

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

<b>DARYL CHARLES ALI,</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	<b>CIVIL NO. 3:CV-17-1171</b>
<b>v.</b>	:	
	:	<b>(Judge Caputo)</b>
<b>FCI Allenwood, et al.</b>	:	
	:	
<b>Defendants</b>	:	
	:	

**M E M O R A N D U M**

**I. Introduction**

Presently before the Court is Daryl Charles Ali’s “Complaint”<sup>1</sup> and ex parte Motion for a Temporary Restraining Order (TRO) and Preliminary Injunction. (ECF Nos. 1 and 8.) Plaintiff is incarcerated at FCI Allenwood. He claims that in “the latter part of May and June 11, 2017, [he] was sexually assaulted by his roommate(sic)”. (ECF No. 1.) He names no defendants in his “Complaint.” In both his Complaint and TRO, Mr. Ali seeks his immediate transfer to another facility because he no longer feels safe at FCI Allenwood, is dissatisfied with the lack of counseling offered to him as a victim of sexual assault, and does not wish to “be faced with retaliation from staff members at FCI Allenwood” for filing this lawsuit. (ECF No. 9.)

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<sup>1</sup> Mr. Ali’s action was commenced via a “Pro Se Motion for Injunctive Relief against ALL Staff at FCI Allenwood and Immediate Relocation within Bureau of Prisons” filed in the United States District Court for the Middle District of Florida (Orlando District). See ECF No. 1. The matter was transferred to this Court on July 5, 2017. (ECF No. 4.)

For the reasons that follow, Plaintiff's motion for injunctive relief will be denied and he will be required to file a Complaint which complies with the requirements of Fed. R. Civ. P. 8(a)(2).

## **II. Relevant Background**

In "the latter part of May and June 11, 2017, [Mr. Ali] was sexually assaulted by [his] roommate (sic) Wade Kilgore." (ECF No. 1.) While asleep in his cell, Mr. Ali was awoken by Kilgore who attempted to force him to perform fellatio. When Mr. Ali refused and resisted, Kilgore went to sleep in his bunk. Mr. Ali tried to report the attempted sexual assault to the psychology department numerous times without success by advising staff he "needed to discuss a personal problem". (*Id.*, p. 2.) He was told there was no one to see him that day "because the person on duty was only an intern." (*Id.*) He sent an electronic request to speak with a psychologist and a request to the warden of the facility "requesting his assistance in setting up an appointment with the psychology department." Neither the warden or the psychology department replied to his request as of June 16, 2017. (*Id.*) However, he was later told that he was scheduled to see someone in the psychology department but that he failed to appear for his appointment. (*Id.*)

The second attempted assault occurred the evening of June 11, 2017. On that date Kilgore attempted to rape Mr. Ali. The following morning, when his celldoor was unlocked, Mr. Ali went to the counselor's office and demanded a room change. The counselor granted his request that day. (*Id.*, pp. 1 - 2.)

Mr. Ali states he reported “the sexual assault via trulincs to O.I.G.” (*Id.*, p. 3.) Plaintiff does not know why he was placed in the institution’s Special Housing Unit (SHU) following his report of these events. He fears that FCI Allenwood staff will retaliate against him and attempt to cover up the events “to offset [their] liability with P.R.E.A.<sup>2</sup> or any outside investigative departments.” (*Id.* and ECF No. 9, p. 3.) He seeks an immediate transfer to another facility.

### **III. Discussion**

#### **A. Mr. Ali must file a Proper Complaint**

Pursuant to Fed. R. Civ. P. 3, “a civil action is commenced by filing a complaint with the court.” The Complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Mr. Ali’s “Pro Se Motion for Injunctive Relief against ALL Staff at FCI Allenwood and Immediate Relocation within Bureau of Prisons” violates both rules. It is not a complaint; it is a five page letter-motion describing his encounter with his former cellmate and his attempts to contact the mental health professionals at the facility following the event. It is completely devoid of reference to any specific individual defendant. In its present form he fails to set forth a claim against a single individual. Mr. Ali will therefore be required to file a complaint, labeled as such, and one that complies with Rule 8(a)(2).

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<sup>2</sup> The Prison Rape Elimination Act of 2003 (PREA) is a federal law dealing with the sexual assault of prisoners.

**B. Mr. Ali's Motion for TRO will Be Denied.**

Federal Rules of Civil Procedure 65 governs the grant or denial of TROs. The Third Circuit Court of Appeals has outlined four factors to consider: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Crissman v. Dover Downs Entm't Inc.*, 239 F.3d 357, 364 (3d Cir. 2001); see *Bieros v. Nicola*, 857 F. Supp. 445, 446 (E.D. Pa. 1994). The granting of a TRO is extraordinary in nature, and such relief should only be granted in limited circumstances. *A.T. & T. Co. V. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426 - 27 (3d Cir. 1994). "In the prison context, requests for injunctive relief must always be viewed with great caution because judicial restraint is especially called for in dealing with complex and intractable problems of prison administration." *Sanders v. Beard*, No. 3:09-CV-1384, 2010 WL 2853113, at \*1 (M.D. Pa. July 20, 2010).

Mr. Ali has failed to demonstrate that either an ex parte TRO or a preliminary injunction is warranted. Specifically, Mr. Ali does not allege any instance of retaliation, intimidation, or any other threat to his safety from staff or other inmates since July 12, 2017, when he was provided new housing. Likewise, the fact that he is housed in the institution's SHU following the report and during the investigation of his allegations of sexual assault is not unusual. Accordingly, Mr. Ali's motion fails to set forth facts clearly demonstrating that immediate

irreparable injury will result to him before the adverse party can be heard in opposition to his request for preliminary injunctive relief. See Fed. R. Civ. P. 65(b)(1)(A).

Moreover, Plaintiff's request for a preliminary injunction will also be denied because Mr. Ali has not demonstrated that he is likely to suffer irreparable harm absent preliminary injunctive relief.<sup>3</sup> A party seeking a preliminary injunction must allege facts which "clearly support a finding that immediate and irreparable injury will result to the movant if preliminary relief is denied." *Yunik v. McVey*, No. 08-1706, 2009 WL 1683286, at \*1 (W.D. Pa. June 15, 2009). The mere possibility of irreparable injury is insufficient; rather, a movant must demonstrate that irreparable injury is "likely" absent preliminary relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Moreover, "[a] preliminary injunction cannot be issued based on past harm," but is instead intended "to prevent future irreparable harm." *Fisher v. Goord*, 981 F.Supp. 140, 168 (W.D.N.Y. 1997). The failure to establish the likelihood of irreparable injury renders a preliminary injunction inappropriate. See *NutraSweet Co. v. Cit-Mart Enters., Inc.*, 176 F.3d 151, 153 (3d Cir. 1999).

While the Court scrutinizes claims regarding inmate safety with the utmost care, Plaintiff's allegations of irreparable harm are too speculative to warrant the preliminary injunctive relief sought. See *Bentz v. Lindenberg*, No. 15-cv-121, 2015 WL 4574801, at \*4 (S.D. Ill. July 29, 2015). Indeed, the "Complaint" and TRO motion are entirely devoid of

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<sup>3</sup> A district court is not required to hold a hearing on a moving party's request for preliminary injunction "when the movant has not presented a colorable factual basis to support the claim on the merits or the contention of irreparable harm." *Bradley v. Pittsburg Bd. of Educ.*, 910 F.2d 1172, 1176 (3d Cir. 1990).

specific allegations regarding the likelihood of future irreparable harm. *See Fisher*, 981 F.Supp. at 168. Here, Mr. Ali admits he is no longer housed with Mr. Kilgore. Likewise, he fails to suggest that prison officials have ignored any new concerns for his safety that he may have shared with them or that his present housing exposes him to a likely risk of harm. Because Plaintiff does not sufficiently allege that he will likely suffer an irreparable injury absent the extraordinary remedy of a preliminary injunction, the Court will deny his motion.

An appropriate Order follows.

**/s/ A. Richard Caputo**  
**A. RICHARD CAPUTO**  
**United States District Judge**

**Date: July 14th, 2017**