United States District Court
Southern District of Texas
**ENTERED**
November 10, 2026
Nathan Ochsner, Clerk

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

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|---|---|---|
| Darius Jamar Smith, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Civil No. 4:25-cv-5938 |
| | § | |
| Channelview Independent School District, *et al.*, | § | |
| | § | |
| Defendants. | § | |

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Before the Court is a Report and Recommendation by Magistrate Judge Richard W. Bennett, recommending that this case be dismissed with prejudice as to Plaintiff's claims under 42 U.S.C. § 1983 for failure to state a claim, and that Plaintiff's accompanying state law claim be dismissed without prejudice as to being raised in state court. Doc. 40 at 21.

Parties may object to any portion of a Magistrate Judge's report and recommendation. 28 U.S.C. § 636(b)(1)(C). The district court may accept any part of the report and recommendation to which there is no objection if there is no clear error on the face of the record. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc)). When a party objects to a report and recommendation, the district court reviews the objected-to portions *de novo*. See Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(C); *see also United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam).

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When there have been no timely objections to a report, or the objections are improper, "the court need only satisfy itself that there is no clear error on the face of the record." Fed. R. Civ. P. 72(b), advisory committee's notes to 1983 amendment.

Objections were due on October 9, 2026. *See* Doc. 40. Defendants filed no objections. Plaintiff filed a Motion for Leave to File Objections Out of Time, Doc. 41, on November 9, 2026. Plaintiff claims that he "does not recall receiving or reviewing ECF No. 40" before November 5. *Id.* at 1. Plaintiff's sleeping on his rights does not provide the Court with good cause to grant his Motion, and thus it is DENIED.

No clear error otherwise appears upon review and consideration of the report, the record, and the applicable law. As such, the Report and Recommendation of Magistrate Judge Bennett is adopted as the Memorandum and Order of this Court.

Defendant's Motions to Dismiss, Docs. 8 and 9, are GRANTED. Plaintiff's Complaint, Doc. 5, is DISMISSED WITH PREJUDICE as to all federal claims and DISMISSED WITHOUT PREJUDICE to refiling in state court as to the Texas Code of Criminal Procedure claim.

A Final Judgment will be entered separately.

**SO ORDERED.**

**SIGNED** at Houston, Texas, on the 10th of November, 2026.

Nicholas J. Ganjei
United States District Judge