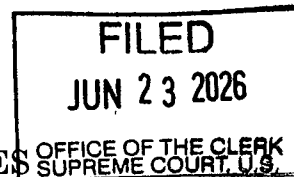


26-5015
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



MITCHELL CROCKER— PETITIONER
(Your Name)

VS.

CENTERPOINT ENERGY — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States District Court for the Southern District of Texas (Order granting IFP on appeal, Dkt. 60, July 31, 2025)

United States Court of Appeals for the Fifth Circuit (IFP status carried forward; no order denying)

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

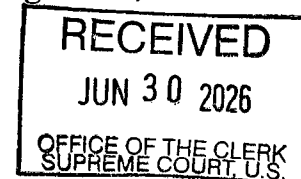
☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

Mitchell Crocker

(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Mitchell Crocker, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>1,000</u>	\$ <u>0</u>	\$ <u>300</u>	\$ <u>0</u>
Self-employment	\$ <u>150</u>	\$ <u>0</u>	\$ <u>100</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>60</u>	\$ <u>0</u>	\$ <u>272</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>1,210</u>	\$ <u>0</u>	\$ <u>672</u>	\$ <u>0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Houston Christian University	7502 Fondren Rd, Houston, TX 77074	08/2020 - Present	\$ 500
Alianza Security Prof.	660 Int. Pkwy, Ste 105, Richardson, TX	03/2026 - Present	\$ 400
Guard Tech Solutions	13903 Stonewood Ct, Rosharon, TX	10/2024 - Present	\$ 100

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
N/A			\$
N/A			\$

4. How much cash do you and your spouse have? \$ ⁶³ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	\$ 12.72	\$ 0
Savings	\$ 830.00	\$ 0
Savings	\$ 600	\$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home
Value \$ 372,042

☐ Other real estate
Value

☒ Motor Vehicle #1 2023 Kia Sportage
Year, make & model
Value \$ 31,197.14

☐ Motor Vehicle #2
Year, make & model
Value

☐ Other assets
Description
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ _____	\$ _____
N/A	\$ _____	\$ _____
N/A	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	_____	_____
N/A	_____	_____
N/A	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0	\$ 0
Are real estate taxes included? ☐ Yes ☐ No		
Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 250	\$ 0
Home maintenance (repairs and upkeep)	\$ 50	\$ 0
Food	\$ 200	\$ 0
Clothing	\$ 0	\$ 0
Laundry and dry-cleaning	\$ 0	\$ 0
Medical and dental expenses	\$ 50	\$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 200	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 100	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0	\$ 0
Installment payments		
Motor Vehicle	\$ 0	\$ 0
Credit card(s)	\$ 0	\$ 0
Department store(s)	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Alimony, maintenance, and support paid to others	\$ 0	\$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0
Total monthly expenses:	\$ 850	\$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am currently pending Bankruptcy Chapter 7 Case No. 25-35898 and SNAP approved. My vehicle was repossessed by Ally on January 8, 2026 during the bankruptcy stay. I have missed work and essential duties due to lack of transportation. I remain indigent and unable to pay filing fees

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

Executed on: June 22, 2026

Mitchell Crocker

(Signature)

ENTERED
July 31, 2025
Nathan Ochsner, Clerk

1. **Introduction**
 2. **Background**
 3. **Methodology**
 4. **Results**
 5. **Discussion**
 6. **Conclusion**
 7. **References**
 8. **Appendix**
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 217. **Figure 209**

ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE

CenterPoint ended, it defies logic that CenterPoint retaliated against Crocker for filing his EEOC charge.

Causation is a necessary element of a § 21.055 retaliation claim. "An employee must establish that absent [his] protected activity, the materially adverse employment action would not have occurred when it did." *Tex. Dep't of Crim. Just. v. Flores*, 555 S.W.3d 656, 668 (Tex. App.—El Paso 2018, no pet.). "In other words, a plaintiff must prove that [he] would not have suffered an adverse employment action 'but for' engaging in the protected activity." *Id.*

Although CenterPoint did not raise this causation argument in its motion for summary judgment, a "district court may enter summary judgment sua sponte if the parties are provided with reasonable notice and an opportunity to present argument opposing the judgment." *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 435 (5th Cir. 2000). "A party must be given at least ten days notice." *Id.* On June 9, 2025, I issued a written order providing Crocker notice that I was "inclined, based on the summary judgment record before me, to grant summary judgment in favor of CenterPoint on the § 21.055 retaliation claim for lack of causation." Dkt. 39 at 2. I gave Crocker until June 20, 2025, "to submit any argument and/or evidence explaining why summary judgment should not be entered against him on his § 21.055 retaliation claim for lack of causation." *Id.* On June 20, 2025, Crocker timely submitted a written response, outlining why he believes summary judgment should not be entered against him on the § 21.055 claim. *See* Dkt. 43.

Crocker argues it is irrelevant that he did not file a formal charge of discrimination until October 17, 2023, because he engaged in protected activity when he filed an inquiry with the EEOC on March 2, 2023, just 13 days before he was terminated. In the six-page EEOC inquiry submitted on March 2, 2023, Crocker identifies, among other things, basic information about himself and his employer, the reason for his claim, and the adverse actions allegedly taken against him. *See id.* at 20–24.

It would be unlawful for CenterPoint to retaliate against Crocker for filing an inquiry with the EEOC. See Tex. Lab. Code § 21.055 (prohibiting retaliation against an employee who “opposes a discriminatory practice,” “makes or files a charge,” “files a complaint,” or “testifies, assists, or participates in any manner in an investigation, proceeding, or hearing”). But Crocker cannot avoid summary judgment on his § 21.055 claim by merely pointing out that he submitted an EEOC inquiry on March 2, 2023, and that CenterPoint terminated him on March 15, 2023. He is required to present some evidence indicating that CenterPoint had actual knowledge of the EEOC inquiry. As the Fifth Circuit has explained:

To establish the causation prong of a retaliation claim, the employee should demonstrate that the employer knew about the employee’s protected activity. Generally, this requires some showing that the decisionmaker the individual who actually made the decision or caused the decision to be made—was aware of the activity. A decisionmaker’s awareness may be established by circumstantial evidence. . . .

. . . Demonstrating that a decisionmaker was aware of an employee’s protected activity certainly requires more evidence than mere curious timing coupled with speculative theories. . . . And if the plaintiff fails to produce any evidence that a decisionmaker was aware of the protected activity, judgment as a matter of law should be granted. See *Bain v. Ga. Gulf Corp.*, 462 [F. App’x] 431, 433–34 (5th Cir. 2012) (per curiam) (crediting the sole decisionmaker’s testimony that he had no knowledge of protected activity when the plaintiff did not present any evidence to the contrary); *Lopez v. Martinez*, 240 [F. App’x] 648, 650 (5th Cir. 2007) (per curiam) (noting that the plaintiff “presented no evidence establishing the superior’s knowledge”).

EEOC v. EmCure, Inc., 857 F.3d 678, 683–84 (5th Cir. 2017) (citation modified).³

Here, the summary judgment record contains no evidence that CenterPoint knew that Crocker had made an inquiry to the EEOC in March 2023. Crocker does not suggest that he informed CenterPoint of that inquiry, and there is no indication that CenterPoint learned of the inquiry from any other source. I have no reason to

³ Section 21.055 is interpreted in accordance with parallel provisions of Title VII. See *Alamo Heights Indep. Sch. Dist. v. Clark*, 541 S.W.3d 755, 818 (Tex. 2018).

believe CenterPoint received notice of the EEOC inquiry because, unlike the filing of an EEOC charge, for which the EEOC is required to serve notice on the employer within 10 days of filing, see 42 U.S.C. § 2000e-5(b), an EEOC inquiry is not automatically forwarded to the employer. The burden is on Crocker to create a genuine issue of material fact as to causation. He has not done so. Because Crocker has failed to produce evidence sufficient for a factfinder to conclude that CenterPoint was aware that Crocker had filed an EEOC inquiry prior to his termination, CenterPoint is entitled to summary judgment on the § 21.055 claim.

C. DEFAMATION CLAIM

To prevail on a defamation claim under Texas law, Crocker must demonstrate that CenterPoint (1) "published a false statement; (2) that defamed [Crocker]; (3) with the requisite degree of fault regarding the truth of the statement (negligence if the plaintiff is a private individual); and (4) damages." *Bedford v. Spassoff*, 520 S.W.3d 901, 904 (Tex. 2017). A plaintiff seeking to recover on a defamation claim must, at a bare minimum, "identify the alleged defamatory statement and the speaker." *Ameen v. Merck & Co.*, 226 F. App'x 363, 370 (5th Cir. 2007); see also *Moyer v. Jos. A. Bank Clothiers, Inc.*, No. 3:11-cv-3076, 2013 WL 4434901, at *6 (N.D. Tex. Aug. 19, 2013) (holding that a plaintiff asserting a defamation claim must identify "the time, place, content, speaker, and listener" of the defamatory statement); *Davis v. Prosperity Bank*, 383 S.W.3d 795, 804 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (affirming grant of summary judgment in favor of defendant where plaintiffs failed to identify "any specific statements they claim to be defamatory").

Crocker alleges a defamation claim in his live pleading, but he is unable to identify a single defamatory statement made by CenterPoint. This dooms his defamation claim. At his deposition, Crocker repeatedly stated that he did not know or could not recall CenterPoint making any false statement.

Q. Are you aware you've also brought a claim in this case for defamation against CenterPoint?

A. I can't recall.

Q. Do you know what that means? Defamation? What does that word mean to you, "defamation"?

A. I don't know.

Q. Do you believe that CenterPoint made false statements about you to anyone?

A. I can't recall. Don't know.

Q. Is there any—is there any statement that you can identify today as you sit here under oath to give your deposition testimony, that you believe CenterPoint made about you that is false?

A. I don't know.

Q. Can you identify any false statement that you believe CenterPoint made about you?

A. Right now, I can't recall.

...

Q. Is there any statement that you believe CenterPoint made against you that was false that caused you harm?

A. I don't know.

Dkt. 20-2 at 34.

In his summary judgment response, Crocker claims CenterPoint "disseminated false statements to the Texas Workforce Commission ([EXHIBIT 5]) and internal stakeholders ([EXHIBIT 6])," but he fails to identify any particular statement as the basis for his defamation claim. Dkt. 25 at 8. Exhibit 5 is part of an opinion from the Texas Workforce Commission; Exhibit 6 is an illegible copy of Crocker's responses to CenterPoint's requests for production. See Dkt. 25 at 25–41. Even if the documents did, hypothetically, contain defamatory statements, such statements are unquestionably privileged. See *James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982) ("Communications in the due course of a judicial proceeding will not serve as the basis of a civil action for libel or slander."); *Garry v. Yeager*, No. 3:21-cv-00813, 2022 WL 1750044, at *3 (N.D. Tex. May 11, 2022) ("[P]roceedings before the [Texas Workforce Commission] are considered quasi-judicial

proceedings, therefore any communications involved in these proceedings cannot be the basis for defamation claims." (quotation omitted)).

Because the summary judgment record is devoid of any evidence that CenterPoint made a defamatory statement, CenterPoint is entitled to summary judgment on Crocker's defamation claim.

MOTION TO AMEND

In response to CenterPoint's motion for summary judgment, Crocker contends that he is pursuing causes of action under a shopping list of state and federal statutes. These include: Title VII; the Whistleblower Protection Act (5 U.S.C. § 2302(b)(8)-(9)); 42 U.S.C. § 1981; Texas Labor Code §§ 21.051, 21.055, 21.1065, 21.202, 21.208, 21.259; and Texas Civil Practice and Remedies Code § 73.001. See Dkts. 25 at 5, 26 at 5, 32 at 5, 43 at 3.4 The problem is that all these claims—except for Texas Labor Code § 21.055—are nowhere to be found in Crocker's live pleading. A claim raised for the first time in response to a dispositive motion "is not properly before the court." *Jackson v. Gautreaux*, 3 F.4th 182, 188 (5th Cir. 2021) (quotation omitted) (collecting cases). But where, as here, a pro se plaintiff raises a new claim for the first time in response to a dispositive motion, a district court should construe the response as a motion to amend the lawsuit. See *Stover v. Hattiesburg Pub. Sch. Dist.*, 549 F.3d 985, 989 n.2 (5th Cir. 2008).

The Docket Control Order in this case set a September 6, 2024 deadline to amend pleadings. See Dkt. 17 at 1. Rule 16(b)(4) "governs amendment of pleadings after a scheduling order's deadline to amend has expired." *Marathon Fin. Ins., Inc. v. Ford Motor Co.*, 591 F.3d 458, 470 (5th Cir. 2009). That rule provides that a

⁴ Crocker filed a timely response to the summary judgment motion, see Dkt. 25, and then filed a second response five weeks later. See Dkt. 32. CenterPoint asks me to strike the second response as untimely. See Dkt. 35. Relatedly, Crocker recently sought leave to file a supplemental response/surreply, responding to CenterPoint's request to strike the second response. See Dkt. 36. Crocker then filed a proposed supplemental response on the court's docket. See Dkt. 37. To give Crocker, who is representing himself, every opportunity to set forth his position in opposition to summary judgment, I will not strike his second response. I will also grant his motion to file a supplemental response/surreply. See Dkt. 36.

scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "The good cause standard requires the party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension." *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 535 (5th Cir. 2003) (quotation omitted). To determine whether good cause exists, the Fifth Circuit requires district courts to consider four factors: "(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." *Marathon*, 591 F.3d at 470 (quotation omitted).

None of these factors support allowing Crocker to amend his pleadings at this late date. To start, Crocker offers no explanation why his proposed new claims could not have been brought before the expiration of the deadlines set forth in the Docket Control Order. Crocker's failure to offer any explanation is, standing alone, sufficient to deny amendment. See *Banks v. Spence*, 114 F.4th 369, 371 (5th Cir. 2024) (no need for a district court to engage in the remainder of the four factor analysis if the moving party fails to explain why he could not have amended the complaint before the court's deadline). The pleading deadline ended more than 10 months ago. All discovery was due by January 27, 2025. The dispositive motion deadline occurred on March 3, 2025. Throughout that entire period, Crocker was represented by counsel who could have sought to amend the live pleading but did not.⁵ This strongly militates against allowing Crocker to amend now. See *E.E.O.C. v. Serv. Temps Inc.*, 679 F.3d 323, 334 (5th Cir. 2012) (finding denial of leave to amend "squarely within [the district court's] sound discretion" where the defendant "had time to obtain discovery and seek leave to amend by the ... deadline").

⁵ On March 12, 2025, I signed an order allowing Crocker's former counsel to withdraw from the case. See Dkt. 24.

With respect to the second Rule 16(b)(4) factor, I cannot determine the importance of any amendment. Crocker merely identifies a list of claims he would like to assert in this litigation; I have no basis to discern whether those potential claims have merit or are futile. What I do know is that Crocker could have asserted the claims he now wishes to pursue through amendment from the outset of this litigation. See *S&W Enters.*, 315 F.3d at 536. This factor does not support amendment.

Under the third factor, I must assess whether allowing the late amendment will prejudice CenterPoint. "A defendant is prejudiced if an added claim would require the defendant to reopen discovery and prepare a defense for a claim different from the one that was before the court." *Smith v. EMC Corp.*, 393 F.3d 590, 596 (5th Cir. 2004) (citation modified). Likewise, an amendment that "would fundamentally alter the nature of the case" is considered prejudicial and may be denied. *Mojemux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 427 (5th Cir. 2004). Here, the prejudice is obvious and substantial. At this late date, it would be patently unfair to force CenterPoint to, in effect, start this litigation from scratch to address a plethora of new discrimination and retaliation claims.

The final factor asks whether a continuance would cure any prejudice to CenterPoint caused by the late amendment. "Although a continuance could mitigate the prejudicial effect of the proposed amendment, requiring [CenterPoint] to participate in discovery on the additional [claims for relief] would undoubtedly result in delay and additional cost." *Moreno v. Silvertip Completion Servs. Operating, LLC*, No. 7:19-cv-240, 2020 WL 6867056, at *3 (W.D. Tex. Nov. 13, 2020); see also *Harrison v. Aztec Well Servicing Co.*, No. 1:20-cv-038, 2021 WL 5280956, at *5 (N.D. Tex. Nov. 12, 2021) ("And even though a continuance would cure any evidentiary prejudice, a continuance could not cure the prejudice [CenterPoint] would suffer from needing to contest the [claims] on their merits."). Accordingly, the fourth factor weighs against permitting Crocker's amendment.

Having considered the Rule 16(h)(4) factors, I refuse to allow Crocker to add and pursue new claims this late in the litigation.

CONCLUSION

For the reasons explained above, I grant CenterPoint's motion for summary judgment (Dkt. 20) and deny Crocker's motion for clarification (Dkt. 26). I also deny Crocker leave to amend his lawsuit to add new causes of action that were not included in his state court petition. A final judgment will issue separately.

SIGNED this 9th day of July 2025.


ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE

B-2: Final Judgment of the U. S. District Court (July 9, 2025)

Case 4:24-cv-01051 Document 45 Filed on 07/09/25 in TXSD

Page 1 of 1

United States District Court
Southern District of Texas

ENTERED

July 09, 2025

Nathan Ochser, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MITCHELL CROCKER,

Plaintiff,

V.

CENTERPOINT ENERGY,

Defendant.

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CIVIL ACTION NO. 4:24-cv-01051

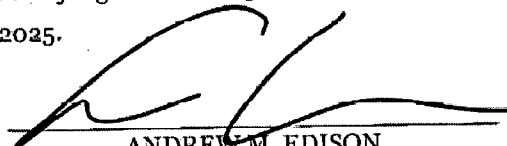
FINAL JUDGMENT

Pursuant to the Court's Opinion and Order entered today, judgment is entered in favor of Defendant CenterPoint Energy, and this matter is dismissed.

This is a final judgment.

The Clerk will provide copies of this judgment to the parties.

SIGNED this 9th day of July 2025.


ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE