

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

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MICHAEL TRISTANO,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendants.  
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ORDER

07-C-189-C

In an order dated April 17, 2007, I granted plaintiff's motion for a preliminary injunction as to defendant Federal Bureau of Prisons and dismissed from the action former defendants United States of America, Ricardo Martinez, Michael Nalley and Harley Lappin. Judgment reflecting these actions was entered on April 20, 2007. Subsequently, on May 3, 2007, plaintiff filed a motion seeking enforcement of the April 17 order. I denied that motion on May 15, 2007. Now defendant Bureau of Prisons has filed an answer. This order is intended to clarify the status of the case and move it to full resolution.

First, I note that the May 17, 2007 order was not a final decision resolving in full the issue raised in this case. Therefore, the entry of judgment on April 20 may have been premature. In the ordinary case, when a plaintiff receives preliminary injunctive relief, he

has made the necessary showing of a likelihood of success on the merits of his claim. However, because it is always possible for a defendant to overcome this showing when the matter is considered in connection with a dispositive motion, such as a motion for summary judgment, or at trial, the case does not end. Here, however, the record suggests that it is not at all likely that defendant will attempt to prove on a motion for summary judgment or at trial that plaintiff cannot succeed on the merits of his claim. Indeed, it seems clear from plaintiff's motion for an order seeking enforcement of the injunction and defendant's response to it that defendant Bureau of Prisons has already provided plaintiff with all the relief to which he is entitled. Therefore, I will vacate the judgment entered in this action on April 20, 2007, but direct plaintiff to show cause why this case should not be dismissed as moot.

#### ORDER

IT IS ORDERED that the judgment entered herein on April 20, 2007 is VACATED.

Further, IT IS ORDERED that plaintiff may have until July 2, 2007, in which to show cause why his case should not be dismissed as moot. If, by July 2, 2007, plaintiff fails to respond to this order, the clerk of court is directed to enter judgment dismissing this case

in its entirety.

Entered this 18th day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge