United States Court of Appeals for the Fifth Circuit

No. 25-11107
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 6, 2026
Lyle W. Cayce
Clerk

HUONG GILMER GIACCIO,

Plaintiff—Appellant,

versus

RAY DAVIS; TIM ROUGH; HECTOR ROMERO,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CV-2469

Before SOUTHWICK, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Huong Gilmer Giaccio, a pro se litigant, moves for leave to proceed in forma pauperis (IFP) in this appeal of the district court's dismissal without prejudice of her 42 U.S.C. § 1983 complaint after the court denied her application to proceed IFP in the district court and dismissed her case after she failed to pay the $405.00 filing fee. The motion is a challenge to the

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

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).

Upon review of Giaccio's amended IFP application, the district court found that Giaccio had been receiving $3,000 per month from family, which was $559 more than the monthly expenses that she listed in her amended IFP application and reflected sufficient funds to pay the $405.00 in filing fees, even excluding the value of her other assets. *See Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 338-40 (1948). In her IFP motion, Giaccio argues that the financial support she receives from her family is occasional, inconsistent, not guaranteed, and unreliable. However, despite having ample opportunities to raise this argument in the district court, Giaccio failed to do so. Indeed, she continued to maintain, even after the judgment was entered, that she received $3,000 per month from her family without any qualifications. We do not consider this argument for the first time on appeal. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

Giaccio otherwise raises no nonfrivolous argument that the district court abused its discretion in denying her motion to proceed IFP. *See Green v. Estelle*, 649 F.2d 298, 302 (5th Cir. 1981). Accordingly, she can show no arguable error in the district court's dismissal of her case after she failed to pay the $405.00 in filing fees.

Based on the foregoing, 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. Giaccio's motions for judicial notice and motion to supplement to record are also DENIED.

United States Court of Appeals for the Fifth Circuit

No. 25-11107

United States Court of Appeals
Fifth Circuit
FILED
March 20, 2026
Lyle W. Cayce
Clerk

HUONG GILMER GIACCIO,

Plaintiff—Appellant,

versus

RAY DAVIS; TIM ROUGH; HECTOR ROMERO,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CV-2469

ON PETITION FOR REHEARING

Before SOUTHWICK, DUNCAN, and ENGELHARDT, *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 20, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-11107 Giaccio v. Davis
USDC No. 3:24-CV-2469

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

S. Rasheed

By: _____
Shatyra Rasheed, Deputy Clerk
504-310-7646

Ms. Huong Gilmer Giaccio

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

HUONG GILMER GIACCIO, Plaintiff,	§	
v.	§	No. 3:24-CV-2469-B-BW
RAY DAVIS, 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:

1. This civil action is **DISMISSED** without prejudice.

2. The Clerk of the Court shall transmit a true copy of this Judgment to Plaintiff.

SO ORDERED.

SIGNED September 25, 2025.

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

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

HUONG GILMER GIACCIO, Plaintiff,	§	
v.	§	No. 3:24-CV-2469-B-BW
RAY DAVIS, et al., Defendants.	§	Referred to U.S. Magistrate Judge[1]

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

Before the Court is Plaintiff Huong Gilmer Giaccio's amended Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (AO 239 Long Form), received on August 5, 2025. (Dkt. No. 19.) Based on the relevant filings and applicable law, the Court should **DENY** the amended application and dismiss this case without prejudice unless Giaccio pays the $405.00 filing and administrative fees by September 18, 2025, or by some other deadline established by the Court.

I. LEGAL STANDARDS AND ANALYSIS

Under 28 U.S.C. § 1915(a)(1), a federal district court may authorize a person to bring a civil action in forma pauperis ("IFP") when she submits an affidavit establishing her financial inability to pay or give security for applicable court fees "without suffering undue financial hardship." *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). To determine whether the payment of fees would cause undue

[1] By Special Order No. 3-251, this pro se case has been automatically referred for judicial screening.

financial hardship, the Court must examine the applicant's financial condition. *See id.* "This entails a review of other demands on individual plaintiffs' financial resources, including whether the expenses are discretionary or mandatory." *Id.*

Here, by order dated August 4, 2025, the Court notified Giaccio that her filings did not provide sufficient information to decide whether IFP status was appropriate and stated that the filings were incomplete or inconsistent, both internally and with one another, as to Giaccio's income, assets, and expenses. (*See* Dkt. No. 17.) The order directed Giaccio to submit an amended IFP application within 14 days that explained the inconsistencies in her IFP filings and provided full responses to each request for information. (*See id.*) On August 5, 2025, Giaccio requested an 8-day extension of the deadline to respond to the August 4 order, which the Court granted. (*See* Dkt. Nos. 18, 20.) The same day, instead of the form amended IFP application ordered by the Court, Giaccio filed her version of the requested IFP application, along with supporting documents, and on August 18, 2025, she filed a notice confirming that she complied with the Court's August 4 order. (*See* Dkt. No. 19 at 3-9; Dkt. No. 52.)

