

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

April 13, 2022

Lyle W. Cayce  
Clerk

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No. 21-10893

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GABRIEL SALASCIO, *also known as* GABRIEL PAUL SALAS,

*Plaintiff—Appellant,*

*versus*

CORRECTIONAL OFFICER Ms. TREJO; CORPORAL LITTLETON;  
MEGAN LNU,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:19-CV-305

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Before STEWART, HAYNES, and HO, *Circuit Judges* .

PER CURIAM:\*

Pretrial detainee, Gabriel Salascio, Tarrant County inmate # 0565059, sought and obtained voluntary dismissal of his 42 U.S.C. § 1983 complaint. He now seeks leave to proceed in forma pauperis (IFP) on his appeal of that dismissal and postjudgment motion to reopen. Salascio's notice of appeal

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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from the voluntary dismissal of his complaint was untimely. *See* FED. R. APP. P. 4(a)(1)(A). As a result, we lack jurisdiction over an appeal from the district court's order of dismissal. *See Bowles v. Russell*, 551 U.S. 205, 213-14 (2007).

To the extent that Salascio has filed a timely notice of appeal from the denial of his motion to reopen that presumably arose under Federal Rule of Civil Procedure 60(b), he has failed to show that he should be permitted to proceed IFP on appeal under 28 U.S.C. § 1915(g) or that his appeal of the district court's order denying the motion presents a nonfrivolous issue. *See Banos v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). He has not established that he is under imminent danger of serious physical injury.<sup>1</sup> *See* § 1915(g). Accordingly, his motion for leave to proceed IFP on appeal is DENIED. Salascio presents no nonfrivolous issue for appeal; therefore, the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

Salascio is reminded that, pursuant to § 1915(g), he has accumulated three strikes and is therefore barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. *See* § 1915(g). In addition, he is WARNED that future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction may subject him to additional sanctions, which may include dismissal, monetary sanctions, and restrictions on his ability to file pleadings.

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<sup>1</sup> He concedes that the inmate who might assault him is now deceased.