

United States Court of Appeals
for the Fifth Circuit

No. 26-50109

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2026

Lyle W. Cayce
Clerk

ALEJANDRO HERNANDEZ,

Plaintiff—Appellant,

versus

KEN PAXTON, *Attorney General, State of Texas,*

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:25-CV-220

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Texas state courts classified Appellant Alejandro Hernandez as a vexatious litigant in 2019. *See* TEX. CIV. PRAC. & REM. CODE §§ 11.101–.102. Nonetheless, in 2023, Hernandez filed a lawsuit on behalf of The Freedom Indeed Foundation, a corporation which he founded and of which he is the president. After losing at trial, Hernandez sought to appeal. Because of Hernandez’s status as a vexatious litigant, the county court

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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required him to obtain permission from a local Administrative Law Judge (ALJ) before proceeding with his appeal. The ALJ denied permission.

Hernandez sought to override this denial with a state mandamus petition filed with the Eighth Court of Appeals. Because Texas law requires corporations to be represented by licensed attorneys on appeal, the court of appeals refused to let Hernandez, who is not a licensed attorney, proceed with his petition. *See* TEX. GOV'T CODE §§ 81.101–.102, 83.001–.006; *Moore v. Elektro-Mobil Technik GmbH*, 874 S.W.2d 324, 327 (Tex. App.—El Paso 1994, writ denied) (holding that corporations must be represented by a licensed attorney under Texas law). The court instructed Hernandez to amend his petition to comply with Texas law, presumably by retaining an attorney for his corporation. Hernandez filed an amended petition, *pro se*, clarifying that he was only seeking relief on his own behalf, not on behalf of his corporation. Ultimately, the court denied the mandamus petition insofar as it sought relief for the foundation because Hernandez, as an individual, lacked standing to seek permission for a separate entity's litigation to proceed. As for Hernandez's claim that he was seeking exclusively individual relief, the Court concluded the petition was new litigation for which Hernandez had to obtain ALJ permission. Hernandez had not obtained that permission, so the court dismissed his petition.

While the Eighth Court of Appeals was still considering whether to dismiss Hernandez's mandamus petition, Hernandez turned to federal court, filing a *pro se* suit against Defendant Ken Paxton, the Attorney General of Texas, alleging that the county court's permission requirement violated his rights under the First and Fourteenth Amendment and seeking an injunction. The district court dismissed Hernandez's suit based on *Younger* abstention, given the pending suit before the Eighth Court of Appeals.

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After the Eighth Court of Appeals rejected Hernandez's mandamus petition, Hernandez sought relief from the district court's judgment under FED. R. CIV. P. 60(b). He argued that *Younger* could no longer bar his suit because the simultaneous state suit had resolved and he no longer had a path to an adequate remedy in state court. The district court denied Hernandez's motion, and Hernandez appealed.

On appeal, Hernandez seeks relief under three subsections of 60(b). None of these subsections entitle Hernandez to relief. Accordingly, we AFFIRM the denial of Hernandez's 60(b) motion.

Federal Rule of Civil Procedure 60(b) permits courts to "relieve a party . . . from a final judgment, order, or proceeding." FED. R. CIV. P. 60(b). As the party seeking relief under the rule, Hernandez bears the burden of showing that he is entitled to relief. *D.R.T.G. Builders, L.L.C. v. Occupational Safety & Health Rev. Comm'n*, 26 F.4th 306, 312 (5th Cir. 2022). When reviewing a district court's denial of a 60(b) motion, this court applies an abuse of discretion standard. *See Osborne v. Belton*, 131 F.4th 262, 269 (5th Cir. 2025).

Hernandez first contends he is entitled to relief under Rule 60(b)(5). That subsection permits courts to grant relief from a judgment where "applying [the judgment] prospectively is no longer equitable." FED. R. CIV. P. 60(b)(5). Because the district court's opinion was based on *Younger* abstention, Hernandez asserts that it is inequitable to leave its judgment in place now that state court proceedings have concluded.

Hernandez's argument fails because Rule 60(b)(5) applies only to judgments with prospective effects, such as a judgment that "requires a court to supervise changing conduct or conditions that are provisional or tentative." *Nat'l City Golf Fin. v. Scott*, 899 F.3d 412, 419 (5th Cir. 2018). And a judgment dismissing a case, as the district court did here, "does not

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apply prospectively within the meaning of Rule 60(b)(5).” *Tapper v. Hearn*, 833 F.3d 166, 171 (2d Cir. 2016) (collecting cases from seven circuits, including the Fifth Circuit); *see also Picco v. Glob. Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990) (holding that it is “clearly not enough” for Rule 60(b)(5) if “the only arguably prospective effect of [a] dismissal is that it precludes relitigation of the issues decided”).¹ Accordingly, Hernandez cannot invoke Rule 60(b)(5) to overturn the district court’s non-prospective judgment.

Nor may Hernandez obtain relief under Rule 60(b)(6). That catchall provision establishes that courts may grant relief for “any other reason that justifies relief.” FED. R. CIV. P. 60(b)(6). Courts grant relief under Rule 60(b)(6) “only if extraordinary circumstances are present.” *Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 160 (5th Cir. 1990). No extraordinary circumstances justify relief here. Hernandez claims he is the victim of a procedural trap in which he lacks standing to sue on behalf of his corporation but may not proceed individually without permission from an ALJ. Far from being some extraordinary trap, this procedural situation is the result of several generally applicable rules. Hernandez cannot represent his corporation on appeal because he is not a licensed attorney.² *See TEX. GOV’T CODE* §§ 81.101–.102, 83.001–.006; *Moore*, 874 S.W.2d at 327. Nor can he bring an individual suit on his corporation’s behalf. *See Kowalski v. Tesmer*, 543 U.S. 125, 129, 125 S. Ct. 564, 567 (2004) (explaining that a party

¹ Hernandez urges that dismissals under *Younger* should be treated distinctly from dismissals in general because *Younger* is “inherently prospective.” But Rule 60(b)(5) turns on the “prospective effects” of a judgment, not the reasoning in an opinion. *Nat’l City Golf*, 899 F.3d at 419. Because the effect of the dismissal here is no different than any other dismissal, Rule 60(b)(5) does not apply.

² Hernandez does not challenge the constitutionality of this rule in his brief. He also appears to concede that it was correctly applied to him.

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“must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties”). As a result, any suit he brings can only be on his behalf as a *pro se* litigant, which he can do only after receiving ALJ permission due to his vexatious-litigant status. Hernandez’s options may be limited. But they are limited because of a state rule whose constitutionality he does not challenge, Supreme Court precedent we lack the power to overrule, and his own prior misconduct that resulted in his classification as a vexatious litigant. That Hernandez is subject to these generally applicable rules hardly constitutes an extraordinary circumstance.

Hernandez’s final argument fares no better. He accuses the district court of conflating him with The Freedom Indeed Foundation and thus misapprehending his claims. This claim sounds in Rule 60(b)(1), which permits relief where a judgment was based on a mistake. FED. R. CIV. P. 60(b)(1). In particular, Hernandez focuses on the district court’s determination that his corporation could have freely proceeded with its lawsuit if it retained an attorney, thereby satisfying Texas’s requirement that corporations be represented by licensed attorneys. Although he does not dispute that his corporation may proceed with its litigation by taking that simple step, he claims that doing so would not redress his personal injuries under the Due Process Clause, the Equal Protection Clause, and the First Amendment resulting from “the state’s imposition of vexatious-litigant permission burdens on him” when he sought to sue on behalf of his corporation.

If the district court did not explicitly address these constitutional claims, it is because they are entirely frivolous and their dismissal required no reasoned explanation. *See Sumner v. Mata*, 449 U.S. 539, 548, 101 S. Ct. 764, 770 (1981) (“Undoubtedly, a court need not elaborate or give reasons for rejecting claims which it regards as frivolous or totally without merit.”). “Courts in Texas have repeatedly rejected claims that the vexatious-litigant

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statute violates the constitutional right to due process and to access the courts.” *Dunsmore v. Barchak*, No. 3:21-CV-0020, 2022 WL 1653183, at *4 (S.D. Tex. May 11, 2022). The same is true for First Amendment challenges to the statute. *See McCarrell v. Dunham & Jones Att’ys at L. P.C.*, No. 03-19-00783-CV, 2020 WL 4726635, at *6 (Tex. App.—Austin Aug. 12, 2020, no pet.) (collecting cases). As for the Equal Protection claim, Hernandez has failed to point to any similarly situated corporate officer—namely, a corporate officer who has been classified as a vexatious litigant—who was permitted to proceed with *pro se* litigation related to his company without first receiving permission from an ALJ. *See Hines v. Quillivan*, 982 F.3d 266, 272 (5th Cir. 2020) (“To state a claim for equal protection, ‘the plaintiff must prove that similarly situated individuals were treated differently.’” (quoting *Beeler v. Rounsavall*, 328 F.3d 813, 816 (5th Cir. 2003))). Hernandez’s constitutional arguments are frivolous, and the district court did not abuse its discretion.

Accordingly, we AFFIRM the district court’s denial of Hernandez’s 60(b) motion.