

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID Q. WEBB,

Plaintiff,

V.

KELLY BUSEY, et al.,

Defendants.

CASE NO. 3:22-cv-05397-TL

ORDER REVOKING *IN FORMA PAUPERIS* STATUS

This matter is before the Court on referral from the United States Court of Appeals for
ninth Circuit. Dkt. No. 21. The Ninth Circuit has referred this matter back to the Court to
determine if *in forma pauperis* (IFP) status should continue for *pro se* Plaintiff David Q. Webb's
case. Plaintiff filed a Motion to Dismiss on April 1, 2019, challenging the constitutionality
of this Court's Order and Judgment dismissing his case against employees of the Gig
City Police Department with prejudice for failure to state a claim upon which relief may be
granted. See Dkt. Nos. 17, 18. The Court FINDS Plaintiff's appeal to be frivolous and therefore
denies his *in forma pauperis* status.

1 Plaintiff Webb originally filed the claims at issue as part of a separate action, *Webb v.*
2 *Busey*, No. C22-5030 (*Busey I*). *Busey I*, Dkt. Nos. 1-1, 5. In that case, the District Judge adopted
3 the United States Magistrate Judge's recommendation to deny IFP status over Plaintiff's
4 objections and dismissed the case without prejudice to re-filing. *Busey I*, Dkt. Nos. 7, 8, 11.
5 Within weeks of dismissal, Plaintiff filed a new IFP application and proposed complaint that
6 named five of the same defendants as in *Busey I* and asserted the same causes of action. Dkt. No.
7 1. This Court granted Plaintiff an opportunity to show cause how he had cured the deficiencies
8 previously identified but Plaintiff failed to plead the facts necessary to state a claim for relief.
9 Dkt. Nos. 14, 16, 17. The Court therefore dismissed the case pursuant to 28 U.S.C. § 1915 and
10 entered judgment accordingly. Dkt. Nos. 17, 18. Plaintiff appealed to the Ninth Circuit. Dkt.
11 No. 19.

12 The Ninth Circuit referred the matter back to this Court "for the limited purpose of
13 determining whether in forma pauperis status should continue for this appeal or whether the
14 appeal is frivolous or taken in bad faith" pursuant to 28 U.S.C. § 1915(a)(3). Dkt. No. 21 at 1. A
15 good faith appeal must seek review of at least one "non-frivolous" issue or claim. *See Hooker v.*
16 *Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). A frivolous claim "lacks an arguable basis
17 either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). As noted in the Court's
18 order of dismissal, Plaintiff's most recent complaint failed to state a claim for relief under Title
19 VI, the Fourth Amendment, the Fourteenth Amendment, or Section 1983 due to inability to plead
20 facts to support those claims. Dkt. No. 17 at 3–5. Plaintiff has been provided multiple
21 opportunities over multiple legal cases to cure the deficient complaint and the Court determined
22 that it would be futile to grant leave for further amendment. *Id.* at 6.

1 Since none of Plaintiff's claims have "an arguable basis either in law or in fact" (*Neitzke*,
2 490 U.S. at 325), the Court ORDERS Plaintiff's IFP status REVOKED for the purpose of appeal
3 pursuant to 28 U.S.C. § 1915(a)(3).

4 The Clerk shall provide a copy of this Order to all parties and the U.S. Court of Appeals
5 for the Ninth Circuit.

6 Dated this 21st day of November, 2022.

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9 Tana Lin
United States District Judge

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