

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENNARO RAUSO : Civil Action
 :
 V. :
 :
 HENRY SUTTON, et al. : No. 99-2817

ORDER-MEMORANDUM

AND NOW, this 29th day of June, 1999, plaintiff Gennaro Rauso's motion to alter, amend, or vacate the denial of his petition to proceed in forma pauperis is denied. See order, June 9, 1999.

Accepting as true the allegations of the complaint, the assertions that he was ordered to stand "pre-naked" in front of his cell door and denied outdoor exercise do not constitute exceptions to § 1915(g). Whatever the long-term effects on plaintiff's health, these alleged occurrences did not put him in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Cf. Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997) (plaintiff who had received death threats was entitled to proceed in forma pauperis despite prohibition of § 1915(g)).

Plaintiff's argument that § 1915(g) does not apply to First Amendment claims is also unsupportable. Section 1915(g) applies to "civil actions and appeals" brought by prisoners seeking in forma pauperis status. 28 U.S.C. § 1915(g). Neither the language of the provision, nor relevant case law have placed restrictions on the type of civil action to which § 1915(g) is applicable. See generally Anderson v. Sundquist, 1 F. Supp. 2d 828 (W.D. Tenn.

1998) (applying § 1915(g) to prisoner's First Amendment claim); Williams v. Muhammad, 1997 WL 136270 (N.D. Ill. March 20, 1997) (same). The only exception - imminent threat of serious physical injury - is not pertinent here.¹

Furthermore, plaintiff's argument that a dismissal would prejudice his case because of the expiration of the statute of limitations is unpersuasive. Plaintiff may avoid this result by paying the requisite filing fee.

Plaintiff shall have until July 30, 1999 within which to pay the \$150 filing fee.² Otherwise, this action will be dismissed.

Edmund V. Ludwig, J.

¹Plaintiff's citation of Canell v. Lightner, 143 F.3d 1210 (9th Cir. 1998), is not helpful. Canell held that § 1915(g) was inapplicable to a claim that was already pending when it was enacted. Id., 143 F.3d at 1212-13. It was also held that § 1915e(e) - which governs a prisoner's right to relief for emotional injury - does not apply to First Amendment claims. Id., 143 F.3d at 1213. Canell does not stand for the proposition, however, that First Amendment claims are outside the scope of § 1915(g). See id., 143 F.3d at 1212.

²Plaintiff was originally given until June 28, 1999 to remit the fee. Order, June 9, 1999. In light of plaintiff's motion to amend, his time for paying the filing fee is extended.