

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS, SHERMAN DIVISION

Peter E. Lander v. Marc David Krock, et al.

Peter E. Lander v. Marc David Krock, et al. · No. 4:25-cv-684-JDK-KNM · Decided March 4, 2026

SUMMARY

The United States District Court for the Eastern District of Texas adopted a magistrate judge's report and recommendation and granted Defendant Chen Su's motion to dismiss. The court held that Plaintiff Peter E. Lander failed to allege facts establishing that Su, a private citizen, acted jointly with state actors for purposes of liability under 42 U.S.C. § 1983, and dismissed the claims against her with prejudice.

CASE DETAILS

|                       |                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of Texas, Sherman Division                                                                                          |
| WRITING FOR THE COURT | Jeremy D. Kernodle                                                                                                                                                        |
| JURISDICTION          | United States District Court for the Eastern District of Texas, Sherman Division                                                                                          |
| DECIDED               | March 4, 2026                                                                                                                                                             |
| DOCKET                | 4:25-cv-684-JDK-KNM                                                                                                                                                       |
| DISPOSITION           | dismissed                                                                                                                                                                 |
| PROCEDURAL POSTURE    | The district court conducted de novo review of the plaintiff's objections to a magistrate judge's report and recommendation and ruled on a defendant's motion to dismiss. |
| STANDARD OF REVIEW    | De novo review of the objected-to portions of the report and recommendation under Federal Rule of Civil Procedure 72 and 28 U.S.C. § 636(b)(1).                           |
| PRECEDENTIAL VALUE    | unpublished district court order                                                                                                                                          |
| PARTIES               | Peter E. Lander v. Chen Su, Marc David Krock, et al.                                                                                                                      |

TOPICS

- motions to dismiss
- section 1983
- state action
- civil procedure

## PRACTICE AREAS

civil rights

civil procedure

## QUESTIONS PRESENTED

1. Whether Plaintiff adequately alleged that Chen Su, a private citizen, acted under color of state law for purposes of liability under 42 U.S.C. § 1983.
2. Whether the claims against Chen Su should be dismissed with prejudice because Plaintiff had pleaded his best case and amendment would be futile.

## HOLDINGS

1. A private citizen is not liable under § 1983 unless the plaintiff alleges facts showing that the private citizen was a willful participant in joint activity with the State or its agents, including an agreement with public defendants to commit an illegal act and a resulting constitutional deprivation. Plaintiff's allegations that Chen Su hired a roofer and that police later became involved did not satisfy this requirement.
2. Dismissal with prejudice was proper because Plaintiff had pleaded his best case and amendment would be fruitless.

## KEY QUOTATIONS

*“For a private citizen to be held liable under § 1983, she must be “a willful participant in joint activity with the State or its agents.””*

*“A plaintiff seeking to hold a non-state actor liable “must allege: (1) an agreement between the private and public defendants to commit an illegal act and (2) a deprivation of constitutional rights.””*

*“These facts do not establish Section 1983 liability against Chen Su.”*

*“The Court further finds that Plaintiff has pleaded his “best case” and amendment would be fruitless.”*

## FACTUAL BACKGROUND

Plaintiff sued his neighbor, Chen Su, alleging that Su hired a roofer who later confronted Plaintiff, resulting in police involvement and an involuntary mental-health evaluation. Plaintiff alleged that Su was responsible for setting these events in motion but did not allege an agreement or coordinated activity between Su and the police officers.

## PROCEDURAL HISTORY

Plaintiff brought claims under 42 U.S.C. § 1983 and state law. The case was referred to Magistrate Judge K. Nicole Mitchell, who recommended granting Chen Su's motion to dismiss and dismissing the claims against her with prejudice. After Plaintiff filed objections, the district court adopted the report and recommendation, granted the motion to dismiss, and dismissed the claims against Chen Su with prejudice.

## DISPOSITION

dismissed

#### CASES CITED

- *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc)
- *Brown v. Miller*, 631 F.2d 408, 410–11 (5th Cir. 1980)
- *Love v. King*, 784 F.2d 708, 712 (5th Cir. 1986)
- *Cinel v. Connick*, 15 F.3d 1338, 1343 (5th Cir. 1994)
- *Priester v. Lowndes County*, 354 F.3d 414, 420 (5th Cir. 2004)
- *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (per curiam)
- *Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009)

#### OPINION

Lander

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

PETER E. LANDER, §

§ Plaintiff, § § v. § Case No. 4:25-cv-684-JDK-KNM § MARC DAVID KROCK, et al., § § Defendants. §

ORDER ADOPTING REPORT AND RECOMMENDATION

OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Peter E. Lander initiated this lawsuit seeking relief pursuant to 42 U.S.C. § 1983 and state law. The case was referred to United States Magistrate Judge K. Nicole Mitchell in accordance with 28 U.S.C. § 636. The Magistrate Judge issued a Report recommending that Defendant Chen Su’s motion to dismiss (Docket No. 29) be granted and that the claims against Defendant Chen Su be dismissed with prejudice. Docket No. 43. Plaintiff filed written objections. Docket No. 52. The Court reviews objected-to portions of the Report and Recommendation de novo. FED. R. CIV. P. 72; 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding and recommendation to which objection is made.”). The Court conducting a de novo review examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), superseded on other grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Plaintiff is suing his neighbor, Chen Su, for hiring a roofer who got into a confrontation with Plaintiff, ultimately resulting in police involvement and an involuntary mental health evaluation. Docket No. 1 at 35–36, 39, and 51. He does not dispute that he is seeking relief against Chen Su pursuant to 42 U.S.C. § 1983.

Docket No. 52. Instead, he argues that his neighbor is responsible for setting in motion the events that occurred by hiring the roofer at issue. *Id.* at 3. Section 1983 may be used to sue a state employee using or abusing power that is possessed by virtue of state law to violate a person's constitutional rights. See *Brown v. Miller*, 631 F.2d 408, 410–11 (5th Cir. 1980). To maintain a civil rights lawsuit, a plaintiff must show an abuse of governmental power that rises to a constitutional level. *Love v. King*, 784 F.2d 708, 712 (5th Cir. 1986). Plaintiff has not alleged facts showing that Chen Su is a state actor. She is a private citizen. For a private citizen to be held liable under § 1983, she must be “a willful participant in joint activity with the State or its agents.” *Cinel v. Connick*, 15 F.3d 1338, 1343 (5th Cir. 1994). A plaintiff seeking to hold a non-state actor liable “must allege: (1) an agreement between the private and public defendants to commit an illegal act and

(2) a deprivation of constitutional rights.” *Priester v. Lowndes County*, 354 F.3d 414, 420 (5th Cir. 2004) (citing *Cinel v. Connick*, 15 F.3d at 1343). Here, Plaintiff has not alleged any facts that would establish any agreement between Chen Su and the only state actors involved, the police officers. Plaintiff repeatedly states in his complaint and written objections that Chen Su hired a roofer, and the police were called at some point later when Plaintiff got into an altercation with that roofer. These facts do not establish Section 1983 liability against Chen Su. Plaintiff's claim against Chen Su thus fails as a matter of law. The Court further finds that Plaintiff has pleaded his “best case” and amendment would be fruitless. *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (per curiam); *Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009) (finding that a pro se plaintiff did not provide any explanation for how he would have overcome the deficiencies identified by the court if given opportunity to amend). Having conducted a de novo review of the written objections filed by Plaintiff in response to the Report and Recommendation, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and Plaintiffs objections are without merit. Accordingly, it is hereby ORDERED that the Magistrate Judge's Report and Recommendation (Docket No. 43) is ADOPTED. It is ORDERED that Defendant Chen Su's motion to dismiss (Docket No. 29) is GRANTED and the claims against Defendant Chen Su are DISMISSED with prejudice. So ORDERED and SIGNED this 4th day of March, 2026.

JHKREMYD. KERN DLE

UNITED STATES DISTRICT JUDGE