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United States District Court,

D. Kansas.
Mohammed SALEH, Plaintiff,
v.
M.E. RAY. et al., Defendants.
No. Civ.A.02–3241–CM.

Nov. 12, 2003.
Mohammed Saleh, Florence, CO, pro se.

Robin Barkett Moore, Wichita, KS, for Defendants.

MEMORANDUM AND ORDER

MURGUIA, J.

***1** Plaintiff, a federal inmate appearing pro se, brings this action against defendants M.E. Ray, Walter Wood, Raymond Darrow, "John Doe I" and the United States of America, alleging that while incarcerated at the United States Penitentiary, Leavenworth, Kansas, (USP Leavenworth), defendants placed him in administrative detention because of his Muslim faith in violation of his First Amendment right to religious freedom. Additionally, plaintiff alleges that defendants subjected him to excessive force, also due to his Muslim faith, when he was placed in ambulatory restraints on March 20, 2001, in violation of both his First and Eighth Amendment rights. Plaintiff has further alleged these acts have violated his statutory rights under the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb–1(a). This matter is before the court on plaintiff's Motion for Discovery (Doc. 31) and defendants' Motion to Dismiss or for Summary Judgment (Doc. 24).

I. Motion for Discovery

On July 16, 2003, this court granted defendants' Motion to Stay Discovery pending a ruling on defendants' dispositive motion. That same day, plaintiff filed the instant Motion for Discovery. In light of the court's July 16, 2003 order staying discovery, the court denies plaintiff's Motion for Discovery as moot.

II. Motion for Summary Judgment

A. Facts [FN1]

FN1. The court construes the facts in the light most favorable to plaintiff as the nonmoving party pursuant to Fed.R.Civ.P. 56. With that in mind, the court points out that plaintiff's statement of facts contains merely outlined headings followed by numbered statements. However, it does not appear those numbered statements correspond with any of the enumerated facts presented by defendants in their statement of material facts, and it is not readily apparent which of the defendants' facts, if any, are specifically controverted as required by D. Kan. Rule 56.1. Thus, to the extent that plaintiff fails to specifically controvert defendants' statement of undisputed facts, the court deems them to be admitted.

During the times relevant to this action, plaintiff was incarcerated at USP Leavenworth. On March 6, 2001, defendants removed plaintiff from general population and placed him in administrative detention. Plaintiff claims that defendants placed him in administrative detention due to an investigation into plaintiff's washing of his hands and feet, a religious ritual performed by followers of the Islamic faith. Defendants, on the other hand, assert they placed plaintiff in administrative detention pending an investigation into plaintiff's safety at the prison and attach as evidence the Administrative Detention Order stating this reason.

Senior Officer Specialist Douglas P. Nee was assigned to D cellhouse and was supervising inmates on Four Gallery, including plaintiff, who was housed in cell D–425. On March 20, 2001, at approximately 11:15 a.m., Lieutenant Torix informed Officer Nee that Five Gallery needed to be cleared of all inmates and that available cells on other ranges needed to be located for those inmates in

Five Gallery. Specifically, Officer Nee was instructed to check with the single celled inmates on Four Gallery to see if the inmate had someone with whom he wanted to be celled. If an inmate did not state a preferred cellmate, that inmate was instructed that a cellmate would be assigned to them.[FN2]

> FN2. All of the cells on Four Gallery are designed for two man occupancy. However, during certain periods of time, some inmates are celled alone in two man designed cells. The general rule is that inmates are celled two to a cell.

At approximately 12:10 p.m., the Four Gallery inmates became disruptive due to the impending cell rotations. Lieutenant Torix was assaulted by an inmate near cell D–409. Other inmates on the gallery began breaking the fire sprinkler heads in their cells, which caused flooding, and several inmates broke the porcelain toilets in their cells and threw porcelain pieces out of their cells. Defendants contend that, based on the violent and assaultive behavior of the inmates on the gallery, the fact that one staff member already had been assaulted, the destruction of government property, and the refusal of the inmates to comply with institutional regulations and staff directives, defendants determined that use of force procedures would be used.

***2** Defendants assembled three force cell teams. During the use of force procedures, some inmates barricaded themselves in their cells, brandishing homemade weapons. Defendants determined that, at times, it was necessary to fire a 37 mm stun gun with a low impact round into the cell to subdue uncooperative inmates and, at other times, defendants introduced chemical agents through the vent in the inmate's cell in order to remove the inmate.

There is a dispute regarding whether plaintiff engaged in disruptive behavior during the disturbance. Plaintiff contends that he did not, yet defendant Darrow filed an incident report, charging plaintiff with engaging in a group demonstration and stating that plaintiff was yelling at other inmates not to cooperate. In any event, as a matter of procedure, inmates were requested to voluntarily submit to restraints. If an inmate voluntarily submitted to restraints, he was removed from his cell, placed in ambulatory restraints, [FN3] and then placed back into either the same cell or another assigned cell.

> FN3. Ambulatory restraints consist of handcuffs, a chain around the inmate's waist, and leg restraints around the ankles. Ambulatory restraints are defined as approved restraint equipment which allow the inmate to eat, drink, and take care of basic human needs without staff intervention.

Defendants contend that plaintiff voluntarily submitted to hand restraints, was removed from his cell, placed in ambulatory restraints, and returned to his cell without incident. Plaintiff asserts that he was extracted from his cell and that defendant Woods ordered the team to place him in ambulatory restraints. Plaintiff also claims that defendant Woods ordered the restraints to be extra tight. Defendant Woods testified that he did not give any such order.

Plaintiff contends that at approximately 4:40 p.m., he complained that his restraints were too tight but that the supervising lieutenant never showed up to loosen the restraints. Yet, defendants submit as evidence a completed Inmate Injury Assessment form, indicating that on March 20, 2001, at approximately 4:30 p.m., Physician's Assistant Haider Al–Rubiie conducted an injury assessment and medically evaluated plaintiff while plaintiff was in ambulatory restraints. According to both the Inmate Injury Assessment form and P.A. Al–Rubiie's sworn testimony, plaintiff voiced no complaints regarding pain or discomfort, and the assessment of plaintiff's ambulatory restraints did not indicate any problems. Then, according to the evidence in the record, P.A. Al–Rubiie conducted another medical evaluation of the plaintiff later that evening while plaintiff was in ambulatory restraints. At that time, plaintiff's circulation was within normal limits, the tightness of the restraints was normal, there was no evidence of injury to the wrist area, and plaintiff did not comment on pain or problems with the restraints.

The next morning, at approximately 4:25 a.m., Physician's Assistant Pierre E. Camps performed a

medical evaluation on plaintiff while plaintiff was in ambulatory restraints. The evidence in the record shows that P.A. Camps checked the restraints for tightness by placing his finger between the restraints and plaintiff's wrist, that plaintiff was able to move all his extremities, that there was no evidence of injury to the wrists, and that plaintiff did not make any comments to P.A. Camps regarding pain or problems with the restraints.

***3** Approximately eighteen to twenty-four hours after plaintiff was placed in restraints, the restraints were removed.[FN4] Plaintiff contends that, after the restraints were removed, defendant Woods stated to the warden that plaintiff had done nothing wrong but that, because plaintiff was a Muslim, it would have looked bad in front of other Muslims who were placed in restraints if plaintiff was left unrestrained. Defendant Woods testified that at no time did he advise the warden that plaintiff had been placed in restraints only because plaintiff was Muslim or that it would look bad if plaintiff was not placed in restraints when the other Muslim inmates were restrained.

> FN4. The amount of time plaintiff spent in ambulatory restraints is not entirely clear from the record. Plaintiff states in two of his administrative appeals that he was placed in restraints "for almost 18 hrs," yet in his response brief plaintiff states that it was twenty-four hours.

B. Standards

Summary judgment is appropriate if the moving party demonstrates that there is "no genuine issue as to any material fact" and that it is "entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In applying this standard, the court views the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Adler v. Wal–Mart Stores, Inc.,* 144 F.3d 664, 670 (10th Cir.1998) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). A fact is "material" if, under the applicable substantive law, it is "essential to the proper disposition of the claim." *Id.* (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). An issue of fact is "genuine" if "there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way." *Id.* (citing *Anderson,* 477 U.S. at 248).

The moving party bears the initial burden of demonstrating an absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *Id.* at 670–71. In attempting to meet that standard, a movant that does not bear the ultimate burden of persuasion at trial need not negate the other party's claim; rather, the movant need simply point out to the court a lack of evidence for the other party on an essential element of that party's claim. *Id.* at 671 (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

Once the movant has met this initial burden, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." *Anderson,* 477 U.S. at 256; *see Adler,* 144 F.3d at 671 n. 1 (concerning shifting burdens on summary judgment). The nonmoving party may not simply rest upon its pleadings to satisfy its burden. *Anderson,* 477 U.S. at 256. Rather, the nonmoving party must "set forth specific facts that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the nonmovant." *Adler,* 144 F.3d at 671. "To accomplish this, the facts must be identified by reference to affidavits, deposition transcripts, or specific exhibits incorporated therein." *Id.* Finally, the court notes that summary judgment is not a "disfavored procedural shortcut;" rather, it is an important procedure "designed to secure the just, speedy and inexpensive determination of every action." *Celotex,* 477 U.S. at 327 (quoting Fed.R.Civ.P. 1).

***4** The court acknowledges that plaintiff appears pro se and his response is entitled to a somewhat less stringent standard than a response filed by a licensed attorney. *Hall v. Bellmon,* 935 F.2d 1106, 1110 (10th Cir.1991). However, this does not excuse plaintiff from the burden of coming forward with evidence to support his claims as required by the Federal Rules of Civil Procedure and the local rules of this court. *Pueblo Neighborhood Health Ctrs., Inc. v. Losavio,* 847 F.2d 642, 649 (10th Cir.1988). Even a pro se plaintiff must present some "specific factual support" for his allegations. *Id.*

C. Discussion

Plaintiff's Complaint does not clearly allege the basis for invoking jurisdiction. Plaintiff first alleges that jurisdiction is invoked pursuant to 28 U.S.C. § 1331 and RFRA, 42 U.S.C. § 2000bb–1(c), and then proceeds to assert constitutional claims under the Eighth Amendment (Count I) and the First Amendment (Count II). Later in his Complaint, plaintiff asserts that he has filed a "Tort Claim," and attaches a claim he filed under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), along with a letter denying that claim. Plaintiff asserts in his response brief that he is suing under the FTCA.

Section 1346(b) grants the federal district courts jurisdiction over a certain category of claims for which the United States has waived its sovereign immunity and "render[ed]" itself liable. *Richards v. United States,* 369 U.S. 1, 6, 82 S.Ct. 585, 7 L.Ed.2d 492 (1962). This category includes claims that are: "[1] against the United States, [2] for money damages, ... [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b).

Thus, to be actionable under § 1346(b), a claim must allege, *inter alia,* that the United States "would be liable to the claimant" as "a private person" "in accordance with the law of the place where the act or omission occurred." Construing this provision, the Supreme Court held that a constitutional tort claim could not contain such an allegation. *F.D.I.C. v. Meyer,* 510 U.S. 471, 477–78, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994). The Court stated: "[W]e have consistently held that § 1346(b)'s reference to the 'law of the place' means law of the State—the source of substantive liability under the FTCA. By definition, federal law, not state law, provides the source of liability for a claim alleging the deprivation of a federal constitutional right.... [T]he United States simply has not rendered itself liable under § 1346(b) for constitutional tort claims." *Id.* (internal citations omitted).

Plaintiff in this case has alleged only constitutional tort claims based upon violations of the First and Eighth Amendments of the United States Constitution and RFRA. Accordingly, this court lacks jurisdiction over plaintiff's claims brought pursuant to the FTCA. *See Johnson v. Sawyer,* 47 F.3d 716, 727 (5th Cir.1995) (en banc) (holding that neither a violation of federal law nor the Constitution can provide the basis for a cause of action under FTCA; plaintiff must allege a violation of duty imposed by state law).

***5** With respect to plaintiff's assertion of jurisdiction under § 1331, the court will construe plaintiff's action as one brought under *Bivens v. Six Unknown Named Agents,* 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). [FN5] As noted by defendants, the United States has not waived sovereign immunity in *Bivens* actions. *Meyer,* 510 U.S. at 483–86; *Chapoose v. Hodel,* 831 F.2d 931, 935 (10th Cir.1987). To the extent that plaintiff seeks monetary damages from the defendants in their official capacities, the action must be construed as one against the United States. *Kentucky v. Graham,* 473 U.S. 159, 166, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). As such, any claims for recovery against the United States and defendants in their official capacities for constitutional violations pursuant to *Bivens* are hereby dismissed. *Pleasant v. Lovell,* 876 F.2d 787, 793 (10th Cir.1989) (to maintain a *Bivens* cause of action, plaintiff must proceed against federal officials in their individual capacities). The court therefore analyzes plaintiff's Complaint as alleging federal constitutional and statutory violations against defendants in their individual capacities.

FN5. *Bivens v. Six Unknown Named Agents,* 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), provides a remedy against federal officials for violations of federal rights.

1. Eighth Amendment Claim

In an Eighth Amendment claim for excessive force, the court must determine "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillan,* 503 U.S. 1, 7, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). Whether force is excessive in violation of the Eighth Amendment depends upon the circumstances confronting the officer as well as the nature and amount of force applied in reaction. *Whitley v. Albers,* 475 U.S. 312,

321, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986).

Under *Hudson,* it is clear that, while the extent of injuries suffered by an inmate is relevant to whether the force involved was unnecessary and wanton, the mere absence of injury does not, itself, end the inquiry. Minor injury does not preclude an action for excessive force, but "de minimis uses of physical force" ordinarily will not support a claim. *Hudson,* 503 U.S. at 9–10. As such, a plaintiff need not show that he suffered serious injury, but the extent of his injury is relevant in evaluating the necessity and wantonness of the force.

In this case, there is no evidence in the record that plaintiff suffered any injury at all. Plaintiff's Complaint alleges that he suffered back pain and partial loss of feeling in his hands and feet. In his response brief, plaintiff also alleges he suffered psychological pain. However, the evidence in the record, which plaintiff does not controvert, shows that plaintiff never complained that his restraints were too tight. More significantly, the medical records pertaining to plaintiff include no entries indicating treatment for any physical injuries as alleged by plaintiff. To the contrary, plaintiff was medically evaluated three times, and the medical records indicate that each time plaintiff was evaluated, there appeared no signs of injury. Further, there is no evidence in the record that plaintiff sought medical treatment, either physical or psychological, after the restraints were removed. Plaintiff's conclusory, unsupported allegations are simply insufficient to refute the medical records.

***6** Taking into account the lack of evidence of any injury sustained by plaintiff, the court turns to whether there is evidence in the record that defendants applied excessive force. An inmate may be restrained by the use of force so long as that force is applied in a good faith effort to maintain or restore discipline and not maliciously and sadistically for the very purpose of causing harm. *Whitley,* 475 U.S. at 319 ("The infliction of pain in the course of a prison security measure ... does not amount to cruel and unusual punishment simply because it may appear in retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense.").

Plaintiff has described, and the facts produced by defendants corroborate, that there was a disturbance on March 20, 2001, in plaintiff's housing unit (D–Cell House) by inmates protesting cell assignments. These facts demonstrate that prison officers had a legitimate concern in restoring order to the unit. Plaintiff claims that he was not participating in the disturbance, yet there is evidence in the record to the contrary. In any event, even taking plaintiff's allegations as true, the placement of plaintiff (and other inmates) in amubulatory restraints to quell a prison disturbance does not amount to cruel and unusual punishment. Plaintiff's allegations do not show that the defendants used more force than was necessary to maintain or restore discipline during a time when many of the inmates in D–Cell House were vigorously protesting cell assignments.

Additionally, plaintiff makes no allegation that defendants applied force in the actual placement in restraints. In fact, plaintiff alleges that he complied and cooperated completely, and there is no allegation that the manner in which defendants placed plaintiff in restraints was inappropriate. And the fact that plaintiff remained in ambulatory restraints for eighteen hours to twenty-four hours does not, itself, rise to the level of an Eighth Amendment violation. *See Cunningham v. Eyman,* 17 Fed. Appx. 449, 453–454 (7th Cir.2001) (finding no Eighth Amendment violation were prisoner spent sixteen hours in shackles and four to five hours in soiled clothing); *Key v. McKinney,* 176 F.3d 1083, 1086 (8th Cir.1999) (holding that prisoner who was restrained in handcuffs and shackles for twenty-four hours, making it more difficult for him to relieve himself, did not suffer a constitutional violation). Plaintiff makes no allegation that his movement was restricted while he was restrained or that he was deprived of food, water, or bathroom breaks. To the contrary, plaintiff was free to move about in his cell. As such, this case differs from the recently decided Supreme Court case *Hope v. Pelzer,* 536 U.S. 730, 738, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002), in which the Court found an Eighth Amendment violation where prison guards handcuffed an inmate, placed him in leg irons, shackled him to a hitching post in the outdoors for seven hours, forced the inmate to remove his shirt while the sun burned his skin, gave the inmate only one or two water breaks but no bathroom breaks, and taunted the inmate about his thirst. The Court determined that the guards "knowingly subjected [the

inmate] to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7–hour period, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation." *Id.*

***7** Viewing all reasonable inferences in favor of plaintiff, the court concludes that the actions of defendants demonstrate that defendants took reasonable steps to quell a prison disturbance and do not demonstrate the type of malicious or sadistic behavior required for stating an Eighth Amendment violation. Defendants are entitled to summary judgment on this claim.

2. First Amendment Claim

Plaintiff alleges he was placed in administrative detention on March 6, 2001, "during an investigation into the performance of religious ablutions (washing hands and feet) by followers of the Islamic faith." (Complaint, p. 3). Plaintiff further claims that the March 20, 2001, incident involving ambulatory restraints occurred because he was Muslim and that, as a result, he was deprived of his right to practice the Islamic faith.

The court notes that plaintiff's response brief makes no argument to support any claim relating to a restraint or inhibition from freely practicing his religion, but appears more to clarify his claim as being that of religious retaliation. The court will nevertheless address plaintiff's free exercise allegation.

a. Free Exercise of Religion

A prison inmate is entitled to reasonable opportunity to practice his religion under the Free Exercise Clause of the First Amendment. *Cruz v. Beto,* 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). Although inmates clearly retain their First Amendment right to free exercise of religion, incarceration necessarily limits that right. *O'Lone v. Estate of Shabazz,* 482 U.S. 342, 353, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987). To state a free exercise claim, a plaintiff must first show that the official action burdened a religious belief rather than a philosophy or way of life. *Wisconsin v. Yoder,* 406 U.S. 205, 215–19, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). Second, the burdened belief must be sincerely held by the plaintiff, and that plaintiff must demonstrate that the official action has interfered with the exercise or expression of her or his own deeply held faith. *Thomas v. Review Bd.,* 450 U.S. 707, 714–16, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981).

In this case, plaintiff has not articulated any interference with the practice of his Muslim beliefs. Plaintiff offers nothing but his conclusory allegation that "[d]efendant John Doe I and defendant Woods were aware that their retaliatory actions ... deprived him of his right to practice the Islamic faith," (Complaint, p. 3), but plaintiff has not alleged any facts showing how the defendants' acts interfered with that right. As previously noted, there is no allegation that his placement in detention and ambulatory restraints interfered with his bodily movement or daily activity. Clearly, defendants' actions did not interfere with plaintiff's exercise or expression of plaintiff's Islamic beliefs.

b. Retaliation

Prison officials may not retaliate against or harass an inmate because of the inmate's exercise of his constitutional rights. *Smith v. Maschner,* 899 F.2d 940, 947 (10th Cir.1990). An inmate claiming retaliation must "allege specific facts showing retaliation because of the exercise of the prisoner's constitutional rights." *Frazier v. Dubois,* 922 F.2d 560, 562 n. 1 (10th Cir.1990). To establish retaliation, an inmate "must prove that 'but for' the retaliatory motive, the incidents to which he refers, including disciplinary action, would not have taken place." *Peterson v. Shanks,* 149 F.3d 1140, 1144 (10th Cir.1998). Moreover, in the prison setting, a plaintiff "must show that 'prison authorities' retaliatory action did not advance legitimate goals of the correctional institution or was not tailored narrowly enough to achieve such goals." ' *Ladd v. Davis,* 817 F.Supp. 81, 82 (D.Kan.1993) (citing *Rizzo v. Dawson,* 778 F.2d 527, 531 (9th Cir.1985)).

***8** Regarding plaintiff's claim that he was placed in administrative detention on March 6, 2001, in retaliation for practicing the Muslim religion, plaintiff has failed to allege any specific facts in support. The record indicates that prison officials questioned plaintiff's safety in the general population and that the move to administrative detention was based upon that reason. Plaintiff's

conclusory allegations are not supported in the record and are, therefore, insufficient to survive summary judgment on this claim.

The court turns to plaintiff's allegation that he was placed in ambulatory restraints on March 20, 2001 in retaliation for practicing his religion. Plaintiff has acknowledged that there was an inmate disturbance in his housing unit on March 20, 2001, and that he, as well as other inmates, were placed in ambulatory restraints.[FN6] There remains a factual dispute whether defendant Wood made the statement that plaintiff had done nothing wrong but that, because plaintiff was a Muslim, it would have looked bad in front of other Muslims who were placed in restraints if plaintiff were left unrestrained. Plaintiff asserts in his Complaint that defendant Woods made this statement, yet defendant Wood testified in a sworn affidavit that he made no such statement.

> FN6. The court notes that conspicuously absent from plaintiff's Compliant is any allegation that only Muslim inmates were placed in ambulatory restraints.

However, even assuming defendant Wood made the statement as plaintiff claims, the statement itself evidences a legitimate reason for placing plaintiff in restraints: treating all inmates on the gallery in a consistent manner. It is a reasonable conclusion that inmates receiving different or favorable treatment by prison officials may be perceived by other inmates as a sign that somehow the inmate has cooperated or complied with staff. In a correctional setting, such a perception could place the inmate in danger of retaliation from other inmates. In the prison context, prison officials must be given broad flexibility in managing penal facilities. *Sandin v. Conner,* 515 U.S. 472, 482–83, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Absent competent evidence of a discriminatory animus, this court will not second-guess defendants' decision to place plaintiff in ambulatory restraints in an effort to restore order to the unit and to ensure the future safety of plaintiff. Summary judgment on plaintiff's First Amendment claim is granted.

3. RFRA Claim

Plaintiff, in conclusory fashion, states that his claim falls within the broad language of RFRA, which states that government officials "shall not substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb–1(a) (2002). "[A] plaintiff establishes a prima facie claim pursuant to RFRA by proving the following three elements: (1) a substantial burden imposed by the federal government on a(2) sincere (3) exercise of religion." *Kikumura v. Hurley,* 242 F.3d 950, 960 (10th Cir.2001). Once a plaintiff has met his prima facie burden, the government must show that the imposition "is in furtherance of a compelling governmental interest." *Id.* at 962 (internal quotations and citation omitted). The Tenth Circuit has recognized that, in the prison context, the maintenance of safety and order is a compelling governmental interest. *Id.* at 962.

***9** Applying these legal standards, plaintiff clearly has not satisfied the threshold requirement for stating a RFRA claim. Plaintiff has failed to allege any facts, and the court finds nothing in the record, tending to show that defendants' actions burdened the free exercise of his religion. Even if plaintiff could satisfy all the elements of a prima facie RFRA claim, the actions of defendants were clearly within the government's compelling interest in maintaining safety and order in its prisons. Defendants are entitled to summary judgment on plaintiff's RFRA claim.

IT IS THEREFORE ORDERED that plaintiff's Motion for Discovery (Doc. 31) is denied as moot, and defendants' Motion to Dismiss or for Summary Judgment (Doc. 24) is granted. This case is hereby dismissed.

D.Kan.,2003.

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