

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

VERNADO MALONE, et al.)	
)	
Plaintiffs,)	
)	CAUSE NO. 3:06-CV-719 AS
v.)	
)	
UNITED STATES, et al.,)	
)	
Defendants.)	

OPINION AND ORDER

Vernado Malone, a *pro se* prisoner, submitted a motion seeking the return of property pursuant to FED. R. CRIM P. 41(g). Pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

This is not the first time that Mr. Malone has brought this claim. In *Malone v. United States*, 3:06-CV-016 (N.D. Ind. filed January 3, 2006), he is also seeking the return of this same property. That case is still pending on appeal. It is malicious to sue the same defendant for the same cause of action while the prior claim is pending on appeal. Though Mr. Malone seeks to also sue additional governmental defendants in this case, those defendants (to the extent that they are proper parties) must be joined to that case if it is remanded, not sued separately in this one. See FED. R. CIV. P. 19.

For the foregoing reasons, the claims of Vernado Malone are **DISMISSED** pursuant to 28 U.S.C. § 1915A.

IT IS SO ORDERED.

ENTERED: October 19 , 2006

S/ ALLEN SHARP

ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT