**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**
**Chief Judge Marcia S. Krieger**

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

**REVEREND MATT HALE,**

**Plaintiff,**

**v.**

**FEDERAL BUREAU OF PRISONS;**

**Defendants.**

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**ORDER ON MOTIONS TO JOIN AND OBJECTIONS**

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**THIS MATTER** comes before the Court pursuant to a number of pending motions. The first group consists of Motions to Join filed by various nonparties (**#s 115-121, 122, 123, 127-132,** and **136**).[1] The Bureau of Prisons (BOP) filed two Responses (**#s 134** and **145**) addressing all the Motions to Join, and the nonparties filed Replies (**# 135, 138, 140-143, 148,** and **149**).[2] The Plaintiff, Matt Hale, filed a Motion (**# 139**) for Leave to file a Reply. Also before the Court are Mr. Hale's Objections (**# 137**) to the Magistrate Judge's Minute Order (**#126**) denying his Renewed Motion to be removed from solitary confinement (**# 106**). The BOP filed a Response to these Objections (**# 145**) and Mr. Hale filed a Reply (**# 150**). Lastly, the Parties filed a Joint Motion for Extension of time to Complete Discovery (**# 152**).

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[1] Throughout this Order the Court will refer to the Motions to Join collectively as "the Motions." When discussing individual motions the Court will identify them by Docket Number.

[2] A number of these Replies are labeled as "letters" or "declarations."

## II. FACTUAL BACKGROUND

Only a summary of certain facts is relevant for resolution of the pending motions. Mr. Hale is an inmate at the Administrative Maximum facility in Florence, Colorado (ADX).[3] While there, Mr. Hale was the leader of "Creativity," purportedly a religious group with a goal of "total racial segregation so as to stop the mixture, and hence destruction, of White culture and genetic stock."

In this action, Mr. Hale has asserted multiple claims against the BOP. Four claims are pending: 1) the BOP violated Mr. Hale's right to freely practice his religion by imposing two bans on Mr. Hale's mail (from July 2010 – January 2011, and from January 2013 – August 2013)[4] and by refusing to provide him a special diet; 2) the BOP imposed the mail bans in retaliation for Mr. Hale's exercise of his First Amendment rights; 3) the BOP violated Mr. Hale's First Amendment right to free speech when it prohibited from having a copy of a book, Nature's Eternal Religion; and 4) the mail bans and the refusal to provide a special diet violated Mr. religious freedom rights under the Religious Freedom Restoration Act (RFRA).

This case was filed in January of 2014. Discovery deadlines have been extended a number of times, with a final extension setting the discovery cut-off for April 17, 2017.

## III. MOTIONS FOR JOINDER

The non-party movants contend that their First Amendment rights will be affected by any future restrictions on Mr. Hale's ability to communicate with them. Because Mr. Hale and the movants appear *pro se*, the Court reads their submissions liberally, and holds them to a less

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[3] Mr. Hale was convicted of one count of solicitation of the murder of a federal judge. *See Hale v. United States*, No. 08-cv-94, 2010 WL 2921634, *1, (N.D. Ill., July 22, 2010).

[4] There is no pending claim nor are there allegations that Mr. Hale's mail has since been restricted, is currently being restricted, or is imminently likely to be restricted in the future.

stringent standard than it would filings submitted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

**A. Legal Standards**

Joinder of parties in an action is governed by Rules 19 and 20 of the Federal Rules of Civil Procedure. Rule 19 addresses compulsory joinder, and Rule 20 addresses permissive joinder. In addition, a person can move to intervene in an action pursuant to Rule 24.

**1. Compulsory Joinder**

Joinder of parties is compulsory under Rule 19 if a person's participation is required to afford complete relief among the existing parties, or the person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may impair or impede the person's ability to protect his or her interest or leave an existing party subject to substantial risk of incurring double, multiple or otherwise inconsistent obligations. Fed. R. Civ. P. 19(a); *State Farm Mut. Auto Ins. Co. v Mid-Continent Cas. Co.*, 518 F.2d 292, 294 (10th Cir. 1975). Rule 19(a) requires the Court to determine, on a case-by-case basis, whether a party is "indispensible" or necessary. *Symes v. Harris*, 472 F.3d 754, 760 (10th Cir. 2006). To do so, the Court asks whether complete relief is possible without joinder of the party and if the absent party has a legally protected interest in the outcome of the action. *Confederated Tribes of Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1498 (9th Cir. 1991). If the party is necessary, the Court considers whether the person can be made a party to the action and, if not, whether the action should still proceed. *Symes*, 472 F.3d at 760.