In her amended IFP application, Giaccio states that she receives $2,000 in support per month from family, has $100 in cash, and $300 in bank accounts. (*See* Dkt. No. 19 at 3.) Her spouse is employed by the United States, but Giaccio does not provide information about his income, stating instead, without explanation, that it is unknown. (*See id.*) She owns a car and a house with a mortgage of $1,491 per month, and she provides a copy of her and her husband's July 2025 mortgage

statement confirming a monthly payment of $1,491; she does not list the value of the vehicle or her home. (*See id.* at 3, 7.) Giaccio also reports monthly expenses of $2,400 for mortgage/rent, $300 for utilities, $500 for food, $250 for transportation, $100 for medical, and $200 for "Other (court fees, etc.)," for estimated monthly expenses totaling $3,750. (*Id.* at 3-4.) She also states that her debts and financial obligations include a mortgage balance of approximately $300,000, credit card debt of approximately $5,000, and Carrollton Municipal Court fines of approximately $19,000. (*See id.* at 4.) She also identifies a 23-year-old son as a dependent.[2] (*See id.* at 4.)

Giaccio's stated monthly expense of $2,400 for mortgage/rent is nearly $1,000 more than the mortgage payment amount listed in her assets and reflected in her mortgage statement; Giaccio offers no explanation for the surplus. (*See id.* at 3-4, 7.) The Court also notes that, based on the mortgage statement attached to her amended IFP application, Giaccio also overstates her principal mortgage balance by approximately $100,000. (*See id.* at 4, 7.) As for her other stated debts and financial obligations, her application does not indicate any required monthly payments for such. (*See id.* at 4.)

Here, the amended IFP application contains inconsistencies and select omissions relevant to the IFP determination, which cuts against Giaccio's burden of establishing entitlement to proceed IFP. *See, e.g.*, *Linwood v. Finance America, LLC*,

[2] Giaccio's son is not listed as a dependent for tax purposes on the 2024 Form 1040 attached to her amended IFP application. (*See* Dkt. No. 19 at 5.)

No. 3:24-CV-01963-B (BT), 2024 WL 3682299, at *1 (N.D. Tex. Aug. 6, 2024). For instance, in evaluating a plaintiff's IFP application, "it is appropriate to consider a spouse's income," which information Giaccio has elected not to provide. *Elliot v. Chase Bank*, No. 4:12-CV-324-A (BJ), 2012 WL 2354424, at *1 (N.D. Tex. May 24, 2012) (citation and internal quotation marks omitted), *rec. adopted*, 2012 WL 2354444 (N.D. Tex. June 20, 2012); *see also Duru v. Georgia*, No. 3:15-CV-1884-B-BN, 2015 WL 4366867, at *2 (N.D. Tex. July 15, 2015) ("Whether the litigant is unable to pay the costs associated with initiating a lawsuit, moreover, . . . depends in part on the litigant's actual ability to get funds from a spouse, a parent, an adult sibling, or other next friend." (cleaned up)). Additionally, although Giaccio did not provide the value of her vehicle or home, "[c]ourts have denied IFP applications even where the plaintiffs' expenses exceed their income because the plaintiffs had other assets."[3] *Lansford v. Laredo College*, No. 5:23-CV-00045, 2023 WL 4669685, at *2 (S.D. Tex. June 28, 2023), *rec. adopted*, 2023 WL 4670303 (S.D. Tex. Jul. 20, 2023).

Based on this information, the Court should find that Giaccio has failed to satisfy her burden to show that payment of the $405.00 filing and administrative fees would cause her undue financial hardship. Accordingly, the Court should deny her amended application to proceed IFP.

[3] Giaccio previously represented that her home was valued at $500,000. (*See* Dkt. No. 4 at 3.)

II. RECOMMENDATION

The Court should **DENY** the amended Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (AO 239 Long Form), received on August 5, 2025 (Dkt. No. 19), and dismiss this case without prejudice unless Giaccio pays the $405.00 filing and administrative fees by September 18, 2025, or by some other deadline established by the Court.

SO RECOMMENDED on August 28, 2025.

BRIAN McKAY
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). To be specific, an objection must identify the finding or recommendation to which objection is made, state the basis for the objection, and indicate the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).

No. 25-11107
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HUONG GILMER GIACCIO,
Plaintiff–Appellant,

v.

RAY DAVIS, ET AL.,
Defendants–Appellees.

PETITION FOR PANEL REHEARING

TO THE HONORABLE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Plaintiff–Appellant, **Huong Gilmer Giaccio**, proceeding pro se, respectfully petitions for **panel rehearing** of the Court's March 6, 2026, order denying leave to proceed in forma pauperis on appeal and dismissing the appeal.

This petition is respectfully submitted because the Court appears to have overlooked or misapprehended a material fact concerning Appellant's financial condition. Specifically, the Court relied on a prior statement that Appellant received **$3,000 from family (It was once time only)** and concluded that Appellant had not adequately qualified or corrected that point in the district court. Appellant respectfully states that any such family assistance was not regular, guaranteed, or reliable monthly income available to pay court fees. Rather, any support was occasional, limited, and dependent on temporary family circumstances.

I. BASIS FOR REHEARING

Panel rehearing is warranted because the dismissal rested on a mistaken understanding of Appellant's actual ability to pay.

Appellant respectfully clarifies as follows:

1. **Any family assistance was not fixed monthly income.**

   It was not guaranteed wages, salary, or reliable support available each month for litigation costs.

2. **Any support received was occasional or emergency help only.**

It was not stable income that Appellant could depend on to prepay appellate filing fees.

3. **Appellant's actual liquid funds were minimal.**

   Appellant's available cash and bank balances were extremely limited, and insufficient to cover filing costs without hardship.

4. **Appellant's listed property interests were not liquid assets.**

   A partial home interest and an older vehicle do not constitute available cash from which court fees could realistically be prepaid.

5. **The record should not treat non-liquid property or intermittent family help as proof of ability to pay appellate fees.**

Because the dismissal of the appeal as frivolous was tied to the in forma pauperis ruling, Appellant respectfully submits that rehearing is necessary so the Court may reconsider the financial record under an accurate understanding of Appellant's circumstances.

II. CLARIFICATION OF FINANCIAL CIRCUMSTANCES

Appellant respectfully states that she has been under continuing financial hardship. Her expenses, debt obligations, mortgage obligations, and basic living costs have remained substantial. Any help from relatives or household members was not dependable income available for court filing purposes.

To the extent any prior filing stated or suggested that I received **$3,000 from family (It was once time only)**, I clarify that any such assistance was a one-time or occasional contribution and was not guaranteed, reliable, or recurring monthly income available to me for court costs. Because the dismissal of the appeal followed from the Court's understanding of Appellant's financial ability to pay, reconsideration is warranted to prevent dismissal based on a misunderstanding of irregular family assistance.

Appellant therefore respectfully asks the Court to reconsider the denial of in forma pauperis status in light of this clarification.

III. GOOD-FAITH BASIS OF APPEAL

Appellant further respectfully submits that her appeal was not frivolous. The appeal raises serious issues concerning constitutional rights, unlawful citations, duplicative charges, enforcement conduct, and related due process concerns. Appellant sought appellate review in good faith and did not file for delay or improper purpose.

IV. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests that this Court:

1. **GRANT this Petition for Panel Rehearing;**
2. **VACATE the March 6, 2026, order denying in forma pauperis status and dismissing the appeal;**
3. **RECONSIDER Appellant's motion to proceed in forma pauperis based on Appellant's actual financial circumstances;** and
4. **GRANT such other and further relief to which Appellant may be justly entitled.**

Respectfully submitted,

/s/ Huong Gilmer Giaccio
Huong Gilmer Giaccio, Pro Se
3719 Kelly Blvd
Carrollton, TX 75007
Phone: 945-546-0934
Email: hgfive@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Panel Rehearing was served on all parties in accordance with the Federal Rules of Appellate Procedure on this 7th day of March 2026.

/s/ Huong Gilmer Giaccio
Huong Gilmer Giaccio, Pro Se

No. 25-11107
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HUONG GILMER GIACCIO,
Plaintiff–Appellant,

v.

RAY DAVIS, ET AL.,
Defendants–Appellees.

DECLARATION OF HUONG GILMER GIACCIO
IN SUPPORT OF PETITION FOR REHEARING

I, **Huong Gilmer Giaccio**, declare under penalty of perjury under 28 U.S.C. § 1746 that the following is true and correct:

1. I am the Appellant in this case and make this declaration based on my personal knowledge.
2. I have been under financial hardship and have sought leave to proceed in forma pauperis because I do not have sufficient liquid funds to pay appellate filing fees without hardship.
3. To the extent any prior filing stated or suggested that I received **$3,000 from family (It was once time only)**, I clarify that any such assistance **was a one-time** or occasional contribution and was not guaranteed or reliable monthly income available for court costs
4. Any family assistance I received was occasional, irregular, and dependent on temporary circumstances. It was not wages, salary, or fixed disposable income under my control.
5. My actual available cash and bank funds have been limited.
6. My interest in real property, if any, is not liquid cash available to pay court fees. My vehicle is also not a liquid asset that could realistically be used to prepay filing costs.
7. I respectfully ask the Court to reconsider the denial of in forma pauperis status based on my true financial circumstances.

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

Executed on this 07 day of March 2026, in Carrollton, Texas.

/s/ Huong Gilmer Giaccio
Huong Gilmer Giaccio

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