

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

EDWARD LEWIS,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:06-0040
	:	
v.	:	(CONABOY, D.J.)
	:	(MANNION, M.J.)
	:	
YORK COUNTY PRISON	:	
ADMINISTRATION, THOMAS	:	
HOGAN, DEPUTY WARDEN	:	
ROGER THOMAS, DEPUTY	:	
WARDEN DENNIS W. BOWEN,	:	
YORK COUNTY PRISON	:	
MEDICAL DEPARTMENT,	:	
JOSEPH SALLEMI, MR. BROWN,	:	
MR. MCCARTHY, & DONALD	:	
MONICA,	:	
	:	
Defendants	:	

ORDER

The plaintiff was an alien detained by the U.S. Immigration and Customs Enforcement at the York County Correctional Facility pending removal. He filed the instant complaint on January 9, 2006. (Doc. No. 1.) Shortly thereafter, he received an administrative order directing him to pay the filing fee or apply to proceed in forma pauperis and an application and authorization form for use by prisoners to proceed in forma pauperis. (Doc. No. 5.) Upon his returning the application and the authorization form, the court issued an administrative order pursuant to the Prisoner Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b), directing the prison warden to remit each month to the court a percentage of the filing fee from the plaintiff's prison account. (Doc. No. 11.)

On March 22, 2006, the plaintiff filed a “memorandum” in which he argued that, as an alien detained pending removal, he was a civil detainee and not a prisoner as defined by the PLRA, §1915(h). Consequently, the plaintiff contended, he was not subject to deductions authorized by §1915(b) against prisoner accounts for proceedings in forma pauperis. (Doc. No. 16.) The court construed a memorandum as a motion to stop in forma pauperis deductions from his prison account and to refund the money already deducted. (Doc. No. 28.) The court ordered the defendants to brief two issues: whether the plaintiff was authorized to proceed in forma pauperis; and, whether the plaintiff was subject to the §1915(b) deductions. The defendants timely submitted briefs, in which they concede that the plaintiff is permitted to proceed in forma pauperis and he is not subject to the automatic deductions taken against prisoners. (Doc. Nos. 32 & 35.) The court agrees.

Section 1915(a)(1), the in forma pauperis statute, provides:

[A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.

The in forma pauperis “statute is intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, ‘in any court of the United States’ solely because his poverty makes it impossible for him to pay or secure the costs.” Adkins v. Dupont

Co., 335 U.S. 331, 342 (1948). Although the seemingly linked use of the words “person” and “prisoner” in §1915(a)(1) confuses the issue of whether a free person may proceed in forma pauperis, it is well established that the statute allows any indigent person, free or incarcerated, to avoid paying court fees. See Martinez v. Kristie Kleaners, Inc., 364 F.3d 1305, 1306 n.1 (11th Cir. 2004); Haynes v. Scott, 116 F.3d 137, 139-40 (5th Cir. 1997); Floyd v. U.S. Postal Serv., 105 F.3d 274, 276 (6th Cir. 1997), overruled on other grounds by Callihan v. Schneider, 178 F.3d 800 (6th Cir. 1999); Powell v. Hoover, 956 F.Supp. 564, 566 (M.D. Pa. 1997). Accordingly, it is clear that the plaintiff is entitled to proceed in forma pauperis and, as he has already submitted forms showing his indigence and been approved for in forma pauperis status. That approval was proper, based upon his financial condition.

The PLRA provides that, “if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). It defines a prisoner as “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.” Id. § 1915(h). It is well established that a civil detainee, including an alien detained by the Federal government pending removal, is not a prisoner for the purposes of the PLRA; indeed, every court that has addressed the issue has held that the PLRA does not apply to civil detainees.

See, e.g., Jackson v. Johnson, – F.3d –, 2007 WL 10728, at *3-*4 (5th Cir. 2007); Michau v. Charleston County, South Carolina, 434 F.3d 725, 727-28 (4th Cir. 2006); Agyeman v. Immigration & Naturalization Serv., 296 F.3d 871, 885-86 (9th Cir. 2002); Troville v. Venz, 303 F.3d 1256, 1259-60 (11th Cir. 2002); LaFontant v. Immigration & Naturalization Serv., 135 F.3d 158, 165 (D.C. Cir. 1998); Ojo v. Immigration & Naturalization Serv., 106 F.3d 680, 682 (5th Cir. 1997). Accordingly, it is clear that the plaintiff was not subject to the prisoner in forma pauperis deductions under §1915(b), and the administrative order was erroneously issued.

NOW, THEREFORE, IT IS ORDERED THAT the York county Correctional Facility is to cease deducting plaintiff's monies for payment of the filing fee, return any monies collected but not yet forwarded to the Clerk of Courts, and the Clerk of Court is directed to refund to the plaintiff the sum of any filing fees paid to the court pursuant to the administrative order issued on February 14, 2006.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States Magistrate Judge

Date: February 23, 2007

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