APPENDICES

The following pages are Appendices

A thru F

A= 5th Circuit ruling to deny Informa Pauperis (I.F.P) on appeal.

B= U.S District Court, western of Texas' ruling to deny I.F.P. on appeal.

C= 5th Circuit Ruling to deny "Rehearing"

D= U.S. District Court, western of Texas' "Response to Remand"

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also = DECLARATION declaring hand written copies are true and correct

APPENDIX A

5th Cir. ruling to DENY I.F.P. on Appeal

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 19, 2024
Lyle W. Cayce
Clerk

No. 22-50583
Summary Calendar

LARRY R. STEELE,

Plaintiff—Appellant,

versus

UNITED STATES POSTAL SERVICE; STATE OF TEXAS; UNITED STATES OF AMERICA; BRYAN COLLIER, *Executive Director, Texas Department of Criminal Justice*; BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CV-4

Before CLEMENT, ENGELHARDT, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Larry R. Steele, Texas prisoner # 01864228, moves for leave to proceed in forma pauperis (IFP) in this appeal of the dismissal of his civil rights action filed pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown*

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

Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The motion is a challenge to the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

The district court dismissed Steele's claims against the United States Postal Service (USPS), the United States, and the State of Texas after determining that the defendants were immune from suit. Steele maintains that the USPS is no longer a governmental entity and thus does not warrant sovereign immunity. He is incorrect. *See Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 484 (2006). The fact that he is alleging federal question jurisdiction against the USPS and the United States pursuant to 28 U.S.C. § 1331 does not preclude sovereign immunity in the absence of a statute waiving such immunity. *Elldakli v. Garland*, 64 F.4th 666, 670 (5th Cir.), *cert. denied*, No. 23-115, 2023 WL 8531894 (U.S. Dec. 11, 2023). Although Steele correctly asserts that the Federal Tort Claims Act and the Administrative Procedures Act may waive sovereign immunity in certain situations, those are not applicable here. *See* 5 U.S.C. § 704; *McAfee v. 5th Cir. Judges*, 884 F.2d 221, 223 (5th Cir. 1989). Steele's assertion that the Eleventh Amendment does not bar lawsuits against the State of Texas because he was alleging that the defendant was acting contrary to federal law is incorrect. *See Quern v. Jordan*, 440 U.S. 332, 339-40 (1979).

With respect to the individual defendants, officials with the Texas Department of Criminal Justice (TDCJ), Steele does not challenge the district court's dismissal of the claims against them in their official capacities, and any such arguments are deemed abandoned. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). As for the claims against these defendants in their individual capacities, Steele contends that they have violated his rights of access to the courts under the First and Fourteenth Amendments because the USPS is the only authorized service to be used by TDCJ prisoners to send legal mail to the courts. He maintains

that undue delays in the postal system and the existence of third-party delivery services requires that prisoners be permitted to use another means of delivering legal mail. Steele has not shown that exclusive use of the USPS precludes prisoners from having a reasonably adequate opportunity to challenge their convictions or the conditions of their confinement. *See Lewis v. Casey*, 518 U.S. 343, 354-55 (1996). Moreover, Steele has not sufficiently alleged that he was unable to pursue a nonfrivolous legal claim in light of delays in the mail system. *See Christopher v. Harbury*, 536 U.S. 403, 415 (2002).

Finally, Steele alleges that the individual defendants have deprived him of access to the courts under the First and Fourteenth Amendments because they have limited prisoners' access to paper supplies, free postage, the prison law library, and public record information. He concedes that he has access to the prison law library, and he has not shown that limitations on "extra" time or weekend visits were unreasonable or insufficient. *See McDonald v. Steward*, 132 F.3d 225, 230 (5th Cir. 1998). Additionally, Steele has not shown that he has a constitutional right to unlimited postage, paper, or public records. *See Felix v. Rolan*, 833 F.2d 517, 518 (5th Cir. 1987). Moreover, Steele has not sufficiently alleged that the limitations on supplies or library access prevented him from pursuing a nonfrivolous legal claim. *See Christopher*, 536 U.S. at 415; *McDonald*, 132 F.3d at 230-31.

