

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
BILLINGS DIVISION

James Morrison v. City of Billings, et al.

CV 25-148-BLG-WWM (D. Mont. Mar. 17, 2026) · No. CV 25-148-BLG-WWM; 1:25-cv-00148 · Decided
March 17, 2026

SUMMARY

The United States District Court for the District of Montana denied James Morrison’s motion to alter or amend an order revoking his in forma pauperis status. The court construed the motion as one for reconsideration and held that Morrison had sufficient opportunity to contest the identified strikes, which included prior dismissals involving tribal sovereignty, immunity, and other fatal deficiencies. The court ordered Morrison to pay the \$405 filing fee by April 6, 2026, or the action would be closed.

CASE DETAILS

COURT	United States District Court for the District of Montana, Billings Division
WRITING FOR THE COURT	William W. Mercer
JURISDICTION	United States District Court for the District of Montana, Billings Division
DECIDED	March 17, 2026
DOCKET	CV 25-148-BLG-WWM; 1:25-cv-00148
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 59(e) to alter, amend, or strike the court's prior order revoking his in forma pauperis status. The court construed the filing as a motion for reconsideration under District of Montana Local Rule 7.3 and denied it.
STANDARD OF REVIEW	A motion under Rule 59(e) is available only to alter or amend a judgment within 28 days after entry; because no judgment had been entered, the court treated the filing as a motion for reconsideration under Local Rule 7.3.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown

TOPICS

- civil procedure
- tribal sovereignty
- federalism

PRACTICE AREAS

Civil procedure

Prisoner litigation

In forma pauperis proceedings

Federal courts

Tribal sovereignty

QUESTIONS PRESENTED

1. Whether Morrison's filing was a proper motion to alter or amend under Federal Rule of Civil Procedure 59(e).
2. Whether Morrison was entitled to notice and an opportunity to be heard before the court revoked or denied his in forma pauperis status.
3. Whether changes in substantive law required retroactive reassessment of a prior dismissal for purposes of determining a strike under 28 U.S.C. § 1915(g).
4. Whether dismissals based on lack of jurisdiction, a Heck bar, or clearly applicable immunity can qualify as dismissals for failure to state a claim under § 1915(g).
5. Whether Morrison had accumulated at least three qualifying strikes and therefore could not proceed in forma pauperis.

HOLDINGS

1. The filing was not a proper Rule 59(e) motion because no judgment had been entered; it was properly construed as a motion for reconsideration under District of Montana Local Rule 7.3.
2. Morrison was not entitled to notice or an additional opportunity to be heard before the court denied or revoked his in forma pauperis status, and his motion independently gave him an opportunity to be heard.
3. A later change in substantive law does not require retroactive reassessment of whether an earlier action qualified as a strike under § 1915(g).
4. A dismissal may qualify as a strike for failure to state a claim when a fatal deficiency, including lack of jurisdiction, a Heck bar, or immunity, is apparent from the face of the complaint and relief cannot be granted.
5. Morrison had at least three dismissals qualifying as strikes and was not entitled to proceed in forma pauperis.

KEY QUOTATIONS

“Having placed Ray on notice of the three cases that constituted strikes, Andrews I was satisfied. No part of the relevant statute required the court to provide Ray any additional process.” (31 F.4th at 697)

FACTUAL BACKGROUND

Morrison filed this action and sought to proceed in forma pauperis. The court previously determined that he had at least three dismissals qualifying as strikes, including a prior action involving tribal policies and criminal prosecution and a later action against Yellowstone County that was dismissed in the district court and on appeal as frivolous. Morrison challenged the revocation, contending that he lacked prior notice and that intervening changes in substantive law undermined one of the counted dismissals.

PROCEDURAL HISTORY

The court previously revoked Morrison's in forma pauperis status after determining that he had accumulated at least three qualifying strikes under 28 U.S.C. § 1915(g). Morrison sought reconsideration, arguing that he was entitled to notice and an opportunity to be heard before revocation and that two prior dismissals should not count as strikes. The court denied the motion and ordered Morrison to pay the full filing fee by April 6, 2026, or the clerk would close the action.

DISPOSITION

other

CASES CITED

- Andrews v. King, 398 F.3d 1113 (9th Cir. 2005)
- Ray v. Lara, 31 F.4th 692, 697 (9th Cir. 2022)
- Rodriguez v. Cook, 169 F.3d 1176, 1180 (9th Cir. 1999)
- Marks v. Solcum, 98 F.3d 494, 495-96 (9th Cir. 1996)
- Heck v. Humphrey, 512 U.S. 477 (1994)
- Harris v. Harris, 935 F.3d 670, 676 (9th Cir. 2019)
- Morrison v. Spang, CV 10-150-BLG-RFC
- Morrison v. Yellowstone County, et al., CV 24-46-BLG-SPW-TIC

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION JAMES MORRISON, CV 25-148-BLG-WWM Plaintiff, VS. ORDER
DENYING MOTION TO ALTER OR AMEND CITY OF BILLINGS, ET AL., Defendants,
Plaintiff James Morrison has moved to alter, amend or strike the Court's February 10, 2026 Order
revoking his in forma pauperis status, under Federal Rule of Civil Procedure 59(e).

(Doc. 7). Morrison's motion asserts two arguments: He was not given an opportunity to be heard on the revocation of his in forma pauperis status, and the Court failed to conduct the proper strike analysis of his prior dismissals. (Doc. 7 at 1). Morrison's motion is denied.

As an initial matter, Morrison's motion is not a proper Rule 59 motion. Federal Rule of Civil Procedure 59(e) allows a court to alter or amend a judgment within 28 days of its entry. Judgment has not been entered in this matter.

In essence, Morrison is asking the Court to reconsider its prior Order. However, motions for reconsideration in the District of Montana are controlled by Local Rule 7.3, which requires leave of court prior to filing a motion for reconsideration.

The motion for leave must justify the motion for reconsideration because: (1) (A) the facts or applicable law are materially different from the facts or applicable law that the parties presented to the court before entry of the order for which reconsideration is sought, and (B) despite the exercise of reasonable diligence, the party applying for reconsideration did not know such fact or law before entry of the order; or (2) new material facts arose or a change of law occurred after entry of the order.

D. Mont. L.R. 7.3. Morrison's motion would likely not have fit this provision, given that he had not previously presented legal arguments or facts on the issue of his in forma pauperis status. However, the appropriate approach in this context would have been to apply for leave to file such a motion and to have explained those circumstances.

The Court will construe his motion as a motion to reconsider under the local rule, since it certainly is not a motion to amend a judgment under Rule 59. As to Morrison's first substantive point, he was not entitled to notice prior to the revocation of his in forma pauperis status. Morrison cites *Andrews v. King*, 398 F.3d 1113 (9th Cir. 2005) ("Andrews in support of his assertion that the Court must offer him an opportunity to be heard prior to denying an in forma pauperis motion.

(Doc. 7 at 1). However, in *Ray v. Lara*, 31 F.4th 692 (9th Cir. 2022), the Ninth Circuit rejected this position, after the district court clearly identified three prior dismissals in its sua sponte order denying Ray's motion to proceed IFP. "Having placed Ray on notice of the three cases that constituted strikes, Andrews I was satisfied. No part of the relevant statute required the court to provide Ray any additional process.

28 U.S.C. § 1915. Thus, the district court did not err by denying Ray's motion without providing him a further opportunity to be heard." *Ray*, 31 F.4th at 697 (internal citation omitted.) In Morrison's situation, however, having filed his motion to reconsider, he has had an opportunity to be heard. Next, Morrison contests whether two of the three cases identified by the Court count as legitimate strikes.

Morrison first questions whether *Morrison v. Spang*, CV 10-150-BLG-RFC, should count as a strike because the substantive law on the issue of tribal sovereignty has changed. (Doc. 7 at 2), For two reasons, Morrison's analysis fails.

First, substantively, the change in the law would not benefit Morrison if he filed his lawsuit today. Morrison sued the President of the Northern Cheyenne Tribe over tribal policies and a criminal prosecution, and his specific allegations were directed at the Northern Cheyenne Tribe itself. *Morrison v. Spang*, CV 10-150-BLG-RFC, Doc. 2. These claims are exactly the kind of scenario that raises the issue of tribal sovereignty, rather than individual responsibility, as in the cases cited by Morrison in his motion.

But more importantly, there is no reason to retroactively apply any changes of substantive law to reassess whether a case stated a claim for the purposes of assigning a strike. “TFP” status is not a constitutional right. Congress created IFP status to assist indigent persons in bringing legitimate claims in the late 1800s.

As a congressionally created benefit, IFP status is not constitutionally mandated and can be extended or limited by Congress. As the Eleventh Circuit held in *Rivera*, where no fundamental interest is at stake, “ ‘Congress is no more compelled to guarantee free access to federal courts than it is to provide unlimited access to them.’ ” *Rodriguez vy. Cook*, 169 F.3d 1176, 1180 (9th Cir.

1999) (citations omitted). Morrison’s analysis imports substantive concepts of retroactivity into a procedural context. 28 U.S.C. § 1915(g) is a procedural rule that allows prisoners to avoid paying filing fees upfront. It does not impair any substantive rights. *Marks v. Solcum*, 98 F.3d 494, 495-96 (9th Cir. 1996) (holding that “three strikes” provision is merely procedural and raises no retroactivity concerns). When Morrison filed his suit, it was barred by immunity.

Whether it would be today makes his filing no less improper at the time. Relatedly, Morrison objects to the conclusion that “failure to state a claim” is an appropriate label for cases dismissed for lack of jurisdiction, a Heck bar, or clearly immune defendants. See also *Ray*, 31 F.4th at 697 (a Heck dismissal may constitute a strike for failure to state a claim when obvious from the face of the complaint (citing *Heck v. Humphrey*, 512 U.S. 477 (1994))).

Failure to state a claim upon which relief can be granted is a broader category than Morrison presumes. If a fatal deficiency is clear from the face of the Complaint, whether that is jurisdiction, a Heck bar, or immunity, that failure will result in the conclusion that relief cannot be granted. *Harris v. Harris*, 935 F.3d 670, 676 (9th Cir. 2019) (“[T]here are rare cases where an affirmative defense, such as immunity, may be so clear on the face of the complaint that dismissal may qualify as a strike for failure to state a claim.”) See also *Ray*, 31 F.4th at 697.

Morrison’s construction of “failure to state a claim” is too narrow. Finally, the Court’s prior Order stated that Morrison had had at least three dismissals that resulted in strikes. In addition to those previously cited, the dismissal of *Morrison v. Yellowstone County, et al.*, CV 24-46-BLG-SPW-TIC, in both the district court, and on appeal, adds two strikes.

(Appeal (No. 24-3744) dismissed as frivolous on Dec. 19, 2025.) Morrison is not entitled to proceed in forma pauperis. Accordingly, IT IS HEREBY ORDERED: 1. Morrison’s motion to alter or amend (Doc. 7) is DENIED. 2. If Morrison intends to proceed, he must pay the full filing fee of \$405.00, on or before April 6, 2026. 3. If payment is not timely received, the clerk will close the action.

4, At all times during the pendency of this action, Morrison must immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a Notice of Change of Address may result in the dismissal of the action for failure to prosecute. Fed. R. Civ. P. 41(b). DATED this 17th day of March, 20 Es hawcer WILLIAM W.MERCER UNITED STATES DISTRICT JUDGE

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