

App'x 1

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-50202

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A True Copy  
Certified order issued Nov. 18, 2019  
\_\_\_\_\_/s/ Lyle W. Cayce  
Clerk, U.S. Court of Appeals, Fifth Circuit

IRMA ROSAS,

Plaintiff - Appellant,

versus

AUSTIN INDEPENDENT SCHOOL DISTRICT;  
TEXAS DEPARTMENT OF STATE HEALTH  
SERVICES; TEXAS RIOGRANDE LEGAL AID,  
INCORPORATED,

Defendants – Appellees.

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Appeal from the United States District Court  
for the Western District of Texas

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O R D E R :

IN THE SUPREME COURT OF THE UNITED STATES

No. \_\_\_\_\_

IRMA ROSAS,

Petitioner

v.

AUSTIN INDEPENDENT SCHOOL DISTRICT; TEXAS DEPARTMENT OF  
STATE HEALTH SERVICES; TEXAS RIOGRANDE LEGAL AID,  
INCORPORATED,

Respondents

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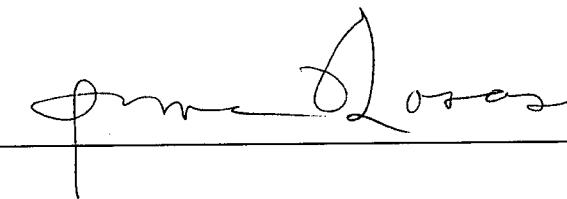
CERTIFICATE OF SERVICE

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I, Irma Rosas, *pro se* Petitioner, hereby certifies that respondents were never served with this instant matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2020



Irma Rosas 02/03/2020

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On October 23, 2019, the clerk denied  
appellant's motion to reopen. Appellant's motion for  
reconsideration is DENIED.

\_\_\_\_\_  
/s/ Jerry E. Smith  
JERRY E. SMITH  
United States Circuit Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IRMA ROSAS,	§
Plaintiff,	§
AUSTIN INDEPENDENT SCHOOL DISTRICT,	§ 1:18-CV-472-RP
TEXAS DEPARTMENT OF STATE HEALTH SERVICES,	§
and TEXAS RIOGRANDE LEGAL AID, INC.,	§
Defendants.	§

**ORDER**

Before the Court is the report and  
recommendation of the United States Magistrate  
Judge Mark Lane concerning Plaintiff Irma Rosas's

### App'x 3

(“Rosas”) complaint pursuant to 28 U.S.C. § 1915(e), 28 U.S.C. § 636(b), and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. (R. & R., Dkt. 7). In his report and recommendation, Judge Lane recommends that the Court dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B0. (*Id.* at 8). Rosas timely filed objections to the report and recommendation. (Objs., Dkt 13).<sup>1</sup>

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b). Because Rosas timely objected to “certain factual omissions” in the report and recommendation relating to Defendant Austin Independent School

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<sup>1</sup> Rosas filed a motion to proceed in forma pauperis on appeal, (Dkt. 9), which the Court construed as a request for extension of time to file written objections to Judge Lane’s report and recommendation, (Dkt. 10, at 2). The Court gave Rosas until September 28, 2018, to file her objections. (Dkt. 10, at 3). She did so on September 26, 2018. (Objs., Dkt. 13).

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District (“AISD”), (Objs., Dkt. 13, at 2), the Court reviews that portion of the report and recommendation *de novo*. The Court reviews the remainder of the report and recommendation for committee’s note (“When no timely objection is filed [sic], the district court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”). Having reviewed the report and recommendation *de novo* and for clear error, where appropriate, the Court overrules Rosas’s objections and adopts the report and recommendation as its own order.

Rosas objects that Judge Lane failed to consider facts related to the allegation that AISD “did not follow the proper procedure in her termination.” (Id.). However, the facts Rosas alleges were omitted are not germane to Judge Lane’s analysis. Judge Lane concluded that Rosas’s claims against AISD should be dismissed because she failed to timely file a charge of discrimination with the United State Equal Employment Opportunity Commission (“EEOC”). (R. & R., Dkt. 7, at 6); *see Brooks v. Firestone Polymers, LLC*, 70

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F. Supp. 3d 816, 861-62 (E.D. Tex. 2014) (stating that in Texas, a plaintiff bringing a disability discrimination action the ADA must file a charge of discrimination with the EEOC within 300 days of the alleged unlawful employment practice and receive a right-to-sue letter prior to filing suit in federal court)). The Court agrees that Rosas's claims against AISD should be dismissed because she failed to include in her complaint any information that she timely filed an EEOC charge against AISD. *Brooks*, 70 F. Supp. 3d at 861-62; 42 U.S.C. § 2000e-5(e)(1).

With respect to Defendant Texas Department of State Health Services (“DSHS”), and Defendant Rio Grande Legal Aid, Inc. (“Rio Grande”), the Court finds no clear error in Judge Lane’s analysis. Rosas’s claims against DSHS must be dismissed because they are time-barred, and her claims against Rio Grande must be dismissed because they do not allege any facts that would entitle her to relief under the Civil Rights Act or 42 U.S.C. § 1983. (R. & R., Dkt. 7, at 7-8).

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Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 7), is **ADOPTED**. Rosas's complaint, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE**.

SIGNED on February 8, 2019.

\_\_\_\_\_  
/s/ Robert Pitman  
ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

\_\_\_\_\_  
No. 19-50202  
\_\_\_\_\_

A True Copy  
Certified order issued May 06, 2019  
\_\_\_\_\_  
/s/ Lyle W. Cayce  
Clerk, U.S. Court of Appeals, Fifth Circuit

IRMA ROSAS,

Plaintiff – Appellant

v.

App'x 7

AUSTIN INDEPENDENT SCHOOL DISTRICT;  
TEXAS DEPARTMENT OF STATE HEALTH  
SERVICES; TEXAS RIOGRANDE LEGAL AID,  
INCORPORATED,

Defendants – Appellees

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Appeal from United States District Court for the  
Western District of Texas

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CLERK'S OFFICE:

Under 5<sup>th</sup> Cir. R. 42.3, the appeal is dismissed as of May 6, 2019, for want of prosecution. The appellant failed to timely file appellant's brief and record excerpts.

LYLE W. CAYCE  
Clerk of the United States Court  
of Appeals for the Fifth Circuit

By: /s/ Roeshawn Johnson  
Roeshawn A. Johnson, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

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IN THE UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

App'x 8  
OFFICE OF THE CLERK

June 11, 2019

Ms. Irma Rosas  
6333 S. Lavergne Avenue  
Chicago, IL 60638

No. 19-50202

Irma Rosas v. Austin  
Independent School Dist,  
et al  
USDC No. 1:18-CV-472

Dear Ms. Rosas,

The default must be remedied before your case can be reopened, you must file your appellant's brief and record excerpts.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Roeshawn Johnson  
Roeshawn A. Johnson, Deputy Clerk  
504-310-7998

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IN THE UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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OFFICE OF THE CLERK

October 23, 2019

MEMORANDUM TO COUNSEL OR PARTIES  
LISTED BELOW:

NO. 19-50202      Irma Rosas v. Austin  
                            Independent School Dist,  
                            et al  
                            USDC No. 1:180CV-472

The court has denied appellant's motion to  
reinstate the appeal.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Lisa E. Ferrara —  
Lisa E. Ferrara, Deputy Clerk  
504-310-7675

Ms. Irma Rosas

P.S. Your brief contains the following  
deficiencies:

It does not include a statement of oral  
argument

The certificate of service is out of order

App'x 10

Some citations to the record are not in the  
proper form

Your record excerpts contain the following  
deficiency:

Citations to the record are not in the proper  
form