

## APPENDIX A

# United States Court of Appeals for the Fifth Circuit

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No. 23-10821

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IN RE SCOTT ZIRUS,

*Petitioner.*

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Petition for a Writ of Mandamus  
to the United States District Court  
for the Northern District of Texas  
USDC No. 1:23-CV-135

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## UNPUBLISHED ORDER

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Petitioner's petition for writ of mandamus is  
DENIED.

IT IS FURTHER ORDERED that Petitioner's motion to proceed in  
forma pauperis is GRANTED.



A True Copy  
Certified order issued Dec 12, 2023

*Lyfe W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

## APPENDIX D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

SCOTT ZIRUS,  
Institutional ID No. 1640002

Plaintiff,

v.

No. 1:23-CV-00135-H

PATRICK L. O'DANIEL, *et al.*,

Defendants.

ORDER

Plaintiff Scott Zirus, a state prisoner proceeding pro se, jointly filed a civil-rights complaint with nine other inmates confined in TDCJ's Robertson Unit. Dkt. No. 2; *see also* No. 1:23-cv-00086 at Dkt. No. 1. The Court denied the plaintiffs' requests for transfer of venue, class certification, and to proceed jointly, and it required each plaintiff to file an amended complaint and either pay the filing fee or file a properly supported request to proceed *in forma pauperis* (IFP). Dkt. No. 1.

All ten original plaintiffs filed objections to and a motion to reconsider the Court's order denying their requests for transfer of venue and class certification and severing their claims into individual civil actions.<sup>1</sup> *See* No. 1:23-cv-00086 at Dkt. No. 12. Additionally, Plaintiff Zirus filed a motion to stay his deadline for filing an amended complaint and resolving the filing-fee deficiency "until the resolution of the sever[a]nce issue." Dkt. No. 5.

The Court overruled the plaintiffs' objections and denied their motion for reconsideration by separate order entered today. Additionally, the Court sua sponte extends the

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<sup>1</sup>Plaintiff Zirus also filed a petition for writ of mandamus in the Fifth Circuit seeking an order vacating the Court's order with regard to venue and severance, but the Fifth Circuit denied mandamus relief on December 12, 2023. *See* Dkt. Nos. 8, 10; Fifth Cir. No. 23-10821.

deadline for resolving the identified filing deficiencies as provided below. Thus, Plaintiff Zirus's motion for stay, Dkt. No. 5, is denied as moot.


If Plaintiff Zirus wishes to pursue his claims, he must pay the \$402 filing fee or file an application to proceed *in forma pauperis* with a certified statement of his inmate trust account. Plaintiff Zirus must also submit a complete amended complaint on the court-approved form for civil-rights cases. Plaintiff must answer each question on the form and must present his entire complaint on the form unless it is necessary to attach additional pages. Plaintiff must (1) identify each defendant, (2) describe the unconstitutional or unlawful acts or omissions of each defendant, and (3) describe when and where each act or omission occurred. Plaintiff may not incorporate by reference, or otherwise, any portion of the complaint previously submitted and may not attach the prior complaint or amended complaint as an exhibit. Plaintiff's amended complaint must be signed. Plaintiff must file his amended complaint and either pay the fee or file a properly supported IFP application within 30 days of the date of this order.

**Failure to comply with this order will result in the dismissal of Plaintiff's complaint for want of prosecution without further notice.**

So ordered.

The Clerk is directed to send Plaintiff Zirus an application to proceed *in forma pauperis* and a prisoner civil-rights complaint form, marked "amended" and stamped with this civil action no., for his use in complying with this order. Plaintiff may obtain a certificate of his inmate trust account from the appropriate official at his prison unit.

Dated December 15, 2023.

  
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JAMES WESLEY HENDRIX  
United States District Judge

## APPENDIX E

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

SCOTT ZIRUS,  
Institutional ID No. 1640002

Plaintiff,

v.

No. 1:23-CV-00135-H

PATRICK L. O'DANIEL, *et al.*,

Defendants.

ORDER

Plaintiff filed a request to stay the Court's December 15 order—requiring him to file a complete amended complaint and either pay the \$402 filing fee or file an application to proceed *in forma pauperis* (IFP) with a certificate of his inmate trust account—until the Supreme Court resolves his petition for a writ of certiorari from the denial of his mandamus petition in the Fifth Circuit. The motion for stay is denied.

Plaintiff's request for mandamus relief does not deprive the Court of jurisdiction over his claims here. *See Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1416 (5th Cir. 1995) (explaining that the Federal Rules of Civil Procedure do not provide for an automatic stay of district court proceedings while a petition for writ of mandamus is pending). Nor does his request for Supreme Court review for the denial of mandamus relief.

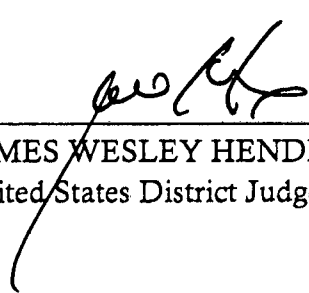
Plaintiff signed the original complaint in this case ten months ago. *See* Dkt. No. 2. The Court has twice ordered him to cure filing deficiencies by paying the statutorily mandated filing fee and filing an amended complaint setting forth his individual claims in compliance with the Federal Rules of Civil Procedure. The Court finds there is no reason for further delay at this stage of the proceedings. Plaintiff must comply with the December 15 order by filing his

amended complaint and either paying the filing fee due in this case or filing a properly supported IFP application no later than **January 22, 2024**.<sup>1</sup>

**Failure to comply with this order will result in the dismissal of Plaintiff's complaint for want of prosecution without further notice.**

So ordered.

Dated January 10, 2024.



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JAMES WESLEY HENDRIX  
United States District Judge

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<sup>1</sup> The Court sua sponte extends the deadline by one week to allow Plaintiff to receive notice of this order.



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