

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ISIDRO HERNANDEZ-RAMIREZ,

Petitioner,

v.

CIVIL ACTION NO. 1:06CV93
(Judge Keeley)

JOYCE FRANCIS,
WARDEN FCI-GILMER,

Respondent.

**ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND DENYING PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS**

On June 5, 2006, the petitioner, Isidro Hernandez-Ramirez, filed an "Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241." (Doc. No. 1.) On June 12, 2006, the petitioner filed a motion to proceed *in forma pauperis* (IFP). (Doc. No. 4.) On July 13, 2006, United States Magistrate Judge James E. Seibert issued a Report and Recommendation (R&R) recommending that the petitioner's motion be denied because the ledger sheet submitted by the petitioner reflected a prisoner trust account balance of \$41.10 as of June 4, 2006. Thus, the magistrate judge concluded that the petitioner had sufficient funds to pay the \$5.00 filing fee.

On July 19, 2006, the petitioner filed his objections to the R&R. In support he filed an updated ledger sheet, showing that, after a June 9, 2006, \$25.00 quarterly payment to the Inmate Financial Responsibility Plan (IFRP), his balance on June 12, 2006, was actually \$16.10. As such, he argues that because his account

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had less than \$20.00 in it on the date he filed his motion to proceed IFP, the Court should grant his motion.

In part, 28 U.S.C. § 1915(a) provides:

(1) . . . any 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.*

(emphasis added)

Here, the petitioner's filing fee is \$5.00. The ledger sheet provided to the magistrate judge indicated a balance of \$41.10. His updated ledger sheet showed a balance of \$16.10 as of June 9, 2006, with no withdrawals occurring before June 12, 2006, the date he filed his motion to proceed IFP.¹ Although his prisoner trust account balance had been reduced by the quarterly payment to the IFRP, like the magistrate judge, the Court finds that the petitioner had sufficient funds to pay the \$5.00 filing fee on the date his motion was filed. Thus, the Court **AFFIRMS** Magistrate Judge Seibert's recommendation and **DENIES** the petitioner's motion

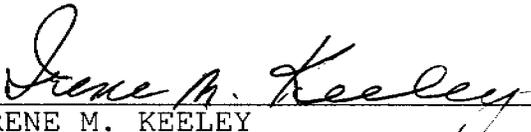
¹ The ledger sheet also shows a \$16.00 reduction for "sales" on July 7, 2006, leaving the petitioner with a total account balance of \$0.10 as of July 16, 2006, the date of the report. Because this reduction occurred after his motion for leave to proceed IFP was filed, it bears no impact on the Court's analysis.

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to proceed IFP. (Doc. No. 4.)

The Clerk is directed to mail a certified copy of this Order to the petitioner and transmit copies of this Order to counsel of record and all appropriate agencies.

Dated: July 24, 2006.


IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE