

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

JAMES F. OLIVEIRA	)	
	)	
v.	)	Case No. 11-cv-180-M
	)	
ASHBEL T. WALL, et al.	)	
	)	

**MEMORANDUM AND ORDER**

JOHN J. McCONNELL, JR., United States District Judge.

Plaintiff James F. Oliveira, *pro se*, an inmate at the Adult Correctional Institutions (the “ACI”) in Cranston, Rhode Island, filed a Complaint alleging a violation of due process under 42 U.S.C. §1983. The Complaint names three defendants: (i) Ashbel T. Wall, Director of Rhode Island Department of Corrections (“RIDOC”); (ii) Warden James Weeden of Maximum Security at the ACI; and (iii) Lieutenant Oden at the ACI. This Court screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A and, for the reasons set forth below, finds that it fails to state a claim on which relief may be granted.<sup>1</sup>

**BACKGROUND<sup>2</sup>**

Just before 8 o’clock in the morning on March 21, 2011, as Mr. Oliveira was leaving the dining room, he stopped “for about five (5) seconds” to ask another inmate about visits and the law library. Shortly after this brief conversation, Mr. Oliveira was stopped by Lt. Oden who queried why he had stopped and spoken with the other inmate. Mr. Oliveira recounted the brief conversation to Lt. Oden, who told him that he was not supposed to do that, checked his identification and directed him back to his block. Shortly after returning to his cell,

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<sup>1</sup> In view of this Court’s review of the Complaint, Mr. Oliveira’s application to proceed *in forma pauperis* is denied as moot. *See infra*.

<sup>2</sup> The Background is based on allegations in the Complaint and the documents attached thereto.

Mr. Oliveira's cell was locked with a key – a situation he describes as “L.F.I” – meaning that he was locked and fed in his cell. A document dated March 22, 2011 entitled Letter of Grievance (the “Letter”), signed by Mr. Oliveira and attached to the Complaint, states that Mr. Oliveira's cell remained locked until about 3:35pm the following day, so he was L.F.I. for approximately 32 hours.<sup>3</sup>

Mr. Oliveira wrote to defendant Warden James Weeden complaining that he was L.F.I. without a “notice of confinement” or a disciplinary hearing in violation of the RIDOC Code of Inmate Discipline (the “Code”).<sup>4</sup> Attached to the Complaint and referenced in the Letter are several pages from the Code that Mr. Oliveira contends were violated. Mr. Oliveira did not receive a response to the letter he wrote to Warden Weeden, and, as such, filed this lawsuit.

Mr. Oliveira contends that there is no prohibition against “talking to another inmate while in the chow hall,” and states he has witnessed other inmates chatting without being questioned by prison staff. Mr. Oliveira believes that his punishment – being locked and fed in his cell – was “the first showings of retaliation” for a § 2254 case he had filed in the Federal Court.

## **DISCUSSION**

### **A. Screening under § 1915(e)(2) and § 1915A**

In connection with proceedings *in forma pauperis*, 28 U.S.C. § 1915(e)(2) instructs courts to dismiss a case at any time if the court determines that the action, *inter alia*, “fails to state a claim on which relief may be granted.” Similarly, 28 U.S.C. § 1915A directs courts to screen complaints filed by prisoners against “a governmental entity or officer or employee of a

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<sup>3</sup> The Complaint indicates that the Letter is a “typed copy” of the grievance letter Mr. Oliveira wrote to Warden Weeden; no photocopy of the actual letter written to Warden Weeden was submitted to this Court.

<sup>4</sup> The Complaint further states that Mr. Oliveira did not file a complaint with the RIDOC about the incident because that complaint would first go to the “Lieutenant in question” (presumably Lt. Oden). Mr. Oliveira fears that filing such a complaint would have generated further retaliation by the prison staff.

governmental entity” and to dismiss the complaint, or any portion thereof, for the same reasons set forth in § 1915(e)(2).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B) and § 1915A is identical to the legal standard applied when ruling on a Rule 12(b)(6) motion. *See Fridman v. City of New York*, 195 F.Supp.2d 534, 538 (S.D.N.Y. 2002); *Pelumi v. Landry*, No. 08-084, 2008 WL 2660968, at \*2 (D.R.I. June 30, 2008). In making this determination, courts must accept plaintiff’s allegations as true and construe them in the light most favorable to plaintiff. Although courts must review pleadings of a *pro se* plaintiff liberally, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), they need not credit bald assertions or legal conclusions without factual allegations. *Ashcroft v. Iqbal*, -- U.S. --, 129 S.Ct. 1937, 1949-50 (2009). To survive, the “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); Fed. R. Civ. P. 8(a)(2).

## **B. Review Of Claims**

In the Complaint, Mr. Oliveira claims that (1) “defendants violated due process by punishing [him] without a hearing;” (2) he was disciplined in retaliation for his filing of a § 2254 action; and (3) “defendants subverted the P.L.R.A. by refusing grievance for exhaustion.”

### **1. 42 U.S.C. § 1983 Procedural Due Process Claim**

“Section 1983 creates a cause of action for persons who are denied a federally protected right.” *Price v. Wall*, 464 F.Supp.2d 90, 95 (D.R.I. 2006). Mr. Oliveira contends that his due process rights were violated because he did not have notice or a hearing before he was locked in his cell for approximately 32 hours. To state a procedural due process claim, an inmate must demonstrate a violation of a life, liberty or property interest. *See Wilkinson v. Austin*, 545 U.S.

209, 221 (2005). The United States Supreme Court has explained that prisoners' liberty interests are "generally limited to freedom from restraint" imposing "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Connor*, 515 U.S. 472, 484 (1995) (inmate's placement in segregation for 30 days did not implicate liberty interest).

Mr. Oliveira's relatively short confinement in his own cell under these circumstances does not constitute an "atypical and significant hardship" implicating a liberty interest. *See, e.g., Williard v. Destefano*, No. 09-401, 2009 WL 4506583, at \* 3 (D.R.I. Dec. 3, 2009) (23 days in segregation "does not amount to an 'atypical or significant hardship' contemplated by the Due Process Clause"); *Taylor v. Collins*, 464 F.Supp.2d 88, 90 (D.R.I. 2006) (discipline, including 15 days in segregation, "not an 'atypical and significant' hardship as contemplated by *Sandin*"); *Williams v. Wall*, No. 06-12, 2006 WL 2854296, at \*3 (D.R.I. Oct. 4, 2006) (sanction including 21 days of punitive segregation did not implicate liberty interest). Because the discipline about which Mr. Oliveira complains does not implicate a liberty interest under *Sandin*, he fails to state a procedural due process claim under § 1983.

## **2. Retaliation Allegations**

Mr. Oliveira alleges that he was disciplined in retaliation for litigating a § 2254 case.<sup>5</sup> "A claim asserting retaliation for the exercise of a constitutional right consists of three elements: (i) the plaintiff engaged in constitutionally protected conduct; (ii) the plaintiff suffered an adverse action that would deter a person of ordinary firmness from the exercise of the right at stake; and (iii) there was a causal connection between the constitutionally protected conduct and the adverse action." *Smith v. Estrella*, No. 09-426, 2009 WL 4927143, at \*5 (D.R.I. Dec. 18, 2009). This Court is mindful that claims of retaliation by prison inmates "must be supported by

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<sup>5</sup> Although the Complaint does not specifically enumerate a retaliation claim, this Court nevertheless reviews the allegations of retaliation in the Complaint and Letter as if such a claim was included.

specific and detailed factual allegations.” *Baskerville v. Blot*, 224 F.Supp.2d 723, 731 (S.D.N.Y. 2002). While Mr. Oliveira’s filing of a lawsuit is constitutionally protected, *see Bounds v. Smith*, 430 U.S. 817, 821-32 (1977), and therefore satisfies the first element, his allegations with respect to both the second and third elements are insufficient.

