

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MATTHEW ANDREW GARCES,

Plaintiff-Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States believes that oral argument is unnecessary in this case, as the facts and legal arguments are adequately presented in the briefs and record, and the issues presented on appeal are straightforward. If the Court believes that oral argument would be helpful, the United States will appear for argument.

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STATEMENT OF JURISDICTION

Plaintiff-appellant Matthew Andrew Garces brought a pro se suit against the Civil Rights Division (the Division) of the United States Department of Justice (the Department), alleging that the Division had violated the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 *et seq.* The district court had jurisdiction under 28 U.S.C. 1331. In an order accepting the recommendation of a United States Magistrate Judge, the court dismissed Garces' suit under 28 U.S.C. 1915(e)(2)(B)(ii). Garces timely appealed. ROA.83.¹ This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

1. Whether the district court plainly erred in concluding that Garces' challenge to the Division's decision not to investigate his complaint of disability discrimination failed to state a claim under the ADA.

2. Whether the district court plainly erred in dismissing Garces' suit because the Division's decision was reviewable under the

¹ "ROA.____" refers to the page numbers of the Record on Appeal. "Br. ____" refers to the page numbers in Garces' opening brief.

Administrative Procedure Act (APA), 5 U.S.C. 704, and violated that statute as arbitrary and capricious agency action, 5 U.S.C. 706.

STATEMENT OF THE CASE

A. Factual Background²

In early 2024, Garces was on probation in Bexar County, Texas, having been granted 12-months' and three-years' deferred adjudication for charges of "Terroristic Threat" and "Assault on [a] Security Officer," respectively. ROA.10. In a Supplemental Reporting detailing Garces' compliance with the terms of his probation, Jason Woolf, a Community Supervision Officer, informed the county court that Garces "had provided proof of disability" and was engaging in "anger management sessions with a therapist." ROA.10. Woolf also noted that Garces' drug tests "ha[d] shown positive for Marijuana and Opiates," though he acknowledged that Garces "ha[d] provided prescriptions for both [drugs]." ROA.10.

Later that summer, on July 17, 2024, Yolanda Huff, the county judge overseeing Garces' case, ordered Garces to cease using certain

² The following facts are taken from Garces' complaint and the attachments to his complaint. See ROA.6-42.

“prescribed medications that treat physical and mental disabilities.” ROA.7. Judge Huff also allegedly “caused [Garces] to have a panic attack in her courtroom” by asking him to “imagine” who would care for his service animal if she ordered him “detain[ed] or imprison[ed].” ROA.7.

On July 17, 2024, Garces submitted a report through the Division’s website alleging “civil rights violations committed by Judge Huff.” ROA.7. Later that day, the Division responded to Garces’ submission. Add.1.³ The Division explained that it reviews all reports it receives to “identify civil rights violations,” and that after doing so, the Division might “[o]pen an investigation or take some other action,” “[c]ollect more information” before “look[ing] into [the] report,” or “[r]ecommend another government agency that can properly look into [the] report.” Add.2.

A week later, the Disability Rights Section of the Division sent a follow-up response. Add.5. It stated that “[t]eam members from the Civil Rights Division reviewed the information [Garces] submitted,” and that “[a]fter careful review,” the Division “decided not to take any further action” on his complaint. Add.6. The Division explained that it

³ As Mr. Garces referenced in his brief (at 8), attached in the addendum to this brief are the letters from DOJ that were sent to him.

“receive[s] several thousand reports of civil rights violations each year and cannot take direct action on every report” it receives. Add.6. The Division cautioned, though, that its decision did not reflect a “determin[ation] that [Garces’] report lack[ed] merit.” Add.6. And it provided contact information for the American Bar Association and the Legal Services Corporation in case Garces’ report was “actionable by others.” Add.6.

B. Procedural Background

Garces filed suit against the Division in the Western District of Texas and applied to proceed pro se and *in forma pauperis*. ROA.4-5.⁴ Garces attached to his application a copy of his complaint, which set forth three claims for relief. Count 1, “Violation of Americans with Disabilities

⁴ This suit was one of 28 pro se suits Garces filed in the Western District of Texas in the first eight months of 2025. *See Garces v. Bondi*, No. 25-50359, 2025 WL 2375410, at *2 (5th Cir. Aug. 15, 2025). The district court has since entered a cease-and-desist order against Garces and is considering whether to label him a “vexatious litigant.” *Ibid*. And this Court has recently warned Garces twice that “future frivolous, repetitive, or otherwise abusive filings can and will result in sanctions by this Court, which may include dismissal, monetary sanctions, and restrictions on his ability to file pleadings here and in any court subject to this Court’s jurisdiction.” *Garces v. Hernandez*, No. 25-50342, 2025 WL 2401001, at *2 (5th Cir. Aug. 19, 2025), *petition for cert. pending*, No. 25-5558 (filed Sept. 4, 2025).

Act,” alleged that the Division had “failed to enforce the protections under the Americans with Disabilities Act, the 14th Amendment and the 8th Amendment of the U.S. Constitution.” ROA.8.⁵ Count 2 alleged that Judge Huff and Officer Woolf had denied Garces equal protection of the law, in violation of the Fourteenth Amendment. ROA.8. Count 3 alleged that Judge Huff and Officer Woolf had subjected Garces to cruel and unusual punishment, in violation of the Eighth Amendment. ROA.8. As relief, Garces sought \$1 million in damages, a declaration that Judge Huff and Officer Woolf violated Garces’ constitutional rights, dismissal of the state criminal case against Garces, and expungement of his criminal record. ROA.8.

Pursuant to a local standing order governing *in forma pauperis* cases, a Magistrate Judge reviewed Garces’ complaint under 28 U.S.C. 1915(e)(2)(B)(ii) to determine if the complaint “state[d] a claim on which relief may be granted.” ROA.25-26. He concluded that it did not. Regarding Garces’ claim against the Division, the Magistrate Judge

⁵ Garces does not address these alleged violations of his Eighth and Fourteenth Amendment rights by the Division in his opening brief. Consequently, they are forfeited. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

concluded that the court lacked jurisdiction over Garces' claim that the Division had "fail[ed] to investigate his purported ADA or constitutional claims" because "federal courts generally do not resolve claims that the Executive Branch failed to prosecute an action in either the civil or criminal context." ROA.27. And regarding Garces' Eighth and Fourteenth Amendment claims, they failed because Garces had not named Judge Huff or Officer Woolf as defendants in this suit. ROA.27; *see also* ROA.27 n.3 (pointing out that Garces had brought suit against Judge Huff or Officer Woolf "in another of Plaintiff's pending cases"). In light of these infirmities, the Magistrate Judge ordered Garces to show cause why his complaint should not be dismissed and advised that Garces could do so by "filing an amended complaint" that "stat[es] a plausible, non-frivolous claim for relief and addressing the issues set out in [his] Order." ROA.27. The Magistrate Judge also advised Garces that "failure to file the amended complaint as ordered may result in dismissal of his case for failure to comply with the Court's orders." ROA.28.

Garces neither filed an amended complaint nor responded to the Show Cause order. ROA.49-50. The Magistrate Judge thus submitted a Report and Recommendation to the district court, recommending

dismissal of Garces' suit under 28 U.S.C. 1915(e). ROA.50. The Report and Recommendation also informed Garces that any objections to the Report "must be filed within 14 days after being served," and failure to file objections would result in the district court reviewing the Report under a deferential standard of review. ROA.50-51.

Despite this admonition, Garces filed untimely objections to the Report and Recommendation. *See* ROA.71. Given Fifth Circuit case law holding that "[c]ourts may treat untimely objections the same as filing no objections," and that Garces had "ma[de] no attempt to explain the untimeliness of his objections," the district court reviewed the Report and Recommendation for clear error and found none. ROA.79-80. The court found "no basis under the ADA" on which Garces could sue the Division for allegedly failing to investigate his claims—a conclusion bolstered by case law arising in "an analogous context." ROA.80 (citing *Simien v. EEOC*, No. 08-4978, 2009 WL 799982 (E.D. La. Mar. 24, 2009)). As for the claims against Judge Huff and Officer Woolf, the court dismissed those counts as "duplicative or malicious" because Garces had "sued them in a prior case on the same or similar facts." ROA.83.

Garces timely appealed. ROA.78.

SUMMARY OF ARGUMENT

This appeal is simple. In his complaint, Garces brought only one claim against the Division: “Violation of the Americans with Disabilities Act.” And his sole allegation to support that claim was that the Division failed to enforce (and therefore violated) the ADA by declining to “take direct action” on an ADA complaint he submitted to the Division. The district court dismissed the claim, and because Garces’ lacks standing and Title II of the ADA does not apply to the federal government this Court should affirm.

The standard of review makes this appeal even simpler. The magistrate judge recommended dismissal for failure to state a claim, and the district court accepted the recommendation. Because Garces did not timely object to the magistrate judge’s report and recommendation, this Court reviews the dismissal for plain error. The district court did not plainly err by accepting the magistrate judge’s recommendation that Garces failed to state a claim and dismissing the case.

Garces makes this appeal seem more complicated than it is by invoking the APA. But that is a red herring; Garces raised no such claim at the district court, and he cannot raise it for the first time on appeal.

Even the most generous reading of his complaint unearths neither an APA claim, nor the failure-to-investigate theory that he premises his APA claim on. The district court did not plainly err, then, by dismissing the complaint for failure to state a claim, even if the Division’s decision not to take direct action on Garces’ complaint could theoretically be subject to APA review.

ARGUMENT

I. The Court lacks jurisdiction over this case.

A. Garces lacks standing to bring his ADA claim.

The Court reviews standing de novo. *Texas State LULAC v. Elfant*, 52 F.4th 248, 252 (5th Cir. 2022). “To have Article III standing, a plaintiff ‘must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’” *Jackson v. City of Houston*, 143 F.4th 640, 645 (5th Cir. 2025) (quoting *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 338 (2016)).

Garces is adamant that he seeks “narrow” relief. Br. 20. He simply asks this Court to “craft a narrow injunction ordering the DOJ to perform the discrete, ministerial act of investigating [his] ‘complete complaint.’” Br. 20. This is a procedural injury. A “deprivation of a procedural right

without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing. Only a ‘person who has been accorded a procedural right to protect *his concrete interests* can assert that right without meeting all the normal standards for redressability and immediacy.’” *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992)).

Standing “often turns on the nature and source of the claim asserted” and “[b]ecause different claims protect against different injuries, an injury in fact for one claim may not constitute an injury in fact for a different claim.” *Jackson*, 143 F.4th at 645-646 (citation omitted). Garces only asserts an ADA claim against the Division. His alleged “procedural injury: the denial of [a] congressionally mandated investigative process,” Br. 19, is not an injury in fact under the ADA. His other alleged injury—“discrimination by agents of the State of Texas based on [his] disabilities,” Br. 18—is not traceable to the Division. Finally, the relief Garces seeks—“[a]n court order compelling the DOJ to investigate,” Br. 19—would not redress his injury.

B. The United States did not waive sovereign immunity for the ADA.

The “United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.” *United States v. Sherwood*, 312 U.S. 584, 586 (1941) (internal citations omitted). Waivers of sovereign immunity cannot be implied, but must be unequivocally expressed. *United States v. Mitchell*, 445 U.S. 535, 538 (1980). Such statutory waivers are to be strictly construed in favor of the sovereign. *See Department of Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999).

Congress did not waive the United States’ sovereign immunity for suits brought under the ADA. As discussed further below (pp. 13-15), the ADA does not even apply to the federal government. *See Cellular Phone Taskforce v. FCC*, 217 F.3d 72, 73 (3d Cir. 2000) (per curiam). So there is no “mention of a right of action against federal agencies for those dissatisfied with investigative or enforcement decisions” and certainly no waiver of “sovereign immunity for a damages claim based on DOJ’s processing of discrimination complaints.” *Evans-Sampson v. United States Dep’t of Just.*, No. 21-1834, 2022 WL 883939, at *2 (3d Cir. Mar.

24, 2022); *cf.* 42 U.S.C. 12202 (abrogating state sovereign immunity under the ADA).

II. The district court did not plainly err in dismissing Garces’ claim against the Division.

A. Standard of Review

This Court reviews *de novo* a 28 U.S.C. 1915(e)(2)(B) dismissal for failure to state a claim, using the same standard applicable to dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Rogers v. Boatright*, 709 F.3d 403, 406-407 (5th Cir. 2013). The Court’s review is limited to “the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings, and matters of which the judge may take judicial notice.” *Benfer v. City of Baytown*, 120 F.4th 1272, 1278 n.2 (5th Cir. 2024) (citation omitted).

In general, “[a]llegations of *pro se* complaints are held to less stringent standards than formal pleadings drafted by lawyers.” *Rogers*, 709 F.3d at 407. But when a party in the district court fails to object to a magistrate judge’s report and recommendation, appellate review of a district court’s acceptance of the magistrate judge’s legal conclusions is for plain error. *See Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). Unpreserved arguments raised for the first time on appeal—

rather than in objections at the district court to a magistrate judge’s report and recommendation—are likewise reviewed for plain error. *See Tilmon v. Prator*, 368 F.3d 521, 524 (5th Cir. 2004). To prevail under the plain error standard, the appellant “must show (1) that an error occurred; (2) that the error was plain, which means clear or obvious; (3) the plain error must affect substantial rights; and (4) not correcting the error would seriously impact the fairness, integrity, or public reputation of judicial proceedings.” *Ortiz v. City of San Antonio Fire Dep’t*, 806 F.3d 822, 825-826 (5th Cir. 2015) (quoting *Septimus v. University of Houston*, 399 F.3d 601, 607 (5th Cir. 2005)). An error is not plain if the appellant’s theory “requires the extension of precedent.” *United States v. Trejo*, 610 F.3d 308, 319 (5th Cir. 2010) (citation omitted).

B. Garces failed to state a claim under the ADA.

Garces’ appeal fails at the outset because he lacked a viable cause of action for his claim. Garces’ complaint only alleges one claim against the Division: a violation of Title II of the ADA.⁶ *See* ROA.8; *see also* Br.

⁶ While Garces does not expressly bring his ADA claim under Title II, *see* ROA.8, the Division presumes that is the title he intends to invoke, as it is the only title that he references in his complaint. *See* ROA.7 (discussing Title II case, *Tennessee v. Lane*, 541 U.S. 509 (2004)).

13 (discussing Title II). Under Title II, a qualified individual with a disability may not “be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity” by reason of their disability. 42 U.S.C. 12132. The statute defines “public entity” as, among other things “any State or local government.” 42 U.S.C. 12131. This definition does *not* include the United States. *See Wiley v. Vachhani*, 592 F. App’x 306, 306 (5th Cir. 2015) (recognizing that Title II “addresses disability discrimination by *state* public entities” and holding that the plaintiff’s claims against the Social Security Administration “d[id] not fall under the statute”); *see also Evans-Sampson v. United States Dep’t of Just.*, No. 21-1834, 2022 WL 883939, at *2 (3d Cir. 2022) (holding that “Title II of the ADA [does not] appl[y] to federal agencies”); *Cellular Phone Taskforce v. FCC*, 217 F.3d 72, 73 (3d Cir. 2000) (*per curiam*) (“Title II of the ADA is not applicable to the federal government.”). Title II thus affords Garces no path to relief.

But even if he could bring a claim against the United States under the ADA, his argument that the ADA affords individuals a private right of action against the United States if the United States insufficiently investigates their complaints is novel at best and would require the

extension of precedent. *Cf. Trejo*, 610 F.3d at 319. It therefore does not amount to plain error.

C. Garces failed to state a claim under the APA.

Despite focusing on the APA in his opening appellate brief, Garces brought no APA claim in his complaint filed in the district court. *See* ROA.8; *see also* ROA.81 (“[Garces] only claim against the DOJ is brought under the ADA, and that claim fails to state a claim upon which relief can be granted.”). This dooms his attempt to seek review of the Division’s actions under the APA on appeal. *See Thompson v. Naphcare, Inc.*, 117 F. App’x 317, 325 (5th Cir. 2004) (explaining that a plaintiff “may not raise [a new claim] for the first time on appeal”); *cf. Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999) (“The Court will not allow a party to raise an issue for the first time on appeal merely because a party believes that he might prevail if given the opportunity to try a case again on a different theory.”) (quoting *Forbush v. J.C. Penney Co.*, 98 F.3d 817, 822 (5th Cir. 1996)).

Even taking his new appellate arguments on their merits provides Garces no basis for recovery. The Supreme Court has held in no uncertain terms that the APA’s carve-out of unreviewable agency actions,

5 U.S.C. 701(a)(2), includes “agency refusals to institute investigative or enforcement proceedings, unless Congress has indicated otherwise.” *Heckler v. Chaney*, 470 U.S. 821, 837-838 (1985). Contrary to Garces’s arguments on appeal, there is no relevant distinction between “enforcement action[s] at the back end of the process” and investigatory action “at the front end of the process.” Br. 14 (emphasis omitted). Garces does not attempt to argue that any statutory language overcomes the APA’s presumption of non-reviewability, so his claim under the APA fails from the start. *Cf.* Br. 14 (arguing instead that investigations are “[m]inisterial”).

Further, the Court should reject Garces’s arguments that the DOJ has adopted a “systemic policy of abdication” regarding ADA complaints. Br. 17-18. The record in Garces’s own cases demonstrates that no such policy exists. The Division explained that it reviews all reports it receives to “identify civil rights violations,” and that after doing so, the Division might “[o]pen an investigation or take some other action,” “[c]ollect more information” before “look[ing] into [the] report,” or “[r]ecommend another government agency that can properly look into [the] report.” Add.2. The Division also informed Garces that “[t]eam

members from the Civil Rights Division reviewed the information [Garces] submitted,” and that “[a]fter careful review,” the Division “decided not to take any further action” on his complaint. Add.6.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court’s dismissal of Garces’ suit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 6, 2025, I filed this brief with the Clerk of the Court by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

s/ Greta Gieseke
GRETA GIESEKE
Attorney

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 3355 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Greta Gieseke
GRETA GIESEKE
Attorney

Date: October 6, 2025

ADDENDUM



U.S. Department of Justice
Civil Rights Division

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The following email message (with Granicus TMS id 1465420909) was sent by the Civil Rights Division to ['drummajormac@gmail.com'] on 2024-07-17 15:35:22+00:00:

Message Details

TMS ID	1465420909
Report ID	480287
Subject	Thank you for submitting a report to the Civil Rights Division
Recipient(s)	['drummajormac@gmail.com']
Created at	2024-07-17 20:35:15+00:00
Completed at	2024-07-17 15:35:22+00:00
Status	sent
Purpose	auto
Error message	None

Contact

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Please do not reply to this email. This is an unmonitored account.

Thank you for submitting a report to the Civil Rights Division. Please save your record number for tracking. Your record number is: 480287-MMS.

If you reported an incident where you or someone else has experienced or is still experiencing physical harm or violence, or are in immediate danger, please call 911 and contact the police.

What to Expect

1. We review your report

Our specialists in the Civil Rights Division carefully read every report to identify civil rights violations, spot trends, and determine if we have authority to help with your report.

2. Our specialists determine the next steps

We may decide to:

- Open an investigation or take some other action within the legal authority of the Justice Department.
- Collect more information before we can look into your report.
- Recommend another government agency that can properly look into your report. If so, we'll let you know.

In some cases, we may determine that we don't have legal authority to handle your report and will recommend that you seek help from a private lawyer or local legal aid organization.

3. When possible, we will follow up with you

We do our best to let you know about the outcome of our review. However, we may not always be able to provide you with updates because:

- We're actively working on an investigation or case related to your report.
- We're receiving and actively reviewing many requests at the same time.

If we are able to respond, we will contact you using the contact information you provided in this report. Depending on the type of report, response times can vary. If you need to reach us about your report, please refer to your report number when contacting us. This is how we keep track of your submission.

What You Can Do Next

1. Contact local legal aid organizations or a lawyer if you haven't already.

Legal aid offices or members of lawyer associations in your state may be able to help you with your issue.

- American Bar Association, visit the www.americanbar.org/groups/legal_services/flh-home or call (800) 285-2221
- Legal Services Corporation (or Legal Aid Offices), to help you find a legal aid lawyer in your area visit www.lsc.gov/find-legal-aid

2. Learn More

Visit civilrights.justice.gov to learn more about your rights and see examples of violations we handle.

Please Note: Each week, we receive hundreds of reports of potential violations. We collect and analyze this information to help us select cases, and we may use this information as evidence in an existing case. We will review your letter to

decide whether it is necessary to contact you for additional information. We do not have the resources to follow-up on every letter.

Contact

civilrights.justice.gov



U.S. Department of
Justice
Civil Rights Division
950 Pennsylvania
Avenue, NW
Washington, D.C.
20530-0001



(202) 514-3847
1-855-856-1247 (toll-
free)
Telephone Device for the
Deaf
(TTY) (202) 514-0716



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Civil Rights Division

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The following email message (with Granicus TMS id 1467448930) was sent by the Civil Rights Division to ['drummajormac@gmail.com'] on 2024-07-24 12:57:28+00:00:

Message Details

TMS ID	1467448930
Report ID	480287
Subject	Response: Your Civil Rights Division Report -480287-MMS from the Disability Rights Section
Recipient(s)	['drummajormac@gmail.com']
Created at	2024-07-24 17:57:26+00:00
Completed at	2024-07-24 12:57:28+00:00
Status	sent
Purpose	manual
Error message	None

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Dear Matthew Garces,

You contacted the Department of Justice on July 17, 2024. After careful review of what you submitted, we have decided not to take any further action on your complaint.

What we did:

Team members from the Civil Rights Division reviewed the information you submitted. Based on our review, we have decided not to take any further action on your complaint. We receive several thousand reports of civil rights violations each year and cannot take direct action on every report.

Your report number was 480287-MMS.

What you can do:

We are not determining that your report lacks merit. Your issue may still be actionable by others - your state bar association or local legal aid office may be able to help.

To find a local office:

American Bar Association

https://www.americanbar.org/groups/legal_services/flh-home

(800) 285-2221

Legal Services Corporation (or Legal Aid Offices)

<https://www.lsc.gov/find-legal-aid>

How you have helped:

While we cannot take on each individual report, your report can help us find issues affecting multiple people or communities. It also helps us understand emerging trends and topics.

Thank you for taking the time to contact the Department of Justice about your concerns. We regret we are not able to provide more help on this matter.

Sincerely,

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