

Appendix A:

Order for Petitioner for Panel Rehearing from the United States Court of Appeals
for the Seventh Circuit

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

NOTICE OF ISSUANCE OF MANDATE

January 4, 2024

To: Thomas G. Bruton
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago, IL 60604-0000

	JERICO MATIAS CRUZ, Plaintiff - Appellant
No. 23-1599	v. STATE OF ILLINOIS, Defendant - Appellee
Originating Case Information:	
District Court No: 1:20-cv-07659 Northern District of Illinois, Eastern Division District Judge Jorge L. Alonso	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:

No record to be returned

form name: c7_Mandate (form ID: 135)

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 27, 2023



Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1599

JERICO MATIAS CRUZ,
Plaintiff-Appellant,
v.
STATE OF ILLINOIS,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 20 C 07659

Jorge L. Alonso,
Judge.

ORDER

Plaintiff-Appellant filed a petition for rehearing on December 12, 2023. All the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

Appendix B:

Order for Appeal from the 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

FINAL JUDGMENT

November 29, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1599	JERICO MATIAS CRUZ, Plaintiff - Appellant v. STATE OF ILLINOIS, Defendant - Appellee
-------------	--

Originating Case Information:

District Court No: 1:20-cv-07659

Northern District of Illinois, Eastern Division

District Judge Jorge L. Alonso

The appeal is **DISMISSED**. Cruz has a history of frivolous litigation that recently led the Executive Committee of the Northern District of Illinois to impose a filing bar. This is just one of the frivolous appeals Cruz has brought in this court, and we previously advised him that appellants must present arguments addressing the reasons they lost in the district court. Cruz has not heeded our instruction or indicated that his frivolous filings will cease. We thus revoke the leave previously granted to Cruz to litigate this appeal in forma pauperis (that is, without prepaying the filing fee). For all other cases that Cruz has in this circuit or in its district courts, we likewise order him to pay now whatever filing fees remain outstanding. Finally, to prevent future abuse from Cruz and regardless of payments that Cruz may make to comply with this order, we revoke his privilege of litigating new suits or appeals in forma pauperis in any court of this circuit. We instruct the clerk of this court and the clerks of the district courts of this circuit not to docket any new suits or appeals from Cruz in noncriminal matters unless he pays the docketing fee first. The above is in accordance with the decision of this court entered on this date.

Clerk of Court

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 21, 2023*
Decided November 29, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1599

JERICO MATIAS CRUZ
Plaintiff-Appellant,

v.

STATE OF ILLINOIS
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 20 C 07659

Jorge L. Alonso,
Judge.

* The defendant-appellee was not served with process and is not participating in this appeal. We have agreed to decide the case without oral argument because the appeal is frivolous. FED. R. APP. P. 34(a)(2)(A).

ORDER

Jerico Matias Cruz appeals the dismissal of his employment discrimination lawsuit challenging a testing requirement of the Illinois State Police. Because he does not present any ground for reversal, we dismiss the appeal.

Cruz sued the State of Illinois after receiving a notification that his application for an antiterrorism trainee position with the Illinois State Police required him to sit for an exam. He alleged that the Department of Central Management Services, which is the department in charge of the state's hiring policies, discriminated against him based on his race, color, religion, sex, or national origin by not excusing him from the exam although he had submitted his application before the requirement was in place.

After the district court dismissed his original complaint for failing to state a claim against a proper defendant, Cruz submitted an amended complaint that continued to name the State of Illinois as the only defendant in the caption. Upon screening the complaint again, *see* 28 U.S.C. § 1915(e)(2)(B)(ii), the court informed Cruz that either the Department or the Illinois State Police, which Cruz mentioned in the body of his amended complaint, could be the proper defendant, but the court would not select the targeted entity for him. The court then dismissed the complaint without prejudice and allowed Cruz 28 days to file a second amended complaint. The court warned Cruz that if he failed to comply, it would dismiss the case.

The deadline for filing a second amended complaint came and went, and months later, the court dismissed Cruz's suit for failure to comply with its earlier order and lack of prosecution. *See* FED. R. CIV. P. 41(b). Cruz filed a motion to vacate, explaining that he had been occupied with campaign operations for his bid for a seat in the United States House of Representatives. The court denied the motion on the ground that Cruz's lack of diligence was not an exceptional circumstance that justified relief, *see Bakery Mach. & Fabrication, Inc. v. Traditional Baking, Inc.*, 570 F.3d 845, 848 (7th Cir. 2009).

Cruz appeals, but he does not contend that the district court erred in dismissing his suit based on noncompliance with its order or failure to prosecute; thus, he forfeits any such argument. *See Webster v. CDI Indiana*, 917 F.3d 574, 578 (7th Cir. 2019). Although we construe pro se filings liberally, the appellate brief must contain an argument that addresses the district court's rulings and provides reasons for reversal. FED. R. CIV. P. 28(a)(8)(A). *See Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001). Cruz does not give us any argument to consider, and so we dismiss the appeal.

Cruz has a history of frivolous litigation that recently led the Executive Committee of the Northern District of Illinois to impose a filing bar. *See In re Cruz*, No. 23-C-3115 (N.D. Ill. July 18, 2023). This is just one of the frivolous appeals Cruz has brought in this court, and we previously advised him that appellants must present arguments addressing the reasons they lost in the district court. *See, e.g., Cruz v. Illinois*, No. 22-3182, 2023 WL 3172182 (7th Cir. 2023) *reh'g denied*, No. 22-3182, 2023 WL 3725196 (7th Cir. 2023). Cruz has not heeded our instruction or indicated that his frivolous filings will cease. We thus revoke the leave previously granted to Cruz to litigate this appeal in forma pauperis (that is, without prepaying the filing fee). *See In re City of Chicago*, 500 F.3d 582, 583 (7th Cir. 2007); *Campbell v. Clarke*, 481 F.3d 967, 969–70 (7th Cir. 2007); *see also Ammons v. Gerlinger*, 547 F.3d 724, 726 (7th Cir. 2008). For all other cases that Cruz has in this circuit or in its district courts, we likewise order him to pay now whatever filing fees remain outstanding. *See In re Chicago*, 500 F.3d at 583. Finally, to prevent future abuse from Cruz and regardless of payments that Cruz may make to comply with this order, we revoke his privilege of litigating new suits or appeals in forma pauperis in any court of this circuit. *See 28 U.S.C. § 1915(a)(3); Martin v. District of Columbia Ct. of Appeals*, 506 U.S. 1 (1992)). *See also, e.g., Gakuba v. Ill. Prisoner Rev. Bd.*, 143 S. Ct. 641 (2023); *Gakuba v. Dodd*, 143 S. Ct. 629 (2023) (revoking in forma pauperis status for repeated abuse). We instruct the clerk of this court and the clerks of the district courts of this circuit not to docket any new suits or appeals from Cruz in noncriminal matters unless he pays the docketing fee first. *See Gakuba*, 143 S. Ct. at 641.

DISMISSED

Appendix C:

Order for the Complaint from the United States District Court for the Northern
District of Illinois, Eastern Division

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JERICOMATIAS CRUZ,)
)
 Plaintiff,) No. 20 C 7659
)
 v.) Judge Jorge Alonso
)
 STATE OF ILLINOIS,)
)
 Defendant.)

ORDER

Plaintiff's motion to vacate judgment [27] is granted in part and denied in part. The motion is granted as to that portion of the Court's February 28, 2023 Order [26] that required plaintiff to pay the full filing fee. Plaintiff is not incarcerated and need not pay the filing fee because he has been granted leave to proceed *in forma pauperis* without paying such fees. The motion is otherwise denied for the reasons stated herein. Case remains closed.

STATEMENT

In this employment discrimination matter, plaintiff sought and obtained leave to proceed *in forma pauperis*, so this Court screened his complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The Court determined that plaintiff failed to state a claim against a proper defendant, so it dismissed the complaint, without prejudice to amendment if plaintiff could name a proper defendant, and the Court set a twenty-eight-day deadline for plaintiff to file an amended complaint, warning plaintiff that failure to meet the deadline might result in dismissal for want of prosecution. Plaintiff filed nothing, so the Court dismissed the case for want of prosecution and entered judgment on February 28, 2023. The same day, plaintiff filed the present motion to vacate judgment, citing Federal Rule of Civil Procedure 60(b)(1). He asks for twenty-eight days to file an amended complaint.

Rule 60(b)(1) allows a court to relieve a party from a final judgment for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). The grounds for plaintiff's motion are unclear, but the Court understands him to be saying essentially two things: (1) there was never any defect in his complaint to begin with, so there was no basis for the October 2022 dismissal, and (2) he was too busy with his congressional campaign to litigate this suit.

As to the first ground, contrary to plaintiff's representation in his motion that the Court gave "no reasons why" he had failed to state a claim, the Court explained in some detail that the "State of Illinois" was not the proper defendant, so it directed him to file an amended complaint in which he named as a defendant the state agency responsible for the hiring decision that he

challenges, so that agents of the United States Marshal Service would know whom to serve. (See Oct. 26, 2022 Order, ECF No. 24.) But plaintiff did not do so. Plaintiff states that he filed an administrative complaint, and all documents from that administrative action “are shared to the district court.” (Mot. at 6, ECF No. 27.) To the extent plaintiff believes that this Court has access to all the records of his administrative action and that those documents somehow relieve him of his pleading burden in this Court, he is mistaken. The Court has only what plaintiff files, and he has to file pleadings that state a claim for relief. As the Court explained, it could not determine precisely which agency plaintiff intended to sue, so it directed him to file an amended complaint. He did not do so, so the Court terminated the case for want of prosecution. Plaintiff has not shown and the Court does not see any mistake in these decisions.

Regarding the second ground for plaintiff’s motion, a lack of diligence typically does not qualify as an “exceptional circumstance” that justifies the “extraordinary remedy” of Rule 60(b) relief. *See Bakery Mach. & Fabrication, Inc. v. Traditional Baking, Inc.*, 570 F.3d 845, 848 (7th Cir. 2009). The Court has discretion to enforce its deadlines, and in fact it was quite lenient with plaintiff, giving him several additional *months* before terminating his case, and he is *still* not prepared to file an amended complaint. Indeed, it seems that plaintiff only remembered this case was pending because the Court reminded him of it by closing it. The Court is not inclined to forgive his negligence of his own personal lawsuit without a much better excuse than this.

Plaintiff also seeks Rule 60(b) relief from the portion of the Court’s order that required him to pay the full filing fee. Although the Prison Litigation Reform Act requires incarcerated plaintiffs to pay the full filing fee, even if they are entitled to *in forma pauperis* status and can only pay in installments over time, 28 U.S.C. § 1915(b)(1), the Court has discretion to waive the filing fee for *in forma pauperis* litigants who are not incarcerated and for whom paying the fee would be a hardship. *See, e.g., Aura Mortg. Advisors, LLC v. Poole*, No. 20-CV-2212, 2020 WL 7060119, at *1 (N.D. Ill. Dec. 2, 2020). The previously assigned judge initially waived plaintiff’s fee, and this Court never warned him that it might impose the sanction of requiring him to pay the full filing fee, so it relieves him of that sanction. However, the Court did warn plaintiff that it might dismiss this suit for want of prosecution if he did not meet its deadline. The Court has discretion to manage its docket by enforcing its deadlines strictly, and plaintiff has not swayed the Court to exercise its discretion otherwise, as he has not given any satisfactory excuse for missing the deadline. For these reasons, plaintiff’s motion to vacate judgment is denied, except as to relief from the filing fee requirement.

SO ORDERED.

ENTERED: March 3, 2023



HON. JORGE ALONSO
United States District Judge

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