

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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NATANAEL RIVERA,

Plaintiff,

v.

GEORGE J. JIMENEZ, TOMES COMPBALL,  
COMEING, NUMEKE, ROUSE, TINGLY,  
PETER ERICKSON, MICHEAL BAENEN,  
SARA COOPER and JOHN DOES 1-12,

Defendants.<sup>1</sup>  
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OPINION AND ORDER

12-cv-476-bbc

Pro se prisoner Natanel Rivera has filed a proposed complaint that is ready for screening under 28 U.S.C. §§ 1915(e)(2) and 1915A, which require the court to screen the complaint and to dismiss any claims that fail to state a claim upon which relief may be granted. Having reviewed the complaint, I will allow plaintiff to proceed against defendant George Jimenez on two claims under the Eighth Amendment, but I am dismissing the complaint as to the remaining defendants because plaintiff does not include any allegations about them.

I understand plaintiff to be raising two claims against defendant Jimenez about

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<sup>1</sup> In the caption of his complaint, plaintiff refers to “George J. Jimenez” as “*Geoge* J. Jimenez.” However, because plaintiff uses the spelling “George” in the body of the complaint and that it is the much more common spelling, I have amended the caption to be consistent with the rest of the complaint.

incidents that occurred on July 14, 2011: (1) Jimenez made plaintiff walk naked through the prison, in front of other prisoners; (2) while plaintiff was restrained, Jimenez used excessive force on plaintiff. (In one part of his complaint, plaintiff says that the incidents occurred on July 14, 2012, but I assume that is a typographical error because he filed the complaint on July 5, 2012.) Plaintiff's complaint is not detailed, but I conclude that he has alleged enough facts to state a claim against defendant Jimenez with respect to both of these claims.

With respect to his first claim, plaintiff alleges that he was strip searched after "experiencing mental issues" and then forced to walk naked through the prison to another cell. I do not understand plaintiff to be challenging the strip search itself because he does not include any facts about the search or identify which defendants were involved in it. Rather, plaintiff seems to be alleging that Jimenez violated his constitutional rights by forcing him to walk naked in front of other prisoners. The Court of Appeals for the Seventh Circuit has not considered that type of claim, but I concluded in Ghashiyah v. Frank, No. 07-C-308-C, 2007 WL 2061053, \*7 (W.D. Wis. 2007), that the standard for evaluating strip searches should apply to forced nudity in front of other prisoners. In particular, the question is whether, without a legitimate penological interest, Jimenez required plaintiff to expose himself to other prisoners "to humiliate [him] and inflict psychological pain." Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003). At this early stage, I will infer that Jimenez did not have a legitimate reason for his actions, so I will allow plaintiff to proceed on this claim. At summary judgment or trial, plaintiff will have to come forward with

specific evidence showing Jimenez's intent.

Plaintiff includes a statement in his complaint that the incident violated his "relig[ious] beliefs," but he does not explain further. To the extent plaintiff means to allege that his religious beliefs prohibit him from being naked in front of other prisoners, that allegation would not support a separate claim. Although the First Amendment would prohibit an officer from targeting a prisoner because of his religious beliefs, plaintiff does allege that Jimenez even knew what his religious beliefs were, much less that Jimenez required plaintiff to walk naked in an attempt to undermine them.

With respect to plaintiff's excessive force claim, plaintiff alleges that Jimenez "knee[d]" him "over and over," causing pain and bruising on his back when he failed to comply with an order to stand up and later caused pain and bruising again by pulling on the chain attached to plaintiff's hand restraints. In determining whether an officer has used excessive force against a prisoner in violation of the Eighth Amendment, the question is "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320 (1986). The factors relevant to making this determination include:

- ▶ the need for the application of force
- ▶ the relationship between the need and the amount of force that was used
- ▶ the extent of injury inflicted
- ▶ the extent of the threat to the safety of staff and inmates, as reasonably perceived

by the responsible officials on the basis of the facts known to them

- any efforts made to temper the severity of a forceful response

Id. at 321. In Hudson v. McMillan, 503 U.S. 1, 9-10 (1992), the Supreme Court refined this standard, explaining that the extent of injury inflicted was one factor to be considered, but the absence of a significant injury did not bar a claim for excessive force so long as the officers used more than a minimal amount of force. Similarly, the Court of Appeals for the Seventh Circuit has cautioned district courts not to dismiss claims simply because the defendant used a small amount of force; rather, the court must consider all of the relevant factors. Washington v. Hively, — F.3d —, 2012 WL 3553419, \*1 (7th Cir. Aug. 20, 2012).

In this case, some factors seem to cut against plaintiff's claim. For example, he admits that he was not following orders and he has not provided a clear description of the amount of force Jimenez used. Although it may be that facts developed at summary judgment or trial will show that Jimenez acted reasonably, I believe it would be premature to dismiss plaintiff's claim at this stage. Even if plaintiff's refusal to stand up would justify some amount of force, that does not necessarily mean it would be permissible to strike plaintiff repeatedly to the point of causing bruises. In addition, although pulling on plaintiff's chain may be a relatively small amount of force, plaintiff alleges that it was significant enough to cause pain and bruising. If Jimenez had no justification for the use of force, that could be sufficient to show an Eighth Amendment violation. Accordingly, I will allow plaintiff to proceed on this claim.

## ORDER

IT IS ORDERED that

1. Plaintiff Natanael Rivera is GRANTED leave to proceed on the following claims: (1) defendant George Jimenez forced plaintiff to walk naked in front of other prisoners, in violation of the Eighth Amendment; and (2) defendant Jimenez used excessive force on plaintiff by “kneeing” him repeatedly and pulling on his chain, in violation of the Eighth Amendment.

2. The complaint is DISMISSED as to defendants Tomes, Compball, Comeing, Numeke, Rouse, Tingly, Peter Ericksen, Micheal Baenen, Sarah Cooper and John Does 1-12 for plaintiff’s failure to state a claim against them upon which relief may be granted.

3. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of their documents.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendant. Under the agreement, the Department of

Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.

6. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

Entered this 25th day of September, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge