

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 11-cv-00109-WJM-CBS

MIKEAL GLENN STINE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS (Agency),
MR. DAVID ALLRED, Clinical Dir. ADX,
MR. BLAKE DAVIS, Warden ADX,
MR. MUNSON, Associate Warden ADX,
MR. A. OSAGIE, Physician Assist. ADX,
MR. R. HUDDLESTON, EMT/ADX,
MR. SMITH, Assist. Health Services Administrator,
MR. MANSPEAKER, Corr. Officer ADX,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR EMERGENCY TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

In this case brought pursuant to 42 U.S.C. § 1983, Plaintiff Mikeal Stine alleges that Defendants, who are all employees of the Bureau of Prisons, violated his Eighth Amendment rights by failing to provide constitutionally sufficient dental care. Before the Court is Plaintiff's Verified Motion for Emergency Temporary Restraining Order and/or Preliminary Injunction ("Motion"). (ECF No. 340.) In the Motion, Plaintiff seeks a "TRO/Preliminary Injunction Pursuant to Fed.R.Civ.P. 65" as well as an evidentiary hearing on the Motion. (*Id.* at 1-2.)

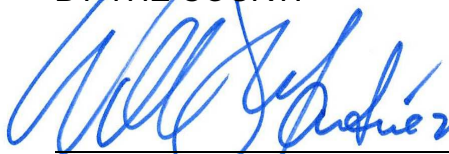
To the extent Plaintiff's Motion seeks a temporary restraining order, the Motion is denied without prejudice. To succeed on a temporary restraining order, Plaintiff must

“clearly show that immediate and irreparable injury . . . will result to [Plaintiff] before [Defendant] can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). Here, Plaintiff complains that he is not getting access to dental care and asks the Court to mandate that he receive “timely” dental care. The relief sought by Plaintiff anticipates an evidentiary hearing which, by necessity, can only occur after notice to Defendants of the instant Motion. Under these circumstances, the Court finds that Plaintiff has failed to show that he will suffer immediate and irreparable injury if the Court delays in resolving this Motion until Defendant can be heard. Thus, the Court finds that Plaintiff’s Motion is more properly construed as a motion for a preliminary injunction.

Accordingly, the Court ORDERS that Plaintiff’s Verified Motion for Emergency Temporary Restraining Order and/or Preliminary Injunction is DENIED to the extent it seeks a temporary restraining order. The portion of the Motion seeking a preliminary injunction is REFERRED to United States Magistrate Judge Craig B. Shaffer for any appropriate proceedings.¹

Dated this 7th day of March, 2013.

BY THE COURT:



William J. Martinez
United States District Judge

¹ The Court notes that Plaintiff has consented to have the Magistrate Judge decide the Motion by order rather than recommendation. See 28 U.S.C. § 636(c). If Defendants will likewise consent, the Court will amend its order of reference to permit Magistrate Judge Shaffer to determine the merits of the Motion.