

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Frank E. Polo, Sr. v. Juan Fernandez-Barquin, et al.

No. 25-cv-26058-DPG (S.D. Fla. Mar. 4, 2026) (report and recommendation) · No. 25-cv-26058-DPG · Decided
March 6, 2026

SUMMARY

The document is an order denying Frank E. Polo Sr.’s motion to proceed in forma pauperis and a report and recommendation that his amended complaint be dismissed. The court concludes that Polo had already paid the filing fee, that the amended complaint is an improper shotgun pleading, and that the asserted federal claims—including claims under 42 U.S.C. §§ 1983 and 1985(2)—fail for pleading and immunity-related reasons. The excerpt also describes state-law claims involving an educational institution, a judicial officer, and alleged interference and conspiracy.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Lisette M. Reid
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	March 6, 2026
DOCKET	25-cv-26058-DPG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed an amended complaint asserting three federal claims and three state-law claims. After paying the filing fee, he moved to proceed in forma pauperis for purposes of obtaining service by the United States Marshal. The magistrate judge denied the IFP motion and recommended dismissal of the complaint.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e)(2), the court must dismiss an action brought by a litigant proceeding in forma pauperis if it is frivolous or fails to state a claim. The pleading must satisfy Rules 8(a) and 10(b) and state a facially plausible claim under <i>Ashcroft v. Iqbal</i> and <i>Bell Atlantic Corp. v. Twombly</i> . Pro se pleadings are construed liberally, but the court may not act as de facto counsel or rewrite a deficient pleading.
PRECEDENTIAL VALUE	unpublished report and recommendation; nonprecedential

PARTIES

Frank E. Polo, Sr. v. Juan Fernandez-Barquin, Scott M. Bernstein, St. Thomas University, Inc., Merlin Hernandez, Randolph Martinez, Manuel A. Segarra, III

TOPICS

civil procedure pleadings section 1983 civil rights due process

PRACTICE AREAS

civil procedure civil rights constitutional law federal courts pleading

QUESTIONS PRESENTED

1. Whether Plaintiff could proceed in forma pauperis after already paying the filing fee.
2. Whether the amended complaint was an impermissible shotgun pleading under Federal Rules of Civil Procedure 8(a)(2) and 10(b).
3. Whether the § 1983 claim against the county clerk was barred by absolute quasi-judicial immunity.
4. Whether the two § 1985(2) claims adequately alleged a conspiracy, retaliation connected to participation in a federal proceeding, an act in furtherance of the conspiracy, and cognizable injury.
5. Whether the court should exercise supplemental jurisdiction over the state-law claims after recommending dismissal of all federal claims.

HOLDINGS

1. The IFP motion was properly denied because Plaintiff had already paid the filing fee and did not establish an inability to pay the fees.
2. The amended complaint was deficient as a shotgun pleading because it contained conclusory, vague, and immaterial allegations and failed to clearly connect claims, facts, and defendants.
3. The § 1983 claim against the county clerk was barred by absolute quasi-judicial immunity because the alleged filing rejections were performed pursuant to a court order.
4. The § 1985(2) claims failed because Plaintiff did not adequately allege a conspiracy, an act in furtherance of the conspiracy, retaliation tied to attendance or testimony in federal court, a qualifying constitutional basis, or injury consisting of impairment of an actual federal proceeding.
5. The state-law claims should be dismissed without prejudice because the federal claims were subject to dismissal and Plaintiff alleged no independent basis for federal jurisdiction.

KEY QUOTATIONS

“Section 1985(2) prohibits conspiracies to intimidate parties or witnesses to federal lawsuits.” (at 12-13)

“a claimant must show that the conspiracy hampered the claimant’s ability to present an effective case in federal court.” (at 15-16)

“as long as an attorney’s conduct falls within the scope of representation of his client, such conduct is immune from an allegation of a § 1985 conspiracy.” (at 17)

FACTUAL BACKGROUND

Plaintiff's claims arose primarily from a Florida family-law action in which his filing rights were restricted and a judgment was entered against him. He alleged that a county clerk rejected filings subject to the restriction, that family-law participants retaliated against him after a prior federal action, and that a judgment was recorded against his property. He also alleged that communications by a state judge led to his suspension and expulsion from St. Thomas University and supported state-law claims for breach of implied agreement, tortious interference, and civil conspiracy.

PROCEDURAL HISTORY

Plaintiff commenced the action on December 22, 2025, and later filed an amended complaint adding defendants and claims. The matter was referred to Magistrate Judge Lisette M. Reid by District Judge Darrin P. Gayles. The recommendation denied the IFP motion because Plaintiff had already paid the filing fee, recommended dismissal with prejudice of the § 1983 claim, recommended dismissal without prejudice of the two § 1985(2) claims, and recommended dismissal without prejudice of the state-law claims for lack of supplemental jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Fletcher v. President of Albert Einstein Medical Center, No. 15-24355-CIV, 2016 WL 11547296, at *1 (S.D. Fla. Feb. 10, 2016)
- Boyington v. Geo Group, Inc., No. 2:09-cv-570-FtM-29SPC, 2009 WL 3157642, at *1 (M.D. Fla. 2009)
- Troville v. Venz, 303 F.3d 1256, 1260 (11th Cir. 2002)
- Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002)
- Denton v. Hernandez, 504 U.S. 25, 32-33 (1992)
- Emrit v. Saint Thomas University School of Law, No. 22-CV-20835, 2022 WL 874089, at *2 (S.D. Fla. Mar. 24, 2022)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007)
- Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1168 (11th Cir. 2014)
- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- Martinez v. Kristi Kleaners, Inc., 364 F.3d 1305, 1306 n.1, 1307 (11th Cir. 2004)
- Sumrall v. Georgia Department of Corrections, No. 1:23-CV-5395-VMC-CMS, 2024 WL 6473641, at *2 (N.D. Ga. July 3, 2024)
- Chau v. United States, No. CV 306-51, 2006 WL 2443351, at *1 (S.D. Ga. Aug. 18, 2006)

- *Edilberto v. United States*, No. CV 306-49, 2006 WL 2474101, at *1 (S.D. Ga. Aug. 24, 2006)
- *Thomas v. Governor's Office*, No. 7:22-CV-00112 (WLS), 2023 WL 12239340, at *1 (M.D. Ga. Aug. 21, 2023)
- *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1320, 1322-23 (11th Cir. 2015)
- *Anderson v. District Board of Trustees*, 77 F.3d 364, 366 (11th Cir. 1996)
- *Real Estate Mortgage Network, Inc. v. Cadrecha*, No. 11-cv-474, 2011 WL 2881928, at *2 (M.D. Fla. July 19, 2011)
- *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991)
- *Barmapov v. Amuial*, 986 F.3d 1321, 1326 (11th Cir. 2021)
- *Daniels v. Gerald*, 578 F. App'x 811, 811 (11th Cir. 2014)
- *Johnson v. Bank of New York Mellon Trust Co.*, No. 1:10-CV-00249-SPM-GR, 2011 WL 678635, at *5 (N.D. Fla. Feb. 3, 2011)
- *Hyland v. Kolhage*, 267 F. App'x 836, 2008 WL 495927 (11th Cir. Feb. 26, 2008)
- *Jenkins v. Clerk of Court, U.S. District Court, Southern District of Florida*, 150 F. App'x 988, 990 (11th Cir. 2005)
- *Fuller v. Truncal*, 50 So. 3d 25 (Fla. 1st DCA 2010)
- *Fischer v. Rivera*, No. 0:19-CV-62499, 2022 WL 21778320, at *2 (S.D. Fla. Jan. 28, 2022)
- *Chance v. Cook*, No. 4:19CV335-MW/CAS, 2019 WL 13219834, at *3 (N.D. Fla. Nov. 15, 2019)
- *Odum v. Rayonier, Inc.*, No. CIV.A. CV204-190, 2005 WL 3440817, at *4 (S.D. Ga. Dec. 14, 2005)
- *Grappell v. Carvalho*, 847 F. App'x 698, 702 (11th Cir. 2021)
- *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984)
- *Mickens v. Tenth Judicial Circuit*, 181 F. App'x 865, 876 (11th Cir. 2006)
- *Kearson v. Southern Bell Telephone & Telegraph Co.*, 763 F.2d 405, 407 (11th Cir. 1985)
- *Oldaker v. Giles*, 724 F. Supp. 3d 1315, 1347-50 (M.D. Ga. 2024)
- *Armstrong v. Friduss*, 138 F. App'x 189, 194 (11th Cir. 2005)
- *Vignoli v. Clifton Apartments, Inc.*, 930 F. Supp. 2d 1342, 1345 (S.D. Fla. 2013)
- *Ling v. Secretary of Florida Department of Children & Families*, No. 4:24-CV-508-RH/MJF, 2025 WL 1198810, at *3 (N.D. Fla. Mar. 7, 2025)
- *Raney v. Allstate Insurance Co.*, 370 F.3d 1086, 1088-89 (11th Cir. 2004)
- *Gonzalez v. Florida Department of Highway Safety & Motor Vehicles Division of Florida Highway Patrol*, 237 F. Supp. 2d 1338, 1369 (S.D. Fla. 2002)