With respect to the second element, the adverse action Mr. Oliveira experienced was being locked in his cell for approximately 32 hours. For an action to be “adverse” within the prison context it must “impose a meaningful hardship on the inmate.” *Klein v. MHM Correctional Servs., Inc.*, No. 08-11814, 2010 WL 3245291, at \*7 (D. Mass. Aug. 16, 2010). Examples of adverse actions within this context include transfers to segregation, involuntary transfers out of state, and assaults. *See, e.g., Tucker v. Wall*, No. 07-406, 2010 WL 322155, at \*13 (D.R.I. Jan. 27, 2010) (transfer to segregation); *Price*, 464 F.Supp.2d at 97 (transfer to segregation or out of state prison); *Baskerville*, 224 F.Supp.2d at 732 (assault). The discipline imposed on Mr. Oliveira – being locked in his cell for about 32 hours under these circumstances – did not impose a meaningful hardship on him as he described in the Complaint and therefore does not satisfy the adverse action element.

With respect to the third element, the “causal connection must be sufficient to support an inference that the protected conduct played a substantial part in the adverse action.” *Baskerville*, 224 F.Supp.2d at 732. In other words, the Complaint must allege that the “constitutionally protected conduct was a motivating factor for the adverse action.” *Tucker v. Wall*, 2010 WL 322155, at \*12. Bald assertions of retaliation fail to state a claim. *Laurence v. Wall*, No. 09-427, 2009 WL 4780910, at \*5 (D.R.I. Dec. 10, 2009). Here, most of the allegations regarding retaliation are bald assertions – they contain Mr. Oliveira’s beliefs that he is being retaliated

against but no detailed or specific factual allegations supporting those beliefs.<sup>6</sup> Mr. Oliveira contends he mailed a “counter-response” in his § 2254 case a few days prior to his discipline and mentioned Lt. Oden therein; by his own estimation the “counter-response” would have been received by the Attorney General on either the Friday before or the Monday of the discipline; and he surmises that his discipline “could be” retaliation. These allegations alone are insufficient to show that his § 2254 litigation was “a motivating factor” or “played a substantial part” in his discipline. The Complaint and materials attached thereto do not contain factual and specific allegations, such as Mr. Oliveira being berated for filing the § 2254 case or Mr. Oliveira’s “counter-response” being opened and read, that satisfy the causal connection element. *See Tucker*, 2010 WL 322155, at \*13. Mr. Oliveira therefore has not pled the third element of a retaliation claim.

### **3. P.L.R.A. Claim**

Plaintiff’s contention that “defendants subverted the P.L.R.A. by refusing grievance for exhaustion” also fails to state a claim. The Prison Litigation Reform Act (“P.L.R.A.”) provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). While the Complaint does not specify, Mr. Oliveira appears to be contending that the lack of response to the Letter is an attempt by defendants to prevent him from exhausting his administrative remedies, a prerequisite to his bringing legal action under § 1983. Or perhaps Mr. Oliveira is alleging that his fear of retaliation by prison staff should excuse him from having to exhaust his administrative remedies. Regardless, this Court need not reach the issue because the

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<sup>6</sup> The Complaint states that “the retaliation has indeed begun”; “this is the very first incident of what I [b]elieve to be retaliation”; and the punishment was “entirely a retaliatory measure” by the prison staff.

failure to exhaust administrative remedies under the P.L.R.A. is not a claim, it is an affirmative defense to be raised by defendants. *See Casanova v. Dubois*, 304 F.3d 75, 77-78 n.3 (1st Cir. 2002). Since Mr. Oliveira has otherwise failed to state a claim, it is unnecessary to delve any further into this issue because this case will not progress to the point where defendants may raise affirmative defenses.

## CONCLUSION

The Complaint fails to state a claim on which relief may be granted. Pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), the Complaint is hereby DISMISSED.

Mr. Oliveira's Application to Proceed *In Forma Pauperis* is likewise DENIED as moot.

SO ORDERED:

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.  
United States District Judge

August 16, 2011