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dismissal opinion & judgment; (c) vacate the challenged Doc. 12 of SDTX Houston Cause 4:20–CV–01651, as allowed per 28 U.S.C. §1651, &/or (d) remand the action to SDTX Houston or WDTX Austin district court for further proceedings on merits.

Dated this 11/1/24.

Respectfully Submitted,
Ernest Adimora-Nweke
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Pro Se Petitioner

PROOF OF SERVICE & DECLARATION

I, Ernest Adimora-Nweke, do swear or declare that on this date ~11/1/2024, (or before 11/14/2024), I have served the enclosed PETITION FOR A WRIT OF CERTIORARI & APPENDIX on each party to the above proceeding or that party's counsel, & on every other person required to be served, by depositing an envelope containing the above documents in the US mail properly addressed to each of them & with 1st class postage prepaid, or by delivery to a 3rd party commercial carrier for delivery within 3 calendar days; & via emails below:

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I declare under penalty of perjury that all the foregoing is true & correct.
11/1/2024. Ernest Adimora-Nweke.

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No. 24-_____

SUPREME COURT OF THE UNITED STATES

Ernest Adimora-Nweke,

Petitioner,

vs.

Steven C. McGraw, Director of Texas Department of Public Safety; Texas Department of Public Safety; Lynn N. Hughes, U.S. District Judge, Official Capacity,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI
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VOL. 1

United States Court of Appeals for the Fifth Circuit

No. 23-50744

United States Court of Appeals
Fifth Circuit
FILED
June 7, 2024
Lyle W. Cayce
Clerk

ERNEST ADIMORA-NWEKE,

Plaintiff—Appellant,

versus

STEVEN C. MCGRAW, *Director of Texas Department of Public Safety*; TEXAS DEPARTMENT OF PUBLIC SAFETY; LYNN N. HUGHES, *U.S. District Judge, Official Capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1048

Before BARKSDALE, SOUTHWICK, and GRAVES, *Circuit Judges*.

PER CURIAM:*

The Appellant is a licensed attorney who appeals without separate counsel from the district court's dismissal of his complaint against the Texas Department of Public Safety, its Director, and a federal judge. The district court dismissed his complaint for lack of standing and absolute judicial

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.4.

immunity. The district court further admonished the Plaintiff for continuously filing frivolous lawsuits. We DISMISS the appeal as frivolous.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2018, licensed attorney Ernest Adimora-Nweke was arrested on suspicion of driving while intoxicated. *Adimora-Nweke v. McGraw*, No. 4:20-CV-4149, 2021 WL 5711787, at *1 (S.D. Tex. Dec. 2, 2021) ("*Adimora-Nweke I*"). After receiving the Texas Department of Public Safety's ("TDPS") Form DIC-24 that warns of the statutory consequences of refusing to provide a breath or blood sample, Adimora-Nweke refused to provide one. *Id.*; TEX. TRANSP. CODE § 724.015(a).[1] One of these consequences was that Adimora-Nweke's driver's license would be suspended automatically. § 724.015(a)(2). Although Adimora-Nweke's license is no longer suspended and he is permitted to drive, he must pay a $125.00 reinstatement fee to obtain a new driver's license, which may not have been paid. *Adimora-Nweke I*, 2021 WL 5711787, at *1.

Instead of pursuing state administrative remedies, Adimora-Nweke sued Steven A. McCraw, Director of TDPS, and "approximately thirty putative defendants" in state court. *Id.* The defendants removed the case to the United States District Court for the Southern District of Texas. *Id.* In his 125-page complaint, Adimora-Nweke contended that Form DIC-24 is unconstitutional and violates Texas state law because it does not include the warning contained in Section 724.015(a)(6). *Id.* That provision applies to unlicensed residents, which Adimora-Nweke undisputedly was not. *Id.* As a

[1] The Texas Legislature amended the Texas Transportation Code in 2021, after the events at issue. *See* 2021 Tex. Sess. Law Serv. Ch. 840, § 2 (S.B. 335). As relevant here, the only difference is that the enumerated provisions of that section are now under subsection (a). *Id.* For example, what was Section 724.015(6) is now Section 724.015(a)(6). We will use the current version.

result, the district court concluded Adimora-Nweke could not have been injured by any failure to warn, and therefore lacked standing to sue. *Id.* Adimora-Nweke made several failed attempts for reconsideration. Eventually, the district court stated any further relief must be sought through an appeal. *Adimora-Nweke v. McGraw*, No. 4:22-CV-765, 2022 WL 2056281, at *1 (S.D. Tex. May 25, 2022) ("*Adimora-Nweke II*").

Instead of appealing, Adimora-Nweke filed a "bill of review" in Texas state court, which "sought in essence to have a state court review and determine the efficacy and enforceability of a judgment and order imposed by [the] federal court." *Id.* at *1–2. After the defendants removed the case, the federal district court explained that state courts have no authority to review federal court decisions and dismissed Adimora-Nweke's claims with prejudice. *Id.* The court also recognized Adimora-Nweke's "extensive history of persistent abuse of the judicial system and bad faith litigation practice in the Southern District." *Id.* at *2. It referred to the denial of his admission to practice before the court, including as a *pro se* litigant, and the revocation of his *pro hac vice* status in previous cases. *Id.*; *see also Aguocha-Ohakweh v. Harris Cnty. Hosp. Dist.*, 731 F. App'x 312, 314 n.1 (5th Cir. 2018). The court therefore warned Adimora-Nweke against future abusive tactics. *Adimora-Nweke II*, 2022 WL 2056281, at *2. Although he filed an appeal, it was dismissed for want of prosecution. *Adimora-Nweke v. McGraw*, No. 22-20269, 2022 WL 17423453 (5th Cir. Aug. 15, 2022) (clerk order).

Adimora-Nweke then filed a mandamus petition in this court. *See In re Ernest Adimora-Nweke*, No. 22-20472 (5th Cir. Jan. 11, 2023) (unpublished order). In that petition, he sought to vacate the district court orders in the cases just discussed, vacate an order from an unrelated case barring him from practicing in the Southern District, and vacate various orders and judgments in state-court proceedings. *Id.* at 2–3. All of this was deemed frivolous. *Id.* at 5. The panel cautioned Adimora-Nweke that future frivolous filings may

result in sanctions, "including monetary sanctions, dismissal, and restrictions on filing, as well as disciplinary action and referral to appropriate attorney disciplinary authorities." *Id.*

Undeterred, Adimora-Nweke tried again, this time by filing a complaint in the United States District Court for the Western District of Texas. *See Adimora-Nweke v. McGraw*, No. 1:23-CV-1048, 2023 WL 6884166, at *1 (W.D. Tex. Oct. 10, 2023) ("*Adimora-Nweke III*"), *adopted*, 2023 WL 6882770 (W.D. Tex. Oct. 18, 2023) ("*Adimora-Nweke IV*"). In addition to reasserting his previously dismissed claims against McCraw and TDPS, Adimora-Nweke added United States District Judge Lynn Hughes, in his official capacity, as a defendant because he entered the order barring Adimora-Nweke from practicing in the Southern District. *Id.* at *2. The case was referred to a magistrate judge, who screened the complaint under 28 U.S.C. § 1915(e) because Adimora-Nweke requested to proceed *in forma pauperis* ("IFP"). *Id.* at *1. The magistrate judge granted the IFP request but recommended dismissing Adimora-Nweke's claims with prejudice because he was "attempting to bring the same twice-dismissed lawsuit in a new court" and any claims against Judge Hughes were barred because of his absolute judicial immunity. *Id.* at *2–3. The district court adopted the magistrate judge's report and recommendation and once again admonished Adimora-Nweke for continuing to file frivolous cases. *Adimora-Nweke IV*, 2023 WL 6882770, at *1. Adimora-Nweke now appeals.

DISCUSSION

Dismissals of IFP complaints as frivolous under Section 1915(e)(2)(B)(i) are reviewed for abuse of discretion. *Carmouche v. Hooper*, 77 F.4th 362, 366 (5th Cir. 2023). An IFP complaint may be dismissed as frivolous "if it lacks 'an arguable basis in law or fact.'" *Id.* (quoting *Denton v. Hernandez*, 504 U.S. 25, 31–32 (1992)). Dismissals for failure to state a

claim on which relief can be granted under Section 1915(e)(2)(B)(ii) are reviewed *de novo*. *Id.* A complaint fails to state a claim "when it lacks sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A district court's dismissal of a complaint for lack of standing is also reviewed *de novo*. *Ordonez Orosco v. Napolitano*, 598 F.3d 222, 225 (5th Cir. 2010).

Although Adimora-Nweke is proceeding *pro se*, he is still a licensed attorney in Texas. Thus, we do not apply the liberal standards afforded to non-attorney *pro se* litigants "because an attorney is presumed to have a knowledge of the legal system and need less protections from the court." *United States ex rel. Holmes v. Northrop Grumman Corp.*, 642 F. App'x 373, 379 n.10 (5th Cir. 2016) (citation omitted). Instead, we hold *pro se* attorneys like Adimora-Nweke to the same stringent standard that normally applies. *See Fleming v. United States*, 162 F. App'x 383, 386 (5th Cir. 2006). Here, as in the past, Adimora-Nweke has fallen woefully short. *See In re Ernest Adimora-Nweke*, No. 22-20472, at 5.

As to standing, Adimora-Nweke appears to argue that denying standing would deprive him of various constitutional protections. He also asserts that he will be harmed if he is forced to wait for an unlicensed resident to be issued Form DIC-24, which purportedly omits the Section 724.015(a)(6) warning for unlicensed drivers.

These arguments lack any "basis in law or fact" and are therefore frivolous. *Carmouche*, 77 F.4th at 366. In order for an Article III court to exercise jurisdiction over his case, Adimora-Nweke must demonstrate that he has standing by showing he has suffered an "injury in fact" that is (1) "concrete and particularized," (2) "fairly . . . traceable to the challenged action of the defendant," and (3) "likely" to be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (quotation marks and

citations omitted). Standing is also claim-specific, meaning that Adimora-Nweke "must demonstrate standing for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Here, Adimora-Nweke cannot demonstrate he was injured by any alleged failure to include the Section 724.015(a)(6) warning on Form DIC-24 because that warning did not apply to him; it applies only to *unlicensed* drivers, which Adimora-Nweke was not. *See* TEX. TRANSP. CODE § 724.015(a)(6); *Adimora-Nweke III*, 2023 WL 6884166, at *3. Thus, Adimora-Nweke cannot show that TDPS's practice with respect to Form DIC-24 harmed him based on the deficiency he alleges. *See Warth v. Seldin*, 422 U.S. 490, 508 (1975). As a result, the district court lacked the power to entertain his Form DIC-24 claim under Article III. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 422–23 (2021).

Adimora-Nweke makes two arguments regarding the magistrate judge's handling of his complaint. First, he argues that the district court improperly referred this case to a magistrate judge because he expressly refused to consent. The order referring the case to the magistrate judge did so under 28 U.S.C. § 636(b)(1), which does not require consent of the parties. *See Newsome v. EEOC*, 301 F.3d 227, 230 (5th Cir. 2002). Second, Adimora-Nweke argues that the magistrate judge was not authorized to screen his complaint under 28 U.S.C. § 1915(e) because he is not a prisoner. The mandatory screening procedures in Section 1915(e), however, apply to prisoners and non-prisoners proceeding IFP alike. *See* 16AA CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §§ 3970, 3970.1 (5th ed.).

As to the district court's dismissal of the claims against Judge Hughes, Adimora-Nweke asserts that judge's order violated various constitutional rights and argues the judge is not absolutely immune from his request for a "*Bivens* injunction," "28 U.S.C. § 1651 *writ* injunction," or "FRCP Rule 60(d) independent action." These arguments have no basis in law. Judge

Hughes is absolutely immune from suit because his order barring Adimora-Nweke from practicing in the Southern District was a judicial act that was "not performed in the clear absence of all jurisdiction." *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993). His arguments for a writ of mandamus are as unavailing now as they were last time. *See In re Ernest Adimora-Nweke*, No. 22-20472, at 4. As to his request for relief from judgment under Federal Rule of Civil Procedure 60(d), Adimora-Nweke has not argued, much less satisfied, any of the requirements for granting such relief. *See Turner v. Pleasant*, 663 F.3d 770, 776 (5th Cir. 2011). Adimora-Nweke's assertions of judicial bias, prejudice, and discrimination are also unsupported and inappropriate. *See Amrhein v. United States*, 740 F. App'x 65, 66–67 (5th Cir. 2018).

We conclude that the district court correctly ruled that Adimora-Nweke lacked standing for his claims regarding Form DIC-24 and that Judge Hughes was absolutely immune from suit. The district court did not abuse its discretion in dismissing Adimora-Nweke's suit as frivolous under Section 1915(e)(2)(B)(i). The district court also did not err in dismissing this suit for failure to state a claim under 1915(e)(2)(B)(ii). To the extent Adimora-Nweke's brief contains additional arguments not already addressed, they are inadequately briefed and are considered abandoned. *Dardar v. Lafourche Realty Co.*, 985 F.2d 824, 831 (5th Cir. 1993).

Our summary of past proceedings in this case supports that Adimora-Nweke has continually ignored his obligations as counsel, pursued claims that have been definitively resolved against him, and brought frivolous arguments such as in the current appeal. Adimora-Nweke earlier received a warning from this court that future frivolous filings may result in sanctions, "including monetary sanctions, dismissal, and restrictions on filing, as well as disciplinary action and referral to appropriate attorney disciplinary authorities." *In re Ernest Adimora-Nweke*, No. 22-20472, at 5.

Our warnings and district court sanctions have not deterred Adimora-Nweke's continued bad-faith litigation and abuse of the judicial system. Consequently, we hereby impose a monetary sanction of $1,000 on Adimora-Nweke, and he is barred from filing any pleadings in this court or any court in Texas subject to this court's jurisdiction until the sanction is paid in full, unless he first obtains leave of the court in which he seeks to file such pleadings. This is consistent with our practice towards vexatious *pro se* litigants who have been previously warned and sanctioned. *See Whitfield v. Tex. Child. Mem'l Hermann Hosp.*, No. 19-20292, 2020 WL 6301372, at *2 (5th Cir. Oct. 27, 2020); *Greene v. Smile Cmty. Action Agency*, 359 F. App'x 516, 517 (5th Cir. 2010); *Gant v. Lockheed Martin Corp.*, 152 F. App'x 396, 397 (5th Cir. 2005); *Woodall v. Texas*, 78 F. App'x 953, 954 (5th Cir. 2003); *Lovell v. Greer*, 250 F.3d 740, 740 (5th Cir. 2001) (unpublished); *see also Coghlan v. Starkey*, 852 F.2d 806, 808 (5th Cir. 1988) (explaining this court has authority to impose sanctions *sua sponte*). We further find that sanctions are especially appropriate in this case because Adimora-Nweke is no ordinary *pro se* litigant; he is a licensed attorney subject to the same stringent standards of professional conduct as any other attorney. *See Fleming*, 162 F. App'x at 386.

Adimora-Nweke's appeal is DISMISSED as frivolous. He is ORDERED to PAY a sanction of $1,000 to the clerk of this court. The clerk of this court and the clerks of all courts in Texas subject to the jurisdiction of this court are DIRECTED to refuse to file any civil complaint or appeal by Adimora-Nweke unless he submits proof of satisfaction of this penalty, or unless he first obtains leave of the court in which he seeks to file such pleadings. Adimora-Nweke is further WARNED that the filing of future frivolous, repetitive, or otherwise abusive pleadings in this court or any court in Texas subject to this court's jurisdiction will subject him to additional and progressively more severe sanctions. Appeal DISMISSED as frivolous; sanctions IMPOSED; additional sanctions warning ISSUED.

United States Court of Appeals for the Fifth Circuit

Certified as a true copy and issued as the mandate on Aug 20, 2024

Attest: Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 23-50744

United States Court of Appeals
Fifth Circuit
FILED
June 7, 2024
Lyle W. Cayce
Clerk

ERNEST ADIMORA-NWEKE,

Plaintiff—Appellant,

versus

STEVEN C. MCGRAW, *Director of Texas Department of Public Safety*; TEXAS DEPARTMENT OF PUBLIC SAFETY; LYNN N. HUGHES, *U.S. District Judge, Official Capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1048

Before BARKSDALE, SOUTHWICK, and GRAVES, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED as frivolous.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

IT IS FURTHER ORDERED that Adimora-Nweke's appeal is DISMISSED as frivolous. He is ORDERED to PAY a sanction of $1,000 to the clerk of this court. The clerk of this court and the clerks of all courts in Texas subject to the jurisdiction of this court are DIRECTED to refuse to file any civil complaint or appeal by Adimora-Nweke unless he submits proof of satisfaction of this penalty, or unless he first obtains leave of the court in which he seeks to file such pleadings. Adimora-Nweke is further WARNED that the filing of future frivolous, repetitive, or otherwise abusive pleadings in this court or any court in Texas subject to this court's jurisdiction will subject him to additional and progressively more severe sanctions.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

United States Court of Appeals for the Fifth Circuit

No. 23-50744

United States Court of Appeals
Fifth Circuit
FILED
August 15, 2024
Lyle W. Cayce
Clerk

ERNEST ADIMORA-NWEKE,

Plaintiff—Appellant,

versus

STEVEN C. MCGRAW, *Director of Texas Department of Public Safety*; TEXAS DEPARTMENT OF PUBLIC SAFETY; LYNN N. HUGHES, *U.S. District Judge, Official Capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1048

ORDER:

The Appellant's motion for stay of the mandate pending petition for writ of certiorari is DENIED.

Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff, v. STEVEN C. MCGRAW, *Director of Texas Department of Public Safety*, TEXAS DEPARTMENT OF PUBLIC SAFETY, HON. JUDGE LYNN HUGHES, *in her Official Capacity* Defendants.	§	1:23-CV-1048-DII

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning Plaintiff Ernest Adimora-Nweke ("Plaintiff") complaint pursuant to 28 U.S.C. § 1915(e), 28 U.S.C. § 636(b) and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. (R. & R., Dkt. 9). In his report and recommendation, Judge Lane recommends that the Court dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B). (*Id.* at 2). Plaintiff timely filed objections to the report and recommendation. (Objs., Dkt. 10).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure de novo review by the district court. 28 U.S.C. § 636(b). Because Johnson timely objected to the report and recommendation, the Court reviews the report and recommendation de novo. Having done so and for the reasons given in the report and recommendation, the Court overrules Plaintiff's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 9), is **ADOPTED**. Plaintiff's complaint, (Dkt. 1), is **DISMISSED WITH PREJUDICE**. Plaintiff's motions, (Dkts. 2, 8), are **DISMISSED AS MOOT**.

The Court adopts the magistrate judge's admonishment in full. Accordingly, the undersigned **ADMOMISHES** Plaintiff not to file obviously frivolous lawsuits that lack a basis in law. The undersigned, again, borrows from the Hon. Charles Eskridge and warns: "Plaintiff Ernest Adimora-Nweke is **ADMONISHED** that if he continues to abuse the process of this Court or otherwise engage in bad faith litigation practices, a preclusion order barring further unauthorized practice, including as a pro se litigant, will be entered." *Adimora-Nweke v. McGraw*, 2022 U.S. Dist. LEXIS 104590, at *5 (italics added, capitals in original).

SIGNED on October 18, 2023.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ERNEST ADIMORA-NWEKE,	§	
Plaintiff,	§	
v.	§	
	§	
STEVEN C. MCGRAW, Director of	§	**1:23-CV-1048-DII-ML**
Texas Department of Public Safety,	§	
TEXAS DEPARTMENT OF PUBLIC	§	
SAFETY, and HON. JUDGE LYNN	§	
HUGHES, official capacity,	§	
Defendants.	§	

ORDER ON *IN FORMA PAUPERIS* STATUS AND
REPORT AND RECOMMENDATION ON THE MERITS OF THE CLAIMS

TO THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE:

The Magistrate Court submits this Report and Recommendation to the United States District Court pursuant to 28 U.S.C. § 636(b) and Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

Before the court is Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 3) and Motion to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (Dkt. 6). Because Plaintiff is requesting permission to proceed *in forma pauperis*, this court must review and make a recommendation on the merits of Plaintiff's claims pursuant to 28 U.S.C. § 1915(e).

I. INTRODUCTORY NOTE

At the outset, "[i]t [] bears mention that [Plaintiff] has an extensive history of persistent abuse of the judicial system and bad faith litigation practice in the Southern District of Texas. *Adimora-Nweke v. McGraw*, No. 4:22-cv-00765, 2022 U.S. Dist. LEXIS 104590, at *4 (S.D. Tex.

2022). He may not practice there. *Apheaus Ohakweh, et al., v. Harris Health Sys., et al.*, No. H-20-1651 (S.D. Tex. Jun. 26, 2020), ECF No. 12.

II. REQUEST TO PROCEED *IN FORMA PAUPERIS*

The court has reviewed Plaintiff's financial affidavit and determined Plaintiff is indigent and should be granted leave to proceed *in forma pauperis*. Accordingly, the court hereby **GRANTS** Plaintiff's request for *in forma pauperis* status. The Clerk of the Court shall file the complaint without payment of fees or costs or giving security therefor pursuant to 28 U.S.C. § 1915(a). This indigent status is granted subject to a later determination the action should be dismissed if the allegation of poverty is untrue or the action is found frivolous or malicious pursuant to 28 U.S.C. § 1915(e). Plaintiff is further advised, although Plaintiff has been granted leave to proceed *in forma pauperis*, a court may, in its discretion, impose costs of court at the conclusion of this lawsuit, as in other cases. *Moore v. McDonald*, 30 F.3d 616, 621 (5th Cir. 1994).

As stated below, this court has made a § 1915(e) review of the claims made in this complaint and is recommending Plaintiff's claims be dismissed with prejudice under 28 U.S.C. § 1915(e). Therefore, service upon Defendants should be withheld pending the District Court's review of the recommendations made in this Report. If the District Court declines to adopt the recommendations, then service should be issued at that time upon Defendants.

III. STANDARD OF REVIEW

Because Plaintiff has been granted leave to proceed *in forma pauperis*, the court is required by statute to review the Complaint. Section 1915(e)(2) provides in relevant part that "the court shall dismiss the case at any time if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A complaint is

frivolous, if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325, (1989); *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997). A claim lacks an arguable basis in law when it is "based on an indisputably meritless legal theory." *Neitzke*, 490 U.S. at 327. A claim lacks an arguable basis in fact when it describes "fantastic or delusional scenarios." *Id.* at 327–28.

Pro se complaints are liberally construed in favor of the plaintiff. *Haines v. Kerner*, 404 U.S. 519, 20–21 (1972). However, *pro se* status does not offer a plaintiff an "impenetrable shield, for one acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." *Farguson v. MBank Houston N.A.*, 808 F.2d 358, 359 (5th Cir. 1986). Furthermore, although Plaintiff is representing himself *pro se*, he is a licensed attorney, and "counsel is held to a higher standard than a *pro se* litigant." *Wright v. McCain*, 703 F. App'x 281, 284 (5th Cir. 2017) ("'it would be rather peculiar to treat a trained attorney's error more leniently than' that of a pro se litigant") (quoting *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002)).

IV. Review of the Merits of the Claim

A. Claim Against Judge Hughes

Plaintiff purports to sue Judge Lynn Hughes of the U.S. District Court for the Southern District of Texas ("SDTX") "in his official capacity." Dkt. 7 at 4. He "seeks a *Bivens* injunction, or alternatively, 28 U.S.C. § 1651 writ injunction, or FRCP Rule 60(d) relief." *Id.* Judge Hughes barred Plaintiff from filing cases in the Southern District of Texas and denied Plaintiff admission there.[1] *Id.* at 4–5.

[1] The court previously took judicial notice that "[b]eacuse he has abused his credentials, the full [U.S. District Court for the Southern District of Texas] has denied [Plaintiff's] admission to the Southern District several times" and that "[h]e has been sanctioned for recalcitrance." Dkt. 5 at 2 n.2. The court takes further judicial notice that Plaintiff "may not practice in" the Southern District of Texas and may not file cases there. *Id.*

The court need not delve deeply into Plaintiff's flawed claims against Judge Hughes because as an Article III judge, he has absolute immunity from this lawsuit. *Black v. Griffin*, 638 F. App'x 371, 373 (5th Cir. 2016). Accordingly, the undersigned will recommend dismissal of Plaintiff's claims against Judge Hughes with prejudice.

B. Standing to Bring Claim Against Steven McGraw and Texas DPS

1. This lawsuit's background

Plaintiff's lawsuit stems from his 2018 arrest for suspected driving while intoxicated. Dkt. 7 at 14. During the arrest, he received a statutory warning regarding the status of his driver's license contained on a DIC-24 form. *Id.* The Texas Department of Public Safety ("DPS"), which McGraw leads, promulgates the DIC-24 form, and law enforcement agencies around the state use it when effecting arrests based on suspicion of impaired driving. *See id.* In conjunction with his arrest and relying on a DIC-24 form, a Houston police officer confiscated Plaintiff's driver's license. *Id.* Later, Plaintiff's driving privilege was suspended. *Id.*

Plaintiff contends that the DIC-24 form is defective because it does not contain the text of Texas Transportation Code §724.015(a)(6). *Id.* at 15. Plaintiff argues that under the Constitution's and the Texas Constitution's unreasonable search and seizure, equal protection, and due process provisions, the DIC-24 form "must meet strict compliance" but does not because it does not contain §724.015(a)(6)'s text. *Id.*

This is not the first time Plaintiff asserted his DIC-24-related claims. He twice sued McGraw and DPS, along with other defendants, in actions the defendants removed from state court. *Id.* at 16, 18. A federal district court in Houston dismissed both lawsuits with prejudice. *Adimora-Nweke v. McGraw*, 2022 U.S. Dist. LEXIS 104590, at *5; *Adimora-Nweke v. McGraw*, No. 4:20-cv-04149, 2021 U.S. Dist. LEXIS 230726, at *5 (S.D. Tex. 2021).

As he does here, in the SDTX suits, "Plaintiff allege[ed] that the DIC-24 form is unconstitutional on its face as applied because it is not in strict compliance with Texas Transportation Code 724.015." *Adimora-Nweke v. Yarbrough-Smith*, 2021 U.S. Dist. LEXIS 231593, at *3. "Specifically, Plaintiff argue[ed] that the DIC-24 form is 'missing Texas Transportation Code Section 724.015(6).'" *Id.*

2. Plaintiff lacks standing

The court has a duty to consider jurisdictional bars *sua sponte*. *Wilkins v. United States*, 143 S. Ct. 870, 876 (2023). Constitutional standing is a question of subject matter jurisdiction. *Norris v. Causey*, 869 F.3d 360, 366 (5th Cir. 2017) (citing *Sprint Commc'ns. Co. v. APCC Servs. Inc.*, 554 U.S. 269, 273 (2008)). "To establish Article III standing, a plaintiff must show (1) an injury in fact; (2) a sufficient causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision." *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015). A plaintiff who seeks to challenge a governmental practice must allege specific, concrete facts demonstrating that the challenged practice harm him, and that he personally would benefit in a tangible way from the court's intervention. *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

To avoid reinventing the wheel, the court borrows from our SDTX sister court's analysis of Plaintiff's claim:

> Plaintiff argues he was harmed by the DIC-24 form that is missing Texas Transportation Code Section 724.015(6). However, Texas Transportation Code Section 724.015(6) only applies to individuals who do not have a driver's license. *Texas Transportation Code Section 724.015(6) did not apply to Plaintiff because he had a driver's license at the time of his arrest*. Thus, Plaintiff cannot be injured by a lack of notice regarding Texas Transportation Code Section 724.015(6). . . . **Without an injury, Plaintiff fails to establish standing**.
>
> **"[T]he Court cannot redress Plaintiff's criticism of the DIC-24 form because the reason for Plaintiff's license suspension had nothing to do with a portion**

> **of the statute that does not apply to Plaintiff**. . . . Plaintiff's request for a declaration or injunction would be futile as neither would change the inapplicability of the language in the DIC-24 form to Plaintiff.

Adimora-Nweke v. Yarbrough-Smith, 2021 U.S. Dist. LEXIS 231593, at *5 (citations and quotations omitted) (emphases added).

The undersigned recommends dismissal of Plaintiff's claims against McGraw and DPS for the same reason that our sister court dismissed Plaintiff's identical claims in the Southern District of Texas: he lacks standing.

V. CONCLUSION

Plaintiff is attempting to bring the same twice-dismissed lawsuit in a new court. **He may not.** Plaintiff's lawsuit reflects fundamental misunderstandings of basic principles of American jurisprudence. This is troubling because Plaintiff is an attorney licensed to practice law.

To sum up, Plaintiff attempts to sue a federal judge for meting out discipline that offended Plaintiff. But the judge is immune from suit. Plaintiff also attempts to reassert his claim that a DPS-promulgated form is constitutionally defective, but again he is thwarted and for the same reason he was in his previous actions: he fails to meet the constitutional minimum of standing.

"The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is [] restricted to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 473 (1982). Because Plaintiff cannot show an injury in fact *or* that this court could grant him relief, the undersigned recommends dismissal of this lawsuit for lack of subject matter jurisdiction.

VI. ORDER & RECOMMENDATIONS

The Magistrate Court hereby **GRANTS** Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 3) and Motion to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (Dkt. 6). The Magistrate Court **RECOMMENDS** the District Court **DISMISS WITH PREJUDICE** Plaintiff's Amended Complaint (Dkt. 7) pursuant to 28 U.S.C. § 1915(e)(2)(B) and for lack of subject matter jurisdiction.

The undersigned **ADMOMISHES** Plaintiff not to file obviously frivolous lawsuits that lack a basis in law. The undersigned, again, borrows from the Hon. Charles Eskridge and warns: "Plaintiff Ernest Adimora-Nweke is ADMONISHED that if he continues to abuse the process of this Court or otherwise engage in bad faith litigation practices, a preclusion order barring further unauthorized practice, *including as a pro se litigant*, will be entered." *Adimora-Nweke v. McGraw*, 2022 U.S. Dist. LEXIS 104590, at *5 (italics added, capitals in original).

Plaintiff is **FURTHER ORDERED** not to email[2] any judge or other court employee regarding this case. Federal courts are courts of record and, as such, submissions should be made via CMECF. Should Plaintiff's behavior continue, the undersigned will recommend that the U.S. District Court for the Western District of Texas follow the Southern District's lead and prohibit him from filing cases in it.[3]

The referral of this case to the Magistrate Court should now be canceled.

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[2] Plaintiff emailed the undersigned nearly a dozen times in one month. Those emails are attached as Exhibits A–K.

[3] "Because he abused his credentials, the full court has denied Adimora-Nweke's admission to the Southern District several times. He has been sanctioned for his recalcitrance. He may not practice in this district and must stop filing cases in it." *Apheaus Ohakweh, et al., v. Harris Health Sys., et al.*, No. H-20-1651 (S.D. Tex. Jun. 26, 2020), ECF No. 12.

VII. WARNING

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

SIGNED October 10, 2023.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ERNEST ADIMORA-NWEKE,	§	
Plaintiff,	§	
v.	§	
	§	
STEVEN C. McGRAW, Director of	§	
Texas Department of Public Safety,	§	**1:23-CV-1048-DII-ML**
TEXAS DEPARTMENT OF PUBLIC	§	
SAFETY, and HON. JUDGE LYNN	§	
HUGHES,	§	
Defendants.	§	

ORDER

Before the court is Plaintiff's Complaint (Dkt. #1), Application to Proceed in District Court Without Prepaying Fees or Costs (Dkt. #3), and Plaintiff's FRCP Rule 60(d)(1) Motion for Independent Action, FRCP Rule 23 Motion to Certify Class & FRCP Rules 56 & 54 Partial Summary & Judgment Motion (Dkt. #3). Because Plaintiff is seeking permission to proceed *in forma pauperis*, the court must perform an initial review of the Complaint and dismiss the case if the court determines that the Complaint is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune. 28 U.S.C. § 1915(e)(2). The information Plaintiff has provided in the Complaint is insufficient for the court to properly evaluate the Complaint under 28 U.S.C. §1915(e)(2) to determine whether Plaintiff states cognizable claims.

Plaintiff identifies the above-named Defendants, but his Complaint is written in such a way that the court cannot determine basic information about Plaintiff's lawsuit.[1] Although Plaintiff is representing himself *pro se*, he is a licensed attorney, and "counsel is held to a higher standard

[1] The court takes judicial notice that at least one court previously provided Plaintiff notice that meandering and prolix pleadings are problematic. Dkt. #1 at 81 (Report & Recommendation by United States Magistrate Judge Sam S. Sheldon).

than a *pro se* litigant." *Wright v. McCain*, 703 F. App'x 281, 284 (5th Cir. 2017) ("'it would be rather peculiar to treat a trained attorney's error more leniently than' that of a *pro se* litigant") (quoting *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002)).[2] Therefore, pursuant to Federal Rule of Civil Procedure 12(e), the court **ORDERS** Plaintiff to file an Amended Complaint with the Clerk of the Court. The Amended Complaint shall clearly articulate who Plaintiff is attempting to sue; the cause(s) of action Plaintiff asserts; against which Defendant(s) the cause(s) of action asserted; and the factual the basis giving rise to the cause(s) of action.

IT IS FURTHER ORDERED that Plaintiff shall file the Amended Complaint **on or before September 20, 2023**. *See* FED. R. CIV. P. 12(e); *Hanna v. Goodyear Tire & Rubber*, 6 F. Supp. 2d 605, 608 (E.D. Tex. 1998). A failure to do so will result in this court's recommending dismissal of Plaintiff's complaint for want of prosecution.

Finally, finding the Application to Proceed *In Forma Pauperis* and Financial Affidavit in Support to be lacking, Plaintiff is **FURTHER ORDERED** to file an Application to Proceed in District Court Without Prepaying Fees or Costs (AO Form 239) (Long Form) **on or before September 20, 2023.**

SIGNED September 6, 2023.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

[2] The court takes judicial notice that "[b]eacuse he has abused his credentials, the full [U.S. District Court for the Southern District of Texas] has denied [Plaintiff's] admission to the Southern District several times" and that "[h]e has been sanctioned for recalcitrance." Dkt. #1 at 66 (Order Denying Reconsideration). The court takes further judicial notice that Plaintiff "may not practice in" the Southern District of Texas and may not file cases there. *Id.*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
May 11, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: Louis Fuentes
DEPUTY

IN RE: COURT DOCKET MANAGEMENT §
§
FOR AUSTIN DIVISION §

ORDER

In accordance with the authority vested in the United States Magistrate Judge pursuant to Rule 1 of the Local Rules for the Assignment of Duties to United States Magistrates, Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, **IT IS ORDERED** that, with regard to cases assigned to Austin Docket II, the following matters shall be referred to a United States Magistrate Judge for the Austin Division, allocated pursuant to the Clerk of the Court's standard procedure, for the types of actions listed below:

(1) All cases brought pursuant to 28 U.S.C. §§ 2241, 2254 (excluding cases in which a sentence of death was imposed), and 2255 (excluding cases in which a sentence of death was imposed), cases brought by federal prisoners and detainees challenging conditions of confinement, cases brought by prisoners pursuant to 42 U.S.C. § 1983, and cases seeking judicial review of social security decisions shall be assigned to a United States Magistrate Judge for the Austin Division for disposition of all non-dispositive pretrial matters as provided in 28 U.S.C. § 636(b)(1)(A), and for findings and recommendations on all case-dispositive motions as provided in 28 U.S.C. § 636(b)(1)(B).

(2) Any case in which application to proceed in forma pauperis has been made, other than a case described in paragraph (1) above, shall be referred to a United States Magistrate Judge for the Austin Division for disposition of the application to proceed in forma pauperis, disposition of any motion for appointment of counsel, and for a prompt recommendation as to whether the case should be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e). Upon completion of the above tasks, the Magistrate Judge shall return the case to the district court for further proceedings.

This Order supersedes all prior Orders of this Court regarding the above-referenced matters for the Austin Division.

SIGNED on May 11, 2023.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
ENTERED
June 26, 2020
David J. Bradley, Clerk

Aphaeus Ohakweh, *et al.*,

Plaintiffs,

versus

Harris Health System, *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§
§

Civil Action H-20-1651

Order Denying Reconsideration

This court's denial of Ernest Chukwunenye Adimora-Nweke's application to appear *pro hac vice* subsists.

Because he has abused his credentials, the full court has denied Adimora-Nweke's admission to the Southern District several times. He has been sanctioned for his recalcitrance. He may not practice in this district and must stop filing cases in it.

In an unprincipled motion, he alternatively seeks to join himself as a party in this case and proceed as a *pro se* plaintiff. He may not.

His motions for reconsideration and joinder are denied. (9)(10)

Signed on June 26, 2020, at Houston, Texas.

Lynn N. Hughes
United States District Judge

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

www.dps.texas.gov
DRIVER LICENSE DIVISION
512-424-2600
EN ESPAÑOL 512-424-7181

STEVEN C. McCRAW
DIRECTOR
SKYLOR HEARN
FREEMAN F. MARTIN
RANDALL B. PRINCE
DEPUTY DIRECTORS

COMMISSION
STEVEN P. MACH, CHAIRMAN
MANNY FLORES
A. CYNTHIA LEON
JASON K. PULLIAM
FAITH WATSON

01/14/2019

ERNEST C [redacted]
[redacted] LANE
HOUSTON, TX [redacted] 0000

DL No: [redacted] ID No: UNL No:

ORDER OF SUSPENSION

Your Texas Driver License, permit and/or driving privilege to operate a motor vehicle has been suspended from 12/24/2018 through 06/21/2019, because you refused to provide a specimen of blood or breath following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated, while under the influence of alcohol or while under the influence of a controlled substance.

You will be required to pay a $125.00 reinstatement fee to the Texas Department of Public Safety, Central Cash Division, PO Box 15999, Austin, TX 78761-5999. In order for the Department to correctly identify your file, please complete the form on the reverse side and return with the reinstatement fee. Failure to pay the reinstatement fee will result in the denial of renewal or issuance of a Texas driver license.

This suspension has resulted in the disqualification of all commercial driving privileges. An occupational or essential need driver license may not be issued for the operation of a commercial motor vehicle. You must surrender any valid Texas Driver License in your possession. The license will be returned to you upon expiration of the suspension period.

Driving any motor vehicle upon the highways of this state while a license or privilege is invalid may result in criminal penalties and additional suspension action.

Manager,
Enforcement and Compliance Service
Driver License Division

STATUTORY AUTHORITY: Texas Transportation Code Section 724.035; 724.046; 522.089

EXHIBIT
A

DRIVER IMPROVEMENT & COMPLIANCE BUREAU - REINSTATEMENT OF LICENSE (ALR)

Driver License No._____ DOB_____

Name:_____

Address:_____

You are required to pay a $125 fee to reinstate your driver license. In order for the Department to correctly identify your file, please complete this form and return it along with your reinstatement fee, to the Department at the following address, Texas Department of Public Safety, Driver Improvement and Compliance Bureau, PO Box 15999, Austin, Texas 78761-5999. Payment must be made in the form of a personal check, cashier's check or money order made payable to the Texas Department of Public Safety. Please include your driver license number on the payment.

FOR DPS USE ONLY: Number:_____ Amount:_____

United States District Court
Southern District of Texas
ENTERED
April 09, 2021
Nathan Ochsner, Clerk

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

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff	§	4:20-CV-4149
v.	§	
Steven A McGraw, et al		
Defendants		

ORDER ON PLAINTIFF'S UNOPPOSED MOTION TO WITHDRAW APPLICATION TO PROCEED WITHOUT COSTS

On this 9th day of April, 2021 came consideration of Plaintiff's unopposed motion to withdraw application to proceed without costs, without prejudice.

Plaintiff's motion is hereby granted.

Sam Sheldon
United States Magistrate Judge

Case 4:22-cv-03907 Document 15 Filed on 09/09/21 in TXSD Page 1 of 20

United States District Court
Southern District of Texas
ENTERED
September 09, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE,	§	
	§	
Plaintiff,	§	
	§	
V.	§	**CIVIL ACTION NO. 4:20-CV-4149**
	§	
HANNAH O. YARBROUGH-SMITH, ET AL,	§	
	§	
Defendants.	§	

MEMORANDUM AND RECOMMENDATION

Pending before the Court[1] is Defendant Director McGraw's Motion to Dismiss (Dkt. No. 15). The Court has considered the motion, all other relevant filings, and the applicable law. For the reasons set forth below, the Court **RECOMMENDS** that Defendant Director McGraw's Motion to Dismiss (Dkt. No. 15) be **GRANTED** and the case against him be **DISMISSED WITH PREJUDICE**. The Court **FURTHER RECOMMENDS** that all other pending motions (Dkt. Nos. 5, 7, 17, 22) be **DENIED AS MOOT**.

I. BACKGROUND

Plaintiff Ernest Adimora-Nweke filed this lawsuit in the 234th Judicial District Court of Harris County, Texas on September 16, 2020.[2] Defendant Steven A. McGraw, Director of the Texas Department of Public Safety ("Director McGraw") removed the case on December 4, 2020.[3]

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[1] This case was referred to the Undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure ("Rule") 72. (*See* Dkt. No. 12.)

[2] Dkt. No. 1 at 1.

[3] *Id.*

Plaintiff filed a 125-page fourth amended complaint on December 8, 2020, bringing claims under the U.S. Constitution and state law torts among others.[4]

On November 14, 2018, Plaintiff was arrested on suspicion of driving while intoxicated.[5] Plaintiff did not voluntarily provide a breath or blood sample.[6] Texas Transportation Code 724.015 describes information police officers shall provide before requesting specimen in these situations and states "if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended . . . ." *See* Tex. Transp. Code 724.015(2). Plaintiff received notice via a DIC-24 form that his license would be suspended.[7] A DIC-24 form is a piece of paper that contains the above statutory warning. *See* Tex. Transp. Code 724.015.

Plaintiff had a license at the time of his arrest and alleges that an officer kept it after he posted bail.[8] The DIC-24 form can serve as a temporary driving permit if a license is confiscated.[9] Within 15 days of arrest or notice of suspension, an individual may request an Administrative License Revocation ("ALR") hearing. *See* Tex. Transp. Code 724.041(a). On November 16, 2018, Plaintiff requested an ALR hearing regarding his license suspension.[10] On November 26, 2018, Plaintiff was notified that his request was insufficient under Texas Administrative Code, Title 37, Chapter 17, Rule 17.8 (4) and (5).[11] Plaintiff did not attempt to correct the defect until January 26, 2019, well after the 15-day statutory time period passed.[12] Consequently, Plaintiff's license was

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[4] *See* Dkt. No. 6.
[5] *Id.* at 86.
[6] *Id.* at 87.
[7] Dkt. No. 2 at 352.
[8] Dkt. No. 6 at 89.
[9] Dkt. No 2 at 352.
[10] Dkt. No. 6 at 87–88.
[11] Dkt. No. 2 at 347.
[12] *Id.* at 348–51.

suspended from December 14, 2018 until June 21, 2019.[13] Plaintiff's license is no longer suspended and he is permitted to drive, but he is required to pay a $125.00 reinstatement fee before a new driver's license will be issued.[14]

Plaintiff alleges that the DIC-24 form is unconstitutional on its face as applied because it is not in strict compliance with Texas Transportation Code 724.015.[15] Specifically, Plaintiff argues that the DIC-24 form is "missing Texas Transportation Code Section 724.015(6)."[16] Director McGraw filed the pending Motion to Dismiss on December 22, 2020.[17] The Court stayed the case on March 8, 2021 until the Court could rule on Director McGraw's Motion to Dismiss.[18]

II. LEGAL STANDARD

Rule 12(b)(6) provides for dismissal of an action for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss, a court should construe the allegations in the complaint favorably to the pleader and accept as true all well-pleaded facts. *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010). To survive dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, a court is not bound to accept legal conclusions couched as factual allegations. *Papasan*

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[13] *Id.* at 345.
[14] *Id.*
[15] Dkt. No. 6 at 99.
[16] *Id.* at 100.
[17] Dkt. No. 15.
[18] Dkt. No. 33.

v. *Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of a plaintiff, a plaintiff must plead "specific facts, not mere conclusory allegations." *Tuchman v. DSC Comme'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994).

A complaint may also be dismissed if the Court lacks subject matter jurisdiction over an action. Fed. R. Civ. P. 12(b)(1). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)).

III. ANALYSIS

Director McGraw argues Plaintiff lacks standing to bring claims against him and any complaint regarding the DIC-24 form is moot.[19] Further, Director McGraw argues Plaintiff's claims against him should be dismissed for failing to state a claim upon which relief can be granted.[20] The Court notes at the outset that Plaintiff is a licensed and practicing attorney who is representing himself in this case. Consequently, "this Court holds [him] to a higher standard than it does a typical *pro se* plaintiff." *Davis v. GECESP Assocs. LLC*, No. 2:14-CV-01065, 2015 WL 410030, at *2 (E.D. Tex. Jan. 23, 2015); *see Wright v. McCain*, 703 F. App'x 281, 284 (5th Cir 2017) (quoting *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002)) ("Since counsel is held to a higher standard than a *pro se* litigant, 'it would be rather peculiar to treat a trained attorney's error more leniently than' that of a pro se litigant."). The Court will address each of Director McGraw's arguments in turn.

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[19] Dkt. No. 15 at 9.

[20] *Id.*

a. Standing

Director McGraw argues Plaintiff lacks standing to bring claims against him because Plaintiff has not been injured.[21] Plaintiff contends that he "still has standing per injury in fact that is fairly to Director McGraw's continuously authorized unconstitutional DIC-24 document . . ."[22] The Court agrees with Director McGraw.

"Constitutional standing is a question of subject matter jurisdiction." *AmGuard Ins. Co. v. Lone Star Legal Aid*, No. CV H-18-2139, 2019 WL 4034276, at *2 (S.D. Tex. Aug. 27, 2019) (citing *Norris v. Causey*, 869 F.3d 360, 366 (5th Cir. 2017)). "To establish Article III standing, a plaintiff must show (1) an injury in fact; (2) a sufficient causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision." *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015).

Plaintiff argues he was harmed by the DIC-24 form that is "missing Texas Transportation Code Section 724.015(6)."[23] However, Texas Transportation Code Section 724.015(6) only applies to individuals who do not have a driver's license.[24] Texas Transportation Code Section 724.015(6) did not apply to Plaintiff because he had a driver's license at the time of his arrest.[25] Thus, Plaintiff cannot be injured by a lack of notice regarding Texas Transportation Code Section 724.015(6).

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[21] *Id.*

[22] Dkt. No. 16 at 2.

[23] *Id.* at 100.

[24] Texas Transportation Code Section 724.015(6) states "if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state."

[25] Dkt. No. 6 at 89.

5 / 12

Plaintiff does not refute that this specific section did not apply to him. Without an injury, Plaintiff fails to establish standing.

Further, Director McGraw argues that the Court cannot redress Plaintiff's criticism of the DIC-24 form "because the reason for Plaintiff's license suspension had nothing to do with a portion of the statute that does not apply to Plaintiff."[26] The Court agrees with Director McGraw that Plaintiff's request for a declaration or injunction would be futile as neither would change the inapplicability of the language in the DIC-24 form to Plaintiff.[27] Plaintiff's license suspension has ended and the reinstatement fee only applies to obtaining a new license. There is no current injury to Plaintiff's ability to drive that could be redressed by the equitable relief Plaintiff seeks Accordingly, the Court recommends that Plaintiff's claims be dismissed pursuant to Rule 12(b)(1) *Wright v. Brady*, No. H-06-CV-2021, 2006 WL 2371327, at *1 (S.D. Tex Aug. 15, 2006) ("If a plaintiff lacks standing to assert a claim, a federal court lacks subject-matter jurisdiction over that claim.").

b. Mootness

Director McGraw also argues that Plaintiff's claims are moot because his license is no longer suspended and he is permitted to drive.[28] Plaintiff argues his case is not moot because he is still subject to the $125.00 reinstatement fee along with the "detrimental effects" on his insurance and driving record.[29]

"A claim is moot when a case or controversy no longer exists between the parties." *Kovac*

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[26] Dkt. No. 15 at 10.
[27] Dkt. No. 20 at 4.
[28] Dkt. No. 15 at 11–12.
[29] Dkt. No. 16 at 2.

v. *Wray*, 449 F. Supp. 3d 649, 653 (N.D. Tex. 2020) (quoting *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338, 345 (5th Cir. 2017)). Here, Plaintiff's license was suspended from December 14, 2018 until June 21, 2019.[30] Plaintiff's license is no longer suspended, but he is required to pay a $125.00 reinstatement fee before a new driver's license will be issued.[31] [T]he period of suspension is not extended by failure to pay the fee." *Allen v. State*, 48 S.W.3d 775, 778 (Tex. Crim. App. 2001). As discussed above, the reinstatement fee only applies to obtaining a new license and did not extend Plaintiff's license suspension nor his ability to lawfully drive. As such, there is no live case or controversy related to the DIC-24 form and Plaintiff. Accordingly, the Court recommends that Plaintiff's claims be dismissed as moot.

c. Failure to State a Claim

Lastly, Director McGraw argues that Plaintiff has not stated a claim for which relief may be granted.[32]

i. Rule 8(a)

First, Director McGraw contends that Plaintiff fails to satisfy Rule 8.[33] Rule 8 states that a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "For a complaint to meet the pleading requirements of Rule 8(a)(2) and to survive a Rule 12(b)(6) motion to dismiss, the following conditions must be met: (1) every element of each cause of action must be supported by specific factual allegations, and (2) the complaint must state a plausible claim for relief." *Kan v. OneWest Bank, FSB*, 823 F.

[30] Dkt. No. 2 at 345.
[31] *Id.*
[32] Dkt. No. 15 at 12.
[33] *Id.*

Case: 22-20809 Document: 00516417289 Page: 28 Date Filed: 08/04/2022

Supp. 2d 464, 468 (W.D. Tex. 2011).

Plaintiff's fourth amended complaint is 125 pages long.[34] *It discusses everything from a bad business arrangement Plaintiff entered into with a person whom he believes is a criminal to his other arrests related to this business partner to a conspiracy involving kidnapping and contracted hit-men.*[35] 25 pages are spent on Plaintiff's bad business arrangement and 54 pages discuss his other arrests.[36] Plaintiff sues not only Director McGraw, but 25 other defendants and numerous members of law enforcement.[37]

In no way does Plaintiff's complaint comply with Rule 8(a)(2). Plaintiff, a licensed attorney, has had multiple opportunities to correct the deficiencies in his fourth amended complaint and has failed to do so. Accordingly, the Court recommends that Plaintiff's complaint be dismissed for failure to comply with Rule 8.

ii. Immunity From Liability

Second, Director McGraw contends Plaintiff fails to state a claim against him for which relief can be granted because he retains immunity from liability to Plaintiff's claims.[38]

"[W]hen a State removes to federal court a private state court suit based on a federal-law claim, it invokes federal jurisdiction and thus waives its unqualified right to object peremptorily to the federal district court's jurisdiction on the ground of state sovereign immunity. However, that waiver does not affect or limit the State's ability to assert whatever rights, immunities or defenses are provided for by its own sovereign immunity law to defeat the claims against the State finally

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[34] Dkt. No. 6.
[35] *See id.*
[36] *Id.* at 6–86.
[37] *Id.* at 1–5.
[38] Dkt. No. 15 at 13.

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and on their merits in the federal courts." *Meyers ex rel. Benzing v. Texas*, 454 F.3d 503, 504 (5th Cir. 2006); *see also Skinner v. Gragg*, No. 14-CV-1412, 2015 WL 12966224, at *11 (S.D. Tex Aug. 13, 2015), *aff'd*, 650 F. App'x 214 (5th Cir. 2016) ("[A]fter removal, a state may not defeat jurisdiction based on sovereign immunity, but may still assert state sovereign immunity as defined by state law as a defense.").

To the extent Plaintiff argues his case falls under an *Ex parte Young* exception, Plaintiff's argument fails because, as Director McGraw notes, there is no ongoing constitutional violation. *See Anderson v. Valdez*, 913 F.3d 472, 479 (5th Cir. 2019). Any relief sought regarding Plaintiff's past suspension would need to be retroactive and any relief sought regarding the reinstatement fee does not implicate a constitutional right. *See Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003) ("To obtain equitable relief for past wrongs, a plaintiff must demonstrate either continuing harm or a real and immediate threat of repeated injury in the future."). Accordingly, Director McGraw is immune from liability and retrospective equitable relief to address Plaintiff's alleged past injuries.

iii. Due Process

Third, Director McGraw argues that Plaintiff's right to due process has not been violated because he received sufficient notice.[39] Moreover, given that driving an automobile is not a constitutionally protected right, any lack of notice language intended to address individuals without driver's licenses, or a required reinstatement fee is not a violation of due process.[40]

Plaintiff admits that he had a driver's license.[41] Plaintiff clearly had notice as he requested

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[39] *Id.* at 15–17

[40] *Id.*

[41] Dkt. No. 6 at 89.

an ALR hearing regarding the suspension of his license two days after he had been arrested.[42] Further, as noted by Director McGraw, the right to obtain a driver's license is a privilege, not a protected right. *See Gillaspie v. Dep't. of Pub. Safety*, 152 Tex. 459, 259 S.W.2d 177, 182 (1953) ("[A] license or permit to drive an automobile on the public highways and streets is a privilege and not property or a property right."); *see also Blakely v. Andrade*, 360 F. Supp. 3d 453, 470 (N.D. Tex. 2019) (same). Thus, any lack of notice language intended to address individuals without driver's licenses or a required reinstatement fee prior to obtaining a license is not a violation of due process.

As discussed above, any argument as to notice is moot as Plaintiff's license is no longer suspended and he is permitted to drive, and Plaintiff's reinstatement fee is not depriving him of a constitutionally protected right. Thus, Plaintiff's due process argument fails.[43]

iv. Equal Protection

Fourth, Director McGraw argues that Plaintiff fails to allege facts that suggest an equal protection claim is being brought against Director McGraw.[44]

"To state a claim under the Equal Protection Clause, a § 1983 plaintiff must either allege that (a) a state actor intentionally discriminated against [him] because of membership in a protected class or (b) he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Gibson v. Texas Dep't of Ins.--Div. of*

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[42] *Id.* at 87–88.

[43] Director McGraw also notes that allegations as to the missing language on the DIC-24 would be an alleged violation of state law, not the U.S. constitution. (Dkt. No. 15 at 17.) "It is well established that violations of state law are not actionable under § 1983." *Whitt v. Stephens Cty.*, 236 F. App'x 900, 902 (5th Cir. 2007).

[44] Dkt. No. 15 at 17.

Workers' Comp., 700 F.3d 227, 238 (5th Cir. 2012) (internal quotations and citations omitted).

In his fourth amended complaint, Plaintiff simply states he is "a foreign-born person (alienage) and hence within a protected class."[45] The Court agrees with Director McGraw that Plaintiff fails to allege facts to indicate Director McGraw or DPS discriminated against Plaintiff on that basis and that Plaintiff does not allege the DIC-24 form applied to him in a discriminatory manner.[46] Plaintiff does not address Director McGraw's argument in his response. Accordingly, Plaintiff's equal protection argument fails.

IV. CONCLUSION

Based on the foregoing, the Court **RECOMMENDS** that Defendant Director McGraw's Motion to Dismiss (Dkt. No. 15) be **GRANTED** and the case against him be **DISMISSED WITH PREJUDICE**. The Court **FURTHER RECOMMENDS** that all other pending motions (Dkt. Nos. 5, 7, 17, 22) be **DENIED AS MOOT**.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk electronically. Copies of such objections shall be mailed to opposing parties and to the chambers

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[45] Dkt. No. 6 at 77.

[46] *See* Dkt. No. 15 at 17.

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of the Undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

SIGNED in Houston, Texas on September 9, 2021.

Sam S. Sheldon
United States Magistrate Judge

Case: 22-20600 Document: 00516417089 Page: 2 Date Filed: 08/08/2022
United States District Court
Southern District of Texas
ENTERED
December 02, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:20-cv-04149
vs.	§	JUDGE CHARLES ESKRIDGE
STEVEN A. MCGRAW, *et al*, Defendants.	§	

ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION

Plaintiff Ernest Adimora-Nweke represents himself here *pro se*. But he's also a lawyer. As such, Magistrate Judge Sam S. Sheldon declined to leniently construe his pleadings in the Memorandum and Recommendation. See Dkt 50 at 4. Neither will this Court in reviewing Adimora-Nweke's objections. See *Wright v McCain*, 703 F App'x 281, 284 (5th Cir 2017, *per curiam*). Indeed, Adimora-Nweke is admonished and cautioned to observe the dictates of Rule 11 of the Federal Rules of Civil Procedure going forward. This Court will not hesitate where warranted to shift costs, make a referral to the Texas State Bar for appropriate disciplinary proceedings, or otherwise issue any necessary sanctions.

Adimora-Nweke brought this action in state court, which was removed here. Dkt 1. Now at issue is his rambling, 125-page fourth amended complaint that asserts wide-ranging causes of action against approximately thirty putative defendants under (among other things) the United States Constitution and state tort law, while also seeking class certification. Dkt 6. The removal papers

include a lengthy appendix of materials filed in state court prior to removal. Dkt 2.

All of this relates to his arrest on suspicion of driving while intoxicated in November 2018. He there refused to voluntarily provide a breath or blood sample after being warned that such refusal would subject his driver's license to automatic suspension pursuant to § 724.015 of the Texas Transportation Code. Dkt 6 at 86–87; see also Dkt 2 at 176 (DIC-24 statutory warning). And so, he received notice via a form DIC-25 that his license would be suspended. Dkt 2 at 352 (DIC-25 notice of suspicion). A form DIC-25 also serves as a temporary driving permit where one's driver's license is confiscated. Ibid.

Section 724.041(a) of the Texas Transportation Code permits an individual within fifteen days of arrest or of receiving notice of suspension to request an Administrative License Revocation hearing. Adimora-Nweke requested such a hearing. Dkt 6 at 87–88. But he was later notified that his request was deficient. Dkt 2 at 347. He didn't attempt to correct the stated deficiencies until well after the statutorily required fifteen-day period. Id at 348–51. And so, his license was suspended from December 24, 2018 through June 21, 2019. Id at 345 (order of suspension).

Adimora-Nweke's license is no longer suspended, and he's permitted to drive but must remit the required $125 reinstatement fee before a new license will be issued. Ibid. He hasn't paid the fee and contends that the DIC-24 warning fails to strictly comply with § 724.015 of the Texas Transportation Code and is unconstitutional on its face. Dkt 6 at 98–100.

The case was referred for disposition to Magistrate Judge Sam S. Sheldon. Dkt 12. By Memorandum and Recommendation, he resolved a number of outstanding motions. See Dkt 50.

First, upon determination that Adimora-Nweke lacks standing to assert claims concerning form DIC-24, he recommended that the motion to dismiss by Defendant Steven A. McGraw, in his official capacity as Director of the

Case 4:22-cv-00780 Document 54 Filed on 05/15/23 in TXSD Page 3 of 5 Date Filed: 08/08/2022

Texas Department of Public Safety, be granted. Dkt 15; Dkt 50 at 1. Plainly, section 724.015(6) of the Texas Transportation Code applies only "to individuals who do not have a driver's license." Id at 5. And because Adimora-Nweke had a driver's license at the time of his arrest—a contention he doesn't refute—he couldn't have been injured by a lack of notice as to this section. Ibid. Further, because his license is no longer suspended and he's permitted to drive, Adimora-Nweke's claims are moot. Id at 6–7.

Second, he recommended that all other pending motions be denied as moot. Dkt 50 at 1. These included:

- Adimora-Nweke's motion for partial summary judgment and injunction. Dkt 5;
- Adimora-Nweke's amended motion for partial summary judgment, injunction, class certification, representation, counsel, and counsel compensation, Dkt 7;
- Adimora-Nweke's second amended motion for partial summary judgment, injunction, class certification, representation, counsel, and counsel compensation, Dkt 17; and
- Adimora-Nweke's emergency motion for alternate service, to separate, and leave to amend, Dkt 22.

Adimora-Nweke timely objected, contending that the findings by the Magistrate Judge assume facts not in evidence, are contrary to the scope of a 12(b)(6) motion, and error on facts and the law. Dkt 51.

The district court conducts a *de novo* review of those conclusions of a magistrate judge to which a party has specifically objected. See 28 USC § 636(b)(1)(C); see also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989). To accept any other portions to which there is no objection, the reviewing court need only satisfy itself that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglas v United Services Automobile Association*, 79 F3d

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1415, 1420 (5th Cir 1996); see also FRCP 72(b) Advisory Comm Note (1983).

The Court has reviewed *de novo* the objections by Adimora-Nweke. The response by McGraw adequately and accurately addresses all such complaints. Dkt 52. The objections lack merit and disposition is controlled by authority cited in the Memorandum and Recommendation.

The Court has otherwise considered the Memorandum and Recommendation and reviewed the pleadings, the response, and the reply. No clear error appears.

The Memorandum and Recommendation of Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 50.

The motion to dismiss by Defendant Steven A. McGraw, in his official capacity as Director of the Texas Department of Public Safety, is GRANTED. Dkt 15.

McGraw is DISMISSED WITH PREJUDICE. This is appropriate where the subject pleading is a fourth amended complaint of 125 pages in length, and yet it fails even now to meet the requirements of Rule 8(a)(2). See Dkt 50 at 7–8.

The various other motions by Plaintiff Ernest Adimora-Nweke are DENIED AS MOOT. Dkts 5, 7, 17, & 22.

SO ORDERED.

Signed on December 2, 2021, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States District Court
Southern District of Texas
ENTERED
December 02, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:20-cv-04149
vs.	§	JUDGE CHARLES ESKRIDGE
STEVEN A. MCGRAW, *et al*, Defendants.	§	

ORDER TO SHOW CAUSE

Plaintiff Ernest Adimora-Nweke is a lawyer who represents himself here *pro se*. He brought this action in state court in September 2020. It was removed here in December 2020. Dkt 1. Prior to removal, Adimora-Nweke filed multiple motions requesting to serve process on several named defendant through alternate service. For example, see Dkt 2 at 75, 146–51. Each was denied. See id at 144, 160, 165, and 167.

The docket reflects that of the approximately thirty putative defendants against whom Adimora-Nweke asserts wide-ranging causes of action, only Defendant Steven A. McGraw has been served. Id at 326–27. And McGraw has now been dismissed with prejudice. Dkt 54.

Federal Rule of Civil Procedure 4(m) states, "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." This mandates dismissal absent good cause shown by the plaintiff for the failure to timely

serve. *Levis v Secretary of Public Safety and Corrections*, 870 F3d 365, 369 (5th Cir 2017).

Adimora-Nweke is ORDERED to show cause by December 15, 2021 why this case shouldn't be dismissed without prejudice for failure to satisfy Rule 4(m).

SO ORDERED.

Signed on December 2, 2021, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States District Court
Southern District of Texas
ENTERED
December 27, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:20-cv-04149
vs.	§	JUDGE CHARLES ESKRIDGE
HANNAH O. YARBROUGH-SMITH, *et al*, Defendants.	§	

MEMORANDUM DENYING RECONSIDERATION AND DISMISSING ACTION

Plaintiff Ernest Adimora-Nweke is an attorney who filed suit against approximately thirty putative defendants asserting wide-ranging causes of action. Dkt 6. But he only ever served Steven A. McGraw, who has now been dismissed from this action with prejudice. Dkt 54.

Adimora-Nweke was ordered to show cause as to why this case shouldn't be dismissed without prejudice as to all other defendants for failure to satisfy Rule 4(m) of the Federal Rules of Civil Procedure. Dkt 55. He responded. Dkt 58. He also filed a motion seeking reconsideration of this Court's order adopting the memorandum and recommendation of Magistrate Judge Sam S. Sheldon. Dkt 56.

As to the motion for reconsideration. Adimora-Nweke argues error pursuant to Rule 59 solely on points already considered and rejected. Compare Dkt 56 with Dkts 50 (memorandum and recommendation) & 54 (order adopting same). But Rule 59 doesn't technically pertain to the

interlocutory order at issue. Rule 54(b) is instead appropriate where relief is sought from interlocutory judgments, which "permits the district court 'to reconsider and reverse its decision for any reason it deems sufficient.'" *McClendon v United States*, 892 F3d 775, 781 (5th Cir 2018); see also Dkt 59 at 2–3 (quoting same).

Adimora-Nweke doesn't present any new legal or factual argument that causes the Court to reconsider its prior ruling. The motion for reconsideration will be denied.

As to response to show cause. Adimora-Nweke asserts that the abstention doctrine somehow "preclude[s] this court from dismissing the non-McGraw claims." Dkt 58 at 1. Wholly absent is any reckoning of the mandatory requirement upon him to serve defendants to have a live proceeding even pending here.

Federal Rule of Civil Procedure 4(m) states, "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." This mandates dismissal absent good cause shown by the plaintiff for the failure to timely serve. *Lewis v Secretary of Public Safety and Corrections*, 870 F3d 365, 369 (5th Cir 2017).

Substantially more than 90 days have passed. And prior to removal, Adimora-Nweke filed multiple motions requesting to serve process on several named defendants through alternate service. For example, see Dkt 2 at 75, 146–51. Each was denied. See id at 144, 160, 165, and 167. Adimora-Nweke doesn't here show good cause for his failure to serve the remaining named defendants as required by Rule 4(m). Dismissal without prejudice is thus appropriate. For example, see *Crear v JP Morgan Chase Bank N.A.*, 2011 WL 1129574, *4–5 (5th Cir, *per curiam*).

The motion for reconsideration by Plaintiff Ernest Adimora-Nweke is DENIED. Dkt 56.

The claims asserted against all remaining named defendants are DISMISSED WITHOUT PREJUDICE for failure of service.

This action is DISMISSED. A final judgment will enter by separate order.

SO ORDERED.

Signed on December 27, 2021, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States District Court
Southern District of Texas
ENTERED
January 21, 2022
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:20-cv-04149
vs.	§	JUDGE CHARLES ESKRIDGE
HANNAH O. YARBROUGH-SMITH, *et al*, Defendants.	§	

ORDER DENYING
SECOND REQUEST FOR RECONSIDERATION

Magistrate Judge Sam S. Sheldon entered recommendation on September 9, 2021 that Defendant Steven A. McGraw and all claims against him be dismissed with prejudice, with various other motions recommended to be denied as moot. Dkt 50.

That memorandum and recommendation was adopted on December 2, 2021. Dkt 54. Plaintiff Ernest Adimora-Nweke was also ordered that same day to show cause why the entire case shouldn't be dismissed for failure to serve any of the other Defendants. Dkt 55.

He instead moved for reconsideration of this Court's order adopting the memorandum and recommendation. Dkt 56. That was denied on December 27, 2021. Dkt 60. And good cause not having been shown, the action was dismissed without prejudice that same day for failure of service as to other Defendants. Id at 2. An order of dismissal also entered separately, disposing of the entire case. Dkt 61.

Adimora-Nweke now moves for reconsideration of that order denying reconsideration. Dkt 64. He again argues error pursuant to Rule 59 solely on points twice considered and rejected. Compare Dkt 56 with Dkts 50, 54 & 60. He again presents no new legal or factual argument that causes the Court to reconsider its prior rulings.

The motion for reconsideration is DENIED. Dkt 64.

Adimora-Nweke elsewhere on the docket purports to have filed return of summons as to Defendant Harris County after this case was dismissed. See Dkts 62 & 63. But it has already been determined that he failed to show good cause for his prior failure of service. See Dkts 55 & 60. This action was commenced on December 4, 2020. Dkt 1. Return of service of summons on January 3, 2022 is far beyond the ninety days allowed by Rule 4(m), especially where no explanation of good cause has been attempted, much less shown.

This action has already been TERMINATED on this Court's docket. Plaintiff Ernest Adimora-Nweke is an attorney but proceeds here *pro se*. He is admonished that any further relief must be sought from the Fifth Circuit Court of Appeals on appellate review, if still available to him.

Further motions filed on this docket will hereafter be denied as moot.

SO ORDERED.

Signed on January 21, 2022, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States District Court
Southern District of Texas
ENTERED
May 25, 2022
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:22-cv-00765
vs.	§	JUDGE CHARLES ESKRIDGE
STEVEN C. MCGRAW, *et al*, Defendants.	§	

ORDER

The motion by Defendants Harris County and Lina Hidalgo (in her official capacity as Harris County Judge) to dismiss the complaint by Plaintiff Ernest Adimora-Nweke is granted. Dkt 4. The various other motions and objections by Defendants are denied as moot. Dkts 5, 7, 15 & 20. This action is dismissed with prejudice.

This action has been here before. Adimora-Nweke previously filed suit against more than two dozen putative defendants, asserting wide-ranging causes of action related to his arrest on suspicion of driving while intoxicated in November 2018. See *Ernest Adimora-Nweke v Yarbrough-Smith, et al*, Civil Action No 4:20-cv-4149. The details of that action needn't be specified here. What's important is that on December 2, 2022, this Court on recommendation of Magistrate Judge Sam S. Sheldon dismissed with prejudice all claims against the only properly served Defendant—Steven C. McGraw (in his official capacity as Director of the Texas Department of Public Safety)—and denied as moot various pending motions by Adimora-Nweke. Id at Dkt 54.

Adimora-Nweke was there cautioned that failure to observe the dictates of Rule 11 of the Federal Rules of Civil Procedure would, where warranted, be met with sanctions or referral for disciplinary proceedings as appropriate or necessary. Ibid. He was also that day ordered to show cause as to why the action shouldn't be dismissed for failure to serve the other named Defendants. Id at Dkt 55. He responded, but wholly absent from his response was any reckoning of the mandatory requirement upon him to timely serve defendants in civil litigation. Id at Dkt 58. He also moved for reconsideration of this Court's order adopting the memorandum and recommendation, which was denied. Id at Dkts 56 & 60. Good cause not having been shown, the action was dismissed without prejudice for failure to serve the remaining Defendants. An order of dismissal entered disposing of the entire case on December 27, 2022. Id at Dkt 61.

Adimora-Nweke next moved for reconsideration of the order denying reconsideration. Id at Dkt 64. That motion presented no new legal or factual argument and was on such basis denied on January 21, 2022. And he was there admonished that any further relief must be sought from the Fifth Circuit Court of Appeals on appellate review, if still available to him. Id at Dkt 65.

Flouting such admonition, Adimora-Nweke chose not to appeal as permitted and instead filed in Texas state court a putative "bill of review" of this Court's prior dismissal and denial of reconsideration. Dkt 1-2. Defendants removed Adimora-Nweke's new action here, asserting that allegations regarding violation of his federal constitutional rights raise federal questions under 42 USC § 1983. See Dkt 1 at 2.

Harris County and Hidalgo observe that Adimora-Nweke's action seeks either reconsideration or some species of appeal of his prior action disposed of at Civil Action No 4:20-cv-4149. See Dkt 4 at 11. And they correctly argue that such attempt is procedurally improper. If Adimora-Nweke wanted legal review of the merits of his claims as adjudged by this Court in that prior action,

appellate relief was available to him. But this action presents no cognizable claim and will be dismissed on that basis.

Beyond this, it's clear that Adimora-Nweke in this action sought in essence to have a state court review and determine the efficacy and enforceability of a judgment and order imposed by a federal court. To the contrary, state courts cannot sit as quasi-appellate courts in review of federal court judgments. For example, see *National Railroad Passenger Corporation v Pennsylvania Public Utility Commission*, 342 F3d 242, 259 (3rd Cir 2003) (state courts can't nullify federal court decisions); cf *Deposit Bank of Frankfort v Board of Councilmen of City of Frankfort*, 191 US 499, 517 (1903) (finding it to be "well settled that a right claimed under the Federal Constitution, finally adjudicated in the Federal courts, can never be taken away or impaired by state decisions"). The Texas Supreme Court sees it the same way. For example, see *Valdez v Hollenbeck*, 465 SW3d 217, 226 (Tex 2015) (only court rendering original judgment may exercise jurisdiction over bill of review); *San Antonio Independent School District v McKinney*, 936 SW2d 279, 284 (Tex 1996) (*res judicata* precludes state court litigation where federal court had jurisdiction over claims); *Morton v City of Boerne*, 345 SW3d 485, 488 (2011) (collateral attack in state court on federal court judgment improper).

It also bears mention that Adimora-Nweke has an extensive history of persistent abuse of the judicial system and bad faith litigation practice in the Southern District of Texas. For example, see *Aguocha-Owakweh, et al v Harris County Hospital District, et al*, Civil Action No 4:16-cv-903; *Oscar Suarez v Susan Brown, et al*, Civil Action No 4:19-cv-1656. As such, his *pro hac vice* status has previously been revoked, and he has several times been denied admission to practice before the Southern District of Texas, including as a *pro se* litigant. See *Aguocha-Owakweh, et al v Harris County Hospital District, et al*, Civil Action No 4:16-cv-903 at Dkts 299 & 300; see also *In re Attorney Admissions Report*, Civil Action No 4:16-mc-02192;

Aphaeus Ohakweh, et al v Harris Health System, et al, Civil Action No 4:20-cv-1651 at Dkt 12.

Plaintiff Ernest Adimora-Nweke is ADMONISHED that if he continues to abuse the process of this Court or otherwise engage in bad faith litigation practices, a preclusion order barring further unauthorized practice, including as a *pro se* litigant, will be entered.

All claims asserted by Plaintiff Ernest Adimora-Nweke against Defendants Harris County, Steven C. McGraw (in his official capacity as Director of the Texas Department of Public Safety), and Lina Hidalgo (in her official capacity as Harris County Judge) are DISMISSED WITH PREJUDICE. Dkt 4.

All other pending motions and objections in this action are DENIED AS MOOT. Dkts 5, 7, 15 & 20.

Any further motions hereafter filed on this docket will be summarily denied as moot.

A final judgment will enter by separate order.

SO ORDERED.

Signed on May 25, 2022, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States District Court
Southern District of Texas
ENTERED
June 23, 2022
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE,	§	CIVIL ACTION NO.
	§	4:22-cv-00765
Plaintiff,	§	
	§	JUDGE CHARLES ESKRIDGE
	§	
vs.	§	
	§	
	§	
STEVEN C. MCGRAW, *et al*,	§	
	§	
Defendants.	§	

ORDER DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS

Pending is an application by Plaintiff Ernest Adimora-Nweke to proceed *in forma pauperis* on appeal. Dkt 27. Such applications are governed by 28 USC § 1915 and Federal Rule of Appellate Procedure 24. Section 1915(a)(3) states, "An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." *Good faith* is demonstrated "when a party seeks appellate review of any issue 'not frivolous.'" *Howard v King*, 707 F2d 215, 220 (5th Cir 1983) (citation omitted).

This action was previously dismissed with prejudice on the basis that it "presents no cognizable claim." See Dkt 21 at 3. That order referenced Adimora-Nweke's "extensive history of persistent abuse of the judicial system and bad faith litigation practice in the Southern District of Texas." Id at 3–4. Perhaps an appeal by Adimora-Nweke on his prior action before this Court wouldn't have been frivolous. See Dkt 21 at 1, citing Civil Action No 4:20-cv-4149. But an appeal on the merits of this action most certainly is. The

response by Defendant Steven McGraw makes this point quite clearly. See Dkt 29.

It is hereby CERTIFIED that an appeal wouldn't be taken in good faith.

The motion by Plaintiff Ernest Adimora-Nweke for leave to proceed *in forma pauperis* on appeal is DENIED. Dkt 27.

SO ORDERED.

Signed on June 23, 2022, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 12, 2024
Lyle W. Cayce
Clerk

No. 23-50744

ERNEST ADIMORA-NWEKE,

Plaintiff—Appellant,

versus

STEVEN C. MCGRAW, *Director of Texas Department of Public Safety*; TEXAS DEPARTMENT OF PUBLIC SAFETY; LYNN N. HUGHES, *U.S. District Judge, Official Capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1048

ON PETITION FOR REHEARING EN BANC

Before BARKSDALE, SOUTHWICK, and GRAVES, *Circuit Judges*.

PER CURIAM:

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

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff, v. STEVEN C. MCGRAW, *Director of Texas Department of Public Safety*, TEXAS DEPARTMENT OF PUBLIC SAFETY, HON. JUDGE LYNN HUGHES, *in her Official Capacity* Defendants.	§	1:23-CV-1048-DII

FINAL JUDGMENT

On this date, the Court entered an order dismissing Plaintiff's claims with prejudice. As nothing remains to resolve, the Court renders Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that the case is **CLOSED**.

IT IS FURTHER ORDERED that each party bear its own costs.

SIGNED on October 18, 2023.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

United States District Court
Southern District of Texas
ENTERED
December 27, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE,	§	CIVIL ACTION NO.
	§	4:20-cv-04149
Plaintiff,	§	
	§	
	§	JUDGE CHARLES ESKRIDGE
vs.	§	
	§	
	§	
HANNAH O. YARBROUGH-SMITH, *et al*,	§	
	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

This civil action is DISMISSED WITHOUT PREJUDICE for the reasons stated in the Memorandum Denying Reconsideration and Dismissing Action entered this same date. Dkt 60.

This is a FINAL JUDGMENT

SO ORDERED.

Signed on December 27, 2021, at Houston, Texas.

Chas R Eskridge III

Hon. Charles Eskridge
United States District Judge

United States District Court
Southern District of Texas
ENTERED
May 25, 2022
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:22-cv-00765
vs.	§	JUDGE CHARLES ESKRIDGE
STEVEN C. MCGRAW, *et al*, Defendants.	§	

FINAL JUDGMENT

This civil action is DISMISSED WITH PREJUDICE for the reasons stated in the Opinion and Order entered this same date. Dkt 21.

This is a FINAL JUDGMENT.

SO ORDERED.

Signed on May 25, 2022, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

United States Court of Appeals for the Fifth Circuit

No. 22-20269

United States Court of Appeals
Fifth Circuit
FILED
August 15, 2022
Lyle W. Cayce
Clerk

ERNEST ADIMORA-NWEKE,

Plaintiff—Appellant,

versus

DIRECTOR STEVEN C. MCGRAW; HARRIS COUNTY; LINDA HIDALGO,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-765

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of August 15, 2022, for want of prosecution. The appellant failed to timely pay the fee.

A True Copy
Certified order issued Aug 15, 2022

Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

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

By: Christina Gardner
Christina A. Gardner, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
ENTERED
June 26, 2020
David J. Bradley, Clerk

Aphaeus Ohakweh, *et al.*,

Plaintiffs,

versus

Harris Health System, *et al.*,

Defendants.

§ § § § § § § § § §

Civil Action H-20-1651

Opinion on Dismissal

1. *Introduction.*

Ernest Chukwunenye Adimora-Nweke, Jr., filed a case on behalf of the estate of Aphaeus Ohakweh that has already been adjudicated. This case will be dismissed as *res judicata*.

2. *Background.*

Ohakweh's family filed a wrongful death suit in Harris County in 2016. It was removed. That month, they filed a case about the same events in federal court. The United States of America declined to intervene on July 27, 2016.[1] The cases were consolidated in December 2016 into a lead case before Judge Alfred H. Bennett.[2]

Judge Bennett dismissed the case for failure to state a claim in 2017. On appeal, his ruling was affirmed in 2018.

On May 12, 2020, the same parties filed this case in this court. The first amended complaint is 391 pages.

[1] Civil Action 4:16-cv-1704.

[2] Civil Action 4:16-cv-903.

All of the cases have involved Ohakweh's family members suing Baylor College of Medicine and workers at Ben Taub for the wrongful death of Ohakweh.

3. *Res Judicata.*

This case has been filed several times. The iterations share parties and alleged events. It has had more than its day in court, and it has lost every time. This case is barred as *res judicata.*

4. *Statute of Limitations.*

Ohakweh died in September 2015.[3] The Texas statute of limitations for wrongful death actions is two years.[4]

Even if this case were not *res judicata*, it could not proceed because it is time-barred.

5. *Conclusion.*

Because the case is *res judicata* and time-barred, it will be dismissed with prejudice.

Signed on June 26, 2020, at Houston, Texas.

Lynn N. Hughes
United States District Judge

[3] Am. Compl. at 128.

[4] TEX. CIV. PRAC. & REM. CODE 16.003.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
ENTERED
June 26, 2020
David J. Bradley, Clerk

Aphaeus Ohakweh, *et al.*,

Plaintiffs,

versus

Harris Health System, *et al.*,

Defendants.

Civil Action H-20-1651

Final Dismissal

This case is dismissed with prejudice as *res judicata* and time-barred.

Signed on June 26, 2020, at Houston, Texas.

Lynn N. Hughes
United States District Judge

Provisions Involved

United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXAS TRANSPORTATION CODE CHAPTER 724. IMPLIED CONSENT
SUBCHAPTER B. TAKING & ANALYSIS OF SPECIMEN:

§724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally & in writing that:

(6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions & for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; ...

(8) if the person submits to the taking of a blood specimen, the specimen will be retained & preserved in accordance with Article 38.50, Code of Criminal Procedure. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 674 (S.B. 1787), Sec. 1, eff.

Sept. 1, 2011. Acts 2021, 87th Leg., R.S., Ch. 840 (S.B. 335), Sec. 2, eff. Sept. 1, 2021.

Texas Rules of Civil Procedure Rule 145 – Payment of Costs Not Required:

(a)*Costs Defined.* "Costs" mean any fee charged by the court or an officer of the court, including, but not limited to, filing fees, fees for issuance and service of process, fees for copies, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

(b)*Sworn Statement Required.* A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A "sworn" Statement is one that is signed before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

(c) Duties of the Clerk. The clerk:

(1) must make the Statement available to any person for free without request;

(2) may return a Statement for correction only if it is not sworn-not for failure to attach evidence or any other reason; and

(3) must, on the filing of a sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to a party...

(e)*Motion to Require Payment of Costs. A motion to require the declarant to pay costs must comply with this paragraph.*

(1) *By the Clerk, the Reporter, or a Party.* A motion filed by the clerk, the court reporter, or a party must contain sworn evidence-not merely allegations-either that the Statement was materially false when made or that because of changed circumstances, it is no longer true.

(f)*Notice; Hearing; Requirements of Order.* When a Statement has been filed, the declarant must not be ordered to pay costs unless these procedural requirements have been satisfied:

(1) *Notice and Hearing.* The declarant must not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(2) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(3) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(4) *Order Must State Notice of Right to Appeal.* An order requiring the declarant to pay costs must state in conspicuous type: "You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145."

Federal Rules of Appellate Procedure Rule 24 – Proceeding in Forma Pauperis:

(a) Leave to Proceed in Forma Pauperis.

(1) *Motion in the District Court.* Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) *Action on the Motion.* If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) *Prior Approval.* A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) *Notice of District Court's Denial.* The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) *Motion in the Court of Appeals.* A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding. A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1):

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

VOL. 2

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CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ernest Adimora-Nweke	§	Civil Action No
Plaintiff/Petitioner	§	**1:23-CV-1048-DII-ML**
v.	§	
Steven C. McGraw, *et al*	§	
Defendant(s)	§	

PLAINTIFF'S AMENDED ORIGINAL & INDEPENDENT ACTION IN EQUITY COMPLAINT, & FRCP Rule 23(a), 23(b)(1)(A), 23(b)(1)(B), 23(b)(2), & 23(b)(3) CLASS ACTION PETITION/MOTION

TO THE HONORABLE COURT & CLERK:

NOTICE: This Complaint/Pleading shall be construed as a whole with contents of each section and subsection incorporated by reference into all preceding and subsequent sections and subsections, and made a part thereof. All documents and evidence cited to, if not attached to or image embedded in this complaint, are on record file in

(a) U.S Supreme Court Docket No. 22-6773. *Adimora-Nweke v. McGraw* (Director).

(b) U.S. District Court, Southern District of Texas, Houston Division (accessible via www.Pacer.gov):

a. Cause No. 4:20-CV-04149 – *Ernest Adimora-Nweke v. Yarbrough-Smith et al.*
b. Cause No. 4:22-CV-00765 - *Ernest Adimora-Nweke v. Steven C. McGraw et al.*
c. Doc. 12 of Cause No. 4:20-CV-01651 – *Ohakweh v. Harris Health et al*
d. Docs. 1 & 2 of Cause # 4:23-mc-00964 – *Adimora-Nweke v. McGraw et al.*
e. Docs. 1 - 4 of Cause # 4:23-mc-00976 – *Adimora-Nweke v. McGraw et al.*
f. Docs. 1 - 6 of Cause # 4:23-mc-01283 – *Adimora-Nweke v. McGraw et al.*

(c) Harris County District Court Cause No. 202056824 – *Ernest Adimora-Nweke v. Hannah Yarbrough-Smith et al.*
(accessible via https://www.hcdistrictclerk.com/Edocs/Public/search.aspx)

*Said documents and their contents are hereby incorporated by reference, as necessary.

*The below documents & their contents are also hereby incorporated by reference, as necessary:

- Docs. 1, 1-2, 1-3, 1-4 of Cause # 1:23-CV-1048-DII-ML – *Adimora-Nweke v. McGraw et al.*, U.S. District Court, Western District of Texas, Austin Division, Filed on 8/28/2023, Docketed on 9/6/2023 (accessible via www.Pacer.gov).

PARTIES

Plaintiff/Petitioner: **Ernest Adimora-Nweke** is an individual who resides in The State of Texas & Harris County; & practices law in said State of Texas, & is in good standing with Texas State Bar.
Defendant(s):

(1) **Steven C. McGraw** is the applicable and responsible Director of **Texas Department of Public Safety ("TxDPS")**, a Texas State Agency.

a. Director McGraw & TxDPS are sued in official capacity, as applicable.

b. Director McGraw may be served process at 5805 N. Lamar Blvd. Austin, TX 78752-4431.

c. TxDPS may be served process via Director McGraw at at 5805 N. Lamar Blvd. Austin, TX 78752-4431.

d. Director McGraw & TxDPS are Defendants to this complaint's FRCP Rule 60(d)(1) independent action in equity seeking relief from USDC Cause #s 4:20-CV-04149 & 4:22-CV-00765.

e. Director McGraw & TxDPS are Defendants to this complaint's sought 42 USC Sec. 1983 class action injunction against recognition of the void 2011 & 2021 DIC-24 forms.

i. The void & challenged DIC-24 forms are created by TxDPS & Director McGraw, under color of law of Texas.

ii. Since 2011, the DIC-24 forms have been void, & therefore subjected or caused the deprivation of Plaintiff & other subjected citizens' always known & existing U.S. Constitutional 14th Amendment guaranteed equal protection, substantive & procedural due process rights to *inter alia*, privacy, bodily integrity, fair notice & hearing, right against deprivation of driving privileges without fair notice & hearing, & unreasonable search & seizure rights. The current 2021 version of the DIC-24 form remains void for same reasons as the 2011 version.

iii. Plaintiff also still remains subject to a $125 statutory driver's license reinstatement fee upon his TX driver's license renewal in 11/5/2024; a result of

1. being subjected to the void DIC-24 form on 11/14/2018 in Houston, TX by HPD officers in a DWI situation, **then**
2. subsequently denied fair & statutory notice of Texas Transportation

Code Sec. 724.015(a) statutory warning – via a void TxDPS DIC-24 form used/presented him by the HPD officers, **then**

3. subsequently subjected or caused a void driver's license temporary revocation per the void DIC-24 form, **then**
4. subsequently denied duly entitled statutory & constitutional fair ALR notice & hearing on (i) the void DIC-24 form, & (ii) the void driver's license temporary revocation, all prior to (iii) issuing a void 6-month driver's license suspension against Plaintiff, **then**
5. subsequently subjected to &/or caused the void 6-month driver's license suspension.

iv. The 42 U.S.C. Sec. 1983 class action injunction was originally sought against Director McGraw & TxDPS in USDC Cause # 4:20-CV-04149, & later via independent action in USDC 4:22-CV-00765.

v. Both the original action (USDC # 4:20-CV-04149), and the 1st independent action (USDC # 4:22-CV-00765), were wrongfully dismissed with prejudice, without due process for Plaintiff, & with Plaintiff denied equal protection rights.

vi. Plaintiff was unable to appeal the original & wrongfully dismissed USDC # 4:20-CV-04149, dismissed without due process hearing before an impartial tribunal & judge.

vii. Plaintiff therefore filed an independent action in equity (USDC # 4:20-CV-00765), which was also dismissed without due process fair hearing before an impartial tribunal & judge, nor without docket control order/scheduling order.

viii. Plaintiff duly noticed appeal & sought to appeal USDC # 4:22-CV-00765 to the Fed. 5th Circuit. *See, Adimora-Nweke v. McGraw*, U.S. 5th Circ. Case No. 22-20269, Filed on 6/7/2022.

ix. Plaintiff was illegally/wrongly denied petition, equal protection, & due process right to proceed *in forma pauperis* before the 5th Circuit, and the appeal action (5th Circuit Cause # 22-20267) dismissed for failure to pay fee. *See Id.* (Judgment of Dismissal for Failure to Pay Appeal Fee issued on 8/15/2022)

x. After a denied reconsideration motion, Plaintiff then duly appealed to the U.S.

Supreme Court. *See, Ernest Adimora-Nweke, Petitioner v. Steven C. McCraw, in His Official Capacity as Director of the Texas Department of Public Safety, et al.*, U.S. Supreme Court Cause No. 22-6773, Docketed 2/14/2023.

xi. SCOTUS recognized & granted Plaintiff's *in forma pauperis* application, but denied writ of cert. *See, Id.* U.S. Supreme Court Cause No. 22-6773 Docket.

xii. Plaintiff lacks any reasonable, alternative, or adequate remedy at law.

xiii. Since this matter has never had its day in court, nor ever had due process fair hearing on the merits & before an impartial tribunal & judge, Plaintiff now seeks relief via this duly entitled & filed 2nd independent action in equity.

xiv. Plaintiff seeks relief from the proceedings & dismissal orders in USDC#s 4:20-CV-04149 & 4:22-CV-00765, & seeks the class action injunction reliefs that have always been pled since USDC # 4:20-CV-04149 & 4:22-CV-00765.

f. **NOTICE 1**: A copy of the pleading shall be served to Texas Attorney General, at Office of the Attorney General PO Box 12548 Austin, TX 78711-2548; as/if required.

g. **NOTICE 2**: In the original action with cause 4:20-CV-4149, & the 1st independent action with cause 4:22-CV-00765, Plaintiff raised other separate & unrelated civil rights issues, claims, & remedies, against other non-McGraw & TxDPS Defendants; to bypass or mitigate cost of filing different lawsuits. Said claims are not to be resolved in this independent action. In order not to confuse issues, parties, & claims, any non-McGraw & TxDPS civil rights claims shall be pursued via a separate independent action.

(2) **Hon. Judge Lynn Hughes** is a federal court judge in **U.S. Dist Court. S.D. TX Houston Division**, a U.S. federal entity.

a. The action is brought against only U.S. District Court, Southern District of Texas Federal Court. Hon. Judge Lynn Hughes in his official capacity.

b. Against Judge Hughes, Plaintiff seeks a *Bivens* injunction, or alternatively, 28 U.S.C. §1651 writ injunction, or FRCP Rule 60(d) relief, against the void order Judge Hughes entered against Plaintiff in Doc. 12 of Cause 4:20-CV-01651, USDC SD TX; while acting in his official capacity as an officer/official of the United States.

c. Said order (Doc. 12 of Cause 4:20-CV-01651) is unconstitutionally overbroad, & bars

Plaintiff – a duly licensed & competent attorney – from filing any case in USDC SDTX.

d. It effectively, unconstitutionally, & unreasonably subjects Plaintiff to the deprivation of, or impedes or deprives Plaintiff of his then/always known & existing (i) Fed. 5th Amendment equal protection & substantive due process right to contract with his clients, including vested contractual rights & obligation with clients; (ii) Fed. 1st Amendment right to petition government for redress of grievance within USDC SD TX courts; (iii) Fed. 5th Amendment equal protection & due process right to fair hearing before an impartial judge/magistrate; & (iv) Fed. 5th & 6th Amendment equal protection right to impartial tribunal.

e. It also effectively, unconstitutionally & unreasonably subjects Plaintiff's legal services contract clients to the deprivation of, or deprives or impedes their then/always known & existing (i) Fed. 5th Amendment equal protection & substantive due process right to contract with Plaintiff for legal services, & right to their vested contractual benefits or obligations; (ii) U.S. Const. 1st Amendment right to petition government for redress of grievance within USDC SD TX courts – including upon removal of any case, with Plaintiff as counsel, to Federal Court; (iii) Fed. 5th Amendment equal protection & due process right to counsel of choice – including upon removal of any action, with Plaintiff as counsel, to USDC SD TX courts; (iv) Fed. 5th Amendment equal protection & due process right to fair hearing before an impartial judge/magistrate; & (v) Fed. 5th & 6th Amendment equal protection right to impartial tribunal.

f. The same Judge Hughes oversees the attorney admissions to SD TX in its Houston office; & denied Plaintiff's admission application on various occasions.

g. Plaintiff lacks a statutory cause of action - such as 42 USC Sec. 1983 does for state officials. Plaintiff lacks any appellate or other remedy for said void Doc. 12 of 4:20-CV-01651. Any available statutory cause of action does not provide a meaningful remedy. Plaintiff attempted a Sec. 1651 writ before the Fed. 5th Circuit, via Fed. 5th Circuit Cause No. 22-20472; which Fed. 5th Circuit wrongfully/illegally denied without fair hearing before an impartial judge or tribunal, & based on separate & unrelated issues & grounds.

h. The void, unconstitutional, still existing, & irreparably harmful Doc. 12 of USDC # 4:20-CV-01651 order, was left unaddressed by the Fed. 5th Circuit judge(s), in their

denial order/opinion filed in U.S. Fed. 5th Circ. Cause No. 22-20472. *See, In Re, Ernest Adimora-Nweke*, U.S. Fed. 5th Circ. Cause No. 22-20472, Filed on 9/14/2022; Decided on 1/11/2023 via Judgement Mandate.

i. The void & irreparably harmful Doc. 12 of 4:20-CV-01651 order, is continuously leveraged by other judges, magistrates, Defendants, Defendants' counsels, in subsequent actions involving Plaintiff in SD TX, to unconstitutionally or unreasonably deny Plaintiff & his clients of their known & existing U.S. Constitutional petition, equal protection, due process, counsel of choice, & impartial tribunal rights.

j. Hence, the void Doc. 12 of 4:20-CV-01651 order needs vacated via an injunction against its validity & recognition; which is sought here via a *Bivens* injunction against Judge Hughes, in his official capacity; & sought effective throughout USDC SD TX.

k. Judge Hughes may be served process at 515 Rusk Ave., Houston, TX, 77002.

JURY DEMAND: As necessary, Plaintiff hereby requests a jury trial.

JURISDICTION & VENUE

Plaintiff's claims against Defendants are federal civil rights allowed under federal common laws, statutes, & rules of procedure: 42 U.S.C. §1983 *et seq*; 28 USC §1331, §1651, §2201 & §2202, FRCP Rule 60(d)(1); *Turner v. Pleasant*, 663 F.3d 770, 776 (5th Circ. 2011); *U.S. v. Beggerly*, 524 U.S. 38 (1998); *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238 (1944); & *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

The main underlying issue raised in this matter – *inter alia*, (1) challenge to the TxDPS' the void DIC-24 form, (2) challenged to the void TxDPS's ALR order of suspension, and (3) irreparable harm against Plaintiff & class members – is statutorily deemed a civil matter; independent of any criminal charges or proceedings, & independent of any results of any such criminal charges or proceedings. *Tex. Transp. Code §724.048(a)(1) & §724.048(a)(2)*. The challenged DIC-24 document is promulgated out of Defendants Texas Dept of Public Safety & its director, Steven C. McGraw, said Defendants are domiciled in Austin, TX.

Although Plaintiff's subjection to the void DIC-24 form by HPD officers occurred in Harris County, Houston, TX on or about 11/14/2018, (a) the 2011 & 2021 DIC-24 forms promulgated by TXDPS, were promulgated by said TxDPS agency in Austin TX, & (b) the void order of suspension challenged or sough vacated, originates out of TxDPS's office in Austin, TX.

The second matter in this action is the *Bivens,* FRCP Rule 60(d)(1), or 28 USC §1651 injunction actions sought against Hon. Judge Lynn Hughes, to vacate the void & irrep. harmful Doc. 12 order, issued in USDC # 4:20-CV-01651; which bars Plaintiff (a duly TX State Bar licensed & practicing attorney) from litigating any cases in U.S. District Court, SDTX – including as *pro se* Plaintiff.

All mentioned Defendants are Texas residents. Yet since the DIC-24 form originates from TxDPS office in Travis County, this U.S District Court, Western District of Texas Austin Division, is adequate & proper venue for the action. *28 U.S. Code §1391.*

Plaintiff's reliefs requested, including attorney's fees & costs, are also within the jurisdictional limits of this Court; and as/if applicable/necessary, are above $100M in aggregate.

This Court has jurisdiction over Defendants, and is proper venue for this case because (a) Defendants are residents of Harris County and the State of Texas; (b) the events or incidents that are the basis of Plaintiff(s) claims occurred in Harris County and throughout Texas.

INTRO

In general, to succeed on an independent action in equity, a recognized federal action, *inter alia*, Plaintiff has to plead & prove (1) a prior judgment which 'in equity & good conscience' should not be enforced; (2) a meritorious claim in the underlying case; (3) fraud, accident, or mistake which prevented the party from obtaining the benefit of their claim; (4) the absence of

fault or negligence on the part of the party; & (5) the absence of an adequate remedy at law." *Turner v. Pleasant*, 663 F.3d 770, 776 (5th Circ. 2011) (elements of independent action in equity)

For *Bivens* action elements & support, see response to Question #s 3 & 6 – 12 of "*Bivens* Basics: An Introductory Guide for Immigration Attorneys," Practice Advisory, American Immigration Council, 7/19/2021; available online at https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/bivens_basics_an_introductory_guide_for_immigration_attorneys_0.pdf; retrieved on 9/9/2023.

The independent & *Bivens* actions are warranted due to, *inter alia*, the void denial of Plaintiff's 1st, 5th, & 6th Amendment Petition, equal protection, & due process rights. Plaintiff-Petitioner is continuously subjected to impartial tribunal, and denied due process fair hearing before an impartial magistrate or judge. Plaintiff-Petitioner has never had a fair in-court hearing on the merits of his action, even post requests. The unneutrally detached judges or magistrates continuously disregard Plaintiff-Petitioner's pleading contents & exhibits; & enter void discriminatory & harmful dismissal orders against Plaintiff-Petitioner (e.g. *coram non judice* acts).

Afterwards, Plaintiff is either precluded appeal per void dismissal order contents; & when appealed, Plaintiff is subjected to futile appeals per the void appeal judgments-orders entered. Plaintiff then has to seek to rectify the lack of due process via independent actions in equity actions before a unimpartial judges & tribunals.

E.g., Due to lack of funds, & per personal bias by judge Bennet, who was involved in the original *Ohakweh* federal case #s 4:16-CV-903 & 4:16-CV-1704, Plaintiff was recently unjustly denied even complaint filing, & denied due process fair hearing before impartial judge; in recent

independent action efforts (Cause 4:23-mc-00964 SDTX Hou., Filed 6/15/23, & Cause 4:23-mc-00976); & denied such w/o hearing or relevant reason.[1] *Accord,* Docs. 3–6, Case# 4:23-mc-00964.

Personal bias & prejudice against Plaintiff, by SDTX Houston judges, hail from Bennett & Hughes, who wrongfully dismissed &/or terminated Plaintiff's outstanding/unresolved civil rights & whistleblower (*qui tan*) action & independent action filed in their court. *See*, USDC#s 4:16-CV-903 & 4:16-CV-1704 (the original & consolidated *Ohakweh* federal civil rights & *qui tam* actions before a biased J. Bennett – dismissed without due process oral & fair hearing on the merits of the 12(b)(6) motions, & the *qui tam* action terminated; wrongfully affirmed on appeal without due process impartial tribunal & judges. 5th Circuit Chief Judge involved had a conflict of interest, & affirmed the void 12(b)(6) dismissal with prejudice.); *See also*, USDC # 4:20-CV-01651 (Plaintiff's first attempt at an independent action in equity on the *Ohakweh* civil rights & *qui tam* claims; illegally dismissed with prejudice by a biased J. Hughes: without statutory written consent of Texas or U.S. Attorney General, & without due process requested in-court hearing; & wrongly affirmed on appeal without explanation, nor due process fair hearing & impartial tribunal.); *See also*, USDC # 4:22-CV-04352 (Plaintiff's second attempt at an independent action in equity on the *Ohakweh* civil rights & *qui tam* claims; illegally dismissed with prejudice by a biased J. Hoyt: without statutory written consent of Texas or U.S. Attorney General, & without requested in-court due process fair hearing.); *See also*, USDC # 4:23-mc-01283, Doc. 4 (unreasonably citing the dismissal with prejudice from J. Hoyt in USDC # 4:22-CV-04352, as basis to deny *in forma pauperis application* in USDC # 4:23-mc-01283)

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[1] *See* Docs. 1 & 2, USDC# 4:23-mc-00964, SDTX Houston (Doc. 2 application to proceed *in forma pauperis* denied without reason); *See also*, Docs. 1 & 2, USDC # 4:23-mc-00976, SDTX Houston (Doc. 2 application to proceed in forma pauperis denied because of the pled **U.S.D.C. Cause # 4:20-CV-01651 Doc. 12 Issue** sought litigated & enjoined or vacated in the 4:23-mc-00976 action: that "applicant is not permitted to practice before SDTX.").

Plaintiff's prior actions on this DIC-24 matter has been before impartial magistrates, judges, or tribunals. No docket control or fair in-court hearing on the merits ever occurred, even post requests. Prior hearing transcripts have disappeared per clerk. Plaintiff is continuously denied petition & due process fair hearing rights. Prior judgments or orders are void. Plaintiff's void & challenged TxDPS' order of suspension, entered without notice or hearing, still denies Plaintiff & class members equal & due process rights, via **illegal/unauthorized $125 reinstatement fees**, costs, irreparable harm, etc.

Section I.

U.S.D.C. # 4:20-CV-01651 Doc. 12 Issue
(Void dismissal order precludes/denies Plaintiff-Petitioner & his clients of their 1st & 5th Amendment petition, equal protection, & due process rights)

The challenged order from 4:20-CV-01651[2] is facially void for denial of Petitioner's equal protection & due process petition rights. It & its resulting discrimination caused Petitioner in S.D. TX, harms petitioner's 1st, 5th, 6th & 14th amendment petition, equal protection, & due process rights. It's language, "He may not practice in this district & must stop filing cases in it,"[3] unreasonably precludes Petitioner from filing cases in S.D. Tx., including as *pro se*; a deprivation of liberty & petition rights.

It also shows unreasonable personal bias & prejudice of the issuing Judge Lynn Hughes against Petitioner; subjects Petitioner to be denied U.S. Const. petition, equal protection, & due process rights redress of grievance on his own behalf; & subjects Petitioner – a licensed attorney in Houston, TX – to undue litigation discrimination & prejudice in S.D. Tx Cts – upon removals.[4] It also subjects Petitioner's clients to deprivation of their right to U.S. constitutionally entitled

[2] Appx. 97.
[3] *Id.*
[4] *See*, 28 U.S.C. §1446.

counsel of choice[5]; as is used to deny Petitioner *pro hac vice* admission to represent clients post removal. *See e.g.*, Cause 4:22-CV-03155, Docs. 39 & 41. USDC SDTX

Plaintiff-Petitioner appealed the action that resulted in the order, and said appeal resulted in a void judgment from Fed. 5th Circuit; which affirmed the dismissal of the action without explanation. See Fed. 5th Circuit Court of Appeals, Cause 20-20446, *Ohakweh v. Baylor College of Medicine, Harris Health System, et al.*

Said appeal judgment form Cause 20-20446 is void as the complaint included a Federal & State *qui tam* action; and neither the U.S. nor TX attorney general provided written consent to the dismissal, as required by law for *qui tam* claims.

Hence the judge lacked[6] or lost jurisdiction[7] to issue said order; & said order language that precludes Plaintiff of right to practice in USDC SDTX, or the order as a whole, need vacated.[8]

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[5] *See e.g., United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 - 148 (2006) ("The right to select counsel of one's choice, by contrast, has never been derived from the Sixth Amendment's purpose of ensuring a fair trial.[Footnote 3] It has been regarded as the root meaning of the constitutional guarantee. See *Wheat*, 486 U. S., at 159; *Andersen* v. *Treat*, 172 U. S. 24 (1898). See generally W. Beaney, The Right to Counsel in American Courts 18–24, 27–33 (1955). Cf. *Powell*, *supra*, at 53. Where the right to be assisted by counsel of one's choice is wrongly denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.")

[6] 28 U.S.C. §455(a).

[7] *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void... because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition In *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357 [(1938)], the court was declared to have lost its jurisdiction in a trial for crime when it denied the constitutional right to the assistance of counsel."); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'); *See also, Marshall v. Jerrico*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases..."); *Mahone v. Addicks Utility Dist., Of Harris Cnty*, 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality... citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)"); *See also*, 28 U.S.C. Sec. 455(a).

[8] *Id.*

The order is used to continuously & irreparably harm Plaintiff's U.S. Const. protected petition & due process rights to litigate matters/grievance redress, even as *pro se*, in SDTX courts. It is also used as leverage to illegally & unjustly discriminate against Plaintiff in litigation, and perpetuate obstruction of justice against Plaintiff & his clients by denying them right to litigate federal claims, via continuous wrongful dismissal of any case involving Plaintiff within SDTX – post removal of the action to federal court. Since Plaintiff resides in & his practice is based in Houston, SDTX is the court for most removed action involving Plaintiff, & the contested Doc. 12 of 4:20-CV-01651 void order, & its resulting discrimination, therefore illegally deprives Plaintiff & his clients of liberty & federal civil rights; & is illegally leveraged to perpetuate such, & further obstruct justice. The void Doc. 12 of 4:20-CV-01651 order, was entered without due process hearing, & in violation of 28 USC Sec. 455(a). *See* Case # 4:20-CV-01651 at Docs. 7, 9 – 21.

J. Hughes did not sanction Plaintiff in the action, after a post-judgment show cause hearing in said action, during pendency of appeal. *See* Case # 4:20-CV-01651 at Docs. 21, 22, 29, & 31. Hence, further reasons that Doc. 12 of 4:20-CV-01651, is void of due process, & needs vacated.

Bivens or 28 U.S.C. §1651 writ injunction action against Hughes in his official capacity, or FRCP Rule 60(d) independent action, allows this court to grant such relief. *See*, 28 USC §1331, §1651, §2201 & §2202, FRCP Rule 60(d)(1); *Turner v. Pleasant*, 663 F.3d 770, 776 (5th Circ. 2011); *U.S. v. Beggerly*, 524 U.S. 38 (1998); *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238 (1944); & *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); *Accord Pulliam v. Allen*, 466 US 522 (1984) (Judges are not immune from injunction action in official capacity); *See also*, *Weinberger v. Wiesenfeld*, 420 U.S. 636, n.2 (1975) ("...This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment...")

Such also allows Plaintiff to duly resolve any action duly allowed/entitled him & clients, within USDC SDTX. *U.S. Const. Amd. I & V.*

Plaintiff hereby requests said *Bivens* injunction, 28 U.S.C. §1651 injunction writ, or 60(d) relief, from/against the void Doc. 12 of USDC # 4:20-CV-01651 order that bars his practice w/n SDTX; per petition, equal protection, & due process federal constitutional rights. *Supra*, fn(s). 7, 164-165.

Section II.
McGraw & TX DPS DIC-24 Issue:

FACTS (on the underlying McGraw & TX DPS §1983 class action injunction claim)

Texas Department of Public Safety (TxDPS) is a state agency of the State of Texas, authorized by Texas Transportation Code §724.003 to promulgate the DIC-24 Statutory Warning document to be in strict compliance with §724.015, and to be used by law enforcement officers throughout the State of Texas in situations enumerated by Texas Transportation Code §724.011, §724.012, §724.013, §724.014(c), and §724.015(a).

Director McGraw is the Director of Texas Department of Public Safety.

The originally challenged DIC-24 statutory warning sheet is promulgated by Texas Department of Public Safety (TxDPS). The agency, acting under the authority of Director McGraw, drafts, enforces, and also makes the DIC-24 document available via their official TxDPS website with the weblink: https://www.dps.texas.gov/Internetforms/FormDetail.aspx?Id=236&FormNumber=DIC-24.pdf The actual document is available for download in TxDPS official website listed above, and via the following separate weblink: https://www.dps.texas.gov/Internetforms/getForm.ashx?id=DIC-24.pdf

HPD and its officers use the DIC-24 Statutory Warning document and its contents as their means of providing the §724.015(a)'s enumerated oral and written notice.

On 11/14/2018, Plaintiff was supposedly arrested for a driving while intoxicated ("DWI") misdemeanor charge. The merits of the arrest or charge are irrelevant for this order.

Plaintiff was subjected to the existing DIC-24 statutory warning document on 11/14/2018.

At no time pre or post arrest, and prior to requesting Plaintiff to provide any blood or breath specimen, did any Houston Police Department (HPD) officer ever inform Plaintiff of the following: "if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state."

After Plaintiff made bail, Plaintiff realized that the state actors – e.g. officer Wang – took Plaintiff's driver's license.

On 11/16/2019, Plaintiff immediately requested an Administrative License Revocation ("ALR") hearing to contest the license taking, as a precautionary measure by inputting information into the following TxDPS official website: https://www.dps.texas.gov/DriverLicense/customer_service/alr.aspx

In the ALR hearing request, Plaintiff made it clear that Plaintiff was never legally requested to give consent to the blood draw by entering the, "Not Requested to Submit" option.

Plaintiff was never legally notice of, nor granted an ALR hearing. Plaintiff was sent a 01/14/2019 dated Order of Suspension in the mail, stating that Plaintiff's driving privilege was suspended from 12/24/2018 through 06/21/2019 because of refusal to provide a specimen of blood

or breath following the arrest.

Plaintiff's driving privilege was, & is still unjustly deprived, per the suspension, & deprived without the required U.S. Constitutional 14th Amendment due process fair notice & ALR hearing. Plaintiff is still subject to an $125 ALR reinstatement fee upon renewal of his driver's license; which expires on 11/5/2024.

Plaintiff never duly received notice of an ALR hearing, nor did he duly receive any legally required timely notice to schedule an ALR hearing.

The DIC-24 Statutory Warning notice document promulgated by Texas Department of Public Safety, & required by Texas Transportation Code §724.015(a), must meet strict compliance, not substantial compliance, in order to comply with U.S. & Texas Constitutions' unreasonable search & seizure, equal protection, & due process requirements.[9] The DIC-24 Statutory Warning document to which Plaintiff was subjected on 11/14/2018, was missing §724.015(a)(6) as mandated by statute. Hence it lacks fair due process notice to all its subjects; & denies the equal protection of the laws.[10]

Texas Congress amended the §724.015(a) in 2021, to include §724.015(a)(6). TxDPS amended the DIC-24 Statutory Warning document in Sept. 2021.[11] Yet TxDPS's 9/2021 amended

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[9] *See, U.S. Const. Amd. XIV, Sec. 1; Texas Const. Art. 1 Sec. 3, 3a, 9, & 13*; *Accord,* ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*****, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law.")

[10] *Mahone v. Addicks Utility Dist., Of Harris Cnty,* 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality... citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)"); *See also, Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.');

[11] Tex. DPS Peace Officer Statutory Warning Form, DPS Internet Form No. DIC-24, Avail via Tx DPS forms website:

version is still missing the statutory notice requirement of §724.015(a)(6); which is statutorily applicable to all persons subjected to Texas Transportation Code §724.015(a).

Plaintiff duly filed this original suit in Harris County Judicial District Court 234 on or about 09/15/2020; & an independent action in equity on 2/14/2022. Director McGraw removed the case to Federal Court on or about 12/04/2020 & 3/10/2020 respectively.

There are no statute of limitations issues on the DIC-24 matter.

Section III.

PROCEDURAL HISTORY (on the McGraw & TX DPS DIC-24 class action injunction)
(Issue: Dismissal orders are void for denial of petition, equal protection, & due process rights)

The Original (1st) Action (USDC No. 4:20-CV-04149)

Petitioner filed both the original (1st) suit & the independent (2nd) action in state court, complied with all petition requirements to proceed *in forma pauperis* in the suits, & was eventually granted said right.[12] In the 1st action, the clerk only served TxDPS via Director McGraw.[13] TxDPS responded, & immediately removed the action[14] to federal court.; before Petitioner noticed that none else was served process.

Post removal in said 1st action, upon Petitioner's efforts to serve additional parties, the trail court stayed the case & referred it to an unconsented & unneutrally detached federal trial court magistrate, who – with record knowledge of Petitioner's lack of funds & *in forma pauperis* status pre-removal – deceptively requested Petitioner to file a 28 U.S.C. §1915 application to proceed without costs.[15]

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https://www.dps.texas.gov/internetforms/Home/Details/236 & @ https://www.dps.texas.gov/internetforms/getForm.ashx?id=DIC-24.pdf; retrieved on 5/1/2023.
[12] Appx. 70–71; 90–106; 235–254.
[13] Appx. 100–106; 316.
[14] Appx. 56 (Doc. 1); 290-292; *See also*, USDC # 4:20-CV-4149, S.D. TX, Filed 12/4/2020.
[15] Appx. Pg. 58–59; 57 (Doc #s. 11, 12, & 21). Court also lost jurisdiction. *28 U.S.C. §455(a) & (b)(1)*

At the void §1915 hearing, which occurred on 4/7/2021 & after the FRCP Rule 4 90-day deadline to serve parties had lapsed, the unconsented & unneutrally detached magistrate deceptively requested that Petitioner either (a) withdraw his application, or (b) have the case dismissed for failure to state a claim.[16] The court never set a deadline to serve parties.[17] Petitioner lacked funds to serve parties,[18] yet had summary judgment ("SJ") 4th & 14th Amd U.S. Const §1983 claims[19] duly pled, with filed supporting SJ evidence[20]. Petitioner was therefore unduly coerced, or forced, to withdraw the §1915 application – a deprivation of petition due process rights – than have the case dismissed.[21]

Hence, the unneutrally detached & unconsented magistrate, deceptively denied Petitioner of right to proceed without costs & serve additional non-TxDPS defendants post removal in federal court; & did so without a finding that Petitioner was not otherwise entitled to proceed without costs, as required under FRAP 24(a)(3).

The magistrate & the trial court judge then subsequently & wrongfully dismissed the case for failure to state a claim;[22] & disallowed service on non-TxDPS parties on the non-TxDPS claims.[23] Thereafter, they denied any further post judgment motions.[24]

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[16] Appx. 59–60 (Doc. 48); 117; 116–118; 197.
[17] Appx. 56-61; 119.
[18] Appx. 100–106; 116–118; 175–177; 198; 203–204; 205; 218–219; 235–254.
[19] Appx. 107-140; 313; 317–338.
[20] Appx. 141-153; 164-171; 339–340; 341-359; 583-585.
[21] Appx. 175–177; 40.
[22] Appx. 41–52.
[23] Appx. 38–39; 118–119; 353–358.
[24] Appx. 39; 534.

The orders precluded Petitioner's opportunity to file a FRAP 24(a) post judgment motion, obtain a 24(a)(3) ruling, & if denied, be entitled to file the a FRAP 24(a)(5) motion in appellate court; in order to appeal *in forma pauperis*.[25] Else, Petitioner must pay for appeal filing & transcript costs.[26]

Hence, without funds to pay for appeal costs[27], Petitioner's *in forma pauperis* procedural appeal rights were wrongfully impeded by the trial court's preclusion of further motions;[28] & by its deceptive forced withdrawal of the §1915 application, without a finding that Petitioner was not otherwise entitled to proceed without costs for appeal,[29] as required under FRAP 24(a)(3).[30]

The Independent (2nd) Action in Equity (USDC No. 4:22-CV-00765)

Petitioner consequently refiled an independent (2nd) action & class action motion in state court,[31] & again complied with all requirements to proceed *in forma pauperis* in the suits, & was again granted the const. right.[32]

In said 2nd action, Petitioner was able to get both TxDPS & HC respondents served by the state clerk pre-transfer[33], & before any responses & removal of action.[34]

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[25] Appx. 71–72.
[26] *FRAP R. 24(a)(1).*
[27] See, e.g., Appx. 100-101; 218-219; 234-254; 534.
[28] Appx. 39; 534.
[29] Appx. 40; 175-177; 316.
[30] *FRAP R. 24(a)(3).*
[31] Appx. 107-140; 313-338; 341-359; 360-382; 531-538.
[32] Appx. 90-99; *Accord, U.S. Const. Amd. XIV, §1.*
[33] Appx. 27.
[34] Appx. 23 (Doc.1).

Once in federal court, the fed. court clerk refused to honor Petitioner's request to serve additional parties.[35] Respondents TxDPS & HC filed dispositive FRCP Rule 12(c) & 12(b)(6) Motions, respectively.[36] Petitioner responded.[37] The trial court dismissed the case again without an initial conference or docket scheduling.[38]

Post filing notice of appeal,[39] the 5th Circuit appeal clerk refused to honor Petitioner's uncontroverted[40] pre-removal *in forma pauperis* status from state court; & required *in forma pauperis* Petitioner to file a FRAP 24(a)(1) motion in federal trial dist. court to obtain an order allowing him to proceed *in forma pauperis* for appeal.[41] Petitioner called the clerk & informed her such wasn't proper per FRAP 24, & only gives the trial court an opportunity to controvert Petitioner's *in forma pauperis* status.[42] Yet, Petitioner complied;[43] & was invidiously treated as a prisoner;[44] as Petitioner now understands is Fed. Crt. policy to file mail-envelopes of such persons.

Petitioner also requested the transcripts of the 1st actions' 4/7/21 §1915 hearing.[45] The trial clerk & court denied the existence of the 4/7/21 hearing; even with minutes entry from the §1915 hearing docketed.[46][47] The trial court also denied the

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[35] Appx. 24 (Doc. 17).
[36] Appx. 293-312; 391-410.
[37] Appx. 531-545; 419-432.
[38] Appx. 17-21; 24.
[39] Appx. 24.
[40] *FRAP Rule 24(a)(3)*; Appx. 90-99.
[41] Appx. 11.
[42] *FRAP R. 24(a)(3)(A).*
[43] Appx. 25; 83-91.
[44] *See, e.g.*, Appx. 89.
[45] Appx. 25 (Doc. 26).
[46] Appx. 59 & 60 (Docs. 46 & 48).
[47] Such deceptive denial of transcripts for appeal petition rights, is (a) fraud by the court per false representation, & (b) irreparable harm to Petitioner's liberty to appeal or an independent action in equity; that vitiates the proceedings with causes 4:22-CV-00765 & 4:22-CV-04149, & all entered orders & judgments, for lack of jurisdictional due process for Petitioner, including lack of impartial tribunal,

application on non-good faith appeal grounds;[48] thereon officially controverting Petitioner's *in forma pauperis* status from state court[49] in the 2nd action.[50]

The 5th Circ. clerk requested Petitioner to pay or reapply per Rule 24.[51] To reapply, Petitioner only required a motion & Appx. 15-16 & 83-89.[52]

Since both action's dismissals were for failure to state a claim,[53] & since the FRAP 24(a) motion denial order was on grounds that the appeal was frivolous,[54] in order to show that Petitioner's appeal was in good faith & not frivolous, Petitioner had to file a FRAP Rule 24(a)(5) motion showing that Petitioner stated a valid federal civil rights claim; which is similar but limited in scope to challenging the 12(b)(6) dismissal orders as required for appeal.[55] Hence Petitioner filed his brief, & all §1651 writ remedies needed, in a comprehensive R. 24(a)(5) motion.[56]

The 5th Circuit refused to read or review the motion, & required Petitioner to refile the application & motion, with another financial affidavit requirement from Petitioner.[57] Petitioner has & had no funds.[58] Petitioner motioned & tried to explain that a new financial affidavit was unnecessary as already provided to trial court & in

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magistrate, & judge. *See Infra*, fn(s) 165 – 167. Hence Petitioner warrants the independent action sought.

[48] Appx. 15-16.

[49] Appx. 90-99.

[50] *FRAP 24(a)(3)(A); C.f. USDC Cause # 4:20-CV-04149 (1st Action); Supra, Pgs.* 16-18.

[51] Appx. 9.

[52] *FRAP 24(a)(5).*

[53] Appx. 15-21; 28-52.

[54] Appx. 15-16.

[55] Appx. 15; 399-400.

[56] "APPELLANT'S FRAP Rule 21 Extraordinary Writ; FRAP Rule 21(d) Motion for Additional Word Count; 24(a)(5) Motion & BRIEF," *Adimora-Nweke v. McGraw*, Case No. 22-20269, Doc. No. 00516417289, Filed on 8/2/2022, U.S. Fed. 5th Circ.; *See e.g.*, Appx. 15-16 & 77-89 (14 of 349 pgs.).

[57] Appx. 8.

[58] Appx. 77–89; 219-220.

the disregarded-pending 24(a)(5) motion; & that the trial court's reason for denying Petitioner's FRAP 24(a) application (i.e., non-good-faith[59]) also rendered any financial affidavit issue irrelevant & moot.[60]

5th Circuit seems in support of this writ, & ultimately showed such via (a) the unconstitutional reason stated in the 8/15/2022 order[61], which was issued in light of Petitioner's FRAP 24(a)(5) *in forma pauperis* motion[62], & (b) the denied transfer & reconsideration motion issues.[63] These are all void orders & judgements due vacated.

Petitioner raises issues that occur daily throughout Texas & U.S., with irreparable harm to fundamental substantive & procedural due process rights of citizens. Most issues, e.g., Issues 2(A), regard statutory notice violations by government actors, with *inter alia*, irreparable harm to citizens & their rights.[64]

The trial court granted Respondents' 12(b)(6) dismissals,[65] then issued an impediment order finding; that appealing the independent action was non-good-faith.[66] Petitioner always pled various separate §1983, §1985, & §1986 damage & class action injunction claims,[67] against separate state & local govt defendants; hailing from 7+ different incidents involving unreasonable search & seizures of

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[59] Appx. 15.
[60] *See*, "APPELLANT's FRAP Rule 27.2.1 Motion to Reinstate Appeal, Supplement, Stay Mandate, & Transfer Case to D.C. Circuit," *Adimora-Nweke v. McGraw*, Fed. 5th Circuit Case No. 22-20269, Doc. No. 00516436680, Filed on 8/17/2022.
[61] **Appx. 6.**
[62] **Appx. 77–89.**
[63] **Appx. 498–530.**
[64] *Infra*, ***Pgs. 41-49.***
[65] Appx. 17-21.
[66] Appx. 16.
[67] Appx. 107-140; 141–255; 256–276; 313; 316–336; 341–359; 360–382; 441–467; 470–482; 484–497; 512-526.

Petitioner, & invidiously, & insidiously denying him liberty, privacy, petition, equal protection, & due process rights. And such still continues, as well as the severe harm.

Plaintiff appealed the matter to U.S. Supreme Court ("SCOTUS") via SCOTUS Cause # 22-6773, *Adimora-Nweke v. McGraw* (Director); & included the necessary *in forma pauperis* application. SCOTUS, a discretionary court, granted the in forma pauperis application, but denied writ of cert on 6/5/2023.

Plaintiff is still yet to get a fair due process oral in-court hearing before an impartial judge or magistrate, in any court, & on the merits of the issues. Such has resulted in the void orders challenged, as well as the unfavorable appeal results; and perpetuates the harm on Plaintiff.

Section IV.

ADDITIONAL DETAILS ON PROCEDURAL/CASE HISTORY
(As pled in Cause # 4:22-CV-00765); Additional inclusions are highlighted in yellow.

The first original action was originally filed in 234th Harris County Judicial District Court with cause 202056824. Plaintiff requested clerk service of defendant parties without cost on Plaintiff, per TRCP Rule 145, on grounds of Plaintiff's inability to pay costs. Plaintiff filed the necessary documents in support including affidavit statement. Plaintiff also filed a motion for alternative service on grounds that other Defendants cannot be found or located; and sought service on them via email. After multiple wrongful denials by the interim judge of 234th court of alternative service and service of process without costs to Plaintiff, and multiple motions for reconsideration filed by Plaintiff, the clerk finally served parties but served only Defendant Director McGraw of TxDPS. Director McGraw answered with counsel, and immediately removed the case to the U.S. District Court, Southern District of Texas, Houston Division, which is located

within Harris County, on the grounds that Plaintiff's claims against McGraw arise under the U.S. Constitution and Federal Laws of the United States per 28 U.S.C. Section § 1331 *et al.*

Some of Plaintiff's claims arise under the U.S. Constitution and Federal laws, as well as under state law. Hence this court also has jurisdiction as Plaintiff's claims occurred in or in close enough relation to Harris County to confer jurisdiction; and Plaintiff resides in Harris County, TX. All necessary notices have been, were, or shall be provided necessary Defendant parties.

Per prior litigation matters in Federal Court, e.g. Cause No. 4:20-CV-1651 – *Ohakweh et al v. Harris Health System et al*, Cause No. 4:16-CV-903 – *Aguocha-Ohakweh et al v. Harris County Hospital District et al.*, and a whistleblower action Cause No. 4:16-CV-1704 – *Aguocha-Ohakweh, et al v. Baylor College of Medicine, et al.*, Plaintiff is unconstitutionally barred from litigating any claims, including *pro se* claims, in U.S. District Court, Southern District of Texas, Houston Division. *See Doc. 12, Cause 4:20-CV-01651.* Defendant McGraw leveraged this wrongful court action by removing the original action with Cause No. 202056824 to said court, and raising the void prejudicial orders from the *Ohakweh* litigation to obtain favor and secure the void challenged judgments.[68] Plaintiff needs this Doc. 12 order vacated.

Due to the unfair bias, unfair prejudice, and discrimination that Plaintiff must deal with in Southern District of Houston federal court, Plaintiff is continuously, unconstitutionally, and fatally denied 1st amendment U.S. Constitutional petition rights, 5th & 14th Amendment U.S. Constitutional equal protection and due process rights, and equivalently his Texas Open Courts, equal protection, and due process rights in cases or matters addressed in the federal court house. The unjust discrimination, unfair bias and unfair prejudice against Plaintiff are clear in the orders and judgments challenged, and shows a lack of impartiality of the tribunal. Such evidences that

[68] Dkt. 9-1, filed on 12/11/2020, Cause No. 4:16-CV-04149

the impartiality of the court was reasonably in question, with the court's unconstitutional or arbitrary and irrational discrimination, unfair bias and unjust prejudice against Plaintiff, of such a nature, as to unjustly deprive Plaintiff of fundamental due process.[69]

The lack of impartial and disinterested tribunal negates due process and deprived the courts of jurisdiction; thereby voids any fatal orders and judgments entered, and allows for this bill of review collateral attack. *Bass v. Hoagland,* 172 F.2d. 205, 209 (5th Circ. 1949), cert denied, 338 U.S. 816 (1949) (Civil or criminal judgment reached without due process of law is without jurisdiction and void, and may be attached collaterally.) The contents of the void challenged orders and judgments[70] also show that Plaintiffs' substantive and procedural due process, and equal protection rights, are effectively deprived by the challenged orders, including that of the federal court. As explained[71], they result in unconstitutional discriminatory and unequal application of §724.015 in the case of Plaintiff and similarly situated individuals, by denying Plaintiff and similarly situated persons of required fair notices, right to bodily integrity against unconsented blood draws, and right to equal protection of the law including statutory laws, and administration of said laws. (*See e.g.*, Dkt. 64, in cause 4:20-CV-04149.)

The fatal unconstitutional deprivation of Plaintiff's fundamental rights results in void orders and judgments harmful to Plaintiff, similarly situated persons subject to Texas

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[69] *Rosas v. State*, 76 S.W.3d 771, 775 (Tex. App. – Houston [1st District] 2002, no writ history); *accord, Liteky v. United States*, 510 U.S. 540 (1994) ("Section 455(a) of Title 28 of the United States Code requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned."); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'); *See also, Marshall v. Jerrico*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases..."); *Mahone v. Addicks Utility Dist., Of Harris Cnty,* 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality... citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)")

[70] *See e.g.*, Dkts. 50, 55, 65 filed in cause 4:20-CV-04149, U.S. District Court, Southern District of Texas, Houston Division; *See also*, attached complaint Exhibits 1.5 & 1.6.

[71] *See* Dkts. 6 pgs. 88 – 108; Dkts 16, 31, 51, 54, 56, 58, & 64 filed in cause 4:20-CV-04149, U.S. District Court, Southern District of Texas, Houston Division

Transportation Code §724.015, and the public at large; including the judgments and orders challenged in this bill of review action. They effectively deny Plaintiff of the right, benefit of, and opportunity to litigate his claims against Defendant(s). They are also not a result or fault of Plaintiff, nor a result of his negligence. Plaintiff continuously and diligently pursued/pursues his claims, and continues to do so, even with unconstitutional constraints by the court, current or putative defendants, or other interested parties.

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Plaintiff cannot and could not get a fair hearing opportunity in Federal court, and is continuously denied his petition rights as well as his due process and equal protection rights. Plaintiff, continuously unconstitutionally kept out of court by one flagrant/void order or judgment, and was again denied fair hearing on the merits before dismissal, even post requests in Dkt. 51, 53, 56, & 58 filings. The courts continuously rule in contrary to settled law or abuse discretion, to the unfair prejudice and harm of Plaintiff, when Plaintiff is involved in matters; to blatantly further perpetuate the harm on Plaintiff, and sometimes his clients. Such occurs even when the Defendants are clearly wrong, Plaintiff sufficiently met the burden of proof by law and evidence, and more. Plaintiff, depleted of funds by these actions and the actions complained of in the pleading to which Plaintiff seeks damages and other relief, is then without funds but with severe damages. Plaintiff then has to exert further efforts, to recover damages due, while harmed in his reputation, person, liberty, and business; consequently, harmed in his finances; yet denied access to court via denial of service of parties without costs or wrongful judgments contrary to fact, law, and/or evidence, and therefore further harmed and hindered from accumulating funds to pursue such claims.

The unfair and unjust discrimination and resulting injustice against Plaintiff in Federal Court is so blatant that Plaintiff, a counsel, is - by another void constitutional order or judgment –

barred from bringing any claims in U.S. District Court, Southern District of Texas Houston Division; even *pro se*. Such is a blatant deprivation of Plaintiff's 1st and 5th Amendment petition and due process rights. This was leveraged by Defendant McGraw in federal court, as he and TxDPS wrongfully raised such void smear campaign order barring Plaintiff from Federal Court, as reason for dismissal. Meanwhile, Plaintiff had proper claims and defenses in the governing pleading in federal court.[72] Note that under state law, the actions by the clerk to deny Plaintiff of service of process is a constitutional violation of Plaintiff's open courts, due process, and equal protection rights, that resulted in the fatal denial of Plaintiff's claims against other Defendants and against McGraw and TxDPS.

