

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

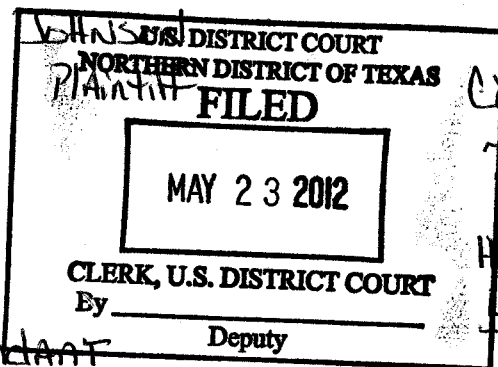
RODERICK KEITH WILSON

VERSUS

GARY JOHNSON

Richard WATHEN,

Defendant



Civil Action Number

7:02-CV-087-M

Honorable BARBARA M.G.

LYNN, U.S. District Judge

MEMORANDUM OF LAW IN SUPPORT OF
Plaintiffs Motion FOR Temporary Restraining Order and
Preliminary Injunction

STATEMENT OF THE CASE

This is an action where Mr. Johnson reads standing because this court established that he was injured by past violations of the law by the Texas Department of Criminal Justice Prison officials. And seeks an injunction because the past violations now have a continuing effect. Because he was released on parole in 2003 injunctive relief became moot and the return to prison in 2007 these acts have a continuing effect on him in an adverse way and the violations are now being repeated in the future. An adverse jury verdict on damages for their past conduct does not prevent this court for granting an injunction because he has no adequate remedy at law and an award of damages or other relief will not protect him. The future violation is shown in this brief that the present conduct against him by prison officials are part of a pattern of officially sanctioned behavior of Texas prison officials, and that the conditions present an imminent threat of harm. The Plaintiff seeks a Temporary Injunction and Restraining Order

And A Preliminary Injunction For Emergency Protection And Issue An order directing TEXAS Prison officials to ARRANGE without undue delay for A Transfer of him to A Place of Incarceration outside OF TEXAS, either in A federal or Another states Correction System To Ensure his SAFETY And that he is moved out of Administrative Segregation And Provided Proper mental health CARE which will no Longer Pose A threat to his mental health.

The extreme Social Isolation And Reduced Environmental stimulation Deprives him of his SANITY, And the Continued Confinement in the TEXAS Prison system Subjects him to An Unusually high Risk of PHYSICAL DANGER that will Result in Death.

STATEMENT OF THE FACTS

AS STATED in the Brief And declaration Submitted With this motion, the Plaintiff Remain in constant fear that Prison officials will follow through With their threats to have him Killed in Retaliation for Petitioning for Redress of his Grievances Administratively And through the Courts for his filing And Prosecution of LAWSuits Against Prison officials (Brief Section I, II, III). The TEXAS Prison officials ARE Being Deliberately Indifferent to the Serious mental Health Risks Posed by the Conditions in Isolation And the Retaliatory Solitary Confinement Poses A GRAVE Risk And threat to the mental Health of Mr. Johnson. (SEE Brief Section IV, II) MR. Johnson HAS filed OVER 25 Grievances STEP 1 And STEP 2 expressing extreme fear for his Life And SAFETY And THAT the Admin Segregation is being used in order to Punish him by housing him there when feasible Alternatives Exist (See Declaration 1-66) And that evidence Shows that his notoriety will not Keep him SAFE And his SAFETY would be best Protected if he Serves out the Remainder of his time in Another Jurisdiction (See Brief Section VII) And AS A direct result of the Prison officials Repeated Acts And omissions he has

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Suffering from physical and emotional pain, humiliation, excruciating emotional pain, and lasting
psychic trauma. (See Brief and Declaration)

ARGUMENT POINT I.

A. THE PLAINTIFF IS THREATENED WITH IRREPARABLE HARM

The Plaintiff alleges that he has been denied care for a serious medical need contrary to a physician's instructions. Such conduct by prison officials is a clear violation of the Eighth Amendment. The Eighth Amendment requires prison officials to provide you with medical care. And this requirement includes mental health. *Estelle v. Gamble*, 429 U.S. 97, 103, 104 (1976). The Plaintiff alleges that the prolonged isolation and sensory deprivation is psychologically damaging and experiencing a degree of psychological trauma in reaction to the extreme special isolation and the severely restricted environmental stimulation in administrative isolation and special housing unit. Courts have held that housing mentally ill prisoners under conditions of extreme isolation is unconstitutional. *Jones et al v. Berge*, 164 F. Supp. 2d 1096, 1116-25 (N.D. Wisc. 2001). The psychological impact of isolated confinement can have disastrous consequences. *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (finding the risk of mental illness on those likely to develop mental illness is unreasonable and violates the Eighth Amendment). Isolation can provide extreme stress and worsen their condition and therefore violates their rights.

The Plaintiff alleges that he has been denied the right to be free from cruel and unusual punishment in violation of the Eighth Amendment because his past sexual enslavement by GANBS and because prison officials and prison guards have branded him a "snitch" he now faces a substantial risk of further sexual assault, brutal beatings, and even death by being returned to Texas prison system custody from New Mexico.

THE TEXAS Prison System does not operate in compliance with the Eighth Amendment and that his Return to Texas Shows he is in Grave Danger. Exposing Prisoners to Dangerous Conditions may violate the Constitution and Prison officials violate the Constitution when they knowingly expose a Prisoner to a Condition that Poses an unreasonable Risk of Serious Damage to that Prisoner's health *Helling v. McKinney* 509 U.S. 25 (1993). And Prison officials violate the Constitution when they are "deliberately indifferent" to a Prisoner's safety *Farmer v. Brennan*, 511 U.S. 825, 836-37 (1994). In this case Circumstances shows, Transfer in this case is Constitutionally Required to protect Life and Safety. *Streeter v. Hopper*, 618 F.2d 1178, 1182 (5th Cir. 1980) (Prison officials had a Responsibility under the Eighth Amendment to protect his safety and thus Transfer was appropriate). *Walker v. Lockhart*, 713 F.2d 1378 (8th Cir. 1983) (Request to be transferred to another Prison system for his safety was granted) The Plaintiff alleges that the Conditions and Transfer BACK to the Texas Prison System is in Retaliation Against him for Exercising his first Amendment Right to file grievances and for exercising his Right of Access to the Courts. It is unconstitutional to Retaliate Against Prisoners for Exercising the Right of access to the Courts and Un-Constitutional Retaliation may Be Remedied by an injunction, even if the Practices are not formally part of official Policy or by an award of damages. *Ruiz v. Estelle*, 679 F.2d 1115, 1154 (5th Cir. 1982)

The Transfer in Retaliation for bringing lawsuits or Exercising other Constitutional Rights are unlawful as are Transfers that seriously threaten a Prisoner's Life or Safety. *Fitzharris v. Wolff*, 702 F.2d 836, 839 (9th Cir. 1983) *Morris v. Powell*, 449 F.3d 682, 687 (5th Cir. 2006) (Transfer to a more Dangerous Prison); See also Cases cited in Section C of ~~these~~ Points.

AS A MATTER OF LAW, THE CONTINUING VIOLATION OF Constitutional Rights Constitutes Irreparable HARM. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *American Trucking Associations Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058-59 (9th Cir. 2009) This Principle has been Applied in Prison litigation generally, see *Jolly v. Loukaitis*, 76 F.3d 468, 482 (2nd Cir. 1996); *Newsome v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989); *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2nd Cir. 1984); *McClendon v. City of Albuquerque*, 272 F.Supp.2d 1250, 1259 (D.N.M. 2003).

IN Addition, the Plaintiff is threatened with irreparable harm because of the nature of the conditions of confinement and the injuries are a result of past violations of the law and has standing to seek an injunction because the past violations have continuing effects. *Kerr v. Farley*, 95 F.3d 472 (7th Cir. 1996) and the violation has been and is likely to be repeated in the future *Butler v. Dowd*, 979 F.2d 661, 674 (8th Cir. 1992). He can show a future likelihood of future violation because the showing of the Texas Prison officials present conduct and actions in which he challenge are sanctioned by a written policy and are part of a pattern of officially sanctioned behavior, and the conditions otherwise present an imminent threat of harm *Smith v. Arkansas Dept. of Corrections*, 103 F.3d 637, 644 (8th Cir. 1996) (Prisoner who had not yet been assaulted had standing to challenge conditions that presented a serious risk of assault). The likelihood of recurrence of violations against Mr. Johnson is greater in prison than it was in civilian life. *Williams v. Wilkinson*, 132 F.Supp.2d 601, 606 (S.D. Ohio 2001) ("by virtue of his confinement, Mr. Williams is in continual contact with corrections officers whose job it is to scrutinize closely his behavior for possible rule infractions") *Smith v. Zachary*, 255 F.3d 446, 450 (7th Cir. 2001) (Harassment is made possible by the corrections environment)

B. The Balance of Hardships Favors the Plaintiff

In deciding whether to Grant TRO's And Preliminary injunctions, Courts Ask whether the Suffering of the moving Party if the motion is denied will Outweigh the Suffering of the non-moving Party if the motion is Granted. See e.g. *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984) (holding that dangers posed by Prison overcrowding outweighed state's financial and Administrative concerns); *Duran v. Anaya*, 642 F.Supp. 510, 527 (D.N.M. 1986) (holding that Prisoner's interest in safety And medical care outweighed state's interest in saving money by cutting staff).

In this case, the Present Suffering of the Plaintiff And his Potential Suffering And Death if he is Continued to Remain in virtual Solitary isolation And is Continued deprivation of human contact and other sensory and Intellectual stimulation ~~can~~ have Disastrous Consequences. Due to his notoriety And Claims that Texas Prison Guards And officials threaten And Abuse him makes him An inviting Target for Any disgruntled Prisoner or Guard who wants To Embarrass Prison Authorities. The Substantial Risks to him are too Enormous to Continue to ignore. The "Sufferings" the defendant's will Experience if the Court Grants the order will consist of Placing him on A VAN And TAKING him to A Prison system where he won't remain in virtual isolation And be entitled to the same Privileges And Amenities As any other Prisoner in the Institution. which is something that they Can do And are obligated to do BY Keeping him safe without the use of Isolation, As they do for members of the Prison Population on A Daily Basis. the Defendant's hardship Amounts to no more than business As Usual.

C. THE PLAINTIFF IS LIKELY To SUCCEED ON THE MERITS

on the merits. What the Defendant TEXAS Prison officials have done in retaliation for his filing grievances and lawsuits against prison officials and their conspiring to place and keep him in the Prisons Special Management Facility knowing placing a prisoner as mentally ill as him in segregation can violate the Eighth Amendment because they are particularly susceptible to the psychological effects of isolation so this placement is an atypical and significant hardship where it would not be for a person without mental illness. The prison officials violate the Constitution when they are "deliberately indifferent" to a prisoner's safety when they know they are at a substantial risk of serious harm. Farmer v. Brennan, 54 U.S. 825, 836-37 (1994) to the prisoner's health and violates the Eighth Amendment because it amounts to "unnecessary and wanton infliction of pain contrary to contemporary standards of decency." Helling v. McKinney, 113 S.Ct at 2480. Many other courts have found these atrocities unconstitutional. See, Estelle v. Gamble, 429 U.S. 97 at 104. (Deliberate indifference to serious medical need of prisoner constitutes the "unnecessary and wanton infliction of pain" proscribed by the Eighth Amendment); Page v. Norvell, 186 F.Supp. 2d 1134, 1136 (D.Ore. 2000) (noting lack of dispute that prisoner with a diagnosis of bipolar disorder and with great anxiety had a serious need);

Many courts have also held housing mentally ill prisoners under conditions of extreme isolation is unconstitutional. See Jones-Eli v. Berge, 164 F.Supp. 2d 1096, 1116-25 (W.D. Wis. 2001) (granting preliminary injunction requiring removal of seriously mentally ill from Jupermax Prison); Ruiz v. Estelle, 37 F.Supp. 2d 855, 915 (S.D. Tex 1999) (holding "administrative segregation is being utilized unconstitutionally to house mentally ill inmates - inmates whose illness can only be exacerbated by the depravity of their confinement"); Coleman v. Wilson, 912 F.Supp. 1282, 1320-21 (E.D. Cal 1995) (Inappropriate disciplinary treatment and placement in segregation units of prisoner's with mental illnesses was unconstitutional)

Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (holding retention of mentally ill prisoners in Pelican Bay isolation unit unconstitutional); *Casoy v. Lewis*, 834 F. Supp. 1477, 1548-49 (D. Ariz. 1993) (condemning placement and retention of mentally ill prisoners in lockdown status); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D. NY 1988) (holding that psychiatric evidence that prison officials fail to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" raises a triable Eighth Amendment issue); inmates of *Occoquan v. Barry*, 717 F. Supp. 854, 868 (D. DC 1989) (holding that inmates with mental health problems must be placed in a separate area or a hospital and not in administrative and punitive segregation area); In *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) the court held the Eighth Amendment was violated by placement in the extremely isolating conditions at the Pelican Bay administrative segregation unit in California of "the already mentally ill, as well as persons with borderline personality disorder, brain damage or mental retardation, impulse-ridden personalities, or a history of prior psychiatric problems or chronic depression. For these inmates placing them in the SHU is mental equivalent of putting an asthmatic in a place with little air to breathe")

Actions that courts have found to sufficiently adverse to support a retaliation claim: Assaults / threats; *Wilson v. Silcox*, 151 F. Supp. 2d 1345, 1350-51 (N.D. Fla. 2001) (verbal harassment and threats of bodily harm); *Hudspeth v. Figgins*, 584 F.2d 1345, 1348 (4th Cir. 1978) (death threats); Placement in segregated confinement *Trobaugh v. Hall*, 176 F.3d 1087, 1088 (8th Cir. 1999) (three days of isolation for persisting in pursuing grievances conceded to violate first amendment); *Auletta v. France*, 233 F. Supp. 2d 396, 402 (N.D. NY 2002) (seven and a half days keeplock); *Morris v. Powell*, 449 F.3d 682, 687 (5th Cir. 2006) (transfer to a more dangerous prison)

Manuel v. Rodriguez, 2008 WL 1000000 (9th Cir. 2/28/08) (8th Cir. 1993) 304
(blocking Reclassification opportunities, worsening living conditions); Davis v. Goord, 320 F.3d 346, 353 (2d Cir. 2003) (obstruction of grievances); Purkey v. CCA Detention Center, 339 F.Supp.2d 1145, 1154-55 (D.Kan. 2004) (harassment, threats, placement in segregation, scattering and disassembling of papers, confiscation of legal materials); Rodriguez v. McClennin, 399 F.Supp.2d 228, 239-40 (S.D.N.Y. 2005) (disciplinary charge following grievance).

The Transfer from New Mexico and Isolation may violate Mr. Johnson's Rights even if they do not present a due process issue. Fitzharris v. Wolff, 702 F.2d 836, 839 (9th Cir. 1983) (Transfers in Retaliation for bringing litigation or for exercising other Constitutional Rights are unlawful. As are transfers that seriously threaten a prisoner's life or safety) (The Constitution requires prison officials to provide "Reasonable Safety" for prisoners. They must protect them from assault by other inmates and from unreasonable hazardous living and working conditions and must refrain from subjecting them to the unnecessary use of force.) Farmer v. Brennan, 511 U.S. 825, 844 (1994); Helling v. McKinney, 509 U.S. 25, 33 (1993). The "deliberate indifference" standard is shown that prison officials displayed "deliberate indifference" or "reckless disregard" for safety by failing to act reasonably. In response to danger. Farmer v. Brennan 511 U.S. At 828, 834-47 (1994); Goka v. Bobbitt, 862 F.2d 646, 651 (7th Cir. 1988) (The Constitution is violated "where defendant's know of danger or where the threat is so substantial or pervasive that their knowledge could be inferred, and yet defendant's fail to embrace a policy or take other reasonable steps which may have prevented the harm).

If protective measures prove inadequate in practice, of course officials are obliged to take further action. Jensen v. Clarke, 94 F.3d 1191, 1200-01 (8th Cir. 1996) (holding injunction was appropriate despite defendant's post complaint actions)

Prison System or Federal Custody may be Constitutionally Required to Protect Life And Safety. WALKER V. LOCKHART, 713 F.2d 1378, 1383 (8th Cir. 1983); Streeter v. HOPPER, 618 F.2d 1178, 1182 (5th Cir. 1980); Moore v. Schuetzle, 486 F. Supp. 2d 969, 481-82 (D. N.D. 2007)

A Prisoners Claim for injunctive Relief for Prison Conditions or Practices Generally Becomes moot if the Plaintiff is Released from Prison Koch v. Schiro, 339 F.3d 1099, 1100-01 (9th Cir. 2004) though they will do so if the facts indicate that re-incarceration is likely Demery v. Arapaho, 378 F.3d 1020, 1027 (9th Cir. 2004) (Challenge to Jail Practice was not moot where some released plaintiffs had been jailed repeatedly) Chapman v. Pickett, 568 F.2d 22, 26-27 (7th Cir. 1978) (Release from Prison did not moot claim for expungement of disciplinary Record); Holland v. New Jersey, 246 F.3d 267, 274 (3rd Cir. 2001) (A case is not moot, even if the Appellant Primary injury is Resolved, so long as the Appellant continues to suffer some harm that a favorable court decision would remedy") An Adverse Jury verdict on damages for Past Conduct does not necessarily Prevent the Court from Granting an injunction see Burton v. Armontrout, 975 F.2d 543, 544-45 (8th Cir. 1992) (noting Court may Rely on evidence not Available to the Jury, And Jury's factual findings may be inconclusive, especially if there is a General Verdict)

Prisoners have been granted Injunctions by the Courts in A variety of Cases Such as Mr. Johnson's Dec. Stringer-El v. Nix, 945 F.2d 1015 (8th Cir. 1991); Pletka v. Nix, 943 F.2d 916 (8th Cir. 1991); Hayes v. Lockhart, 754 F.2d 281 (8th Cir. 1985); Jones-El v. Berge, 164 F. Supp. 2d 1096, 1116-25 (W.D. Wis. 2001); Yarbough v. Roach, 736 F. Supp. 318 (D.D.C. 1990) (Requiring medical Treatment)

D. THE RELIEF SOUGHT WILL SERVE THE PUBLIC INTEREST

In this CASE, the GRANT of Relief will serve the Public Interest because it is ALWAYS in the Public Interest for Prison officials to obey the LAW, especially the Constitution. *PHILIPS-ROPER V. NIXON*, 545 F.3d 685, 690 (8th Cir. 2008); *DURAN V. ANAYA*, 642 F. Supp. 510, 527 (D.N.M. 1986) ("Respect for the law, particularly by officials responsible for the Administration of the states Correctional System, is in itself a matter of the highest Public Interest."); *HEWELYN V. OAKLAND COUNTY PROSECUTOR'S OFFICE*, 402 F. Supp. 1379, 2393 (E.D. MICH. 1975) (stating "the Constitution is the ultimate expression of the Public INTEREST.").

POINT II

THE PLAINTIFF SHOULD NOT BE REQUIRED TO POST SECURITY

Usually A litigant who obtains interim injunctive Relief is Asked to Post Security. Rule 65(c), Fed. R. Civ. P. However, The Plaintiff is An indigent Prisoner and is unable to Post Security. The Court has ~~directed~~ discretion to excuse An impoverished litigant from Posting Security. *ELLIOT V. KIESWETTER*, 98 F.3d 47, 60 (3rd Cir. 1996) (stating That District Courts have discretion to Waive the Bond requirement contained in Rule 65(c) of the Federal Rules of Civil Procedure if "The BALANCE OF THE EQUITIES Weighs Overwhelmingly in FAVOR of The Party Seeking the injunction"). *MOLTAN CO. V. EAGLE-PITCHER INDUSTRIES, INC.*, 55 F.3d 1171, 1176 (6th Cir. 1995). In view of the Serious Medical And Physical Danger confronting the Plaintiff, the Court should Grant the Relief Requested without Requiring the Posting of Security.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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2400 WALLACE PACK RD.
NAVASOTA, TX 77868

RE: THE HONORABLE U.S. DISTRICT JUDGE
BARBARA M.G. LYNN, Presiding

RODERICK KEITH JOHNSON,
Plaintiff

vs.

GARY JOHNSON,
RICHARD WATHEN
Defendants

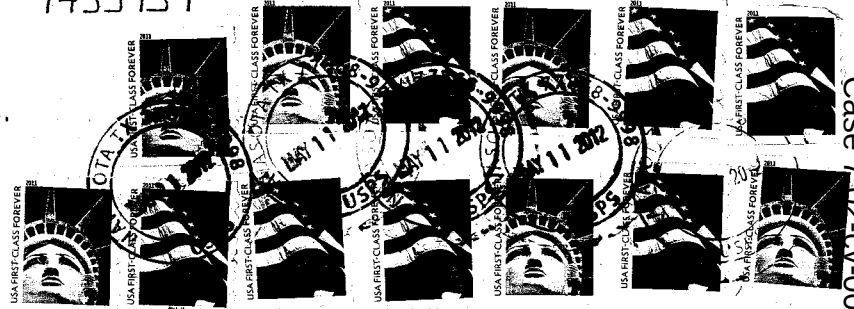
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- * MOTION FOR APPOINTMENT OF COUNSEL
- * Declaration in Support of Appointment of Counsel
- * ORDER To Show Cause for Temporary Restraining order
- * Declaration, memorandum, Brief In Support of Temporary Restraining order And Preliminary injunction

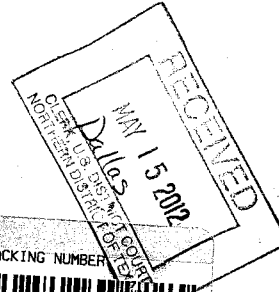
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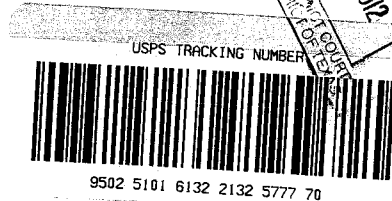
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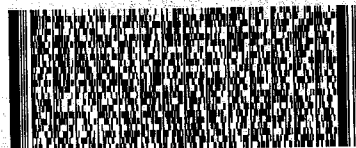


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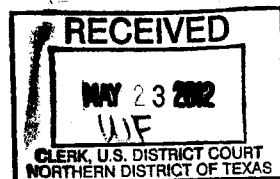
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