

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TEDDY NORRIS DAVIS, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. C-12-166
	§	
RICK THALER, <i>et al</i> ,	§	
	§	
Defendants.	§	

MEMORANDUM AND RECOMMENDATION TO DENY
PLAINTIFF DAVIS'S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Pending is plaintiff Davis's motion for a temporary restraining order and preliminary injunction (D.E. 29-1, 29-2).¹ It is respectfully recommended that plaintiff's motion be denied.

I. Jurisdiction.

The Court has federal question jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331.

II. Background facts and plaintiff's allegations.

Plaintiff Davis is an inmate currently assigned to the McConnell Unit of TDCJ-CID (D.E. 1). Plaintiff alleges that he is Native American, and he is being denied the right to practice his religion in violation of the Constitution and The Religious Land Use and Institutionalized Persons Act (RLUIPA). Robbie Goodman was allowed to join the

¹ Plaintiff Davis brought this motion on behalf of himself and his co-plaintiff. The motion is not signed by co-plaintiff Goodman. Plaintiff was warned at the evidentiary hearing that he is not a lawyer and he cannot file motions on behalf of his co-plaintiff. Co-plaintiff Goodman is perfectly capable of filing his own motions for relief. To the extent that plaintiff Davis is acting on behalf of anyone but himself, the request is struck as improper.

lawsuit as a co-plaintiff. Service of process has been ordered. Plaintiff brings this motion for a temporary restraining order and preliminary injunction, complaining that he and co-plaintiff Goodman are not being allowed adequate time together in the law library to work on their lawsuit.

III. Discussion.

In order to obtain a preliminary injunction under Fed. R. Civ. P. 65(a), the applicant must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) the injunction will not disserve the public interest. Affiliated Professional Home Health Care Agency v. Shalala, 164 F.3d 282, 285 (5th Cir. 1999). Injunctive relief is an extraordinary remedy which requires the applicant to unequivocally show the need for its issuance. See Valley v. Rapides Parish School Bd., 118 F.3d 1047, 1050 (5th Cir. 1997). Plaintiff must carry the burden as to all four elements before a preliminary injunction may be considered. United States v. Jefferson County, 720 F.2d 1511, 1519 (5th Cir. 1983).

Plaintiff's motion fails to warrant such an extraordinary remedy. Even assuming plaintiff could demonstrate a likelihood of success on the merits of his claims, he has not suffered any irreparable injury. Plaintiff agrees that he has had law library time with his co-plaintiff, but he merely believes the time allotted has not been sufficient. Plaintiff fails to explain what he could accomplish with more law library time. Service of process has been ordered in the case, and after answers are filed, the court will hear dispositive

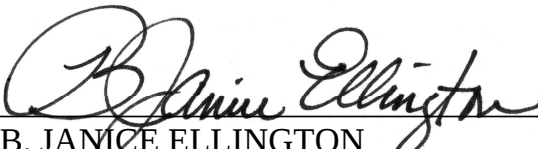
motions. Plaintiff does not represent the co-plaintiff, and the co-plaintiff is capable of filing his own motions and responses to dispositive motions. Plaintiff has not demonstrated any harm at all, and especially not harm outweighed by the defendants' interest in maintaining security at the prison unit.

Finally, plaintiff has not shown that ordering of injunctive relief at this time would serve the public interest. Federal courts are reluctant to interfere in the internal affairs of local jails or state prisons. See Kahey v. Jones, 836 F.2d 948, 950 (5th Cir. 1988) (federal courts defer to prison administrators concerning day-to-day operations). The ordering of injunctive relief at this stage of plaintiff's case would not serve the public interest.

IV. RECOMMENDATION

Based on the foregoing, it is respectfully recommended that plaintiff's motion for a temporary restraining order and preliminary injunction (D.E. 29-1, 29-2) be denied.

ORDERED this 17th day of September, 2012.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1), General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996)(en banc).