

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**ALFONSO R. KINNARD,**

**Plaintiff,**

**v.**

**CASE NO. 22-3148-SAC**

**KANSAS DEPARTMENT OF CORRECTIONS<sup>1</sup>,  
et al.,**

**Defendants.**

**MEMORANDUM AND ORDER**

Plaintiff, a state prisoner appearing pro se and in forma pauperis, filed this civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff currently is an inmate at the Larned Correctional Mental Health Facility. He alleges that in August 2021, while incarcerated at the Hutchinson Correctional Facility (HCF), he was subjected to excessive force in violation of the Eighth Amendment.

The Court finds that the proper processing of Plaintiff's claims cannot be achieved without additional information from appropriate officials of the HCF. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978); *see also Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991). Accordingly, the Court orders the appropriate officials of the HCF to prepare and file a *Martinez* Report. Once the report has been received, the Court can properly screen Plaintiff's claims under 28 U.S.C. § 1915A.

**IT IS THEREFORE ORDERED BY THE COURT that:**

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<sup>1</sup> The Kansas Department of Corrections is not a proper defendant in an action under § 1983. Section 1983 does not abrogate the States' sovereign immunity, and the States, their agencies, and state officials acting in their official capacity do not qualify as "persons" under § 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 67, 71 (1989). Therefore, the Kansas Department of Corrections must be dismissed as a defendant but as discussed in the order, will be designated as an interested party for purposes of preparing the *Martinez* report.

(1) The Court will enter a separate e-service order directing the Clerk of Court to serve Defendants.

(2) The Kansas Department of Corrections (“KDOC”) shall submit the *Martinez* Report within **sixty (60) days** following the electronic filing of the Waiver of Service Executed. Upon the filing of that Report, the Court will screen Plaintiff’s Complaint. If the Complaint survives screening, the Court will enter a separate order setting an answer deadline. Therefore, any answer deadline provided in the waiver of service is not controlling.

(3) Officials responsible for the operation of the HCF are directed to undertake a review of the subject matter of the Complaint:

- a. To ascertain the facts and circumstances;
- b. To consider whether any action can and should be taken by the institution to resolve the subject matter of the Complaint; and
- c. To determine whether other like complaints, whether pending in this Court or elsewhere, are related to this Complaint and should be considered together.

(4) Upon completion of the review, a written report shall be compiled which shall be filed with the Court and served on Plaintiff. The KDOC must seek leave of the Court if it wishes to file certain exhibits or portions of the report under seal or without service on Plaintiff. Statements of all witnesses shall be in affidavit form. Copies of pertinent rules, regulations, official documents, and, wherever appropriate, the reports of medical or psychiatric examinations shall be included in the written report. Any recordings related to Plaintiff’s claims shall also be included.

(5) Authorization is granted to the officials of the HCF to interview all witnesses having knowledge of the facts, including Plaintiff.

(6) No motion addressed to the Complaint shall be filed until the *Martinez* Report required herein has been prepared.

(7) Discovery by Plaintiff shall not commence until Plaintiff has received and reviewed any Court-ordered answer or response to the Complaint. This action is exempted from the requirements imposed under Fed. R. Civ. P. 26(a) and 26(f).

**IT IS FURTHER ORDERED** that the Kansas Department of Corrections is dismissed as a defendant from this action. However, the Clerk of Court shall enter KDOC as an interested party on the docket for the limited purpose of preparing the *Martinez* Report ordered herein. Upon the filing of that report, KDOC may move for termination from this action.

Copies of this order shall be transmitted to Plaintiff, to Defendants, and to the Attorney General for the State of Kansas.

**IT IS SO ORDERED.**

**Dated August 29, 2022, in Topeka, Kansas.**

**S/ Sam A. Crow**  
**SAM A. CROW**  
**U. S. Senior District Judge**