**2. Permissive Joinder**

Permissive joinder allows a person to join an action if he or she asserts a right to relief with respect to, or arising out of the same transaction or occurrence as, that raised in the action,

and the person's asserted right to relief will involve a question of law or fact that is common to claim(s) of the named parties. Fed. R. Civ. P. 20(a); *Mississippi ex rel. Hood v. AU Optronics Corp.*, 134 S.Ct. 736, 742 (2014). To determine whether there is a single transaction, occurrence, or series of transactions or occurrences, courts apply a "logical-relationship" test. *See* Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, Richard L. Marcus, *Federal Practice & Procedure*, § 1653 (3d ed. 2017). All logically related events entitling a person to institute a legal action against another are regarded as a single transaction or occurrence. *Revilla v. Glanz*, 7 F.Supp.3d 1207, 1212-12 (N.D. Okla. 2014). If there is a high likelihood that separate actions will result in overlapping proof and duplicative testimony, there may be a single same transaction or occurrence. *Sprint Commc'ns Co., L.P. v. Theglobe.com, Inc.*, 233 F.R.D. 615, 616 (D. Kan. 2006). However, if claims arise out of differing factual circumstances, permissive joinder is not appropriate. By way of example, in *Birdwell v. Glanz*, 314 F.R.D. 521 (N.D. Okla. 2015), the district court examined whether two prisoners could assert claims against defendants (jail staff) in a single action. The first plaintiff claimed that the jail's medical staff exhibited deliberate indifference to his medical needs, while the second claimed that staff used excessive force. The alleged violations occurred several months apart. The court found that joinder under Rule 20(a) was not permissible.

As to whether there is a common question of law or fact, the claims asserted by the parties seeking to join need not share all of the same questions of law and fact; a single overlap is sufficient. *Lee v. Cook Cnty, Ill.*, 635 F.3d 969 (7th Cir. 2011); *Montgomery v. STG Intern., Inc.*, 532 F.Supp.2d 29 (D.D.C. 2008).

If these two requirements are met, the Court nevertheless has discretion in deciding whether to allow joinder under Rule 20. The Court may decline to permit joinder where doing so

is necessary to protect a party from "embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party." Fed. R. Civ. P. 20(b). The Court may also disallow joinder where it would not serve the purpose of Rule 20 – promoting trial convenience and expediting the resolution of disputes. *See* Wright & Miller, *Federal Practice & Procedure*, § 1652; *see also Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir 2000); *Premier Group, Inc. v. Bolingbroke*, No. 15-cv-01469-PAB-CBS, 2015 WL 4512313, *9 (D. Colo. July 27, 2015) (*citing Basile v. Walt Disney Co.*, 717 F.Supp.2d 381, 387 (S.D. N.Y. 2010); *Patrick Collins, Inc. v. John Does 1-2*, No. 12-cv-01641-WYD-MEH, 2013 WL 3759942, *3 (D. Colo. July 15, 2013) (*citing Voltage Pictures, LLC v. Does 1-5,000*, 818 F.Supp.2d 28, 38 (D. D.C. 2011).

**3. Intervention under Rule 24**

Rule 24 provides a third mechanism for a nonparty to join an action, both as a matter of right and on permission of the court. Fed. R. Civ. P. 24(a), (b). The standards provided by Rule 24 closely align with those of Rule 20. As relevant here, intervention as a matter of right is available if a party can "claim an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest. . ." Fed. R. Civ. P. 24(a)(2). On the other hand, the Court may permit a party to intervene if the party "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B); *Tri-State Generation & Transmission Ass'n, Inc. v. New Mexico Public Regulation Com'n.*, 787 F.3d 1068, 1071 (10th Cir. 2015). The Court must also consider if permitting intervention will cause undue delay or prejudice. Fed. R. Civ. P. 24(b)(3); *Tri-State Generation*, 787 F.3d at 1074.

**B. Discussion**

The movants here (both "adherents of Creativity" and non-followers) assert a right to communicate with Mr. Hale. Each seeks prospective relief, stating a "wish to protect [his or her] own First Amendment right to correspond with Reverend Hale without the Defendant interfering with or oppressing same." *See* Docket Nos. 116-121, 127-132, 136.

Reading the Motions liberally, as the Court is obligated to do, it appears that the Movants seek to protect their First Amendment right to free speech or free exercise of religion. As for free speech, the First Amendment provides that "Congress shall make no law ... abridging the freedom of speech . . . government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *United States v. Stevens*, 559 U.S. 460, 468 (2010). It is difficult to discern how the BOP's restriction of Mr. Hale's outgoing mail impairs the Movants' expression, and even how a restriction on Mr. Hale's incoming mail might impair the Movants' right of expression, as there is no constitutional guarantee of an audience for permissible expression. But the Court will assume, without deciding, that there is some constitutional right that the Movants assert that is impaired by mail bans imposed against Mr. Hale.

As for free exercise of religion, the First Amendment Free Exercise Clause prohibits the government from penalizing persons based on their religious ideologies. *Sherbert v. Verner*, 374 U.S. 398, 402 (1963). Those Movants who are adherents of Creativity[5] suggest that their inability to communicate with Mr. Hale interferes with their religious practice. Again the Court

[5] The majority of the Motions state that the movants are not Creativity followers, thus the Court has some difficulty, even reading those pleadings liberally, determining how these movants claim that their rights to freely practice a religion are violated. Of those motions filed by Creativity followers, none allege that their freedom to freely practice Creativity is being curtailed, however, interpreting them broadly, the Court will presume that those motions reference to protecting their "First Amendment rights" includes their right to freely exercise Creativity as well as their right to free speech.

assumes without deciding that the Movants have a constitutional right that may be impaired by the mail bans imposed by BOP.

None of the Rules allowing for joinder or intervention support the requests of the Movants. Compulsory joinder under Rule 20 is appropriate only if complete relief in this action cannot be accomplished in its absence. The claims brought in this action all pertain to alleged violations of Mr. Hale's individual rights that occurred in the past. In contrast, the Movants seek prospective relief to prevent violation of their individual rights in the future. [6] Mr. Hale's claims can be resolved without consideration of the claims of the Movants. If there is a future violation of the Movant's individual rights – each Movant will be able to bring an action for relief. Thus, compulsory joinder is not appropriate.

Similarly, permissive joinder is inappropriate. While there is a logical relationship between the two mail bans imposed from July 2010-January 2011 and from January 2013-August 2013 and the Movants' ability to communicate in the future, the Movants' concerns have not ripened into claims that can be pursued. They are purely speculative.

Finally, turning to whether the Movants' could intervene to assert a claim, the Court asks whether the movants have a claim or defense that shares a common question of law or fact with the main action. The answer is no – Mr. Hale asserts his own rights, as would each Movant. However, Mr. Hale's claims are for alleged past violations. The Movants allege no violations; they simply fear that their rights may be violated in the future. What the nature of such claims could be and what factual and legal questions will arise is unknown. Because the Movants'

[6] The Court is substantial doubt that the joinder Motions actually assert *any* right to relief against the BOP for restrictions imposed against Mr. Hale. First, the BOP has no power to restrain or curtain the movants' speech or ability to exercise their religion. Second, there is no showing that prior mail bans against Mr. Hale have impacted Movants, and the supposition that there will be future mail bans or that such would impact the Movants is purely speculative. At this juncture, the Movants have not shown any injury for which relief can be provided.

claims are not yet ripe (nor likely to become ripe), they cannot share a common issue of law or fact with Mr. Hale's individual claims for past violations.

Accordingly, the Court denies the Motions to Join (**#s 115-121, 122, 123, 127-132, 136,** and **139**). The Court also denies Mr. Hale's Motion for Leave to File a Reply (**# 139),** as moot. The Court has before it all facts necessary to conduct an analysis under established law for both joinder and intervention. Therefore, it does not find that any motion filed by Mr. Hale would assist the Court in resolving these Motions.

## IV. OBJECTIONS TO MINUTE ORDER

Also before the Court are Mr. Hale's Objections (**# 137)** to the Magistrate Judge's Order (**# 126**), denying Mr. Hale's Renewed Motion to be Removed from Solitary Confinement (**# 106**).

Mr. Hale's original Motion to be Removed **(# 95)** and Renewed Motion, sought an order directing the BOP to remove Mr. Hale from the Special Housing Unit (SHU) at Terre Haute, Indiana. Mr. Hale's Objections now ask this Court to find that the Magistrate Judge erred in denying his request, and to order the BOP to remove him from confinement in the SHU.

After Mr. Hale's Objections were filed, the Parties submitted a Joint Motion to Extend Discovery **(# 152**). In that Motion, the parties represent that Mr. Hale is no longer in the SHU at Terre Haute, Indiana, but has since been returned to the Administrative Maximum Facility at Florence, Colorado (ADX). Because Mr. Hale is no longer confined in SHU, Mr. Hale's Objections now appear to be moot.

Accordingly, the Objections **(# 137**) are denied as moot.

## V. JOINT MOTION TO EXTEND DISCOVERY

The parties seek a joint motion to amend the discovery and dispositive motion deadline.

The Court may modify its scheduling orders upon a showing of good cause. *See* Fed.R.Civ.P. 16(b)(4); D.C.COLO.LCivR 16.1. Whether to "extend or reopen discovery is committed to the sound discretion" of the Court. *Smith v. United States*, 834 F.2d 166, 169 (10th Cir.1987). In exercising its discretion, the Court considers the following factors: (1) whether trial is imminent; (2) whether the request to reopen or extend discovery is opposed; (3) whether the non-moving party would be prejudiced; (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the Court; (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the Court; and (6) the likelihood that the discovery will lead to relevant evidence. *Id.* (citations omitted). As for the fourth factor, good cause requires the moving party to show that it has been diligent in attempting to meet the deadlines, which means it must provide an adequate explanation for the delay. *Strope v. Collins*, 315 F. App'x 57, 61 (10th Cir.2009).

This is the parties' fourth motion for an extension of discovery deadlines. *See* Docket #s **86, 97,** and **110.** The parties' motion contains the following justifications for the delay. First, they contend that because Mr. Hale was – until recently – confined in the SHU at Terre Haute, Indiana, discovery was delayed. Particularly, the BOP represents that while it initially believed that the current discovery deadlines allowed sufficient time for Mr. Hale to be returned to ADX in Colorado and for depositions and discovery to occur, Mr. Hale was returned to ADX later than expected. In addition, while Mr. Hale has been returned to Colorado, his legal materials apparently have not yet been sent from Terre Haute. As a result, he has not been able to take depositions.

As for the first factor for the Court to consider, trial has not yet been set in this matter. The second and third factors – whether the motion is opposed and whether a party would be

prejudiced – the motion is not opposed and it appears that, were the Court to deny the motion to extend, Mr. Hale would incur prejudice. Regarding the fourth factor (whether the moving party has been diligent in its efforts to obtain discovery) the Court has some doubt that the BOP has, however, any harm that might occur if the Court denied the motion to extend would impact Mr. Hale more so than the BOP. In addition, whether Mr. Hale is able to obtain discovery regardless of his diligence is largely out of his control given his incarcerated status. Lastly, the motion does not address the foreseeability of the need for additional discovery (though it represents that the parties will work diligently to complete the depositions in the additional time allotted) nor the likelihood that the discovery will lead to relevant evidence.

In light of the fact that Mr. Hale has not had the opportunity to take depositions, the Court sees no choice but to grant the Joint Motion to extend. However, the parties asked for, but not shown a need for, an additional 75 days. Mr. Hale is now back in Colorado, and the parties, who have known that these depositions will need to occur for quite some time, should be able to complete them promptly. The Court shall allow an additional 60 days for Mr. Hale to complete discovery and for both parties to file dispositive motions. The BOP is directed to fully cooperate and assist in facilitating depositions.

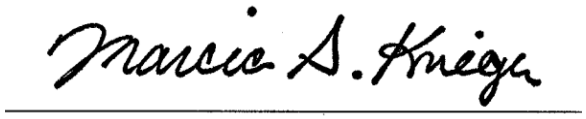
The Court hereby GRANTS in PART the Joint Motion to Extend (**# 152**). The parties shall have until June 2, 2017 to complete discovery and until June 30 to file dispositive motions.

## VI. CONCLUSION

The Court DENIES the Motions to Join (**#s 115-121, 122, 123, 127-132,** and **136**). Mr. Hale's Motion for Leave to file a Reply (**# 139)** is denied as moot. Mr. Hale's Objections (**# 137)** are overruled, and the Court adopts the Magistrate Judge's Order (**# 126)**. The Joint Motion to Extend (**# 152)** is GRANTED in PART.

Dated this 26th day of April, 2017.

**BY THE COURT:**



Marcia S. Krieger
Chief United States District Judge