

February 23, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20747  
Conference Calendar

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CHRISTOPHER G. POLITIS,

Plaintiff-Appellant,

versus

JAMES H. DYER; WIT, Houston Police Department Officer;  
ESPINOSA, Houston Police Department Officer;  
ESPINOSA'S PARTNER, Houston Police Department Officer;  
COURT #351st; MARK KENT ELLIS, Judge,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CV-2840  
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Before BARKSDALE, GARZA, and STEWART, Circuit Judges.

PER CURIAM:\*

Christopher G. Politis, currently immigration detainee # 95541637, appeals from the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim. Politis argues that the district court failed to afford his complaint liberal construction and denied him procedural due process by failing to conduct a hearing and give him an opportunity to amend the complaint before dismissal. We conclude that the district

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

court properly conducted the screening function required by 28 U.S.C. § 1915A and that the court did not err by dismissing the complaint before Politis could amend. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Jones v. Greninger, 188 F.3d 322, 326-27 (5th Cir. 1999); Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986). We decline to review Politis's claim, raised for the first time on appeal, that he was subject to a due process violation because of an inadequate law library at his detention facility. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999). Politis has also inappropriately filed a motion to stay deportation in this civil rights action. That motion is DENIED.

The appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. Politis is cautioned that the dismissal of this appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g), as does the district court's dismissal of his complaint for failure to state a claim, and that if he accumulates three strikes, he will not be able to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996); 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED; MOTION DENIED.