

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 28, 2022

Lyle W. Cayce  
Clerk

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No. 21-40904  
Summary Calendar

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JUAN A. MORENO,

*Plaintiff—Appellant,*

*versus*

ISAAC KWARTING, *Medical Director, McConnell Unit*; ERICK ECHAVARRY, *Medical Physician, McConnell Unit*; STEVEN STEGER, *Optometrist, McConnell Unit*; DANIEL VIVIS, *Medical Mental Psychotherapist, McConnell Unit*; DONNA BRYANT, *Substitute Counsel-Advocate, McConnell Unit*; GENE E. MILLER; TANYA LAWSON; DANIEL DOMINGUEZ; CANDACE MOORE; MEGAN THOMPSON; PLACIDO SAMANIEGO,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:20-CV-146

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Before JONES, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:\*

Juan A. Moreno, a Texas prisoner, slipped and fell in a prison restroom. He alleged employees of both the University of Texas Medical Branch<sup>1</sup> and the Texas Department of Criminal Justice<sup>2</sup> failed to provide adequate medical care and access to a prison library restroom. He sued under 42 U.S.C. § 1983 for violations of the Constitution and the Americans with Disability Act (“ADA”). The district court dismissed his claims, adopting the recommendations of a magistrate judge. Moreno now appeals the dismissal of his claims for violations of the Eighth and Fourteenth Amendments of the Constitution and the ADA. He proceeds pro se. Pro se briefs are afforded liberal construction. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).

After a careful review of Moreno’s brief, considering the magistrate judge’s opinion and relevant portions of the record, we could not discern any argument against the magistrate judge’s analysis. When an appellant fails to identify any error in the trial court’s analysis, it is the same as if the appellant had not appealed that issue. *See Brinkmann v. Dall. Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The appeal, therefore, lacks arguable merit and is DISMISSED. *See* 5TH CIR. R. 42.2. His motions to compel the clerk to perform duties and to appoint counsel are DENIED.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

<sup>1</sup> Isaac Kwarteng, M.D., Erick Echavarry, P.A., Steve Steger, O.D., Vivi S. Daniel, M.D., Tanya Lawson, and Daniel Dominguez.

<sup>2</sup> Donna Bryant, Candace Moore, Megan Thompson, Placido Samaniego, and Gene Miller.

**ENTERED**

November 23, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JUAN A MORENO,

Plaintiff,

VS.

ISAAC KWARTING<sup>1</sup>, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:20-CV-00146

**ORDER ADOPTING MEMORANDUM & RECOMMENDATION**

Pending before the Court are Magistrate Judge Julie K. Hampton's Memorandum and Recommendation (M&R) (D.E. 65) and Plaintiff Juan Moreno's Objection to M&R (D.E. 66), Memorandum of Law in Support of American with Disabilities Act (ADA) (D.E. 71), and a supplement<sup>2</sup> (D.E. 72), all of which are construed as objections to the M&R. The M&R recommends that the Court grant all aspects of Defendants' motions to dismiss. D.E. 65, pp. 1, 31–32 (citing D.E. 48, 49). The M&R further recommends that the Court: (1) dismiss with prejudice Plaintiff's claims against Defendant Lisa Kendra (D.E. 22, 23); (2) decline to exercise supplemental jurisdiction over Plaintiff's state law negligence and medical malpractice claims (D.E. 22, 23); (3) dismiss Plaintiff's Motion for Default Judgment (D.E. 55); and deny Plaintiff's motions effectively seeking preliminary

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<sup>1</sup> Named Defendant Kwarting's correct legal surname is spelled "Kwarteng," as noted by Defendants in D.E. 49, p. 1 n.1. The Court, therefore, uses the correct spelling throughout the remainder of the Order, but keeps the case name so as not to risk the case's misidentification.

<sup>2</sup> To the extent that the supplement is intended as a supplement to his complaint, it is filed without leave of court and is not considered for that purpose.

injunctive relief (D.E. 57, 58, 62, 64). For the following reasons, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the Magistrate Judge's M&R in all respects.

### LEGAL STANDARDS

**Magistrate Judge Recommendations.** The district court conducts a de novo review of any part of a magistrate judge's disposition that has been properly objected to. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); *Warren v. Miles*, 230 F.3d 688, 694 (5th Cir. 2000). "Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." *Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987) (discussing pro se petitioner's objections to M&R), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996).<sup>3</sup> As to any portion for which no objection is filed, a district court reviews for clearly erroneous factual findings and conclusions of law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam).

**Pro Se Documents.** A "handwritten pro se document is to be liberally construed," and "a pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)). However, "The right of

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<sup>3</sup> See also *Aldrich v. Bock*, 327 F. Supp. 2d 743, 747 (E.D. Mich. 2004) (discussing pro se petitioner's objections to M&R) ("An 'objection' that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in this context."); *Jones v. Hamidullah*, No. 2:05-2736, 2005 WL 3298966, at \*3 (D.S.C. Dec. 5, 2005) (noting a pro se petitioner's M&R objections were "on the whole . . . without merit in that they merely rehash [the] general arguments and do not direct the court's attention to any specific portion of the [M&R]"); *Thomas v. Arn*, 474 U.S. 140, 147 (1985) ("The filing of objections to a magistrate's report enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute.").

self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.” *Hulsey v. Texas*, 929 F.2d 168, 171 (5th Cir. 1991) (quoting *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (per curiam)).

### DISCUSSION

The Court reviewed Plaintiff’s filings, including his objections (D.E. 66), memorandum of law (D.E. 71), and supplement (D.E. 72), all of which are construed as objections to the M&R. Despite careful review of Plaintiff’s briefing, the Court finds it largely incoherent and unsupported by the record. In sum, Plaintiff:

1. Recounts portions of the M&R;
2. Recounts portions of his pleadings;
3. Recounts portions of previously-filed motions and responses;
4. Appears to ask for an extension of time for appeal when the time for appeal will not begin to run until judgment is entered;
5. Discusses cases with no apparent application and without demonstrating how they relate to the Magistrate Judge’s analysis; and
6. Complains that the Magistrate Judge is biased.

Plaintiff does not state a factual or legal basis for how the M&R is incorrect. Nor does he cite to authority that is contrary to the M&R’s analysis. These objections are insufficient to warrant a de novo review by this Court.

At no time does Plaintiff demonstrate any error in the Magistrate Judge’s reasoning or conclusions that: (a) there is no basis for injunctive relief against the McConnell Unit

because Plaintiff is no longer housed there (D.E. 65, pp. 5–6); (b) all claims against Defendants Moore, Thompson, Lawson, Dominguez, Daniel, Samaniego, and Bryant and some claims against Defendants Kwarteng, Echavarry, Steger, and Miller are not related to the slip and fall that supplies the main basis for Plaintiff's claims and are thus misjoined (*Id.* at 6–8, 13–18); (c) Defendant fails to state a constitutional or statutory (ADA) claim for relief against Defendants Kwarteng, Echavarry, Steger, Miller, and Kendra regarding the slip and fall incident (*Id.* at 10–12, 18–21, 23–27); (d) Plaintiff fails to state a claim against Defendant Kendra (*Id.* at 26–27); (e) a federal court may decline to exercise supplemental jurisdiction over state law claims when the court has dismissed all claims over which it has original jurisdiction (*Id.* at 27–28); (f) Defendants are entitled to qualified and Eleventh Amendment immunity as to Plaintiff's § 1983 claims (*Id.* at 21–23); (g) Plaintiff is not entitled to default judgment in this case (*Id.* at 28); and (h) the Court should not issue injunctive relief against Estelle Unit operators for the factual, legal, and public policy reasons cited in the M&R (*Id.* at 28–31). The Court **OVERRULES** Plaintiff's objections, if any, to the Magistrate Judge's analysis and result regarding the above-mentioned recommendations.

The only specific objection Plaintiff asserts is that the Magistrate Judge's recommendation is biased. The Court reviewed the Magistrate Judge's well-reasoned and comprehensive M&R, which indicates: (1) the Magistrate Judge's thorough review of the facts and arguments presented by Plaintiff in his filings, and (2) no evidence that the

Magistrate Judge was biased in reaching the recommended result. Therefore, the Court **OVERRULES** this objection.

### **CONCLUSION**

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the M&R, as well as Plaintiff's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the M&R to which objections were specifically directed, the Court **OVERRULES** Moreno's objections and **ADOPTS** the Magistrate Judge's findings and conclusions.

The Court **GRANTS** the motions to dismiss filed by Defendants Lawson, Dominguez, Moore, Thompson, Samaniego, Miller, Kwarteng, Echavarry, Steger, Daniel, and Bryant (D.E. 48, 49) in their entirety and as follows:

- (1) (a) Plaintiff's deliberate indifference claims against Defendants Kwarteng, Echavarry, and Steger, arising from his June 20, 2019 slip and fall, are **DISMISSED WITH PREJUDICE** as frivolous and/or for failure to state a claim for relief; and (b) the remaining claims against Defendants Kwarteng, Echavarry, and Steger are **DISMISSED WITHOUT PREJUDICE** on the basis of improper joinder under Rules 18(a) and 20.
- (2) Plaintiff's claims against Defendants Moore, Thompson, Lawson, Dominguez, Daniel, Samaniego, and Bryant are **DISMISSED WITHOUT PREJUDICE** on the basis of improper joinder under Rules 18(a) and 20.
- (3) (a) Plaintiff's claims against Defendant Miller arising from his June 20, 2019 slip and fall are **DISMISSED WITH PREJUDICE** for failure to state a claim for relief; and (b) the remaining claims against Defendant Miller are **DISMISSED WITHOUT PREJUDICE** on the basis of improper joinder under Rules 18(a) and 20.
- (4) (a) Plaintiff's ADA claim related to medical care arising from the June 20, 2019 slip and fall is **DISMISSED WITH PREJUDICE** for failure

to state a claim for relief; and (b) the remaining portion of Plaintiff's ADA claim is **DISMISSED WITHOUT PREJUDICE** on the basis of improper joinder under Rules 18(a) and 20.

(5) Plaintiff's requests for injunctive relief are **DISMISSED** as moot.

It is also **ORDERED** that Plaintiff's claims against Defendant Lisa Kendra are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B).

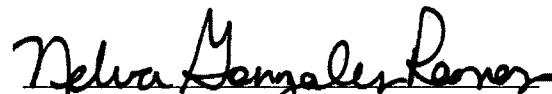
The Court **DECLINES** to exercise supplemental jurisdiction over Plaintiff's state law claims of negligence and medical malpractice and they are **DISMISSED WITHOUT PREJUDICE**.

Plaintiff's Motion for Default Judgment (D.E. 55) is **DENIED**.

Plaintiff's motions for preliminary injunctive relief (D.E. 57, 58, 62, 64) are **DENIED**.

This action is **DISMISSED** in its entirety.

ORDERED on November 23, 2021.

  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE



**ENTERED**

November 23, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JUAN A MORENO,

Plaintiff,

VS.

ISAAC KWARTING, *et al.*,

Defendants.

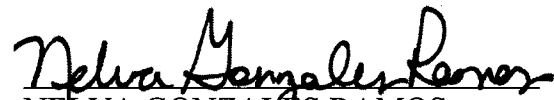
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CIVIL ACTION NO. 2:20-CV-00146

**FINAL JUDGMENT**

Pursuant to the Court's Order Adopting Memorandum and Recommendation (D.E.  
76), the Court enters final judgment dismissing this action.

ORDERED on November 23, 2021.

  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE

United States Court of Appeals  
for the Fifth Circuit

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No. 21-40904

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JUAN A. MORENO,

*Plaintiff—Appellant,*

*versus*

ISAAC KWARTING, *Medical Director, McConnell Unit*; ERICK ECHAVARRY, *Medical Physician, McConnell Unit*; STEVEN STEGER, *Optometrist, McConnell Unit*; DANIEL VIVIS, *Medical Mental Psychotherapist, McConnell Unit*; DONNA BRYANT, *Substitute Counsel-Advocate, McConnell Unit*; GENE E. MILLER; TANYA LAWSON; DANIEL DOMINGUEZ; CANDACE MOORE; MEGAN THOMPSON; PLACIDO SAMANIEGO,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:20-CV-146

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ON PETITION FOR REHEARING EN BANC

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is

DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

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Appendix-A

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

February 09, 2023

#1689833  
Mr. Juan A. Moreno  
CID McConnell Prison  
3001 S. Emily Drive  
Beeville, TX 78102-0000

No. 21-40904      Moreno v. Kwarting  
USDC No. 2:20-CV-146

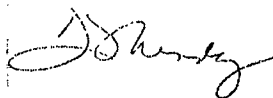
Dear Mr. Moreno,

We received your "Motion for Stay for Leave a Writ of Certiorari" [sic] moving the court for notice of appeal objection on petition for rehearing en banc denial. We take no action on your motion in light of the mandate having already issued. Issuance of the court's mandate will not interfere with the filing a petition for writ of certiorari--which is both captioned and filed directly with the Supreme Court.

You have 90 days to file a petition for certiorari with the U.S. Supreme Court from the date of this court's decision or the denial of a petition for rehearing.

Sincerely,

LYLE W. CAYCE, Clerk



By:  
Donna L. Mendez, Deputy Clerk  
504-310-7677

cc: Mr. Jason T. Bramow  
Mr. Jacob Przada

APPendix C.

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

December 15, 2022

Mr. Juan A. Moreno  
#1689833  
CID McConnell Prison  
3001 S. Emily Drive  
Beeville, TX 78102-0000

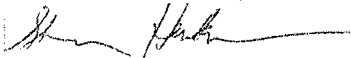
No. 21-40904      Moreno v. Kwarting  
USDC No. 2:20-CV-146

Dear Mr. Moreno,

We received your Objections to the Magistrates Report and Recommendations. We are taking no action on this document as there is no report and recommendation issued by the Magistrate on November 28, 2022. The only remedy for this case is a petition for rehearing. Your extension request to file a petition for rehearing is pending with the court.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Shawn D. Henderson, Deputy Clerk  
504-310-7668

cc:

Mr. Jason T. Bramow  
Mr. Jacob Przada

**Additional material  
from this filing is  
available in the  
Clerk's Office.**