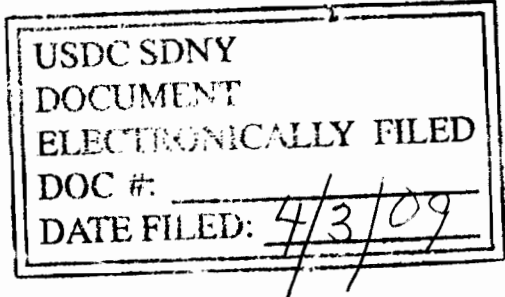


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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:  
**ANTHONY HARRIS ,**  
:  
**Plaintiff,**  
:  
**- against -**  
:  
**CITY OF NEW YORK, et al.,**  
:  
**Defendants.**  
-----X  
**SHIRA A. SCHEINDLIN, U.S.D.J.:**

**ORDER**  
**07 Civ. 6939 (SAS)**



Plaintiff Anthony Harris, a/k/a Tony Harris, a/k/a Anthony Johnson, a/k/a John Doe, has filed countless actions in this district, most of which have been dismissed for failure to state a claim or because they were frivolous or malicious. On October 3, 2008, this Court issued an Order to Show Cause directing Harris to show cause why he should not be enjoined from re-filing the instant action or filing any future actions in this district without prior approval from a Magistrate Judge. That Order also revoked plaintiff's *in forma pauperis* status and dismissed the instant action without prejudice, thereby permitting plaintiff to re-file the action upon payment of the filing fee.

On October 16, 2008, this Court received plaintiff's Opposition to the Order to Show Cause and a motion entitled "Leave to File as Non-Prisoner [In] Forma Pauperis." As he is no longer incarcerated, plaintiff sought a change in

status so that the instant action would not be subject to the Prison Litigation Reform Act (“PLRA”).<sup>1</sup> Plaintiff also requested *in forma pauperis* status on the ground that he is “a poor person without income, bank accounts or assets.” In an Order dated October 24, 2008, this Court decided not to enjoin plaintiff from filing any future actions without the prior approval of a Magistrate Judge. This Court further held that the instant action, which plaintiff filed while he was a prisoner, remains subject to the PLRA.<sup>2</sup> Finally, plaintiff’s request for *in forma pauperis* status was denied.

Plaintiff has since filed a “Motion to Set Aside and Relief From Judgement,” citing Rules 60(b)(1), (2) & (4) and 55(a) & (c) of the Federal Rules

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<sup>1</sup> In particular, plaintiff seeks to avoid the so-called “three strikes” rule set forth in 28 U.S.C. § 1915(g).

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

<sup>2</sup> See *In re Smith*, 114 F.3d 1247, 1251 (D.C. Cir. 1997) (“If a litigant is a prisoner on the day he files a civil action, the PLRA applies.”).

of Civil Procedure, hereinafter referred to as the “Motion.”<sup>3</sup> In his Motion, plaintiff argues that by failing to afford him the chance to pay the filing fee, as either a prisoner or as a non-prisoner, this Court has deprived him of court access in violation of his constitutional right to due process.<sup>4</sup> Plaintiff further argues “[t]hat only a poor prisoner or person is deprived by class. A person able to pay [the] filing fee would not then be subjected to this *unconstitutional* bill of attachment.”<sup>5</sup>

Plaintiff’s arguments are both contradictory and misguided. With regard to his first argument, this Court is in no way preventing plaintiff from paying the filing fee and reinstating his action. Thus, there is no violation of due process as plaintiff is free to pay the filing fee and reinstate his action at any time within the statute of limitations.

Plaintiff’s second argument, as interpreted by this Court, seems to suggest that the withholding or revocation of *in forma pauperis* status is itself unconstitutional because the result is that poor people are not given free access to

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<sup>3</sup> Rule 55, which governs default judgments, does not apply here and cannot provide the remedy that plaintiff seeks.

<sup>4</sup> See Motion at 5.

<sup>5</sup> *Id.* (emphasis in original).

the courts. This argument is not very persuasive given that *in forma pauperis* status is a privilege, not a right.<sup>6</sup> Here, plaintiff has abused that privilege by invoking *in forma pauperis* status in the past to bring numerous actions which were dismissed as being frivolous and without merit. Surely it is not unconstitutional to prevent a prisoner from continuing to waste scarce judicial resources at little expense.<sup>7</sup> As explained by the Ninth Circuit, section 1915(g) does not infringe upon a prisoner's fundamental rights under a rational basis test:

The three-strike rule was enacted to curtail the extraordinary costs of frivolous prisoners suits and minimize such costs to the taxpayers. We have previously recognized that prisoners file a disproportionate number of frivolous suits. We also recognized that prisoners file these suits because of "potential gains and low opportunity

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<sup>6</sup> See *Polanco v. Hopkins*, No. 03-CV-6661-CJS(F), 2007 WL 914023, at \*6 (W.D.N.Y. Mar. 23, 2007) ("In *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1997), the Fifth Circuit held that the three-strike rule does not violate the Fifth Amendment due process clause because it does not prohibit prisoners from filing a lawsuit, it only denies them IFP status. Likewise, in *Rivera v. Allin*, 144 F.3d 719, 723-24 (11th Cir. 1998), the Eleventh Circuit held that IFP status is a privilege, not a right, and that § 1915(g) does not unconstitutionally burden a prisoner's access to the courts."). See also *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) ("[C]ourt permission to proceed IFP is itself a matter of privilege and not right.").

<sup>7</sup> "Congress is no more compelled to guarantee free access to federal courts than it is to provide unlimited access to them. The Supreme Court has never recognized an 'unlimited rule that an indigent at all times and in all cases has the right to relief without the payment of fees.'" *Roller v. Gunn*, 107 F.3d 227, 231 (4th Cir. 1997) (quoting *United States v. Kras*, 409 U.S. 434, 450 (1973)).

costs.” Congress has addressed the rising costs of defending against frivolous prisoner suits by limiting the number of suits they can bring for free. Requiring prisoners to pay filing fees for suits will force them to go through the same thought process non-inmates go through before filing a suit, i.e., is filing this suit worth the costs? Budgetary concerns are a legitimate governmental interest and curbing the costs of defending against frivolous litigation is rationally related to maintaining the budget. Therefore, § 1915(g) satisfies the rational basis test.<sup>8</sup>

In sum, there is no constitutional right to expend the limited resources of the judicial system by allowing a prisoner to bring one frivolous case after another without paying the full filing fee. Accordingly, plaintiff’s request that this Court vacate its decision to revoke his *in forma pauperis* status in the instant action is denied. The Clerk of the Court is directed to close plaintiff’s Motion (Document # 24).

SO ORDERED:

  
Shira A. Scheindlin  
U.S.D.J.

Dated: New York, New York  
April 3, 2009

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<sup>8</sup> *Rodriguez v. Cook*, 169 F.3d 1176, 1181 (9th Cir. 1999) (citations omitted).

**- Appearances -**

**Plaintiff (Pro Se):**

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