

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

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TITUS HENDERSON,

Plaintiff,

v.

MATTHEW FRANK; PETER HUIBREGTSE; BRIAN  
KOOL; TRACEY GERBER; J. STARKY; RUSSELL  
BAUSCH; ROBERT SHANNON; TODD OVERBO;  
DICK VERHAGEN; and RICHARD  
SCHNEITER,

Defendants.

ORDER

06-C-12-C

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In this lawsuit, plaintiff Titus Henderson is proceeding on the following claims:

- 1) defendants Frank, Schneider and Peter Huibregtse implemented a policy at the Wisconsin Secure Program Facility, policy 524.02, that is facially unconstitutional under the First Amendment;
- 2) defendants Frank, Schneider and Peter Huibregtse violated plaintiff's rights under the First Amendment by failing to train staff at the Wisconsin Secure Program Facility to apply policy 524.02 constitutionally;
- 3) defendant Starky violated plaintiff's First Amendment rights by refusing to deliver

letters on March 1 and March 16, 2005;

4) defendant Gerber violated plaintiff's First Amendment rights by refusing to deliver a letter addressed to Senator Bill Frist on March 26, 2005;

5) defendant Verhagen violated plaintiff's rights under the establishment clause of the First Amendment by implementing DOC 309 IMP 6, which does not recognize Taoism as an umbrella religious group;

6) defendant Overbo violated plaintiff's rights under the establishment clause of the First Amendment by purchasing texts for Catholic, Protestant, Jewish, and Muslim inmates but not Taoist inmates;

7) defendant Overbo violated plaintiff's rights under the free exercise clause of the First Amendment by refusing to purchase two Taoist texts;

8) defendant Kool violated plaintiff's First Amendment rights by denying him a promotion to level three on November 1, 2005 in retaliation for his having filed case no. 05-C-157-C in this court;

9) defendant Kool violated plaintiff's First Amendment rights by denying him a promotion to level three on November 21, 2005 in retaliation for his having written in a questionnaire that he would file lawsuits against staff who mistreat inmates;

10) defendant Kool violated plaintiff's First Amendment rights by recommending that he be placed in administrative confinement on December 19, 2005 in retaliation

for his having filed case no. 05-C-157-C;

11) defendants Schneider and Peter Huibregtse violated plaintiff's Eighth Amendment rights by refusing to take action to prevent Sgt. Sickinger from refusing to respond to inmates' requests for medical care;

12) defendant Schneider violated plaintiff's Eighth Amendment rights because a policy at the Wisconsin Secure Program Facility forces him to choose between participating in recreation and using the facility's law library;

13) defendants Bausch and Shannon violated plaintiff's Eighth Amendment rights by fondling him on July 16, 2003;

14) defendant Bausch violated plaintiff's Eighth Amendment rights by grabbing his buttocks on December 17, 2003; and

15) defendant Peter Huibregtse violated plaintiff's Eighth Amendment rights by failing to prevent defendant Bausch from grabbing his buttocks on December 17, 2003.

Now plaintiff has filed a document titled "Order to Show Cause for an Injunction and Temporary Restraining Order," which I construe as a motion for a preliminary injunction. Plaintiff supports his motion with a brief and an affidavit in which he reasserts his claims that he suffered retaliatory conduct at the hands of defendant Kool in November and December 2005. In addition, he avers that he is being subjected to numerous retaliatory acts

because he filed case no. 05-C-157-C and this lawsuit, case no. 06-C-12-C, and numerous institutional grievances about officer misconduct. In particular, he contends that a number of individuals, including persons who are not parties to this lawsuit, retaliated against him in December 2005 and January 2006, interfered with mail he received from the United States Department of Justice and Civil Liberty Unions, destroyed personal magazines, demoted him, refused to comply with his request that he receive medical attention before chemical agents are sprayed on his unit, denied him outside recreation in May 2006 and designated him as a person in need of the “Target Threat/Glance” policy, a policy that allows prison staff to apply physical force if an inmate turns his head to look at an officer during escort. Additionally, he contends that one officer who is not a party to this lawsuit commented to another officer who is not a party to the lawsuit that “he should break my ankle during escort” and that “I want to hurt this motherfucker.” Plaintiff asks that this court require defendants Schneiter and Huibregtse to “immediately arrange transfer of plaintiff Henderson to another maximum security prison to protect the safety and physical well-being and prevent physical harm and the continued retaliation by defendants and staff under their authority . . . .”

This court cannot consider any of plaintiff’s assertions of wrongdoing in the context of a motion for a preliminary injunction in this case. As I told plaintiff in another of his cases, Henderson v. Sebastian, 04-C-39-C, opinion dated April 26, 2004,

In situations in which a plaintiff alleges that state officials have retaliated against him for initiating a lawsuit, it is the policy of this court to require the claim to be presented in a lawsuit separate from the one which is alleged to have provoked the retaliation. This is to avoid the complication of issues which can result from an accumulation of claims in one action. The court recognizes an exception to this policy only where it appears that the alleged retaliation would directly, physically impair the plaintiff's ability to prosecute his lawsuit.

Nothing in plaintiff's affidavit supports a conclusion that he is being physically prevented from prosecuting this lawsuit. Even plaintiff's assertion that he has been threatened with physical harm is insufficient to allow plaintiff to raise his new collection of complaints of officer misconduct in the context of this lawsuit. Plaintiff admits that he has filed an inmate grievance concerning the matter so that prison officials are aware of the alleged threatening comments. Court intervention is neither necessary nor appropriate.

#### ORDER

IT IS ORDERED that plaintiff's "Order to Show Cause for an Injunction and

Temporary Restraining Order,” construed as a motion for a preliminary injunction, is DENIED.

Entered this 24th day of July, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge