

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

**At a stated term of the United States Court of Appeals for the Second Circuit,
held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
New York, on the 25th day of September, two thousand twenty-six.**

PRESENT:

JOSÉ A. CABRANES,
GERARD E. LYNCH,
JOSEPH F. BIANCO,
Circuit Judges.

JOSE OVIDIO HERNANDEZ,

Plaintiff-Appellant,

v.

25-1609

FARVA JAFRI, RICHARD SKLARIN, SAMI
NASSER, MARCI DUSTIN, JENNA LAZZARO,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:

JOSE OVIDIO HERNANDEZ, *pro se*, Port
Chester, New York.

FOR DEFENDANT-APPELLEE
SAMI NASSER:

MATTHEW K. FLANAGAN (Diane K. Toner,
Smiley & Smiley, LLP, New York, New York,
on the brief), Marshall Dennehey P.C.,
Melville, New York.

FOR DEFENDANT-APPELLEE
RICHARD SKLARIN:

Richard Sklarin, *pro se*, Elmsford, New York.

FOR DEFENDANTS-APPELLEES
FARVA JAFRI, MARCI DUSTIN,
AND JENNA LAZZARO:

No appearance.

Appeal from a judgment of the United States District Court for the Southern District of New York (Laura Taylor Swain, *Chief Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered on October 30, 2024, is **AFFIRMED**.

Jose Ovidio Hernandez, proceeding *pro se*, appeals from the *sua sponte* dismissal of his complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii). Hernandez sued the defendants—three attorneys, a private court reporter for a transcription service, and an assistant law clerk for the New York Supreme Court in Westchester County—for their alleged conduct in connection with his state-court lawsuit, *Hernandez v. Stop One Minimarket*, No. 64178/2022 (N.Y. Sup. Ct.), including alleged actions during his deposition in that case. *See generally Hernandez v. Jafri*, No. 24-CV-6972, 2024 WL 4627463 (S.D.N.Y. Oct. 25, 2024). According to the federal complaint, in the state case, Defendant-Appellee Farva Jafri represented Hernandez and Defendants-Appellees Richard Sklarin and Sami Nasser represented the defendants. Defendant-Appellee Marci Dustin worked as a private court reporter for a transcription service and was the reporter for the deposition, while Defendant-Appellee Jenna Lazzaro was sued for her role as an assistant law clerk in the state court.

The district court construed Hernandez’s complaint to raise due process claims under

42 U.S.C. § 1983, and dismissed the complaint *sua sponte*, concluding that (1) Lazzaro had absolute immunity as a court employee for any liability with respect to his federal claims, and (2) the remaining defendants were private parties and he did not plausibly allege that they were acting under color of state law, as required for a Section 1983 claim. *See Hernandez*, 2024 WL 4627463, at *3–4. The district court declined to exercise supplemental jurisdiction over the state-law claims. *Id.* at *3. The district court also declined to grant Hernandez leave to amend his complaint, determining that any such amendment would be futile “[b]ecause the defects in [his] complaint [could not] be cured with an amendment.” *Id.* at *4. We assume the parties’ familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.¹

“We review *de novo* a district court’s dismissal of a complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).” *Milan v. Wertheimer*, 808 F.3d 961, 963 (2d Cir. 2015) (per curiam). Because Hernandez “has been *pro se* throughout, his pleadings and other filings are interpreted to raise the strongest claims they suggest.” *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024).

The district court did not err in dismissing Hernandez’s complaint. With respect to the court clerk, the district court correctly concluded that she was immune from Hernandez’s suit. “It is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions.” *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009). “Absolute judicial

¹ We have appellate jurisdiction over this matter because we construe Hernandez’s motion for an extension of time to appeal as a timely notice of appeal. *See Haugen v. Nassau Cnty. Dep’t of Soc. Servs.*, 171 F.3d 136, 137–38 (2d Cir. 1999) (per curiam).

immunity also extends to those who, at the direction of a judicial officer, perform administrative functions closely associated with the judicial process.” *Dieujuste v. Sin*, 125 F.4th 397, 399 (2d Cir. 2025) (concluding a clerk was entitled to judicial immunity for filing items on the docket). Here, Hernandez’s federal claims for monetary damages arose from the clerk’s alleged actions in filing documents, responding to requests, and scheduling hearings in his civil lawsuit—acts that are “integrally related to an ongoing judicial proceeding.” *Bliven*, 579 F.3d at 210. Thus, those claims were properly dismissed on immunity grounds.

As to the remaining defendants, the district court correctly dismissed the federal claims against them for failure to state a claim. Claims for damages for violations of constitutional rights, including due process, are properly considered under Section 1983. *See, e.g., Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305–06 (1986). To state a Section 1983 claim, plaintiffs “must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999).

Generally, private actors are not proper Section 1983 defendants because they do not act under color of state law. *See id.* at 50. Here, it is clear from the allegations in the complaint that the remaining defendants—three private attorneys and an employee of a private company hired to transcribe Hernandez’s deposition in his state case—are private actors who do not work for the government. *See, e.g., id.* at 52 (holding that private company “will not be held to constitutional standards unless . . . the challenged action of the [company] . . . may be fairly treated as that of the State itself” (internal quotation marks and citation omitted)); *Polk Cnty. v. Dodson*, 454 U.S. 312,

319 n.9 (1981) (“Although lawyers are generally licensed by the States, they are not officials of government by virtue of being lawyers.” (internal quotation marks and citation omitted)).

Hernandez argues that these defendants collaborated with or were otherwise entangled with the court clerk and, thus, acted under color of state law. To be sure, when a private actor’s conduct is fairly attributable to the state, it is considered state action under Section 1983. *See Hollander v. Copacabana Nightclub*, 624 F.3d 30, 33 (2d Cir. 2010) (per curiam). For instance, a private actor’s conduct is fairly attributable to the state “when the state provides significant encouragement to the entity, the entity is a willful participant in joint activity with the state, or the entity’s functions are entwined with state policies.” *Sybalski v. Indep. Grp. Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir. 2008) (per curiam) (alteration accepted) (internal quotation marks omitted). However, Hernandez’s vague and conclusory claims of conspiracy are insufficient to plausibly allege collusion between state and private actors. *See Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 324 (2d Cir. 2002) (“A merely conclusory allegation that a private entity acted in concert with a state actor does not suffice to state a § 1983 claim against the private entity.”); *see also Dennis v. Sparks*, 449 U.S. 24, 28 (1980) (“Of course, merely resorting to the courts . . . does not make a party a co-conspirator or a joint actor with [a judicial official].”). Therefore, Hernandez failed to plausibly allege that the remaining defendants acted under color of state law, and his Section 1983 claims were properly dismissed.

Having dismissed all federal claims, the district court did not abuse its discretion by declining to exercise jurisdiction over Hernandez’s remaining state-law claims. *See* 28 U.S.C. § 1367(c)(3); *Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006).

Finally, when “a district court’s denial of leave to amend . . . was based on an interpretation of law, such as futility, . . . we review the legal conclusion *de novo*.” *Panther Partners Inc. v. Ikanos Commc’ns, Inc.*, 681 F.3d 114, 119 (2d Cir. 2012). “A *pro se* complaint should not be dismissed without the [c]ourt granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (alterations accepted) (internal quotation marks and citation omitted). However, “a futile request to replead should be denied.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Here, the district court properly denied leave to amend because the defects in the federal claims were “substantive” and it was clear that “better pleading [would] not cure it.” *Id.*

*

*

*

We have considered all of Hernandez’s arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.²

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

² Hernandez has filed a motion to remand the case to the district court in order to allow him to continue his efforts to obtain the video of the deposition referenced in his complaint. However, because his federal claims fail as a matter of law for the reasons set forth herein and the complaint was properly dismissed on those grounds, the motion is denied as moot.