United States District Court
Southern District of Texas
ENTERED
September 25, 2026
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARIUS JAMAR SMITH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:25-cv-5938**
	§	
CHANNELVIEW INDEPENDENT SCHOOL DISTRICT, AND RUBEN RODRIGUEZ	§	
	§	
Defendants.	§	

MEMORANDUM AND RECOMMENDATION

Pending before the Court[1] is Defendant Ruben Rodriguez's ("Rodriguez") Motion to Dismiss First Amended Complaint (ECF No. 8) and Defendant Channelview Independent School District's ("Channelview") Motion to Dismiss First Amended Complaint (ECF No. 9). Based on a review of the motions, arguments, and relevant law, the Court **RECOMMENDS** Rodriguez's motion to dismiss (ECF No. 8) be **GRANTED** and Channelview's motion to dismiss (ECF No. 9) be **GRANTED**.

I. Background

On December 9, 2025, Plaintiff Darius Jamar Smith ("Plaintiff") sued Defendants because they declined to hire him after he refused to disclose

[1] This case was referred to the Undersigned for all purposes pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Federal Rule of Civil Procedure 72. (ECF No. 31).

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details about his prior criminal charges that had been expunged. (ECF No. 1). On December 16, 2025, Plaintiff filed a First Amended Complaint as of right, naming as defendants Rodriguez in his individual and official capacities, and Channelview.[2] (ECF No. 5). In his brief Amended Complaint, Plaintiff alleges he applied for employment with Channelview, and during the process, he shared he had prior criminal charges that "had been dismissed and expunged by court order." (*Id.* at 2). Plaintiff also alleges Defendants demanded full disclosure of the records, although he informed them that "Texas law prohibits requesting or using expunged records." (*Id.*). As a result of Plaintiff's refusal to disclose his records, Plaintiff alleges Defendants declined to hire him, which caused him "economic harm, reputational damage, and emotional distress." (*Id.*). Plaintiff asserts claims under 42 U.S.C. § 1983 for due process and equal protection violations, a retaliation claim for asserting "expunction protections," and a claim for violating Texas's "Expunction Law." (*Id.* at 2–3). Plaintiff seeks compensatory damages, "[b]ack pay and front pay," emotional distress damages, punitive damages against Rodriguez, and attorney's fees. (*Id.* at 3).

On February 3, 2026, Rodriguez filed the instant motion to dismiss Plaintiff's Amended Complaint under Federal Rule of Civil Procedure ("Rule")

[2] In the original Complaint, Plaintiff identifies Rodriguez as "Executive Director of Human Resources" at Channelview. (ECF No. 1 at 1).

12(b)(1) for failure to exhaust administrative remedies, under Rule 12(b)(5) for insufficient service of process, and under Rule 12(b)(6) for failure to state a claim. (ECF No. 8). That same day, Channelview filed its own motion to dismiss, under the same rules. (ECF No. 9).

Plaintiff filed a response in opposition to both motions, contending that service is curable; clarifying that he does not assert a Title VII claim and therefore exhaustion is inapplicable; arguing he plausibly states 1983 claims for retaliation and constitutional violations; and alternatively requesting leave to amend. (ECF No. 11). Channelview filed a reply in support of its motion to dismiss (ECF No. 16), and Plaintiff moved for leave to file a sur-reply, which the Court granted (ECF Nos. 17, 18). At the Rule 16 conference, Defendants advised that they have accepted service. (ECF No. 34). Because exhaustion and service are not presently at issue, only the parties' Rule 12(b)(6) arguments remain.

II. Legal Standard

A. Motion to Dismiss under Rule 12(b)(6)

Rule 12(b)(6) provides for dismissal of an action for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). When considering a motion to dismiss, a court should construe the allegations in the complaint favorably to the pleader and accept as true all well-pleaded facts.

Sullivan v. Leor Energy, LLC, 600 F.3d 542, 546 (5th Cir. 2010). In the Fifth Circuit, motions to dismiss under Rule 12(b)(6) are viewed with disfavor and rarely granted. *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009). To survive dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

However, a court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of a plaintiff, a plaintiff must plead "specific facts, not mere conclusory allegations." *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994); *see also Firefighters' Ret. Sys. v. Grant Thornton, L.L.P.*, 894 F.3d 665, 669 (5th Cir. 2018) ("Although a complaint does not need detailed factual allegations, the allegations must be enough to raise a right to relief above the speculative level . . . .") (internal quotations omitted)). "'Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *Firefighters' Ret. Sys.*, 894 F.3d at 669 (quoting *Iqbal*, 556 U.S. at 678). "The court is not

required to conjure up unpled allegations or construe elaborately arcane scripts to save a complaint." *Santerre v. Agip Petroleum Co., Inc.*, 45 F. Supp. 2d 558, 568 (S.D. Tex. 1999) (internal quotations omitted).

To determine whether to grant a Rule 12(b)(6) motion, a court may only look to allegations in a complaint to determine their sufficiency. *Id.*; *Atwater Partners of Tex. LLC v. AT & T, Inc.*, No. 2:10-cv-175, 2011 WL 1004880, at *1 (E.D. Tex. Mar. 18, 2011). "A court may, however, also consider matters outside the four corners of a complaint if they are incorporated by reference, items subject to judicial notice, matters of public record, orders, items appearing in the record of a case, and exhibits attached to a complaint whose authenticity is unquestioned." *Joubert on Behalf of Joubert v. City of Houston*, No. 4:22-cv-3750, 2024 WL 1560015, at *2 (S.D. Tex. Apr. 10, 2024).

"A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotation marks omitted); *see also* FED. R. CIV. P. 8(e) ("Pleadings must be construed so as to do justice").

B. 42 U.S.C. § 1983

Section 1983 provides a claim against anyone who "under color of any statute, ordinance, regulation, custom, or usage, of any State" violates

another's constitutional rights. 42 U.S.C. § 1983. Importantly, § 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979). To prevail upon a Section 1983 claim, a plaintiff must establish two elements: (1) a constitutional violation; and (2) that the defendants were acting under color of state law when they committed the constitutional violation. *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013). "Although a private person may cause a deprivation of such a right, he may be subjected to liability under § 1983 only when he does so under color of law." *Flagg Bros. v. Brooks*, 436 U.S. 149, 156 (1978).

At the motion to dismiss stage, a plaintiff "still must plead facts that plausibly support each element of § 1983 municipal liability under" each of his theories. *Pena v. City of Rio Grande City*, 879 F.3d 613, 621 (5th Cir. 2018) (citing *Iqbal*, 556 U.S. at 678).

III. Discussion

At the outset, the Court notes that in Plaintiff's response to the motions to dismiss, he adds new allegations and claims concerning his lawsuit. For instance, he alleges that "[o]n July 25, 2025, CISD informed Plaintiff that his employment recommendation had been approved and that he was cleared to

proceed with 'next steps' in the hiring process," and "[i]mmediately after Plaintiff invoked his expunction protections, CISD terminated the hiring process on August 1, 2025." (ECF No. 11 at 1–2). He also claims his § 1983 claims are tied to the First Amendment and the "unconstitutional conditions doctrine." (*Id.* at 4–5). However, plaintiffs may not level new allegations or facts in responses to dismissal motions. *See SCHST, Inc. v. Arthur J. Gallagher & Co.*, No. 4:21-cv-02935, 2022 WL 4022054, at *9 (S.D. Tex. Aug. 23, 2022), *report and recommendation adopted sub nom. Schst, Inc. v. Certain Underwriters at Lloyd's, London*, No. 4:21-cv-02935, 2022 WL 4588589 (S.D. Tex. Sep. 28, 2022) (noting plaintiff could not remedy the complaint's deficiencies by "injecting unpleaded facts" when responding to defendant's motion to dismiss (citing *McDavid v. Hous. Indep. Sch. Dist.*, No. 21-cv-993, 2021 WL 4555241, at *4 (S.D. Tex. Oct. 5, 2021) (rejecting attempt to "use a response to a motion to dismiss as a backdoor to add allegations that [plaintiff] did not plead in her complaint"))). Moreover, to the extent his amended complaint and original complaint differ, "[a]n amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading." *Taylor v. Acad. Partnerships LLC*, No. 3:19-cv-1764, 2020 WL 5127791, at *1 (N.D. Tex. June 17, 2020) (citation omitted) (noting facts

alleged in the amended complaint were materially different than those previously alleged, so much so that the retaliation claim that the court previously found to be plausible had not been reasserted, and the amended complaint neither "specifically refer[ed] to" nor "adopt[ed] or incorporate[d] by reference" the initial complaint), *report and recommendation adopted*, No. 3:19-cv-1764, 2020 WL 5110370 (N.D. Tex. Aug. 29, 2020), *aff'd sub nom. Taylor v. Acad. Partnerships L.L.C.*, No. 20-11205, 2021 WL 3719351 (5th Cir. Aug. 20, 2021). With these principles in mind, the Court turns to the Defendants' motions to dismiss and the arguments therein.

A. Failure to State a Claim

1. Official Capacity Claims Against Rodriguez

Rodriguez first argues that any claims against him in his official capacity should be dismissed because such claims are duplicative of the claims asserted against his government employer—Channelview. (ECF No. 8 at 10–11). As the Supreme Court has explained:

> Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official-capacity suits, in contrast, generally represent only another way of pleading an action against an entity of which an officer is an agent. . . . [A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity. . . . [A] plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.

Kentucky v. Graham, 473 U.S. 159, 165–66 (1985) (citations omitted); *see also Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. . . . As such, it is no different from a suit against the State itself.") (citations omitted). Given the Eleventh Amendment bar to damages actions in federal court against state officials in their official capacity, then absent waiver by the state or valid congressional override, an official-capacity action for damages may not be maintained against an official in federal court. *Graham*, 473 U.S. at 169–70; *see also United States ex rel. Adrian v. Regents of Univ. of Cal.*, 363 F.3d 398, 403 (5th Cir. 2004) (noting the court correctly dismissed state agency employees because the False Claims Act does not provide a cause of action against state agency employees in their official capacity).

Here, Rodriguez is an employee of Channelview, and Plaintiff alleges that Rodriguez acted in his official capacity and within the scope of his employment. (ECF Nos. 5, 11). Defendants therefore argue the official capacity claims against Rodriguez should be dismissed "because the claims are redundant and of no independent legal significance as they are the same as the claims asserted against the [school district]." (ECF No. 8 at 11). The Court agrees. "The established course in these circumstances is to dismiss the claims

against the individual sued in his or her official capacity." *Silguero v. Rio Hondo Indep. Sch.*, No. 1:18-cv-00128, 2019 WL 13261515, at *5 (S.D. Tex. Jan. 2, 2019) (dismissing as redundant § 1983 claims against school security guard in his official capacity, where the plaintiff sued the school and security guard and alleged the guard acted in his official capacity and within the scope of his employment); *Abdeljalil v. City of Fort Worth*, No. 4:98-cv-342, 1998 WL 1967119, at *2 (N.D. Tex. Dec. 22, 1998) ("Because the City of Fort Worth is a defendant in this action, plaintiffs' official-capacity claims against Walker are redundant and will be dismissed."). The Court therefore recommends that Plaintiff's claims against Rodriguez in his official capacity should be dismissed.

2. Section 1983 Claim for Due Process Violation

Defendants argue that Plaintiff fails to state a claim under the Fourteenth Amendment's Due Process Clause because he fails to plead allegations supporting a procedural or substantive due process claim. (ECF No. 8 at 12–13; ECF No. 9 at 10–13).

"To state a Fourteenth Amendment due process claim under § 1983, 'a plaintiff must first identify a protected life, liberty or property interest and then prove that governmental action resulted in a deprivation of that interest.'" *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (quoting *Baldwin v. Daniels*, 250 F.3d 943, 946 (5th Cir. 2001)). "[T]he threshold requirement of

any due process claim is the government's deprivation of a plaintiff's liberty or property interest. Without such an interest, no right to due process accrues." *Davis v. Dall. Indep. Sch. Dist.*, 448 F. App'x 485, 494 (5th Cir. 2011).

Here, Plaintiff has not identified a cognizable liberty or property interest. In his Amended Complaint, he merely states "Defendants deprived Plaintiff of liberty and property interests without due process." (ECF No. 5 at 2). In his response to the motion to dismiss, Plaintiff contends that the "Fourteenth Amendment protects individuals from arbitrary governmental barriers to pursuing their occupation" and that he stated "a plausible deprivation of a liberty interest in pursuing public employment free from unconstitutional conditions." (ECF No. 11 at 6). Plaintiff's allegations, however, amount to asserting a liberty interest to be considered for a specific job opportunity, but the Fourteenth Amendment does not encompass such an expansive interest. *See Edelstein v. City of Brownsville*, No. 1:19-cv-00042, 2019 WL 13041329, at *4 (S.D. Tex. Nov. 13, 2019), *aff'd*, No. 20-40211, 2021 WL 4096581 (5th Cir. Sep. 8, 2021) ("Plaintiffs' allegations amount to asserting a liberty interest to be considered for a specific job opportunity. The Fourteenth Amendment does not encompass such an expansive liberty interest."); *see generally Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999) ("[T]he liberty component of the Fourteenth Amendment's Due Process Clause

includes some generalized due process right to choose one's field of private employment, but a right which is nevertheless subject to reasonable government regulation."). The Court therefore recommends dismissing Plaintiff's § 1983 claims based on due process violations.

3. Section 1983 Claim for Equal Protection Violation

Plaintiff's sole allegation to support his equal protection claim is that "[he] was treated differently than similarly situated applicants." (ECF No. 5 at 2). Defendants argue his claim fails because he "merely asserts a conclusory statement that is devoid of any factual allegations reflecting how [Defendants] treated other applicants during the hiring process or otherwise treated Plaintiff differently from a similarly situated individual." (ECF No. 8 at 14; ECF No. 9 at 12).

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). "To establish a violation of the Equal Protection Clause in the employment context, a plaintiff must prove a discriminatory purpose or motive." *Normore v. Dall. Indep. Sch. Dist.*, 677 F. Supp. 3d 494, 524–25 (N.D. Tex. 2023). To properly raise such a claim, the plaintiff must

"allege facts which, if proved, demonstrate that '[he] received treatment different from that received by similarly-situated individuals and that the unequal treatment stemmed from discriminatory intent.'" *Gill v. Devlin*, 867 F. Supp. 2d 849, 855–56 (N.D. Tex. 2012) (citation omitted). "Discriminatory purpose in an equal protection context implies that the decisionmaker selected a particular course of action at least in part because of, and not simply in spite of, the adverse impact it would have on an identifiable group." *Woods v. Edwards*, 51 F.3d 577, 580 (5th Cir. 1995) (citation omitted).

In his Amended Complaint, Plaintiff does not allege a discriminatory purpose or motive on part of Defendants, nor how Defendants treated Plaintiff differently than similarly situated individuals. Plaintiff also does not address his equal protection claim in his response to the motions to dismiss. "When a plaintiff fails to defend a claim in response to a motion to dismiss or summary judgment motion, the claim is deemed abandoned." *Normore*, 677 F. Supp. 3d at 525; *see also Black v. N. Panola Sch. Dist.*, 461 F.3d 584, 588 n.1 (5th Cir. 2006) (concluding that the plaintiff abandoned her retaliatory abandonment claim when she failed to defend the claim in response to a motion to dismiss). The Court therefore recommends dismissing Plaintiff's § 1983 claims based on equal protection violations.

4. Retaliation Claim

In his Amended Complaint, Plaintiff raises a retaliation claim because "Defendants retaliated against Plaintiff for asserting expunction protections." (ECF No. 5 at 2). In his response to the motion to dismiss, Plaintiff cites the First Amendment and adds that "[i]nvoking legal rights and refusing to waive statutory protections constitutes protected conduct" and that "[t]ermination of an approved hiring process qualifies as adverse action." (ECF No. 11 at 4).

To assert a claim for retaliation under Section 1983, a plaintiff must show: "(1) he or she was engaged in constitutionally protected activity, (2) the defendants' actions caused plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendants' adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct." *Alamo Forensic Servs., LLC v. Bexar Cnty.*, 861 F. App'x 564, 570 (5th Cir. 2021). 'To make a claim for constitutional or statutory retaliation, a plaintiff must show, among other things, that she suffered an 'adverse action.'" *Martin v. Local 556, Transp. Workers Union*, 708 F. App'x 171, 175 (5th Cir. 2017).

Plaintiff's claim fails for two reasons. First, the right that Plaintiff alleges was the basis for Defendants' retaliation does not arise under the U.S. Constitution or a federal statute; but rather Texas law on expunged records.

