

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JUN 30 2005

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Mohammed Saleh)
#34853-054)
P.O. Box 8500 - ADA)
Florence, Co 81226)

(Enter your full name, prison number
and address)

CASE NUMBER 1:05CV01315

JUDGE: Colleen Kollar-Kotelly

DECK TYPE: Civil Rights (non-employment)

DATE STAMP: 06/30/2005

v.

Alberto Gonzalez)
Harley G. Lappin)
320 First St. NW)
Wash. DC 20534)

(Enter the full name and address(es),
if known, of defendant(s) in this
action)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

Instructions for filing a Complaint by a Prisoner
Under the Civil Rights Act, 42 U.S.C. §1983

28 U.S.C. §1361

This packet contains one copy of a complaint form and one copy of an application to proceed *in forma pauperis*. To start an action, you must file an original and one copy of this complaint form.

Your complaint must be clearly handwritten or typewritten and you must sign and declare under penalty of perjury that the facts are correct. If you need additional space to answer a question, you may use another blank page.

Your complaint can be brought in this Court only if one or more of the named defendants is located within the District of Columbia. Further, you must file a separate complaint for each claim that you have unless they are related to the same incident or problem. The law requires that you state only facts in your complaint.

You must supply a certified copy of your prison trust account, pursuant to the provisions of 28 U.S.C. §1915, effective April 26, 1996. The filing fee is \$150.00. If insufficient funds exist in your prison account at the time of filing your complaint, the court must assess, and when funds exist, collect an initial filing fee equal to 20 percent of the greater of:

- (1) the average monthly deposits to your prison account, or
- (2) the average monthly balance of your prison account for the prior six-month period.

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Thereafter, you are required to make monthly payments of 20% of the preceding month's income. The agency having custody over you must forward payments from your account to the clerk of the court each time the amount in the account exceeds \$10.00 until the fines fees are paid.

Therefore, before an assessment can be made regarding your ability to pay, you must submit a certified copy of your prison account for the prior six-month period.

When this form is completed, mail it and the copies to the Clerk of United States District Court for the District of Columbia, 333 Constitution Ave., NW, Washington, D.C. 20001.

I. SUCCESSIVE CLAIMS

Pursuant to the Prison Litigation Reform Act of 1995, unless a prisoner claims to be in "imminent danger of serious physical injury," he or she may not file a civil action or pursue a civil appeal *in forma pauperis* "if the prisoner has, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or they failed to state a claim upon which relief could be granted."

II. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? Yes () No ()

B. Have you begun other lawsuits in state or federal court relating to your imprisonment? Yes () No ()

C. If your answer to A or B is Yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit.

Plaintiffs: Mohammed Saleh

Defendants: Ray warden, Wood captain
Darrow Lieutenant at USP Leavenworth, Kansas

2. Court (if federal court, name the district; if state court, name the county)

U.S. District of Kansas

Docket number 02-3241-CM

Name of judge to whom case was assigned: Carlos Murguia

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D.C. DISTRICT OF COLUMBIA

- 5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still was dismissed on 1/2/04 and affirmed on appeal on Aug 19, 2004.
- 6. Approximate date of filing lawsuit: 08/7/02
- 7. Approximate date of disposition: 1/2/04
on 8th Amend (excessive use of force).

III. PLACE OF CONFINEMENT

United State Penitentiary - ADX at Florence - Colorado
Florence, CO 81226-8500

A. Is there a prisoner grievance procedure in this institution? Yes () No ()
If your answer is Yes, go to Question III B. If your answer is No, skip Question III B, C and D and go to Question III E.

B. Did you present the facts relating to your complaint in the prisoner grievance procedure? Yes () No ()

C. If your answer is Yes to Question III B;

1. To whom and when did you complain? Warden Hood

2. Did you complain in writing? (Furnish copy of the complaint you made, if you have one.) Yes () No ()

3. What, if any, response did you receive? (Furnish copy of response, if in writing.) a copy attached

4. What happened as a result of your complaint? No action

D. If your answer is No to Question III B, explain why not. N/A

If there is no prison grievance procedure in the institution, did you complain to prison authorities? Yes () No () NA

F. If your answer is Yes to Question III E; NA

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1. To whom and when did you complain? the attorney General never
Response to my complain, the Bop director response is
attached exhibit (1)
have one.)
3. What, if any, response did you receive? (Furnish copy of response if in writing)
Bop Response attached.
4. What happened as a result of your complaint? the certified receipt of
service is attached in the exhibit exhibit (1)

IV. PARTIES

In item A below, place your name and prison number in the first blank and your present address in the second blank. Do the same for additional plaintiffs, if any.

A. Name of Plaintiff: Mohammed Saleh #34853-054
Address: ADX P.O. Box 8500, Florence, CO 81226

In item B below, place the full name of the defendant(s) in the first blank, their official position in the second blank, their place of employment in the third blank and their address in the fourth blank. Do the same for additional defendants, if any.

B. Defendant: Alberto Gonzalez is employed as
attorney General of US at Wash. D.C.
Address: Dept. of Justice - suite 570 - Flag BLD.
Wash. D.C. 20530.

Defendant: Harley G. Lappin is employed as
director of Bureau of Prison at Wash. D.C. office
Address: 320 First St. N.W
Wash. D.C. 20534

Defendant: _____ is employed as
_____ at _____
Address: _____

Defendant: _____ is employed
as _____ at _____
Address: _____

SEARCHED
SERIALIZED
INDEXED

Statement of Facts Relevant to the Issues Presented for Review.

1. Plaintiff Moh'd Saleh was convicted of selling diesel from his Gas station^{to} confidential informant whom paid over than a million dollars for his role in creating the conspiracy, which plaintiff was convicted for seditious conspiracy & bombing conspir. & attempt bombing and sentence to 35 yrs in 1993, and was housed in General population (G-P) since up 9/11/2001. The plaintiff always maintain a good conduct and worked at prison industry (unicor) and always follow the prison rules and respected by Staff & inmates.
2. ON 9/11/2001 the plaintiff was placed in solitary confinement for a while and then transferred to permanent solitary confinement at ADX. only because of his origin as Arab & Muslim and his conspir. conviction. The plaintiff was told by Warden Curja the USP warden that order came from the attorney General through Bop director.
3. The plaintiff's currently housed in solitary confinement at USP-ADX Colorado. The defendants have violated and continue to violate the plaintiff's rights as afforded by the due process clause, and Equal protection clause of the U.S.C.A. Const. Amend 5, And the cruel and unusual punishment clause, and deliberate indifference clause of the U.S.C.A Const. Amend. 8, by discriminate and systematic maladministration of acts and rules, laws & Rights of plaintiffs, in a discriminatory manner.
4. The defendants did not afford the plaintiff the same due process that is afforded to same inmates at ADX prior to his transfer to ADX and in connection with all aspects of his confinement at ADX, and informed the plaintiff that his confinement at ADX is permanent by order from attorney General and not allowing him to participate in the step down program which allow the inmates at ADX after 3 yrs to leave the solitary confinement and to be transferred to another USP in General population.

CAUSE OF ACTION1. Claim one:

The continued imposition of indefinite Solitary confinement of plaintiffs at the ADX violates his Rights as afforded by the due process clause, and Equal protection clause of the U.S.C.A. Const. Amed. 5. As plaintiff assert that he has Liberty interests in remaining free from indefinite Solitary confinement (where he has been housed since 9/11/2001). And the defendants not allowing the ADX officials to afford him the same procedural due process that is afforded to inmates at ADX. Specifically the Step-down program which allow inmates to leave the Solitary confinement after two years from entering the program. And the defendants action of transferring the plaintiff to ADX from General population brought about a quantum change in his level of custody.

2. Supporting facts:

The plaintiff has been subjected to indefinite Solitary confinement since almost five years, for nothing other than his origin as an Arab-muslim and his conviction since the plaintiff does not have an affiliation to any group or association.

3. whereby the plaintiff assert he has liberty interest in connection with his confinement at the ADX.

4. whereby plaintiff assert that the conditions of his confinement at ADX, in relation to the conditions of confinement he experience as inmates in an "open" General population, where he was transferred from, poses an Atypical and significant hardship in relation to ordinary incidents of prison life.

5. whereby plaintiff assert that his transfer to ADX Solitary confinement brought on him a quantum change in the level of custody, 23 hrs lockdown in the cell only allow 5 hrs for recreation per week, No social or Religious group activity. No jobs, Restriction on family connection two phones a month while in USP General population No such restrictions.

6. denying the plaintiff to participate in step-down program a less restrictive unit, when plaintiff meet all criteria for said placement, and don't pose any threat to the safe secure, and orderly operation of the facility is disregard to BOP policy: FLM 5321.06E(i).

7. plaintiff assert that he is denied due process that is afforded to certain inmates at ADX in connection with their confinement as outlined in Bop policy: institutional Supplement FLM 5212.07A to have review by the executive panel every 60-90 days; the documentation of all reviews; the opportunity to be heard; determinate the durations of confinement, that is afforded to other units inmates. But not to plaintiff is unconstitutional, and violates plaintiff clearly established rights as afforded by the due process clause, and Equal protection clause of the U.S.C. A. Const. Amend. 5, and Bop policy: FLM 5212.07A, & 541.20 & 541.22. And repeated use and explicitly mandatory language of the 28 C.F.R. § 541.13 & § 541.22 & § 541.20 in connection with requiring specific substantive predicates, regarding solitary confinement or segregation of inmates. Bop policy ps 52.70.07.

Request For Relief

1. Plaintiff's Request the following Relief As to his claim:

A) Relief under provision for compelling officer of United States to perform his duty by granting the plaintiff injunctive relief to force the defendants to comply with their rules and transfer the plaintiff to General population prison. See *Steinbach v. Federal Bureau of Prison*, 339 F.2d 628 (D.N.J. 2004) (~~Where~~ the court construed § 2241 to § 1361 and granted the plaintiff injunctive relief where the BOP failed to follow BOP PS 7310.04. to transfer the plaintiff from ACI to community confinement center) Also the court found that BOP must follow the rules & own regulations and § 1361 doesn't shield the agency of responsibility and relief under § 1361 is not barred by sovereign immunity at AD 630.

B) A Declaratory judgement stating that the defendant's policies; practices, procedures, Acts and omissions as described in claim one, violates plaintiff's rights as afforded by the due process clause, and equal protection clause of the U.S. C.A. Const. Amend. 5; The cruel and unusual punishment clause of, and deliberate indifference clause of the U.S. C.A. Const. Amend. 8, and under § 2201.

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include the names of other persons involved, dates and places. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra sheets if necessary.

stated on page 5.

VI. RELIEF

State briefly exactly what you want the Court to do for you.

stated on page 8

Signed this 6 day of June, 2005.

M. Saleh
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

6/16/05
(Date)

M. Saleh
(Signature of Plaintiff)

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