

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED
CLERK'S OFFICE
JUN 22 2005
LUTHERA D. HARRIS, Clerk
Deputy Clerk

JOHN TURSCAK,

:

Petitioner,

PRISONER HABEAS CORPUS

28 U S C. § 2241

vs

GERARDO MALDONADO,
Warden,

CIVIL ACTION NO

1 05-CV-0569-CC-SSC

Respondent

RESPONSE TO PETITION FOR HABEAS CORPUS

Respondent Gerardo Maldonado, Warden of the Atlanta United States Penitentiary ("USP Atlanta"), by and through his attorney, the United States Attorney for the Northern District of Georgia, hereby submits his response to the Court's show cause order and Inmate John Turscak's petition for writ of habeas corpus.

BACKGROUND

Petitioner is an inmate at the United States Penitentiary in Atlanta, Georgia, serving a 360-month sentence for Racketeer Influenced and Corrupt Organization Conspiracy (RICO), Violent Crime in Aid of Racketeering in violation of 18 U S C § 1962 See Ex 1 He has a projected release date of July 13, 2025, via Good

Conduct Time Release. Id

In his habeas petition, Petitioner alleges that on or about May 13, 2002, he was removed from USP Atlanta's general population and placed in the Special Housing Unit ("SHU") for protective reasons. Petition at 4. According to Petitioner, prison officials determined that it was safe to return him to the general population, which they did on November 27, 2002. Id Petitioner was returned to the SHU on December 9, 2002, for protective custody reasons. Id Petitioner states that on August 18, 2003, while he was still housed in the SHU, he was assaulted, and that his life continues to be in danger. Petition at 3. He alleges that continued confinement in the SHU is cruel and unusual punishment, and reflects deliberate indifference to his right to be free from violence. For relief he asks to be transferred to another facility where he can be placed in general population confinement. Petition at 3-5.

ARGUMENT

I. Petitioner's Habeas Petition Should Be Dismissed Because Habeas Is Not the Proper Vehicle for Challenging Conditions of Confinement.

Petitioner does not seek release from prison or a shorter sentence. See Petition at 4. Rather, he seeks to have the conditions of his confinement altered,

that is, to be moved from confinement in the prison's SHU to another facility where he can be placed in that institution's general population. Such a claim is not cognizable under the habeas statute because it challenges the conditions of his confinement rather than the fact or duration of his custody.

Section 2241 of Title 28 provides habeas relief to individuals who are in custody in violation of the Constitution. 28 U.S.C. § 2241(c); Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). The Supreme Court has recognized that the "essence of habeas corpus" is an attack by a person on the "fact or length of his confinement" that seeks "immediate or a more speedy release." Id. at 484, 494. When a person challenges the conditions of his or her confinement, rather than the fact or duration of that confinement, however, the appropriate vehicle for relief is a civil rights action. Id. at 499. The Supreme Court recently reiterated this principle in Nelson v. Campbell, 124 S. Ct. 2117 (2004), noting that prisoner claims challenging the fact or duration of custody "fall within the 'core' of habeas corpus" whereas "constitutional claims that merely challenge the conditions of a prisoner's confinement . . . fall outside of that core" and may be brought as a civil rights action. Id. at 2122.¹

¹ Preiser and Nelson involved state prisoners and thus civil rights actions under § 1983, which applies only to alleged constitutional violations by state actors.

