

INDEX TO APPENDICES

Tab 1: United States Court of Appeals for the Fifth Circuit Dismissed as Frivolous Judgement

Tab 2: United States District Court for the Western District of Texas Order and Final Judgement

Tab 1: United States Court of Appeals for the
Fifth Circuit Dismissed as Frivolous Judgement

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2021

No. 20-50070
Summary Calendar

Lyle W. Cayce
Clerk

SURAN WIJE,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-660

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Suran Wije moves for leave to appeal in forma pauperis (IFP) from the denial of his claims against the United States Department of Education (USDE) under the Federal Tort Claims Act (FTCA). The district court dismissed the action for failure to state a claim under 28 U.S.C. § 1915(e)(2).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50070

The district court also denied leave to appeal IFP because the appeal is not in good faith. *See McGarrah v. Alford*, 783 F.3d 584, 584 (5th Cir. 2015) (unpublished).

In his complaint, Wije contended that the USDE negligently failed to protect him from constitutional violations by the Texas Woman's University (TWU). He argues that the USDE had a duty to act in his favor based on a mission statement on the USDE's website, a broad policy statement in a form letter from the USDE's Office of Civil Rights, and more generally under the Constitution. The district court properly dismissed his action because his claims are not based on any "law of the place"—in this case, Texas law—under which "the United States, if a private person, would be liable." 28 U.S.C. § 1346(b)(1); *see FDIC v. Meyer*, 510 U.S. 471, 477-78 (1994); *Coleman v. United States*, 912 F.3d 824, 835 (5th Cir. 2019).

Further, the action is barred by the discretionary function exception of 28 U.S.C. § 2680(a) because Wije fails to allege any specific nondiscretionary duty imposed on the USDE. *See United States v. Gaubert*, 499 U.S. 315, 322-23 (1991). We also note that the claims and issues in this action are indistinguishable from those rejected in a 2014 action against TWU and the USDE. *See Wije v. Stuart*, 694 F. App'x 234, 235-36 (5th Cir. 2017). Wije is precluded from relitigating those claims and issues. *See United States v. Shanbaum*, 10 F.3d 305, 310-11 (5th Cir. 1994) (addressing the doctrines of issue preclusion and claim preclusion).

Wije has failed to identify any nonfrivolous issue for appeal. *See McGarrah*, 783 F.3d at 584. Accordingly, the IFP motion is DENIED, and the appeal is DISMISSED AS FRIVOLOUS.

In addition to this frivolous appeal, Wije has filed two essentially identical and equally meritless civil actions. He is therefore WARNED that the filing of additional repetitive or frivolous actions or appeals will result in

No. 20-50070

sanctions, including monetary sanctions and limits on his access to this court and any court subject to this court's jurisdiction.

United States Court of Appeals
for the Fifth Circuit

No. 20-50070
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2021

Lyle W. Cayce
Clerk

SURAN WIJE,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-660

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED as frivolous.



Certified as a true copy and issued
as the mandate on Oct 15, 2021

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

Tab 2: United States District Court for the
Western District of Texas Order and Final
Judgement

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

SURAN WIJE,

§

Plaintiff,

§

v.

1:19-CV-660-RP

UNITED STATES OF AMERICA,

§

Defendant.

§

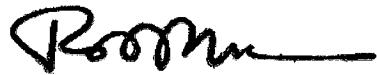
ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Susan Hightower concerning Plaintiff Suran Wije’s (“Wije”) 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. 6). In her report and recommendation, Judge Hightower recommends that the Court dismiss this action pursuant to 28 U.S.C. § 1915(e)(2) without leave to amend. (*Id.* at 7-8). Wije timely filed objections to the report and recommendation. (Objs., Dkt. 13).

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 Wije timely objected to each portion of the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so, the Court overrules Wije’s objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Susan Hightower, (Dkt. 6), is **ADOPTED**. Wije's complaint, (Dkt. 1), is **DISMISSED** without the opportunity to amend.

SIGNED on December 3, 2019.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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

SURAN WIJE,

Plaintiff,

v.

1:19-CV-660-RP

UNITED STATES OF AMERICA,

Defendant.

FINAL JUDGMENT

On this date, the Court issued an order dismissing Plaintiff's complaint without leave to amend. As nothing remains to resolve, the court renders Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that the case is **CLOSED**.

IT IS ORDERED that all pending motions are **MOOT**.

IT IS ORDERED that that each party bear its own costs.

SIGNED on December 3, 2019.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE