

of Appeals for the Fifth Circuit previously advised plaintiff that he needed to submit the \$350.00 filing fee or establish an imminent threat of serious physical harm to proceed with a civil suit once he accumulates three “strikes,” pursuant to 28 U.S.C. § 1915(g). Wolters v. Federal Bureau of Prisons, No. 10-30717, slip op. at 2.

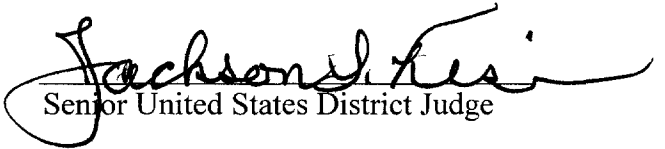
Plaintiff names as defendants Eric Holder, the Attorney General of the United States, and C. Zych, Warden of the United States Penitentiary in Lee County, Virginia (“USP Lee”). Plaintiff complains that correctional staff retaliated against him by entering allegedly false incident reports and disciplinary convictions to increase his security level and housing classification after plaintiff complained about threats of sexual and physical assault.¹ Plaintiff also alleges that staff at another federal prison retaliated against him by X-raying his mouth and anus to search for weapons during a prison transfer.

After reviewing plaintiff’s complaint in this civil action, it is clear that plaintiff does not establish that he is currently under any imminent threat of any serious physical injury within the meaning of 28 U.S.C. § 1915(g). Furthermore, plaintiff was housed at a federal penitentiary in Pennsylvania when he instituted this action, and thus, plaintiff could not have been in imminent danger of serious physical harm in Pennsylvania about the conditions previously experienced in Virginia. Accordingly, I dismiss the action without prejudice for plaintiff’s failure to pay the filing fee at the time of filing the complaint. See, e.g., Dupree v. Palmer, 284 F.3d 1234, 1237 (11th Cir. 2002) (reasoning that the filing fee is due upon filing a civil action when in forma pauperis provisions do not apply to plaintiff and that the court is not required to permit plaintiff an opportunity to pay the filing fee if plaintiff is ineligible to proceed in forma pauperis).

¹ Plaintiff acknowledges that this action does not litigate the related issues of the alleged unspecified sexual and physical assaults. (Compl. 5.)

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying
Order to plaintiff.

ENTER: This 3rd day of ~~June~~ ^{July}, 2012.


Senior United States District Judge