Steele has not established that he will present a nonfrivolous issue on appeal. *See Baugh*, 117 F.3d at 202; *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. This court's dismissal of the appeal as frivolous counts as one strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532 (2015). Steele is CAUTIONED that if

he accumulates three strikes, he will no longer be allowed to proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 19, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 22-50583 Steele v. USPS
USDC No. 4:22-CV-4

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk

Enclosure(s)

Mr. Reese D. Larmer
Mr. Mark Gabriel Martinez
Mr. Larry R. Steele

APPENDIX C

5th Cir. Ruling to deny Rehearing

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 26, 2024
Lyle W. Cayce
Clerk

No. 22-50583

LARRY R. STEELE,

Plaintiff—Appellant,

versus

UNITED STATES POSTAL SERVICE; STATE OF TEXAS; UNITED STATES OF AMERICA; BRYAN COLLIER, *Executive Director, Texas Department of Criminal Justice*; BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CV-4

ON PETITION FOR REHEARING

Before CLEMENT, ENGELHARDT, and RAMIREZ, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 26, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50583 Steele v. USPS
USDC No. 4:22-CV-4

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Reese D. Larmer
Mr. Mark Gabriel Martinez
Mr. Larry R. Steele

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

LARRY R. STEELE,	§	
Plaintiff,	§	
	§	
v.	§	**No. PE:22-CV-00004-DC**
	§	
UNITED STATES POSTAL SERVICE	§	
et al.,	§	
Defendants.	§	

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE

Plaintiff Larry R. Steele ("Plaintiff"), an individual currently incarcerated with the Lynaugh Unit of the Texas Department of Criminal Justice ("TDCJ"), brings this action pursuant to 42 U.S.C. § 1983, arguing that, in pertinent part, TDCJ officials violated his constitutional rights in connection with his self-representation in various federal court proceedings. United States Magistrate Judge David B. Fannin, in his Report and Recommendation (hereafter, "R&R") filed on October 11, 2022, recommends granting Defendants Brian Collier ("Collier") and Bobby Lumpkin's ("Lumpkin") (together, "Defendants") Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) (hereafter, "Motion to Dismiss"). (Doc. 19). Plaintiff timely filed objections to the R&R. (Doc. 31). After due consideration, the Court **OVERRULES** Plaintiff's objections, **ADOPTS** the R&R (Doc. 29), and **GRANTS** the Motion to Dismiss (Doc. 19).

I. BACKGROUND

Plaintiff agrees to the Magistrate Judge's chronicling of this case's facts. (Doc. 31 at 2 ("[Plaintiff] will accept [the Magistrate Judge's] rendition as true enough.")). Therefore, the statement of the factual background in the R&R will be adopted here.

Defendants filed their Motion to Dismiss on June 10, 2022, asserting *inter alia* the defense of qualified immunity. (Doc. 19). Plaintiff filed a Response to the Motion to Dismiss on July 5, 2022. (Doc. 22). The Magistrate Judge recommended granting the Motion to Dismiss and dismissing Defendants Lumpkin and Collier from this action based on (1) Plaintiff's failure to state an injury, and (2) Defendants' entitlement to qualified immunity in the alternative. (Doc. 29). On November 1, 2022, Plaintiff objected to the R&R on the following grounds: (1) the Lynaugh Unit does not contain "a system for the mailing of legal mail," which prohibited Plaintiff's timely filing of certain documents; (2) Defendants "should have known that the USPS is delinquent in the delivery of [] mail"; (3) the Magistrate Judge incorrectly read Plaintiff's claims as stating only a Fourteenth Amendment violation instead of also a violation of Plaintiff's First Amendment right to redress his grievances and be heard; (4) Defendants are not entitled to qualified immunity because they knew or should have known they were violating his rights. (Doc. 31).

II. LEGAL STANDARD

When a defendant moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the trial court must assess whether a complaint states a plausible claim for relief. *See Raj v. La. State Univ.*, 714 F.3d 322, 329–30 (5th Cir. 2013) (citing *Bass v. Stryker Corp.*, 669 F.3d 501, 506 (5th Cir. 2012)). The court must accept "all well-pleaded facts in the complaint as true and viewed in the light most favorable to the plaintiff." *See id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

On the other hand, if the complaint only offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action," dismissal is appropriate. *Iqbal*, 556 U.S. at 678

(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Shaw v. Villanueva*, 918 F.3d 414, 415 (5th Cir. 2019) (quoting *Iqbal*, 556 U.S. at 678). The court should dismiss a complaint if the court can only infer the mere possibility of misconduct, or if the plaintiff has only alleged that he is entitled to relief rather than stating a claim that is "plausible on its face." *Iqbal*, 556 U.S. at 678–79 (quoting *Twombly*, 550 U.S. at 570).

Under 28 U.S.C. § 636(b) and Federal Rules of Civil Procedure Rule 72(b), a party may serve and file specific, written objections to the proposed findings and recommendations of the magistrate judge within 14 days after being served with a copy of the Report and Recommendation, and thereby secure a de novo review by the district court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150–53 (1985); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989) (per curiam).

III. DISCUSSION

As a preliminary matter, Plaintiff's Response to the Motion to Dismiss purportedly presents a motion under Federal Rule 12(f) to "strike [Defendants'] motion as their defense is an insufficient defense." (Doc. 22 at 1). This was unaddressed in the R&R. Plaintiff's Response spends but a handful of analysis-free sentences which can be interpreted to represent his Federal Rule 12(f) argument, with the vast majority of the document's substance pertaining to the Motion to Dismiss. (*Id.*). According to the Local Rules for the Western District of Texas, all

relief requested must be made by a separate, standalone motion. Local Rule CV-7(c)(1). Therefore, under Local Rule CV-7(c)(1), any relief Plaintiff intended to request under Federal Rule 12(f) should have been sought by a standalone motion. Accordingly, Plaintiff's Response will be construed only as a response to the Motion to Dismiss, and not as a Federal Rule 12(f) motion. The Court cannot grant any Federal Rule 12(f) relief at this time.

A. Merits of the Original Complaint[1]

i. Fourteenth and First Amendments

Plaintiff objects to the Magistrate Judge's conclusion that Plaintiff had not adequately alleged a constitutional violation because the elements of a Fourteenth Amendment violation were not sufficiently pleaded. (Doc. 31 at 4–5). According to Plaintiff, the R&R considers only the Fourteenth Amendment as a ground for asserting a constitutional violation, to the exclusion of the First Amendment "right to be heard." (*Id.* at 5).

Plaintiff argues that he indeed did assert a First Amendment claim for Defendants' alleged denial of his right to "redress the [G]overnment of [his] grievance." (*Id.* at 2, 4, 8–9). Plaintiff characterizes this violation as his inability to timely file his appeals and other documents in other court proceedings. (*Id.* at 3–5). The Magistrate Judge found deficient Plaintiff's Fourteenth Amendment claim because it failed to allege "a right guaranteed under the [] Amendment." (Doc. 29 at 11). In large part, Plaintiff's attacks in this regard do not constitute a rebuttal to any of the substance in the R&R, but instead stand to restate rather superfluously the alleged consequences of Defendants' decision to utilize the Postal Service as the exclusive mail delivery service. (Doc. 31 at 4).

[1] For ease of reading in the following analysis, "Original Complaint" will refer to both the Original Complaint and the More Definite Statement. (Docs. 1, 5).

At the outset, the Court empathizes with Plaintiff's concerns that his writing and diction may be "hard to understand." (*Id.* at 8). While this concern is perhaps generally applicable to prisoners proceeding pro se, the Court reiterates the judicial principle of interpreting pro se litigants' filings liberally so as to minimize the impact of pro se representation upon the litigants' outcomes. *See Golden v. City of Longview*, No. 6:20-CV-00620-JDK, 2021 WL 3829126, at *3 (E.D. Tex. Aug. 4, 2021) (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). This case is no exception.

Plaintiff also surmises that the Magistrate Judge "did not read" his Response to the Motion to Dismiss in exclaiming that he was asserting a First Amendment violation. (Doc. 31 at 5, 8). The Court, in conducting a *de novo* review of the Magistrate Judge's conclusions, also heeds Plaintiff's Response. Thus, whether the Magistrate Judge specifically considered Plaintiff's Response in drafting the R&R, the Court considers it now.

Turning to the objection, as the Magistrate Judge observed, "the 'right of access to the courts . . . is founded in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, and the Fifth and Fourteenth Amendment Due Process Clauses.'" (Doc. 29 at 5–6 (citing *Spears v. McCraw*, No. 20-50406, -- F. App'x -- , 2021 WL 3439148, at *2 n.16 (5th Cir. Aug. 5, 2021))). The right to access the courts of the United States comes from the First Amendment's Petition Clause, while the Due Process Clause of the Fourteenth Amendment confers the right for this access to be meaningful. *Hill v. Walker*, 718 F. App'x 243, 247–48 (5th Cir. 2018) (unpublished). Prison authorities are required either to "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Lewis v. Casey*, 318 U.S. 343, 346 (1996). In other words, all that is mandated by the two Amendments is that a prisoner be

allowed "meaningful access to the courts." *Id.* at 248. The Petition Clause, which states that the people have the right to "petition the Government for a redress of grievances," is "really inseparable" from Fourteenth Amendment Due Process claims. U.S. CONST. amend. I; *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 335 (1985).

Therefore, the analyses for recovery under both the First Amendment and the Fourteenth Amendment are identical. The Magistrate Judge appears to have conducted his analysis only upon specific mention of the Fourteenth Amendment. (*See* Doc. 29 at 6 ("To state a Fourteenth Amendment claim for denial of the right to access the courts . . . .")). The Court, having conducted a *de novo* review of this objection, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and that the objection is without merit. Therefore, the Court hereby adopts the findings and conclusions in the R&R relating to the analysis under the Fourteenth Amendment right of meaningful access to the courts, as they are equally applicable to the First Amendment right to petition.

ii. Law Library and Mail Room Policies

Another of Plaintiff's objections, construed liberally, is that the R&R improperly concludes that the Lynaugh Unit contains a satisfactory system for mailing legal mail. (Doc. 31 at 6–7). This objection is multi-pronged but can be reduced to one singular prong advancing the inadequacy of policies allegedly established by Defendants at the Lynaugh Unit law library and mail room, with particular emphasis on the latter. (Doc. 22 at 3–4). Notably, this objection is distinct from the ostensibly similar objection concerning the adequacy of the Postal Service as the Lynaugh Unit's exclusive mail delivery system—this objection only regards the policies for law library and mail room usage. A section addressing the objection pertaining to the exclusivity of the Postal Service is to follow.

In the mail room, Plaintiff claims that policies pertaining to a 25-page limit on printing and a five-dollar minimum balance requirement for the inmate's trust account are unconstitutional. (Doc. 5 at 2–4, 10–12). The law library's policies purportedly run afoul of Plaintiff's rights by preventing facility access on the weekend and restricting his access to public information and social media. The Magistrate Judge concluded that the restraints on access to the law library and in the mail room as alleged were insufficient to buttress a constitutional rights violation. (Doc. 29 at 8–10). Specifically, the Magistrate Judge held that Plaintiff did not provide authority for the constitutional right to page limits greater than 25 pages, weekend law library times, free printing, social media access, or additional weekday law library scheduling. (*Id.*). In the absence of these sources, and furthermore considering Plaintiff's evident desire to let the Court decide for its own what the page limits, fund account requirements, and law library access times should be, as the R&R explains, the Magistrate Judge was not willing to endorse Plaintiff's proposed line-drawing.

Plaintiff's objections feature a number of cases. (*See generally* Doc. 31). None of Plaintiff's new sources provide any direct authority for the proposition that a 25-page limit, a lack of weekend access hours to the library, or the inability to access social media to locate other outstanding complaints are a per se violation of the constitutional right to access the courts. Interpreting Plaintiff's worries about accessing social media as corresponding to his "right to access public information" argument present in his Original Complaint, Plaintiff still has not cited any source guaranteeing this prisoner's right. (*See* Docs. 1, 5).

Furthermore, Plaintiff likens this case to *Ruiz v. Estelle*, claiming that the "culmination of acts" he alleges "together cause[s] injury." (Doc. 31 at 6). In *Ruiz*, the District Court for the Southern District of Texas held that the policies in place at various units of the Texas

Department of Corrections ("TDC") "significantly restrict[ed] the times and places inmates may work on legal matters" and prevented inmates from pursuing their legal actions. 503 F. Supp. 1265, 1367 (S.D. Tex. 1980). In particular, TDC had "hamper[ed] inmates' opportunities to engage in productive legal research," in addition to other restrictions not relevant here. *Id.* at 1371. Most TDC units had individually established their own policies concerning the time and place when inmates can work on legal matters. *Id.* at 1367–68. These policies included permitting legal work to be performed only in the law library or alternatively the inmates' cells. *Id.* at 1368. Where legal work was restricted to the law library, restrictions on the maximum weekly allotted time to access the library additionally limited the amount of time inmates may spend on legal matters. *Id.* Coupled with inhibited communication with more learned inmates, access to inmates' own attorneys, and retaliatory practices against those who attempted to participated in the judicial process, the *Ruiz* court found these restrictions on the right of access to the courts to be unreasonable. *Id.* at 1370–73.

In this case, Plaintiff has not pleaded that he is prevented from working on legal matters, such as reading or writing documents, outside of the Lynaugh Unit law library. Plaintiff's closest contentions to a restriction found unreasonable in *Ruiz* are his claims that Defendants implement a ten-hour weekly maximum for law library access and preclude weekend law library hours. Yet, Plaintiff has not explained how ten hours each week during the weekdays is unreasonable or insufficient amount of time for him to be able to meet his deadlines, despite many invitations to do so, from the R&R to the Order for More Definite Statement. (Docs. 4, 29). He has not alleged he cannot work on legal matters outside of the law library, or that a certain minimum number of library access hours is necessary. Plaintiff's other asserted limitations on paper and the minimum required trust account balance do not appear to affect the

time or location in which he can prepare his legal arguments, and Plaintiff has not pleaded to the contrary. The Court is not inclined to recognize a constitutional violation for every instance in which prison directors place limits on maximum law library access hours. *See Ruiz*, 503 F. Supp. at 1371 (acknowledging that "as long as meaningful access to the courts is guaranteed, the states are free to experiment with various means of achieving this goal"). With no explanation as to whether and how Defendants' actions are unreasonable, Plaintiff's pleadings are severely vitiated. Plaintiff's allegations are therefore insufficient on their face to state a violation of his right to access the courts.

Additionally, Plaintiff's briefings are devoid of authority indicating that a trust account minimum balance requirement is unconstitutional. As the Magistrate Judge concluded, Plaintiff has no evident right to free postage or paper supplies in prison. (Doc. 29 at 10). Further, Plaintiff does not describe how a five-dollar trust account balance policy is unreasonable for himself or other prisoners. The Magistrate Judge's holding shall stand.

Plaintiff's other contentions concerning the inability to "post[] signs, post anything on social media, or even look for others in general that have had this happen to [them]" do not accompany any right to access the courts. (Doc. 31 at 6). Plaintiff has otherwise not contended that an inability to access social media is unreasonable. Put simply, Plaintiff has no right to access social media or post signs, and the right of access to the courts implicates no such liberty. *See Walker v. Clark*, No. 2:17-CV-221-D, 2019 WL 5685340, at *15 (N.D. Tex. Feb. 25, 2019). The Court will not contrive one here.

The Court, having conducted a *de novo* review of this objection, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and that the objection is without

merit. Therefore, the Court hereby adopts the findings and conclusions in the R&R relating to the adequacy of the mail room and law library policies present at the Lynaugh Unit.

iii. Exclusivity of the Postal Service

Relatedly, Plaintiff also objects to the R&R's finding that the use of the Postal Service as the exclusive mailing service does not produce a reason to believe Defendants' conduct is unreasonable. (Doc. 31 at 2–4). The Court first notes that Plaintiff concedes he "may not have a right to a certain delivery service." (*Id.* at 3). Yet, Plaintiff argues that the Magistrate Judge, in concluding that Plaintiff did not "suggest an alternative source for mail distribution," (Doc. 29 at 7), erred, since he had contemplated some alternatives in his Response. (Doc. 31 at 4–5).

