

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

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NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

RICHARD SCHNEITER, GARY BOUGHTON,  
PETER HUIBREGTSE, RICK RAEMISCH,  
SANDRA HAUTAMAKI, ELLEN RAY, GERALD  
BERGE, CAPTAIN MONICA HORNER, THOMAS  
CRAVENS and SGT. STEVEN WRIGHT,

Defendants.  
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ORDER

06-C-608-C

In an order dated November 13, 2006, I granted plaintiff leave to proceed in forma pauperis on his claims that (1) defendants Steven Wright, Gerald Berge, Ellen Ray, Peter Huibregtse, Sandra Hautamaki and Rick Raemisch exhibited deliberate indifference to his health by denying him access to adequate amounts of sunlight; (2) defendants Richard Schneider, Ray, Huibregtse, Hautamaki and Raemisch exhibited deliberate indifference to his health by promulgating and enforcing policies that require him to wear clothing contaminated with other inmates' bodily fluids; and (3) defendants Monica Horner, Thomas Cravens, Gary Boughton and Huibregtse violated his rights under the First Amendment by

refusing temporarily to admit him to the High Risk Offender Program in retaliation for his filing lawsuits and grievances. Now before the court is plaintiff's motion for reconsideration, in which he takes issue with the court's decision to deny him leave to proceed on several matters allegedly overlooked in the screening order and to dismiss certain defendants from this lawsuit. In large part, plaintiff's motion is mere disagreement with the legal conclusions I reached when screening his complaint. However, several matters require brief attention.

First, plaintiff contends that when I screened his complaint, I overlooked two claims: that defendants violated his right to free speech and equal protection by placing him in administrative confinement at the Wisconsin Secure Program Facility in retaliation for his "white separatist" beliefs. To the extent that plaintiff is trying to raise an equal protection claim, he has failed to do so. Assuming plaintiff's allegations are true, defendants did not place him in administrative confinement because he is white, but because of his membership in the Aryan Circle, an organization with strong beliefs about racial segregation. It is plaintiff's membership in a white separatist gang, not the color of his skin, that allegedly led to his placement in administrative segregation. Therefore, because plaintiff's allegations do not suggest that defendants have discriminated against plaintiff because of his skin color, he has failed to state an equal protection claim.

Moreover, plaintiff fails to state a claim under the First Amendment. In ¶ 55 of his complaint, plaintiff alleges that former defendants "Cpt. Blackburn and Timothy Haines

revealed that Lindell was never going to be let out of admin[istrative] conf[inement] status because they deemed Lindell a member/affiliate of the “Aryan Circle.” In Westefer v. Snyder, 422 F.3d 570, 574 (7th Cir. 2005), the court of appeals held that Illinois prisoners failed to state a claim under the First Amendment when they alleged that prison officials transferred them to the state’s supermaximum security prison because of their gang memberships. Although the court analyzed the prisoners’ claims under a free association rather than a free speech standard, the distinction is not material here. As the court explained, prisoners have no “right grounded in the First Amendment to belong to a prison gang.” Id. at 575. To the extent defendants retained plaintiff in administrative confinement within the Wisconsin Secure Program Facility because of his affiliation with the Aryan Circle, they did not violate any of his First Amendment rights; consequently, plaintiff will not be allowed to proceed on a claim that they did.

Finally, I note plaintiff’s assertion that he may use this lawsuit to enforce provisions of the consent decree entered in Jones ‘El v. Berge, Case No. 00-C-421-C. As plaintiff knows well, the settlement decree may be enforced only by counsel for the Jones ‘El class, of which plaintiff is a member. Should plaintiff have ongoing concerns about defendants’ compliance with the consent decree, he should write to the settlement monitor, Walter J. Dickey, University of Wisconsin Law School, 975 Bascom Mall, Madison, Wisconsin 53706-1399, or class counsel, Ed Garvey, Garvey McNeil & McGillivray SC, 634 W Main Street # 101,

Madison, Wisconsin 53703-2687. He may not enforce the class action consent decree through private litigation.

ORDER

IT IS ORDERED that plaintiff Nathaniel Lindell's motion for reconsideration of this court's November 13, 2006 order is DENIED.

Entered this 13<sup>th</sup> day of December, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge