

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSEPH A. DANIELS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:22CV526–HEH
)	
MICHAEL GAITHER, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION
(Dismissing Action Because Plaintiff has Three Strikes)

Plaintiff, a Virginia inmate, has submitted this civil action pursuant to 42 U.S.C. § 1983 complaining that he contracted COVID-19 in 2020, but has never been treated for his loss of taste and smell. However, Plaintiff may not file an action in this Court *in forma pauperis* because he is barred by 28 U.S.C. § 1915(g). The pertinent statute provides:

In no event shall a prisoner bring a civil action [*in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Plaintiff has at least three other actions or appeals that have been dismissed as frivolous or for failure to state a claim. *See, e.g., Daniels v. Caldwell*, No. 3:14CV856, 2015 WL 7283121, at *2 (E.D. Va. Nov. 16, 2015); *Daniels v. Jarratt*, No. 3:13CV440, 2014 WL 12654876, at *1 (E.D. Va. July 22, 2014); *Daniels v. Caldwell*, No. 3:11CV461, 2013 WL 6713129, at *4 (E.D. Va. Dec. 18, 2013). Plaintiff

contacted COVID-19 in 2020 and suggests that he has never received medical treatment for loss of taste or smell. (ECF No. 1, at 5–6.) Plaintiff’s current submission does not suggest that he is in imminent danger of serious physical harm. Accordingly, any request to proceed *in forma pauperis* will be DENIED. The action will be DISMISSED WITHOUT PREJUDICE.

Plaintiff remains free to submit a new complaint with the full \$402 filing fee. The full \$402 fee must be filed with any new complaint or the Court will dismiss the action. The Court will process any new complaint as a new civil action.

An appropriate Order shall accompany this Memorandum Opinion.



/s/

HENRY E. HUDSON
SENIOR UNITED STATES DISTRICT JUDGE

Date: July 29, 2022
Richmond, Virginia