

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COY PHELPS,)
Plaintiff,)
)
v.) CIVIL ACTION
) NO. 08-40103-DPW
)
MICHAEL B. MUKASEY,)
HARLEY LAPPIN, CAROLYN SABOL,)
AMERICAN FEDERAL OF GOVERNMENT)
EMPLOYEES LOCAL NO. 0222, AFL-CIO,)
U.S. DEPARTMENT OF JUSTICE and)
FEDERAL BUREAU OF PRISONS)
Defendants.)

MEMORANDUM AND ORDER
September 29, 2009

Coy Phelps, the plaintiff¹ in this *Bivens* action - alleging misconduct by the Federal Bureau of Prisons and United States Department of Justice, various officials of those agencies, a labor organization and others unnamed and/or inadequately identified - claims he is being kept in custody wrongfully. After being found not guilty by reason of insanity on charges of possessing, manufacturing, and placing pipe bombs in San Francisco, Phelps was ordered civilly committed pursuant to 18 U.S.C. § 4243. *Phelps v. United States*, 831 F.2d 897 (9th Cir. 1987). He maintains that the Bureau of Prisons, generally, and FMC Devens, in particular, do not provide proper facilities for

¹ Phelps, perhaps because of his considerable experience in habeas corpus practice, reflexively styles himself in his complaint as "Petitioner/Claimant." Since his complaint seeks "award of money damages," he is properly termed the plaintiff in a civil action.

his placement. In addition, he purports to allege incidents involving misconduct by various BOP correction officers who are not specifically named as parties in this proceeding.

The plaintiff's foundational claim of impropriety in his placement in the Bureau of Prisons has been litigated repeatedly and resulted in multiple adverse judgments against him.² Late last year, the United States Court of Appeals for the First Circuit again dismissed the claim in the specific context of FMC Devens, noting that "[w]e have already rejected plaintiff's claim that the Federal Bureau of Prisons ("BOP") does not have lawful custody of him because he is a civilly committed person rather than a prisoner." *Phelps v. Sabol*, No. 08-1474 (1st Cir. Nov. 13, 2008) *aff'g* No. 07-cv-40147-GAO, 2008 WL 824258 (D. Mass. Mar. 27, 2008). The matter is barred from further litigation by principles of res judicata. *Cf. Phelps v. Sabol*, Civ. No. 09-10557-RGS (D. Mass. Apr. 16, 2009) at 2 (declining to entertain habeas corpus petition because legality of detention previously determined).

² See, e.g., *Phelps v. Channel*, 1st Cir. Nos. 07-2609, 07-2610, 07-2611 and 07-2612 (1st Cir. June 25, 2009) (*aff'g Phelps v. Channel*, No. 06-40282-GAO, 2007 WL 2827465 at *2 (D. Mass. Sept. 26, 2007); *Phelps v. Rasmussen*, No. 06-40082-GAO, 2007 WL 2827452 at *1 (D. Mass. Sept. 26, 2007); *Phelps v. Haas*, No. 06-40163-GAO, 2007 WL2827416 at *1 (D. Mass. Sept. 26, 2007); *Phelps v. Sabol*, No. 05-40042-GAO, 2007 WL 2827460 at *1 (D. Mass. Sept. 26, 2007)); *Phelps v. United States Bureau of Prisons*, 62 F.3d 1020, 1023 (8th Cir. 1995); *Phelps v. Bracey*, No. 06-cv-40090-GAO, 2007 WL 2872458 (D. Mass. Sept. 27, 2007); *Phelps v. Ashcroft*, No. 5:03-CT-461-H, 2003 WL 23857318 at *1 (E.D.N.C. July 2, 2003).

The suggestions of individual misconduct stumble at the threshold. First, the individual perpetrators have not been named as party defendants and moreover, the plaintiff's diffuse, confused and confusing complaint fails to make a plausible claim of constitutional violations by such individuals, especially given their entitlement to qualified immunity. Rather, to the degree understandable, what is presented is a rambling recitation of disagreeable incidents failing to set forth a legible claim of direct liability.

Second, to the degree the plaintiff seeks to allege some form of supervisory responsibility, the complaint is inadequate and cannot proceed under a theory of vicarious responsibility. See *Phelps v. Sabol*, 2008 WL 824258 at *2. The plaintiff's efforts to draw a labor organization into the action fare no better and only add additional statutory impediments to the plaintiff's claims.

The Clerk is directed to dismiss this action.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE