IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TAYR KILAAB AL GHASHIYAH (KHAN),
f/n/a JOHN CASTEEL,

Petitioner,

OPINION AND ORDER

v.

07-C-308-C

MATTHEW FRANK, RICHARD SCHNEITER,
CHRISTINE BEERKIRCHER, JAILOR A. JONES,
GERALD KONDOZ, JAILOR SHARPE,
JAILOR HANFIELD, JAILOR PRIMMER,
JAILOR MICKELSON, JAILOR ESSER, JANE
DOE and DEPARTMENT OF CORRECTIONS,

Respondents.

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This is a proposed civil action for declaratory, injunctive and monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Tayr Kilaab al Ghashiyah, a prisoner, requests leave to proceed in forma pauperis under 28 U.S.C. §1915. In a previous order, I concluded that petitioner was unable to prepay the full filing fee and I directed him to make an initial partial payment of $3.71, which he has done.

As I construe petitioner's complaint, he raises the following claims:

•respondents Kondoz, Frank, Schneiter and Beerkircher prevented petitioner from

using his religious and current legal name, in violation of the free exercise clause and the Religious Land Use and Institutionalized Persons Act;

•petitioner is prohibited from sealing his outgoing mail, in violation of the free speech and equal protection clauses;

• petitioner was strip searched and beaten in violation of the Fourth and Eighth Amendments;

• petitioner was placed naked in a cold cell for several hours without access to a toilet, requiring him to defecate and urinate on the floor, in violation of the Eighth Amendment;

• petitioner was denied a meal for failing to comply with a prison rule, in violation of the Eighth Amendment;

• petitioner was transferred to the Wisconsin Secure Program Facility, in violation of the due process clause;

• petitioner lost good time credits as a result of a disciplinary proceeding, in violation of the due process clause; and

•petitioner was held in control status, in violation of Wis, Admin. Code § DOC 306.17(2)(c)2.

Because petitioner is a prisoner, I am required under the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or asks for money damages

from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. I conclude that petitioner states a claim upon which relief may be granted with respect to his claim regarding the use of his religious name. I will stay a decision on petitioner's claims challenging the strip search, his cell conditions and the adequacy of process he received before losing good time credits and being transferred to the Secure Program Facility. As explained further below, petitioner may have until July 27, 2007, to provide more information supporting these claims. Petitioner's remaining claims will be dismissed for his failure to state a claim upon which relief may be granted or for lack of subject matter jurisdiction.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Tayr Kilaab al Ghashiyah is incarcerated at the Wisconsin Secure Program Facility in Boscobel, Wisconsin.

A. Religious Name

In April 1988 petitioner received a court order changing his name from John Casteel to his current name. The purpose of the change was to aid the practice of his religion.

In 2005, the Department of Corrections' prison registrar gave petitioner permission to use his new name without referring to his former name.

On January 25, 2007, respondent Gerald Kondoz refused to review an administrative appeal of petitioner's because he used his religious name. Kondoz referred the matter to the security director for disciplinary action.

From January 28, 2007, through June 15, 2007, respondents Matthew Frank (Secretary of the Wisconsin Department of Corrections), Richard Schneiter (the warden of the Wisconsin Secure Program Facility) and Christine Beerkircher "precluded and prevented" petitioner from filing grievances when he used his religious name.

B. Outgoing Mail Policy

The prison has a policy that prohibits petitioner from sealing any of his outgoing mail. However, prisoners at other maximum security prisons as well as prisoners confined on the C Unit of the Secure Program Facility are permitted to seal their outgoing mail.

C. Strip Search

On May 1, 2007, petitioner was moved from the "segregation unit" to "control status confinement." While in the segregation unit, petitioner had very limited contact with other prisoners and a very restricted ability to "receive, transfer or conceal" contraband. Before

he was moved, petitioner had no opportunity "to secure contraband, weapons or anything" that would present a security threat.

Nevertheless, petitioner was strip searched in accordance with Wis. Admin. Code § DOC 306.17 (2)(c)2, which permits strip searches "[b]efore an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution." (Petitioner identifies DOC § 306.16 as the relevant regulation, but that provision concerns cell searches.). During the search, petitioner was ordered to cut one of his fingernails. When he refused, "he was beaten by several jailers who had donned riot gear." After that, the officers took petitioner to a "control cell," where petitioner was handcuffed and forced to submit to a manual anal and genital inspection. The strip search was conducted in the hallway within the view of other prisoners; it humiliated and degraded petitioner.

D. Cell Conditions

On May 1, 2007, petitioner was placed in a holding cell naked and without access to a bathroom or toilet. As a result, petitioner was forced to defecate and urinate on the floor. Petitioner was subjected to the smell of this waste for another five hours. While in the holding cell, cold air was pumped into the cell as a means of torturing petitioner.

Also on May 1, petitioner was denied a meal for failing to comply with an order.

On May 3, petitioner complained in letters to respondents Mason, Schneiter and

Frank about the conditions in controlled segregation.

E. Failure to Provide Process

On January 25, 2007, petitioner was transferred to the Wisconsin Secure Program Facility without "the required due process."

On May 1, 2007, respondents failed to provide petitioner with "proper procedures afforded incarcerated persons placed in control status pursuant to DOC 303.71."

On May 30, 2007, petitioner was found guilty of a conduct report. This resulted in a loss of good time credits and 360 days' segregation time "without adhering to DOC regulation and/or constitutional standards."

OPINION

A. Parties

An overarching problem with petitioner's complaint is that he has failed to sufficiently identify how particular respondents were involved in the alleged constitutional violations. Instead, he alleged that "each and every" respondent was responsible for the violations "directly or indirectly." However, this is simply a "legal conclusion couched as a factual allegation," which this court is not required to accept as true. Papasan v. Allain, 478 U.S. 265, 286 (1986). See also Hickey v. O'Bannon, 287 F.3d 656, 658 (7th Cir. 2002).

Federal Rule of Civil Procedure 8 requires petitioner to provide notice to each respondent of his or her alleged wrongdoing, which means that petitioner must provide an explanation of how each respondent was involved.

As explained below in the context of particular claims, I will give petitioner two weeks to file an addendum to his complaint identifying the allegedly unconstitutional actions performed by each respondent. If petitioner does not know the name of a particular respondent, he should provide as much identifying information about that unnamed respondent as he can for the purpose of identifying that respondent later, including the respondent's title (if known), physical appearance and the time and type of interaction petitioner had with that respondent. If petitioner fails to file an addendum with the appropriate information, I will dismiss the relevant claims without prejudice to petitioner's refiling them when he has enough information to proceed.

Finally, I note that the complaint must be dismissed as to respondent Department of Corrections because it cannot be sued in a lawsuit brought pursuant to 42 U.S.C. § 1983. In Will v. Michigan Department of State Police, 491 U.S. 58 (1989), the Supreme Court concluded that Congress did not intend § 1983 to be used against state agencies. See also Fairley v. Fermaint, 482 F.3d 897, 904 (7th Cir. 2007).

B. First Amendment and Religious Land Use and Institutionalized Persons Act: Use of

Religious Name

Prisoners have a limited right under the First Amendment to change their name for religious reasons. Azeez v. Fairman, 795 F.2d 1296 (7th Cir. 1986). See also Malik v. Brown, 71 F.3d 724 (9th Cir. 1995); Salaam v. Lockhart, 905 F.2d 1168, 1170 (8th Cir.1990); Felix v. Rolan, 833 F.2d 517 (5th Cir. 1987); Barrett v. Commonwealth of Virginia, 689 F.2d 498, 503 (4th Cir. 1982). The Religious Land Use and Institutionalized Persons Act recognizes this right as well. E.g., Shidler v. Moore, 446 F. Supp. 2d 942, 948 (N.D. Ind. 2006).

Under either the First Amendment or RLUIPA, petitioner has the initial burden to show that his religious exercise was substantially burdened by the inability to use his religious name. Vision Church v. Village of Long Grove, 468 F.3d 975, 996-97 (7th Cir. 2006). A "substantial burden" is "one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003). Under the First Amendment, the religious exercise must be "central" to the adherent's belief or practice. Kaufman v. Karlen, No. 06-C-2005-C, 2007 WL 1821098, *13 (W.D. Wis. June 21, 2007) (citing Hernandez v. Commissioner of Internal Revenue, 490 U.S. 680, 699 (1989)); under RLUIPA, a substantial burden on *any* religious exercise triggers the statute's protections. 42 U.S.C. § 2000cc-1(a)(1)-(2).

Once petitioner shows a substantial burden, the question under the First Amendment is whether the burden is one that applies equally to everyone or whether it targets petitioner's beliefs in particular; if the rule applies to everyone without regard to religion, there is no constitutional violation. Employment Division Department of Human Resources of Oregon v. Smith, 494 U.S. 872, 887 (1990). But see Sasnett v. Litscher, 197 F.3d 290 (7th Cir. 1999) (questioning whether Smith applies to prisoner claims); Tarpley v. Allen County, Indiana, 312 F.3d 895, 898 (7th Cir. 2002) (ignoring Smith in prisoner free exercise case).

Even if a restriction does target petitioner's faith, it violates his free exercise rights only if it is not reasonably related to a legitimate penological interest. O'Lone v. Estate of Shabazz, 482 U.S. 342, 350-51 (1987). Four factors are relevant to that determination: whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; whether the prisoner retains alternatives for exercising the right; the impact thataccommodation of the right will have on prison administration; and whether there are other ways that prison officials can achieve the same goals without encroaching on the right. Turner v. Safley, 482 U.S. 78 (1987).

Under RLUIPA, the analysis is quite different (and more favorable for the prisoner). Once petitioner shows a substantial burden on a religious exercise, respondents must show that the restriction furthers "a compelling governmental interest," and does so by "the least

restrictive means." Cutter v. Wilkinson, 544 U.S. 709, 712 (2005).

Petitioner does not say in his complaint whether his ability to practice his religion was hindered by the restriction on using his religious name. At summary judgment or at trial, petitioner will be required to come forward with evidence on this point, but it is reasonable to infer now that his religious exercise was substantially burdened. Vincent v. City Colleges of Chicago, 485 F.3d 919 (7th Cir. 2007) (plaintiff need not plead facts supporting all elements of his claim); Savory v. Lyons, 469 F.3d 667, 670 (7th Cir. 2006) (in determining whether complaint states claim, court must draw all reasonable inferences in favor of plaintiff). Further, the allegations in petitioner's complaint do not shed any light on the reasons he was prohibited from using his religious name, so it is impossible to determine at this stage whether the restriction on petitioner's use of his religious name can survive scrutiny under the First Amendment or RLUIPA.

Petitioner will be allowed to proceed on this claim against respondents Kondoz, Frank, Schneiter and Beerkircher, each of whom petitioner alleges prohibited him from using his religious name. To the extent petitioner believes that other respondents prohibited him from using his religious name, he may have until July 27, 2007, in which to file an addendum identifying those respondents and explaining their involvement in the alleged constitutional violation.

C. First Amendment and Equal Protection: Sealing Outgoing Mail

I understand petitioner to contend that the prison's policy of requiring him to leave his outgoing mail unsealed violates his right to free speech and his right to equal protection because other prisoners at his facility and other facilities are allowed to seal their outgoing mail. With respect to petitioner's First Amendment claim, the Court of Appeals for the Seventh Circuit held more than 20 years ago that prison officials may inspect outgoing mail without violating the First Amendment, at least with respect to nonlegal mail. Gaines v. Lane, 790 F.2d 1299, 1304 (7th Cir. 1986). See also Koutnik v. Berge, 03-C-345-C, 2004 WL 1629548, *4 (W.D.Wis. July 19, 2004) (concluding that similar policy at Wisconsin Secure Program Facility was constitutional). Petitioner does not suggest in his complaint that his legal mail is being inspected without cause before it is mailed out of the prison. To the extent he did mean to include such a claim, I concluded recently that there is no basis in the Constitution for enhancing prisoners' rights related to legal mail over the rights related to nonlegal mail. Vasquez v. Raemisch, 480 F. Supp. 2d 1120, 1138-40 (W.D. Wis. 2007).

Petitioner's equal protection claim fails as well. Although it may seem unfair to petitioner, prison officials are not required to give all prisoners identical treatment. If there is a rational basis for the difference, there is no constitutional violation. Johnson v. Daley, 339 F.3d 582, 586 (7th Cir. 2003). Petitioner is a prisoner at the Wisconsin Secure Program Facility, meaning that he has the most restrictive security classification in the

Wisconsin prison system. Thus, it is rational for prison officials to consider petitioner's mail a greater security risk than other prisoners' mail. Petitioner complains that prisoners on the C Unit at the Secure Program Facility are not required to seal their mail, but I know from other cases before this court that the C Unit houses general population prisoners. This distinction would provide a rational basis for treating those prisoners differently from petitioner, who is not in general population.

Accordingly, both of petitioner's claims relating to outgoing mail will be dismissed for his failure to state a claim upon which relief may be granted.

D. Fourth and Eighth Amendments: Strip Search

Petitioner complains of a strip search that occurred when he was transferred between units. Although petitioner's complaint is not entirely clear, I understand him to be raising several claims arising from that search: (1) the regulation authorizing the search is unconstitutional; (2) the search was unconstitutional because petitioner could not have been hiding any contraband, making the search unnecessary; (3) the search was conducted in an abusive manner; (4) the search was conducted where other prisoners could see him.

A strip search is almost always uncomfortable and embarrassing for the subject of the search. This is not surprising when one considers that, under ordinary circumstances, the acts constituting a strip search could be criminally prosecuted as a sexual assault. Most of

us would cringe at even the thought of being forced to submit to such treatment. In the prison context, in which many inmates are already highly sensitive to the vast power differential between them and the prison authorities, the sense of vulnerability caused by the search can only be heightened.

For these reasons, many prisoners might be surprised to learn that the circumstances are very limited under which a strip search conducted in the prison setting violates the Constitution. Both the Supreme Court and the Court of Appeals for the Seventh Circuit have concluded that the privacy rights of prisoners are severely curtailed. Hudson v. Palmer, 468 U.S. 517, 527 (1984); Canedy v. Boardman, 16 F.3d 183 (7th Cir. 1994). Those courts have concluded that because security is of paramount concern in a prison, officials must have great discretion in determining when and what kind of search is appropriate.

Even in the context of strip searches, prison officials do not need particularized suspicion of wrongdoing. Peckham v. Wisconsin Dept. of Corrections , 141 F.3d 694, 695 (7th Cir. 1998) (upholding various routine strip searches of prisoner, including those that occur "whenever prison officials undertake a general search of a cell block"). Rather, the court of appeals has held that as a general matter the Eighth Amendment governs the constitutionality of strip searches and that, under that standard, the question is whether the search was "conducted in a harassing manner intended to humiliate and inflict psychological pain." Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003). Thus, so long as the officers

conducted the search for the purpose of finding contraband or for another legitimate purpose, the search is not unconstitutional simply because the prisoner believes that officials had no reason to suspect that he was hiding anything.

Applying these standards, I conclude that claims 1 and 2 listed above do not state a claim upon which relief may be granted. With respect to petitioner's challenge to the constitutionality of the regulation, it is difficult to think of almost any policy allowing strip searches of prisoners that would be unconstitutional on its face. Even a policy requiring a strip search every time a prisoner left his cell would likely survive scrutiny. To be constitutionally suspect, the policy would have to instruct officers to conduct strip searches for no other purpose than to harass the prisoner. Needless to say, that is not what the challenged regulation does. Rather, it permits searches preceding transfers of prisoners to different units, when there is a greater likelihood that contraband may be smuggled or passed. Peckham,141 F.3d at 695 (upholding strip searches that occur "whenever a prisoner moves into segregation"). There is no basis from which I could infer that the sole purpose of the regulation was to harass and humiliate prisoners.

The next claim fails for similar reasons. Petitioner may believe that the search was unnecessary because the chances were remote that he was hiding any contraband. It is understandable that he would object to a personal intrusion of such magnitude that was not absolutely necessary, but that is not the standard governing petitioner's claim. Respondents

do not have to show that the search was necessary or wise. It is enough that the general purpose of the search was to detect contraband.

Petitioner's challenges to the manner in which the strip search was conducted are much different. He alleges that officers beat him when he refused to comply with an order to clip a fingernail and forced him to submit to a manual inspection of his anus and genitals. As I have held recently, a failure to permit a prisoner to comply with a visual inspection before conducting a manual inspection could constitute an unreasonable search if there was no legitimate penological reason for proceeding directly to the more intrusive manual inspection. Vasquez, 480 F. Supp. 2d at 1131-32. Even if the manual inspection was necessary because of petitioner's noncompliance, a simple failure to comply with an order would not justify beating him. Whitley v. Albers, 475 U.S. 312, 321 (1986) (in determining whether force is excessive under Eighth Amendment, court considers need for application of force; relationship between need and amount of force that was used; extent of injury inflicted; extent of threat to safety of staff and inmates and any efforts made to temper severity of a forceful response).

Petitioner does not explain what he means when he says that he was "beaten"; it may turn out that what petitioner describes as a beating was a necessary use of force required by his own resistance to the search. However, because at this stage I must draw all reasonable inferences in favor of petitioner, it would be premature to dismiss the claim.

Petitioner also challenges the fact that the strip search was conducted where other prisoners could view him. In Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995), the court of appeals held that neither the Fourth nor Eighth Amendment is violated when a guard who is the opposite sex of the prisoner views him while he is naked. But the primary rational of that decision is that the cross-sex viewing of naked prisoners by officers is necessary to uphold the prison's interest in security. Id. at 146 ("Inter-prisoner violence is endemic, so constant vigilance without regard to the state of the prisoners' dress is essential. Vigilance over showers, vigilance over cells—vigilance everywhere, which means that guards gaze upon naked inmates."). Although it may be necessary for officers to view a prisoner naked, the security justifications for conducting a strip search in front of other prisoners are more questionable. If officers chose a public location simply to make a display out of petitioner with the hope of humiliating him in front of his peers, such a search would violate the standard set forth in Calhoun.

The problem with petitioner's challenges to the manner of the strip search is that he fails to identify in his complaint which respondents were involved. He says only that respondents Sharpe, Primmer, Jones, Mickelson, Esser and Jane Doe were "employee[s] for the department at Boscobel," "in charge of the segregation unit" and"directly and indirectly responsible for the strip search." As noted above, these types of conclusory statements neither give sufficient notice to the respondents of their alleged involvement nor provide

enough information for the court to determine whether their involvement is of the type that might give rise to liability under 42 U.S.C. § 1983.

Petitioner may have until July 27, 2007, in which to file an addendum to his complaint in which he describes the conduct of each of the respondents he believes is liable for the strip search. For example, did they conduct the search or take part in the beating? Were they present during the incident and failed to intervene? Petitioner should be aware that prison officials may not be held liable under § 1983 simply because they were the supervisors of other officers directly involved in the search. In some areas of the law, employers are legally responsible for conduct of their agents that occurs in the course of their employment, but under § 1983, a petitioner must show that each respondent directly participated in the alleged violation, ordered it or knew of the violation and failed to prevent it from happening. Morfin v. City of East Chicago, 349 F.3d 989, 1001 (7th Cir. 2003).

If by July 27, petitioner does not file an addendum to his complaint, I will dismiss these claims without prejudice to petitioner's refiling them after he has enough information to proceed.

E. Eighth Amendment: Cell Conditions

Petitioner alleges that he was held in a cold cell, naked and without access to a bathroom for several hours, forcing him to defecate and urinate on the floor. He was left in

the cell with his feces and urine for an additional five hours.

These allegations state a claim under the Eighth Amendment. "No static 'test' can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Rhodes v. Chapman, 452 U.S. 337, 346 (1981) (internal quotations omitted). Although Eighth Amendment violations often involve serious physical injury, that is not always required, as the court of appeals has noted recently. Powers v. Snyder, 484 F.3d 929, 932 (7th Cir. 2007). The Eighth Amendment may also be violated when a prisoner is denied "the minimal civilized measure of life's necessities." Rhodes, 452 at 347. Further, the Supreme Court has observed that the "basic concept underlying the Eighth Amendment is nothing less than the dignity of man," Trop v. Dulles, 356 U.S. 86, 100 (1958), suggesting that some prison conditions may be so inconsistent with human dignity that they violate the Eighth Amendment even when they do not inflict lasting physical harm.

The allegations in petitioner's complaint are similar to those that other courts have recognized as stating a claim under the Eighth Amendment. Hope v. Pelzer, 536 U.S. 730, 738 (2002) (finding an obvious Eighth Amendment violation for tying a prisoner to hitching post for seven hours while noting that "a deprivation of bathroom breaks . . . created a risk of particular discomfort and humiliation"); Gillis v. Litscher, 468 F.3d 488, 493 (7th Cir.

2006) (forced nakedness and denial of hygiene products contributed to possible Eighth Amendment violation). Of course, there may have been legitimate penological reasons for housing petitioner in the conditions he alleges, e.g., O'Malley v. Litscher, 465 F.3d 799, 805 (7th Cir. 2006) (concluding that it was reasonable to deny prisoner bathroom breaks when he had made statements suggesting that he would "fight to the death" if allowed freedom of movement), and the short-term nature of the conditions counsels against a finding of a constitutional violation. Dixon v. Godinez, 114 F.3d 640, 643 (7th Cir. 1997) (duration of deprivation must be considered in determining whether condition of confinement is unconstitutional); Harris v. Fleming, 839 F.2d 1232, 1235 (7th Cir. 1988) (temporary neglect of prisoner's hygienic needs is insufficient to establish an Eighth Amendment violation).

However, at this stage, I cannot conclude that petitioner will be unable to prevail on this claim. If officers did not have a legitimate penological reason for taking all of petitioner's clothes and denying him access to the bathroom, petitioner may have endured a violation of his Eighth Amendment rights.

Again, petitioner does not identify in his complaint which respondents were involved. He alleges only that he complained to respondents Mason, Schneiter and Frank two days later, but by that time the deprivation was over. Officials may be held liable for failing to stop an ongoing constitutional violation, but not for violations of which they learn only after

the violation is complete. Vasquez, 480 F. Supp. 2d at 1133-34. At that point, there is nothing to be done, except perhaps discipline the alleged wrongdoer, but there is no constitutional right to that type of remedy. Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002).

Accordingly, petitioner may have until July 27, 2007, to file an addendum to his complaint (1) naming the respondents who subjected him to these cell conditions and (2) describing how each was involved. If, by July 27, petitioner does not file such an addendum, I will dismiss this claim without prejudice to petitioner's refiling it once he has the necessary information to proceed with the claim.

F. Eighth Amendment: Food Deprivation

Petitioner alleges that an officer denied him one meal for failing to comply with a prison rule. Under Freeman v. Berge, 441 F.3d 543, 545 (7th Cir. 2006), and Rodriguez v. Briley, 403 F.3d 952 (7th Cir. 2005), this allegation cannot state a claim under the Eighth Amendment. In Freeman and Rodriquez, the court held that it does not violate the Eighth Amendment to withhold food because of a prisoner's failure to comply with a rule, at least if the prisoner's health is not seriously jeopardized. Certainly, one missed meal would not have subjected petitioner to serious health risks.

G. Fourteenth Amendment: Failure to Provide Process

Petitioner raises three claims involving a failure to provide him with process. First, he says that he was transferred to the Wisconsin Secure Program Facility without "the required process." Second, he says that respondents failed to provide him with "proper procedures afforded incarcerated persons placed in control status pursuant to DOC 303.71." Third, he says that respondents took away good time credits "without adhering to DOC regulation and/or constitutional standards."

Petitioner's second claim must be dismissed because this court may not exercise jurisdiction over it. If petitioner believes that respondents failed to comply with an administrative regulation while he was on control status, the proper mechanism for challenging that is through a writ of certiorari in state court. Outagamie County v. Smith, 38 Wis. 2d 24, 34, 155 N.W.2d 639, 645 (1968) (with respect to laws that are not made enforceable by statute expressly, action is reviewable only by certiorari).

Petitioner's first and third claims could state a claim under the due process clause. With respect to the third claim, petitioner alleges that he lost good time credits. Because the loss of good time credits has the effect of extending the prisoner's time of confinement, the loss of such credits is a deprivation of liberty with the meaning of the Fourteenth Amendment. Scruggs v. Jordan, 485 F.3d 934, 939 (7th Cir. 2007); Montgomery v. Anderson, 262 F.3d 641, 644-45 (7th Cir. 2001); Meeks v. McBride, 81 F.3d 717, 719 (7th

Cir. 1996).

With respect to the first claim, in Wilkinson v. Austin, 545 U.S. 209, 223 (2005), the Supreme Court held that the conditions in an Ohio supermaximum facility were sufficiently "atypical and significant" to rise to the level of deprivation of liberty under Sandin v. Connor, 515 U.S. 472 (1995). Although petitioner does not include facts about the conditions at the Wisconsin Secure Program Facility, I know from other cases before this court that the conditions are similar to those at issue in Wilkinson, at least with respect to the time spent in isolated confinement and the indefinite nature of the length of the placement, two factors on which the Court relied heavily in Wilkinson. See also Lagerstrom v. Kingston, 463 F.3d 621, 623 (7th Cir. 2006) (describing conditions at Wisconsin Secure Program Facility as "draconian"). Accordingly, at this stage I may assume that petitioner's transfer triggered the protections of the due process clause.

However, I cannot yet allow petitioner to proceed on his due process claims. The first problem with respect to these claims is that petitioner fails to describe the process he was actually given, making it impossible to determine whether he was given the process he was due. Accordingly, I will give petitioner until July 27, 2007, in which to file an addendum to his complaint in which to describe all the process he was given in conjunction with his transfer to the Secure Program Facility and his loss of good time credits. In particular, petitioner should discuss the notice he received of the reasons for the decisions, if any, and

the opportunity he had to rebut those reasons or otherwise tell his side of the story. If petitioner has documents showing the process he received, he may file those with court, but he is not required to do so.

The second problem is by now a familiar one, which is that petitioner fails to identify in his complaint which respondents failed to give him process. Petitioner should include this information in his addendum. If he does not know who was responsible for his transfer, he should say this. If petitioner otherwise states a claim, I will allow him to proceed against respondent Frank for the purpose of discovering the appropriate decision makers. Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996). If petitioner does not file an addendum by July 27, I will dismiss these claims without prejudice to petitioner's refiling them when he has the necessary information to proceed.

Finally, with respect to the claim for loss of good time credits, petitioner should be aware that his claim may have to be brought as a petition for a writ of habeas corpus under 28 U.S.C. § 2254 instead of a civil action under 42 U.S.C. § 1983. In Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), the Supreme Court held that a party may not bring a civil rights action to challenge conduct if success on the claim would "necessarily imply" that his confinement was illegal or that he was entitled to speedier release. In that situation, the party must first overturn his conviction through a petition for a writ of habeas corpus. Only then may he recover damages under §1983. In a later case, the Court extended this rule to

include disciplinary proceedings that resulted in an increase in the prisoner's duration of confinement through the loss of good time credits. Edwards v. Balisok, 520 U.S. 641 (1997). Thus if the deficiency in the process petitioner received is one that would necessarily invalidate the disciplinary decision, this claim will have to be dismissed without prejudice to petitioner's refiling it after he has exhausted his state remedies and succeeded in overturning the decision through a petition for a writ of habeas corpus.

ORDER

IT IS ORDERED that

1. Petitioner Tayr Kilaab al Ghashiyah is GRANTED leave to proceed on his claim that respondents Gerald Kondoz, Matthew Frank, Richard Schneiter and Christine Beerkircher prohibited petitioner from using his religious name, in violation of his right to free exercise of religion under the First Amendment and the Religious Land Use and Institutionalized Persons Act.

2. A decision whether to allow petitioner to proceed is STAYED with respect to his claims that

(a) unidentified respondents conducted a manual inspection of his anus and genitals without giving him a chance to comply with a visual inspection, in violation of the Fourth and Eighth Amendments;

(b) unidentified respondents beat him when he refused to comply with an order, in violation of the Fourth and Eighth Amendments;

(c) unidentified respondents conducted a strip search on petitioner where other prisoners could view him, in violation of the Fourth and Eighth Amendments;

(d) unidentified respondents placed petitioner in a cold cell, naked and without access to a bathroom or toilet for several hours, in violation of the Eighth Amendment.

Petitioner may have until July 27, 2007, in which to file an addendum to his complaint in which he identifies which respondents were involved in these alleged violations and the involvement of each respondent. If by July 27, 2007, petitioner fails to file an addendum with the necessary information, I will dismiss the appropriate claims or defendants from the case.

3. A decision whether to allow petitioner to proceed is STAYED with respect to his claims that unidentified respondents failed to provide him with due process when he was transferred to the Wisconsin Secure Program Facility and when he lost good time credits after a disciplinary proceeding. Petitioner may have until July 27, 2007, in which to file an addendum to his complaint in which he describe the process he received in conjunction with those events. In addition, petitioner should identify which respondents were involved in the alleged due process violations and what the involvement of each respondent was. If by July 27, 2007, petitioner fails to file an addendum with the necessary information, I will dismiss

the appropriate respondents or claims from the case.

4. Petitioner is DENIED leave to proceed on the following claims for his failure to state a claim upon which relief may be granted:

(a) petitioner is required to leave his outgoing mail unsealed, in violation of his right to free speech and equal protection;

(b) the state administrative regulation authorizing strip searches is unconstitutional on its face;

(c) the May 1, 2007 strip search was unconstitutional because it was unnecessary;

(d) petitioner was denied a meal for failing to comply with a prison rule, in violation of his right to be free from cruel and unusual punishment.

5. Petitioner is DENIED leave to proceed on his claim that he was held in control status in violation of Wis. Admin. Code § DOC 303.71. That claim will be dismissed for lack of subject matter jurisdiction.

6. The complaint is DISMISSED as to the Department of Corrections.

7. Copies of petitioner's amended complaint and this order will be sent to the Attorney General for service on the state respondents remaining in the lawsuit after this court determines whether petitioner may proceed with the stayed claims.

8. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed

copies of his documents.

9. The unpaid balance of petitioner's filing fee is $346.29; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 12th day of July, 2007.

BY THE COURT:

Barbara B. Crabb

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BARBARA B. CRABB
District Judge