United States Court of Appeals for the Fifth Circuit

No. 22-40449

CORNEL JACKIE DRUMMER,

Plaintiff—Appellant,

versus

KEN MAYNARD, III; AARON MOHANTLY; DR. HAGUE, *Medical Doctor*; UNIVERSITY OF TEXAS MEDICAL BRANCH MEDICAL STAFF, *George Beto Unit*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:19-CV-387

Before ELROD, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:*

Cornel Jackie Drummer, Texas prisoner # 00619316, appeals from the dismissal of his civil rights action as frivolous and for failure to state a claim on which relief may be granted. Drummer filed the action pursuant to 42 U.S.C. § 1983 to complain of alleged deliberate indifference to his serious

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

medical needs. Currently pending before this court are several motions filed by Drummer.

Because Drummer has not shown exceptional circumstances, his motion for the appointment of counsel is DENIED. *See Ulmer v. Chancellor*, 691 F.2d 209, 212-13 (5th Cir. 1982). Drummer recently paid the appellate filing fee, and therefore his motion to proceed in forma pauperis (IFP) on appeal is DENIED as moot. Drummer's two motions for judicial notice are also DENIED.

An appeal should be dismissed upon the hearing of any interlocutory motion where "it appears to the court that the appeal is frivolous and entirely without merit." 5TH CIR. R. 42.2. Our thorough examination of Drummer's brief and the record reveals no nonfrivolous issue. The brief raises only one concrete argument. Contrary to Drummer's contention, the district court did not err by dismissing his civil action sua sponte without ordering a response from the defendants. *See Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986); 28 U.S.C. § 1915(e)(2)(B)(ii). Because Drummer's appeal is frivolous and without any arguable merit, it is DISMISSED. *See* 5TH CIR. R. 42.2.

The district court's dismissal counts as one strike under § 1915(g), and Drummer incurs an additional strike for this frivolous appeal. *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). Drummer is WARNED that if he accumulates three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious bodily injury. *See* § 1915(g).

Sincerely,

LYLE W. CAYCE, Clerk

Dantrell Johnson

By: _____
Dantrell L. Johnson, Deputy Clerk

Enclosure(s)

Mr. Cornel Jackie Drummer

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

No. 3:19-cv-387

CORNEL JACKIE DRUMMER, TDCJ #00619316, PLAINTIFF,

v.

KEN MAYNARD, *ET AL.*, DEFENDANTS.

MEMORANDUM OPINION AND ORDER

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Plaintiff Cornel Jackie Drummer, an inmate in the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ), has filed a civil-rights complaint under 42 U.S.C. § 1983, Dkt. 1, and a more definite statement of his claims, Dkt. 12. He sues (1) Ken Maynard III, a surgeon at the University of Texas Medical Branch (UTMB); (2) Aaron Mohantly, a surgeon at UTMB; (3) Dr. Hague, a physician at the George Beto Unit; and (4) "UTMB – Medical Staff, George Beto Unit." He alleges that the defendants have violated his rights under the Eighth Amendment. Drummer is *pro se* and has leave to proceed *in forma pauperis*.

After screening the pleadings pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A(b), the court concludes that this case must be dismissed.

I. BACKGROUND

Dr. Maynard and Dr. Mohantly performed surgery on Drummer's back on August 7, 2017. Dkt. 1 at 4; Dkt. 12 at 4. Drummer alleges that at the conclusion of the surgery Dr. Maynard and Dr. Mohantly failed to close his incision, which caused him to "bleed out." Dkt. 1 at 5; Dkt. 12 at 9–10. He also alleges that the doctors did not prescribe him any pain medication or "walking material" post-surgery. Dkt. 1 at 5.

On September 26, 2017, Drummer was transferred to the George Beto Unit. *Id.* In October 2017, Drummer "experienced his first sign of pain to his upper left mid[-]section." *Id.* Drummer alleges that "[a]fter having experienced my first pain encounter in October 2017, I made an oral request [for medical assistance] to a medical staff who was passing out medication[.]" Dkt. 12 at 15. Because the unit was on lockdown, the unidentified medical staffer told Drummer to submit a sick-call slip. *Id.* It is not clear from the pleadings whether Drummer submitted a sick-call slip at this time, but he alleges that "[w]hen the pain had went away, I thought that it would not come back, but it did so I started submitting sick calls to medical for evaluation in November of 2017, December of 2017." *Id.*; *see also* Dkt. 1 at 5. Drummer continued to complain to medical staff at the Beto Unit in November and December of 2017. Dkt. 1 at 5; Dkt. 12 at 15. At some point Drummer was seen by Dr. Hague, who denied Drummer's request for x-rays and to be sent to Galveston Hospital for further evaluation. Dkt. 12 at 15–18. Instead, Dr. Hague

prescribed Tylenol for Drummer, and allegedly told Drummer that "nothing was wrong with him." Dkt. 1 at 5; Dkt. 12 at 16–18.

