

# **APPENDIX A**

# United States Court of Appeals for the Fifth Circuit

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No. 24-50487

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 6, 2025

YOLANDA M. WILLIAMS,

Lyle W. Cayce  
Clerk

*Plaintiff—Appellant,*

*versus*

AUSTIN POLICE DEPARTMENT,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:23-CV-1510

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Before JOLLY, JONES, and WILLETT, *Circuit Judges.*

PER CURIAM:\*

Plaintiff-appellant, Yolanda M. Williams, proceeding *pro se* and *in forma pauperis* (“IFP”), filed a civil rights complaint against the Austin Police Department after its officers forcibly removed her from an airport restroom. The district court dismissed her complaint as frivolous under 28 U.S.C. § 1915(e)(2) because it was time barred and insufficiently plead. We affirm.

I.

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

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On December 5, 2021, Williams was in a women's restroom near baggage claim at the Austin Bergstrom International Airport in Austin, Texas. She had seemingly been living at the airport for at least two weeks.<sup>1</sup> After an airport employee told Williams she could not stay at the airport if she was not traveling and asked for Williams's name, Williams allegedly hit the airport employee with a luggage cart. The airport employee called the police and Austin Police Department officers were dispatched to the airport restroom. The police officers entered the restroom where Williams was and repeatedly asked for her name. Eventually, Williams was arrested for failure to identify herself. She was placed in two sets of handcuffs after complaining of shoulder pain. And after complaining that she was going to throw up, Williams was transported to the hospital by emergency medical services. The officers received permission to "unarrest" her around this time.

On December 11, 2023, Williams filed the underlying lawsuit against the Austin Police Department. Specifically, she filed a civil rights lawsuit on the grounds that she was "wrongfully detained and arrest[ed] with unnecessary use of excessive force." She also filed a motion to proceed IFP, which triggered a referral of her case to a magistrate judge. The magistrate judge granted Williams's motion to proceed IFP and proceeded to consider whether Williams's complaint should be dismissed under § 1915(e)(2). After concluding that the Austin Police Department was not an entity that could be sued, the magistrate judge construed Williams's claim as against the City of Austin. Because the magistrate judge found that Williams's claim was time barred and that Williams had failed to plead adequately a *Monell* claim

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<sup>1</sup> Whether and how long Williams had been living in the airport is unclear from the record. Although Williams states that she was not using the airport for "dwelling purposes" and that she had been in Austin, Texas "less than 60 days," the airport employee who ultimately reported Williams told police that she had seen Williams at the airport in the two weeks leading up to December 5, 2021.

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against the City of Austin, the magistrate judge issued a report and recommendation advising that Williams's lawsuit be dismissed as frivolous under § 1915(e)(2). In response, Williams filed a motion to reinstate her case and an amended complaint, which the district court judge construed as objections to the magistrate judge's report and recommendation. Ultimately, the district court judge overruled Williams's objections, adopted the magistrate judge's report and recommendation, and dismissed Williams's case with prejudice. Williams timely appealed.

## II.

"We review a determination that a case is frivolous under § 1915(e)(2)(B)(i) for abuse of discretion." *Newsome v. E.E.O.C.*, 301 F.3d 227, 231 (5th Cir. 2002) (per curiam) (citation omitted). A complaint is considered frivolous under this section "if it has no arguable basis in law or in fact." *Ruiz v. United States*, 160 F.3d 273, 274-75 (5th Cir. 1998) (per curiam). Notably, a district court may *sua sponte* dismiss a complaint as frivolous on statute-of-limitations grounds if it is clear from the face of the complaint that the claims asserted are time barred. *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994).

## III.

On appeal, Williams, citing Texas Civil Practice and Remedies Code § 16.003(b), argues that her complaint is not time barred because she is not deceased.<sup>2</sup>

The applicable statute of limitations in a 42 U.S.C. § 1983 civil rights action is the forum state's general personal injury limitations period. *Rotella*

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<sup>2</sup> Williams also asserts that she has not failed to state a claim. Because the statute of limitations issue is dispositive, however, we need not reach this argument.

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*v. Pederson*, 144 F.3d 892, 897 (5th Cir. 1998). In Texas, that is “two years after the day the cause of action accrues.” *TEX. CIV. PRAC. & REM. CODE* § 16.003(a).

Federal law, not state law, governs when the claim accrues, however. *Walker v. Epps*, 550 F.3d 407, 414 (5th Cir. 2008) (citing *Wallace v. Kato*, 549 U.S. 384, 388 (2007)). Accrual occurs “when a plaintiff has ‘a complete and present cause of action.’” *Ibid.* (quoting *Wallace*, 549 U.S. at 388). Thus, a statute of limitations “begins to run ‘the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.’” *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995) (quoting *Russell v. Bd. of Trs.*, 968 F.2d 489, 493 (5th Cir. 1992)).

Whether Williams is deceased has no bearing on her case because it is not a wrongful death case and, even if it were, federal law determines the date of accrual—not § 16.003(b). *See Walker*, 550 F.3d at 414. Compare *TEX. CIV. PRAC. & REM. CODE* § 16.003(a) (indicating that personal injury lawsuits must be brought no later than two years after the cause of action accrues), with *TEX. CIV. PRAC. & REM. CODE* § 16.003(b) (indicating that lawsuits involving an injury resulting in death accrue on the date of the injured person’s death and must be brought within two years of that death). Death is therefore not a prerequisite for Williams’s cause of action to have accrued or for the statute of limitations on her cause of action to have expired.

Williams possessed sufficient information to know that she suffered an injury on December 5, 2021, the date of her airport encounter with the Austin Police Department. *See Piotrowski*, 51 F.3d at 516. Thus, the statute of limitations on her § 1983 action expired on December 5, 2023. *See TEX. CIV. PRAC. & REM. CODE* § 16.003(a). Williams concedes, however, that she filed her case on December 11, 2023. Accordingly, because Williams filed the underlying lawsuit more than two years after the accrual date of her

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claim, her lawsuit is time barred. The district court therefore did not abuse its discretion in dismissing Williams's claim as frivolous under § 1915(e)(2).

IV.

In sum, the district court correctly dismissed Williams's lawsuit as frivolous and the judgment is, in all respects,

AFFIRMED.

# United States Court of Appeals for the Fifth Circuit

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No. 24-50487  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 6, 2025

Lyle W. Cayce  
Clerk

YOLANDA M. WILLIAMS,

*Plaintiff—Appellant,*

*versus*

AUSTIN POLICE DEPARTMENT,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:23-CV-1510

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Before JOLLY, JONES, 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 judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

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for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

# **APPENDIX C**

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

**YOLANDA M. WILLIAMS,**  
*Plaintiff*

v.

**AUSTIN POLICE DEPARTMENT,**  
*Defendant*

§  
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§

**Case No. 1:23-CV-01510-DII-SH**

**ORDER AND REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE DISTRICT COURT  
UNITED STATES DISTRICT JUDGE**

Before the Court is Plaintiff Yolanda M. Williams's Complaint (Dkt. 1) and Application to Proceed *In Forma Pauperis* and Financial Affidavit in Support (Dkt. 2), both filed December 11, 2023. The District Court referred this case to this Magistrate Judge pursuant to 28 U.S.C. § 636(b), Federal Rule of Civil Procedure 72, Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, and the Court Docket Management Standing Order for cases assigned to Austin Docket II. Dkt. 4.

**I. General Background**

Plaintiff Yolanda M. Williams filed this civil rights lawsuit against Defendant Austin Police Department on December 11, 2023. Williams, who is proceeding *pro se*, alleges that she was wrongfully detained and asks the Court to award money damages.

**II. Application to Proceed *In Forma Pauperis***

After reviewing Williams's Financial Affidavit, the Court finds that she is indigent. Accordingly, the Court **HEREBY GRANTS** Williams *in forma pauperis* status and **ORDERS** her Complaint to be filed without pre-payment of fees or costs or giving security therefor, pursuant to 28 U.S.C. § 1915(a)(1). This indigent status is granted subject to a later determination that the

action should be dismissed if the allegation of poverty is untrue or the action is found frivolous or malicious pursuant to 28 U.S.C. § 1915(e)(2). Williams is further advised that although she has been granted leave to proceed *in forma pauperis*, a Court may, in its discretion, impose costs of court at the conclusion of this lawsuit, as in other cases. *Moore v. McDonald*, 30 F.3d 616, 621 (5th Cir. 1994).

The Court has conducted a review of the claims made in the Complaint under 28 U.S.C. § 1915(e)(2) and recommends that Williams's lawsuit should be dismissed. Service on Defendant should be withheld pending the District Court's review of these recommendations.

### **III. Section 1915(e)(2) Frivolousness Review**

Because Williams has been granted leave to proceed *in forma pauperis*, the Court is required by standing order to review her Complaint under Section 1915(e)(2). A court may summarily dismiss a complaint filed *in forma pauperis* if it concludes that the action is (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

If it is “clear from the face of a complaint filed *in forma pauperis* that the claims asserted are barred by the applicable statute of limitations, those claims are properly dismissed pursuant to § 1915.” *Gonzales v. Wyatt*, 157 F.3d 1016, 1019-20 (5th Cir. 1998) (quoting *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993)). A complaint fails to state a claim on which relief may be granted when the plaintiff does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To avoid dismissal for failure to state a claim, a plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Mere “labels and conclusions” or a “formulaic recitation of the elements of a cause of action” do not

state a claim on which relief may be granted. *Id.* The Court must liberally construe a *pro se* litigant's pleadings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Williams appears to sue the Austin Police Department under 42 U.S.C. § 1983. She alleges that she was “wrongfully detained and arrest[ed] with unnecessary use of excessive force” at the Austin airport on December 5, 2021, and taken to a hospital. Dkt. 1 at 4. Williams does not provide the names of any officers who allegedly used force against her or any other allegations related to their use of force.

