IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

TUJUAN ESTAISYO SESSION, Institutional ID No. 01714978	§	
Plaintiff,	§	Civil Action No. 1:20-CV-00116-BU
v.	§	
GIANNOTTI, *et al.*,	§	
Defendants.	§	

ORDER

Pro se Plaintiff Tujuan Estaisyo Session (Session), filed this civil rights action under 42 U.S.C. § 1983 on May 27, 2020. Dkt. No. 1. The Court previously granted Session permission to proceed *in forma pauperis*, which subjects Session's Complaint to the Court's preliminary judicial screening process under 28 U.S.C. § 1915(e)(2) and 1915A(b)(1). Dkt. No. 5. Thereafter, Session consented to the exercise of jurisdiction by the undersigned. Dkt. Nos. 11, 12.

Session filed a Motion for Leave to Amend, which the Court granted, on December 11, 2020. Dkt. Nos. 24, 25. He then tried to file another Motion to Amend his Complaint on January 8, 2021. Dkt. No. 28. However, the Court denied this request "because the motion [did] not include the proposed complete amended complaint" as required by previous orders and the Local Civil Rules. Dkt. No 31. The Court also reminded Session of the proper procedure for seeking leave to amend a pleading, but Session did not seek

leave to amend. *Id.* As a result, the operative pleadings in this case include Session's Amended Complaint (Dkt. No. 27) and his Response to the Magistrate Judge's Questionnaire (Dkt. No. 34) which consist of the claims discussed in this Order.

After considering the allegations in Session's Amended Complaint, his responses to the Magistrate Judge Questionnaire, the authenticated records provided by the TDCJ, and the applicable law, the Court finds that Session's excessive force claim against Alberto Giannotti, deliberate indifference to medical needs claims against FNU Haines and Giannotti, and any claims related to the grievance process at the Robertson Unit do not survive judicial screening and must be dismissed under 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii) and 1915A(b)(1) as frivolous and for failure to state a claim upon which relief may be granted.

I. PRELIMINARY SCREENING

A court must dismiss a complaint filed by a prisoner against a government entity or employee if the court determines the complaint is frivolous or 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. § 1915A(b) (applying section to any suit by a prisoner against certain governmental entities, regardless of whether the prisoner is proceeding *in forma pauperis*).

A frivolous complaint lacks any arguable basis, either in fact or in law, for the wrong alleged. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A complaint lacks an arguable basis in fact if it rests upon clearly baseless factual contentions, and similarly lacks an arguable

basis in law if it contains indisputably meritless legal theories. *See id.* at 327; *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005).

Dismissal for failure to state a claim—whether under Section 1915(e)(2)(B)(ii), Section 1915A(b)(1), or Rule 12(b)(6)—"turns on the sufficiency of the 'factual allegations' in the complaint." *Smith v. Bank of Am., N.A.*, 615 F. App'x 830, 833 (5th Cir. 2015) (per curiam) (quoting *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014) (per curiam). Thus, if a plaintiff "plead[s] facts sufficient to show" that the claims asserted have "substantive plausibility" by stating "simply, concisely, and directly events" that they contend entitle them to relief, the claims should not be dismissed merely because the plaintiff fails to articulate the proper legal theory that otherwise makes those facts actionable in court. *Johnson*, 574 U.S. at 11–12 (citing FED. R. CIV. P. 8(a)(2)–(3), (d)(1), (e)).

Courts accept *well-pleaded* factual allegations as true. *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016) (emphasis added). This means the factual allegations, while not required to be detailed, must amount to more than mere labels, conclusions, or a statement of the legal elements of a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *see also Chhim*, 836 F.3d at 469.

For claims to be substantively plausible, a plaintiff need not establish that the pleaded facts probably occurred as alleged, but the facts must allow the court "to infer more than the mere possibility of misconduct." *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634

F.3d 787, 796 (5th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 678–79). Even pro se plaintiffs must plead facts that raise the right to relief above a speculative level. *Chhim*, 836 F.3d at 469 (citing *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002)). And when plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." *Twombly*, 550 U.S. at 570.

When evaluating a complaint under these standards, courts liberally construe the pleadings of pro se plaintiffs, holding their complaints to "less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). But "liberal construction does not require that the Court ... create causes of action where there are none." *Smith v. CVS Caremark Corp.*, Civil Action No. 3:12-cv-2465-B, 2013 WL 2291886, at *8 (N.D. Tex. May 23, 2013). "To demand otherwise would require the 'courts to explore exhaustively all potential claims of a *pro se* plaintiff'" and would "'transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.'" *Jones v. Mangrum*, No. 3:16-cv-3137, 2017 WL 712755, at *1 (M.D. Tenn. Feb. 23, 2017) (quoting *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985)).

Ultimately, "'[d]etermining whether a complaint states a plausible claim for relief' is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) (quoting *Iqbal*, 556 U.S. at 679).

II. FACTUAL SUMMARY

Session alleges that on March 13, 2020, prison guard Alberto Giannotti was escorting him to the showers and "spit in [his] face." Dkt. No. 34 at 1.[1] Session claims that after witnessing "what he had done" Giannotti began laughing and then told Session that "he just gave me the Coronavirus." *Id.* Session requested to go to medical, but states that Giannotti would not let him go. *Id.* When Session began to get out of his restraints in order to take a shower, Giannotti "told [him] that he was going to give it to everybody else too"—in other words, threatening to give other inmates the Coronavirus. *Id.*

On March 15, 2020, Session began experiencing what he "thought was a chest cold but no cough, loss of breath." *Id.* Session claims to have given Nurse Haines two "emergency sick call request forms" and asked her to have "the doctor call [him] out immediately." *Id.* at 2. Despite Haines assuring Session a few days later that she turned in the forms and would check up on them, Session was never seen by medical at the Robertson Unit in response to these sick call requests. *Id.*

At some point between March and April, Session was transferred from the Robertson Unit to the Hughes Unit. *Id.* Session says he was transported to medical on April 6, 2020, "because the staff's here on Hughes Unit learned of the assault and threats that Giannotti did to [him]." *Id.* When Session was at medical, he claims that a nurse there

[1] Session does not provide any facts about what happened that may have caused or provoked the spitting incident.

informed him that there was nothing in his medical file saying that Giannotti had spit on him. *Id.*

Session claims to have filed a Step 1 grievance because of the March 13th occurrence with Giannotti. Session says he "handed [his] step 1 grievance to Officer Gomez" and watched at the door as "officer Gomez...placed my grievance inside the dayroom grievance box." *Id.* at 3. On March 16, 2020, Session claims that a woman picked up his grievance. *Id.* However, Session says that while he was the Robertson Unit his grievance "was never investigated or reviewed." *Id.* Session states that a staff member at the Hughes Unit checked on his grievance and that he "was granted an opportunity to re-file [his] grievance on Giannotti here on Hughes Unit." *Id.*

III. DISCUSSION AND ANALYSIS

Session's claims can be construed as excessive force, deliberate indifference to serious medical needs, and complaints about the grievance system. The Court takes each in turn.