Drummer states that in December 2017 his "lungs collapsed" and he was seen by medical personnel at the Beto Unit. Dkt. 1 at 5. He was allegedly told by unidentified medical personnel that nothing was wrong and "to just relax more." *Id.*

On January 9, 2018, Dr. Hague recommended that an x-ray be taken of Drummer's chest. *See id.* at 6; Dkt. 12 at 17, 19. The x-ray was performed on January 11, 2018, "and it was there when it was determined that the plaintiff was suffering from a very large pocket of fluid to his chest cavity and to his left side lung area." Dkt. 1 at 6; *see also* Dkt. 12 at 17, 23. Drummer was then sent to John Sealy Hospital for emergency medical assistance. Dkt. 1 at 6; Dkt. 12 at 23–24. On January 12, 2018, Drummer underwent a procedure to remove the fluid in his lungs. *See* Dkt. 12 at 24. Drummer states that his current condition is "good," that he does not have any problems breathing, that he does not have any pain or chest problems, that he is not taking any medications related "to the lung/chest problem," and that no additional fluids have built up in his chest. *Id.* at 26.

Drummer filed this civil-rights action on November 18, 2019. *See* Dkt. 1 at 8. Drummer claims that Dr. Maynard and Dr. Mohantly are to blame for the fluid that was discovered in his lungs on January 11, 2018; specifically, he alleges that Dr. Maynard and Dr. Mohantly "intentionally, knowingly and deliberately

committed professional negligence of malpractice by deliberate indifference when they injected a large amount of an unknown fluid into" plaintiff's "chest cavity and left side lung area with intent to cause the plaintiff's lungs to col[l]apse or for his heart to stop due to conjective [sic] heart failure to cause his death." Dkt. 1 at 6; *see also* Dkt. 1 at 4; Dkt. 12 at 8 (claiming that Dr. Maynard and Dr. Mohantly "intentionally, knowingly, and deliberately injected [a large amount of fluid] into my chest cavity and left side lung area that was designed to cause harm and the death of the Plaintiff"). He further alleges that Dr. Hague and "UTMB-Medical Staff, George Beto Unit" "refused to submit for x-ray [when] initial complaint was made." Dkt. 1 at 3. Drummer seeks $50 million for pain and suffering, punitive damages, and "declaratory damages." *Id.* at 4.

II. STANDARD OF REVIEW

Because Drummer is an inmate who has been granted leave to proceed *in forma pauperis*, the Prison Litigation Reform Act requires the court to scrutinize the pleadings. The court must dismiss the case at any time, in whole or in part, if it determines that the action is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b). A dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b) for failure to state a claim is governed by the same standard under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See DeMarco v. Davis*, 914 F.3d 383, 386 (5th Cir. 2019); *Rogers v. Boatright*, 709

F.3d 403, 407 (5th Cir. 2013). When considering whether the plaintiff has adequately stated a claim on which relief can be granted, the court examines whether the complaint contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Rogers*, 709 F.3d at 407 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Under this standard, the court "construes the complaint liberally in favor of the plaintiff," "takes all facts pleaded in the complaint as true," and considers whether "with every doubt resolved on [the plaintiff's] behalf, the complaint states any valid claim for relief." *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009) (cleaned up).

In reviewing the pleadings, the court is mindful that Drummer proceeds *pro se*. Courts construe *pro se* litigants' pleadings under a less stringent standard of review. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). Under this standard, "[a] document filed *pro se* 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." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Even under this lenient standard, a *pro se* plaintiff must allege more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft*, 556 U.S. at 678 (cleaned up). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* No matter how well-pleaded the factual allegations may be, they must reveal that the plaintiff is entitled

to relief under a valid legal theory. *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *McCormick v. Stalde*r, 105 F.3d 1059, 1061 (5th Cir. 1997).

III. DISCUSSION

"Section 1983 provides a federal cause of action for the deprivation, under color of law, of a citizen's 'rights, privileges, or immunities secured by the Constitution and laws' of the United States . . . ." *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994) (*quoting Maine v. Thiboutot*, 448 U.S. 1, 4 (1980)). "Section 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). Thus, to state a claim under 42 U.S.C. § 1983, a plaintiff must allege facts showing that (1) he has been deprived of a right secured by the Constitution or of federal law, and (2) the violation was committed by someone acting under color of state law. *See Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978); *Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245, 252–53 (5th Cir. 2005).

Drummer alleges that Dr. Maynard and Dr. Mohantly intentionally injected fluid into his chest cavity with the intent to cause death by congestive failure and lung collapse. He further alleges that Dr. Hague and unidentified medical staff at the Beto Unit "refused to submit for x-ray [when] initial complaint was made." Dkt. 1 at 3. Because Drummer is a felon in state prison, his claim for inadequate medical care is governed by the Eighth Amendment prohibition against "cruel and

unusual" conditions of confinement. *See Rhodes v. Chapman*, 452 U.S. 337, 345–47 (1981); *Helling v. McKinney*, 509 U.S. 25, 31–33 (1993).

To prevail on his Eighth Amendment claims, Drummer must show that the defendants exhibited "deliberate indifference" to his "serious medical needs[,]" constituting an "unnecessary and wanton infliction of pain." *Estelle*, 429 U.S. at 104; *see also Easter v. Powell*, 467 F.3d 459, 463 (5th Cir. 2006). The Eighth Amendment has both an objective and subjective component. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). First, the prisoner must show "objective exposure to a substantial risk of serious harm." *Gobert v. Caldwell*, 463 F.3d 339, 345 (5th Cir. 2006). Second, he must show that the defendant acted, or failed to act, with deliberate indifference to the risk. *Id.* at 345–46.

Deliberate indifference is an "extremely high standard to meet." *Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001). "Unsuccessful medical treatment, acts of negligence, or medical malpractice do not constitute deliberate indifference, nor does a prisoner's disagreement with his medical treatment, absent exigent circumstances." *Gobert*, 463 F.3d at 346. "A showing of deliberate indifference requires the prisoner to submit evidence that prison officials 'refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.'" *Id.* (quoting *Domino*, 239 F.3d at 756).

A. Official Immunity

The defendants in this case are sued for money damages for actions they took as employees of UTMB—an agency of the State of Texas. *See* Tex. Educ. Code § 65.01 *et seq.* Unless expressly waived, the Eleventh Amendment bars an action in federal court by a citizen of a state against his or her own state, including a state agency. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). The Eleventh Amendment also bars a federal action for monetary damages against state officials when the state itself is the real party in interest. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100–03 (1984). A suit against a state official in his or her official capacity is considered a suit against the state itself. *See Will*, 491 U.S. at 71 ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the state itself.") (citation omitted).

Texas has not waived its Eleventh Amendment immunity and Congress did not abrogate that immunity when it enacted 42 U.S.C. § 1983. *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 394 (5th Cir. 2015) (citing *Quern v. Jordan*, 440 U.S. 332, 340 (1979)). Because UTMB is a state agency and therefore immune, officials employed by UTMB are also entitled to immunity from any claim for monetary damages against them in their official capacity. *See Loya v. Tex. Dep't of Corr.*, 878 F.2d 860, 861 (5th Cir. 1989) (per curiam); *Oliver v. Scott*, 276 F.3d 736, 742 (5th Cir. 2002). As a result, the defendants are entitled to immunity from

any claim for monetary damages against them in their official capacities.

B. Claims Against Dr. Maynard and Dr. Mohantly

Civil-rights claims under § 1983 are governed by the two-year statute of limitations provided by Texas law. *See Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001) (citing Tex. Civ. Prac. & Rem. Code § 16.003(a)); *see also Redburn v. City of Victoria*, 898 F.3d 486, 496 (5th Cir. 2018). This means that a plaintiff has two years from the time that his claim accrues to file a civil-rights complaint under § 1983. *See Gonzales v. Wyatt*, 157 F.3d 1016, 1020 (5th Cir. 1998).

Federal law determines when a cause of action accrues under § 1983. *See Smith v. Reg'l Transit Auth.*, 827 F.3d 412, 421 (5th Cir. 2016). A claim generally accrues "the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured" by actions attributable to the defendant. *Piotrowski*, 237 F.3d at 576 (internal citation and quotations omitted).

Drummer's claims that Dr. Maynard and Dr. Mohantly did not close the incision from his surgery and that they did not prescribe him any pain medication or "walking material" accrued on August 8, 2017, which is the date Drummer states that he learned from a nurse that his incision was bleeding and that Dr. Maynard and Dr. Mohantly did not make the prescriptions. *See* Dkt. 12 at 10. Because his complaint was not filed until November 18, 2019, his claims based on the alleged

failure of Dr. Maynard and Dr. Mohantly to properly close his surgical incision or to prescribe him any pain medication or walking material are outside the two-year statute-of-limitations period. Thus, these claims are dismissed as frivolous. *See Abston v. Fed. Bureau of Prisons*, 689 F. App'x 304, 304 (5th Cir. 2017) (per curiam) ("'[W]here it is clear from the face of a complaint filed *in forma pauperis* that the claims asserted are barred by the appliable statute of limitations, those claims are properly dismissed' as frivolous.") (quoting *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993) (per curiam)).

Drummer also claims that Dr. Maynard and Dr. Mohantly violated his Eighth Amendment rights when they intentionally injected fluid into his lungs with the intent to cause his lungs to collapse or for his heart to stop. The basis for this allegation is pure speculation. That is, Drummer believes that because he did not have any fluid in his body before his August 2017 back surgery, the only way it could have gotten there was that Dr. Maynard and Dr. Mohantly injected it into his lungs.[1] *See* Dkt. 1 at 6 (stating that "because the large amount of fluid did not

[1] That Drummer's allegation that the fluid discovered in his lungs in January 2018 was intentionally placed there by Dr. Maynard and Dr. Mohantly during his back surgery in August 2017 is based on pure speculation is further supported by Drummer's own pleadings. For example, in the court's order for a more definite statement, the court asked whether a medical professional told Drummer the reason as to why he had a large pocket of fluid in his chest cavity and lung area. *See* Dkt. 11 at 9. In response, Drummer states:

> Richard W. Goodgame, MD, IM-Gastroenterology was assigned to my case. . . . [he] asked me where did I get the fluid [in my chest and lungs] from and how? I responded and told him that I got the fluid from an operation I had there at Galveston Hospital on August 7, 2017-on my lower back.

contain any biological bacteria genetically identifying any cancer cells, TB, or any other medical issues with the plaintiff, the plaintiff was ask[ed] where did he get the large amount of fluid from? The plaintiff immediately responded that the fluid was injected during his August 7, 2017, back surgery operation."); Dkt. 12 at 5. Claims based on pure speculation should be dismissed. *See In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) ("Factual allegations must be enough to raise a right to relief above the speculative level . . . .") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *Mosley v. Anderson*, 503 F. App'x 272, 274 (5th Cir. 2012) (per curiam) (affirming district court's dismissal of

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> But, "How"? he ask. I said, "I don't know, maybe they put the IV in me the wrong way." "But that is impossible cause it don't work like that" he said. I said, "well, I don't know, but I know I got it from the back operation on August 7, 2017." "Do you realize [that] this is January 12, 2018 and you're saying that you got this fluid from the hospital on August 7, 2017, that is impossible that you could have survived this long with this much fluid in your body." ?
>
> . . .
>
> Dr. Goodgame told me that the fluid does not have any bacteria in it from an infection–therefore, there is no way possible that this fluid can build up in my body without an infection to generate it.
>
> During a follow up examination after being discharged on January 24, 2018, one of Dr. Goodgame's medical team staff members told me that "the fluid build might be generated from me having bad teeth."

Dkt. 12 at 25–26; *see also id.* at 30 (stating that the "Texas Medical Board conducted an investigation and concluded that, they found no evidence that the injury complained of occurred during the operation and that a proper follow up was made to monitor the situation").

inmate's complaint under 28 U.S.C. §§ 1915A(b)(1) & 1915(e)(2)(B) when the inmate's factually unsupported and speculative allegations were insufficient to state a claim for deliberate indifference); *Shelton v. Lemons*, 486 F. App'x 395, 397 (5th Cir. 2012) (per curiam) (affirming dismissal of plaintiff's claim as frivolous when plaintiff's allegations were "conclusory and speculative"). So, even assuming that Drummer's Eighth Amendment claim that the surgery performed by Dr. Maynard and Dr. Mohantly was responsible for the later fluid build-up in his lungs is timely, the claim is dismissed for failure to state claim on which relief may be granted under 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1).

C. Claims Against Dr. Hague

Drummer argues that Dr. Hague violated his Eighth Amendment rights when he "refused to submit [Drummer] for x-ray when initial complaint was made" and "to be sent over to Galveston Hospital for further evaluation." Dkt. 12 at 15, 18; *see also* Dkt. 1 at 3. Although Drummer was not satisfied with the care provided by Dr. Hague when was seen by the doctor in the latter part of 2017, Dr. Hague's conclusion that an x-ray was not needed at that time or that Drummer did not need an additional evaluation at Galveston Hospital does not amount to deliberate indifference. *See Matthews v. Fleming*, Civil Action No. 3:05-CV-1408-L, 2010 WL 669447, at *4 (N.D. Tex. Feb. 25, 2010) ("Disagreements between a health care provider and the inmate over a diagnosis and the proper course of treatment are insufficient to support a deliberate indifference claim.") (citing *Norton v.*

Dimazana, 122 F.3d 286, 292 (5th Cir. 1997) and *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991)). The pleadings show that Dr. Hague did not fail to treat Drummer or ignore his complaints; Dr. Hague examined Drummer in November or December of 2017 and prescribed him Tylenol and it was Dr. Hague who ordered the x-ray of Drummer's chest on January 9, 2018. Drummer has otherwise failed to show Dr. Hague "knew of and disregarded an excessive risk" to his "health or safety." *Alexander v. Tex. Dep't of Crim. Just.*, 951 F.3d 236, 241 (5th Cir. 2020); *see also Perniciaro v. Lea*, 901 F.3d 241, 258 (5th Cir. 2018) ("Liability attaches only when an official has actual knowledge of a substantial risk of serious harm.") (citation omitted).

Drummer's claim against Dr. Hague is dismissed for failure to state claim on which relief may be granted under 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1).

D. Claims Against "UTMB Medical Staff, George Beto Unit"

Drummer claims that "UTMB Medical Staff, George Beto Unit" violated his Eighth Amendment rights when they "refused to submit [him] for x-ray upon initial complaint was made" and otherwise generally denied him medical assistance. *See* Dkt. 1 at 3, 7.

Despite submitting supplemental pleadings, Drummer has failed to identify any UTMB staff at the Beto Unit, besides Dr. Hague, who are responsible for the alleged violations of his civil rights. The court ordered Drummer to submit a more definite statement and asked multiple questions about Drummer's claims,

including identification of each person in "medical" at the Beto Unit who denied his request for medical assistance. *See* Dkt. 11 at 5–6. Besides Dr. Hague, Drummer did not name any specific individuals. *See* Dkt. 12 at 14–17. The only other individual Drummer identified was the unnamed medical staffer who told Drummer he would have to submit a sick call slip because the unit was on lockdown. Dkt. 12 at 15. There are no factual allegations whatsoever that support that this medical staffer knew of and disregarded an excessive risk to Drummer's health or safety.

UTMB itself is not a proper defendant. Section 1983 authorizes suit against a "person" acting under color of law who causes certain deprivations of rights.[2] State agencies, like UTMB, are not "persons" within the meaning of § 1983. *See Will*, 491 at 65–66 ("Our conclusion that a State is not a 'person' within the meaning of § 1983 is reinforced by Congress' purpose in enacting the statute."); *Pratt v. Harris Cnty., Tex.*, 822 F.3d 174, 180 (5th Cir. 2016) (holding that to establish a claim under § 1983 a plaintiff must allege a deprivation "committed by a person acting under color of state law"); *Hyatt v. Sewell*, 197 F. App'x 370 (5th Cir. 2006) (per curiam) ("UTMB is not a person for purposes of § 1983") (citing *Will*, 491 U.S. at 71). Drummer's claim against "UTMB Medical Staff, George Beto

[2] *See* 42 U.S.C. § 1983 ("Every ***person*** who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .") (emphasis supplied).

Unit" is dismissed for failure to state claim on which relief may be granted under 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1).

* * *

For the reasons stated above, the court **ORDERS** as follows:

1. The civil action filed by Cornel Jackie Drummer is **DISMISSED with prejudice**—pursuant to 28 U.S.C. §§ 1915A(b), 1915(e)(2)(B)—as frivolous and for failure to state a claim on which relief may be granted;

2. All pending motions are denied as moot; and

3. The dismissal will count as a strike for purposes of 28 U.S.C. § 1915(g).

The clerk will provide a copy of this order to the plaintiff. The clerk will also send a copy to the manager of the Three Strikes List at Three_Strikes@txs.uscourts.gov.

Signed on Galveston Island this 22nd day of June, 2022.

JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

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