

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

LOYDALE KIRVEN,

Plaintiff,

vs.

No. CIV 19-0324 JB\SMV

CURRY COUNTY DETENTION CENTER,  
FNU WARNELL,

Defendants.

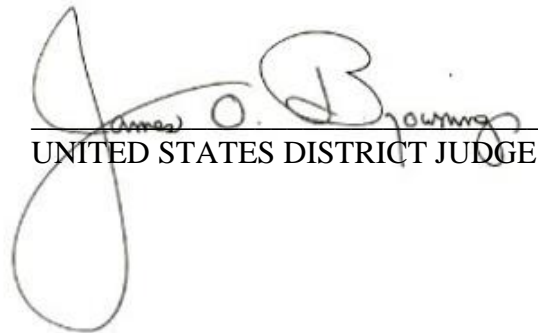
**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Plaintiff’s Motion to Proceed In Forma Pauperis, filed May, 9, 2019 (Doc. 3)(“Motion”). Plaintiff Loydale Kirven is incarcerated at the Curry County Detention Center. He seeks to prosecute this prisoner civil rights action without prepaying the \$400.00 filing fee. In forma pauperis relief is not available if a plaintiff has, “on 3 or more occasions, while incarcerated . . . brought an action . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . .” 28 U.S.C. § 1915(g). The only exception is where the complaint contains “specific, credible allegations of ‘imminent danger.’” Kinnell v. Graves, 265 F.3d 1125, 1127 (10th Cir. 2001)(quoting 28 U.S.C. § 1915(g)).

Kirven previously filed three civil actions while incarcerated, which were dismissed as frivolous, malicious, or failure to state a cognizable claim. See Kirven v. Central New Mexico Correctional Facility, No. CIV 13-0217 MCA\SMV; Kirven v. McIlwain, CIV 07-0958 JB\CG; and Kirven v. Curry County Detention Center, CIV 06-1212 JB\WDS. Furthermore, the Complaint, filed April 5, 2019 (Doc. 1), contains no specific, credible allegations that Kirven is in

imminent danger. See Complaint at 1-5. Kirven alleges that prison officials placed him near a mentally ill individual; that individual assaulted Kirven; and Kirven was required to “use lethal force” on the individual. See Complaint, at 1-2. While the Motion parrots the “imminent danger” standard, it is similarly devoid any specific allegations. See Motion at 5. Consequently, Kirven is not eligible to proceed in forma pauperis, and the Court will deny the Motion. Kirven must prepay the \$400.00 filing fee within thirty days of entry of this Order. The failure to timely comply will result in dismissal of this action without prejudice and without further notice.

**IT IS ORDERED** that: (i) the Plaintiff’s Motion to Proceed In Forma Pauperis, filed May 9, 2019 (Doc. 3) is denied; and (ii) within thirty days of entry of this Memorandum Opinion and Order, Plaintiff Loydale Kirven must prepay the \$400.00 civil filing fee.



UNITED STATES DISTRICT JUDGE

Parties:

Loydale Kirven, Plaintiff pro se  
Curry County Detention Center  
Clovis, New Mexico