

No. USCA 5 25-50216

IN THE

SUPREME COURT OF THE UNITED STATES

STACEY BERNARD MARTIN — PETITIONER

Vs.

THE CITY OF LAS VEGAS, LINDA MARQUIS, DALIA
MARINA-HUNT, LEGAL AID CENTER OF SOUTHERN NEVADA
CAMERON BROWN, CHRISTOPHER P. FORD,
TONY T. SMITH, KIMBERLY-EVANS HOUSE, KASSANDRA LEVAY,
ROSIE ALVARADO, CHRISTINA VASQUEZ HORTICK, TONJA
MICHELLE OCHONMA, CHARLES OCHONMA,

— RESPONDENTS

Appendices

Appendix A: Judgment of The United States Court of Appeals, Fifth Circuit in Cause Number USCA 5 No. 25-50216 dated November 26, 2025.

Appendix B: Petition for rehearing on December 19, 2025.

Appendix C: US District Court Order And Final Judgment in Civil Action on June 10, 2025. Appendix D

**United States Court of Appeals
for the Fifth Circuit**

No. 25-50216

United States Court of Appeals
Fifth Circuit

FILED

November 26, 2025

Lyle W. Cayce
Clerk

STACEY BERNARD MARTIN,

Plaintiff—Appellant,

versus

CITY OF LAS VEGAS, *City Hall*; ATTORNEY CAMERON BROWN,
FORD FRIEDMAN LAW FIRM; ATTORNEY CHRISTOPHER P.
FORD, FORD FRIEDMAN LAW FIRM; ATTORNEY TONY T.
SMITH, FORD FRIEDMAN LAW FIRM; KIMBERLY B. HOUSE;
KASSANDRA LEVAY, CHILD ADVOCACY; TONJA MICHELLE
OCHONMA; CHARLES OCHONMA,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:24-CV-647
Summary Calendar

Before KING, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

Pro se Plaintiff–Appellant Stacey Bernard Martin filed an amended complaint in the Western District of Texas against The City of Las Vegas

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

(The City), Judge Linda Marquis, Marina Dalia-Hunt,¹ Legal Aid Center of Southern Nevada, Inc. (LACSN), Cameron Brown, Christopher P. Ford, Tony T. Smith, Kimberly B. House, Kassandra Levay Child Advocacy (KLCA), Tonja Michelle Ochonma, Charles Ochonma, Judge Christine Vasquez Hortick, and Judge Rosie Alvarado. He alleged the defendants engaged in illegal and unconstitutional conduct by depriving him of access to his son. *incorrect; They all*

Dalia-Hunt and LACSN filed a motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).² Judge Marquis similarly filed a motion to dismiss for, *inter alia*, lack of personal jurisdiction under Rule 12(b)(2). Judges Hortick and Alvarado also filed a motion to dismiss, arguing that, *inter alia*, Martin's claims against them were barred by Eleventh Amendment and judicial immunity.

The district court granted all three motions to dismiss, finding that the court lacked personal jurisdiction over Dalia-Hunt, LACSN, and Judge Marquis, and that Judges Hortick and Alvarado were entitled to Eleventh Amendment and judicial immunity. A magistrate judge entered a Report and Recommendation that the remaining defendants—The City, Brown, Ford, Smith, House, KLCA, and the Ochonmas—be dismissed for lack of service or improper service.

Before the district court ruled on the Recommendation, Martin filed a “Motion for Interlocutory Appeal Section 1,” and a “Motion for Interlocutory Appeal Section 2,” which were construed as Notices of

¹ Martin erroneously refers to her as “Dalia Marina-Hunt.”

² Dalia-Hunt and LACSN filed their motion to dismiss prior to the amended complaint. The district court explained that because the allegations against these defendants remained the same between the original complaint and the amended complaint, it exercised its discretion to apply the motion to dismiss to the amended complaint. ROA.345-46.

Appeal. In "Section 1," Martin claims the district court "improperly dismissed" The City, Judge Marquis, and Dalia-Hunt and "denied all his motions relevant to other Nevada defendants/attorneys" Ford, Smith, Brown, and the Ochonmas. In "Section 2," he claims the district court "improperly dismissed" Judges Alvarado and Hortick, and "denied all his motions." Upon direction from this court, Martin filed his opening brief, in which he claimed there are nine constitutional questions for this court to answer and explained the alleged criminal conspiracy involving all the defendants from his amended complaint and the violation of his constitutional rights.

* "[W]e are obligated to examine the basis for our jurisdiction, *sua sponte*, if necessary." *Lewis v. Sheriff's Dep't Bossier Par.*, 478 F. App'x 809, 813 (5th Cir. 2012) (quoting *In re Cortez*, 457 F.3d 448, 453 (5th Cir. 2006)). "[I]n a multi-party lawsuit, 'a dismissal of claims against some, but not all, defendants is not a final appealable judgment unless, pursuant to Rule 54(b) ... the district court concludes there is no justification for delaying an appeal and specifically directs entry of judgment.'" *Butler v. Denka Performance Elastomer LLC*, 806 F. App'x 271, 273 (5th Cir. 2020) (quoting *Elizondo v. Green*, 671 F.3d 506, 509 (5th Cir. 2012)). When a notice of appeal is premature, "the court lacks jurisdiction over the appeal." *Star Ins. Co. v. Livestock Producers Inc.*, 34 F. App'x 151, 2002 WL 496371, at *2 (5th Cir. 2002).

Here, at the time Martin filed his Notices of Appeal, there was no final, appealable judgment. The orders dismissing Dalia-Hunt and Judges Marquis, Alvarado, and Hortick were not designated final pursuant to Rule 54(b), and The City had not yet been dismissed because the district court had not ruled on the magistrate judge's Recommendation. Indeed, the final judgment was not entered until about three months after Martin filed his Notices of Appeal. Therefore, the Notices of Appeal were premature, and we

do not have jurisdiction to review whether dismissal of Dalia-Hunt, and Judges Marquis, Alvarado, and Hortick was improper.

As to the orders which “denied all his motions,” Federal Rule of Appellate Procedure 3(c)(1)(B) states that the notice of appeal must “designate the judgment—or the appealable order—from which the appeal is taken.” FED. R. APP. P. 3(c)(1)(B). “Although courts should ‘liberally construe’ the requirements of Rule 3, ‘[t]his principle of liberal construction does not . . . excuse noncompliance with the Rule.’” *Wilson v. Navika Cap. Grp., L.L.C.*, 663 F. App’x 341, 344 (5th Cir. 2016) (quoting *Smith v. Barry*, 502 U.S. 244, 248 (1992)). “[T]he purpose of [Rule 3] is to ensure that the filing provides sufficient notice to other parties and the courts.” *Kinsley v. Lakeview Reg’l Med. Ctr.*, 570 F.3d 586, 589 (5th Cir. 2009) (quoting *Smith*, 502 U.S. at 248). Here, Martin’s Notices of Appeal did not “designate” any specific orders, and the 18 page “Section 1” Notice of Appeal, ten page “Section 2” Notice of Appeal, and Martin’s 20-page brief made no further mention of the orders which denied his motions. While “[f]ailure to properly designate the order appealed from . . . may be cured by an indication of intent in the briefs or otherwise,” here, the filings hardly mention the district court, let alone the district court orders. See *Turnbull v. United States*, 929 F.2d 173, 177 (5th Cir. 1991) (quoting *United States v. Rochester*, 898 F.2d 971, 976 n.1 (5th Cir. 1990)). Martin’s filings focus on the events that transpired in state courts. Under these circumstances, we cannot say that this court has sufficient notice of which orders Martin appeals.

Alternatively, upon a review of the record, we have determined that the motions denied were: a motion to dismiss a motion to dismiss (which was construed as a response to the motion to dismiss); a motion for default judgment; a motion for criminal investigation referral; and a motion to proceed in forma pauperis on appeal. The orders denying the motion to dismiss a motion to dismiss, motion for default judgment, and motion for

criminal investigation referral were all not appealable when Martin filed his Notices of Appeal. *See Adult Film Ass'n of Am., Inc. v. Thetford*, 776 F.2d 113, 115 (5th Cir. 1985) (per curiam) (“We find that the district court’s order denying a [motion for] default judgment . . . is not an appealable final order.”). Regarding the order denying Martin’s motion to proceed in forma pauperis, “a federal court may refuse to certify an appeal for in forma pauperis status if it is not taken in good faith. . . . ‘Good faith’ is demonstrated when a party seeks appellate review of any issue ‘not frivolous.’” *Howard v. King*, 707 F.2d 215, 219–20 (5th Cir. 1983) (citation omitted). The motion was filed on the district court’s short form application and thereby is frivolous because it “only provides his financial information [without] address[ing] whether his appeal will present a nonfrivolous issue.” *See United States v. Dunlap*, 389 F. App’x 359, 360 (5th Cir. 2010) (per curiam). Even if the motion did mention the orders dismissing Dalia-Hunt, and Judges Marquis, Alvarado, and Hortick, the appeal would still be frivolous because, as we explained above, we lack jurisdiction to review those orders. *See Johnson v. Cain*, 471 F. App’x 301, 302 (5th Cir. 2012) (per curiam). Thus, the district court did not err in refusing to certify Martin’s motion to appeal in forma pauperis.

Accordingly, the appeal is DISMISSED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

STACEY BERNARD MARTIN,

Plaintiff,

v.

Case No. 5:24-CV-00647-JKP

THE CITY OF LAS VEGAS, CITY HALL; JUDGE LINDA MARQUIS, DALIA MARINA-HUNT, LEGAL AID CENTER OF SOUTHERN NEVADA, INC.; LEGAL AID CENTER OF SOUTHERN NEVADA, INC., ATTORNEY CAMERON BROWN, FORD FRIEDMAN LAW FIRM; ATTORNEY CHRISTOPHER P. FORD, FORD FRIEDMAN LAW FIRM; ATTORNEY TONY T. SMITH, FORD FRIEDMAN LAW FIRM; KIMBERLY B. HOUSE; KASSANDRA LEVAY, CHILD ADVOCACY; TONJA MICHELLE OCHONMA, CHARLES OCHONMA, JUDGE CHRISTINA VASQUEZ HORTICK, JUDGE ROSIE ALVARADO,

Defendants.

ORDER AND FINAL JUDGMENT

The Court has considered the issues presented in this action and rendered its decisions. For the reasons stated in the Court's Memorandum Opinion and Orders, (*ECF Nos. 37, 41*), and Order Adopting Report and Recommendations, (*ECF No. 62*), Plaintiff's causes of action have been dismissed. Therefore, the Court issues this Final Judgment pursuant to Fed. R. Civ. P. 58. Plaintiff takes nothing from his causes of action against Defendants.

With the entry of this Order and Final Judgment, the Clerk of Court is **DIRECTED** to close this case.

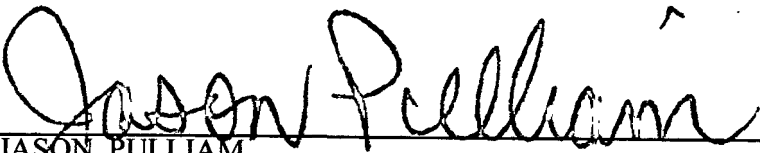
To facilitate timely receipt of this Order, the Clerk of Court is further **DIRECTED** to email a copy of this Order to Martin at:

1) staceybmartin1970@gmail.com

The Clerk of Court is further **DIRECTED** to mail, via certified mail with return receipt requested, a copy of this Order to:

1) Stacey Bernard Martin, 119 Dobbs, San Antonio, Texas 78237

It is so ORDERED.
SIGNED this 10th day of June, 2025.


JASON PULLIAM
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

STACEY BERNARD MARTIN,

Plaintiff,

v.

Case No. 5:24-CV-00647-JKP

THE CITY OF LAS VEGAS, CITY HALL; JUDGE LINDA MARQUIS, DALIA MARINA-HUNT, LEGAL AID CENTER OF SOUTHERN NEVADA, INC.; LEGAL AID CENTER OF SOUTHERN NEVADA, INC., ATTORNEY CAMERON BROWN, FORD FRIEDMAN LAW FIRM; ATTORNEY CHRISTOPHER P. FORD, FORD FRIEDMAN LAW FIRM; ATTORNEY TONY T. SMITH, FORD FRIEDMAN LAW FIRM; KIMBERLY B. HOUSE, KASSANDRA LEVAY, CHILD ADVOCACY; TONJA MICHELLE OCHONMA, CHARLES OCHONMA, JUDGE CHRISTINA VASQUEZ HORTICK, JUDGE ROSIE ALVARADO,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Judge Linda Marquis' ("Judge Marquis") Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(6). *ECF No. 19*. Judge Marquis complied with the Court's *Standing Order in Civil Cases Assigned to Judge Jason Pulliam, ECF No. 3*, however, Plaintiff Stacey Bernard Martin ("Martin") failed to amend his First Amended Complaint. Instead, Martin filed a Motion to Dismiss Judge Mar-

quis' Motion. *ECF No. 21*. Upon consideration, the Court grants Judge Marquis' Motion. *ECF No. 19*.

BACKGROUND

In his First Amended Complaint, Plaintiff Stacey Bernard Martin ("Martin"), proceeding *pro se*, asserts sweeping allegations of illegal conduct by the 13 named Defendants, claiming they deprived him of access to his son. *ECF No. 10 at 4–18*. Liberally construed, Martin alleges Defendants—individuals and entities involved in Martin's state-court child custody proceedings—are liable under 42 U.S.C. § 1983 for violating his constitutional rights based upon race and gender. *Id.* Martin further alleges Defendants are liable under various federal and state criminal laws. *Id.* As relief, Martin seeks damages and attorney fees in the amount of \$141 million dollars, disbarment of attorneys, and a criminal referral to the United States Department of Justice. *Id.*

In response to Martin's First Amended Complaint, Defendant Judge Linda Marquis ("Judge Marquis") filed the instant Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(6) ("the Motion"). *ECF No. 19*. Judge Marquis filed a Supplement to the Motion, consisting of email correspondence with Martin, detailing compliance with the Court's *Standing Order in Civil Cases Assigned to Judge Jason Pulliam*. *ECF No. 20*. The email correspondence indicates Judge Marquis and Martin scheduled a telephone conference for September 4, 2024. *Id.* However, Martin did not call in to the telephone conference. *Id.* As a result, Judge Marquis informed Martin she would be filing the Motion. *Id.*

Martin filed a Motion to Dismiss the Motion. *ECF No. 21*. In Martin's Motion to Dismiss the Motion he asserts, among other things, the Court possesses jurisdiction over this matter under 42 U.S.C. § 1983. *Id. at 3*. In a Response, Judge Marquis states Martin's Motion to Dismiss the

Motion does not refute her arguments, made in the Motion, the Court lacks personal jurisdiction over her, judicial immunity bars Martin's causes of action, criminal statutes do not confer private rights, and Martin's service was insufficient. *ECF No. 26*.

The Court now addresses the Motion. *ECF No. 19*. The Court construes Martin's Motion to Dismiss the Motion, *ECF No. 21*, as a Response to the Motion. The Court further construes Judge Marquis' Response, *ECF No. 26*, to Martin's Motion to Dismiss the Motion as a Reply.

LEGAL STANDARDS AND ANALYSIS

As jurisdictional matters must be resolved first, the Court first turns to Judge Marquis' argument the Court lacks personal jurisdiction over her. *See, e.g., United States v. Texas Tech University*, 171 F.3d 279, 285 n. 9 (5th Cir. 1999) (“[C]ourts must . . . decide issues of personal jurisdiction before ruling on the merits.”).

A. Personal Jurisdiction

A federal court can exercise personal jurisdiction over a nonresident defendant if: (1) the long-arm statute of the forum state confers personal jurisdiction over the defendant; and (2) the exercise of such jurisdiction by the forum state is consistent with the due process under the United States Constitution.” *Ruston Gas Turbines, Inc. v. Donaldson Co., Inc.*, 9 F.3d 415, 418 (5th Cir. 1993) (citations omitted); *see also Wilson v. Belin*, 20 F.3d 644, 646–47 (5th Cir. 1994). Only the latter inquiry need be addressed because the Texas long-arm statute extends to the limits of federal due process. *See Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 n. 1 (5th Cir. 2007); *see also Tex. Civ. Prac. & Rem. Code* § 17.041, *et seq.* (Texas Long Arm Statute).

The Due Process Clause permits the exercise of personal jurisdiction over a nonresident defendant if: (1) the defendant has ‘minimum contacts’ with the forum state; and (2) the exercise of jurisdiction does not offend ‘traditional notions of fair play and substantial justice.’” *Brown v.*

Slenker, 220 F.3d 411, 417 (5th Cir. 2000) (citing *Ruston Gas Turbines*, 9 F.3d at 418). For a federal court to exercise personal jurisdiction, “[b]oth prongs of the due process test must be met.” *Ruston Gas Turbines*, 9 F.3d at 418.

To satisfy the “minimum contacts” prong of the due process test, the Supreme Court established standards for “specific” and “general” jurisdiction. *Wilson*, 20 F.3d at 647; *Ruston Gas Turbines*, 9 F.3d at 418–19. A court may exercise “specific jurisdiction” when (1) the defendant purposely directed its activities toward the forum state or purposely availed itself of the privileges of conducting activities there; and (2) the controversy arises out of or is related to the defendant’s contacts with the forum state. *Freudensprung v. Offshore Technical Servs., Inc.*, 379 F.3d 327, 343 (5th Cir. 2004). When a cause of action does not arise out of a nonresident defendant’s purposeful contacts with the forum, however, a court may exercise “general jurisdiction” when the defendant has engaged in continuous and systematic contacts in the forum. *Freudensprung*, 379 F.3d at 345.

Once the plaintiff makes a *prima facie* showing of minimum contacts pursuant to the first prong, the burden then shifts to the defendant to show “the exercise of jurisdiction would not comply with ‘fair play’ and ‘substantial justice.’” *Freudensprung*, 379 F.3d at 343. In assessing whether the plaintiff makes a *prima facie* showing of minimum contacts, the Court may consider the contents of the record at the time of the motion, including “affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery.” *Thompson v. Chrysler Motors Corp.*, 755 F.2d 1162, 1165 (5th Cir.1985).

Here, Martin does not carry his burden of establishing the Court’s personal jurisdiction over Judge Marquis. The party seeking to assert personal jurisdiction—here, Martin—must present sufficient facts to make out a *prima facie* case supporting the exercise of personal jurisdic-

tion. *Freudensprung*, 379 F.3d at 343. In other words, in response to Judge Marquis' argument personal jurisdiction is improper, it is Martin's burden to show Judge Marquis in fact had minimum contacts with the state of Texas and that fair play and substantial justice would not be offended by subjecting her to jurisdiction here.

A review of Martin's First Amended Complaint and Response to the Motion reveals Judge Marquis has not engaged in any activities in Texas, let alone any activities that are continuous and systematic. *ECF Nos. 10, 21*. The defendant's relationship with the forum state "must arise out of contacts the 'defendant [*her*]self' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (quoting *Burger King*, 471 U.S. 462, 475 (1985)) (emphasis in original). It is well-settled "the *plaintiff* cannot be the only link between the defendant and the forum." *Id.* at 285 (emphasis added). Judge Marquis, a family court judge in Clark County, Nevada, adjudicated a guardianship dispute concerning Martin's minor son. *ECF No. 19-1*. That Martin is from Texas, or the dispute concerned a child who formerly resided in Texas, does not equate to Judge Marquis directing activities toward Texas or purposefully availing herself of the privileges of conducting activities here.

In his Response to the Motion, where Martin had the opportunity to make a showing of minimum contacts, Martin fails to address Judge Marquis' argument the Court lacks personal jurisdiction over her. *ECF Nos. 21*. Instead, Martin asserts the Court possesses jurisdiction over this matter under 42 U.S.C. § 1983. *ECF No. 21 at 3*. However, 42 U.S.C. § 1983 does not confer nationwide service of process or jurisdiction upon federal district courts. *Ray v. Collin Co. Sheriff's Off.*, No. 4:20-CV-856, 2022 WL 18674951 at *3 (E.D. Tex. Nov. 21, 2022); *See also DeMelo v. Toche Marine, Inc.*, 711 F.2d. 1260, 1269 (5th Cir. 1983). Accordingly, the Court concludes Martin fails to make a *prima facie* showing of Judge Marquis' minimum contacts with

Texas pursuant to the first prong of the due process test.

In sum, Martin has not set out any facts showing Judge Marquis has sufficient minimum contacts within the territorial jurisdiction of the Court for the Court to have personal jurisdiction over her. As a result, the Court need not reach Judge Marquis' arguments based upon Rules 12(b)(1), 12(b)(4), and 12(b)(6), though those arguments are well taken.

CONCLUSION

For the reasons stated, Defendant Judge Linda Marquis' Motion to Dismiss, *ECF No. 19*, is **GRANTED**. The Clerk of Court is **DIRECTED** to terminate Judge Linda Marquis as a **Defendant in this action**. Martin's Motion to Dismiss the Motion, *ECF No. 21*, construed as a Response, is **DENIED AS MOOT**.

To facilitate timely receipt of this Order, the Clerk of Court is further DIRECTED to email a copy of this Order to Martin at:

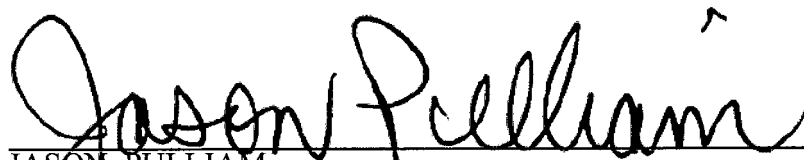
1) staceybmartin1970@gmail.com

The Clerk of Court is further DIRECTED to mail, via certified mail with return receipt requested, a copy of this Order to:

1) Stacey Bernard Martin, 119 Dobbs, San Antonio, Texas 78237

It is so ORDERED.

SIGNED this 3rd day of December, 2024.


JASON PULLIAM
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

STACEY BERNARD MARTIN,

Plaintiff,

v.

Case No. 5:24-CV-00647-JKP

THE CITY OF LAS VEGAS, CITY HALL; JUDGE LINDA MARQUIS, DALIA MARINA-HUNT, LEGAL AID CENTER OF SOUTHERN NEVADA, INC.; LEGAL AID CENTER OF SOUTHERN NEVADA, INC., ATTORNEY CAMERON BROWN, FORD FRIEDMAN LAW FIRM; ATTORNEY CHRISTOPHER P. FORD, FORD FRIEDMAN LAW FIRM; ATTORNEY TONY T. SMITH, FORD FRIEDMAN LAW FIRM; KIMBERLY B. HOUSE, KASSANDRA LEVAY, CHILD ADVOCACY; TONJA MICHELLE OCHONMA, CHARLES OCHONMA, JUDGE CHRISTINA VASQUEZ HORTICK, JUDGE ROSIE ALVARADO,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is two Motions to Dismiss:

1. Defendants Marina Dalia-Hunt and Legal Aid Center of Southern Nevada, Inc.'s (the "LACSN Defendants") Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), (*ECF No. 8*); and
2. Defendants Judge Rosie Alvarado and Judge Christine Vasquez Hortick's (the "Judicial Defendants") Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), (*ECF No. 13*).

Upon consideration, the Court grants the two Motions. *ECF. 8, 13.*

BACKGROUND

In his First Amended Complaint, Plaintiff Stacey Bernard Martin (“Martin”), proceeding *pro se*, asserts sweeping allegations of illegal conduct by the 13 named Defendants, claiming they deprived him of access to his son. *ECF No. 10 at 4–18*. Liberally construed, Martin alleges Defendants—individuals and entities involved in Martin’s state-court child custody proceedings—are liable under 42 U.S.C. § 1983 for violating his constitutional rights based upon race and gender. *Id.* Martin further alleges Defendants are liable under various federal and state criminal laws. *Id.* As relief, Martin seeks damages and attorney fees in the amount of \$141 million dollars, disbarment of attorneys, and a criminal referral to the United States Department of Justice. *Id.*

In response to Martin’s allegations, Defendants Marina Dalia-Hunt and Legal Aid Center of Southern Nevada, Inc. (the “LACSN Defendants”) filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), challenging the Court’s personal jurisdiction over them. *ECF Nos. 8*. Martin did not initially respond to the LACSN Defendants’ Motion to Dismiss. Instead, Martin filed his First Amended Complaint. *ECF No. 10*. In his First Amended Complaint, Martin added Defendants Judge Rosie Alvarado and Judge Christine Vasquez Hortick (the “Judicial Defendants”) as parties to this lawsuit. *Id.*

Following these events, the Judicial Defendants filed a Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *ECF No. 13*. In the Motion to Dismiss, the Judicial Defendants assert: (1) Martin lacks standing to bring his causes of action against the Judicial Defendants; (2) the Eleventh Amendment deprives the Court of subject matter jurisdiction; (3) Martin’s causes of action are barred by judicial immunity; and (4) Martin fails to state a

claim upon which relief may be granted. *Id.* at 2–9. Martin filed a Response to the Motion to Dismiss, and the Judicial Defendants filed a Reply. *ECF Nos. 15, 18.*

Five months after the LACSN Defendants filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the LACSN Defendants filed a Supplement to the Motion. *ECF No. 39.* In the Supplement to the Motion, the LACSN Defendants detail compliance with the Court’s *Standing Order in Civil Cases Assigned to Judge Jason Pulliam*. *Id.*¹ In response, Martin filed a Motion to Dismiss the LACSN Defendants’ Motion. *ECF No. 40.* In Martin’s Motion to Dismiss the LACSN Defendants’ Motion he asserts, among other things, the Court possesses jurisdiction over this matter under 42 U.S.C. § 1983. *Id.* at 3. Martin also asserts he “did not recall” receiving the LACSN Defendants’ Motion to Dismiss. *Id.* at 1.

The Court now addresses each of the two Motions in turn. *ECF Nos. 8, 13.* The Court construes Martin’s Motion to Dismiss the LACSN Defendants’ Motion, *ECF No. 40*, as a Response to the LACSN Defendants’ Motion to Dismiss, *ECF No. 8.*

LEGAL STANDARDS AND ANALYSIS

I. Martin’s First Amended Complaint

It is a generally accepted principle that the filing of an amended complaint supersedes the prior complaint. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). A motion to dismiss that attacks the superseded complaint may be denied as moot. *See, e.g., Mangum v. United Parcel Servs.*, No. 3:09–cv–0385–D, 2009 WL 2700217, at *1 (N.D. Tex. Aug. 26, 2009). However, a motion to dismiss that attacks the original complaint for deficiencies that persist in the amended complaint should not necessarily always be denied as moot. Rather, the court has the discretion to apply the original motion to dismiss to the amended complaint. *E.g., Davis v. Baylor Regional*

¹ The Court notes the *Standing Order in Civil Cases Assigned to Judge Jason Pulliam*, *ECF No. 3*, is applicable only to Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

Med. Ctr. at Grapevine, No. 3:11-cv-1350, 2013 WL 866173, at *1 (N.D. Tex. Mar. 8, 2013) (“If some of the defects raised in the original motion remain in the new pleading, the court may simply consider the motion as being addressed to the amended pleading.” (quoting Charles Alan Wright et al., *Fed. Prac. & Proc.* § 1476 (2010))).

Here, after the LACSN Defendants filed a Motion to Dismiss, Martin filed his First Amended Complaint. *ECF Nos. 8, 10*. In his First Amended Complaint, Martin added the Judicial Defendants as parties to this lawsuit. *ECF No. 10*. The text regarding the LACSN Defendants in Martin’s First Amended Complaint and Martin’s Original Complaint remained the same. *Compare ECF No. 1 at 6–11 with ECF No. 10 at 4–9*. As a result, the Court finds and concludes the LACSN Defendants’ Motion to Dismiss attacks Martin’s Original Complaint for deficiencies related to personal jurisdiction that persist in Martin’s First Amended Complaint. *ECF Nos. 1, 8, 10*. Therefore the Court exercises its discretion in applying the LACSN Defendants’ Motion to Dismiss to Martin’s First Amended Complaint. *ECF Nos. 8, 10*.

