

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ERIC FIERRO,

Petitioner,

v.

No. 17-CV-00832-KG-CG

R.C. SMITH,

Respondent.

**ORDER DENYING MOTION TO PROCEED *IN FORMA PAUPERIS***

This matter is before the Court on Petitioner Eric Fierro's Prisoner's Motion and Affidavit For Leave To Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2], filed on August 11, 2017. For the reasons explained below, Petitioner's motion will be denied.

Title 28 of the United States Code, section 1915(a) provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees. 28 U.S.C. § 1915(a)(1). This statute "is designed to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). However, "proceeding *in forma pauperis* in a civil case is a privilege, not a right—fundamental or otherwise." *White v. State of Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998) (internal quotation marks and citation omitted). While a litigant need not "be absolutely destitute to enjoy the benefit of the statute," the litigant must provide an affidavit "which states that one cannot because of his poverty pay or give security for the costs . . . and still be able to provide for himself and dependents with the necessities of life." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

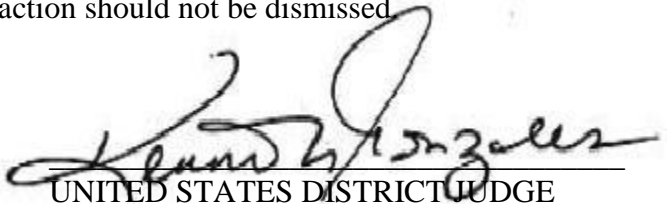
The filing fee in the present case is \$5. See 28 U.S.C. § 1914(a). According to the inmate

account statement submitted by Petitioner, he has sufficient funds available in his inmate account to prepay the \$5 filing fee. [Doc. 2 at 3] Therefore, Petitioner's motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 will be denied.

Petitioner must pay the \$5 filing fee within thirty (30) days of the date of this order or show cause for his failure to do so. Failure timely to pay the filing fee, or to show cause, may result in the dismissal of this action without further notice.

IT IS THEREFORE ORDERED that Petitioner's Prisoner's Motion and Affidavit For Leave To Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2] is DENIED;

IT IS FURTHER ORDERED that Petitioner submit the \$5 filing fee within thirty (30) days of the date of this Order or show cause why this action should not be dismissed



UNITED STATES DISTRICT JUDGE