IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1435

Summary Calendar

ROBERT LANG,

Plaintiff-Appellant,

v.

J. MICHAEL QUINLAN and
RON THOMPSON,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Texas
(3:91-CV-2647-H)

(April 9, 1993)

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

Robert Lang, a federal prisoner, appeals the district court's dismissal of his pro se, in forma pauperis civil rights complaint as frivolous pursuant to 28 U.S.C. § 1915(d). For the following reasons, we affirm the dismissal in part, reverse the

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

dismissal in part, and remand for proceedings consistent with this opinion.

I. BACKGROUND

A. **The Inmate Financial Responsibility Program**

In 1987, the federal prison system implemented the Inmate Financial Responsibility Program (IFRP), now codified at 28 C.F.R. §§ 545.10 and 545.11 (1992), to "encourage[] each sentenced inmate to meet his or her legitimate financial obligations." The program provides for prison staff members to work with inmates to develop a "financial plan," with the goal of fulfilling specific financial obligations.[1] The inmate is then responsible for making the payments required under the plan and for providing documentation of the payments. Id. at § 545.11(b). Payments may be made from the earnings of the inmate within the institution or from outside resources. See id. The inmate's participation in the program is reviewed each time prison staff assesses the inmate's demonstrated level of responsible behavior. Id. at § 545.11(c).

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[1] The program provides that the financial plan shall include the following obligations, in order of priority:

(1) Special Assessments imposed under 18 U.S.C. § 3013;
(2) Court-Ordered [restitution];
(3) Fines and court costs;
(4) State and local court obligations; and
(5) Other federal government obligations.

28 C.F.R. § 545.11(a) (1992).

Effective January 2, 1990, the Department of Justice added a minimum payment provision to the IFRP. See 54 Fed. Reg. 49944-45 (1989). The payment provision was amended in 1991. See 56 Fed. Reg. 23476-77 (1991). It now provides, in part:

> Ordinarily, the minimum payment for non-UNICOR and UNICOR grade 5 inmates will be $25.00 per quarter. This payment may exceed $25.00, taking into consideration the inmate's specific obligations, institution resources and community resources.

28 C.F.R. § 545.11(b)(1) (1992).

The 1991 amendment also added a specific subsection to the IFRP addressing the effects of nonparticipation in the program. See 56 Fed. Reg. 23476-77 (1991). As amended, the IFRP provides that the "[r]efusal by an inmate to participate in the program or to comply with the provisions of his plan shall ordinarily result" in nine specific sanctions. 28 C.F.R. § 545.11(d). These sanctions include:

(1) Where applicable, the Parole Commission will be notified of the inmate's failure to participate;

(2) The inmate will not receive any furlough (other than possibly an emergency furlough);

(3) The inmate will not receive performance pay above the maintenance pay level, or bonus pay, or vacation pay;

(4) The inmate will not be assigned to any work detail outside the secure perimeter of the facility;

(5) The inmate will not be placed in UNICOR.[2] Any inmate assigned to UNICOR who fails to make adequate progress on his/her financial plan will be removed from UNICOR, and once removed, may not be placed on a UNICOR waiting list for six months. Any exceptions to this require approval of the Warden;

(6) The inmate will not be permitted to purchase any items in excess of the monthly spending limitation, including special purchase items like sports equipment, hobby crafts, etc.;

(7) The inmate will be quartered in the lowest housing status (dormitory, double-bunking, etc.);

(8) The inmate will not be placed in a community-based program;

(9) The inmate will not receive a release gratuity unless approved by the Warden.

28 C.F.R. § 545.11(d).[3]

Thus, under Bureau of Prison regulations, an inmate's "refusal to participate" in the IFRP can have various consequences. The prisoner ordinarily will be unable to obtain performance pay above the maintenance pay level, which is approximately five dollars per month, or fifteen dollars per quarter. And, if the prisoner is indigent, he or she will

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[2] The Department of Justice operates Federal Prison Industries, Inc. (UNICOR) to provide industrial jobs for inmates confined in federal institutions. The work is designed to provide inmates the opportunity to acquire knowledge, skills, and work habits that will be of use when the inmate is released from prison. Inmates with UNICOR jobs earn considerably higher wages than those with non-UNICOR jobs. See 28 C.F.R. §§ 345.10-345.26 (1992).

[3] As originally adopted, the IFRP provided for only two specific sanctions: (1) the inmate's progress on his or her plan would be reported to the parole commission and (2) an inmate who failed to demonstrate financial responsibility could neither hold a UNICOR work assignment nor receive performance pay above the maintenance pay level. See 52 Fed. Reg. 10529 (1987).

probably be unable to meet the minimum payment requirement of twenty-five dollars per quarter. This failure, it appears, could in turn result in more serious sanctions, such as the postponement of the prisoner's parole date or the denial of any furlough.

B. **Lang's Complaint**

On December 6, 1991, Robert Lang, a federal prisoner who, as part of his sentence, had been assessed a fine of $1,650, filed a pro se complaint against prison administrators. Lang alleged that, because he is indigent and unable to pay the twenty-five dollar minimum quarterly payment towards his court-ordered special assessment, the imposition of the sanctions "ordinarily" resulting from the "refusal" to participate in the IFRP violates his constitutional rights. In particular, Lang complained (1) that the minimum payment provision of the IFRP violates the equal protection guarantee of the Fifth Amendment due process clause, (2) that the he had been or would be sanctioned under the IFRP without due process of law, (3) that the IFRP subjects inmates like him to involuntary servitude in violation of the Thirteenth Amendment, and (4) that prison administrators had conspired to deprive him of constitutional rights in violation of 18 U.S.C. § 241. Lang sought declaratory and injunctive relief, as well as monetary damages in the amount of $75,000.[4]

[4] On the same day, Lang also filed a motion for class certification and a motion for a temporary restraining order (TRO) or preliminary injunction. Lang specifically sought to assert the specified constitutional claims on behalf "of all persons who have been, will be or [are] in the present being

The district court referred Lang's complaint to a magistrate, who propounded interrogatories to Lang. The magistrate specifically inquired (1) whether Lang had ever been denied release on parole as a result of his failure to participate in the IFRP, (2) whether Lang had ever refused the offer of a UNICOR job assignment that would have provided him with income sufficient to satisfy the IFRP minimum payment provision, and (3) whether Lang had exhausted his administrative remedies. With respect to the magistrate's first question, Lang responded that, although he did not know for certain, he believed that his failure to make minimum IFRP payments would affect his parole date. As for the magistrate's inquiry about offers of a UNICOR job, Lang responded: "I refused no assignment." Finally, in response to the magistrate's question about his pursuit of administrative remedies, Lang attached documentation indicating that he had indeed exhausted that avenue for obtaining relief.

The magistrate presumed that Lang, because of his status as a federal prisoner, was attempting to state a claim under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).[5] Based on his responses to the interrogatories,

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affected and subject to [the IFRP]." He further sought a preliminary injunction restraining the enforcement of the IFRP. Although the district court never ruled on Lang's motion for class certification, the district court ultimately denied Lang's motion for a TRO and preliminary injunction. Lang has not appealed the denial of this latter motion.

[5] It should be noted that Lang objected to the magistrate's presumption that he was proceeding under Bivens as being "unwarranted and erroneous." Although it is not entirely clear, Lang appears to argue that he is proceeding only under 18 U.S.C.

however, the magistrate concluded that Lang's claims had no arguable basis in law and recommended dismissal under 28 U.S.C. § 1915(d). In support of its conclusion that Lang's claims were legally frivolous, the magistrate noted that, "although the validity of the [IFRP] has yet to be addressed by the United States Court of Appeals for the Fifth Circuit, other federal courts . . . are uniform in concluding that it does not violate a federal prisoner's civil rights." In addition, with respect to Lang's due process claim, the magistrate reasoned that Lang "has no interest of a constitutional magnitude in many of the privileges of which he might be deprived due to his failure to participate in the [IFRP]." The magistrate did not separately address Lang's equal protection claim, his involuntary servitude claim, or his claim under 18 U.S.C. § 241.

The district court, after independently reviewing the record, the magistrate's report, and Lang's objections, adopted the findings and conclusions of the magistrate judge and dismissed Lang's complaint with prejudice. Lang timely filed a notice of appeal.[6]

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§ 241 and under the judicial review provision of the Administrative Procedure Act, 5 U.S.C. § 702.

Construing Lang's complaint broadly, as we must, we agree that Lang is essentially asserting constitutional tort claims. After all, he seeks not only injunctive relief, but also money damages. And, it is by now clear that a person may bring a Bivens action against federal officials who have violated his or her Fifth Amendment due process or equal protection rights. See United States v. Burzynski Cancer Research Institute, 819 F.2d 1301, 1308 (5th Cir. 1987), cert. denied, 484 U.S. 1068 (1988).

[6] Shortly after he perfected this appeal, Lang filed a motion for a TRO or preliminary injunction with this court. The

II. SECTION 1915(d) DISMISSALS

28 U.S.C. § 1915(d) authorizes a federal court to dismiss a complaint filed in forma pauperis "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." A complaint is "frivolous" within the meaning of section 1915(d) if "it lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). According to the Supreme Court, section 1915(d) gives a federal court "not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Id. at 327.

A complaint should be dismissed for being "legally frivolous" only in limited circumstances. Indeed, the Supreme Court has indicated that legal frivolousness, in the context of section 1915(d), "refers to a more limited set of claims than does Rule 12(b)(6)" of the Federal Rules of Civil Procedure. Id. at 329; see also id at 331 (holding that a complaint is not automatically frivolous within the meaning of section 1915(d) because it fails to state a claim). Similarly, this court has indicated that a complaint is legally frivolous when it involves

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motion was denied. Lang subsequently filed another motion, which we now deny. Although we have the authority under 28 U.S.C. § 1651(a) to grant injunctive relief, such authority should be invoked only in extreme cases. See Stell v. Savannah Chatham County Bd. of Ed., 318 F.2d 425, 426 (5th Cir. 1963), cert. denied, 376 U.S. 908 (1964). This is not such a case.

the "mere application of well-settled principles of law." Moore v. Mabus, 976 F.2d 268, 271 (5th Cir. 1992); see also Parker v. Fort Worth Police Dep't, 980 F.2d 1023, 1024 (5th Cir. 1993) (a complaint that fails to state a claim under Rule 12(b)(6) may nonetheless have an arguable basis in law and hence not be frivolous). For example, a complaint would be legally frivolous if "it is clear that the defendants are immune from suit" or if the plaintiff alleges "infringement of a legal interest which clearly does not exist." Neitzke, 490 U.S. at 327.

A complaint should be dismissed as "factually frivolous," by contrast, if the facts alleged are clearly baseless, fanciful, fantastic, or delusional. See Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible." Id. A complaint is not factually frivolous, however, "simply because the court finds the plaintiff's allegations unlikely." Id. After all, the section 1915(d) frivolous determination "cannot serve as a factfinding process for the resolution of disputed facts." Id.

We review section 1915(d) dismissals--whether based on a determination that the complaint is legally or factually frivolous--for abuse of that discretion. See Denton, 112 S. Ct. at 1734; Moore, 976 F.2d at 270. In determining whether a district court has abused its discretion, we consider, among other things, whether (1) the plaintiff is proceeding pro se, (2) the court inappropriately resolved genuine issues of disputed

fact, (3) the court applied erroneous legal conclusions, (4) the court has provided a statement of reasons which facilitates intelligent appellate review, and (5) any factual frivolousness could have been remedied through a more specific pleading. Denton, 112 S. Ct. at 1734; Moore, 976 F.2d at 270. The lower court's legal conclusions are especially important in the context of dismissals based on legal frivolousness.

III. THE DISMISSAL OF LANG'S COMPLAINT

As discussed above, Lang's complaint raises four specific challenges to the IFRP. He first argues that prison administrators, by enacting and implementing the IFRP regulations, have conspired to deprive him of constitutional rights. He also contends that the IFRP and its minimum payment provision effectively subjects him to involuntary servitude in violation of the Thirteenth Amendment. In addition, Lang argues that the application of the minimum payment provision to indigents violates the equal protection component of the Fifth Amendment due process clause. Finally, Lang complains that the sanctions "ordinarily resulting" from an inmate's refusal to participate in the IFRP are imposed without due process of law. We address of each of these contentions in turn to determine whether the district court abused its discretion in dismissing Lang's complaint as frivolous.

A. **Criminal Conspiracy Claim**

With respect to Lang's criminal conspiracy claim under 18 U.S.C. § 241, we hold that the district court acted well within its discretion in dismissing the claim as legally frivolous. Section 241, which criminalizes conspiracies to deprive a person of "any right or privilege secured to him by the Constitution or laws of the United States," does not give rise to a private cause of action. Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989). Accordingly, Lang's claim under this statute is patently frivolous and was properly dismissed pursuant to section 1915(d).

B. **Involuntary Servitude Claim**

We also agree that Lang's claim of involuntary servitude, as he has alleged it, has no arguable basis in law. It may be true, as Lang argues, that a prisoner who has not been sentenced to hard labor retains a Thirteenth Amendment right to be free of involuntary servitude. See Watson v. Graves, 909 F.2d 1549, 1552 (5th Cir. 1990). This right is violated, however, only if the prisoner has, or believes he has, no way to avoid continued service. Id. "A showing of compulsion is thus a prerequisite to proof of involuntary servitude." Id. (quoting Flood v. Kuhn, 316 F. Supp. 271, 281 (S.D.N.Y. 1970), aff'd, 443 F.2d 264 (2d Cir. 1991), aff'd on other grounds, 407 U.S. 258 (1972)). When a prisoner has a choice about continued service, even though it is a painful one, there is no involuntary servitude. Watson, 909 F.2d at 1552.

Here, Lang has not even alleged that prison administrators have compelled him to work so that he can make IFRP payments; on

the contrary, the gravamen of his complaint is that he has been subjected to various sanctions because he did not (and was not allowed to) participate in the IFRP. Thus, Lang has not only failed to allege that he was compelled to continue service, but also that he served at all. While the sanctions that Lang has allegedly suffered may indeed be painful, they do not by themselves give rise to a claim for involuntary servitude under the Thirteenth Amendment. Accordingly, we conclude that the district court did not abuse its discretion in dismissing Lang's involuntary servitude claim as "indisputably meritless."

C. **Equal Protection Claim**

Lang's equal protection claim presents a more difficult question. Lang contends that the IFRP, as administered by prison officials, requires each inmate with court-ordered financial obligations to pay a minimum of twenty-five dollars per quarter, regardless of his financial resources.[7] Because he is indigent and unable to make the required minimum payment, Lang contends that the sanctions authorized by the program are being imposed as a result of his indigency, and in violation of the equal protection guarantee of the Fifth Amendment due process clause.

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[7] Lang makes specific reference to two Bureau of Prisons directives implementing the IFRP--Program Statement 5380.2, dated May 15, 1991 and Institution Supplement SEA 5380.1(c), dated June 15, 1991. The Institution Supplement provides, in relevant part:

> The Inmate Financial Responsibility Program has a minimum monthly payment for both Non-UNICOR and UNICOR workers. . . . The minimum, monthly payment for Non-UNICOR inmates is $25 per quarter. The minimum payment may exceed $25 per quarter, depending on the inmate's financial resources.

"The essence of an equal protection claim is that other persons similarly situated as is the claimant unfairly enjoy benefits that he does not or escape burdens to which he is subjected." United States v. Cronn, 717 F.2d 164, 169 (5th Cir. 1983), cert. denied, 468 U.S. 1217 (1984). Moreover, under settled equal protection jurisprudence, "a law nondiscriminatory on its face may be grossly discriminatory in its operation." Griffin v. Illinois, 351 U.S. 12, 17 n.11 (1956). And, while we recognize that indigency is not a suspect class for purposes of equal protection review, see Maher v. Roe, 432 U.S. 464, 470-71 (1977), the disparate treatment of indigents can give rise to a valid equal protection claim. See, e.g., Williams v. Illinois, 399 U.S. 235, 242 (1970) (holding that the state may not subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely because of their indigency).

The district court nevertheless concluded that Lang's equal protection claim has no arguable basis in law. The court first noted that, while this circuit has not addressed the validity of the IFRP, other federal courts "are uniform in concluding that it does not violate a federal prisoner's civil rights." Finding nothing in the pleadings "which would cause it to question the decision reached by those other courts," the district court summarily concluded that Lang's claims also were meritless.

This reasoning, in our view, does not provide an adequate basis for the dismissal of Lang's equal protection claim. Not

only does it fail to address the claim in a manner that facilitates appellate review, it acknowledges that Lang's equal protection claim presents issues that are unresolved in this circuit. Dismissal of such claims pursuant to section 1915(d) is generally inappropriate. See Moore, 976 F.2d at 271 (holding that section 1915(d) dismissal was improper where pro se complaint raised issues that were res nova in this circuit and which did not involve the mere application of well-settled principles of law); see also Guti v. I.N.S., 908 F.2d 495, 496 (9th Cir. 1990) (section 1915(d) dismissal was improper where there was no controlling Supreme Court or Ninth Circuit authority requiring a holding that the facts alleged failed to state an arguable claim).

In addition, our review of the decisions relied upon by the district court reveals that they do not necessarily foreclose the specific equal protection challenge raised by Lang. In Johnpoll v. Thornburgh, 898 F.2d 849, 851 (2d Cir.), cert. denied, 111 S. Ct. 63 (1990), the Second Circuit rejected a constitutional challenge to the authority of the Bureau of Prisons to collect money owed for civil judgments, and in doing so, stated that "the IFRP serves valid penological interests." The Johnpoll court did not, however, have occasion to consider whether the minimum payment provision of the IFRP, because it allegedly discriminates against indigents, violates the equal protection guarantee of the Fifth Amendment. Nor does the Third Circuit's decision in James v. Quinlan, 866 F.2d 627 (3d Cir.), cert. denied, 493 U.S. 870

(1989), foreclose Lang's equal protection claim. There, the Third Circuit rejected inmates' claim that their Fifth Amendment right to due process of law was violated when they were forced, under threat of losing their job assignment, to sign authorizations giving prison authorities the power to withhold fifty percent of their prison wages and apply it toward their obligations. Id. at 629. In rejecting this due process claim, the Third Circuit held that the inmates had no liberty or property interest in their current job assignment. See id. at 629-30. More importantly, however, in the two cases in which indigent inmates squarely raised equal protection challenges to IFRP provisions, the courts did not reach the merits of the inmates' claims. See Perez-Caraballo v. United States, 784 F. Supp. 941, 944-45 (D.P.R. 1991) (declining to address indigent inmate's equal protection claim because inmate had not exhausted his administrative remedies); Prows v. United States Dep't of Justice, 704 F. Supp. 272, 274 (D.D.C. 1988) (failing to address indigent inmate's equal protection challenge where Program Statement 5380.1, which implemented IFRP, was held invalid), aff'd, 938 F.2d 274 (D.C. Cir. 1991).

Finally, because the district court did not separately address Lang's equal protection challenge, we cannot say with any certainty that it did not resolve disputed fact issues. In particular, it is unclear whether the district court, when it evaluated Lang's equal protection claim, accepted as true Lang's allegation that he had not been offered a job assignment that

would have allowed him to make the twenty-five dollar per quarter minimum payment. Although there is evidence in the record suggesting that Lang refused a UNICOR job, Lang specifically denies refusing any assignment. If Lang's allegations are true, then it is at least arguable that he has stated a cognizable equal protection claim.[8]

Accordingly, while we express no view on Lang's ability to prevail on his equal protection challenge to the IFRP's minimum payment provision (or even on his ability to withstand a motion for summary judgment), we hold that the district court abused its discretion in dismissing the challenge as legally frivolous. It may be true that the IFRP generally serves legitimate penological interests. The specific question Lang appears to be raising,

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[8] Of course, Lang will ultimately have the burden of demonstrating that the IFRP discriminates against indigents. That is, he will have to demonstrate that prison administrators, in implementing the IFRP, require indigent inmates to pay twenty-five dollars per quarter without first (a) offering them job assignments that would allow such payments to be made, or (b) otherwise allowing them to obtain an exemption from the sanctions ordinarily resulting from a refusal to participate. Cf. Chavez v. Housing Auth. of City of El Paso, 973 F.2d 1245, 1248 (5th Cir. 1992) (where plaintiff was challenging facially neutral regulation on equal protection grounds, plaintiff had burden of demonstrating a classification scheme).

We note, however, that at each stage of the IFRP's evolution, commenters have raised the issue of the program's impact on indigent inmates. See 52 Fed. Reg. 10528 (1987) ("A commenter suggested that, to make the [rule] fairer, in light of the consequences of non-compliance, the rule should allow for legitimate indigency claims."); 54 Fed. Reg. 49944 (1989) ("A commenter stated that the IFRP punishes indigent inmates . . . ."); 56 Fed. Reg. 23476 (1991) ("One commenter stated that the existing policy and proposed revisions fail to take into account indigent inmates and the lack of earning potential in federal penitentiaries, particularly with respect to inmates who receive maintenance pay . . . .").

however, is whether requiring indigent inmates to pay twenty-five dollars per quarter--without affording them the opportunity to earn that amount or to otherwise obtain an exemption--violates the equal protection component of the Fifth Amendment due process clause. This question has not been decided in this or in any other circuit. Moreover, it appears that the district court may have resolved disputed fact issues in summarily rejecting Lang's equal protection claim. Under these circumstances, and considering the fact that Lang is proceeding pro se, we conclude that the district court abused its discretion in dismissing Lang's equal protection claim with prejudice pursuant to section 1915(d).

D. **Due Process Claim**

The district court's dismissal of Lang's due process claim is also problematic. The district court reasoned that Lang's due process claim lacked an arguable basis in law because Lang had "no interest of a constitutional magnitude in many of the privileges of which he might be deprived due to his failure to participate in the [IFRP]." In particular, the court observed that prisoners have no protected interest in a particular housing assignment and that eligibility for parole is a matter left to the discretion of the parole commission. Although this reasoning specifically addresses Lang's due process claim, we conclude, again, that it fails to provide adequate grounds for dismissal.

In order for Lang to state a cognizable claim that he was sanctioned without due process of law, he must first demonstrate

that the sanctions allegedly imposed impinge upon a protected liberty or property interest. On this score, we agree with the district court's conclusion that prisoners have no protected interest in the mere expectancy of parole, see Shahid v. Crawford, 599 F.2d 666, 670 (5th Cir. 1979), or in a particular prison housing assignment, see Meachum v. Fano, 427 U.S. 215, 224 (1976). In the case before us, however, Lang has challenged the imposition of sanctions under the IFRP, which provides for nine different sanctions. From the undeveloped record before us, we cannot discern which of these nine sanctions were in fact imposed upon Lang, or whether Lang had a fixed parole date prior to the imposition of IFRP sanctions. Under these circumstances, we cannot say with confidence that Lang had no protected interest in any of the privileges of which he allegedly was deprived under the IFRP.

Nor can we conclude that Lang indisputably received the process he was due. We recognize that, with respect to most of the sanctions "ordinarily resulting" from an inmate's refusal to participate in the IFRP, only the minimal procedural protections of Hewitt v. Helms, 459 U.S. 460, 472 (1983), would apply. However, one of the nine sanctions--namely, notifying the Parole Commission of the inmate's refusal to participate in the IFRP--could conceivably affect Lang's parole date. Thus, with respect to this sanction, the more stringent procedural protections of Wolff v. McDonnell, 418 U.S. 539 (1974), may be implicated. See also Dzana v. Foti, 829 F.2d 558, 562 (5th Cir. 1987) (suggesting

that Wolff standards, requiring an adversary proceeding, advance written notice, and other procedural safeguards, apply if a sanction "can affect the time the prisoner spends behind bars under confinement"). Lang alleges that he was sanctioned without any notice or opportunity for hearing. To hold that Lang indisputably received the process he was due on the basis of an undeveloped record would, in our view, require resolution of disputed fact issues. This we decline to do in the context of a section 1915(d) dismissal.

Therefore, we must again conclude that the district court abused its discretion in dismissing Lang's due process claim pursuant to section 1915(d). Had Lang only alleged that he had been transferred to less desirable housing, we would agree with the district court's conclusion that his due process claim is legally frivolous. See Neitzke, 490 U.S. at 327-28. Even the magistrate recognized, however, that Lang alleges he was sanctioned in other ways. In particular, Lang alleges that he was denied good time credits and that prison officials recommended to the U.S. Parole Commission that his parole be revoked or rescinded. Given these allegations, we cannot say that Lang's due process claim is "indisputably meritless."

IV. CONCLUSION

In sum, we conclude that the district court correctly dismissed Lang's criminal conspiracy and involuntary servitude claims as legally frivolous. The district court's erred,

however, in dismissing Lang's equal protection and due process claims as legally frivolous. While we express no opinion about Lang's ultimate ability to prevail on these claims, they do not--at least on the basis of this undeveloped record--fall within the narrow category of claims having no "arguable basis in law." For these reasons, the dismissal of Lang's entire pro se complaint with prejudice constituted an abuse of the discretion accorded the district court under section 1915(d).

We therefore AFFIRM the district court's dismissal of Lang's criminal conspiracy and involuntary servitude claims, REVERSE the court's dismissal of Lang's equal protection and due process claims, and REMAND the action for further consideration of those claims.[9]

[9] On remand, the district court should also consider whether this action is properly maintained as a class action and, if it is, whether Lang is an appropriate class representative. If the action is not properly maintained as a class action, the court should consider whether Lang's subsequent transfer to another federal institution has rendered either of the remanded claims moot. Finally, because no court has addressed the application of the IFRP program to indigent inmates, and because it is an issue that is very likely to be revisited, the court should consider whether the appointment of counsel might be warranted.