

February 23, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-10405  
Conference Calendar

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ALFREDO ALVAREZ,

Plaintiff-Appellant,

versus

NFN ORTEGA, Detective, Forth Worth Police Department;  
ROBERT RANGEL, Drug Enforcement Administration Agent;  
TERRI MOORE, Assistant United States Attorney; NEIL  
DURRANCE, Public Defender; KEVIN FITCHETT, Detective,  
Fort Worth Police Department; PAUL GARTNER, C.D. Deputy  
Chief; LIEUTENANT UNKNOWN,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:04-CV-403-Y  
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Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Alfredo Alvarez, federal prisoner # 30170-077, appeals the dismissal of his Bivens\*\* complaint and moves for appointment of counsel. The district court held in pertinent part that Alvarez's claims were barred by Heck v. Humphrey, 512 U.S. 477,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

\*\* Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

486 (1994). Alvarez has failed to brief this issue and therefore has waived its review. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Alvarez's appeal is without arguable merit and is therefore dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. His motion for appointment of counsel is denied. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The dismissal of his appeal as frivolous and the district court's dismissal of his complaint as frivolous and for failure to state a claim constitute two strikes for the purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Alvarez is cautioned that if he obtains 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 § 1915(g).

APPEAL DISMISSED; APPOINTMENT OF COUNSEL DENIED; SANCTION WARNING ISSUED.