APPENDIX

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APPENDIX A

United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Case No. 26-50024

"Judgement"
and
"Order"

June 6, 2026

6-Pages

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
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Mr. Michael David Byrum
#06391934
Texas Civil Commitment Center
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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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

June 12, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order. Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

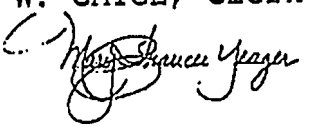
Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, and advise them of the time limits for filing for rehearing and certiorari. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



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

Enclosure(s)

Mr. Michael David Byrum

United States Court of Appeals for the Fifth Circuit

No. 26-50024
Summary Calendar

MICHAEL DAVID BYRUM,

Plaintiff—Appellant,

versus

GEORGE W. BUSH, *Governor, 1995-2001*; JOHN AND/OR JANE DOE, *State's Attorney General, 1995-2001*; RICK PERRY, *Governor, 2001-2015*; JANE JOHN DOES, *State's Attorney General, 2000-*; ET AL.,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:25-CV-694

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Michael David Byrum, former Texas prisoner # 1012085 and current Texas Civil Commitment Center resident # 06391934, filed a 42 U.S.C. § 1983 complaint naming over 500 defendants. In his complaint, Byrum sought monetary compensatory and punitive damages from each defendant,

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

his release from the custody of the Texas Civil Commitment Office, and to compel the Texas State Legislature to revisit the state law pertaining to civil commitments.

Because the district court dismissed Byrum's Eighth and Fourteenth Amendment claims for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), we review that ruling under the same de novo standard that applies to a dismissal under Federal Rule of Civil Procedure 12(b)(6). *See DeMoss v. Crain*, 636 F.3d 145, 152 (5th Cir. 2011). The facts alleged in the complaint must be taken as true and viewed in the light most favorable to the plaintiff. *Green v. Atkinson*, 623 F.3d 278, 280 (5th Cir. 2010). Nonetheless, a complaint will not proceed unless it "contain[s] 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) (internal quotation marks and citation omitted).

In essence, Byrum argues that the defendants violated his Eighth and Fourteenth Amendment rights by failing to provide him with treatment while he was incarcerated and, as a result, he is now civilly committed. Regarding his Eighth Amendment claim, he fails to state a claim that the defendants acted with deliberate indifference towards his medical needs. *See id.* at 679; *see also Cleveland v. Bell*, 938 F.3d 672, 676 (5th Cir. 2019). Similarly, he has failed to state a claim that the defendants violated his procedural or substantive due process rights under the Fourteenth Amendment. *See Wilkinson v. Austin*, 545 U.S. 209, 221 (2005); *McClendon v. City of Columbia*, 305 F.3d 314, 325-26 (5th Cir. 2002) (en banc).

Additionally, Byrum fails to show that the district court erred in concluding that the state legislators were immune from liability. *See Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998); *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951); *Hughes v. Tarrant Cnty. Tex.*, 948 F.2d 918, 920 (5th Cir. 1991).

Similarly, the court correctly concluded that a habeas application was the appropriate mechanism for Byrum to pursue release from his civil commitment, *see Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005), and that it was without power to grant the requested mandamus relief, *see Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013); *McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 412 (5th Cir. 2004). Lastly, the district court did not err when it denied Byrum's motion for the appointment of counsel, *see Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982), and the appointment of counsel on appeal is likewise not warranted, *see id.*; *Cooper v. Sheriff, Lubbock Cnty.*, 929 F.2d 1078, 1084 (5th Cir. 1991).

The judgment of the district court is AFFIRMED. Byrum's motion for the appointment of counsel is DENIED.

APPENDIX A-1

United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Case No. 26-50024

Notice/Rehearing
Time Expired

July 24th, 2026

2-pages

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#06391934
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Littlefield, TX 79339

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United States Court of Appeals

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Suite 115
NEW ORLEANS, LA 70130

July 24, 2026

#06391934
Mr. Michael David Byrum
Texas Civil Commitment Center
2600 S. Sunset Avenue
Littlefield, TX 79339

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Dear Mr. Byrum,

We will take no action on your petition for rehearing. The time for filing a petition for rehearing under Fed. R. App. P. 40 has expired.

Sincerely,

LYLE W. CAYCE, Clerk

Renee McDonough

By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

APPENDIX A-2

United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Case No. 26-50024

Notice/Motion to Stay Mandate
No Action

and

Notice/Motion to Extend Time
No Action

July 24, 2026

3-Pages

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NEW ORLEANS, LA 70130

July 24, 2026

#06391934
Mr. Michael David Byrum
Texas Civil Commitment Center
2600 S. Sunset Avenue
Littlefield, TX 79339

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Dear Mr. Byrum,

We received your motion to stay mandate on July 21, 2026. The mandate issued on July 6, 2026. Therefore, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk

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

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

July 24, 2026

#06391934
Mr. Michael David Byrum
Texas Civil Commitment Center
2600 S. Sunset Avenue
Littlefield, TX 79339

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Dear Mr. Byrum,

On July 7, 2026, we received your motion to extend time to file rehearing. The motion is untimely, we are taking no action on this motion.

Any rehearing should be accompanied by a motion to file out of time.

Sincerely,

LYLE W. CAYCE, Clerk

Mary Frances Yeager

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

APPENDIX A-3

United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Case No. 26-50024

Notice/Mandate Issued

July 6,2026

2-Pages

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FIFTH CIRCUIT
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Suite 115
NEW ORLEANS, LA 70130

July 06, 2026

Mr. Philip Devlin
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

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

cc: Mr. Michael David Byrum

APPENDIX A-4

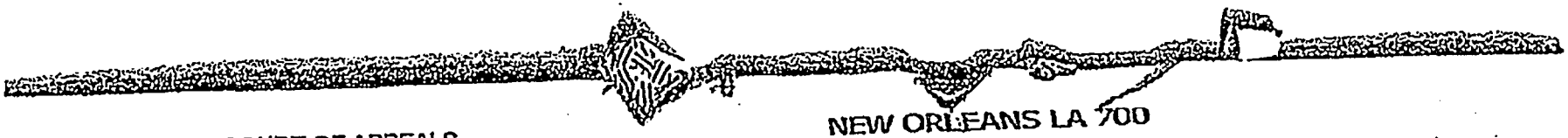
United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Case No. 26-50024

Notice/Appeal Docketed

February 4, 2026

7-Pages



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#06391934
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2600 S. Sunset Avenue
Littlefield, TX 79339

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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

February 04, 2026

#06391934
Mr. Michael David Byrum
Texas Civil Commitment Center
2600 S. Sunset Avenue
Littlefield, TX 79339

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Dear Mr. Byrum,

We have docketed your appeal. You should use the number listed above on all future correspondence.

You should carefully read the following sections

Filings in this court are governed strictly by the Federal Rules of Appellate Procedure, NOT the Federal Rules of Civil Procedure. We cannot accept motions submitted under the Federal Rules of Civil Procedure. We can address only those documents the court directs you to file, or motions filed under the Fed. R. App. P. in support of the appeal. See Fed. R. App. P. and 5th Cir. R. 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

Appellant's Brief Required by Fed. R. App. P. and 5th Cir. R. 28

Your appellant's brief is due for filing within forty (40) days from the date of this notice.

The court knows you are not a lawyer and does not hold you to the same standards it requires of attorneys in stating your case. The court reviews the case on the record of the district court proceedings and on the briefs filed by the parties. Therefore, your brief should explain as briefly and plainly as possible the facts of the case, the issues of law that you think entitle you to relief, and the relief you are asking. To assist you in writing your brief please see below.

A. FORMAT AND NUMBER OF COPIES:

1. Use 8 1/2 x 11 inch light colored paper, preferably white;
2. Make a 1 inch margin on the top, bottom and both sides of the pages;

3. Securely fasten the brief so pages do not fall out, and so the pages can be read when the brief is opened;

4. Send us 4 copies of your brief.

B. CONTENTS:

Your brief should include the following:

1. a STATEMENT OF THE LEGAL ISSUES you think the court should decide;

2. a concise STATEMENT OF THE CASE setting out the facts relevant to the issues submitted for review;

3. an ARGUMENT telling why the court should decide for you. Give legal authority which supports your side of the case. For each legal issue, try to include the "standard of review" this court should use in deciding your case. The "standard of review" may be included either under a separate heading before the discussion of each issue or in the discussion of the issue;

4. a CONCLUSION giving a brief statement of the relief you want and why.

5. a CERTIFICATE OF COMPLIANCE confirming the page or word count is within the type-volume rule limitations. Such briefs, whether typed or handwritten, must not exceed 30 pages (not counting any statement regarding oral argument, and the certificates of service and compliance). For computer prepared briefs, the computer's word count feature should be used. Do not count the words yourself. You may use the "text line" method for typewritten briefs to show you meet the type-volume limits. Typewritten briefs with proper margins, (as described above), typeface with at least 10 1/2 characters per inch, and double spacing should have no more than 26 lines of text per page. Handwritten briefs must be legible and follow the same type-volume limitations in accordance with Fed. R. App. P. 32. Any handwritten or typed brief exceeding the page limit must be accompanied by a motion seeking leave of court to exceed the page limit. Motions to exceed the page limitation MUST contain COMPELLING REASONS.

C. CERTIFICATE OF SERVICE.

Your brief MUST CONTAIN a certificate of service showing the date you mailed a copy of your brief to the other parties in the case, and giving the name and complete mailing address (street number or post office box number, city and state) of the person you sent your brief to.

D. PENALTIES.

If you do not mail 4 copies of your brief to us within 40 days of the date shown on this letter, or properly request an extension of time, we will dismiss your case without further notice, see 5th Cir. R. 42.3. Note, 5th Cir. R. 31 and the

Internal Operating Procedures following rules 27 and 31 provides the general sense of the court on the disposition of a variety of matters, which includes that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

Pro se prisoners may request the record from the district court to prepare their briefs. If requested, the record will be sent to the warden.

Appellee's Brief

The appellee is allowed 30 days from the date of service of your brief to file a response. The appellee's brief may be in letter or memorandum form but must provide a concise statement of the case setting out the facts relevant to the issues raised and provide record and legal authority citations. If this court has granted COA, then an appellee's brief will be due 30 days from the date of service of appellant's brief. If the district court denied In Forma Pauperis status and certified that the appeal is not taken in good faith, or if a defendant or respondent did not make an appearance previously, the appellee does not need to file a brief, unless the court notifies the appellee to do so. We will send you a copy of the notice.

Important notice regarding citations to the record on appeal to comply with the recent amendment to 5th Cir. R. 28.2.2.

Parties are directed to use the new ROA citation format in 5th Cir. R. 28.2.2 only for electronic records on appeal with pagination that includes the case number followed by a page number, in the format "YY-NNNNN.###". In single record cases, the party will use the shorthand "ROA.###" to identify the page of the record referenced. For multi-record cases, the parties will have to identify which record is cited by using the entire format (for example, ROA.YY-NNNNN.###).

Parties may not use the new citation formats for USCA5 paginated records. For those records, parties must cite to the record using the USCA5 volume and or page number.

In cases with both pagination formats, parties must use the citation format corresponding to the type of record cited.

Explanation: In 2013, the court adopted the Electronic Record on Appeal (EROA) as the official record on appeal for all cases in which the district court created the record on appeal on or after 4 August 2013. Records on appeal created on or after that date are paginated using the format YY-NNNNN.###. The records on appeal in some cases contain both new and old pagination formats, requiring us to adopt the procedures above until fully transitioned to the EROA.

The recent amendment to 5th Cir. R. 28.2.2 was adopted to permit a court developed computer program to automatically insert hyperlinks into briefs and other documents citing new EROA records using the new pagination format. This program provides judges a

ready link to pages in the EROA cited by parties. The court intended the new citation format for use only with records using the new EROA pagination format, but the Clerk's Office failed to explain this limitation in earlier announcements.

Reply Brief

You have 21 days from the date the appellee's brief is filed to file a reply brief. However, you are not required to file a reply brief.

In accordance with the Judicial Conference Schedule of Fees following 28 U.S.C. § 1913, we must charge $.50 per page for all copies requested, including copies of this Court's opinions. Requests for copies will not be processed until payment is received, therefore, payment must be made in advance. Prior to remittance of any funds you must write or call ahead to obtain the appropriate costs. The Fifth Circuit accepts electronic payment of fees through Pay.Gov, the federal government's secure online payment system. Other acceptable forms of payment include check, travelers check or money order made payable to Clerk, U.S. Courts. Complete fee information can be found on our website at www.ca5.uscourts.gov/forms-fees/fees/fee-schedule. Counsel may obtain copies via PACER.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. You may access the "Application and Oath for Admission" form at: www.ca5.uscourts.gov. Information on Electronic Case Filing is also available on our site.

Brief Template: The clerk's office provides brief templates and a tool to check briefs for potential deficiencies before docketing. To access these resources, log in to CM/ECF and select 'Brief Template' (Counsel Only) or 'PDF Check Document' from the Utilities menu or the "Attorney Toolbox".

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

Special guidance regarding filing certain documents:

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

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

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Video/Audio Exhibits: If this record contains exhibits, such as dash cam or body cam videos, that need to be submitted to the court, please provide them to the District Court in MP4 format for submission to our court.

Signing Pleadings: While our rules do not directly regulate the process by which a party or an attorney produces the filing—such as writing it personally with no assistance, delegating part of its preparation to another, or using generative artificial intelligence, the signature is an attestation that the signer has reviewed the filing and is responsible for the accuracy of its contents.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Lisa Ferrara
Lisa Ferrara, Deputy Clerk
504-310-7675

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 26-50024

Michael David Byrum,

Plaintiff - Appellant

v.

George W. Bush, Governor, 1995-2001; John and/or Jane Doe, State's Attorney General, 1995-2001; Rick Perry, Governor, 2001-2015; Jane John Does, State's Attorney General, 2000-; Et al,

Defendants - Appellees

APPENDIX A-5

United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Case No. 26-50024

Notice/Appeal
Docketed

January 21, 2026

5-Pages

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
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NEW ORLEANS, LOUISIANA 70130-3408

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Mr. Michael David Byrum
#06391934
Texas Civil Commitment Center
2600 S. Sunset Avenue
Littlefield, TX 79339

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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

January 21, 2026

#06391934
Mr. Michael David Byrum
Texas Civil Commitment Center
2600 S. Sunset Avenue
Littlefield, TX 79339

No. 26-50024 Byrum v. Bush
USDC No. 1:25-CV-694

Dear Mr. Byrum,

We have docketed the appeal as shown above, and ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of Appellate Procedure. We cannot accept motions submitted under the Federal Rules of Civil Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See Fed. R. App. P. and 5th Cir. R. 27 for guidance. We will not acknowledge or act upon documents not authorized by these rules.

All counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" naming all parties represented within 14 days from this date, see Fed. R. App. P. 12(b) and 5th Cir. R. 12. This form is available on our website www.ca5.uscourts.gov. Failure to electronically file this form will result in removing your name from our docket. Pro se parties are not required to file appearance forms.

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

Electronic Record on Appeal (EROA): We permit you to download all or part of the electronic record on appeal (EROA) after this is approved by the U.S. District Court. You will receive a notice when access to the EROA is available. Counsel must be approved for electronic filing and be listed as an attorney of record in the case before access will be granted. Instructions for accessing and downloading the EROA will be included in the notice you receive from the district court, but are also available here: http://www.ca5.uscourts.gov/docs/default-

source/forms/instructions-for-electronic-record-download-feature-of-cm.

Please note that sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. You must file a motion in our court for access to sealed documents, which will be provided by the district court only upon the filing and granting of a motion by our court.

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

ATTENTION: If you are filing Pro Se (without a lawyer) you can request to receive correspondence from the court and other parties by email and can also request to file pleadings through the court's electronic filing systems. Details explaining how you can request this are available on the Fifth Circuit website at http://www.ca5.uscourts.gov/docs/default-source/default-document-library/pro-se-filer-instructions. This is not available for any pro se serving in confinement.

Special guidance regarding filing certain documents:

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

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

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

E. M. Falls

By: _____
Eyonka M. Falls, Deputy Clerk
504-310-7670

cc:
Mr. Philip Devlin

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 26-50024

Michael David Byrum,

Plaintiff - Appellant

v.

George W. Bush, Governor, 1995-2001; John and/or Jane Doe, State's Attorney General, 1995-2001; Rick Perry, Governor, 2001-2015; Jane John Does, State's Attorney General, 2000-,

Defendants - Appellees

CLERK U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
100 E. FERGUSON STREET, SUITE 125
TYLER, TX 75702

Michael Derek Bynum
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Beaumont, TX 77720

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EASTERN DISTRICT OF TEXAS

APPENDIX B

United States Court of Appeals
Western District of Texas
Austin

Case No. 1:25-cv-00694-DAE-ML

Order
and
Final Judgement

December 3, 2025

13-Pages

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MICHAEL DAVID BYRUM, Plaintiff,	§ § §	
V.	§	A-25-CV-00694-DAE
GEORGE WALKER BUSH, et al., Defendants.	§ § §	

ORDER

Before the Court is Plaintiff Michael David Byrum's complaint filed pursuant to 42 U.S.C. § 1983 and his response to the Court's Show-Cause Order. (ECF Nos. 1, 10.) Plaintiff is proceeding pro se and in forma pauperis. Upon review, the Court dismisses Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

I. FACTUAL BACKGROUND

On May 16, 2023, a jury found Plaintiff to be a Sexually Violent Predator (SVP) and he was ordered civilly committed. *In re: The Commitment of Michael David Byrum*, No. 21-1063-C26 (26th Dist. Ct. Williamson Cnty., May 16, 2023). His commitment order was affirmed on appeal. *In re Commitment of Byrum*, No. 03-23-00388-CV, 2025 WL 1449264 (Tex. App.--Austin 2025). Currently, Plaintiff is in the custody of the Texas Civil Commitment Office (TCCO) and resides at the Texas Civil Commitment Center (TCCC) in Littlefield, Texas.

Plaintiff executed his complaint on May 1, 2025. He names approximately 554 Defendants: 515 individual members of the Texas House of Representative and the Texas Senate and 39 other Texas government officials, of which 18 are identified as "John(s)/Jane(s) Doe." Plaintiff alleges that, after he pleaded guilty to two sex offenses in 2000, he did not receive any sex offender treatment during his incarceration in the Texas Department of Criminal Justice—Correctional Institutions Division (TDCJ-CID). He further alleges that, after he was granted parole, Melissa

Davis of TCCO contacted him on March 8, 2021, about an assessment for civil commitment. Plaintiff alleges Defendant Dr. Stephen A. Thorne interviewed Plaintiff on April 15, 2021, and Dr. Michael Arambula interviewed him on September 13, 2021; he states both doctors concluded Plaintiff suffered from a "behavioral abnormality" as defined by the Sexually Violent Predator Act (SVPA). On August 5, 2021, Plaintiff alleges the State served him a petition pursuing his civil commitment.

Plaintiff states that, as a condition of his parole, he was required to complete a nine-month Sex Offender Treatment Program (SOTP)—his only sex offender treatment during his incarceration—which he successfully completed on April 21, 2022. Plaintiff states he remained in TDCJ custody until May 5, 2023, when he was transported to county jail for his civil commitment trial. On May 16, 2023, a jury found beyond a reasonable doubt that Plaintiff was an SVP as defined by the SVPA. The judge entered an order of commitment and Plaintiff was transferred into TCCO custody.

Plaintiff claims all Defendants violated his Eighth and Fourteenth Amendment rights by failing to provide him with sex offender treatment during his incarceration in TDCJ-CID. He alleges no one at TDCJ notified him he had a behavioral abnormality of such magnitude that he would eventually be civilly committed. He alleges Defendants violated his constitutional rights by allowing him to exist with an untreated mental health disorder during his almost 23-year incarceration in TDCJ. He further argues that, by not providing him with the long-term treatment and supervision he needed not to be civilly committed, Defendants have subjected him to a possible lifetime restriction on his liberty. Plaintiff seeks $2 million in compensatory damages from each defendant, $2 million in punitive damages from each defendant, release from TCCO custody, and for the Court to require the Texas State Legislature revisit the problems in the SVPA.

II. DISCUSSION & ANALYSIS

1. Legal Standard

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. Under § 1915(e)(2)(B), a district court is directed to dismiss a case filed in forma pauperis at any time if the court determines the action is (i) frivolous or malicious or (ii) fails to state a claim on which relief may be granted. An action is frivolous where there is no arguable legal or factual basis for the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges a violation of a legal interest which clearly does not exist." *Harper v. Showers*, 174 F.3d 716, 718 (5th Cir. 1999) (internal quotation and citation omitted). A complaint is factually frivolous when "the facts alleged are 'fantastic or delusional scenarios' or the legal theory upon which a complaint relies is 'indisputably meritless.'" *Eason v. Thaler*, 14 F.3d 8, n.5 (5th Cir. 1994) (quoting *Neitzke*, 490 U.S. at 327-28).

In evaluating whether a complaint states a claim for purposes of § 1915(e)(2)(B), a court applies the same standards governing dismissals pursuant to Federal Rule of Civil Procedure 12(b)(6). *See DeMoss v. Crain*, 636 F.3d 145, 152 (5th Cir. 2011). To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead sufficient facts to state a claim for relief that is plausible on its face. *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. A court must 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.* 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 fails to state a claim upon which relief may be granted.

2. Legislative Immunity

Plaintiff names 515 current and former Texas legislators as Defendants and alleges they violated his constitutional rights by either voting for the SVPA or by not requiring the SVPA be amended so that sex offenders at risk of civil commitment receive sex offender therapy during their incarceration.

The United States Supreme Court has held that "state and regional legislators are entitled to absolute immunity from liability under § 1983 for their legislative activities." *Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998). That immunity "attaches to all actions taken 'in the sphere of legitimate legislative activity.'" *Id.* at 54 (quoting *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)). Legislative immunity "applies to activities, not offices." *Bryan v. City of Madison*, 213 F.3d 267, 272 (5th Cir. 2000). "Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it." *Id.*

Plaintiff argues these 515 Defendants are not entitled to legislative immunity because (1) under *Scheuer v. Rhodes*, 416 U.S. 232, 238 (1974), the United States Supreme Court held that "damages against individual defendants are a permissible remedy in some circumstances notwithstanding the fact that they hold public office ..." and (2) these Defendants were performing administrative functions, which is an exception to legislative immunity. Plaintiff's arguments are unpersuasive.

First, *Scheuer* described the doctrine of qualified immunity, which is a legal doctrine protecting government officials "from liability for civil damages insofar as their conduct does not

violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity, however, is only relevant if the Defendants are not entitled to legislative immunity. As such, Plaintiff's appeal to *Scheuer* does not address Defendants' entitlement to legislative immunity.

Plaintiff next argues these Defendants were performing administrative functions, not legislative acts, and thus are not entitled to legislative immunity. "[T]raditional legislative functions, . . . may become administrative, and therefore not protected by legislative immunity, if the action singles out specific individuals or exceeds the powers granted to the legislative body." *Lowrance v. King Cnty.*, 16 F.3d 1215 (5th Cir. 1994) (unpublished per curiam) (citing *Hughes v. Tarrant Cnty.*, 948 F.2d 918, 921 (5th Cir. 1991)). Plaintiff does not allege these Defendants singled him out in enacting the SVPA, nor that enacting the SVPA exceeded their power as legislators.

These 515 Defendants either created or voted on the SVPA. Such actions are "quintessentially legislative." *Bogan*, 523 U.S. at 54. The Court concludes that these Defendants are entitled to legislative immunity and dismisses Plaintiff's claims against them.

3. Release from TCCO Custody

As part of his requested relief, Plaintiff seeks release from TCCO custody. To challenge the validity of his continued commitment as an SVP, Plaintiff must assert his claim in either a state court proceeding or file a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973); *see also Duncan v. Walker*, 533 U.S. 167, 176 (2001) (citing *Francois v. Henderson*, 850 F.2d 231 (5th Cir. 1998) (addressing a challenge under 28 U.S.C. § 2254 to a state court's commitment of a person to a mental institution after verdict of not guilty by reason of insanity)); *Seling v. Young*, 531 U.S. 250 (2001) (reviewing a sex offender's civil commitment

order via 28 U.S.C. § 2254). Accordingly, to the extent Plaintiff seeks release from confinement as an SVP, he cannot pursue such relief in a § 1983 action.[1]

4. Mandamus

Plaintiff's request for the Court to order the Texas State Legislature to "revisit this ill-conceived law" is construed as a request for mandamus relief. *Norman v. U.S. Atty. Gen. for W. Dist. of Tex.*, No. 23-50360, 2024 WL 64769 at *2 (5th Cir. Jan. 5, 2024) (holding district court appropriately construed request to stop defendants from violating federal criminal laws and to compel them to perform certain non-discretionary acts as seeking mandamus relief). "The common-law writ of mandamus, as codified in 28 U.S.C. § 1361, is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty." *Heckler v. Ringer*, 466 U.S. 602, 616 (1984). Section 1361 provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

None of the Defendants are officers or employees of the United States or any federal agency. Further, federal courts lack "the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only

[1] Further, to the extent Plaintiff argues he was wrongfully civilly committed, and seeks damages for his wrongful civil-commitment, such a claim is likely barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Supreme Court held that a § 1983 claim for monetary damages is not cognizable when "judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence" unless that conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal ... or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 487. The issue of whether *Heck* applies to civil commitment is still unsettled in the Fifth Circuit. *Smith v. Hood*, 900 F.3d 180, 185 (5th Cir. 2018) ("[W]hether *Heck* extends to civil commitments is still a res nova question in this circuit."). However, several other circuit courts have applied *Heck* to civil commitments. *See Bell v. Raoul*, 88 F.4th 1241, 1234 (7th Cir. 2023); *Thomas v. Eschen*, 928 F.3d 709, 711 (8th Cir. 2019); *Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1140-41 (9th Cir. 2005); *Banda v. New Jersey*, 134 F. App'x 529, 530 (3d Cir. 2005); *Whitehead v. Bush*, 62 F. App'x 912, 913 (10th Cir. 2003); *Fetzer v. Secretary, Fla. Dep't of Children & Families*, No. 20-11139-E, 2020 WL 5625172 at *1 (11th Cir. 2020). Further, the Court has found no authority finding *Heck* inapplicable to civil commitment. As such, the weight of authority suggests that, if Plaintiff wishes to seek damages based on claims he was wrongfully civilly-committed, he must have his civil commitment invalidated first.