II. The LACSN Defendants’ Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2)

A federal court can exercise personal jurisdiction over a nonresident defendant if: (1) the long-arm statute of the forum state confers personal jurisdiction over the defendant; and (2) the exercise of such jurisdiction by the forum state is consistent with the due process under the United States Constitution.” *Ruston Gas Turbines, Inc. v. Donaldson Co., Inc.*, 9 F.3d 415, 418 (5th Cir. 1993) (citations omitted); *see also Wilson v. Belin*, 20 F.3d 644, 646–47 (5th Cir. 1994). Only the latter inquiry need be addressed because the Texas long-arm statute extends to the limits of federal due process. *See Moncrief Oil Int’l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 n. 1 (5th Cir. 2007); *see also Tex. Civ. Prac. & Rem. Code* § 17.041, *et seq.* (Texas Long Arm Statute).

The Due Process Clause permits the exercise of personal jurisdiction over a nonresident defendant if: (1) the defendant has 'minimum contacts' with the forum state; and (2) the exercise of jurisdiction does not offend 'traditional notions of fair play and substantial justice.'" *Brown v. Slenker*, 220 F.3d 411, 417 (5th Cir. 2000) (citing *Ruston Gas Turbines*, 9 F.3d at 418). For a federal court to exercise personal jurisdiction, "[b]oth prongs of the due process test must be met." *Ruston Gas Turbines*, 9 F.3d at 418.

To satisfy the "minimum contacts" prong of the due process test, the Supreme Court established standards for "specific" and "general" jurisdiction. *Wilson*, 20 F.3d at 647; *Ruston Gas Turbines*, 9 F.3d at 418–19. A court may exercise "specific jurisdiction" when (1) the defendant purposely directed its activities toward the forum state or purposely availed itself of the privileges of conducting activities there; and (2) the controversy arises out of or is related to the defendant's contacts with the forum state. *Freudensprung v. Offshore Technical Servs., Inc.*, 379 F.3d 327, 343 (5th Cir. 2004). When a cause of action does not arise out of a nonresident defendant's purposeful contacts with the forum, however, a court may exercise "general jurisdiction" when the defendant has engaged in continuous and systematic contacts in the forum. *Freudensprung*, 379 F.3d at 345.

Once the plaintiff makes a *prima facie* showing of minimum contacts pursuant to the first prong, the burden then shifts to the defendant to show "the exercise of jurisdiction would not comply with 'fair play' and 'substantial justice.'" *Freudensprung*, 379 F.3d at 343. In assessing whether the plaintiff makes a *prima facie* showing of minimum contacts, the Court may consider the contents of the record at the time of the motion, including "affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery." *Thompson v. Chrysler Motors Corp.*, 755 F.2d 1162, 1165 (5th Cir.1985).

Here, Martin does not carry his burden of establishing the Court's personal jurisdiction over the LACSN Defendants. The party seeking to assert personal jurisdiction—here, Martin—must present sufficient facts to make out a *prima facie* case supporting the exercise of personal jurisdiction. *Freudensprung*, 379 F.3d at 343. In other words, in response to the LACSN Defendants' argument personal jurisdiction is improper, it is Martin's burden to show the LACSN Defendants in fact had minimum contacts with the state of Texas and fair play and substantial justice would not be offended by subjecting them to jurisdiction here.

A review of Martin's First Amended Complaint, and Original Complaint, reveals the LACSN Defendants have not engaged in any activities in Texas, let alone any activities that are continuous and systematic. *ECF Nos. 1, 10*. The defendant's relationship with the forum state "must arise out of contacts the 'defendant [*her*]*self*' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (quoting *Burger King*, 471 U.S. 462, 475 (1985)) (emphasis in original). It is well-settled "the *plaintiff* cannot be the only link between the defendant and the forum." *Id.* at 285 (emphasis added). The LACSN Defendants were appointed to represent Martin's minor son in a Petition for Temporary Guardianship filed in Clark County, Nevada. *ECF Nos. 8, 8-1, 8-2*. That Martin is from Texas, or the dispute concerned a child who formerly resided in Texas, does not equate to the LACSN Defendants directing activities toward Texas or purposefully availing themselves of the privileges of conducting activities here.

Martin's Response to the LACSN Defendants' Motion to Dismiss is silent as to Legal Aid Center of Southern Nevada, Inc.'s minimum contacts with Texas, but states Marina Dalia-Hunt "made improper contact with Judge Richard Garcia of the 166th Judicial Court by phone." *ECF No. 40 at 4*. The *prima facie* standard does not require the court to credit conclusory allegations, even if uncontroverted. *CDC Real Est. Corp. v. La Biela, LLC*, No. SA-24-CV-00220-JKP,

2024 WL 3498628 (W.D. Tex. July 22, 2024) (citing *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 868–69 (5th Cir. 2001); *See also Felch v. Transportes Lar-Mex SA DE CV*, 92 F.3d 320, 326 n. 16 (5th Cir. 1996). Under this standard, Martin’s conclusory allegation is insufficient. *Sealed Appellant 1 v. Sealed Appellee 1*, 625 Fed. Appx. 628, 631 (5th Cir. 2015) (“[W]e must determine whether the plaintiffs have established a *prima facie* case of personal jurisdiction through non-conclusory allegations supported by admissible evidence.”). It is Martin’s burden to establish a *prima facie* case for personal jurisdiction through his pleadings and evidentiary submissions. Martin’s sole assertion regarding Marina Dalia-Hunt’s minimum contacts with Texas is she made a phone call to Judge Richard Garcia of the 166th Judicial Court. *ECF No. 40 at 4*. Martin produced no evidentiary submissions in support of this conclusory allegation and therefore it is insufficient to establish Marina Dalia-Hunt’s minimum contacts with Texas.

Even if the Court found Marina Dalia-Hunt had minimum contacts with Texas, the Court would still decline to exercise personal jurisdiction over her because such jurisdiction would not comport with traditional notions of fair play and substantial justice. Traveling to and from Texas for trial would certainly be costly and burdensome, and it does not appear Marina Dalia-Hunt has previously taken on this burden in her role as an attorney with the Legal Aid Center of Southern Nevada, Inc. *ECF Nos. 8, 8-1, 8-2*. Thus, even if Marina Dalia-Hunt had minimum contacts with Texas, exercising personal jurisdiction over Marina Dalia-Hunt would offend traditional notions of fair play and justice and therefore, would not comport with due process requirements. Accordingly, the Court concludes Martin fails to make a *prima facie* showing of either of the LACSN Defendants’ minimum contacts with Texas pursuant to the first prong of the due process test.

To the extent Martin asserts in his Response, First Amended Complaint, and Original Complaint, the Court possesses jurisdiction over this matter under 42 U.S.C. § 1983, the Court

notes 42 U.S.C. § 1983 does not confer nationwide service of process or jurisdiction upon federal district courts. *Ray v. Collin Co. Sheriff's Off.*, No. 4:20-cv-856, 2022 WL 18674951 at *3 (E.D. Tex. Nov. 21, 2022); *See also DeMelo v. Toche Marine, Inc.*, 711 F.2d. 1260, 1269 (5th Cir. 1983). Martin misconstrues personal jurisdiction and subject matter jurisdiction. The Court notes for Martin, for a court to issue a binding judgment against a defendant, it must have both subject matter and personal jurisdiction over the defendant. *Pace v. Cirrus Design Corp.*, 93 F.4th 879, 894 (5th Cir. 2024). A district court has personal jurisdiction over a nonresident defendant if the forum's long-arm statute creates personal jurisdiction over the defendant and this exercise of personal jurisdiction comports with federal due process. *Id.*

In sum, because Martin has not set out any facts showing the LACSN Defendants have sufficient minimum contacts within the territorial jurisdiction of the Court for the Court to have personal jurisdiction over them, the LACSN Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) is granted. *ECF No. 8*. All causes of action against the LACSN Defendants are dismissed without prejudice. *Guidry v. U.S. Tobacco Co.*, 188 F.3d 619, 623 (5th Cir. 1999) (dismissal for lack of personal jurisdiction is not a judgment on the merits, and thus, is not a dismissal with prejudice).

III. The Judicial Defendants' Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6)

A. Official Capacity

The Judicial Defendants correctly assert any causes of action against them in their official capacities are barred by the Eleventh Amendment to the United States Constitution. *ECF No. 13 at 5–6*. “Texas judges are entitled to Eleventh Amendment immunity for claims asserted against them in their official capacity.” *Warnock v. Pecos Cnty., Tex.*, 88 F.3d 341, 343 (5th Cir. 1996). Judge Rosie Alvarado is the Presiding Judge of the 438th District Court of Bexar County, Texas.

ECF No. 13 at 5. Judge Christine Vasquez Hortick is the Presiding Judge of the 225th District Court of Bexar County, Texas. *Id.* Martin acknowledges Judge Alvarado and Judge Hortick serve as judges for the 438th and 225th District Courts in Bexar County, Texas, in his Response. *ECF No. 15 at 3.* Thus, all causes of action against the Judicial Defendants in their official capacities are dismissed without prejudice. *Du Bois v. Warne*, 336 F. App'x 407, 409 (5th Cir. 2009) (finding the district court properly dismissed all claims against a Texas district judge in his official capacity because of Eleventh Amendment immunity); *Voisin's Oyster House, Inc. v. Guidry*, 799 F.2d 183, 188–189 (5th Cir. 1986) (the proper remedy for actions barred by the Eleventh Amendment is dismissal of the case, without prejudice, for lack of subject matter jurisdiction).

B. Individual Capacity

The Judicial Defendants also correctly assert Martin's causes of action against them are barred because of the doctrine of judicial immunity. *ECF No. 13 at 6–7.* Judicial immunity is an immunity from suit, not just from ultimate assessment of damages. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). “[J]udicial immunity can be overcome in two sets of circumstances: (1) ‘a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity’; and (2) ‘a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.’” *Ballard v. Wall*, 413 F.3d 510, 515 (5th Cir. 2005) (citing *Mireles*, 502 U.S. at 11–12).

Here, Martin does not point to any facts showing the Judicial Defendants lacked jurisdiction or the Judicial Defendants acted outside of their juridical role. The only events Martin alleges give rise to his causes of action against the Judicial Defendants occurred during court hearings. *ECF No. 10 at 9–13.* Accordingly, any causes of action against the Judicial Defendants are

dismissed with prejudice under the doctrine of judicial immunity. *See Washington v. Bolin*, 492 F. App'x 470, 472 (5th Cir. 2012) (“Because [plaintiff] has alleged no facts that would support a finding that the judges he sued took any actions outside the court's jurisdiction or that their acts were nonjudicial, [plaintiff]'s claims against [the judges] were properly dismissed on grounds of absolute judicial immunity.”); *See also Ballard*, 413 F.3d at 517 (finding district court's grant of motion to dismiss in favor of state-court judge under Rule 12(b)(6) was proper).

IV. Leave to Amend

A Complaint should only be dismissed under Federal Rule 12(b)(6) after affording every opportunity for the plaintiff to state a claim upon which relief can be granted, unless it is clear amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Hitt v. City of Pasadena*, 561 F.2d 606, 608–09 (5th Cir. 1977); *DeLoach v. Woodley*, 405 F.2d 496, 496–97 (5th Cir. 1968). Consequently, when it appears a more careful or detailed drafting might overcome the deficiencies on which dismissal is sought, a Court must allow a plaintiff the opportunity to amend the Complaint. *Hitt*, 561 F.2d at 608–09. A court may appropriately dismiss an action with prejudice without giving an opportunity to amend if it finds that the plaintiff alleged his best case or amendment would be futile. *Foman*, 371 U.S. at 182; *DeLoach*, 405 F.2d at 496–97.

In the Judicial Defendants' Motion to Dismiss, they request the Court take judicial notice of another of Martin's cases dismissed by U.S. District Judge Orlando Garcia, *Martin v. Ochonma*, No. SA-23-cv-00079-OLG, 2023 WL 2366750 (W.D. Tex. Mar. 6, 2023), *R. & R. adopted*, No. SA-23-cv-79-OLG, 2023 WL 2656571 (W.D. Tex. Mar. 27, 2023). *ECF No. 13 at 2*. As explained to Martin in that case, “judges are not a proper party to [Martin's] lawsuit. Judges enjoy judicial immunity from suit as to those acts taken in their judicial capacity.” 2023 WL 2366750, at *2. Based upon these findings and conclusions, the Court will not provide Martin

an opportunity to amend his First Amended Complaint with regards to any causes of action against the Judicial Defendants in their individual capacities.

CONCLUSION

For the reasons stated, Defendants Marina Dalia-Hunt and Legal Aid Center of Southern Nevada, Inc.'s Motion to Dismiss, *ECF No. 8*, is **GRANTED**. Defendants Judge Rosie Alvarado and Judge Christine Vasquez Hortick's Motion to Dismiss, *ECF No. 13*, is also **GRANTED**.

Defendants Marina Dalia-Hunt and Legal Aid Center of Southern Nevada, Inc.'s Supplement to the Motion, *ECF No. 39*, filed as a Motion is **DENIED AS MOOT**.

The Clerk of Court is **DIRECTED** to terminate Marina Dalia-Hunt, Legal Aid Center of Southern Nevada, Inc., Judge Rosie Alvarado, and Judge Christine Vasquez Hortick as Defendants in this action.

To facilitate timely receipt of this Order, the Clerk of Court is further DIRECTED to email a copy of this Order to Martin at:

1) staceybmartin1970@gmail.com

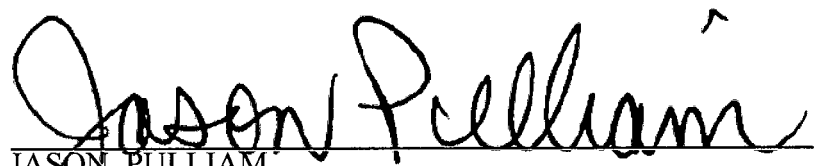
The Clerk of Court is further **DIRECTED** to add this email address to Martin's contact information on CM/ECF.

The Clerk of Court is further directed to mail, via certified mail with return receipt requested, a copy of this Order to:

1) Stacey Bernard Martin, 119 Dobbs, San Antonio, Texas 78237

It is so ORDERED.

SIGNED this 10th day of December, 2024.


JASON PULLIAM
UNITED STATES DISTRICT JUDGE

(See Docket Entries 8, 13, 19, and 39.) On December 3, 2024, and December 10, 2024, the District Court granted the those motions. (See Docket Entries 37 and 41.)

There are eight other Defendants who have not yet responded to the complaint:

1. The City of Las Vegas, Las Vegas City Hall (“Las Vegas”);
2. Attorney Cameron Brown of Ford Friedman Law Firm, Henderson, NV (“Attorney Brown”);
3. Attorney Christopher P. Ford of Ford Friedman Law Firm, Henderson, NV (“Attorney Ford”);
4. Attorney Tony T. Smith of Ford Friedman Law Firm, Henderson, NV (“Attorney Smith”);
5. Attorney Kimberley B. House (“Attorney House”);
6. Child Advocate Kassandra Levay of San Antonio, TX (“Advocate Levay”);
7. Tonja Michelle Ochonma (“Tonja Ochonma”); and
8. Charles Ochonma;

In a previous order, the undersigned ordered Plaintiff to file proof of service as to said Defendants. (See Docket Entry 24, at 4.) The undersigned required that proof of service be made by October 10, 2024, and admonished Plaintiff that failure to do so could result in dismissal for lack of service under Federal Rule of Civil Procedure 4(m). (*Id.*) The undersigned subsequently allowed Plaintiff additional time to effect service, until November 1, 2024. (See Docket Entry 34.) As shown below, however, the extended deadline has passed without adequate proof of service from Plaintiff.

II. Analysis.

Plaintiff is responsible for having the summons and complaint timely served upon each defendant. FED. R. CIV. P. 4(c)(1). Unless service is waived, proof of such service must be made to the Court. FED. R. CIV. P. 4(d)(1). As shown below, Plaintiff has made no attempt to serve one

Defendant—the City of Las Vegas—and his attempts to serve the other Defendants were improper. These failures require dismissal without prejudice under Rule 4(m).

A. *The City of Las Vegas.*

Although Plaintiff named the city of Las Vegas as a Defendant (*see* Docket Entry 10, at 2), Plaintiff not only failed to serve this Defendant—he failed to secure the issuance of a summons altogether. *See* FED. R. CIV. P. 4(b) (“[A]fter filing the complaint, the plaintiff may present a summons to the clerk [and], . . . [if] properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant.”). Plaintiff’s failure to secure issuance of a summons on this Defendant warrants dismissal for lack of service.

B. *The Other Unserved Defendants.*

As to these Defendants, Plaintiff has attempted to demonstrate proof of service, in two documents—a Proof of Service and Extension of Time for Named Defendants to Respond to Suit (Docket Entry 32)¹ and a Second Motion for Default Judgments (Docket Entry 35). Attached to these documents are multiple exhibits titled Proof of Service, which appear to be signed by someone who works for the Constable’s Office of Henderson Township, though the signature is illegible. (*See* Docket Entries 32, at 7–21.)

None of the attached documents demonstrate service on any of the Defendants. Most of the documents have copies of U.S. Postal Service Certified Mail Receipts attached in the top right hand corner. Mailing copies of the complaint by certified mail, without more, does not meet the requirements for any of the forms of service permitted by Rule 4(e). The Rule does not

¹ As explained in the undersigned’s previous order, Plaintiff cannot make an extension request on behalf of Defendants. (*See* Docket Entry 34.)

contemplate service by certified mail, and although it permits service in accordance with Texas law, Texas law allows for certified mail service only if a return receipt is requested. *See* FED. R. CIV. P. 4(e) (authorizing service on individual defendants via personal delivery; delivery upon a cohabitant of suitable age and discretion; or in a manner authorized by the law of the state where the district court sits); TEX. R. CIV. P. 106(a) (authorizing service on individual defendants via personal delivery or “registered or certified mail, return receipt requested”). Here, none of the receipts indicate that they were sent with a “Return Receipt” request. Nor have any signed return receipts been entered into the record by Plaintiff in a timely manner. Thus, Plaintiff’s proffered proofs of service do not demonstrate that effective service has been made.

C. Dismissal.

Service of process must be made within 90 days after the complaint is filed. FED. R. CIV. P. 4(m). “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” FED. R. CIV. P. 4(m). However, the Court must extend the time for service “if the plaintiff shows good cause for the failure.” *Id.*

In this case, Plaintiff’s original complaint was filed on June 11, 2024, and his first amended complaint was filed on July 29, 2024. (*See* Docket Entries 1 and 10.) As discussed above, there has been no showing made to the Court that the eight aforementioned Defendants in this case—*i.e.*, those who have not waived service by voluntarily moving for dismissal—were served within the time contemplated by Rule 4(m). The undersigned ordered Plaintiff to produce proof of service, and admonished Plaintiff as to the consequences of failing to do so. (Docket Entry 24.)

The undersigned also extended the time for service. (*See* Docket Entry 34). Despite these admonitions and opportunities, Plaintiff has not filed adequate proof of service; nor has he sought or made any showing of good cause that would support an additional extension of his time to do so. Given these circumstances, dismissal of these eight Defendants for lack of service is appropriate in this case. *See AIAAdvertising, Inc. v. Italeau, Inc.*, No. SA-23-CV-1227-JKP, 2024 WL 420163 (W.D. Tex. Feb. 5, 2024) (recommending dismissal under Rule 4(m) when Plaintiff did not respond to show cause order requiring proof of timely service); *see also Thrasher v. City of Amarillo*, 709 F.3d 509, 511–12 (5th Cir. 2013) (collecting cases under Rule 4(m)).

IV. Conclusion and Recommendation.

For the reasons set out above, I recommend **DISMISSAL WITHOUT PREJUDICE** of Plaintiff's claims against (1) Las Vegas; (2) Attorney Cameron Brown, (3) Attorney Christopher Ford; (4) Attorney Tony Smith; (5) Attorney Kimberley House; (6) Advocate Kassandra Levay; (7) Tonja Ochonma, and (8) Charles Ochonma.

V. Instruction for Service and Notice for Right to Object.

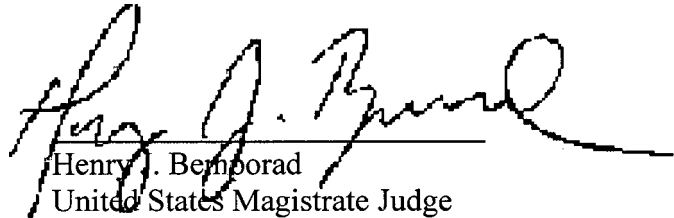
The United States District Clerk shall serve a copy of this Report and Recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the Clerk of Court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this Report and Recommendation must be filed within **14 days** after being served with a copy of the same, unless this time period is modified by the District Court. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

The parties shall file any objections with the Clerk of the Court and serve the objections on all other parties. An objecting party must specifically identify those findings, conclusions, or

recommendations to which objections are being made and the basis for such objections; “objections that are frivolous, conclusory, or general in nature needn’t be considered.” *Williams v. Lakeview Loan Serv. LLC*, 694 F. Supp. 3d 874, 881 (S.D. Tex. 2023) (citing *Battle v. United States Parole Comm’n*, 834 F.2d 419, 421 (5th Cir. 1987)).

A party’s failure to file written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation shall bar the party from a *de novo* review by the District Court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file timely written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to, proposed findings and conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED on December 12, 2024


Henry J. Benporad
United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

STACEY BERNARD MARTIN,

Plaintiff,

v.

Case No. 5:24-CV-00647-JKP

THE CITY OF LAS VEGAS, CITY HALL; JUDGE LINDA MARQUIS, DALIA MARINA-HUNT, LEGAL AID CENTER OF SOUTHERN NEVADA, INC.; LEGAL AID CENTER OF SOUTHERN NEVADA, INC., ATTORNEY CAMERON BROWN, FORD FRIEDMAN LAW FIRM; ATTORNEY CHRISTOPHER P. FORD, FORD FRIEDMAN LAW FIRM; ATTORNEY TONY T. SMITH, FORD FRIEDMAN LAW FIRM; KIMBERLY B. HOUSE; KASSANDRA LEVAY, CHILD ADVOCACY; TONJA MICHELLE OCHONMA, CHARLES OCHONMA, JUDGE CHRISTINA VASQUEZ HORTICK, JUDGE ROSIE ALVARADO,

Defendants.

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

Before the Court is United States Magistrate Judge Henry J. Bemporad's Report and Recommendation recommending dismissal without prejudice of Plaintiff Stacey Bernard Martin's ("Martin") causes of action as to Defendants (1) The City of Las Vegas, City Hall; (2) Attorney Cameron Brown, Ford Friedman Law Firm; (3) Attorney Christopher P. Ford, Ford Friedman Law Firm; (4) Attorney Tony T. Smith, Ford Friedman Law Firm; (5) Kimberly B. House; (6) Kassandra Levay, Child Advocacy; (7) Tonja Michelle Ochonma; and (8) Charles

Ochonma for failure to effect timely service. *ECF No. 45*. No party filed any objection to the Magistrate Judge's Report and Recommendation, and the time for doing so expired.

Any party who seeks review of all or a portion of a Magistrate Judge's Report and Recommendation must serve and file specific written objections within fourteen days after being served with a copy. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). If a party does not timely object to all or a portion of a Magistrate Judge's Report and Recommendation, the District Court will review the unobjected-to proposed findings and recommendations to determine whether they are clearly erroneous or contrary to law. *Johnson v. Sw. Research Inst.*, 210 F. Supp.3d 863, 864 (W.D. Tex. 2016) (citing *U.S. v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.) (per curiam), *cert. denied*, 492 U.S. 918 (1989)).¹

Consistent with § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2), the Court reviewed the subject Report and Recommendation entered by Magistrate Judge Henry J. Bemporad for clear error on the face of the record. This Court finds no such error as to Defendants (1) The City of Las Vegas, City Hall; (2) Attorney Cameron Brown, Ford Friedman Law Firm; (3) Attorney Christopher P. Ford, Ford Friedman Law Firm; (4) Attorney Tony T. Smith, Ford Friedman Law Firm; (5) Kimberly B. House; (6) Kassandra Levay, Child Advocacy; (7) Tonja Michelle Ochonma; and (8) Charles Ochonma.

The Court notes Martin attaches proof of service on Defendants Tonja Michelle Ochonma and Charles Ochonma ("the Ochonmas") to his Motion for Default Judgment, filed No-

¹ While Federal Rule 72(b) does not facially require any review in the absence of a specific objection, the advisory committee notes following its adoption in 1983 state: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Further, failure to object shall also bar appellate review of those portions of the Magistrate Judge's Report and Recommendation that were ultimately accepted by the district court, unless the party demonstrates plain error. *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *United States v. Wilson*, 864 F.2d at 1221.

vember 18, 2024. *ECF No. 35*. This, however, is beyond the extended deadline Judge Bemporad allowed Martin to provide proof of service. *See ECF Nos. 24, 34, 45*.

The Court further notes Martin asserts causes of action against the Ochonmas for violation of 42 U.S.C. § 1983 and 18 U.S.C. §§ 241, 242. “The Supreme Court has explained that ‘[t]o state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that *the alleged deprivation was committed by a person acting under color of state law.*’” *Gomez v. Galman*, 18 F.4th 769, 775 (5th Cir. 2021) (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988)). There are no allegations in Plaintiff’s First Amended Complaint of action taken under color of law by the Ochonmas. *See ECF No. 10*. In addition, U.S. Code Title 18, Sections 241 and 242 are criminal statutes that do not provide civil remedies. 18 U.S.C. §§ 241, 242; *see also Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 511 (2d Cir. 1994); *Hanna v. Home Ins. Co.*, 281 F.2d 298, 303 (5th Cir. 1960).

Accordingly, the Court ACCEPTS Magistrate Judge Henry J. Bemporad’s findings and recommendation as to Defendants (1) The City of Las Vegas, City Hall; (2) Attorney Cameron Brown, Ford Friedman Law Firm; (3) Attorney Christopher P. Ford, Ford Friedman Law Firm; (4) Attorney Tony T. Smith, Ford Friedman Law Firm; (5) Kimberly B. House; (6) Kassandra Levay, Child Advocacy; (7) Tonja Michelle Ochonma; and (8) Charles Ochonma. *ECF No. 45*.

As recommended, Martin’s causes of action as to Defendants (1) The City of Las Vegas, City Hall; (2) Attorney Cameron Brown, Ford Friedman Law Firm; (3) Attorney Christopher P. Ford, Ford Friedman Law Firm; (4) Attorney Tony T. Smith, Ford Friedman Law Firm; (5) Kimberly B. House; (6) Kassandra Levay, Child Advocacy; (7) Tonja Michelle Ochonma; and

(8) Charles Ochonma are **DISMISSED WITHOUT PREJUDICE** for failure to effect timely service.

All other motions pending in this action are **DISMISSED AS MOOT**.

As a result of this Order no defendants remain. However, because Martin filed a series of pending interlocutory appeals, (*ECF Nos. 56, 57*), the Court will not direct the Clerk of Court to terminate this action at this time.

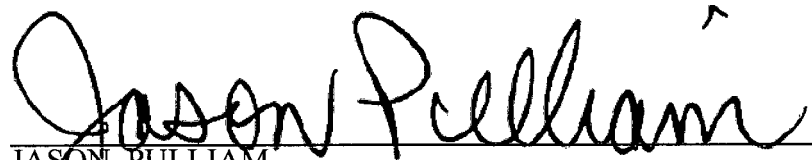
To facilitate timely receipt of this Order, the Clerk of Court is further **DIRECTED** to email a copy of this Order to Martin at:

1) staceybmartin1970@gmail.com

The Clerk of Court is further **DIRECTED** to mail, via certified mail with return receipt requested, a copy of this Order to:

1) Stacey Bernard Martin, 119 Dobbs, San Antonio, Texas 78237

It is so ORDERED.
SIGNED this 9th day of May, 2025.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE

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