It is indeed true that the R&R does not mention any one of the "United States Parcel Service ["UPS"], Federal Express, or many other reliable carriers" which Plaintiff signified in his Response to the Motion to Dismiss. (Doc. 22 at 5). The Magistrate Judge, however, did not seem to reach his conclusion based on Plaintiff's failure to describe *any* alternative, private mailing service. (Doc. 29 at 7). Rather, as the R&R states, the Original Complaint itself lacks mention of a specific service to which Plaintiff believes he is entitled as an option at the Lynaugh Unit. (*Id.*). Notwithstanding whether Plaintiff mentioned an alternative service in his Response, the Original Complaint must delineate the relief requested—here, a mail delivery service—along with the authority supporting such relief, lest the Court be subjected to merely guessing which would be most appropriate. Because the Original Complaint omits this language, the vague, indeterminate form relief described in the Response should not be granted.

Even if Plaintiff's language from the Response were incorporated into the Original Complaint, the deficiencies noted in the R&R would still not be addressed. Plaintiff does not notate anywhere the spurious requirement that prison systems such as the Lynaugh Unit offer an

individual private mailing service. (*See* Docs. 1, 5, 22, 31). Plaintiff himself appears to delegate to the Court the decision of whether to require Defendants to implement one or more of the Federal Express, UPS, or another third-party mail delivery service at the Lynaugh Unit. Regardless, this is inconsequential, for even if Plaintiff's Original Complaint were equipped with a request for a particular mailing service, the conclusion would be identical. Judicial sanctioning of a private party company is ill-advised, and in this scenario, is unwarranted. This is not a decision which should be made by this Court, and Plaintiff presents no reason otherwise.

Plaintiff's qualms about *Harlow v. Fitzgerald* and *Foster v. City of Lake Jackson* offer no resolution. Plaintiff cites the two cases generally in contending that Defendants "should have known that the [Postal Service] is delinquent in the delivery of the mail." (Doc. 31 at 3). Plaintiff argues that *Harlow* supports the conclusion that "Defendants are not obliged under law to *only* use [the Postal Service]." (Doc. 31 at 8 (emphasis in original)). This quote, however, does not appear anywhere in the *Harlow* opinion. *See generally Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Further, both the other portion of *Harlow* and the entirety of *Foster* which Plaintiff cites only pertain to the defense of qualified immunity, which as discussed briefly below, does not need to be addressed at this time. *Foster v. City of Lake Jackson*, 28 F.3d 425, 430 (5th Cir. 1994); (*see also* Doc. 31 at 3–4).

As the Magistrate Judge identified, the costs associated with declaring the Postal Service to be an inadequate mail delivery system as a matter of law, not to mention the subsequent bureaucratic implications of finding the preeminent Government-operated mail service to be a basis for constitutional violations, would be epic in proportion. In the absence of authority to the contrary, the Court refuses to endorse Plaintiff's proposition.

The Court, having conducted a *de novo* review of this objection, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and that the objection is without merit. Therefore, the Court hereby adopts the findings and conclusions in the R&R relating to the exclusive provision of the Postal Service as the Lynaugh Unit's mail delivery service.

B. Qualified Immunity

Plaintiff lastly presents an objection to the R&R's conclusion that Defendants are entitled to qualified immunity. (Doc. 31 at 6–7). Because the Court concludes that Defendants' Motion to Dismiss should be granted for Plaintiff's failure to state a claim, the Court need not reach the issue of whether Defendants are entitled to qualified immunity.

IV. CONCLUSION

For the reasons stated above, it is **ORDERED** that Plaintiff's objections are **OVERRULED** and the R&R is **ACCEPTED** and **ADOPTED** by the Court. (Docs. 29, 31).

Further, the Court **GRANTS** Defendants' Motion to Dismiss. (Doc. 19).

Finally, the Court **ORDERS** that all other pending motions be **DISMISSED AS MOOT**, and that Plaintiff's claims be **DISMISSED WITH PREJUDICE**.

It is so **ORDERED**.

SIGNED this 8th day of December, 2022.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

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