relief sought." *Moye v. Clerk, Dekalb Cnty. Sup. Ct.*, 474 F.2d 1275, 1275-76 (5th Cir. 1973). Accordingly, this Court is without power to order Defendants to revisit the SVPA and Plaintiff's request for mandamus relief is dismissed as frivolous. *See Santee v. Quinlan*, 115 F.3d 355, 357 (5th Cir. 1997) (affirming dismissal of petition for writ of mandamus as frivolous because federal courts lack power to mandamus state courts in the performance of their duties).

5. Eighth Amendment

Plaintiff alleges Defendants violated his Eighth Amendment rights by failing to provide him with sex offender therapy to treat his behavioral abnormality during his incarceration in TDCJ. To state a claim for deliberate indifference under the Eighth Amendment, Plaintiff must show that a prison official "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

First, to the extent this claim is not barred by *Heck*'s favorable termination rule, *see supra* note 1, it is likely barred by the statute of limitations. The statute of limitations for a § 1983 claim is determined by the forum state's limitations period for personal injury torts. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). In Texas, that is two years from the date the cause of action accrues. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a); *Schaefer v. Gulf Coast Reg'l Blood Ctr.*, 10 F.3d 327, 331 (5th Cir. 1994). Federal law determines when a § 1983 cause of action accrues. *Gartrell v. Gaylor*, 981 F.2d 254, 257 (5th Cir. 1993). Under federal law, a cause of action under § 1983 accrues when the aggrieved party knows, or has reason to know of, the injury or damages which form the basis of the action. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995).

Plaintiff admits he was aware of his behavioral abnormality by September 13, 2021. He therefore had until September 13, 2023, to file a § 1983 lawsuit complaining about the lack of

treatment for this abnormality. However, Plaintiff waited until May 1, 2025, to execute his civil rights complaint, over 1 year and 7 months after the statute of limitations expired.

In his response to the Court's show-cause order, Plaintiff argues that his claim did not accrue until he left TDCJ custody, on May 5, 2023, which he states was the last date TDCJ could have provided him with the necessary treatment for his behavioral abnormality. He further argues that the notice he received on September 13, 2021, was "inconsequential, amounting to nothing more than warning signs that did not create redressable harm, injury, or damage." (ECF No. 10 at 10.)

Plaintiff's first argument—that his claim did not accrue until May 5, 2023, because this was the last day of his TDCJ custody—misunderstands the law. A claim accrues when the Plaintiff knows about his injury—accrual is therefore based on a plaintiff's knowledge, not on a defendant's actions. As such, it does not matter when Defendants lost the opportunity to remedy their alleged constitutional violations, only when Plaintiff knew of them. Plaintiff admits to knowing about his behavioral abnormality by September 13, 2021.

Plaintiff's second argument—that the psychologist's conclusion about Plaintiff's behavioral abnormality is inconsequential—goes too far. It presumes Plaintiff's injury is not the behavioral abnormality, but the resulting civil commitment. In this version of Plaintiff's complaint, his civil commitment is the result of TDCJ not providing him sex offender therapy during his incarceration. This argument is both an attack on the validity of Plaintiff's civil commitment—which, as detailed above, he can only pursue in a writ of habeas corpus—and entirely too speculative. There is no evidence, outside of Plaintiff's speculation, that he would have avoided civil commitment had he received sex offender therapy during incarceration. *See Bell Atl. Corp.*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative

level.") As a result, the Court concludes that Plaintiff's Eighth Amendment claim is barred by the statute of limitations.

Even if Plaintiff's claim was not time-barred, it nevertheless fails to state a claim for relief. "Deliberate indifference is an extremely high standard to meet." *Domino v. Texas Dep't. of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001). Claims of inadvertent failure to provide medical care or negligent diagnosis are insufficient to state a claim of inadequate medical care. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). Similarly, unsuccessful medical treatment or disagreement between an inmate and his doctor concerning the manner of treatment does not give rise to a cause of action. *Banuelos v. McFarland*, 41 F.3d 232, 235 (5th Cir. 1995); *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991).

Plaintiff argues Defendants knew he was eligible for civil commitment when he entered TDCJ because they assessed him for an Individualized Treatment Plan (ITP), which would have identified him as meeting one of the SVP requirements. At this point, Plaintiff argues Defendants knew he might be civilly committed as an SVP and should have provided him with sex offender therapy. He argues that failing to do so was deliberate indifference to his medical care. He further argues that Defendants knew of and drew the inference that a substantial risk of serious harm existed to Plaintiff and others when they enacted the SVPA.

As Plaintiff admits, the SVPA does not require the TDCJ to provide prisoners with sex offender treatment during their incarceration. Further, it was not until the end of Plaintiff's 22-year incarceration that he was assessed for a behavioral abnormality. It is unclear how any TDCJ prison officials could have known he had a behavioral abnormality until this point, much less that they drew the inference that a substantial risk of serious harm existed. At most, Plaintiff's allegations amount to negligence and, again, are far too speculative to rise to the level of deliberate indifference. *Iqbal*, 556 U.S. at 679 (a plaintiff's factual allegations must establish more than just

the "sheer possibility" a defendant has acted unlawfully). As a result, to the extent Plaintiff's Eighth Amendment claim is not barred by the statute of limitations, it nevertheless fails to state a claim for relief.

6. Fourteenth Amendment

Finally, Plaintiff alleges Defendants' failure to provide him with sex offender treatment during his incarceration violates his rights under the Fourteenth Amendment. To state a claim for procedural due process under the Fourteenth Amendment, Plaintiff must first show he had a liberty interest in receiving sex offender treatment during his period of incarceration. The Supreme Court has held that a prisoner's liberty interests "will be generally limited to freedom from restraint which, ... imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995). Prisoners generally have no constitutionally-protected liberty interest in participating in rehabilitation programs. *Moody v. Doggett*, 429 U.S. 78, 88 n.9 (1976); *Bulger v. Bureau of Prisons*, 65 F.3d 48, 49 (5th Cir. 1995).

In support of this claim, Plaintiff restates the arguments he made in support of his Eighth Amendment claim, i.e., that Defendants were aware he might be civilly committed and should have provided him with sex offender treatment so he could avoid civil commitment. He argues that an earlier assessment of his propensity for a behavioral abnormality, along with sex offender treatment, could have given him a better opportunity to change his behavioral abnormality. He also argues that TDCJ has been offering rehabilitation programs, including sex offender treatment, since at least 1995.

None of these arguments address the central issue for a procedural due process claim: did Plaintiff have a liberty interest in receiving sex offender treatment while in TDCJ custody? The Court finds no statutory or legal authority supporting such a conclusion, and Plaintiff provides none. As a result, Plaintiff fails to state a claim for a procedural due process violation.

To the extent Plaintiff claims a violation of his substantive due process rights, this also fails. To state a substantive due process claim under the Fourteenth Amendment, a plaintiff must allege egregious, arbitrary government conduct that "shocks the conscience" or "interferes with rights 'implicit in the concept of ordered liberty.'" *SO Apartments, L.L.C. v. City of San Antonio*, 109 F.4th 343, 352 (5th Cir. 2024) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). The SVPA does not require prisoners convicted of sex offenses to be assessed for behavioral abnormalities upon their incarceration. Further, there is no constitutional liberty interest in participating in rehabilitation programs while incarcerated.

Plaintiff relies on long quotations from Justice Breyer's dissenting opinion in *Kansas v. Hendricks*, 521 U.S. 346, 373-97 (1997) in arguing that a better version of the SVPA would require the State provide potential SVPs with sex offender treatment during their incarceration. This might be true, but, like Justice Breyer's dissent, it is not controlling legal authority. TDCJ is not and was not required to provide Plaintiff with sex offender treatment during his incarceration. It therefore does not shock the conscience that Plaintiff was not provided sex offender therapy during his imprisonment. As such, Plaintiff also fails to state a claim for a violation of his right to substantive due process.

It is therefore ORDERED that Plaintiff's complaint is DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B).

SIGNED this 3rd day of December 2025.

DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE

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

MICHAEL DAVID BYRUM, Plaintiff,	§ §	
V.	§	A-25-CV-00694-DAE
GEORGE WALKER BUSH, et al., Defendants.	§ §	

FINAL JUDGMENT

Before the Court is the above styled and numbered cause. On this day, the Court dismissed Plaintiff Michael David Byrum's civil rights complaint. Accordingly, the Court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

It is therefore ORDERED that Plaintiff Michael David Byrum's complaint is DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B).

This case is hereby CLOSED.

SIGNED this 3rd day of December 2025.

DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE

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