

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

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PIERRE DEPREE HUSBAND,

Petitioner,

v.

ANN TURNER, Madison Police Dept. Detective; and  
DOROTHY DOHEY, Madison Police Dept. Detective,

Respondents.  
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ORDER

07-C-391-C

Plaintiff, a prisoner at the Racine Youth Offender Correctional Facility in Racine, Wisconsin, is proceeding in forma pauperis and pro se in this action on his claim that defendants Turner and Dohey deprived him of his Fifth Amendment right against self-incrimination by failing to advise him of his Miranda rights. Defendants have not yet answered the complaint. Now, however, plaintiff has filed a document he titles “addendum to complaint,” which I construe as a motion to amend his complaint to add claims under the Fourteenth Amendment’s due process and equal protection clauses and to assert embarrassment as an emotional injury.

As an initial matter, I note that plaintiff’s motion is not accompanied by a proposed

amended complaint that will replace the original complaint, as this court's procedures require. Even if plaintiff had submitted such a proposed complaint, however, I would not grant his motion to amend because his amendment is futile with respect to his due process and equal protection claims and unnecessary with respect to his specification that part of the injury for which he seeks damages is embarrassment or emotional harm.

Substantive due process is implicated when the government exercises power without reasonable justification, and is most often described as an abuse of government power that "shocks the conscience." Tun v. Whitticker, 398 F.3d 899, 900 (7th Cir. 2005). However, because it is difficult to place responsible limits on the concept of substantive due process, the Supreme Court has directed lower courts to analyze claims under more specifically applicable constitutional provisions where they exist, rather than addressing a substantive due process challenge. Albright v. Oliver, 510 U.S. 266 (1994) ("Where a particular amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.'") (citing Graham v. Connor, 490 U.S. 386 (1989)); Koutnik v. Brown, 456 F.3d 777, 781 (7th Cir. 2006). In this case, plaintiff is proceeding on his claim that defendants violated his Fifth Amendment right against self-incrimination. Therefore, it is unnecessary to analyze his claim under a substantive due process theory as well.

With respect to plaintiff's equal protection challenge, plaintiff does not allege any facts in his original complaint or in his motion to amend to suggest how his rights under this clause of the Fourteenth Amendment might have been violated. The equal protection clause guarantees that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). To give defendants notice of the basis for his equal protection claim, plaintiff would have to allege at least some minimal set of facts from which an inference may be drawn that defendants intentionally treated him differently from similarly situated individuals. Plaintiff has not done this. His complaint and motion contain no facts describing the similarities between him and one or more other persons and the manner in which defendants' treatment of him differed from the treatment they gave those others. Thus, plaintiff's request to amend his complaint to add an equal protection claim must be denied.

Finally, plaintiff seeks to amend his complaint to describe the embarrassment he suffered as a result of defendants' interrogation of him without first affording him Miranda warnings. However, there is no independent right under federal law that protects an individual from embarrassment. Moreover, to the extent that plaintiff may be seeking to add to his complaint a description of the precise nature of the damages to which he believes he may be entitled, his amendment is unnecessary. Fed. R. Civ. P. 8 requires only that a party's pleading contain a demand for judgment for the relief the pleader seeks. Plaintiff's

complaint already does this. He has asked for money damages from each defendant. At the pleading stage, it is unnecessary for him to specify why he believes he is entitled to those damages.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint to add claims under the Fourteenth Amendment's due process and equal protection clauses and to assert embarrassment as an emotional injury is DENIED.

Entered this 11th day of September, 2007.

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