

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
FLORIDA, TAMPA DIVISION

Danny D. Cabrera v. Moe, Maria, and Nikos New York Style Diner

Cabrera · No. 8:26-cv-34-TPB-CPT · Decided January 12, 2026

SUMMARY

The United States District Court for the Middle District of Florida dismissed Danny D. Cabrera’s pro se 42 U.S.C. § 1983 complaint with prejudice under 28 U.S.C. § 1915A. The court held that the private diner owners and business were not state actors, and that amendment would be futile.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Tampa Division
WRITING FOR THE COURT	Thomas P. Barber
JURISDICTION	United States District Court for the Middle District of Florida, Tampa Division
DECIDED	January 12, 2026
DOCKET	8:26-cv-34-TPB-CPT
DISPOSITION	dismissed
PROCEDURAL POSTURE	A pretrial detainee filed a pro se action under 42 U.S.C. § 1983 and moved to proceed in forma pauperis. The court screened the complaint under 28 U.S.C. § 1915A and dismissed it with prejudice for failure to state a claim.
STANDARD OF REVIEW	Statutory screening under 28 U.S.C. § 1915A; the complaint was assessed for whether it was frivolous, malicious, failed to state a claim, or sought relief from an immune defendant, with pro se allegations read liberally.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is not stated.
PARTIES	Danny D. Cabrera v. Moe, Maria, Nikos New York Style Diner

TOPICS

[section 1983](#)

[prisoners rights](#)

[civil rights](#)

[motions to dismiss](#)

[civil procedure](#)

PRACTICE AREAS

civil rights

constitutional law

prisoner litigation

employment law

QUESTIONS PRESENTED

1. Whether the complaint stated a claim under 42 U.S.C. § 1983 against the owners and private restaurant based on alleged employment discrimination and harassment.
2. Whether amendment should be permitted when the alleged defendants were private parties and the complaint could not establish state action.

HOLDINGS

1. The complaint failed to state a claim under § 1983 because Cabrera did not allege, and could not allege on the pleaded facts, that the private defendants acted under color of state law.
2. Leave to amend was properly denied because amendment would be futile.

KEY QUOTATIONS

“Section 1983 provides judicial remedies to a claimant who can prove that a person acting under color of state law committed an act that deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States.” (Analysis)

“A court is required to dismiss a complaint (or any portion thereof) if it is “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.”” (Footnote 1)

FACTUAL BACKGROUND

Cabrera, who was detained at the Pasco County Detention Center, alleged that a kitchen manager at Nikos New York Style Diner harassed and discriminated against him by using racial and profane insults. He asserted that he complained to owners Moe and Maria, but they took no action, and that he quit because of the embarrassment and humiliation. He claimed no physical injuries but sought compensation for lost wages.

PROCEDURAL HISTORY

Cabrera initiated the action against private individuals and a private restaurant, alleging employment-related harassment, discrimination, and First Amendment violations. On screening, the district court concluded that the defendants were not state actors and that amendment would be futile, dismissed the complaint with prejudice, terminated pending motions, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Hale v. Tallapoosa Cty., 50 F.3d 1579, 1582 (11th Cir.)

- Harvey v. Harvey, 949 F.2d 1127, 1130 (11th Cir.)
- Bryant v. Dupree, 252 F.3d 1161, 1168 (11th Cir.)
- Haines v. Kerner, 404 U.S. 519 (1972)

OPINION

Cabrera

PER CURIAM.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

DANNY D. CABRERA,

Plaintiff, v. Case No. 8:26-cv-34-TPB-CPT

MOE,

MARIA, and

NIKOS NEW YORK STYLE DINER,

Defendants. _____/

ORDER

Danny D. Cabrera, a pretrial detainee at the Pasco County Detention Center, initiated this action by filing a pro se civil rights complaint under 42 U.S.C. § 1983, and motion to proceed in forma pauperis. (Docs. 1–3) Upon review, this case must be dismissed with prejudice because the complaint fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915A.1

1 Under 28 U.S.C. § 1915A(a), the Court must screen certain civil suits brought by prisoners to determine whether they should proceed. A court is required to dismiss a complaint (or any portion thereof) it is “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). The Court must read a plaintiff’s pro se allegations in a liberal fashion. *Haines v. Kerner*, 404 U.S. 519 (1972).

I. Cabrera’s Complaint Cabrera sues individuals named “Moe” and “Maria” who are owners of Nikos New York Style Diner for discrimination and for violations of his First Amendment rights. He alleges the following (Doc. 1 at 4): After kitchen manager harassing me I spoke to owners Moe and Maria[.] Nothing was done. Around Nov. 8th at Nikos Diner he harassed me and discriminated calling me a spic and a motherfucker. . . . I quit because of the embarrassment and humiliations he made me go thru. When prompted to explain his injuries, Cabrera writes that he sustained “no injuries,” but he seeks to recover compensation for lost wages. (Id. at 5) II. Analysis “Section 1983 provides judicial remedies to a claimant who can prove that a person acting under color of state law committed an act that deprived the claimant of some right, privilege, or immunity protected by the Constitution or laws of the United States.” See *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582

(11th Cir. 1995) (emphasis added). Private parties are state actors for § 1983 purposes only in rare circumstances not applicable here. *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992). Cabrera as not alleged that Moe, Maria, or Nikos New York Style Diner are state actors for purposes of § 1983, nor can he assert facts demonstrating that these private parties are state actors because the events giving rise to this action involve Cabrera’s employment at a private business. Amendment of Cabrera’s complaint would be futile because he can state no valid § 1983 claim against these private parties. See *Bryant v. Dupree*, 252 F.3d 1161, 1168 (11th Cir. 2001) (“A district court need not... allow an amendment... where amendment would be futile.”). III. Conclusion Accordingly, Cabrera’s Complaint is DISMISSED WITH PREJUDICE for failure to state a claim. The Clerk is directed to enter a judgment of dismissal against Cabrera, terminate any pending motions, and to CLOSE this case. DONE and ORDERED in Chambers in Tampa, Florida, this 12th day of January, 2026.

“TOMBARBER =__=__™

UNITED STATES DISTRICT JUDGE