

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-00245-MSK-MJW

REVEREND MATT HALE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

**RESPONSE TO PLAINTIFF’S RENEWED MOTION FOR AN ORDER RELEASING
HIM FROM A SPECIAL HOUSING UNIT [DOC. 106]**

Just three weeks after this Court properly declined to order the Federal Bureau of Prisons (“BOP”) to change Hale’s housing assignment, Doc. 104, he filed a new motion seeking the same relief. Doc. 106. He asserts that circumstances have changed, *see id.* at 1-3, but the circumstances that warrant his current confinement in the Special Housing Unit (“SHU”) at the Federal Correctional Institution in Terre Haute, Indiana (“FCI Terre Haute”) have not changed. There is no factual or legal basis for the Court to reverse course and issue an order requiring the BOP to move Hale.

I. Hale is currently confined in the SHU for safety and security reasons, but the process to transfer him to a different prison has commenced.

Hale has now been referred for possible designation to another prison. *See* Second Declaration of Warden Stephen Julian, Ex. 1 at ¶ 2.¹ In the correctional judgment of the BOP,

¹ For safety and security reasons, the BOP does not publish details concerning potential transfers of inmates and the timing of their movement between institutions.

that prison is “commensurate with [Hale’s] safety and security needs.” *Id.* In the process for determining whether Hale will ultimately be moved to that institution, his views will be heard. But until that process is completed and a final decision made, “Hale’s placement in the SHU is appropriate.” *Id.* at ¶¶ 2-3; *see also* 28 C.F.R. 541.23(a) (an inmate who is “pending classification or reclassification” may be placed on administrative detention status and housed in a SHU). And, in the BOP’s judgment, Hale cannot be safely housed in the general population at FCI Terre Haute at this time because of “safety and security concerns related to Hale and other inmates[.]” Ex. 1 at ¶ 4.

There is ample support for the BOP’s judgment. As the BOP explained in its response to Hale’s first motion, Hale was placed in the SHU after he authored a threatening communication about a federal judge and attempted to persuade another inmate to send it outside the prison. *See* Doc. 101 at 2-3.² BOP officials evaluated Hale’s conduct in light of information they know about Hale and his followers outside the prison. *Id.* They also took into account the fact that an inmate in the general-population unit at FCI Terre Haute became a confidential informant against Hale. *See* Doc. 101-1 at ¶ 12. Hale has publicly identified an inmate he believes to be the informant. *See* Doc. 102 at 22.

Hale disagrees with the prison officials’ conclusions, but his opinion is not determinative. Judicial deference is accorded to the professional judgment of correctional officials, “who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” *Toevs v. Reid*, 685 F.3d 903, 910 (10th Cir. 2012) (quoting *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003)). As this Court found in

² The BOP incorporates by reference its prior briefing pursuant to Fed. R. Civ. P. 10(c).

rejecting Hale’s first motion, the BOP “has a real and legitimate justification for restricting [Hale’s] public messages to his followers.” Doc. 104 at 4.

That justification remains, notwithstanding Hale’s arguments to the contrary. Hale claims that the Warden at FCI Terre Haute said that Hale was “innocent” of attempting to circumvent the prison’s mail-monitoring procedures, *see* Doc. 106 at 2, but that is not the Warden’s view of the matter. In the attached sworn declaration, the Warden avers that he did not make that statement. Ex. 1 at ¶ 5. And, very recently, a BOP Discipline Hearing Officer listened to Hale’s evidence and reaffirmed that Hale is *not* innocent. Following a rehearing of disciplinary charges against Hale on December 29, 2016, Hale was again found to have attempted to circumvent mail-monitoring procedures by asking another inmate to mail the inflammatory “press release” castigating a sitting federal judge. *Id.* at ¶ 6.

Nor does it matter that, from another prison and under different circumstances, Hale was allowed to mail out different “press releases” critical of other federal judges. *See* Doc. 106 at 3. What matters is that the press release at issue here “target[ed] the judge on the basis of the Judge’s presumed ethnicity” and “use[d] racially inflammatory” language.” Ex. 1 at ¶ 7. That is important because Hale—and his followers, too—are “admittedly ‘pro-white and anti-semitic,’” and, “in the past, violent acts have been committed in [Hale’s] name.” *See* Doc. 104 at 4; *see also, e.g., Hale v. United States*, No. 1:08 CV 94, 2010 WL 2921634, *25 (N.D. Ill. July 22, 2010), *aff’d*, 448 F.3d 971 (7th Cir. 2006) (discussing Hale’s comments concerning another federal judge who “had created a ‘state of war’” with Hale’s group, and describing Jews as “criminal dogs” on whom there is “open season”).

The circumstances are the same as when the Court denied Hale’s first motion: he is incarcerated in the SHU while the BOP makes a designation decision, and he cannot be returned to the general-population unit where he was previously housed. These correctional decisions reside, by law, with the BOP. 18 U.S.C. § 3621(b) (“The Bureau of Prisons *shall* designate the place of the prisoner’s imprisonment.”) (emphasis added); *see also* Doc. 101 at 7 (discussing Supreme Court and Tenth Circuit cases holding that an inmate has no constitutional right to a particular place of confinement or to a specific security classification). As before, *see* Doc. 104 at 5, this Court should decline to second-guess the BOP’s security decisions about the manner of Hale’s confinement.

II. Hale must be restrained in accordance with national BOP policy while he is in the SHU, but that does not prevent him from taking depositions while he is there.

National BOP policy requires that SHU inmates be restrained when they are outside their cells. Ex. 1 at ¶ 8. No SHU inmate, including Hale, is exempt from those restraint procedures.

Id.

Although not ideal from Hale’s perspective, these restraints do not prevent him from conducting depositions. He will not be “immobilized,” as he asserts. Doc. 106 at 4. The restraints will allow him to stand, walk, and sit. He will be able to move his papers. He will be able to take breaks when he needs them. A prison staff member will be assigned to assist him, and undersigned counsel will help him make arrangements for a court reporter. *See* Ex. 1 at

¶ 10.³

³ Prison personnel carefully considered Hale’s request to alter the SHU restraint procedures that apply to all SHU inmates, but it was determined that it would be inappropriate to change these safety and security measures.

Some of the depositions Hale wants to take can be conducted at FCI Terre Haute, while the process concerning Hale's possible transfer to another prison is proceeding.⁴ At the conclusion of that process, if Hale is transferred, the BOP will expedite the moving of Hale's legal materials to his new location so that any remaining depositions can be completed promptly.

CONCLUSION

The Court should not issue a protective order to alter prison conditions that have nothing to do with discovery in this case and that do not prevent Hale from conducting discovery. The Court should deny Hale's motion.

Respectfully submitted on January 9, 2017.

ROBERT C. TROYER
Acting United States Attorney

s/ Susan Prose
Susan Prose
Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0404
E-mail: susan.prose@usdoj.gov

Counsel for the Federal Bureau of Prisons

⁴ Hale also has the option of using the deposition-by-written-questions process. *See* Fed. R. Civ. P. 31.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on January 9, 2017, I served the foregoing document, and the exhibit referenced therein, to the following non-CM/ECF participant in the manner indicated by the non-participant's name:

Matthew Hale (U.S. Mail)
Reg. No. 15177-424
FCI – Terre Haute
P.O. Box 33
Terre Haute, IN 47808

Counsel for the Federal Bureau of Prisons (e-mail)

In addition, I emailed this filing to BOP personnel and asked them to hand deliver it to Mr. Hale.

s/ Susan Prose
Susan Prose
United States Attorney's Office

Attachment 1

Second Declaration of Warden Stephen Julian

Hale v. Fed. Bureau of Prisons,
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FEDERAL BUREAU OF PRISONS,

Defendant.

SECOND DECLARATION OF STEPHEN JULIAN

I, Stephen Julian, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby make the following declaration relating to the above-entitled matter:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (“Bureau”). I am the Warden of the Federal Correctional Institution (FCI), Terre Haute, Indiana. I have been the Warden of FCI Terre Haute since October 2015.¹

2. Inmate Hale, the plaintiff in this case, is housed in the Special Housing Unit (SHU) at FCI Terre Haute at this time. He has been referred for possible designation to another institution commensurate with his safety and security needs. He will be transferred to that other institution at the conclusion of the referral process, if appropriate.

¹ My duties as Warden of FCI Terre Haute are set forth in my October 4, 2016, declaration in this case. *See* Doc. 101-1 ¶ 2.

3. Until that designation decision is made, Hale's placement in the SHU is appropriate. Due to Hale's institutional conduct and safety and security concerns related to Hale and other inmates, he is not appropriate for placement in the general population at FCI Terre Haute at this time.

4. Decisions concerning Hale's confinement have been taken for safety and security reasons and to promote the Bureau's legitimate penological interests, and not for any retaliatory purpose.

5. Hale asserts that I informed him that he was "innocent" of any attempt to circumvent the prison's mail-monitoring procedures. *See* Doc. 106 at 2. I did not make that statement.

6. On December 29, 2016, after Hale filed an administrative remedy, his disciplinary charge of attempted circumvention of mail-monitoring procedures was reheard by a Bureau Discipline Hearing Officer. Following that rehearing, Hale was again found to have committed the prohibited act of attempted abuse of the mail by circumventing mail-monitoring procedures. All sanctions against Hale from the original hearing, including disallowance of 27 days of good-conduct time, were upheld.

7. With regard to Hale's assertion that he was allowed to mail "press releases" critical of federal judges while he was incarcerated at the ADX, *see* Doc. 106 at 3, that fact does not alter the Bureau's assessment of the press release that was inadvertently released from FCI Terre Haute. The Bureau assesses that press release—which targets the judge on the basis of the judge's presumed ethnicity and uses racially inflammatory and personally hostile language—as a dangerous communication. Whatever communications Hale may have been allowed to send in the past does not alter the Bureau's evaluation of this press release.

8. By national Bureau policy, SHU inmates must be restrained when they are outside their cells. That rule applies across the board, to all SHU inmates, including Hale. The rule is designed to protect the safety of Bureau staff, inmates, and persons in the community who may come into contact with SHU inmates. Typically, when a SHU inmate is outside his cell, his hands are cuffed behind his back, and he is escorted by prison staff. Alternatively, if a SHU inmate's hands are cuffed in the front, he must wear a waist chain to which his hand cuffs are linked and be escorted by prison staff.

9. In a deposition in the SHU at FCI Terre Haute, Hale would be in physical contact not only with prison personnel, but also with a private court reporter who is not employed by the Bureau. Therefore, Hale—like all other SHU inmates—will be required to be restrained with hand cuffs and a waist chain in that setting.

10. This arrangement will not prevent Hale from moving papers and other items on the table in front of him. Moreover, adjustments that do not compromise safety and security will be made to ensure that Hale is as comfortable as possible. In addition, a staff member will be assigned to provide Hale any reasonable assistance he may need. There is no reason that Hale cannot conduct depositions in the SHU at FCI Terre Haute.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed this 6th day of January, 2017, in Terre Haute, Indiana.

s/ Stephen Julian
Stephen Julian, Warden
FCI Terre Haute
Federal Bureau of Prisons