Although the Supreme Court has formally left open the question of whether habeas may ever be used to challenge prison conditions, Preiser, 411 U.S. at 499-500; see Glaus v Anderson, No. 03-1226, 2005 WL 1163673, at *4 (7th Cir. May 17, 2005) (“While the Supreme Court has left the door open a crack for habeas corpus claims challenging prison conditions, it has never found anything that qualified.”), many courts have taken its cue and made clear that claims challenging conditions of confinement are not cognizable in habeas. See, e.g., id. at *3 (“If a prisoner is not challenging the fact of his confinement, but instead the conditions under which he is being held, we have held that she must use a § 1983 or Bivens theory.” or possibly bring “a Federal Tort Claims Act claim . . . or an

Administrative Procedures Act challenge . . . ”).² Leamer v Fauver, 288 F.3d 532,

Federal prisoners have analogous civil rights actions available to them under Bivens v Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). See Glaus v Anderson, No. 03-1226, 2005 WL 1163673, at *3 (7th Cir. May 17, 2005) (noting that Preiser’s “rationale applies just as soundly to federal prisoners filing a claim based on Bivens”); see also 18 U.S.C. § 3626 (setting forth standards for actions challenging prison conditions)

² The Seventh Circuit has also held that District Courts generally should not recharacterize improper § 2241 petitions as civil rights claims because of the many differences between habeas petitions and civil complaints, and “the changed landscape caused by the Prison Litigation Reform Act of 1996 (PLRA) and the Antiterrorism and Reform Act of 1996 (AEDPA)” Glaus, 2005 WL 1163673, at *4 (discussing Bunn v Conley, 309 F.3d 1002 (7th Cir. 2002)), accord Richmond

540-44 (3d Cir. 2002) (discussing authorities and explaining that prisoner may not pursue habeas actions to challenge conditions of confinement but rather only the fact or duration of confinement); Boyce v Ashcroft, 251 F 3d 911, 918 (10th Cir. 2001) (holding that petitioner may not raise challenges to conditions of confinement in § 2241 petition)

The Eleventh Circuit has noted the issue but apparently has not had the occasion to squarely address it. See Gomez v United States, 899 F.2d 1124, 1125-26 (11th Cir 1990)³ In Gomez, the Court recognized that, while the Supreme Court has left open the question whether habeas is ever available to challenge prison conditions, “[s]ome authorities do not permit such claims to be asserted in a habeas corpus action ” Id at 1126 (citing cases from Fourth, Ninth and Tenth Circuits and a contrary case from Eighth Circuit) Though noting the issue, the Court did not resolve it because the government had not raised the habeas-is-

v Scibana, 397 F 3d 602, 606 (7th Cir 2004).

³But see Medberry v Crosby, 351 F 3d 1049, 1053-54 & n 4 (11th Cir. 2003)(noting in dicta 1974 Fifth Circuit authority permitting habeas petitions seeking release from administrative segregation), cert. denied, 541 U.S 1032 (2004). Old Fifth Circuit cases are not clear on the issue, however, recognizing for example that habeas relief is not available to prisoners who complain of mistreatment in prison but do not seek relief from custody. See Cook v Hanberry, 596 F.2d 658, 660 & n.1 (5th Cir 1979), Granville v Hunt, 411 F 2d 9, 12 (5th Cir 1969)

unavailable argument on appeal. Id. at 1126. The Court did hold, however, that the petitioner would not be entitled to release from prison because he was alleging mistreatment in the prison and thus challenging only the conditions of his confinement. Id.

Citing Gomez, other District Courts in this Circuit have held that habeas claims challenging the conditions of confinement are not cognizable. See Howard v. Haley, No. CIV A. 01-0065-BH-S, 2001 WL 303534 (S.D. Ala. Mar. 8, 2001); Price v. Bamberg, 845 F. Supp. 825 (M.D. Ala. 1993). In Price, prisoners who, similar to Petitioner here, were being held as escape risks in isolation cells in the U.S. Penitentiary in Atlanta filed a habeas petition challenging their administrative detention and conditions of confinement. Relying on Gomez, the court held that the prisoners were not entitled to habeas corpus relief because they would not be entitled to release even if the conditions of their confinement were unconstitutional. Price, 845 F. Supp. at 827. Similarly, in Howard, the court cited Gomez and dismissed a habeas petition on the ground that “[t]he writ of habeas corpus does not extend to challenges to the conditions of confinement.” Howard, 2001 WL 303534, at *1.

Likewise here, Petitioner does not seek release from prison or a shorter

sentence. Even if he were correct that his continued detention in the SHU were somehow unconstitutional, he would not be entitled to (and does not assert an entitlement to) immediate or a speedier release from custody. He seeks only to be transferred from custody in the SHU to custody in the general population of another facility. His challenge goes only to the conditions of his confinement and is thus not cognizable in habeas proceedings. His petition should be dismissed.

II. Petitioner's Habeas Petition Should Be Dismissed Because He Failed to Exhaust His Administrative Remedies.

Even if Petitioner's claims were cognizable in habeas proceedings, his habeas action would be subject to dismissal for failure to exhaust administrative remedies. Although the Eleventh Circuit has held that the statutory exhaustion requirements of the PLRA do not apply to habeas proceedings, "prisoners seeking habeas relief, including relief pursuant to § 2241, are subject to administrative exhaustion requirements." Skinner v Wiley, 355 F.3d 1293, 1295 (11th Cir. 2004) (per curiam). The failure to exhaust may be excused in limited circumstances, such as when pursuing administrative remedies would be futile, but these "exceptions to the exhaustion requirement apply only in 'extraordinary circumstances,'" and the petitioner bears the burden of demonstrating the futility of administrative review."

Morrow v. Rivera, No. 4 05 CV 00115 MP AK, 2005 WL 1177913, at *2 (M.D. Fla. May 17, 2005) (quoting Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994)) The Eleventh Circuit has held that District Courts lack jurisdiction over a federal prisoner's § 2241 petition unless and until all available administrative remedies have been exhausted. See Skinner, 355 F.3d at 1295 (noting that "[e]xhaustion of administrative remedies is jurisdictional" (quoting Gonzalez v. United States, 959 F.2d 211, 212 (11th Cir. 1992) (per curiam))), Winck v. England, 327 F.3d 1296, 1300 n.1 (11th Cir. 2003).

The Bureau of Prisons has established a three-tier administrative remedy procedure whereby prisoners may grieve any aspect of their imprisonment. See 28 C.F.R. §§ 542.10 et seq. Ex. 2 at ¶ 2. The process also provides for an attempt at informal resolution of the inmate's claim. See 28 C.F.R. § 542.13. The formal procedures first provide for a request at the institutional level to the Warden (BP-9 request) See id. § 542.14. If not satisfied with the Warden's response, the inmate has 20 calendar days to file an appeal to the Regional Director (BP-10 request). Id. § 542.15. Finally, if the inmate is not satisfied with the review and determination by the Regional Director, the inmate has 30 calendar days to file an appeal with the General Counsel for the Federal Bureau of Prisons (BP-11 request). Id. The

regulations provide that the time limits for appeal may be extended if the inmate demonstrates a valid reason for delay. Id.

Here, Petitioner has filed several requests for administrative remedies at various levels. See Ex. 2 at ¶¶ 2-7. Of these several, only two relate to his request for a transfer to another institution. Ex. 2 at ¶ 4a & 4b. The first request was denied and Petitioner was directed to file a request at the proper level, which he did not do. Id., ¶ 4a. The second was rejected and he was directed to follow additional procedures to receive a response to his BP-9. Id. at ¶ 4b. Petitioner thus failed to exhaust all of the administrative procedures available for grieving his continued detention in the SHU. His habeas petition is subject to dismissal at least until he exhausts all possible administrative procedures. See Skinner, 355 F.3d at 1295 (upholding dismissal of § 2241 petition for failure to exhaust administrative remedies), Irwin v. Hawk, 40 F.3d 347 (11th Cir. 1994) (upholding dismissal of civil rights action for failure to exhaust Bureau of Prisons' administrative remedy procedure), United States v. Herrera, 931 F.2d 761, 764 (11th Cir. 1991) (finding no jurisdiction where prisoner failed to exhaust Bureau of Prisons' procedure). Petitioner has not exhausted his administrative remedies, and this petition should be

dismissed.⁴

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny Petitioner's application for writ of habeas corpus and dismiss this action.

Respectfully submitted,

DAVID E. NAHMIAS
UNITED STATES ATTORNEY



MARY C. ROEMER
ASSISTANT U S. ATTORNEY
Georgia Bar No. 611790

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Atlanta, Georgia 30303
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⁴As Respondent represented in his previous motion, Respondent is actively attempting to identify another facility to which to transfer Petitioner. Although these efforts have been continuing, to date Respondent has not located an appropriate facility. According to Michael Branch, Chief Correctional Officer for USP Atlanta, Petitioner is housed in the SHU with an inmate from whom he is not to be separated, and neither inmate has reported any safety concerns with the arrangement. See Ex. 3. Petitioner is separated from the inmate who attacked him in August 2003, and at no time are the inmates allowed to interact with each other

SERBQ * PUBLIC INFORMATION * 06-16-2005
 PAGE 001 * INMATE DATA * 12:04 13
 AS OF 06-16-2005

REGNC. 14098-074 NAME: TURSCAK, JOHN

RESP OF: ATL / DESIGNATED, AT ASSIGNED FACIL
 PHONE.. 404-635-5100 FAX. 404-331-2403

FBI NUMBER. 555659EB3 RACE/SEX. . WHITE / MALE
 PROJ REL MT- GOOD CONDUCT TIME RELEASE DOB/AGE. . . 05-28-1971 / 34
 PROJ REL DT 07-13-2025 PAR ELIG DT N/A
 PAR HEAR DT

----- ADMIT/RELEASE HISTORY -----

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
ATL	A-DES	DESIGNATED, AT ASSIGNED FACIL	08-25-2003 2038	CURRENT
ATL	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	08-18-2003 0217	08-25-2003 2038
ATL	A-DES	DESIGNATED, AT ASSIGNED FACIL	03-19-2002 1904	08-18-2003 0217
A01	RELEASE	RELEASED FROM IN-TRANSIT FACL	03-19-2002 1904	03-19-2002 1904
A01	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	03-19-2002 1000	03-19-2002 1904
OKL	HLD REMOVE	HOLDOVER REMOVED	03-19-2002 0900	03-19-2002 0900
OKL	A-HLD	HOLDOVER, TEMPORARILY HOUSED	03-15-2002 1645	03-19-2002 0900
1-J	RELEASE	RELEASED FROM IN-TRANSIT FACL	03-15-2002 1745	03-15-2002 1745
1-J	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	02-15-2002 1102	03-15-2002 1745
CLB	ADMIN REL	ADMINISTRATIVE RELEASE	02-15-2002 0802	02-15-2002 0802
CLB	A-ADMIN	ADMINISTRATIVE ADMISSION	02-15-2002 0800	02-15-2002 0802
PHX	PRE REMOVE	PRE SENT DETAINEE REMOVED	01-03-2000 0440	02-13-2002 0800
PHX	A-PRE	PRE-SENT ADMIT, ADULT	11-10-1999 1350	01-03-2000 0440
PHX	ADM CHANGE	RELEASE FOR ADMISSION CHANGE	11-10-1999 1345	11-10-1999 1350
PHX	A-HLD	HOLDOVER, TEMPORARILY HOUSED	11-10-1999 1340	11-10-1999 1345
PHX	ADM CHANGE	RELEASE FOR ADMISSION CHANGE	11-10-1999 1335	11-10-1999 1340
PHX	A-DES	DESIGNATED, AT ASSIGNED FACIL	11-10-1999 1333	11-10-1999 1335
PHX	LOCAL HOSP	ESC TRIP TO LOCAL HOSP W/RETN	11-09-1999 2054	11-10-1999 1333
PHX	A-HLD	HOLDOVER, TEMPORARILY HOUSED	11-09-1999 1425	11-09-1999 2054
4-H	RELEASE	RELEASED FROM IN-TRANSIT FACL	11-09-1999 1625	11-09-1999 1625
4-H	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	11-09-1999 1523	11-09-1999 1625
PHX	TRANSFER	TRANSFER	11-09-1999 1323	11-09-1999 1323
PHX	A-PRE	PRE-SENT ADMIT, ADULT	07-07-1999 1409	11-09-1999 1323
P99	RELEASE 07	RELEASED FROM IN-TRANSIT, JUL	07-07-1999 1709	07-07-1999 1705
P99	A-ADMIT 05	ADMITTED TO IN-TRANSIT, MAY	05-08-1999 0530	07-07-1999 1709
0-G	RELEASE	RELEASED FROM IN-TRANSIT FACL	05-08-1999 0530	05-08-1999 0530
0-G	A-ADMIT	ADMITTED TO AN IN-TRANSIT FACL	01-08-1999 1009	05-08-1999 0530
BOP	ADMIN REL	ADMINISTRATIVE RELEASE	01-08-1999 1009	01-08-1999 1009
BOP	A-ADMIN	ADMINISTRATIVE ADMISSION	01-08-1999 1008	01-08-1999 1009

G0002 MORE PAGES TO FOLLOW



SERBQ * PUBLIC INFORMATION * 06-16-2005
PAGE 002 * INMATE DATA * 12 04 13
AS OF 06-16-2005

REGNO 14098-074 NAME: TURSCAK, JOHN

RESP CF: ATL / DESIGNATED, AT ASSIGNED FACIL
PHONE.: 404-635-5100 FAX: 404-331-2403

PRE-RELEASE PREPARATION DATE: 01-13-2025

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT
THE INMATE IS PROJECTED FOR RELEASE. 07-13-2025 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO 010 -----

COURT OF JURISDICTION.....: CALIFORNIA, CENTRAL DISTRICT
DOCKET NUMBER 99-382-AHM
JUDGE. MATZ
DATE SENTENCED/PROBATION IMPOSED 11-26-2001
DATE COMMITTED 03-19-2002
HOW COMMITTED. US DISTRICT COURT COMMITMENT
PROBATION IMPOSED... NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED	\$200 00	\$00.00	\$00.00	\$00 00

RESTITUTION.	PROPERTY	NO	SERVICES	NO	AMOUNT.	\$00 00
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-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE 545
OFF/CHG 18USC1962 RACKETEER INFLUENCED AND CORRUPT ORGANIZATION
CONSPIRACY,VIOLENT CRIME IN AID OF RACKETEERING

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 360 MONTHS
TERM OF SUPERVISION 5 YEARS
DATE OF OFFENSE 05-01-1998

GC002 MORE PAGES TO FOLLOW . .

SERBO * PUBLIC INFORMATION * 06-16-2005
PAGE 003 OF 003 * INMATE DATA * 12 04 13
AS OF 06-16-2005

REGNC 14098-074 NAME: TURSCAK, JOHN

RESP OF ATL / DESIGNATED, AT ASSIGNED FACIL
PHONE 404-635-5100 FAX 404-331-2403

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 06-21-2002 AT ATL AUTOMATICALLY

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010 010 010

DATE COMPUTATION BEGAN ... : 11-26-2001
TOTAL TERM IN EFFECT ... : 360 MONTHS
TOTAL TERM IN EFFECT CONVERTED... : 30 YEARS
EARLIEST DATE OF OFFENSE. ... : 05-01-1999

JAIL CREDIT. ... FROM DATE THRU DATE
04-21-1999 11-25-2001

TOTAL PRIOR CREDIT TIME.... : 950
TOTAL INOPERATIVE TIME... : 0
TOTAL GCT EARNED AND PROJECTED... : 1376
TOTAL GCT EARNED : 284
STATUTORY RELEASE DATE PROJECTED 07-13-2025
SIX MONTH /10% DATE. : N/A
EXPIRATION FULL TERM DATE ... : 04-19-2029

PROJECTED SATISFACTION DATE.. 07-13-2025
PROJECTED SATISFACTION METHOD ... : GCT REL

50055 NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

John Jurscak
Petitioner

v.

Civil Action No.
1:05-CV-0569-CC

G. Malconado,
Respondent

Declaration of J. Latease Bailey

I, the undersigned J. Latease Bailey, do hereby make the following unsworn declaration pertinent to the above-styled and numbered cause:

1. I am an Assistant Regional Counsel for the Federal Bureau of Prisons (BOP) Southeast Regional Office, Atlanta, Georgia. I have been with the BOP since January 4, 1999.
2. The Bureau of Prisons Administrative Remedy Program is described at 28 C.F.R. § 542.10, et seq. In accordance with the administrative remedy procedures, inmates ordinarily must first present their complaint to the Warden of the facility in which the inmate is confined. If the inmate is not satisfied with the response received from the Warden, the response may be appealed to the Regional Director. If the inmate is not satisfied with the response of the Regional Director, that response may be appealed to the General Counsel's Office. The response from the General Counsel's Office is considered the final agency decision.
3. As a part of my duties, I have access to the computer records known as Sentry, which contain electronic records for the tracking the Administrative Remedy Program.
4. I have reviewed Sentry for the Administrative Remedy records for inmate John Jurscak, Reg. No. 14098-074. According to Sentry, this inmate has filed the following:
 - a. Remedy Number 308193-R1, requesting a transfer and stated that he fears for his life. This remedy was rejected because it was determined the issue was not sensitive. He was directed to file a request at the proper level (instructor) and to submit one remedy per issue.
 - b. Remedy Number 322521-R1, requesting transfer to California state prison for his protection. This remedy request was rejected, however, the allegations were forwarded for review. He was directed to follow appropriate procedures to receive a written response to his BP-9.
 - c. Remedy Number 367779-F1, requested a change from his Central Inmate Monitoring System (CIMS) classification. This remedy was accepted and closed with a denial.

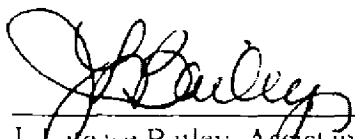


Bailey Declaration
Lack of Exhaustion
Page 2

- d. Remedy Number 367779-R1, appealing the denial of 367779-F1. This remedy was accepted and closed with a denial.
5. Inmate Turseak has filed Administrative Remedy Requests concerning his CIMIS classification at the institution and regional level. He has not filed at the Central Office level, which is necessary for exhaustion.
6. Further, neither the request for transfer to the California prison system or the fear for his life has been addressed.
7. Therefore, inmate Turseak has NOT exhausted his administrative remedies for any of the above named issues.
8. I certify that the enclosed documents as provided to the Assistant United States Attorney are true and accurate copies of the original computerized documents created and held during the regular course of business within the BOP.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

I executed this 20th day of June 2005.



J. Bailey, Assistant Regional Counsel
SERO

SERBQ *ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL * 05-03-2005
 PAGE 004 OF 004 * FULL SCREEN FORMAT * 09:28 46

REGNO. 14098-074 NAME TURSCAK, JOHN
 RSP OF ATL UNT/LOC/DST- A 3/CODE QTR . Z05-314LAD RCV OFC SER
 REMEDY ID: 367779-R1 SUB1- 13CM SUB2 DATE RCV- 03-16-2005
 UNT RCV. . A 3/CODE QTR RCV.: Z05-312LAD FACL RCV. ATL
 UNT ORG .- A 3/CODE QTR ORG.- Z05-311LAD FACL ORG ATL
 EVT FACL ATL ACC LEV: ATL 1 SER 1 RESP DUE. SUN 04-17-2005
 ABSTRACT CIMS CLASSIFICATION
 STATUS DT: 04-12-2005 STATUS CODE: CLD STATUS REASON DNY
 INCRPTNO : RCT: P EXT: DATE ENTD: 03-21-2005
 REMARKS..:

CURRENT INVESTIGATIVE AND RELIEF TRACKING DATA					
DATE DUE	DEPARTMENT	TO	DATE ASSN	TRK TYPE	DATE RETURNED
MON 04-04-2005	CORR PGM	JU	03-21-2005	INV	04-01-2005
SUN 04-17-2005	CEO	REH	04-01-2005	SIG	04-12-2005

5 REMEDY SUBMISSION(S) SELECTED
 G0000 TRANSACTION SUCCESSFULLY COMPLETED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

John Turscak
Petitioner

v

Civil Action No
1:05-CV-0569-CC

G. Maldonado,
Respondent

Declaration of Michael Branch

I, the undersigned Michael Branch, do hereby make the following unsworn declaration, as permitted by 28 U.S.C. § 1746 regarding the above-styled and numbered action

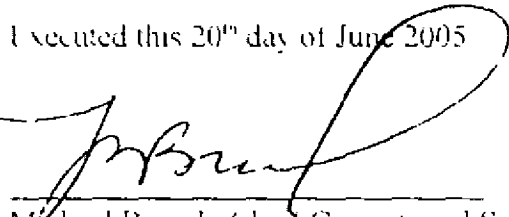
- 1 I am the Chief Correctional Supervisor (Captain) for the Federal Bureau of Prisons (BOP) United States Penitentiary in Atlanta Georgia (USP Atlanta)
- 2 As a part of my duties I am responsible for oversight of the safety and security of inmates and staff at USP Atlanta
- 3 I have been made aware of the habeas action filed by inmate John Turscak reg no 14098-074. In his suit Petitioner alleges his life is in danger that the Special Housing Unit (SHU) is not safe for him. He further states that the inmate who assaulted him in August of 2003 continues to threaten him.
- 4 Inmate Turscak was housed in SHU 3 at the time the assault occurred. SHU 3 is the maximum security unit for USP Atlanta. Inmates in this unit are on 23 hour lockdown status. They are only permitted out of the cell for recreation one hour, five days per week. Correctional staff screen the inmates taking recreation together to ensure inmates who should be separated from one another remain so.
- 5 In August of 2003 while in SHU 3 inmate Turscak was assaulted by his cellmate. BOP nor USP Atlanta had no prior notice that these inmates should be separated or that this type of incident might occur. Since the assault these two inmates have been separated although both remain in SHU 3. However, at no time have they been allowed to interact with one another.
- 6 Currently inmate Turscak has a cell mate due to overcrowding in SHU 3 and the fact that inmate Turscak can be celled with an inmate from whom he is not to be kept separated. Neither inmate Turscak nor his current cellmate have reported any safety concerns with the arrangement. Further, housing him with another inmate makes inmate Turscak less suspicious (less like a "snitch") than celling him alone.



7 If inmate Turscak were in danger from EVERY inmate in the unit, he would be celled alone. However, that is not his current situation.

8 I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 20th day of June 2005

A handwritten signature in black ink, appearing to read "Michael Blanch", written over a horizontal line.

Michael Blanch, Chief Correctional Supervisor (Captain)
USP Atlanta

CERTIFICATE OF COMPLIANCE

I certify that the document to which this certificate is attached has been prepared with one of the font and point selections approved by the Court in L.R. 5.1B (Times New Roman, 14 pt) for documents prepared by computer

This 22nd day of June, 2005.



Mary C Roemer
Georgia Bar No. 611790


CERTIFICATE OF SERVICE

I certify that I have this day served the RESPONSE TO PETITION FOR
HABEAS CORPUS by causing a copy thereof to be deposited in the United States

Mail and addressed as follows

John Turscak
Register # 14098-074
United States Penitentiary
P O Box 150160
Atlanta, Georgia 30305

This 22nd day of June, 2005



Mary C. Roemer