

Plaintiff's Name Wali Al-Taqi Davis
DORIAN DAVIS
Inmate No. K-78044
Address P.O. Box 5101
DELANO, CA 93216

FILED

MAY 08 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
J. HELINGS
DEPUTY CLERK

DORIAN DAVIS AKA Wali Al-Taqi
(Name of Plaintiff)

NO 1:07-CV-00696-OWW-SMS-PC
(Case Number)

vs.

AMENDED COMPLAINT

A. Hedgpeth (WARDEN)

RECEIVED

Civil Rights Act, 42 U.S.C. § 1983

MAY 08 2008

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes No

(PC) Davis v. Hedgpeth

If your answer to A is yes, how many? 2
Describe previous or pending lawsuits in the space below.
(If more than one, use back of paper to continue outlining all lawsuits.)

Doc. 30 Att. 1

1. Parties to this previous lawsuit:

Plaintiff DORIAN DAVIS

Defendants L. GRAVES, V. DOSER, OFFICER CANTRELL, H. HUEBNER, B. McDILL, K. Todd

2. Court (if Federal Court, give name of District; if State Court, give name of County)
EASTERN DISTRICT

3. Docket Number S-01-0549 4. Assigned Judge HON. L.K. KARTON

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)
WAS DISMISSED AT TRIAL, APPEALED, AND APPEAL WAS DISMISSED

6. Filing date (approx.) JUNE 12, 2001 7. Disposition date (approx.) 2/18/08

2. PARTIES TO PREVIOUS LAWSUIT

PLAINTIFF: DORIAN DAVIS

DEFENDANTS: D. McCARGAR . ET AL.

COURT: EASTERN DISTRICT

DOCKET NUMBER: S-01-0640

ASSIGNED JUDGE: WBS-JFM

DISPOSITION: CASE WAS DISMISSED

FILING DATE: APRIL 2, 2001

DISPOSITION DATE: NOT AVAILABLE AT THIS
TIME.

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II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes No

If your answer is no, explain why not N/A

C. Is the process completed?

Yes If your answer is yes, briefly explain what happened at each level.

INFORMAL LEVEL WAS BY PASSED. "FIRST LEVEL" DENIED THERE IS NO ALLOWED ALTERNATIVE RECREATION AT KERN VALLEY STATE PRISON. "SECOND LEVEL" THERE IS NO RECREATION DURING MODIFIED PROGRAM. THIRD "LEVEL" APPEAL WAS RETURNED FOR ALLEGEDLY,

No If your answer is no, explain why not.

N/A

it NOT BEING FILED WITHIN 15 DAYS (WORKING DAYS) WHICH IT WAS.

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). **Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit.** Booth, 532 U.S. at 734.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant ANTHONY HEDGETH is employed as WARDEN at KERN VALLEY STATE PRISON

Additional Exhibits

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

SEE ATTACHED PAGES

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

SEE ATTACHED PAGES

I declare under penalty of perjury that the foregoing is true and correct.

Date MAY 5, 2008

Signature of Plaintiff Alan Davis (Wali Jagi)

1 CLAIM #1. PLAINTIFF FEDERAL CONSTITUTIONAL RIGHTS HAS BEEN
2 AND IS CONTINUOUSLY VIOLATED BY THE CONTINUOUS DEPRI-
3 VATION OF OUTDOOR (OUT OF THE CELL) RECREATION DURING LOCK
4 DOWNS IS CRUEL AND UNUSUAL PUNISHMENT AND A DUE
5 PROCESS VIOLATION OF THE 8TH AMENDMENT, AND 14TH
6 AMENDMENT OF THE UNITED STATES CONSTITUTION.

7
8 CLAIM #2. PLAINTIFF IS "CONTINUOUSLY" BEING DEPRIVED OF A
9 STATE-CREATED STATUTORY RIGHT. THE PRIVILEGES THAT ARE GI-
10 VEN TO HIM ARE STATUTE, CASE LAW, AND GOVERNMENTAL
11 CODE PROTECTED RIGHTS OF THE 14TH AMENDMENT, RIGHT
12 TO DUE PROCESS OF THE LAW.

13
14 STATEMENT OF FACTS IN SUPPORT
15 OF CLAIM #1, CLAIM #2

16 1. THE CONTINUOUS DEPRIVATION OF PLAINTIFF OUT-
17 DOOR RECREATION EXERCISE BY WAY OF FICTITIOUS LO-
18 CKDOWNS FOR THE ACTIONS OF OTHERS IS DEPRESSIVE AND
19 CREATES AILMENTS AND ANTI-SOCIAL PSYCHOLOGICAL BEHAVIOR.

20 2. THE INSTITUTIONAL HEAD IS THE POLICY MAKER FOR
21 KERN VALLEY STATE PRISON, HE SIGN ON OR AND OFF ON ALL
22 POLICY, AND THIS INSTITUTIONAL HEAD HAS IGNORED ALL ALTER-
23 NATIVES, REFUSED, AND STONEWALLED AGAINST SATISFYING AND
24 EXERCISING HIS OBLIGATION TO SAFEGUARD PLAINTIFF RIGHT TO
25 OUTDOOR EXERCISE (RECREATION).

26 3. THE STRIPPING OF THOSE PRIVILEGES THAT ARE
27 STATUTORY AND DUE PROCESS PROTECTED IS AN ISSUE OF
28 ADDRESSING.

1 4. PLAINTIFF ARRIVED AT KERN VALLEY STATE PRISON
 2 ON OCTOBER 26, 2005 FROM SALINAS VALLEY STATE PRISON
 3 (ANOTHER DEPRESSIVE PRISON WHO HAS RECENT HISTORY OF
 4 VIOLATING SIMILAR RIGHTS TO OUTDOOR EXERCISE). PLAINTIFF
 5 CAME FROM A LOCKDOWN PRISON TO A LOCKDOWN.

6 5. SINCE PLAINTIFF BEEN AT KERN VALLEY STATE
 7 PRISON THERE HAS BEEN A FACILITY LOCKDOWN EVERY
 8 MONTH. THE YARDS PLAINTIFF BEEN ON HAS SPORADICALLY
 9 BEEN ON LOCKDOWN. IT'LL BE 2 WEEKS ON LOCKDOWN AND
 10 THEN A WEEK OFF. IT'LL BE A MONTH ON LOCKDOWN
 11 THE 2 WEEKS OFF. THIS WILL GO ON SPORADICALLY AT
 12 THE YEAR. THERE HAS NOT BEEN ONE MONTH WHERE
 13 THERE HASN'T BEEN A LOCKDOWN ON THE YARDS
 14 PLAINTIFF BEEN ON (A YARD & "D" YARD).

15 6. WHEN THERE IS A FISTFIGHT (KEEP IN
 16 MIND THIS IS A MAXIMUM SECURITY PRISON WHERE THERE
 17 IS VIOLENT CRIMINALS WHO IS NEVER GOING HOME, FAMI-
 18 LY DONE ABANDONED THEM, NO INCENTIVES TO DO GOOD,
 19 A HOPELESSNESS GIVEN BIRTH TO FRUSTRATION, NO PROGRES-
 20 SIVE PROGRAMS, NO PAYING JOBS, AND EVERY AND ANYTHING
 21 ELSE THAT CAUSES NEGATIVITY AND STIFLES POSITIVITY). ALLEG-
 22 EDLY A KITE GOT DROP, A WEAPON. "ALLEGEDLY" FOUND. "ALLEG-
 23 EDLY" WORD GOT OUT TO STAFF THAT "IMPLICATED" INMATES TH-
 24 REAT AGAINST STAFF.

25 7. THIS DEFENDANT WAS EVEN VIOLATED
 26 THE STATUTORY CODES (TITLE 15 AND PENAL CODE) THAT HE
 27 WAS TACITLY AGREED TO ABIDE BY JUST BY THE ACT OF
 28 TAKING THE WARDEN POSITION.

1 B. EVERY P.S.R. (PROGRAM STATUS REPORT) THAT
2 COMES AT DUE TO A LOCKDOWN IS CHECKED OFF AS "MODI-
3 FIED BUT IN PRACTICE AND CONTENTS ITS NOT MODIFIED
4 PROGRAM BUT A LOCKDOWN PROGRAM.

5 9. ASSUMING FOR ARGUENDO ITS A LOCK-
6 DOWN ABOUT A FISTFIGHT BETWEEN TWO CONVICTED VIOLENT
7 FELONS OF THE SAME GROUP. WHAT'S JUSTIFIABLE ABOUT LOCK-
8 ING DOWN THE WHOLE YARD? WHAT'S EXIGENT ABOUT A WEA-
9 PON BEING FOUND ON A CONVICTED FELON OR IN A CONVIC-
10 TED FELON CELL? WHAT'S THE EXIGENT ABOUT WORD GET-
11 TING TO OFFICERS ABOUT A THREAT TO THEM ESPE-
12 CIALLY WHEN THAT SO-CALLED THREAT BEEN REMOVED
13 AND DETAINED?

