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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

MARCO PEREZ, Plaintiff, vs. BRENT HUFFINES, Defendant.	)))))))))	Case No. 16-2343

SUMMARY JUDGMENT ORDER

This cause is before the Court for consideration of the Defendant's motion for summary judgment. [29].

I. BACKGROUND

Plaintiff, a pro se prisoner, has one claim alleging Physician's Assistant (PA) Brent Huffines was deliberately indifferent to his serious medical condition at the Jerome Combs Detention Center. *See* December 22, 2016 Merit Review Text Order. Plaintiff says he suffers from severe lower back pain and Defendant Huffines refused or delayed Plaintiff's previously prescribed medication, back brace, and cane. In addition, Defendant Huffines failed to provide a timely lower bunk permit.

Defendant has filed a motion for summary judgment and Plaintiff has field a response. Plaintiff has properly responded to some of Defendant's undisputed facts by pointing to evidence in the record in an attempt to dispute the fact. *See* Fed.R.Civ.P 56(c)(2); LR CDIL 7.1(D)(2)(b). However, on other occasions, Plaintiff simply responds

with an argument in support of his claims without any citation to the record. Therefore, he has not properly disputed the fact alleged.

The Court will nonetheless consider all arguments presented. However, Plaintiff's claim before this Court is limited to one Defendant: PA Huffines. Therefore, the actions of other individuals, acting on their own and without the Defendant's knowledge, are not relevant to Plaintiff's claim. In addition, Plaintiff's claim is limited to his back pain. Therefore, any complaints about medical care for his diabetes or other unrelated conditions are also irrelevant to this case.

II. FACTS

Plaintiff was detained at the Jerome Combs Detention Center (JCDC) as a pretrial detainee for seven months from June 21, 2016 to January 25, 2017. Defendant Huffines was employed as a Physician's Assistant at the facility. The Defendant provided medical care and treatment in response to inmate medical requests or sick call slips. (Def. Mot., Huff. Aff., p. 1). However, Defendant Huffines did not personally review request slips or grievances. (Def. Mot., Huff. Aff., p. 2).

While Plaintiff was booked into JCDC on June 21, 2016, he did not receive an initial medical screening on this day. Between June 22, 2016 and June 26, 2016, Plaintiff submitted five requests through the JCDC kiosk system. Plaintiff first noted he had three previous back surgeries and needed an extra mattress. (Def. Mot., Plain, Depo. p. 27, 29). Plaintiff was instructed to write directly to the medical department for any specific medical request. (Def. Mot., Plain, Depo. p. 30). Plaintiff then filled out medical

requests again noting he had three surgeries to his back, doctors had removed half of a disc, he had disc disease, and he was in pain. (Def. Mot., Plain, Depo. p. 31).

In addition, three days after Plaintiff entered JCDC, he appeared before a Federal Judge. Plaintiff maintains his mother brought his medications and provided them to the Marshals who transported him to the courthouse. Plaintiff further claims the medications were given to JCDC personnel. (Plain. Resp., p. 5). However, this claim is disputed, and there is no evidence in the medical record indicating Defendant Huffines, or any other JCDC medical staff member, received these medications. (Def. Reply, p. 4).

Plaintiff first met with Defendant PA Huffines on June 27, 2016. Plaintiff again reported he had multiple back surgeries, he had not received any medication since he entered JCDC, and he was suffering with lower back pain. He also requested a bottom bunk. Defendant Huffines notes this was the first time he was notified Plaintiff was experiencing any pain. (Def. Mot., Huff. Aff., p. 1).

Defendant Huffines observed Plaintiff did not appear to be in acute distress and he was "ambulating without difficulty." (Def. Mot., Huff. Aff., p. 1). The Defendant diagnosed Plaintiff with Lumbago (back pain) and prescribed a lower bunk permit, aspirin, Lisinopril, Amoxicillin, Naprozen 500 milligrams and Tramadol, 50 milligrams (mg) for his pain. (Def. Mot., Huff. Aff., p. 1). Plaintiff was also scheduled for a follow up visit in three months.

