

**U.S. District Court
Southern District of Florida (Ft Pierce)
CIVIL DOCKET FOR CASE #: 2:23-cv-14385-KMW**

Augustus Rose Jr. v. Stephen et al
Assigned to: Judge Kathleen M. Williams
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 12/06/2023
Jury Demand: Defendant
Nature of Suit: 555 Habeas Corpus (Prison Condition)
Jurisdiction: Federal Question

Plaintiff

Augustus Rose Jr.
also known as
Cowboy, Tex

represented by **Augustus Rose Jr.**
465868
Columbia Correctional Institution-Annex
Inmate Mail/Parcels
216 S.E. Corrections Way
Lake City, FL 32025-2013
PRO SE

V.

Defendant

Noel E. Stephen
Sheriff, Okeechobee County, Florida, in his individual and official capacities

represented by **Andrew William Jolly**
Purdy, Jolly, Giuffreda & Barranco, P.A.
2455 E. Sunrise Blvd. Suite 1216
Ft. Lauderdale, FL 33304
954-336-8592
Email: andrew@purdylaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Huascar Oscar Moreira
Deputy, Okeechobee County Jail, in his individual and official capacities

represented by **Andrew William Jolly**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Linda Herndon
Lead Nurse for the Okeechobee County Jail, in her individual capacity

represented by **Andrew William Jolly**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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09/10/2024	56	Burden of Proof by Augustus Rose Jr. (wce) (Entered: 09/10/2024)
09/09/2024	57	ORDER GRANTING MOTION FOR REFERRAL TO VOLUNTEER ATTORNEY PROGRAM AND REFERRING CASE TO VOLUNTEER ATTORNEY PROGRAM: Plaintiff's Motion (DE 55) is GRANTED, and this matter is referred to the Court's Volunteer Attorney Program, where a volunteer attorney may accept the representation on a pro bono basis if he or she so desires. Signed by Judge Kathleen M. Williams on 9/9/2024. <i>See attached document for full details.</i> (wce) (Entered: 09/10/2024)
08/23/2024	55	MOTION for Referral to Volunteer Attorney Program by Augustus Rose Jr. (wce) (Entered: 08/23/2024)
08/23/2024	54	Plaintiff's Second Request for Production of Documents by Augustus Rose Jr. Responses due by 9/6/2024. (wce) Modified on 8/30/2024 (mf). (Entered: 08/23/2024)
08/23/2024	53	NOTICE of Filing Discovery: DEFENDANT MOREIRA'S FIRST SET OF INTERROGATORIES TO PLAINTIFF by Augustus Rose Jr re 52 .(wce) (Entered: 08/23/2024)
08/13/2024	52	PAPERLESS ORDER. THIS MATTER comes before the Court on the pro se Motion for Extension of Time (" Motion ") filed by Plaintiff Augustus Rose, Jr. (" Plaintiff "). (DE 50 .) In the Motion, Plaintiff seeks an extension of time to comply with the Defendants' discovery requests (First Request for Production and First Set of Interrogatories), claiming they were mailed by Defendants on July 10, 2024, but not received by Plaintiff until July 31, 2024. (<i>Id.</i> at 2.) Plaintiff claims that, given the July 31, 2024 receipt of the discovery requests and his status as an incarcerated Plaintiff, he requires additional time to gather the documents requested by Defendants and to respond to the interrogatories. (<i>Id.</i> at 3-4.) The Defendants have filed a response (DE 51) to the Motion, stating they do not oppose a brief, ten-day extension of time, but oppose a thirty-day extension because Plaintiff received the discovery requests over two weeks prior to filing the Motion presently before the Court, and has failed to show good cause under Fed. R. Civ. P. 6(b) to warrant granting a thirty-day extension of time. (DE 51 at 2.) The Court disagrees. Absent evidence to the contrary, under the mailbox rule, Plaintiff filed the Motion requesting an extension of time on August 7, 2024, when he handed the Motion to prison authorities for mailing. See (DE 50 at 26.) Thus, Plaintiff was in receipt of the discovery requests for only one week, not two, before filing the Motion. (<i>Id.</i>) Accordingly, upon review of the Motion, the pertinent portions of the record, and relevant authorities, and for good cause shown, it is ORDERED AND ADJUDGED that Defendants' objection to granting Plaintiff a thirty-day extension (DE 51) is overruled, and Plaintiff's Motion (DE 50) is GRANTED solely to the extent that Plaintiff shall file his response to the Defendants' discovery requests on or before September 13, 2024 . Signed by Judge Kathleen M. Williams on 08/13/2024. (nn) (Entered: 08/13/2024)
08/13/2024	51	RESPONSE to Motion re 50 MOTION for Extension of Time to File Response/Reply/Answer filed by Linda Herndon, Huascar Oscar Moreira, Noel E. Stephen. Replies due by 8/20/2024. (Attachments: # 1 Exhibit A-Discovery propounded to Plaintiff, Augustus Rose)(Jolly, Andrew) (Entered: 08/13/2024)

08/13/2024	50	MOTION for Extension of Time to File Response/Reply/Answer by Augustus Rose Jr. (wce) (Entered: 08/13/2024)
08/05/2024	49	NOTICE of Inquiry by Augustus Rose Jr. (A blank copy of the Volunteer Attorney Program Form was mailed to the Plaintiff) (wce) (Entered: 08/05/2024)
08/01/2024	48	<i>Defendant Sheriff Stephen's</i> ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand <i>to Plaintiff's Amended Complaint (ECF 22)</i> by Noel E. Stephen. (Jolly, Andrew) (Entered: 08/01/2024)
07/31/2024	47	ORDER GRANTING 46 MOTION TO DEPOSE INCARCERATED WITNESS: It is ORDERED AND ADJUDGED that Defendants' Motion (DE 46) is GRANTED, and Defendants may depose Travis L. Smith. Signed by Judge Kathleen M. Williams on 7/31/2024. <i>See attached document for full details.</i> (wce) (Entered: 07/31/2024)
07/30/2024	46	Unopposed MOTION to Take Deposition from Witness, TRAVIS L. SMITH by Linda Herndon, Huascar Oscar Moreira, Noel E. Stephen. (Jolly, Andrew) (Entered: 07/30/2024)
07/17/2024	45	ORDER DENYING MOTION TO DISMISS FILED BY SHERIFF NOEL STEPHEN: Accordingly, upon careful consideration of Stephen's Motion, a review of underlying briefing and the record, and consideration of relevant authorities, it is ORDERED AND ADJUDGED that Stephen's Motion to Dismiss (DE 34) is DENIED; and Stephen shall file an answer to Plaintiff's Amended Complaint on or before August 1, 2024. Signed by Judge Kathleen M. Williams on 7/17/2024. <i>See attached document for full details.</i> (wce) (Entered: 07/17/2024)
07/01/2024	44	NOTICE of Compliance by Linda Herndon, Huascar Oscar Moreira, Noel E. Stephen re 36 Scheduling Order,, (Jolly, Andrew) (Entered: 07/01/2024)
06/28/2024	43	Defendant's REPLY to 34 Defendant's MOTION TO DISMISS 22 Amended Complaint/Amended Notice of Removal, FOR FAILURE TO STATE A CLAIM <i>And Supporting Memorandum of Law ** In Support of**</i> by Noel E. Stephen. (Jolly, Andrew) (Entered: 06/28/2024)
06/25/2024	42	Plaintiff's of Revised Documents re 34 Defendant's MOTION TO DISMISS 22 Amended Complaint/Amended Notice of Removal, FOR FAILURE TO STATE A CLAIM <i>And Supporting Memorandum of Law</i> filed by Augustus Rose Jr. Replies due by 7/2/2024. (Attachments: # 1 Amended Plaintiff Statement)(wce) (Entered: 06/25/2024)
06/24/2024	41	Notice of Pending, Refiled, Related or Similar Actions by Linda Herndon, Huascar Oscar Moreira, Noel E. Stephen (Attachments: # 1 Exhibit A-Complaint from Case 23-cv-14429, # 2 Exhibit B-Order Dismissing Previous Lawsuit, # 3 Exhibit C-Order Denying Motion for Reconsideration, # 4 Exhibit D-Dismissal y 11th Circuit, # 5 Exhibit E-Order on Motion for Trial Transcript) (Jolly, Andrew) (Entered: 06/24/2024)
06/24/2024	40	ORDER 38 GRANTING MOTION TO DEPOSE INCARCERATED PLAINTIFF. Signed by Judge Kathleen M. Williams on 6/24/2024. <i>See attached document for full details.</i> (wce) (Entered: 06/24/2024)
06/21/2024	39	Plaintiff Statement of DIsputed Facts for Defendant's 34 Motion to Dismiss filed by Augustus Rose Jr. Replies due by 6/28/2024. (wce) (Entered: 06/21/2024)

