

United States Court of Appeals  
for the Fifth Circuit

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No. 22-50583  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 19, 2024

Lyle W. Cayce  
Clerk

LARRY R. STEELE,

*Plaintiff—Appellant,*

*versus*

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

*Defendants—Appellees.*

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

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

PER CURIAM:\*

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

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

No. 22-50583

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

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

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

No. 22-50583

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

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

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

No. 22-50583

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

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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January 19, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

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

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

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

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

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

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

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

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink that reads "Melissa Mattingly". The signature is written in a cursive style and is contained within a rectangular box.

By: \_\_\_\_\_  
Melissa V. Mattingly, Deputy Clerk

Enclosure(s)

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

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

March 26, 2024

Lyle W. Cayce  
Clerk

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No. 22-50583

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LARRY R. STEELE,

*Plaintiff—Appellant,*

*versus*

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

*Defendants—Appellees.*

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

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ON PETITION FOR REHEARING

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

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

