

**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.

DEFENDANT’S MOTION TO STRIKE DOCKET ENTRY 208

The Court should exercise its inherent authority to manage its docket by striking from the record the document entitled “Evidence of Defendant’s Current, Ongoing Unlawful Activity.” Doc. 208. To file that document, Mr. Hale used his privilege of sending the Court sealed “Special Mail.” *Id.* at 34 (Mr. Hale labeled his envelope “Special Mail”); *see also* 28 C.F.R. § 540.2(c) (“Special Mail” includes correspondence sent to U.S. Courts); *id.* § 540.18(a) (“outgoing special mail may be sealed by the inmate and is not subject to inspection”). Mr. Hale’s filing is not a motion. Rather, as explained below, he appended a letter he had tried to send to a correspondent, but which the BOP had rejected. By filing this document on this Court’s docket through the Special Mail procedure, Mr. Hale has made the Court his personal bulletin board for posting materials to his followers that, in the judgment of BOP correctional officials, should never have been allowed to leave the ADX.

The letter that Mr. Hale submitted to the Court is an “article” he intended for mass dissemination to his followers. *See* Doc. 208 at 11-33. BOP officials in the ADX Special Investigative Services (“SIS”) Department reviewed that article. *See* Ex. 1 ¶ 5 (Declaration of Lieutenant Amy Kelley).

The BOP declined to let Mr. Hale send that article to his followers. Mr. Hale uses some of the article to proclaim his innocence, but the article was not rejected for that reason. *Id.* Rather, BOP officials determined that the article must be rejected because Mr. Hale used it to reassert a leadership role over the Creativity Movement, a BOP-designated Security Threat Group (“STG”). *Id.* ¶¶ 8-10. As the BOP has explained in earlier filings in this case, inmates are not allowed to lead, direct, or conduct the business of an STG, either within the prison or on the street. *See, e.g.*, Motion for Summary Judgment, Doc. 186 at 77 ¶ 42 & 116-17. Leadership was the clear purpose of Mr. Hale’s article. For example, he wrote: “I urge you rather to fight for my freedom so that I can fight again for *you*. Let me put my charisma and drive to good use on your behalf for I know that if you do I will unite and push our movement forward in ways that have never been seen before.” Ex. 1 ¶ 9 (emphasis in original). Mr. Hale wants “[t]he cause of my freedom [to] become the *cause celebre* of the entire Racial Loyalist movement. I’m counting on you”—his followers—“to make that happen.” *Id.* ¶ 10.

SIS officials also had concerns with language in the article where Mr. Hale casts himself in the role of victim and the BOP in the role of oppressor. *Id.* ¶ 11 (“I can’t [lead the movement] from this prison cell where I am stymied and harassed by my captors at every turn,” and “I have never been broken by our enemies and I never will be.”). The BOP found that this is the same kind of victimhood language Mr. Hale has historically used “to encourage his followers to take

matters into their own hands and to declare open war on federal employees or members of the judiciary[.]” *Id.* In the judgment of SIS officials, this language was particularly concerning “when read in tandem with” the language seeking “direction, leadership, and control of the STG.” *Id.*

These are security decisions that ADX officials are authorized and trained to make, and their judgment in these matters is entitled to deference. *See, e.g., Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) (courts “must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them”); *Beard v. Banks*, 548 U.S. 521, 530 (2006) (courts must defer to prison officials on “disputed matters of professional judgment”). Mr. Hale was entitled to use the BOP’s administrative remedy process to voice any objection to the officials’ decision. Instead, he used this Court’s docket to accomplish an end-run around the BOP’s correctional judgment.

The filing by Mr. Hale, and the subsequent posting of the article by Mr. Hale on the Court’s website, enabled him to get around the BOP’s rejection of that correspondence. Since the article was posted on the Court’s docket, it has appeared on various websites. *Id.* ¶ 12.

The Court should exercise its authority to manage its docket by striking docket entry 208 from the record. As the Tenth Circuit has emphasized, “[t]he power of district courts to manage their dockets is deeply ingrained in our jurisprudence.” *United States v. Schneider*, 594 F.3d 1219, 1225 (10th Cir. 2010) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *United States v. Nicholson*, 983 F.2d 983, 988 (10th Cir. 1993)). The document was clearly immaterial, impertinent, and improper. *Cf. Fed. R. Civ. P. 12(f)* (“The court may strike from a

pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”). Allowing Mr. Hale to post rejected correspondence on the Court’s docket undermines the BOP’s authority to manage him and to make judgments about how to control the security risks he poses. Under the circumstances here, striking the filing is well within the Court’s “great discretion regarding trial procedure applications (including control of the docket and parties)[.]” *Nicholson*, 983 F.3d at 988 (observing that such “decisions are reviewed only for abuse of discretion”).

For these reasons, the Court should issue an order striking docket entry 208 from the record. In doing so, the Court should also instruct Mr. Hale that any further attempt to publicly file correspondence, or information contained in correspondence, that BOP officials have rejected pursuant to the procedures for reviewing his mail, may result in filing restrictions imposed by the Court. *See Lornes v. No Named Defendant*, 703 F. App’x 712, 713 (10th Cir. 2017) (holding that a district court may “impose filing restrictions as appropriate. ‘Federal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions in appropriate circumstances.’”) (quoting *Andrews v. Heaton*, 483 F.3d 1070, 1077 (10th Cir. 2007)).

Respectfully submitted on March 12, 2018.

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s/ Susan Prose

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

I hereby certify that on March 12, 2018, I directed that the foregoing document and the exhibit referenced therein be served on the following non-CM/ECF participant by United States mail addressed as follows:

Matthew Hale
Reg. No. 15177-424
ADX – Florence
P.O. Box 8500
Florence, CO 81226

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

Exhibit 1

Declaration of Amy Kelley

Hale v. Fed. Bureau of Prisons,
No. 14-cv-00245-MSK-MJW

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FEDERAL BUREAU OF PRISONS,

Defendant.

DECLARATION OF AMY KELLEY

I, Amy Kelley, 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 a Lieutenant detailed to the Special Investigative Services Department (“SIS”) of the Federal Correctional Complex (“FCC”) in Florence, Colorado. I have been a Lieutenant at ADX Florence since October 2016 and I have worked in the Bureau in positions of increasing responsibility since September 2012. Before becoming a Lieutenant, I was employed as a Technician in the SIS Department.

2. FCC Florence consists of a minimum-security Federal Prison Camp (“FPC”), a medium-security Federal Correctional Institution (“FCI”), the United States Penitentiary (“USP”), and the United States Penitentiary-Administrative Maximum (“ADX”).

3. As Lieutenant, I assist with operations of the SIS Department at ADX Florence. This includes investigations conducted into inmate conduct, as well as monitoring and investigating Security Threat Groups (“STGs”). As part of my official duties as Lieutenant, I have access to documents maintained by the SIS Department during the ordinary course of business. These documents include, but are not limited to, documents regarding the restriction of inmate communication privileges and the grounds therefor; information maintained in the SENTRY¹ database, inmate central files, and TruAccess system; and rejections of incoming or outgoing mail or publications sent to ADX inmates.

4. I am familiar with Plaintiff, federal inmate Matthew Hale, Register Number 15177-424. He is currently housed at ADX Florence.

5. I am aware that Plaintiff alleges the Bureau improperly rejected an outgoing “article” he had written to be disseminated to his followers. *See* Doc. 208 at 2. He claims it was “for distribution to those who believe in my innocence, explaining why I want to be free, the lack of any evidence that I committed a crime, and our ongoing efforts to secure the commutation of my imprisonment.” *Id.* I submit this declaration in order to clarify the Bureau’s reasons for rejecting the outgoing letter, as well as to provide the Court a fuller context of what Hale’s letter actually said.

6. Inmate Hale or any federal inmate can generally write to outside correspondents about his innocence. He can write about how he wants to be free, how his underlying conviction

¹ SENTRY is the Bureau’s national database that tracks various data regarding an inmate’s confinement, including but not limited to the inmate’s institutional history, sentencing information, program participation and completion, administrative remedies, and discipline history.

was baseless, or why his supporters should lobby for his release. But to be clear, Hale's mass letter to his followers did not stop there. *See id.* at 11-33.

7. If Hale stopped his mass communication after its first ten pages, the Bureau would not have rejected it. *See id.* at 11-20. Those pages outline his contention that he is innocent, the alleged government plot to incarcerate or silence him, and his yearning to be home with his mother and to start a family. *Id.* There is nothing in those pages to jeopardize security of the institution, or that of staff, inmates, or the public.

8. But then Hale pivots. *See id.* at 21. He hails his own written contributions to the white supremacy movement as "two of the greatest books for the future of our White people that have ever been written." *Id.* This statement is just a transition into Hale's true purpose for this mass letter. He follows, "[T]he fact remains that it is the free world where I can help our people the most. Merely writing books, I fear, is not going to save our White Race. Rather, *the right direction, the right organization, and the right hands-on, dynamic leadership* is what we need if our kind is to survive in this world." *Id.* at 21-22 (emphasis added). As I have declared in this lawsuit previously, the Bureau generally and the SIS Department in particular become gravely concerned when the leader or former leader of any STG—which, again, the Bureau considers the Creativity Movement or Church of the Creator to be—asserts leadership, direction, or control of other members or associates of the STG. Given that Hale's mass release titled "Why Do I Want to be Free?" is a bald pitch to followers to appoint Hale as the resurgent leader of Creativity, the letter was rejected because it could have very easily jeopardized intuitional security or public safety.

9. The rest of the letter follows in that vein: Hale appeals to his followers to free him, to do so (apparently) by legal means, and yes, to engage in what would likely be First

Amendment-protected conduct. *See id.* at 22-33. But the question was not just what Hale encouraged his followers to do, but the reason *why* he wanted them to do it: so that he could again lead this group that the Bureau considers a STG. *See id.* at 25-26 (“I urge you rather to fight for my freedom so that I can fight again for *you*. Let me put my charisma and drive to good use on your behalf for I know that if you do I will unite and push our movement forward in ways that have never been seen before” (emphasis in original)).

10. In line with his pitch for leadership, direction, and control of the STG, Hale attempts to draw upon his cache within Creativity to spur his followers to act: “The cause of my freedom must become the *cause celebre* of the entire Racial Loyalist movement. I’m counting on you to make that happen.” *See id.* at 31-32. The Bureau interprets such words not just as a cry for help from one inmate to his supporters, but as a demand and an exhortation from an STG leader to once again control the reins.

11. Furthermore, the letter concerned the SIS Department in how Hale used the language of victimhood. He writes, “I can’t [lead the movement] from this prison cell where I am stymied and harassed by my captors at every turn” and notes, “I have never been broken by our enemies and I never will be.” *Id.* at 22-23, 24. Historically, Hale has used terms of victimhood to encourage his followers to take matters into their own hands and to declare open war on federal employees or members of the judiciary when they are seen by Creators as agents of the Zionist Occupied Government (“ZOG”). His use of the above terms to describe staff, while not a standalone reason to reject the letter, was also concerning when read in tandem with the previously-mentioned sections regarding direction, leadership, and control of the STG.

12. It is equally problematic that inmate Hale did an end-run around the Bureau by filing this rejected letter with the Court. He effectively sent out, through legal mail, a letter that the Bureau in its discretion felt was unsafe to send. Such conduct in the future will not be tolerated and could lead to disciplinary charges against inmate Hale. After he filed this mass letter, his followers have posted it on various websites (<https://freematthale.net/wp-content/uploads/2018/02/Document-208-filed-by-Matt.pdf> and <http://creativitymovementtoronto.blogspot.ca/2018/02/who-do-i-want-to-be-freeby-rev-matt-hale.html>). If Hale takes issue with the Bureau's rejections, he may grieve those decisions through the Administrative Remedy Program.

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 28th day of February, 2018, in Florence, Colorado.

s/ Amy Kelley
Amy Kelley
Lieutenant
FCC Florence
Federal Bureau of Prisons