

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Vincent F. Rivera,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:06-CV-165
	:	
James H. Douglas,	:	
Patrick Leahy, and Vermont	:	
Department of Corrections,	:	
Defendants.	:	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
(Paper 1)

Plaintiff Vincent F. Rivera, a Florida inmate proceeding *pro se*, has filed a motion to proceed *in forma pauperis*. (Paper 1). In his proposed complaint, Rivera seeks to bring claims against the defendants for their alleged participation in "an established prison industrial cartel operating state-to-state." Because Rivera has violated the "three strikes rule" by filing previous frivolous claims in United States federal courts, I recommend that his motion be DENIED, and that this case be DISMISSED without prejudice.

The Prison Litigation Reform Act, 28 U.S.C. § 1915(g) ("PLRA"), states:

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.

In a 2005 decision, the United States District Court for the Middle District of Florida rejected Rivera's application to proceed *in forma pauperis* on the ground that he had violated the PLRA's "three strikes rule." Rivera v. Aramark, Inc., 2005 WL 1271368, at \*1 (M.D. Fla. May 18, 2005). In support of its ruling, the Aramark court cited three cases filed in the Middle District of Florida, each of which were dismissed because "they were frivolous, malicious or failed to state a claim upon which relief may be granted." Id.; see also Rivera v. Allin, 144 F.3d 719, 730-32 (11<sup>th</sup> Cir.), cert. dismissed, 524 U.S. 978 (1998) (upholding district court's "three strikes" dismissal of Rivera's filing).

Based upon the cases cited in the Aramark decision, this Court is compelled by § 1915(g) to deny Rivera *in forma pauperis* status. Rivera is currently incarcerated, is clearly a "three strikes" violator, and there is no indication that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). I therefore

recommend that his motion to proceed *in forma pauperis* (Paper 1) be DENIED, and that this case be DISMISSED without prejudice, subject to refileing only upon the full payment of the filing fee.

Dated at Burlington, in the District of Vermont,  
this 25<sup>th</sup> day of August, 2006.

/s/ Jerome J. Niedermeier  
Jerome J. Niedermeier  
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).