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Joanna Staton, District Clerk
District Court - Bell County, TX
by Shannon White , Deputy

CAUSE NO. 25DCV357599

JANE DOE ***Plaintiff***	§	**IN THE DISTRICT COURT OF**
v.	§	**BELL COUNTY, TEXAS**
BLAINE MCGRAW ***Defendant***	§	
JANE DOES #2-#82 ***Intervenor-Plaintiffs***	§	**146TH DISTRICT COURT**
v.	§	
BLAINE MCGRAW ***Defendant***	§	**JURY TRIAL DEMANDED**

PLAINTIFF'S AND INTERVENOR-PLAINTIFFS' RESPONSE TO DEFENDANT MCGRAW'S MOTION TO DISMISS

Defendant's Motion to Dismiss should be denied in its entirety because it rests on procedural defects, unsupported assertions, and a fundamental misunderstanding of the law. Defendant's incarceration has no bearing on this Court's ability to adjudicate Plaintiffs' claims; service was properly effected and is conclusively established by the record; and any challenge to venue has been waived and, in any event, is unsupported by any identified alternative forum.

Moreover, Defendant's reliance on the Federal Tort Claims Act is misplaced, as no certification has been issued and no determination regarding scope of employment has been made—both of which are prerequisites to invoking the Act. At bottom, Defendant's Motion fails to identify any cause of action lacking a basis in law or fact and instead improperly seeks to avoid adjudication on the merits through speculation regarding due process and jury bias. For these reasons, and as set forth more fully below, the Motion should be denied.

BACKGROUND AND PROCEDURAL HISTORY

1. On November 10, 2025, Plaintiff Jane Doe filed her Original Petition, bringing claims against Defendant Blaine McGraw related to his sexual misconduct and voyeurism.

146TH DISTRICT COURT
BELL COUNTY, TEXAS

2. On December 10, 2025, Intervenor-Plaintiffs Jane Does 2 through 82 filed a Petition in Intervention, also asserting claims of invasion of privacy, assault, negligence, and gross negligence.

3. On January 30, 2026, Defendant filed a Motion to Dismiss, asking this Court to "dismiss this cause in its entirety."

4. Defendant also filed a Motion to Set Aside Default Judgment. The motion for default judgment was filed because McGraw had not appeared or filed *anything* with the Court. Now that McGraw has appeared, there is no need for a default judgment, and any motion related to such is moot.

5. This Motion to Dismiss is set for hearing on March 26, 2026. Plaintiffs and Intervenor-Plaintiffs (hereinafter referred to as "Plaintiffs") file the below Response and ask this Court to deny Defendant's Motion for the reasons herein.

ARGUMENTS AND AUTHORITIES

6. In support of his Motion, Defendant points to his location and status, and also claims inappropriate service, improper venue and jurisdiction, and violations of due process. Plaintiffs respond to the arguments as follows, in the order raised by Defendant.

A. Defendant's incarceration is legally irrelevant and does not justify dismissal of these civil claims.

7. This civil proceeding in front of this Court is separate from any other military or criminal proceeding. While there has not yet been a finding of guilt against Defendant, Defendant's implication that he is not facing any charges is misleading and inaccurate.[1]

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[1] *See* "This Case Now has Formal Criminal Charges" by Haley Fulley, www.military.com, December 9, 2025, available at https://www.military.com/feature/2025/12/09/allegation-prosecution-military-case-against-maj-blaine-mcgraw.html.

Military.com News Benefits Veteran Jobs Military Life Discounts Join the Military

Military.com | By Haley Fuller
Published December 10, 2025 at 10:23am ET

The Case Now Has Formal Criminal Charges

On Dec. 9, 2025, the U.S. Army Office of Special Trial Counsel formally preferred criminal charges against Maj. Blaine McGraw, a 47-year-old Army obstetrician-gynecologist assigned to Carl R. Darnall Army Medical Center at Fort Hood, Texas. The Army has publicly confirmed that four charges and 61 specifications have now been filed under the Uniform Code of Military Justice. At this stage, the Army has not yet released a standalone public charging document on its official court-martial docket system, and no trial date has been announced. The formal prosecuting authority in the case is the Army's Office of Special Trial Counsel, which handles serious violent and sexual offenses across the service.

8. Prior to the filing of the Petition in Intervention, the U.S. Army Office of Special Trial Counsel had formally preferred charges against Defendant. It is troubling that Defendant does not seem to even understand that he is not merely "detained" in jail; he is actively facing serious charges brought by numerous women. In the instant civil case, Defendant may continue *pro se* or move for an *attorney ad litem* or for one to be appointed. In either case, his decision should not impact the disposition of the case.

9. Finally, Defendant states that his housing at Bell County Jail "should not be construed to imply … the merit of specific allegations."[2] While his presence in jail does not reflect well on his behalf, his current standing in jail and the future outcome of the charges should not preclude civil claims from being pursued. Plaintiffs fully understand jury in this matter will expect to hear evidence beyond criminal charges; Plaintiffs will actively participate in the discovery

[2] Defendant's Motion, at 1-2.

process, and all parties—Plaintiffs and Defendant—are expected to provide testimony as to their account of what occurred, via deposition and/or at trial.

B. Service was properly effected through multiple valid channels, and Defendant's challenge is conclusively refuted by the record.

10. The affidavits of service for Plaintiff's Original Petition and the Petition in Intervention are on file. Defendant was properly served with the Petition through the Judge Advocate General ("JAG") on November 24, 2025. The affidavit of service was filed on November 26, 2025. Defendant was properly served with the Petition in Intervention on December 26, 2025, through the Bell County Jail due to his confinement. The affidavit of service was filed on January 7, 2026. There are no service issues in this matter.

C. Defendant's venue challenge is waived under Texas law and independently fails for lack of any identified proper venue.

11. As an initial matter, Defendant did not, and has not, filed a Motion to Transfer Venue. Any challenge to venue must be filed before or concurrently with the defendant's answer.[3] In the absence of a timely filed motion to transfer venue, the defendant's objection to improper venue is waived.[4]

12. Moreover, in a Defendant's motion to transfer venue, it shall state that the action should be transferred to another specified county of proper venue because the county where the action is pending is not a proper county or there is mandatory venue in another county.[5] At no point has Defendant identified *any* other county of proper venue. Defendant merely repeatedly states that the entire case should be dismissed in its entirety. Defendant has not filed a Motion to Transfer Venue, and any attempt to do so at this point would be untimely.

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[3] TEX. CIV. PRAC. & REM. CODE ANN. § 15.063.
[4] TEX. R. CIV. P. 86.
[5] *Id.*

D. Defendant cannot invoke FTCA immunity in the absence of federal certification, and no scope determination has been made.

13. Defendant further states that the Federal Tort Claims Act gives him immunity from the claims brought against him here. Defendant relies on only one case for his contention that this case should be dismissed. His reliance on *Oviedo v. Hallbauer*, however, is misguided, as this case is distinguishable here. In *Oviedo*, the United States filed the Motion to Dismiss. Here, in this case, the federal government has *not* made an appearance and has not filed any motion to dismiss.

14. The allegations in the *Oviedo* case were specifically for medical malpractice.[6] In contrast, Plaintiff and Intervenor-Plaintiffs' live Petition does not assert claims for medical negligence as currently pleaded. Furthermore, the *Oviedo* Petition alleged that the actions complained of were within the course and scope of their federal employment, and the federal government filed a certification that the federal employees "were acting within the scope of their employment at the time of the actions giving rise to the plaintiff's lawsuit."[7] "[O]nce the government files a course-and-scope certification, the 'action or proceeding shall be deemed to be an action or proceeding brought against the United States under the [FTCA], and the United States shall be substituted as the party defendant.'"[8] Importantly, here, Defendant's Motion contains zero reference to any agreement or acknowledgment by the federal government that the actions at issue in the plaintiff's lawsuit were within the scope of Defendant's employment.

15. Plaintiffs expressly reserve all rights to assert any claims, theories, or remedies that may be available against any party, including the United States, in any appropriate forum. Nothing in this Response should be construed as a concession or admission regarding whether Defendant

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[6] "[Oviedo] filed an action for medical negligence … and alleges that Hallbauer and Jennings, while acting with the course and scope of their employment … deviated from the applicable standard of care." *Oviedo v. Hallbauer,* 2010 WL 3909722 at *1 (S.D. Tex. Sept. 29, 2010), vacated, 655 F.3d 419 (5th Cir. 2011) (vacated for lack of jurisdiction).
[7] *Id.* at *5.
[8] *Id.* at *4 (citing 28 U.S.C. § 2679(d)(2)).

was acting within or outside the course and scope of any alleged employment, and Plaintiffs expressly disclaim any such limitation at this stage.

E. Defendant's Motion fails to satisfy Rule 91a because it does not identify any claim lacking a basis in law or fact.

16. While it is not titled a Rule 91a Motion, Defendant's Motion essentially seeks the same relief. And in determining whether a cause of action should be dismissed pursuant to Rule 91a, a court considers "the allegations of the live petition and any attachments thereto."[9] "[The courts] apply the fair notice pleading standard to determine whether the allegations of the petition are sufficient to allege a cause of action."[10] The Court thus "construe the pleadings liberally in favor of the plaintiff, look to the pleader's intent, and *accept as true the factual allegations in the pleadings* to determine if the cause of action has a basis in law or fact."[11] Defendant wants to adjudicate the merits of Plaintiffs' claims at this stage. That is improper.

17. Furthermore, a motion to dismiss under Rule 91a must identify each cause of action it attacks and specify "the reasons the cause of action has no basis in law, no basis in fact, or both."[12] Defendant does not identify the reasons as to why Plaintiffs' causes of action have no basis in law, no basis in fact, or both. Defendant merely makes broad-stroke arguments of jury bias and difficulties procuring counsel.

18. Numerous civil assault and sexual misconduct cases are litigated every single day. Many do not even have accompanying criminal charges. Jane Doe, the Plaintiff that initiated this suit, specifically met with U.S. Army officials where she was shown photographs that the officials had discovered on Defendant's phone. Defendant's actions were beyond the pale. As previously

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[9] *Weizhong Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 183 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).
[10] *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).
[11] *Koenig v. Blaylock*, 497 S.W.3d 595, 599 (Tex. App.—Austin 2016, pet. denied) (emphasis added).
[12] TEX. R. CIV. P. 91a(2).

discussed, he now attempts to escape liability and hide behind the federal government—who has not filed a certification that the actions complained of by Plaintiffs (*e.g.* misconduct including inappropriate touching and recording) were within the course and scope of his employment and acts undertaken as part of his official duties. To date, the United States has not appeared and has not issued any such certification regarding scope of employment. Absent such certification, Defendant cannot rely on the FTCA as a basis for dismissal.

19. Tellingly, in his 13-page manifesto packaged as a Motion to Dismiss, Defendant never once unequivocally denies the allegations. In this case, this Court and jury will hear from at least eighty-two Plaintiffs who will testify as to the harm they suffered at the hands of Defendant. This is far from a manufactured, baseless attack.

20. This civil case against Defendant does not preclude claims against the federal government for, *inter alia*, failing to supervise and for allowing Defendant continued access to his victims. Plaintiffs have not alleged, and are not required at this stage to establish, that Defendant's conduct was within or outside the course and scope of his federal employment. Critically, no certification has been issued by the United States under 28 U.S.C. § 2679(d), and Defendant cannot unilaterally invoke the protections of the FTCA.

21. The conduct alleged by Plaintiffs—including non-consensual recording and inappropriate physical contact—does not fall within the type of conduct typically associated with legitimate professional interactions. Whether such conduct is deemed within or outside the scope of employment is a determination that has not been made and is not before this Court.

22. Defendant may truly believe his intentions were somehow proper and can present such defense if he chooses during this case. As with Plaintiffs, Defendant will have the opportunity

to testify in this case, whether by deposition, video, or live at trial. His testimony will be evidence for the jury to consider.

23. Defendant further claims the case should be dismissed because the court cannot enforce a subpoena on the federal government, and that he would be prejudiced because he would not be able to review Plaintiffs' medical records. This cannot be a valid reason for dismissal. As with any injury case, an opposing party may produce or obtain medical records, with limitations on scope and breadth. Even if theoretically Defendant could not procure records himself, Plaintiffs themselves would be able to obtain their own records and produce them in the discovery process. This case should not be dismissed at the onset, and it should proceed to discovery. Plaintiffs imagine that after Plaintiffs testify and after McGraw has to acknowledge under oath that he was filming Plaintiffs, that he had private photographs and videos on his phone, and that he engaged in further misconduct, any jury—in any county—will not see Plaintiffs' claims as "blatant exaggerations and distortions."

F. Defendant's allegations of jury bias and due process violations are unsupported, legally irrelevant, and do not justify dismissal.

24. Defendant claims Defendant's ex-wife and her husband are attempting to take custody of Defendant's daughter. This is entirely irrelevant to this case and whether Plaintiffs' case should be dismissed.

25. Plaintiffs and their counsel have not violated any court order, as there is none. While Defendant takes issue with Plaintiffs' counsel's statements (even going as far as to state that the allegations are "through a lens of Mr. Cobos' creation"), the investigation into Defendant's actions and the subsequent charges were widely reported by multiple news outlets, and even acknowledged by the Office of Special Trial Counsel itself. And as reported on Military.com, according to the Army's charging announcement, McGraw faces 54 specifications of indecent

visual recording under Article 120c, five specifications of conduct unbecoming an officer under Article 133, one specification of willful disobedience of a superior officer under Article 90, and one specification of making a false official statement under Article 107. The predicament that Defendant faces is not of anyone's creation but his own.

26. *Eighty-two* Plaintiffs have filed claims against Defendant. Defendant's misdeeds are far-reaching. Defendant believes he would not receive a fair trial in Bell County (*e.g.* stating "it would be impossible for a jury of citizens of Bell County to remain unbiased"), yet Defendant does not argue the case should be transferred to any other county to be in front of any other jury. Rather, Defendant claims the claims should be dismissed in their entirety. This is illogical.

27. The Court should reject Defendant's arguments.

CONCLUSION

28. Defendant seeks to dismiss this case at this early onset on baseless grounds. Defendant's Motion should be denied. Plaintiffs request any and all further relief to which they may be entitled.

[Signatures on following page]

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been duly served on all parties of record as indicated below in accordance with the Texas Rules of Civil Procedure on March 19, 2026.

Via Regular Mail and
CMRRR 9407 1118 9876 5433 0473 99
Blaine McGraw
c/o Bell County Sheriff's Office - Bell County Jail
113 W. Central Ave.
Belton, Texas 76513

/s/ Andrew Dao
ANDREW DAO

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Status as of 3/20/2026 4:15 PM CST

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