14 10. TO DEPRIVE PLAINTIFF DAVIS OF HIS
15 RIGHT TO OUTDOOR / OUT OF CELL RECREATION FOR THE AC-
16 TIONS OF OTHERS WHEN THOSE 'OTHERS' ARE DETA-
17 INED, GIVEN PROGRAM, I.E.. VISITING, RECREATION, CANTEEN
18 AFTER 10 TO 15 DAYS IN ADMINISTRATION SEGREGATION
19 IS TO VIOLATE THE STATUTORY RIGHTS OF THE CODE OF
20 REGULATION, AND PENAL CODE.

21 11. FURTHERMORE, WHENEVER THERE IS A LO-
22 CKDOWN (SO-CALLED LOCKDOWN) ASSUMING ITS JUSTIFIABLE AND
23 THOSE INMATE(S) INVOLVED IS REMOVED FROM THE FACILITY
24 AND PLACED IN AD-SEG (ADMINISTRATION SEGREGATION) AT THE
25 LEAST THOSE SAID INMATES WILL HAVE ALL THEIR RIGHTS AND
26 PRIVILEGES RESTORED TO THEM, I.E. OUTDOOR / OUT OF CELL
27 RECREATION, COMMISSARI, ACCESS TO THE COURTS BY WAY
28 OF LAW LIBRARY, PHYSICAL AND PAGING ACCESS, SOCIAL CONTACT.

1 visits, and education, while inmates relatively on lock-
 2 down in general population continuously remain deprived
 3 of those rights and privileges.

4 12. Plaintiff have suffered as a result of
 5 such violations and oppressive policy, heartburns, con-
 6 stipation, developed lower back arthritis, lethargy, plain-
 7 tiff developed gastro intestinal disease and he has had an
 8 enema. Plaintiff have been on several different medica-
 9 tions. Currently plaintiff is on "Prilosec" and "Gabapentin".
 10 Plaintiff eye problems has worsen, coupled with the con-
 11 stant pain in his lower back due to arthritis.

12 13. There is nothing modified about
 13 the continuing deprivation of rights and privileges that
 14 has refuge in policy. This is a liberty interest, i.e. no
 15 commissary, no quarterly packages, no phone calling home,
 16 no visits, no outdoor/out of cell recreational exer-
 17 cise, no social contact with other inmates, discrimi-
 18 nation between preferred legal users and general legal
 19 users, no physical access to law library nor a pag-
 20 ing system, no education, showers once every three (3)
 21 days, escort to and from showers in handcuffs,
 22 dehumanizing unclothed cavity search by officials in-
 23 dignifying his body, that abovementioned in and of
 24 itself is not "modified program".

25 Claims For Relief

26 The actions of defendant, A. Hedgpeth
 27 in not authorizing outdoor/out of cell recreational exer-
 28

1 case during lockdowns. THAT HAPPENS ON A SPORADIC
2 MONTHLY BASIS. AND FOR THE CALLOUS AND RECKLESS NEGLECT
3 TO KNOWING THAT SUCH "CONTINUOUS" DEPRIVATION WILL LEAD
4 TO A SUBSTANTIAL RISK OF HARM, AND HEALTH AND PHY-
5 SICAL WELL BEING DETERIORATE CONSTITUTES CRUEL AND UN-
6 USUAL PUNISHMENT IN VIOLATION OF THE 8TH AMENDMENT.

7
8 THE ACTIONS OF DEFENDANT A. HEDGPETH IN
9 DEPRIVING PLAINTIFF OF PRIVILEGES THAT IS A STATE -
10 RIGHT, PROTECTED BY STATE LAW, STATUTORY LAW, AND THE
11 GOVERNMENTAL CODE, WHERE THE SAID RIGHTS CAN ONLY BE
12 DENIED BY DUE PROCESS (PROCEDURES) PROTECTED BY THE 14TH
13 AMENDMENT, CREATES A LIBERTY INTEREST, CONSTITUTES A 14TH
14 AMENDMENT CONSTITUTIONAL VIOLATION.

15
16 WHEREFORE, PLAINTIFF REQUESTS THAT THE COURT
17 GRANT THE FOLLOWING RELIEF:

18 A. ISSUE A DECLARATORY JUDGMENT STA-
19 TING THAT:

20 1. THE CONTINUOUS ABSOLUTE DENIALS OF AT-
21 DOOR RECREATION DURING LOCKDOWN'S BY DEFENDANT A. HE
22 DGPETH VIOLATED THE PLAINTIFF RIGHTS TO BE FREE OF CRU-
23 EL AND UNUSUAL PUNISHMENT PROTECTED BY THE 8TH AM-
24 ENDMENT TO THE UNITED STATES.

25 2. THE DEFENDANT A. HEDGPETH DEPRIVING
26 PLAINTIFF OF HIS STATE-CREATED RIGHT, I.E. PRIVILEGES
27 THAT CAN ONLY BE DENIED AND DEPRIVED BY WAY OF DUE
28 PROCESS, VIOLATED THE PLAINTIFF'S RIGHT TO DUE PRO-

1 LESS OF LAW PROTECTED BY THE 14TH AMENDMENT, CR-
2 EATED A LIBERTY INTEREST.

3
4 (B. ISSUE AN INJUNCTION ORDERING DE-
5 FENDANT A. HEDGPETH OR HIS AGENTS TO:

6 1. IMMEDIATELY TO FORMALIZE A POLICY
7 THAT WILL SATISFY THE RIGHT TO OUTDOOR/OUT OF CELL RE-
8 ^{CREATION} ~~during~~ modified PROGRAMS, ON THE ALTERNATIVE CONCRETE
9 YARD THAT IS ANNEXED TO EACH BUILDING (1-8) ONE
10 THROUGH EIGHT.

11 2. IMMEDIATELY TO FORMALIZE AND EN-
12 ACT A POLICY TO CONTINUE THE PRIVILEGES THAT ARE
13 STATE-CREATED RIGHTS, AND TO CEASE OR REVERSE
14 THE CUSTOMARY PRACTICE OF DEPRIVING EN MASSES
15 THE STATUTORY AND CONSTITUTIONALLY PROTECTED PRIVI-
16 LEGES.

17
18 C. AWARD COMPENSATORY DAMAGES IN
19 THE FOLLOWING AMOUNTS:

20 1. \$100,000 JOINTLY AND SEVERALLY AG-
21 AINST DEFENDANT 'A. HEDGPETH' FOR THE PHYSICAL AND
22 EMOTIONAL INJURIES SUSTAINED AS A RESULT OF THE
23 SPORADIC AND CONTINUOUS DENIAL OVER A PERIOD OF 1 1/2
24 (ONE AND A HALF), FROM THE INCEPTION OF DEFENDANT TE-
25 NURE TO 2008, OF OUTDOOR/OUT OF CELL RECREATION.

26 2. \$10,000 JOINTLY AND SEVERALLY AG-
27 AINST DEFENDANT A. HEDGPETH FOR THE PUNISHMENT
28 AND EMOTIONAL INJURY RESULTING FROM HIS DENIAL AND

1 AUTHORIZATION OF THE PRIVILEGES THAT ARE STATE CR-
2 ENTITLED - RIGHTS.

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D. AWARD PUNITIVE DAMAGES IN THE
FOLLOWING AMOUNT:

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1. \$100,000 (ONE-HUNDRED THOUSAND
DOLLARS) AGAINST DEFENDANT A. HEDGPETH.

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E. GRANT SUCH OTHER RELIEF AS
IT MAY APPEAR THAT PLAINTIFF IS ENTITLED.

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VERIFICATION

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, DORIAN PAVIS, declare under penalty of perjury that:

I am the PLAINTIFF in the attached matter; I have read the foregoing document(s) and know the contents thereof; that the same is true and correct of my own knowledge, and if called to testify to the contents thereof, I could do so competently as a sworn witness.

Executed this 5 day of MAY, 2008, at DELANO, California 93216.

Dorian Pavis
Declarant

DECLARATION OF SERVICE BY MAIL

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, Keith Huckaby, declare: That I am a resident of KERN VALLEY State Prison, DELANO, California; I am over the age of 18 years; that I am/ I am not, a party in the above entitled action; that I served a true copy of:

AMENDED COMPLAINT CIVIL RIGHTS ACT, 42 U.S.C. § 1983

on the party(s) listed below by placing a true copy of said document(s) into a sealed envelope with the appropriate postage affixed thereto, and delivering said envelope to prison staff for mailing in the United State Mail as provided for at KERN VALLEY State Prison, DELANO, California, addressed as follows:

CLERK OF THE U.S. DIST.
COURT FOR THE EASTERN DIST.
1130 "D" STREET, ROOM 5000
FRESNO, CA 93721

I declare under penalty of perjury that the foregoing is true and correct of my own knowledge, executed this 5 day of MAY, 2008, at DELANO California 93216.

Keith Huckaby
Declarant