

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

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JOEL WALTERS,

Petitioner,

v.

DANIEL MOESER,  
and DANE COUNTY,

Respondents.

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ORDER

03-C-638-C

This is a proposed civil action for injunctive relief, brought under 42 U.S.C. § 1983. Petitioner, who lists his address as 245 South Park St., #201, Madison, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. However, I cannot grant petitioner leave to proceed in forma pauperis because this court lacks jurisdiction to hear his claim in a civil action under 42 U.S.C. § 1983.

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

complaint alleges in full as follows:

This whole situation is moot and irreverent (sic), because I am Sir Joel Walters. My cover is that of a mental patient. Plus the courts have no time to waste (i.e. North Carolina vs. Peterson).

My funds are limited at the moment and I need to file this case pro se. I might get legal help in the future.

Petitioner attaches to his complaint a copy of a Dane County Circuit Court order signed by respondent Daniel Moeser dated October 20, 2003, committing petitioner to a Dane County mental health facility for a period of six months. As relief, petitioner asks that this court “overturn lower court’s ruling.”

#### OPINION

Federal courts are courts of limited jurisdiction. They can hear only those cases that Congress empowers them to hear. Generally, the cases fall into two categories: cases in which the petitioner alleges a violation of a his constitutional rights or rights established under federal law, and cases in which the petitioner, a citizen of one state, alleges a violation of his rights established under state law by a citizen of another state.

Petitioner's allegations do not fall into either category. He and respondent Moeser appear to be citizens of the same state, and he does not allege any facts to suggest that he has been denied a right to which he is entitled under federal law. Possibly petitioner intended to argue that respondent Moeser’s decision to commit him involuntarily to a

mental health facility was constitutionally faulty, but even if he were to amend his complaint to explain in greater detail the basis for such a claim, I cannot consider granting him the relief he wants in a § 1983 action.

Petitioner's request for an order "overturning" Judge Moeser's commitment order is the same thing as requesting release from his ordered confinement. Release from confinement because of alleged violations of federal law in the proceedings leading to confinement cannot be granted in a civil action under § 1983. Such relief is available only in a habeas corpus action under 28 U.S.C. § 2254. The Court of Appeals for the Seventh Circuit has directed district courts to refrain from converting a § 1983 action to a petition for a writ of habeas corpus under 28 U.S.C. § 2254. See Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996). Even if I could convert petitioner's action into a habeas corpus action, I would have to dismiss it immediately. This is because petitioner has failed to allege any facts suggesting that he is in custody in violation of the constitution or laws of the United States and he has failed to allege that he has exhausted his state court remedies, which is a jurisdictional prerequisite to filing a habeas corpus action in federal court under 28 U.S.C. § 2254(b).

#### ORDER

IT IS ORDERED that petitioner Joel Walters's request for leave to proceed in forma

pauperis on his § 1983 claim against respondents is DENIED and this case is DISMISSED for lack of jurisdiction.

Entered this 19th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge