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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

WILLIE GIBSON,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 81-0878-R
)	
U.S. PAROLE COMMISSION, et al.,)	
)	
Respondents.)	

MEMORANDUM

This matter came before the court on petitioner's application for a temporary restraining order and a preliminary injunction under Fed. R. Civ. P. 65. Petitioner asks the court to restrain respondents from transferring him to another institution.

Petitioner alleges that his transfer will necessitate his withdrawal from a Veterans Administration-approved Barbering School Rehabilitation Program, that he must pay back the Veterans Administration funds provided him if he fails to complete the course, and that respondents have taken this action to punish him for having filed his petition with the court. A federal institution may not punish a prisoner for having sought judicial remedies once he has instituted judicial proceedings in his own behalf. Cf. Hudspeth v. Figgins, 584 F.2d 1345 (4th Cir. 1978) (state prisoners).

If respondents transfer petitioner to an institution outside of this jurisdiction, the court can retain jurisdiction over petitioner's habeas corpus suit. See, e.g., United States ex rel. Snyder v. People, 442 F.Supp. 75 (N.D. Ill. 1977). At an appropriate time petitioner may name his successor warden as a respondent in an amendment to his petition for a writ of habeas corpus.

The court can grant a temporary restraining order only if "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition...." Fed. R. Civ. P. 65(b). Petitioner alleges that he may have to repay funds to the Veterans Administration due to the illegal actions of respondents. Should that occur, he will have an adequate remedy at law: compensation by a money award. Thus petitioner has alleged no irreparable harm, and the court therefore denies the application for a temporary restraining order, as reflected by the order accompanying this memorandum.

In the Fourth Circuit, Blackwelder Furn. Co., Etc. v. Seilig Mfg. Co., Inc., 550 F.2d 189 (4th Cir. 1977), governs the grant of preliminary injunctions. Blackwelder teaches that the first step in analyzing an application for such relief is to balance the likelihood of irreparable harm to the movant against the likelihood of harm to the resisting party. Assuming arguendo that the harm to the government resulting from grant of a preliminary injunction is zero, the irreparable harm to petitioner resulting from denial of a preliminary injunction is zero also. Without any possibility of irreparable harm, the grant of a preliminary injunction would be wholly inappropriate. Therefore the court denies the application for a preliminary injunction by the order accompanying this memorandum.

Date: _____

United States District Judge