UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROBERT KING WILKERSON, ET AL.	)	CIVIL ACTION NUMBER 00-304-C-M3
Plaintiffs,	)	
	)	JUDGE BRADY
v.	)	
	)	MAGISTRATE JUDGE BOURGEOIS
RICHARD STALDER, ET AL.,	)	
	)	**Evidentiary Hearing Requested**[1]
Defendants.	)	

MOTION FOR TEMPORARY RESTRAINING ORDER

NOW INTO COURT, through undersigned counsel, comes Plaintiff Albert Woodfox, who submits this Motion for a temporary restraining order ("TRO") to prohibit Defendants from strip searching him on a daily basis for every movement he makes within the David Wade Correctional Center. As set forth in the accompanying memorandum, Plaintiff Woodfox meets all four standards for granting this motion. Notably, as set forth in detail below, Plaintiff Woodfox has already won relief on this very same issue against Defendants, which makes their unlawful conduct all the more perplexing.

Plaintiff Woodfox respectfully requests that this Court consider this matter on an expedited basis and issue an order prohibiting Defendants from this unlawful conduct.

WHEREFORE, the Plaintiff prays that this Motion be granted.

[1] Plaintiff Woodfox requests an evidentiary hearing on this motion only if Defendants dispute the factual nature of their strip search practices as described in Section I.C., below.

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ROBERT KING WILKERSON, ET AL. Plaintiffs, v. RICHARD STALDER, ET AL., Defendants.	)	CIVIL ACTION NUMBER 00-304-C-M3 JUDGE BRADY MAGISTRATE JUDGE BOURGEOIS

MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER

This history of this case is well known to this Court. The Louisiana Department of Public Safety and Corrections has held Plaintiff Albert Woodfox ("Plaintiff Woodfox" or "Mr. Woodfox") in solitary confinement for the past 41 years in violation of his constitutional rights.

In further violation of those rights, Defendants now strip search Plaintiff Woodfox and inspect his anus every time he enters or leaves his cell. These strip searches occur as often as 6 times a day: when Mr. Woodfox goes to a doctor appointment or to have his hair cut, exercises daily in an individual pen on the yard, uses the phone by the guard offices to call his lawyers, etc.

Defendants strip Mr. Woodfox even though he is shackled in wrist, ankle and waist chains when outside of his cell; is under constant observation or escort; and typically has no contact with individuals other than correctional personnel. Defendants continue this practice despite the fact that they are on notice that these strip searches are unlawful *and* previously agreed via consent agreement not to conduct such strip searches.

I. <u>FACTUAL AND PROCEDURAL HISTORY</u>

A. Defendants' Regular Strip Search Practices Were Rejected as Unlawful by the Late Judge Daniel W. LeBlanc

Defendants previously subjected Mr. Woodfox to unlawful strip searches in the 1970's. Mr. Woodfox brought a suit against Defendants' unlawful strip searching of inmates housed in secure areas such as the CCR unit. In *Woodfox v. Phelps*, No. 209, 535 "H", 19th JDC (1978). Mr. Woodfox prevailed, winning class-wide relief. Judge LeBlanc held that Defendants "must curtail, ***and in certain instances cease***, the routine requirement of anal examinations." *Id.* at 3 (attached hereto as Exhibit 1) (emphasis added). The court's order was unambiguous:

> Anal examinations may be required before an inmate enters a segregation area or following unescorted contact with general population inmates, but ***defendants must cease requiring anal examinations before or after a segregated inmate is moved within the segregation area or anywhere in the prison while under escort or observation***.

Id. at 3 (emphasis added).

B. Defendants Enter Into a Consent Agreement that Explicitly Prohibits Regular Strip Searches Such as Those at Issue Here.

Defendants' conduct was so egregious that Judge LeBlanc ordered Defendants to revise their regulations and also left Defendants a stern admonition not to violate his order:

> Any deliberate deviations from the Court approved regulations by the defendants, their agents or employees, will be punishable as provided by law for ***willful disobedience of a judge*** and order of the Court."

Id. at 4 (emphasis added). Accordingly, Defendants entered into a Consent Agreement that clearly precluded the sort of strip searches Defendants have recently resumed. *See* Exhibit 2, 1978 *Woodfox v. Phelps* Consent Agreement (hereinafter *Woodfox* Consent Agreement). The *Woodfox* Consent Agreement binds Defendants pursuant to ¶ II, which dictates that the

"agreement is applicable to all employees and/or agents of the Louisiana Department of Correction." Exh. 2 at 2.

The *Woodfox* Consent Agreement explicitly states that

> a strip search is ***specifically prohibited*** when a segregated inmate[] is moved within the segregation area or anywhere within the institution while the inmate[] is under escort or observation, unless there is probable cause to believe that the inmate has secreted contraband into a body cavity.

Id. at 1. The *Woodfox* Consent Agreement further outlines Defendants' voluntary promise not to strip search Mr. Woodfox without probable cause:

> in all other circumstances not specifically mentioned [in the Consent Agreement], ***strip searches may be required only upon a specific and particular demonstration of probable cause***. The details of the probable cause should be recorded in writing and based on firsthand knowledge. The record should include the reasons, circumstances, and results of the search. A copy should be given to the inmate[] and a copy should be placed in the…institutional record.

Id. at 2 (emphasis added).

C. Defendants Resume Unlawful Strip Searches the Very Month Judge LeBlanc Passes Away.

Despite the binding nature of the *Woodfox* Consent Agreement, Defendants recently resumed regular strip searches of Mr. Woodfox and others housed in CCR at the David Wade Correctional Center. Defendants force Mr. Woodfox to strip until he is naked and expose himself each time he leaves his cell and each time he returns to it. Defendants force Mr. Woodfox to bend at the waist, lift his genitals, and spread his buttocks so that the officer may inspect his anus. Defendants force Plaintiff Woodfox to submit to these degrading searches despite him being escorted by prison guards everywhere he goes and is never outside the direct observation of the prison guards. Defendants force Mr. Woodfox to be stripped regardless of whether he has actually made physical contact with inmates or people from outside the prison. Plaintiff Woodfox must submit to this procedure even when he has only left his cell to exercise

in an enclosed pen where he has no contact with other inmates or people from outside the prison. When leaving his cell, Plaintiff Woodfox is shackled by the hands and feet and is always escorted by a correctional officer anywhere he goes.

Prior to instituting this new policy of regular strip searches in March 2013, Defendants had managed to house Mr. Woodfox without the aid of regular strip searches for approximately 34 years: first at the Louisiana State Penitentiary until 2009, and then at Wade from 2009-2013. Further, Mr. Woodfox – who is 68 years old - has not had a single disciplinary incident or write-up during his entire time at Wade. Nonetheless, Defendants instituted a practice of stripping Mr. Woodfox in March 2013, the same month that Judge LeBlanc passed away.[2]

D. Defendants Are Put On Notice that Strip Searches Are Unlawful and in Violation of the *Woodfox* Consent Agreement.

Plaintiff Woodfox orally informed Defendants that the searches were illegal the first time he was ordered to submit to the resumed practice (in March 2013). At the same time, Mr. Woodfox referred Defendants to the *Woodfox v. Phelps* case and the *Woodfox* Consent Agreement. However, Defendants continued the unlawful strip searches.

In early June, Plaintiffs' Counsel raised the issued directly with the Warden of Wade. *See* Exhibit 3, 6/7/13 Letter from G. Kendall to Warden Jerry Goodwin. After months of attempting to address the matter directly, Mr. Woodfox also filed for an administrative remedy in June 2013. *See* Exhibit 4, 6/25/13 Administrative Remedy Procedure Request of June 25, 2013, at 1-2. Defendants continued the unlawful strip searches.

In early July, Plaintiffs' Counsel contacted Defendants' Counsel regarding unlawful strip searches, again providing Defendants an opportunity to rectify the situation without the Court's involvement. *See* Exhibit 5, 7/2/13 Email from C. Williams to R. Curry. Despite being put on

[2] Judge LeBlanc passed away on May 12, 2013. *See*, *e.g.*, http://en.wikipedia.org/wiki/Daniel_W._LeBlanc

notice through both written and telephonic communications, Defendants continue the unlawful strip searches.

II. Legal Analysis

A. The Standards for Temporary Restraining Order ("TRO") Are Met

Rule 65 of the Federal Rules of Civil Procedure governs the granting of preliminary injunctions and temporary restraining orders. To obtain a preliminary injunction, a plaintiff must show:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury outweighs any damage that the injunction might cause the defendant, and (4) that the injunction will not disserve the public interest.

Planned Parenthood of Houston and Southeast Texas v. Sanchez, 403 F.3d 324, 329 (5th Cir. 2005). A TRO "should be restricted to serving [the] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

As discussed further below, Plaintiffs meet all four considerations. Even if the Defendants had not previously agreed to bind themselves by the *Woodfox* Consent Agreement and were not otherwise bound by Judge LeBlanc's order, Plaintiff Woodfox would succeed on a de novo review of the constitutionality of the regular strip searches at issue here. The regular strip searches of Mr. Woodfox are a gross constitutional violation, an affront to his dignity, and the precise sort of injury a TRO is designed to address. There is no real threat to Defendant from the injunction, and the injunction is consistent with, rather than contrary to, the public interest.

B. The Consent Agreement – an Enforceable Final Judgment – More Than Meets the Substantial Likelihood of Success on the Merits Requirement.

The Supreme Court has described a consent agreement as "an agreement between the parties to a case after careful negotiation has produced agreement on [its] precise terms." *Local Number 93, International Assoc. of Firefighters, etc. v. Cleveland*, 478 U.S. 501, 522, (1986) (internal quotations omitted) (emphasis added). A consent decree is a final judgment, even though it is a consensual judgment resulting from an agreement between the parties, rather than one rendered on the merits following trial. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992). As a result, a consent decree is still "subject to the rules generally applicable to other judgments and decrees.." *Rufo*, 502 U.S. at 378. It is a final judgment to be enforced even if Defendants do not agree that the judgment is required by the Constitution. *Cooper v. Noble*, 33 F.3d 540, 545 (5th Cir. 1994) (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971) ("the very nature of a consent agreement is such that parties will agree to act in ways they do not believe the Constitution requires in order to save themselves the time, expense, and inevitable risk of litigation.")(emphasis added). Accordingly, Defendants cannot unilaterally decide not to be bound by a consent decree or to change its terms. *See*, *e.g.*, *LULAC v. City of Boerne*, 659 F.3d 421, 436 (5th Cir. 2011) (citing *Sys. Fed'n No. 91, Ry. Emps.' Dept., AFL-CIO v. Wright*, 364 U.S. 642 (1961).

Defendants are violating Judge LeBlanc's order and the Consent Agreement multiple times every day. Judge LeBlanc's order, requires Defendants to "cease requiring anal examinations before or after a segregated inmate is moved within the segregation area or anywhere in the prison ***while under escort or observation***." Exh. 1 at 3. The Consent Agreement also forbids strip searches for merely entering or leaving a segregation area. Exh. 2 at 2. Defendants contention that it may – and so does – strip search Plaintiff Woodfox whenever

he is entering or leaving a segregation area is directly contrary to the plain language of both Judge LeBlanc's Order and the *Woodfox* Consent Agreement – each of which possess the fore and effect of a final and binding judgment upon Defendants. As such, Plaintiffs more than demonstrate a substantial likelihood of success on the merits by virtue of prior litigation alone.

C. Mr. Woodfox Would Have a Substantial Likelihood of Success of Demonstrating the Strip Searches are Unlawful Even If There Was No Prior Judgment

Courts around the country view strip searches with a skeptical eye. For example, the Fifth Circuit has described strip searches as "humiliating and degrading." *Williams v. Kaufman County*, 352 F.3d 994, 1013 (5th Cir. 2003). The Seventh Circuit has opined that it "can think of few exercises of authority by the state that intrude on the citizen's privacy and dignity as severely as [] visual anal and genital searches." *Mary Beth G. v. Chicago*, 723 F.2d 1263. 1272 (7th Cir. 1983). More recently, the Seventh Circuit has called strip searches"[o]ne of the clearest forms of degradation in Western Society is to strip a person of his clothes. The right to be free from strip searches and degrading body inspections is thus basic to the concept of privacy." *Canedy v. Boardman*, 16 F.3d 183, 185 (7th Cir. 1994).

Accordingly, the Supreme Court has held that the search of an inmate's body cavity must be ***reasonable under all the facts and circumstances*** in which they are performed. As the Court explained,

> the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted."

Bell v. Wolfish, 441 U.S. 520, 559 (1979). This is the controlling standard in the Fifth Circuit, where inmate claims of unconstitutional strip searches and body cavity searches are evaluated

through the lens of Fourth Amendment reasonableness. *See*, *e.g.*, *Moore v. Carwell*, 168 F.3d 234, 237 (5th Cir. 1999) (citing *Elliott v. Lynn*, 38 F.3d 188, 191 n. 3 (5th Cir. 1994); *United States v. Lilly*, 576 F.2d 1240 (5th Cir. 1978)).

The Supreme Court has announced that "the absence of substantial evidence" will negate a courts' general deference to prison officials' judgment in operating a facility. *Florence v. Bd. of Chosen Freeholders*, 132 S. Ct. 1510, 1519 (2012) (citing *Block v. Rutherford*, 468 U.S. 576, 584 (1984)). Where the evidence (or lackthereof) "indicate[s] that the officials have exaggerated their response to [security interests]," a court need not give the officials' every benefit of the doubt. *Id.* Indeed, courts adjudicating the reasonableness of strip searches must always weigh "the ***admittedly legitimate*** claims of inmates not to be searched in a ***humiliating and degrading manner***" against the prison's proffered justifications for conducting such searches. *Watt v. City of Richardson Police Dep't*, 849 F.2d 195, 196 (5th Cir. 1988) (emphasis added).

Strip searches must be justified by a real threat to the prison. These threats include emergencies such as "prison murders, suicides, stabbings, and cuttings." *Lynn*, 38 F.3d at 191. In addition, legitimate and documentable concerns regarding the circulation of contraband could also justify strip searches. *See*, *e.g.*, *Gettridge v. Jackson Parish Corr. Ctr.*, No. 3:12-cv-31482013 U.S. Dist. LEXIS 38870, at *6 (W.D. La. Feb. 19, 2013) (citing *Florence v. Bd. of Chosen Freeholders*, 132 S. Ct. 1510, 1519 (2012)).

Despite these possible justifications, neither the Supreme Court – nor any other court – has ruled that it is reasonable to strip search an isolated inmate ***every time he moves*** where, as here, he has no contact with any individuals, is under constant direct observation, and is shackled in chains. Upon review, the only court that has weighed in on this situation is the Second

Circuit, which forbids regularly strip searching isolated inmates who are under constant guard. The Second Circuit's *Hurly* decision speaks directly to this issue:

> [I]n the case of a [solitary confinement and/or disciplinary segregation] inmate…who [i]s heavily shackled and under close and constant guard during the few restricted excursions from his segregated cell, the routine [strip] searches [are]… unnecessary and unjustified."

Hurley v. Ward, 584 F.2d 609, 611 (2d. Cir. 1978) (upholding a preliminary injunction against that practice).

Defendants contend that the regular strip searches of Mr. Woodfox are lawful pursuant to Regulation C-02-003. Regulation C-02-003 states that permissible strip searches include when an inmate:

1. is entering or leaving the facility for a court appearance, trip, or work detail;
2. participated in any physical contact visit;
3. is entering or leaving a segregation area; or
4. has unescorted contact with general population offenders.

See August 1, 2013 letter from R. Curry to Carine Williams (attached hereto as Exhibit 6). Defendants specifically rely upon the fact that the inmate is "entering or leaving a segregation area" to justify the regular strip searches of Mr. Woodfox. *See* Exhibit 7, 8/5/13 First Step Response to Woodfox Administrative Remedy Procedure Request. Defendants have argued to Plaintiffs, without elaboration, that such searches are justified because they "are conducted for…safety and security." Exhibit 6, *supra.*

Despite numerous attempts to deal with this matter without the Court's intervention, Defendants continue to refuse to explain to what safety or security threat they are responding when searching Mr. Woodfox. They have refused to address the fact that Mr. Woodfox does not (and cannot) leave his cell without being: 1) escorted and 2) while shackled at the hands, waist, and feet. They also have failed to provide any authority or otherwise offer any explanation of

why they are justified in unilaterally ignoring the terms of the *Woodfox* Consent Agreement. *Cf. Woodfox* Consent Agreement, *supra* ("A strip search is specifically prohibited when a segregated inmate[] is moved within the segregation area or anywhere within the institution while the inmate[] is ***under escort or observation***") (emphasis added).

Defendants' fabricated "penological interest" in strip searching a 68 year old man held in isolation for 23 hours a day for over 40 years, and cut off from all other inmates and contact visits, does not withstand scrutiny. Plaintiff Woodfox is shackled at the hands, waist and ankles any time he is out of his cell. These shackles are over a prison-issued jumpsuit, which he is not allowed to remove when outside his cell. Mr. Woodfox cannot reach, let alone secrete, something into his backside. Moreover, he is under constant watch while outside of his cell, and he is not allowed contact with other inmates who could pass him contraband. Thus, there is no one else who could hide any contraband on Mr. Woodfox's person, let alone in or around his genitals.

Defendants' unequivocal statement that they are entitled to conduct daily strip searches simply by decreeing it necessary for "safety and security" is unsupported by law. As an unsupportable exaggeration, it is entitled to no deference whatsoever pursuant to the Supreme Court's guidelines laid down in *Florence*. As the Second Circuit observed in *Hurley*, for an "inmate…who [i]s heavily shackled and under close and constant guard during the few restricted excursions from his segregated cell, the routine [strip] searches [are]… unnecessary and unjustified." *Hurley*, at 611.[3] As such, should Plaintiff Woodfox have to litigate the lawfulness of the strip searches anew, he would succeed again.

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[3] It bears mentioning that the inmate in *Hurly* actually had a history of contraband within his facility, yet the Second Circuit still upheld an injunction against strip searching him "upon leaving [isolated housing] to go anywhere within the correctional facility." *Hurley* at 610. Here, in contrast, Plaintiff Woodfox has no history of contraband whatsoever at Wade.

III. CONCLUSION

For the foregoing reasons, Plaintiff Woodfox easily meets all the requirements for granting this TRO. There is a substantial likelihood of success both on his ability to enforce the prior judgment and on the underlying constitutionality of the regular strip searches. There is no legitimate penological interest – no emergency, no "real threat" of Plaintiff Woodfox smuggling contraband.

Moreover, the irreparable harm is obvious: without this TRO, Mr. Woodfox will continue to be forced to submit to numerous "humiliating and degrading" strip searches on a daily basis. In contrast, Defendants will suffer no injury should this TRO be granted. As discussed above, Plaintiff Woodfox poses no "real threat" to contraband distribution within the facility because it is physically impossible for him to actually hide contraband inside his body, and regardless, he has no access to other inmates anyway. Moreover, the Louisiana Correctional System was able to operate without regular strip searches for decades – in accordance with court order and the *Woodfox* Consent Agreement. The public has no specific beneficial interest in Defendants' unlawfully strip searching Plaintiff Woodfox, and the public interest will be served by Defendants respecting and following the rule of law.

For the foregoing reasons, Plaintiff Woodfox requests this Court to issue TRO prohibiting Defendants from the regular strip searches at issue here.

August 23, 2013

Respectfully submitted,

By: ***<u>/s/ Katherine Kimpel</u>***

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this MOTION and MEMORANDUM was served this 23rd day of August 2013 by tendering same through ECF, electronic e-mail, on all counsel of record, namely:

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