

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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In the Matter of a Complaint by :

DAVID DONHAUSER, :
Plaintiff, :

- against - :

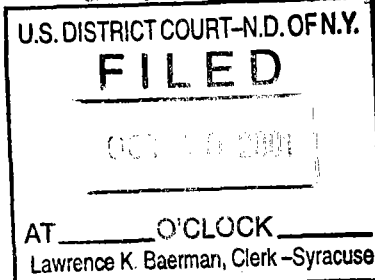
GLENN S. GOORD, Commissioner, :
New York DOCS; MARTHA YOURTH, :
C.S.W.; DOMINIC MARTINELLI, S.O.P.:
Counselor, New York DOCS, :

Defendants. :

Pursuant to 28 U.C.S. § 1983. :
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NOTICE OF MOTION FOR A
PRELIMINARY INJUNCTION

_____-CV-_____ (_____) 4



S I R S:

PLEASE TAKE NOTICE that upon the annexed affirmation of
DAVID DONHAUSER, affirmed the 9 day of October, 2001, and
upon the complaint herein, plaintiff will move this Court, Hon.
_____, U.S.D.J., in Room _____, United States Courthouse
100 South Clinton Street, Syracuse, New York, 13261-7367, on the
12 day of November, 2001, at 9 o'clock in the Fore
noon thereof, or as soon thereafter as parties can be heard, for
an Order pursuant to Rule 65 of the Federal Rules of Civil Procedure
enjoining the defendants from:

- A. taking any action(s) in retaliation or in retribution
against plaintiff for having filed and commenced the
instant action, or any actions which would serve to
render the instant action moot, including, but not limited
to: transferring plaintiff to another facility; harassing
plaintiff through the use of unwarranted searches and
frisks of his person and property or the use of the
inmate disciplinary process; withholding plaintiff's
goodtime for failure to participate in the Sex Offender's
Program which plaintiff complains of in the instant Action;
or any other actions of a similar nature aimed at punishing

plaintiff for having commenced the instant action or at preventing litigation on the instant action from proceeding;

- B. continuing the current practice of requiring a detailed written accounting of an S.O.P. participant's personal sexual history, biography, and description of the instant offense, where said participant maintained his innocence at a trial or took an "Alfred" plea, and said conviction has pending appellate or post-conviction actions or remedies;
- C. disseminating any information currently in existence which has been obtained from any document listed in subparagraph B, above, to other inmate program facilitators, to Corrections Officers, to the Board of Sex Offense Examiners, to District Attorneys or other prosecutors, to any Court for any purpose other than the instant action, or to any other person, agency or entity not specifically identified herein;
- D. utilizing any information obtained thereby for any reason, including, but not limited to: seeking an increased risk level prior to an S.O.P. participant's release; seeking criminal prosecution for uncharged crimes or criminal actions of any said participant which have come to light through said practice; seeking to withhold good time credits based upon said information; seeking to prevent release upon any said participant's Conditional Release date by the denial of proposed residences and release programs based upon the use of said information, of any other use of said information which is intended to negatively impact any said participant's reputation, ability to function, and eligibility to participate or obtain programs, services, privileges, etc.
- E. And from taking any other actions which the Court deems to be inappropriate, unwarranted, arbitrary and injurious to the plaintiff.

Dated: Onieda County, New York
Sept 12, 2001.

Yours, etc.

David Donhauser, Plaintiff.

FROM: DAVID DONHAUSER, Plaintiff Pro Se
DIN#99-B-1868
Oneida Correctional Facility
6100 School Road, Box 4580
Rome, NY 13442-4580

TO: UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
United States Courthouse
100 South Clinton Street
P. O. Box 7367
Syracuse, NY 13261-7367

GLENN S. GOORD, Commissioner
MARTHA YOURTH, C.S.W. Guidance Specialist
Defendants
New York State Department of Correctional Services
State Office Building Campus, Bldg. #2
1220 Washington Avenue
Albany, NY 12226

DOMINIC MARTINELLI, Sex Offender Program Counselor, Defendant
Oneida Correctional Facility
6100 School Road, Box 4580
Rome, NY 13442-4580

Hon. Elliot L. Spitzer, Attorney General
Attorney for Defendants
New York State Department of Law
Office of the Attorney General
The Capitol
Albany, NY 12224

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In the Matter of a Complaint by :
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DAVID DONHAUSER, :
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Petitioner, :
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- against - :
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GLENN S. GOORD, Commissioner, :
New York DOCS; MARTHA YOURTH, :
C.S.W.; DOMINIC MARTINELLI, S.O.P. :
Counselor, New York DOCS, :
 :
 :
Defendants. :
 :
 :
Pursuant to 28 U.C.S. § 1983. :
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-CV- ()

A. Taking any action(s) in retaliation or in retribution against plaintiff for having filed and commenced the instant action, or taking any actions which would serve to render the instant action moot, including, but not limited to: transferring plaintiff to another facility; harrassing plaintiff through the use of unwarranted searches and frisks of his person and property or through the use of the inmate disciplinary process; withholding plaintiff's Good Time for ailure to participate in the Sex Offender's Program which plaintiff complains of in the instant Action; or any other actions of a similar nature aimed at punishing plaintiff for having commenced the instant action or at preventing litigation on the instant action

from proceeding;

B. Continuing the current practice of requiring a detailed written accounting of an S.O.P. participant's personal sexual history, biography, and description of the instant offense, where said participant maintained his innocence at a trial or took an "Alfred" plea, and said conviction has pending appellate or post-conviction actions or remedies;

C. Dissiminating any information currently in existence which had been obtained from any document listed in sub-paragraph B, above, to other inmate program facilitators, to Corrections Officers, to the Board of Sex Offense Examiners, to District Attorneys or other prosecutors, to any Court for any purpose other than the instant action, or to any other person, agency or entity specifically identified herein;

D. Utilizing any information obtained thereby for any reason, including, but not limited to: seeking an increased risk level prior to an S.O.P. participant's release; seeking criminal prosecution for uncharged crimes or criminal actions of any said participant which have come to light through said practice; seeking to withhold good time credits based upon said information; seeking to prevent release upon any said participant's Conditional Release date by the denial of proposed residences and release programs based upon the use of said information, of any other use of said information which is intended to negatively impact any said participant's reputation, ability to function, and eligibility to participate or obtain programs, services, privileges, etc.; and

E. From taking any other actions which the Court deems to be inappropriate, unwarranted, arbitrary and injurious to the plaintiff,

until such time as a final disposition on the merits in the above-entitled action has been reached.

2. Unless restrained, the defendants will continue to, or will begin to, take the actions herein sought to be enjoined.

3. Immediate and irreparable injury, loss, and damage will result by reason of the threatened and/or ongoing actions of the defendants, as more particularly appears in the complaint filed in this action. Plaintiff currently has no adequate remedy at law.

4. Plaintiff herein incorporates and relies upon the factual allegations contained within the Complaint as the factual predicate which forms the basis of support for the relief requested herein.

5. Plaintiff recognizes that the Court has discretion in determining whether to grant or deny a preliminary injunction and further recognizes the fact that a preliminary injunction is an extraordinary and drastic remedy that should not be granted freely. However, plaintiff respectfully asserts that discretion would be properly utilized in this action based upon the following grounds:

A. The significance of the threat of irreparable harm to plaintiff if the injunction is not granted presents a reasonable probability that plaintiff's constitutional liberty, privacy, due process and equal protection interests will ultimately be irrevocably compromised;

B. The state of the balance between this harm and the injury that granting the injunction would inflict on the defendants weighs heavily in plaintiff's favor;

C. There exists a high probability the plaintiff will ultimately succeed on the merits in this action; and,

D. The public interest favors such an injunction inasmuch as

there are currently many others similarly situated to plaintiff's instant circumstances.

WHEREFORE, DAVID DONHAUSER, being the plaintiff in the instant action, respectfully prays that the Court issue a preliminary injunction restraining the defendants from continuing the conduct or taking the actions as described above, and for such other and further relief as the Court may deem to be equitable, just and proper under the circumstances.

I, DAVID DONHAUSER, being the plaintiff in the above-entitled action, do hereby declare and affirm that the foregoing is true and correct to the best of my knowledge and belief, and that I make this declaration and affirmation under the full penalties of perjury.

EXECUTED this 17 day of Sept., 2001.



David Donhauser, Plaintiff Pro Se
DIN #99-B-1868
Oneida Correctional Facility
6100 School Road, Box 4580
Rome, NY 13342-4580