

**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 OBJECTIONS [DOC. 137]

The order denying Mr. Hale’s motion to be released from his current housing assignment was not “clearly erroneous” or “contrary to law.” *See* Doc. 126; *see also* Fed. R. Civ. P. 72(a) (“The district judge in the case must consider timely objections and modify or set aside any part of [a nondispositive] order that is clearly erroneous or contrary to law.”). Mr. Hale’s arguments do not show otherwise. Nor do Mr. Hale’s arguments support recusing the United States Magistrate Judge assigned to this case. The Court should deny Mr. Hale’s objections (Doc. 137).

A. The Magistrate Judge did not err in declining to order the BOP to release Mr. Hale from a Special Housing Unit in a prison in another state.

There is no legal justification for the Court to overturn the order denying Mr. Hale’s renewed motion to remove him from the Special Housing Unit (“SHU”) at the Federal Correctional Institution in Terre Haute, Indiana (“FCI Terre Haute”). *See* Doc. 126.

There is ample evidence in the record to support the Magistrate Judge’s conclusion that

Mr. Hale should not be released from the SHU, including the BOP's assessment that Mr. Hale issued a dangerous and threatening communication about a sitting federal judge; that Mr. Hale was disciplined for circumventing the mail-monitoring procedures at FCI Terre Haute; that Mr. Hale has publicly identified an inmate in the general population at FCI Terre Haute whom Mr. Hale believes was a confidential informant against him; and that Mr. Hale can conduct discovery in this case from the SHU, even if he does not view those circumstances as ideal. *See* Doc. 101 at 2-7; Doc. 101-1 (Declaration of Warden Julian) (discussing evidence in support of Mr. Hale's SHU placement); Doc. 108 at 2-6; Doc. 108-1 (Second Declaration of Warden Julian) (further discussing evidence in support of Mr. Hale's SHU placement).¹ And Mr. Hale, who has been convicted of soliciting the murder of a federal judge, is not in the same position as the President of the United States when it comes to criticizing judges. *See* Doc. 137 at 3; *see also United States v. Hale*, 448 F.3d 971, 983 (7th Cir. 2006). His constitutional rights "are more limited in scope than the constitutional rights held by individuals in society at large." *Shaw v. Murphy*, 532 U.S. 223, 229 (2001); *see also, e.g., Hudson v. Palmer*, 468 U.S. 517, 523 (1984) (recognizing that inmates retain only those First Amendment rights "not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system")

There is no support for Mr. Hale's contention that Judge Watanabe "failed to consider" the evidence he presented, including a declaration that Mr. Hale filed on January 9, 2017. *See* Doc. 137 at 4-5. Mr. Hale also suggests that Judge Watanabe did not consider the "press release" about a federal judge that is an issue related to his SHU placement, Doc. 137 at 2-3, but in the order denying Mr. Hale's first motion to be removed from the SHU, Judge Watanabe

¹ The BOP incorporates its prior briefing by reference pursuant to Fed. R. Civ. P. 10(c).

specifically stated that he *did* review the press release. *See* Doc. 104 at 3. And Judge Watanabe's reference to the BOP moving Mr. Hale "to another facility," Doc. 126 at 2, does not show any lack of understanding on Judge Watanabe's part, as Mr. Hale claims. *See* Doc. 137 at 4 (asserting that Judge Watanabe "failed to understand the remedy sought here"). Mr. Hale plainly wants out of the SHU; the reference to "another facility" is a matter of semantics that shows no clear error in the order denying Mr. Hale's motion.

At bottom, Judge Watanabe simply found the BOP's arguments and supporting evidence to be more compelling than Mr. Hale's. That is the very sort of decision a federal judge is required to make, and the fact that that decision went against Mr. Hale shows no error in the Court's analysis. Moreover, the correctional assessment concerning where Mr. Hale can be safely housed resides, by law, with the BOP, and not the Court. *See* 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). Judge Watanabe properly declined to second-guess the BOP's security decisions about Mr. Hale's confinement. That decision is not clearly erroneous or contrary to law.

Finally, there has been a recent development that is relevant to Mr. Hale's request to be removed from the SHU at FCI Terre Haute. Undersigned counsel is authorized to represent that Mr. Hale has now been referred for placement in another prison. If Mr. Hale chooses to challenge that placement through the BOP's administrative-remedy process, as is his right, he likely will remain in the SHU until the administrative-remedy process is completed. At the conclusion of the administrative-remedy process, Mr. Hale will either be sent to the prison where

he has been designated or, should he prevail in an administrative challenge to that placement, he will be designated to another prison. In either case, he will not remain in the SHU at FCI Terre Haute. There is no reason for the Court to intervene in an ongoing process that will result in Mr. Hale's being assigned to a new housing situation.

In sum, the Court should not overturn the order denying Mr. Hale's motion to remove him from the SHU.

B. Mr. Hale has not shown that Judge Watanabe should be recused.

There is no basis for Judge Watanabe to be recused from this case, which is the primary thrust of Mr. Hale's motion. Doc. 137 at 5 ("to the extent the foregoing could be construed as a motion to recuse Magistrate Judge Watanabe, Hale makes that motion at this time"). Mr. Hale questions Judge Watanabe's impartiality, alleges that Judge Watanabe is biased against him, and suggests that the Judge's "own personal racial or religious background" may have a role to play. *See id. passim*. The Court should deny any motion to recuse Judge Watanabe because the record here provides no basis to conclude that his impartiality can reasonably be questioned.

Pursuant to 28 U.S.C. § 455, a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). A judge "shall also disqualify himself . . . [w]here he has a personal bias or prejudice concerning a party." *Id.* at § 455(b)(1). A judge has a strong duty to sit when there is no legitimate reason for his recusal. *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659 (10th Cir. 2002). The recusal "statute is not intended to give litigants a veto power over sitting judges, or a vehicle for obtaining a judge of their choice." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993). Recusal is "appropriate only where a reasonable person, were he to know all the circumstances,

would harbor doubts about the judge's impartiality." *United States v. Mendoza*, 468 F.3d 1256, 1262 (10th Cir. 2006) (quotation omitted).

Importantly, a "judge should not recuse himself on unsupported, irrational, or highly tenuous speculation." *Hinman v. Rogers*, 831 F.2d 937, 939-40 (10th Cir. 1987) (citation omitted). "Unsubstantiated suggestions, speculations, and opinions, are insufficient to establish even the appearance of any bias, prejudice, or misconduct that would warrant judicial recusal." *Carpenter v. Boeing Co.*, 456 F.3d 1183, 1204 (10th Cir. 2006).

Here, Mr. Hale provides nothing more than "unsubstantiated suggestions, speculations, or opinions" regarding the judicial conduct of Judge Watanabe. He claims that Judge Watanabe is in the "Defendant's camp" because he has ruled in favor of the BOP on some motions. Doc. 137 at 1. He asserts that there "is simply no possibility that any impartial judge" could rule against him, *id.* at 2 (emphasis in original), but his view of the matter hinges on the fact that *Mr. Hale* is convinced that he is correct. The fact that Judge Watanabe saw the issues differently does not demonstrate that his disagreement was prompted by a lack of impartiality. As discussed above, there is compelling legal authority and evidence to support Judge Watanabe's conclusion that Mr. Hale should not be released from the SHU.

Mr. Hale disagrees with the BOP's assessment of these matters, but the fact that a federal judge has concluded that the BOP has the stronger position does not show that the judge is biased. "Adverse rulings . . . cannot in themselves form the appropriate grounds for disqualification." *Green v. Dorrell*, 969 F.2d 915, 919 (10th Cir. 1992). Nor do Mr. Hale's "unsubstantiated suggestions of personal bias or prejudice" suffice to establish bias or lack of impartiality. *Switzer v. Berry*, 198 F.3d 1255, 1258 (10th Cir. 2000). In short, because Mr. Hale

provides nothing more than an “unsubstantiated suggestion” of bias on the part of Judge Watanabe, his argument fails to overcome Judge Watanabe’s “strong [] duty to sit when there is no legitimate reason to recuse.” *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995). The Court should deny Mr. Hale’s motion.

CONCLUSION

The Court should not overturn the order denying Mr. Hale’s renewed motion to be released from the SHU at FCI Terre Haute, nor should it order that Judge Watanabe recuse himself from these proceedings.

Dated March 7, 2017.

Respectfully submitted,

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

I hereby certify that on March 7, 2017, I served the foregoing document on the following non-CM/ECF participant by U.S. mail:

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s/ Susan Prose
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