

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CALVIN RAY HYDER	§	
TDCJ-CID #458495	§	
V.	§	C.A. NO. C-07-291
	§	
NATHANIEL QUARTERMAN	§	

**ORDER DENYING PETITIONER'S
MOTION FOR A RESTRAINING ORDER**

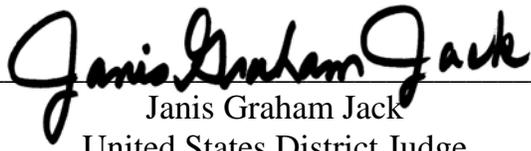
By order entered December 5, 2007, the Court granted respondent's motion to dismiss for failure to exhaust state court remedies, and entered final judgment dismissing without prejudice petitioner § 2254 habeas corpus application. (D.E. 34, 35). On May 1, 2008, petitioner filed a motion to reinstate. (D.E. 40). On May 14, 2008, petitioner filed the instant "motion and request for restraining order," alleging that, on May 2, 2008, prison officials at the Telford Unit in New Boston, Texas, assaulted him. (D.E. 42). On December 22, 2008, the Court denied plaintiff's motion to reinstate. (D.E. 52).

This is a closed habeas corpus case. Petitioner's motion for a restraining order arguably raises, *inter alia*, constitutional claims of excessive force. Such claims must be pursued in a separate § 1983 civil rights action. See Preiser v. Rodriguez, 411 U.S. 475, 487 (1973) (claims challenging the fact or duration of confinement must be pursued in a habeas corpus proceeding, while claims challenging the conditions of confinement are maintained properly in a civil rights action). Moreover, plaintiff complains of persons employed at the Telford Unit, and of events that occurred there. The Telford Unit is in Bowie County, which is located in the Eastern District of Texas, Texarkana Division. See 28 U.S.C. § 124(c)(5). The Court does not have personal jurisdiction over the Telford Unit prison personnel.

Finally, the relief which petitioner seeks is merely a declaration that the Telford Unit prison personnel be restrained from violating his constitutional rights. No court order is required to mandate what is already the law.

Accordingly, petitioner's motion for a restraining order (D.E. 42) is DENIED.

SIGNED this 22nd day of January, 2009.



Janis Graham Jack
United States District Judge