The Austin Police Department is not an entity that can be sued. *See Darby v. Pasadena Police Dep’t*, 939 F.2d 311, 313 (5th Cir. 1991) (holding that a city department may not be sued unless it has a separate legal existence from the city). Because Williams filed her Complaint *pro se*, the Court recommends that her claim be construed against the City of Austin. *See Wilson v. Austin Police Dep’t*, No. A-23-CV-233-RP-ML, 2023 WL 3688462, at \*2 (W.D. Tex. Apr. 24, 2023) (construing a *pro se* claim against the Austin Police Department as a claim against the City of Austin), *R. & R. adopted*, 2023 WL 3688014 (W.D. Tex. May 26, 2023).

#### **A. Williams’s Claim is Barred by the Statute of Limitations**

The statute of limitations for a claim under 42 U.S.C. § 1983 is determined by the forum state’s limitations period for personal injury torts. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). The statute of limitations in Texas is two years from the date the cause of action accrues. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a); *Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001). A cause of action under Section 1983 accrues when the aggrieved party knows or has reason to know of the injury. *Piotrowski*, 237 F.3d at 576.

Williams alleges that she was injured on December 5, 2021, and she was aware of the injury on that day. Dkt. 1 at 4. Her claim accrued the day that the officers allegedly used excessive force,

and the statute of limitations expired on December 5, 2023. Williams signed the Complaint on December 5, 2023 and mailed it the next day, but the Clerk did not receive it until December 11, 2023. Dkt. 1 at 1, 5; Dkt. 1-2. A complaint mailed by a plaintiff who is not incarcerated is not filed until it is delivered to the clerk. FED. R. CIV. P. 5(d)(2); *Gonzales*, 157 F.3d at 1020. Because Williams's Complaint was not filed until after the statute of limitations period expired, her Section 1983 claim is time-barred.

#### **B. Williams Fails to State a Claim on Which Relief May Be Granted**

Even if Williams's claim were not time-barred, she fails to state a claim against the City of Austin. Section 1983 does not permit municipal liability for the actions of a city's employees on a theory of respondeat superior. *Shumpert v. City of Tupelo*, 905 F.3d 310, 316 (5th Cir. 2018). Municipalities are liable for the constitutional torts of their employees under *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978), if the plaintiff can show three elements: "a policymaker; an official policy; and a violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski*, 237 F.3d at 578 (quoting *Monell*, 436 U.S. at 694). The official policy "must be either unconstitutional or have been adopted with deliberate indifference to the known or obvious fact that such constitutional violations would result." *Shumpert*, 905 F.3d at 316 (citation omitted).

Williams alleges that she was subject to excessive force, but does not allege that any City policy was the moving force behind the constitutional violation, or that any City policy was unconstitutional or adopted with deliberate indifference. For these reasons, she does not state a claim against the City of Austin.

In sum, the Court finds that Williams's lawsuit is frivolous because it is barred by the statute of limitations and because she does not state a claim on which relief may be granted.

#### IV. Order

The Court **GRANTS** Plaintiff Yolanda M. Williams's Application to Proceed *In Forma Pauperis* (Dkt. 2).

#### V. Recommendation

This Magistrate Judge **RECOMMENDS** that the District Court **DISMISS** Williams's lawsuit as frivolous under 28 U.S.C. § 1915(e)(2).

The Court **FURTHER ORDERS** the Clerk to **REMOVE** this case from this Magistrate Judge's docket and **RETURN** it to the docket of the Honorable District Court.

#### VI. Warnings

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except on grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

**SIGNED** on January 5, 2024.



SUSAN HIGHTOWER  
UNITED STATES MAGISTRATE JUDGE

# **APPENDIX D**

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

YOLANDA M. WILLIAMS,

§

Plaintiff,

§

v.

1:23-CV-1510-RP

AUSTIN POLICE DEPARTMENT,

§

Defendant.

§

**ORDER**

Before the Court is the report and recommendation from United States Magistrate Judge Susan Hightower concerning Plaintiff Yolanda M. Williams's ("Plaintiff") complaint pursuant to 28 U.S.C. § 1915(e). (R. & R., Dkt. 5). Pursuant to 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, Judge Hightower issued her report and recommendation on January 5, 2024. (*Id.*). Plaintiff filed an amended complaint, (Dkt. 8), which the Court has reviewed, and a motion to reinstate case, (Dkt. 9), which the Court construes as Plaintiff's objections to the report and recommendation even though the motion was untimely.

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)(1)(C). Because Plaintiff timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Plaintiff's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of the United States Magistrate Judge, (Dkt. 5), is **ADOPTED**. Plaintiff's complaint, (Dkt. 1), is **DISMISSED WITH PREJUDICE**.

The Court will enter final judgment by separate order.

**SIGNED** on March 6, 2024.

  
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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE