

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

JOSHUA G. BELK,

Plaintiff,

ORDER

v.

3:07-cv-301-bbc

FEDERAL BUREAU OF PRISONS,

Defendant.

Although this case appeared to have been resolved several months ago, the parties continue to disagree about the appropriate relief. Plaintiff is a federal prisoner who alleged in his complaint that defendant was violating 18 U.S.C. § 3621(b) by refusing to consider him for transfer to a halfway house until the final 10% of his sentence. In an order dated September 24, 2007, I granted plaintiff's motion for a preliminary injunction and directed defendant to consider plaintiff for transfer to a halfway house, using the criteria listed in 18 U.S.C. § 3621(b).

Plaintiff later brought a motion to enforce the injunction, contending that defendant has failed to comply with it. In its response to that motion, defendant conceded that it deferred a decision on plaintiff's transfer to a halfway house until April 2008. In an order

dated December 5, 2007, I directed defendant to do one of two things by December 20: (1) transfer plaintiff to a halfway house now or (2) explain why he does not qualify for such a transfer under § 3621(b) or other relevant authority.

Now, defendant has filed a “motion for clarification” of the December 5 order, but it is more accurately described as a motion to modify the September 24 order granting plaintiff’s motion for a preliminary injunction. In its motion, defendant says it believed that the issue in the case was limited to whether plaintiff was entitled to be transferred to a halfway house six months before his scheduled release date (which is still 1 1/2 years away) because that was the only issue that plaintiff raised in his administrative grievances. Therefore, defendant believed that it did not have to consider plaintiff for immediate transfer but could defer any decision until plaintiff approached the final six months of his sentence.

I cannot rule on defendant’s motion without giving plaintiff an opportunity to respond. Accordingly, IT IS ORDERED that plaintiff may have until January 7, 2008, in which to oppose defendant’s motion. In particular, plaintiff should address the question raised by defendant, which is whether in light of the scope of his grievances, this court may order defendant to consider him for transfer to a halfway house more than six months before

his scheduled release date.

Entered this 19th day of December, 2007.

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