

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
ILLINOIS**

**Kevin Birdo, individually and on behalf of K.B. v. Micheala Smith,
J.S., Eric Collins, and Dennis Johnson, Sr.**

Birdo · No. 25-cv-1908-JPG · Decided December 9, 2025

OPINION

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS
KEVIN BIRDO, individually and on behalf of K.B., Plaintiff, v. Case No. 25-cv-1908-JPG
MICHEALA SMITH, J.S., ERIC COLLINS, and DENNIS JOHNSON, SR., Defendants.
MEMORANDUM AND ORDER This matter comes before the Court on plaintiff Kevin Birdo's
motion for leave to proceed in forma pauperis in this action (Doc.

2). A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file in forma pauperis or can dismiss a case if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii).

The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

When assessing a petition to proceed in forma pauperis, a district court should inquire into the merits of the plaintiff's claims, and if the court finds them to be frivolous, it should deny leave to proceed in forma pauperis. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

In an order dated October 28, 2025 (Doc. 5), the Court noted that Birdo had not submitted an affidavit in support of his indigency and had not stated facts to plausibly suggest a violation of the Equal Protection Clause or the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1595(a). It gave him until November 25, 2025, to file an affidavit of indigency and an amended complaint stating sufficient facts to support a cause of action over which this Court had jurisdiction.

The Court warned him that, if he failed to file those documents in a timely fashion, the Court would dismiss this case without prejudice for failure to state a claim. Birdo has filed neither document. Accordingly, as it warned it would, the Court DENIES his motion for leave to proceed

in forma pauperis (Doc. 2) for lack of indigency and for failure to state a claim for relief that is plausible on its face.

It further DISMISSES this case without prejudice pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim and DIRECTS the Clerk of Court to enter judgment accordingly. IT IS SO ORDERED. DATED: December 9, 2025 s/ J. Phil Gilbert J. PHIL GILBERT DISTRICT JUDGE