

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
OHIO, EASTERN DIVISION

Brian Keith Alford v. Dr. Hawk, et al.

Case No. 2:25-cv-187 · No. 2:25-cv-187 · Decided March 17, 2026

SUMMARY

The United States District Court for the Southern District of Ohio sustains Brian Keith Alford’s objections to a Report and Recommendation denying in forma pauperis status. The court finds that Alford’s allegations concerning severe and inadequately treated medical conditions sufficiently invoke the imminent-danger exception to the Prison Litigation Reform Act’s three-strikes provision. The matter is returned to the Magistrate Judge for further review of the in forma pauperis application and, if appropriate, screening of the amended complaint.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of Ohio, Eastern Division                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Michael H. Watson                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | United States District Court for the Southern District of Ohio, Eastern Division                                                                                                                                                                                                                    |
| DECIDED               | March 17, 2026                                                                                                                                                                                                                                                                                      |
| DOCKET                | 2:25-cv-187                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | remanded                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | A prisoner proceeding without counsel objected to a Magistrate Judge's Report and Recommendation recommending denial of leave to proceed in forma pauperis under the Prison Litigation Reform Act's three-strikes provision. The District Court reviewed the objections de novo and sustained them. |
| STANDARD OF REVIEW    | De novo review under Federal Rule of Civil Procedure 72(b) of the portions of the Report and Recommendation to which Plaintiff properly objected.                                                                                                                                                   |
| PRECEDENTIAL VALUE    | unpublished district court opinion; limited persuasive value                                                                                                                                                                                                                                        |

TOPICS

- prisoners rights
- civil rights
- civil procedure
- health law

## PRACTICE AREAS

prisoner civil rights

in forma pauperis procedure

prison medical care

## QUESTIONS PRESENTED

1. Whether Plaintiff, despite having accumulated three strikes under the Prison Litigation Reform Act, adequately alleged that he was under imminent danger of serious physical injury so as to qualify for the statutory exception to the three-strikes bar.
2. Whether the objections to the Magistrate Judge's Report and Recommendation should be sustained and the matter returned for further consideration of Plaintiff's in forma pauperis application.

## HOLDINGS

1. A prisoner with three qualifying strikes may proceed in forma pauperis when the complaint, liberally construed, alleges facts supporting a reasonable inference that the prisoner was under imminent danger of serious physical injury when the action was filed. Plaintiff's allegations of significant ongoing pain, denial of necessary medication, and delayed surgery sufficiently alleged that exception.
2. Plaintiff's objections were sustained, and the matter was returned to the Magistrate Judge to reconsider the in forma pauperis application in light of the finding that Plaintiff satisfied the imminent-danger exception.

## KEY QUOTATIONS

*"Under the PLRA, a prisoner who has obtained three strikes for bringing actions that were frivolous, were malicious, or failed to state a claim cannot proceed in forma pauperis on further actions unless the prisoner 'is under imminent danger of serious physical injury.'"* (2)

*"Construed liberally, these Complaints allege that Plaintiff remains in significant pain, is being denied necessary medication, and requires immediate surgery that is nonetheless being delayed."* (3)

*"Those allegations sufficiently allege an imminent danger of serious physical injury."* (3)

## FACTUAL BACKGROUND

Plaintiff, a prisoner, alleged that in December 2024 he was unable to urinate for several days before receiving treatment, eventually requiring a catheter that released blood and urine. He alleged that he subsequently suffered severe pain, lost thirty-six pounds, and was hospitalized, where scans revealed a double kidney infection, a blood clot on his left lung, and a cyst on his left kidney. In later pleadings, he alleged continuing catheterization, rising prostate-specific antigen levels, denial of medication, and delay in necessary prostate surgery that could result in kidney failure or death.

## PROCEDURAL HISTORY

Plaintiff moved to proceed in forma pauperis. The Magistrate Judge recommended denying the motion because Plaintiff conceded that he had accumulated three strikes and had not adequately pleaded imminent danger. Plaintiff objected, arguing that his continuing medical conditions and delayed surgery satisfied the imminent-

danger exception. The District Court sustained the objections and returned the matter to the Magistrate Judge for further review of the in forma pauperis application and, if appropriate, initial screening of the Amended Complaint.

## DISPOSITION

remanded

## REMAND INSTRUCTIONS

The matter was returned to the Magistrate Judge to (1) proceed with review of Plaintiff's motion for leave to proceed in forma pauperis in light of the finding that the imminent-danger exception was satisfied and (2) if the remaining requirements were met and in forma pauperis status was granted, conduct an initial screening of the Amended Complaint under 28 U.S.C. § 1915(e). The Clerk was directed to terminate ECF Nos. 10, 14, and 15 as pending motions; Plaintiff's second in forma pauperis motion and motion for an extension of time were denied as moot.

## CASES CITED

- Ware-Mustapha v. Dixon, No. 23-5605, 2024 WL 1505089, at \*1 (6th Cir. Apr. 3, 2024)
- Ryan v. G. Robert Cotton Corr. Fac., No. 20-1305, 2020 WL 9258300, at \*3 (6th Cir. Dec. 8, 2020)

## OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION Brian Keith Alford, Plaintiff, Case No. 2:25-cv-187 Vv. Judge Michael H. Watson Dr. Hawk, et al., Magistrate Judge Silvain, Jr. Defendants. OPINION AND ORDER Brian Keith Alford ("Plaintiff"), a prisoner proceeding without the assistance of counsel, moves for leave to proceed without the prepayment of fees ("in forma pauperis").

Mot. IFP, ECF No. 7. The Magistrate Judge issued a Report and Recommendation ("R&R"), recommending that the Court deny Plaintiff leave to proceed in forma pauperis. See generally R&R, ECF No. 14. The R&R concludes that Plaintiff has garnered "three strikes" under the Prison Litigation Reform Act ("PLRA") and did not plead that he was in imminent danger, such that 28 U.S.C. § 1915(g) prohibits in forma pauperis status. /d.

Specifically, the R&R concludes that Plaintiff pleaded in the Amended Complaint that he had received some medical treatment and alleged, at most, that he was awaiting surgery but failed to allege that surgery had been prescribed in the first place. /d. at 5-6. Plaintiff objects. Obj, ECF No. 16. Pursuant to Federal Rule of Civil Procedure 72(b), the Court reviews de novo those portions of the R&R to which Plaintiff properly objected.

On objection, Plaintiff concedes that he has obtained "three strikes" but argues that he sufficiently pleaded that he was, and remains, under a threat of serious bodily injury, which removes him from

the prohibition against proceeding in forma pauperis. Obj. 2, ECF No. 16. Namely, Plaintiff argues that his medical conditions continue to this day, including that he still passes blood in his urine.

Id. at 6. Under the PLRA, a prisoner who has obtained three strikes for bringing actions that were frivolous, were malicious, or failed to state a claim cannot proceed in forma pauperis on further actions unless the prisoner “is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Pursuant to the imminent-danger exception, “a plaintiff must only allege facts from which a court, informed by its judicial experience and common sense, could draw a reasonable inference that the plaintiff was in danger when he filed the complaint.” *Ware-Mustapha v. Dixon*, No. 23-5605, 2024 WL 1505089, at \*1 (6th Cir.

Apr. 3, 2024) (citation omitted). “[T]he PLRA’s imminent-danger exception does not require a prisoner to allege or show that a life-threatening ailment poses an imminent danger to him; rather, it requires only that the prisoner allege that there is an imminent danger of a ‘serious physical injury’ to him.” *Ryan v. G. Robert Cotton Corr. Fac.*, No. 20-1305, 2020 WL 9258300, at \*3 (6th Cir.

Dec. 8, 2020) (citations omitted). Untreated or inadequately treated chronic medical conditions Case No. 2:25-cv-187 Page 2 of 5 satisfy that requirement. /d. (citation omitted). Moreover, “[t]his Court must liberally construe a prisoner’s claim that he qualifies for the imminent-danger exception.” /d. at \*2 (citation omitted).

In an abundance of caution, the Court SUSTAINS Plaintiff’s objections. The original Complaint and Amended Complaint are largely similar. In them, Plaintiff alleges that in mid-December 2024, he could not urinate for several days and yet was not immediately seen for treatment. Compl., ECF No. 2 at PAGEID #5; Am. Compl. J 10, ECF No. 8.

On December 10, he sought immediate medical attention and was eventually given a catheter, which resulted in the release of blood and urine. /d. Plaintiff was provided with antibiotics and pain medication, but, over the next two weeks, Plaintiff lost thirty-six pounds and suffered extreme pain. /d. He was transferred to the Ohio State James Medical Center on December 23 and remained hospitalized for five days; CT scans revealed that Plaintiff had a double kidney infection, a blood clot on his left lung, and a cyst on his left kidney. /d.

Plaintiff was released back to prison on December 27 but remained in the medical unit until January 2, 2025, when he was released back into general population. /d. In the original Complaint, which Plaintiff filed about two months after his release to general population, Plaintiff alleges that he “remains cathed in great pain, without pain medication, and uncertainty about his future[.]” Compl., ECF No. 1 at PAGEID # 8.

Case No. 2:25-cv-187 Page 3 of 5 In the Amended Complaint, which Plaintiff filed about six months after that, Plaintiff alleges that he was given various types of catheters between January

and July 2025. Am. Compl. J 10, ECF No. 8. During that time, Plaintiff's prostate-specific antigen levels had risen, and he has since been awaiting prostate surgery. /d. Jf] 10-11.

He alleges that he has been denied medication and that the delay in surgery could cause “kidney failure or possible death[.]’ /d. q 11. In both Complaints, Plaintiff seeks damages and injunctive relief— apparently in the form of transfer to a medical facility such as Frazier Health Center. See, e.g., Am. Compl., ECF No. 8-1 at PAGEID ## 46-47, 55-57. Construed liberally, these Complaints allege that Plaintiff remains in significant pain, is being denied necessary medication, and requires immediate surgery that is nonetheless being delayed.

Those allegations sufficiently allege an imminent danger of serious physical injury. Accordingly, the Court SUSTAINS Plaintiff's objections and RETURNS the matter to the Magistrate Judge with directions to: (1) proceed with a review of Plaintiff's motion for leave to proceed in forma pauperis given the Court's finding of satisfaction of the imminent danger exception, and (2) if the Magistrate Judge finds the remainder of that application sufficient and grants in forma pauperis Case No. 2:25-cv-187 Page 4 of 5 status, perform an initial screen of the Amended Complaint under 28 U.S.C. § 1915(e)."

The Clerk shall terminate ECF Nos. 10, 14, and 15 as pending motions. ) IT IS SO ORDERED. ~, hyn) ICHAE L H. WATSON, JUDGE UNITED STATES DISTRICT COURT 1 Plaintiffs second motion for leave to proceed in forma pauperis and motion for extension of time to file objections, ECF Nos. 10 and 15, are DENIED as moot. Case No. 2:25-cv-187 Page 5 of 5