

APPENDIX (A)

# United States Court of Appeals for the Fifth Circuit

---

No. 23-40234

---

ALEX ADAMS,

*Plaintiff—Appellant,*

*versus*

UNKNOWN LAYTON, *Sergeant, Coffield Unit; Use of Force Office, Coffield Unit; UNIVERSITY OF TEXAS MEDICAL BRANCH, McConnell Unit; Office of Inspector General; Unit Grievance Investigator, McConnell Unit; Unit Grievance Investigator, Coffield Unit; Central Grievance Office; BOBBY LUMPKIN, Director, Texas Department of Criminal Justice, Correctional Institutions Division; TEXAS BOARD OF PARDONS AND PAROLES,*

*Defendants—Appellees.*

---

Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:22-CV-436

---

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of July 10, 2023, for want of prosecution. The appellant failed to timely comply with the Court's notice of April 20, 2023.

LYLE W. CAYCE  
Clerk of the United States Court  
of Appeals for the Fifth Circuit

*Rebecca L. Leto*

By: REBECCA L. LETO, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Appendix C

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ALEX ADAMS, #1181239, §  
Plaintiff, §  
v. § Case No. 6:22-cv-436-JDK-KNM  
UNKNOWN LAYTON, et al., §  
Defendants. §

**ORDER DENYING RELIEF FROM FINAL JUDGMENT**

The Court dismissed Plaintiff's civil rights lawsuit with prejudice for failure to state a claim on February 16, 2023. Docket Nos. 15, 16. The matter is before the Court again on Plaintiff's "Motion to Set Aside Judgement." Docket No. 17. Because time for Plaintiff to seek relief under Rule 59 expired before Plaintiff filed this motion (*see* Fed. R. Civ. P. 59(b) (allowing 28 days after judgment to move for new trial)), the Court considers the filing to be a motion for relief from judgment under Rule 60 of the Federal Rules of Civil Procedure.

**JURISDICTION**

As an initial matter, the Court observes that Plaintiff also labels his submission as a "Notice of Appeal." Docket No. 17 at 1. A district court generally lacks jurisdiction to grant a Rule 60(b) motion once an appeal is pending. Fed. R. Civ. P. 62.1 (Advisory Committee Notes) ("After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand."). "Once the notice of appeal has been filed, while the district court may consider or deny a Rule 60(b) motion . . . it no longer has the jurisdiction to grant such

a motion while the appeal is pending.” *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004). However, the Fifth Circuit “has expressly recognized the power of the district court to consider on the merits and deny a 60(b) motion filed after a notice of appeal, because the district court’s action is in furtherance of the appeal.” *Willie v. Cont'l Oil Co.*, 746 F.2d 1041, 1046 (5th Cir. 1984), *on reh'g*, 784 F.2d 706 (5th Cir. 1986).

### STANDARD

A Rule 60 movant must show that he is entitled to relief from judgment because of (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misconduct, or misrepresentation of an adverse party; (4) that the judgment is void; (5) that the judgment has been satisfied; or (6) any other reason justifying the granting of relief from the judgment. Fed. R. Civ. P. 60(b). Relief will be granted only in “unique circumstances,” and the district court has considerable discretion in determining whether the movant has met any of the Rule 60(b) factors. *Teal v. Eagle Fleet, Inc.*, 933 F.2d 341, 347 (5th Cir. 1991); *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 287 (5th Cir. 1985).

“The purpose of Rule 60(b) is to balance the principle of finality of a judgment with the interest of the court in seeing that justice is done in light of all the facts.” *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 638 (5th Cir. 2005) (citing *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981)). But “it goes without saying that a Rule 60 motion is not a substitute for an appeal from the underlying judgment.” *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1408 (5th Cir. 1994).

“The burden of establishing at least one of the Rule 60(b) requirements is on [plaintiff] as the movant.” *Bahsoon v. Wells Fargo Bank, NA*, No. 3:12-cv-2017-D, 2013 WL 1831786, at \*1 (N.D. Tex. May 1, 2013) (citing *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990), *abrogated on other grounds by Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075-76 n.14 (5th Cir. 1994) (en banc)); *see also Wallace v. Magnolia Family Servs., L.L.C.*, No. 13-4703, 2015 WL 1321604, at \*2 (E.D. La. Mar. 24, 2015) (“The extraordinary relief afforded by Rule 60(b) requires that the moving party make a showing of unusual or unique circumstances justifying such relief.” (citing *Pryor*, 769 F.2d at 286)).

Rule 60(b) motions are typically committed to the sound discretion of the district court. *See Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998) (noting that the United States Court of Appeals for the Fifth Circuit has “consistently held that the relief under Rule 60(b) is considered an extraordinary remedy and that the desire for a judicial process that is predictable mandates caution in reopening judgments” (internal quotation marks and alterations omitted)). And, because “denial of a 60(b)(6) motion is reviewed only for abuse of discretion,” “[i]t is not enough that the granting of relief might have been permissible, or even warranted—denial must have been so unwarranted as to constitute an abuse of discretion.” *Travelers*, 38 F.3d at 1408 (quoting *Seven Elves*, 635 F.2d at 402; footnote and citation omitted).

## ANALYSIS

Plaintiff does not raise any specific circumstance that justifies extraordinary relief under Rule 60(b)(1)–(5). Under Rule 60(b)(6), the rule’s catchall category, a court may reopen a judgment for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). Rule 60(b)(6) is a residual clause used to cover unforeseen contingencies and “is a means for accomplishing justice in exceptional circumstances.” *Steverson v. Global-SantaFe Corp.*, 508 F.3d 300, 303 (5th Cir. 2007) (quoting *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d 599, 604-05 (5th Cir. 1986)); *see also Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002) (“Rule 60(b)(6) motions ‘will be granted only if extraordinary circumstances are present.’”) (quoting *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 747 (5th Cir. 1995)). Extraordinary circumstances “may include, in an appropriate case, ‘the risk of injustice to the parties’ and ‘the risk of undermining the public’s confidence in the judicial process.’” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863-864 (1988)).

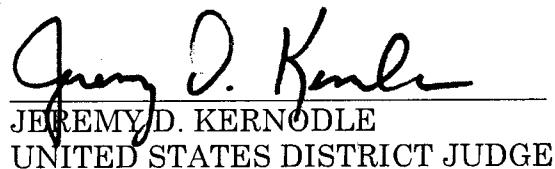
Plaintiff has not raised any facts or circumstances that would qualify as extraordinary or exceptional circumstances justifying relief under Rule 60(b)(6). He continues to assert a “right to a grievance process,” which does not exist, as the Court has already explained. Docket No. 17 at 1; Docket No. 11 at 5. He has not stated any claim in connection with his vague reference to a disciplinary conviction, and his mention of a broken tooth does not even appear in the statement of the claim in his amended complaint. Docket No. 8 at 4.

The remainder of Plaintiff's submission is a crude and frivolous commentary that is both irrelevant and unacceptable in filings in this Court. Docket No. 17. Plaintiff is admonished to refrain from such vulgarity in further court filings and cautioned that such behavior might subject him to sanctions.

#### CONCLUSION

Plaintiff has not raised any facts or circumstances that would justify relief from the Court's judgment. He has failed to carry his burden under any of the Rule 60(b) provisions. Plaintiff, therefore, is not entitled to relief from the final judgment entered in this case. Plaintiff's Rule 60(b) motion for relief from judgment (Docket No. 17) is **DENIED**.

So ORDERED and SIGNED this 25th day of April, 2023.

  
\_\_\_\_\_  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ALEX ADAMS, #1181239,

§

Plaintiff,

§

v.

Case No. 6:22-cv-436-JDK-KNM

UNKNOWN LAYTON, et al.,

§

Defendants.

§

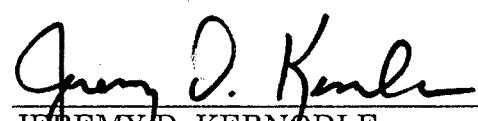
**FINAL JUDGMENT**

The Court, having considered Plaintiff's case and rendered its decision by opinion issued this same date, hereby enters **FINAL JUDGMENT**.

It is **ORDERED** that Plaintiff's claims are **DISMISSED** with prejudice. All pending motions are **DENIED** as moot.

The Clerk of Court is instructed to close this case.

So **ORDERED** and **SIGNED** this **16th** day of **February, 2023**.

  
\_\_\_\_\_  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE

APPENDIX (B)

CASREF,SA4

**U.S. District Court**  
**Eastern District of TEXAS [LIVE] (Tyler)**  
**CIVIL DOCKET FOR CASE #: 6:22-cv-00436-JDK-KNM**

Adams v. Layton et al  
 Assigned to: District Judge Jeremy D. Kernodle  
 Referred to: Magistrate Judge K. Nicole Mitchell  
 Cause: 42:1983 Prisoner Civil Rights

Date Filed: 11/14/2022  
 Jury Demand: None  
 Nature of Suit: 550 Prisoner: Civil  
 Rights  
 Jurisdiction: Federal Question

**Plaintiff****Alex Adams**

represented by **Alex Adams**  
 1181239  
 MCCONNELL UNIT  
 3001 S. Emily Drive  
 Beeville, TX 78102  
 PRO SE

V.

**Defendant**

**Unknown Layton**  
*Sargeant, Coffield Unit*

**Defendant**

**Use of Force Office**  
*Coffield Unit*

**Defendant**

**University of Texas Medical Branch**  
*McConnell Unit*

**Defendant****Office of Inspector General****Defendant**

**Unit Grievance Investigator**  
*McConnell Unit*

Date Filed	#	Docket Text
11/14/2022	1	COMPLAINT against Unknown Layton, Office of Inspector General, Unit Grievance Investigator, University of Texas Medical Branch, Use of Force Office, filed by Alex Adams. (Attachments: # 1 Envelope(s))(wea, ) (Entered: 11/15/2022)

11/14/2022	<input checked="" type="checkbox"/> 2	MOTION for Leave to Proceed in forma pauperis by Alex Adams. (Attachments: # <a href="#">1</a> Data Sheet)(wea, ) (Entered: 11/15/2022)
11/14/2022	<input checked="" type="checkbox"/> 3	MOTION to Present Exhibits by Alex Adams. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Exhibit 9, # <a href="#">10</a> Exhibit 10, # <a href="#">11</a> Exhibit 11, # <a href="#">12</a> Exhibit 12, # <a href="#">13</a> Exhibit 13, # <a href="#">14</a> Exhibit 14, # <a href="#">15</a> Exhibit 15, # <a href="#">16</a> Exhibit 16, # <a href="#">17</a> Exhibit 17, # <a href="#">18</a> Exhibit 18, # <a href="#">19</a> Exhibit 19, # <a href="#">20</a> Exhibit 20, # <a href="#">21</a> Exhibit 21, # <a href="#">22</a> Exhibit 22, # <a href="#">23</a> Exhibit 23, # <a href="#">24</a> Exhibit 24, # <a href="#">25</a> Exhibit 25, # <a href="#">26</a> Exhibit 26, # <a href="#">27</a> Exhibit 27, # <a href="#">28</a> Exhibit 28, # <a href="#">29</a> Exhibit 29, # <a href="#">30</a> Exhibit 30, # <a href="#">31</a> Exhibit 31, # <a href="#">32</a> Exhibit 32, # <a href="#">33</a> Exhibit 33, # <a href="#">34</a> Exhibit 34, # <a href="#">35</a> Exhibit 35, # <a href="#">36</a> Exhibit 36, # <a href="#">37</a> Exhibit 37, # <a href="#">38</a> Exhibit 38, # <a href="#">39</a> Exhibit 39, # <a href="#">40</a> Exhibit 40, # <a href="#">41</a> Exhibit 41, # <a href="#">42</a> Exhibit 42, # <a href="#">43</a> Exhibit 43, # <a href="#">44</a> Exhibit 44, # <a href="#">45</a> Exhibit 45, # <a href="#">46</a> Exhibit 46, # <a href="#">47</a> Exhibit 47, # <a href="#">48</a> Exhibit 48, # <a href="#">49</a> Exhibit 49, # <a href="#">50</a> Exhibit 50, # <a href="#">51</a> Exhibit 51, # <a href="#">52</a> Exhibit 52, # <a href="#">53</a> Exhibit 53, # <a href="#">54</a> Exhibit 54, # <a href="#">55</a> Exhibit 55, # <a href="#">56</a> Exhibit 56, # <a href="#">57</a> Exhibit 57, # <a href="#">58</a> Exhibit 58, # <a href="#">59</a> Exhibit 59, # <a href="#">60</a> Exhibit 60, # <a href="#">61</a> Exhibit 61, # <a href="#">62</a> Exhibit 62, # <a href="#">63</a> Exhibit 63, # <a href="#">64</a> Exhibit 64, # <a href="#">65</a> Exhibit 65, # <a href="#">66</a> Exhibit 66, # <a href="#">67</a> Exhibit 67, # <a href="#">68</a> Exhibit 68, # <a href="#">69</a> Exhibit 69, # <a href="#">70</a> Exhibit 70)(wea, ) (Entered: 11/16/2022)
11/14/2022	4	CASE REFERRED to Magistrate Judge K. Nicole Mitchell. (wea, ) (Entered: 11/16/2022)
11/16/2022		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form <u>Consent to Proceed Before Magistrate Judge</u> is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically using the event <u>Notice Regarding Consent to Proceed Before Magistrate Judge</u> . MAILED Consent form to Plaintiff. (wea, ) (Entered: 11/16/2022)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ALEX ADAMS #1181239 §  
VS. § CIVIL ACTION NO. 6:22cv436  
UNKNOWN LAYTON, et al. §

ORDER REGARDING FILING FEE

Before the Court is Plaintiff's motion for leave to proceed *in forma pauperis* (IFP), which is supported with a copy of his prison trust account statement. (Dkt. #2.) The Prison Litigation Reform Act of 1996 (PLRA) requires prisoners seeking to bring civil actions to pay an initial partial filing fee. The Act further requires prisoners thereafter to pay the balance of the full filing fee.

The Court having considered the IFP application in light of PLRA finds that the following order should be entered. Accordingly, it is **ORDERED** that:

1. The Plaintiff's motion for leave to proceed IFP (Dkt. #2), is **GRANTED**. 28 U.S.C. § 1915. The granting of this motion does not relieve the Plaintiff of the responsibility of paying the full filing fee or any partial fees connected therewith, unless and until this Court directs otherwise, regardless of the disposition of the case. Because the Plaintiff has been granted IFP status, the amount of the filing fee is \$350.00.
2. The Clerk shall file the Plaintiff's pleadings without prepayment of the filing fee.
3. Because Plaintiff has no current assets from which to pay a fee, no partial filing fee shall be assessed. This does not relieve Plaintiff of his obligation to pay the full filing fee, regardless of the disposition of this case.
4. Service of process shall be withheld pending screening pursuant to 28 U.S.C. § 1915A.

5. No amendments or supplements to the complaint shall be filed without prior approval.

A complete amended complaint shall be attached to any motion to amend.

6. There will be no discovery in the case at this time. *See Fed. R. Civ. P. 26.*

7. All discovery in this case is stayed until an order to answer is filed.

8. No motions for appointment of counsel shall be filed until the Court has completed its screening pursuant to 28 U.S.C. § 1915A, which may but need not include a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

9. The Plaintiff shall notify the Court of any changes of address by filing a written notice of change of address with the Clerk. Failure to file such notice may result in the case's being dismissed for want of prosecution.

10. In the event that the Plaintiff subsequently receives deposits in his inmate trust account, the agency having custody of the Plaintiff shall deduct 20% of each deposit made to the Plaintiff's inmate trust account and forward payments to the Court on a regular basis provided the account exceeds \$10.00.

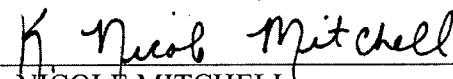
11. In the event that the Plaintiff is released from custody, the filing fee is still due and payable. Failure to make arrangements with the Court for payment of the fee may result in the dismissal of the case for want of prosecution.

12. The Court shall mail a copy of this order to the TDCJ-CID Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, and the TDCJ Local Funds Division, P.O. Box 629, Huntsville, Texas 77342-0629.

NOTICES TO THE PLAINTIFF:

- a. If you do not wish to prosecute this action, you may notify the court in writing, by letter or motion, that you wish to voluntarily dismiss this civil action.
- b. Payment of all or any part of the full filing fee will not prevent dismissal of the complaint if it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.

So ORDERED and SIGNED this 16th day of November, 2022.

  
\_\_\_\_\_  
K. NICOLE MITCHELL  
UNITED STATES MAGISTRATE JUDGE

APPENDIX  
F

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ALEX ADAMS #1181239 §  
VS. § CIVIL ACTION NO. 6:22cv436  
UNKNOWN LAYTON, et al. §

ORDER TO AMEND

Before the Court is Plaintiff's civil rights lawsuit, (Dkt. #1), filed pursuant to 42 U.S.C. §1983. A cursory review of Plaintiff's complaint establishes that it suffers from deficiencies that will prevent its moving forward in the current form.

Rule 8(a) of the Federal Rules of Civil Procedure requires that complaints contain a short and plain statement of the claim showing that the pleader is entitled to relief. A short and plain statement of the claim is one that gives the defendant fair notice of what the plaintiff's claims are and the grounds upon which they rest. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Moreover, claims under Section 1983 must rest on specific facts and reasonable factual inferences, not on Plaintiff's bare conclusions and unsupported feelings.

Plaintiff's complaint does not satisfy these standards. In the statement of his claim, Plaintiff does not allege any facts with specificity. (Dkt. #1 at 4.) Instead, he refers to a separate motion he filed with exhibits that he says state his claims against each party. (*Id.*) The motion in question, a "Motion to Present Exhibit's [sic]," consists of more than 225 pages of vague indexing and documents, most of which do not mention the Defendants named in the complaint or clearly relate to any claims against them. (Dkt. #3.) The motion's very caption states that it is "namely to explain Step 1 & 2 grievance to support claim [sic] & I-60." (*Id.*) But to the extent Plaintiff is trying to

prove exhaustion of administrative remedies at this stage, that is an affirmative defense that a prisoner is not required to establish in his complaint and is not material to the screening or service of a complaint. *Jones v. Bock*, 549 U.S. 199, 216 (2007) (“[I]nmates are not required to specifically plead or demonstrate exhaustion in their complaints.”)

This attempt to incorporate separate materials into a complaint would not fairly apprise any Defendant served with the complaint of the claims against him or their factual bases. Moreover, it is not the responsibility of the Defendants or the Court to comb through hundreds of pages of random exhibits in search of facts or claims that are not spelled out in the body of the complaint, and Plaintiff may not rely on a bulk of attachments to state a legal claim. *Vizcayno v. Michael Unit*, No. 6:18CV440, 2020 WL 5536504, at \*11 (E.D. Tex. July 26, 2020), *report and recommendation adopted*, No. 6:18CV440, 2020 WL 5534579 (E.D. Tex. Sept. 14, 2020) (“The Court is not required to search through the amended complaint(s) and any exhibits in order to glean a clear and succinct statement of each claim for relief. Instead, it is the responsibility of the Plaintiff to edit and organize his claims and supporting allegations into a manageable format.”).

Moreover, it appears that Plaintiff may be improperly joining unrelated claims in a single complaint. The minimal information provided in the complaint indicates that he sues different Defendants, at different locations, for unrelated alleged violations ranging from a wrongful disciplinary conviction to inadequate medical care. (Dkt. #1 at 3.) But an inmate’s claims are not properly joined in a single lawsuit just because they all arise in prison. The United States Court of Appeals for the Seventh Circuit has explained why such improper joinder is impermissible:

The controlling principle appears in Fed. R. Civ. P. 18(a): “A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.” Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different

defendants belong in different suits . . . to prevent the sort of morass that this 50-claim, 24-defendant suit produced[.]

*George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *see also Bonner v. Bosworth*, No. 3:10-CV-2150-O-BH, 2010 WL 11534476, at \*1–2 (N.D. Tex. Nov. 30, 2010), *report and recommendation adopted*, No. 3:10-CV-2150-O-BH, 2011 WL 13199228 (N.D. Tex. May 2, 2011) (“Requiring parties to assert unrelated claims against different defendants in separate complaints avoids unduly cumbersome litigation.”).

Misjoinder is not grounds for dismissal of an entire lawsuit, but the Federal Rules of Civil Procedure authorize a district court to “on just terms, add or drop a party” *sua sponte* or to “sever any claim against a party.” Fed. R. Civ. P. 21. Accordingly, if Plaintiff’s claims are unrelated, and this defect is not corrected in the amended complaint, it would be within the Court’s discretion to select one of Plaintiff’s several claims to review in this case and simply sever or dismiss the rest without prejudice. *See Daker v. Head*, 730 F. App’x 765, 768 (11th Cir. 2018) (“Even though it appears that Daker asserted unrelated claims against unrelated defendants, the district court should have exercised its authority under Rule 21 *sua sponte* to dismiss improper defendants and sever unrelated claims.”); *accord Shafer v. Davis*, No. 2:20-CV-167, 2020 WL 6489094, at \*6 (S.D. Tex. Nov. 4, 2020) (explaining that “[b]y alleging unrelated occurrences or transactions against different prison officials, Plaintiff’s complaint does not comport with Rule 18 and Rule 20 of the Federal Rules of Civil Procedure” and reviewing only “Group One” claims with instruction to the plaintiff that he must pursue the remaining claims in separate civil actions subject to separate filing fees).

Plaintiff must amend his complaint to clarify his precise claims in this case and to show that he has a basis for a civil rights lawsuit. *See Eason v. Thaler*, 14 F.3d 8 (5th Cir. 1994). He must produce “a short and plain statement . . . which rests on more than conclusions alone.” *Shultea*

*v. Wood*, 47 F.3d 1427, 1433 (5th Cir. 1995) (en banc); *accord, Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). Accordingly, it is

**ORDERED** that Plaintiff shall have thirty (30) days from receipt of this order to file an amended complaint on the standard form stating specific facts to support his claim(s). In this repleading, Plaintiff shall legibly explain in detail—for only those claims he is pursuing in this case—how and when his constitutional rights were allegedly violated, identify the defendants responsible for those violations, specify how each defendant personally violated his constitutional rights, and explain how he was harmed or injured by those violations. He must organize each separate claim under a separate heading in his statement of claim, and clearly state who did what, when, and where for each claim, as well as how he was injured. Plaintiff may, if he chooses, attach exhibits to his amended complaint, but their relevant substance must be discussed in the body of his amended complaint to be considered by the Court during screening or answered by any Defendant who is served. Once Plaintiff has filed his amended complaint, it will act as the operative pleading in this lawsuit; therefore, it must comprehensively set forth Plaintiff's claims and should not refer to or attempt to incorporate the original complaint or any other filings. Nor should Plaintiff repeat any claims from his other pending suits or any suits that have been dismissed on their merits. Plaintiff should be as clear and concise as possible and must place the matter number assigned to this case on his amended complaint. The amended complaint must be typed or neatly printed so that it is legible. Failure to replead in conformity with this order may result in dismissal. It is further

**ORDERED** that the Clerk of Court shall send Plaintiff a blank copy of the standardized section 1983 form, which Plaintiff must fill it out and return to the Court in conformity with this order. Finally, it is

**ORDERED** that Plaintiff's motion to present exhibits (Dkt. #3) is **DENIED** as moot, without prejudice to Plaintiff's ability to attach any relevant exhibits to his amended complaint as discussed above.

So ORDERED and SIGNED this 16th day of November, 2022.

K. Nicole Mitchell  
K. NICOLE MITCHELL  
UNITED STATES MAGISTRATE JUDGE

APPEAL Dkt 6

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

**MAGISTRATE REFERRAL**

CIVIL ACTION NO. 6:22cv436 JDK/KNM

Adams

v.

Layton et al.

Pursuant to a Standing Order, certain civil suits are referred at the time of the filing equally among magistrate judges. Therefore, the above-entitled action has been referred to:

Magistrate Judge K. Nicole Mitchell

Appendix A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADAMS

vs.

LAYTON et al.

§  
§  
§  
§

CASE NO. 6:22-cv-436-JDK-KNM

**CONSENT TO PROCEED BEFORE UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's trial jurisdiction from being exercised by a magistrate judge.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

**NOTICE**

In accordance with the provisions of 28 U.S.C. 636(c), the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Signatures

Party Represented

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Alfrey 054

⑤

# 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

May 09, 2023

#1181239  
Mr. Alex Adams  
CID McConnell Prison  
3001 S. Emily Drive  
Beeville, TX 78102-0000

No. 23-40234 Adams v. Unknown Layton  
USDC No. 6:22-CV-436

Dear Mr. Adams,

We are not filing or taking action on your brief received with your application to proceed in forma pauperis, because it is premature. Notice will be issued in due course regarding the next procedural step necessary in processing your appeal. If you receive a briefing notice, you must notify this office in writing if you want this premature brief filed. Failure to notify this office, or to file a replacement brief within the time provided, will result in dismissal of your appeal without further notice.

Sincerely,

LYLE W. CAYCE, Clerk



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

Appendix

(J)

## 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

April 20, 2023

Mr. Alex Adams  
#1181239  
CID McConnell Prison  
3001 S. Emily Drive  
Beeville, TX 78102-0000

No. 23-40234 Adams v. Unknown Layton  
USDC No. 6:22-CV-436

Dear Mr. Adams,

We have docketed your appeal with the 5th Circuit number shown above. Please use this number in all future contact with the court. **If you have more than one appeal, you will have to comply with the instructions below for each appeal.** Read this letter carefully because you have 45 days to make two decisions **and** to notify us what you want to do, or we may dismiss your appeal without further notice:

The Prison Litigation Reform Act, 28 U.S.C. § 1915, generally requires you to make arrangements to pay the \$505.00 filing fees before this court will consider your appeal. Knowing that you must pay for your appeal, the **first decision** you must make is if you want to continue with your case. If you do not want to continue, you may voluntarily dismiss your appeal now using the attached Form 1. When we get your Form 1 we will dismiss your case and you do not have to do anything more.

If you want your case to continue, the **second decision** you must make is how you will pay the fees. You may either:

(1) Make a one time payment of \$505.00 to the **district court clerk**; or,

(2) Apply to the **district court** for permission to appeal in forma pauperis (IFP). If you want this option you should contact the district court for specific instructions and any forms they have, and should contact your prison authorities for instructions how to get a "certified trust fund account statement." Also, if your prison requires them, you must sign consent forms and authorizations to have money taken from your account. You must send these forms to the district court, along with your motion to proceed on appeal in forma pauperis, your certified trust fund account statement and any other required

documents. If the **district court** grants you permission to appeal IFP, you will have to pay an "initial partial filing fee" calculated by the court. You must pay this initial fee from your inmate trust fund account. If your account does not have enough money to pay the full initial fee, all money in your account will be collected and the remainder taken when more funds exist. After this initial fee is paid, you still will have to pay the rest of the \$505.00 fee from your prison trust fund account.

If you have not already paid the full filing fee to the district court, or applied to the district court for permission to appeal IFP, **you should do so immediately.**

You have **45 days from the date of this letter** to tell us what your decision is on your case. If you want to dismiss your case, send us a completed Form 1. If you want to continue your case, send us a completed Form 2 showing us how you are going to pay for your appeal. If you are using Form 2, please read it very carefully, and then mark one of the three boxes on it. **You must complete and return either Form 1 or Form 2 to us within 45 days of the date of this letter or we may dismiss your appeal without further notice.**

**ATTENTION ATTORNEYS:** Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). Information on Electronic Case Filing is available at [www.ca5.uscourts.gov/cmecf/](http://www.ca5.uscourts.gov/cmecf/).

We recommend that you visit the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov) and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

**Special guidance regarding filing certain documents:**

General Order No. 2021-1, dated January 15, 2021, requires parties to file in paper highly sensitive documents (HSD) that would ordinarily be filed under seal in CM/ECF. This includes documents likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. Before uploading any matter as a sealed filing, ensure it has not been designated as HSD by a district court and does not qualify as HSD under General Order No. 2021-1.

A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

**Sealing Documents on Appeal:** Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that

the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Shawn D. Henderson, Deputy Clerk  
504-310-7668

Enclosure(s)

cc w/encl:

Mr. David O'Toole

FORM 1

---

No. 23-40234

---

MOTION TO DISMISS APPEAL

Under the provisions of the **5TH CIR. R.** 42.1, I hereby move to voluntarily dismiss the appeal in this case.

---

(name of appellant)