

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

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ARMANDO CASTANEDA,

Plaintiff,

OPINION AND ORDER

v.

13-cv-134-wmc

EDWARD F. WALL and TIM HAINES,

Defendants.<sup>1</sup>

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Plaintiff Armando Castaneda has filed a proposed civil action pursuant to 42 U.S.C. § 1983, alleging that he has been denied his constitutional right to contact visitation privileges while incarcerated in the Wisconsin Department of Corrections (“WDOC”). Castaneda also seeks a preliminary injunction and moves to certify a class action on behalf of other, similarly situated inmates at the Wisconsin Secure Program Facility (“WSPF”), where Castaneda is currently assigned. (Dkts. ##2, 3.)

Castaneda has already been granted leave to proceed *in forma pauperis* and he has paid an initial partial filing fee in compliance with 28 U.S.C. § 1915(b)(1). Because he is incarcerated, the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A(b), also requires this court to screen Castaneda’s complaint and dismiss any portion that is legally frivolous, malicious, fails 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. After

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<sup>1</sup> In addition to naming Warden Tim Haines, the original complaint names “John Doe” Director of the Wisconsin Department of Corrections (“WDOC”) as the primary defendant. Because Edward F. Wall was recently appointed as Director of the WDOC, he is substituted automatically pursuant to Fed. R. Civ. P. 25(d).

considering all of the pleadings, the court concludes that the complaint fails to state a claim on which relief can be granted and must be dismissed for the reasons that follow.

## ALLEGATIONS OF FACT<sup>2</sup>

Castaneda is currently incarcerated as the result of his conviction in Milwaukee County Circuit Court Case No. 04CF1524, on one count of first-degree intentional homicide while armed, two counts of first-degree reckless homicide while armed, and three counts of attempted first-degree intentional homicide while armed. Those charges stemmed from a gang-related shooting. Castaneda used an AK-47 assault rifle with a thirty-round clip to shoot a total of six rival gang members, wounding three and killing three others. He pled guilty and received a sentence of life imprisonment without the possibility of release.

In this case, Castaneda takes issue with the conditions of his confinement at WSPF, noting that it was built in 1999 to house only those inmates who warrant long-term segregation status or “Administrative Confinement,” which is reserved only for those “whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security of the institution.” Wis. Admin.

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<sup>2</sup> In addressing any *pro se* litigant’s pleadings, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court accepts plaintiff’s well-pleaded allegations and reasonable inferences as true and assumes the following facts. To the extent that it pertains to his classification and its attendant conditions of confinement, the court has supplemented the facts with information from the electronic docket sheet in his underlying criminal case, which is available at Wisconsin Circuit Court Access, <http://wcca.wicourts.gov> (last visited July 8, 2013), and the court of appeals decision affirming that conviction. *See State v. Castaneda*, 2010 WI App 100, ¶¶ 2-4, 788 N.W.2d 384, 327 Wis. 2d 799, 788 N.W.2d 384, 2010 WL 2363727, \*1.

Code DOC § 308.01. WSPF originally opened as a “supermax” correctional facility. As such, the facility features highly restrictive conditions of confinement. In the more pejorative words of plaintiff, WSPF was designed and designated to serve as “the hole.” Castaneda discloses, however, that he is not one of the inmates classified as requiring “Administrative Confinement.” Instead, he is assigned to a portion of WSPF that is reserved for “general population” inmates.

Castaneda explains that WSPF is divided into five units or wings (Alpha, Charlie, Delta, Echo and Foxtrot). Since 2007, two of those wings (Charlie and Delta) have been converted to house general population inmates from other prisons. These general population inmates are not subject to the same restrictive conditions as those who reside in Administrative Confinement status. Due to WSPF’s purpose and design, general population inmates such as plaintiff nevertheless enjoy limited “amenities” in comparison to those at other maximum security facilities operated by WDOC. In particular, Castaneda emphasizes in this case, “there is no contact visitation allowed between inmates and their family and friends.” Instead, Castaneda is only allowed to visit with friends and family members through “thick break-proof glass.”

Castaneda contends that the lack of contact visitation has deterred several of his friends and family members from visiting him altogether. He maintains, therefore, that his conditions of confinement constitute cruel and unusual punishment. Castaneda also points out that WDOC has administrative policies and procedures stating that contact visitation privileges can be curtailed only as punishment for violating institutional rules. *See Wis. Admin. Code DOC §§ 309.11, 309.12.* Noting that all general population

inmates are eligible to receive contact visits, except for those assigned to WSPF, Castaneda argues that he has been denied contact visitation in violation of his right to due process and equal protection. Castaneda seeks declaratory and injunctive relief on a class-wide basis in the form of a court order directing WDOC to construct a contact-visiting area at WSPF. He also seeks \$10 in nominal damages for each day that he and other general population inmates have been deprived of their constitutional rights, compensatory damages in the amount of \$100,000.00, and punitive damages in the amount of \$500,000.00.

## OPINION

### **I. Plaintiff's Claim for Damages**

As an initial matter, plaintiff's claim for compensatory damages must be dismissed as barred by the PLRA because he does not allege (and would appear unable to allege) a physical injury. This is not to denigrate mental and/or emotional injuries that Castaneda may suffer from the no contact policy, but rather to say that a physical injury is also necessary to pursue monetary damages. *See* 42 U.S.C. § 1997e(e) ("No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."); *Martin v. Snyder*, 329 F.3d 919, 921 (7th Cir. 2003) (citing *Zehner v. Trigg*, 133 F.3d 459, 461 (7th Cir. 1997)).

Plaintiff likewise fails to show that punitive damages are warranted because he does not allege that his rights were violated in an egregious or reprehensible fashion. *See*

*State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003); *BMW of North Amer. Inc. v. Gore*, 517 U.S. 559, 575 (1996). Rather, plaintiff acknowledges that contact visits are not possible at WSPF because of the unit’s design and emphasis on high security. Assuming he were to prevail, the most he could recover under these circumstances is nominal damages and injunctive relief.

## **II. Plaintiff’s Claim for Non-Monetary Relief**

To state a claim for purposes of § 1983, a plaintiff must allege — at a minimum — the violation of a right protected by the Constitution and laws of the United States. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *see also Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009) (reciting the elements required to make a claim under § 1983). Liberally construed, plaintiff alleges that he has been denied contact visitation privileges in violation of the Eighth Amendment, the Due Process Clause and the Equal Protection Clause found in the Fourteenth Amendment.

### **A. Eighth Amendment**

Plaintiff’s claim under the Eighth Amendment is without merit. The United States Supreme Court has repeatedly explained that the Eighth Amendment, which prohibits cruel and unusual punishment, is reserved only for claims involving the “unnecessary and wanton infliction of pain[.]” *Hudson v. McMillian*, 503 U.S. 1, 5 (1992). The Eighth Amendment principally applies when prison officials have deliberately ignored an objectively serious risk to an inmate’s health or safety. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Helling v. McKinney*, 509 U.S. 25, 32

(1993). Moreover, the Seventh Circuit Court of Appeals has held that denial of contact visitation privileges does *not* violate the Eighth Amendment because it does not rise to the level of cruel and unusual punishment. *See Caldwell v. Miller*, 790 F.2d 589, 600-01 (7th Cir. 1986) (considering the extended lock-down and suspension of contact visitation privileges at the United States Penitentiary in Marion, Illinois). Because plaintiff's claim appears foreclosed by Seventh Circuit precedent, it lacks an arguable basis in law and must be dismissed.

### **B. Due Process**

Before a prisoner is entitled to protection under the Due Process Clause, he must first show that a liberty interest is at stake.<sup>3</sup> *See Sandin v. Conner*, 515 U.S. 472, 483-84 (1995). Liberty interests may emanate from either the Due Process Clause itself or from state law. *See Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). Because the Due Process Clause does not guarantee visitation privileges while in prison, the existence of a liberty interest depends on state law in this instance.

A state-created liberty interest is protected under the Due Process Clause only where a deprivation of that interest would impose an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin*, 515 U.S. at 484. The relevant regulation on visitation privileges states only that WDOC “shall administer a visitation program” that is “consistent with resources available, the

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<sup>3</sup> The Due Process Clause also protects property interests, which are created and defined by an independent source, such as a contract or state law. *E.g.*, *Miyler v. Village of East Galesburg*, 512 F.3d 896, 898 (7th Cir. 2008) (citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)). Because plaintiff does not cite to any legal support for finding a property interest in visitation privileges, the court considers only a possible liberty interest.

department's responsibility for the secure and orderly operation of institutions, public safety, and the protection of visitors, staff and inmates." Wis. Admin. Code. DOC § 309.06. As plaintiff concedes, he is not denied all ability to have visits at WSPF; he complains only about the lack of physical contact with his visitors. Because confinement necessarily entails limitations on a prisoner's ability to visit or have physical contact with others, plaintiff does not clearly identify, nor is he likely to be able to identify, the sort of "atypical and significant hardship" that implicates a liberty interest for purposes of the Due Process Clause. *Sandin*, 515 U.S. at 483.

Absent a constitutionally protected liberty interest, plaintiff cannot establish that he has been deprived of contact visitation privileges without due process. *See Wolff v. McDonnell*, 418 U.S. 539, 571 n. 1 (1974) (noting that the denial of privileges does not require the use of procedures that comply with due process). Even assuming that there is a liberty interest in contact visitations, the restrictions imposed need only have a rational relation to a legitimate penological concern. In that respect, the Supreme Court has recognized an "obvious" connection between a ban on contact visits and the need for internal security in the prison environment. *Block v. Rutherford*, 468 U.S. 576, 586 (1984). In doing so, the Court took judicial notice that "[c]ontact visits invite a host of security problems" for a prison facility because "[t]hey open the institution to the introduction of drugs, weapons, and other contraband." *Id.* The Court held, therefore, that the "blanket prohibition [of contact visits] is an entirely reasonable, nonpunitive response" to legitimate security concerns. *Id.* at 588.

The connection between a ban on contact visits and internal prison security seems particularly obvious at WSPF where, according to plaintiff, general population inmates are housed in close proximity to prisoners who merit Administrative Confinement. *See Overton v. Bazzetta*, 539 U.S. 126, 134 (2003) (commenting that “[w]ithdrawing visitation privileges is a proper and even necessary management technique to induce compliance with the rules of inmate behavior, especially for high-security prisoners who have few other privileges to lose”).<sup>4</sup>

Because contact visits inherently pose a high risk of introducing contraband, drugs and weapons into a high security facility, the allegations here do not overcome the state prison system’s reasonable need to maintain safety and security at WSPF. *See Bell v. Wolfish*, 441 U.S. 520, 540 (1979) (“The government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees.”). Even assuming that all of plaintiff’s allegations are true, as well as viewing all of those allegations in the light most favorable to plaintiff, the complaint simply does not support a finding that Castaneda was deprived of a right in violation of due process.

### **C. Equal Protection**

Finally, plaintiff contends that WSPF is one of five maximum security facilities within WDOC and that general population inmates confined in these comparable facilities are eligible for contact visitation at these units. By plaintiff’s own admission, however, WSPF is distinguishable by design from other prison units operated by WDOC.

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<sup>4</sup> Plaintiff concedes that there are other avenues of contacting family and friends while in custody at WSPF, which does allow visits through an impenetrable glass partition.

It follows then that plaintiff cannot demonstrate that he has been treated differently from other, “similarly situated” inmates for purposes of an equal protection claim. *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). Accordingly, his allegations do not support a constitutional or state law claim for which relief can be granted. Absent a viable claim, his complaint must be dismissed.

#### ORDER

IT IS ORDERED that:

1. Plaintiff Armando Castaneda’s claims are DISMISSED with prejudice as legally frivolous and for failure to state a claim upon which relief can be granted. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g).
2. Plaintiff’s motions for class certification (Dkt. # 2) and for a preliminary injunction (Dkt. # 3) are DENIED as moot.
3. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly installments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the state prison where plaintiff is in custody, advising the warden of his obligation to deduct payments from plaintiff’s inmate trust fund account until the filing fee has been paid in full.

Entered this 19th day of July, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge