

Case: \_\_\_\_\_

IN THE  
UNITED STATES SUPREME COURT

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Menes Ankh-El,

Plaintiff

v.

Robert Carter,

Kieth Butts,

Ms. French,

Mr. Fetz,

Ms. Owens,

Jennifer Smith,

Defendants in their official and  
private capacities

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**Appendix for Petition for Writ of Certiorari to the  
United States Court of Appeals for the Seventh Circuit**

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Menes Ankh El c/o  
Wendell Brown, 233632  
New Castle Correctional Facility  
P.O. Box A  
New Castle, IN 47362

# UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

## ORDER

September 9, 2019

Before

WILLIAM J. BAUER, *Circuit Judge*  
AMY J. ST. EVE, *Circuit Judge*

No. 19-1969	<p>MENES ANKH-EL, also known as WENDELL BROWN, Plaintiff - Appellant</p> <p>v.</p> <p>ROBERT CARTER, et al., Defendants - Appellees</p> <p>and</p> <p>JENNIFER SMITH, et al., Appellees</p>
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### Originating Case Information:

District Court No: 1:18-cv-03476-JRS-MPB  
Southern District of Indiana, Indianapolis Division  
District Judge James R. Sweeney

On August 30, 2019, the clerk received a document from the appellant labeled, "Petition for Panel Rehearing." The court construes this filing as a motion to recall the mandate and for reconsideration of the order denying the appellant leave to proceed in forma pauperis.

**IT IS ORDERED** that the motion to recall the mandate is **GRANTED**. The mandate is **RECALLED**, and the clerk shall file the motion for reconsideration **INSTANTER**.

**IT IS FURTHER ORDERED** that the motion to reconsider is **DENIED**. The appellant shall pay the filing fee by September 20, 2019, or else this appeal will be dismissed for failure to prosecute.

# UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT



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## ORDER

August 9, 2019

*Before*

WILLIAM J. BAUER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 19-1969	MENES ANKH-EL, also known as WENDELL BROWN, Plaintiff - Appellant v. ROBERT CARTER, et al., Defendants - Appellees and JENNIFER SMITH, et al., Appellees
<b>Originating Case Information:</b>	
District Court No: 1:18-cv-03476-JRS-MPB Southern District of Indiana, Indianapolis Division District Judge James R. Sweeney	

The following are before the court:

1. **MEMORANDUM IN SUPPORT OF PLRA MOTION TO PROCEED ON APPEAL WITHOUT PAYING FILING FEES**, filed on July 1, 2019, by the pro se appellant.
2. **VERIFIED MOTION TO PROCEED ON APPEAL WITHOUT PAYING FILING FEES**, filed on July 1, 2019, by the pro se appellant.

**IT IS ORDERED** that the motion is **DENIED**. The appellant has not demonstrated that he has a potentially meritorious argument for appeal. The appellant shall pay the required docketing fee within 14 days or else this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MENES ANKH-EL, )  
CRAIG WILSON, )  
 )  
Plaintiffs, )  
 )  
v. ) No. 1:18-cv-03476-JRS-MPB  
 )  
ROBERT CARTER, )  
KEITH BUTTS, )  
FRENCH, )  
FETZ, )  
 )  
Defendants. )

**Order Denying Rule 59(e) Motion to Alter Judgment**

Plaintiff Menes Ankh-El filed an amended complaint alleging that his transfer from a Level 1 facility to a Level 2 facility with access to a law library constituted retaliation for Mr. Ankh-El's exercise of his right to access the courts. Dkt. 26. The Court screened and dismissed the amended complaint. Dkt. 25. Mr. Ankh-El has now filed a motion to alter judgment pursuant to Federal Rule of Civil Procedure 59(e).

Rule 59(e) allows a court to vacate a judgment only if the movant can "demonstrate a manifest error of law or fact or present newly discovered evidence." *Lightspeed Media Corp. v. Smith*, 830 F.3d 500, 505–06 (7th Cir. 2016) (internal quotation marks omitted). "Manifest error" means "a wholesale disregard, misapplication, or failure to recognize controlling precedent." *Stragapede v. City of Evanston, Illinois*, 865 F.3d 861, 868 (7th Cir. 2017) (internal quotation marks omitted).

Mr. Ankh-El's Rule 59(e) motion argues that his case is "identical" to *Babcock v. White*, 102 F.3d 267 (7th Cir. 1996). Dkt. 28. In *Babcock*, the plaintiff alleged that he had filed several

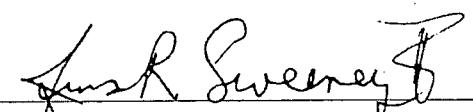
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grievances regarding threats from other inmates and seeking a prison transfer. *Babcock*, 102 F.3d at 269. When the plaintiff asked the defendant why his transfer requests had been delayed, the defendant allegedly responded, “Maybe you ought to stop filing all that shit.” *Id.* The Seventh Circuit held that these allegations stated a claim for retaliation. *Id.* at 275–76.

Mr. Ankh-El, in contrast, alleges that the defendants transferred him to ensure that Mr. Ankh-El could *continue* pursuing his right to access the courts, not to deter him from doing so. Dkt. 26 at 2–3. That is what the Court concluded in its order dismissing Mr. Ankh-El’s amended complaint, dkt. 25, and Mr. Ankh-El has not shown that the Court’s decision relied on a manifest error of law or fact. Accordingly, his motion to alter judgment, dkt. [28], is **denied**.

**IT IS SO ORDERED.**

Date: 6/11/2019

  
\_\_\_\_\_  
JAMES R. SWEENEY II, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

MENES ANKH-EL  
Wendell Brown 233632  
NEW CASTLE - CF  
NEW CASTLE CORRECTIONAL FACILITY - Inmate Mail/Parcels  
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CRAIG WILSON  
913312  
NEW CASTLE - CF  
NEW CASTLE CORRECTIONAL FACILITY - Inmate Mail/Parcels  
1000 Van Nuys Road  
NEW CASTLE, IN 47362

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MENES ANKH-EL )  
a/k/a Wendell Brown, )  
CRAIG WILSON all prisoners similarly situated, )  
Plaintiffs, )  
v. ) No. 1:18-cv-03476-JRS-MPB  
ROBERT CARTER, *et al.* )  
Defendants. )

**Order Granting Verified Motion to Alter Judgment, Vacating Judgment,  
Granting Motion to Amend Complaint, Dismissing Amended Complaint, and  
Directing Entry of Final Judgment**

**I.**

Plaintiff Menes Ankh-El has filed a verified motion to alter judgment, dkt. [24], asserting that the Court erred in dismissing his amended complaint. Accordingly, he requests that the Court grant relief from its entry of final judgment. Mr. Ankh-El's verified motion to alter judgment, dkt. [24], is **granted**. The **clerk shall vacate the Entry and the Judgment** issued on April 16, 2019. Dkt. 22; dkt. 23.

Mr. Ankh-El's motion to amend complaint, dkt. [19], is **granted**. The **clerk shall re-docket** the proposed amended complaint (dkt. 20-1) as the amended complaint. This is the operative complaint.

**II.**

In his original complaint, Mr. Ankh-El and Craig Wilson alleged that prisoners at New Castle Correctional Facility (NCCF) are improperly forced to transfer from the Level 1 facility to a Level 2/3 facility if they want access to a law library to initiate challenges to their convictions

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and sentences. They also asserted that they are not given enough law library time. They purported to bring their claims on their own behalf and on behalf of all similarly situated prisoners held at New Castle.

On screening, the Court dismissed the complaint for failing to state a claim upon which relief can be granted and denied the plaintiffs' attempt to bring a case on behalf of all similarly situated prisoners at New Castle. Dkt. 5. The Court allowed the plaintiffs an opportunity to show cause why this action should not be dismissed.

In response, Mr. Ankh-El has filed an amended complaint. Mr. Ankh-El continues to assert that he was forcibly transferred to NCCF's Level 2/3 facility in order to access a law library and that his appeals and grievances have been ineffective. He also asserts that certain defendants are "retaliating" against him for needing access to the law library. He requests monetary damages and injunctive relief.

### III.

First, as the Court has already explained in its November 19, 2018, Screening, any attempt to bring this case on behalf of all similarly situated prisoners at New Castle must be rejected. Dkt. 5 at 3.

Mr. Ankh-El has explained that his "singular claim alone states a claim for retaliation against My right to access the courts." Dkt. 24 at 1. To state a First Amendment retaliation claim, Mr. Ankh-El must allege that: (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity; and (3) the protected activity he engaged in was at least a motivating factor for the retaliatory action. *Archer v. Chisholm*, 870 F.3d 603, 618 (7th Cir. 2017) (citing *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). Mr. Ankh-

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MENES ANKH-EL  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MENES ANKH-EL, )  
CRAIG WILSON, )  
Plaintiffs, )  
v. ) No. 1:18-cv-03476-JRS-MPB  
ROBERT CARTER in official and private )  
capacities, )  
KIETH BUTTS in official and private capacities, )  
FRENCH Ms., in official and private capacities, )  
FETZ Mr., in official and private capacities, )  
Defendants. )

**Order Granting Plaintiff Menes Ankh-El's Motion to Proceed *In Forma Pauperis*,  
Directing Resolution of Filing Fee from Plaintiff Craig Wilson, Screening and Dismissing  
Complaint, Denying Motion to Certify Class and to Appoint Counsel, and  
Directing Plaintiffs to Show Cause**

**I. Plaintiff Menes Ankh-El's Motion for Leave to Proceed *In Forma Pauperis* (Dkt. 2)**

Plaintiff Menes Ankh-El's motion for leave to proceed *in forma pauperis*, dkt. [2], is granted to the extent that Mr. Ankh-El is assessed an initial partial filing fee of Five Dollars and Thirty-Three Cents (\$5.33). The plaintiff shall have **through December 14, 2018**, in which to pay this sum to the clerk of the district court.

Notwithstanding the foregoing ruling, the plaintiff still owes the entire filing fee. "All [28 U.S.C.] § 1915 has ever done is excuse *pre*-payment of the docket fees; a litigant remains liable for them, and for other costs, although poverty may make collection impossible." *Abdul-Wadood v. Nathan*, 91 F.3d 1023, 1025 (7th Cir. 1996).

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## II. Plaintiff Craig Wilson's Filing Fee

Plaintiff Craig Wilson shall have through **December 14, 2018**, in which to either pay the \$400.00 filing fee for this action or demonstrate that he lacks the financial ability to do so. If he seeks leave to proceed *in forma pauperis*, his request must be accompanied by a copy of the transactions associated with his institution trust account for the 6-month period preceding the filing of this action on November 8, 2018.

## III. Screening and Dismissing Complaint

### A. Screening Standard

Plaintiffs Menes Ankh-El and Craig Wilson are prisoners currently incarcerated at New Castle Correctional Facility (New Castle). Because the plaintiffs are "prisoners" as defined by 28 U.S.C. § 1915(h), this Court has an obligation under 28 U.S.C. § 1915A(b) to screen their complaint before service on the defendants. The Court must dismiss the complaint if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). To survive dismissal under federal pleading standards,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *Pro se* complaints such as that filed by the plaintiffs are construed liberally and held "to a less stringent standard than formal pleadings drafted by lawyers." *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015) (internal quotation omitted).

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## **B. The Complaint**

The plaintiffs assert in their complaint that prisoners at New Castle are improperly forced to transfer from the Level 1 facility to a Level 2/3 facility if they want access to a law library to initiate challenges to their convictions and sentences. They also assert that they are not given enough law library time. They purport to bring their claims on their own behalf and on behalf of all similarly situated prisoners held at New Castle. They seek damages and injunctive relief.

## **C. Discussion of Claims**

Based on the screening set forth above, the complaint must be dismissed. First, any attempt to bring this case on behalf of all similarly situated prisoners at New Castle must be rejected. Rule 23(a) of the *Federal Rules of Civil Procedure* establishes four prerequisites for class certification: “(1) [that] the class is so numerous that joinder of all its members is impracticable, (2) [that] there are questions of law or fact common to the class, (3) [that] the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) [that] the representative parties will fairly and adequately protect the interests of the class.” The plaintiffs have not established any of these prerequisites.

Next, the plaintiffs’ complaint fails to state a claim upon which relief can be granted. The claims that the plaintiffs are unable to access a law library as Level 1 inmates or have not been provided with adequate law library time are understood to be claims that their rights to access the courts have been violated. “Prisoners have a fundamental right of access to the courts that prisons must facilitate by providing legal assistance.” *In re Maxy*, 674 F.3d 658, 660 (7th Cir. 2012) (citing *Bounds v Smith*, 430 U.S. 817 (1977)). At the same time, however, prisoners do not have an “abstract, freestanding right to a law library or legal assistance.” *Lewis v. Casey*, 518 U.S. 343, 351 (1996). Thus, to prevail on an access-to-courts claim, a prisoner must “submit evidence that

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he suffered actual injury—i.e., that prison officials interfered with his legal materials—and that the interference actually prejudiced him in his pending litigation.” *Devbrow v. Gallegos*, 735 F.3d 584, 587 (7th Cir. 2013) (citations omitted). “[T]he very point of recognizing any access claim is to provide effective vindication for a separate and distinct right to seek judicial relief for some wrong. ... [T]he right is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court.” *Christopher v. Harbury*, 536 U.S. 403, 414–15 (2002). In other words, “the mere denial of access to a prison library or to other legal materials is not itself a violation of a prisoner’s rights; his right is to access the courts, and only if the defendants’ conduct prejudices a potentially meritorious challenge to the prisoner’s conviction [or] sentence ... has this right been denied.” *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). Here, the plaintiffs fail to identify any potentially meritorious suit that has actually been prejudiced.

Accordingly, the complaint must be **dismissed for failure to state a claim upon which relief can be granted** pursuant to 28 U.S.C. § 1915A(b).

#### **IV. Motion to Certify Class and to Appoint Counsel**

The plaintiffs’ motion to certify class and to appoint counsel, dkt. [3], is **denied**. As explained above, the plaintiffs have not established any of the prerequisites for class certification. Additionally, the defendants have not yet been served the complaint. The Seventh Circuit has found that “until the defendants respond to the complaint, the plaintiff’s need for assistance of counsel ... cannot be gauged.” *Kadamovas v. Stevens*, 706 F.3d 843, 845 (7th Cir. 2013).

#### **V. Summary of Actions Taken and Further Proceedings**

Plaintiff Menes Ankh-El’s motion for leave to proceed *in forma pauperis*, dkt. [2], is **granted** to the extent that the Mr. Ankh-El is assessed an initial partial filing fee of Five Dollars and Thirty-Three Cents (\$5.33). Plaintiff Craig Wilson shall have through **December 14, 2018**,

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in which to either pay the \$400.00 filing fee for this action or demonstrate that he lacks the financial ability to do so. The plaintiffs' motion to certify class and to appoint counsel, dkt. [3], is denied.

The plaintiffs shall have through December 14, 2018, in which to show cause why this action should not be dismissed for failure to state a claim upon which relief can be granted.

*Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013) (plaintiffs should be given at least an opportunity to amend or to respond to an order to show cause before a case is "tossed out of court without giving the applicant any timely notice or opportunity to be heard to clarify, contest, or simply request leave to amend."). If the plaintiffs fail to show cause, the action will be dismissed for the reasons set forth in this Entry without further notice.

**IT IS SO ORDERED.**

Date: 11/19/18

  
\_\_\_\_\_  
JAMES R. SWEENEY II, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

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233632  
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Financial Deputy Clerk



**Additional material  
from this filing is  
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Clerk's Office.**