Indeed, Plaintiff clarified that his claim is not brought under Title VII. (ECF No. 11 at 3). Second, even if the Court were to liberally construe and consider Plaintiff's claim under the First Amendment, it would still fail because he does not allege he engaged in speech that involved a matter of public concern. To establish a First Amendment retaliation claim, a plaintiff "must establish that: (1) [he] suffered an adverse employment action; (2) [his] speech involved a matter of public concern; (3) [his] interest in commenting on matters of public concern outweighs the employer's interest in promoting efficiency; and (4) [his] speech motivated the employer's adverse action." *Thomas v. Woods*, No. 3:25-cv-00209, 2026 WL 759658, at *11 (S.D. Tex. Mar. 18, 2026), *report and recommendation adopted*, No. 3:25-cv-209, 2026 WL 928655 (S.D. Tex. Apr. 6, 2026). Because Plaintiff's complaint was made "in furtherance of a private employment dispute," it is not speech that is protected by the First Amendment. *Id.* at *12 ("There is nothing about the Charge that implicates a public concern. Thomas did not file her Charge as a "crusader[ ] for public justice" but rather as an individual employee "seeking employment benefits to which [she] believed [she] w[as] entitled."); *see also Norman v. Beaumont Indep. Sch. Dist.*, No. 25-40215, 2026 WL 1180537, at *3 (5th Cir. Apr. 30, 2026) ("The First Amendment guards a public employee's right 'in certain circumstances, to speak as a citizen addressing matters of public concern.

Speech involves a matter of public concern if it can be 'fairly considered as relating to any matter of political, social, or other concern to the community.'"). For these reasons, the Court therefore recommends dismissing Plaintiff's retaliation claims.[3]

5. Claim for Violating Texas Law Regarding Expungements

Plaintiff raises a claim for "violation of Texas Expunction Law" because Defendants demanded disclosure of Plaintiff's expunged records during their hiring process. (ECF No. 5 at 2–3). In his original complaint, Plaintiff cited this law as Texas Code of Criminal Procedure § 55.03. (ECF No. 1 at 2). That law, which was in effect until 2025, provides that, when the order of expunction is final:

> (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
> (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
> (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

[3] Rodriguez additionally argues that he is entitled to qualified immunity in his individual capacity (ECF No. 7 at 11), and Channelview additionally argues it cannot be held municipally liable under *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978) (ECF No. 9 at 12–13). Because the Court concludes Plaintiff fails to establish an underlying constitutional violation, it does not reach these arguments.

TEX. CODE CRIM. PROC. ANN. ART. 55.03 (2025).[4] Its adjacent section, article 55.04, provides that "[a] person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files." TEX. CODE CRIM. PROC. ANN. ART. 55.04 (2025).[5] However, these articles fall under the purview of state law, "not a federal law, and it does not secure any right or privilege under the Constitution or federal law. Indeed, there is no constitutional or federal right to expunction." *Khnanisho v. Rivera*, No. 2:22-cv-00233, 2023 WL 3922652, at *7 (S.D. Tex. Apr. 6, 2023), *report and recommendation adopted in part, rejected in part*, No. 2:22-cv-00233, 2023 WL 3534377 (S.D. Tex. May 18, 2023) (citing *Sealed Appellant v. Sealed Appellee*, 130 F.3d 695, 697 (5th Cir. 1997) ("There is no constitutional basis for a 'right to expungement.'"); *Duke v. White*, 616 F.2d 955, 956 (6th Cir. 1980) ("The right to expungement of state records is not a federal constitutional right.")). As such, Plaintiff fails to state a § 1983 claim upon which relief may be granted, because he fails to allege that he had a

[4] Repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), eff. Jan. 1, 2025.
[5] *See supra* note 4.

constitutional or federal right in connection with the expungement of his arrest record.

Additionally, a violation of the statute does not create a private cause of action. Another court in this district addressed a claim surrounding the same statute and explained as follows:

> Plaintiff's claim should also be dismissed under Rule 12(b)(6) for failure to state a claim because he bases his allegations on the violation of a Texas criminal statute. Article 55.04 makes it a misdemeanor offense to knowingly release, disseminate, or otherwise use expunged records. That statute, however, does not create a private right of action. "Under Texas law, the fact that a criminal statute is enacted does not necessarily mean that courts may recognize a civil cause of action predicated upon that statute." A state criminal statute does not, without clear indication of such intent, give rise to a private cause of action. Here, there is no indication of any sort that a violation of article 55.04 is intended to create a private cause of action. Plaintiff does not reference or identify any other state or federal law as a basis for his claim.

