

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SEAN SWAIN,	:	Case No. 4:14-cv-2074
Plaintiff,	:	Judge Benita Y. Pearson
v.	:	
GARY C. MOHR, et al.,	:	
Defendants.	:	

UNCONTESTED STIPULATIONS OF FACT

Now come the parties and as their Uncontested Stipulations of Fact, state as follows:¹

1. On or about January 31, 2015, Plaintiff was denied previously scheduled Video Visitation visits over the Jpay System.
2. The reason given for the cancellation of these previously scheduled Video Visitations was that Plaintiff was under investigation for recent JPay activity he had engaged in with a friend, Ben Turk.
3. The investigation was reported to involve two perceived threats:
 - A. That Plaintiff had, or caused others, to be made public, the personalized license plate number of Warden Terry Tibbals and identified his private vehicle by its physical characteristics upon which the license plates were affixed.

¹ By Court Order, journalized February 23, 2015, the Court ordered that counsel for the parties to “confer with one another in person in order prepare written stipulations as to all uncontested facts to be presented at the hearing on the motion. Said stipulations shall be filed no later than February 25, 2015, at 4:00 P.M.” Doc. # 21, p. 1, ¶ 3. In response, Mr. Kerger acted promptly, sending his first version of proposed Uncontested Facts via email to Mr. Miller on Wednesday, February 25, 2015. Undersigned had returned to work that very day from a previous five (5) day illness. However, as a result of a previous deadline in the Sixth Circuit Court of Appeals, Mr. Miller had to devote his full time and attention to completing Appellees’ Brief in *Hurst v. ODRC, et al.*, No. 14-4025 in order that it could be timely filed. Thereafter, because of the five (5) day illness other matters also had to be addressed. As a result, it was not until this date that undersigned was able to devote attention to Mr. Kerger’s previous and timely February 25, 2015 email correspondence with his draft of Proposed Stipulated Facts.

B. That previous and subsequent JPay emails exchanged between Plaintiff and Ben Turk had made reference to “a bonfire at or...of the state capital (sic) building.”

4. After the cancellation of his visits, the Plaintiff purportedly began a hunger strike which included a purported intention to refuse to continue to take his prescribed blood pressure medication.

5. On Friday, February 13, 2015, a physician, Dr. James Kline, Chief Medical Officer at the Ohio State Penitentiary (OSP) where Plaintiff was housed at the time, was contacted by the OSP Health Care Administrator (HCA) regarding Inmate Swain’s apparent refusal to take his prescribed blood pressure medications. As a result, Dr. Kline provided his approval to the HCA to admit Inmate Swain to the OSP Infirmary.

6. Over the weekend, the Plaintiff was housed in a cell in the OSP Infirmary.

7. By Sunday, February 15, 2015, the Plaintiff determined to begin taking his blood pressure medication and he was returned to his normal cell in general population after medical personnel had monitored his vital signs and determined that they had returned to acceptable and normal ranges.

8. On two occasions, counsel for Plaintiff emailed counsel for the Defendants to gain further explanation on why these actions had been taken. There was no response.

9. On February 18, 2015, the Plaintiff then filed a Motion for a Temporary Restraining Order citing the Defendants’ conduct described above.

10. On February 20, 2015, the Plaintiff was transferred to the Southern Ohio Correctional Facility (SOCF) in Lucasville, Scioto County, Ohio.

IT IS SO STIPULATED.

Respectfully submitted,

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Ohio Attorney General

s/Thomas C. Miller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing, UNCONTESTED STIPULATIONS OF FACT, has been reviewed and approved by Mr. Richard Kerger, counsel for Plaintiff, and has been thereafter filed electronically with the Court's ECF System this 5th day of March, 2015. Parties will receive notice by email notification through the Court's ECF Notification System.

s/Thomas C. Miller

THOMAS C. MILLER (0075960)
Assistant Attorney General