IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ALGENONE WILLIAMS,

Petitioner,

v.

GERALD BERGE, SERGEANT BOWDEY, SERGENT BENISCH and CO I SANDER and CO I GILARDI, in their individual and official capacities,

Respondents.

OPINION AND ORDER

02-C-0010-C

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This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Algenone Williams, who is currently an inmate at Supermax Correctional Institution in Boscobel, Wisconsin, alleges that respondents violated his (1) Eighth Amendment rights by using excessive force on him; (2) First and Eighth Amendment rights by denying him breakfast meals during Ramadan; (3) First Amendment rights by retaliating against him for filing grievances; (4) Eighth Amendment rights regarding the conditions of confinement at Supermax Correctional Institution; and (5) rights under Wisconsin law by intentionally inflicting emotional distress on him.

The status of petitioner's proposed complaint is as follows: (1) he was denied leave to proceed in forma pauperis on his excessive force and retaliation claims; (2) a decision whether he could proceed with his claim that he was denied breakfast meals was stayed until March 20, 2002, so that he could provide the court with further information; (3) he was granted leave to proceed on his conditions of confinement claim, but that claim was stayed because of his membership in the class in Jones 'El v. Berge, No. 00-C-421-C; and (4) a decision whether to assume supplemental jurisdiction over his state law claim of intentional infliction of emotional distress was stayed because the decision hinged on whether petitioner would be granted leave to proceed on claims relating to denial of breakfast meals and the claims that overlapped with the claims in Jones 'El. Order entered March 6, 2002, dkt. # 2, at 15-16. On March 25, 2002, petitioner filed a response to this court's queries regarding the denial of his breakfast meals. Separately, on March 28, 2002, this court approved the settlement in the Jones 'El class action lawsuit.

Presently before the court is petitioner's request for leave to proceed in forma pauperis as to his state law claims and his claim of the denial of his breakfast meals in violation of the First and Eighth Amendment. In addition, because the Jones 'El lawsuit has been resolved, I will lift the stay with respect to petitioner's Eighth Amendment conditions of confinement claim. Because the settlement in Jones 'El did not resolve the issue of liability on the conditions of confinement claim, it is necessary to reconsider whether

petitioner has alleged facts in this lawsuit sufficient to make out an independent claim of a constitutional violation. Finally, petitioner has filed a motion to reconsider the denial of his request for leave to proceed in forma pauperis on his claims of excessive force and retaliation and has filed a motion for appointment of counsel.

Because petitioner's claim that the denial of breakfast meals violates his First and Eighth Amendment rights is legally frivolous, I will deny his request for leave to proceed in forma pauperis as to these claims. Upon lifting the stay imposed because petitioner's conditions claims overlapped with the conditions claim in Jones 'El and examining his allegations, I conclude that petitioner states two Eighth Amendment claims: (1) that 24-hour cell illumination with bed checks every 30 minutes causes him serious sleep deprivation and (2) that he is subjected to extreme cell temperatures that are injurious to his health. However, I will deny petitioner's request for leave to proceed on his Eighth Amendment claims: (1) that his 24-hour cell confinement with no meaningful opportunity to exercise violates his rights and (2) that the totality of these conditions of confinement has a mutually enforcing effect that deprives him of a single basic human need. Because nothing in petitioner's motion to reconsider convinces me that I erred in denying his request for leave to proceed on his excessive force and retaliation claims, I will deny his motion to reconsider. In addition, I will deny his motion for appointment of counsel as premature. Finally, I will exercise supplemental jurisdiction over petitioner's state law claim of intentional infliction

of emotional distress only to the extent that the state claim relies on the same operative facts as his Eighth Amendment conditions of confinement claims on which I am granting him leave to proceed.

DISCUSSION

A. Denial of Breakfast Meals

In his complaint, petitioner alleges that he was denied an unspecified number of breakfast meals during Ramadan. Because this allegation lacks specificity, I stayed a decision whether to grant petitioner's request for leave to proceed as to this claim so that he could provide the court with the following information: (1) the dates on which he was denied breakfast meals; (2) whether on those dates he was denied a lunch and dinner meal; and (3) how the denial of his breakfast meals relates to his ability to practice his religion. In response to these three questions, petitioner filed a 15-page, single-spaced response and motion to reconsider (including 44 exhibits), which in most respects fails to address the court's queries.

In his motion to reconsider, petitioner alleges that he was denied a breakfast meal on December 8, 18, 19, 22 and 23, 2000. In addition, petitioner alleges that he does not have "personal documentation" as to the exact dates of other denials because "[he] apparently destroyed [his] carbon copies of the inmate complaints as [he has] proven to be a terrible

one to maintain and properly store evidentiary materials and records." However, I did not ask petitioner to provide "personal documentation." I asked him to allege the dates on which he was denied breakfast. Moreover, petitioner failed to answer the court's questions whether he was also denied a lunch and dinner meal on the same day he was denied breakfast and how the denial of breakfast affected his ability to practice his religion.

1. First Amendment

Petitioner does not allege how he could not participate in Ramadan worship because of the denial of his breakfast meals. A bald assertion of wrongful conduct is not sufficient to support a claim upon which relief can be granted. See Hill v. Shobe, 93 F.3d 418, 421 (7th Cir. 1996) (noting that "[a] conclusory allegation of recklessness . . . is insufficient to defeat a motion to dismiss") (citing Palda v. General Dynamics Corp., 47 F.3d 872, 875 (7th Cir. 1995)); Zemke v. City of Chicago, 100 F.3d 511 (7th Cir. 1996). Accordingly, I will deny petitioner's request for leave to proceed on his claim that the denial of breakfast meals interfered with his ability to practice his religion in violation of the First Amendment.

2. Eighth Amendment

I understand petitioner to allege that the denial of breakfast on five, non-consecutive days and on an unspecified number of "other days" constitutes cruel and unusual

punishment under the Eighth Amendment. Under certain circumstances, a substantial deprivation of food raises a claim of constitutional dimension. See Robles v. Coughlin, 725 F.2d 12, 15 (2d Cir. 1983) (allegations that petitioners were denied any food on 12 days, three of which were consecutive, within a 53-day period and that prison staff contaminated food with rocks, glass and human waste were sufficient to defeat motion to dismiss); Moss v. Ward, 450 F. Supp. 591, 596-97 (W.D.N.Y. 1978) (deprivation of any food for four consecutive days violated prisoner's Eighth Amendment rights). This court has held that "the deliberate deprivation of food, or the reckless disregard for whether an inmate is fed constitutes an Eighth Amendment violation, except in those circumstances in which the inmate refuses to cooperate in the serving of his meals, such as refusing a meal that is not in the form he prefers or by endangering the health or safety of staff members who attempt to provide the meal." Hall v. Sandstrom, No. 89-C-658-C, slip op. at 2 (W.D. Wis. June 5, 1990). Even if petitioner were denied breakfast meals on occasion, petitioner does not allege that he was denied a lunch or dinner meal on any day he was denied his breakfast. Petitioner's allegations simply do not rise to the level of an Eighth Amendment violation because they do not suggest that he was subjected to a substantial deprivation of food. Therefore, petitioner will be denied leave to proceed as to this Eighth Amendment claim.

B. Conditions of Confinement

On March 6, 2002, I stayed all proceedings relating to petitioner's conditions of confinement claim because of his membership in the class in Jones 'El v. Berge, 00-C-421-C, in which a conditions claim encompassing the conditions about which he complains was pending before this court. On March 28, 2002, I approved the settlement agreement in Jones 'El. Because the case settled, I never ruled whether the totality of the conditions of confinement identified in Jones 'El amounted to a violation of the Eighth Amendment. Had there been a finding of liability, it may have been possible for petitioner to prove in this lawsuit that he was entitled to money damages for injuries he suffered as a result of some of the conditions making up the totality claim. However, because there was no finding of liability in Jones 'El, I must now consider whether the specific conditions about which petitioner complains are sufficient to state a claim under the Eighth Amendment standing alone and, if not, whether the totality of the conditions may give rise to an Eighth Amendment claim.

1. Individual conditions

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347

(1981). Because the Eighth Amendment draws its meaning from evolving standards of decency in a maturing society, there is no fixed standard to determine when conditions are cruel and unusual. Id. at 346. The Court of Appeals for the Seventh Circuit has found Eighth Amendment violations when, for example, an inmate was tied to a bed for nine days, had to use a urinal pitcher which was then left full by his bed for two days, had no change of linen or clothes for that period, had no silverware and had to eat with his hands, and had no opportunity to exercise. See Wells v. Franzen, 777 F.2d 1258 (7th Cir. 1985). However, conditions that create "temporary inconveniences and discomforts" or that make "confinement in such quarters unpleasant" are insufficient to state an Eighth Amendment claim. Adams v. Pate, 445 F.2d 105, 108-09 (7th Cir. 1971). In Adams, the court of appeals did not find a constitutional violation when an inmate alleged that his cell was filthy and stunk, that the water faucet from which he drank was only inches above the toilet and that the ventilation was inadequate. Id.

a. Extreme cell temperature

Petitioner alleges that during the winter months, "it is so cold that [his] feet feel like blocks of ice even though [he is] wearing socks and shoes" and that he sleeps fully clothed under two blankets and is still cold. Conversely, in the summer months, petitioner alleges that he is in a state of perpetual perspiration that causes heat rash, hand tremors, loss of

sleep and increased use of his asthma inhaler that, in turn, causes an increased heart rate.

Prisoners are entitled to "the minimal civilized measure of life's necessities." See Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997) (citing Farmer v. Brennan, 511 U.S. 825, 833-34 (1994)). This includes a right to protection from extreme cold, see id. (holding that cell so cold that ice formed on walls and stayed throughout winter every winter might violate Eighth Amendment), and extreme heat, see Shelby County Jail Inmates v. Westlake, 798 F.2d 1085, 1087 (7th Cir. 1986). "[C]ourts should examine several factors in assessing claims based on low cell temperature, such as the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; as well as whether he must endure other uncomfortable conditions as well as cold." Dixon, 114 F.3d at 644. In certain circumstances extreme hot or cold cell temperature may constitute violations of the Eighth Amendment. Although at this early stage I cannot say that petitioner could not prove any set of facts entitling him to relief on this claim, I note that he faces an uphill battle. To succeed on this claim, petitioner will have to garner evidence of the actual temperature in his cell during the time in question and be prepared to prove that as a result of the extreme heat or cold he suffered deleterious effects on his health beyond mere discomfort.

b. 24-hour illumination with bed checks

Petitioner alleges that because of the 24-hour illumination in his cell, he covers his eyes at night in order to block out the light and, because his eyes are covered, prison staff wakes him routinely every 30 minutes throughout the night. Petitioner alleges that he suffers extreme sleep deprivation, constant headaches and that he gets only three hours of sleep a day because of sheer exhaustion. Although the 24-hour illumination does not rise to the level of an Eighth Amendment violation in and of itself, petitioner alleges that prison staff wakes him every 30 minutes when he tries to sleep by covering his eyes. Petitioner does not allege facts from which it can be determined whether he is deprived of his sleep only intermittently or whether he is subjected to the condition on a regular and sustained basis. To prove an Eighth Amendment violation, petitioner will have to adduce evidence that he is being deprived of his sleep on a regular and sustained basis and that the sleep deprivation has affected his physical health. Because petitioner may be able to prove that he is subjected to harmful sleep deprivation, I will grant his request for leave to proceed on this claim.

c. 24-hour confinement and exercise facility

Petitioner alleges that he is in 24-hour cell confinement and that because the exercise space reflects the current outdoor temperature, he does not use it. He alleges that having no meaningful opportunity to exercise violates his Eighth Amendment rights. The Court of

Appeals for the Seventh Circuit has recognized that in some circumstances the failure to provide prisoners incarcerated in segregation "with the opportunity for at least five hours a week of exercise outside the cell raises serious constitutional questions." Davenport v. DeRobertis, 844 F.2d 1310, 1315 (7th Cir. 1988); see also Jamison-Bey v. Thieret, 867 F.2d 1046 (7th Cir. 1989) (although 101 consecutive days of segregation does not alone violate Constitution, severe restrictions on exercise may constitute Eighth Amendment violation). However, in Harris v. Fleming, 839 F.2d 1232, 1236 (7th Cir. 1988), the court of appeals found no Eighth Amendment violation when an inmate spent four weeks in segregation and was not permitted outside recreation but was allowed to move about his segregation cell and could have exercised by jogging in place, engaging in aerobics or doing push-ups in his cell. I am not convinced that requiring petitioner to use an exercise space that reflects the outdoor temperature violates his constitutional rights. The idea behind exercise is to increase muscle use that, in turn, raises body temperature. On all but the hottest days in Wisconsin's summers and the coldest days in Wisconsin's winters, petitioner has an opportunity to exercise without endangering his health. His choice to forgo the opportunity to exercise does not render the conditions constitutionally inadequate. Petitioner does not state an independent claim that he is being deprived of meaningful exercise in violation of his Eighth Amendment rights. Accordingly, petitioner will be denied leave to proceed as to this claim.

2. Totality of conditions

In Jones 'El, I granted the plaintiff class leave to proceed on a claim that the total combination of the conditions of confinement at the Supermax Correctional Institution made out a possible claim of violation of the Eighth Amendment. In doing so, I relied on Wilson v. Seiter, 501 U.S. 294, 304 (1991), in which the Court recognized that although certain conditions standing alone might not raise a claim of a constitutional violation, a combination of conditions having a "mutually enforcing effect that produces the deprivation of a single identifiable human need such as food, warmth or exercise — for example, a low cell temperature at night combined with a failure to issue blankets," might state a claim under the Eighth Amendment.

The objectionable physical conditions at Supermax at issue on the totality claim in Jones 'El were as follows:

(1) 24-hour lock down, except that some inmates are able to leave their cells for up to four hours a week to use an unheated or cooled indoor recreation cell;

(2) cells with a sliver of a window and a boxcar door that prevents inmates from seeing outside their cell;

(3) extremely limited use of the telephone, family or personal visits by video screen only and visiting regulations so burdensome as to prevent many inmates from receiving visitors;

(4) chronic sleep deprivation caused by 24-hour cell illumination and, for inmates choosing to block the light by covering their heads, being awakened hourly throughout the night by security staff;

(5) use of a video camera rather than human interaction to monitor all inmate movement; and

(6) extreme cell temperatures.

Rather than analyzing these conditions separately to determine whether each made out an independent claim for a violation of the Eighth Amendment, I accepted the premise that even if one or more of the conditions did not make out a separate Eighth Amendment claim, the plaintiffs had alleged sufficient facts to suggest that the conditions combined to deprive them of the clearly identifiable and basic human needs of social interaction and sensory stimulation. I reiterated this thinking in a later order in Jones 'El, when the plaintiff class attempted to amend the complaint to add to their totality claim a challenge to the ability of female guards to monitor male inmates while allegedly making rude remarks about the inmates' genitals. I denied plaintiffs' motion to include this allegation in their totality claim because it did not relate to "the over-arching concern behind the totality claim, the sensory deprivation and social isolation imposed on inmates." Jones 'El, 00-C-421-C, Aug. 14, 2001, dkt. # 90, at 25.

In this case, petitioner alleges that he was subjected to the following conditions also

found among the conditions listed in Jones 'El:

(1) chronic sleep deprivation caused by 24-hour cell illumination with frequent bed checks (petitioner contends that his bed checks are every 30 minutes rather than every hour as alleged in Jones 'El);

(2) 24-hour cell confinement with only a sliver of a window and an exercise space that reflects the outdoor temperature, which provides him no meaningful opportunity to exercise; and

(3) extreme cell temperatures.

I have concluded that petitioner states independent claims for relief under the Eighth Amendment with respect to the conditions that result in chronic sleep deprivation and that cause him to suffer from extreme hot and cold cell temperature. Even if I combine the claims to include the one on which petitioner fails to state an independent Eighth Amendment claim, that is, that he is in 24-hour cell confinement because he chooses to forgo exercise in a space reflecting the current outdoor temperature, I cannot draw the inference that these conditions have a mutually enforcing effect that produces the deprivation of a separate identifiable human need, such as the need for human contact and sensory stimulation found lacking in the total conditions at stake in Jones 'El. Rather, petitioner's claims relate to the physical discomforts brought about by his surroundings, such as headaches from his lack of sleep, heat rash and increased use of his asthma inhaler because of the hot temperatures in

his cell and an inability to warm himself because of cold temperatures in his cell and the alleged inability to leave his cell to exercise because the conditions of the recreation cell are so uncomfortable. Even when I consider these alleged conditions together, I can identify no deprivation of a single identifiable human need that is not already identified by the individual claims, that is, the need to sleep, the need to warm and cool oneself and the need to exercise and move about freely. Indeed, the conditions central to the totality claim in Jones 'El (cells with only a sliver of a window and a boxcar door that prevents inmates from seeing outside the cell; extremely limited use of phone; family and personal visits by video and visiting regulations so burdensome as to discourage visitors; and the use of a video camera rather than human interaction to monitor inmate movement) are not conditions that petitioner challenges in his complaint in this case. Accordingly, I conclude that petitioner's allegations do not make out a claim that the totality of the conditions of confinement about which he complains deprives him of his Eighth Amendment rights.

C. Motion to Reconsider

1. Excessive Force

In his motion to reconsider, petitioner contends that I erred when I denied him leave to proceed on his claim that North Fork Correctional Facility staff used excessive force on him. I denied leave because he had failed to name North Fork respondents. In petitioner's

complaint, he made bald assertions that, among a myriad of other things, all 30 respondents were acting under a "de facto policy" of allowing North Fork staff to use excessive force on him. As petitioner is well aware from other lawsuits he has filed in this court, a bald assertion of wrongful conduct is insufficient to support a claim upon which relief can be granted. See Hill v. Shobe, 93 F.3d 418, 421 (7th Cir. 1996). Petitioner argues in his motion to reconsider that he meant to allege in his complaint that "the contract monitors were continuously apprised of the numerous instances of excessive force/physical abuse" occurring at the North Fork and did nothing to intervene.

To support his allegations, petitioner attaches to his motion two letters that he wrote to Jan Mink, a contract monitor. One of the letters is undated. In it, petitioner advises Mink that he is "in fear for [his] life" because officer Penn sprayed him with chemical agents while he was in his cell on April 17 and 19, 1999. See Ptnr.'s Mot. to Reconsider, dkt. #6, at Exh. 1. In the second letter, which is dated May 4, 1999, petitioner wrote Mink, stating that he was "still being subjected to unprovoked attacks." He attached for Mink's review a copy of an "emergency grievance" in which he alleged that on May 4, officer Rhoads "took his thumb and dug it between [petitioner's] earlobe and jawbone even though [petitioner] wasn't resisting and kept it there for two minutes." See id. at Exh. 3-4. (Curiously, the allegations of abuse in petitioner's contemporaneous letter to Mink differ dramatically from the description of the same incident in his complaint. Specifically, in addition to alleging

that an officer dug his thumb into his earlobe and jawbone area, petitioner also alleges that during the May 4 incident officers kneed him in the head, choked him, wrenched his wrists and neck, hit him in the back of his knee and yanked his arms through the door chute.) In any event, petitioner does not allege facts sufficient to state a claim against Mink that she failed to protect him from harm in violation of the Eighth Amendment. It is inappropriate for petitioner to argue that the court erred in denying him leave to proceed on a claim for which he supplied little to no facts and then attempt to show the error by supplying more facts. Nevertheless, even considering petitioner's additional allegations, he still fails to state a claim upon which relief can be granted against Mink.

A prison official may be liable for violating the Eighth Amendment if he or she knew that there was a substantial likelihood that a prisoner would be assaulted and failed to take reasonable protective measures. See Farmer v. Brennan, 511 U.S. 825, 847 (1994). In a failure to protect action, "[a] prisoner normally proves actual knowledge of impending harm by showing that he complained to prison officials about a specific threat to his safety." McGill v. Duckworth, 944 F.3d 344, 349 (7th Cir. 1991). The official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and the official must draw that inference. See Pavlick v. Mifflin, 90 F.3d 205, 207-08 (7th Cir. 1996).

Even assuming that the undated letter was received by Mink before May 4, 1999, the

question is whether the letter made Mink aware of specific threats to petitioner's safety indicating a substantial risk of impending harm. In his letter, petitioner advises Mink that he is in fear for his life because Penn sprayed him with chemical agents on April 17 and 19, 1999. However, in the second letter to Mink, petitioner alleges that Rhoads (not Penn) assaulted him physically (not chemically). The notification of alleged inappropriate behavior on the part of Penn was insufficient to warn Mink that there was a substantial risk that petitioner would be physically attacked by another officer at a later date. Petitioner's allegations simply do not suggest that he complained about a specific threat to his safety in which Mink should have intervened in order to protect him as required under McGill, 944 F.3d at 349. Accordingly, I will deny petitioner's motion to reconsider as to his claim that contract monitors failed to protect him from harm.

2. Retaliation

Petitioner argues that construed liberally, the incidents surrounding his retaliation claim can be construed as assault and battery under Wisconsin law. However, I did not grant petitioner leave to proceed on his retaliation claims. Accordingly, I decline to exercise supplemental jurisdiction over the state law claims arising out of the same set of facts. See 28 U.S.C. § 1367(a) (district courts have supplemental jurisdiction over claims so related to claims in action that they form part of same case or controversy).

In sum, because nothing in petitioner's motion to reconsider convinces me that I erred in denying him leave to proceed in forma pauperis on his claims of excessive force (now more clearly a claim of failure to protect) and retaliation, I will deny his motion to reconsider.

D. State Law Claim

I will exercise supplemental jurisdiction over petitioner's state law claim of intentional infliction of emotional distress only to the extent that this state law claim relies on the same operative facts as his Eighth Amendment conditions of confinement claims on which I am granting leave to proceed. 28 U.S.C. § 1367(c)(3)); see also Groce v. Eli Lilly & Co., 193 F.3d 496, 500 (7th Cir. 1999) (district court has discretion to retain or refuse jurisdiction over state law claims).

E. Motion for Appointment of Counsel

It is too early to consider petitioner's request for appointment of counsel. Before a decision on a motion to appoint counsel can be made, the litigant asking for counsel must show that he made a reasonable effort to find a lawyer on his own. See Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). The court considers that a litigant has made a reasonable effort to find a lawyer if he submits proof that he contacted three different

lawyers who declined to take his case. Petitioner would like this requirement waived because he is allegedly destitute, lacks access to general correspondence and has overdrawn his $200 legal loan limit. Petitioner appears to believe that because he is destitute or has overdrawn his legal loan account, he is entitled to appointed counsel who will bear the expense of his lawsuit. That is not the case. Petitioner has chosen to file this case at a time when he has two other lawsuits pending in this court and several other lawsuits pending in the Western District of Oklahoma. Petitioner is in a position no different from a person who is not incarcerated and who has limited funds with which to file lawsuits in federal court; if the limitations on his funds prevent him from prosecuting his case with the full vigor he wishes to prosecute it, he is free to choose to dismiss it voluntarily and bring it at a later date, when he has fewer cases in litigation. Petitioner has chosen to continue with this suit at a time when he lacks funds. It would be improper to appoint counsel solely for the purpose of shifting petitioner's costs to a lawyer. Accordingly, I will deny petitioner's motion for appointment of counsel.

ORDER

IT IS ORDERED that

1. Petitioner Algenone Williams's request for leave to proceed in forma pauperis on his First and Eighth Amendment denial of breakfast meals claims is DENIED as legally

frivolous;

2. Petitioner's request for leave to proceed in forma pauperis on his Eighth Amendment conditions of confinement claims is GRANTED in part and DENIED in part: GRANTED as to his claims of 24-hour cell illumination with bed checks every 30 minutes and extreme cell temperatures; DENIED as to his claims of 24-hour cell confinement because the exercise facility reflects the outdoor temperature and the totality of the conditions of confinement;

3. All respondents except respondent Gerald Berge are dismissed from this action;

4. Petitioner's motion to reconsider is DENIED;

5. Petitioner's motion for appointment of counsel is DENIED; and

6. I will exercise supplemental jurisdiction over petitioner's state law claim of intentional infliction of emotional distress only to the extent that this state claim relies on the same operative facts as his Eighth Amendment conditions of confinement claims on which I am granting petitioner leave to proceed.

Entered this 30th day of April, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge