

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRENT ALVON SMITH,	}	
TDCJ-CID NO.1024817,	}	
Plaintiff,	}	
v.	}	CIVIL ACTION NO. H-08-2920
	}	
STATE OF TEXAS, <i>et al.</i> ,	}	
Defendants.	}	

OPINION ON DISMISSAL

Plaintiff, a state inmate, has filed a civil rights complaint, alleging that he was subjected to threats and excessive force by prison guards. (Docket Entry No.1). Plaintiff seeks compensatory and punitive damages. (*Id.*).

Plaintiff has also filed a motion to proceed *in forma pauperis*. (Docket Entry No.2). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in imminent danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). In his complaint dated, September 22, 2008, plaintiff alleges that in July, 2008 and on September 8, 2008, he was threatened with bodily injury by two inmates “by and through Warden Janicek and his subordinates.” (Docket Entry No.1). Other than this conclusory statement, plaintiff states no other facts that would show that on the date that he filed the pending complaint that he was in imminent danger of serious physical harm. *See Banos*, 144 F.3d. at 884-85; *Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998).

Plaintiff's litigation history reveals that he falls within the provisions of section 1915(g). *See Smith v. Commissioner's Court*, Civil Application No.6:00cv557 (E.D. Tex. Feb. 2, 2001); *Smith v. Smith County Jail*, Civil Action No.6:00cv407 (E.D. Tex. Jan. 8, 2001); *Smith v. White*, Civil Action No.6:94cv514 (E.D. Tex. Jan. 6, 1995); *Smith v. Wood County*, Civil Action No.6:93cv426 (E.D. Tex. June 16, 1994). Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). All pending motions are DENIED.

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, this 13th day of November, 2008.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE