

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES MURRAY a/k/a)	
JAMES HINES,)	
)	
Petitioner,)	
)	
vs.)	2:11-cv-30-WTL-WGH
)	
FEDERAL BUREAU OF PRISONS, et al.,)	
)	
Respondents.)	

**ENTRY DENYING LEAVE TO PROCEED *IN*
FORMA PAUPERIS AND DISMISSING ACTION¹**

Petitioner, James Murray a/k/a James Hines (hereafter “Murray”), filed this suit and seeks leave to proceed *in forma pauperis*. The factual basis for this claim is that Petitioner is a “bona fide prison system analysis; and bona fide jailhouse lawyer.” (Petition for Judicial Review at 4). He further alleges that “[w]ithin the pass (sic) ten years while in federal custody, Petitioner has been confind (sic) to six U.S.P. from north to south to east from west.” (*Id.* at 6). He alleges that the Federal Bureau of Prisons, “pursuant to a pattern and practice, custom and usage of resistance,” violates the federally-protected rights of Petitioner and others who are jailhouse lawyers and subjects them to retaliatory treatment. (*Id.*). Petitioner alleges that his status as a bona bide jailhouse lawyer arises under the Ninth Amendment to the U.S. Constitution. Petitioner cites to *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed2d 637 (2008), and *Sigafus v. Brown*, 416 F.2d 105 (7th Cir. 1969), as the basis for such a constitutional right.

Because Murray is a prisoner, his complaint is subject to the screening required by 28 U.S.C. § 1915A(b). Pursuant to this statute, “[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief.” *Jones v. Bock*, 127 S.Ct. 910, 921 (2007). “[A] complaint must always . . .

¹Plaintiff filed a “Motion for Judicial Screening of Complaints” (Docket 29) and “Motion to Expedite Judicial Screening of Complaints” (Docket No. 40). While those motions were granted in part, this Order finally resolves the request to screen.

allege ‘enough facts to state a claim to relief that is plausible on its face.’” *Limestone Development Corp. v. Village of Lemont, Ill.*, 520 F.3d 797, 803 (7th Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Plausibility is defeated, however, if a plaintiff “pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits.” *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008); *see also Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (“Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”). Pro se complaints such as that filed by Murray are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Obriecht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

A review of the authorities suggested by Petitioner does not establish that there is any constitutionally protected right to the status of being a jailhouse lawyer. Moreover, Petitioner has failed to plead any plausible set of facts establishing retaliation. The mere fact that Petitioner has been incarcerated in six different penitentiaries over a ten year period of time does not suggest retaliation to this court.

Therefore, because Petitioner’s claim is not supported by law and does not recite a plausible set of facts alleging retaliation, his request to proceed *in forma pauperis* must be **DENIED**. Dismissal of the action pursuant to 28 U.S.C. § 1915A(b) is therefore mandatory, *Gladney v. Pendleton Corr. Facility*, 302 F.3d 773, 775 (7th Cir. 2002), and judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 01/03/2013

Distribution:

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Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana