

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 14, 2026

Lyle W. Cayce
Clerk

No. 26-50186
Summary Calendar

JOSEPH ANTHONY REYNA,

Plaintiff—Appellant,

versus

TEXAS DEPARTMENT OF STATE HEALTH SERVICES, *in its official
capacity,*

Defendant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:25-CV-871

Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Joseph Anthony Reyna, proceeding pro se and in forma pauperis, appeals from the district court's 28 U.S.C. § 1915(e)(2)(B) dismissal of his complaint against the Texas Department of State Health Services. Reyna's operative complaint challenged two Texas Senate bills that he says would ban certain hemp products. Reyna argued that the bills violate the Americans

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

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with Disabilities Act (ADA), the Religious Freedom Restoration Act (RFRA), and various provisions of the U.S. Constitution. The district court held that sovereign immunity deprived it of subject-matter jurisdiction over Reyna's ADA and constitutional claims. And it separately dismissed Reyna's RFRA challenge for failure to state a claim.

On appeal, Reyna concedes that his RFRA challenge was properly dismissed. That leaves his ADA and constitutional claims. Reyna has not shown that the district court erred in holding that sovereign immunity bars those claims against the Department. The district court erred, however, in dismissing Reyna's ADA and constitutional claims with prejudice. We therefore MODIFY the judgment accordingly and AFFIRM.

I

Section 1915(e)(2)(B) requires a district court to dismiss an in forma pauperis action "at any time" if it determines that the action is frivolous, malicious, or "fails to state a claim on which relief may be granted." We review § 1915(e)(2)(B) dismissals, as well as dismissals for lack of subject-matter jurisdiction, *de novo*. See *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009); see also *Crane v. Johnson*, 783 F.3d 244, 250 (5th Cir. 2015). "The question of whether state defendants are entitled to sovereign immunity is likewise reviewed *de novo*." *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 393 (5th Cir. 2015) (quoting *Moore v. La. Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 962 (5th Cir. 2014)). "[W]e review the district court's decision to grant a motion to dismiss with or without prejudice only for abuse of discretion." *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 215 n.34 (5th Cir. 2009).

II

"Under the Eleventh Amendment, states are immune from being sued in federal court by their own citizens or citizens of other states." *Eriakha*

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v. Univ. of Miss., No. 26-60007, slip op. at 9 (5th Cir. Sep. 9, 2026). Federal courts are thus “without jurisdiction over suits against a state, a state agency, or a state official in his official capacity unless that state has waived its sovereign immunity or Congress has clearly abrogated it.” *Moore*, 743 F.3d at 963.

Reyna raises two principal sovereign-immunity arguments on appeal.

First, he argues that his ADA claim falls within the abrogation recognized in *Tennessee v. Lane*, 541 U.S. 509 (2004). But in *Lane*, the Supreme Court held that Title II of the ADA validly abrogated sovereign immunity “as it applies to the class of cases implicating the accessibility of judicial services.” 541 U.S. at 531. Reyna’s claims involve proposed hemp legislation, not access to the courts. Reyna argues that *Lane* “applies to a class of cases beyond just physical courthouse access,” but he cites no case extending *Lane* to a case like this. He has thus forfeited that argument. *See Denton Cnty. Elec. Coop., Inc. v. NLRB*, 962 F.3d 161, 167 n.4 (5th Cir. 2020).

Second, he invokes *Ex parte Young*, 209 U.S. 123 (1908), and asks us to construe his complaint as having named the Department’s commissioner as a defendant. But the operative complaint names only the Department, a conceded “[a]gency of the State of Texas.” “[E]ven a *pro se* appellant cannot raise new theories for relief for the first time on appeal.” *Collins v. Dall. Leadership Found.*, 77 F.4th 327, 330 n.2 (5th Cir. 2023). We accordingly decline to disturb the district court’s holding that Reyna’s ADA and constitutional claims are barred by sovereign immunity.

Reyna is correct, however, that the district court abused its discretion by dismissing his ADA and constitutional claims with prejudice. The district court dismissed those claims only because they are barred by sovereign immunity. “Dismissals based on sovereign immunity are without prejudice.” *John Gannon, Inc. v. Tex. Dep’t of Transp.*, 178 F.4th 906, 912 (5th Cir. 2026).

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We therefore MODIFY the judgment to dismiss Reyna's ADA and constitutional claims without prejudice and, as modified, AFFIRM.