# Appendix A –

*San Miguel v. Abbott,* No. 22-50413, 2023 U.S. App. LEXIS 20568 (5th Cir. Tex. Aug. 8. 2023)

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
August 8, 2023
Lyle W. Cayce
Clerk

No. 22-50413

SAMUEL SAN MIGUEL,

*Plaintiff—Appellant*,

*versus*

GREG ABBOTT, *Texas Governor*; MARSHA MCLANE, *Texas Civil Commitment Center Office, Executive Director*; MICHAEL SEARCY, *Texas Civil Commitment Center Office, Operation Spec.*; JESSICA MARSH, *Texas Civil Commitment Center Office, Deputy Director*; WELLPATH RECOVERY SOLUTIONS; MANAGEMENT TRAINING CORPORATION,

*Defendants—Appellees*.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-566

Before DUNCAN and WILSON, *Circuit Judges*, and SCHROEDER, *District Judge*.*

PER CURIAM:†

* District Judge of the Eastern District of Texas, sitting by designation.

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

Plaintiff-Appellant Samuel San Miguel, proceeding *pro se* and *in forma pauperis*, appeals the district court's grant of motions to dismiss filed by Defendants-Appellees Greg Abbott, Marsha McLane, Michael Searcy, Jessica Marsh, Wellpath Recovery Solutions, and Management Training Corporation (collectively, "Defendants"). San Miguel also appeals the district court's orders denying his motion for preliminary injunction and his motion to alter or amend the judgment.

## I.

In 2002, San Miguel pled guilty to two counts of aggravated sexual assault of a child and was sentenced to thirteen years in prison. Near the end of San Miguel's imprisonment, the State of Texas filed a petition to have him civilly committed as a sexually violent predator ("SVP") under the Texas Sexually Violent Predator Act ("SVPA"). *See* TEX. HEALTH & SAFETY CODE §§ 841.001–.153.[1] Following a jury trial, San Miguel was civilly committed under the SVPA.

In 2021, San Miguel sued Defendants under 42 U.S.C. § 1983, alleging that the SVPA is so punitive that it constitutes a criminal—rather than civil—statute, which violates his constitutional rights. Defendants subsequently moved to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). San Miguel moved for a preliminary injunction. The district court granted Defendants' motions and dismissed San Miguel's complaint with prejudice pursuant to Rule 12(b)(6), explaining that San Miguel failed to "allege that there are no circumstances under which the SVPA would be valid, and the Texas state courts have found both the original

[1] The SVPA permits the civil commitment of SVPs who have committed multiple sexually violent offenses and are found to suffer from behavioral abnormalities that make them likely to commit additional sexually violent offenses. TEX. HEALTH & SAFETY CODE §§ 841.001, .003(a).

and amended SVPAs to be non-punitive." It also denied San Miguel's motion for preliminary injunction as he could not "show he is substantially likely to succeed on the merits." San Miguel then filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The district court denied this motion too, and San Miguel timely appealed.

## II.

We review *de novo* a district court's grant of a Rule 12(b)(6) motion to dismiss, accepting well-pled facts as true and viewing those facts in the light most favorable to the plaintiff. *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation and citation omitted). We construe a *pro se* litigant's brief liberally, but the litigant "must still brief the issues and reasonably comply with the standards" outlined in Federal Rule of Appellate Procedure 28. *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995) (per curiam).

## III.

On appeal, San Miguel contends that the district court erred in (1) granting Defendants' motions to dismiss, (2) denying his motion for preliminary injunction, and (3) denying his Rule 59(e) motion. At the threshold, we note that San Miguel's brief fails to comply with Rule 28 by failing to include a jurisdictional statement or a summary of the argument identifying the district court's purported errors. *See* FED. R. APP. P. 28(a)(4), (7). Nonetheless, we have "considered a *pro se* appellant's brief despite its technical noncompliance with the Rules of Civil Procedure when it at least argued *some* error on the part of the district court." *Grant*, 59 F.3d at 524–25. Construed liberally, we understand San Miguel's brief to contend, with respect to Defendants' motions to dismiss and his motion for

preliminary injunction, that the district court erred by failing to consider certain arguments, case law, and legislative history. As such, we will consider San Miguel's brief to the extent it bears on the district court's disposition of those motions.[2] *Id.*

We specifically consider San Miguel's argument that the district court erred in granting Defendants' motions to dismiss and that the SVPA is a criminal statute that violates his constitutional rights. San Miguel contends that this challenge to the SVPA is not facial. However, "to categorize a challenge as facial or as-applied we look to see whether the 'claim and the relief that would follow . . . reach beyond the particular circumstances of the [] plaintiff[].'" *Cath. Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 426 (5th Cir. 2014) (first alteration in original) (quoting *Doe v. Reed*, 561 U.S. 186, 194 (2010)). Because his requested relief extends beyond his own circumstances and would invalidate the SVPA in its entirety, we conclude that San Miguel lodges a facial challenge. *Id.*

To sustain a facial constitutional challenge to a statute, "the challenger must establish that no set of circumstances exists under which the [law] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). San Miguel, however, has not properly alleged that there is *no* set of circumstances in which the SVPA would be valid. For this reason, we conclude he fails adequately to allege a facial challenge to the SVPA, and that

[2] San Miguel "fails to advance arguments in the body of [his] brief in support of" his contention that the district court erred in failing to grant his Rule 59(e) motion. *See Justiss Oil Co. v. Kerr-McGee Refin. Corp.*, 75 F.3d 1057, 1067 (5th Cir. 1996). Accordingly, "we consider [this] issue[] abandoned" and decline to consider its merits. *Id.*; *see also Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) ("A party forfeits an argument . . . by failing to adequately brief the argument on appeal.").

the district court did not err in granting Defendants' motions to dismiss.[3] *See Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 662–63 (5th Cir. 2006).

Separately, in the light of the district court's judgment denying permanent injunctive relief, as well as our affirmance of the district court's Rule 12(b)(6) dismissal of San Miguel's claims, we conclude that San Miguel's appeal of his motion for preliminary injunction is moot. *See Koppula v. Jaddou*, 72 F.4th 83, 84 (5th Cir. 2023) ("[T]here is no need for a preliminary injunction to preserve the status quo during the pendency of trial court proceedings that are now over," as a "denial of permanent relief moots the appeal from a denial of preliminary relief."); *see also La. World Exposition, Inc. v. Logue*, 746 F.2d 1033, 1037–38 (5th Cir. 1984) (citing *Payne v. Fite*, 184 F.2d 977, 978 (5th Cir. 1950)).

AFFIRMED in part; DISMISSED in part as moot.

[3] To the extent San Miguel challenges the SVPA as applied based on his conditions of confinement, we conclude that he has forfeited this argument by failing to address the district court's conclusion that our precedent in *Brown v. Taylor*, 911 F.3d 235, 243–44 (5th Cir. 2018) (per curiam), precludes such a challenge. *See Rollins*, 8 F.4th at 397; *see also Washington v. Scott*, 786 F. App'x 483, 485 (5th Cir. 2019) (per curiam) (collecting cases and holding that a pro se appellant "waived his ability to challenge" a district court's decision by "not address[ing] the basis of the . . . decision").

# Appendix B –

*San Miguel v. Abbott,* No. 1:21-cv-00566-RP (W.D. Tex. Jan. 20, 2022)

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

| | | |
|---|---|---|
| **SAMUEL SAN MIGUEL,** | § | |
| **PLAINTIFF,** | § | |
| | § | |
| **V.** | § | |
| | § | |
| **GREG ABBOTT, MARSHA MCLANE,** | § | **A-21-CV-566-RP-SH** |
| **MICHAEL SEARCY, JESSICA MARSH,** | § | |
| **WELLPATH RECOVERY SOLUTIONS,** | § | |
| **and MANAGEMENT TRAINING** | § | |
| **CORPORATION,** | § | |
| **DEFENDANTS.** | § | |

**ORDER**

Before the Court are Plaintiff Samuel San Miguel's Complaint filed pursuant to 42 U.S.C. § 1983 (ECF No. 1), Defendants Abbott, McLane, Searcy, Marsh, Wellpath Recovery Solutions, and Management Training Corporation's Motions to Dismiss (ECF Nos. 10-11, 26), and Plaintiff's Motion for Preliminary Injunction and Declaration (ECF No. 17). Plaintiff is proceeding *pro se* and *in forma pauperis*. Upon careful consideration of the pleadings, the Court grants Defendants' Motions to Dismiss and denies Plaintiff's Motion for Preliminary Injunction.

## I. Statement of the Case

In July 2015, Plaintiff was involuntarily civilly committed as a Sexually Violent Predator (SVP); he resided at the Travis County Jail until September 2015, when he was transferred to the Texas Civil Commitment Center (TCCC) in Littlefield, Texas. Plaintiff's supervision is currently managed by the Texas Civil Commitment Office (TCCO).

In his complaint, Plaintiff argues that the conditions of confinement at TCCC are the same or worse than what he experienced in prison; that none of the SVPs are being released from their civil commitment; and that, as a result, Chapter 841 of the Texas Health and Safety Code—the

enactment of the Texas Sexual Violent Predator Act (SVPA)[1]—is punitive, not civil, in nature and therefore violates the U.S. Constitution. He names Greg Abbott, Governor of Texas; Marsha McLane, Executive Director of TCCO; Jessica Marsh, Deputy Director at TCCO; Michael Searcy, TCCO Operations Specialist; Wellpath Recovery Solutions (Wellpath); and Management Training Corporation (MTC). He seeks declaratory and injunctive relief, as well as $500,000 in damages for his unconstitutional confinement. (ECF No. 1.)

Defendants Wellpath and MTC have filed a motion to dismiss, arguing the statute of limitations bars Plaintiff's claims against Wellpath; Plaintiff does not state a valid facial challenge to the SVPA; neither Wellpath nor MTC are proper defendants; and the SVPA is not punitive in nature. (ECF No. 10.) Defendants Abbott, McLane, Marsh, and Searcy have also filed motions to dismiss, arguing they are immune from damages in their official capacities; there is no supervisory liability under § 1983; Governor Abbott and Michael Searcy are not proper defendants; and that Plaintiff fails to state a claim that the SVPA is unconstitutional. (ECF Nos. 11, 26.) Plaintiff has filed a Motion for Preliminary Injunction, seeking to enjoin Defendants Abbott, McLane, Marsh, and MTC from confining him pursuant to the SVPA as well as a declaration that the SVPA is punitive in purpose and thereby violates the U.S. Constitution. (ECF Nos. 17-18.)

## II. Discussion & Analysis

1. Plaintiff's Complaint

In July 2015, just prior to his release from incarceration at the Texas Department of Criminal Justice (TDCJ), Plaintiff was civilly-committed after a jury found he suffers from a behavioral abnormality which increases the likelihood that he will commit a future sexual offense. Plaintiff's civil commitment began at the Travis County Jail, where he and other SVPs would

[1] Although Plaintiff uses the term "Chapter 841" to refer to the SVPA throughout his pleadings, the Court will only refer to the SVPA as Plaintiff is challenging the constitutionality of the statute.

leave the jail twice a week, unattended, to attend group therapy in downtown Austin. He was also allowed to go to a community health clinic and the grocery store. In September 2015, after the Texas legislature amended the SVPA, Plaintiff was transferred to inpatient treatment at the TCCC.

Plaintiff argues that the constitutionality of the SVPA rests upon the State's interest in providing public safety as well as long-term treatment and rehabilitation for SVPs. In practice, however, Plaintiff contends the scheme is almost wholly punitive in nature. In support, Plaintiff alleges the following:

1. There are only five SVPs who have achieved Tier 5 status, meaning they can reside in the community while still under the supervision of TCCO. All other SVPs are inpatient residents at the TCCC.

2. The vast majority of the staff and administration of the TCCC and TCCO are former TDCJ and Bureau of Prisons (BOP) employees.

3. Defendant McLane was an administrator at TDCJ's Pardons and Parole Division for thirty years prior to becoming Executive Director of TCCO.

4. The TCCC is a more punitive environment than TDCJ because
   a. the cost recovery at TCCC is exorbitant—33% on all gifted and purchased foods, as well as property and social security benefits;
   b. TCCO charges SVPs 200% more for commissary items than TDCJ charges prisoners for the same items;
   c. SVPs at TCCC are charged $0.21/minute for phone calls compared to $0.06/minute for TDCJ prisoners, and $0.00/minute for civil committees in state hospitals;
   d. The length of punishment for SVPs at TCCC are 300% longer than those imposed by TDCJ for similar disciplinary infractions (e.g. a major infraction results in six months of punishment in TCCC compared to 45 days TDCJ);
   e. The disciplinary rules for TCCC patients are the same as those for TDCJ prisoners;
   f. Although the disciplinary rules are the same for TCCC patients and TDCJ prisoners, TCCC patients have less procedural protections than TDCJ prisoners;
   g. TCCC patients can be punished with 24 hours of solitary confinement for a single rule infraction while TDCJ no longer allows solitary confinement as punishment; and
   h. TCCC patients receive a lower standard of medical and dental care than TDCJ prisoners.

5. TCCO policies allow patients in lower treatment tiers to experience lower standards of living than those in higher treatment tiers, and this disparity continues for years;

6. Many TCCC patients cannot graduate to a higher tier because they are illiterate and/or have learning disabilities and thus are incapable of completing the necessary lessons;

7. TCCC patients are forced to wear GPS monitors under penalty of felony offense; and

8. The standard of release from TCCO supervision is so stringent that it effectively condemns SVPs to permanent institutionalization.

Based on these allegations, Plaintiff claims the SVPA is punitive in nature and constitutes a criminal, not civil, statute, thereby violating the U.S. Constitution. He claims Defendants have confined him for five years in a maximum-security prison, which violates his due process rights under the Fifth Amendment. Plaintiff seeks a declaration that the SVPA is punitive in nature and violates the U.S. Constitution; that the conditions of confinement he alleges violate his constitutional rights; and that the State may no longer confine him pursuant to the SVPA. He also seeks injunctive relief in the form of being released from TCCC and enjoining the State from confining anyone pursuant to the SVPA. Finally, Plaintiff seeks $500,000 in damages against Defendants for his five years of unconstitutional confinement. (ECF No. 1.)

1. Eleventh Amendment Immunity

Pursuant to the Eleventh Amendment, federal courts are without jurisdiction over suits against a state unless that state has waived its sovereign immunity or Congress has clearly abrogated it. *Moore v. La. Bd. of Elem. and Second. Educ.*, 743 F.3d 959, 963 (5th Cir. 2014). A state's sovereign immunity under the Eleventh Amendment may not be evaded by suing state agencies or state employees in their official capacity because such claims are essentially against the state itself. *Green v. State Bar of Tex.*, 27 F.3d 1083, 1087 (5th Cir. 1994) (suit against a state official in their official capacity is no different than a suit against the state itself). Accordingly, to the extent Plaintiff's claim for damages is against Defendants Abbott, McLane, Marsh, and Searcy

in their official capacities, they are immune from suit under the Eleventh Amendment, and these claims are dismissed without prejudice.

2. Failure to State a Claim

All defendants argue that Plaintiff's complaint fails to state a claim upon which relief can be granted. Under the Federal Rules of Civil Procedure, a complaint 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). To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead sufficient facts to state a claim for relief that is plausible on its face. FED. R. CIV. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *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." *Iqbal*, 566 U.S. at 678.

In deciding a motion to dismiss under Rule 12(b)(6), a court will accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. *See Raj v. La. State Univ.*, 714 F.3d 322, 329-30 (5th Cir. 2013). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 679. Further, a plaintiff's factual allegations must establish more than just the "sheer possibility" a defendant has acted unlawfully. *Id.*; *Twombly*, 550 U.S. at 555 (factual allegations must be enough to raise a right to relief above the speculative level) (citation omitted). Determining a complaint's plausibility is a "context-specific task," but if the factual allegations "do not permit the court to infer more than the mere possibility of misconduct" the complaint has failed to meet the pleading standard under Rule 8(a)(2). *Iqbal*, 566 U.S. at 678.

Plaintiff's complaint is focused around his claim that the conditions of confinement at TCCC render the SVPA punitive in nature. In *Seling v. Young*, the United States Supreme Court reaffirmed the principle articulated in *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997) that "determining the civil or punitive nature of an Act must begin with reference to its text and legislative history." 531 U.S. 250, 262 (2001). When interpreting a statute, a court must first "ascertain whether the legislature meant the statute to establish 'civil' proceedings." *Hendricks*, 521 U.S. at 361. If the legislature's intent was to punish, this ends the inquiry. *Smith v. Doe*, 538 U.S. 84, 92 (2003). If, however, a court determines the legislature intended to create a civil and non-punitive statute, the party challenging the statute must provide "'the clearest proof'" that the "'statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil'." *Hendricks*, 521 U.S. at 361 (quoting *United States v. Ward*, 448 U.S. 242, 248-49 (1980)). To aid in this latter inquiry, courts look to the seven factors listed in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963):

> (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment--retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned.

*See Ward*, 448 U.S. at 249.

Texas courts have twice used this approach when construing the SVPA. First, in 2005, the Texas Supreme Court analyzed the original SVPA pursuant to *Hendricks* and *Kennedy* and concluded the statute was civil, non-punitive, and did not violate an SVPs substantive or procedural due process rights. *In re Commitment of Fisher*, 164 S.W.3d 637 (Tex. 2005). Then, after the legislature's 2015 amendments to the SVPA, the Texas Ninth Court of Appeals also used

this approach in concluding the SVPA was civil, and not punitive, and the Texas Supreme Court denied the petition for review. *In re Commitment of May*, 500 S.W.3d 515, 520-24 (Tex. Ct. App.—Beaumont 2016, pet. denied).

In their Motions to Dismiss, Defendants construe Plaintiff's challenge to the SVPA as a facial challenge and argue it fails to state a claim because Plaintiff has failed to allege there are no circumstances under which the SVPA would be valid. *See Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006) ("In general, to mount a successful facial attack, 'the challenger must establish that no set of circumstances exists under which the Act would be valid.'" (quoting *United States v. Salerno*, 481 US. 739, 745 (1987)). Defendants also argue that several courts have already found both the original and amended SVPAs to be constitutional. Plaintiff does not respond to Defendants' arguments; rather, he filed a Motion for Preliminary Injunction, wherein he restates the arguments from his original complaint. (ECF Nos. 17,18.)

Defendants are correct that Plaintiff does not allege that there are no circumstances under which the SVPA would be valid, and the Texas state courts have found both the original and amended SVPAs to be non-punitive. Further, regarding his conditions of confinement, the Fifth Circuit has held that "[p]roximity to prisoners and restrictive conditions alone do not state a due process claim." *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018) In *Brown*, a Texas SVP complained of allegedly "'squalid living conditions, harassment from staff members and prisoners/parolees,' and [an] inadequate grievance procedure." *Id.* at 241. The Fifth Circuit held that *Hendricks* foreclosed claims that civil-commitment facilities and statutory schemes violated due process by being "too prison-like." *Id.* at 243 (noting that "[t]he Supreme Court in *Hendricks* upheld Kansas's civil commitment scheme even though Kansas confined the committed persons at a prison hospital with prisoners and treated prisoners and committed persons alike.") Rather, the

court found that the conditions the plaintiff complained about were reasonably related to State's twin goals of the "'long-term supervision and treatment of sexually violent predators.'" *Id.*

Thus, to the extent Plaintiff is raising a facial challenge to the SVPA, his claim fails because he does not allege there are no conditions under which the statute would be valid. To the extent Plaintiff is arguing the SVPA is unconstitutional because the conditions of confinement are too prison-like at the TCCC, Plaintiff's claim fails for the reasons articulated in *Brown*, i.e. he fails to show that the conditions at TCCC are not reasonably related to the State's goals of supervision and treatment.

Regarding Plaintiff's pending Motion for Preliminary Injunction, it is denied because Plaintiff cannot show he is substantially likely to succeed on the merits. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) ("A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest"); *Johnson v. FEMA*, 393 F. App'x 160, 162 (5th Cir. 2010) (a movant cannot be granted a preliminary injunction unless he can establish that he is substantially likely to succeed on the merits) (citing *La Union Del Pueblo Entero v. FEMA*, 608 F.3d 217, 220 (5th Cir. 2010)).

Accordingly, it is therefore ORDERED the Defendants' Motions to Dismiss (ECF Nos. 10-11, 26) are GRANTED and Plaintiff's Motion for Preliminary Injunction (ECF No. 17) is DENIED.

SIGNED this 20th day of January, 2022.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

# Appendix C–

*San Miguel v. Abbott,* No. 22-50413, U.S. App. LEXIS 4819 (5th Cir. Tex., Feb. 27, 2024) (Mandate Recalled)

# United States Court of Appeals for the Fifth Circuit

No. 22-50413

SAMUEL SAN MIGUEL,

*Plaintiff—Appellant,*

*versus*

GREG ABBOTT, *Texas Governor*; MARSHA MCLANE, *Texas Civil Commitment Center Office, Executive Director*; MICHAEL SEARCY, *Texas Civil Commitment Center Office, Operation Spec.*; JESSICA MARSH, *Texas Civil Commitment Center Office, Deputy Director*; WELLPATH RECOVERY SOLUTIONS; MANAGEMENT TRAINING CORPORATION,

*Defendants—Appellees.*

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-566

UNPUBLISHED ORDER

Before DUNCAN, WILSON, and SCHROEDER, *Circuit Judges.*

PER CURIAM:

A member of this panel previously DENIED Appellant's motion to file a petition for rehearing out of time. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion for reconsideration is GRANTED. Appellant's motion to file a petition for rehearing out of time is also GRANTED.

IT IS FURTHER ORDERED that the mandate in this case is recalled, and Appellant shall file any petition for rehearing on or before March 15, 2024.

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
March 20, 2024
Lyle W. Cayce
Clerk

No. 22-50413

SAMUEL SAN MIGUEL,

*Plaintiff—Appellant,*

*versus*

GREG ABBOTT, *Texas Governor*; MARSHA MCLANE, *Texas Civil Commitment Center Office, Executive Director*; MICHAEL SEARCY, *Texas Civil Commitment Center Office, Operation Spec.*; JESSICA MARSH, *Texas Civil Commitment Center Office, Deputy Director*; WELLPATH RECOVERY SOLUTIONS; MANAGEMENT TRAINING CORPORATION,

*Defendants—Appellees.*

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-566

ON PETITION FOR REHEARING

Before DUNCAN and WILSON, *Circuit Judges,* and SCHROEDER, *District Judge.**

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

* District Judge of the Eastern District of Texas, sitting by designation.

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

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

March 20, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50413 Miguel v. Abbott
USDC No. 1:21-CV-566

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mrs. Nichol L. Bunn
Mr. Samuel San Miguel
Ms. Amber R. Pickett
Ms. Briana Marie Webb

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