Khnanisho, 2023 WL 3922652, at *8 (citation modified).[6] Indeed, Plaintiff seemingly acknowledges that he does not have a standalone cause of action for his claim premised on a violation of Texas's expunction law. (*See* ECF No. 11 at 6 ("To the extent the Court finds no standalone private right of action under Texas expunction statutes . . . Plaintiff does not rely solely on a state statutory

[6] In this case, the magistrate judge's recommendation was rejected in part as to concluding that the claim lacked subject matter jurisdiction but adopted in part as to concluding Plaintiff failed to state a claim. *See Khnanisho v. Rivera*, No. 2:22-cv-00233, 2023 WL 3534377, at *1–2 (S.D. Tex. May 18, 2023).

cause of action.")). The Court therefore recommends dismissing Plaintiff's claim based on a violation of Texas's expungement law.

B. Supplemental Jurisdiction

Supplemental jurisdiction can exist only when there is a federal claim over which the district court possesses jurisdiction. *See* 28 U.S.C. § 1367(a) (supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution"). If Plaintiff's underlying § 1983 claims are dismissed, then the Court should decline to exercise supplemental jurisdiction over any claim under state law. "The general rule in this circuit is that state law claims should be dismissed when the federal claims to which they are pendent are dismissed." *Khnanisho*, 2023 WL 3922652, at *12 (citations omitted); *see id.* (recommending that the district court not exercise supplemental jurisdiction and "dismiss Plaintiff's state law claim alleging a violation of Texas Code of Criminal Procedure article 55.04, without prejudice to his raising that claim in a state court.").

C. Leave to Amend

As discussed, Plaintiff's claims are subject to dismissal under Rule 12(b)(6) because he has not stated any viable § 1983 claims against any of the Defendants. Plaintiff is proceeding *pro se*, and ordinarily "a *pro se* litigant

should be offered an opportunity to amend his complaint before it is dismissed." *Wiggins v. La. State Univ. – Health Care Servs. Div.*, 710 F. App'x 625, 627 (5th Cir. 2016). But leave to amend is not required where amendment would be futile—that is, where an amended complaint would still fail to survive a Rule 12(b)(6) motion. *See Stem v. Gomez*, 813 F.3d 205, 215–16 (5th Cir. 2016).

> Here, any attempt to amend the complaint would be futile.
>
> Plaintiff alleges that the defendants violated the expunction order, contrary to Texas state law. It is the violation of that expunction order that Plaintiff contends amounted to a violation of his rights and resulted in his claimed damages. But an expunction order is a creature of Texas state law, not federal law, and its violation (if that occurred) does not amount to a deprivation of Plaintiff's constitutional or federal rights as is required by § 1983. No amendment to add more facts or details could rescue this claim – any amendment would itself fall victim to dismissal under Rule 12(b)(6), if it survived jurisdictional scrutiny, because Plaintiff's claim simply is not cognizable under § 1983.

Khnanisho, 2023 WL 3922652, at *11.

All that said, however, this memorandum and recommendation allows Plaintiff 14 days in which to "explain how he would cure the deficiencies" identified above and thus demonstrate to the Court why his case should not be dismissed with prejudice and that the Court should instead grant Plaintiff leave to amend his claims. *See Scott v. U.S. Bank Nat's Ass'n*, 16 F.4th 1204, 1209 (5th Cir. 2021), *as revised* (Nov. 26, 2021) ("A court should freely give leave to amend when justice so requires, . . . but a movant must give the court

at least some notice of what his or her amendments would be and how those amendments would cure the initial complaint's defects. . . . If the plaintiff does not provide a copy of the amended complaint nor explain how the defects could be cured, a district court may deny leave.").

IV. Conclusion

Based on the foregoing, the Court **RECOMMENDS** Rodriguez's motion to dismiss (ECF No. 8) be **GRANTED** and Channelview's motion to dismiss (ECF No. 9) be **GRANTED**. The Court further **RECOMMENDS** the Section 1983 claims for due process violations, equal protection violations, retaliation, and expungement law violations be **DIMISSED WITH PREJUDICE**, and any state law claim alleging a violation of Texas Code of Criminal Procedure be **DISMISSED WITHOUT PREJUDICE** to his raising that claim in a state court.[7]

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time

[7] *See Lucky Tunes #3, L.L.C. v. Smith*, 812 F. App'x 176, 184 (5th Cir. 2020) ("The final state law claims, however, should have been dismissed without prejudice. We hold that the district court did not abuse its discretion by declining to exercise supplemental jurisdiction over the remainder of the declaratory-judgment claims and the Texas conversion claim, which involve distinct questions of state law. Such dismissals, of course, are without prejudice.").

period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

SIGNED in Houston, Texas on September 25, 2026.



Richard W. Bennett
United States Magistrate Judge