

* (Petition for a writ of Habeas Corpus)
(APPENDIX A)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

(
No: 22-3544
)

Gary Leon Webster

Plaintiff - Appellant

v.

Institute of Virology

Defendant - Appellee

(COPY)

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-00720-LPR)

JUDGMENT

Before LOKEN, COLLOTON and ERICKSON, Circuit Judges.

Appellant has failed to pay the filing fee or demonstrate eligibility to proceed in forma pauperis under 28 U.S.C. § 1915(g). The full \$505 appellate and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court. The appeal is dismissed. ✓

(
January 19, 2023
)

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

* (Petition for a writ of Habeas)
(APPENDIX B)

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3544

Gary Leon Webster

Appellant

v.

Institute of Virology

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-00720-LPR)

ORDER

The petition for rehearing by the panel is denied.

February 22, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 01/31/2023

Case Name: Gary Webster v. Institute of Virology

Case Number: 22-3544

Docket Text:

PETITION for rehearing by panel filed by Appellant Mr. Gary Leon Webster, w/service by USCA8 02/01/2023. [5241112] [22-3544]

The following document(s) are associated with this transaction:

Document Description: Petition for Rehearing

Document Description: Attachment to Petition for Rehearing

Notice will be mailed to:

Mr. Gary Leon Webster
TUCKER CORRECTIONAL FACILITY
114018
P.O. Box 240
Tucker, AR 72168-0240

Notice will be electronically mailed to:

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

GARY LEON WEBSTER
ADC #114018

PLAINTIFF

v.

NO: 4:22-CV-00720-LPR

INSTITUTE OF VIROLOGY

DEFENDANT

ORDER

Plaintiff Gary Leon Webster, incarcerated at the Tucker Unit of the Arkansas Department of Correction, filed a *pro se* Complaint on August 11, 2022.¹ Plaintiff did not pay the \$402 filing fee, instead seeking to proceed *in forma pauperis*.

The Prison Litigation Reform Act (“PLRA”) provides that a prisoner cannot proceed *in forma pauperis* “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”² Prior to filing this lawsuit on August 11, 2022, Plaintiff filed at least three actions that were dismissed for failing to state a claim upon which relief may be granted.³ Nevertheless, Plaintiff may proceed *in forma pauperis* if he meets the imminent-danger exception to the three-strikes rule.⁴

¹ Compl. (Doc. 2).

² 28 U.S.C. § 1915(g).

³ See *Webster v. Does*, 3:19-CV-59-DPM (E.D. Ark.); *Webster v. Pigg*, 3:19-CV-60-DPM (E.D. Ark.); and *Webster v. Day Inn Motels, Inc., et al.*, 3:19-CV-78-DPM (E.D. Ark.).

⁴ *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998) (explaining that the exception applies only if the prisoner is in imminent danger “at the time of filing” and that “[a]llegations that the prisoner has faced imminent danger in the past are insufficient”).

Plaintiff sued the Institute of Virology (in Wuhan, China), alleging that it has either negligently or intentionally introduced COVID-19, Monkey Pox, and other communicable diseases into the environment.⁵ Based on his allegations, Plaintiff was not in imminent danger at the time he filed his Complaint. Accordingly, the imminent-danger exception does not apply.⁶ This case will be dismissed due to Plaintiff's failure to pay the filing fee. Plaintiff will have thirty (30) days to reopen this case by paying the \$402 filing fee in full.

In addition, Mr. Webster will now be placed on the "restricted filer list." On June 6, 2022, the Court "demonstrated beyond any doubt that [Mr. Webster] is a serial vexatious litigant"⁷ The Court thus provided "FINAL NOTICE" to Mr. Webster that:

*If Mr. Webster files another pro se action that is later dismissed because it is frivolous, malicious, or fails to state a claim for relief, his name will be placed on the "restricted filer list." Thereafter, the Clerk of the Court will no longer file any of Mr. Webster's pro se cases, without first receiving prior approval from the Judge to whom the case is assigned.*⁸

Despite this warning, Mr. Webster has continued to file frivolous lawsuits. It is patently obvious that the Court does not have jurisdiction over the Wuhan Institute of Virology. Accordingly, the Court must now actually enforce the restricted-filer warning that it issued in June.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Complaint is DISMISSED without prejudice.
2. Plaintiff has thirty (30) days from the date of this Order in which to reopen this case by paying the \$402 filing fee in full.

⁵ Compl. (Doc. 2).

⁶ *Ashley*, 147 F.3d at 717.

⁷ *Webster v. Lewis*, 3:22-CV-52-LPR (E.D. Ark.), (Doc. 3) at 2.

⁸ *Id.* at 2–3 (citation omitted).

3. The Clerk of the Court will no longer file any of Mr. Webster's *pro se* cases, without first receiving prior approval from the Judge to whom the case is assigned.

4. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order or the accompanying Judgment would not be taken in good faith.

IT IS SO ORDERED this 23rd day of September 2022.

A handwritten signature in black ink, appearing to read 'L. P. Rudofsky', with a horizontal line extending to the right.

LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE