

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

NICHOLAS HARRISON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:18-cv-641 (LMB/IDD)
	)	
LLOYD J. AUSTIN III, et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is pro se plaintiff Nicholas Harrison’s Motion to Show Cause (“Motion”) requesting that the Court “require the named Defendants to appear in person to show cause as to why they should not be held in contempt.” [Dkt. No. 403] at 5. For the following reasons, Harrison’s Motion will be denied.

In his Motion, Harrison claims that defendants have failed to abide by this Court’s injunction orders and continue to deny him the ability to participate fully in the Direct Commission Course (“DCC”) he must complete to maintain his commission in the Judge Advocate General Corps for the District of Columbia National Guard, and to be eligible for promotion to the rank of Captain. See [Dkt. No. 403]. Specifically, Harrison alleges that defendants have obstructed issuance of his military ID card; interfered with his access to military systems; delayed transition of his enlisted military accounts to officer military accounts; withheld formal orders to attend training courses; prevented booking of government travel or access to the defense travel system; refused to enroll his dependent in his military records; and failed to incorporate this Court’s injunction orders into his electronic military personnel file. Id. at 1-3. Defendants oppose the Motion, explaining that they are in full compliance with the injunctions

issued by this Court, and that Harrison's complaints relate to unintentional, system-wide administrative issues that either have been resolved or are in the process of being resolved. See [Dkt. No. 404].

To justify an order to show cause that defendants are in contempt of the Court's injunctions, Harrison must demonstrate "by clear and convincing evidence":

- 1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; 2) that the decree was in the movant's favor; 3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and 4) that the movant suffered harm as a result.

Rainbow Sch., Inc. v. Rainbow Early Educ. Holding LLC, 887 F.3d 610, 617 (4th Cir. 2018)

(citation omitted). Although Harrison has satisfied the first two requirements, he has not demonstrated that defendants violated the injunctions and that he has been harmed by their delay in handling multiple administrative matters.

Without citing to specific language in the injunctions that Harrison believes the defendants violated, he instead claims that defendants' conduct impinges on the "spirit" of the Court's injunctions. See [Dkt. No. 406] at 2. Based on the Court's previous rulings, Harrison is likely referencing two injunctions relevant to his current Motion. First, this Court previously ordered:

[t]he Secretary of the Army to rescind her decision denying Harrison's application to commission in the Judge Advocate General Corps for the District of Columbia National Guard and reevaluate that application in a manner consistent with [other] injunctive relief awarded to plaintiffs in this Order.

Amended Order, [Dkt. No. 314] at 1-2. Second, the Court's July 19, 2023 Order enjoined defendants "from instituting any Selective Retention Board or other proceeding to separate [Harrison] involuntarily from military service." [Dkt. No. 400] at 1.

Based on the record presented by the parties, the defendants are in compliance with the Court's Orders. The denial of Harrison's application to commission as a JAG Officer was rescinded; Harrison was reconsidered for commissioning under the Secretary of Defense's June 6, 2022 policy permitting commissioning of certain HIV-positive service members; and Harrison was granted a commission into the Judge Advocate General Corps ("JAG Corps"). See [Dkt. No. 372] ¶ 3.

Harrison's Motion primarily focuses on defendants' actions with respect to his attendance at a training course, which he must complete to remain in the JAG Corps and to become eligible for promotion. See [Dkt. No. 403] at 3-4. The alleged actions of defendants are neither violative of the Court's injunctions nor do they appear to be the cause of any resulting harm to Harrison. First, although Harrison claims that not attending the August DCC will prevent him from completing the training within the required twelve-month time period, Major LeJuan Terrell Strickland has filed a declaration explaining that Harrison "has now been enrolled in the next available DCC training course, scheduled for October 9, 2023, with a reserved spot in the subsequent Judge Advocate Officer Basic Course," that will conclude on February 28, 2024, which is within the required twelve-month period. [Dkt. No. 407-1] ¶¶ 5, 15.<sup>1</sup>

On this record, Harrison has not demonstrated by "clear and convincing evidence" that the administrative delays that he experienced in his initial processing after being commissioned are attributable to malicious intent on the part of the defendants, as opposed to the "administrative complexities" "caused by service-wide technical issues that the National Guard worked diligently to overcome." [Dkt. No. 404] at 7-8. In addition, Harrison has not

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<sup>1</sup> If Harrison is not able to attend the October DCC, the required twelve-month training period may be extended for good cause. [Dkt. No. 404-1] ¶ 4.

demonstrated that he has suffered any harm, given that he will receive the necessary training within the required twelve-month period. Accordingly, it is hereby

ORDERED that Harrison's Motion to Show Cause [Dkt. No. 403] be and is DENIED.

The Clerk is directed to forward copies of this Order to counsel of record and plaintiff,

pro se.

Entered this 4<sup>th</sup> day of October, 2023.

Alexandria, Virginia

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Leonie M. Brinkena  
United States District Judge