Plaintiff says Huffines did not provide him with most of the medications he was previously prescribed by his treating physicians. Plaintiff admits he was receiving Tramadol, but Defendant Huffines decreased the dosage.

Plaintiff also asked the Defendant to obtain his medical records, and the Defendant told Plaintiff he would first have to sign a medical release form. (Plain. Resp., p. 6). The parties dispute whether Plaintiff mentioned his medical records during this visit with the Defendant Huffines.

On July 6, 2016, Plaintiff submitted a medical request form asking to see a doctor about his lower back pain. JCDC Nurse Heather Gill responded noting Plaintiff had just seen Defendant Huffines and he was provided pain medication.

Plaintiff also submitted a second medical request on July 6, 2016 stating he had been prescribed a lower bunk, but he still had not received it. Plaintiff added he had fallen out of his upper bunk, and he was in pain. Plaintiff did not receive a response.

On July 8, 2016, Plaintiff submitted another medical request again stating he had not received his lower bunk permit, and therefore had moved his mattress to the floor. Nurse Angie Kimps responded noting she had talked to a correctional officer and Plaintiff should receive his bottom bunk assignment.

Plaintiff was eventually assigned to a lower bunk at some time between July 7, 2016 and July 13, 2016.

JCDC Chief of Corrections Chad Kolitwenzew states any inmate who has a medical need for a bottom bunk must obtain medical authorization from a doctor or PA. However, once a lower bunk is prescribed, it is the responsibility of JCDC administration, not medical personnel, to make the assignment. (Def. Mot., Kol. Aff., p. 1).

On July 13, 2016, Plaintiff requested an MRI as a result of falling from the top bunk a week prior. JCDC Nurse Kimps responded noting an MRI would be scheduled.

Plaintiff submitted two grievances on July 17, 2016 and July 18, 2016, complaining the denial of medical care was violating his constitutional rights. Plaintiff specifically noted no one took him to the hospital after he fell out of his bed. Plaintiff says he made this request to unidentified nurses and correctional officers after his fall. (Def. Mot., Plain. Depo. p. 61-62, 82).

On July 20, 2016, Plaintiff filed a medical request asking for an increase of his pain medication. JCDC Nurse Kimps responded in writing that Plaintiff would be seen in the medical department.

On July 25, 2016, Plaintiff submitted a medical request asking for an extra mattress. He also submitted a second request on this day asking to see a doctor about his lower back pain.

On July 26, 2016, JCDC Nurse Tami Stauffer responded to both of Plaintiff's requests again stating he would be scheduled for an appointment in the medical department.

On the same day, Plaintiff submitted another medical request claiming he had developed blisters when he fell from the top bunk and he believed they were infected. Nurse Kimps responded that Plaintiff was scheduled for a clinic visit.

Plaintiff met with Defendant PA Huffines the second time on August 3, 2016. The Defendant notes during this visit, Plaintiff stated he was under the care of a neurosurgeon at Stronger hospital and he was scheduled for a follow-up visit in August

of 2016. Plaintiff also said his treating physicians had provided him with a back brace and cane. (Def. Mot., Huf. Aff., p. 2).

Defendant Huffiness says Plaintiff was not in distress and he was still moving without difficulty. Therefore, the Defendant did not believe a back brace or cane were medically necessary. However, Defendant Huffines continued Plaintiff's medications and added an additional pain medication, Gabapentin, 600 mg. (Def. Mot., Huf. Aff., p. 2). This was one of the drugs previously prescribed for the Plaintiff, but the dosage was lower. (Plain. Resp., p. 12).

Plaintiff claims this was the second time he had reviewed his medical history with the Defendant. (Plain. Resp., p. 12). Plaintiff also asked when he was going to receive and MRI, and stated he would need to see a doctor, but neither is noted in the medical record and this account is disputed by the Defendant. (Plain. Resp., p. 12).

Plaintiff filed a grievance of August 3, 2016 complaining he had told Defendant Huffiness about his chronic back problem, his disc disease, and his need to see an orthopedic doctor. Plaintiff also claimed the Defendant told him Plaintiff he needed medical treatment and he would provide it.

Defendant Huffines says he never received this grievance. (Def. Mot., Huf. Aff., p. 2). Instead, a correctional officer responded to the grievance informing Plaintiff he should send it to the medical department.

Plaintiff says his mother went to the Cook County Hospital Records Office on September 9, 2016, obtained a copy of Plaintiff's medical records, and mailed them to

Plaintiff. Plaintiff then provided a copy to JCDC Nurse Stauffer for delivery to the Defendant. (Plain. Resp., p. 14).

Defendant Huffines met with Plaintiff for a third and final time on October 14, 2016. Plaintiff reported he was still experiencing chronic back pain, but the medication was helping to a certain extent. Therefore, Huffines continued the previously prescribed medication, but increased Plaintiff's Tramadol from 50 mg to 100 mg, and increased the Gabapentin from 600 mg to 900 mg.

Defendant PA Huffines again noted Plaintiff was not in distress and moved without difficulty. The Defendant maintains Plaintiff did not request either a back brace or a cane during the visit, "nor where they medically necessary." (Def. Mot., Huf. Aff., p. 2).

Plaintiff disputes the medical record. Plaintiff maintains he was in a great deal of pain. (Plain. Resp., p. 15).

Two weeks later, Plaintiff was examined by JCDC Dr. Jeff Long. The doctor examined Plaintiff and diagnosed him with "chronic lumbar disc and joint disease with radiculopathy" and he ordered an MRI. (Def. Mot., Und. Fact #30). Plaintiff received the MRI on November 18, 2016 which showed his previous surgeries. (Def. Mot, Ex. 35-1, MRI). The MRI also notes "[s]pondylitic changes of the lumbar spine from L3-4 through L5-S1." (Def. Mot, Ex. 35-1, MRI).[1]

[1] 'Spondylosis is a broad term that simply refers to some type of degeneration of the spine" most commonly associated with age. SPINE HEALTH, https://www.spine-health.com/conditions/lower-back-pain/spondylosis-what-it-actually-means (last visited January 16, 2018); MEDSCAPE, https://emedicine.medscape.com/article/

Based on the MRI results, Dr. Long referred Plaintiff to a pain specialist who gave him an injection in his back and suggested any continued treatment at Stroger or Cook Cook Hospital for any further treatment. (Def. Mot., Und. Fact #34).

In December of 2016 or January of 2017, Plaintiff's mother brought his back brace and cane to JCDC which he was permitted to use. (Def. Mot., Plain. Depo., p. 94-95).

Plaintiff saw the pain specialist on January 3, 2017, who gave him an injection in his back and recommended Plaintiff return to either Stroger or Cook County Hospital for any additional treatment. (Def. Mot., Und. Fact #34).

Plaintiff left JCDC on January 25, 2017 for a different facility.

III. LEGAL STANDARD

The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A movant may demonstrate the absence of a material dispute through specific cites to admissible evidence, or by showing that the nonmovant "cannot produce admissible evidence to support the [material] fact." Fed. R. Civ. P. 56(c)(B). If the movant clears this hurdle, the nonmovant may not simply rest on his or her allegations in the complaint, but instead must point to admissible evidence

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249036-overview(last visited January 16, 2018).

in the record to show that a genuine dispute exists. *Id.; Harvey v. Town of Merrillville*, 649 F.3d 526, 529 (7th Cir. 2011). "In a §1983 case, the plaintiff bears the burden of proof on the constitutional deprivation that underlies the claim, and thus must come forward with sufficient evidence to create genuine issues of material fact to avoid summary judgment." *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010).

At the summary judgment stage, evidence is viewed in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists when a reasonable juror could find for the nonmovant. *Id.*

III. ANAYLSIS

Defendant PA Huffines maintains Plaintiff cannot demonstrate his constitutional rights were violated. Plaintiff was a pretrial detainee during his seven month stay at JCDC. Pretrial detainees have a right to adequate medical care under the Fourteenth Amendment, but courts still evaluate the claim using the same standards as an Eighth-Amendment claim. *See Heard v. Sheahan*, 148 Fed. Appx. 539, 540 (7th Cir. 2005) ("The Fourteenth Amendment, not the Eighth, protects a pre-trial detainee from denial of adequate medical care, but our analysis is practically identical to the Eighth Amendment standard of deliberate indifference."). Therefore, Plaintiff must show he suffered from a serious medical need and the Defendants were deliberately indifferent to that need. *See Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976); *Hayes v. Snyder*, 546 F.3d 516, 522 (7th Cir.2008). For purposes of the dispositive motion, Defendant Huffines concedes Plaintiff suffered from a serious medical condition.

"To determine if a prison official acted with deliberate indifference, we look into his or her subjective state of mind." *Petties v. Carter*, 836 F3d 722, 728 (7th Cir. 2016) *citing Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In other words, "a plaintiff must provide evidence that an official *actually* knew of and disregarded a substantial risk of harm." *Petties,* 836 F3d at 728 (emphasis in original) *citing Farmer v Brennan*, 511 U.S. 825, 844 (1994). "Deliberate indifference may occur where a prison official, having knowledge of a significant risk to inmate health or safety, administers blatantly inappropriate medical treatment, acts in a manner contrary to the recommendation of specialists, or delays a prisoner's treatment for non-medical reasons, thereby exacerbating his pain and suffering. *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015)(internal citations omitted).

The Seventh Circuit has held "[a] medical professional is entitled to deference in treatment decisions 'unless no minimally competent professional would have so responded under those circumstances.'" *Sain v Wood*, 512 F.3d 886, 894-95(7th Cir. 2008) *quoting Collignon v Milwaukee County*, 163 F.3d 982, 988 (7th Cir. 1998). Therefore, for a medical professional to be liable for deliberate indifference to an inmate's medical needs, he must make a decision that represents "such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Sain*, 512 F.3d at 895 (7th Cir.2008) (internal citations omitted).

Consequently, the Eighth Amendment is not a vehicle for bringing claims of medical malpractice. *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996). Inadequate medical treatment due to negligence or even gross negligence does not support an

Eighth Amendment violation. *Shockley v. Jones*, 823 F.2d 1068, 1072 (7th Cir. 1987). In addition, mere dissatisfaction or disagreement with a doctor's course of treatment is generally insufficient. *See Snipes*, 95 F.3d at 591-92.

Defendant Huffines states he met with Plaintiff on three occasions: June 27, 2016; August 3, 2016; and October 14, 2016. On each occasion, the Defendant examined the Plaintiff and provided what he considered to be appropriate medical care for the symptoms presented. On each occasion, the Defendant prescribed pain medication to address Plaintiff's complaints. And on each occasion, Defendant PA Huffines made changes in the prescription of pain medication based on feedback from the Plaintiff.

"An inmate may demonstrate a medical professional was deliberately indifferent if he presents evidence that the patient repeatedly complained of enduring pain with no modifications in care." *Petties v. Carter*, 836 F.3d 722, 731 (7th Cir. 2016). However, Defendant Huffines states the record clearly demonstrates he re-evaluated Plaintiff on each occasion, and he changed the medication prescriptions accordingly.

Plaintiff argues JCDC medical staff should have seen him sooner and he should have received quicker responses to his medical requests. Nonetheless, Plaintiff has named PA Huffines as a Defendant and there is no evidence the Defendant was responsible for either. Defendant PA Huffines' job was to examine and provide medical care for inmates who were scheduled for an appointment in the medical department. It was not his job to review medical requests or grievances, or schedule those examinations. Plaintiff admits, the responses he received to his medical requests came from the nursing staff, not the Defendant.

Plaintiff also argues the Defendant substituted his own medical judgment rather than obtain copies of Plaintiff's medical records which demonstrated the medications and treatment prescribed by five different doctors. The parties disagree as to whether Plaintiff ever asked Defendant Huffines to obtain his medical records, and how soon Plaintiff told Defendant Huffines about his specific treatment.

Nonetheless, neither Defendant Huffines, nor any other member of the medical staff, could obtain Plaintiff's medical records without Plaintiff first signing a medical release. Plaintiff claims Defendant Huffines should have provided him with the release. However, in his deposition, Plaintiff admitted he sent a written medical request on July 29, 2016 specifically asking medical staff to obtain his records. As noted, the Defendant was not responsible for processing these requests. Therefore, a nurse responded on August 1, 2016 explaining to Plaintiff that he must first sign a release, and he could request a release the next time he was in the medical unit. (Def. Mot., Plain. Depo., p. 74-75).

Plaintiff does not remember if he ever signed a release. (Def. Mot., Plain. Depo., p. 75). Therefore, Plaintiff provides no evidence demonstrating he made any specific attempt to obtain his records. Instead, he repeatedly argues it was Defendant Huffines responsibility to get his medical records even without a release.

Nonetheless, Plaintiff argues Defendant Huffines did receive a copy of his medical records by the time they met on October 14, 2016. Plaintiff's mother had obtained a copy and Plaintiff gave it to one of the JCDC nurses in September of 2016.

Defendant Huffines does not clearly confirm or deny whether he had access to the records, or whether he had reviewed the records before the October 14, 2016 visit. However, Defendant Huffines did significantly increase two of the pain medications Plaintiff had previously been prescribed: Tramadol and Gabapentin. In addition, Plaintiff has scheduled for an examination by a doctor just two weeks later and Plaintiff then continued under a doctor's care while at JCDC. Plaintiff received an MRI, as well as a consultation with an outside pain specialist.

The Court also notes Plaintiff has provided copies of his medical records to demonstrate the treatment he was receiving before he entered JCDC on June 21, 2016. He was diagnosed with Lumbar Spondylosis, which is a degenerative condition. (Plain. Resp., Ex. 3, [36-3], p. 4, 18).

The records also indicate on more than one occasion, Plaintiff reported the prescribed medications did not help with his pain. In fact during a visit at a pain clinic just four days before his arrest, the Plaintiff stated he was "not currently taking any medications, as he said they weren't helping control his pain." (Plain. Resp., Ex. 3, [36-3], p. 18, June 17, 2016); *see also* Ex. 2, [36-3], p. 24, April 26, 2016). It is also unclear from the records that Plaintiff was using a cane.

Plaintiff was scheduled to return for another shot to help with his complaints of back pain in three months (September 2016); and return to the pain clinic in four months (October 2016). (Plain. Resp., Ex. 3, [36-3], p. 7, 19).

Construing the evidence in the Plaintiff's favor, the first opportunity Huffines would have to review Plaintiff's medical records and confirm medications as well as

previous treatment was on October 14, 2016. Defendant Huffiness increased Plaintiff's pain medication accordingly, and Plaintiff's continued care was transferred to a doctor at the facility. Plaintiff has presented no evidence that this short delay had any impact on his medical condition. He suffered from a degenerative condition, the Defendant continued to prescribe pain medication, and the Defendant altered and increased the medication accordingly.

Plaintiff next argues Defendant Huffines was deliberately indifferent because he did not prescribe a back brace or cane. Again, the parties dispute how often Plaintiff made this request. Regardless, Plaintiff did not have either item when he entered JCDC, nor was it apparent he was using either a brace or a cane. Defendant Huffines found neither was medically necessary based on his evaluation and observation of the Plaintiff, but the Defendant continued to provide other treatment. *See Thompson v. Godinez*, 2013 WL 4505817, at *4 (S.D.Ill. Aug. 23, 2013)(disagreement with failure to provide back brace does not state Eighth Amendment claim when based on medical opinion and other care provided); *Wrobleski v. Kayira*, 2016 WL 659655, at *3 (C.D.Ill., Feb. 18 2016)(same). Furthermore, while neither a back brace nor a cane was prescribed at JCDC, Plaintiff was also allowed to have both when his mother brought the items to the facility.

Plaintiff next argues Defendant Huffines agreed to approve a lower bunk permit, but Plaintiff was not assigned to a lower bunk for two weeks. Plaintiff maintains the Defendant "did not monitor or follow-up" to insure Plaintiff received the required bunk. (Plain. Resp., p. 17-18).

While Plaintiff believes Defendant should have done more, the only evidence before the Court confirms the bunk assignment was done by correctional staff, not medical staff. Plaintiff has presented no evidence demonstrating the Defendant was required to do more, nor that this was his job responsibility, nor that the Defendant even knew there was a delay in providing the bunk assignment. *See Rockwell Automation, Inc. v. National Union Fire Insurance Co. of Pittsburgh, PA*, 544 F.3d 752, 757 (7th Cir. 2008)("mere speculation or conjecture will not defeat a summary judgment motion"); *Hall-Bey v Hanks*, 93 Fed.Appx 977, 980 (7th Cir. 2004)("conclusory statements cannot sustain a non-movant's burden on summary judgment."); *Stagman v Ryan,* 176 F.3d 986, 995(7th Cir. 1999)("statements that are the result of speculation or conjecture or merely conclusory" do not meet requirements of Rule 56).

Plaintiff also complains about the lack of immediate treatment after he fell from his bunk, but there is no evidence in the record that Defendant Huffines was aware Plaintiff had fallen, nor was he involved in reviewing medical requests or scheduling appointments. The Court also notes while Plaintiff mentioned struggling to get into his top bunk in his complaint, he did not mention a fall, nor did he state any claims based on a fall. (Comp., [1]).

Plaintiff points to many flaws in the medical procedures at JCDC concerning initial medical evaluations, as well as coordinating medical records and requests, and scheduling appointments. Nonetheless, Plaintiff's complaint is against a physician's assistant. There is no evidence before the Court demonstrating Defendant Huffines had

any involvement in many of Plaintiff's complaints, nor would a physician's assistant typically be responsible for the overall medical care provided at a correctional center.

Therefore, Plaintiff's claim is limited to the three evaluations and examinations conducted by Defendant Huffines. While Plaintiff was not satisfied with the treatment he received, Plaintiff has not presented evidence demonstrating Defendant PA Huffines treatment decisions represented "a substantial departure from accepted professional judgment, practice, or standards" based on the information available to the Defendant. Sain, 512 F.3d at 895 (7th Cir.2008). Defendant Huffines provided pain medication and continued to alter the medications and prescriptions based on Plaintiff's complaints as well as Defendant's own evaluation and observations. Therefore, Plaintiff cannot demonstrate deliberate indifference based on the record before the Court. *see also Pyles v. Fahim*, 771 F.3d 403, 412 (7th Cir. 2014)(Defendant provided new mediation or changed dosage each time plaintiff complained the prescriptions were not helping his back pain. Plaintiff "may have wanted different treatment, but his disagreement with Defendant does not allow him to prevail on his Eighth Amendment claim."); *Arce v. Barnes,* 662 Fed.Appx. 455, 458 (7th Cir. 2016)(nurse "altered her course of treatment each time that (plaintiff) reported that his medications were ineffective" for his back pain, but no evidence of Eighth Amendment violation). The motion for summary judgment is granted.

IT IS THEREFORE ORDERED:

1) Defendant's motion for summary judgment is granted pursuant to Federal Rule of Civil Procedure 56. [29]. The Clerk of the Court is directed to enter judgment in

favor of Defendant and against Plaintiff. This case is terminated, with the parties to bear their own costs.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *See also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 16th day of January, 2018.

s/ James E. Shadid

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE