

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARK REYES,

Plaintiff,

v.

No. 16-CV-00884-MCA-KBM

GERMAN FRANCO, et al.,

Defendants.

ORDER DENYING MOTION FOR PRODUCTION

THIS MATTER is before the Court on Plaintiff Mark Reyes's Motion For Production, filed on August 1, 2016. [Doc. 3] Plaintiff is incarcerated, appears pro se, and is proceeding *in forma pauperis*. In his motion, Plaintiff requests the production of evidence to assist him in the prosecution of his Prisoner's Civil Rights Complaint [Doc. 1], which seeks monetary damages based on the injuries Plaintiff incurred in a physical fight with another inmate at the Penitentiary of New Mexico on May 24, 2016 and the alleged unlawful disciplinary segregation and sanctions imposed on Plaintiff as a result of the fight. Plaintiff requests the production of sixteen different categories of evidence: (1) camera evidence of the physical fight; (2) camera pictures of the physical fight; (3) camera pictures of Plaintiff's injuries; (4) complete names and personnel profiles of the nurse's assistants on duty on May 24, 2016; (5) complete names and personnel profiles of Defendants; (6) all of Plaintiff's misconduct reports and decision packets; (7) the complete investigation of the STIU gang unit into the assault; (8) confidential informant status verifications with complete names and numbers; (9) all notes sent to the Warden in June 2016, including handwriting samples; (10) transfer orders showing the reasons for the transfer of the other inmate; (11) Plaintiff's complete medical file; (12) all of Plaintiff's photographs and

mugshots from 1994 to 2016; (13) Plaintiff's complete custody status review file; (14) Plaintiff's complete caseworker/classification file; (15) Plaintiff's complete grievance file; and (16) copies of Plaintiff's lawsuits and habeas corpus petitions filed from 2007 to 2016. [Doc. 4] For the following reasons, Plaintiff's motion will be denied without prejudice.

Plaintiff has filed a Prisoner Civil Rights Complaint challenging the conditions of his confinement and, therefore, this case is excluded from the normal pre-trial case management procedures, including discovery. *See* D.N.M. LR-Civ. 16.3(d). Because Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915, the Court will screen Plaintiff's Prisoner Civil Rights complaint to determine whether it "is frivolous, malicious, or fails to state a claim upon which relief may be granted" or whether it "seeks monetary relief from a defendant who is immune from such relief." § 1915(A)(a), (b). If all or part of Plaintiff's Prisoner Civil Rights Complaint survives screening under § 1915 and any Rule 12(b) motions that may be filed by Defendants, then the Court will, if appropriate, order a *Martinez* Report, which is a "court-authorized investigation and report by prison officials." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991). The *Martinez* Report will require prison officials to investigate Plaintiff's claims and "develop a record sufficient to ascertain whether there are any factual or legal bases for [those] claims." *Id.* The *Martinez* Report may be used by the Court in deciding whether to grant summary judgment, either upon one of the parties' motions or *sua sponte*, and will contain all materials relevant to Plaintiff's claims, including medical records, incident reports, and inmate grievances, among other documents. Once produced, the *Martinez* Report will be filed on the docket of this case and served on Plaintiff, and Plaintiff will then have an opportunity to file a response.

Plaintiff's Prisoner's Civil Rights Complaint has not yet been screened under § 1915 and a *Martinez* Report has not yet been ordered by the Court. Screening of the complaint and, if

appropriate, production of the *Martinez* Report may obviate the need for the production of the documents identified in Plaintiff's Motion For Production. Therefore, Plaintiff's Motion For Production will be denied without prejudice as premature.

IT IS THEREFORE ORDERED that Plaintiff's Motion For Production [Doc. 3] is DENIED without prejudice.


UNITED STATES CHIEF MAGISTRATE JUDGE