06/18/2024	38	MOTION to Take Deposition from Plaintiff, Augustus Rose Jr. by Linda Herndon, Huascar Oscar Moreira, Noel E. Stephen. (Jolly, Andrew) (Entered: 06/18/2024)
05/21/2024	37	Inquiry Notice Service of Process by Augustus Rose Jr. (A Copy of the Docket Sheet was mailed to the Plaintiff). (wce) (Entered: 05/21/2024)
05/20/2024	36	SCHEDULING ORDER: Calendar Call set for 4/15/2025 11:00 AM in Miami Division before Judge Kathleen M. Williams. Jury Trial set for 4/21/2025 in Miami Division before Judge Kathleen M. Williams. Signed by Judge Kathleen M. Williams on 5/20/2024. <i>See attached document for full details.</i> (wce) Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here. (Entered: 05/20/2024)
05/20/2024	35	ORDER: re 34 Defendant Sheriff Noel Stephen's (the "Defendant") Motion to Dismiss Plaintiff's 22 Amended Complaint. Accordingly, it is ORDERED AND ADJUDGED that on or before June 17, 2024, Plaintiff shall file a response to Defendant's Rule 12(b)(6) Motion, together with a supporting affidavit--signed under penalty of perjury--and any other relevant evidence. Signed by Judge Kathleen M. Williams on 5/20/2024. <i>See attached document for full details.</i> (wce) (Entered: 05/20/2024)
05/17/2024	34	Defendant's MOTION TO DISMISS 22 Amended Complaint/Amended Notice of Removal, FOR FAILURE TO STATE A CLAIM <i>And Supporting Memorandum of Law</i> by Noel E. Stephen. Responses due by 5/31/2024. (Jolly, Andrew) (Entered: 05/17/2024)
05/17/2024	33	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand (<i>ECF-22</i>) by Linda Herndon, Huascar Oscar Moreira. (Jolly, Andrew) (Entered: 05/17/2024)
05/14/2024	32	NOTICE of Attorney Appearance by Andrew William Jolly on behalf of Huascar Oscar Moreira. Attorney Andrew William Jolly added to party Huascar Oscar Moreira(pty:dft). (Jolly, Andrew) (Entered: 05/14/2024)
05/14/2024	31	NOTICE of Attorney Appearance by Andrew William Jolly on behalf of Linda Herndon. Attorney Andrew William Jolly added to party Linda Herndon(pty:dft). (Jolly, Andrew) (Entered: 05/14/2024)
04/26/2024	30	SUMMONS (Affidavit) Returned Executed on 22 Amended Complaint/Amended Notice of Removal, with a 21 day response/answer filing deadline pursuant to Fed. R. Civ. P. 12. Linda Herndon served on 4/26/2024, response/answer due 5/17/2024. (wce) (Entered: 04/29/2024)
04/10/2024	29	PAPERLESS ORDER. THIS MATTER is before the Court <i>sua sponte</i> . A review of the record indicates that Defendants Stephen and Moreira have been served but Defendant Herndon has not yet been served. To better manage the orderly progress of this case, Defendants Stephen and Moreira shall not file a response to the Amended Complaint until Defendant Herndon has been served. Once all Defendants have been served, Defendants shall file either a joint response or separate answers to the Amended Complaint within the time allowed for the last-served Defendant to respond. If conflicts exist precluding a joint response, the Defendant(s) must file a motion for leave to file separately, describing those conflicts. The Parties are advised that all motions and filings must comply fully with the Federal Rules of Civil

