Appendix B

United States Court of Appeals
for The Fifth Circuit

CASE No. 20-10914

SUMMARY ORDER

FEBRUARY 5, 2021

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 5, 2021
Lyle W. Cayce
Clerk

No. 20-10914
Summary Calendar

ROBERT PAUL MAGTULIS CLEDERA,

Plaintiff—Appellant,

versus

UNITED STATES; ROBERT M. WILKINSON, *Acting U.S. Attorney General*; JAMES MCHENRY, *Executive Office for Immigration Review*; KEVIN K. MCALEENAN, *Acting Secretary, U.S. Department of Homeland Security*; STEVEN MCCRAW, *Texas Department of Public Safety*; GARY C. THOMAS, *Dallas Area Rapid Transit*; U. RENEE HALL, *Dallas Police Department, Dallas, Texas*; DOMINIQUE ARTIS, *Dallas Fire Department, Dallas, Texas*; STEVE DYE, *Grand Prairie Police Department, Grand Prairie, Texas*; ROBERT FITE, *Grand Prairie Fire Department, Grand Prairie, Texas*; WILL JOHNSON, *Arlington Police Department, Arlington, Texas*; TRACY AARON, *Mansfield Police Department, Mansfield, Texas*; BRIAN MANLEY, *Austin Police Department, Austin, Texas*; CHARLES EDGE, *Ellis County Sheriff*; RYAN HOLT, *Waco Police Department, Waco, Texas*; GREGORY FELLOWS, *Menifee Police Department, Menifee, California*; HOMEPRO OPERATING, L.L.C.; APPLE, INCORPORATED; THE WALT DISNEY COMPANY; BEST BUY COMPANY, INCORPORATED; TARGET CORPORATION; WALMART, INCORPORATED; HOME DEPOT PRODUCT AUTHORITY, L.L.C.; RING (AMAZON.COM, INCORPORATED); ARLO (ARLO TECHNOLOGIES, INCORPORATED); LG ELECTRONICS, USA INCORPORATED; VERIZON COMMUNICATIONS, INCORPORATED; CITY OF GRAND PRAIRIE; CITY OF MANSFIELD; MENIFEE POLICE DEPARTMENT,

Defendants—Appellees.

No. 20-10914

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-1997

Before JOLLY, ELROD, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Robert Paul Magtulis Cledera filed a complaint *pro se* against thirty parties, including the United States, federal officials, state officials, municipalities, and corporations. Cledera alleged violations of the Texas Penal Code and other constitutional and statutory provisions. Multiple defendants moved to dismiss Cledera's claims. The district court granted those motions and dismissed all of Cledera's claims. Cledera now appeals the district court's dismissal of his claims. Because the district court correctly held that Cledera fails to state a claim on which relief can be granted, we AFFIRM.

I.

In 2019, Cledera filed a criminal complaint against thirty parties, including the United States, federal officials, state officials, municipalities, and many corporations. Cledera subsequently amended his complaint. In his amended complaint, Cledera alleged that he was being harassed, tortured, and stalked by agents acting on behalf of the federal government. In support of his claim of vast conspiracy between multiple levels of government facilitated by private corporations, Cledera points to a variety of instances. He says that unknown actors watched him from the moment he left his home to when he returned. He says that unmarked vans appeared when he exited

* 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.

his driveway. He says that aircrafts would linger overhead when he stepped out of his home, and that the engine noises were enhanced to annoy and harass him. Cledera states that he knows "for a fact that [his] Phones [have] been cloned and wire tapped," because the phone creates messages on its own and the videos he records with the phone are blurry.

In his complaint, Cledera specifically asserts violations of the Fourth, Fifth, Sixth, and Fourteenth Amendments. He also argues that he has suffered violations of 28 U.S.C. § 1983, Texas Penal Code § 15.02 (criminal conspiracy), the Privacy Act of 1974, and Title VII of the Civil Rights Act of 1964.

Multiple defendants filed motions to dismiss on various bases, including pursuant to Federal Rule of Civil Procedure 12(b)(6) (failure to state a claim), Federal Rule of Civil Procedure 12(b)(5)(insufficient service of process), and Federal Rule of Civil Procedure 12(b)(1) (lack of subject matter jurisdiction). Some defendants also filed motions to dismiss the case as frivolous, while another defendant filed a motion for judgment on the pleadings.

The defendants argued that Cledera did not raise a specific legal cause of action, nor identify any legal duties allegedly violated, making it impossible to ascertain what cause of action was being asserted.

The magistrate judge issued a recommendation that the district court grant all pending motions to dismiss. The district court adopted the recommendation in full, dismissing Cledera's lawsuit. Cledera now appeals, seeking to have the district court's dismissal of his claims reversed and his case remanded to the district court.

II.

We review dismissals under Federal Rule of Civil Procedure 12(b)(6) *de novo*. *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 734 (5th Cir. 2019). Federal Rule of Civil Procedure 8(a)(2) requires that a plaintiff's pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). That is, the "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible if the plaintiff alleges facts that, accepted as true, allow a court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* While the court must accept the facts in the complaint as true, it will "not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (quoting *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005)). A district court's authority to dismiss a claim extends to dismissal of claims that are "clearly baseless." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *see also Twombly*, 550 U.S. at 570. This includes "claims describing fantastic or delusional scenarios." *Neitzke*, 490 U.S. at 328.

We "must construe the pleadings of *pro se* litigants liberally" to prevent the loss of rights due to inartful expression. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). We are, however, not at liberty to create a cause of action where there is none. *Hughes v. Rowe*, 449 U.S. 5, 9–10 (1980). Ordinarily, a *pro se* litigant should be offered an opportunity to amend his complaint before it is dismissed. *See Mendoza-Tarango v. Flores*, 982 F.3d 395, 402 (5th Cir. 2020). However, leave to amend is not required when an amendment would be futile. *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletics Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014).

Here, Cledera has asserted claims that are clearly baseless. He fails to address how the defendants have conspired to harass, stalk, or torture him. He fails to show how any of his allegations, such as the unmarked vehicles and aircrafts following him, implicate the named defendants. Simply put, Cledera fails to state a plausible claim on which relief can be granted. His claims do not contain sufficient factual matter giving rise to the inference that the defendants are liable for the alleged misconduct. For these reasons, we AFFIRM.

III.

The judgment of the district court is AFFIRMED.

Appendix C

United States District Court
For The Northern District of Texas

Dallas Division

CASE No. 3:19-cv-01997-M-BN

CLERK'S ENTRY OF DEFAULT

AUGUST 7, 2020

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Dallas Division

Robert Paul Magtulis Cledera Plaintiff	§	
v.	§	Civil Action No. 3:19-cv-01997-M-BN
United States et al Defendant	§	

CLERK'S ENTRY OF DEFAULT

The record reflects that service of the complaint has been made upon the Defendant named below:

RING (Amazon.com Inc)

It appears from the record that service of the complaint has been made, that the Defendant has failed to answer or otherwise defend as directed within the time allowed, and that the Plaintiff has shown that failure through affidavit or otherwise.

Therefore, upon Plaintiff's request, DEFAULT is entered against the Defendant named above.

KAREN S. MITCHELL, CLERK
U.S. DISTRICT COURT

s/N. Taylor
By: Deputy Clerk on 8/7/2020

Appendix D

United States District Court
For The Northern District of Texas

Dallas Division

CASE No. 3:19-cv-01997-M-BN

JUDGEMENT

AUGUST 7, 2020

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERT PAUL MAGTULIS CLEDERA, Plaintiff,	§	
V.	§	No. 3:19-cv-1997-M
UNITED STATES, ET AL., Defendants.	§	

JUDGMENT

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered, it is ORDERED, ADJUDGED, and DECREED that Plaintiff Robert Paul Magtulis Cledera's motion to add additional defendants [Dkt. No. 112] is DENIED and all pending motions to dismiss, *see* Dkt. Nos. 11, 13, 14, 16, 17, 19, 21, 22, 27, 29, 32, 33, 34, 37, 41, 42, 43, 44, 45, 49, 50, 56, 61, 62, 77, 82, 83, & 101, are GRANTED to the extent that, because Cledera has already amended his claims and because allowing further leave to amend would be futile, given the claims made, the Court DISMISSES this action with prejudice, under Federal Rule of Civil Procedure 12(b)(6), for Cledera's failure to state a claim upon which relief may be granted.

SIGNED this 7th day of August, 2020.

Barbara M. G. Lynn

BARBARA M. G. LYNN
CHIEF JUDGE

Appendix E

United States District Court
For The Northern District of Texas

Dallas Division

CASE No. 3:19-cv-01997-M-BN

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE

AUGUST 7, 2020

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERT PAUL MAGTULIS CLEDERA,	§	
	§	
Plaintiff,	§	
	§	
V.	§	No. 3:19-cv-1997-M
	§	
UNITED STATES, ET AL.,	§	
	§	
Defendants.	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. An objection was filed by Plaintiff. The District Court reviewed *de novo* those portions of the proposed Findings, Conclusions, and Recommendation to which objection was made, and reviewed the remaining proposed Findings, Conclusions, and Recommendation for plain error. Finding no error, the Court ACCEPTS the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

SO ORDERED this 7th day of August, 2020.

Barbara M. G. Lynn

BARBARA M. G. LYNN
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERT PAUL MAGTULIS CLEDERA,	§	
	§	
Plaintiff,	§	
	§	
V.	§	No. 3:19-cv-1997-M-BN
	§	
UNITED STATES, ET AL.,	§	
	§	
Defendants.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Robert Paul Magtulis Cledera paid the $400 filing fee to bring this *pro se* civil rights action against the United States, federal officials, state officials, municipal officials, and corporations. Through an amended complaint, Cledera alleges that "[a]gents acting [on] behalf of the Federal Government [have] engaged in a conspiracy to harass[], torture and stalk [him] and [his] family." Dkt. No. 8.

His case has been referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from Chief Judge Barbara M. G. Lynn.

Multiple defendants have moved to dismiss Cledera's claims as amended on various bases, most moving to dismiss under Federal Rule of Civil Procedure 12(b)(6), because Cledera has failed to state a claim upon which relief may be granted. *See* Dkt. Nos. 11, 13, 14, 16, 17, 19, 21, 22, 27, 29, 32, 33, 34, 37, 41, 42, 43, 44, 45, 49, 50, 56, 61, 62, 77, 82, 83, & 101. Cledera has responded and moved to add additional defendants (but not amend his claims). *See* Dkt. No. 112. And the defendants have

more than the mere possibility of misconduct.'" *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 796 (5th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 679); *see also Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) ("Where the well-pleaded facts of a complaint do not permit a court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" (quoting *Iqbal*, 556 U.S. at 678 (quoting, in turn, FED. R. CIV. P. 8(a)(2)))).

While, under Federal Rule of Civil Procedure 8(a)(2), a complaint need not contain detailed factual allegations, a plaintiff must allege more than labels and conclusions, and, while a court must accept all of a plaintiff's allegations as true, it is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). A threadbare or formulaic recitation of the elements of a cause of action, supported by mere conclusory statements, will not suffice. *See id.* Instead, "to survive a motion to dismiss" under *Twombly* and *Iqbal*, a plaintiff need only "plead facts sufficient to show" that the claims asserted have "substantive plausibility" by stating "simply, concisely, and directly events" that the plaintiff contends entitle him or her to relief. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam) (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)); *see also Inclusive Communities Project*, 920 F.2d at 899 ("'Determining whether a complaint states a plausible claim for relief' is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" (quoting *Iqbal*, 556 U.S. at 679; citing *Robbins v. Oklahoma*, 519 F.3d 1242, 1248

considered to be part of the pleadings, if they are referred to in the plaintiff's complaint and are central to her claim." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)).

While the United States Court of Appeals for the Fifth Circuit "has not articulated a test for determining when a document is central to a plaintiff's claims, the case law suggests that documents are central when they are necessary to establish an element of one of the plaintiff's claims. Thus, when a plaintiff's claim is based on the terms of a contract, the documents constituting the contract are central to the plaintiff's claim." *Kaye v. Lone Star Fund V (U.S.), L.P.*, 453 B.R. 645, 662 (N.D. Tex. 2011). "However, if a document referenced in the plaintiff's complaint is merely evidence of an element of the plaintiff's claim, then the court may not incorporate it into the complaint." *Id.*

And a plaintiff may not amend his allegations through a response to a motion to dismiss. "[A] claim for relief" must be made through a pleading, FED. R. CIV. P. 8(a), and a response to a motion is not among the "pleadings [that] are allowed" under the Federal Rules of Civil Procedure, FED. R. CIV. P. 7(a); *see, e.g., Klaizner v. Countrywide Fin.*, No. 2:14-CV-1543 JCM (PAL), 2015 WL 627927, at *10 (D. Nev. Feb. 12, 2015) ("All claims for relief must be contained in a pleading. A response to a motion is not a pleading and it is improper for the court to consider causes of action not contained in the pleadings." (citations omitted)).

"Ordinarily, 'a *pro se* litigant should be offered an opportunity to amend his

to respond." *Id.* (quoting *Lozano v. Ocwen Fed. Bank, FSB*, 489 F.3d 636, 643 (5th Cir. 2007) (quoting, in turn, *Carroll*, 470 F.3d at 1177); internal quotation marks and brackets omitted). These findings, conclusions, and recommendations afford Cledera notice, and the period for filing objections to them affords him an opportunity to respond. *See, e.g., Starrett*, 2018 WL 6069969, at *2 (citations omitted)).

Analysis

Cledera asserts that a vast conspiracy between multiple levels of government, facilitated by (or, at least, with the assistance of) private corporations, to surveil and harass him entitles him to $100 million in damages. *See, e.g.*, Dkt. No. 8 at 2 ("I reported to my supervisor incidents of unknown actors watching me from the moment I leave my home to work and upon arrival home. There would be a buzz of activity as soon as I step out of my home. Unmarked vans appearing out of the comer as I leave my house and as I prepare to drive out of my driveway. Cars would be traveling at speeds that are clearly unsafe for. a residential community roadway. Cars that are designed to alarm, annoy and harass by using sounds that were clearly enhanced or modified to be louder than a regular vehicle would create. I say this as I would hear these cars from inside my home at ungodly hours of the night into the morning."); *id.* at 3 ("They have also employed aircraft to harass and annoy. Aircraft would pass overhead as I step out of my home, or vehicle including my back yard. These events have been caught on my RING and ARLO security cameras as these have the capacity to record audio. I would be awoken in the middle of the night to these airplanes that engine noises were not normal and clearly enhanced to annoy and harass. I say this

complaint, some of which are set out above, the undersigned finds that Cledera has set out claims that are fantastic, delusional, irrational, or wholly incredible. The Court should therefore dismiss his claims with prejudice. *Cf. Starrett*, 763 F. App'x at 384 ("Starrett asks us to overturn the district court's dismissal based on outlandish claims of near-constant surveillance, theft of intellectual property, and painful remote communication accomplished using nonexistent technology. These pleaded facts are facially implausible. Dismissal with prejudice was appropriate, the district court did not err ...."); *Simmons v. Payne*, 170 F. App'x 906, 907-08 (5th Cir. 2006) (per curiam) ("The district court found that Simmons's assertion of a vast conspiracy by all levels of the state government and federal government was manifestly frivolous because the factual allegations were fanciful, irrational, incredible, and delusional. ... Our review of Simmons's complaint convinces us that the dismissal as frivolous was not an abuse of discretion." (citations omitted)); *Kolocotronis v. Club of Rome*, 109 F.3d 767, 1997 WL 115260, at *1 (5th Cir. Feb. 24, 1997) (per curiam) ("The district court did not abuse its discretion in adopting a magistrate judge's finding that Kolocotronis' allegations, which describe a government plot to spread the AIDS virus throughout the world, were 'fantastic' and 'delusional' and therefore frivolous." (citation omitted)).

Recommendation

The Court should deny Plaintiff Robert Paul Magtulis Cledera's motion to add additional defendants [Dkt. No. 112] and grant all pending motions to dismiss, *see* Dkt. Nos. 11, 13, 14, 16, 17, 19, 21, 22, 27, 29, 32, 33, 34, 37, 41, 42, 43, 44, 45, 49, 50,

Additional material from this filing is available in the Clerk's Office.