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CAUSE NO. 25DCV357599

JOANNA STATON
DISTRICT COURT
BY JOANNA STATON DEPUTY
v. BLAINE MCGRAW

BLAINE MCGRAW
Defendant

JANE DOES #2-82
Intervenor - Plaintiffs

v.

BLAINE MCGRAW
Defendant

IN THE DISTRICT COURT OF

BELL COUNTY, TEXAS

146TH DISTRICT COURT

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF THIS COURT:

On December 26, 2025, I, Blaine McGraw (hereinafter referred to as "Dr. McGraw" or "Defendant"), was served the Petition in Intervention in the above-numbered cause, and received a citation from the Clerk of this Court stating I must file a written response within twenty (20) days. I therefore humbly submit this Motion to Dismiss as my response, written this day, January 14, 2026. I write this statement with my own hand, without benefit of legal advice or representation.

I. LOCATION AND STATUS OF DEFENDANT

1. I received the aforementioned Petition in Intervention while being housed at Bell County Jail, in the status of "Pretrial Confinement." As the Court is likely aware, pretrial

confinement is a unique holding status within the military that is initiated and carried out by a Commander, not a judicial body, in part to maintain good order and discipline of a Unit. It should not be construed to imply the guilt or innocence of a service member, nor the merit of specific allegations.

2. The correct term in this case is "allegations" because unlike civilian proceedings, pretrial confinement does not require indictment, arraignment, or even formal criminal charges.

To date, I have not yet gone before a judge, military or civilian, to address these allegations in any fashion. Because Fort Hood no longer has stockades, where soldiers would traditionally be housed in such circumstances, the Army has contracted with Bell County Jail to provide accommodations for soldiers in pretrial confinement. One of the stipulations of that contract is the location, photographs of the confinee (colloquially known as "mugshots"), and any non-adjudicated allegations against the service member be sealed to the public. Clearly this contract has been breached, as the photographs taken by Bell County Jail, as well as misinformed reports of the allegations and the defendant's legal status, were leaked within hours of arriving at the jail, and have been widely circulated in multiple local and national news outlets.

3. In Bell County Jail, there is no access to the internet, nor any means by which I might seek out competent legal representation for such a complex set of allegations addressed in this civil suit, which include medical malpractice, military

law, state law, and the Federal Tort Claims Act. Pretrial confinement is an indefinite status for service members due to the lack of a bail system in the military, and it often takes years for a case to proceed to Court Martial. Therefore, my housing status and access to legal representation are not likely to change in the near future.

II. INAPPROPRIATE SERVICE

4. Paragraph twenty-four (24) of the Petition in Intervention contains a false statement. As of this date, January 14, 2026, I have never been served Jane Doe's original petition. Given the lack of proper service, I hereby give notice of intent to file a separate motion to strike the Petition in Intervention.

5. Notwithstanding, I wish to proceed at this time with a motion to dismiss the entire cause, based on the grounds detailed herein. I pray that the Court will rule on this Motion to Dismiss prior to proceeding with any other motions or petitions.

III. GROUNDS FOR DISMISSAL

A. Improper Venue and Lack of Jurisdiction

6. Plaintiffs allege wrongful acts (i.e., torts) occurred within the walls of a military treatment facility, on federal property, by an active-duty military physician, an employee of the federal government in the performance of his duties.

Claims within this context are strictly governed by the Federal Tort Claims Act (FTCA), 28 USC §§ 1346(b), 2671 et seq 28 USC, § 2679(b)(1), which renders federal employees immune from common law tort claims. The FTCA stipulates that plaintiffs must first seek administrative relief, and if no remedy is attained within six months of filing, then a suit may proceed in federal court, with the United States as the proper defendant. In *Hallbauer v. Oviedo*, NO. 09-13-00103-CV (Tex. App. June 2014), a patient filed a civil tort claim against her OBGYN, Dr Hallbauer, in Montgomery County, Texas, which was dismissed upon appeal because: (1) the defendants were deemed federal employees; (2) the plaintiff failed to exhaust her administrative remedies prior to filing suit; (3) the State Court lacked jurisdiction due to the defendants' status as federal employees; and (4) the proper defendant in the case, the United States, was never served in the original suit. The appellate body further commented, "either [the plaintiff] did not know that the defendants were federal employees, making the failure to serve the proper defendant an accident, or she did know, making it fraud or a wrongful act" (see Appellate Memorandum Opinion, page 8).

7. Attorneys for the plaintiffs have included language in their filing, as well as countless public statements, that inculcate the United States as complicit in the alleged wrongdoing. They go a step farther and reference actions of the United States in criminal cases that are irrelevant

to this cause, wherein Defendant is not alleged to have participated. By including actions of the United States in their petition, attorneys for the plaintiffs are clearly requesting this Court consider those actions as material to the cause, yet they have deliberately excluded the United States as a defendant. This failure must be interpreted as a wrongful act, which leaves this Court with no other option than immediate dismissal.

8. Attorneys for the plaintiffs are attempting to circumvent a law that they claim to be well aware of, as evidenced by paragraph five(5) and paragraph sixty(60) of the Petition in Intervention, which references their intent to file **future** claims "in accordance with the Federal Tort Claims Act." The contradiction in this statement is obvious: the FTCA requires exhausting administrative remedies **prior** to filing suit. Then (and only then), a tort claim may be filed exclusively in federal court.

9. Petitioners have filed this cause in Bell County District Court, but wish to constrain the Court by arguing that "nothing herein should be construed as alleging medical malpractice" (footnote 1 on page 7 of Petition in Intervention). Yet, there is not a single allegation that involves interactions that took place outside the setting of a medical practice. They also allege incomplete or incorrect documentation and impugn Defendant's motives for those alleged errors. The creation of medical documentation after a patient encounter falls within the clinical duties of a physician.

Therefore, allegations regarding documentation errors also fall within the purview of malpractice claims. By repeatedly asking the Court to accept at face value the plaintiffs' presumption that physician-patient interactions were "unnecessary" and "without any medical rationale", attorneys for the plaintiffs are attempting to restrict the ability of this Court to make a determination for itself. Perhaps this is tacet acknowledgment on the part of the attorneys that this Court lacks jurisdiction to do so, as stated in the FTCA.

10. Proper adjudication of the allegations in this cause rests on two questions: (1) whether a military physician acted in a manner that was inconsistent with standard of care; and (2) whether that deviation from standard of care, once established, constitutes a willful act of abuse and/or assault. To adjudicate the second question prior to addressing the first (i.e., to entertain questions about intent without establishing as fact that a deviation from standard of care occurred), would set a dangerous precedent wherein patients could seek damages based on their perceptions alone, untethered to the correctness or incorrectness of the physician's actions. However, this Court lacks jurisdiction to decide either question. All parties in this cause agree that the defendant was acting as an agent of the United States when the alleged wrongdoings occurred. Therefore, as demonstrated in *Hallbauer v. Oviedo*, this Court must dismiss the cause and refer plaintiffs to the proper authority.

B. Additional Assertions Highlight Jurisdictional Conflict

11. Plaintiffs' attorneys make numerous assertions that are not only factually incorrect, but impossible to prove or disprove within the jurisdiction of this Court. For example, in paragraph thirty-three (33) of the Petition in Intervention, attorneys make reckless speculations regarding the quantity, timeline, and nature of the criminal allegations being investigated by federal authorities, despite having zero access to the ongoing investigation. Such speculation can only be redressed via subpoena of federal authorities to turn over investigative documents. Plaintiffs' attorneys know they will not have to defend such blatant exaggerations and distortions because they know this Court lacks the ability to enforce a subpoena of the federal government.

12. In addition to requiring unlimited access to federal investigative documents to adjudicate this cause, this Court would also need unrestricted access to the electronic medical record, which is property of the federal government. Access to the full medical record is necessary to understanding the clinical context of the encounters referenced in this petition. This is illustrated perfectly by the Petitioners' inclusion of the tragic story of a rape survivor who did not get a sexual assault forensic examination (paragraphs 44 and 45). A better understanding of the military medical system would inform Plaintiffs' attorneys that OBGYN physicians in military treatment facilities do not perform sexual assault forensic

examinations. These specialized exams are conducted by highly-trained and uniquely-certified Registered Nurses in the Emergency Department, which is the only appropriate place for a chain of command to send a rape victim. Referring a rape victim to the OBGYN department, where she would be scheduled and seen months later, is nonsensical to anyone vaguely familiar with sexual assault response in the military. Review of this patient's complete record, including documentation by other providers, would be required to investigate this very concerning allegation. However, Petitioners have selected an improper venue for adjudication and must address their concerns through the federal tort claims process set forth in the FTCA.

C. Violations of Due Process and Attempts to Influence Jury Pool in Bell County

13. Defendant is under orders not to speak publicly about the specifics of the allegations or to interact in any way with alleged victims, due to risk of witness tampering. While Defendant has been forced to remain silent on the allegations, the Fort Hood and Bell County communities have been rife with speculation, rumors, and misinformation. Social media pages dedicated solely to the discussion of the allegations have sprung up all over the internet, where alleged victims and potential witnesses have shared their suspicions and unverified gossip, thus participating in unintentional collusion and witness tampering.

14. Other instances of witness tampering and inappropriate

influence have occurred in Bell County that were more deliberate. Since the allegations arose against Dr. McGraw, the defendant's ex-wife, Mrs. Julia Carroll, and her husband, Mr. Kenneth Carroll, II, both residents of Bell County, have attempted to take advantage of the allegations in order to seize custody of Defendant's teenage daughter. The Carrolls lost custody earlier in the year due to the volatile and unsafe conditions in their home. Mr. Carroll is alleged by members of his own family to be a serial abuser and perpetrator of domestic violence, while Mrs. Carroll suffers from such significant mental health issues that she becomes psychotic and requires committal. In November, they filed false accusations regarding sexual assault/sexual misconduct by Defendant against his teenage daughter, which have since been fully investigated by Child Protective Services (CPS) and were determined to be unfounded. Despite the exoneration by CPS and knowing the accusations to have been false from the beginning, Mr. Carroll took it upon himself to reach out to news outlets and to join various victims' groups on social media to spread debunked accusations, as well as other misinformation and inflammatory rhetoric. While we may never know the full extent that malignant infiltrators pierced the social networks of alleged victims, we do know that Mr. Carroll was caught conversing with Jane Doe #1 on social media. (Screenshots are available but are not included herein due to Jane Doe's desire for anonymity.)

15. On November 4, 2025, one of the attorneys representing

Jane Doe #1, Mr. Andrew Cobos, stood in front of the Fort Hood Bernie Beck Gate and gave a press conference to multiple local news organizations in order to maximize exposure to the residents of Bell County. Mr. Cobos was the first person to publicly identify the defendant and to sensationalize the case, insinuating that every patient Dr. McGraw had ever helped may be an unknowing victim of "sexual assault." Mr. Cobos announced, without evidence or personal knowledge of the details of the investigation, that this was "the largest case of sexual assault in the history of the U.S. Army, with potentially thousands of victims," a reference to the number of patients Dr. McGraw has treated since graduating medical school. Mr. Cobos was not describing the criminal allegations, he was making new allegations. He was crafting a narrative and creating a climate in which patients who had hitherto been satisfied with their care were being encouraged to reconsider their experiences and reevaluate them through a lens of Mr. Cobos' creation. Mr. Cobos exploited the lack of publicized information about a narrow set of allegations, limited in scope, number, and timing, and positioned himself as the spokesperson of an investigation he knew almost nothing about. It was he that introduced the accusation of "assault" into the public discourse, ignoring the trauma he was inflicting by proselytizing a sense of victimhood.

16. After his press conference, Mr. Cobos went on multiple news outlets to reiterate his allegations, where "court documents"

are repeatedly cited as if they independently corroborate Mr. Cobos' allegations, when in fact the only documents are the ones written and filed by Mr. Cobos. In each appearance, Mr. Cobos intimates to have inside knowledge of the ongoing federal investigation, while including fictitious and speculative assertions that reveal his ignorance to those with actual knowledge of the investigation. While the media exposure may have been good for Mr. Cobos, allowing him to recruit scores of new plaintiffs since he began his media campaign, his actions have a tragic cost that should not be ignored. Attempts to recruit victims of sexual assault who had not previously identified as such is not a way to discover victims, it is a way to create victims. This phenomenon is evidenced by the fact that so few of Mr. Cobos' plaintiffs are considered to be alleged victims by federal investigators. Consequently, it would be impossible for a jury of citizens of Bell County to remain unbiased when attempting to adjudicate these allegations based on Petitioners' testimonies alone. However, due to the inability of this Court to compel the federal government to provide material evidence, Petitioners' perceptions and hearsay about criminal allegations would be the only matters for the jury to consider.

17. Bias has been inexorably introduced to both the Petitioners and the jury pool alike. Even if jurists somehow managed to avoid the direct messaging with which unscrupulous actors have flooded the airwaves, they would nonetheless

be indirectly subjected to its influence by virtue of the climate that has been created around the case.

IV. SUMMARY AND REMEDY

18. I began this Motion to Dismiss listing reasons why it would be challenging to retain competent legal representation while being restricted to Bell County Jail due to the sophistication of the legal issues surrounding the allegations and the complex overlap between disparate areas of law. The U.S. Congress also understood the medicolegal complexity of tort claims within military treatment facilities. The myriad conflicts inherent to such claims being adjudicated in State Courts include limited access to federal property, limited access to federal investigations and records, the uniqueness of the military medical system, the lack of medical malpractice insurance, the distinct criminal justice system that military medical providers are subjected to (which affords less rights than their civilian counterparts), and the risk of sensationalization if left in the hands of local juries. All these complex issues were carefully balanced against the rights of service members and their dependants when Congress passed the Federal Tort Claims Act and granted sole jurisdiction to the federal courts. Because the allegations in this cause are exclusively within the parameters established by the FTCA, this Court must dismiss this cause in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Blaine D. McGraw', with a long horizontal flourish extending to the right.

Blaine D. McGraw, M.D.

MAJ, U.S. Army

c/o Bell County Jail

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