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APPENDIX A.

(Opinion and Judgement of the United States Court of Appeals for the Eleventh Circuit Issued February 25, 2026)

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12552

JOSEPH TYRELL DUHON,

Plaintiff-Appellant,

versus

FCI - COLEMAN MEDIUM,

Federal Penal Administration,

BOP - in their official capacity,

BUREAU OF PRISONS,

Federal Penal Administration

-in their official capacity,

M. CORTOPASSI,

Correctional Counselor, BOP

- in their individual and official capacity,

FCC COLEMAN - MEDIUM WARDEN,

in their individual and official capacity,

JEFF MIDDENDORF,

Supervisory Attorney, FCC Coleman

- in their official capacity, et al.,

Defendants-Appellees,

JOHN DOE,

SE Regional Director, BOP

- in their official capacity, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:23-cv-00264-KKM-PRL

Before ROSENBAUM, NEWSOM, and KIDD, Circuit Judges.

BY THE COURT:

In February 2025, Joseph Duhon, a federal prisoner, filed his second amended complaint against (1) the Department of Justice; (2) the Bureau of Prisons; (3) FCC Coleman-Medium; (4) and several correctional officers at FCC Coleman-Medium, alleging violations of his rights under the Rehabilitation Act of 1973, 29 U.S.C. § 794, et. seq. (“Rehab Act”). He based his claims on his reassignment to a cell with an inmate who exhibited symptoms of, and eventually tested positive for, COVID-19, and the initial denial of his requests for COVID-19 tests before his cellmate tested positive. He also alleged that he was not given counsel to help him administratively litigate this claim. He moved for leave to proceed in forma pauperis (“IFP”), which was granted.

The district court dismissed Duhon’s second amended complaint with prejudice for failure to state a claim. Duhon moved for reconsideration, which was denied. Duhon then filed his notice of appeal of the dismissal of his second amended complaint, and moved for leave to proceed IFP on appeal, which was denied. He now moves for leave to proceed in this Court.

All prisoners seeking to appeal a judgment in a civil non-habeas action must, under the Prison Litigation Reform Act, pay the filing fees, regardless of whether they are indigent or the appeal is

25-12552

Order of the Court

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nonfrivolous. 28 U.S.C. § 1915(a), (b). Because Duhon has consented to paying the filing fee, the only remaining issue is whether an appeal would be frivolous. *See id.* § 1915(e)(2)(B). An action is frivolous if it is without arguable merit either in law or fact. *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

Here, Duhon has no nonfrivolous arguments for appeal, as he did not allege sufficient facts to demonstrate that he was denied the benefits of a service, or was otherwise discriminated against, on the basis of any disability, and thus, he cannot state a claim for relief under the Rehab Act. *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1083 (11th Cir. 2007). His conclusory allegations to the contrary are insufficient to prevent dismissal. *Oxford Asset Mgmt., Ltd. v. Jaha-ris*, 297 F.3d 1182, 1188 (11th Cir. 2002). Because he already had two opportunities to amend his complaint, and still failed to state a claim, the district court correctly dismissed his second amended complaint with prejudice. *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295-96 (11th Cir. 2018).¹ Accordingly, this Court finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

¹ While Duhon does not indicate in his second amended complaint whether he seeks to proceed under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), he could have done neither, as he names defendants who are not state actors subject to § 1983, *see Griffin v. City of OpaLocka*, 261 F.3d 1295, 1303 (11th Cir. 2001), and his claims do not fall into one of the three categories of *Bivens* actions recognized by the Supreme Court, *see Ziglar v. Abbasi*, 582 U.S. 120, 130-31 (2017).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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February 25, 2026

Joseph Tyrell Duhon
77 3RD AVE UNIT B
SHALIMAR, FL 32579

Appeal Number: 25-12552-J
Case Style: Joseph Duhon v. FCC Coleman - Medium, et al
District Court Docket No: 5:23-cv-00264-KKM-PRL

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

APPENDIX B.

(Final Order and Judgement of the United States
District Court for the Middle District of Florida, June
16, 2025)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JOSEPH TYRELL DUHON,
Plaintiff,

v.

Case No. 5:23-cv-264-KKM-PRL

FCI - COLEMAN MEDIUM, et al.,
Defendants.

ORDER

Joseph Tyrell Duhon, a federal inmate who is proceeding in forma pauperis, initiated this action by filing a complaint under the Rehabilitation Act and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).¹ (Doc. 1.) The complaint was dismissed for failure to state a claim. (Doc. 15.) Duhon filed an amended complaint, (Doc. 18), that was dismissed for failure to state a claim. (Doc. 19.) In his second amended complaint, Duhon sues the Department of Justice (DOJ), the Federal Bureau of Prisons (BOP), Federal Correctional Institution, Coleman (Coleman), M. Cortopassi, Warden C.M. Rijos, and Jeff Middendorf for violating his rights under the Rehabilitation Act. (Doc. 22, p. 1.)

As required by law, I must screen Duhon's complaint. *See* 28 U.S.C. § 1915A (requiring a district court to screen a complaint in "a civil action in which a prisoner seeks redress from a governmental entity or officer or

¹ The United States Supreme Court established the availability of a cause of action against federal officials in their individual capacities for limited violations of federal constitutional rights, beginning in *Bivens*, 403 U.S. at 394-97.

employee of a governmental entity” and dismiss the complaint if it “is frivolous, malicious, [] fails to state a claim upon which relief may be granted[,]” or “seeks monetary relief from a defendant who is immune from such relief”); *see also* 28 U.S.C. § 1915(e)(2) (requiring dismissal of a complaint in an in forma pauperis proceeding under the same circumstances). Upon consideration, the complaint is dismissed with prejudice.²

I. PLEADING REQUIREMENTS

The Federal Rules of Civil Procedure set out requirements for filing a complaint. A pleading 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). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). The factual allegations in a complaint must “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). Although a court must construe pro se complaints liberally, the complaint still “must

² Duhon’s complaint is an impermissible shotgun pleading because he does not specify which claims he brings against which defendants. *See Weiland v. Palm Beach Cnty. Sheriff’s Office*, 792 F.3d 1313, 1320–23 (11th Cir. 2015). The proper course of action is generally to strike a shotgun pleading and allow a plaintiff to remedy the deficiency. *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1357 (11th Cir. 2018). However, because this is Duhon’s third attempt at pleading, and he fails to state a claim under the Rehabilitation Act irrespective of any specific defendant’s involvement, I will resolve only on the merits as discussed within.

allege factual allegations that 'raise a right to relief above the speculative level.'" *Owens v. Sec'y, Fla. Dep't of Corr.*, 602 F. App'x 475, 477 (11th Cir. 2015) (quoting *Saunders v. Duke*, 766 F.3d 1262, 1266 (11th Cir. 2014)). The court will not accept legal conclusions or other conclusory statements as true. *See id.*

II. DUHON'S ALLEGATIONS

On March 30, 2020, Duhon was incarcerated at Coleman when it was placed on an emergency modified lockdown because of the Covid-19 pandemic. (Doc. 22, p. 2.) On March 31, 2020, Cortopassi reassigned Duhon to a cell with an inmate exhibiting Covid-19 symptoms. (*Id.*) Duhon was confined to his cell with his symptomatic cellmate under the Covid-19 modified lockdown policy. (*Id.*) On April 6 and April 29, 2020, Duhon requested to be tested for Covid-19 in administrative grievances. (*Id.*) On May 12, 2020, Rijos denied Duhon's requests. (*Id.*, pp. 2, 48.) On May 26, 2020, Duhon submitted a regional appeal requesting to be tested for Covid-19, but the BOP Southeast Regional Director did not respond until September 23, 2020. (*Id.*, pp. 2–3.) Duhon was not tested for Covid-19 until August 20, 2020, after his cellmate tested positive. (*Id.*, p. 3.) Duhon tested negative, but two days later he was retested, and the result was positive. (*Id.*, pp. 3, 53–56.) Between October 2020 and July 2021, Duhon began experiencing cognitive, cardiovascular, and pulmonary complications. (*Id.*, p. 3.) On September 30, 2021, Duhon was diagnosed with anxiety and depression, and prescribed Mirtazapine and Buspirone. (*Id.*, pp. 3, 58–59.)

Duhon filed an administrative tort claim, alleging that Coleman officials caused his cognitive, cardiovascular, and pulmonary complications, and Middendorf—a BOP Supervisory Attorney—denied the claim. (*Id.*, pp. 3, 7, 36–37.) Duhon appealed and Middendorf denied his claim as meritless. (*Id.*, p. 27.) Duhon filed a complaint with the DOJ Office of Professional Responsibility contesting the denial of his administrative tort claim, seemingly accusing Middendorf of misconduct, and asking for legal counsel. (*Id.*, pp. 3, 7, 86–92.) The Office of Professional Responsibility forwarded the complaint to the Office of Inspector General (OIG) because the claim fell within its jurisdiction. (*Id.*, pp. 3, 85.) Duhon does not say whether the complaint was further investigated or denied. (*Id.*, pp. 7–8.) Instead, he only alleges they should have known he is a qualified individual and a “communication barrier probably excluded [him] from the benefit of legal counsel on the basis of [his] learning disability.” (*Id.*)

III. ANALYSIS

The Rehabilitation Act prohibits discrimination based on disability “under any program or activity conducted by any Executive agency[.]” 29 U.S.C. § 794(a). “The standard for determining liability under the Rehabilitation Act is the same as that under the Americans with Disabilities Act . . . (‘ADA’); thus, cases involving the ADA are precedent for those involving the Rehabilitation Act.” *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005). A plaintiff alleging discrimination under either the Rehabilitation Act or the ADA must allege: “(1) that he is a qualified individual with a

disability; (2) that he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that the exclusion, denial of benefit, or discrimination was by reason of the plaintiff's disability." *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1083 (11th Cir. 2007). The Rehabilitation Act applies to prisons. *Onishea v. Hopper*, 171 F.3d 1289, 1296 n.11 (11th Cir. 1999).

A. Claim One

Duhon alleges that "Cortopassi probably discriminated against [him] by reassigning him to a cell with a symptomatic inmate." (Doc. 22, p. 6.) Duhon further claims that Rijos also "probably discriminated" against him by denying his request for a Covid-19 test. (*Id.*)

Although Duhon alleges that he is a qualified individual within the meaning of the Rehabilitation Act, he does not identify his "disability." (*Id.*, p. 8.) Duhon only says that he was "unable to perform manual task[s]." ³ (*Id.*, pp. 6-7.) Even when assuming that Duhon is disabled, he does not allege facts from which I could plausibly conclude that he was reassigned or denied a Covid-19 test because of his disability. Duhon does not allege any circumstances surrounding his reassignment. (*Id.*, pp. 2, 6.) Duhon claims that when he was reassigned, his cellmate was symptomatic, but notably he does not allege that his cellmate tested positive for Covid-19 at this time. (*Id.*)

³ In the grievances and letters that Duhon included in his complaint, he only references his disability once and says that his "ability to read, concentrate, and work has been substantially limited due to [his] condition[.]" but he does not name the condition. (Doc. 22, p. 91.)

When Duhon requested a Covid-19 test, he did not exhibit any Covid-19 symptoms. (*Id.*) Once Duhon's cellmate tested positive, around August 20, 2020, Duhon was tested. (*Id.*, pp. 3, 6.) Although Duhon tested positive, he was asymptomatic and remained asymptomatic until he returned to general population on September 8, 2020. (*Id.*, pp. 51, 55–56.)

Duhon's allegations do not demonstrate that he was denied a Covid-19 test because of his unspecified disability, but rather, demonstrate that he was tested when there was a reason to test him: his cellmate tested positive for Covid-19. Duhon does not allege any reason why he should have been tested for Covid-19 before August 20, 2020. Further, Duhon does not explain how failing to test him for Covid-19, when he did not have it, caused his alleged cognitive, cardiovascular and pulmonary complications.

B. Claim Two

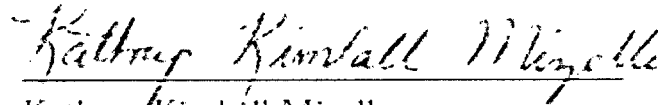
Duhon vaguely alleges that he was excluded from the benefit of counsel because of a "learning disability, i.e[.], being unable to interpret law[]s relating to the supervision of the federal penal institution." (*Id.*, pp. 7–8.) This claim fails on all three elements. First, inability to interpret the law is not a disability. *See* 29 U.S.C. § 705(20) (defining "individual with a disability" as someone with "a physical or mental impairment which . . . results in a substantial impediment"). Second, it is not clear why Duhon was seeking counsel, presumably to help him litigate this claim, but he does not identify a DOJ or OIG program that provides counsel to prisoners to litigate their civil claims. Third, Duhon's allegations do not demonstrate that his

request for counsel was denied because of his alleged unparticularized disability, if it was denied at all.

Accordingly, the Court **ORDERS**:

1. Duhon's second amended complaint, (Doc. 22), is **DISMISSED with prejudice**. See *Woldeab v. Dekalb Cty. Bd. of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018).
2. The **CLERK** is directed to enter judgment in Defendants' favor and to **CLOSE** this case.

ORDERED in Ocala, Florida on June 16, 2025.


Kathryn Kimball Mizelle
United States District Judge

APPENDIX C.

(Orders of the United States Court of Appeals for the
Eleventh Circuit Regarding Issuance of Mandates)

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12552

JOSEPH TYRELL DUHON,

Plaintiff-Appellant,

versus

FCI - COLEMAN MEDIUM,

Federal Penal Administration,

BOP - in their official capacity,

BUREAU OF PRISONS,

Federal Penal Administration

-in their official capacity,

M. CORTOPASSI,

Correctional Counselor, BOP

- in their individual and official capacity,

FCC COLEMAN - MEDIUM WARDEN,

in their individual and official capacity,

JEFF MIDDENDORF,

Supervisory Attorney, FCC Coleman

- in their official capacity, et al.,

Defendants-Appellees,

JOHN DOE,

SE Regional Director, BOP

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Order of the Court

25-12552

- in their official capacity, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:23-cv-00264-KKM-PRL

Before ROSENBAUM, NEWSOM, and KIDD, Circuit Judges.

BY THE COURT:

Pursuant to 11th Cir. R. 22-1(c) and 27-2, Joseph Duhon moves for reconsideration of this Court's February 25, 2026, order denying him leave to proceed on appeal and dismissing his appeal. He additionally moves for leave to seek reconsideration out of time, as his motion is untimely. *See* 11th Cir. R. 27-2.

Duhon's motion for leave to move for reconsideration out of time is GRANTED. However, because he offers no new evidence or meritorious arguments as to why this Court should reconsider its previous order, his motion for reconsideration is DENIED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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May 22, 2026

Joseph Tyrell Duhon
77 3RD AVE UNIT B
SHALIMAR, FL 32579

Appeal Number: 25-12552-J
Case Style: Joseph Duhon v. FCC Coleman - Medium, et al
District Court Docket No: 5:23-cv-00264-KKM-PRL

The enclosed order has been ENTERED.

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Clerk's Office Phone Numbers

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MOT-2 Notice of Court Action

**Additional material
from this filing is
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