		Procedure, the Local Rules for the Southern District of Florida, and the Practices and Procedures of this Court. Signed by Judge Kathleen M. Williams on 4/10/2024. (rm04) (Entered: 04/10/2024)
04/10/2024	28	NOTICE of Attorney Appearance by Andrew William Jolly on behalf of Noel E. Stephen. Attorney Andrew William Jolly added to party Noel E. Stephen(pty:dft). (Jolly, Andrew) (Entered: 04/10/2024)
04/01/2024	27	SUMMONS (Affidavit) Returned Executed on 22 Amended Complaint, with a 21 day response/answer filing deadline pursuant to Fed. R. Civ. P. 12. Huascar Oscar Moreira served on 4/1/2024, response/answer due 4/22/2024. (wce) (Entered: 04/01/2024)
03/28/2024	26	Summons Issued as to Nurse Linda Herndon. (kma) (Entered: 03/28/2024)
03/28/2024	25	ORDER TO U.S. MARSHAL DIRECTING PERSONAL SERVICE UPON DEFENDANT Signed by Judge Kathleen M. Williams on 3/28/2024. <i>See attached document for full details.</i> (kma) (Entered: 03/28/2024)
03/28/2024	24	ORDER: re 22 Amended Complaint. For the reasons stated above, it is ORDERED AND ADJUDGED that: Plaintiff's Amended Complaint (DE 22) shall PROCEED against Deputy Moreira, Sheriff Stephen, and Nurse Herndon solely on an Eighth Amendment claim. Plaintiff's ADA, PREA, and Fourth Amendment claims are DISMISSED WITHOUT PREJUDICE. Signed by Judge Kathleen M. Williams on 3/28/2024. <i>See attached document for full details.</i> (wce) (Entered: 03/28/2024)
03/26/2024	23	SUMMONS (Affidavit) Returned Executed on 1 Complaint/Notice of Removal, with a 21 day response/answer filing deadline pursuant to Fed. R. Civ. P. 12. Noel E. Stephen served on 3/26/2024, response/answer due 4/16/2024. (wce) Modified on 3/27/2024 (kma). (Entered: 03/27/2024)
03/18/2024	22	AMENDED COMPLAINT against Linda Herndon, Huascar Oscar Moreira, and Noel E. Stephen re 20 Order, filed by Augustus Rose Jr.(wce) (Main Document 22 replaced on 3/18/2024) (kma). (Additional attachment(s) added on 3/18/2024: # 1 Civil Cover Sheet, # 2 Court Order DE 20) (kma). (Entered: 03/18/2024)
02/22/2024	21	NOTICE of Compliance re 20 Order. The Clerk has attached to the Docket, and has mailed a copy of the Order along with the approved complaint form to the Plaintiff. (wce) (Entered: 02/22/2024)
02/22/2024	20	ORDER: Plaintiff's Motion to Produce (DE 19) is STRICKEN. Plaintiff's Motion to Supplement (DE 18) is DENIED. However, Plaintiff may, if he so chooses, file an amended complaint on or before March 22, 2024. The Clerk of Court shall ensure that the approved complaint form is docketed as an attachment to this Order and mailed to the Plaintiff along with his copy of this Order and shall make a notation on the Court's docket reflecting that this has been accomplished, as ordered. Signed by Judge Kathleen M. Williams on 2/22/2024. <i>See attached document for full details.</i> (Attachments: # 1 Complaint Form) (wce) (Entered: 02/22/2024)
02/02/2024	19	(STRICKEN per Order at DE 20) MOTION for Production of Documents by Augustus Rose Jr. Responses due by 2/16/2024. (wce) Modified Text on 2/22/2024 (wce). (Entered: 02/02/2024)
02/02/2024	18	Motion to Supplement the Record by Augustus Rose Jr. (wce) (Entered: 02/02/2024)

01/22/2024	17	ORDER: re 14 Motion to Appoint Counsel. Accordingly, it is ORDERED AND ADJUDGED that Plaintiff's Motion for Appointment of Counsel (DE 14) is DENIED. Signed by Judge Kathleen M. Williams on 1/22/2024. <i>See attached document for full details.</i> (wce) (Entered: 01/23/2024)
01/22/2024	16	Memorandum of Law In Support of Plaintiff's 14 Motion for The Appointment of Counsel by Augustus Rose Jr.. (wce) (Entered: 01/22/2024)
01/22/2024	15	Declaration in Support of Plaintiff's 14 MOTION For The Appointment of Counsel filed by Augustus Rose Jr. (wce) (Entered: 01/22/2024)
01/22/2024	14	Motion For The Appointment of Counsel by Augustus Rose Jr. Responses due by 2/5/2024. (wce) (Entered: 01/22/2024)
01/08/2024	13	Summonses Issued as to Deputy Huascar Oscar Moreira, and Sheriff Noel E. Stephen. (kma) (Entered: 01/08/2024)
01/08/2024	12	ORDER TO U.S. MARSHAL DIRECTING PERSONAL SERVICE UPON DEFENDANTS Signed by Judge Kathleen M. Williams on 1/8/2024. <i>See attached document for full details.</i> (kma) (Entered: 01/08/2024)
01/08/2024	11	ORDER: Plaintiff's Complaint (DE 1) shall PROCEED against Deputy Moreira and Sheriff Stephen solely on an Eighth Amendment claim. Signed by Judge Kathleen M. Williams on 1/8/2024. <i>See attached document for full details.</i> (wce) (Entered: 01/08/2024)
01/04/2024	10	NOTICE of Compliance Per Order at DE 9 The Clerk has mailed a copy of the Order to the Non-party addressees Listed on the Order. (wce) (Entered: 01/04/2024)
01/04/2024	9	ORDER GRANTING 7 PLAINTIFF IN FORMA PAUPERIS STATUS AND ESTABLISHING A DEBT OF \$350.00: Granting to the extent that the plaintiff need not prepay even a partial filing fee in this case, or to prepay costs such as for service of process. Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of \$ 350.00. USM Service NOT Ordered. The Clerk of Court shall mail and/or provide a copy of this Order to the non-party addressees listed below and shall note the docket that this has been accomplished as ordered. Signed by Judge Kathleen M. Williams on 1/4/2024. <i>See attached document for full details.</i> (wce) (Entered: 01/04/2024)
12/28/2023	8	NOTICE of Inquiry (Documents Request) by Augustus Rose Jr. A copy of the Local Rules has been mailed out to plaintiff. (wce) (Entered: 12/28/2023)
12/27/2023	7	MOTION for Leave to Proceed in forma pauperis by Augustus Rose Jr. (wce) (Entered: 12/27/2023)
12/07/2023	6	NOTICE of Compliance: per Order at DE 5 , the Clerk attached the approved IFP Application form to the Order and has mailed to the Plaintiff along with his copy of this Order. (wce) (Entered: 12/07/2023)
12/07/2023	5	ORDER DENYING 3 PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND REQUIRING PAYMENT OF FILING FEE OR RENEWED MOTION TO PROCEED IN FORMA PAUPERIS: On or before January 8, 2024, Plaintiff shall either pay the \$405.00 filing fee or shall complete and file the form IFP Application to proceed without payment of fees, which is attached to this Order. Signed by Judge Kathleen M. Williams on 12/7/2023. <i>See attached document for full details.</i> (Attachments: # 1 IFP Form) (wce) (Entered: 12/07/2023)

12/07/2023	4	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Judge Kathleen M. Williams on 12/7/2023. <i>See attached document for full details.</i> (wce) (Entered: 12/07/2023)
12/06/2023	3	MOTION for Leave to Proceed in forma pauperis by Augustus Rose Jr.. (kma) (Entered: 12/07/2023)
12/06/2023	2	Judge Assignment to Judge Kathleen M. Williams (kma) (Entered: 12/07/2023)
12/06/2023	1	Complaint pursuant to 42 USC 1983 against Huascar Oscar Moreira, Noel E. Stephen. Filing fee \$ 405.00 (IFP filed), filed by Augustus Rose Jr.. (Attachments: # 1 Exhibit)(kma) (Entered: 12/07/2023)