A. Excessive Force against Alberto Giannotti

When a prisoner alleges that prison officials used excessive force against them in violation of the Eighth Amendment, the core judicial inquiry is whether the force "was applied in a good-faith effort to maintain or restore discipline, or [applied] maliciously and sadistically to cause harm." *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (quoting *Hudson v. McMillian*, 503 U.S. 1, 6 (1992)). Given the nature of being in prison, not every dispute resulting in a "push or shove" will end up being a constitutional violation. *Hudson*, 503

U.S. at 9 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)). A claim for excessive force "must allege '(1) an injury, which (2) resulted directly and only from the use of force that was clearly excessive to the need; and the excessiveness of which was (3) objectively unreasonable.'" *Pena v. City of Rio Grande City*, 879 F.3d 613, 619 (5th Cir. 2018) (internal quotations omitted). Ultimately, "[t]he second and third elements collapse into a single objective-reasonableness inquiry." *Id.*

In deciding whether an officer's force was reasonable under the circumstances, the court may consider a number of factors. *McGuffey v. Blackwell*, 784 F. App'x 240, 242–43 (5th Cir. 2019). These factors include: the severity of the injury; "the need for the application of force; the relationship between the need and the amount of force used; the threat reasonably perceived by the responsible officials; and any efforts made to temper the severity of a forceful response." *Id.*

Although an injury does not need to be severe to give rise to an Eighth Amendment violation, "[t]he Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force." *Hudson*, 503 U.S. at 9–10. To have a violation of the Eighth Amendment, the force used must be such that it is "'repugnant to the conscience of mankind.'" *Id.* (citing *Whitley v. Albers*, 475 U.S. 312, 327 (1986)).

Session alleges that Giannotti intentionally, and without reason, spit in his face. A summary of Session's grievance to TDCJ that was included in the authenticated records indicates that after Giannotti spit in Session's face, the spit dripped into Session's eye, and

claim, even if true. *Robertson v. Plano City*, 70 F.3d 21, 24 (5th Cir. 1995) (*citing McFadden v. Lucas*, 713 F.2d 143 (5th Cir. 1983)). And abusive language or other verbal harassment, "while unprofessional and inexcusable, are simply not sufficient to state a constitutional claim under 42 U.S.C. § 1983." *Johns v. Miller*, 2005 WL 3592248, at *7 (E.D. La. Oct. 26, 2005) (citations omitted). Giannotti's statement that he gave Session the Coronavirus and was going to give it to everyone else amounts only to verbal threats, and therefore cannot constitute excessive force or other constitutional violation.

For the reasons stated, Session's claim for excessive force against Alberto Giannotti is DISMISSED with prejudice as frivolous and for failure to state a claim under both 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

B. Deliberate Indifference Claims

Under the Eighth Amendment, prison officials have a duty to provide adequate medical care. *Rogers v. Boatright*, 709 F.3d 403, 409 (5th Cir. 2013). An inmate seeking to establish an Eighth Amendment violation regarding medical care must allege facts showing that prison officials were deliberately indifferent to his serious medical needs. *Morris v. Livingston*, 739 F.3d 740, 747 (5th Cir. 2014) (quoting *Wilson v. Seiter*, 501 U.S. 294, 297 (1991)) (explaining that because "only the 'unnecessary *and wanton* infliction of pain' implicates the Eighth Amendment, a prisoner advancing such a claim must, at a minimum, allege 'deliberate indifference' to his 'serious' medical needs" (emphasis in original)). "Deliberate indifference" means that the denial of medical treatment was "much more likely than not to result in serious medical consequences, and additionally that the

defendants had sufficient knowledge of the situation so that the denial of medical care constituted wanton disregard of the prisoner's rights." *Johnson v. Treen*, 759 F.2d 1231, 1238 (5th Cir. 1985).

To successfully claim a deliberate indifference to medical needs, a plaintiff must satisfy both an objective and subjective test. *Rogers*, 709 F.3d at 410. An inmate must first prove objective exposure to a substantial risk of serious bodily harm. *Gobert v. Caldwell*, 463 F.3d 339, 345–46 (5th Cir. 2006). As to the subjective component, a prison official acts with deliberate indifference only where he (1) knows the inmate faces a substantial risk of serious harm and (2) disregards that risk by failing to take reasonable measures to abate it. *Id.* at 346; *see also Harris v. Hegmann*, 198 F.3d 153, 159 (5th Cir. 1999).

Allegations of malpractice, negligence, or unsuccessful treatment fail to establish deliberate indifference. *Gobert*, 463 F.3d at 346. Similarly, an inmate's disagreement with the medical treatment provided does not give rise to a constitutional claim. *Norton v. Dimazana*, 122 F.3d 286, 292 (5th Cir. 1997). The prison staff must have engaged in conduct that shows "a wanton disregard for any serious medical needs." *Treen*, 759 F.2d at 1238.

1. FNU Haines

Session claims that he gave Haines two medical request forms on March 15, 2020, and asked Haines to "have the doctor call [him] out immediately." Dkt. No. 34 at 2. He says he told her "im sick and I think I may have the Coronavirus." *Id.* From "March 15, 2020 through March 20, 2020," Session says he was "in the cell struggling to breathe." *Id.*

However, Session says he did not seek help from anyone else because he "trusted Mrs. Haines with [his] sick call request forms." *Id.* Session does not remember the exact date, but he ultimately followed up with Haines about his medical requests a few days after submitting them. *Id.* She told him that she had submitted them, asked if he had been seen yet, and told Session that "she would go check on it." *Id.* Session says he never saw Haines again. *Id.*

On April 6, 2020, Session was seen by a medical team at the Hughes Unit. *Id.* A nurse informed Session after pulling up his medical records that there was nothing in his medical file about Giannotti spitting on him. *Id.* Because there was nothing in his file regarding the incident, Session believes that "Nurse Haines...intentionally denied or delayed [his] access to treatment." *Id.*

Session's deliberate indifference to medical needs claim against Haines fails on both the objective and subjective prong. "'[A] serious medical need is one for which treatment has been recommended or for which the need is so apparent that even laymen would recognize that care is required.'" *Sims v. Griffin*, 35 F.4th 945, 949 (5th Cir. 2022) (quoting *Gobert*, 463 F.3d at 345 n.12)). Session does not allege facts showing an objectively serious need for medical care. Although Session complains about experiencing shortness of breath while in his cell, a chest cold, and in essence flu-like symptoms, he also admits that he began feeling better after three days. Dkt. No. 34 at 1. Even when discussing his pink eye, Session says he "would have it about 3 days and it [would] go away and a week or two" later his pink eye would return. *Id.* These symptoms, as described by Session, are not so

severe that the need for medical care would be readily apparent. *See id.*; *Sims*, 35 F.4th at 949.

Additionally, Session has not shown that Haines knew he faced a substantial risk of harm or that she consciously disregarded it. At the time the events giving rise to this lawsuit occurred, March 2020, people knew little about what the Coronavirus was or how to manage its symptoms.[4] Therefore, it is uncertain what medical treatment could have been provided to Session for flu-like symptoms that subsided after three days at which point Session says he "started feeling better." Dkt. No. 34 at 2. And Session provides no facts regarding what Haines knew about the condition of Session's eye when he was requesting medical treatment. Thus, Session has not pleaded enough facts to make it plausible that Haines knew not obtaining medical treatment for him would pose a substantial risk of harm to his health. *See Gobert*, 463 F.3d at 348–49.

Lastly, Haines's actions in dealing with Session's medical request forms do not establish more than negligence or recklessness. Session says that Haines asked if he had been seen and said she would check up on his request forms. Dkt. No. 34 at 2. Although the fact that there was nothing in Session's file regarding the incident with Giannotti may show that Haines failed to file Session's request forms and failed to check up on them, these failures alone do not establish that Haines intentionally disregarded Session's needs for medical attention. Session's statement that Haines "intentionally denied or delayed [his]

[4] *See CDC Museum COVID-19 Timeline*, *supra* note 2.

access to treatment" amounts only to a conclusion and does not show that Haines's failure to turn in the forms, assuming true, resulted from deliberate indifference rather than mere negligence. *Id.* And Haines's questions to Session about whether he had seen anyone from medical and her assurance that she would follow up on Session's requests—even if Haines failed to submit the requests—show the opposite of a wanton disregard for Session's medical needs.

Consequently, Session's claim against Haines for deliberate indifference to his medical needs is DISMISSED with prejudice as frivolous and for failure to state a claim under both 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

2. Alberto Giannotti

Session complains that Giannotti refused to let him see a doctor after spitting in his face. Specifically, Session states that after Giannotti spit in his face, Session asked Giannotti to be let into his cell so that he could "get dressed" because he "had to go to medical." Dkt. No. 34 at 1. Session claims that "Mr. Giannotti said he [would] not let [him] go to medical." *Id.* The Court liberally construes Session's claim that Giannotti refused to take him to medical as a deliberate indifference to a serious medical need claim.

At the time that Session asked Giannotti to take him to medical, he does not claim to have been experiencing any symptoms that would indicate an objective need for medical care. The mere threat of receiving the Coronavirus is not enough to show that Session needed medical attention. As stated above, it is unclear what treatment medical professionals could provide for Session if he did have the Coronavirus, particularly if not

enough time had passed for him to be experiencing any symptoms[5], or for a Coronavirus test to render accurate results.[6]

For similar reasons, Giannotti did not knowingly disregard a substantial risk of harm by not allowing Session to go to medical. Session does not provide any facts showing that at the time he asked Giannotti to go to medical, just moments after Giannotti spit in Session's face, Giannotti knew he needed treatment that if not received would pose a substantial risk of harm to his health. Therefore, any deliberate indifference to medical needs claim that Session has against Giannotti for not taking him to medical after spitting on him is DISMISSED with prejudice as frivolous and for failure to state a claim under both 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

C. Grievance claims

Session states that his Step-1 grievance against Giannotti was never investigated or reviewed. Because FNU Reyes, FNU Cano, and J. Lopez are responsible for investigating Step-1 grievances, Session believes they must be responsible for his grievance not being examined. Dkt. No. 34 at 3–5.

Prisoners do "not have a federally protected liberty interest in having [their] grievances resolved to [their] satisfaction," and an alleged § 1983 due process violation for failure to investigate grievances is "indisputably meritless." *Hill v. Walker*, 718 F. App'x

[5] *Symptoms of COVID-19*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (last updated Oct. 26, 2022) ("Symptoms may appear 2-14 days after exposure to the virus").

[6] *COVID-19 Testing: What you Need to Know*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html (updated Sept. 28, 2022) ("...wait at least 5 full days after your exposure before testing").

243, 250 (5th Cir. 2018) (citing *Geiger*, 404 F.3d at 373–74). The Fifth Circuit has further stated that "an alleged violation of [a prisoner's] due process rights resulting from prison grievance procedures is a 'legally nonexistent interest.'" *Geiger*, 404 F.3d at 374.

Not only does Session not provide enough information for the Court to conclude that Session's grievance was ignored, but even if he did, Session has no legal interest in having his grievance investigated. Session's claims against Reyes, Cano, and Lopez for allegedly failing to investigate his Step-1 grievance are DISMISSED with prejudice as frivolous and for failure to state a claim under both 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

III. CONCLUSION

For the foregoing reasons, Session's claims against the Defendants are dismissed with prejudice.

ORDERED this 1st day of December, 2022.

JOHN R. PARKER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

TUJUAN ESTAISYO SESSION, Institutional ID No. 01714978 Plaintiff, v. GIANNOTTI, *et al.*, Defendants.	§ § § § § § § § § §	Civil Action No. 1:20-CV-00116-BU

JUDGMENT

In accordance with the Order issued this same day, it is the judgment of this Court that Plaintiff Tujuan Estaisyo Session's Amended Complaint, and all claims alleged therein, are DISMISSED with prejudice under 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii) and 1915A(b)(1) as frivolous and/or for failure to state a claim on which relief may be granted.

ORDERED this 1st day of December, 2022.

JOHN R. PARKER
UNITED STATES MAGISTRATE JUDGE

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

APPENDIX A

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 13, 2023.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

APPENDIX B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner Mr. Tusuan Estaisyo Session is and and was at all times mentioned herein a Prisoner of the state of Texas. in the custody of the Texas Department of Criminal Justice. Is Currently Confined in Robertson unit, in Abilene, TX

respondent Roberto Giannotti excessive force, deliberate indifference to serious medical needs, unsafe conditions, discrimination violated Tusuan Session's rights and constituted the Eighth Amendment at issue for Cruel and unusual Punishment, a due Process Violation and a TDCJ Policy and Procedure Violation 8th Amendment Constitutional Amendment at issue to the united States Constitution

respondent's Adam Burnett, FNU odom, FNU Labaran, FNU Peister, N. Lofton, FNU Breeden, FNU Cano, FNU Bolen, Crystal Reyes, deliberate indifference to serious Medical needs, unsafe Conditions, discrimination and failing to investigate and service my Grievance Violated Tusuan Session rights and Constituted the 1st, 5th, 8th and 14th Amendment at issue for Cruel and unusual Punishment a due Process Violation and a TDCJ Policy and Procedure Violation. 1st, 5th, 8th, 14th Amendments Constitutional Amendment at issue to the united States Constitution

respondent Haines Married Amanda Viramontes deliberate indifference to serious medical needs, discrimination Violated Tusuan Session rights and Constituted the 8th Amendment at issue for Cruel and unusual Punishment, a due Process Violation and a TDCJ Policy Violation. 8th Amendment Constitutional Amendment at issue to the united States Constitution.

STATEMENT OF THE CASE

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543-0001

APPEAL NO. 23-10010 Session V. Giannatti
USDC NO. 1:20-CV-116

Mr. Iuisuan Estaislo Session 01714978
Robertson unit
12071 F.M 3522
Abilene, TX 79601-0000

Greetings Supreme Court of the united states.
I am Petitioner Mr. Iuisuan Estaislo Session 01714978. on ~~March~~ May, 27, 2020. I filed a Pro Se Complaint Civil rights action under 42 u.s.c § 1983.

3). I sued 11 Texas Department of Criminal Justice, Robertson unit employees and former employees.

3). I sued TDCJ Robertson unit Roberto Giannetti for excessive force, deliberate indifference to serious medical needs.

4). I sued TDCJ Robertson unit employees FNU Burnett, FNU odom, FNU Lafaranel, FNU Pfister, FNU Breeden, N. Lofton for Negligence, deliberate indifference to serious medical Needs.

5). I sued TDCJ Robertson unit Pill nurse Maid name FNU Haines. Married name Amanda Viramontes for Negligence deliberate indifference to serious medical needs.

6). I sued TDCJ Robertson unit former Assistant Wardens J. LOPEZ, FNU Cano and former Grievance investigater Cristal Reyes for Negligence, deliberate indifference to serious medical needs

7). on December 1, 2022, Abilene, TX, District Court Magistrate Judge John R. Parker Dismissed my entire Case With Prejudice as frivolous and for failure to state a claim under both 28 u.s.c. §§ 1915(e)(2)(B) and 1915A(b).

FACTS

8). Office of the Clerk, Supreme Court of the united states. I Petitioner Mr. Iuisuan Estaislo Session 01714978 is going to state in detail all the facts that are the basis for my Suit.

9). Im going to include what the 11 TDCJ Robertson unit employees and former employees did to me. Im going to explain what happened, where, when, how, and Who was there.

10). I do understand that Judges may know very little about Prison. therefore, I will be sure to explain the terms I use.

APPENDIX D

STATEMENT OF THE CASE

1). Here, I will divide my description of facts into separate short paragraphs in a way that makes sense - by time, date, or event.

2). All of my claims against the 11 defendants, Appellees, and now respondents have exhausted administrative remedies which Magistrate John R. Parker failed to include in the authenticated record. All of my claims against the 11 defendants, Appellees, and now respondents also have surveillance video which magistrate John R. Parker refused to use in regard to his conclusion.

3). On March 13, 2020, on Frank Robertson unit, on 12 building, C Pod, D section, 43 cell, on or after 3 PM. on 2 Row.

4). While being escorted to the showers, officer Roberto Giannotti called my name "Session"; and the second I looked at officer Roberto Giannotti to see what he wanted.

5). Officer Roberto Giannotti intentionally spit in my face, including inside of my left eye. Officer Roberto Giannotti started laughing and threatened to just give me the Corona virus. and that he is going to give everybody else the Corona virus too.

6). I requested to be escorted back to my cell so I can get dressed so I can go to medical. officer Roberto Giannotti told me I couldn't go to medical.

7). I requested to speak with a sergeant. after showering, Sergeant FNU Odom, Sergeant FNU Lafrance, Sergeant FNU Pfister and officer Adam Burnett came to my cell, which was 12C43 cell at the time.

8). I informed Sergeant FNU Odom and Sergeant Lafarance that officer Roberto Giannotti intentionally spit in my face while I was in handcuffs and that his spit got inside my left eye which had swelled nearly shut seconds after officer Roberto Giannotti spit in my face.

9). I informed Sergeant FNU Odom and Sergeant Lafarance that officer Roberto Giannotti started laughing and threatened to just give me the Corona virus and that he is going to give everybody else the Corona virus too.

10). Sergeant FNU Lafarance told me not to call him out of his office to report the type of complaint that I was reporting on officer Roberto Giannotti.

11). I requested to be escorted to medical so I can file a complaint and to take pictures of my left swollen eye.

12). Sergeant FNU Odom and Sergeant FNU Lafarance both said, No! that my complaint is not serious enough. despite them seeing my left swollen eye.

13). So I asked both Sergeant's can they please go and review the surveillance video since this assault and threats occured right in front of 2 surveillance video cameras.

14). They answered, No! and that is when officer Adam Burnett and Sergeant FNU Pfister came through the door. they refused to help as well.

15). Not only was my Eighth Amendment to the Constitution was violated by officer Roberto Giannotti, officer Adam Burnett, Sergeant FNU Odom, Sergeant FNU Lafarance, Sergeant FNU Pfister. But these six officers and former officers violated TDCJ Policy and Procedure.

STATEMENT OF THE CASE

26). Texas Department of Criminal Justice Policy and Procedure.
Subject: Taking Photographs following an injury or use of force incident.
Authority: Tex. Gov't Code §§ 493.001, 493.006 (b), 494.001, 494.002(a)
Applicability: Texas Department of Criminal Justice (TDCJ)

27). Policy: Photographs will be taken of each offender involved in a use of force incident or whenever an offender or employee incurs an injury.
The Purpose of the Photographs is to provide additional evidence in an administrative Proceeding or Criminal Prosecution. Photographs taken should show and injury, or lack there of, with as much detail as possible.

28). Procedures:
1. Offender Photographs
A). Following a use of force incident, whether an injury exists or not. Correctional staff must take at least a full front Photograph and a full back Photograph of the offender.
B). Whenever an offender injury has been noted or reported, Correctional staff must:
1). Photograph the injured area; and
2). Photograph all injuries if more than one injury is noted or reported.

29). There is no escaping liability if the evidence showed that officer Roberto Giannetti, officer Adam Burnett, Sergeant FNU odom, Sergeant FNU Lafrance and Sergeant FNU Pfister all merely refused to verify underlining facts that they all strongly suspected to be true. or declined to confirm inferences of risk that they all strongly suspected to exist.

30). I was dissatisfied on how officer Adam Burnett, Sergeant FNU Pfister, Sergeant FNU odom, and Sergeant FNU Lafarance handled my Complaint against officer Roberto Giannetti by refusing to comply with the TDCJ Policy and Procedures

31). Therefore, I sent a statement through mail to Robertson unit 12 building Captain N. Lotten and 12 building Major Breeden

32). which they both failed to respond back to me. I sent these 2 statements out on March 16 2020. and on March 24, 2020 I sent 2 more statements out through mail to Captain N. Lotten and Major Breeden and this time I made carbon copies of both statements which I sent to the district Court which Magistrate John R. Parker did not include in the authenticated record.

33). I also sent statements to the office of Inspector General in Huntsville Texas and to the Texas Board of Criminal Justice in Austin, TX on March 24, 2020. and I made carbon copies of those statements and sent them to the district Court which magistrate John R. Parker did not include in the authenticated record.

34). On March 14, 2020, I wrote and submitted a step one grievance on officer Roberto Giannetti, officer Adam Burnett, Sergeant FNU Pfister, Sergeant FNU odom, sergeant FNU Lafrance

35). My step one grievance was never investigated and reviewed by assistant Warden J. Lopez, assistant warden FNU Cano, and Grievance investigator Crystal Reyes.

STATEMENT OF THE CASE

36). On March 15, 2020. I woke up around 3 A.M feeling dangerously ill. I had a fever, I Couldn't breathe. I had shortening of breath. my left eye was still swollen.

37). I filled out 2 sick call request forms. one to medical and one to the Mental health department,

38). I gave both sick call request forms to the Pill nurse maid name Amanda Haines. her Married name Amanda Viramontes.

39). In both sick call request forms I explained what officer Roberto Giannetti did to me and said to me. I also stated in both sick call request forms that I reported officer Roberto Giannetti assault and threats to officer Burnett, Sgt. Odom, Sgt. Lafarance, and Sgt. Pfister and what that told me. I clearly described what my medical Problem was and why I ~~cannot~~ want to be seen by a doctor.

40). I was never Scheduled a Medical appointment and days later I Seen Pill nurse Amanda Haines, Married name Amanda Viramontes and I asked her what did she do with my two sick call request forms?

41). She lied to me by saying She turned them in. TDCJ Policy requires all sick calls be answered within 48 hours. See. Farmer, 511 U.S. at 843 n.8. See Texas Civil Practice and remedies Code, Chapter 74. Texas Civil Practices and remedies Code § 74.351.

42). I assumed Franch Robertson unit administration J. LOPEZ, FNU Cano, Crystal Reyes got tired of my Complaints regarding the Giannetti situation.

43). I was transferred to Alfred D. Hughes unit on March 26, 2020.

44). on April 6, 2020. I was escorted to Captain Y. Garcia's office regarding my Statement that I Sent to The Texas Board of Criminal Justice.

45). I was interviewed by Captain Y. Garcia and the Texas Board of Criminal Justice employee. through Phone.

46). I was asked by Captain Y. Garcia why I didn't file a grievance on officer Giannetti? I responded. I did file a grievance on officer Giannetti and that I haven't heard anything back yet.

47). After our interview. Captain Y. Garcia called Hughes unit grievance investigator Vicki Cundiff. Captain Y. Garcia asked Vicki Cundiff. When was the last step one grievance that Tuscan Session 0171497 had filed?

48). When reviewing my grievance record Vicki Cundiff informed Captain Y. Garcia that my last step one grievance was investigated and reviewed November of 2019.

49). Captain Y. Garcia informed Vicki Cundiff on what officer Giannetti did to me. and that I did turn in a grievance on Giannetti.

50). Grievance investigator waved off the grievance that was never investigated and reviewed on Robertson unit and allowed me a opportunity to file my grievance on officer Giannetti a second time.

51). When the grievance issue was tooken care of. Captain Y. Garcia asked me what did medical say? and I informed her that I was denied medical care despite me giving Pill nurses Amanda Haines Married name Amanda Viramontes my 2 sick call request forms when I was sick 2 days after the incident with Giannetti.

STATEMENT OF CASE

52). Captain Y. Garcia called Hughes unit medical department and informed nurse Teryn Rauschenberg on the assault and threat Giannotti did to me and I was ordered to be escorted to medical for an examination.

53). after filing my victim's statement and Captain Y. Garcia filing her incident report I was escorted to medical where I gave nurse Teryn Rauschenberg, nurse Kayla Phipps, and nurse Amber Gutierrez a statement on Giannotti.

54). I informed these 3 nurses that I got sick with a chest cold that I never felt before and that I gave Pill nurse Amanda Haines married name Amanda Viramontes my sick call request forms and that I was never called out for a medical appointment.

55). nurse Teryn Rauschenberg pulled my medical record up on her computer and told me I was never scheduled a medical appointment because Pill nurse Amanda Haines married name Amanda Viramontes never turned in my sick call request forms like she told me she did.

56). nurse Teryn Rauschenberg, nurse Amber Gutierrez and Captain Y. Garcia saved their incident reports on my medical record dated April 6, 2022.

57). In my doctor's appointment doctor Tolga Milton informed me that I had a left eye infection for not being treated ~~of~~ for my injuries while on Robertson unit.

58). Doctor Tolga Milton treated my left eye infection with eye ointment and eye drops.

59). I exhausted administrative remedies on officer Roberto Giannotti in one grievance, I exhausted administrative remedies on officer Adam Burnett, Sgt. Odom, Sgt. Lafrance, Sgt. Pfister, Capt. N. Lofton, MJ. Breeden in the second grievance.
I exhausted administrative remedies on Pill nurse Amanda Haines married name Amanda Viramontes in the third grievance.
I exhausted administrative remedies on assistant Warden J. Lopez, FNU Cano and Reyes in the fourth grievance

60). I sent all four of my exhausted administrative remedies to the district court to be attached to my lawsuit.

61). Magistrate John R. Parker did not include none of the four exhausted administrative remedies that I sent to the district court in the authenticated record.

62). However, Magistrate John R. Parker did include a summary of a grievance that he got from TDCJ saying that I said after Giannotti spit in my face that his spit dripped into my eye.

63). I don't recall ever saying after Giannotti spit in my face that his spit dripped into my eye.

64). Magistrate John R. Parker need to name the TDCJ employee who gave him that summary of that grievance. Because it's false.

65). Magistrate John R. Parker default judgement against officer Burnett, Sgt. Odom, Sgt. Lafrance, Sgt. Pfister, Capt. Lofton and major Breeden

STATEMENT OF CASE

66). Officer Adam Burnett, Sergeant Odom, Sergeant Lafarance, Sergeant Pfister, Captain N. Lofton and Major Breeden was served by the united states Marshal with a COPY of Summons. and the COPY of my Complaint on the same day as Giannetti, Haines, LOPEZ, Cano, and Reyes was served with a COPY of summons and the COPY of my Complaint.

67). Magistrate John R. Parker Committed Prosecutor Misconduct by allowing Adam Burnett, FNU Odom, FNU Lafarance, FNU Pfister, N. Lofton, and FNU Breeden to escape liability by failing to answer or otherwise defend as to my Complaint. or serve a COPY of any answers or any defense which it might have had, upon affiant or any Plaintiff herein.

68). Burnett, Odom, Lafarance, Pfister, N. Lofton, Breeden are not in the Military Service and are not infants or incompetents.

69). By Magistrate John R. Parker terminating officer Burnett, Sergeant Odom, Sergeant Pfister, Sergeant Lafarance, Captain Lofton and Major Breeden off of my 1983 Civil suit with my Consent, without my knowledge and without a court order was Prejudice and Bias.

70). Burnett, Odom, Lafarance, Pfister, Lofton and Breeden are Caucasian and I am African American. Clearly that is discriminatory.

71). And I was Mis-lead in Magistrate John R. Parker Questionnire where his instruction, informed me to only respond to Questions that he asked. and if I give responses to Questions that he didn't asked that my Case will be dismissed without further notice.

72). I wanted to Give responses about Burnett, Odom, Lafarance, Pfister, Lofton and Breeden. But I couldn't because Magistrate John R. Parker never Questioned me about these Six People

73). I let the united States Court of Appeals, Fifth Circuit know that I didn't know that Magistrate John R. Parker terminated Burnett, Odom, Lafarance, Pfister, Lofton and Breeden off of my lawsuit until Magistrate John R. Parker dismissed my case.

74). I asked the Fifth Circuit Can that add Burnett, Odom, Lafarance, Pfister, Lofton and Breeden back on my 1983 Civil suit? I was denied.

75). By Magistrate John R. Parker terminating Burnett, Odom, Lafarance, Pfister, Lofton, and Breeden off of my lawsuit Changed the outcome of my Case.

76). Burnett, Odom, Lafarance, Pfister, Lofton, and Breeden is the six officials I tried informal resolution with. and I must show the Court that I first tried informal ~~resolved~~ resolution with.

77). This case is why I was nearly Murdered on Hughes unit by impersonating lieutenant Hadley R. Herring, impersonating Prison Guard Charleswhare, impersonating Prison Guard Shane Delsoki. on September 24, 2020.

78). and when I sent a statement to Magistrate John R. Parker about that assassination attempt. Magistrate John R. Parker refused to respond back to me with a Court order. So I wrote a letter to the district Court Judge James Wesley Hendrix about the assassination attempt. and the following week Judge James Wesley Hendrix sent me a 20 day Court order to Amend my Complaint. that is where the Case name Session v. Ware Came from before that Case was transferred ~~but~~ to Waco, Tx district court. and later dismissed for failure to exhaust administrative remedies before filing suit.

APPENDIX D

STATEMENT OF CASE

79). In MY original Complaint and in my Amended Complaint I stated that officer Burnett, SGT. Lafarance, Sgt. Odom, SGT. Pfister, Capt. Lofton, and Major Breeden have acted "under color of state law.

80). officer Burnett, SGT. Lafarance, SGT. odom, SGT. Pfister, Capt. N. Lofton and Major Breeden Was on duty When I Was intentionally exposed to the Corona Virus against MY Will by officer Roberto Giannotti.

81). I Proved in my original Complaint and in MY Amended complaint that officer Burnett, SGT. odom, SGT. Lafarance, Sgt. Pfister, Capt. N. Lofton and Major Breeden acted or failed to act in a way that led to the violation of my rights as Well as the violation of the TDCJ Policy and Procedures.

82). Thats WHY Assistant Warden J. LOPEZ, Assistant Warden FNU Cano, Sergeant FNU odom, Sergeant Lafarance, Sergeant FNU Pfister, Captain N. Lofton and Maj. Breeden is no longer employed at Franch Robertson Unit

83). That's WHY Grievance Investigator Crystal Reyes was down Graded from Robertson unit Grievance Investigator to Robertson unit Prison Guard.

84). Because that all Carried out a "Policy" or "Practice" that led to the violation of my rights and the Violation of TDCJ Policy and Procedures.

LEGAL CLAIMS

85). Defendant, Appellee, respondent Roberto Giannotti used excessive force against Plaintiff, Appellant, Petitioner Mr. Tuisuan Estaisy6 session by intentionally SPITTING in his face, including inside of his left eye. laughing and threatened to just Give him the coronavirus and that he is going to give everybody else the Corona virus too. When session Was not Violating any Prison rule and was not acting disruptively. Defendant, Appellee, respondent Roberto Giannotti's action Violated Plaintiff, Appellant Petitioner Mr. Tuisuan Estaisy6 session's rights under the Eighth Amendment to the united states Constitution and Caused Petitioner session Pain, Suffering, Physical injury and emotional distress. Also, respondent Roberto Giannotti's action's Violatated TDCJ Policy and Procedures.

86). Defendant's, Appellee's, respondent's Adam Burnett, FNU odom, FNU Lafarance, FNU Pfister, N. Lofton, FNU Breeden, J. LOPEZ, FNU Cano, Crystal Reyes BY Witnessing respondent Giannotti illegal action, failing to file an incident report, failing to escort me to medical, failing to take Photographs, failing to Correct the Misconduct. Defendant's, Appellee's, respondents Adam Burnett, FNU odom, FNU Lafarance, FNU Pfister, N. Lofton, FNU Breeden, J. LOPEZ, FNU Cano, Crystal Reyes is also Violating Petitioner session rights under the Eighth Amendment to the united states Constitution and Causing Petitioner session Pain, Suffering, Physical injury, and emotional distress.

87). Defendant, Appellee, respondent Amanda Haines Married name Amanda Vicamontes illegal actions, failing to turn in MY medical and mental health sick call request forms and for failing to file a incident report is also Violating Petitioner session's rights under the Eighth Amendment to the united states Constitution and Causing Petitioner session Pain suffering, Physical injury, and emotional distress.

88). Defendant's, Appellees, Respondent's illegal action failing to investigate and review Petitioner Session Grievance Violated Petitioner session First, Fifth, and fourteenth Amendments to the united states Constitution. This illegal action Caused Petitioner Session injury to his First, Fifth, and Fourteenth Amendments rights

PRELIMINARY SCREENING

89). A Court must dismiss a Complaint filed by a Prisoner against a Government entity or employee if the Court determines the Complaint is frivolous or malicious, fails to state a Claim upon which relief may be granted.

90). Prison Litigation reform Act, Judicial screening. District Court Judges must screen Prisoner Complaint as soon as Practicable and must dismiss the Complaint, or any Portion of the Complaint if the Complaint is frivolous, malicious, or fails to state a Claim which relief may be granted 28 u.s.c.s § 1915(e)(2)

91). "Frivolous" which means lacking an arguable basis either in law or in fact. When Screening for frivolousness, the Complaint is the entire record of the case.

92). Magistrate John R. Parker's Prosecuter misconduct damaged my case by terminating FNU Burnett, FNU Adams, FNU Laterance, FNU Pfister, N. Lotter, and FNU Breeden While the Judicial Screening was in Process.

93). With that being said Magistrate John R. Parker abused the Judicial Screening as well as abusing the Court's discretion.

94). I withdranted three hundred and fifty dollars off of my inmate trust fund account and sent it to the district Court. Therefore, I have a right to know why magistrate John R. Parker terminated Burnett, Adams, Laterance, Pfister, N. Lotter, and major Breeden off of my case while the Judicial Screening was in Process. on the other hand, magistrate John R. Parker did this without my Consent, With a notification and without a Court order.

95). Magistrate John R. Parker stated in his Conclusion to state a Claim for excessive force. I must be able to link my injuries - Pink eye and flu-like symptoms - to the spitting incident. See Pena, 879 F.3d at 619. Magistrate John R. Parker stated I did not Plead Sufficient facts from which the Court can infer that my flu-like symptoms or my Pink eye were a result of the incident with Giannotti. Magistrate John R. Parker stated the act that I experienced these issues soon after the occurrence with Giannotti, by itself, does not make it Plausible that Giannotti caused these symptoms.

96). I informed the district Court in my Original Complaint and in my ~~original~~ Amended Complaint, in the exhausted administrative remedies that Giannotti intentionally spit in my face in front of 2 Surveillance Video Cameras and the second after Giannotti spit went inside my left eye, my entire left eye swelled nearly shut. and Giannotti just standing there laughing at his assault on me.

97). Therefore, it is Plausible that Giannotti exposed me to the Coronavirus, after my left eye swelled nearly shut. I looked into both surveillance Video Cameras which Magistrate John R. Parker failed to use in his Conclusion or investigation.

STATEMENT OF CASE

98). I filed a Pro Se Complaint. I needed the district Court to review Surveillance Video's to each of my claims to Prove my case.

99). These surveillance video's which Provide real-time evidence of the events as they actually occurred.

100). I Want the Supreme Court of the united States to know that instead of Magistrate John R. Parker doing his job in the best interest of Justice, he sent a assassination attempt at me on Hughes unit on September 21, 2020 through February 27, 2021.

101). That's WHY Hadley R. Herring, Shane Dulski and Charles Ware Was never held accountable for sneaking inside of Hughes unit on 9/24/2020 to Murder me.

102). (A) Claim one. Please review Surveillance video on Robertson unit, 12 Building, 13-B C Pod, D section, on a ROW on or after 4 P.m You will see officer Roberto Giannotti You will See this officer intentionally SPit in my face as soon as I looked at him. and the Supreme Court of the united states will See my left eye swelled nearly Shut Seconds after Giannotti SPit Went into my left eye.
See Payne V. Parnell, 246 Fed. APPX 884 (5th Cir. 2007) Physical injury requirement.
Also See, Estelle V. Gamble, 429 U.S. 97, 103 (1976) of Prisoners Constitutes the unnecessary and Wanton infliction of Pain Proscribed by the Eighth Amendment. Estelle V. Gamble, 429 U.S. 97 at 104, Farmer V. Brennan 511 U.S. 825 (1994). Dean V. Coughlin, 623 F. SuPP. 392, 404 (S.D.N.Y 1985), Kennedy V. Potter, 344 Fed. APPX. 987; 2009 U.S. APP. LEXIS 212.7 (5th Cir. 2009).

103). (B) Claim two Please review Surveillance Video on Robertson unit, 12 building, C Pod, D Section, 43 Cell on or after 5 P.m. the Supreme Court of the united States Will See me reporting the assault and threats to officer Adam Burnett, Sergeant FNU odom, Sergeant FNU Pfister, Sergeant FNU Talavance and I Sent Statements through Mail to Captain N. Lofton and Major Breuden
See Case Domino V. Tex. Dept of Criminal Justice, 239 F. 3d 752, 756 (5th Cir. 2001). The Prisoner Must instead ~~show~~ establish that officials "refused to treat him, ignored his Complaints or engaged in any similar Conduct that would Clearly evince a Wanton disregard for any Serious medical needs.
Farmer, 511. U.S at 842. See also Fielder V. Bosshard, 590 F. 2d. 105 (5th Cir. 1979) Also, See McCoy V. Texas Department of Criminal Justice, 2006 U.S. Dist. LEXIS 58861 (S.D. Tex. 2006).

104). (C) Claim three. Please review Surveillance Video on Robertson unit, 12 building, C Pod, D Section, 43 Cell on or after 5 A.m on 3-15-2020. The Supreme Court of the united States will See me Give nurse Haines Married name Amanda Viramontes my 2 sick call request forms. When reviewing MY medical record on 3-15-2020 til 4-6-2020 the Supreme Court of the united states will learn nurse Haines Married name Amanda Viramontes never turned in my 2 sick call request forms like She told me She did.
See Johnson V. Treen, 759 F. 2d 1236, 1238 (5th Cir. 1985). Indeed Courts have found that evidence of medical exams, sick calls and diagnoses have been used ~~to~~ to rebut a Claim of deliberate indifference. See, e.g. Sexton V. Young No. 07-0088, 2007 U.S. Dist. LEXIS 25147, at *3-4 (W.D. La. Mar 12, 2007)

See Texas Civil Practice and remedies, remedies Code, Chapter 74, Also see Texas Civil Practice and remedies Code § 74.351, ~~Sadin v.~~ Sandin v. Conner, 515 U.S. 472, 485 (1995), Also see Farmer V. Brennan, 511 U.S. 825 (1994).

105). (D). Claim 4 Please review Video Surveillance on Robertson unit, on March 14, 2006, (Pod, D Section, 43 cell on or after 10 P.M. The Supreme Court of the united States will see me give my Grievance to Officer Gomez and Gomez do and Place my Grievance inside the Section Grievance box. and on March 16, 2006 You will see a lady come and ~~Take~~ Get my Grievance out of that Grievance box and leave with it. When reviewing my Grievance record the Supreme Court of the united states will learn my Grievance was never investigated and reviewed by J. LOPEZ, FNU CANO, Crystal Reyes. these are the three former Grievance employees who investigate and review all step one Grievances on Robertson unit in Abilene, Texas.

106). I have a fundamental right to access and use the Court System. This right is based on the First, Fifth, and Fourteenth Amendments to the Constitution. under the First Amendment, I have a right to "Petition the Government for a redress of Grievances" and under the Fifth and Fourteenth Amendments, I have a right to "due Process of law". Put ~~these~~ together, these Provisions means that I must have the opportunity to go to Court if I think my rights have been violated. This right is referred to as the "right of access to the Courts.

107). I request that the Supreme Court of the united states Consider all of my Claims to be Substantively Plausible. Magistrate John R. Parker withheld my case for 2 1/2 years. and he didn't do nothing but committ an intent to defraud for his own benefit.

Pro se Complaints

108). The Supreme Court has not specifically addressed the applicability of the Plausibility standard to Pro se Complaints. Prior to Twombly, the Court held that Pro se Complaints are subject to "less stringent standards than formal Pleadings drafted by lawyers" and should be liberally Construed in the Plaintiff's favor. In Erickson v. Pardus, decided between Twombly and Iqbal, the Court applied the traditional notice Pleading standard, and not the Plausibility standard to a Pro se Prisoner Complaint. The Court reiterated the familiar Principles that Pro se Complaints should be "liberally Construed" and "however inartfully Pleaded, must be held to less stringent standards than formal Pleadings drafted by lawyers." However, because the Court in Erickson did not apply the Plausibility standard, it did not discuss whether or how that standard applies to Pro se Complaints. Perhaps a good solution is that adopted by the Sixth Circuit, which applied the Plausibility standard to a Pro se Complaint, with the understanding that Pro se Complaints are held to less stringent standard than Complaints drafted by lawyers, and should therefore be liberally Construed. Other Circuits have also applied the Plausibility standard to Pro se Complaints.

REASONS FOR GRANTING THE PETITION

There is surveillance Videos to each of my claims. there is also exhausted administrative remedies to each of my claims. and I request that the Supreme Court of the united States examine the surveillance videos for possible alteration or distortion. I request this because Magistrate John R. Parker damaged my case by terminating odom, Burnett, Lafarance, Pfister, Lofton, Breeden off of my lawsuit without my Consent, without my knowledge and without a court order. despite me paying $50.00 off of my inmate trust fund account to sue odom, Burnett, Lafarance, Pfister, Lofton Breeden. Magistrate John R. Parker didn't include none of the surveillance videos to my claims or the four exhausted administrative remedies, nor TDCJ Policy and Procedure or Giannotti's medical record into the authenticated record. therefore, Basic information about these videos to each of my claims Provides necessary context for me to assess their accuracy and reliability. Also, Surveillance Photos and videos are likely to be Probative of the effects of my injuries. The videos are crucial in my case because its the ability to Prove its Prima facie. on the other hand, I had 0 witnesses. however, all my claims are Lawsuit on Surveillance Video. I demand Justice. I want to file Criminal Charges against Roberto Giannotti for intentionally exposing me to the Corona virus by spitting in my face while I was in handcuffs. laughing and threatened to just give me the Coronavirus and that he is going to give every body else the Coronavirus too. Giannotti medical record around the time he assaulted me along with the surveillance video Corroborates me being exposed with the Corona Virus and a left eye infection. my most important reason for the Supreme court of the united states to grant my Petition. No one is above the law. I was intentionally exposed to the Coronavirus and a left eye infection. I did everything that I was supposed to do as a inmate. I reported the assault and threats and Giannotti as my Potential Contact to Burnett, odom, Lafarance, Pfister, Lofton, Breeden, Haines Married name Viramontes, all these are Caucasian People. and that refused to do their job because I'm a African American and that assumed I didn't know my rights. I was assaulted on March 13, 2020 by Giannotti's spitting incident. and on March 15, 2020. I experienced Coronavirus symptoms. I self reported to everybody to all the name officials and former officials in this Petition. and everybody that I named in this Petition denied me to self-report except Hughes unit officials. Clearly if I am experiencing Coronavirus symptoms or if I being exposed to the Corona Virus. I must self report. what Roberto Giannotti did to me intentionally in front of 2 surveillance Video Cameras was a inhumane Prison Condition that rised to the level of an Eighth Amendment Violation where all 11 Prison officials deprived me of the minimal Civilized measures of life's necessities and acted with deliberate indifference in doing so. thereby exposing me to a substantial risk of serious damage to my future health. Each of my 4 claims Contains two requirements: an objective and subjective Component. Farmer, 511 us at 834. A Prisoner asserting a claim that their conditions of Confinement violate the Eighth Amendment must allege (1) that objectively, they were "incarcerated under conditions posing a substantial risk of serious harm" and (2) that the respondents. All 11 Prison officials Personally knew of the substantial risk to my health and safety and failed to respond. [] reasonably to the risk" Farmer, 511 u.s. at 834, 844-45. Notably, deliberate indifference requires more than Negligence Farmer, 511 u.s. at 835. Furthermore all 11 officials who actually knew of a substantial risk to my health and safety may be found free from liability if they responded reasonably to the risk even if the harm ultimately was not averted Farmer, 511 u.s. at 844.

REASONS FOR GRANTING THE PETITION

I want to inform the united states Supreme Court that that's why Hughes unit former warden Cynthia A. Lofton allowed Hadley R. Herring, Shane Dulski and Charles Ware to sneak inside of Hughes unit on 9-24-2021. Because I sued her husband From Robertson unit. N. Lofton. but magistrate John R. Parker somehow was convinced to terminate N. Lofton and five other's off of my lawsuit. Magistrate John R. Parker conspired to deprive me of my Constitutional rights. evidence tend to show Prejudicial, Magistrate John R. Parker actions were not Judicial. he acted without authority. Inferences of discrimination was inescapable in my lawsuit where he terminated Burnett, Odom, Lafarance, Pfister, Lofton, and Breeden. these six Caucasian People off of my lawsuit without my consent, or without a notification or without a court order. and not including the Surveillance Videos to all of my claims or any Material evidence was not included in the authenticated record. Magistrate John R. Parker never gave adequate notice to me. Magistrate John R. Parker relied on circumstantial evidence or just his opinion to Prove an element of the offense. instead of using sufficient evidence that I presented to the district court. Such as all four exhausted administrative remedies and the surveillance Video's to all of my claims. Im showing to the Supreme Court of the united states outrageous government conduct and Prejudice by government use. Magistrate John R. Parker rejected my arguments and my evidence because I cannot afford to fight my case.

My Prisoners Civil-rights Complaint successfully stated a claim on all claims because it contained relevant dates to show whether each claim of mine happened the way I said it happened. I Pray in good faith that the Supreme Court of the united states consider that I Provided sufficient quantum of Credent evidence demonstrating the violation of my Constitutional rights to warrant relief. Magistrate John R. Parker abused his discretion ~~st~~ because Video surveillance evidence of all four of my claims against the 11 respondents was Procedurally barred from my 1983 Civil suit. Magistrate John R. Parker made Major decisions effecting my case. and Violations of discrimination must warrant a reversal of all four of my claims in my lawsuit. I Pray in good faith and in the best interest of Justice that the Supreme Court of the united states consider that I am entitled to relief because Magistrate John R. Parker withheld my case for over 2 1/2 Years. and didnt do nothing but send assassination attempts at me Please review the Session v. Ware case. Magistrate John R. Parker withheld every Piece of Material evidence I will need to Prove my case. If Magistrate John R. Parker would have never terminated Burnett, Odom, Pf. Lafarance, Lofton, and Breeden off of my case. the result of my case would have been different. had the evidence been disclosed before the Judicial Screening.

I want the Supreme Court of the united States to understand that the entire time Magistrate John R. Parker had my case It was so fundamentally unfair that my due Process rights were violated and should be entitled to relief, immediately, based off of Prosecutorial Misconduct. for example he terminated 6 white People off my case without a court order while the Judicial Screening was in Process. by law Im entitled to relief because I successfully demonstrated Prejudice by Prosecutors allegedly discriminatory use of Magistrate John R. Parker exclusion. Clearly, it was inappropriate where I Presented sufficient evidence on my 8th, 1st, 5th, and 14th Amendments. Magistrate John R. Parker had ~~Posted~~ Possessed evidence favorable to my Claims because I Presented them. but failed to disclose such evidence for Purpose of my case. With this being said. ~~that~~ these are the reasons why the Supreme Court Must Grant my Petition.

APPENDIX E

Accordingly, because Session has not shown that his appeal will involve a nonfrivolous issue, his motion to proceed IFP on appeal is DENIED, and his appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; *Howard*, 707 F.2d at 220; 5TH CIR. R. 42.2. His motions for production of documents and to amend the caption are also DENIED.

The district court's dismissal of the suit under § 1915A(b)(1) and our dismissal of this appeal as frivolous each count as strikes under 28 U.S.C. § 1915(g). *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724-25 (2020); *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). Session is WARNED that if he accumulates three strikes, he will not be permitted to proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

was plausible that Session sustained physical injuries as a result of the incident, Session could not show a nonfrivolous issue regarding whether his injuries, a three-day-long cold and a case of pink eye, were more than de minimis when considered in the context of the amount of force allegedly used, and that the officer's use of threatening language did not amount to a constitutional violation. Although we have never "directly held that injuries must reach beyond some arbitrary threshold to satisfy an excessive force claim," *Brown v. Lippard*, 472 F.3d 384, 386 (5th Cir. 2006), our precedent indicates that the claimant "must have suffered from the excessive force more than a de minimis physical injury," *Gomez v. Chandler*, 163 F.3d 921, 924 (5th Cir. 1999). And "mere threatening language and gestures of a custodial officer do not, even if true, amount to constitutional violations." *See McFadden v. Lucas*, 713 F.2d 143, 146 (5th Cir. 1983). The magistrate judge also concluded that Session failed to allege facts showing that he had an objectively serious medical need that was disregarded by any prison official or that he suffered substantial harm because of any delay in medical treatment. *See Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006); *Sims v. Griffin*, 35 F.4th 945, 949 (5th Cir. 2022) ("[A] serious medical need is one for which treatment has been recommended or for which the need is so apparent that even laymen would recognize that care is required." (internal quotation marks and citation omitted)).

Session has not shown that he will raise legal points arguable on their merits (and therefore not frivolous) on appeal with respect to these claims. Additionally, because "any alleged due process violation arising from the alleged failure to investigate [an inmate's] grievances is indisputably meritless," *Geiger v. Jowers*, 404 F.3d 371 374 (5th Cir. 2005), he cannot show that he will raise legal points arguable on their merits with respect to that issue.

Tujuan Estaisyo Session, Texas prisoner # 1714978, moves to proceed in forma pauperis (IFP) on appeal following the magistrate judge's dismissal[1] of his 42 U.S.C. § 1983 claims as frivolous and for failing to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2)(B). He also now moves this court to order the production certain documents that he asserts support his § 1983 claims and to amend the caption to add certain individuals as defendants-appellees.

In his § 1983 complaint, Session alleged that defendants used excessive force against him and were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. He also alleged that defendants violated his due process rights by failing to properly investigate his grievances. His claims stemmed from an incident during which one of the defendants spat on him and joked afterwards that he gave Session coronavirus. Session alleged that he later suffered injuries—a bad cold and pink eye—from the incident.

By moving to proceed IFP, Session is challenging the magistrate judge's certification decision that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into whether the appeal is taken in good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

In the order dismissing Session's complaint, upon which the certification decision was based, the magistrate judge assumed that even if it

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[1] The magistrate judge's order is a final, appealable order over which we have jurisdiction, as Session unambiguously consented to the authorization of the magistrate judge to conduct proceedings and enter final judgments in accordance with 28 U.S.C. § 636(c)(1).

United States Court of Appeals for the Fifth Circuit

No. 23-10010

United States Court of Appeals
Fifth Circuit
FILED
June 12, 2023
Lyle W. Cayce
Clerk

TUJUAN ESTAISYO SESSION,

Plaintiff—Appellant,

versus

FNU GIANNOTTI, *Texas Department of Criminal Justice Robertson Unit Employee*; FNU HAINES, *Texas Department of Criminal Justice Robertson Unit Pill Nurse*; FNU CANO, *Texas Department of Criminal Justice Unit Assistant Warden*; J. LOPEZ, *Texas Department of Criminal Justice Robertson Unit Assistant Warden*; FNU REYES, *Texas Department of Criminal Justice Robertson Unit Grievance Staff*,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:20-CV-116

Before HIGGINBOTHAM, STEWART, and WILLETT, *Circuit Judges.*

PER CURIAM:*

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