

United States Court of Appeals
for the Fifth Circuit

No. 26-50242
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 9, 2026

Thomas B. Plunkett, III
Clerk

MARK HILAL,

Plaintiff—Appellant,

versus

ENRIQUE D. MENDOZA, *Officer, #3150*; R. MICHAEL MARTINEZ,
Detective, #1898; THE CITY OF EL PASO; PHOENIX SECURITY,
L.L.C.; REDCAP STAFFING AGENCY; FRANKLIN CONSTRUCTION
LIMITED,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:25-CV-444

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

PER CURIAM:*

Someone stole Mark Hilal's identification documents. Dissatisfied with the police response, Hilal brought various state and federal claims against the responding officers, the City of El Paso, and four private

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

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companies. The district court dismissed his federal claims as frivolous and declined to reach his state-law claims. Proceeding pro se, Hilal does not challenge the substance of that ruling but the process that produced it. We find no fault in either and AFFIRM.

I

Hilal filed this § 1983 action in forma pauperis, alleging constitutional violations arising from the police response to the theft of his identification documents. A magistrate judge recommended dismissing the § 1983 claims with prejudice as frivolous—there is no constitutional right to a criminal investigation—and dismissing the state-law claims without prejudice for lack of jurisdiction.

Uncertain whether Hilal had received the report and recommendation (R&R), the district court ordered supplemental service by certified and regular mail. Hearing nothing, it adopted the R&R on January 26, 2026.

Hilal then moved for reconsideration and renewed his request for leave to amend, attaching a proposed second amended complaint and explaining that a change of address had delayed his receipt of the R&R.¹ The district court assumed good cause for the delay but denied both motions, holding that the proposed amended complaint merely reasserted claims that the R&R had already rejected. Hilal raises three issues on appeal. He says the district court: (1) violated due process by proceeding despite failed

¹ Hilal has used three addresses during this litigation. In October 2025, his initial filings listed an El Paso address. Weeks later, his first amended complaint again listed the El Paso address, but it was mailed from an Austin address. In November, he requested a case update from that same Austin address. In December, he moved to file a second amended complaint using a different Austin address. At the end of January 2026, Hilal formally updated his address to that second Austin location. Before that formal update, however, the court mailed the R&R to his El Paso address on December 17 and again on January 12.

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service of the R&R; (2) abused its discretion by never docketing his second amended complaint; and (3) abused its discretion by summarily denying reconsideration. No appellee has briefed the merits. Counsel for the City and the individual officers advised the court that those defendants were never served² below and will not be filing, though they agree with the district court's disposition.

II

Whether a complaint states a cognizable constitutional claim is a question of law we review *de novo*. We review for abuse of discretion, however, the dismissal of an in forma pauperis complaint as frivolous, *Denton v. Hernandez*, 504 U.S. 25, 33 (1992)—same for the denial of a motion for reconsideration, *Matthews v. Tidewater, Inc.*, 108 F.4th 361, 370 (5th Cir. 2024).

Ordinarily, we review the denial of leave to amend for abuse of discretion. But when the denial is based on “futility of amendment alone,” we apply the same *de novo* standard that governs a Rule 12(b)(6) dismissal. *Martinez v. Nueces Cnty.*, 71 F.4th 385, 391 (5th Cir. 2023). “It is not an abuse of discretion to deny the motion to amend if it would not survive a

² The magistrate judge declined to order service after recommending dismissal. That accords with ordinary practice under 28 U.S.C. § 1915(e), which requires dismissal of frivolous in forma pauperis cases.

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Rule 12(b)(6) motion.” *McLin v. Twenty-First Jud. Dist.*, 79 F.4th 411, 415 (5th Cir. 2023).

III

A

Hilal first contends that the district court violated due process by entering judgment despite knowing that service of the R&R had “completely failed.” Due process requires notice “reasonably calculated” to reach interested parties and give them an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950). That standard was met.

The district court said it was “unclear” whether Hilal had received the R&R and ordered supplemental service by certified and regular mail. After hearing nothing from Hilal, the court relied on the presumption that the regular-mail copy was received, the R&R’s availability on PACER since mid-December, and seventeen days without objection. It applied the correct clear-error standard for unobjected-to recommendations. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Despite the service problems, Hilal received actual notice and an opportunity to be heard. He disputes the *timing* of his receipt but not the *fact* of it. And once he learned of the R&R, he moved for reconsideration and for leave to file a second amended complaint. Rather than denying those motions as untimely, the district court assumed Hilal had good cause for failing to object to the R&R and considered the merits.

A litigant who learns of a ruling, responds to it, and receives a merits ruling has not been denied due process.

B

Hilal next challenges the district court’s denial of leave to amend under Rule 15. He argues that the court “never docketed” his second

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amended complaint and “dismissed the action . . . as if the amendment did not exist.”

Since the district court denied leave to amend as futile, we review Hilal’s proposed second amended complaint under the Rule 12(b)(6) standard. *See Martinez*, 71 F.4th at 391. We ask whether, “in the light most favorable to [Hilal,] the amended complaint states any valid claim for relief.” *See Ford v. Anderson Cnty.*, 102 F.4th 292, 318 (5th Cir. 2024). It does not.

With respect to Hilal’s § 1983 claims, we agree with the district court that he “merely reassert[ed] his original causes of action,” all of which are futile. The proposed complaint names several private companies, two investigating officers, and the City of El Paso. But the companies are not state actors. *See Lindke v. Freed*, 601 U.S. 187, 194 (2024). As for the officers and the City, the sole theory against them is failure to investigate, and there is no constitutional right to a police investigation. *See Lefebure v. D’Aquila*, 15 F.4th 650, 652 (5th Cir. 2021) (“[A] crime victim may not challenge a prosecutor’s failure to investigate or prosecute his perpetrator.”). Those § 1983 claims are therefore futile, and no amendment could cure them.

Hilal’s amended complaint also adds claims under §§ 1981 and 1985—but neither would survive a motion to dismiss.

Hilal asserts that “All Defendants” violated § 1981. That provision prohibits racial discrimination in specified activities. But Hilal alleges none of the required elements: that he is a “member[] of a racial minority,”³ that the defendants “intended to discriminate on the basis of race,” or that any such “discrimination concerned one or more of the activities enumerated in

³ Hilal referred to his “Moroccan birth certificates,” but he does not claim to be a racial minority or that he suffered discrimination on that basis.

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[§ 1981].” *See Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 386 (5th Cir. 2017).

Hilal also alleges that his staffing agency and payroll provider conspired against him in violation of § 1985(3). Although the complaint is not clear, Hilal may mean to invoke § 1985(3)’s prohibition on conspiracies to deprive a person “of the equal protection of the laws, or of equal privileges and immunities under the laws,” and/or “prevent[] or hinder[]” state authorities from providing “the equal protection of the laws.” But he does not allege *why* the defendants conspired, or *which* federal rights they meant to deprive him of, or *how* they prevented state authorities from providing equal protection. The § 1985 claim fails, too.

Since none of the claims in Hilal’s proposed second amended complaint would survive a motion to dismiss, the district court did not abuse its discretion in denying leave to amend.

C

Finally, Hilal argues that the district court abused its discretion by denying his Rule 59(e) motion for reconsideration within 48 hours, without, he says, examining his proposed complaint or resolving the service issue.

Nothing obliges a district court to sit with a motion for longer than it takes to decide it. And the substance of this order confirms that the court considered the motion earnestly: it assumed good cause for the untimely objection, noted that Hilal still had not objected to the R&R, and compared the proposed amended complaint against the original. There is no abuse of discretion in the denial of reconsideration.

IV

The judgment of the district court is AFFIRMED.