

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

Kormahyah Karmue

v.

Case No. 17-cv-107-LM-AKJ

David Remington, Chief Deputy  
United States Marshal, et al.

**REPORT AND RECOMMENDATION**

Before the court is plaintiff Kormahyah Karmue's motion (Doc. No. 79) to amend the complaint in this matter. In his motion, Karmue seeks to add claims to this action against Patrick Kapatos, a physical therapist at the Federal Medical Center in Devens, Massachusetts ("FMC Devens").

**Background<sup>1</sup>**

Karmue has been incarcerated at FMC Devens since late 2015 or early 2016. On February 18, 2018, a nurse at FMC Devens scheduled an appointment for Karmue to see Kapatos, as Karmue was suffering ill effects from back and hip injuries he has alleged he received during incidents underlying claims already pending in this case. Karmue alleges that when he attended the appointment, he was immediately met with anger from Kapatos, who

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<sup>1</sup>The facts recounted here are gleaned from Karmue's motion (Doc. No. 79) to supplement his complaint, and are credited as true for purposes of considering the instant motion.

stated that he remembered Karmue from a prior incident between Karmue and FMC Devens Physical Therapist Quinn in which, Karmue alleges, Quinn refused to provide Karmue with adequate medical care for Karmue's injuries, and which resulted in Karmue bringing claims in this action against Quinn.

Karmue alleges that at the February 18, 2018 appointment Kapatos instructed him to sit on a medical chair, and that when he did, Kapatos "in a vindictive manner, forcefully folded both of plaintiff's legs over his head and placed his full weight, approximately 240 lbs. on plaintiff's body causing him tremendous pain." Doc. No. 79, 1. Karmue told Kapatos that he was hurting Karmue, but Kapatos ignored Karmue and did not stop, causing Karmue to urinate on himself. At that point, Kapatos "got off of [Karmue], but seemed to get even angrier."

After refusing Karmue's request to speak to Kapatos's supervisor, Kapatos ordered Karmue to leave the area, but refused to allow Karmue to take his cane. As a result, Karmue fell in the FMC Devens hospital lobby due to the extreme pain he experienced walking without his cane. Karmue was assisted to the FMC Devens clinic where he received an x-ray and pain medication. Karmue remained in the clinic for several hours until a nurse told him to return to his unit. When Karmue attempted to do so, he again fell. Karmue's requests for a wheelchair or assistance walking were refused. When Karmue

stated he was in too much pain to walk, an officer took Karmue to "SHU," where Karmue remained for eight days.

Karmue asserts that Kapatos wrote a disciplinary citation against Karmue to cover Kapatos's vindictive behavior during the February 18, 2018 appointment. Karmue further complains that after the February 18, 2018 incident, Kapatos caused Karmue to regularly be refused treatment, causing Karmue to experience constant pain and a decline in his health.

Karmue now seeks to amend this action to add claims against Kapatos. Specifically, Karmue asserts claims alleging violations of Karmue's Eighth Amendment rights to adequate medical care and not to be subjected to cruel and unusual punishment, and alleging that Kapatos retaliated against Karmue in violation of Karmue's First Amendment right to petition the government for a redress of grievances.

## **Discussion**

### **I. Motion to Supplement and Join Kapatos (Doc. No. 79)**

In his motion (Doc. No. 79), Karmue seeks to supplement the complaint with claims against Kapatos which arose after the events giving rise to the claims already pending in this action. Kapatos has not been named previously as a defendant to this action. Karmue's motion is best construed, therefore, as a

motion to supplement the Second Amended Complaint (Doc. No. 70) pursuant to Federal Rule of Civil Procedure 15(d), and to join a new defendant to this case pursuant to Rule 20(a)(2).

"The district court should grant a motion to supplement, if doing so would promote complete adjudication of a dispute between the parties, without causing undue delay, unnecessary expense, or unfair prejudice." Bourne v. Arruda, No. 10-cv-393-LM, 2011 WL 2357504, at \*18, 2011 U.S. Dist. LEXIS 62332, at \*52 (D.N.H. June 10, 2011) (citing 6A Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1504 ("The purpose of [Rule 15(d)] is to promote as complete an adjudication of the dispute between the parties as is possible."))).

The joinder of claims, parties, and remedies is "strongly encouraged" when appropriate to further judicial economy and fairness. This does not mean, however, that parties should be given free [rein] to join multiple plaintiffs and multiple defendants into a single lawsuit when the claims are unrelated.

Gresham v. Smith, No. 1:16-CV-1402, 2017 WL 33567, at \*3, 2017

U.S. Dist. LEXIS 681, at \*10 (W.D. Mich. Jan. 4, 2017)

(citations omitted).

## II. Venue

Venue is proper in: "a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; [or] a judicial district in

which a substantial part of the events or omissions giving rise to the claim occurred . . . .” 28 U.S.C. § 1391(b)(1)-(2).


“When a case is filed in an improper venue, the court may either dismiss it or transfer it to a more appropriate district if doing so serves the interests of justice.” Bobola v. Fishing Vessel Expectation, No. 15-CV-296-PB, 2016 DNH 077, 2016 WL 1312529, at \*1-\*2, 2016 U.S. Dist. LEXIS 45405, at \*2 (D.N.H. Apr. 4, 2016) (internal quotation marks omitted) (citing 28 U.S.C. §§ 1404(a) 1406(a)).

The claims Karmue has asserted against Kapatos arise out of events which occurred in Massachusetts, where Kapatos is located, substantially after the events giving rise to the existing claims in this action. Those claims are not sufficiently related to the claims pending in this case to require that they be added to this action.

As Karmue’s claims asserted against Kapatos could be brought in the District of Massachusetts, see 28 U.S.C. § 1391(b), the court finds that venue in Massachusetts is appropriate as to all Karmue’s claims asserted against Kapatos. Accordingly, the court recommends that Karmue’s motion to amend (Doc. No. 79) this action to assert claims against Kapatos be denied, without prejudice to Karmue’s ability to assert those claims against Kapatos in the District of Massachusetts.

### Conclusion

For the foregoing reasons, the district judge should deny Karmue's motion (Doc. No. 79) to supplement the Second Amended Complaint and to join Kapatos as a defendant to this action, without prejudice to Karmue's ability to bring those claims in an action filed in the District of Massachusetts. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen-day period may be extended upon motion. Failure to file specific written objections to the Report and Recommendation within the specified time waives the right to appeal the district court's order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016)



Andrea K. Johnstone  
United States Magistrate Judge

February 1, 2019

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