

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01549-BNB

RICHARD MARTINEZ,

Plaintiff,

v.

EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF
CORRECTIONS, and
WARDEN OF THE STERLING CORRECTIONAL FACILITY,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP - 9 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff Richard Martinez initiated this action by filing a *pro se* Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Upon review of the merits of the Complaint, Magistrate Judge Boyd N. Boland entered an order, on July 20, 2009, directing Mr. Martinez to file an Amended Complaint. Plaintiff was instructed to name proper defendants and to assert personal participation by each named defendant. Mr. Martinez, in keeping with *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007), also was instructed to explain what each defendant did to harm him, when the defendant did the harmful act, how he was injured, and what specific legal right the defendant violated. Plaintiff was warned that if he failed to file an Amended Complaint within the time allowed the Complaint and the action would be dismissed without further notice.

On July 28, 2009, Mr. Martinez filed a Letter with the Court, in which he states that he does not intend to file an Amended Complaint because he named proper Defendants in the original Complaint. Mr. Martinez further asserts, in the Letter, that named Defendants implemented the Population Management Pod (PMP) and are responsible for the punishment of inmates, including himself, by placing inmates in the PMP without a hearing and without due process. Mr. Martinez further asserts that if the Court dismisses the Complaint he will appeal.

In the original Complaint, Mr. Martinez simply states, on Page Two of the Complaint form, that the Colorado Department of Corrections DOC Executive Director and the Warden of the Sterling Corrections Facility are responsible for the actions of the prison officers. Mr. Martinez does not state in the original Complaint that he is challenging a policy or procedure initiated by the Executive Director or the Warden that established the PMP, which may state a claim. Nothing, therefore, in Mr. Martinez's original Complaint properly asserts claims against named Defendants. Mr. Martinez's claims in the original Complaint are directed against the prison staff members who have placed him in the PMP. Even the claims Mr. Martinez asserts in the July 28, 2009, Letter do not clarify whether the Executive Director and the Warden have initiated a new policy that Mr. Martinez is challenging as unconstitutional or whether prison staff members have failed to properly implement a new policy or procedure.

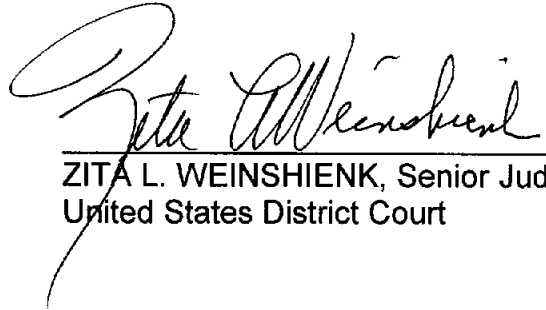
In accordance with D.C.COLO.L.CivR 8.2A., a *pro se* party shall use the forms established by the Court to file an action. Fed. R. Civ. P. 83(a)(2) allows a federal district court's local rules to be enforced unless the failure to comply with a rule is "nonwillful." Mr. Martinez's refusal to comply with Magistrate Judge Boland's order to

amend is blatantly willful. Upon review of the original Complaint and the July 28, 2009, Letter, the Court finds that Magistrate Judge Boland correctly instructed Mr. Martinez to amend the Complaint and name as defendants the individuals who participated in the alleged constitutional violations. Therefore, the Complaint and action will be dismissed. Accordingly, it is

ORDERED that the Complaint and action are dismissed without prejudice for failure to comply with the July 20, 2009, Order and to file an Amended Complaint.

DATED at Denver, Colorado, this 8 day of Sept, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

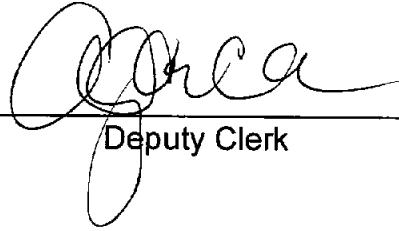
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Richard Martinez
Prisoner No. 75213
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 9/9/09

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk