

****NOT FOR PRINTED PUBLICATION****IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JASON J. HERNANDEZ

§

VS.

§

CIVIL ACTION NO. 9:17-CV-23

GREG ABBOTT, *et al.*,

§

ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, Jason J. Hernandez, an inmate confined at the Polunsky Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”) against the following defendants: Governor Greg Abbott, TDCJ Executive Director Brian Collier, Robert Grant, Tod Harris, Eva Shiver, and Michael Butcher.

The Court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Lufkin, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the following: (1) granting defendant Abbott’s Motion to Dismiss in its entirety, (2) dismissing plaintiff’s ADA and RA claims against all the defendants for lack of subject matter jurisdiction and for failure to state a claim, (3) dismissing plaintiff’s official capacity claims against all the defendants for money damages for lack of subject matter jurisdiction, and (4) denying defendant Collier, Harris, Grant, Shiver and Butcher’s 12(b)(1) and 12(b)(6) Motion to Dismiss requesting dismissal of plaintiff’s Fourteenth and Eighth Amendment claims.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ACCEPTED**. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge. It is, further,

ORDERED that plaintiff's Fourteenth and Eighth Amendment claims pursuant to 42 U.S.C. § 1983 against defendants Collier, Harris, Grant, Shriver and Butcher as outlined in the Report and Recommendation entered August 24, 2020 are **SEVERED** from this action. The resulting case should be assigned to the regular practice for numbering and allotment of newly-filed civil actions.

So ORDERED and SIGNED, Sep 15, 2020.



Ron Clark
Senior Judge