None of the reasons for the wrongful or void judgments challenged via this independent action in equity/bill of review, are Plaintiff's fault. All of the wrongful actions of Defendants and the court in the prior proceedings – including refusal to serve process, lack of deadline for service of process, unfair and unconstitutional discrimination against Plaintiff, and partiality and unfair bias and prejudice against Plaintiff – all caused in the dismissal with prejudice of McGraw claim, and dismissal of the other claims pled. They are not Plaintiff's fault or neglect. They also caused Plaintiff to be deprived of the benefit of his claims and defendants to McGraw's allegations, in said original and originally removed action.

Plaintiff is hated in the courts because Plaintiff handles very sensitive matters with serious or unimaginable damages; e.g., the civil rights obstruction of justice and *qui tam* claims from causes 4:19-CV-904 & 4:20-CV-01651 in the S.D of Tx, Houston Federal court. Plaintiff never brings frivolous claims. Plaintiff made every effort to serve parties, even without funds; in state court *and* in Federal Court. *See Dkt. 64 of Cause 4:20-CV-04149, Filed on 1/20/2022.*

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[72] Dkt. 6, filed on 12/8/2020, Cause No. 4:16-CV-04149, *Ernest Adimora-Nweke v. Steven C. McGraw, Hannah Yarborough-Smith et al*, U.S. District Court, Southern District of Texas, Houston Division.

Upon removal of the case to Federal Court by McGraw, the same again occurred, which was futile to Plaintiff's case as Plaintiff was ultimately denied his fair due process and equal protection right to litigate all his claims and defenses as pled in the governing pleading; including claims and defense against McGraw and TxDPS as isolated in detail in Plaintiff's class action and summary judgment motion[73].

Plaintiff was subjected to the DIC-24 document on 11/14/2018. The DIC-24 document that contains contents to be provided Plaintiff orally and in writing before the officer makes such request, lacks Section 724.015(a)(6) of transportation code. Hence, it is void of mandated fair notice requirements prior to invasion of bodily integrity, as contemplated by Congress in enumerating Section 724.015(a), and for circumstances as applicable to Plaintiff on 11/14/2018.[74]

Plaintiff made a request for an ALR hearing on 11/16/2018, made the only reasonable entry selection in the system available, that the arresting officer did not request or properly request for a breath or blood sample. This ALR hearing request must be made within 15-days of 11/14/2018, or Plaintiff's driver's license gets suspended and subject to reinstatement fee.

Plaintiff, subject to 724.015(a)'s contemplated situation on 11/14/2018, meets the class of persons subject to the 724.015(a) notice. Without 724.015(a)(6) in a compliant DIC-24 form, neither officer Wang nor any government person, may request a blood draw. *See Dkt. 64*, cause 4:20-CV-04149; *See also, See* Dkts. 6 pgs. 88 – 108; Dkts 16, 31, 51, 54, 56, 58, & 64 filed in cause 4:20-CV-04149, U.S. District Court, Southern District of Texas, Houston Division; *Tex. Code of Criminal Procedure 18.01(j)(2)*(granting magistrate authority to issue blood warrant upon

[73] Dkt. 17, filed on 12/25/2020, Cause No. 4:16-CV-04149.
[74] *See e.g.*, **Dkt. 51** filed on 09/23/2021, **Dkt. 53** filed on 09/30/2021, **Dkt. 56** filed on 12/8/2021, & **Dkt. 64** filed on 1/20/2020, Cause No. 4:16-CV-04149.

refusal of a person to submit to breath of blood alcohol test.) (Emphasis added.); *Tex. Transp. Code §724.015(a)*(***"Before requesting***... ")(Emphasis added.)

According to McGraw's evidence, TxDPS drafted and mailed Plaintiff a notice on 11/26/2018, 3 days before the 11/29/2018 15-day deadline to request an ALR hearing from TxDPS. The notice stated that Plaintiff did not properly enter his request or they did not receive it, and he has until the 15-day deadline to correct/make his request.

The 11/26/2018 drafted notice letter is deemed received by law 5 days after it is sent, hence at least 11/31/2018 or the following business day. Yet, Plaintiff had until 11/29/2018 to receive the 11/26/2018 cure notice and make the request.

Plaintiffs later received a notice of suspension in February 2019, with a notice of reinstatement fee requirement, on grounds of finding that Plaintiff (a) refused to provide a breath or blood sample, and (b) did not timely request an ALR hearing to dispute putative suspension.

Plaintiff did not receive the 11/26/2018 letter, and could not have received it by the statutory 15-day deadline which lapsed on 11/29/2018, when the letter is deemed received by law on at least 12/1/2018. Hence the order of suspension and reinstatement fee requirement is void of due process fair notice and hearing opportunity.

The Federal Court's adopted memorandum and opinion in Dkt. 50, 55, 60, & 61, are clearly errors of fact and law, and unconstitutional. Plaintiff has done enough to explain and reiterate the law, and provide them necessary evidence to support the well pled facts. Hence, the resulting wrongful void judgements and orders are not Plaintiff's fault or due to Plaintiff's inexcusable neglect.

In Federal Court, Plaintiff filed an amended complaint with the contents of the FACTS section of this pleading[75]; Defendant McGraw filed a 12(b)(6) motion[76]; and Plaintiff filed a response to the 12(b)(6) motion[77], filed an amended summary judgment and motion to certify class[78] against McGraw and TxDPS, filed a motion to sever the McGraw and TxDPS claims from other claims pled against other defendants[79], filed a petition to proceed in the litigation without costs[80], and filed some disclosures & supplement to responses to the 12(b)(6) motions and motion to sever claims[81].

The case was referred to a magistrate.[82] Plaintiff did not consent to the magistrate, and neither did McGraw.[83] McGraw was represented by the Texas attorney general and his counsels in Federal Court. *Id.* In response to Plaintiff's petition to proceed without costs and at the hearing, McGraw requested and was granted that the petition be determined under 28 U.S.C Sec. 1915(e)[84], which is the same as a motion to dismiss the case on the merits under FRCP Rule 12(b)(6) standard. *See, 28 U.S.C Sec. 1915(e)(2)(B); Cf. Fed. R. Civ. Pro. Rule 12(b)(6)* The unjust discriminatory magistrate at the hearing, was clearly unfairly unconstitutionally biased against Plaintiff – as shown in his wrongful comment on Plaintiff's unsevered claims against other Defendants (e.g. civil rights, fraud, and breach of contract claim against other defendants) – per memorandum and recommendation of dismissal[85]. Plaintiff always made it clear that Plaintiff had no funds to serve

[75] Dkt. 6, Cause 4:20-CV-04149, filed on 12/08/2020.
[76] Dkt. 15, Cause 4:20-CV-04149, filed on 12/22/2020.
[77] Dkt. 16, Cause 4:20-CV-04149, filed on 12/22/2020.
[78] Dkt. 17, Cause 4:20-CV-04149, filed on 12/25/2020.
[79] Dkts. 22 & 23, Cause 4:20-CV-04149, filed on 1/01/2021 and 01/11/2021 respectively.
[80] Dkt. 34, Cause 4:20-CV-04149, filed on 03/09/2021.
[81] Dkts. 40, 41, 42, & 43, Cause 4:20-CV-04149, filed on 03/16/2021
[82] Dkt. 12, Cause 4:20-CV-04149, filed on 12/14/2020
[83] Dkt. 21, Cause 4:20-CV-04149, filed on 01/04/2021.
[84] Dkt. 40, Cause 4:20-CV-04149, filed on 03/15/2021.
[85] Dkt. 50. Pg. 8 "...*bad business arrangement*..." Cause 4:20-CV-04149, filed on 03/15/2021

parties, and made clear of his claims' merit by SCOTUS law and clear Texas statute.[86] Plaintiff even created a complying DIC-24 to illustrate the material and unconstitutional error at issue.[87]

The magistrate irrationally and unconstitutionally discriminated against Plaintiff to the favor of state actor defendant McGraw and TxDPS, and was unfairly prejudiced against Plaintiff; to the extent that, amongst others, he gave Plaintiff the following options at the hearing on 04/07/2020[88]: (a) accept dismissal of the case for failure to state a claim – which was allowed him under 28 U.S.C Sec. 19159(e)(2)(B)(ii) and 12(b)(6), or (b) withdraw the petition and Plaintiff has figure out how to fund and serve other parties himself. No deadline to serve parties was ordered. Plaintiff elected to withdraw the petition[89], but withdrew it without prejudice under the circumstance – as Plaintiff is and was still depleted of funds due to ongoing wrongful smear campaign, malicious prosecution, and liberty deprivation from putative Defendants Harris County, Houston Police Department, and their cohorts/co-conspirators.[90]

Eventually, Plaintiff was and is still unable to secure funds to serve additional parties, and severance of the claims and class action and summary judgment relief would have resolved the issue under the circumstances. But the court is biased against Plaintiff, to the deprivation of his equal protection and due process rights. They would enter a wrongful judgment against Plaintiff, and contrary to U.S. Supreme Court law, or governing laws, just to subject Plaintiff to more harm or costs, or a similarly biased and prejudiced Fifth Circuit appellate court that hates Plaintiff per the results of Plaintiff's prior appearance – hence a futile appeal. Without funds, and finding Plaintiff unable to pay costs, Plaintiff cannot pay the appeal fee. Hence, the appeal of the

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[86] **Dkt. 34** filed on 03/09/2021; **Dkts. 40, 41, & 42** filed on 03/16/2021; **Dkt. 47** filed on 04/08/2021; **Dkt. 51** filed on 09/23/2021; **Dkt. 53** filed on 09/30/2021; **Dkt. 58, pgs. 5 – 7**, filed on 12/10/2021; and **Dkt. 64, pgs. 11 – 14**, filed on 1/20/2022; Cause 4:20-CV-04149, U.S. District Court, Southern District of Texas, Houston Division.

[87] **Dkt. 2, pg. 311 of 352, filed on 12/4/2020, Cause 4:20-CV-04149; Exhibit 14.**

[88] Dkts. 46 – 49, Cause 4:20-CV-04149, filed on 04/02/2021 – 04/09/2021.

[89] Dkt. 47, filed on 04/08/2021, Cause 4:20-CV-04149.

[90] *See* **Dkts. 51 & 64**, filed on 09/23/2021 and 1/20/2022 respectively, Cause 4:20-CV-04149.

judgments or orders challenged are also futile, and Plaintiff is further denied access to court, petition rights, equal protection rights, and due process rights to fairly litigate his claims and defenses before an impartial tribunal and/or judges.

Such is clearly not Plaintiff's fault but that of the prior court staff and judges' unconstitutional bias and prejudice against Plaintiff, TxDPS and McGraw wrongful act to deny Plaintiff of fair notice and hearing opportunity in the DIC-24 and any hearings, extrinsic fraud and malicious actions by other state and local government agencies to affect or deter Plaintiff's claims, and other reasons not Plaintiffs' fault or neglect.

Per Dkt. 6 in cause 4:20-CV-04149, and the below pled facts, Plaintiff clearly had and pled claims and defenses against McGraw and TxDPS, and against HYS, HPD, Harris County, and other Defendants. Per Dkts. 6 & 17 of cause 4:20-CV-04149, Plaintiff clearly had a summary judgment claim against Mc McGraw and TxDPS, and against HYS, HPD, Harris County, and other Defendants.

Per the challenged opinions and judgments from causes 4:20-CV-04149, the magistrate and federal court judge in said case clearly committed serious factual and legal error in dismissing the claims against McGraw and TxDPS, and in finding lack of cause for failure to serve parties. They clearly had an unfair bias and unfair prejudice against Plaintiff and against Plaintiff's claims. The Dkt. 50 magistrate memorandum and opinion, which was adopted by the court, contains clear unconstitutional bias and prejudice language, "... bad business agreement..." against Plaintiff and his claims, to the extent it deprives Plaintiff of impartial tribunal and his equally protected due process rights; and hence voids the opinion, and the adopted challenged judgements.[91]

[91] *See Supra*, fn. 67.

Plaintiff clearly made reasonable efforts to serve parties, filed various motions, stated clear that Plaintiff had no funds, and provided necessary affidavits. To serve Harris County via email under rules of procedure, Plaintiff had to knock door-to-door in his neighborhood to find someone (a) with an email, (b) who would also agree to get involved, (c) willing to email the citation as Harris County required, and (d) for free. Plaintiff succeeded on 1/3/2022, via the assistance of a Mr. Edwardo Torres, and filed the proof of service accordingly[92]; followed with the FRCP Rule 59(e) motion[93].

Plaintiff's FRCP Rule 59(e) motion shows the legal error in fact and law on the claims against McGraw and TxDPS. It also reiterates that Plaintiff made reasonable efforts to serve parties in state court and in Federal court, supported by material evidence that McGraw or his counsel excluded from the removal record. The excluded material evidence showed that the same motion for reconsideration on denial of service without costs, was the basis for serving McGraw. Hence, the other parties should have been served, and it is not Plaintiff's fault that parties were not served in state court as McGraw and the court alleged or wrongfully finds. The biased magistrate court again reviewed the motions, and (1) ruled contrary to FRCP Rule – including without giving Plaintiff a deadline to serve parties, (2) accepted a void and null state court ruling denying indigency and contrary to TCRP Rule 145, and (3) ruled contrary to U.S. Supreme Court, Texas Congress enumerated laws in Texas Transportation Code Sec. 724.015(a), Texas and U.S. Constitution 1st, 5th, and 14th Amendment rights of Plaintiff, and (4) ruled contrary to Fifth Circuit's binding ruling in *Bass v. Hoagland*, which allows Plaintiff the Section 1983 equitable challenge to his suspension order based on the unconstitutional DIC-24 form.

[92] Dkt. 63, filed on 1/10/2022, Cause 4:20-CV-04149.
[93] Dkt. 64, filed on 1/20/2022, Cause 4:20-CV-04149.

Plaintiff cannot be denied justice or access to courts due to lack of funds; or because Plaintiff is black, male, an attorney, of Nigerian origin or born, African or African-America, or such - as complained of in Attachment 1; or because the judge or court staff does not like him, his clients, or his claims; or because the judge or court staff are unfairly biased or bears prejudices against Plaintiff or his clients or his claims, or harbors unfair bias or prejudice in favor of Defendants personally or their defenses. Such are clearly what has continuously occurred, amongst others, and has resulted in the wrongful judgments and orders challenged. These error of law and fact, and the fundamental petition, equal protection, and due process violations, are not Plaintiff's fault or inexcusable negligence, and has resulted in the wrongful judgments and orders challenged.

Plaintiff has no adequate remedy in law or equity. Plaintiff cannot appeal as Plaintiff cannot pay any appeal fee. Per the attached recent affidavit, Plaintiff has no funds nor can Plaintiff afford to pay the appeal fee. Appeal to the fifth circuit would also be futile because Plaintiff is also a marked target in the fifth circuit. The fifth circuit judges have continuously and unconstitutionally denied Plaintiff of his equal protection, petition, and due process rights in prior groundbreaking cases. E.g., *Aguocha-Ohakweh et al v. Harris County Hospital District et al,* No. 17-20259; 731 Fed. Appx. 312, 2018 U.S. App. LEXIS 11556, 2018WL 2077907 (5th Cir. 2018) (Unpublished opinion).[94]

[94] In this case, the Chief Judge of the Fifth, who had a conflict of interest with the case, per her relationship with Defendant Baylor College of Medicine's and their counsel firm Andrews Kurth in the case, inserted herself in the panel of judges ruling on the case, and wrongfully affirmed the appealed void judgment from the trial court. Aside of the invalidity of the trial court's judgment, the fifth circuit's affirmation judgment was void just on such fundamental or unconstitutionally unauthorized judicial conflict-of-interest, lack of impartiality, or "fraud by the court" conduct. *See e.g., Liteky v. United States*, 510 U.S. 540 (1994); *Rosas v. State*, 76 S.W.3d 771, 775 (Tex. App. – Houston [1st District] 2002, no writ history); *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980) *Bass v. Hoagland,* 172 F.2d. 205, 209 (5th Circ. 1949), cert denied, 338 U.S. 816 (1949); *U.S. Const. Amd V; Amd. XIV, Sec. 1.* Other facts and issues raised as to the invalidity of the judgments, including due process rights deprivations and unfair prejudice against Plaintiff and clients in federal court that result in grave miscarriage of justice and manifest unconscionable rulings/judgments, are documented on file in Cause 4:20-CV-01651 in U.S. District Court, Southern District of Texas Houston Division,

The Fifth Circuit affirmed void trial court judgments,[95] granted without fair hearing or fair hearing opportunity for Plaintiff and his clients, on a motion to dismiss filed by Texas State agency defendant, Baylor College of Medicine, and its co-defendant in the case - Harris County Hospital District, alleging that Plaintiff failed to state a federal civil claim for constitutional rights violations, on pleading that contained allegations of amongst others, (a) a forged and criminally fraudulent medical consent form and medical records fraudulently created, altered, and concealed by state and local government agencies Harris County Hospital District and Baylor College of Medicine, and their staff, medical officials, and executives; and (b) lack of consent to withhold or withdraw life-sustaining treatment to Plaintiff's client, and violation of due process statutory requirements of Texas Health & Safety Code Chapter 166. Plaintiff in that case sufficiently pled equal protection, procedural due process, and substantive due process violations, and injuries resulting from said violations in over 70 pages of detail of the facts. Yet the unconstitutionally biased, irrational, unfairly prejudiced against Plaintiff, federal trial court in said case, just as the the federal trial court did in this case, unconstitutionally refused to acknowledge the law and the pled facts when Plaintiff is involved, ruled that Plaintiff failed to state a federal civil rights claim, and issued "manifestly unconscionable" orders of dismissal with prejudice that result in "grave miscarriage of justice" to Plaintiff, United States, State of Texas, and the public at large

In other words, when Plaintiff is involved in cases, the Southern District Federal Court and Fifth Circuit holds or rules, contrary to U.S. Constitution, that Plaintiff and his clients or similarly situated persons, lack e.g., equally protected petition rights, and substantive and procedural due process rights against deprivation of life and liberty without due process of law.

Dkts. 49 & 50, filed on 12/30/2020 (accessible via www.Pacer.gov)

[95] *Emily Jean Aguocha-Ohakweh et al v. Baylor College of Medicine et al*, Civil Action 4:16-CV-903, Docs. 312, 322, & 323 (S.D. Texas 2017)

Such legally prejudicial rulings or judgments, contrary to U.S. Supreme Court law and U.S. Constitution, and even contrary to the Fifth Circuit's laws, shows the unfair discrimination against Plaintiff in the Federal Courts, and voids any of the federal district court in cause 4:20-CV-04149 & 4:22-CV-00765.

All of these issues complained of were material and causes or resulted in the judgments and orders challenged, and are not Plaintiff's fault or inexcusable negligence.

Since Plaintiff is prejudiced in Federal Courts, & lacks funds for filing fees & costs or appeal, (i) Plaintiff lacks any adequate remedy for the challenged orders from cause 4:20-CV-04149 & 4:22-CV-00765; (ii) Plaintiffs' petition, equal protection, & due process rights were & remains irreparably denied/harmed; (iii) there lacks an appealable final judgment for USDC #s 4:23-mc-00976 & 4:23-mc-00964; & (iv) Plaintiff lacks adequate remedy from the terminated & closed 4:23-mc-00976 & 4:23-mc-00964 actions – per the attached docket print & filings from the 4:23-mc-00976 & 4:23-mc-00964 actions. Hence Plaintiff warrants this sought independent action in equity.

Section V.

INTERIM RELIEF REQUESTED

Plaintiff asks that this court (i) review and grant a hearing or mini-trial on the independent action in equity in this complaint; (ii) vacate the challenged orders and judgments (e.g., the orders of dismissal with prejudice from USDC Cause Nos. 4:22-CV-04149 & 4:22-CV-00765; (iii) relieve Plaintiff from the USDC #s 4:23-mc-00976, 4:23-mc-00964, 4:23-mc-01283, 4:22-CV-04149 & 4:22-CV-00765 proceedings; (iv) grant Plaintiff a new trial on the issues/merits, and on the underlying sought claims (*i.e.*, the 42 U.S.C. Sec. 1983 class action injunction sought against Director McGraw & TxDPS on the DIC-24 forms); (v) enjoin & vacate the Doc. 12 order of USDC

4:20-CV-01651; & (vi) grant Plaintiff all relief sought and any relief allowed by law and equity.

UNSWORN DECLARATION (NON-INMATE) My name is Ernest Adimora-Nweke. I am over 18yrs of age & my address is c/o Adimora Law Firm, 3050 Post Oak, Suite 510, Houston, TX 77056, USA. I declare under penalty of perjury that the contents of this document and the facts and allegations stated are true and correct and based on personal knowledge, information, and/or belief, and/or supported by evidence.

Executed in Harris County, State of Texas, on 09/9/2023. /s/Ernest Adimora-Nweke.

Section VI.

UNDERLYING CLAIM'S 42 USC §1983 FACTS & ARGUMENT: *McGraw* & TxDPS claim

(As presented to SCOTUS in Cause 22-6773 Rule 44 Rehearing Motion)

TX DPS' promulgated[96] statutory warning form, the DIC-24 form,[97] is void for non-strict compliance[98] w/ Tex. Transp. Code. §724.015(a)'s required statutory contents,[99] since 2011. Petitioner was subject to the void DIC-24 form in a DWI matter, on 11/14/2018.[100] The version used against Petitioner in 2018 was void for omitting §724.015(a)(6).[101] Hence Petitioner has standing.[102]

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[96] *See*, Tex. Transp. Code §724.003 ("RULEMAKING. The department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.")

[97] *Writ* Appx. 145, 148, 230, & 465.

[98] *Accord*, ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law.")

[99] *Writ* Appx. 68 – 69. *See also*, *Writ* Appx. 153 & 453 (Contains Petitioner's proposed-compliant statutory warning sheet, prepared & presented in the original action USDC # 4:20-CV-04149, Filed 12/4/2020; proposed before TX congress amended §724.015(a) to include §724.015(a)(8) in Sept 2021); *See also*, ***Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020)** ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit.").

[100] *See*, *Writ* Appx. 148, 230 – 232; *Cf. Writ* Appx. 153 & 453.

[101] *Writ*, Pg. 13.

[102] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992).

In 2021, TX Congress Amended §724.015(a) to include §(a)(8).[103] The current DIC-24 form remains void of fair notice for *inter alia*, non-compliant with the 2011 & 2021 amendment to §724.015(a)'s requirements. §724.015(a)(6) remains omitted.[104]

Upon draft of this Rule 44 Motion, Petitioner noticed the TXDPS link to the current 2021 amended DIC-24 form, cited in Petitioner's filed 11/14/2022 *Writ*, was displaced by TxDPS. Hence, material cited & hyperlinked evidence – the current void & also challenged DIC-24 form – was likely not previously presented to this Court upon review. Petitioner has included the TX website download source page for the DIC-24 forms, & a copy of the DIC-24 form as Exhibit 1 to this [cert.] Petition.[105] The omission of such material "best" evidence doc., is grounds for Rule 44 writ rehearing.

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Procedurally, the DIC-24 form is important for due process fair notice that triggers state authority for temporary driver's license revocation, for state authority to institute civil ALR proceedings, & for state authority to issue a warrant for blood draw, e.g., in related DWI criminal actions or proceedings.[106]

Hence its non-compliance materially prejudices the defense rights & case of blood draw subjects in related (e.g., DWI) criminal proceedings;[107] & subjects are

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[103] *See*, *Writ* Appx. 69, 68 – 69; *Cf. Writ* Appx. 231 – 232.
[104] *Writ*, Pg. 13; *See also*, Tex. DPS Peace Officer Statutory Warning Form, DPS Internet Form No. DIC-24, Avail via Tx DPS forms website: https://www.dps.texas.gov/internetforms/Home/Details/236 & @ https://www.dps.texas.gov/internetforms/getForm.ashx?id=DIC-24.pdf; retrieved on 5/1/2023.
[105] *Id.*; *See also*, Exhibit 1 (Retrieved from TxDPS website on 5/1/2023)
[106] *Writ*, Pg. 13-15
[107] *Writ*, Pg. 14-15

therefore subjected to unreasonable searches & seizures, with evidence of such used against them in criminal proceedings, contrary to 4th Amendment. *Id.*

Such materially prejudices subjected citizens' liberties, e.g., Petitioner; as it also subjects or harms 4th, 5th, 6th, & 14th Amend. U.S. Const.[108] due process right against illegally (i.e., warrantless) obtained evidence, or risk of such evidence used against them in related criminal proceedings;[109] & also prejudices, subjects, &/or harms their right to fair defense & fair trial on any related criminal proceedings.[110]

Per Petitioner's Related §1651 *Writ*,[111] such harm occurred against Petitioner. Illegally obtained blood evidence alleged to be Petitioner's blood, & testimonies on said void warrant & illegal obtained evidence, were used against Petitioner at the void criminal conviction trials of related HC Cause #s 2233594 (DWI) & 2233595 (public interference w/ public duties), contrary to Petitioner's pre-trail written objections & suppress motions, contrary to Petitioner's 4th & 14th Amd. U.S. Const. right against unreasonable search & seizures, & contrary to exclusionary rule.[112]

The void DIC-24 form illegally results in denial of required statutory fair due process notice rights, denial of fair defense rights, & bodily integrity rights, which along with the un-impartial judge, caused the void challenged convictions raised for

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[108] *See*, U.S. Const. Amd(s) IV, V, VI, & XIV
[109] *Mapp* v. *Ohio*, 367 U.S. 643 (1961); *See also*, *Kaufman v. United States*, 394 U.S. 217, 229 (1969) (discussing 4th Amd. U.S. Const. unreasonable search & seizure clause, & policy of exclusionary rule for illegally obtained evidence); *See also*, e.g., *Riley v. California*, 134 S.Ct. 2473 (2014) (discussing 4th Amd. U.S. Const. unreasonable search & seizure protections, & exceptions to warrantless search)
[110] *See e.g.*, *U.S. v. Dimberio*, 56 MJ 224 (C.A.A.F. 2001) ("...a defendant has a constitutional right to present a defense. Citing *Washington v. Texas*, 388 U.S. 14 (1967)).
[111] *In re Ernest Adimora-Nweke*, U.S. Supreme Court ("SCOTUS") Cause # _____, Petition for [Related] Writ of Certiorari ("Related *Writ*"), Filed ~4/13/2023; *See* SCOTUS Cause # 22A975.
[112] Related *Writ*, at Pg. 47 – 57.

HC Cause #s 2233594 & 2233595, in Petitioner's recently submitted related §1651 writ of cert.[113]

Hence, there are new intervening circumstances of a substantial & controlling effect (i.e., liberty interests effectively irreparably harmed per the void DIC-24 form), & substantial grounds not previously presented ((1) the current void DIC-24 form, & (2) challenged void judgments[114] & orders resulting from cause #s 2233594 & 2233595, which were partly caused by the challenged void TX DPS' DIC-24 & its resulting lack of authority of magistrate to issue search warrant[115]); as compelling rehearing basis.

The statutory strict compliance *vs* substantial compliance notice issue raised with the DIC-24 form,[116] is important nationwide; as it triggers fair notice – a fundamental due process right required for jurisdiction of govt authorities to invade civil liberties; & applicable in both civil & criminal proceedings.[117] Hence, TX Supreme Courts' sound reasoning need re-affirmed as standard for statutory notice compliance, for Petitioner & TX citizens; & nationwide by SCOTUS, for U.S. citizens.

Such is more compelling reason to grant rehearing & writ on Issue 2(A)(I).

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[113] *Id* at Pg(s). 54, & 47 – 54.
[114] Related *Writ*, Appx. 71 – 78, 1776 – 1778, 1788 – 1800, 1806 – 1818
[115] *See*, Related *Writ*, at Pg. 47 – 50; Related *Writ*, Appx. 1788 – 1800.
[116] *Writ*, Pg. 15.
[117] *U.S. Const. Amd. XIV*; *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence."); *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... The notice must be of such nature as reasonably to convey the required information... and it must afford a reasonable time for those interested to make their appearance...")

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Substantively, the DIC-24 form is important to protect Petitioner & §724.015(a) subjects' substantive due process privacy & bodily integrity liberty rights;[118] & important protect against intrusions of such substantive rights via unreasonable searches & seizures by state actors.[119]

Such const. rights violations are enjoin-able under 42 U.S.C. §1983 against said state actors;[120] & caused damages actionable against state actor "persons" for such deliberate indifferent amounting actions, failure to train;[121] failure to supervise or supervisory acquiescence or participation in the constitutional rights violations;[122] for conspiracies;[123] & for deliberate indifferent wrongful customs or practices,[124] under §1983,[125] §1985,[126] & §1986 – as applicable for Petitioner.

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[118] *Rochin* v. *California*, 342 U.S. 165, 172 (1952) ("Illegally breaking into the privacy of the petitioner, the struggle to open his mouth & remove what was there, the forcible extraction of his stomach's contents... is bound to offend even hardened sensibilities"); *Schmerber* v. *California*, 384 U.S. 757, 772 (1966) ("The integrity of an individual's person is a cherished value of our society"); *Winston* v. *Lee*, 470 U.S. 753, 759 (1985) ("A compelled surgical intrusion into an individual's body for evidence... implicates expectations of privacy and security of such magnitude that the intrusion may be `unreasonable' even if likely to produce evidence of a crime"); Griswold v. Connecticut, 381 U.S. 479, 484 - 485 (1965); *Curzan v. Missouri Dept. of Health*, 497 U.S. 261 (1990)

[119] *See, Mapp* v. *Ohio*, 367 U.S. 643 (1961)

[120] *Gerstein v. Pugh*, 420 U.S. 103, 107 (1975); 28 U.S.C. §1343(a)(3) & §1343(a)(4); *Gibson v. Berryhill*, 411 U.S. 564, 573 (1973) ("...actions brought under the Civil Rights Act of 1871, 42 U.S.C. §1983, were within the 'expressly authorized' exception to the ban on federal injunctions. *Citing*, *Mitchum v. Foster*, 407 U.S. 225 (1972)")

[121] *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388–91 (1989)

[122] *Hyde v. City of Willcox*, 23 F.4th 863, 874 (9th Cir. 2022) ("[S]upervisors 'can be held liable for: 1) their own culpable action or inaction in the training, supervision, or control of subordinates; 2) their acquiescence in the constitutional deprivation of which a complaint is made; or 3) for conduct that showed a reckless or callous indifference to the rights of others.'").

[123] *Dennis v. Sparks*, 449 U.S. 24 (1980); *Wallace v. Kato*, 549 U.S. 384, 397 (2007).

[124] *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).

[125] 42 U.S.C. §1983; *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Villages of Willowbrook v. Olech*, 528 U. S. 562 (2000); *Taylor v. Riojas*, 141 S. Ct. 52 (2020).

[126] 42 U.S.C. §1985; *See also, e.g., Kush v. Rutledge*, 103 S. Ct. 1483 (1983); *Griffin v. Breckenridge*, 403 U.S. 88, 97 (1971); *Hoopes v. Nacrelli*, 512 F. Supp. 363, 368 (E.D. Pa. 1981) (if city council's and mayor's requests for information about pending federal investigation, threats of sanctions for refusing

Petitioner pled & raised these issues in the governing wrongly dismissed complaints,[127] & in the class action & partial summary judgment motions filed in the original & independent actions with causes 4:20-CV-04149[128] & 4:22-CV-00765[129] respectively.

Hence, the (1) continued irreparable harm on liberty & privacy rights of citizens' liberty; (2) continued subjection to unreasonable search & seizures (via void searches & seizures w/ blood warrants issues by magistrates that lack Tex Code of Crim. Pro. 18.01(j) authority); & (3) illegal prejudice to subjects' criminal defense; all resulting from the still void DIC-24 form, & use of illegally obtained blood & other evidence against Petitioner & similarly situated §724.015(a) subjects in criminal proceedings; are compelling grounds to grant rehearing & writ on Issue 2(A)(I).

Section VII.

UNDERLYING CLAIM'S 42 USC §1983 FACTS & ARGUMENT: *McGraw* & TxDPS claim

As presented to SCOTUS in Cause 22-6773 writ of cert

Issue 2(A)(I): Whether Texas Department of Public Safety's DIC-24 statutory warning form, required for implied consent to breath or blood draw of subjects, is void of due process fair notice for non-compliance with Tex. Transp. Code §724.015(a)(6) & (a)(8); & warrant the pled-proposed class action injunction & rectification.

TxDPS's DIC-24 statutory warning lacks fair notice; a basis for §1983 claim.

The DIC-24 statutory warning form is promulgated by Texas Department of Public Safety[130], for use in situations contemplated per Tex. Transp. Code §724.002

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to answer, and suggestions plaintiff was not performing his job as police chief were intended to deter plaintiff from testifying at trial, then § 1985(2) violated)

[127] *Writ*, Appx. 107-140; 141-255; 313-340; 341-359; 583-585.

[128] *Writ*, Appx. 441-467; 470-482.

[129] *Writ*, Appx. 256-276; 360-382; 419-440.

[130] *See, Tex. Transportation Code §724.001(7); §724.003; §724.032(d).*

& §724.011.[131] Petitioner was subjected to the DIC-24 form contents, by HPD officers, on the night of 11/14/18, upon a suspicion of DWI arrest.[132]

Petitioner requested an irrelevant §724.041 Administrative License Revocation ("ALR") Hearing on 11/16/18 (Appx. 141–146); within the §724.015(a)(7) 15-day request period that statutorily lapsed on **11/29/18**. TxDPS's allegedly drafted & post-mailed a 11/26/18 notice-to-cure hearing request to Petitioner's office, not to his home address as stated on the driver's license.[133] Petitioner never received the 11/26/18 notice letter; nor could have received it by the statutory 5-days mail transmission period[134] (i.e., by **12/1/18**), to still make any modified §724.041 hearing request by the statutory request deadline: **11/29/2018**.[135] Petitioner was denied the ALR hearing,[136] his driver's license **unjustly** suspended,[137] & Petitioner is subject to a $125.00 reinstatement fee;[138] all without authority,[139] nor any fair notice & hearing opportunity.[140] NOTE: Per **Appx. 168**, 1/14/2018 **Order** of Suspension was received on 01/19/**2019**. Appx. 168 errs stating that Notice was received on 1/19/2018.

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[131] *Id. at §724.002 & §724.011.*
[132] Appx. 122–126; 146–148.
[133] Appx. 166.
[134] *Id. at §724.033(b)* (mail correspondences deemed received 5-days after TxDPS' dispatch.).
[135] Appx. 179-180; 181-200; 202; 208; 216-218; **265.**
[136] Appx. 167; **259**; 262-266.
[137] Appx. 164-165; 124; 259; 265.
[138] *Tex. Transp. Code §724.046*; Appx. 124; 190; 202; 213; 259; 265; 283.
[139] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("'The fundamental requisite of due process of law is the opportunity to be heard'... This right to be heard has little reality or worth unless one is informed that the matter is pending & can choose for himself whether to appear or default, acquiesce or contest... [Notice] must apprise interested parties of the pendency of the action & afford them an opportunity to present their objections,... must be of such nature as reasonably to convey the required information,... [&] must afford a reasonable time for those interested to make their appearance..." (Citing *Milliken* v. *Meyer*, 311 U.S. 457 (1940); *Grannis* v. *Ordean*, 234 U.S. 385 (1914); *Priest* v. *Las Vegas*, 232 U.S. 604 (1914); & *Roller* v. *Holly*, 176 U.S. 398 (1900))).
[140] *Cf., Bell v. Burson*, 402 U.S. 535 (1971) (fair due process notice & hearing required before driver's license revocations).

The applicable versions of the DIC-24 statutory warning form at issue, are the versions in place post the 2011 & 2021 Texas congress amendments of §724.015(a).[141] Houston Police Department ("HPD") Officers used a copy of the pre-2021 amendment version against Petitioner on the night of 11/14/2018.[142] It lacks §724.015(a)(6).[143]

The 2021 Texas Congressional amendment of §724.015(a), simply added an additional subsection, §724.015(a)(8); with additional statutory disclosures to be provided citizens/subjects, orally & in writing, as required under §724.015(a).[144]

Petitioner, while drafting this *certiorari* writ, noticed online at TxDPS' website (**https://www.dps.texas.gov/Internetforms/Forms/DIC-24.pdf**) that TxDPS adjusted the DIC-24 warning in 9/2021, post the 2021 amendment of §724.015(a), & during the original litigation, to unreasonably & inconspicuously include the §(a)(8) 2021 Congress amendment's addition. ***Yet*** the current version still excludes §(a)(6)[145].

Hence, Texas' DIC-24 form & statutory warnings, have been void since 2011;[146] & is *prima facie* self-authenticating proof of deliberate indifference to due process implied consent right of **each** subject, per its continued excluded §(a)(6).

The contents of the DIC-24 form, is supposed to contain the statutory required fair notice disclosures enumerated in §724.015(a); required for implied consent authority of government to vest, for the sake of blood or breath draw of subjects.[147]

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[141] Appx. 145; 465.
[142] Appx. 171.
[143] *Id.*
[144] Appx. 68-69.
[145] Appx. 68; *See also,* **https://www.dps.texas.gov/Internetforms/Forms/DIC-24.pdf**; *See also,* Appx. 508-511.
[146] *Id*; *See also,* Appx. 69; 230-232.
[147] *See, Tex. Transp. Code §724.015(a)(1)-(a)(8); §724.003*; Appx. 123; 508.

The deficiency of the DIC-24 forms as to required enumerated disclosures, trigger both procedural due process fair notice issues, & substantive due process liberty, privacy, & bodily integrity violation issues, with remedies for the resulting harm(s) available to citizens under 42 U.S.C. §1983.[148]

Oral & written provision of the statutory warnings of §724.015(a)(1) – (a)(8), to subjected citizens, are also prerequisites before govt. can request a citizen to submit to a breath or blood draw, & before any citizen's "refusal" logically occurs.[149]

The term "refusal" is an important prerequisite on the civil aspect, as it vests any jurisdictional authority of government to (1) admit the refusal in subsequent prosecution;[150] (2) permanently or temporarily suspend, revoke, or deny the subject's license to operate a motor vehicle – including as allowed in Subchapter C;[151] (3) institute any Subchapter D Administrative Hearings,[152] or compel hearing requests by the 15-day deadline from the subject, which triggers the citizen-subject's motor vehicle license revocation, suspension, or denial;[153] or (4) require any motor vehicle license reinstatement fees, costs, or charges from or the citizen-subject.[154]

For criminal proceedings, "refusal" vests the jurisdictional authority of government to apply for or issue a search warrant authorizing a blood specimen to be

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[148] *See, U.S. Const. Amd. XIV, §1; See also, 42 U.S.C. §1983; Accord, Ex Parte Young*, 209 U.S. 123 (1908); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Armstrong v. Manzo*, 380 U.S. 545, 550-552 (1965) (holding that subsequent hearing is no remedy for deprivation of due process notice & hearing, but vacating the entered orders or judgments); Appx. 135.
[149] *§724.015(a)*; Appx. 128; 256; 262-263; 270.
[150] *§724.015(a)(1).*
[151] *§724.015(a)(2) & (a)(6); See also, Tex. Transp. Code Ch. 724, Subchapter C* ("SUSPENSION OR DENIAL OF LICENSE ON **REFUSAL** OF SPECIMEN"); *§724.031 et seq.*
[152] *Tex. Transp. Code Ch. 724, Subchapter D* ("HEARING"); *§724.041 et seq.*
[153] *§724.015(a)(7); §724.041 et seq.; §724.031 et seq.*
[154] *§724.046(a)-(c).*

taken from the citizen-subject.[155] But Ch. 724 & its provisions & proceedings, are strictly civil matters, & mutually exclusive from any related criminal proceedings.[156]

Hence, *inter alia*, without the DIC-24 statutory warning notice form contents in strict compliance[157] with §724.015(a), government agents (1) lack authority to apply for or issue a warrant to obtain blood specimen from subjects; (2) lack authority to draw blood specimens from subjects; (3) lack authority to temporarily or permanently suspend, revoke, or deny subjects of motor vehicle operation privileges; (4) lack authority to institute Administrative Hearings, or compel hearing request deadlines; & (5) lack authority cause subjects any resulting penalty, fees, or costs.

Without the DIC-24 form in strict compliance with §724.015(a), the state only has authority to obtain a search warrant to collect the subject's breath sample.[158] & therefore, all or a super-majority of blood samples collected since 2011, & collected pursuant to Tex, Transp. Code. Ch. 724, & Tex Code of Crim. Pro. Art. 18.01(j), have been illegally obtained evidence,[159] unreasonably searched & seized without

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[155] *Tex. Code of Crim. Pro. Art. 18.01(j).*

[156] *Tex. Transp. Code §724.048(a)-(c).*

[157] *Accord,* ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*****, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law."); ***Bostock v. Clayton County, Georgia*****, 140 S. Ct. 1731, 1737 (2020)** ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit.").

[158] *Id.; Accord, Tex. Code of Crim. Pro. Art. 18.01(j).*

[159] *Accord, Franks v. Delaware,* 438 U.S. 154, 166 – 171 (1978).

jurisdictional authority, from unconstitutionally invaded citizens or subjects.

Petitioner pled & raised these issues in the governing complaints,[160] & in the class action & partial summary judgment motions filed in the original & independent actions with causes 4:20-CV-04149[161] & 4:22-CV-00765[162] respectively.

Petitioner also duly raised the issues before Fed. 5th Circ.[163] Petitioner also raised these issues in his disregarded FRAP 24(a)(5) motion for appeal & extraordinary writ,[164] in his denied motion for reinstatement, & in his denied 8/17/22 reconsideration motion;[165] all in Fed. 5th Circ Case# 22-20269.

The trial courts & appellate courts have ruled contrary to governing laws,[166] & acted contrary to basic acceptable constitutional standards.[167] Such results in (a) invidious, insidious, & irrational discrimination against Petitioner, to the deprivation

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[160] Appx. 107-140; 141-255; 313-340; 341-359; 583-585.
[161] Appx. 441-467; 470-482.
[162] Appx. 256-276; 360-382; 419-440.
[163] Appx. 498; 503-530.
[164] Appx. 503 ("Doc. 00516417289 in Case: 22-20269, filed on 8/2/22, Fed. 5th Circ.").
[165] Appx. 503 ("Doc. 00516436680 in Case: 22-20269, filed on 8/17/22, Fed. 5th Circ.").
[166] *BankDirect Capital Finance, LLC v. Plasma Fab, LLC* 519 S.W.3d 76 (Tex. 2017); *Ex Parte Young*, 209 U.S. 123 (1908); & *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Tex. Transp. Code §724.015(a); 42 U.S.C. §1983; U.S. Const. Amd. I, IV, V, XIV, §1.*
[167] *See e.g., Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial & disinterested tribunal in both civil & criminal cases. This requirement of neutrality in adjudicative proceedings safeguards... the prevention of unjustified or mistaken deprivations & the promotion of participation & dialogue by affected individuals in the decision-making process.... by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this [U.S. Supreme] Court."); *See also, Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction & void, & attackable collaterally by *habeas corpus* if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, & its courts are included in this prohibition.").

of his petition[168] & due process rights, & to the deprivation of equal protection & due process rights of similarly subjects of §725.015(a); & (b) void harmful orders.[169]

Such is sufficient compelling reason for this court to intervene, swiftly grant Petitioner's writ, & grant the class action & §1983 injunction remedies sought on the void DIC-24 form & the resulting petition, equal protection & due process rights deprivations, & irreparable harm on Petitioner & subjected-citizens.[170]

TxDPS's state-wide used DIC-24 form, & the §724.046 $125 reinstatement fee still required of Petitioner, also (a) vests legal action standing for Petitioner,[171] & (b) assures that Petitioner's continuously pled elements for class action[172] are met for Petitioner's warranted class action injunction relief sought[173].

That Petitioner filed his independent action in state court[174] was immaterial because an independent action in equity is a federal cause of action in equity;[175]

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[168] *Hooks v. Wainwright*, 352 F.Supp. 163, 167 (M.D. Fla. 1972) ("...the constitutional protection of access to the courts is much broader, for it includes access to all courts, both state & federal, without regard to the type of petition or relief sought. *U.S. Const. Amends. I & XIV, § 1.*"); *Adams v. Carlson*, 488 F.2d. 619, 632 – 634 (7th Circ. 1973) ("'Access to the courts,' . . . is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him..."); *BEK Constr. V. NLRB*, 536 US 516, 525 (2002) (..."the right to petition extends to all departments of the Government," & that "[t]he right of access to the courts is ... but one aspect of the right of petition.").

[169] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *See also*, *Bradley v. Fisher*, 80 U.S. 335, 343 (1871) ("Admit that the court may proceed summarily, still summary jurisdiction is not arbitrary power; & a summons & opportunity of being heard is a fundamental principle of all justice... Without then having summoned [Petitioner], & having given to him an opportunity to be heard, the court had no jurisdiction of [Petitioner]'s person or of any case relating to *him*. It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, & if it have not, the judgment is void *ab initio*.")

[170] *Pulliam v. Allen*, 466 U.S. 522 (1984) (no absolute immunity from §1983 injunctions); *Accord*, *Ex Parte Young*, 209 U.S. 123 (1908); *See also*, Appx. 116–118; 124; 128–135; 149–152; 449-453; 512-530.

[171] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992).

[172] *See*, *Fed. R. Civ. Pro. Rules 23(a), 23(b), & 23(c).*

[173] Appx. 512-530.

[174] Appx. 107-414; 313; 341.

[175] *U.S. v. Beggerly*, 524 U.S. 38, 44-46 (1998) (discussing bill of review procedural remedy replaced by "independent action in equity," a federal "equity" original action.).

federal claims can be raised in state court;[176] & logically, any requirement of Petitioner to seek review before a biased court or forum that deceptively issued the challenged void judgment, would be unconstitutionally futile.

In the latter, Petitioner would be unreasonably forced to subject himself to the same court or forum that denied him of petition rights. Any such requirement to attack, or seek review of void judgment only from the issuing court or federal courts, fails equal protection principles, & is unconstitutional due process.[177]

A void judgment is null *ab initio*; has no effect from the outset;[178] & can be collaterally attacked in any proceeding where raised.[179] Petitioner was not restricted to collaterally attack the void judgments in federal court. State court was allowed.

Post removal, the use of the term "bill of review" or "bill of review/independent action in equity" in the pleadings or documents filed[180] became irrelevant & moot. In fed. court, pleadings are construed on pled facts & *Iqbal*'s plausibility contextual

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[176] *Driscoll v. Superior Court of Madera County*, 2014 WL 333411 (January 30, 2014, Cal. App. 5 Dist.) ("The Supreme Court has 'consistently held that state courts have inherent authority, & are thus presumptively competent, to adjudicate claims arising under the laws of the United State'... '[T]he presumption of concurrent jurisdiction can be rebutted [(1)] by an explicit statutory directive, [(2)] by unmistakable implication from legislative history, or [(3)] by a clear incompatibility between state-court jurisdiction & federal interests...' citing *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) & *Gulf Offshore Co. v. Mobil Oil Corp.* 453 U.S. 473, 478 (1981).").

[177] *See, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980), *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), *Accord, People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66, 69 – 70 (Ill. App. 2nd Dist., 1994).

[178] *Accord, Commonwealth LAND Title Ins. Co. v. Nelson*, 889 S.W.2d 312, 318 (Tex.App. – Houston [14th Dist.] 1994, writ denied) ("...when a document is void or void *ab initio* it is as if it did not exist because it has no effect from the outset...").

[179] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *See also, People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66, 69 – 70 (Ill. App. 2nd Dist., 1994) ("A void judgment, 'that is, one entered by a court which lacks jurisdiction over the parties, the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, **in any court**, either directly or collaterally, provided that the party is properly before the court.'") (Bold emphasis added).

[180] *See, e.g.*, Appx. 107-414; 313; 341.

standard.[181] Petitioner factually pled elements & standard for independent action,[182] similar to bill of review.[183]

Petitioner's proposed solution rectifies due process for all subjects.[184]

Issue 2(B): Whether Petitioner merited independent action, class action, & claims severance. (Omitted)

Independent Action-In-Equity

Pro se Petitioner factually pled unreasonable search & seizure, equal protection, substantive due process, & procedural due process rights violation §1983 claims; as in **Issues 2(A)(I)** above.[185] Petitioner also pled & raised the issues & claims in the 1st & 2nd actions' governing complaints[186][187] & their respective class action motions.[188][189] Petitioner always pled §1983 claims; with due class actions.

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[181] *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949–1953 (2009); *See also*, Appx. 399-401.

[182] *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Circ. 2011) ("...[f]ive elements of an independent action in equity: (1) a prior judgment which 'in equity & good conscience' should not be enforced; (2) a meritorious claim in the underlying case; (3) fraud, accident, or mistake which prevented the party from obtaining the benefit of their claim; (4) the absence of fault or negligence on the part of the party; & (5) the absence of an adequate remedy at law."); *U.S. v. Beggerly*, 524 U.S. 38, 47 (1998) (independent action in equity "available only to prevent a grave miscarriage of justice"); *Accord, Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244 – 245 (1944) (court of equity authority to set aside final judgments after term available "where enforcement of the judgment is "manifestly unconscionable,..." (Citing *Pickford v. Talbott*, 225 U.S. 651, 657 (1912))).

[183] *Ross v. Nat'l Center for the Employment of the Disabled*, 197 S.W.3d 795, 797 (Tex. 2006) ("'Traditionally, a bill of review requires proof of three elements: (1) a meritorious defense, (2) that was not asserted due to fraud, accident, or wrongful act of an opponent or official mistake, (3) unmixed with any fault or negligence by the movant.'" (Citing *Baker v. Goldsmith*, 582 S.W.2d 404, 406 – 407 (Tex. 1979))").

[184] Appx. 512–529; 516–522.

[185] *Supra*, Pg(s). 41-49. **NOTICE: Issue 2(A)(II) presented in SCOTUS writ of cert in Cause #22-6773 is omitted, for simplicity and clarity of issues in this action/complaint; & shall be presented in due course via a separate equity action on those separate and independent issues & claims. All rights reserved.**

[186] *See, e.g.*, Appx. 484-492; 339-340; 583-585; 1080-1173.

[187] Appx. 107-140; 313-359; 339-340.

[188] Appx. 441-467; 471-482.

[189] Appx. 256-276; 339-358; 360-381; 531-537.

In the independent action, *pro se* Petitioner sufficiently showed fraud or absence of fault that prevented Petitioner from benefiting from obtaining the benefit of the pled claims.[190] E.g., Petitioner also factually pled & submitted SJ evidence of deceptive due process wrongs that caused the failure of Petitioner to litigate his claims in the 1st action: E.g., magistrate's deceptive requirement of Petitioner to withdraw his §1915 application or incur a FRCP Rule 12(b)(6) dismissal, with knowledge of Petitioner's financial constraints to serve additional parties; the subsequent dismissal of the 1st action under 12(b)(6)) with notice of Petitioner's cost bearing inability; & then post-judgment disposition knowing HC's notice-service.[191]

The repetitively & evidently pled substantive & procedural due process rights violations of citizens per the void DIC-24 form, & denial of rebuttal opportunities in HC liberty deprivation PC proceedings, show that grave miscarriage of justice occurred & still occurs in HC & Texas; show that the original action's dismissal was manifestly unconscionable, & also effectuates such injustice in HC & Texas; & show that the prior dismissals are void of due process, which 'in equity & good conscience' should not be enforced. Petitioner pled no adequate remedy.[192]

Hence Petitioner warranted an independent action; & the denials, reversed.

Class Action

[190] Appx. 107-120; 315-317.
[191] *Id*; Appx. 117-120; 119; 353-365.
[192] Appx. 120; 122; 317; 320; 321; 362; 365; 366.

Petitioner pled detail facts to meet the FRCP Rule 23 class action factors or element, in both the governing complaints[193], & in class action-partial SJ motions.[194] Petitioner also attached class action SJ evidence to the governing pleadings & SJ motions[195]; or duly filed such before dismissal or removal[196].

Class action certification require a well pleaded complaint; must be certified "as soon as possible;" & is not based on the merits of the underlying action.[197]

Since the class action motions & sufficient supporting evidence were on file pre-dismissal in both cases, the class action requests should have been granted. The denial or preclusion of said motions, a due process violation, must be rectified.

Severance of Claims

Petitioner's complaint in both actions contained invasion of privacy, false arrest, false detention, excessive force, & due process constitutional violation §1983 claims for damages[198] against some parties (e.g., HC, HPD, HCDA, & various individuals). It also contained the §1983 claims for injunction against TxDPS & HC, with TxDPS being a different party on a mutually exclusive issue.

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[193] *See e.g.*, Appx. 1134-1173.
[194] *Supra.* fn(s). 17, 18, 65, 125, 183-184, 189.
[195] Appx. 141-171; 256-275; 313-351; 360-381; 419-421; 441-467; 470-482; 512-526.
[196] Appx. 419-425; 531-537.
[197] *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974); *See also, FRCP Rule 23.*
[198] *See e.g.*, Appx. 431-432 (with "12/30/2022 Notes"); *See also e.g., Adimora-Nweke v. Yarbrough*, "Petitioner's Brief," Case No. 21-0800, Filed on 9/20/2021, Texas Supreme Court; *See also*, Appx. 1284-1364 (Court noticed, pled, & served evidence of resulting damages (*See*, Appx. 698, 743, 759, 760, 801, 1073, 1074, 1075, 1120, 1121, 1127, 1130, 1133, 1144). These are evidence of tortiously interfered &/or harmed business & clients, per the always pled 1st, 4th, & 14th Amend. civil rights violations in, *inter alia*, HC Cause # 201917921.); *See also*, Appx. 435-436.

Petitioners' requested severance of claims[199] was clearly warranted; to preclude the confusion of issues, claims, & parties that eventually resulted per the Federal District Court's dismissal order in USDC # 4:22-CV-00765.[200] Also, *inter alia*, Petitioner's false arrest & detention §1983 damage claims cannot be resolved via §1983 injunction. Hence, denial or preclusion of severance motions need reversed.

Such allows for optimal case management of issues, claims, & parties; & further assures that due petition & due process rights of all litigants are sustained.

Section VIII.

UNDERLYING CLAIM'S 42 USC §1983 FACTS & ARGUMENT: *McGraw* & TxDPS claim

(As presented in the governing pleading of Causes 4:22-CV-00765 & 4:20-CV-04149)

The below is copied & pasted as pled in the governing pleading of Cause 4:22-CV-00765

- **Disclosure**: The documents cited to below are on file in U.S. District Court, Southern District of Texas, Houston Division, Cause No. 4:20-CV-04149 – *Ernest Adimora-Nweke v. Steven C. McGraw et al.* (accessible via www.Pacer.gov) The below is a copy of Dkt. 17's motion for summary judgment and motion to certify class against McGraw and TxDPS, filed in said cause No. 4:20-CV-04149, pre-dismissal. Only additions/adjustments are highlighted in yellow in this document/independent action complaint. The same's material contents were in the 4th Amendment to Original Complaint governing pleading (Dkt. 6), filed in federal court on 12/8/2020, in cause 4:20-CV-04149. The Dkt. 6 complaint was unconstitutionally dismissed on 12/21/2022, and post-judgment motion denied on 12/27/2022.

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On 11/14/2018, HPD officers Wang and Terran, wrongfully arrested Plaintiff on a suspicion of misdemeanor Driving While Intoxicated ("DWI") charge. The merits of the arrest or charge are irrelevant at this moment, only that per the situation on 11/14/2018, Plaintiff was subject to Texas Transportation Code 724.015(a).

At no time pre or post arrest, and prior to requesting Plaintiff to provide any blood or breath specimen, did any Houston Police Department (HPD) officer ever inform Plaintiff of the following: "if the officer determines that the person is a resident without a license to operate a

[199] Appx. 420-432; 512-515.
[200] Appx. 17; *FRCP R. 21.*

motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state."

HPD and its officers use Texas Department of Public Safety's ("TxDPS") promulgated DIC-24 Statutory Warning document and its contents, as their means of providing the required Texas Transportation Code Section 724.015's enumerated oral and written notice and warnings. (Exhibit 1.6)

Amongst others, Plaintiff was rather subjected to the current DIC-24 statutory warning document. (Doc. 2, pg. 176 of 352)

Director McGraw is the Director of Texas Department of Public Safety (Doc. 2, pgs. 341 – 348 of 352).

This DIC-24 statutory warning sheet is promulgated by Texas Department of Public Safety (TxDPS). It has been in place or use since September 2011. (Doc. 2, pg. 323)

The agency, acting under the authority of Director McGraw, drafts, enforces, and also makes the DIC-24 document available via their official TxDPS website with the weblink: https://www.dps.texas.gov/Internetforms/FormDetail.aspx?Id=236&FormNumber=DIC-24.pdf The actual document is available for download in TxDPS official website listed above, and via the following separate weblink: https://www.dps.texas.gov/Internetforms/getForm.ashx?id=DIC-24.pdf

After Plaintiff made bail, Plaintiff realized that the state actors – e.g. officer Wang – took Plaintiff's driver's license.

On 11/16/2019, Plaintiff immediately requested an Administrative License Revocation

("ALR") hearing to contest the license taking, as a precautionary measure (Doc. 2, pg. 174 of 352) by inputting information into the following TxDPS official website: https://www.dps.texas.gov/DriverLicense/customer_service/alr.aspx

In the ALR hearing request, Plaintiff made it clear that Plaintiff was never legally requested to give consent to the blood draw by entering the, "Not Requested to Submit" option. (Exhibit 1.6) Plaintiff sought to also make this clear at the ALR hearing.

Plaintiff was never legally notice of, nor granted an ALR hearing.

Plaintiff was sent a 01/14/2019 dated Order of Suspension in the mail, stating that Plaintiff's driving privilege was suspended from 12/24/2018 through 06/21/2019 because of refusal to provide a specimen of blood or breath following the arrest. (Doc. 2, pg. 175 of 352, pg. 345 of 352)

Upon calling the Texas Department of Public Safety office in Austin, after receiving the 12/24/2018 order, Plaintiff understood that the license was suspended because the arresting officer, officer Wang, claimed/reported that Plaintiff refused to consent to a specimen draw; and that such refusal precluded any ALR hearing. Plaintiff made it clear that the officer did not seek consent as required by statute, and Plaintiff still requested a hearing (Doc. 2, pgs. 349 – 351).

Plaintiff's driving privilege was still justly deprived, per the suspension, without the required notice or ALR hearing. Plaintiff is subject to the $125 ALR reinstatement fee. This $125.00 ALR reinstatement fee is paid upon Plaintiff's renewal of his driver's license post its current term. This reinstatement fee payment is mandated because of the challenged TxDPS suspension. (*See* Order of Suspension, Exhibit 1.5) Plaintiff is also subject to increase in driver's insurance costs, per mandate SR-22 insurance for all prior suspended or revoked driver's

licenses.[201]

Defendant responded to the suit in State Court, with Defendant's Exhibits A – E (Doc. 2 pgs. 345 – 352 of 352), and its defenses.

Plaintiff never received Defendant's Exhibit B (Doc. 2, pg. 347 of 352). It is worth noting that said Exhibits B was clearly not addressed to Plaintiff, as they do not bear Plaintiff's name, nor Plaintiffs' address shown by the records of TxDPS or address in officer Wang's report in Defendants' Exhibit E (Doc. 2, pg. 352 of 352) and Plaintiff's Exhibit 11 (Doc. 2, pg. 176 of 352).

Attached as Exhibit 1.1 is a screenshot of the following TxDPS website address contents: https://www.dps.texas.gov/Internetforms/FormDetail.aspx?Id=236&FormNumber=DIC-24.pdf

Attached as Exhibit 1.2 is a screenshot of the following TxDPS website address contents: https://www.dps.texas.gov/DriverLicense/customer_service/alr.aspx

Attached as Exhibit 1.3 is a copy of the DIC-24 form downloaded from the following website on 12/5/2020: https://www.dps.texas.gov/Internetforms/getForm.ashx?id=DIC-24.pdf

Exhibits 1.1 and 1.2 shows that the website bears/contains the official seal of Texas Department of Public Safety; as necessary per Federal Rules of Evidence authentication purpose. Plaintiff accessed the websites and took the screenshot of said websites on 12/05/2020 around 5:08pm.

Exhibit 1.2 contains the same website where Plaintiff entered information on 11/16/2018 to request the ALR hearing. There have been no changes, at least from Plaintiff's perspective or recollection, to the website in Exhibit 1.2 and its contents. Exhibit 1.2 is a good representation of the same website Plaintiff accessed on 11/16/2018, and entered the ALR hearing request information in Exhibit 1.4. After entry of the information, Plaintiff received the email system

[201] *See also*, Underlined Hyperlink to Texas Department of Motor Vehicles instructions on SR-22 form: **SR22 Insurance in Texas | DMV.com.**

confirmation response in Exhibit 1.4 and Exhibit 1.4's contents.

Plaintiff accessed the website and weblink containing Exhibit 1.3 on 12/05/2020 around 5:40pm, and obtained the attached Exhibit 1.3.

Plaintiff also hereby attaches and submits another legible copy of Doc. 2, pgs. 174 – 176 of 353, as Exhibits 1.4, 1.5, & 1.6.

28 U.S. Code § 1746. Unsworn declarations under penalty of perjury

"I, Ernest C. Adimora-Nweke, Jr., Plaintiff in the above styled case and person with Tx DL# 09215101, declare, under penalty of perjury that the foregoing is true and correct, and based on my personal knowledge and/or belief. I am a resident of Harris County, over 18yrs of age, and possess the necessary capacity to make the foregoing statement. Executed on 12/25/2020."

§1983 Declaratory & Injunctive Relief

Plaintiff hereby moves for a partial summary judgment under Fed. R. Civ. Pro. Rule 56, seeking a declaratory judgment as allowed under Fed. R. Civ. Pro. Rule 57, and for a §1983 allowed injunction against Steven C. McGraw as Director of TxDPS, against any of his and state agency's (i.e. TxDPS') recognition or enforcement of the current DIC-24 statutory warning sheet, or any proceedings, notices, or orders resulting from the current DIC-24 statutory warning document; on the grounds that the DIC-24 document is unconstitutional – i.e. in violation of Texas Transportation Code 724.015, thereby subjecting or causing Plaintiff and similarly situated individuals to be deprived of U.S. and Texas Constitutional equal protection and due process right to proper Section 724.015 statutory warning notice; and subjecting or causing Plaintiff and similarly situated individuals to be deprived of their U.S. Constitutional due process and due course of law rights. The §1983 injunction is allowed against state officials who purport to officially act on behalf of, or as agent of the State and/or State agencies. *See e.g.*, *Ex Parte Young*,

209 U.S. 123 (1908). Also, an act against a state official in his official capacity, is an act against the State. *Id.* at 203. Eleventh Amendment of U.S. Constitution does not apply since the State, acting though its official agent, consented to the suit by removing the case to federal court. *Lapides v. Board of Regents of University System of Georgia*, 535 U.S. 613 (2002). *See also, Meyers Benzing v. Texas*, 410 F.3d 236 (5th Circ. 2005).

Since Plaintiff is subject to a $125.00 reinstatement fee resulting from the use of the DIC-24 document, the continuous resulting subjection to or deprivation of Plaintiff's U.S. and Texas Constitutional equal protection, due process, and due course of law rights, and the revocations or suspension orders, and reinstatement fee requirement(s), constitute irreparable harm.

Such is because the DIC-24 document must be in compliance with Texas Transportation Code 724.015, a procedural statute with substantive due process rights protections. Otherwise, Plaintiff and individuals subjected to the statute, must forego their equally protected and due process right to notice in compliance with Section 724.015 in order to avoid (a) immediate deprivation of their right to consent or refuse consent to the invasion of their bodily integrity, or (b) having their driver's license or driving privilege immediately deprived or infringed upon per Section 724.032(2); all and before an ALR hearing. *See, e.g., Steffel v. Thompson*, 415 U.S. 452, 463 n.12 (1974) ("[A] showing of irreparable injury might be made in a case where . . . an individual demonstrates that he will be required to forgo constitutionally protected activity in order to avoid arrest.").

The DIC-24 statutory warning sheet is unconstitutional on its face and as applied.

This DIC-24 statutory warning sheet is promulgated by Texas Department of Public Safety (TxDPS). *Texas Transportation Code Sections 724.001(7) & 724.003. See also, Texas Transportation Code Sections 724.032(b) & 724.032(d) if applicable.*

As a mandatory statutory procedural statute, the DIC-24 document is required to be in strict compliance with Texas Transportation Code 724.015, and all its subsections required to be read to applicable persons before an officer requests any consent to collect a breath or blood sample. *Texas Transportation Code Sections 724.015* ("...the officer **shall** inform...) (bold emphasis added)

Thereafter, if the person refuses to provide a breath or blood sample, then the officer can execute required measures including taking the driver's license of the person, and instituting ALR proceedings. *Texas Transportation Code Sections 724.015(7); 724.032; 724.034*

Since the DIC-24 document is unconstitutional on its face, i.e. is not in strict compliance with mandated and enumerated requirement of Texas Transportation Code 724.015, neither Plaintiff nor any persons subjected to the DIC-24 document, is fairly noticed as required by Texas Transportation Code 724.015. *See e.g., Schultz v. Performance Lighting, Inc.*, 999 N.E.2d 331, 335-336 (2013) (discussing statutory construction with statutory words as "shall" interpreted as mandatory statutory requirement and requiring strict compliance.); *See also, Pierce v. Underwood*, 487 U.S. 552, 569 – 570 (1988) (discussing mandatory language implications in statutes where "shall" is enumerated); *Maine Community Health Options v. United States,* 140 S.Ct. 1308, 1320 (2020) ("The first sign that the statute imposed an obligation is its mandatory language: `shall'"); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach,* 523 U.S. 26, 35 (1998) (recognizing that "'shall' [n]ormally creates an obligation").

Also, since the DIC-24 document is clearly missing Texas Transportation Code Section 724.015(6), it is not in strict compliance with Texas Transportation Code 724.015, and is thereby null and void for being unconstitutional on its face for deprivation of Plaintiff's 14th Amendment equal protection and due process rights. *U.S. v. Stanley*, 109 U.S. 3, 11 (1883) (discussing nullity and void of state law that is contrary to 14th Amendment). *See also, Shelby County, Ala. v. Holder*,

133 S.Ct. 2612, 2648 (2103) (citing *United States v. Raines,* 362 U.S., at 23, 80 S.Ct. 519 (a statute capable of some constitutional applications may nonetheless be susceptible to a facial challenge only in "*that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application*")") (Italics added); *See also, Bostock v. Clayton County, Gerogia*, 140 S.Ct. 1731, 1737 (2020) ("...When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.")

Texas Legislature's intent is clear on the face of Section 724.015. It requires that all of the subsections 724.015(1) through 724.015(7) are informed Plaintiff orally and in writing. It clearly uses the word "and" as the last word in 724.015(6). Hence, Texas Legislature clearly would not have desired for any oral or written information not in strict compliance with 724.015, to stand. 724.015 shows their unambiguous intent. Hence the DIC-24 document is facially unconstitutional.

Therefore, the unconstitutional DIC-24 document subjects or caused Plaintiff to be subjected to the deprivation of his 14th Amendment equally protection and due process right to oral and written notice in strict compliance with Texas Transportation Code 724.015. Since Director McGraw of TxDPS is in charge of promulgating and enforcing the document, Plaintiff is entitled to an injunction against Director McGraw of TxDPS and TxDPS' use, enforcement, and recognition of the unconstitutional DIC-24 document.

Since the DIC-24 document is facially unconstitutional, it is also unconstitutional as applied to Plaintiff.

The ALR hearing and any orders resulting from the DIC-24 document are unconstitutional.

Plaintiff was also deprived of his due process right to fair notice and ALR hearing

opportunity. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

The ALR hearing document (Doc. 2, pg. 347 of 352) was not reasonably structured to assure that Plaintiff received it. Rather, it was drafted for "ASIMORA LAW FIRM" not Plaintiff, and drafted on a date that assures that it is not timely received by law. Hence, it was clearly unreasonably structured to assure that Plaintiff does **not** receive it. Such is contrary to U.S. Supreme Court rulings. *Armstrong v. Manzo*, 380 U.S. 545, 550 - 552 (1965); *Robinson v. Hanrahan*, 409 U.S. 38 (1974).

Plaintiff was never provided fair notice of the ALR hearing as required by Texas Transportation Code including its Section 724.033. The document in Doc. 2, pg. 347 of 352 was clearly not addressed to Plaintiff in compliance with Section 724.033. There is also no evidence that it was ever sent to Plaintiff in compliance with 724.033(a), nor timely received pursuant to 724.033(b). Aside of the lack of evidence of being sent, the document shows that it was drafted on 11/26/2018. Per Section 724.033(b), it is deemed received – if it was ever sent – as of 12/1/2018. The 15-day deadline after 11/14/2018 falls on 11/29/2018 or 11/30/2018 at the latest. Therefore, by statute, Plaintiff never received said document in Doc. 2, pg. 347 of 352.

Since the document in Doc. 2, pg. 347 of 352 contains a statement that "if the 15-day time period has already lapsed, then this letter is notification of your denial for a hearing, as your request is untimely…," and Plaintiff never received said by law, yet already made the request per Doc. 2, pg. 174 of 352. TxDPS clearly received the request submitted and evidenced in Doc. 2, pg. 174 of 352, per the acknowledgement in Doc. 2, pg. 347 of 352: "We have received your request for

an administrative hearing regarding the Notice of Suspension...."

Therefore, since TxDPS' response per Doc. 2, pg. 347 of 352, was drafted on a date that Plaintiff would be unable to receive it by law – i.e. 11/30/2018, Plaintiff was clearly also denied his due process right to fair notice and ALR hearing opportunity.

Therefore, any ALR proceeding or orders resulting from lack of an ALR proceeding, is null and void. *Bass v. Hoagland*, 172 F.2d. 205, 209 (5th Circ. 1949), cert denied, 338 U.S. 816 (1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally by habeas corpus if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition.")

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Plaintiff is also subjected to the deprivation of 14th Amendment equal protection and due process right against deprivation of his already acquired driving privileges without the required 14th Amendment U.S. Constitutional due process or the required Texas Constitution due course of law. *U.S. Const. Amd. XIV; Tex. Const. Art. 1, Sec. 13.* TxDPS' use of the unconstitutional DIC-24 document can or does result in the deprivation of or infringement upon one's driving privileges – e.g. via the officer taking possession of the person's driver's license per *Texas Transportation Code Section 724.032(2)* – if the officer finds, after reading the unconstitutional DIC-24 document, that the person refused to consent to the taking of a breath or blood specimen. See *Robinson v. State of Florida,* 378 U.S. 153, 156 (1964) ("[S]tate action, of a kind that falls within the prescription of the Equal Protection Clause of the Fourteenth Amendment, may be brought about through the state's administrative and regulatory agencies just as through the legislature."); *See*

also, Mahone v. Addicks Utility Dist. of Harris County, 836 F.2d. 921, 929 (1988) (explaining 14th Amendment due process claims with U.S. Supreme Court holding that "the fourteenth amendment's due process safeguards also extend to the 'interests that a person has already acquired in specific benefits.'")

The void DIC-24 document is an absolute nullity from the start as it lacks force or effect. It cannot form the basis for any legal right or proceeding. *Norton v. Shelby County*, 118 U.S. 425, 442 (1886) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.") Therefore, the use of the void DIC-24 document is equivalent to never asking as all as required by Texas Transportation Code 724.015, and even equivalent to the State, officer, or TxDPS' failure to provide the constitutionally required notice. If one was never asked a required or mandated question, there is no obligation to respond; nor can one legally ever found to have refused something that was never asked as mandated by law. Had the DIC-24 included the red lettered proposal as Plaintiff proposed (Doc. 2, pg. 311 of 352), it would have provided the statutory required notice and warning, and would be constitutional at the time.

Most importantly, since Section 724.015 affects individuals' fundamental due process right to privacy and notice, one is never put on the constitutional and statutorily required fair notice of the repercussions of their rights, actions, or inactions. *U.S. v. Davis*, 139 S. Ct. 2319, 2333 (2019) ("And much like the vagueness doctrine, it is founded on "the tenderness of the law for the rights of individuals" to fair notice of the law "and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department.") Defendant McGraw, TxDPS, or State of Texas will have to provide that the DIC-24 is narrowly tailored to achieve a compelling interest, via the least restrictive means; which it/they cannot do because Section 724.015 is a mandatory

enumerated requirement by Texas Legislature, on point for the contemplated situation. *See e.g, Washington v. Glucksberg*, 521 U.S. 1, 702, 720 - 721 (1973) (discussing heightened protection, "strict scrutiny," for deprivation of fundamental rights); *Schultz v. Performance Lighting, Inc.*, *Pierce v. Underwood*, and *Maine Community Health Options v. United States, Supra,* pgs. 57-59.

Note that as determined by Texas Supreme Court's rules of Texas statutory construction, it is not within the court's jurisdiction to determine or intrude into Texas Legislature's policy intentions in the unambiguous enumeration of Texas Transportation Code Section 724.015's complete requirements. *Smith v. Davis*, 426 S.W.2d 827, 831 (Tex. 1968) ("In passing upon the constitutionality of a statute, we begin with a presumption of validity. It is to be presumed that the Legislature has not acted unreasonably or arbitrarily; and a mere difference of opinion, where reasonable minds could differ, is not a sufficient basis for striking down legislation as arbitrary or unreasonable... The wisdom or expediency of the law is the Legislature's prerogative, not ours... 'There is a strong presumption that a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds.'")

As discussed already, the continuous resulting subjection to or deprivation of Plaintiff's U.S. and Texas Constitutional equal protection, due process, and due course of law rights, and the revocations or suspension orders, and reinstatement fee requirement(s), all constitute irreparable harm; because Plaintiff and individuals subjected to the statute must forego their equally protected and due process right to fair notice in compliance with Section 724.015, by accepting or enduring TxDPS' unconstitutional DIC-24 warning version(s), in order to avoid deprivation of their procedural & substantive due process and equal protection rights. *See e.g., Supra, pg. 36 – 41.* Hence, per *Steffel v. Thompson*, Plaintiff and citizens subject to the DIC-24 document continuously

incur irreparable harm. Such warrants an injunction against the use, recognition, and enforcement of the DIC-24 document.

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Any resulting revocations, ALR proceedings, or TxDPS orders, that result from the use of the DIC-24 document, is also therefore unconstitutional and unenforceable. *See e.g., American Power Co., v. S.E.C.*, 329 U.S. 90, 108 (1946), ("Wherever possible, statutes must be interpreted in accordance with constitutional principles... But should the Commission neglect to follow the necessary procedure in a particular case, such failure would at most justify an objection to the administrative determination rather than to the statute itself...") Plaintiff is not contesting or objecting to Texas Transportation Code Section 724. Rather, Plaintiff contents the commissioned agency's (i.e. TxDPS's) administrative determination based on its unconstitutional DIC-24 document and TxDPS ALR proceedings. Plaintiff also contests any TxDPS orders or reinstatement fee requirements resulting from TxDPS' unconstitutional DIC-24 document, unconstitutional ALR proceedings, and unconstitutional orders.

Since Plaintiff was denied of fair ALR notice and hearing opportunity, the resulting order of suspension and license revocation is therefore unconstitutionally void for being issued in violation of Plaintiff's 14th Amendment due process right. *Bass v. Hoagland*, 172 F.2d. at 209.

The resulting $125 reinstatement fee order or requirement resulting from the use of the unconstitutional DIC-24 document, and the unconstitutional order of suspension, is also a void requirement or order. *Id.*

Since the DIC-24 document subject or causes Plaintiff and similarly situated citizens to be subjected to an ALR proceeding, the ALR proceeding and any orders resulting from the DIC-24 document, including order to pay a reinstatement fee, must be deemed as void. But for the

unconstitutional DIC-24 document, Plaintiff and similarly situated citizens would not be subjected to an ALR proceeding. Such is clear because Texas Transportation Code Subchapter D and its Section 724.041 governs the ALR hearing. *Texas Transportation Code Subchapter D, §724.041.* Per Section 724.041(a), notice of suspension or denial under Section 724.032(a) triggers the ALR hearing. *Texas Transportation Code §724.041(a).* The notice of suspension or denial is triggered by a persons' refusal to submit to taking of specimen. *Texas Transportation Code §724.032(a) & §724.033.* And as already established, one cannot legally refuse what was never legally asked in compliance with the statute.

Therefore, any ALR proceeding, hearing, orders, or reinstatement fee requirement resulting from the use of the unconstitutional DIC-24 document, is rendered void. The ALR proceeding is not a constitutionally recognized mitigating factor against (a) the irreparable harm that results from the already existing deprivation of 14th Amendment U.S. Constitutional substantive and procedural due process rights, and (b) the burden placed on Plaintiff and similarly situated citizens to prove, at the ALR hearing, that there was no notice as required by Section 724.015, or there was no refusal as they were never legally asked in compliance with the statute. There is no way to wipe the slate clean before the ALR hearing because the unconstitutional DIC-24 already leads to the civil rights deprivation without the proper mandated notice. *See e.g., Armstrong v. Manzo*, 380 U.S. 545, 550-552 (1965) (holding that a subsequent hearing is no remedy for the deprivation of Constitutionally mandated notice and due process).

FRCP Rule 23 CLASS ACTION MOTION & CERTIFICATION REQUEST

Numerosity: Plaintiff's equal protection and due process rights were also deprived as a result of the unconstitutional Statutory Warning (i.e., the 9/2011 & 9/2021 DIC-24 document), & were subjected to &/or paid the $125 reinstatement fee. This statutory warning is applied state-wide

per Texas Department of Public Safety's state-wide jurisdiction. Per the attached truncated report from Texas Department of Public Safety ("TxDPS"), (Doc. 2, pgs. 307 – 310 of 352 in USDC 4:20-CV-04149), there were 88,163 DWI charges in 2016, 90376 DWI charges in 2017, and 97,660 DWI charges in 2018 in all Texas Counties. Hence there is a total of **at least** 276,199 different individuals that were subjected to 9/2011 Texas Transportation Code ("TTC") §724.015 informed consent requirement, and the 9/2011 DIC-24 statutory warning sheet. Such is sufficient enough basis to meet the class numerosity requirement for class certification.

Commonality: There is a common question of fact and law that applicable to Plaintiff, that also governs all proposed **Class Members** – i.e., whether the individual was subjected to the DIC-24 statutory warning in an alleged situation as enumerated in applicable §724.011, §724.012, §724.013, §724.014, and §724.015, on or after 9/1/2011; &/or paid the $125 fee per the contested void 9/2011 & 9/2021 DIC-24 documents.

Typicality: The common claim and defense of Plaintiff and the class is whether the DIC-24 document is unconstitutional for non-compliance with TTC §724.015 enumerated requirements. If not in compliance, then Plaintiff and Class Members were clearly subjected to and/or caused the deprivation of their U.S. and Texas Constitutional equal protection and due process rights of the Class Members were clearly deprived. Furthermore, the common question of fact and law applicable to Plaintiff and all Class Members is in regards to damages. All Class Members are subjected to and/or caused damages including the $125.00 reinstatement fee exposure or charge. This reinstatement fee is required to be paid to TxDPS for renewal or issuance of driver's license; and applies in applicable situations of TTC §724.015(a). Plaintiff and the Class Members are caused irreparable harm, & additional damages including mental anguish, loss of reputation, loss of income, loss of income opportunities, reputational injury.

If this Court finds that the DIC-24 documents are unconstitutional, then a common defense against the effectiveness of the DIC-24 documents are a §1983 injunction against their enforcement or applicability; with said defense common and applicable to all persons subjected to the 9/2011 & 9/2021 DIC-24 documents used throughout TxDPS jurisdiction (i.e., Texas).

Adequacy: Plaintiff is a viable class representative for (a) a declaratory judgment action under Texas Civil Practice and Remedies Code Chapter 37; (b) an injunction against the use, recognition, and enforcement of the 9/2011 & 9/2021 DIC-24 documents under §1983; and (c) a §1983 injunction against any $125.00 reinstatement fee payment requirement consequent to any use of the DIC-24 documents within Texas - as incurred or sustained by Plaintiff and Class Members.

Plaintiff is a counsel and can represent the interests of all Class Members himself. Plaintiff has done the necessary research, has the litigation background to adequately carry out this class action, and can vigorously prosecute the class claims as class representative and class counsel.

There is no conflict or antagonism between the interests of Plaintiff and Class Members. All interests are aligned as the class certification sought is in regards to an injunction on the enforceability, effectiveness, or unconstitutionality of the 9/2011 & 9/2021 DIC – 24 forms.

This project/class action is easily manageable because the main entities to work with on the injunction to preclude or resolve the resulting $125.00 reinstatement fee damages, are Steven McGraw and TxDPS. TxDPS has all information on all Class Members in their database, and Plaintiff-Counsel can request the information via discovery.

In regards to financing the class action, that is relatively complex yet simple for Plaintiff. It shall go according to the following **Proposed Plan**:

I. Once the DIC-24 is found unconstitutional, the class action certified, and Plaintiff appointed as Class Representative and Class Counsel, Plaintiff-Counsel intends to begin by requesting

the information from Steven McGraw and TxDPS, to ascertain all the actual Class Members, and calculate the aggregate $125.00 individual Class Member damages or damages exposure – which is partly clear per Doc. 2, pgs. 307 – 310 of 352, USDC # 4:20-CV-04149.

2. Plaintiff-Counsel shall work with Steven McGraw of TxDPS and his staff, to enter into a settlement agreement in regards to the proposed modifications to the DIC – 24 form to meet Texas Legislature requirements (e.g., Doc. 2, pg. 311 of 352, USDC # 4:20-CV-04149, plus any current statutory updates; including the 2021 amendment), and settlement terms of the injunction. The settlement terms are as proposed in Doc. 2, pgs. 312 – 317 of 352 of USDC # 4:20-CV-04149, with amendments to the settlement agreement to comply with the terms of the class action certification and compensation order, and shall include Plaintiff-ClassCounsel attorney's fees and costs paid in two tranches. **(This paragraph is now void)**
3. Within 5 business days of this Court's pre-approval of the settlement terms at a Preliminary Hearing, Steven McGraw and TxDPS shall then pay the first tranche of the settlement, applicable for the attorney's fees and costs for notice and administration of the settlement, to Plaintiff-ClassCounsel's designated account.
4. Upon receipt of the payment for the attorney's fees and costs for notice and administration of the settlement, Plaintiff-ClassCounsel shall then send out a class notice to all Class Members (See, Doc. 1-3, USDC WDTX Cause 1:23-cv-01048-DII-ML, Filed on 08/28/23, Page 4 of 5; *See also*, Doc. 2, pg. 318 of 352, Cause 4:20-CV-04149 (prior drafted version that is now void).
5. The Final Settlement Hearing shall occur 12 months from (a) this Court's class certification & judgment on behalf of the class, or (b) pre-approval of the settlement terms at a Preliminary Hearing; and shall be in regards to compliance with & objections to the settlement or judgment terms.

6. On or before 30 days before the Final Settlement Hearing, Steven McGraw shall release the remainder of the attorney's fees and costs due Plaintiff-ClassCounsel via a second tranche payment to Plaintiff-ClassCounsel at said Plaintiff-ClassCounsel's designated account.
7. Plaintiff shall then move to certify class for §1983 claims against other Defendants or putative Defendants – i.e., the various governmental entities throughout Texas – for the non-reinstatement fee damage claims incurred by putative Class Members. **(This paragraph is now void – per "NOTICE 2." *See Supra*, Pg. 4)**
8. Plaintiff shall present to this Court, a Proposed Plan for each class action sought to be certified for said non-reinstatement fee damages claims that are due the Class Members, against future class action Defendants. **(This paragraph is now void – per "NOTICE 2." *See Supra*, Pg. 4)**

Per the above, Plaintiff will adequately represent the interests of all Class Members in the injunction sought against enforcement of the DIC-24, and for any resulting §1983 equal protection and due process rights deprivation claim for damages. Plaintiff will also be able to finance this class action. Plaintiff is also a duly licensed attorney by the State Bar of Texas; & has always been and remains in good standing. *See e.g.*, Texas State Bar License No. 24082602 lawyer profile.

ADDITIONAL RELIEF REQUESTED

Wherefore, Plaintiff asks this Court to (a) order that neither Director McGraw or TxDPS are entitled to sovereign immunity; (b) order, adjudge, and decree that the prior & current TxDPS promulgated statutory warning sheet (e.g., the DIC-24 document in Exhibit 1 of 22-6773 rehearing motion, & Exhibits 1.3 & 1.6 of USDC # 4:20-CV-04149 amended complaint) as used by law enforcement throughout Texas, are unconstitutional and void; and (c) Steven C. McGraw as

Director of TxDPS, and TxDPS, are enjoined against (i) any recognition or enforcement of the TxDPS promulgated 9/2011 & 9/2021 DIC-24 statutory warning sheets, (ii) any recognition or enforcement of any proceedings, notices, or orders resulting from the TxDPS promulgated 9/2011 & 9/2021 DIC-24 statutory warning documents – including any recognition of the 01/14/2019 order of suspension of Plaintiff's driver's license in Exhibit 1.5, and (iii) any of Plaintiff's requirement to pay any resulting fee (e.g. the statutory $125.00 reinstatement fee, including as stated in Exhibit 1.5).

Plaintiff also asks the Court to (d) certify class as requested above; (e) grant Plaintiff and Class Members a §1983 injunction against (i) any recognition of the 01/14/2019 order of suspension of Plaintiff's driver's license and any similar findings/orders, and (ii) any resulting fee requirement/payment (e.g. $125.00 reinstatement fee); (f) order Plaintiff as Class Representative; and (g) order Plaintiff and Adimora Law Firm, PLLC as Class Counsel, with reasonable & necessary compensation for attorney's fees and costs fixed at: 25%[202] to 100%[203] of the greater of (i) 276,199 multiplied by $125.00, or (ii) $125.00 multiplied by the number of individual Class Members that were subjected to &/or paid the $125 fee - with the exclusion of Plaintiff. Plaintiff-Petitioner also asks for any relief sought, &/or allowed by law & equity.

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[202] Customary class action attorney fee percent.

[203] Standard class action disgorgement of profits equitable remedy allowed per the knowingly repeated void DIC-24 forms; void per TxDPS' clear & evident ***fraud-in-factum*** (i.e., the excluded Sec. 724.015(a)(6)), TxDPS' deliberate indifference to constitutional rights, health, & safety of citizens (i.e., the continued exclusion in the 2021 promulgated form after notice from Plaintiff in Cause 4:20-CV-04149), & TxDPS' **lack of due process & jurisdiction/authority**. *See, U.S. v. Throckmorton*, 98 U.S. 61, 64 (1878) ("There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments."); *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949).

Section IX.

Attachments - 44 pgs total

(Challenged Orders, Statutes, & IFP filings & rulings in prior related "mc" actions)
Arranged in the following/below order; & found in **Doc. 1, Pgs. 66 – 109, of Cause No. 1:23-cv-01048-DII-ML, Filed 08/28/23, USDC WDTX Austin**:

Void USDC # 4:20-CV-01651, Doc. 12 – Order Denying Reconsideration

1. Void TxDPS order of suspension
2. Void Pre-9/2021 TxDPS' DIC-24 statutory warning sheet used on Plaintiff, on 11/14/2018.
3. Void Pre-9/2021 statutory version of Tex. Transp. Code Sec. 724.015(a)
4. Void Blank Pre-9/2021 TxDPS' DIC-24 statutory warning sheet
5. Void Blank Post-9/2021 TxDPS' DIC-24 statutory warning sheet
6. Void Memorandum & Recommendation – Cause 4:20-CV-04149
7. Void Order Adopting Memorandum & Recommendation – Cause 4:20-CV-04149
8. 4:23-mc-00964 Docket
9. 4:23-mc-00964 IFP application.
10. 4:23-mc-00964 Order Denying IFP application.
11. 4:23-mc-00976 Docket
12. 4:23-mc-00976 IFP application with 28 USC 1404(a) & 1404(c) Motion to Transfer
13. Void Order Denying 4:23-mc-00976 IFP appl. with 28 USC 1404(a) & 1404(c) Motion to Transfer
14. 4:23-mc-01283 Docket
15. Void Order Denying 4:23-mc-01283 IFP appl. with 28 USC 1404(a) & 1404(c) Motion to Transfer.
16. Void Order Denying Reconsideration & Hearing request on 4:23-mc-01283 IFP appl. with 28 USC 1404(a) & 1404(c) Motion to Transfer.
17. Void Order Denying Change of Venue of 4:23-mc-01283.

See, Doc. 1, Pgs. 66 – 109, of Cause No. 1:23-cv-01048-DII-ML, Filed 08/28/23, USDC WDTX Austin.

***Doc. 1, Pgs. 66 – 109's contents are hereby incorporated by reference. ***

Section X.

Cited Appendix ("Appx." aka/or "*Writ*, Appx.") documents/evidence, cited in **Section(s) IV & VI** of this Amended Complaint, were all uploaded to a CD & submitted via U.S. Post mail to USDC WDTX Austin on 8/18/2023. The CD was mailed to USDC WDTX Austin's Clerk office on 8/18/2023, with a double-sided print version of the Complaint & documents filed in Docket 1 of Cause # **1:23-CV-1048-DII-ML**.

Cited Exhibits documents/evidence in this complaint, including prior actions' cited void & challenged judgments & orders from USDC # causes 4:20-CV-04149 & 4:22-CV-00765, were submitted as Appendix in SCOTUS Cause 22-6773; & hence are also found in the uploaded & submitted CD Appx. document/evidence, mailed on 8/18/2023.

Section XI.

Respectfully Submitted,

/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr; Texas State Bar Number: 24082602
c/o Adimora Law Firm; 3050 Post Oak Blvd., Suite 510; Houston, TX 77056
281-940-5170 (Office); ernest@adimoralaw.com
Pro Se Plaintiff-Petitioner, Class Representative, & Class Counsel

Section XII.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above petition has been filed with USDC W.D. TX Austin Division Clerk, as of the file-stamp date, and has or shall be served or delivered to all necessary parties in this case or to the various attorneys of such necessary parties, in due course, as allowed by the Court and pursuant to Federal Rules of Civil Procedure.

Respectfully Submitted,

/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr; Texas State Bar Number: 24082602
c/o Adimora Law Firm; 3050 Post Oak Blvd., Suite 510; Houston, TX 77056
281-940-5170 (Office); ernest@adimoralaw.com
Pro Se Plaintiff-Petitioner, Class Representative, & Class Counsel

Served On:
KEN PAXTON
Attorney General of Texas
SCOT M. GRAYDON, Assistant Attorney General, Texas Bar No. 24002175; Southern ID No. 719112; *PRIOR ATTORNEYS FOR DEFENDANT STEVEN A. MCGRAW*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff/Petitioner	§	**1:23-CV-1048-DII-ML**
v.	§	
Steven C. McGraw, et al		
Defendants		

PLAINTIFF'S AMENDED FRCP Rule 60(d)(1) MOTION FOR INDEPENDENT ACTION, FRCP Rule 23 MOTION TO CERTIFY CLASS, & FRCP Rules 56 & 54 PARTIAL SUMMARY & JUDGMENT MOTION & (Amended Proposed Order)

TO THE HONORABLE COURT & CLERK:

On this __ day of ___202__, came hearing and/or consideration on Plaintiff-Petitioner's motion for independent action, certify class, & partial summary judgment motion:

MOTION

INCORPORATION BY REFERENCE: The contents of **Plaintiff's Amended Original & Independent Action In Equity Complaint**, its applicable CD submitted Appendix & Exhibits contents, & all the contents of the below "**ORDER**"; are hereby incorporated. Contents of Doc. 1-3 of USDC WDTX Case # 1:23-cv-01048-DII-ML, filed 8/28/23, are also hereby incorporated.

ORDER

I.

RE: PARTIAL SJ on *BIVENS* ACTION AGAINST Hon. Judge L. Hudges of USDC SDTX

This Court hereby FINDS, **ORDERES, ADJUDGES, AND DECREES** the following on Plaintiff's *Bivens* injunction action relief sought against Hon. Judge Lynn Hughes in his official capacity, & also sought effective against USDC SDTX & its officials & staff:

After hearing and/or consideration, this Court hereby FINDS & CONCLUDES as follows:

This Court hereby finds that Hon Judge Lynn Hughes of USDC SDTX Houston, while acting in his official capacity, issued said challenged Doc. 12 order on 6/26/2020 in USDC Cause # 4:20-CV-01651; which bars Plaintiff, Ernest Adimora-Nweke, a duly Texas State Bar licensed

attorney and still in good standing, from filing cases within USDC SDTX.

This Court hereby finds that said Doc. 12 order from USDC Cause # 4:20-CV-01651 has also resulted in unreasonable & unfair denial of Plaintiff's right to litigate actions as a *pro se* litigant, within in cases filed within USDC SDTX.

This Court hereby finds that said Doc. 12 order from USDC Cause # 4:20-CV-01651 subjected, and continues to subject & cause Plaintiff, Ernest Adimora-Nweke, to be unreasonably, unfairly, & unconstitutionally[1] discriminated against in his legal practice & within USDC SD Tx; which also subjects & causes Plaintiff & his clients harm to (i) their vested contractual rights & obligations, & (ii) their contractual attorney-client relationship, upon past & future removal of cases from TX state court to USDC SDTX Courts.

This Court hereby finds that said Doc. 12 order from USDC Cause # 4:20-CV-01651 subjected, and continues to subject & cause Plaintiff, Ernest Adimora-Nweke, to be unreasonably (i) Fed. 5th Amendment equal protection & substantive due process right to contract with his clients, including vested contractual rights & obligation with clients;[2] (ii) Fed. 1st Amendment right to petition government for redress of grievance within USDC SD TX courts;[3] (iii) Fed. 5th

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[1] *Mahone v. Addicks Util Dist. of Harris County*, 836 F.2d 921, 932 (5th Circ. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *accord, Zeigler v. Jackson*, 638 F.2d 776, 779 (5th Cir. Unit B March 1981) ('[T]he unequal application of a state law, fair on its face, may act as a denial of equal protection.')"); *See also, Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ("But the concepts of equal protection & due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' &, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.")

[2] *See, e.g., Lochner v. New York*, 198 U.S. 45 (1905) (right to contract is a U.S. Const. substantive due process right.); *See also, U.S. Const. Amd. V* ("... nor be deprived of life, liberty, or property, without due process of law...")

[3] *Hooks v. Wainwright*, 352 F.Supp. 163, 167 (M.D. Fla. 1972) ("...the constitutional protection of access to the courts is much broader, for it includes access to all courts, both state & federal, without regard to the type of petition or relief sought. U.S. Const. Amends. I & XIV, § 1."); *Adams v. Carlson*, 488 F.2d. 619, 632 — 634 (7th Circ. 1973) ("Access to the courts,'... is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him..."); *BEK Constr. V. NLRB*, 536 US 516, 525 (2002) (..."the right to petition extends to all departments of the Government," & that "[t]he right of access to the courts is ... but one aspect of the right of petition.")

Amendment equal protection & due process right to fair hearing before an impartial judge/magistrate;[4] & (iv) Fed. 5th & 6th Amendment equal protection right to impartial tribunal.[5]

This Court hereby finds that said Doc. 12 order from USDC Cause # 4:20-CV-01651 subjected and continues to subject & cause said Plaintiff's clients to be deprived of their (i) Fed. 5th Amendment equal protection & substantive due process right to contract with Plaintiff for legal services, & right to their vested contractual benefits or obligations; (ii) U.S. Const. 1st Amendment right to petition government for redress of grievance within USDC SD TX courts – including upon removal of any case, with Plaintiff as counsel, to Federal Court; (iii) Fed. 5th Amendment equal protection & due process right to counsel of choice[6] – including upon removal of any action, with Plaintiff as counsel, to USDC SD TX courts; (iv) Fed. 5th Amendment equal protection & due process right to fair hearing before an impartial judge/magistrate; & (v) Fed. 5th & 6th Amendment equal protection right to impartial tribunal.

This Court hereby finds the constitutional rights violations to be a known & direct result of the challenged order in Doc. 12 of Cause 4:20-CV-01651, issued by Judge Lynn Hughes in his official capacity. This Court hereby finds that said challenged order in Doc. 12 of Cause 3:20-CV-01651, continues to subject & cause Plaintiff & his current & future legal profession clients unreasonable & irreparable harm to their U.S Constitutional 1st, 5th, & 6th Amendment rights.

This Court hereby finds that Plaintiff has no other adequate or reasonable remedy at law.

WHEREFORE, the following is hereby **ORDERED, ADJUDGED, AND DECREED:**

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[4] *See e.g., Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial & disinterested tribunal in both civil & criminal cases. This requirement of neutrality in adjudicative proceedings safeguards... the prevention of unjustified or mistaken deprivations & the promotion of participation & dialogue by affected individuals in the decision-making process.... by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this [U.S. Supreme] Court."); *See also, Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009)

[5] *Id.*

[6] *See e.g., United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 - 148 (2006) (finding due process right to counsel of choice guaranteed under the U.S. Constitution, & said right separate from 6th Amendment right to counsel)

The challenged order &/or judgment entered against Ernest Adimora-Nweke, by Hon. Judge Lynn Hughes of U.S. District Court, Southern District of Texas Houston Division, in Doc. 12 of Cause 4:20-CV-01651, are hereby vacated per overbreadth, equal protection, & due process doctrines.[7]

Hon. Judge Lynn Hughes of USDC SDTX Houston Division, USDC SDTX, & USDC SDTX officials & staff, are hereby enjoined from recognizing said challenged Doc. 12 of USDC Cause No. 4:20-CV-01651, filed on 6/26/2020, & filed in USDC SDTX Houston Division.

II.

RE: INDEPENDENT ACTION IN EQUITY, CLASS ACTION, & SUMMARY JUDGMENT AGAINST STEVEN C. MCGRAW *ET AL*

On Plaintiff's independent action in equity, motion to certify class, and motion for summary judgment, against Defendants Texas Department of Public Safety ("TxDPS") and its Director Stephen C. McGraw – sued in his official capacity, in the cause number above.

A.

RE: Independent action in equity Action

This Court hereby **FINDS, ORDERES, ADJUDGES, AND DECREES** the following on Plaintiff's independent action in equity &/or FRCP Rule 60(b) relief request against TxDPS & Director McGraw:

[7] *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void... because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition In *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357 [(1938)], the court was declared to have lost its jurisdiction in a trial for crime when it denied the constitutional right to the assistance of counsel."); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'); *See also, Marshall v. Jerrico*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases..."); *Mahone v. Addicks Utility Dist., Of Harris Cnty,* 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality... citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)"); *See also*, 28 U.S.C. Sec. 455(a).

(A) Per the Amended Complaint in this **1:23-CV-1048-DII-ML action**, and its supporting attachments, citations, applicable cited Appendix & Exhibits from U.S. Supreme Court Cause No. 22-6773, this Court hereby FINDS & CONCLUDES that Plaintiff pled & meet (i) the elements of *Turner v. Pleasant*,[8] & (ii) the standards of *Hazel Atlas v. Hartford Co.*[9] & *U.S. v. Beggerly*[10], for the independent action in equity sought against

a. the dismissal with prejudice & other orders from USDC Cause Nos. 4:20-CV-04149 & 4:22-CV-00765,

b. Doc. 2 of USDC Cause No. 4:23-mc-00964,

c. Doc. 2 of USDC Cause No. 4:23-mc-00976, &

d. Docs. 2, 4, & 6 of USDC Cause No. 4:23-mc-01283

(B) This Court hereby finds that Plaintiff has no adequate relief or remedy from said challenged orders.

WHEREFORE, the following is hereby **ORDERED, ADJUDGED, AND DECREED:**

1. The challenged orders and judgments entered by the U.S. District Court, Southern District of Texas, Houston Division, in cause 4:20-CV-04149, (Docket No(s) 33, 48, 49, 50, 54, 55, 60, 61, & 65) are hereby vacated;[11]
2. The challenged orders & judgments entered by the U.S. District Court, Southern District of Texas Houston Division, in cause 4:22-CV-00765 (Docket No(s) 16, 18, 21, 22, & 30) are hereby vacated;[12]

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[8] *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Circ. 2011) (elements of independent action in equity)

[9] *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244 - 245 (1944) (court of equity authority to set aside final judgments after term available "where enforcement of the judgment is "manifestly unconscionable..." (Citing *Pickford v. Talbott*, 225 U.S. 651, 657 (1912)))

[10] *U.S. v. Beggerly*, 524 U.S. 38, 47 (1998) ((independent action in equity "available only to prevent a grave miscarriage of justice")

[11] *Id.*

[12] *Id.*

3. The challenged orders & judgments entered by the U.S. District Court, Southern District of Texas Houston Division, in cause 4:23-mc-00964 (Docket No. 2) is hereby vacated;[13]
4. The challenged orders & judgments entered by the U.S. District Court, Southern District of Texas Houston Division, in cause 4:23-mc-00976 (Docket No. 2) is hereby vacated;[14]
5. The challenged orders & judgments entered by the U.S. District Court, Southern District of Texas Houston Division, in cause 4:23-mc-01283 (Docket No. 2, 4, & 6) are hereby vacated;[15]
6. Plaintiff is hereby relieved from the proceeding with causes 4:23-mc-00964, 4:23-mc-00976, & 4:23-mc-01283, filed on 6/14/2023, 8/3/2023 respectively, in USDC SDTX Houston Division;[16] &
7. Plaintiff is hereby granted a new trial on the issues/merits of pled claims & relief(s) sought as allowed by law and equity. *See e.g.*, *Bass v. Hoagland, 172* F.2d 205, 209 (5th Cir. 1949)

B.

RE: Class Action & Summary Judgment against TxDPS

On Plaintiff, Ernest Adimora-Nweke's motion for partial summary judgment and injunction under 42 U.S.C. Section 1983, and motion for class certification against Defendants, Steven C. McGraw, as Director of Texas Department of Public Safety ("TxDPS"), and/or TxDPS;

After hearing and/or consideration, this Court hereby FINDS & CONCLUDES as follows:

Texas Department of Public Safety (TxDPS) is a state agency of the State of Texas, authorized by Texas Transportation Code §724.003 to promulgate the DIC-24 Statutory Warning document to be in strict compliance with §724.015, and to be used by law enforcement officers throughout the State of Texas in situations enumerated by Texas Transportation Code §724.011,

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.; See also*, FRCP Rule 60(d)(1) & FRCP 60(d)(3)

§724.012, §724.013, §724.014(c), and §724.015(a).

Director McGraw is the Director of Texas Department of Public Safety.

The originally challenged DIC-24 statutory warning sheet is promulgated by Texas Department of Public Safety (TxDPS). The agency, acting under the authority of Director McGraw, drafts, enforces, and also makes the DIC-24 document available via their official TxDPS website with the weblink: https://www.dps.texas.gov/Internetforms/FormDetail.aspx?Id=236&FormNumber=DIC-24.pdf The actual document is available for download in TxDPS official website listed above, and via the following separate weblink: https://www.dps.texas.gov/Internetforms/getForm.ashx?id=DIC-24.pdf

HPD and its officers use the DIC-24 Statutory Warning document and its contents as their means of providing the §724.015(a)'s enumerated oral and written notice.

On 11/14/2018, Plaintiff was supposedly arrested for a driving while intoxicated ("DWI") misdemeanor charge. The merits of the arrest or charge are irrelevant for this order.

Plaintiff was subjected to the existing DIC-24 statutory warning document on 11/14/2018.

At no time pre or post arrest, and prior to requesting Plaintiff to provide any blood or breath specimen, did any Houston Police Department (HPD) officer ever inform Plaintiff of the following: "if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state."

After Plaintiff made bail, Plaintiff realized that the state actors – e.g. officer Wang – took Plaintiff's driver's license.

On 11/16/2019, Plaintiff immediately requested an Administrative License Revocation ("ALR") hearing to contest the license taking, as a precautionary measure by inputting information into the following TxDPS official website: https://www.dps.texas.gov/DriverLicense/customer_service/alr.aspx

In the ALR hearing request, Plaintiff made it clear that Plaintiff was never legally requested to give consent to the blood draw by entering the, "Not Requested to Submit" option.

Plaintiff was never legally notice of, nor granted an ALR hearing. Plaintiff was sent a 01/14/2019 dated Order of Suspension in the mail, stating that Plaintiff's driving privilege was suspended from 12/24/2018 through 06/21/2019 because of refusal to provide a specimen of blood or breath following the arrest.

Plaintiff's driving privilege was, & is still unjustly deprived, per the suspension, & deprived without the required U.S. Constitutional 14th Amendment due process fair notice & ALR hearing. Plaintiff is still subject to an $125 ALR reinstatement fee upon renewal of his driver's license; which expires on 11/5/2024.

Plaintiff never duly received notice of an ALR hearing, nor did he duly receive any legally required timely notice to schedule an ALR hearing.

The DIC-24 Statutory Warning notice document promulgated by Texas Department of Public Safety, & required by Texas Transportation Code §724.015(a), must meet strict compliance, not substantial compliance, in order to comply with U.S. & Texas Constitutions' unreasonable search & seizure, equal protection, & due process requirements.[17] The DIC-24 Statutory Warning

[17] *See, U.S. Const. Amd. XIV, Sec. 1; Texas Const. Art. 1 Sec. 3, 3a, 9, & 13*; *Accord*, ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares

document to which Plaintiff was subjected on 11/14/2018, was missing §724.015(a)(6) as mandated by statute. Hence it lacks fair due process notice to all its subjects; & denies the equal protection of the laws.[18]

Texas Congress amended the §724.015(a) in 2021, to include §724.015(a)(6). TxDPS amended the DIC-24 Statutory Warning document in Sept. 2021.[19] Yet TxDPS's 9/2021 amended version is still missing the statutory notice requirement of §724.015(a)(6); which is statutorily applicable to all persons subjected to Texas Transportation Code §724.015(a).

Plaintiff duly filed this original suit in Harris County Judicial District Court 234 on or about 09/15/2020; & an independent action in equity on 2/14/2022. Director McGraw removed the case to Federal Court on or about 12/04/2020 & 3/10/2020 respectively. Hence there are no statute of limitations issues on the matter.

For these reasons, this Court hereby FINDS, ORDERS, ADJUDGES, & DECREES that the 9/2011 & 9/2021 versions of the DIC-24 form is void, for failure to comply with the statutory requirements of Texas Transportation Code §724.015(a); and are hereby ORDERED vacated.

For these reasons, this Court also hereby FINDS, ORDERS, ADJUDGES, & DECREES that TxDPS's 01/14/2019 dated Order of Suspension entered against Plaintiff-Petitioner, is void for lack of required due process fair notice & ALR hearing opportunity; and is hereby vacated.

Plaintiff's Class Action Motion is hereby GRANTED, & **"Class Member(s)"** are hereby **ORDERED** certified and shall be defined as follows:

---

to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law.")

[18] *Mahone v. Addicks Utility Dist., Of Harris Cnty,* 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality... citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)"); *See also, Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.');

[19] Tex. DPS Peace Officer Statutory Warning Form, DPS Internet Form No. DIC-24, Avail via Tx DPS forms website: https://www.dps.texas.gov/internetforms/Home/Details/236 & @ https://www.dps.texas.gov/internetforms/getForm.ashx?id=DIC-24.pdf; retrieved on 5/1/2023.

All persons within Texas and Texas Department of Public Safety ("TxDPS") Jurisdiction, who are subjected to the challenged TxDPS' DIC-24 statutory warning document, and in situations as enumerated in Texas Transportation Code §724.011, §724.012, §724.013, §724.014(c), and §724.015 and its §724.015(a), on or after 09/01/2011.

Class Member(s) shall include the following:

(A) All individuals subjected to the 9/2011 & 9/2022 TxDPS' promulgated DIC-24 document or its equivalent, since 09/01/2011. *Accord, Texas Transportation Code Sec. 724.003*

This Court also hereby **FINDS, ADJUDGES, ORDERS, and DECREES** the following:

Neither Director McGraw nor TxDPS are entitled to sovereign or qualified immunity.

The DIC-24 Statutory Warning documents are void for being unconstitutional on its face.

The DIC-24 Statutory Warning documents are void for being unconstitutional as applied.

The DIC-24 Statutory Warning document subjected or caused Plaintiff, and similarly situated individuals, to be deprived of U.S. and Texas Constitutional equal protection and due process or due course of law rights, including rights to proper §724.015 statutory warning notice.

Steven C. McGraw as Director of TxDPS, and TxDPS, are hereby enjoined against any of his official and TxDPS' recognition or enforcement of the 9/2011 & 9/2021 DIC-24 Statutory Warning documents.

Steven C. McGraw as Director of TxDPS, and TxDPS, are hereby enjoined against any of his official and TxDPS' recognition or enforcement of any proceedings, notices, or orders, including any order of suspension or order to pay any reinstatement fee (e.g., $125.00 reinstatement fee in Plaintiff's case), that result from the use of the 9/2011 & 9/2021 DIC-24 Statutory Warning documents.

The TxDPS Order of Suspension dated 01/14/2019, is hereby declared void per *Bass v.*

Hoagland, because it was obtained in violation of Plaintiff and Class Member(s)' equal protection and due process rights. Plaintiff also sought an irrelevant ALR hearing, and was also wrongfully denied one.

The 9/2011 statutory warning sheet (i.e. the DIC-24 document) promulgated and enforced by TxDPS, and used by HPD and Officer Wang and Terran on Plaintiff on 11/14/2018, is void and unconstitutional – as it is not in compliance with Texas Legislature's enumerated requirements in Texas Transportation Code Section 724.015(a). It is deficient as to Texas Transportation Code Section 724.015(a)(6).

Steven C. McGraw as Director of TxDPS, & TxDPS, are hereby enjoined against any recognition or enforcement of the terms of the 01/14/2019 Order of Suspension including any restrictions on Plaintiff's driver's license, and any requirement to pay any reinstatement fee (e.g., the $125.00 reinstatement fee).

Steven C. McGraw as Director of TxDPS, & TxDPS, are hereby ordered against any recognition or enforcement of the current DIC-24 statutory warning sheet or any proceedings, notices, or orders resulting from the 9/2011 & 9/2021 DIC-24 Statutory Warning documents, as they are not in compliance with Texas Legislature's enumerated requirements in Texas Transportation Code Section 724.015.

***

Ernest Adimora-Nweke, a duly licensed attorney by the State Bar of Texas, and in good standing, is hereby **ADJUDGED, DECREED, & ORDERED** as **Class Representative** and **Class Counsel** for the class action claim against Texas Department of Public Safety.

Ernest Adimora-Nweke of Adimora Law Firm, PLLC shall be compensated as reasonable and necessary compensation for services, with present security interest in the following calculated amount: $125.00 multiplied by the number of each individual **Class Member**, with the exclusion

of Plaintiff. Such shall be reasonable and necessary compensation for Ernest Adimora-Nweke and Adimora Law Firm, PLLC's services as **Class Representative & Class Counsel ("Plaintiff-Counsel")**.

Plaintiff-Counsel, Ernest Adimora-Nweke and Adimora Law Firm, PLLC's **"Proposed Plan"** for the class action suit against Steven C. McGraw & TxDPS, is as below:

Proposed Plan for TxDPS & McGraw Class Action:

1. Plaintiff-Counsel shall finalize a draft DIC-24 form in compliance with Texas Transportation Code 724.015(a), and provide such to Steven McGraw & TxDPS counsel; within 7 days of this judgment-order.
2. Steven McGraw and TxDPS shall provide Plaintiff-Counsel, Ernest Adimora-Nweke and Adimora Law Firm, PLLC, with all applicable DIC-24 & DIC-25 form for all Class Members, along with all the names and addresses of all Class Members; within 30 days of this order.
3. Within 35 business days of this order, TxDPS shall pay the 50% (1st tranche) of the **Class Representative** and **Class Counsel** compensation into Plaintiff-Counsel's designated bank account, for fees and costs for notice and administration of class action.
4. Plaintiff-Counsel shall provide TxDPS and Steven McGraw's counsel with their designated payment account details, within 7 business days of this judgment-order.
5. Upon receipt of the 1st tranche payment for the attorney's fees & costs for notice & administration of class action, Plaintiff-Counsel shall then send out class notice to all Class Members.
6. The Final Settlement Hearing shall occur on _____ (date), and shall be in regards to **Class Member(s)** objections on the McGraw & TxDPS class action and/or its settlement terms.
7. On or before 30 days before the Final Settlement Hearing, Steven McGraw shall release the remainder (2nd tranche) 50% of the attorney's fees and costs due Plaintiff-Counsel into said

Plaintiff-Counsel's designated bank account.

The following is also hereby ORDERED, ADJUDGED, & DECREED:

Per the above, Ernest Adimora-Nweke adequately represents the interests of all Class Members in this class action injunction sought against TxDPS via its Director Steven C. McGraw, & against enforcement of the 9/2011 & 9/2021 DIC-24 Statutory Warning Sheets.

Plaintiff is a duly licensed attorney by the State Bar of Texas, has always been & remains in good standing.

The above **Proposed Plan** is reasonable, and is hereby deemed applicable for the §1983 class action injunction suit against Director Steven C. McGraw & TxDPS. The **Proposed Plan**, is hereby binding on the class action suit against Director Steven C. McGraw & TxDPS.

TxDPS is hereby enjoined against any recognition or enforcement of the terms of TxDPS orders, findings, or judgments, including (a) any driver's license Order of Suspension, (b) any driver's license revocations; (c) any driver's license restrictions; (d) any payment requirement from any **Class Member(s)** to pay any reinstatement fee (e.g., the $125.00 reinstatement fee applicable to Plaintiff); or (e) any other fee or costs or increase in costs (e.g., increase in insurance costs per SR-22 form requirements); that result from the use or enforcement of TxDPS' void & invalid 9/2011 & 9/2021 DIC-24 Statutory Warnings, & Statutory Warning Forms.

Any other unresolved claims entitled Plaintiff-Petitioner &/or Class Members, by law or equity, & against any Defendant(s) other than Steven C. McGraw, TxDPS, or TxDPS staff & officials, are hereby reserved for Plaintiff or Class Members to be pursued via a separate action/suit.

It is so ORDERED. _____ **Judge Presiding.**
This is a final judgment.

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr
Texas State Bar Number: 24082602
Adimora Law Firm
3050 Post Oak Blvd., Suite 510
Houston, TX 77056
281-940-5170 (Office)
ernest@adimoralaw.com
Pro Se Plaintiff
Proposed Class Representative & Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above, on or before the date of filing/file stamp, has been delivered to the attorneys listed below pursuant to applicable Federal Rules of Civil Procedure (e.g. electronic filing, fax, ECF system, and/or email).

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr
Texas State Bar Number: 24082602

ATTORNEYS FOR DEF. MCGRAW & TxDPS
Served On:

KEN PAXTON
Attorney General of Texas
SHAWN COWLES
Deputy Attorney General for Civil Litigation

BRENT WEBSTER
First Assistant Attorney General
THOMAS A. ALBRIGHT
Chief - General Litigation Division

SCOT M. GRAYDON
Texas Bar No. 24002175; Southern ID No. 719112;
Assistant Attorney General
PRIOR ATTORNEYS FOR DEFENDANT STEVEN A. MCGRAW

USPS MEDIA/LIBRARY MAIL - $4.35 (6.59 lbs)

SCREENED BY CSO
SEP 13 2023

U.S. Dist Clerk's Office
501 West Fifth Street, Suite 1100
Austin, TX 78701

Ernest
c/o Adamera Law Firm
3050 Post Oak Blvd, Suite 510
Houston, TX 77056

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
ENTERED
June 26, 2020
David J. Bradley, Clerk

Aphaeus Ohakweh, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
versus	§	Civil Action H-20-1651
	§	
Harris Health System, *et al.*,	§	
	§	
Defendants.	§	

Order Denying Reconsideration

This court's denial of Ernest Chukwunenye Adimora-Nweke's application to appear *pro hac vice* subsists.

Because he has abused his credentials, the full court has denied Adimora-Nweke's admission to the Southern District several times. He has been sanctioned for his recalcitrance. He may not practice in this district and must stop filing cases in it.

In an unprincipled motion, he alternatively seeks to join himself as a party in this case and proceed as a *pro se* plaintiff. He may not.

His motions for reconsideration and joinder are denied. (9) (10)

Signed on June 26, 2020, at Houston, Texas.

Lynn N. Hughes
United States District Judge

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

www.dps.texas.gov
DRIVER LICENSE DIVISION
512-424-2600
EN ESPAÑOL 512-424-7181

STEVEN C. McCRAW
DIRECTOR
SKYLOR HEARN
FREEMAN F. MARTIN
RANDALL B. PRINCE
DEPUTY DIRECTORS

COMMISSION
STEVEN P. MACH, CHAIRMAN
MANNY FLORES
A. CYNTHIA LEON
JASON K. PULLIAM
RANDY WATSON

01/14/2019

ERNEST C [redacted] LANE
HOUSTON, TX [redacted] 0000

DL No: [redacted] ID No: UNL No:

ORDER OF SUSPENSION

Your Texas Driver License, permit and/or driving privilege to operate a motor vehicle has been suspended from 12/24/2018 through 06/21/2019, because you refused to provide a specimen of blood or breath following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated, while under the influence of alcohol or while under the influence of a controlled substance.

You will be required to pay a $125.00 reinstatement fee to the Texas Department of Public Safety, Central Cash Division, PO Box 15999, Austin, TX 78761-5999. In order for the Department to correctly identify your file, please complete the form on the reverse side and return with the reinstatement fee. Failure to pay the reinstatement fee will result in the denial of renewal or issuance of a Texas driver license.

This suspension has resulted in the disqualification of all commercial driving privileges. An occupational or essential need driver license may not be issued for the operation of a commercial motor vehicle. You must surrender any valid Texas Driver License in your possession. The license will be returned to you upon expiration of the suspension period.

Driving any motor vehicle upon the highways of this state while a license or privilege is invalid may result in criminal penalties and additional suspension action.

Manager,
Enforcement and Compliance Service
Driver License Division

STATUTORY AUTHORITY: Texas Transportation Code Section 724.035; 724.046; 522.089

EXHIBIT
A

DRIVER IMPROVEMENT & COMPLIANCE BUREAU - REINSTATEMENT OF LICENSE (ALR)

Driver License No._____ DOB_____

Name: _____

Address:_____

You are required to pay a $125 fee to reinstate your driver license. In order for the Department to correctly identify your file, please complete this form and return it along with your reinstatement fee, to the Department at the following address. Texas Department of Public Safety, Driver Improvement and Compliance Bureau, PO Box 15999, Austin, Texas 78761-5999. Payment must be made in the form of a personal check, cashier's check or money order made payable to the Texas Department of Public Safety. Please include your driver license number on the payment.

FOR DPS USE ONLY: Number:_____ Amount:_____

STATUTORY WARNING

06/24 (Rev. 9/1)

ERNEST C [redacted] 0[redacted]1 1[redacted]5
Full Name of Subject (print or type) State Drivers License/I.D. No. or None Date of Birth

Date of Arrest: 11/4/18 Time of Arrest: 2300 County of Arrest: HARRIS

(If unlicensed: Race: B Sex: M Height: 600 Weight: 170 Eyes: BROWN Hair: BLACK

You are under arrest for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated or an offense under Section 106.041, Alcoholic Beverage Code. You will be asked to give a specimen of your breath and/or blood. The specimen will be analyzed to determine the alcohol concentration or the presence of a controlled substance, drug, dangerous drug, or other substance in your body.

If you refuse to give the specimen, that refusal may be admissible in a subsequent prosecution. Your license, permit, or privilege to operate a motor vehicle will be suspended or denied for not less than 180 days. Whether or not you are subsequently prosecuted for this offense.

If you refuse to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from you.

If you are 21 years of age or older and submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of 0.08 or more, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 90 days whether or not you are subsequently prosecuted for this offense.

If you are younger than 21 years of age and have any detectable amount of alcohol in your system, your license, permit or privilege to operate a motor vehicle will be suspended for not less than sixty (60) days. However, if you submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of less than 0.08, you may be subject to criminal penalties less severe than those provided for under Chapter 49, Penal Code.

If you were operating a motor vehicle and you refuse to give the specimen, or if the specimen shows that you have an alcohol concentration of 0.04 or more, you may be disqualified from driving a commercial motor vehicle for a period of not less than one year.

You may request a hearing on the suspension or denial. This request must be received by the Texas Department of Public Safety at its headquarters in Austin, Texas, no later than 15 days after you receive or are presumed to have received notice of suspension or denial. The request can be made by written demand, fax, or other form prescribed by the Department.

I certify that I have informed you both orally and in writing of the consequences of refusing to submit to the taking of a specimen or providing a specimen; I have provided you with a complete and true copy of this statutory warning.

I am now requesting a specimen of your [X] Breath [X] Blood.

☒ Subject refused to allow the taking of a specimen and further refused to sign below as requested by this officer.
OR
☐ Subject refused to allow the taking of a specimen as evidenced by his/her signature below:

(Subject's Signature)

☐ I further certify that because you are a child as defined in Section 51.02, Family Code, the above request for a specimen and your response has been videotaped.

Officer's Signature

Z. WANG 3111
Printed Name Badge or ID No.

HOUSTON PD
Agency

7277 REGENCY SQUARE HOUSTON TX 77036
Address

832-394-1700
Phone No

FOR DIC USE ONLY

DPS Copy

Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN. Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1) if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;

(2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;

(3) if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;

(4) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;

(5) if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;

(6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a

license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; and

(7) the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1013, Sec. 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 444, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 674 (S.B. 1787), Sec. 1, eff. September 1, 2011.

Exhibit 1

STATUTORY WARNING

PRE 2021 PLAINTIFF PROPOSED
(Proposed Rev. DIC-24)

SUBJECT'S NAME _____ DL NO./STATE _____ DOB _____

PHYSICAL DESCRIPTION (if unlicensed) Race:_____ Sex:_____ Height:_____ Weight _____ Eyes _____ Hair _____

DATE OF ARREST:_____ TIME OF ARREST:_____ COUNTY OF ARREST _____

You are under arrest for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated, or an offense under Section 106.041, Alcoholic Beverage Code. You will be asked to give a specimen of your breath and/or blood. The specimen will be analyzed to determine the alcohol concentration or the presence of a controlled substance, drug, dangerous drug or other substance in your body.

If you refuse to give the specimen, that refusal may be admissible in a subsequent prosecution. Your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 180 days, whether or not you are subsequently prosecuted for this offense.

If you refuse to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from you.

If you are 21 years of age or older and submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of 0.08 or more, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 90 days, whether or not you are subsequently prosecuted for this offense.

If you are younger than 21 years of age and have any detectable amount of alcohol in your system, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 60 days. However, if you submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of less than 0.08, you may be subject to criminal penalties less severe than those provided for under Chapter 49, Penal Code.

If you were operating a motor vehicle and you refuse to give the specimen or provide a specimen that shows you have an alcohol concentration of 0.08 or more, you may be disqualified from driving a commercial motor vehicle for a period of not less than one year.

If the officer determines that you are a Texas resident without a license to operate a motor vehicle in Texas, Texas Department of Public Safety will deny you the issuance of a license, whether or not you are subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation your driver's license if you had held a driver's license issued by the State of Texas

You may request a hearing on the suspension or denial. This request must be received by the Texas Department of Public Safety at its headquarters in Austin, Texas, no later than 15 days after you receive or are presumed to have received notice of suspension or denial. The request can be made by written demand, fax, or other form prescribed by the Department.

I certify that I have informed you both orally and in writing of the consequences of refusing to submit to the taking of a specimen or providing a specimen. I have provided you with a complete and true copy of this statutory warning.

I am now requesting a specimen of your ☐ Breath ☐ Blood

☐ Subject refused to allow the taking of a specimen and further refused to sign below as requested by this officer.

OR

☐ Subject refused to allow the taking of a specimen as evidenced by his/her signature below.

_____
Subject's Signature

☐ I further certify that because you are a child as defined in Section 51.02, Family Code, the above request for a specimen and your response have been videotaped.

_____
Officer's Signature

_____
Officer's Printed Name

_____
Agency

_____
Telephone No.

FOR DEPARTMENT USE ONLY

DPS Copy—White 308 Driver's Copy—Yellow

Unofficial Copy Office of Court Records Travis County, Texas

STATUTORY WARNING

DIC-24 (Rev 9/2021)

SUBJECT'S NAME _____ DL NO. / STATE _____ DOB _____

PHYSICAL DESCRIPTION (if unlicensed) Race:_____ Sex:_____ Height:_____ Weight:_____ Eyes:_____ Hair:_____

DATE OF ARREST:_____ TIME OF ARREST:_____ COUNTY OF ARREST:_____

You are under arrest for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated, or an offense under Section 106.041, Alcoholic Beverage Code. You will be asked to give a specimen of your breath and/or blood. The specimen will be analyzed to determine the alcohol concentration or the presence of a controlled substance, drug, dangerous drug, or other substance in your body.

If you refuse to give the specimen, that refusal may be admissible in a subsequent prosecution. Your license, permit, or privilege to operate a motor vehicle will be suspended or denied for not less than 180 days, whether or not you are subsequently prosecuted for this offense. If you refuse to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from you.

If you are 21 years of age or older and submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of 0.08 or more, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 90 days whether or not you are subsequently prosecuted for this offense. If you are younger than 21 years of age and have any detectable amount of alcohol in your system, your license, permit, or privilege to operate a motor vehicle will be suspended or denied for not less than 60 days. However, if you submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of less than 0.08, you may be subject to criminal penalties less severe than those provided for under Chapter 49, Penal Code. If you submit to the taking of a blood specimen, the specimen will be retained and preserved in accordance with Article 38.50, Code of Criminal Procedure.

If you were operating a motor vehicle and you refuse to give the specimen or provide a specimen that shows you have an alcohol concentration of 0.08 or more, you may be disqualified from driving a commercial motor vehicle for a period of not less than one year. You may request a hearing on the suspension or denial. This request must be received by the Texas Department of Public Safety at its headquarters in Austin, Texas, no later than 15 days after you receive or are presumed to have received notice of suspension or denial. The request can be made by written demand, fax, or other form prescribed by the Department.

I certify that I have informed you both orally and in writing of the consequences of refusing to submit to the taking of a specimen or providing a specimen. I certify that I have requested your signature below acknowledging the voluntary consent to the taking of a specimen. I certify I have provided you with a complete and true copy of this statutory warning.

I am now requesting a specimen of your: ☐ **Breath** ☐ **Blood**

Consent

☐ The subject consented to allow the taking of a specimen and further refused to sign below as requested by this officer.

☐ I am voluntarily consenting to the taking of a specimen. I have been asked to submit to a specimen and have been informed of the consequences of not submitting as evidenced by my signature.

Subject's Signature: _____

Refusal

☐ The subject refused to allow the taking of a specimen and further refused to sign below as requested by this officer.

☐ I am refusing to allow the taking of a specimen as evidenced by my signature below.

Subject's Signature: _____

☐ I further certify that because you are a child as defined in Section 51.02, Family Code, the above request for a specimen and your response has been videotaped.

Officer's Signature _____ Agency _____

Officer's Printed Name _____ Telephone No. _____

Case 4:22-cv-04149 Document 15 Filed on 09/09/21 in TXSD Page 1 of 7
United States District Court
Southern District of Texas
ENTERED
September 09, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff, V. HANNAH O. YARBROUGH-SMITH, ET AL., Defendants.	§ § § § § § § § §	CIVIL ACTION NO. 4:20-CV-4149

MEMORANDUM AND RECOMMENDATION

Pending before the Court[1] is Defendant Director McGraw's Motion to Dismiss (Dkt. No. 15). The Court has considered the motion, all other relevant filings, and the applicable law. For the reasons set forth below, the Court **RECOMMENDS** that Defendant Director McGraw's Motion to Dismiss (Dkt. No. 15) be **GRANTED** and the case against him be **DISMISSED WITH PREJUDICE**. The Court **FURTHER RECOMMENDS** that all other pending motions (Dkt. Nos. 5, 7, 17, 22) be **DENIED AS MOOT**.

I. BACKGROUND

Plaintiff Ernest Adimora-Nweke filed this lawsuit in the 234th Judicial District Court of Harris County, Texas on September 16, 2020.[2] Defendant Steven A. McGraw, Director of the Texas Department of Public Safety ("Director McGraw") removed the case on December 4, 2020.[3]

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[1] This case was referred to the Undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure ("Rule") 72. (*See* Dkt. No. 12.)

[2] Dkt. No. 1 at 1.

[3] *Id.*

Plaintiff filed a 125-page fourth amended complaint on December 8, 2020, bringing claims under the U.S. Constitution and state law torts among others.[4]

On November 14, 2018, Plaintiff was arrested on suspicion of driving while intoxicated.[5] Plaintiff did not voluntarily provide a breath or blood sample.[6] Texas Transportation Code 724.015 describes information police officers shall provide before requesting specimen in these situations and states "if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended . . . ." *See* Tex. Transp. Code 724.015(2). Plaintiff received notice via a DIC-24 form that his license would be suspended.[7] A DIC-24 form is a piece of paper that contains the above statutory warning. *See* Tex. Transp. Code 724.015.

Plaintiff had a license at the time of his arrest and alleges that an officer kept it after he posted bail.[8] The DIC-24 form can serve as a temporary driving permit if a license is confiscated.[9] Within 15 days of arrest or notice of suspension, an individual may request an Administrative License Revocation ("ALR") hearing. *See* Tex. Transp. Code 724.041(a). On November 16, 2018, Plaintiff requested an ALR hearing regarding his license suspension.[10] On November 26, 2018, Plaintiff was notified that his request was insufficient under Texas Administrative Code, Title 37, Chapter 17, Rule 17.8 (4) and (5).[11] Plaintiff did not attempt to correct the defect until January 26, 2019, well after the 15-day statutory time period passed.[12] Consequently, Plaintiff's license was

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[4] *See* Dkt. No. 6.
[5] *Id.* at 86.
[6] *Id.* at 87.
[7] Dkt. No. 2 at 352.
[8] Dkt. No. 6 at 89.
[9] Dkt. No 2 at 352.
[10] Dkt. No. 6 at 87–88.
[11] Dkt. No. 2 at 347.
[12] *Id.* at 348–51.

suspended from December 14, 2018 until June 21, 2019.[13] Plaintiff's license is no longer suspended and he is permitted to drive, but he is required to pay a $125.00 reinstatement fee before a new driver's license will be issued.[14]

Plaintiff alleges that the DIC-24 form is unconstitutional on its face as applied because it is not in strict compliance with Texas Transportation Code 724.015.[15] Specifically, Plaintiff argues that the DIC-24 form is "missing Texas Transportation Code Section 724.015(6)."[16] Director McGraw filed the pending Motion to Dismiss on December 22, 2020.[17] The Court stayed the case on March 8, 2021 until the Court could rule on Director McGraw's Motion to Dismiss.[18]

II. LEGAL STANDARD

Rule 12(b)(6) provides for dismissal of an action for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss, a court should construe the allegations in the complaint favorably to the pleader and accept as true all well-pleaded facts. *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010). To survive dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, a court is not bound to accept legal conclusions couched as factual allegations. *Papasan*

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[13] *Id.* at 345.
[14] *Id.*
[15] Dkt. No. 6 at 99.
[16] *Id.* at 100.
[17] Dkt. No. 15.
[18] Dkt. No. 33.

v. *Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of a plaintiff, a plaintiff must plead "specific facts, not mere conclusory allegations." *Tuchman v. DSC Comme'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994).

A complaint may also be dismissed if the Court lacks subject matter jurisdiction over an action. Fed. R. Civ. P. 12(b)(1). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)).

III. ANALYSIS

Director McGraw argues Plaintiff lacks standing to bring claims against him and any complaint regarding the DIC-24 form is moot.[19] Further, Director McGraw argues Plaintiff's claims against him should be dismissed for failing to state a claim upon which relief can be granted.[20] The Court notes at the outset that Plaintiff is a licensed and practicing attorney who is representing himself in this case. Consequently, "this Court holds [him] to a higher standard than it does a typical *pro se* plaintiff." *Davis v. GECESP Assocs. LLC*, No. 2:14-CV-01065, 2015 WL 410030, at *2 (E.D. Tex. Jan. 23, 2015); *see Wright v. McCain*, 703 F. App'x 281, 284 (5th Cir 2017) (quoting *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002)) ("Since counsel is held to a higher standard than a *pro se* litigant, 'it would be rather peculiar to treat a trained attorney's error more leniently than' that of a pro se litigant."). The Court will address each of Director McGraw's arguments in turn.

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[19] Dkt. No. 15 at 9.
[20] *Id.*

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a. Standing

Director McGraw argues Plaintiff lacks standing to bring claims against him because Plaintiff has not been injured.[21] Plaintiff contends that he "still has standing per injury in fact that is fairly to Director McGraw's continuously authorized unconstitutional DIC-24 document . . ."[22] The Court agrees with Director McGraw.

"Constitutional standing is a question of subject matter jurisdiction." *AmGuard Ins. Co. v. Lone Star Legal Aid*, No. CV H-18-2139, 2019 WL 4034276, at *2 (S.D. Tex. Aug. 27, 2019) (citing *Norris v. Causey*, 869 F.3d 360, 366 (5th Cir. 2017)). "To establish Article III standing, a plaintiff must show (1) an injury in fact; (2) a sufficient causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision." *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015).

Plaintiff argues he was harmed by the DIC-24 form that is "missing Texas Transportation Code Section 724.015(6)."[23] However, Texas Transportation Code Section 724.015(6) only applies to individuals who do not have a driver's license.[24] Texas Transportation Code Section 724.015(6) did not apply to Plaintiff because he had a driver's license at the time of his arrest.[25] Thus, Plaintiff cannot be injured by a lack of notice regarding Texas Transportation Code Section 724.015(6).

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[21] *Id.*

[22] Dkt. No. 16 at 2.

[23] *Id.* at 100.

[24] Texas Transportation Code Section 724.015(6) states "if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state."

[25] Dkt. No. 6 at 89.

Plaintiff does not refute that this specific section did not apply to him. Without an injury, Plaintiff fails to establish standing.

Further, Director McGraw argues that the Court cannot redress Plaintiff's criticism of the DIC-24 form "because the reason for Plaintiff's license suspension had nothing to do with a portion of the statute that does not apply to Plaintiff."[26] The Court agrees with Director McGraw that Plaintiff's request for a declaration or injunction would be futile as neither would change the inapplicability of the language in the DIC-24 form to Plaintiff.[27] Plaintiff's license suspension has ended and the reinstatement fee only applies to obtaining a new license. There is no current injury to Plaintiff's ability to drive that could be redressed by the equitable relief Plaintiff seeks Accordingly, the Court recommends that Plaintiff's claims be dismissed pursuant to Rule 12(b)(1) *Wright v. Brady*, No. H-06-CV-2021, 2006 WL 2371327, at *1 (S.D. Tex Aug. 15, 2006) ("If a plaintiff lacks standing to assert a claim, a federal court lacks subject-matter jurisdiction over that claim.").

b. Mootness

Director McGraw also argues that Plaintiff's claims are moot because his license is no longer suspended and he is permitted to drive.[28] Plaintiff argues his case is not moot because he is still subject to the $125.00 reinstatement fee along with the "detrimental effects" on his insurance and driving record.[29]

"A claim is moot when a case or controversy no longer exists between the parties." *Kovac*

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[26] Dkt. No. 15 at 10.
[27] Dkt. No. 20 at 4.
[28] Dkt. No. 15 at 11–12.
[29] Dkt. No. 16 at 2.

v. *Wray*, 449 F. Supp. 3d 649, 653 (N.D. Tex. 2020) (quoting *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338, 345 (5th Cir. 2017)). Here, Plaintiff's license was suspended from December 14, 2018 until June 21, 2019.[30] Plaintiff's license is no longer suspended, but he is required to pay a $125.00 reinstatement fee before a new driver's license will be issued.[31] [T]he period of suspension is not extended by failure to pay the fee." *Allen v. State*, 48 S.W.3d 775, 778 (Tex. Crim. App. 2001). As discussed above, the reinstatement fee only applies to obtaining a new license and did not extend Plaintiff's license suspension nor his ability to lawfully drive. As such, there is no live case or controversy related to the DIC-24 form and Plaintiff. Accordingly, the Court recommends that Plaintiff's claims be dismissed as moot.

c. Failure to State a Claim

Lastly, Director McGraw argues that Plaintiff has not stated a claim for which relief may be granted.[32]

i. Rule 8(a)

First, Director McGraw contends that Plaintiff fails to satisfy Rule 8.[33] Rule 8 states that a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "For a complaint to meet the pleading requirements of Rule 8(a)(2) and to survive a Rule 12(b)(6) motion to dismiss, the following conditions must be met: (1) every element of each cause of action must be supported by specific factual allegations, and (2) the complaint must state a plausible claim for relief." *Kan v. OneWest Bank, FSB*, 823 F.

[30] Dkt. No. 2 at 345.
[31] *Id.*
[32] Dkt. No. 15 at 12.
[33] *Id.*

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Supp. 2d 464, 468 (W.D. Tex. 2011).

Plaintiff's fourth amended complaint is 125 pages long.[34] *It discusses everything from a bad business arrangement Plaintiff entered into with a person whom he believes is a criminal to his other arrests related to this business partner to a conspiracy involving kidnapping and contracted hit-men.*[35] 25 pages are spent on Plaintiff's bad business arrangement and 54 pages discuss his other arrests.[36] Plaintiff sues not only Director McGraw, but 25 other defendants and numerous members of law enforcement.[37]

In no way does Plaintiff's complaint comply with Rule 8(a)(2). Plaintiff, a licensed attorney, has had multiple opportunities to correct the deficiencies in his fourth amended complaint and has failed to do so. Accordingly, the Court recommends that Plaintiff's complaint be dismissed for failure to comply with Rule 8.

n. Immunity From Liability

Second, Director McGraw contends Plaintiff fails to state a claim against him for which relief can be granted because he retains immunity from liability to Plaintiff's claims.[38]

"[W]hen a State removes to federal court a private state court suit based on a federal-law claim, it invokes federal jurisdiction and thus waives its unqualified right to object peremptorily to the federal district court's jurisdiction on the ground of state sovereign immunity. However, that waiver does not affect or limit the State's ability to assert whatever rights, immunities or defenses are provided for by its own sovereign immunity law to defeat the claims against the State finally

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[34] Dkt. No. 6.
[35] *See id.*
[36] *Id.* at 6–86.
[37] *Id.* at 1–5.
[38] Dkt. No. 15 at 13.

and on their merits in the federal courts." *Meyers ex rel. Benzing v. Texas*, 454 F.3d 503, 504 (5th Cir. 2006); *see also Skinner v. Gragg*, No. 14-CV-1412, 2015 WL 12966224, at *11 (S.D. Tex Aug. 13, 2015), *aff'd*, 650 F. App'x 214 (5th Cir. 2016) ("[A]fter removal, a state may not defeat jurisdiction based on sovereign immunity, but may still assert state sovereign immunity as defined by state law as a defense.").

To the extent Plaintiff argues his case falls under an *Ex parte Young* exception, Plaintiff's argument fails because, as Director McGraw notes, there is no ongoing constitutional violation. *See Anderson v. Valdez*, 913 F.3d 472, 479 (5th Cir. 2019). Any relief sought regarding Plaintiff's past suspension would need to be retroactive and any relief sought regarding the reinstatement fee does not implicate a constitutional right. *See Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003) ("To obtain equitable relief for past wrongs, a plaintiff must demonstrate either continuing harm or a real and immediate threat of repeated injury in the future."). Accordingly, Director McGraw is immune from liability and retrospective equitable relief to address Plaintiff's alleged past injuries.

iii. Due Process

Third, Director McGraw argues that Plaintiff's right to due process has not been violated because he received sufficient notice.[39] Moreover, given that driving an automobile is not a constitutionally protected right, any lack of notice language intended to address individuals without driver's licenses, or a required reinstatement fee is not a violation of due process.[40]

Plaintiff admits that he had a driver's license.[41] Plaintiff clearly had notice as he requested

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[39] *Id.* at 15--17

[40] *Id.*

[41] Dkt. No. 6 at 89.

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an ALR hearing regarding the suspension of his license two days after he had been arrested.[42] Further, as noted by Director McGraw, the right to obtain a driver's license is a privilege, not a protected right. *See Gillaspie v. Dep't. of Pub. Safety*, 152 Tex. 459, 259 S.W.2d 177, 182 (1953) ("[A] license or permit to drive an automobile on the public highways and streets is a privilege and not property or a property right."); *see also Blakely v. Andrade*, 360 F. Supp. 3d 453, 470 (N.D. Tex. 2019) (same). Thus, any lack of notice language intended to address individuals without driver's licenses or a required reinstatement fee prior to obtaining a license is not a violation of due process.

As discussed above, any argument as to notice is moot as Plaintiff's license is no longer suspended and he is permitted to drive, and Plaintiff's reinstatement fee is not depriving him of a constitutionally protected right. Thus, Plaintiff's due process argument fails.[43]

iv. Equal Protection

Fourth, Director McGraw argues that Plaintiff fails to allege facts that suggest an equal protection claim is being brought against Director McGraw.[44]

"To state a claim under the Equal Protection Clause, a § 1983 plaintiff must either allege that (a) a state actor intentionally discriminated against [him] because of membership in a protected class or (b) he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Gibson v. Texas Dep't of Ins.--Div. of*

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[42] *Id.* at 87–88.

[43] Director McGraw also notes that allegations as to the missing language on the DIC-24 would be an alleged violation of state law, not the U.S. constitution. (Dkt. No. 15 at 17.) "It is well established that violations of state law are not actionable under § 1983." *Whitt v. Stephens Cty.*, 236 F. App'x 900, 902 (5th Cir. 2007).

[44] Dkt. No. 15 at 17.

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Workers' Comp., 700 F.3d 227, 238 (5th Cir. 2012) (internal quotations and citations omitted).

In his fourth amended complaint, Plaintiff simply states he is "a foreign-born person (alienage) and hence within a protected class."[45] The Court agrees with Director McGraw that Plaintiff fails to allege facts to indicate Director McGraw or DPS discriminated against Plaintiff on that basis and that Plaintiff does not allege the DIC-24 form applied to him in a discriminatory manner.[46] Plaintiff does not address Director McGraw's argument in his response. Accordingly, Plaintiff's equal protection argument fails.

IV. CONCLUSION

Based on the foregoing, the Court **RECOMMENDS** that Defendant Director McGraw's Motion to Dismiss (Dkt. No. 15) be **GRANTED** and the case against him be **DISMISSED WITH PREJUDICE**. The Court **FURTHER RECOMMENDS** that all other pending motions (Dkt. Nos. 5, 7, 17, 22) be **DENIED AS MOOT**.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk electronically. Copies of such objections shall be mailed to opposing parties and to the chambers

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[45] Dkt. No. 6 at 77.

[46] *See* Dkt. No. 15 at 17.

of the Undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

SIGNED in Houston, Texas on September 9, 2021.

Sam S. Sheldon
United States Magistrate Judge

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United States District Court
Southern District of Texas
ENTERED
December 02, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE, Plaintiff,	§	CIVIL ACTION NO. 4:20-cv-04149
vs.	§	JUDGE CHARLES ESKRIDGE
STEVEN A. MCGRAW, *et al*, Defendants.	§	

ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION

Plaintiff Ernest Adimora-Nweke represents himself here *pro se*. But he's also a lawyer. As such, Magistrate Judge Sam S. Sheldon declined to leniently construe his pleadings in the Memorandum and Recommendation. See Dkt 50 at 4. Neither will this Court in reviewing Adimora-Nweke's objections. See *Wright v McCain*, 703 F App'x 281, 284 (5th Cir 2017, *per curiam*). Indeed, Adimora-Nweke is admonished and cautioned to observe the dictates of Rule 11 of the Federal Rules of Civil Procedure going forward. This Court will not hesitate where warranted to shift costs, make a referral to the Texas State Bar for appropriate disciplinary proceedings, or otherwise issue any necessary sanctions.

Adimora-Nweke brought this action in state court, which was removed here. Dkt 1. Now at issue is his rambling, 125-page fourth amended complaint that asserts wide-ranging causes of action against approximately thirty putative defendants under (among other things) the United States Constitution and state tort law, while also seeking class certification. Dkt 6. The removal papers

include a lengthy appendix of materials filed in state court prior to removal. Dkt 2.

All of this relates to his arrest on suspicion of driving while intoxicated in November 2018. He there refused to voluntarily provide a breath or blood sample after being warned that such refusal would subject his driver's license to automatic suspension pursuant to § 724.015 of the Texas Transportation Code. Dkt 6 at 86–87; see also Dkt 2 at 176 (DIC-24 statutory warning). And so, he received notice via a form DIC-25 that his license would be suspended. Dkt 2 at 352 (DIC-25 notice of suspicion). A form DIC-25 also serves as a temporary driving permit where one's driver's license is confiscated. Ibid.

Section 724.041(a) of the Texas Transportation Code permits an individual within fifteen days of arrest or of receiving notice of suspension to request an Administrative License Revocation hearing. Adimora-Nweke requested such a hearing. Dkt 6 at 87–88. But he was later notified that his request was deficient. Dkt 2 at 347. He didn't attempt to correct the stated deficiencies until well after the statutorily required fifteen-day period. Id at 348–51. And so, his license was suspended from December 24, 2018 through June 21, 2019. Id at 345 (order of suspension).

Adimora-Nweke's license is no longer suspended, and he's permitted to drive but must remit the required $125 reinstatement fee before a new license will be issued. Ibid. He hasn't paid the fee and contends that the DIC-24 warning fails to strictly comply with § 724.015 of the Texas Transportation Code and is unconstitutional on its face. Dkt 6 at 98–100.

The case was referred for disposition to Magistrate Judge Sam S. Sheldon. Dkt 12. By Memorandum and Recommendation, he resolved a number of outstanding motions. See Dkt 50.

First, upon determination that Adimora-Nweke lacks standing to assert claims concerning form DIC-24, he recommended that the motion to dismiss by Defendant Steven A. McGraw, in his official capacity as Director of the

Texas Department of Public Safety, be granted. Dkt 15; Dkt 50 at 1. Plainly, section 724.015(6) of the Texas Transportation Code applies only "to individuals who do not have a driver's license." Id at 5. And because Adimora-Nweke had a driver's license at the time of his arrest—a contention he doesn't refute—he couldn't have been injured by a lack of notice as to this section. Ibid. Further, because his license is no longer suspended and he's permitted to drive, Adimora-Nweke's claims are moot. Id at 6–7.

Second, he recommended that all other pending motions be denied as moot. Dkt 50 at 1. These included:

- Adimora-Nweke's motion for partial summary judgment and injunction. Dkt 5;
- Adimora-Nweke's amended motion for partial summary judgment, injunction, class certification, representation, counsel, and counsel compensation, Dkt 7;
- Adimora-Nweke's second amended motion for partial summary judgment, injunction, class certification, representation, counsel, and counsel compensation, Dkt 17; and
- Adimora-Nweke's emergency motion for alternate service, to separate, and leave to amend, Dkt 22.

Adimora-Nweke timely objected, contending that the findings by the Magistrate Judge assume facts not in evidence, are contrary to the scope of a 12(b)(6) motion, and error on facts and the law. Dkt 51.

The district court conducts a *de novo* review of those conclusions of a magistrate judge to which a party has specifically objected. See 28 USC § 636(b)(1)(C); see also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989). To accept any other portions to which there is no objection, the reviewing court need only satisfy itself that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglas v United Services Automobile Association*, 79 F3d

1415, 1420 (5th Cir 1996); see also FRCP 72(b) Advisory Comm Note (1983).

The Court has reviewed *de novo* the objections by Adimora-Nweke. The response by McGraw adequately and accurately addresses all such complaints. Dkt 52. The objections lack merit and disposition is controlled by authority cited in the Memorandum and Recommendation.

The Court has otherwise considered the Memorandum and Recommendation and reviewed the pleadings, the response, and the reply. No clear error appears.

The Memorandum and Recommendation of Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 50.

The motion to dismiss by Defendant Steven A. McGraw, in his official capacity as Director of the Texas Department of Public Safety, is GRANTED. Dkt 15.

McGraw is DISMISSED WITH PREJUDICE. This is appropriate where the subject pleading is a fourth amended complaint of 125 pages in length, and yet it fails even now to meet the requirements of Rule 8(a)(2). See Dkt 50 at 7–8.

The various other motions by Plaintiff Ernest Adimora-Nweke are DENIED AS MOOT. Dkts 5, 7, 17, & 22.

SO ORDERED.

Signed on December 2, 2021, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

CLOSED

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:23-mc-00964

Adimora-Nweke v. McGraw et al
Assigned to: Judge Alfred H Bennett

Date Filed: 06/15/2023
Date Terminated: 06/16/2023

Plaintiff

Mr. Ernest Adimora-Nweke

represented by Ernest Adimora-Nweke
Adimora Law Firm
3050 Post Oak Blvd
Suite 510
Houston, TX 77056
281-940-5170
PRO SE

V.

Defendant

Steven C McGraw

Defendant

US District Judge Lynn N Hughes

Date Filed	#	Docket Text
06/15/2023	1	APPLICATION to Proceed In Forma Pauperis filed by Ernest Adimora-Nweke. (Attachments: # 1 Complaint, # 2 Exhibit CD, # 3 Motion, # 4 Summons)(ChrisKrus, 4) (Entered: 06/15/2023)
06/16/2023	2	ORDER Denying Application to Proceed IFP. Case terminated on June 16, 2023.(Signed by Judge Alfred H Bennett) Parties notified.(JacquelineMata, 4) (Entered: 06/16/2023)
06/20/2023	3	Letter regarding denial of Application to Proceed IFP. Party notified, filed. (DarleneHansen, 4) (Entered: 06/20/2023)

PACER Service Center			
Transaction Receipt			
08/03/2023 03:02:32			
PACER Login:	ernestcan	Client Code:	
Description:	Docket Report	Search Criteria:	4:23-mc-00964
Billable Pages:	1	Cost:	0.10

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

~~United States Courts~~
Southern District of Texas
FILED
JUN 15 2023
Nathan Ochsner, Clerk of Court

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Ernest Adimora-Nweke
Plaintiff/Petitioner
v.
Steve C. McGraw (Director of TXDPS) et al
Defendant/Respondent

Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: N/A. If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

Adimora Law Firm
3050 Post Oak Blvd, Suite 510
Houston, TX 77056

My gross pay or wages are: $ N/A (TBD) - See attached and my take-home pay or wages are: $ N/A (TBD) - See attached per *(specify pay period)* N/A.

3. *Other Income.* In the past 12 months, I have received income from the following sources *(check all that apply)*:

(a) Business, profession, or other self-employment	☐ Yes	☑ No
(b) Rent payments, interest, or dividends	☐ Yes	☑ No
(c) Pension, annuity, or life insurance payments	☐ Yes	☑ No
(d) Disability, or worker's compensation payments	☐ Yes	☑ No
(e) Gifts, or inheritances	☐ Yes	☑ No
(f) Any other sources	☐ Yes	☑ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.
N/A

4. Amount of money that I have in cash or in a checking or savings account: $ 0.00 .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:
Kindly see e.g., the attached "12/12/2022 Statement of Inability to Afford Payment of Court Costs or an Appeal Bond." Plaintiff's financial circumstances are yet to change.

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:
See e.g., contents of the attached "12/12/2022 Statement of Inability to Afford Payment of Court Costs or an Appeal Bond."

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:
N/A

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:
Kindly see e.g., the attached "12/12/2022 Statement of Inability to Afford Payment of Court Costs or an Appeal Bond."

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 06/14/2023

/s/ Ernest Adimora-Nweke
Applicant's signature

ERNEST ADIMORA-NWEKE
Printed name

Attachment to McGraw & Hughes SDTX action's Application to Proceed Without Paying Fees or Costs

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: 444609
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: Ernest Adimora-Nweke (Plaintiff-Realtor)
(Print first and last name of the person filing the lawsuit)

And

Defendant: Baylor College of Medicine, Harris Health System & John M. Hurphen
(Print first and last name of the person being sued.)

In the Probate Ct. 1 Court Number
(check one):
☐ District Court
☐ County Court / County Court at Law
☐ Justice Court

Harris County Texas
County

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond in Justice Court

1. Your Information

My full legal name is: Ernest (First) C (Middle) Adimora-Nweke (Last) My date of birth is: ___/___/___ (Month/Day/Year)

My address is: *(Home)* _____

(Mailing) c/o Adimora Law Firm, 3050 Post Oak Blvd, Suite 510, Houston, TX 77056

My phone number: _____ My email: _____

About my dependents: "The people who depend on me financially are listed below.

	Name	Age	Relationship to Me
1	N/A		
2			
3			
4			
5			
6			

2. Are you represented by Legal Aid?

☐ I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

☐ I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

☒ I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

☒ I do not receive needs-based public benefits. - or -

☐ I receive these **public benefits/government entitlements** that are based on indigency:
(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check)

☐ Food stamps/SNAP ☐ TANF ☐ Medicaid ☐ CHIP ☐ SSI ☐ WIC ☐ AABD
☐ Public Housing or Section 8 Housing ☐ Low-Income Energy Assistance ☐ Emergency Assistance
☐ Telephone Lifeline ☐ Community Care via DADS ☐ LIS in Medicare ("Extra Help")
☐ Needs-based VA Pension ☐ Child Care Assistance under Child Care and Development Block Grant
☐ County Assistance, County Health Care, or General Assistance (GA)
☐ Other: _____

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122

Attachment to McGraw & Hughes SDTX action's Application to Proceed Without Paying Fees or Costs

4. What is your monthly income and income sources?

"I get this monthly income:

$ 0.00 in monthly wages. I work as a Attorney/Counsel (Your job title) for Adimora Law Firm, PLLC (Your employer)

$ N/A in monthly unemployment. I have been unemployed since *(date)* _____.

$ N/A in public benefits per month.

$ N/A from other people in my household each month: *(List only if other members contribute to your household income.)*

$ N/A from ☐ Retirement/Pension ☐ Tips, bonuses ☐ Disability ☐ Worker's Comp
☐ Social Security ☐ Military Housing ☐ Dividends, interest, royalties
☐ Child/spousal support
☐ My spouse's income or income from another member of my household *(if available)*

$ 0.00 from other jobs/sources of income. *(Describe)* _____

$ 0.00 is my *total* monthly income.

5. What is the value of your property?

"My property includes:	Value*
Cash	$ 0
Bank accounts, other financial assets	
_____	$ 0
_____	$
_____	$
Vehicles (cars, boats) *(make and year)*	
_____	$ 0
_____	$
_____	$
Other property (like jewelry, stocks, land, another house, etc.)	
Unliquidated claims	$ TBD
Unliquidated interest in claims	$ TBD
_____	$
Total value of property →	$ TBD

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

6. What are your monthly expenses?

"My monthly expenses are:	Amount
Rent/house payments/maintenance	$ ~1000
Food and household supplies	$ ~500
Utilities and telephone	$ ~30 - 85
Clothing and laundry	$ ~30 - 40
Medical and dental expenses	$ 0 - 100
Insurance (life, health, auto, etc.)	$ 0 - 80
School and child care	$ 0
Transportation, auto repair, gas	$ ~30 - 1500
Child / spousal support	$ 0
Wages withheld by court order	$ 0
Debt payments paid to: *(List)*	$ 0
_____	$
_____	$
Total Monthly Expenses →	$ ~1590 - 3350

7. Are there debts or other facts explaining your financial situation?

"My debts include: *(List debt and amount owed)* +$200,000.00 - school loans - Navient & HHloans plus other litigation loans, unpaid rent, and personal loans.
A lot of the debts are damages resulting from civil rights violations and others, to be claimed & recovered.

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page. ☐

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

☒ I cannot afford to pay court costs.

☐ I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is Ernest Adimora-Nweke. My date of birth is : ___ / ___ / _____.

My address is c/o Adimora Law Firm, 3050 Post Oak, Suite 510, Houston TX 77056 U.S.A
Street City State Zip Code Country

/s/ Ernest Adimora-Nweke *Signature* signed on 12 / 12 /2023 *Month/Day/Year* in Harris *county name* County, Texas *State*

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122
Statement of Inability to Afford Payment of Court Costs

United States District Court
Southern District of Texas
~~ENTERED~~
June 16, 2023
Nathan Ochsner, Clerk

AO 240A (Rev. 01/09) Order to Proceed Without Prepaying Fees or Costs

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Ernest Adimora-Nweke
Plaintiff
v.
Steve C. McGraw (Director of TXDPS) et al
Defendant

Civil Action No. 4:23-mc-00964

ORDER TO PROCEED WITHOUT PREPAYING FEES OR COSTS

IT IS ORDERED: The plaintiff's application under 28 U.S.C. § 1915 to proceed without prepaying fees or costs is:

☐ Granted:

The clerk is ordered to file the complaint and issue a summons. The United States marshal is ordered to serve the summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ Granted Conditionally:

The clerk is ordered to file the complaint. Upon receipt of the completed summons and USM-285 form for each defendant, the clerk will issue a summons. If the completed summons and USM-285 forms are not submitted as directed, the complaint may be dismissed. The United States marshal is ordered to serve the completed summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☑ Denied:

This application is denied for these reasons:

Date: JUN 16 2023

Judge's signature

Alfred H. Bennett, U.S. District Judge
Printed name and title

CLOSED

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:23-mc-00976

Adimora-Nweke v. McGraw et al
Assigned to: Judge Alfred H Bennett

Date Filed: 06/20/2023
Date Terminated: 07/31/2023

Plaintiff

Ernest Adimora-Nweke

represented by Ernest Adimora-Nweke
c/o Adimora Law Firm
3050 Post Oak Blvd
Suite 510
Houston, TX 77056
281-940-5170
PRO SE

V.

Defendant

Steve C McGraw

Defendant

U S Dist Judge Lynn Hughes

Date Filed	#	Docket Text
06/20/2023	1	APPLICATION to Proceed In Forma Pauperis filed by Ernest Adimora-Nweke. (Attachments: # 1 Proposed Order)(TerriHanniable, 4) (Additional attachment(s) added on 6/20/2023: # 2 Complaint, # 3 Notice of Transfer, # 4 Motion for Independent Action, # 5 Civil Cover Sheet, # 6 Summons) # 7 Exhibit) (TerriHanniable, 4). (Entered: 06/20/2023)
07/31/2023	2	ORDER Denying Application to Proceed IFP. Case terminated on 7/31/2023(Signed by Judge Alfred H Bennett) Parties notified.(GeorgeKelner, 4) (Entered: 07/31/2023)
07/31/2023	3	Letter regarding denial of Application to Proceed IFP. Party notified, filed. (GeorgeKelner, 4) (Entered: 07/31/2023)

PACER Service Center			
Transaction Receipt			
08/03/2023 02:55:20			
PACER Login:	ernestcan	Client Code:	
Description:	Docket Report	Search Criteria:	4:23-mc-00976
Billable Pages:	1	Cost:	0.10

United States Courts
Southern District of Texas
FILED
JUN 20 2023
Nathan Ochsner, Clerk of Court

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Ernest Adimora-Nweke
Plaintiff/Petitioner
v.
Steve C. McGraw (Director of TXDPS) et al
Defendant/Respondent

Civil Action No. 23MC 976

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS

With 28 USC 1404(a) & (c) Motion to Transfer (attached) (Short Form) & REQUEST FOR ORAL IN-COURT HEARING

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. Per the independent action in equity complaint, I have valid claims, entitled reliefs, & seek such. Kindly grant me an in-court due process fair oral hearing on this application; & on all dispositive motions, orders, rulings, or judgments.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: N/A. If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

Adimora Law Firm
3050 Post Oak Blvd, Suite 510
Houston, TX 77056

My gross pay or wages are: $ TBD - See attached (N/A), and my take-home pay or wages are: $ TBD - See attached (N/A) per (specify pay period) N/A.

3. *Other Income.* In the past 12 months, I have received income from the following sources *(check all that apply)*:

(a) Business, profession, or other self-employment	☐ Yes	☑ No
(b) Rent payments, interest, or dividends	☐ Yes	☑ No
(c) Pension, annuity, or life insurance payments	☐ Yes	☑ No
(d) Disability, or worker's compensation payments	☐ Yes	☑ No
(e) Gifts, or inheritances	☐ Yes	☑ No
(f) Any other sources	☐ Yes	☑ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future. N/A

4. Amount of money that I have in cash or in a checking or savings account: $ 0.00 .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:
Kindly see e.g., the attached "12/12/2022 Statement of Inability to Afford Payment of Court Costs or an Appeal Bond." Plaintiff's financial circumstances are yet to change.

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:
See e.g., contents of the attached "12/12/2022 Statement of Inability to Afford Payment of Court Costs or an Appeal Bond."

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:
N/A

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:
Kindly see e.g., the attached "12/12/2022 Statement of Inability to Afford Payment of Court Costs or an Appeal Bond."

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 06/14/2023

/s/ Ernest Adimora-Nweke
Applicant's signature

ERNEST ADIMORA-NWEKE
Printed name

Attachment to McGraw & Hughes SDTX action's Application to Proceed Without Paying Fees or Costs

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: 444609
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: Ernest Adimora-Nweke (Plaintiff-Reallor)
(Print first and last name of the person filing the lawsuit.)

And

Defendant: Baylor College of Medicine, Harris Health System, & John M. Hulphen
(Print first and last name of the person being sued.)

In the Probate Ct. 1 Court Number
(check one):
☐ District Court
☐ County Court / County Court at Law
☐ Justice Court

Harris County Texas
County

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond in Justice Court

1. Your Information

My full legal name is: Ernest (First) C (Middle) Adimora-Nweke (Last) My date of birth is: ___/___/___ (Month/Day/Year)

My address is: *(Home)* _____

(Mailing) c/o Adimora Law Firm, 3050 Post Oak Blvd. Suite 510, Houston, TX 77056

My phone number: _____ My email: _____

About my dependents: "The people who depend on me financially are listed below.

	Name	Age	Relationship to Me
1	N/A		
2			
3			
4			
5			
6			

2. Are you represented by Legal Aid?

☐ I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

☐ I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

-or-

☒ I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

☒ I do not receive needs-based public benefits. - or -

☐ I receive these public benefits/government entitlements that are based on indigency:
(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check)

☐ Food stamps/SNAP ☐ TANF ☐ Medicaid ☐ CHIP ☐ SSI ☐ WIC ☐ AABD
☐ Public Housing or Section 8 Housing ☐ Low-Income Energy Assistance ☐ Emergency Assistance
☐ Telephone Lifeline ☐ Community Care via DADS ☐ LIS in Medicare ("Extra Help")
☐ Needs-based VA Pension ☐ Child Care Assistance under Child Care and Development Block Grant
☐ County Assistance, County Health Care, or General Assistance (GA)
☐ Other: _____

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122

Attachment to McGraw & Hughes SDTX action's Application to Proceed Without Paying Fees or Costs

4. What is your monthly income and income sources?

"I get this monthly income:

$ 0.00 in monthly wages. I work as a Attorney/Counsel (Your job title) for Adimora Law Firm, PLLC (Your employer)

$ N/A in monthly unemployment. I have been unemployed since *(date)* _____.

$ N/A in public benefits per month.

$ N/A from other people in my household each month: *(List only if other members contribute to your household income.)*

$ N/A from ☐ Retirement/Pension ☐ Tips, bonuses ☐ Disability ☐ Worker's Comp
☐ Social Security ☐ Military Housing ☐ Dividends, interest, royalties
☐ Child/spousal support
☐ My spouse's income or income from another member of my household *(if available)*

$ 0.00 from other jobs/sources of income. *(Describe)* _____

$ 0.00 is my *total* monthly income.

5. What is the value of your property?

"My property includes:	Value*
Cash	$ 0
Bank accounts, other financial assets	
_____	$ 0
_____	$
_____	$
Vehicles (cars, boats) *(make and year)*	
_____	$ 0
_____	$
_____	$
Other property (like jewelry, stocks, land, another house, etc.)	
Unliquidated claims	$ TBD
Unliquidated interest in claims	$ TBD
_____	$
Total value of property →	$ TBD

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

6. What are your monthly expenses?

"My monthly expenses are:	Amount
Rent/house payments/maintenance	$ ~1000
Food and household supplies	$ ~500
Utilities and telephone	$ ~30 - 85
Clothing and laundry	$ ~30 - 40
Medical and dental expenses	$ 0 - 100
Insurance (life, health, auto, etc.)	$ 0 - 80
School and child care	$ 0
Transportation, auto repair, gas	$ ~30 - 1500
Child / spousal support	$ 0
Wages withheld by court order	$ 0
Debt payments paid to: *(List)*	$ 0
_____	$
_____	$
Total Monthly Expenses →	$ ~1590- 3350

7. Are there debts or other facts explaining your financial situation?

"My debts include: *(List debt and amount owed)* +$200,000.00 - school loans - Navient & HEIloans - plus other litigation loans, unpaid rent, and personal loans.
A lot of the debts are damages resulting from civil rights violations and others, to be claimed & recovered.

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page. ☐

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

☒ I cannot afford to pay court costs.

☐ I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is Ernest Adimora-Nweke. My date of birth is: ___/___/____.

My address is c/o Adimora Law Firm, 3050 Post Oak, Suite 510, Houston TX 77056 U.S.A
Street *City* *State* *Zip Code* *Country*

/s/ Ernest Adimora-Nweke *Signature* signed on 12 / 12 /2022 *Month/Day/Year* in Harris *county name* County, Texas *State*

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122
Statement of Inability to Afford Payment of Court Costs

AO 240A (Rev. 01/09) Order to Proceed Without Prepaying Fees or Costs

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ERNEST ADAMOLA - NWEKE
Plaintiff

v.

STEVEN C. McGRAW ET AL
Defendant

Civil Action No. 23MC 976

ORDER TO PROCEED WITHOUT PREPAYING FEES OR COSTS

IT IS ORDERED: The plaintiff's application under 28 U.S.C. § 1915 to proceed without prepaying fees or costs is:

☐ Granted:

The clerk is ordered to file the complaint and issue a summons. The United States marshal is ordered to serve the summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ Granted Conditionally:

The clerk is ordered to file the complaint. Upon receipt of the completed summons and USM-285 form for each defendant, the clerk will issue a summons. If the completed summons and USM-285 forms are not submitted as directed, the complaint may be dismissed. The United States marshal is ordered to serve the completed summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ Denied:

This application is denied for these reasons:

Date: _____

_____
Judge's signature

_____
Printed name and title

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

Ernest Adimora-Nweke *Plaintiff/Petitioner*	§	CASE NO.
v.	§	_____
Steven C. McGraw, et al *Defendants*	§	

PLAINTIFF'S NOTICE & 28 U.S.C. §1404(a) & (c) TRANSFER MOTION w/ (Proposed Order)

TO THE HONORABLE COURT & CLERK:

Plaintiff, Ernest Adimora-Nweke, hereby files the following per the caption above:

NOTICE OF NON-CONSENT TO MAGISTRATE: Plaintiff does not consent to magistrate.

CONFERENCE CERTIFICATE: This request is made pre-summons, & currently unopposed.

FACTS & ARGUMENT

Unfair & unconstitutional bias & prejudice by judges & magistrates against Plaintiff, as litigant or counsel, has resulted in *coram non-judice* actions; resulted in continued harmful denial of Plaintiff's petition, equal protection, & due process rights in matters before U.S.D.C, S.D. Tx, Houston Division; & also need for this independent action – *inter alia*. U.S.D.C., S.D. Tx cases examples include (1) 4:16-CV-903 & 4:16-cv-1704 (consolidated); (2) 4:20-CV-04149; (3) 4:19-CV-01656; (4) 4:20-CV-01651; (5) 4:22-CV-00765; (6) 4:22-CV-03155; & (7) 4:22-CV-04352.

As Plaintiff has never had any cases &/or matters before Hon. Judge George C. Hanks Jr. of U.S. District Court, S.D. Tx, Houston Division, such seems to be U.S. Constitutional due process (impartial judge & tribunal) proper court for resolution of this action, & where Plaintiff shall seeks to secure fair in-court hearings on issues; all as entitled Plaintiff.[1]

[1] *U.S. Const. Amd. I, V, & VI*; *See also, Hooks v. Wainwright*, 352 F.Supp. 163, 167 (M.D. Fla. 1972) ("...the constitutional protection of access to the courts is much broader, for it includes access to all courts, both state & federal, without regard to the type of petition or relief sought. *U.S. Const. Amends. I & XIV, § 1.*"); *Adams v. Carlson*, 488 F.2d. 619, 632 – 634 (7th Circ. 1973) ("'Access to the courts,' . . . is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him..."); *BEK Constr. V. NLRB*, 536 US 516, 525 (2002)

RELIEF REQUESTED: Plaintiff requests transfer of this action to the Court of Hon. Judge George C. Hanks Jr. of U.S.D.C., S.D. Tx, Houston Division, per 28 U.S.C. §1404(a) & (c); & as required per U.S. Const. petition, impartial tribunal, equal protection, & due process clauses.

ORDER on TRANFER

On this _____ day of _____ 2023, came hearing & consideration on the foregoing motion asking for transfer of this action to the Court of Hon. Judge George C. Hanks Jr. of U.S.D.C., S.D. Tx, Houston Division, per 28 U.S.C. §1404(a) & (c);

Said request is hereby GRANTED.

_____ Judge Presiding

ORDER on APPLICATION TO PROCEED w/o PAYING FEES or COSTS

On this _____ day of _____ 2023, came hearing & consideration on the foregoing application to proceed in district court without paying fees or costs.

Said request is hereby GRANTED. The clerk is hereby ordered to issue summons on the complaint. Plaintiff shall make due efforts to obtain waiver of service from Defendants per FRCP Rule 4., & if not denied waiver, shall serve Defendants a copy of the summons & Complaint by certified mail.

_____ Judge Presiding

(..."the right to petition extends to all departments of the Government," & that "[t]he right of access to the courts is ... but one aspect of the right of petition.").

United States District Court
Southern District of Texas
ENTERED
July 31, 2023
Nathan Ochsner, Clerk

AO 240A (Rev. 01/09) Order to Proceed Without Prepaying Fees or Costs

UNITED STATES DISTRICT COURT

for the

Southern District of Texas ☒

ERNEST ADAMOPA - NWEICE
Plaintiff
v.
STEVEN C. McGRAW ET AL
Defendant

Civil Action No. 23MC 976

ORDER TO PROCEED WITHOUT PREPAYING FEES OR COSTS

IT IS ORDERED: The plaintiff's application under 28 U.S.C. § 1915 to proceed without prepaying fees or costs is:

☐ Granted:

The clerk is ordered to file the complaint and issue a summons. The United States marshal is ordered to serve the summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ Granted Conditionally:

The clerk is ordered to file the complaint. Upon receipt of the completed summons and USM-285 form for each defendant, the clerk will issue a summons. If the completed summons and USM-285 forms are not submitted as directed, the complaint may be dismissed. The United States marshal is ordered to serve the completed summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☑ Denied:

This application is denied for these reasons:

The applicant is not permitted to practice before the SDTX - this application cannot be used in lieu of pro admission.

Date: JUL 31 2023

Judge's signature

Printed name and title

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:23-mc-01283

Adimora-Nweke v. McGraw et al
Assigned to: Judge Keith P Ellison

Date Filed: 08/03/2023

Plaintiff

Ernest Adimora-Nweke

represented by **Ernest Adimora-Nweke**
PRO SE

Ernest Adimora-Nweke
c/o Adimora Law Firm,
3050 Post Oak
Suite 510
Houston, Tx 77056
281-940-5170
Email: ernest@adimoralaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Steven C McGraw

Defendant

Texas Department Of Public Safety
("TxDPS)

Defendant

Hon. Judge Lynn Hughes

Date Filed	#	Docket Text
08/03/2023	1	APPLICATION to Proceed In Forma Pauperis filed by Ernest Adimora-Nweke. (Attachments: # 1 Proposed Order), # 2 Complaint, # 3 Civil Cover Sheet, # 4 MOTION, # 5 Exhibit DVD-Forwarded to the shelving Area) (BrendaLacy, 4). (Entered: 08/03/2023)
08/03/2023	2	ORDER TO PROCEED WITHOUT PREPAYING FEES OR COSTS denying 1 Application (Signed by Judge Keith P Ellison) Parties notified.(fcarbia, 2) (Entered: 08/04/2023)
08/07/2023	3	MOTION for Reconsideration of 2 Order (Motion Docket Date 8/28/2023.). MOTION for Hearing by Ernest Adimora-Nweke, filed. (ChrisKrus, 4) (Entered: 08/07/2023)
08/11/2023	4	ORDER denying 3 Motion for Reconsideration; denying 3 Motion for Hearing.(Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 08/11/2023)
08/16/2023	5	EMERGENCY MOTION to Change Venue to Western District of Texas, (Motion Docket Date 9/6/2023), by Ernest Adimora-Nweke, filed. (ghassan, 4) (Entered: 08/16/2023)

08/17/2023	6	ORDER denying 5 Motion to Change Venue ; denying 5 Motion for Emergency.(Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 08/17/2023)

PACER Service Center			
Transaction Receipt			
08/18/2023 13:45:21			
PACER Login:	ernestcan	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:23-mc-01283
Billable Pages:	1	**Cost:**	0.10

AO 240A (Rev. 01/09) Order to Proceed Without Prepaying Fees or Costs

United States District Court
Southern District of Texas
ENTERED
August 04, 2023
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Ernest Adimora-Nweke *Plaintiff*	)	
v.	)	Civil Action No. 23-mc-1283
Steven C. McGraw et al *Defendant*	)	

ORDER TO PROCEED WITHOUT PREPAYING FEES OR COSTS

IT IS ORDERED: The plaintiff's application under 28 U.S.C. § 1915 to proceed without prepaying fees or costs is:

☐ Granted:

The clerk is ordered to file the complaint and issue a summons. The United States marshal is ordered to serve the summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ Granted Conditionally:

The clerk is ordered to file the complaint. Upon receipt of the completed summons and USM-285 form for each defendant, the clerk will issue a summons. If the completed summons and USM-285 forms are not submitted as directed, the complaint may be dismissed. The United States marshal is ordered to serve the completed summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☑ Denied:

This application is denied for these reasons:
The Court denied Plaintiff's application in 4:23-mc-0976. Should Plaintiff seek review of that decision he should file for reconsideration or appeal in that case.

Date: 08/03/2023

Judge's signature

Keith P. Ellison, United States District Judge
Printed name and title

United States District Court
Southern District of Texas
ENTERED
August 11, 2023
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE,	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	CASE NO. 4:23-mc-01283
	§	
STEVEN C. MCGRAW, et al.	§	
	§	
	§	
	§	
Defendants.	§	

ORDER

Pending before the Court is Plaintiff's Motion for Reconsideration and Hearing (ECF No. 3.) The Court **DENIES** the Motion for Reconsideration and Hearing. Plaintiff was denied leave to proceed *in forma pauperis*. Moreover, proposed counsel is not admitted to practice in the Southern District of Texas and has been previously denied *pro hac vice* status. *See* C.A. No. 4:22-cv-04352, ECF No. 21.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 11th of August, 2023.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

United States District Court
Southern District of Texas
ENTERED
August 17, 2023
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ERNEST ADIMORA-NWEKE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CASE NO. 4:23-mc-01283**
	§	
STEVEN C. MCGRAW, et al.	§	
	§	
	§	
Defendants.	§	

ORDER

Pending before the Court is Plaintiff's Emergency 28 U.S. Code § 1391 Motion to Transfer Venue. (ECF Doc. 5.) Plaintiff has asked the Court to transfer this action to the Western District of Texas, Austin Division. The Court **DENIES** the Emergency Motion to Transfer Venue. Plaintiff has failed to provide meritorious reasons warranting a transfer to the Western District of Texas under Fifth Circuit law and the requirements of 28 U.S.C. § 1404(a). *See, e.g., In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (*en banc*) (requiring moving party under 28 U.S.C. § 1404(a) to show good cause to support its claim of transfer).

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 17h of August, 2023.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ernest Adimora-Nweke
Plaintiff/Petitioner
v.
Steven C. McGraw, et al
Defendants

§ CASE NO.
§
§ 1:23CV1048 DII

PLAINTIFF'S APPENDIX SUPPELEMENT TO FRCP Rule 23 MOTION TO CERTIFY CLASS

TO THE HONORABLE COURT & CLERK:

Plaintiff-Petitioner's motion to certify class is hereby supplemented with the following, per Local Court Rules Section IV – Appendices:

APPENDIX A.

INFORMATION REQUIRED - MOTION FOR CLASS ACTION CERTIFICATION

A motion to certify a class must include, but is not limited to, the following:

(1) A brief statement of the case. (See Filed Motion & Governing Complaint)

(2) A statement defining the class plaintiff seeks to have certified including its geographical and temporal scope. (See Filed Motion)

(3) A description of plaintiff's particular grievance and why that claim qualifies plaintiff as a member of the class as defined. (See Filed Motion & Governing Complaint)

(4) Whether the plaintiff contends that the action may be maintained under Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3) and why. FRCP Rules 23(b)(1), 23(b)(2), & 23(b)(3) all apply, per the void DIC-24 statutory warning form that is not in compliance with Texas Transportation Code 724.015(a); & is administered Texas-wide. (See Filed Motion & Governing Complaint)

(5) A statement respecting the four prerequisites of Federal Rule of Civil Procedure 23(a). The statement shall set forth:

a. The anticipated number of class members and how this number was determined. (See Filed Motion & Governing Complaint) The number continues to grow as the statutory violation continues... Hence the class action injunction sought.

b. The common questions of law and fact involved. (See Filed Motion & Governing Complaint) *Inter alia*, Whether the Texas-wide utilized 9/2011 9/2021 DIC-24 forms are void of statutory Tex. Transp. Code Sec. 724.015(a)'s required fair notice to subjects?

c. The reasons why plaintiff's claim is typical of those of the other class members. Same issue. Plaintiff was also subjected to the void DIC-24 form in 2018. (See Filed Motion & Governing Complaint) **Note**: Plaintiff duly filed the original action in 2020. No statute of limitation issue. This is an independent action; as *inter alia*, this case has never had a fair hearing nor its day in court.

d. The reason why representation by the named plaintiff is adequate to protect the interests of the class. This part of the statement shall specifically answer the following questions:

(i) Is the claim of the named plaintiff presently or potentially in conflict with that of any members of the class? No conflict of interest exists. (See Filed Motion & Governing Complaint)

(ii) Will the claims of the class require subclasses presently or in the future? No. (See Filed Motion & Governing Complaint.)

(iii) What is the prior experience of counsel for the plaintiff that would indicate capability to handle the lawsuit? Yrs. (See Filed Motion & Governing Complaint) *See e.g.*, Doc. 1-1 & Doc. 5, USDC # 4:22-cv-04352, Filed SDTX 12/15/2022 & 12/19/2022 respectively; *See e.g.*, Docs. 41 & 54, USDC SDTX # 4:22-cv-03155.

(iv) Is counsel presently representing or has he at any time represented, a class in any other class action, and if so, when, and how many instances? Counsel is yet to represent a class in a certified class action.

(v) How many cases is plaintiff's counsel now handling in which class action allegations are made? 3

(6) A statement describing any other pending actions in any court against the defendants alleging the same or similar causes of action. (See Filed Motion & Governing Complaint) All unjustly or illegally dismissed, terminated &/or closed actions. Irreparably harmful injustice perpetuated Texas-wide.

(7) A statement that the attorney for the named plaintiff has discussed and thoroughly explained to the plaintiff the nature of a class action and potential advantages and disadvantages to the named plaintiff by proceeding in a class action rather than individually.
(See Filed Motion & Governing Complaint) N/A. Plaintiff is a counsel, with standing – as he is personally affected & harmed, & is to be class representative & serve as class counsel.

(8) A statement of the proposed notices to the members of the class and how and when the notices will be given, including a statement regarding security deposit for the cost of notices.
(See Filed Motion & Governing Complaint) See also the attached Sample Drafted Notice.

(9) A description of the extent of any settlement negotiations that have taken place and the likelihood of settlement with the named plaintiff on an individual basis.
(See Filed Motion & Governing Complaint) No settlement seems likely.
If such settlement is likely, include a statement specifying: N/A

a. Whether or not counsel have any knowledge of any person who has relied on the fact that this suit was initially filed as a class action. N/A

b. The manner in which counsel will protect the class in the event of settlement with the named plaintiff on an individual basis. N/A

(10) A statement of any other matters that the plaintiff deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits.
(See Filed Motion & Governing Complaint)

YOU ARE RECEIVING THIS NOTICE BECAUSE SUBJECTED TO TEXAS DEPARTMENT OF PUBLIC SAFETY'S DIC-24 STATUTORY WARNING DOCUMENT IN AN ALLEGED SITUATION AS ENUMERATED IN TEXAS TRANSPORTATION CODE §724.015, ON OR AFTER 9/1/2011

This Notice Contains Important Information About Your Rights.

1. WHAT IS THIS ABOUT?

A Judgment has been reached in a class action lawsuit against Steven C. McGraw in his official capacity as Director of Texas Department of Public Safety ("TxDPS"), pending in the U.S. District Court, Western District of Texas Austin, Case No. _____ ("the Case"). The Case alleges that the current statutory warning, the DIC-24 statutory warning, promulgated by TxDPS and enforced by law enforcement officials throughout Texas, is unconstitutional. The contents of the DIC-24 statutory warning document is required to be provided to you orally and in writing before an officer requests you to submit to the taking of one or more specimens of your breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance, when you were arrested for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated, or alleged to have been committing an offense under Section 106.041 of Texas Alcoholic Beverage Code. This Judgment resolves the unconstitutionality of the DIC-24 document.

2. WHO IS INCLUDED IN THE JUDGEMENT?

You may be a member of the Judgment Class if on or before September 1, 2011 until the present ("Case Timeframe") you were you were arrested for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated, or alleged to have been committing an offense under Section 106.041 of Texas Alcoholic Beverage Code, within the State of Texas, and a police officer, sheriff, or constable requested you to submit to the taking of one or more specimens of your breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance.

3. WHAT CAN YOU GET FROM THE JUDGEMENT?

There is no refund from this Judgment. The class action suit was for an injunction allowed under Federal Civil Rights law, 42 U.S.C. Section 1983, seeking an injunction against TxDPS' requirement or enforcement of any TxDPS issued order of license revocation or suspension, or any TxDPS required reinstatement fee that may be required of you in order to obtain or renew your Texas Driver's License; after a suspension or license revocation occurred based on the unconstitutional DIC-24 statutory warning allegedly provided you upon the alleged arrest. The injunction sought the Court to order (a) that all TxDPS promulgated DIC-24 statutory warning sheets used since 9/2011 are void; (b) that your license shall not be or remain suspended or revoked; (c) that any TxDPS or ALR suspension or revocation on your license since 9/2011 & based on TxDPS's 9/2011 & 9/2021 promulgated DIC-24 statutory warning sheets, shall not be recognized or further enforced; & (d) that you do not have to pay any suspension or reinstatement fee(s) resulting from use of TxDPS's 9/2011 & 9/2021 promulgated DIC-24 statutory warning sheets. Depending on the facts of your case, your insurance policy, or your insurance company, the Judgement terms may reduce your motor vehicle insurance costs, or qualify you for a refund.

4. WHAT ARE YOUR OTHER OPTIONS?

Stay in the Class: You will be a member of the Class if you do nothing. As a Class Member, you will be legally bound by the Judgment, and you will not be able to sue, or continue suing, Steven C. McGraw of TxDPS, TxDPS, and their staff, attorneys, & officers on the same claims that the Case resolves.

Opt-Out of Class: If you do not want to be legally bound by the Judgment, you must Opt Out of the Judgment by _____ __, 202__. If you Opt-Out, you will you will not be able to file your own lawsuit against Steven C. McGraw in his official capacity as Director of TxDPS about the same claim that this Case resolves. If you do not Opt-Out, you may Object to the Judgment by _____ __, 202__. To Opt-Out or Object, you are to send a letter of your desire to Opt-Out to Adimora Law Firm, PLLC, 3050 Post Oak Blvd., Suite 510, Houston, TX 77056, or by email to ernest@adimoralaw.com, by _____ __, 202__.

5. WHO REPRESENTS YOU?

The Court has appointed Adimora Law Firm, PLLC and Ernest Adimora-Nweke as "Class Counsel" to represent you and all other judgement Class Members. You will not be charged for the legal services. Their Attorneys' Fees and Costs will be paid directly by Steven C. McGraw and/or TxDPS. If you want to be represented by another lawyer, you may hire one at your own expense.

6. WILL THE COURT HAVE A HEARING ABOUT ANY OPT-OUT MEMBERS?

The Court will hold a Final Settlement Hearing on _____ __, 202__ at 9am (a) to ensure execution of, & TxDPS compliance with the Judgment's terms; & (b) to note any objections to Class Counsel's request for reasonable attorneys' fees and costs to be paid by Steven C. McGraw of TxDPS. Class Counsel seeks the $125 per Class Member ($125.00/each Class Member). The hearing may be moved to a different date or time without additional notice, so please check the case docket for updates. **You do not have to come to this hearing.** If you would like to attend and be heard, you or your own lawyer, if you have one, will have an opportunity to be heard at the Final Settlement Hearing.

7. HOW CAN YOU GET MORE INFORMATION?

Visit the Judgment's publicly available weblink @____. **You can also contact Class Counsel by email at ernest@adimoralaw.com. You can also send a letter with your inquiry to Adimora Law Firm, PLLC; 3050 Post Oak Blvd. Suite, 510; Houston, TX 77056.**

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr
Texas State Bar Number: 24082602
Adimora Law Firm
3050 Post Oak Blvd., Suite 510
Houston, TX 77056
281-940-5170 (Office)
ernest@adimoralaw.com
Pro Se Plaintiff
Proposed Class Representative & Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above, on or before the date of filing/file stamp, has been delivered to the attorneys listed below pursuant to applicable Federal Rules of Civil Procedure (e.g. electronic filing, fax, ECF system, and/or email).

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr
Texas State Bar Number: 24082602

ATTORNEYS FOR DEF. MCGRAW & TxDPS
Served On:

KEN PAXTON
Attorney General of Texas
SHAWN COWLES
Deputy Attorney General for Civil Litigation

BRENT WEBSTER
First Assistant Attorney General
THOMAS A. ALBRIGHT
Chief - General Litigation Division

SCOT M. GRAYDON
Texas Bar No. 24002175; Southern ID No. 719112;
Assistant Attorney General
PRIOR ATTORNEYS FOR DEFENDANT STEVEN A. MCGRAW

VOL. 3

FILED
October 16, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: DM
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff/Petitioner	§	**1:23-CV-1048-DII-ML**
v.	§	
Steven C. McGraw, et al		
Defendants		

PLAINTIFF'S OBJECTIONS TO DOC. 9

TO THE HONORABLE COURT & CLERK:

Plaintiff, Ernest Adimora-Nweke, hereby files the following per the caption above:

I. DOC. 9 DUE PROCESS OBJECTIONS

A.

Plaintiff hereby objects to Doc. 9 in whole & in all parts, for – similar to all orders, proceedings, & judgments challenged – being issued without due process fair hearing, before a good faith, neutrally detached, &/or authorized magistrate or judge.[1] No action can validate them; they are good nowhere; & harmfully bad everywhere they exist or are used/raised against Plaintiff.[2]

The magistrate was appointed under 28 U.S.C. § 636(b).[3] The Doc. 9 order recommends a disposition of the case on the merits, similar to a FRCP 12(b)(6) order of dismissal with prejudice

[1] *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial & disinterested tribunal in both civil & criminal cases. This requirement of neutrality in adjudicative proceedings safeguards... the prevention of unjustified or mistaken deprivations & the promotion of participation & dialogue by affected individuals in the decision-making process.... by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this [U.S. Supreme] Court."); *See also, Caperton v. A. T. Massey Coal Co.,* 556 U.S. 868 (2009); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *See also*, 28 U.S.C. §636(b)(1)(A), §636(b)(1)(B), §636(b)(3), §636(c)(1); *See also*, 28 U.S.C. §455(a) & 455(b)(1)

[2] *Accord, Dews v. Floyd*, 413 S.W.2d 800, 804 (Tex.Civ.App. – Tyler, 1967) ("[i]t is good nowhere and bad everywhere."); *Walls v. Erupcion Mining Co.*, 36 N.M. 15, 6 P.2d 1021 (N.M. 1931) ("...[t]hat [any] void judgment [or order] has been affirmed on review in an appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time, capable of bearing no fruit... but constituting a constant menace...")

[3] Doc. 9

for failure to state a claim.[4] Respectfully, the magistrate has no authority to enter such an order under 28 U.S.C. § 636(b)(1)(A).[5]

If the magistrate &/or court leverages or finds 28 U.S.C. § 636(b)(1)(C) as basis for Doc. 9's recommendation & proposed findings, Doc. 9 is still void & without authority – as its Sec(s), I, III, IV, V, & VI's 2nd sentence, 2nd paragraph, & footnote 3, contain unfairly prejudicial, harmful, & void proposed findings & recommendations, on issues on the Doc. 7 complaint merits; found & recommended by the magistrate without the statutory due course (or due process) hearing that is logically & sequentially required before such a [referred] magistrate's recommendation & proposed finding is statutorily allowed issued, adopted, or entered – per 28 U.S.C. § 636(b)(1)(B).[6]

Per the IFP application[7], the motions for service of process[8], & the CM/ECF docket report in this action[9], there has been no service of process on Defendants[10], nor has there been notice & hearing on the merits of the complaint[11] & on the pending motions[12] for Plaintiff & Defendants.[13]

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[4] Doc. 9

[5] *See 28 U.S.C. § 636(b)(1)(A)* ("**(A)** a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.")

[6] *28 U.S.C. § 636(b)(1)(B)* ("**(B)** a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, **of any motion excepted in subparagraph (A)**,...")

[7] Docs. 3, 3-1, & 6.

[8] Doc. 3, 3-2, & 8

[9] *See* USDC WDTX Cause No. **1:23-CV-1048-DII-ML** Docket

[10] *Id.* (Docket Report); See also, e.g., Doc. 8

[11] Doc. 7, Pgs. 1 – 72.

[12] Docs. 7, Pgs. 74 – 87; Doc. 8

[13] *U.S. Const. Amd. V*; *See also*, *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence."); *See also*, *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... The notice must be of such nature as reasonably to convey the required information... and it must afford a reasonable time for those interested to make their appearance...")

Hence, the magistrate lacks authority to enter such a disposition recommendation without hearing on the merits of the complaint. Therefore, Plaintiff objects to Doc. 9's Sec(s), I, III, IV, V, & VI's 2nd sentence, 2nd paragraph, & footnote 3,[14] on grounds of denial of equal protection & due process rights of Plaintiff & class members.[15]

B.

Yet, there must be due process notice & service process to Defendants first before due process fair notice of & fair hearing on the merits of the complaint can occur; & then the magistrate to make any recommendation of dismissal disposition of the case on the merits.[16]

Consequently, since the magistrate duly granted Plaintiff's *in forma pauperis* application[17], per FRCP Rule 4(c)(3), this court must grant Plaintiff's Doc. 8 motion/request for service of process on Defendants via U.S. Marshalls.[18]

C.

Aside of recommending the cancellation of magistrate involvement, per *inter alia*, Plaintiffs' Doc. 1-5 & *28 U.S.C. § 636(C)(1)* lack of consent to magistrate, the magistrate's grant of Plaintiff's IFP application[19] is the only duly authorized & the only valid action, order, entry, proposed finding, &/or recommendation – within Doc. 9's contents.[20]

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[14] Doc. 9, Pg. 7.

[15] *See*, Doc. 7, Pgs. 52 – 87; *See also, e.g., U.S. Const. Amd. V; Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction & void, & attackable collaterally by *habeas corpus* if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, & its courts are included in this prohibition.")

[16] *See* Doc. 8 (Plaintiffs' Motion for service of process); *See also, Baldwin v. Hale*, 68 U.S. 223, 233 (1863); Accord, *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950); *See also, U.S. Const. Amd. V*

[17] Doc. 9, Pg. 7

[18] *See*, Doc. 8; *See also, Fed. R. Civ. Pro. Rule 4(c)(3)*

[19] Docs. 3 & 6

[20] *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *Cf. 28 U.S.C. § 636(b)(3)* ("**(3)** A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States."); *Cf.* USDC WDTX Local Rule CV-1(a) ("**Rule CV-1. Scope of Rules**: (a) The rules of procedure in any proceeding in this court shall be prescribed by the laws of the United States, the rules of the Supreme Court of the United States, any applicable rules of the United States Court of Appeals for the Fifth Circuit, and these rules…")

Since the magistrate lacks due process authority to issue any recommendation or proposed finding on the merits on any issue, aside of on Plaintiffs' pre-trial IFP motion/application, Plaintiff hereby OBJECTS to the following statement in Doc. 9, "The Magistrate Court **RECOMMENDS** the District Court **DISMISS WITH PREJUDICE** Plaintiff's Amended Complaint (Dkt. 7) pursuant to 28 U.S.C. § 1915(e)(2)(B) and for lack of subject matter jurisdiction," as void of due process authority, per the lack of fair hearing on the merits before such disposition or disposition proposed finding & recommendation.[21]

Said Doc. 9's proposed findings & recommendations, issued on the merits of the complaint, without the required due process fair notice & hearing for Plaintiff & Defendants on the merits of the complaint & reliefs requested, also show unconstitutional judicial-magistrate bias & prejudicial predisposition to the facts & merits of Plaintiff's action. Such unconstitutional judicial-magistrate predisposition defeats the neutrality constitutionally required of judges, magistrates, & of tribunals.[22]

D.

Plaintiff did not consent to magistrate involvement in this matter.[23]

As Plaintiff did not consent to magistrate involvement, it is proper that the magistrate suggested the termination of his involvement in the action; per Doc. 9's recommendation & proposed finding: "The referral of this case to the Magistrate Court should now be canceled."[24]

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[21] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949)

[22] *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980); *U.S. Const. Amd. VI* (Impartial tribunal clause); *U.S. Const. Amd. V* (due process clause); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) (""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process…'"); *Mahone v. Addicks Utility Dist., Of Harris Cnty,* 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality… citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)"); *See also*, 28 U.S.C. §455(a) & (b)(1).

[23] *See*, Doc. 1-5 ("Notice of Non-Consent to Magistrate: Plaintiff does not consent to magistrate.")

[24] Doc. 9, Pg. 7; *Cf. 28 U.S.C. § 636(C)(1)* ("**(1)** Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case…")

And also, therefore, Plaintiff again objects to Doc. 9's Sec(s), I, III, IV, V, & VI's 2nd sentence, 2nd paragraph, & footnote 3,[25] on grounds of their effective denial of Plaintiff & class members' due process & equal protection rights.

E.

This case also involves a request for injunctions against (a) the harmful & unconstitutional Doc. 12 void order, entered by Hon. Judge Lynn Hughes; (b) the void prior judgements & orders of dismissal with prejudice against Plaintiff – issued without constitutional & statutory authority, & without due process fair hearing on the merits; & (c) against void statutory DIC-24 civil notice documents issued/promulgated by Texas Department of Public Safety in Austin, per Texas Transportation Code Ch. 724, and used throughout Texas in DWI situations. Doc. 7 contains the motion for injunctive reliefs via summary judgments motion.[26]

Since there is yet to be service of process on Defendants, in order for the required due process hearing on the merits of the action (i.e., the complaint's injunction requests & motions, etc.) to subsequently occur, the magistrate lacks authority to issue the Doc. 9 recommendation & proposed findings of the following:

> **"INTRODUCTORY NOTE..."**[27]
> "The Magistrate Court **RECOMMENDS** the District Court **DISMISS WITH PREJUDICE** Plaintiff's Amended Complaint (Dkt. 7) pursuant to 28 U.S.C. § 1915(e)(2)(B) and for lack of subject matter jurisdiction."[28]
> "The undersigned **ADMOMISHES** Plaintiff not to file obviously frivolous lawsuits that lack a basis in law. The undersigned, again, borrows from the Hon. Charles Eskridge and warns: "Plaintiff Ernest Adimora-Nweke is ADMONISHED that if he continues to abuse the process of this Court or otherwise engage in bad faith litigation practices, a preclusion order barring further unauthorized practice, *including as a pro se litigant*, will be entered."

---

[25] *See*, Doc. 9, Pg. 7.
[26] *See*, Doc. 7, Pgs. 1 – 72 ("**PLAINTIFF'S AMENDED ORIGINAL & INDEPENDENT ACTION IN EQUITY COMPLAINT, & FRCP Rule 23(a), 23(b)(1)(A), 23(b)(1)(B), 23(b)(2), & 23(b)(3) CLASS ACTION PETITION/MOTION.**"); *See also*, Doc. 7, Pgs. 74 – 87 ("PLAINTIFF'S AMENDED FRCP Rule 60(d)(1) MOTION FOR INDEPENDENT ACTION, FRCP Rule 23 MOTION TO CERTIFY CLASS, & FRCP Rules 56 & 54 PARTIAL SUMMARY & JUDGMENT MOTION & (Amended Proposed Order)").
[27] **Doc. 9, pg. 1 – 2.**
[28] Doc. 9, Pg. 7, Sentence 2.

Adimora-Nweke v. McGraw, 2022 U.S. Dist. LEXIS 104590, at *5 (italics added, capitals in original)."[29]

Also, since there is yet to be service of process on Defendants, in order for the required due process hearing on the merits of the action (i.e., the complaint's **injunction requests** & motions, etc.) to subsequently occur, the magistrate lacks jurisdictional authority to issue the Doc. 9 contents, recommendation & proposed findings of Doc. 9's Sections I. III, IV, & V, nor issue Doc. 9 subsections IV(A) & IV(B)'s contents, findings & recommends;[30] per the injunction requests.

Therefore, Plaintiff again objects to Doc. 9's Sec(s), I, III, IV, V, & VI's 2nd sentence, 2nd paragraph, & footnote 3,[31] on grounds of their effective denial of Plaintiff & class members' due process & equal protection rights.

F.

Section I's introductory note is also evidence of the magistrates preconceived & unconstitutional bias & prejudice against Plaintiff & Plaintiffs' claims; effectuated to the fatal deprivation of Plaintiffs due process rights via the fatal dismissal recommendation of Doc. 9.[32]

Wherefore, for said due process reasons, Plaintiff hereby objects to ALL the contents, statements, proposed findings, & recommendations in Sections I. III, IV, & V of Doc. 9.[33]

---

[29] Doc. 9, Pg. 7, Paragraph 2.
[30] *See*, Doc. 9, Pgs. 1 – 6 (Sections 1, III, IV, & V)
[31] *See*, Doc. 9, Pg. 7.
[32] Doc. 9, Pg. 7.
[33] *See* Doc. 9, Pgs. 1 – 6 (Sec. **I. INTRODUCTORY NOTE...; III. STANDARD OF REVIEW...; IV. REVIEW OF THE MERITS OF THE CLAIM...** (A) **Claim Against Judge Hughes**..., (B) **Standing to Bring Claim Against Steven McGraw and Texas DPS...; V. CONCLUSION**...); *See also*, *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980); *Baldwin v. Hale*, 68 U.S. 223, 233 (1863); *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950); *See also*, 28 U.S.C. §455(a) & §455(b)(1); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *U.S. Const. Amd. V & VI; Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949).

II. DOC. 9 SECTION IV(A) OBJECTIONS

A.

Plaintiff's prior objections to Section IV is hereby incorporated by reference.

Plaintiff hereby also legally & factually objects to Section IV(A) paragraph 1 (Doc. 9, pg. 3) on grounds that it is (a) irrelevant at this stage, (b) incomplete evidence, and (c) they are mischaracterized quotations from Plaintiff's Doc. 7 governing complaint, presented in a manner that creates **unfair prejudice** against Plaintiff,[34] & subject Plaintiff to possible unfair bias & prejudice, or due process rights denial in this venue.

It disregards that Plaintiff's Doc. 7's court ordered amended complaint for more definite statement, (a) not only pleads - in the alternative per FRCP Rule 8 – the elements of *Bivens* injunction, 28 U.S.C. § 1651 writ injunction, *and* FRCP Rule 60(d) relief against the, *inter alia*, ***clearly*** unconstitutionally overboard, harmful, & collaterally challenged Doc. 12 of USDC SDTX Cause No. 4:20-CV-01651; but also (b) presents & cites to supporting record evidence on Federal Court docket filings in support of judgment in favor of Plaintiff to enjoin & vacate said order. (*See*, Doc. 7, Pgs. 1 – 13, 16 – 36; *See also*, Doc. 7, Pg. 71 – 88; *See also*, Doc. 1, pgs. 62 – 109)

Hence Sec. IV(A) paragraph 1's probative value at this stage of this action, is far outweighed by its unfair prejudice to Plaintiff's case &/or Plaintiff's due process rights in the proceeding, & unfair prejudice to Plaintiff's claim on the merits. It must be rejected by this court.

B.

Plaintiff hereby also legally & factually objects to Section IV(A) paragraph 2 (Doc. 9, pg. 4) on grounds that (a) it shows, evidence, &/or proves unfair bias, prejudice, & predisposition against Plaintiff & Plaintiff's claims, & contrary to as statutorily allowed under 28 U.S.C. 455(a)

[34] *Cf.* Doc. 7 (Amended Complaint per Doc. 5 Court Order)

or as constitutionally allowed per *Marhsall v. Jerrico Inc.*; (b) it is irrelevant at this stage & void opinion without first granting due process notice & fair hearing opportunity before an impartial judge or magistrate, for both Plaintiff & Defendant Hughes; and (c) it disregards Plaintiff's pled, argued, & evidence-supported U.S. Constitutional petition, equal protection, & due process right to redress of grievance, even against U.S. government officials.[35]

Without due process impartiality on the injunction claims against Hughes on the harmful Doc. 12 of USDC SDTX Cause 4:20-CV-01651 order, nor a fair hearing opportunity on the merits of the complaint for Plaintiff, the magistrate wrongly reasons & concludes that, "The court need not delve deeply into Plaintiff's flawed claims against Judge Hughes because as an Article III judge, he has absolute immunity from this lawsuit. *Black v. Griffin*, 638 F. App'x 371, 373 (5th Cir. 2016) … dismissal… with prejudice…"[36]

Plaintiff should at least be granted the fundamentally &/or statutorily required (a) fair notice to Defendants of the action, & (b) fair notice & hearing opportunity on the merits; all before such a disposition, proposed finding, or recommendation as made in Doc. 9, pg. 4.[37]

Otherwise, such Doc. 9, pg. 4 statement results (a) in an uninformed hasty generalization fallacy/flawed reasoning – as in this case; & (b) in another void order or judgement[38], entered to – or that effectuates – the deprivation of Plaintiff's equal protection & due process rights to fair hearing before an impartial tribunal, judge, & magistrate.

Furthermore, Plaintiff already pled & provided legal basis for *Bivens* injunction claim against Judge Lynn Hughes & his Doc. 12 of USDC SDTX Cause 4:20-CV-01651 order.[39]

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[35] *See*, Doc. 7, Pgs. 1 – 13, 16 – 36; *See also*, Doc. 7, Pgs. 71 – 88; *See also*, Doc. 1, pgs. 62 – 109
[36] *See*, Doc. 9, pg. 4.
[37] *See e.g.*, *28 U.S.C. § 636(b)(1)(B); see also e.g.*, *Baldwin v. Hale*, 68 U.S. 223, 233 (1863)
[38] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949)
[39] *See*, Doc. 7, Pgs. 1 – 13, 16 – 36; *See also*, Doc. 7, Pgs. 71 – 88; *See also*, Doc. 1, pgs. 62 – 109

Also, the case the magistrate cites in Doc. 9, Pg 4[40] (i.e., *Black v. Griffin*), discusses a statute of limitations defense to 42 U.S.C. § 1983 suit for damages. Yet, in this action, Plaintiff's governing complaint seeks a *Bivens* injunction against Judge L. Hughes – a federal court judge – in his official capacity; & seeks it effectuated against Defendant Hughes' void Doc. 12 order from USDC SDTX Cause No. 4:20-CV-01651.

Again, judges are not immune from injunction action in their official capacity.[41] And mostly of fundamental legal importance, statute of limitations defense is inapplicable in the court of equity where injunction claims are waged.

Hence, aside of the pled & facts that (a) Defendant Hughes is federal court judge, sued in his official capacity, (b) Defendant Hughes is sued for injunction – or injunction equivalent – equitable remedy & not for damages, (c) the harmful order from Hughes that Plaintiff challenges is facially unconstitutional for being overbroad in scope & effect, hence void *ab initio*, & (d) the harmful order from Hughes that Plaintiff challenges was entered in violation of Plaintiff's equal protection & due process rights per *inter alia*, *Marhsall v. Jerrico Inc.*, *Bolling v. Sharpe*, & 28 USC §455(a) & 455(b)(1); any statute of limitations defense is legally & logically unavailable against Plaintiff's pled (i) *Bivens* injunction, (ii) FRCP Rule 60(d)(1) independent action in equity, &/or (iii) 28 USC §1651 writ injunction against Judge L. Hughes in his federal official capacity & against the void order in Doc. 12 of USDC SDTX Cause No. 4:20-CV-01651. These are matters/claims that sound in **equity**.

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[40] Doc. 9, pg 4 ("The court need not delve… with prejudice."); See also, *Black v. Griffin*, 638 F. App'x 371, 373 (5th Cir. 2016)

[41] *See*, Doc. 7, pgs. 12 – 13 (Citing *inter alia*, *Pulliam v. Allen*, **466 US 522** (1984), and *Weinberger v. Wiesenfeld*, 420 U.S. 636, n.2 (1975) ("…This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment…");
See also, Doc. 7, pgs. 7 – 12 (Citing "*Bivens* Basics: An Introductory Guide for Immigration Attorneys," Practice Advisory, American Immigration Council, 7/19/2021; available online at https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/bivens_basics_an_introductory_guide_for_immigration_attorneys_0.pdf; retrieved on 9/9/2023.)

For said reasons, Plaintiff's legal & factual objections to Section IV(A) paragraph 2 (Doc. 9, pg. 4) must be sustained; & said Section IV(A) and its paragraph 2 rejected by this court.[42]

C.

Simply put, Plaintiff is a duly licensed attorney in Houston, TX; [43] which is in Harris County, & hence within U.S. District Court's Southern District of Texas Houston Division.[44]

Defendant Hughes issued facially unconstitutionally overbroad & harmful order that bars Plaintiff from practicing law or filing cases in SDTX.[45] Respectfully, the resulting unfair bias & prejudice against Plaintiff evident in such an unconstitutionally overbroad, flagrant, & quasi-draconian order (i.e., Doc. 12 of USDC SDTX No. 4:20-CV-01651), immediately disqualified Hughes from any proceeding involving Plaintiff, & voids any concurrent or subsequent orders or judgments from Hughes in any of Plaintiff's matters; including the subsequent dismissal with prejudice of USDC SDTX Cause No. 4:20-CV-01651, & the actions' U.S. Fed. 5th Circuit appeal affirmation judgment.[46]

As pled, evidenced, & argued, as an attorney in Houston, TX, the challenged Doc. 12 of USDC SDTX Cause No. 4:20-CV-01651 order, unreasonably & effectively causes, or subjects Plaintiff & his clients to **irreparable harm** via continued deprivation of their U.S. Constitution petition, equal protection & due process rights; including (a) right to contract for legal services, (b) right to petition for redress a *pro se* in matters restricted to federal courts, (c) right against discrimination in administration of justice in SDTX – including post any Defendant's removal of

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[42] *See, e.g., U.S. Const. Amd. V* (due process clause); *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949).
[43] Doc. 7, Pgs. 7, 10, 69, 87 - 88 (Discussing Plaintiff's TX State Bar No. & Houston Tx as professional base-location)
[44] *See* U.S. Dist. Court. Southern District of Texas Houston Division **Counties**; Available at Southern District of Texas Houston Division Offices website: https://www.txs.uscourts.gov/offices/houston-division. Obtained on 10/15/2023.
[45] *See*, Doc. 1, Pg. 66.
[46] 28 U.S.C. §455(a) & 455(b)(1); *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980); *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *Accord, Walls v. Erupcion Mining Co.*, 36 N.M. 15, 6 P.2d 1021 (N.M. 1931); *Dews v. Floyd*, 413 S.W.2d 800, 804 (Tex.Civ.App. – Tyler, 1967)

cases to any SDTX Court upon Plaintiff & his clients' filing of said case in state court, (d) right to impartial tribunal & neutrally detached judges & magistrates in SDTX.[47]

Since it is void for *inter alia*, being issued without fair notice & hearing, nor before a judge with statutory 28 USC §455(a) & §455(b)(1) authority, it is (a) void *ab initio*, (b) attackable collaterally via this action's Bivens injunction claim, & (c) by Plaintiff – the aggrieved party seeking redress – duly & properly bringing the wrongful counter-party (i.e., Defendant Judge L. Hughes) before the court.[48] Hence the need for Doc. 8's motion granted, & service of process on Judge Lynn Hughes & the designated U.S. Attorney General service of process recipient.[49]

III. DOC. 9 SECTION IV(B)(1) OBJECTIONS

A.

Contents of Sections I & II above, are hereby incorporated by reference.

Plaintiff hereby also legally & factually objects to Section IV(B)(1)[50] on (i) FRE Rule 106 incomplete doctrine grounds; (ii) FRE Rule 403 grounds - as Section IV(B)'s contents' probative value at this stage of proceeding are substantially outweighed by their danger to (a) unfairly prejudice Plaintiff's due process rights, (b) confuse the issues relevant at this stage of this action, (c) unduly delay this proceeding, & (d) waste time at this stage of action; & (iii) lack of due process

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[47] *See*, Doc. 7, Pgs. 1 – 13, 16 – 36; *See also*, Doc. 7, Pgs. 71 – 88; *See also*, Doc. 1, pgs. 62 – 109

[48] *See, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *Accord, People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66, 69 – 70 (Ill. App. 2nd Dist., 1994) ("A void judgment, 'that is, one entered by a court which lacks jurisdiction over the parties, the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, **in any court**, either directly or collaterally, provided that the party is properly before the court.'") (Bold emphasis added); *See also, Sanchez v. Hester*, 911 S.W.2d 173, (Tex.App. - Corpus Christi 1995) ("Voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus." Citing *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (orig. proceeding))

[49] *See* Doc. 8; *See also, Fed. R. Civ. Pro. Rules 4(i)(1)(A)(i), 4(i)(2), & 4(c)(3)*.

[50] Doc. 9, Pgs. 4 – 5, ("B. **Standing to Bring Claim Against Steven McGraw and Texas DPS.**... 1. *This lawsuit's background...*")

required per *Marshall v. Jerrico Inc.*, *Baldwin v. Hale*, *Mahone v. Addicks Utility Dist., Of Harris Cnty, Bolling v. Sharpe, Yick Wo v. Hopkins,* 28 U.S.C. §636, §455(a) & §455(b).[51]

B.

Plaintiff hereby factually objects to Section IV(B)(1) on FRE Rule 106 incomplete doctrine grounds & under FRE Rule 403.[52]

Section IV(B)(1) contents omit pled relevant yet material & actual facts, including that Plaintiff duly made diligent yet irrelevant efforts to request an ALR hearing (within 72hrs of 11/14/2018) to contest any temporary driver's license ("DL") revocation or the eventual DL suspension, all prior to the order of suspension being rendered by TxDPS; yet TxDPS again invidiously denied Plaintiff the required fair & timely ALR proceeding notice & hearing, denying Plaintiff time-sensitive notice letters.[53] Such diligence by Plaintiff, as well as Texas Transportations Code §724.048's provisions, defeat any laches or unclean hands defense in matter for Plaintiff.

Section IV(B)(1)'s contents must be rejected; per FRE Rule 106 incomplete doctrine.

Also, as Section IV(B)(1) omit pled & supported relevant & material facts necessary to show equity, its contents should be rejected at this stage of this action until due process hearing on the merits – post service of process; as their probative value *at this stage* is far outweighed by their unfair prejudice to Plaintiff's due process rights to notice & fair hearing on the merits of the class action injunction claims against Defendants TxDPS & McGraw.[54]

Therefore Section IV(B)(1) contents should be rejected per FRE Rules 106 & 403.

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[51] *See Supra*, fn(s), 1, 5, 6, 15, 20, & 22 (for applicable citations)
[52] Doc. 9, Pgs. 4 – 5; *See also, Fed. R. Evid. Rules 106 & 403*
[53] *See*, Doc. 7 Amended Complaint, Pgs. 28, **42**, & 60 (Discussing TxDPS' unreceived 11/26/18 notice-to-cure hearing request letter, nor could it have been by the statutory 5-days mail transmission period of *§724.033(b)* (i.e., by **12/1/18**), to still have made any modified §724.041 hearing request by the statutory request deadline of **11/29/2018.**)
[54] *See, Fed. R. Evid. Rule 403.*

C.

Plaintiff also hereby factually & legally objects to Section IV(B)(1)[55] under FRE 106 doctrine of completeness, & for lack of jurisdiction & due process grounds; and requests it rejected.

Section IV(B)(1)'s contents[56] hail from a predisposed magistrate that lacks authority to issue said Section IV(B)(1)'s contents, as argued per Sections IA to IF of this motion.[57]

Hence it is void of due process & must be rejected per *Marshall v. Jerrico Inc.*, *Baldwin v. Hale*, *Mahone v. Addicks Utility Dist., Of Harris Cnty, Bolling v. Sharpe, Yick Wo v. Hopkins,* 28 U.S.C. §636, §455(a) & §455(b).[58]

Section IV(B)(1)'s contents also summarily distort & falsely present the pled & actual procedural history for this matter,[59] to the detriment of Plaintiff's *prima facie* independent action in equity complaint[60] & Plaintiff & class members' due process rights.[61]

The disregarded pled & supported procedural history shows: (a) that there has never been a fair due process hearing or hearing opportunity on the merits of the action,[62] & (b) that the challenged orders & dismissal judgements from the 1st original action with Cause 4:20-CV-04149 & from the 1st independent action with Cause 4:20-CV-00765,[63] are adoptions of a void

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[55] Doc. 9, Pgs. 4 – 5, ("*This lawsuit's background*")
[56] *Id.*
[57] *Supra*, Pgs. 1–6
[58] *See Supra*, fn(s), 1, 5, 6, 15, 20, & 22 (for citations)
[59] See Doc. 7, Pgs. 2 – 4 (Parties, Sec. (1)(d) & (1)(e) of McGraw & TxDPS), Pgs. 16 – 34 (Complaint Sections III & IV – Procedural history), Pg. 71 (Section IX – Complaint's Challenged Orders…), & Pg. 72 (Section X – Complaint supporting Appendix & Exhibits).
[60] *See* Doc. 7, Pgs. 13 – 72 & 77 – 86.
[61] *See* Doc. 7, *See also, Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) (""[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process…'"); *Mahone v. Addicks Utility Dist., Of Harris Cnty,* 836 F.2d 921, 932 (5th Cir. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality… citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)"); *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence.")
[62] *See Supra*, fn(s) 59 – 61.
[63] *Id.*; *See also*, Doc. 1, Pgs. 74 – 89.

memorandum and opinion issued by an unneutrally detached magistrate appointed unto the case under 28 U.S.C. § 636(b), & issued without due process merits fair hearing in Cause 4:20-CV-04149[64].

Amongst other reasons also pled & supported with appendix & exhibit evidence to show that this case warrants the independent action in equity on the claims against McGraw & TxDPS,[65] this case has never had its fair day in or court of court[66]; and the resulting irreparable harm on Texas citizens' due process rights continues daily[67].

All orders & judgements entered in Cause 4:20-CV-014149 & 4:22-CV-00765, including the challenged orders & judgments, (i) are void of constitutional finality, (ii) are manifest unconscionable to the subjection of the deprivation of Plaintiff & Texas citizens/class members' (a) equal protection rights, (b) substantive due process rights, (c) procedural due process fair notice

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[64] *See*, Doc. 7, Pgs. 17, 18, 30, & 50 (Discussing & citing to CD Appendix evidence of the void *in forma pauperis* §1915 hearing in Cause 4;20-CV-04149; which occurred on 4/7/2021, occurred after the FRCP Rule 4 90-day deadline to serve parties had lapsed, & occurred before the unneutrally detached & 28 U.S.C. §636 magistrate Sam Sheldon.

On 3/8/2021, before the 4/7/2021 hearing, Sheldon deceptively, unreasonably, & discriminatorily requested Plaintiff to refile a IFP application in order to continue IFP in federal court, then at the 4/7/2021 requested that the application be withdrawn or the case be dismissed.

After Plaintiff withdrew the §1915 IFP application in order not to have the case dismissed, Sam Sheldon issued the void-adopted memorandum & recommendation in USDC SDTX # 4:20-CV-04149, without hearing on the merits of the complaint's facts, legal substance, or supporting self-authenticating evidences.

See, Doc(s). 33–34, 39–41, 44–50 of USDC SDTX # 4:20-CV-04149; *Cf. Yick Wo v. Hopkins*, 118 U.S. 356 (1886); 28 U.S.C. §455(a) & (b)(1); & *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980).)

Upon noticing appeal of the 1st independent action with USDC SDTX # 4:22-CV-00765, Plaintiff requested the transcript of the void 4/7/2021 *in forma pauperis* §1915 hearing in Cause 4:20-CV-04149 before Sheldon. *See* Doc. 24 (Amended Notice of Appeal & Request for Transcript), USDC SDTX Cause 4:20-CV-00765, Filed 6/6/2020.

The clerk docketed "No hearings" in response. *See* Doc. 26 ("No hearings" clerk response to Doc. 24 DKT13 transcript request); *See also*, U.S. Fed. 5th Circuit Court of Appeals Cause No. 22-20269 (Appeal of USDC SDTX Cause 4:20-CV-00765), Document No. 00516417289, Pgs. 184 – 185, Date Filed: 08/02/2022 (Contains USDC SDTX Cause 4:22-CV-00765 docket)

[65] Docs. 1, Pgs. 74 – 89; Doc. 7.
[66] Doc. 7, Pg. 4.
[67] Doc. 7, Pg. 21; *See also*, Doc. 7, Pgs. 13 – 72 & 77 – 86; *See also*, Doc. 1, Pgs. 74 – 89.

& hearing rights, & (d) rights against unreasonable search & seizure; & (ii) result in or effectuate grave miscarriage of justice against Plaintiff & Texas citizens/class members.[68]

Without due process fair notice & hearing on the merits of the action, & such proceeding executed before a neutrally detached judge & magistrate (just as in Plaintiff's situation in 4:20-CV-04149 & 4:22-CV-00765), (i) the recommendation & memorandum from cause 4:20-CV-04149 is void, (ii) the order of the court adopting said recommendation is void, & (iii) any orders or judgments affirming, reciting, or attempting to revive said rulings, are void[69] – just as Doc. 9 & its objected contents.[70]

Doc. 7,[71] its filed Exhibits,[72] & its submitted CD of Appendix,[73] including Doc. 1, Pgs. 74 – 89's Exhibits, all contain the necessary procedural history, facts, law, & supporting evidence to support that Plaintiff's class action injunction claims against TxDPS & McGraw on the unconstitutional & void statutory notice document (i.e., the challenged DIC-24 form);[74] & warrant the pled & motioned independent action in equity: an equitable action/raised court of equity & not subject to statute of limitations defense.

Hence, Plaintiff hereby factually & legally objects to Section IV(B)(1) on incomplete & lack of jurisdiction due process grounds. Doc. 9's Section IV(B)(1) is harmfully void of due process & impartiality, & must be rejected.[75]

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[68] *See*, Doc. 7, Pgs. 71 – 72; *See also*, Doc. 1, Pgs. 74 – 89, *See also*, Doc. 7, Pg. 72 (**Section X**'s complaint's appendix ("Appx.") CD contents, found in the submitted CD's "**SCOTUS Writ of Cert. Cause 22.20269. 2.8.2023 with Appendix Docs 2.9.2023**" pdf file, contains numbered **Appx. 15 – 67**, & contains the TxDPS claim challenged orders)

[69] *Accord, Supra*, fn 2 (cases cited).

[70] *See, Supra*, Pgs. 1 – 14 (Section I, II, & III(A) – III(C)); *See also*, Docs. 1, Pgs. 74–89, *See also*, Docs. 7 & 10; *Cf.* Doc. 9.

[71] Doc. 7 (Amended Complaint, Motion to Certify Class, & Motion for Summary Judgement)

[72] Doc. 1, Pgs. 74–89.

[73] *See* Doc. 7, Pg. 72 (Section X)

[74] *See*, Doc. 7, Pgs. 1 – 88; *See also*, Doc. 1, Pgs. 74–89; *See also*, Doc. 7, Pg. 72 (Section X: Submitted complaint CD of Exhibits & Appendix)

[75] *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction & void, & attackable collaterally by *habeas corpus* if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is

IV. DOC. 9 SECTION IV(B)(2) OBJECTIONS

A.

Contents of Sections I, II, & III above, are hereby incorporated by reference.

Plaintiff hereby legally objects to Section IV(B)(2)[76] on (i) FRE Rule 403 grounds - as Section IV(B)'s contents' probative value at this stage of proceeding are substantially outweighed by their danger to (a) unfairly prejudice Plaintiff's due process rights, (b) confuse the issues relevant at this stage of this action, (c) unduly delay this proceeding, & (d) waste time at this stage of action; & (iii) lack of due process required per *Marshall v. Jerrico Inc.*, *Baldwin v. Hale*, & 28 U.S.C. §636, §455(a) & §455(b), & contrary to Texas Supreme Court's proper ruling *BankDirect Capital Finance, LLC v. Plasma Fab, LLC* 519 S.W.3d 76 (Tex. 2017) on the applicable underlying issue – whether strict compliance is for mandatory statutory notices in Texas - & basis for the void & challenged rejection of Plaintiff's standing to bring claims.

B.

Plaintiff hereby legally objects to Section IV(B)(2) for lack of jurisdiction & due process grounds; and requests it rejected.

As pled in Doc. 7 & supported with Exhibits & Appendix evidence,[77] & as argued in sections above[78], Section IV(B)(2)'s contents[79] hail from an opinion from a predisposed magistrate who lacked authority to issue said Section IV(B)(2)'s contents in SDTX's Cause No. 4:20-CV-04149 without hearing on the merits, & was adopted without due process hearing by a justice that lacked neutrality, in an SDTX tribunal & proceeding that lacked constitutional impartiality.

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forbidden by the fundamental law to take either life, liberty or property without due process of law, & its courts are included in this prohibition.")

[76] Doc. 9, Pgs. 5 – 6, ("B. **Standing to Bring Claim Against Steven McGraw and Texas DPS.**... 1. *Plaintiff lacks standing*...")

[77] See, Supra fn(s) 71–74 (for citations)

[78] *See, Supra*, Pgs. 1–15 (Sections I, II, & III)

[79] Doc. 9, Pgs. 5–6.

Hence the ruling/judgement borrowed from (i.e., *Adimora-Nweke v. Yarbrough-Smith*, 2021 U.S. Dist. LEXIS 231593 (S.D. Tx 2021) is void of due process[80], "[i]t is good nowhere and bad everywhere,"[81] & "[any] order or judgment... reviving it entered adds nothing to its validity."[82] The challenged SDTX-adopted memorandum & recommendation from USDC SDTX Cause No. 4:20-CV-04149, adopted for the challenged judgement of dismissal with prejudice in said SDTX Cause 4:20-CV-04149, "has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time, capable of bearing no fruit... but constituting a constant menace...."[83] Consequently, Plaintiff objects to Section IV(B)(2)'s contents, specifically the following below from Doc. 9, Pgs. 4 – 6, which must be rejected:

> "Plaintiff argues he was harmed by the DIC-24 form that is missing Texas Transportation Code Section 724.015(6). However, Texas Transportation Code Section 724.015(6) only applies to individuals who do not have a driver's license. *Texas Transportation Code Section 724.015(6) did not apply to Plaintiff because he had a driver's license at the time of his arrest*. Thus, Plaintiff cannot be injured by a lack of notice regarding Texas Transportation Code Section 724.015(6) ... **Without an injury, Plaintiff fails to establish standing.**
>
> **"[T]he Court cannot redress Plaintiff's criticism of the DIC-24 form because the reason for Plaintiff's license suspension had nothing to do with a portion of the statute that does not apply to Plaintiff**... Plaintiff's request for a declaration or injunction would be futile as neither would change the inapplicability of the language in the DIC-24 form to Plaintiff." (Doc. 9, Pgs. 5 – 6)

C.

Plaintiff hereby further legally objects to Section IV(B)(2) for lack of jurisdiction & due process grounds; and requests it rejected.

The void SDTX borrowed principles & reasoning, propounded in Section IV(B)(2) as lack of standing basis to dismiss the claims against McGraw & TxDPS with prejudice, is contrary sound judicial & legal principles, contrary to Texas Supreme Court's *BankDirect Capital Finance, LLC*

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[80] *See Supra*, fn(s), 1, 2, 5, 6, 15, 20, & 22 (for applicable cases & statute citations)
[81] *See Supra*, fn. 2 (citing *Dews v. Floyd*, 413 S.W.2d 800, 804 (Tex.Civ.App. – Tyler, 1967))
[82] *See Supra*, fn. 2 (citing *Walls v. Erupcion Mining Co.*, 36 N.M. 15, 6 P.2d 1021 (N.M. 1931))
[83] *Id.*

v. Plasma Fab, LLC 519 S.W.3d 76 (Tex. 2017) that resolves the issue of strict compliance requirements for mandatory statutory notice statutes in Texas, & contrary to U.S. Supreme Court's held principles on statutory construction per *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).[84]

Plaintiff already logically explained in detail in the continuously disregarded Docs. 51, 53, 56, & 64 of USDC SDTX Cause No. 4:20-CV-04149; & presented such via disregarded & unheard motion exhibits filed in Doc. 2 of USDC SDTX Cause No. 4:22-CV-00765 - the 1st independent action.[85]

Furthermore, Texas Transp. Code §724.015(a) contains **statutory warnings** that must be **noticed** (i.e., disclosed) all subjects orally & in writing (regardless of application to the specific subject) **before** the government's limited due process authority to act vests, under TX implied consent law.[86] It is a mandatory & jurisdictional notice & procedural statute.[87]

Texas Supreme Court already resolved similar issue in favor of Plaintiff & class, in 2017; holding strict compliance as required for mandatory statutory notices.[88]

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[84] ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law."); ***Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020)** ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit.").

[85] *See*, **Ex(s). B1–B56 attached to this filing** (Containing docket filings: Doc. 51 (Objections to Recommendation), Doc. 53 (Reply to Dk.53 – McGraw & TxDPS response), & Doc. 64 (Motion for Reconsideration) of USDC SDTX Cause No. 4:20-CV-04149 – the duly 9/15/2020 state district court filed & later removed original 1st action.)

[86] *See*, Tex. Transp. Code Ch. 724 & §724.015(a).

[87] Doc. 7, Pgs. 43–49, 57–59, 62–63.

[88] ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017)**

Hence, strict compliance is required for the statutory warning notice of §724.015(a), required noticed Plaintiff & all §724.015(a) & DIC-24 subjects (i.e., proposed class members). Also, hence, TxDPS' DIC-24 forms are required to contain ALL warnings enumerated in §724.015(a) (including §724.015(a)(6)), & regardless any of §724.015(a)'s required subsection-contents' applicability or inapplicability to the subject. Otherwise notice requirement of §724.015(a) is never met.

Consequently, since 2011, all TxDPS' DIC-24 forms that omit §724.015(a)(6), have been irreparably harmful & void of due process notice to subjects.

Without the mandated & statutory notice, there lacks due process implied consent for searches & seizures of citizens' blood, & government actors lack authority to act (including to (i) revoke or suspend subjects' DLs, (ii) require any ALR proceeding hearing request obligations from subjected citizens, (iii) charge or collect any ALR or driver's license ("DL") revocation or $125 DL reinstatement fees or costs from subjected citizens, etc.) except obtain a warrant for breath.

Consequently, Plaintiff hereby objects to section IV(B)(2) contents as a whole, & its adopted quoted rulings from SDTX - in Doc. 9, Pgs. 5- 6 – on lack of jurisdiction & due process grounds. Said section IV(B)(2) & its contents, & the void quoted & adopted rulings/opinion from SDTX 4:20-CV-04149 (Doc. 9, Pgs. 5 – 6), must be rejected.

V. CONCLUSION(S) & RELEIF(S) REQUESTED

All contents of Sections I, II, III, IV, & V above, are hereby incorporated by reference. For these reasons, Plaintiff hereby:

- objects to Doc. 9 & its contents in whole & in parts for the reasons raised in §I – §V above;
- asks this court to accept **only** the following two authorized ORDERS of Doc. 9:

"The Magistrate Court hereby **GRANTS** Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 3) and Motion to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (Dkt. 6)." (Doc. 9, Pg. 7, Paragraph 1, Sentence 1);

- asks this court to reject the Recommendations & all other contents of Doc. 9; &
- asks this court to grant the request in Doc. 8, Pg. 2.

Respectfully Submitted,
/s/ Ernest Adimora-Nweke
Ernest Adimora-Nweke
Texas State Bar Number: 24082602
Adimora Law Firm
3050 Post Oak Blvd., Suite 510
Houston, TX 77056
281-940-5170 (Office)
ernest@adimoralaw.com
Pro Se Plaintiff
Proposed Class Representative & Counsel

VIII. CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above, on or before the date of filing/file stamp, has been delivered to the attorneys listed below pursuant to applicable Federal Rules of Civil Procedure (e.g. electronic filing, fax, ECF system, and/or email).

Respectfully Submitted,
/s/ Ernest Adimora-Nweke
Ernest C. Adimora-Nweke, Jr
Texas State Bar Number: 24082602

Served On:
ATTORNEYS FOR DEF. MCGRAW & TxDPS
KEN PAXTON
Attorney General of Texas
SHAWN COWLES
Deputy Attorney General for Civil Litigation

BRENT WEBSTER
First Assistant Attorney General
THOMAS A. ALBRIGHT
Chief - General Litigation Division

SCOT M. GRAYDON
Texas Bar No. 24002175; Southern ID No. 719112;
Assistant Attorney General
PRIOR ATTORNEYS FOR DEFENDANT STEVEN A. MCGRAW
Via email

David Goode | Assistant United States Attorney
U.S. Attorney's Office | Western District of Texas
903 San Jacinto Blvd., Suite 334 | Austin, TX 78701
Counsel for United States
Via email

FILED
October 16, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: DM
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff/Petitioner	§	**1:23-CV-1048-DII-ML**
v.	§	
Steven C. McGraw, et al		
Defendants		

PLAINTIFF'S I. NOTICE(S), II. EXHIBITS FOR OBJECTIONS TO DOC. 9, & III.PROPOSED ORDER ON DOC 9's RECOMMEN & OPINION OBJECTIONS

TO THE HONORABLE COURT & CLERK:

Plaintiff, Ernest Adimora-Nweke, hereby files the following per the caption above:

I. NOTICE(S)

A. Plaintiff is unable to access, obtain, & review Docs. 9-1 through 9-11 via CM/ECF online system. Plaintiff is only able to access & view Doc(s) 9, 9-12, 9-13 within Doc. 9 filings.

B. Plaintiff duly filed the 1st original action on 9/15/2020, and duly requested & had McGraw & TxDPS noticed pre-removal to federal court with USDC No. 4:20-CV-04149.[1] Hence no statute of limitations defense applies to the original suit, nor to this independent action.

C. Plaintiff's due process objections to Doc 9 are duly & soon forthcoming – as needed; & which includes the following:

"The void SDTX borrowed principles & reasoning, propounded in Section IV(B)(2) as lack of standing basis to dismiss the claims against McGraw & TxDPS with prejudice, is contrary sound judicial & legal principles, contrary to Texas Supreme Court's *BankDirect Capital Finance, LLC v. Plasma Fab, LLC* 519 S.W.3d 76 (Tex. 2017) that resolves the issue of strict compliance requirements for mandatory statutory notice statutes in Texas, & contrary to U.S. Supreme Court's

[1] *See*, **Ex(s). A1–A5 attached to this filing.**

held principles on statutory construction per *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).[2]

Plaintiff already logically explained in detail in the continuously disregarded Docs. 51, 53, 56, & 64 of USDC SDTX Cause No. 4:20-CV-04149; & presented such via disregarded & unheard motion exhibits filed in Doc. 2 of USDC SDTX Cause No. 4:22-CV-00765 - the 1st independent action.[3]

Furthermore, Texas Transp. Code §724.015(a) contains **statutory warnings** that must be **noticed** (i.e., disclosed) all subjects orally & in writing (regardless of application to the specific subject) **before** the government's limited due process authority to act vests, under TX implied consent law.[4] It is a mandatory & jurisdictional notice & procedural statute (Cite pleading).

Texas Supreme Court already resolved similar issue in favor of Plaintiff & class, in 2017; holding strict compliance as required for mandatory statutory notices.[5]

Hence, strict compliance is required for the statutory warning notice of §724.015(a), required noticed Plaintiff & all §724.015(a) & DIC-24 subjects (i.e., proposed class members). Also, hence, TxDPS' DIC-24 forms are required to contain ALL warnings enumerated in

---

[2] ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law."); ***Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020)** ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit.").

[3] *See*, **Ex(s). B1–B56 attached to this filing** (Containing docket filings: Doc. 51 (Objections to Recommendation), Doc. 53 (Reply to Dk.53 – McGraw & TxDPS response), & Doc. 64 (Motion for Reconsideration) of USDC SDTX Cause No. 4:20-CV-04149 – the duly 9/15/2020 state district court filed & later removed original 1st action.)

[4] *See*, Tex. Transp. Code Ch. 724 & §724.015(a).

[5] ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017)**

§724.015(a) (including §724.015(a)(6)), regardless of application (Cite *Id.*) Otherwise notice requirement of §724.015(a) is never met. Consequently, since 2011, all TxDPS' DIC-24 forms that omit §724.015(a)(6), have been irreparably harmful & void of due process notice to subjects.

Without the mandated & statutory notice, there lacks due process implied consent for searches & seizures of citizens' blood, & government actors lack authority to act (including to (i) revoke or suspend subjects' DLs, (ii) require any ALR proceeding hearing request obligations from subjected citizens, (iii) charge or collect any ALR or driver's license ("DL") revocation or $125 DL reinstatement fees or costs from subjected citizens, etc.) except obtain a warrant for breath.

Consequently, Plaintiff hereby objects to section IV(B)(2) contents as a whole, & its adopted quoted rulings from SDTX - in Doc. 9, Pgs. 5- 6 – on lack of jurisdiction & due process grounds. Said section IV(B)(2) & its contents, & the void quoted & adopted rulings/opinion from SDTX 4:20-CV-04149 (Doc. 9, Pgs. 5 – 6), must be rejected."

II. PROPOSED ORDER ON DOC 9's RECOMMEN & OPINION OBJECTIONS

On this _____ day of _____ 2023, came hearing & consideration on the foregoing OBJECTIONS TO DOC. 9; & DOC. 8 ("PLAINTIFF'S EMERGENCY MOTION & AMENDED ORDER - FOR SUMMONS ISSUANCE & FOR SERVICE OF PROCESS"). Plaintiff requested the following:

A. Accept **only** the following two authorized ORDERS of Doc. 9:

"The Magistrate Court hereby **GRANTS** Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 3) and Motion to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (Dkt. 6)." (Doc. 9, Pg. 7, Paragraph 1, Sentence 1);

B. Reject ALL the contents, statements, proposed findings, & recommendations in Sections I. III, IV, & V of Doc. 9;[6] **&**

C. Grant Plaintiffs' process service request in Doc. 8, Pg. 2, which seeks FRCP Rule 4 order for the clerk to:

1. Issue summons to the following Defendants (a) Texas Department of Public Safety, (b) Steven C. McGraw (Director of Texas Department of Public Safety), & (c) Hon. Judge Lynn Hughes – sued in his official capacity;

2. Have said Defendants served a copy of the summons & complaint per FRCP Rule 4, via either (a) U.S. Marshalls or (b) certified mail; &

3. Have a copy of the summons & complaint for Hon. Judge Lynn Hughes served the United States by either (a) U.S. Marshalls or (b) certified mail, per FRCP Rule 4(i)(1)(A); and served-sent to the following designated person:

Stephanie Rico
Civil Process Clerk
Office of the United States Attorney for the Western District of Texas
601 Loop 410, Suite 600
San Antonio, Texas 78216

---

[6] *See* Doc. 9, Pgs. 1 – 6 (Sec. **I. INTRODUCTORY NOTE...; III. STANDARD OF REVIEW...; IV. REVIEW OF THE MERITS OF THE CLAIM...** (A) **Claim Against Judge Hughes**..., (B) **Standing to Bring Claim Against Steven McGraw and Texas DPS...; V. CONCLUSION**...); *See also*, *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980); *Baldwin v. Hale*, 68 U.S. 223, 233 (1863); *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950); *See also*, 28 U.S.C. §455(a) & §455(b)(1); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *U.S. Const. Amd. V & VI; Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949).

WHEREFORE,

Plaintiff's requests are hereby GRANTED. The clerk is hereby ordered to:

(1) Issue summons to the following Defendants (a) Texas Department of Public Safety, (b) Steven C. McGraw (Director of Texas Department of Public Safety), & (c) Hon. Judge Lynn Hughes – sued in his official capacity; &

(2) Have said Defendants served a copy of the summons & complaint per FRCP Rule 4, via either (a) U.S. Marshalls or (b) certified mail; &

(3) Have a copy of the summons & complaint for Hon. Judge Lynn Hughes served the United States by either (a) U.S. Marshalls or (b) certified mail, per FRCP Rule 4(i)(1)(A); and served-sent to the following designated person:

Stephanie Rico
Civil Process Clerk
Office of the United States Attorney for the Western District of Texas
601 Loop 410, Suite 600
San Antonio, Texas 78216

_____ Judge Presiding

III. EXHIBITS FOR OBJECTIONS TO DOC. 9 (In Order Below):

1. **Ex(s). A1–A5** ---------- **5 pgs**
2. **Ex(s). B1–B56** ---------- **56 pgs**
   a. B1–B24 (USDC SDTX 4:20-CV-04149, **Doc. 51**, Filed 9/23/2021) ---- 24 pgs.
      - Objections to Recommendation & Memorandum (Doc. 50 of USDC SDTX 4:20-CV-04149)
   b. B25–B29 (USDC SDTX 4:20-CV-04149, **Doc. 53**, Filed 9/30/2021) ---- 5 pgs.
      - Reply to Dk.52 (Doc. 52 of H-CV-04149 is McGraw & TxDPS response to Doc. 51 of H-CV-04149)
   c. B30–B56 (USDC SDTX 4:20-CV-04149, **Doc. 64**, Filed 1/20/2022) ---- 27 pgs.
      - Motion for Reconsideration of Docs. 60 & 61's Judgment of Dismissal with Prejudice of H-CV-01419.

11/6/2020 4:53 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 47899256
By: SHANNON NORTH-GONZALEZ
Filed: 11/6/2020 4:53 PM

CAUSE NO. 202056824

Ernest Adimora-Nweke	§	In the 234TH
Plaintiff	§	JUDICIAL DISTRICT COURT
v.	§	HARRIS COUNTY, TX (UNOPPOSED)
Hannah O. Yarbrough-Smith, et al		
Defendants		

PLAINTIFF'S MOTION FOR RECONSIDERATION AND CLERK ORDER

TO THE HONORABLE JUDGE OF SAID COURT & CLERK:

COMES NOW Ernest Adimora-Nweke, Plaintiff, in the case with the style number above, and hereby files this motion for reconsideration and order to the clerk.

FACTS

Plaintiff filed the petition in this case on or about 09/15/2020.

Plaintiff filed an amended petition with a 2-page statement of inability to pay costs and request for alternative service on 09/17/2020. *See e.g. Images 92209124 & 92246282.*

This Court denied the request on 09/28/2020. *Image 92395120.*

Plaintiff filed a verified and amended statement on costs and request for substituted service on 09/30/2020. *Image 92402002.*

This Court denied the request on 10/05/2020. *Image 92482763.*

Plaintiff has been able to submit waiver of costs for citation issuance, service of process, and jury fee via efile. *See e.g. Image 92520801* (for jury fee submission via waiver on efile); *See also, Exhibits 1, 2, & 3 attached.*

The clerk originally requested said waiver entry for their accounting purposes. Post Plaintiff's entry of said waiver in the efile system for their accounting purposes, the clerk thereafter denied the citation issuance and service of process requests. Exhibit 3 attached.

There is no 145(f)(1) to 145(f)(4) motion on file contesting Plaintiff's ability to pay costs.

Unofficial Copy Office of Marilyn Burgess District Clerk

202056824 - ADIMORA-NWEKE, ERNEST vs. YARBROUGH-SMITH, HANNAH O (Court 234)

Chronological History | Print All (non-financial)

Summary | Appeals | Cost Statements | Transfers | Post Trial Writs | Abstracts | Parties
Court Costs | Judgments/Events | Settings | Services/Notices | Court Registry | Child Support | Images

Preview DocketSheet | Add DocketSheets to Basket | Print Summary

Case (Cause) Summary	
File Date	9/15/2020
Case (Cause) Location	
Case (Cause) Status	Active - Civil
Case (Cause) Type	OTHER CIVIL
Next/Last Setting Date	N/A
Jury Fee Paid Date	10/8/2020

The Current Presiding Judge	
Current Court	234th
Filing Court	234th
Address	201 CAROLINE (Floor: 13) HOUSTON, TX 77002 Phone:(713)368-6350
JudgeName	LAUREN REEDER
Court Type	Civil

jwk7

Unofficial Copy Office of Marilyn Burgess District Clerk

P.2

CAUSE NO. 202056824

RECEIPT NO. 872694 78.00 CTM
********** TR # 73812142

PLAINTIFF: ADIMORA-NWEKE, ERNEST
vs.
DEFENDANT: YARBROUGH-SMITH, HANNAH O

In The 234th Judicial District Court of Harris County, Texas
234TH DISTRICT COURT
Houston, TX

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of Harris

TO: MCGRAW, STEVEN C (DIRECTOR OF TEXAS DEPARTMENT OF PUBLIC SAFETY)

5805 N LAMAR BLVD AUSTIN TX 78752 - 4431

Attached is a copy of PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

This instrument was filed on the 18th day of November, 2020, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 18th day of November, 2020, under my hand and seal of said Court.

Issued at request of:
ADIMORA-NWEKE, ERNEST CHUKWUNENYE JR.
5100 WESTHEIMER RD, STE 200
HOUSTON, TX 77056
Tel: (281) 980-5170
Bar No.: 24082602

MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: DENNA BRIANNA JANEL 385//11627499

CLERK'S RETURN BY MAIL

Came to hand the _____ day of _____, _____, and executed by mailing to Defendant certified mail, return receipt requested, restricted delivery, a true copy of this citation together with an attached copy of PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION to the following addressee at address:

_____
(a)ADDRESSEE

_____
ADDRESS

Service was executed in accordance with Rule 106 (2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at

on _____ day of _____, _____
by U.S. Postal Delivery to _____

This citation was not executed for the following reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

RECORDER'S MEMORANDUM
This instrument is of poor quality at the time of imaging

S.NEW.CIM.P

73812142

Unofficial Copy Office of Marilyn Burgess District Clerk

Ex. A3

CAUSE NO. 203056834

RECEIPT NO. 873896 75.00 CTM
********** TR # 73812142

PLAINTIFF: ADIMORA-NWEKE, ERNEST
vs.
DEFENDANT: YARBROUGH-SMITH, HANNAH G

In The 234th Judicial District Court of Harris County, Texas
234TH DISTRICT COURT
Houston, TX

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of Harris

TO: MCCRAW, STEVEN C (DIRECTOR OF TEXAS DEPARTMENT OF PUBLIC SAFETY)

5805 N LAMAR BLVD AUSTIN TX 78752 - 4431

Attached is a copy of PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

This instrument was filed on the 13th day of November, 2020, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 18th day of November, 2020, under my hand and seal of said Court.

Issued at request of:
ADIMORA-NWEKE, ERNEST CHUKWUNENYE JR.
5100 WESTHEIMER RD, STE 200
HOUSTON, TX 77056
Tel: (281) 940-5179
Bar No.: 24082602

DISTRICT COURT OF HARRIS COUNTY, TEXAS

MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: DUMON, BRIANNA JANEL 395//11627499

CLERK'S RETURN BY MAILING

Came to hand the _____ day of _____, _____, and executed by mailing to Defendant certified mail, return receipt requested, restricted delivery, a true copy of this citation together with an attached copy of PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION to the following addressee at address:

_____ _____
ADDRESS

_____
(s)ADDRESSEE

Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at

_____
on _____ day of _____, _____
by U.S. Postal delivery to _____

_____

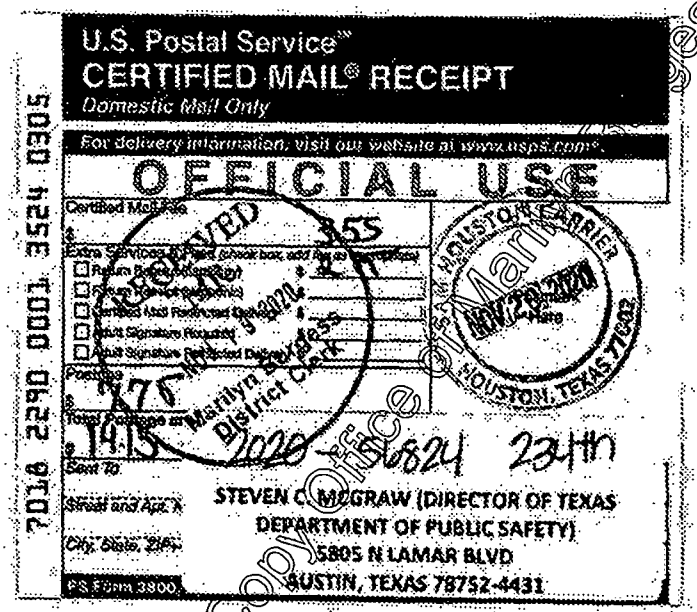
This citation was not executed for the following reason: _____

_____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

Unofficial Copy Office of Marilyn Burgess District Clerk



2020-56824

11-19-2020

Unofficial Copy Office of Marilyn Burgess District Clerk

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

United States Courts
Southern District of Texas
FILED

SEP 23 2021

Nathan Ochsner, Clerk of Court

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

Ernest Adimora-Nweke *Plaintiff*	§	CASE NO. 4:20-CV-4149
v.	§	
Steven C. McGraw, et al *Defendants*	§	

PLAINTIFF'S OBJECTIONS TO DKT 50

TO THE HONORABLE COURT & ALL PARTIES:

COMES NOW Ernest Adimora-Nweke, Plaintiff, and files this FRCP Rule 72(b) objections:

MATERIAL SECTION OF PLEADING AGAINST MCGRAW

Pgs. 86 – 108 of the 4th Amendment to Original Petition, Dkt. 6, contains the material facts and allegations against McGraw. (Dkt. 6, pgs. 5, 86 – 108, 119 – 125)

OBJECTIONS & ARGUMENT

Plaintiff objects to the following statement, and all of the court's equal protection and due process findings and arguments in pgs. 9 – 11 of Dkt. 50, on the grounds that they assume facts not in evidence, they are contrary to scope of 12(b)(6) motion, and they are error on facts and law:

"On November 26, 2018, Plaintiff was notified that his request was insufficient under Texas Administrative Code, Title 37, Chapter 17, Rule 17.8 (4) and (5). Plaintiff did not attempt to correct the defect until January 26, 2019, well after the 15-day statutory time period passed. Consequently, Plaintiff's license was suspended from December 14, 2018 until June 21, 2019…" (Dkt. 50, pgs. 2 – 3).

A) Plaintiff received no due process fair notice of hearing pre-suspension in fact

Defendants provided proof of a notice letter that was drafted on 11/26/2018. (Dkt. 2 at 347)

Plaintiff pled, amongst others, that Plaintiff never received the 11/26/2018 letter, and that he was never granted the statutorily required ALR hearing. (Dkt. 6, pg. 90) Defendant's states that the office name is misspelled, but the contents were addressed to the "Ernest Adimore-Nweke." (Dkt. 6, pg. 6) Since the wrong recipient was on the 11/26/2018 letter, Plaintiff clearly could not have known that the contents inside were for Plaintiff. Regardless, since facts are taken as true in

Ex. B1

favor of Plaintiff on 12(b)(6) motions, the established fact at this moment is that Plaintiff never received fair notice or hearing opportunity constitutionally guaranteed him before any driver's license suspension can occur. *Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that the suspension of a driver's license required due process protection solely because of its importance.); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance."); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) ("A fundamental requirement of due process is 'the opportunity to be heard.' *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) It is an opportunity which must be granted at a meaningful time and in a meaningful manner.")

Any allegation that due process is not required before suspension, revocation, or any infringement on driving privileges, is fails due to *Bell v. Burson*, and unconstitutionally renders the statutorily required §724.041 ALR notices and proceedings useless or meaningless. *Tex. Transp. Code. §724.041; §724.015(7); §724.034; Cf. Smith v. Davis*, 426 S.W.2d 827, 831 (Tex. 1968) ("...The wisdom or expediency of the law is the Legislature's prerogative, not ours...")

B) Plaintiff received no due process fair notice of hearing pre-suspension in law

Most importantly, per Texas Transportation Code §724.033(b), the 11/26/2018 drafted letter is deemed received, if it was ever sent, as of 12/1/2018; 5 days after it was mailed.

The 15-day statutory deadline after the 11/14/2018 arrest and its §724.032(a) notice, falls on 11/29/2018 or 11/30/2018 at the latest. *Tex. Transp. Code. §724.041(a)*; Dkt. 50, pg. 2. Therefore, by law, Plaintiff never received said document in Doc. 2, pg. 347, in time to make any corrections to the request hearings by the required 11/29/2018 or 11/30/2018 deadline per §724.041(a). The notice to correct by deadline letter was deemed received, by law, on 12/1/2018, after the 11/29/2018 deadline. Hence, by law, there was no fair notice or hearing opportunity

Ex. B2

provided Plaintiff to contest the suspension. See *Mullane*, at 314; *Armstrong*, at 552 (citing *Grannis v. Ordean*, 234 U.S. 385, 394 (1914))

The law deemed the letter received by 12/1/2018. But since, Plaintiff never received the 11/26/2018 letter by law or fact – as it was sent to the wrong person, it was never provided Plaintiff, and/or the State provides no proof of sending the letter but only provides proof of drafting the letter – Plaintiff clearly pled a lack of required notice and fair hearing opportunity due process violation.

As also explained, United States Supreme Court's *Bell v. Burson* hold that due process fair notices and hearing opportunity are required before driver's license revocation; and such is supported by the ALR hearing requirements. *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Tex. Transp. Code. §724.041; §724.015(7); §724.034.*

Hence, the suspension of Plaintiff's driver's license without the required fair notice and ALR hearing opportunity, is a U.S. Constitutional equal protection and due process violation that voids the suspension. *Bass v. Hoagland*, 172 F.2d. 205, 209 (5th Circ. 1949), cert denied, 338 U.S. 816 (1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally by habeas corpus if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition.")

***

Plaintiff objects to all "Standing" statements (Dkt. 50, pgs. 5 – 6), and the following:

"Plaintiff argues he was harmed by the DIC-24 form that is "missing Texas Transportation Code Section 724.015(6)."[23] However, Texas Transportation Code Section 724.015(6) only applies to individuals who do not have a driver's license. Texas Transportation Code Section 724.015(6) did not apply to Plaintiff because he had a driver's license at the time of his arrest.[25] Thus, Plaintiff cannot be injured by a lack of notice regarding Texas Transportation Code Section 724.015(6)...

Without an injury, Plaintiff fails to establish standing… There is no current injury to Plaintiff's ability to drive that could be redressed by the equitable relief Plaintiff seeks." (Dkt. 50, pg. 5 – 6)

The reasoning is void and results in the unjust or unconstitutional deprivation of equal protection and due process rights of Plaintiff and similarly situated individuals.

The administrative proceedings entitled Plaintiff and similarly situated individuals under 724.041 and Chapter 724, is a civil matter. *Tex. Transp. Code. §724.041; §724.048(a)* Hence, this court has jurisdiction over Plaintiff's U.S. Constitutional based claims under §1983, and juridical review authority over the challenged void unconstitutional ALR proceeding and its suspension orders via this collateral proceeding with the cause number above, per 28 U.S.C. Section § 1331 and *Bass v. Hoagland. 42 U.S.C. §1983; 28 U.S.C. Section § 1331; Tex. Transp. Code §724.048(a); Bass*, at 209.

C) Equal Protection and additional due process rights are affected as pled

As pled, the source of the matter against McGraw and TxDPS hails from the unconstitutional DIC-24 document, Dkt. 6, pg. 88 – 108. It is unconstitutional on its face as it is lacks Texas legislature's mandated §724.015(6) language. *Id.* at 98 – 106. The whole statute, §724.015 is applicable to Plaintiff and all similarly situated individuals. The class includes individuals with or without Texas driver's license, except persons incapable of refusal per §724.014. *See Tex. Transp. Code §724.011; §724.012; §724.014*

That Plaintiff has standing to bring claim for unconstitutional DIC-24 document. The admitted existence of the error voids the DIC-24 document, even if the existing error is inapplicable to Plaintiff's specific situation. The law requires that the DIC-24 document not contain the error at all. Otherwise, the document is useless as it does not meet constitutional requirements, and anyone it is used upon was not given the required complete warning of

§724.015. Furthermore, since there is no other DIC-24 document that applies to individuals who do not have a driver's license, the state in using the DIC-24 document is then unconstitutionally discriminating in favor of individuals who do not have a Texas driver's license, to the prejudice of those who have a driver's license. Those who don't have a Texas driver's license, are forever those with a standing to challenge the unconstitutional defected DIC-24 document on grounds of lack of fair and required statutory notice, and not have their license suspended, or not have any suspension enforceable per *Bass v. Hoagland*, for clear violation of statutory §724.015 due process requirement. That is irrational and unconstitutional result, and contrary to the statute's legislative intent and constitutional implications per *Section D1* below.

Yet, as explained below, the 724.015 warnings are to protect substantive due process fundamental right to privacy. *Section A below.* Hence, TxDPS and McGraw must have compelling interest to protect by not including the required 724.015(6), and must provide a narrowly tailored and least restrictive means alternative to fulfill the whole statutory requirements disclosure of 724.015. Contrary to the magistrate's ruling or finding of "rational basis" standard for equal protection challenge on pg. 10 of Dkt. 50, to which Plaintiff hereby objects, the state must meet "strict scrutiny" for its knowing and continued exclusion of the required 724.015(6). *See Fn. 6.*

McGraw and TxDPS are unable to do this, nor have they corrected the unconstitutional error that continuously subjects or causes Plaintiff and similarly situated persons unconstitutional equal protection and due process rights deprivation, and harm.

The materiality of §724.015 is that (a) authority of an arresting officer to request or require a specimen from Plaintiff and putative class member, and (b) jurisdiction for any Texas Transportation Code Chapter 724 Subchapter D Administrative proceeding/hearing, vests only upon an arresting officer(s) strict proper compliance with §724.015.

Ex. B5

Per §724.003, TxDPS and Director McGraw "may adopt rules to *administer*" the chapter's provisions." *Tex. Transp. Code §724.003.* It does not authorize McGraw and/or TxDPS to *alter, amend, or change* the required provisions. Such authority vests in Texas legislature.

Hence, the DIC-24 document as it currently stands is an unreasonable, arbitrary, capricious, and unconstitutional act of TxDPS and Director McGraw; contrary to enumerated acts of Texas legislature.

Any argument of McGraw and TxDPS, in regards to post due process remedy available to Defendant is (a) inapplicable in this case per the clearly denied post due process, and (b) is irrelevant and immaterial because the TxDPS never acquires jurisdiction over any administrative hearing without strict compliance with Section 724.015 – i.e., without the DIC-24 document containing section §724.015(6) and it provided orally and in writing to subjects.

As long as the DIC-24 document exists as per Dkt. 2, pg. 323 of 352, versus as Plaintiff proposed in Dkt. 2, pg. 311 of 352, subject to the enumerated caveat of §724.014, (a) no arresting officer to has authority to request or require a specimen from Plaintiff and any putative class member or similarly situated person, (b) no arresting officer has any authority to deprive Plaintiff or any putative class member or similarly situated person of any driving privileges, (c) TxDPS never acquires jurisdiction over the any hearing or proceeding resulting from any alleged request or refusal to provide a breath or blood specimen, and (d) TxDPS never has authority to issue any orders, fines, fees, or costs that result in or affect Plaintiff or any putative class members' driving privileges.

In the case of dead, unconscious, or otherwise incapable[1] of refusal persons, §724.014 would apply and the DIC-24 document would not apply. Existence of §724.014(c) does not preclude Plaintiff's equity Section 1983 claims, or class action, against McGraw and TxDPS pled in the governing pleading, Dkt. 6, pgs. 86 – 108; and addressed in McGraw's 12(b)(6) motion.

D) Unreasonable search and seizure, and substantive due process bodily integrity rights of Plaintiff and similarly situated persons are affected by §724.015 and the defective DIC-24 document

Under Plaintiff's specific facts/circumstance, per §724.015 and its subsection (3), without proper request, there is no refusal, and officer Wang had no statutory authority to obtain a warrant for the blood draw; nor did the magistrate have authority to issue the alleged void blood warrant.[2]

Texas Transportation Code 724.015 and Texas Penal Code Art. 18.01(j)(2) statutes are state police power statutes under 10th Amendment U.S. Constitution[3], that require strict compliance, and are not preempted by federal laws.[4]

D1) Substantive due process rights are affected by 724.015 and the DIC-24 document

The statutes affect substantive due process rights of individuals,[5] and are enumerated by Texas legislature in a narrowly tailored manner, to achieve the state's compelling interest in

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[1] This addresses the lack the person's lack of ability to "understand the requirements and consequence of the test" request. See, e.g., *Eilinger v. Dept. of Motor Vehicles*, (1985) 143 Cal.App.3d 748, 751 [192 Cal.Rptr. 187] ("A driver is excluded from the requirement of voluntary submission if he or she is *incapable of understanding* the requirements and consequences of the test.") (Original Italics added)

[2] See also, *Texas Penal Code Art. 18.01(j)(3)* (requiring "refusal to submit to a breath or blood alcohol test" as precondition for authority to issue a search warrant to collect a blood specimen.)

[3] *U.S. Const. Amd. X; See also, Taylor v. U.S.*, 136 S.Ct. 2076, 2082 – 2085 (discussing constitutionally enumerated federal powers and state police power, discussing federalism and dual sovereignty, and citing Raich and Justice Thomas dissenting)

[4] See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947) (for when state law cannot coexist with federal law when it is clear that Congress intended, by comprehensive legislation, to occupy the entire field of regulation, leaving no room for the states to supplement federal law); *Florida Avocado Growers v. Paul*, 373 U.S. 132, 142–143, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963) (state law cannot stand when compliance with both federal and state regulations is an impossibility); *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941) (when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," it must yield to federal law)

[5] See Dkt. 31, pg. 7, ¶ 3.

Ex. B7

protecting fundamental personal liberties and right to bodily integrity of individuals[6]; in compliance with U.S. 14th Amendment equal protection and due process clauses, and applicable case law.

The violation or non-strict compliance with the statutes opens an unreasonable, arbitrary, and capricious 14th Amendment equal protection rights violation that give rise to Plaintiff's selective prosecution claim. The same equal protection rights deprivation results from the unreasonable, arbitrary, and capricious DIC-24 document, as it gives rise to selective enforcement of administrative proceedings/hearings, to the deprivation of Plaintiff and other class member subjects' 14th Amendment rights.

Texas legislature did its job. McGraw and TxDPS, Officers Wang and Terran *et al*, and Houston Police Department ("HPD") in the case it failed to train, or adequately train, the officers, are the ones that failed to execute the enumerated statutory provisions, and are liable.

Harris County is also liable for selective prosecution, knowing instituting prosecution and acting to enforce a void or illegal blood warrant, in light of the unconstitutionality of the DIC-24 document, and lack of authority for the blood warrant per Texas Penal Code 18.01(j)(2). However, any claims against Wang, Terran, HPD, and Harris County, regarding the lack of warrant for the blood draw, is not yet ripe per the pending criminal appeal. But 14th amendment claims based on the DIC-24 document, and violation of Texas Transportation Code Chapter 724 and its §724.015, are ripe.

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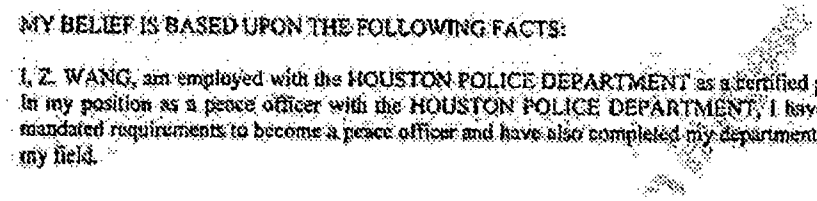
[6] See e.g., *Griswold v. Connecticut*, 381 U.S. 479, 497 ("In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. 'Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling,' *Bates v. Little Rock*, 361 U.S. 516, 524. The law must be shown 'necessary, and not merely rationally related, to the accomplishment of a permissible state policy.' *McLaughlin v. Florida*, 379 U.S. 184, 196. See *Schneider v. Irvington*, 308 U.S. 147, 161.") (Justice Goldberg, Justice Brennan, and Chief Justice Warren concurring opinion) (original italics)

Ex. B8

Whether or not there is a case on point on the DIC-24 document is immaterial for immunity because a reasonable person in their position should know that the DIC-24 document is clearly unconstitutional; and not in compliance with statutory requirement.[7]

The officers are trained or should be trained on all applicable laws necessary to execute their duties including §724.015. Officer Wang swore under oath to have been trained in applicable implied consent law and statutory warnings. A screenshot of the applicable portion is as below:



MY BELIEF IS BASED UPON THE FOLLOWING FACTS:

I, Z. WANG, am employed with the HOUSTON POLICE DEPARTMENT as a certified peace officer in the State of Texas. In my position as a peace officer with the HOUSTON POLICE DEPARTMENT, I have successfully completed the state mandated requirements to become a peace officer and have also completed my department's requirements for employment in my field.

"The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination." *Snowden v. Hughes et al*, 321 U.S. 1, 8 (1944); See also, *Mahone v. Addicks Utility Dist. of Harris County*, 836 F.2d 921, 932 (5th Circ. 1988) ("...equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality."); See also, *Yick Wo. v. Hopkins*, 118 U.S. 536 (1886)

The DIC-24 statutory warning is unconstitutional on its face because it intentionally or purposefully omits mandated sections – i.e., Texas Transportation Code Section 724.015(6). As already explained and as pled, per the mandatory language of Section 724, Texas Congress would not have desired its legislation to stand at all unless it could validly stand in its every application. (Doc. 6, pg. 99)

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[7] "Qualified immunity shields an officer from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted." *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (*per curiam*)

Ex. B9

Also as already explained, and as pled, §724.015 is also a statute that protects the fundamental privacy and bodily integrity due process rights of individuals subjected to the taking of breath or blood specimen; in situations indicated in §724.015(2), §724.015(4), §724.015(5), and §724.015(6). (Doc. 6, pgs. 102, 103, 106-107, 120) Therefore, the use of the void DIC-24 document is equivalent to never asking as all as required by Texas Transportation Code 724.015, and even equivalent to the State, officer, or TxDPS' failure to provide the constitutionally required notice. (Doc. 6, pg. 102 – 103)

Since Plaintiff is entitled to due process by law per *Bell v. Burson*, there is a U.S. constitutional procedural due process right deprived, that is subject to U.S. Constitutional 14th Amendment equal protection clause against the purposeful or intentional rights deprivation or infringement that occurred. *U.S. Const. Amd. XIV, Sec. 1.* The unconstitutional DIC-24 document arbitrarily, unreasonably, purposefully, and intentionally subjects Plaintiff to, or causes Plaintiff to the deprivation of infringement of said right; and does so without passing the required strict scrutiny test as pled in (Doc. 6, pg. 103)

Also, as pled, §724.015 is a mandatory statute that on its face, unambiguously requires TxDPS to provide all its contents to subjected citizens. The DIC-24 document does not do so as required. See e.g., *Tex. Transp. Code Sec. 724.003.* McGraw's motion also admits that 724.015(6) is required. (Doc. 15, pg. 10).

The unconstitutional DIC-24 document has existed and has been used throughout Texas since September 2011. (Doc.6, pg. 107; Doc. 2, pg. 176; Doc. 7, pg. 25)

Therefore, per *Snowden* and *Mahone*, TxDPS, have been unlawfully administering a state statute fair on its face, e.g., §724.015, in a manner that results in its unequal application to

individuals subject to the statute, whom the statute deems entitled to be treated alike; i.e., the statute deems must be noticed orally and in writing of all contents of §724.015.

McGraw's argument that subsection 6 is unnecessary because it applies to residents without a license to operate a motor vehicle in Texas, further supports the unequal application.

The mandatory language of §724.015 clearly show that all individuals subjected to the statute must be treated alike, and read and provided all provisions of 724.015. *Tex. Transp. Code §724.015.* Hence, since 09/2011, Director McGraw and/or TxDPS have been have been unlawfully administering a state statute fair on its face in a manner that results in its unequal application to individuals subject to the statute, whom the statute deems entitled to be treated alike. Such is a deprivation of Plaintiff's protected 14th Amendment equal protection rights; and McGraw's equal protection argument fails.

D2) Plaintiff has standing, there is subject matter jurisdiction, and McGraw and TxDPS are not entitled to any immunity defenses to claims.

Plaintiff hereby objects to all of the court's statements in the "Immunity From Liability" paragraph (Dk. 50, pgs. 8 – 9), and the statements in the "Standing" and "Mootness" sections (Dkt. 50, pgs. 5 – 7), on the grounds that it is a misapplication of law and facts, the claims are not moot, Plaintiff has standing, and McGraw and TxDPS are not entitled to immunity; per the above **Sections A – D1** in this document, and per the following:

As pled, "The §1983 injunction is allowed against state officials who purport to officially act on behalf of, or as agent of the State and/or State agencies. *See e.g., Ex Parte Young*, 209 U.S. 123 (1908). Also, an act against a state official in his official capacity, is an act against the State. *Id.* at 203. Eleventh Amendment of U.S. Constitution does not apply since the State, acting though its official agent, consented to the suit by removing the case to federal court. *Lapides v. Board of*

Regents of University System of Georgia, 535 U.S. 613 (2002). *See also, Meyers Benzing v. Texas*, 410 F.3d 236 (5th Circ. 2005)." (Doc. 6, pg. 97)

Eleventh Amendment sovereign immunity does not apply because the related facts for the injunction claims were pled pre-McGraw's removal (Doc. 1) to federal court, and §1983 is an act by U.S. Congress that authorizes the injunction equity claim. Any sovereign immunity of McGraw and TxDPS is defeated per Supreme Court ruling of *Lapides* and *Meyers*.

The state no longer has such immunity defined by state law as a defense, because the claims are brought under federal statute, §1983, that was enacted to occupy the space of "when state actors act under color of state law to deprive citizens of the constitutional rights." *42 U.S.C. §1983*. It allows private actors to bring claims in law or equity against state officials, for harm caused by deprivation of constitutional rights. *Id.*

Assuming that McGraw and TxDPS seeks to assert qualified immunity or sovereign immunity defense against liability, such defenses fail. As explained above and pled in Dkt. 6, the constitutional or statutory rights violated are clearly established. McGraw and TxDPS are being sued in official capacity for equitable remedies, not in McGraw's individual capacity for liability-damages. Furthermore, they admitted knowledge of the defect, but wrongfully argue that Plaintiff lacks standing. Since Plaintiff has standing to contest the defect per being subject to 724.015 as a whole, their knowledge of the clearly unconstitutional or statutory defect of the DIC-24 form defeats, any yet irrelevant qualified immunity. *See United States v. Lanier*, 520 U.S. 259, 271 (1997) ("...qualified immunity seeks to ensure that defendants 'reasonably can anticipate when their conduct may give rise to liability,' by attaching liability only if '[t]he contours of the right [violated are] sufficiently clear that a reasonable official would understand that what he is doing violates that right'... But general statements of the law are not inherently incapable of giving fair

and clear warning, and in other instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though 'the very action in question has [not] previously been held unlawful'")

The continued existence of the unconstitutional DIC-24 document, the continued existence and legal recognition of the void license suspension and its order, and the continued requirement that Plaintiff and similarly situated persons pay fees including a $125 reinstatement fee, are continued harm resulting from the continued constitutional equal protection and due process rights violation caused by the unconstitutional DIC-24 document. TxDPS has not changed the form, nor have they voided and vacated the suspension, nor have they voided and vacated the $125.00 fee required to get a new license issued Plaintiff upon expiration of the suspended one. There is continued constitutional rights deprivation, and continued harm from the existing constitutional rights deprivation. Hence, Plaintiff meets the *Bauer v. Texas* standard quoted in Dkt. 50, pg. 9.

If the DIC-24 document is voided, and the order of suspension are voided, there will be no requirement for Plaintiff or similarly situated person to pay any fees or costs or charges, including the $125 reinstatement fee required to be paid when issued a new license for any reason such as loss or expiration of the suspended and reinstated license. Hence, there is a continued live controversy resulting from the constructional DIC-24 document, and the issue is not moot.

Therefore, Plaintiff has standing, and pled sufficient claims against McGraw; there is equal protection and due process rights violations; Plaintiff's issues are not moot; there is jurisdiction for Plaintiff's claims against McGraw; and McGraw and TxDPS have no immunity to the claims.

Ex. B13

D3) Plaintiff's pleading meets Rule 8 plausibility standard

Plaintiff hereby objects to this statement: "Plaintiff sues not only Director McGraw, but 25 other defendants and numerous members of law enforcement. In no way does Plaintiff's complaint comply with Rule 8(a)(2)." Dkt. 50, pg. 8

Plaintiff's pleading allegations against McGraw, (Dkt. 6, pgs. 5, 88 – 108) are sufficient to meet the pleading standard of Bell Atlantic. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955 (2007) The pleading attaches exhibits, pleads facts with particularity to show standing, and even pleads official websites with links to the website to show jurisdiction, source of constitutional rights violation, connection with McGraw and TxDPS. *See e.g., Dkt. 6, pgs. 88 – 108.*

Other facts and causes of action pled in the other pages, are against other non-McGraw or non-TxDPS Defendants, and are summarily explained in Dkt. 31. (Dkt. 31) The claims were, and are allowed in this case under Rules 15(c)(1)(B); 18(a); 18(b); 19(a)(1)(A); 19(a)(1)(B). *Fed. R. Civ. Pro. Rules 15(c)(1)(B); 18(a); 18(b); 19(a)(1)(A); 19(a)(1)(B).*

Plaintiff has civil rights claims against HPD, Harris County, their employees or officials, and co-conspirators and informants including Defendant HYS, for many civil rights violations and damages resulting from their continued and ongoing actions that unconstitutionally deprive or subject Plaintiff to the deprivation of his clearly protected equal protection rights against unreasonable searches and seizures, malicious prosecutions, excessive force, and rights against deprivation of liberty and property without due process. *See Dkts. 6 & 31; See also, U.S. Const. Amd. XIV, Sec. 2.* Dkt. 2, pgs. 58 – 70, contains some summary judgment evidence, orders of dismissal for no probable cause, for Plaintiff's unreasonable search and seizure and malicious prosecution based 1983 and 1985 claims of pled Incidents 3 – 5. (Dkt. 6, pgs. 32 – 72; Dkt. 31, pgs. 3 – 5.)

Plaintiff's claims against McGraw and TxDPS arise out of an unreasonable search and seizure, and excessive force incident that occurred on 11/14/2018, during which HPD Officers Wang and Teran tried to wrongfully and unjustly enforce the unconstitutional DIC-24 document, contrary to 724.015 implied consent law and with excessive force. (Dkts. 6, 31) Hence McGraw and TxDPS claims, although equity base and severable claims, arise under the same transaction and occurrence as other Section 1983 liability claims against other state law actors, HPD, Officers Wang and Terran defendants.

Plaintiff hereby objects to the following statements:

"...*It discusses everything from a bad business arrangement Plaintiff entered into with a person whom he believes is a criminal to his other arrests related to this business partner to a conspiracy involving kidnapping and contracted hit-men.* 25 pages are spent on Plaintiff's bad business arrangement and 54 pages discuss his other arrests...Plaintiff, a licensed attorney, has had multiple opportunities to correct the deficiencies in his fourth amended complaint and has failed to do so. Accordingly, the Court recommends that Plaintiff's complaint be dismissed for failure to comply with Rule 8." Dkt. 50, pgs. 8

The magistrate's statement, "...*a bad business arrangement Plaintiff entered into with a person whom he believes is a criminal to his other arrests related to this business partner to a conspiracy involving kidnapping and contracted hit-men.* 25 pages are spent on Plaintiff's bad business arrangement and 54 pages discuss his other arrests..." is improper for 12(b)(6) and this court. It shows bias and prejudice against Plaintiff, to the unjust deprivation of Plaintiff's due process rights to a fair and impartial tribunal. *Marshall v. Jerrico Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases..."); *Liteky v. United States*, 510 U.S. 540 (1994); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ("But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not

imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.").

Plaintiff properly plead facts that meet the elements of breach of contract, fraud, false arrest, false imprisonment, excessive force, malicious prosecution, unreasonable search and seizure, and other U.S. Constitutional rights deprivation-based claims actionable under §1983 and §1985; against McGraw and other Defendants. The "bad business arrangement" statement is improper statement as to the merits of claims; considering that facts pled are to be construed in favor of Plaintiff. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964 – 1974 (2007) (discussing pleadings and standard of 12(b)(6)); *See also*, *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely") The business agreement factually pled was not an illegal agreement. Hence the damages sought are legally justified and said claim passes 12(b)(6) motion.

Pleading Amendment & Notices

Plaintiff amended pleading under FRCP Rule 15(a)(1), after McGraw's response and removal. (Dkt. 6) This case has been stayed since 03/08/2021. (Dkt. 33). There have been no orders to amend pleading. This Dkt. 50 is the ruling on McGraw's 12(b)(6) motion per the 03/08/2021 stay order. (Dkt. 33) Hence, Plaintiff has not had reasonable opportunity or proper fair notice to amend pleadings. See, *Adams v. Lever Bros. Co.*, 874 F.2d 393, 395 (7th Cir. 1989) ("The judicial process works best when orders mean what they say. Surprising interpretations of simple language—perhaps on the basis of a judicial intent not revealed in the words—unnecessarily create complex questions and can cause persons to forfeit their rights

Ex. B16

unintentionally. Parol[e] evidence about the judge's intentions should be irrelevant, just as parol[e] evidence is excluded in contract cases when the language is clear.")

The additions to pleading, if necessary, will be for the following:

(a) to ensure that causes of action summarized in Dkt. 31, e.g., including the word "malicious prosecution" to differentiate from the terms "false arrest" or "false imprisonment" in the various 4th and 14th Amendment based claims, are clarified. Such legal definition is usually not necessary for pleading purposes as pleadings are judged based on facts pled, and are liberally construed. But, if necessary, Plaintiff shall amend pleading in due course to include such.

(b) to include additional parties for additional ongoing civil rights claims that are a continuing result of the causes of action pled in Incidents 6, 7, & 8. *See Dkt. 6, pg. 72 – 97; Dkt. 31, 5 – 8; Dkt. 23, pgs. 1 – 3.*

(c) to include the additional unreasonable search and seizure, malicious prosecution, and due process-based section 1983 claims, upon anticipated favorable ruling on the following writ of habeas corpus: *Image number 97707073, APPLICANTS COURT ORDERED SUPPL. BRIEF FOR ART. 11 WRIT OF HABEAS CORPUS ON BOND FORFEITURE, Cause 1648314AZ, Harris County Judicial District Court 179,* Filed on 09/02/2021. Document Hyperlink: ViewFilePage (hcdistrictclerk.com).

a. The unjust constitutional rights deprivation to due process notices and fair hearing opportunity, and the resulting harm, results from the malicious prosecution proceeding Plaintiff is currently enduring in state court per Incidents 6 & 7 of the pleading. *See Dkt. 6, pg. 72 – 86; Dkt. 31, pgs. 5 – 7. Younger* abstention doctrine currently applies on those claims until final resolution of said writ to vacate the void bond forfeiture judgment, and resolution of the underlying malicious prosecution claim alleged in Incident 7. *See Dkt. 6, pg. 80 – 86; Dkt. 31, pgs. 6 – 7.* The writ also includes transcript evidence that supports or proves Plaintiff's Harris County Class Action claims for unjust deprivation of equal protection and due process right to fair probable cause hearings or determinations. *See e.g., Dkt. 22, pgs. 2 – 3; Dkt. 6, pgs. 108 – 119.*

(d) to include final details upon vest of the unreasonable search and seizure, malicious prosecution, and due process-based section 1983 claims, post anticipated favorable ruling on the following *Writ of Certiorari* to Texas Supreme Court on related claims: *See, Adimora-Nweke v. Yarbrough*, Case No. 21-0800, Petition For Review, Texas Supreme Court, Filed on 09/20/2021. Document hyperlink: SearchMedia.aspx (txcourts.gov).

a. This case is related and material to Incidents 6 & 7 of the pleading. *See Dkt. 6, pg. 72 – 86; Dkt. 31, pgs. 5 – 7. Younger* abstention doctrine currently applies on those claims until final resolution of said writ to vacate the void protective order judgment that subjects or causes Plaintiff serious harm. Same abstention doctrine also applies

to resolution of the underlying malicious prosecution claim alleged in Incidents 6 & 7. *See Dkt. 6, pg. 80 – 86; Dkt. 31, pgs. 6 – 7.*

All parties projected to be included upon pleading amendment, including for the §1983 and §1985 pled claims, have been emailed to notify them of the pending action or of this proceeding. *See e.g., Fed. R. Civ. Pro. Rule 15(c).* Plaintiff has sent necessary discovery and damages disclosures to McGraw, and to responsive putative Defendants and their counsels as of 07/02/2021.

Unfortunately, neither Plaintiff nor this court can address the independent action of *Ohakweh et al v. Harris Health System et al*, discussed in No. 12 of Dkt. 31. (Dkt. 31, pgs. 9 – 13)

While Plaintiff has a statutory, procedural, and contractually vested right and hence constitutionally entitled to proceed with the civil rights and *qui tam* independent action by law[8], Plaintiff is ethically precluded from pursuing the claims in this action. The *qui tam* aspect of the claims is on behalf of The State of Texas and the United States; and Plaintiff cannot be counsel representing State of Texas' interest in the *qui tam* claims against Harris County Hospital District, d/b/a Harris Health System, a sub-entity of Harris County; while suing State of Texas State via their agency and agent, TxDPS and McGraw; all in the same litigation. See *Texas Disciplinary Rules of Professional Conduct, Rule 1.06(a)* ("(a) A lawyer shall not represent opposing parties to the same litigation.") That's would be impatient and unreasonable by Plaintiff.

---

[8] *See e.g., Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 773 – 774 (U.S. 1988) ("We believe, however, that adequate basis for the relator's suit for his bounty is to be found in the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor. The FCA can reasonably be regarded as effecting a partial assignment of the Government's damages claim. Although we have never expressly recognized "representational standing" on the part of assignees, we have routinely entertained their suits, see, *e.g., Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 465 (1962); *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 829 (1950); *Hubbard* v. *Tod*, 171 U.S. 474, 475 (1898)—and also suits by subrogees, who have been described as "equitable assign[ees]," L. Simpson, Law of Suretyship 205 (1950); see, *e. g., Vimar Seguros y Reaseguros, S. A.* v. *M/V Sky Reefer*, 515 U.S. 528, 531 (1995); *Musick, Peeler & Garrett* v. *Employers Ins. of Wausau*, 508 U.S. 286, 288 (1993).")

Hence, without severance of McGraw action, independent action is currently precluded. *See Dkt. 22 & 23.*

Also, under the circumstances, per the ongoing targeted and malicious activities done to deter the resolution of said independent action's civil rights and *qui tam* claims, and done to deter Plaintiff from resolving his claims and interests, all as also plead in Dkt. 6, the state actors involved, along with their associates and cohorts, will continue and wrongfully act to subject or cause Plaintiff to be further unjustly deprived of his liberty, to be further injured in his personal and professional reputation, to be humiliated, embarrassed, and further caused mental anguish and financial ruin, and to ultimately have no reasonable or efficient access to court to resolve the independent action sought civil rights and *qui tam* claims, or resolve his own claims pled in the governing pleading – Dkt. 6. (Dkt. 6, pgs. 6 – 10, 48 – 49, 58, 66, 75, 79, 85, & 96.)

Hence Plaintiff shall not unreasonably risk his statutory or contractual interests and claims, or the interests of the Estate, the United States, and the State of Texas, by prematurely pursuing such claims at the moment. Plaintiff must reasonably wait until all adverse proceedings are finalized, to pursue those claims to resolution. The necessary Defendant entities in the *qui tam* and civil rights independent action, have been noticed and aware of the unresolved condition of said *qui tam* and civil rights claims, and Plaintiff's intent to resolve said claims in due course.

Sever & Remand Option is available to the court if necessary

Any claims that this court deems not within its subject matter jurisdiction, should be severed under Procedure Rule 21 and 42(b), and remanded back to state court per 28 U.S.C. §1447(c). *Fed. R. Civ. Pro. Rules 21 & 42(b);* 28 U.S.C. §1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be

Ex. B19

remanded."). Plaintiff asks for such, and any proper orders or relief this court deems necessary and proper to preserve any of Plaintiff's claims. *See e.g., Dkts. 22, 23, & 31.*

Statute of limitations on the claims for fraud, breach of contract, false arrest and imprisonment, malicious prosecution, currently factually pled for Incidents 1 – 7, and for the excessive force claim pled in Incident 8, have lapsed. Plaintiff filed suit in state court on the deadline for statute of limitations for Incidents 1 – 5. The 2 yrs statute of limitations for claims from Incidents 6 has lapsed for the unreasonable search and seizure claims pled, and lapses around 10/2/2021 for Incident 7's unreasonable search and seizure based 1983 claim. *Tex. Civ. Prac. & Rem. Code. §16.003(a)* Hence any dismissal of claims pled for the facts in Incidents 1 – 8, would be futile for Plaintiff, and results in deprivation of Plaintiff's equally protected 1st Amendment petition rights. *U.S. Const. Amd. I.* They would be barred from refiling per statute of limitations.

Plaintiff cannot be penalized with such ruling as Plaintiff made all reasonable efforts to effectuate service on all Defendants, post filing of the suit in state court. (Dkt. 2, pgs. 76 – 91, 144 – 149) Unfortunately, Defendant McGraw was the only person the state district clerk served process. (Dkt. 2, pgs. 326 – 327, 241) At the last hearing on 04/08/2021, Plaintiff was faced to decide between either (a) serving Defendants out-of-pocket, or (b) having the case dismissed for failure to state a claim. Plaintiff elected the latter to preserve the claims, and withdrew the Application to Proceed Indigent. (Dkt. 47).

Plaintiff's financial circumstances has not changed since Dkts. 47 & 48, and will likely not change until resolution of the adversarial malicious state court proceedings against Plaintiff pled or mentioned in Incidents 6 – 8, and their related proceedings. (Dkt. 6, pgs. 72 – 97; Dkt. 31, pgs. 5 – 8.; See also, e.g., *Image number 97707073, APPLICANTS COURT ORDERED SUPPL. BRIEF FOR ART. 11 WRIT OF HABEAS CORPUS ON BOND FORFEITURE, Cause 1648314AZ, Harris*

Ex. B20

County Judicial District Court 179, Filed on 09/02/2021. Document Hyperlink: ViewFilePage (hcdistrictclerk.com).

This court should not dismiss Plaintiff's complaint for failure to state a claim, as the claims are valid per Dkt. 6 and Dkt. 31 summaries; and dismissal bars them from refiling per statute of limitations, and results in deprivation of Plaintiff's equally protected 1st Amendment petition rights.

Plaintiff asked this court to sever the McGraw claim (Dkts. 22 & 23), as unlike other claims, it is based in equity under §1983; and this court has independent jurisdiction over the McGraw claims per 28 U.S.C. Section §1331 and Tex. Transp. Code §724.048(a). *42 U.S.C. §1983; 28 U.S.C. Section §1331; Tex. Transp. Code §724.048(a).* Hence, the pending state court proceeding of related claims in Incident 8, which are material for Incident 8's pled malicious prosecution and unreasonable search and seizure 4th and 14th Amendment based §1983 claims, are not affected. *Tex. Transp. Code §724.048(a)*

Such would have allowed Plaintiff to pursue the McGraw claims and class action, and if any funds are realized from said McGraw claims, use such to serve and pursue the remaining claims and actions in due course and bear the litigation expenses out-of-pocket. Otherwise, Plaintiff must patiently wait until the adversary state court claims are resolved, and Plaintiff able to secure litigation funding from third parties. Yet, Plaintiff's current unfortunate financial circumstances, caused and currently being exacerbated by current and putative state actor Defendants, Defendant HYS, and their co-conspirators' ongoing "spiteful, vindictive," and "targeted" unconstitutional actions, and malicious prosecutions against Plaintiff in state court, should not affect Plaintiff's petition rights. (See, e.g., Dkt. 6, pgs. 49; 79)

Ex. B21

Plaintiff's class action motion against McGraw and TxDPS, Dkt. 17, contains identical statements and allegations, as pled in the governing pleading. (Dkt. 6, pgs. 86 – 108, 119 – 125)

Ultimately, severance of the McGraw claim and its class action from all others, preserves all claims and Plaintiff's petition rights. Claim against McGraw and TxDPS are therefore not futilely detrimental to other claims' disposition, and *vice versa*; and as explained, this court has reasonable authority to isolate said claims per 28 U.S.C. Section §1331 and Tex. Transp. Code §724.048(a). Although not ideal due to the current antagonism Plaintiff faces in state court, any remand of non-McGraw claims by this court also allows the state district clerk to fulfill its service of process obligations on unserved Defendants as necessary, and allows Plaintiff to amend pleadings as necessary under Texas Rules of Civil Procedure to include any necessary additions or subsequently vested claims. If those Defendants then want to remove to federal court, they have that option after they answer the complaint.

RELIEF REQUESTED

Wherefore, Plaintiff asks this court to (a) not rule according to the magistrate's recommendations in Dkt. 50; (b) deny McGraw's 12(b)(6) motion in Dkt. 6; and (c) grant Plaintiff's motions to sever in Dkts. 22 & 23.

Thereafter, Plaintiff asks this court to (1) grant all relief requested in Plaintiff's amended motion for partial summary judgment and motion to certify class against McGraw and TxDPS, as pled in Dkt. 6 and Dkts. 17, or first allow McGraw and TxDPS to respond to said motion before granting said reliefs requested; and (2) stay proceedings on the severed non-McGraw and TxDPS claims until Plaintiff provides this court with a filed "Notice of Change In Circumstances" via favorable Texas state court judgments or orders, or change in financial circumstances, that allows litigation on said severed non-McGraw and TxDPS claims to continue to resolution.

Such allows Plaintiff, and this court, to manage the dynamic nature of the claims, per the currently ongoing malicious prosecution activities of putative Defendants in state court; and address all claims properly in due course.

Plaintiff asks for a hearing prior any dismissal, if dismissal is this court's preference.

Plaintiff asks for any relief this court deems proper to preserve Plaintiff's claims against, or right to payment for damages from, non-McGraw and TxDPS Defendants.

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr.
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Houston, TX 77056
281-940-5170 (Office)
ernest@adimoralaw.com
Plaintiff *Pro Se*

CERTIFICATE OF SERVICE & COMPLIANCE

This is to certify that a true and correct copy of the foregoing were or shall be served upon counsel for McGraw, this court, on or about 09/22/2021 or 09/23/2021, via electronic filing, or email; and copies mailed to McGraw or TxDPS's counsel of record at his office address, and to Judge Sam Sheldon at 515 Rusk, Suite 7019, Houston, TX 77002.

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr.
Ernest C. Adimora-Nweke, Jr.

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

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff	§	4:20-CV-4149
v.	§	
Steven C. McGraw, et al	§	
Defendants		

PLAINTIFFS' OBJECTIONS TO DKT 50 (Proposed Order)

Plaintiff in the cause number above, filed response to Dkt. 50, and asked this court to:

(a) not rule according to the magistrate's recommendations in Dkt. 50;

(b) deny McGraw's 12(b)(6) motion in Dkt. 6; and

(c) grant Plaintiff's motions to sever in Dkts. 22 & 23.

And to thereafter:

(1) grant all relief requested in Plaintiff's amended motion for partial summary judgment and motion to certify class against McGraw and TxDPS, as pled in Dkt. 6 and per Dkt. 17, or first allow McGraw and TxDPS to respond to said Dkt. 17 partial summary judgment and class certification motion before granting its requested reliefs;

(2) stay proceedings on the severed non-McGraw and TxDPS claims until Plaintiff provides this court with a filed "Notice of Change In Circumstances" that allows litigation on said severed non-McGraw and TxDPS claims to continue to resolution; and

(3) order relief necessary under the circumstances to preserve Plaintiff's claims against, or right to payment for damages from, non-McGraw and TxDPS Defendants.

Or alternatively, grant Plaintiff a hearing prior any dismissal, if dismissal is this court's preference.

After hearing and/or consideration, on this ____ day of _____, 2021, this court hereby orders the following: _____

Signed _____ Judge Presiding

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

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff	§	4:20-CV-4149
v.	§	
Steven C. McGraw, et al	§	
Defendants		

United States Courts
Southern District of Texas
FILED

SEP 30 2021

Nathan Ochsner, Clerk of Court

PLAINTIFF'S REPLY TO DKT 52

TO THE HONORABLE COURT & ALL PARTIES:

COMES NOW Ernest Adimora-Nweke, Plaintiff, and files this reply to Dkt. 52:

OBJECTIONS & ARGUMENT

McGraw's Name Error Argument

Although Plaintiff never received the document, McGraw's argument as to Plaintiff's name error is irrelevant since there was no fair notice to Plaintiff in fact or law. See Dkt. 51, pgs. 1 – 3.

McGraw's Mootness Objection Argument

Plaintiff made it clear that he still has current and sustained injury. Amongst others, Plaintiff pled that he endured a void license suspension that is still on his record, and subjects him to financial consequences including insurance costs and the $125 fee for a new license when the current one expires. Without the wrongful suspension recognized, Plaintiff would not have to pay this $125.00 fee. Without the wrongful suspension Plaintiff would not have to endure the increase in required driver's insurance costs. Without the wrongful suspension Plaintiff would not have to endure the wrongful deprivation of his right to drive without due process – which is injury on its own. This issue is clearly not moot; especially coupled with the Plaintiff's standing arguments in Dkt. 51 and below, and the continued use of said void DIC-24 form – i.e., unchanged – as of today.

McGraw's Standing Objection Arguments

The DIC-24 is clearly wrong. McGraw has accepted that it is missing Sec 724.015(a)(6). Hence it does not comply with 724.015. *Tex. Transp. Code. §724.015(a)* ("Sec. 724.015.

Ex. B25

INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:...")

The question that makes it clearer is "whether Texas Transportation Code §724.015(a) applies to Plaintiff and similarly situated class members;" which is a definite yes.

The statute does not say *shall inform the person orally and in writing "as applicable" that:...*

Plaintiff and similarly situated persons were subjected to the statute, and McGraw and TxDPS' promulgated DIC-24 form, upon Officer Wang and Teran's enforcement of §724.015 and its §724.015(a), per §724.003. *Tex. Transp. Code. §724.003.* Hence McGraw's argument and the court's recommendations are error of fact and law.

Arguing that a void official document should be allowed to remain void, on the grounds that those legally subjected to the document do not have standing to argue its validity, is counter logic and public policy; respectfully speaking. Courts have duties to nullify void official documents that affect the public and most of all, fundamental rights.

McGraw's Criticism and Pleading Amendment Arguments

Plaintiff was not criticizing the magistrate. Plaintiff respectfully cited to the laws in objecting to the magistrates' harmful error statements, findings, arguments, and/or recommendations.

Plaintiff amended pleading once in this court, and once since McGraw has responded. Plaintiff does not need to amend pleading further for McGraw's claim; hence the request for severance of claims against McGraw and TxDPS. Such also resolves any pleading amendment issue they may have, and preserves Plaintiff's right to due course amendment on other claims.

Plaintiff complied with service requirements in state court, and under Rule 4 in this court. Plaintiff elected not to proceed *in forma pauperis* in order not to have the claims wrongfully

dismissed for failure to state a claim. The recommendation does not find that Plaintiff did not comply with service requirements, because the court clearly is aware of Plaintiff's precarious unchanged financial situation and that Plaintiff made reasonable efforts under the circumstances. Hence, such allegation by McGraw or anyone is invalid.

As for Wang and other unserved parties, Plaintiff's arguments in Dkt. 51 remains valid. However, Plaintiff must present the below as it was unclear in Dkt. 51 filing.

> MY BELIEF IS BASED UPON THE FOLLOWING FACTS:
>
> I, Z. WANG, am employed with the HOUSTON POLICE DEPARTMENT as a certified peace officer in the State of Texas. In my position as a peace officer with the HOUSTON POLICE DEPARTMENT, I have successfully completed the state mandated requirements to become a peace officer and have also completed my department's requirements for employment in my field.
>
> Additionally, I have successfully completed the following courses in the field of alcohol detection: the National Highway and Traffic Safety Administration Standardized Field Sobriety Testing Course. Standard Field Sobriety Tests (SFSTs) include, but are not limited to, the Horizontal Gaze Nystagmus (HGN), one leg stand (OLS) and/or the walk and turn (WAT).
>
> During my course of employment, I have observed numerous people who are under the influence of alcohol or other substances such as alcohol, controlled substances, and other narcotics.
>
> During my course of employment, I have testified under oath regarding intoxication and impairment.
>
> I have formed opinions on intoxication on many occasions and have had my suspicions confirmed by breath, blood, or urine samples that were administered after I performed my law enforcement duties relating to the detection of impaired drivers.
>
> I am familiar with the methods in the State of Texas used to obtain samples for alcohol impairment or impairment caused by the introduction of other substances into the body, that being breath, blood, or urine samples. I have found these forensic tests to be reliable in supporting my opinions and observations on consumed substances and levels of impairment.
>
> ...(subsections of Wang Affidavit evidence omitted for irrelevance reasons)
>
> Therefore, I placed the Defendant under arrest and transported the Defendant to the police station. At the station, I offered Defendant an opportunity to provide a sample of the Defendant's breath and/or blood and Defendant declined to provide a sample. This is a violation of the Texas Implied Consent law and is also an indication to me that Defendant is attempting to hide evidence of the Defendant's level of intoxication.

Hence, there is certainly a tie to the DIC-24 form and informed consent. The HPD officers were enforcing the law, which required them to read a valid and compliant DIC-24 form, per §724.003 and §724.015(a)'s complete statutory requirements. *Tex. Transp. Code*, §724.003; §724.015(a). Yet, as explained in Dkt. 51, the claims against McGraw and TxDPS, and the ALR proceeding and suspension issues, are separate and independent civil matters. *Tex. Transp. Code*. §724.048(a)

Ex. B27

RELIEF REQUESTED

Wherefore, Plaintiff asks this court to (a) not rule according to the magistrate's recommendations in Dkt. 50; (b) deny McGraw's 12(b)(6) motion in Dkt. 6; and (c) grant Plaintiff's motions to sever in Dkts. 22 & 23.

Thereafter, Plaintiff asks this court to (1) grant all relief requested in Plaintiff's amended motion for partial summary judgment and motion to certify class against McGraw and TxDPS, as pled in Dkt. 6 and Dkts. 17, or first allow McGraw and TxDPS to respond to said motion before granting said reliefs requested; and (2) stay proceedings on the severed non-McGraw and TxDPS claims until Plaintiff provides this court with a filed "Notice of Change In Circumstances" via favorable Texas state court judgments or orders, or change in financial circumstances, that allows litigation on said severed non-McGraw and TxDPS claims to continue to resolution.

Such allows Plaintiff, and this court, to manage the dynamic nature of the claims, per the currently ongoing malicious prosecution activities of putative Defendants in state court; and address all claims properly in due course.

Plaintiff asks for a hearing prior to any dismissal, if dismissal is this court's preference.

Plaintiff asks for any relief this court deems proper to preserve Plaintiff's claims against, or right to payment for damages from, non-McGraw and TxDPS Defendants.

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
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Plaintiff *Pro Se*

Ex. B28

CERTIFICATE OF SERVICE & COMPLIANCE

This is to certify that a true and correct copy of the foregoing were or shall be served upon counsel for McGraw, this court, on or about 09/30/2021, via electronic filing, or email; and copies mailed to McGraw or TxDPS's counsel of record at his office address, and to Judge Sam Sheldon at 515 Rusk, Suite 7019, Houston, TX 77002.

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr

United States Courts
Southern District of Texas
FILED

JAN 20 2022

Nathan Ochsner, Clerk of Court

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

Ernest Adimora-Nweke	§	CASE NO.
Plaintiff	§	4:20-CV-4149
v.	§	
Steven A McGraw, et al		
Defendants		

PLAINTIFF'S FRCP RULE 59 MOTION FOR RECONSIDERATION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Ernest Adimora-Nweke, hereby files FRCP Rule 59 motion for reconsideration or new trial on the Dkt 60 & 61's dismissals:

INTRO

A Rule 59(e) motion may be granted if the moving party demonstrates any of the following: (1) the judgment was based upon a manifest error of law or fact[1]; (2) there is newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; and (4) there is an intervening change in controlling law. *See* 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCDURE §2810.1 (2d ed. 1995) A Rule 59(e) motion may also be brought when there are errors of procedure or evidence;[2] and "is a 'device to relitigate the original issue" decided by the district court, and used to allege legal error.'"[3]

ARGUMENT

First, the constitutionality of the DIC-24 form is subject to current criminal litigation in state court. (Dkt. 31, pgs. 7 – 8) Plaintiff asked that the court abstain from ruling on

[1] *See McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (banc) (Rule 59(e) is available to "correct manifest errors of law or fact upon which the judgment is based")
[2] *See Browder v. Director*, 434 U.S. 257, 266 (1978) (erroneous denial of hearing is a proper claim brought under Rule 59(e))
[3] *United States v. Fiorelli*, 337 F.3d 282, 288 (3rd Cir. 2003)

claims regarding the 11/14/2018 incident. (Dkt. 31, pg. 7). The DIC-24 form was used on 11/14/2018. (Dkts. 16 & 17). It serves as jurisdictional notice required, per Texas Transportation code 724.015(a), for both (a) any civil license suspension or revocation and the ALR civil proceedings, and (b) authority of state to issue a blood warrant under Texas Code of Criminal Procedure Art. 18.01(j), to invade citizens' bodily integrity and draw the citizens' blood for any criminal allegation or proceedings. *See Tex. Code of Crim. Pro. Art. 18.01(j)*

Hence, per the TxDPS 02/07/2019 Notice of Suspension letter (**Dkt. 2, pg. 348**), the 1/14/2019 TxDPS order of suspension (Dkt. 2, pgs. 345 – 346), and the unreasonable and unreceived 11/26/2019 letter from TxDPS (Dkt. 2, pg. 347; Dkts. 17, 31, 34, 51, 56), the officer's determination of "*refusal*," is material both for the ALR proceeding (Dkt. 2, pgs. 345 & 348), and to obtain a blood warrant under Art. 18.01(j). See, *Tex. Code of Crim. Pro. Art 18.01(j)(2)* ("Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(a)(10) to collect a blood specimen from a person who: ... (2) ***refuses to submit to a breath or blood alcohol test.***")

Notice: The criminal litigation, (See e.g., Exhibits pgs. 1 – 13), is stagnate on appeal in the 1st Court of Appeals, due to Plaintiff's stagnated financial position (Dkt. 58, pgs. 3 – 7; Dkts. 41, 47), and current indigency status (See e.g., Exhibits pg. 14). A writ of habeas corpus has been filed in state court in Harris County Judicial District Court 351, Cause No. 1745037, as of 12/30/2021, in effort to accelerate the resolution of the state court pending

matters rightfully in Plaintiff's favor.[4]

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[4] Ultimately, whether via writ of habeas corpus or appeal, the judgements must be overturned per amongst others, 4th, 5th, 6th, & 14th Amendment of the U.S. Constitution, *Rosas v. State, 76 S.W.3d 771* (Tex. App. – Houston [1st District] 2002, no writ hist.) (discussing due process implications of judicial bias or prejudice for recusal); *Yick Wo v. Hopkins, 118 U.S. 356 (1886)* (holding that "[T]he unequal application of a state law, fair on its face, may act as a denial of equal protection."); *accord, Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Mahone v. Addicks Utility Dist. of Harris County*, 836 F.2d 921, 921 (5th Cir. 1988); *Marshall v. Jerrico Inc.*, 46 U.S. 238, 242 (1980) (the due process clause entitles persons to an impartial tribunal and judge); and ***Thomas v. State*, 723 S.W.2d 696, 707 (Tex.Cr.App.1986)**.

E.g., amongst others, as of the fact that unreasonable search and seizure was factually contested in pretrial (e.g., Exhibits, pgs. 1 - 13) and at trial of the criminal action, no one testified to see Plaintiff operate a vehicle; there was a warrantless blood draw – even per the admission of state's witnesses at trial; there was spoliated video evidence used against Plaintiff's pretrial and trial objections, with foundation testimony of Officer Wang admitting that the body camera video evidence would contain time and date stamp, when none of the admitted and used video camera evidence – body camera or surveillance camera evidence – had a time or date stamp. Regardless, Plaintiff timely and orally objected to the jury charge as allowed under Texas Code of Criminal Procedure Art 36.14 & 36.15; and timely and orally requested and was denied Art. 38.23 special jury instructions as required

***

Texas Transportation Code 724.048(a) makes the order of suspension also challenged in the equity claim against McGraw and TxDPS, a civil matter. *Tex. Transp. Code §724.048(a).* Hence, the 2-year Texas statute of limitations for Plaintiff's §1983 equity action against McGraw & TxDPS, to challenge the ALR suspension of license for 6 months for lack of fair notice or hearing opportunity, as well as the ALR $125 reinstatement fee, began to accrue (1) around 11/14/2018 for the lack of fair due process notice based on the void DIC-24 form; and (2) around early Feb 2019 when Plaintiff received notice that his license had been suspended. *Tex. Civ. Prac. Rem. Code §16.003; Bass v. Hoagland* 172 F.2d. 205, 209 (5th Cir. 1949); *McDonough v. Smith*, 139 S. Ct. 2149, 2155 (2019))

Meanwhile, the civil rights claim against the local police officers, based on

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by Texas Code of Criminal Procedure Art. 36.15 & 36.16. ***These are all evident in the withheld reporter records Plaintiff seeks in state court.*** Yet Plaintiff is denied the equal protection and due process right to the reporter records necessary to overturn the cases, and cannot pay for them. Hence, the criminal case is stagnant. Yet, per Exhibits, pgs. 1 – 13, and the contents of this motion, the criminal case and this civil matter must end favorably for Plaintiff, if equal protection and due process of laws are justly applied. Texas Congress agrees, per their recent amendment to Tex. Transp. Code §724.015(a). *See, Texas State See, Texas State S.B. No. 335, Acts 2021, 87th Leg., R.S., Ch. 840, Sec. 2, eff. September 1, 2021; Tex. Transp. Code §724.015(a).*

unreasonable search and seizure claims that result from the unconstitutional DIC-24 form, vests upon resolution of the criminal action. *See e.g., Heck v. Humphrey*, 512 U.S. 477 (1994) ("Even a prisoner who has fully exhausted available state remedies has no cause of action under §1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.")

Plaintiff had to and did file this case in state court, on the last extension allowed him by the Texas Supreme Court covid19 extensions, to capture statute of limitations for many claims, including the equity claims against McGraw and TxDPS for the void DIC-24 form any revocation of license without required fair notice, fair hearing, or fair hearing opportunity. (Dkts. 6 & 31) The common persons involved in all claims are Defendant HYS, Harris County, and Houston Police Department. These said persons are also involved in the ongoing state litigation that requires abstention.

Hence, ad hoc stay and abstention doctrine applies to McGraw and the other claims, the whole case overall, applies. See *McDonough v. Smith*, 139 S. Ct. 2149, 2158 ("...stays and ad hoc abstention are sufficient to avoid the problems of two-track litigation. Such workarounds are indeed available when claims falling outside *Heck*'s scope nevertheless are initiated while a state criminal proceeding is pending...") *See also*, Dkt. 58, pgs. 2 – 3.

Hence, this court's dismissal of the claim is premature by law, and ad hoc stay is necessary; especially per *Texas State S.B. No. 335's current amendment of* Tex. Transp. Code §724.015(a)'s §(a)(8), *eff. September 1, 2021*. Consequently, the orders and judgments in Dkts. 50, 55, 56, 60, & 61, are void, and must be reversed or vacated.

***

This court's order sustaining adopting the magistrate's recommendations in Dkt. 54, is serious legal error of fact and law. (Dkts.60, pgs. 2 – 3, & Dk. 61). The orders again disregards Plaintiff's argued and pled facts, and proper constitutional law and statutory law, on the McGraw issue – e.g., in Dkts. 6, 49, 51, & 53. It unconstitutionally accepts McGraw's and the magistrate's legally improper and erroneous recommendations, and its erroneous facts and laws, all to the deprivation of Plaintiff's equal protection and due process rights. Dkt. 56, pgs. 1 – 2 (citing *U.S. Const. Amd. V; U.S. Const. Amd. XIV, Sec. I.; Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Marshall v. Jerrico Inc.*, 46 U.S. 238, 242 (1980); & *Bass v. Hoagland* 172 F.2d. 205, 209 (5th Cir. 1949))

Factual and legal error exists in Dkt. 60, that warrants a new trial. E.g.:

> *"As to the motion for reconsideration.* Adimora-Nweke argues error pursuant to Rule 59 solely on points already considered and rejected. Compare Dkt 56 with Dkts 50 (memorandum and recommendation) & 54 (order adopting same). But Rule 59 doesn't technically pertain to the interlocutory order at issue. Rule 54(b) is instead appropriate where relief is sought from interlocutory judgments, which "permits the district court 'to reconsider and reverse its decision for any reason it deems sufficient.'" *McClendon v United States*, 892 F3d 775, 781 (5th Cir 2018); see also Dkt 59 at 2–3 (quoting same). Adimora-Nweke doesn't present any new legal or factual argument that causes the Court to reconsider its prior ruling. The motion for reconsideration will be denied." (Dkt. 60, pgs. 2 – 3.)

Courts may apply Rule 59(e) standards when reviewing motions to reconsider an interlocutory order, particularly orders that ruled upon dispositive motions, in cases in which a final judgment had not yet been entered. *See e.g., Hightower v. Gro. I Auto, Inc.*, Civ. A. No. 15-1284, 2016 WL 3430569, at *1 (E.D. La June 22, 2016)

Plaintiff's rule 59 motion (Dkt. 56), challenging Dkt. 54's interlocutory order (adopting Dkt. 50's memorandum and recommendation for McGraw's 12(b)(6) motion),

challenges an interlocutory order that ruled on a dispositive 12(b)(6) motion (Dkt. 15), when a final judgment (Dkt. 60 & 61), were not yet entered.

The following are additional errors of fact and law, from Dkt. 60, which this court fatally disregards, to the detriment of Plaintiff(s):

(A) The pled and explained the $125 reinstatement fee requirement (Dkt. 6, pgs. 90, 97, 105, 121 and 123; Dkt. 16, pgs. 1 – 2; **Dkt. 51**, pg. 6; Dkt. 54, pgs 2 & 7), which this court acknowledges still exists (Dkt. 50, pg. 5). The ongoing and persisting reinstatement fee requirement meets Plaintiff's standing elements to challenge the suspension and the DIC-24 form that resulted in the suspension. *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015); **Dkt. 51, pgs. 1 - 15.**

a. But for the DIC-24 document form, or but for the unconstitutional suspension of Plaintiff's driver's license that was secured without fair notice and hearing opportunity to Plaintiff, Plaintiff would not be still subject to the $125 reinstatement fee requirement. Hence, "The continued requirement to pay the $125 reinstatement fee, which this court acknowledges is still a pending result of the void license suspension, further ensures that Plaintiff has standing to challenge the suspension and the DIC-24 document." (Dkt. 56, pg. 7; Dkt. 16, pgs. 1 – 2; Dkt. 51, pgs. 1 – 15)

(B) The DIC-24 form currently in use, (Dkt. 2, pgs. 352), does not meet the fair notice standard entitled Plaintiff or anyone entitled §724.015(a) notice requirements. (Dkt. 16, pgs. 1 – 4; Dkt. 51, pgs. 1 – 15; Dkt. 56. Pg.5, citing "required information…"

for fair notice per *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950))

a. The DIC-24 form does not contain the statutory required notice information of §724.015(a)(1) through §724.015(a)(7). It is missing the enumerated notice of §724.015(a)(6). *Compare Dkt. 2, pgs. 352 with Dkt. 2, pg. 311; See also, Dkt. 16, pg. 4; Dkt. 56, pgs. 3 – 7;* ***Dkt. 51, pg. 10 - 11; Dkt. 53, pgs. 1 – 2.***) Plaintiff's proposed sample version complies with §724.015(a), and includes §724.015(a)(6). (**Dkt. 2, pg. 311**) Texas Congress agrees with Plaintiff; the most recent amended version of Texas Transportation Code §724.015(a), effective on September 1, 2021, still includes §724.015(a)(6). *See, Texas State S.B. No. 335, Acts 2021, 87th Leg., R.S., Ch. 840, Sec. 2, eff. September 1, 2021; See also, Tex. Transp. Code §724.015(a).*

b. Plaintiff falls within the protected class of persons subject to §724.015(a), and therefore, statutorily entitled to all notices statements enumerated in §724.015(a)(1) through §724.015(a)(7), including §724.015(a)(6). (Dkt. 56, pgs. 2 – 5; Dkt. 51, pgs. 1 – 13; Dkt. 53, pgs. 1 – 2; Dkt. 34, pgs. 3 – 9; Dkt. 16, pgs. 1 - 6).

c. There is a clear 14th Amendment protected substantive due process right to bodily integrity, for all persons subject to the taking of a breath or blood specimen in situations of §724.011 - §724.014, which the state seeks to notice the persons subjected to §724.011 through §724.014, of the state's right to

§

infringe on said rights. *Tex. Transp. Code §724.011 - §724.015(a); See also, Dkt. 56, pgs. 3 – 6; Dkt. 34, pgs. 3 – 9; Dkt. 51, pgs. 1 - 13.*

a. 724.015(a) requires that McGraw and TxDPS include §724.015(a)(6) in whatever statement, e.g., the DIC-24 form, used and provided to §724.015(a)(1) through §724.015(a)(7) notices to Plaintiff and all persons subjected to §724.015(a). *Tex. Transp. Code §724.015(a); See also, Dkt. 56, pgs. 3 – 6; Dkt. 34, pgs. 3 – 9; Dkt. 16, pgs. 4 – 9; Dkt. 51, pg. 10; Dkt. 53, pgs. 1 – 2.*

b. Per §724.003, TxDPS and Director McGraw "may adopt rules to *administer*" but ***not change*** the chapter's provisions. *Tex. Transp. Code §724.003.*" (Dkt. 34, pg. 5)

c. TxDPS's exclusion of §724.015(a)(6) is clearly an unauthorized violation of the law by McGraw and TxDPS, which deprives Plaintiff and all person subject to §724.015(a), of their statutorily entitled fair notice to the required and enumerated terms of §724.015(a)(1) through §724.015(a)(7). (Dkt. 54. Pg.5; *Dkt. 53, pgs. 1 – 2; Dkt. 51, pgs. 1 - 16*)

d. The most recent version of §724.015(a), effective 2021, still includes §724.015(a)(6). *See, See, Texas State S.B. No. 335, Acts 2021, 87th Leg., R.S., Ch. 840, Sec. 2, eff. September 1, 2021.*

e. Hence, congress still deems §724.015(a)(6) as statutory required notice information for Plaintiff and all persons subject to §724.015(a) notices before a breath or blood specimen is requested. *Id.*

(C) Legal fulfillment of §724.015(a)'s notice requirements is the statutory notice that Texas congress deemed sufficient in circumstances of §724.015, as basis for state's invasion of citizens' substantive due process right to bodily integrity, via taking of breath or blood specimen. (***Dkt. 16, pgs. 1 – 7; Dkt. 34, pgs. 3 – 9;*** Dkt. 51; *Dkt. 53, pgs. 1 – 2.*) Hence, §724.015(a)(1) through §724.015(a)(7) applies to all persons subject to §724.015(a), including Plaintiff; and must be read to all such persons including Plaintiff, before requesting for any breath or blood specimen. *Id.*; *Dkt. 56, pg. 3 – 8.*

(D) Fulfillment of §724.015(a)'s notice requirements is the statutory notice basis Texas congress deemed sufficient in circumstances of §724.015, to (a) authorize and warrant the license revocation by the state or its officer; and (b) authorize any the ALR hearing and any license suspension or revocation, and any subsequent reinstatement or any TxDPS agency fee. (*Dkt. 16, pgs. 1 – 6; Dkt. 34, pgs. 4 – 9; See also, Tex. Transp. Code §724.011 – §724.014; Tex. Transp. Code §724.015(a).*) Since the DIC-24 is void, ALR never had jurisdiction under Ch. 724 of Transportation code for any findings, proceedings, revocations, suspension orders, or reinstatement fee. *Accord, id*; *Bass v. Hoagland* 172 F.2d. at 209. Usually, an ombudsman would be appointed to audit, recoup, and distribute the unauthorized govt. collected funds; or Texas' General Appropriations Act (GAA) provisions applied if applicable. *General Appropriations Act (GAA), Article IX, Section 8.02 (f), 86th Legislature, Regular Session; Senate Bills 1569 and 1863, 79th Legislature, Regular Session; SB 1571, 86th Legislature, Regular Session.* Dkt. 17 is a perfect

solution and mitigates damages countless civil rights litigation exposure against McGraw, his staff, and state (i.e., non-local govt.) level employees exposed.

(E) Plaintiff was subjected to §724.015(a) and the void DIC-24 document on 11/14/2018. (Dkt. 6, pg. 86; Dkts. 16, 17, 51, 53, 56.) Dkt. 54 acknowledges that Plaintiff had a deadline of 15 days from 11/14/2018, to request an administrative hearing. (Dkt. 54, pg. 2.) This 15-day deadline falls on Thursday, 11/29/2018. Plaintiff timely requested an administrative hearing. (Dkt 6, pgs. 87–88).

a. TxDPS provided a notice letter dated 11/26/2018, allegedly sent to Plaintiff, stating that that the request was deficient, and that Plaintiff must cure the request defect within the statutory (i.e., 15-day) deadline. (Dkt. 2, at 347; Dkt. 16, pg. 3.) Therefore, Plaintiff had until 11/29/2018 to cure any hearing request defect.

b. Per §724.003(b), "Notice is considered received on the fifth day after the date it is mailed." *Tex. Transp. Code §724.003(b)*

c. Assuming that the 11/26/2018 notice letter, Dkt. 2 at 347, was mailed on said 11/26/2018, it is considered received by law on Saturday 12/1/2018.

d. Hence, per the record, Plaintiff was clearly not provided reasonable fair notice or hearing opportunity before his driver's license suspension: Plaintiff's statutorily allowed 15-day administrative hearing request deadline ended on 11/29/2018, two days before 12/1/2018 – when the 11/26/2019 notice to cure letter is considered received by law.

e. Consequently, the resulting suspension, Dkt. 2, pg. 345, is clearly void for lack of due process fair notice and fair hearing opportunity. *Bass v. Hoagland* 172 F.2d. at 209. Plaintiff was not provided reasonable time, by law, to request and make appearance to present his objections. ***See also Dkt. 54, pg. 6; Dkt. 16, pg. 3.***

(F) This court's dismissal with prejudice on grounds of FRCP Rule 8(a)(2) and the 125 pages of the governing pleading, is fatal error. FRCP Rule 8(a)(2) states short and plain statement. *Fed. R. Civ. Pro. Rule 8(a)(2)*. There is no page limitation on complaints in this Federal Court. *See, LR10, Form Of Pleadings. U.S. District Court, Southern District of Texas; See also, Judge Charles Eskridge Court Procedures, Rules 6(a), 6(b), 18(c), and 18(e).* Plaintiff explained how the pleading meets the standard of *Bell Atlantic v. Twombly* in Plaintiff's objections. ***Dkt. 51, pgs. 14 – 16.*** The details pled for the McGraw and TxDPS claims, in ***Dkt. 6***, including in ***pgs. 88 – 108***, also meet the plausibility standard of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). It provides enough facts to show Plaintiff is entitled to relief, and even supports the facts with citation to evidence, and the applicable laws. Such complies with FRCP Rule 8(a)(2), *Bell Atlantic*, and *Ashcroft*, and is proper means to preclude any Rule 12(b)(6) dismissal or any Rule 12(E) motion for more definite statement. *Fed. R. Civ. Pro. Rules 12(b)6) & 12(E)* ***See also Dkt. 54, pg. 7***

(A) Plaintiff made reasonable efforts in state court to effectuate service. (See, e.g., **Exhibits, pgs. 15 – 33**; Dkt. 41, pgs. 2 – 3, "Plaintiff did not "choose" not to pay for service of process on other Defendants." *Section Explanation, with citations to original*

case state court filing Dkt. image numbers 92991387, 93991390, and 93162562, Cause 202056824, 234th Harris County District Court.) Plaintiff was also denied any hearing on indigency in state court. *Id.* Hence any state court denial orders are void. *Tex. R. Civ. Pro. Rule 145(f); Marshall v. Jerrico Inc.*, 46 U.S. 238, 242 (1980), & *Bass v. Hoagland* 172 F.2d. at 209.

(B) All alternative service request motion denials predated the final request that was granted in order for McGraw to be served process. (*See* Dkt. 41, pgs. 2 – 3, "Plaintiff did not "choose" not to pay for service of process on other Defendants." *Section Explanation, with citations to original case state court filings.*) McGraw was served process based on the same subsequent 11/06/2020 motion for reconsideration for service of process without costs, filed in state court for all Defendants. *Id.* That the clerk served one party and did not serve the rest, or that McGraw and TxDPS was the only party served, is unconstitutional per *Yick Wo v. Hopkins*, and *Mahone v. Addicks Utility*, and not Plaintiff's fault. Plaintiff should not be unreasonably burdened or unfairly prejudiced post removal, especially under the circumstances.

(C) Plaintiff has no funds to effectuate service at this time, and since filing of the state in state court; due to the continued wrongful actions of named Defendants. (Dkt. 34; Dkt. 6; Dkt. 51). Plaintiff's financial circumstances have not changed since, and has worsened. *See e.g., **Dkt. 58, pgs. 3 – 7; Dkts. 41, 47;*** and Exhibits, pg. 14. Hence, this court errs in finding that Plaintiff lacks sufficient cause for failing to effectuate service (Dkts. 56, 60 & 61). Plaintiff lacks funds to effectuate service. Plaintiff is maliciously financially and professionally stagnated by the continued deprivation

of liberty and more, some complained of against various Defendants. Dkt. 6; Dkt. 23, pgs. 2 – 3. Plaintiff still lacks funds to effectuate service at this time. Exhibits, pg. 14.

Dkts. 60 & 61 must be reversed or vacated, and relief granted for Plaintiff as sought. Such is constitutionally proper in this case, per equal protection and due process clauses.

Also, for these reasons, per the contents of Dkt. 6, and as argued in Dkt. 16, 17, 31, 34, 47, 51, 53, 56, & 58, the motions in Dkts. 5, 7, 17 and 22 are not constitutionally moot.

RELIEF REQUESTED

Plaintiff asks this Court to grant Plaintiff an in-person courtroom hearing on this matter, and afterwards (a) reverse or vacate the orders in Dkts. 50, 54, 55, 60 & 61; (b) not rule according to the magistrate's recommendations in Dkt. 50; (c) deny McGraw's 12(b)(6) motion; and (d)(1) stay proceedings until Plaintiff provides this court with a filed "Notice of Change In Circumstances" as required by *McDonough v. Smith*, or (d)(2) grant Plaintiff's motions to sever in Dkts. 22 and/or 23; and thereafter, (d)(2)(1) grant all relief requested in Plaintiff's amended motion for partial summary judgment and motion to certify class against McGraw and TxDPS, as pled in Dkt. 17, or first allow McGraw and TxDPS to respond to said motion before granting said reliefs requested. Plaintiff also asks that this court grant Plaintiff any favorable relief allowed by law and equity.

Respectfully Submitted,
/s/ Ernest C. Adimora-Nweke, Jr
Ernest C. Adimora-Nweke, Jr
Adimora Law Firm
ernest@adimoralaw.com
Pro Se Plaintiff and proposed Class Counsel

12/5/2019 12:38 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 38986784
By: L Allen
Filed: 12/5/2019 12:38 AM

CAUSE NO 2233594 & 2233595

STATE OF TEXAS	§	IN THE CRIMINAL COURT
	§	AT LAW NO. 15
V.	§	
	§	
ERNEST ADIMORE-NWEKE	§	HARRIS COUNTY, TEXAS

DEFENDANT'S SUPPLEMENT TO MOTION TO DISMISS CAUSES 2233594 & 2233595

COMES now the Defendant in the above entitled and numbered cause, and files this supplement would show as follows:

I.

Pursuant to Texas Code of Criminal Procedure, all pretrial motions filed that are not within the 7- or 10-day deadline, must be by leave of court.

Defendant seeks leave of Court to include the below to end this case.

This case is really simple.

II.

Defendant hereby incorporates the facts and allegations in the joint motion to suppress and quash (image number 85526970 , on file in cause number 2233594/2233595). Defendant also incorporates the facts and contents of image number 85526970, 86170960, & 87245385 that are on file for cause number 2233594, as part of this motion. Defendant also incorporates by reference, the facts and allegations and documents cited within Defendant's motion to dismiss causes number 2233594 & 2233595, image number 87603850.

III.

The warrant should be suppressed because it further does not meet the additional and specific requirements of Texas Code of Criminal Procedure Article 18.

Aside of Defendant's arguments that the warrant violates Texas Code of Criminal Procedure Article 18.01 (a), and 18.01(b), the alleged blood warrant does not meet the requirements of Article 18.01(j).

Article 18.01 (j) requires that Defendant be arrested for an offense under, amongst others, Section 49.04. The alleged section 49.04 is the basis for this case and Defendant's arrest.

The second requirement is that Defendant, or the arrested, "*refuses* to submit to a breath or blood alcohol test." *Tex. Code of Crim. Pro. 18.01(j)(2)*

Per the attached, Exhibit 4 & 5, this second requirement is clearly not met. The State has always had these documents and were aware of their existence. These Exhibits 4 & 5 are on record.

Defendant has always maintained that he was not asked to submit to a breath or blood alcohol test. Such is further proven by the attached Exhibit 4 & 5.

In order to be properly asked to submit to said breath or blood alcohol test, the arresting officer or any of the officers involved must inform Defendant orally and in writing, of the statutory warnings of Texas Transportation Code 721.015 in Exhibit 5 attached.

As Defendant has stated many times, and as timely filed in image number XXXX for consideration by this Court, the statutory warning sheet in Exhibit 4, does not comply with the requirements of Exhibit 5. The highlighted Texas Transportation Code Section 721.015(6) in Exhibit 5, is clearly missing from the Statutory Warning Sheet in Exhibit 4 that the arresting officer claimed that he provided Defendant and that Defendant refused.

Since the statutory warnings does not comply with the prescribed Texas Transportation Code Section 721.015, by its failure to include Texas Transportation Code Section 721.015(6), Defendant is not required to consent to any breath or blood draw or even give a response because Defendant was not asked in compliance with the required procedural statute. Otherwise, such

results in the deprivation of Defendants 14th Amendment U.S. Constitutional substantive due process, procedural due process, and equal protection rights.

The ancient proverb "Ignorance of the law is no excuse," as quoted by Justice Sonia Sotamayor becomes applicable in this situation.

Justice John Robert's minor excuse for police officers, "We have little difficulty concluding that the officer's error of law was reasonable," in *Heien v. North Carolina*, 574 U.S. ____; 135 s. ct. 530 (2014) is also inapplicable in this case because the officer is not excused for reasonably objective non-compliance with a vague statute he leveraged as his basis for probable cause. Furthermore, the magistrate that issued the warrant is not being excused for an unconstitutionally vague law.

In *Heien*, SCOTUS gave the limited caveat excuse for reasonable mistake of law needed to justify reasonable suspicion for an investigatory traffic stop," and did clearly state that the proverb applied "correctly [still] implies that the State cannot impose punishment based on mistake of law."

Most importantly, the cases cited in *Heien*, as well as *Heien*, only excuses errors of law by police that occur because the law in question was subject to different interpretation and/or unconstitutionally vague. *See e.g., United States v. Riddle*, 5 Cranch 311, 313 (1809); *The La Manche*, 14 F. Cas. 965, 972 (No. 8,004) (D Mass. 1863); *Michigan v. DeFillippo*, 443 U. S. 31 (1979). Yet, SCOTUS in *Heien*, unequivocally held that the Fourth Amendment tolerates only reasonable mistakes, and those mistakes – whether of law or fact – must be objectively reasonable... Thus an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty bound to enforce.

This case is one where the error of law in question is clear as water and unambiguous. A

part of the required and legislative enumerated statutory warning is ***omitted*** from the statutory warning allegedly used by the arresting officer.

The officer's probable cause affidavit also alleges that he has received the required training, and alleges that Defendant violated Texas Implied Consent Law, i.e. refusing to provide breath or blood sample after being provided with the statutory warnings of Texas Transportation Code 712.015. Unfortunately, the officer did not provide the required statutory warnings of Texas Transportation Code 721.015. His wrongful actions were not being used as justification for reasonable suspicion for a traffic stop and subsequent arrest. His wrongful actions were being wrongfully used as justification for probable cause of a blood draw – a seriously protected invasive of bodily integrity or a substantive due process rights violation. The procedures required for such violations, must be strictly enumerated by the State Legislature, narrowly tailored to achieve a compelling state's interest, and must be strictly adhered to on any subordinate or local government levels.

Hence the statutory warning the officer allegedly used on Defendant, after his alleged necessary trainings on the required state statute such as Texas Implied Consent law, is clearly objectively unreasonable due to the ***omission*** of required section 712.015(6), and "grossly and flagrantly unconstitutional." The State cannot impose a punishment for such clear mistake of law. The officer cannot gain a Fourth Amendment advantage through a sloppy study or enforcement of the laws he is duty bound to enforce.

"Power is a heady thing; and history shows that the police acting on their own cannot be trusted…" *McDonald v. United States*, 335 U.S. 451, 456 (1948)

The officer's affidavit statements for the blood draw was the basis for the magistrate's finding of probable cause, as well as the basis of the magistrate's authority to issue the blood draw.

warrant as allowed per Texas Code of Criminal Procedure 18.01(j), and its 18.01(j)(2) requirement.

The officer's affidavit contained material intrinsic fraud – i.e. the officer falsely swore under oath that Defendant refused to submit to a breath or blood alcohol test, when Defendant was not asked to provide any blood or breath specimen in compliance with the state's enumerated statutory warnings, and hand no legal obligation to consent or even respond to any such requests with the defective Exhibit 4.

The magistrate should have also taken notice that the statutory warning, Exhibit 4, does not comply with the state enumerated warnings in its omission. In the case that he was not made notice of said defect in the statutory warning, and hence would have understood that he had no authority to issue the blood warrant under Section 18.01(j), his alleged blood warrant was therefore, also obtained with extrinsic or collateral fraud because at the time of the issuance, Defendant was not provided with fraudulent affidavit, amongst others, nor allowed to see the magistrate to explain that there were no basis for the fraudulently obtained warrant.

Such fraud, like all situations of intrinsic (i.e. fraud in the inducement in this case) and extrinsic fraud, renders the blood draw order/warrant either (a) voidable upon Defendant's request due to its intrinsic fraud in the inducement, or (b) null and void from its origin per the extrinsic fraud and due process violation aspect of the blood draw order/warrant.

The body warn footages and all police reports and affidavits must be excluded and/or suppressed per Law Enforcement Exception of Rule 803

The police body warn footages must be excluded and suppressed for spoliation of evidence purposes already argued, and hearsay purposes already argued.

In addition, Texas Rules of Evidence Rule 803(8)(A) & Rule 803(8)(B) contains the law enforcement exception for public records. Rule 803 applies regardless of whether the declarant (i.e. the officer or Defendant) is available as a witness. Per Rule 803(8), the body warn camera

footage is a record, or contains statements, of a public office... However, amongst the law enforcement caveats dictated in Rule 8(A)(ii), Rule 8(A)(iii), and Rule 8(B), ultimately, Defendant has shown that the source of the body worn camera footage or other circumstances, indicate a lack of trustworthiness. Defendant showed this in the spoliation of evidence arguments for the body worn camera footages – i.e. the lack of time stamp, the lack of expert disclosed to attest to the chain of custody, and the State's objection of the body warn camera footage at the motion to suppress hearing on 05/31/2019.

Defendant has also shown the lack of trustworthiness of the all police reports, the probable cause affidavit, and even the warrant itself in the arguments above in this supplement, and in the arguments attacking the warrant and the affidavit itself.

This showing of lack of trustworthiness of the evidence and its sources, also apply to the suppression and exclusion of all police reports and record evidence – including the body worn camera footages – because Texas Rules of Evidence (a) Rule 803(6) per Rule 803(6)(E), and (b) Rule 803(7) per Rule 803(7)(C), renders the law enforcement statements and recordings/record inadmissible.

Therefore, all the body worn camera footages, and the law enforcement reports including the affidavit and warrant, must be excluded per Texas Rules of Evidence 803, and must be suppressed also.

Also, amongst others reasons, since no report or credible report states that anyone with personal knowledge saw Defendant driving any vehicle, and since no video camera footages show Defendant driving any vehicle, then the probative value of such any such police report or body warn camera video footages, are substantially outweighed by the unfair prejudice, confusion of the issues, misleading of the jury, undue delay, and needless presentation of cumulative evidence, to

Defendant in this case. The State will not be able to show that Defendant was operating a vehicle, nor is there enough evidence to prove all elements of the criminal allegations beyond reasonable doubt.

Wherefore, this Court should rule to suppress and/or exclude the admission the body worn camera evidence, the affidavit, the blood warrant, and all its resulting evidence, as well as all the police and State's generated reports in this case. This Court should also grant the acquittal or dismissal of this case. There is, amongst other reasons, insufficient evidence to convict Defendant in this case for the DWI nor the interference charge.

Additional 6th Amendment Constitutional Grounds to Reasons to Dismiss Causes with Prejudice

Furthermore, as argued in filings set for pre-trial hearing, the deprivation of right to speedy trial, and the State's misconduct that occurred in the case – including prosecution of a case in which the warrant is null and void, and arguing that it was valid when they were on notice that it was clearly not valid, warrants setting aside of the information or charging instrument and a dismissal of the case with prejudice, and allows this Court to do so without consent from the State.

Also, the arraignment of Defendant on 11/21/2019, and incorrect reading of Texas Penal Code 49.04 to exclude 49.04(d), as it currently stands in the most recent charging instrument on file, per image number 84977600, and the arraignment done by an antagonistic judge who is not assigned or supposed to be assigned to this case, is a serious due process violation that renders, amongst others, the arraignment as null and void, and warrants dismissal of this case with prejudice.

Finally, the currently Court appointed Counsel, per image number 88222140, did not object to the error in the arraignment on 11/21/2019, and currently states to Defendant and holds the position that Exhibit 4 is valid and contains the highlighted omitted sections of Exhibit 5 – i.e.

Texas Transportation Code Section 724.015(6). Said Counsel also states to Defendant and holds the position that the officer's affidavit and the file-stamped warrant is valid and in compliance with Texas Code of Criminal Procedure Chapter 18, including 18.01(a) and 18.01(b).

Defendant clearly has a *right to effective assistance* of Counsel per 6th Amendment U.S. Constitution and 14th Amendment Equal Protection, which is currently deprived him with said appointed Counsel as Counsel of record for Defendant and acting as Counsel for Defendant in any manner in this criminal proceeding. *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). "[I]f the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel . . . ." 397 U.S. at 771.

Said Counsel also, amongst others, presents and acts on a serious conflict of interest with Defendant. The appointment of such ineffective Counsel and that presents such conflict of interest with Defendant, is grounds to set aside the charging instrument and dismiss the case with prejudice.

IV.

Wherefore, Defendant prays that, amongst others, this Court Finds that there has occurred, amongst others, a violation or deprivation of Defendant's right to speedy trial, violation or deprivation of Defendant's right to effective assistance of counsel, due process rights, and prosecutorial misconduct which warrant dismissal of said cause numbers 2233594 & 2233595, and dismissal of said causes without the consent of the prosecuting district attorney

Respectfully Submitted,
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was or shall be served upon the Attorney for Harris County and all necessary parties on or before 12/05/2019 via electronic filing, or email.

Respectfully Submitted,
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Attorney for Defendant
Submitted *Pro-Se*

STATUTORY WARNING

DIC 24 (Rev. 9/15)

ERNEST C [redacted] 0[redacted]1 1[redacted]3
Full Name of Suspect (print or type) State Driver License ID No. or None Date of Birth

Date of Arrest: 11/24/18 Time of Arrest: 2350 County of Arrest: HARRIS

(If unlicensed: Race: B Sex: M Height: 600 Weight: 170 Eyes: BROWN Hair: BLACK

You are under arrest for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated or an offense under Section 106.041, Alcoholic Beverage Code. You will be asked to give a specimen of your breath and/or blood. The specimen will be analyzed to determine the alcohol concentration or the presence of a controlled substance, drug, dangerous drug, or other substance in your body.

If you refuse to give the specimen, that refusal may be admissible in a subsequent prosecution. Your license, permit, or privilege to operate a motor vehicle will be suspended or denied for not less than 180 days. Whether or not you are subsequently prosecuted for this offense.

If you refuse to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from you.

If you are 21 years of age or older and submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of 0.08 or more, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 90 days, whether or not you are subsequently prosecuted for this offense.

If you are younger than 21 years of age and have any detectable amount of alcohol in your system, your license, permit or privilege to operate a motor vehicle will be suspended for not less than sixty (60) days. However, if you submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of less than 0.08, you may be subject to criminal penalties less severe than those provided for under Chapter 49, Penal Code.

If you were operating a motor vehicle and you refuse to give the specimen, or if the specimen shows that you have an alcohol concentration of 0.08 or more, you may be disqualified from driving a commercial motor vehicle for a period of not less than one year.

You may request a hearing on the suspension or denial. This request must be received by the Texas Department of Public Safety at its headquarters in Austin, Texas, no later than 15 days after you receive or are presumed to have received notice of suspension or denial. The request can be made by written demand, fax, or other form prescribed by the Department.

I certify that I have informed you both orally and in writing of the consequences of refusing to submit to the taking of a specimen or providing a specimen; I have provided you with a complete and true copy of this statutory warning.

I am now requesting a specimen of your ☒ Breath ☒ Blood.

☒ Subject refused to allow the taking of a specimen and further refused to sign below as requested by this officer.
OR
☐ Subject refused to allow the taking of a specimen as evidenced by his/her signature below:

(Subject's Signature)

☐ I further certify that because you are a child as defined in Section 51.02, Family Code, the above request for a specimen and your response has been videotaped.

Officer's Signature

Z. WANG 8151
Printed Name Badge or ID No.

HOUSTON PD
Agency

7277 REGENCY SQUARE HOUSTON TX 77036
Address

832-394-1206
Phone No.

FOR DIC USE ONLY

DPS Copy

Ex. B53

Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN. Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1) if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;

(2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;

(3) if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;

(4) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;

(5) if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;

(6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a

license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; and

(7) the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1013, Sec. 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 444, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 674 (S.B. 1787), Sec. 1, eff. September 1, 2011.

CAUSE NO 2233594 & 2233595

STATE OF TEXAS	§	IN THE CRIMINAL COURT
	§	AT LAW NO. 15
	§	
V.	§	
	§	
ERNEST ADIMORE-NWEKE	§	HARRIS COUNTY, TEXAS

ORDER ON DEFENDANT'S MOTION TO DISMISS CAUSES 2233594 & 2233595

On this date came to be heard DEFENDANT'S MOTION TO DISMISS CAUSES 2233594 & 2233595 with prejudice, and the Court, having heard the evidence and argument of counsel, is of the opinion that said Motion should be GRANTED.

This Court hereby Finds that there has occurred, amongst others, a violation or deprivation of Defendant's right to speedy trial, violation or deprivation of Defendant's right to effective assistance of counsel, violation or deprivation of Defendant's due process rights, and prosecutorial misconduct which warrant dismissal of said cause numbers 2233594 & 2233595, and dismissal of said causes without the consent of the prosecuting district attorney.

It is therefore ORDERED that, for said reasons as stated within the motion, its exhibits, and as cited within and hereby incorporated by reference, the information in cause numbers 2233594 and 2233595 are set aside and both causes hereby dismissed with prejudice against Defendant in said cause numbers; effective immediately.

Signed this_____day of_____, 2019.

_____
JUDGE PRESIDING

Ex. B56

Respectfully Submitted,
/s/ Ernest Adimora-Nweke
Ernest Adimora-Nweke
Texas State Bar Number: 24082602
Adimora Law Firm
3050 Post Oak Blvd., Suite 510
Houston, TX 77056
281-940-5170 (Office)
ernest@adimoralaw.com
Pro Se Plaintiff
Proposed Class Representative & Counsel

VIII. CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above, on or before the date of filing/file stamp, has been delivered to the attorneys listed below pursuant to applicable Federal Rules of Civil Procedure (e.g. electronic filing, fax, ECF system, and/or email).

Respectfully Submitted,
/s/ Ernest Adimora-Nweke
Ernest C. Adimora-Nweke, Jr
Texas State Bar Number: 24082602

Served On:

ATTORNEYS FOR DEF. MCGRAW & TxDPS
KEN PAXTON
Attorney General of Texas
SHAWN COWLES
Deputy Attorney General for Civil Litigation

BRENT WEBSTER
First Assistant Attorney General
THOMAS A. ALBRIGHT
Chief - General Litigation Division

SCOT M. GRAYDON
Texas Bar No. 24002175; Southern ID No. 719112;
Assistant Attorney General
PRIOR ATTORNEYS FOR DEFENDANT STEVEN A. MCGRAW
Via email

David Goode | Assistant United States Attorney
U.S. Attorney's Office | Western District of Texas
903 San Jacinto Blvd., Suite 334 | Austin, TX 78701
Counsel for United States
Via email

VOL. 4

CLOSED,STAYED

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:20-cv-04149

Adimora-Nweke v. Yarbrough-Smith et al
Assigned to: Judge Charles Eskridge
Case in other court: 234th Judicial District, Harris County, Tx, 20-56824
Cause: Civil Miscellaneous Case

Date Filed: 12/04/2020
Date Terminated: 12/27/2021
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Mr. Ernest Adimora-Nweke

represented by **Ernest Adimora-Nweke**
Adimora Law Firm
3050 Post Oak Blvd
Suite 510
Houston, TX 77056
Email: ernest@adimoralaw.com
PRO SE

V.

Defendant

Mr. Steven A. McGraw
TERMINATED: 12/02/2021

represented by **Scot M Graydon**
Assistant Atty General
General Litigation Division
PO Box 12548 Capital Station
Austin, TX 78711
512-463-2120
Fax: 512-320-0667
Email: scot.graydon@oag.texas.gov
ATTORNEY TO BE NOTICED

Defendant

Hannah O Yarbrough-Smith

Defendant

Jarrod Walker

Defendant

Damiola Akinfolarin

Defendant

Officer J.J. Barbar
Houston Police Department
1200 Travis St.
Houston, TX 77002

Defendant

Officer E.A. Blenton
Houston Police Department
1200 Travis St.
Houston, TX 77002

Defendant

Officer J.D. Tallant
Houston Police Department
1200 Travis St.
Houston, TX 7702

Defendant

Officer M. Meyer
Houston Police Department
1200 Travis St.
Houston, TX 77002

Defendant

Officer M.A Rayes
Houston Police Department
1200 Travis St.
Houston, TX 77002

Defendant

Chief of Police Hubert A Acevedo

Defendant

Victoria Nelson
Harris County District Attorney's Office
1201 Franklin
Ste 600
Houston, TX 77002

Defendant

John Patrick Denholm II
Harris County District Attorney's Office
1201 Franklin St.
Ste 600
Houston, TX 77002

Defendant

Kim Ogg
Harris County District Attys Office
201 Caroline St
Houston, TX 77002

Defendant

CWS Galleria
M5250 Apartments
9606 North Mopac Expwy
Suite 500
Austin, TX 78759

Defendant

Deputy Chad Schoenvogel
Harris County Costable Precinct 5
1723 Katy Freeway
Houston, TX 77094

Defendant

Deputy Carmelo Aponte
Harris County Costable Precinct 5

Defendant

Officer D. R. Daniel, III
Houston Police Department
1200 Travis St
Houston, TX 77002

Defendant

Harris County Texas
1001 Preston
Suite 911
Houston, TX 77002

Defendant

Officer Z. Wang
Houston Police Department
7277 Regency Square
Houston, TX 77036

Defendant

Officer J. Teran
Houston Police Department
1200 Travis St.
Houston, TX 77002

Date Filed	#	Docket Text
12/04/2020	1	NOTICE OF REMOVAL from 234th Judidical District court, case number 2020-56824 (Filing fee $ 402 receipt number 0541-25614344) filed by Steven A. McGraw.(Graydon, Scot) (Entered: 12/04/2020)
12/04/2020	2	APPENDIX by Steven A. McGraw, filed.(Graydon, Scot) (Entered: 12/04/2020)
12/04/2020	3	Civil Cover Sheet by Steven A. McGraw, filed.(Graydon, Scot) (Entered: 12/04/2020)
12/04/2020	4	Letter from Ernest Adimora-Nweke re: seeks redress of continuous grievances, filed. (hlerma, 4) (Entered: 12/07/2020)
12/04/2020	5	MOTION for Partial Summary Judgment & Injunction by Ernest Adimora-Nweke, filed. Motion Docket Date 12/28/2020. (hlerma, 4) (Additional attachment(s) added on 12/8/2020: # 1 Motion) (hlerma, 4). Modified on 12/8/2020 (hlerma, 4). (Entered: 12/07/2020)
12/07/2020	8	PROPOSED ORDER re: 7 MOTION for Partial Summary Judgment MOTION to Certify Class MOTION for class counsel compensation, filed.(hlerma, 4) (Entered: 12/08/2020)

12/08/2020	6	Fourth AMENDED COMPLAINT against All Defendants filed by Ernest Adimora-Nweke. Related document: 1 Notice of Removal filed by Steven A. McGraw.(mmapps, 4) (Entered: 12/08/2020)
12/08/2020	7	AMENDED MOTION for Partial Summary Judgment & Injunction, MOTION to Certify Class, Motion for Class Representative & Counsel Motion and (Motion Docket Date 12/29/2020.), MOTION for class counsel compensation by Ernest Adimora-Nweke, filed. (hlerma, 4) (Entered: 12/08/2020)
12/11/2020	9	MOTION to Stay *Litigation* by Steven A. McGraw, filed. Motion Docket Date 1/4/2021. (Attachments: # 1 Appendix Exhibits A-E, # 2 Proposed Order)(Graydon, Scot) (Entered: 12/11/2020)
12/14/2020	10	RESPONSE to 9 MOTION to Stay *Litigation*, filed by Ernest Adimora-Nweke. (mmapps, 4) (Entered: 12/14/2020)
12/14/2020	11	ORDER granting 9 Motion to Stay.(Signed by Judge Charles Eskridge) Parties notified. (jengonzalez, 4) (Entered: 12/14/2020)
12/14/2020	12	ORDER REFERRING CASE to Magistrate Judge Sam S Sheldon. The parties are ordered to advise within twenty days of the entry of this order whether they will consent to the jurisdiction of Magistrate Judge Sheldon for all purposed of this case pursuant to 28 USC 636(c).(Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 12/14/2020)
12/14/2020	13	AMENDED RESPONSE to 10 Response, filed by Ernest Adimora-Nweke. (mmapps, 4) (Entered: 12/14/2020)
12/18/2020	14	REPLY in Support of 9 MOTION to Stay *Litigation*, filed by Steven A. McGraw. (Graydon, Scot) (Entered: 12/18/2020)
12/22/2020	15	MOTION to Dismiss 6 Amended Complaint/Counterclaim/Crossclaim etc. Motions referred to Sam S Sheldon. by Steven A. McGraw, filed. Motion Docket Date 1/12/2021. (Attachments: # 1 Proposed Order)(Graydon, Scot) (Entered: 12/22/2020)
12/22/2020	16	RESPONSE to 15 MOTION to Dismiss 6 Amended Complaint/Counterclaim/Crossclaim etc. , filed by Ernest Adimora-Nweke. (BrendaLacy, 4) (Entered: 12/23/2020)
12/25/2020	17	2nd Amended MOTION for Partial Summary Judgment and Injunction, 1st Motion to Certify Class(Motion Docket Date 1/15/2021.) Motion for Class Representative and Counsel and Motion for Class Counsel CompensationMotions referred to Sam S Sheldon. by Ernest Adimora-Nweke, filed. (Attachments: # 1 Proposed Order)(thanniable, 4) Modified on 9/28/2021 (jengonzalez, 4). (Entered: 12/29/2020)
12/28/2020	18	Letter from Plft's re: to the Court on Stay Order Doc. 11 & Recent filing, filed. (hlerma, 4) (Entered: 12/29/2020)
12/28/2020	19	SUPPLEMENT to 18 Letter by J.J. Barbar, filed.(hlerma, 4) (Entered: 12/29/2020)
12/30/2020	20	REPLY in Support of 15 MOTION to Dismiss 6 Amended Complaint/Counterclaim/Crossclaim etc. , filed by Steven A. McGraw. (Graydon, Scot) (Entered: 12/30/2020)
01/04/2021	21	NOTICE *Concerning Reference to United States Magistrate Judge* re: 12 Order Referring Case to Magistrate Judge, by Steven A. McGraw, filed. (Graydon, Scot) (Entered: 01/04/2021)
01/11/2021	22	Emergency MOTION to SeparateMotions referred to Sam S Sheldon. by Ernest Adimora-Nweke, filed. Motion Docket Date 2/1/2021. (mmapps, 4) (Entered: 01/11/2021)

01/25/2021	23	PLAINTIFF'S EMERGENCY UNOPPOSED Rule 4(c)(3), Rule 21 & 15 Motions, & Motion to Lift Stay Order (Hearing Requested)Motions referred to Sam S Sheldon. by Ernest Adimora-Nweke, filed. Motion Docket Date 2/16/2021.# 1 Proposed Order # 2 attachments (jdav, 4) (Entered: 01/26/2021)
01/29/2021	24	RESPONSE in Opposition to 22 MOTION to Separate, filed by Steven A. McGraw. (Attachments: # 1 Proposed Order)(Graydon, Scot) (Entered: 01/29/2021)
02/05/2021	25	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 3/4/2021 at 10:00 AM in by video before Magistrate Judge Sam S Sheldon. (Signed by Judge Charles Eskridge) Parties notified. (jengonzalezadi, 4) (Entered: 02/05/2021)
02/09/2021	26	SCHEDULING and DOCKET CONTROL ORDER. Amended Pleadings due by 05/06/2021. Joinder of Parties due by 04/06/2021. Plaintiff Expert Report due by 11/02/2021. Deft Expert Report due by 12/02/2021. Discovery due by 01/19/2022. Mediation due by 04/05/2022. Dispositive Motion Filing due by 02/18/2022. Non-Dispositive Motion Filing due by 02/18/2022. Joint Pretrial Order due by 05/05/2022. Docket Call set for 06/20/2022 at 9:30 AM before Judge Charles Eskridge. (Signed by Judge Charles Eskridge) Parties notified. (jengonzalezadi) (Entered: 2/9/2021) (Entered: 02/09/2021)
02/11/2021	27	ORDER: The Court is scheduled to conduct an Initial Conference on March 4, 2021. The Court will hear from the parties regarding all outstanding issues at the Initial Conference. In the interim, the Court ORDERS Plaintiff not to file any additional motions, amendments, supplements, or other pleadings until the Initial Conference with the exception of Plaintiffs responses to any motions filed by other defendants, after they are served by Plaintiff. (Signed by Magistrate Judge Sam S Sheldon) Parties notified.(sjones, 4) (Entered: 02/11/2021)
02/11/2021	28	INITIAL DISCLOSURES by Ernest Adimora-Nweke, filed.(mmapps, 4) (Entered: 02/11/2021)
02/11/2021	29	1st Supplement to INITIAL DISCLOSURES by Ernest Adimora-Nweke, filed. (ChristopherSarrat, 4) (Entered: 02/12/2021)
02/16/2021	30	RESPONSE in Opposition to 23 MOTION, filed by Steven A. McGraw. (Attachments: # 1 Proposed Order)(Graydon, Scot) (Entered: 02/16/2021)
02/19/2021	31	LETTER to Court on Docket Control & Adjustments 30 Response in Opposition to Motion, 27 Order,,, filed by Ernest Adimora-Nweke. (mmapps, 4) (Entered: 02/19/2021)
02/22/2021	32	INITIAL DISCLOSURES by Steven A. McGraw, filed.(Graydon, Scot) (Entered: 02/22/2021)
03/08/2021	33	MINUTE ENTRY ORDER: The Court held an Initial Conference on March 4, 2021. For the reasons stated on the record, Defendants 9 motion to stay the litigation is GRANTED until the Court rules on 15 Defendants motion to dismiss. No discovery shall be conducted. Plaintiff shall not file any other motions in this case. Defendant shall not respond to any pending motion previously filed by Plaintiff. The court has the inherent power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. This power includes the authority to decide the order in which to hear and decide pending issues. Plaintiff will not suffer any prejudice by the stay. Plaintiff is permitted to effectuate service of process on all named Defendants. And shall comply with all statutory deadlines regarding service of process. Plaintiff has requested the Court to order that service be made by a United States Deputy Marshal, but Plaintiff asserts that he cannot afford to pay for such services. If the Plaintiff wishes to proceed in forma pauperis under 28 U.S.C. section 1915, the Court ORDERED Plaintiff to file such a

		request by no later than March 11, 2021. Plaintiffs 23 Emergency Motion is DENIED WITHOUT PREJUDICE for the reasons stated on the record. Appearances: Scot M Graydon, Ernest Adimora-Nweke. Ct Reporter: ERO. Digital Number: 10:01-10:18AM. (Signed by Magistrate Judge Sam S Sheldon) Parties notified.(sjones, 4) (Main Document 33 replaced on 3/8/2021) (sjones, 4). (Entered: 03/08/2021)
03/09/2021	34	MOTION/APPLICATION to Proceed In Forma PauperisMotions referred to Sam S Sheldon. by Ernest Adimora-Nweke, filed. Motion Docket Date 3/30/2021. (mmapps, 4) (Entered: 03/09/2021)
03/09/2021	35	Letter from Plaintiff re: not wanting application filed, filed. (mmapps, 4) (Entered: 03/09/2021)
03/11/2021	36	Summons Issued as to Kim Ogg. Issued summons delivered to plaintiff by NEF, filed. (mmapps, 4) (Entered: 03/11/2021)
03/12/2021	37	Summons Issued as to J. Teran. Issued summons delivered to plaintiff by NEF, filed. (hlerma, 4) (Entered: 03/12/2021)
03/12/2021	38	Summons Issued as to Kim Ogg. Issued summons delivered to plaintiff by NEF, filed. (hlerma, 4) (Entered: 03/12/2021)
03/15/2021	39	RESPONSE to 34 MOTION/APPLICATION to Proceed In Forma Pauperis , filed by Steven A. McGraw. (Graydon, Scot) (Entered: 03/15/2021)
03/16/2021	40	Letter from Plaintiff re: Dkts 36 & 37, filed. (mmapps, 4) (Entered: 03/16/2021)
03/16/2021	41	REPLY to 39 Response, filed by Ernest Adimora-Nweke. (mmapps, 4) (Entered: 03/16/2021)
03/16/2021	42	SUPPLEMENT to Disclosures of Interested Parties 28 Initial Disclosures by Ernest Adimora-Nweke, filed.(mmapps, 4) (Entered: 03/16/2021)
03/16/2021	43	Second SUPPLEMENT to 28 Initial Disclosures by Ernest Adimora-Nweke, filed. (mmapps, 4) (Entered: 03/16/2021)
03/23/2021	44	NOTICE of Setting as to 34 MOTION/APPLICATION to Proceed In Forma Pauperis. Parties notified. Motion Hearing set for 3/31/2021 at 10:30 AM in by video before Magistrate Judge Sam S Sheldon, filed. (sjones, 4) (Entered: 03/23/2021)
04/02/2021	45	NOTICE of Setting re: 34 MOTION/APPLICATION to Proceed In Forma Pauperis. Parties notified. Motion Hearing set for 4/7/2021 at 11:30 AM in by video. before Magistrate Judge Sam S Sheldon, filed. PLAINTIFF WILL APPEAR IN PERSON, COURTROOM 701.(sjones, 4) (Entered: 04/02/2021)
04/02/2021	46	MINUTE ENTRY ORDER: The Court held a hearing on 34 Plaintiffs application to proceed in district court without prepaying fees or costs. Plaintiff, however, did not have an adequate Zoom connection to conduct the hearing. The Court continued the hearing to 11:30 a.m. on April 7, 2021. Plaintiff shall personally appear in the courtroom for the hearing. Appearances: Scot M Graydon, Ernest Adimora-Nweke. Ct Reporter: Kathy Miller. Digital Number: 10:31-10:41AM.(Signed by Magistrate Judge Sam S Sheldon) Parties notified.(sjones, 4) (Entered: 04/02/2021)
04/08/2021	47	Unopposed MOTION to Withdraw 34 MOTION/APPLICATION to Proceed In Forma Pauperis Motions referred to Sam S Sheldon. by Ernest Adimora-Nweke, filed. Motion Docket Date 4/29/2021. (mmapps, 4) (Entered: 04/08/2021)
04/08/2021	48	MINUTE ENTRY ORDER: The Court heard oral argument on 34 Plaintiffs application to proceed without prepaying fees or costs on April 7, 2021. After hearing the Courts concerns regarding the application, Plaintiff has decided to file a motion withdrawing his

		application without prejudice. Defendant has no objection to this motion. Appearances: Ernest Adimora-Nweke, Scot M Graydon. Ct Reporter: ERO. Digital Number: 11:41AM-12:05PM.(Signed by Magistrate Judge Sam S Sheldon) Parties notified.(sjones, 4) (Entered: 04/08/2021)
04/09/2021	49	ORDER granting 47 Motion to Withdraw; withdrawing 34 MOTION/APPLICATION to Proceed In Forma Pauperis.(Signed by Magistrate Judge Sam S Sheldon) Parties notified. (sjones, 4) (Entered: 04/09/2021)
09/09/2021	50	MEMORANDUM AND RECOMMENDATION re 15 MOTION to Dismiss 6 Amended Complaint/Counterclaim/Crossclaim etc. , 5 MOTION for Partial Summary Judgment, 7 MOTION for Partial Summary Judgment MOTION to Certify Class MOTION for class counsel compensation, 22 MOTION to Separate, 17 MOTION for Partial Summary Judgment MOTION to Certify Class MOTION Motion for Class Representative and Counsel and Motion for Class Counsel Compensation Objections to M&R due by 9/23/2021(Signed by Magistrate Judge Sam S Sheldon) Parties notified.(sjones, 4) (Entered: 09/09/2021)
09/23/2021	51	OBJECTIONS to 50 Memorandum and Recommendations, filed by Ernest Adimora-Nweke. (Attachments: # 1 Proposed Order)(thanniable, 4) (Entered: 09/23/2021)
09/30/2021	52	RESPONSE *to Plaintiff's objections to the Memorandum and Recommendation [Doc 51]*, filed by Steven A. McGraw. (Graydon, Scot) (Entered: 09/30/2021)
09/30/2021	53	REPLY to Dkt 52, filed by Ernest Adimora-Nweke. (BrandisIsom, 4) (Entered: 10/01/2021)
12/02/2021	54	ORDER ADOPTING MEMORANDUM AND RECOMMENDATIONS re: The Memorandum and Recommendation of Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 50. The motion to dismiss by Defendant Steven A. McGraw, in his official capacity as Director of the Texas Department of Public Safety, is GRANTED. Dkt 15. McGraw is DISMISSED WITH PREJUDICE. This is appropriate where the subject pleading is a fourth amended complaint of 125 pages in length, and yet it fails even now to meet the requirements of Rule 8(a)(2). See Dkt 50 at 7-8. The various other motions by Plaintiff Ernest Adimora-Nweke are DENIED AS MOOT. Dkts 5, 7, 17, & 22.(Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 12/02/2021)
12/02/2021	55	ORDER TO SHOW CAUSE re: Adimora-Nweke is ORDERED to show cause by December 15, 2021 why this case shouldn't be dismissed without prejudice for failure to satisfy Rule 4(m).(Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 12/02/2021)
12/08/2021	56	MOTION for Reconsideration (Motions referred to Sam S Sheldon) by Ernest Adimora-Nweke, filed. Motion Docket Date 12/29/2021. (rkonieczny, 4) (Entered: 12/09/2021)
12/10/2021	58	Plaintiff's RESPONSE to 55 Order to Show Cause, filed by Ernest Adimora-Nweke. (jtabares, 1) (Entered: 12/13/2021)
12/13/2021	57	MINUTE ENTRY ORDER: On Saturday, December 11, 2021, pro se Plaintiff sent multiple emails to Court personnel. Going forward, all of Plaintiffs communications with the Court shall be filed on ECF. Therefore, it is ORDERED that Plaintiff not send any emails to Court personnel. The Court shall issue sanctions against Plaintiff if he violates this Order. SO ORDERED. (Signed by Magistrate Judge Sam S Sheldon) Parties notified. (sjones, 4) (Entered: 12/13/2021)
12/15/2021	59	RESPONSE in Opposition to 56 MOTION for Reconsideration, filed by Steven A. McGraw. (Attachments: # 1 Proposed Order)(Graydon, Scot) (Entered: 12/15/2021)

12/27/2021	60	MEMORANDUM DENYING RECONDSIDERATION AND DISMISSING ACTION re: The claims asserted against all remaining named defendants are dismissed without prejudice for failure of service. This action is dismissed. A final judgment will enter by separate order.(Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 12/27/2021)
12/27/2021	61	ORDER OF DISMISSAL. Case terminated on 12/27/2021. (Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 12/27/2021)
01/03/2022	62	Summons Issued as to Harris County Texas. Issued summons delivered to plaintiff in person, filed.(SamanthaWarda, 4) (Entered: 01/03/2022)
01/10/2022	63	RETURN of Service of SUMMONS Executed as to Harris County Texas served on 1/3/2022, answer due 1/24/2022, filed.(RachelSalazar, 4) (Entered: 01/13/2022)
01/20/2022	64	MOTION for Reconsideration Motions referred to Sam S Sheldon. by Ernest Adimora-Nweke, filed. Motion Docket Date 2/10/2022. (BrandisIsom, 4) (Entered: 01/20/2022)
01/21/2022	65	ORDER DENYING SECOND REQUEST FOR RECONSIDERATION denying 64 MOTION for Reconsideration. This action has already been TERMINATED on this Court's docket. Plaintiff Ernest Adimora-Nweke is an attorney but proceeds here pro se. He is admonished that any further relief must be sought from the Fifth Circuit Court of Appeals on appellate review, if still available to him. Further motions filed on this docket will hereafter be denied as moot.(Signed by Judge Charles Eskridge) Parties notified. (jengonzalez, 4) (Entered: 01/21/2022)
06/06/2022	66	AO 435 TRANSCRIPT REQUEST by Ernest Nweke for Transcript of Hearing 04/7/2021 before Judge Sheldon. Ordinary (30 days) turnaround requested. Court Reporter/Transcriber: Access Transcripts, filed. Unable to process request. No hearing held on 04/7/2021. (ClaudiaGutierrez, 4) (Entered: 06/06/2022)
06/08/2022	67	DKT-13 TRANSCRIPT ORDER REQUEST by Ernest Adimora-Nweke. Unable to process. No hearing held on 4/7/2021, filed. (RachelWillborg, 4) (Entered: 06/09/2022)

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PACER Login:	ernestcan	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:20-cv-04149
Billable Pages:	6	**Cost:**	0.60

CLOSED

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:22-cv-00765

Adimora-Nweke v. McGraw et al
Assigned to: Judge Charles Eskridge
Cause: 28:1442 Notice of Removal

Date Filed: 03/10/2022
Date Terminated: 05/25/2022
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Mr. Ernest Adimora-Nweke

represented by **Ernest Adimora-Nweke**
Adimora Law Firm
3050 Post Oak Blvd
Suite 510
Houston, TX 77056
Email: ernest@adimoralaw.com
PRO SE

V.

Defendant

Director Steven C McGraw
Office of the Attorney General
Capitol Station
P.O. Box 12548
Capitol Station
Austin, TX 78701
5124632120

represented by **Scot M Graydon**
Assistant Atty General
General Litigation Division
PO Box 12548 Capital Station
Austin, TX 78711
512-463-2120
Fax: 512-320-0667
Email: scot.graydon@oag.texas.gov
ATTORNEY TO BE NOTICED

Defendant

HARRIS COUNTY
Assistant County Attorney
1019 Congress
15th Floor
Houston, TX 77002
7132745117

represented by **Stanley Michael Clark**
Harris County Attorney
1019 Congress 15th Floor
Houston, TX 77002
713-274-5117
Email: Clark_stan@dao.hctx.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Lina Hildago
Assitant County Attorney
1019 Congress
15th Floor
Houston, TX 77002
7132745117

represented by **Stanley Michael Clark**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/10/2022	1	NOTICE OF REMOVAL from 234th Judicial District, case number 202209293 (Filing fee $ 402 receipt number BTXSDC-27863318) filed by Steven C McGraw. (Attachments: # 1 Civil Cover Sheet, # 2 Appendix State Court Pleadings, # 3 List of Counsel)(Graydon, Scot) (Entered: 03/10/2022)
03/17/2022	2	ORDER Scheduling Rule 16 Conference With the Court and Setting Out the Requirements for Initial Pretrial Work. Initial Conference set for 4/27/2022 at 03:40 PM by video before Chief Judge Lee H Rosenthal. A Zoom link will be provided. (Signed by Chief Judge Lee H Rosenthal) (Attachments: # 1 Supplement) Parties notified.(leddins, 4) (Entered: 03/17/2022)
03/18/2022	3	ADVISORY by Steven C McGraw, filed.(Graydon, Scot) (Entered: 03/18/2022)
03/22/2022	4	MOTION to Dismiss by HARRIS COUNTY, Lina Hildago, filed. Motion Docket Date 4/12/2022. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Proposed Order)(Clark, Stanley) (Entered: 03/22/2022)
03/25/2022	5	MOTION for *Judgment on the Pleadings* Judgment by Steven C McGraw, filed. Motion Docket Date 4/15/2022. (Attachments: # 1 Proposed Order)(Graydon, Scot) (Entered: 03/25/2022)
03/25/2022	6	EXHIBITS by Ernest Adimora-Nweke, filed. (Attachments: # 1 Location of CD) (BrandisIsom, 4) (Entered: 03/25/2022)
03/28/2022	7	Joint MOTION to Stay *Director McGraw, Harris County, and Lina Hidalgo's Expedited Joint Motion to Stay Litigation* by Steven C McGraw, filed. Motion Docket Date 4/18/2022. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Proposed Order) (Graydon, Scot) (Entered: 03/28/2022)
03/30/2022	8	Plaintiff's RESPONSE to 5 MOTION for *Judgment on the Pleadings* Judgment, 7 Joint MOTION to Stay *Director McGraw, Harris County, and Lina Hidalgo's Expedited Joint Motion to Stay Litigation*, 4 MOTION to Dismiss , filed by Ernest Adimora-Nweke. (RobertTenorio, 5) (Entered: 03/30/2022)
04/05/2022	9	REPLY in Support of 5 MOTION for *Judgment on the Pleadings* Judgment, filed by Steven C McGraw. (Graydon, Scot) (Entered: 04/05/2022)
04/05/2022	10	Joint REPLY in Support of 7 Joint MOTION to Stay *Director McGraw, Harris County, and Lina Hidalgo's Expedited Joint Motion to Stay Litigation*, filed by Steven C McGraw. (Graydon, Scot) (Entered: 04/05/2022)
04/06/2022	11	REPLY to Response to 4 MOTION to Dismiss , filed by HARRIS COUNTY, Lina Hildago. (Clark, Stanley) (Entered: 04/06/2022)
04/07/2022	12	RESPONSE/proposed order to 5 MOTION for *Judgment on the Pleadings* Judgment, 7 Joint MOTION to Stay *Director McGraw, Harris County, and Lina Hidalgo's Expedited Joint Motion to Stay Litigation*, 4 MOTION to Dismiss , filed by Ernest Adimora-Nweke. (rkonieczny, 4) (Entered: 04/07/2022)
04/07/2022	13	RESPONSE to 5 MOTION for *Judgment on the Pleadings* Judgment, 7 Joint MOTION to Stay *Director McGraw, Harris County, and Lina Hidalgo's Expedited Joint Motion to Stay Litigation*, 4 MOTION to Dismiss filed by Ernest Adimora-Nweke. (JacquelineMata, 4) (Entered: 04/07/2022)

04/07/2022	14	PLAINTIFF'S AMENDED PROPOSED ORDER FOR DKT'S 4,5, & 7's RESPONSE, filed.(jdav, 4) (Entered: 04/08/2022)
04/12/2022	15	OBJECTIONS to 14 Proposed Order, 12 Response, *Director McGraw, Harris County, and Lina Hidalgo's Objections to Plaintiff's Proposed Orders*, filed by Steven C McGraw. (Graydon, Scot) (Entered: 04/12/2022)
04/12/2022	16	ORDER. The court transfers this case to the Hon. Charles R. Eskridge on the agreement of thejudges. (Signed by Chief Judge Lee H Rosenthal) Parties notified.(olindor, 4) (Entered: 04/13/2022)
04/20/2022		The IPTC set for April 27 before Judge Rosenthal is terminated. This case was transferred to the docket of Judge Eskridge. (leddins, 4) (Entered: 04/20/2022)
04/25/2022	17	Summons Not Issued as to Houston Police Department due to these deficiencies: Party named on summons is not a named defendant on the case. Attorney or Plaintiff notified of deficiencies in person, filed.(JosephWells, 4) (Entered: 04/25/2022)
04/28/2022	18	ORDER re: Adimora-Nweke has several times by email contacted the Case Manager and Law Clerk questioning the status of this matter. Adimora-Nweke is ADMONISHED and ORDERED to immediately cease all communication with the Court other than by filings to the docket. A number of motions are now pending. See Dkts 4, 5, 7 & 15. Hearing will be set on any motion as deemed advisable and necessary. Plaintiff Ernest Adimora-Nweke proceeds here pro se but is himself a licensed attorney. As such, his conduct before this Court will not be afforded the lenience warranted for unsophisticated pro se litigants. See Wright v McCain, 703 F App'x 281, 284 (5th Cir 2017, per curiam) (citation omitted). His conduct will instead be scrutinized and subject to sanction, if warranted, for deviation from the rules governing practice before the Southern District of Texas. He should closely review and contemplate Rule 11 of the Federal Rules of Civil Procedure.(Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 04/28/2022)
05/06/2022	19	ADVISORY/Letter/Notice to the court by Ernest Adimora-Nweke, filed.(ckrus, 4) (Entered: 05/06/2022)
05/11/2022	20	OBJECTIONS to 19 Advisory *Defendants Objections to Plaintiff's Attack on a Magistrate Judge and Counsel and "Advisory Letter"*, filed by HARRIS COUNTY, Lina Hildago, Steven C McGraw. (Graydon, Scot) (Entered: 05/11/2022)
05/25/2022	21	ORDER re: All other pending motions and objections in this action are denied as moot. Any further motions hereafter filed on this docket will be summarily denied as moot. A final judgment will enter by separate order. (Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 05/25/2022)
05/25/2022	22	FINAL JUDGMENT. Case terminated on 05/25/2022.(Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 05/25/2022)
05/27/2022	23	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 22 Final Judgment by Ernest Adimora-Nweke, filed.(ShannonHolden, 4) (Entered: 06/03/2022)
06/06/2022	24	Amended NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 22 Final Judgment and Request for Transcript by Ernest Adimora-Nweke, filed. (BrandisIsom, 4) (Entered: 06/06/2022)
06/06/2022	25	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 23 Notice of Appeal, 24 Notice of Appeal - Amended. Fee status: Not Paid, filed. (Attachments: # 1 Notice of Appeal, # 2 Amended Notice of Appeal) (jtabares, 1) (Entered: 06/06/2022)

06/06/2022		Appeal Review Notes re: 23 Notice of Appeal, 24 Notice of Appeal - Amended. Fee status: Not Paid. The appeal filing fee has not been paid, and appellant is a pro se litigant.No hearings were held in the case - no transcripts. Number of DKT-13 Forms expected: 1, filed.(jtabares, 1) (Entered: 06/06/2022)
06/08/2022	26	DKT13 TRANSCRIPT ORDER REQUEST by Ernest Adimore-Nweke. No hearings This order form relates to the following: 24 Notice of Appeal - Amended, filed. (RachelWillborg, 4) (Entered: 06/09/2022)
06/09/2022		Notice of Assignment of USCA No. 22-20269 re: 23 Notice of Appeal, 24 Notice of Appeal - Amended, filed.(jtabares, 1) (Entered: 06/09/2022)
06/13/2022	27	MOTION for Leave to Appeal in forma pauperis by Ernest Adimora-Nweke, filed. Motion Docket Date 7/5/2022. (hlerma, 4) (Entered: 06/13/2022)
06/21/2022	28	Notice of Non-Compliance. Appellant has failed to: Pay the notice of appeal filing fee. Parties notified, filed. (DorinaReyna, 1) (Entered: 06/21/2022)
06/21/2022	29	RESPONSE in Opposition to 27 MOTION for Leave to Appeal in forma pauperis, filed by Steven C McGraw. (Graydon, Scot) (Entered: 06/21/2022)
06/23/2022	30	ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS denying 27 Motion for Leave to Appeal in forma pauperis. It is hereby CERTIFIED that an appeal wouldn't be taken in good faith. The motion by Plaintiff Ernest Adimora-Nweke for leave to proceed in forma pauperis on appeal is DENIED. Dkt 27. (Signed by Judge Charles Eskridge) Parties notified.(jengonzalez, 4) (Entered: 06/23/2022)
08/15/2022	31	Order of USCA Judgment re: 23 Notice of Appeal, 24 Notice of Appeal - Amended ; USCA No. 22-20269. The appeal is dismissed as of August 15, 2022, for want of prosecution. The appellant failed to timely pay the fee, filed.(jtabares, 1) (Entered: 08/15/2022)

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08/26/2024 19:06:09

PACER Login:	ernestcan	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:22-cv-00765
Billable Pages:	4	**Cost:**	0.40

U.S. District Court [LIVE]
Western District of Texas (Austin)
CIVIL DOCKET FOR CASE #: 1:23-cv-01048-RP

Adimora-Nweke v. McGraw et al
Assigned to: Judge Robert Pitman
Case in other court: USCA Fifth Circuit, 23-50744
Cause: 42:1983 Civil Rights Act

Date Filed: 08/28/2023
Date Terminated: 10/18/2023
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Ernest Adimora-Nweke

represented by **Ernest Adimora-Nweke**
3050 Post Oak Blvd
Suite 510
Houston, TX 77056
PRO SE

V.

Defendant

Steven C. McGraw
Director of Texas Department of Public Safety

Defendant

Texas Department of Public Safety

Defendant

Hon. Judge Lynn Hughes
Official Capacity

Date Filed	#	Docket Text
08/28/2023	1	COMPLAINT, filed by Ernest Adimora-Nweke. (Attachments: # 1 Summons, # 2 Motion(s), # 3 Supplement to FRCP Rule 23 Motion to Certify Class, # 4 Application for IFP, # 5 Proposed Order on IFP Application & Hearing Requests & Notice on Magistrate Non-Consent, # 6 Envelope)(pg) (Additional attachment(s) added on 9/5/2023: # 7 Civil Cover Sheet) (pg). (Entered: 09/05/2023)
08/28/2023		Case assigned to Judge Docket II - Austin. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (pg) (Entered: 09/05/2023)
08/28/2023		If ordered by the court, all referrals and consents in this case will be assigned to Magistrate Judge Lane (pg) (Entered: 09/05/2023)

08/28/2023	2	MOTION, for Independent Action, MOTION to Certify Class, MOTION for Partial Summary Judgment by Ernest Adimora-Nweke. (Attachments: # 1 Supplement)(pg) (Entered: 09/05/2023)
08/28/2023	3	MOTION to Proceed in forma pauperis by Ernest Adimora-Nweke. (Attachments: # 1 Proposed Order (Notice on Magistrate Non-Consent))(pg) (Entered: 09/05/2023)
08/28/2023	4	(STANDING ORDER, dated 05/11/2023) REFERRING CASE to Magistrate Judge Mark Lane. Signed by Judge Robert Pitman. (pg) (Entered: 09/05/2023)
09/06/2023	5	ORDER, IT IS FURTHER ORDERED that Plaintiff shall file the Amended Complaint on or before September 20, 2023. Finally, finding the Application to Proceed In Forma Pauperis and Financial Affidavit in Support to be lacking, Plaintiff is FURTHER ORDERED to file an Application to Proceed in District Court Without Prepaying Fees or Costs (AO Form 239) (Long Form) on or before September 20, 2023. Signed by Judge Mark Lane. (pg) (Entered: 09/06/2023)
09/11/2023	6	MOTION to Proceed in District Court without Prepaying Fees or Costs (long form) by Ernest Adimora-Nweke.. Motions referred to Judge Mark Lane. (pg) (Entered: 09/12/2023)
09/13/2023	7	AMENDED COMPLAINT (Plaintiff's Amended Original & Independent Action in Equity Complaint, & FRCP Rule 23(a), 23(b)(1)(A), 23(b)(1)(B), 23(b)(2), & 23(b)(3) Class Action Petition/Motion) against All Defendants amending 1 Complaint. filed by Ernest Adimora-Nweke.(pg) (Entered: 09/14/2023)
10/06/2023	8	Plaintiff's Emergency Motion & Amended Order - for Summons Issuance & for Service of Process by Ernest Adimora-Nweke. Motions referred to Judge Mark Lane. (cc3) (Entered: 10/10/2023)
10/10/2023	9	REPORT AND RECOMMENDATIONS re 3 Motion to Proceed in forma pauperis filed by Ernest Adimora-Nweke. Signed by Judge Mark Lane. (SL) (Additional attachment(s) added on 10/11/2023: # 1 Exhibit Court Exhibit A, # 4 Exhibit Court Exhibit B, # 5 Exhibit Court Exhibit C, # 6 Exhibit Court Exhibit D, # 7 Exhibit Court Exhibit E, # 8 Exhibit Court Exhibit F, # 9 Exhibit Court Exhibit G, # 10 Exhibit Court Exhibit H, # 11 Exhibit Court Exhibit I, # 12 Exhibit Court Exhibit J, # 13 Exhibit Court Exhibit K) (SL). (Entered: 10/10/2023)
10/16/2023	10	OBJECTION to 9 Report and Recommendations by Ernest Adimora-Nweke.. (pg) (Additional attachment(s) added on 10/17/2023: # 1 Notices, Exhibits, Proposed Order) (pg). (Entered: 10/17/2023)
10/17/2023		Case reassigned to Judge Robert Pitman. Judge Docket II - Austin no longer assigned to the case. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (klw) (Entered: 10/19/2023)
10/18/2023	11	ORDER ADOPTING REPORT AND RECOMMENDATIONS for 9 Report and Recommendations. Plaintiff's complaint, (Dkt. 1), is DISMISSED WITH PREJUDICE. Plaintiff's motions, (Dkts. 2 , 8), are DISMISSED AS MOOT. Signed by Judge Robert Pitman. (pg) (Entered: 10/18/2023)
10/18/2023	12	FINAL JUDGMENT. Signed by Judge Robert Pitman. (pg) (Entered: 10/18/2023)
10/18/2023	13	NOTICE OF APPEAL by Ernest Adimora-Nweke. Filing fee $ 505 DUE. Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a (Transcript Order) and follow the instructions set out on the form. This form is available in the Clerk's Office or by clicking the hyperlink above. (klw) (Entered: 10/19/2023)

10/26/2023		Certification of the Electronic Record on Appeal has been accepted by the 5th Circuit re 13 Notice of Appeal. Attorneys are advised that they may now download the EROA from the Fifth Circuit CM/ECF site by following these instructions here (klw) (Entered: 10/26/2023)
10/30/2023	14	ORDER TO SHOW CAUSE as to Ernest Adimora-Nweke. Show Cause Response due by 11/14/2023. Signed by Judge Robert Pitman. (jv2) (Entered: 10/30/2023)

PACER Service Center			
Transaction Receipt			
11/10/2023 08:49:38			
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Billable Pages:	2	**Cost:**	0.20

STATUTORY WARNING

DIC-24 (Rev. 9/11)

SUBJECT'S NAME _____ DL NO./STATE _____ DOB _____

PHYSICAL DESCRIPTION (if unlicensed) Race: _____ Sex: _____ Height: _____ Weight: _____ Eyes: _____ Hair: _____

DATE OF ARREST: _____ TIME OF ARREST: _____ COUNTY OF ARREST: _____

You are under arrest for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place, or a watercraft, while intoxicated, or an offense under Section 106.041, Alcoholic Beverage Code. You will be asked to give a specimen of your breath and/or blood. The specimen will be analyzed to determine the alcohol concentration or the presence of a controlled substance, drug, dangerous drug or other substance in your body.

If you refuse to give the specimen, that refusal may be admissible in a subsequent prosecution. Your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 180 days, whether or not you are subsequently prosecuted for this offense.

If you refuse to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from you.

If you are 21 years of age or older and submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of 0.08 or more, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 90 days, whether or not you are subsequently prosecuted for this offense.

If you are younger than 21 years of age and have any detectable amount of alcohol in your system, your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 60 days. However, if you submit to the taking of a specimen and an analysis of the specimen shows that you have an alcohol concentration of less than 0.08, you may be subject to criminal penalties less severe than those provided for under Chapter 49, Penal Code.

If you were operating a motor vehicle and you refuse to give the specimen or provide a specimen that shows you have an alcohol concentration of 0.08 or more, you may be disqualified from driving a commercial motor vehicle for a period of not less than one year.

You may request a hearing on the suspension or denial. This request must be received by the Texas Department of Public Safety at its headquarters in Austin, Texas, no later than 15 days after you receive or are presumed to have received notice of suspension or denial. The request can be made by written demand, fax, or other form prescribed by the Department.

I certify that I have informed you both orally and in writing of the consequences of refusing to submit to the taking of a specimen or providing a specimen. I have provided you with a complete and true copy of this statutory warning.

I am now requesting a specimen of your ☐ **Breath** ☐ **Blood**

☐ Subject refused to allow the taking of a specimen and further refused to sign below as requested by this officer.

OR

☐ Subject refused to allow the taking of a specimen as evidenced by his/her signature below.

_____
Subject's Signature

☐ I further certify that because you are a child as defined in Section 51.02, Family Code, the above request for a specimen and your response have been videotaped.

_____
Officer's Signature

_____
Officer's Printed Name

_____
Agency

_____
Telephone No.

FOR DEPARTMENT USE ONLY

DPS Copy—White **Driver's Copy—Yellow**

Unofficial Copy Office of Marvin Burgess District Clerk

NOTICE OF SUSPENSION
TEMPORARY DRIVING PERMIT

DIC-25 (Rev. 9/05)

ERNEST C ADIMORE-NWEKE	09215101	11/05/83
Full Name of Subject (print or type)	State, Drivers License/I.D. No. or None	Date of Birth

6826 CADDO LAKE LN, HOUSTON, TX 77083
Home Address

Date of Arrest: 11/14/18, Time of Arrest: 2300, County of Arrest: HARRIS

(If unlicensed): Race: B Sex: M Height: 600 Weight: 170 Eyes: BROWN Hair: BLACK

Your license, permit, or privilege to operate a motor vehicle will be suspended or denied, effective 40 days after the date you receive this notice because you:

ADULT:

☒ REFUSED to provide a specimen or specimens of blood or breath following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance.

☐ PROVIDED a Specimen of blood or breath and an analysis of the Specimen showed an alcohol concentration of .08 or greater, following an arrest for an offense involving the operation of a motor vehicle or watercraft.

MINOR: (Under 21)

☐ REFUSED to provide a specimen or specimens of blood or breath following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance.

☐ PROVIDED a Specimen of blood or breath and an analysis of the Specimen showed an alcohol concentration of .08 or greater, following an arrest for an offense involving the operation of a motor vehicle or watercraft.

☐ WERE NOT REQUESTED TO SUBMIT to the taking of a specimen following an arrest involving the operation of a motor vehicle or watercraft, as the presence of alcohol was detected or measured by other means.

If your Texas drivers license was confiscated, this document will serve as your temporary driving permit. It is subject to the same restrictions and endorsements as your Texas drivers license. If you hold a commercial driver license, this permit authorizes the operation of commercial motor vehicles. This permit does not provide you with any driving privileges if you do not have a Texas driver license or if your Texas driver license is expired, suspended, revoked, canceled, or disqualified. This permit is valid for 40 days from the date of service shown below. If your request a hearing, this permit will remain in effect until the administrative law judge makes a final decision in your case.

Drivers license confiscated: ☒ Yes ☐ No If no, explain .

Date Notice Served: 11/14/18

Officer's Signature

Z. WANG 8111
Printed Name Badge or ID No.

HOUSTON PD
Agency

7277 REGENCY SQUARE HOUSTON TX 77036
Address

832-394-1200
Phone No.

FOR DEPARTMENT USE ONLY

You may request a hearing to contest the suspension or denial by calling (800)394-8913, faxing (512)424-2850 or writing Texas Department of Public Safety, Driver Improvement and Control, PO Box 4040, Austin, Texas 78765-4040. This request must be received by the Texas Department of Public Safety no later than 15 days after you receive or are presumed to have received notice of suspension or denial. For a hearing to be scheduled, all correspondence regarding your suspension must include the following information: Full name, date of birth, driver license number and state, current mailing address, home and daytime telephone numbers, date and county of arrest, arresting agency and arresting officer, whether the test was failed, refused or not requested and such other information as requested by the Department. Please specify if you wish to have a hearing by phone or in person. The request for hearing must be received by the Texas Department of Public Safety no later than 15 days after you receive or are presumed to have received notice of suspension. Failure to request a hearing within this time is waiver of your right to a hearing. You will be notified of the date, time and location of your hearing. You will be required to pay a $125 reinstatement fee to the Texas Department of Public Safety. Driver Improvement Bureau, PO Box 15999, Austin, Texas 78761-5999, in addition to any other fees required by law. See reverse side for periods of suspension and statutory references.

DPS COPY

EXHIBIT E

11/12/2020 3:50:37 PM
Marilyn Burgess - District Clerk
Harris County
Envelope No: 48052186
By: DAVIS, ALEXIA
Filed: 11/12/2020 3:50:37 PM

Adimora Law Firm Mail - ALR Hearing Request

Ernest Adimora-Nweke <ernest@adimoralaw.com>

ALR Hearing Request

ernest@adimoralaw.com <ernest@adimoralaw.com> Fri, Nov 16, 2018 at 1:00 PM
Cc: ernest@adimoralaw.com

Name: Ernest Adimore-Nweke
Driver License OR ID # 09[redacted]01
Date of Birth: [redacted]83
Current Mailing Address: [redacted] Lane
Current Mailing City: Houston
Current Mailing State: TX
Current Mailing Zip: [redacted]
Phone: 281-940-5170
Date of Arrest: 11/14/2018
County of Arrest: Harris
ARRESTING OFFICER AND AGENCY
Officer Name: Zang
Officer Agency: Houston Police Department
Arrested in commercial vehicle: NO
Was Breath/Blood: Not Requested to Submit (MINOR UNDER 21 ONLY)
Do you have an attorney: YES
If YES, ENTER: (if NO, optional fields)
Attorney's Name: Ernest Adimora-Nweke
Attorney's Address: Adimora Law Firm, 5100 Westheimer Rd, Suite 200, Houston, TX 77056
Attorney's Phone: 281-940-5170
Attorney's Fax:
Type of Hearing: Telephonic

Date Request Submitted: 11/16/2018 1:00:05 PM

Unofficial Copy Office of Marilyn Burgess District Clerk

STEVEN C. MCCRAW
DIRECTOR
SKYLOR HEARN
FREEMAN F MARTIN
RANDALL B PRINCE
DEPUTY DIRECTORS

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD. - BOX 4040 - AUSTIN, TEXAS 78765-4040
ENFORCEMENT & COMPLIANCE SERVICE
ALR INFORMATION
1-800-394-9913
www.dps.texas.gov

COMMISSION
STEVEN P MACH CHAIRMAN
MANNY FLORES
A CYNTHIA LEON
JASON K PULLIAM
JANDY WATSON

NOV 26, 2018

ASIMORA LAW FIRM
ATTORNEY AT LAW
5100 WESTHEIMER RD STE 200
HOUSTON, TX 77056

RE: ADIMORE-NWEKE, ERNEST C TX DL NO. 09215101

DEAR MR ASIMORA NWEKE:
Our records indicate that you or your client was served the Notice of the Suspension on 11/14/2018 for refusing or failing a breath or blood test. We have received your request for an administrative hearing regarding the Notice of Suspension; however, we are unable to process your request at this time due to insufficient information.

To schedule a hearing, you must provide this office with the following information within the 15 day statutory period allowed from the date the notice was served.

_____ Date of Arrest

_____ County of Arrest

_X_ Case Type – **Refusal OR Failure (circle one)**

_____ Other –

If the 15 day time period has already lapsed, then this letter is notification of your denial for a hearing, as your request is untimely. This will result in the driver license being automatically suspended for the prescribed time period. You may read the administrative rule governing the hearing processing under the Texas Administrative Code, Title 37, Chapter 17, Rule 17.8 (4) and (5).

Should you have additional questions, please feel free to contact us. If you received this letter by fax, you will also receive this letter by mail.

Manager
Enforcement & Compliance Service
Driver License Division
CMG;MEr2r

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD. - BOX 4040 - AUSTIN, TEXAS 78765-4040
ENFORCEMENT AND COMPLIANCE SERVICES
ALR INFORMATION
1-800-394-9913

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A CYNTHIA LEON
JASON K PULLIAM
RANDY WATSON

February 7, 2019

ADIMORE-NWEKE, ERNEST C
ATTORNEY AT LAW
5100 WESTEIMER, SUITE 200
HOUSTON, TX 77056

RE: ADIMORE-NWEKE, ERNEST C DL: 09215101

DEAR MR ADIMORA-NWEKE:

We have received your request for an administrative hearing in regard to the Notice of Suspension for refusing or failing a breath or blood test.

The records you submitted indicate that your client was served the Notice of the Suspension on 11/14/2018. The request for the hearing was not received by this office within the fifteen (15) day time period permitted by statute. Consequently, we are unable to grant your request for a hearing. Your client will receive an Order of Suspension in the near future.

If we can be of service in the future, please do not hesitate to notify us

Manager,
Enforcement and Compliance Service
Driver License Division

CMG: dro

COURTESY • SERVICE • PROTECTION
EQUAL OPPORTUNITY EMPLOYER

EXHIBIT C

9/18/2020 12:04:46 PM
Marilyn Burgess - District Clerk
Harris County
Envelope No: 46367467
By: NORTH, SHANNON
Filed: 9/17/2020 3:58:20 PM

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: 202056824
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: Ernest Adimora-Nweke
(Print first and last name of the person filing the lawsuit.)

And

Defendant: Hannah O. Yarborough-Smith et al
(Print first and last name of the person being sued.)

In the 234th Court Number *(check one)*:
- [X] District Court
- [ ] County Court / County Court at Law
- [ ] Justice Court

Harris County Texas
County

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: Ernest (First) Adimora-Nweke (Middle / Last) My date of birth is: 11 / 05 / 83 (Month/Day/Year)

My address is: *(Home)*

(Mailing) c/o Adimora Law Firm, 3050 Post Oak Blvd., Suite 510, Houston, TX 77056

My phone number: 281-940-5170 My email:

About my **dependents:** "The people who depend on me financially are listed below.

	Name	Age	Relationship to Me
1	N/A		
2			
3			
4			
5			
6			

2. Are you represented by Legal Aid?

- [ ] I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

- [ ] I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

- [X] I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

- [X] I do not receive needs-based public benefits. **- or -**
- [ ] I receive these **public benefits/government entitlements** that are based on indigency:

(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

- [ ] Food stamps/SNAP [ ] TANF [ ] Medicaid [ ] CHIP [ ] SSI [ ] WIC [ ] AABD
- [ ] Public Housing or Section 8 Housing [ ] Low-Income Energy Assistance [ ] Emergency Assistance
- [ ] Telephone Lifeline [ ] Community Care via DADS [ ] LIS in Medicare ("Extra Help")
- [ ] Needs-based VA Pension [ ] Child Care Assistance under Child Care and Development Block Grant
- [ ] County Assistance, County Health Care, or General Assistance (GA)
- [ ] Other:

Unofficial Copy Office of Marilyn Burgess District Clerk

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122

4. What is your monthly income and income sources?

"I get this monthly income:

$ 0 in monthly wages. I work as a Attorney (Your job title) for Adimora Law Firm (Your employer).

$ 0 in monthly unemployment. I have been unemployed since *(date)* _____.

$ 0 in public benefits per month.

$ 0 from other people in my household each month: *(List only if other members contribute to your household income.)*

$ 0 from ☐ Retirement/Pension ☐ Tips, bonuses ☐ Disability ☐ Worker's Comp ☐ Social Security ☐ Military Housing ☐ Dividends, interest, royalties ☐ Child/spousal support ☐ My spouse's income or income from another member of my household *(If available)*

$ 0 from other jobs/sources of income. *(Describe)* _____

$ 0 is my *total* **monthly** income.

5. What is the value of your property?

"My **property** includes:	**Value***
Cash	$ 0
Bank accounts, other financial assets	
_____	$ 0
_____	$
_____	$
Vehicles (cars, boats) *(make and year)*	
_____	$ 0
_____	$
_____	$
Other property (like jewelry, stocks, land, another house, etc.)	
lots of claims for damages	$ unliquidated
_____	$
_____	$
***Total* value of property →**	**$ unliquidated**

6. What are your monthly expenses?

"My **monthly expenses** are:	**Amount**
Rent/house payments/maintenance	$ 1000/mth
Food and household supplies	$ varies
Utilities and telephone	$ varies
Clothing and laundry	$ varies
Medical and dental expenses	$ 0
Insurance (life, health, auto, etc.)	$ 0
School and child care	$ 0
Transportation, auto repair, gas	$ varies
Child / spousal support	$ 0
Wages withheld by court order	$ 0
Debt payments paid to: *(List)*	$ still accruing
_____	$
_____	$
***Total* Monthly Expenses →**	**$ varies**

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

7. Are there debts or other facts explaining your financial situation?

"My **debts** include: *(List debt and amount owed)* school loans (over $190K), debt to financiers (over $400K) and more. See also the attached Plaintiff's Supplement on Costs."

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page. ☒

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

☒ I cannot afford to pay court costs.

☐ I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is Ernest Adimora-Nweke. My date of birth is : 11 /05 /1983.

My address is c/o Adimora Law Firm, 3050 Post Oak Blvd., Suite 510, Houston, TX 77056
Street *City* *State* *Zip Code* *Country*

/s/ Ernest Adimora-Nweke signed on Sept / 18 / 2020 in Harris County, Texas
Signature *Month/Day/Year* *county name* *State*

Unofficial Copy Office of Marilyn Burgess District Clerk

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