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PC-KS-002-001

NATIVE AMERICAN RIGHTS FUND

FILE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

NOV 17 1980

ARTHUR G. JOHNSON, Cle

Arthur G. Johnson

JOSEPH MARSHNO, et al.,)
 Plaintiffs,)
 vs.)
 PATRICK McMANUS, et al.,)
 Defendants.)

Case No. 79-3146

CONSENT JUDGMENT AND DECREE

Plaintiffs, American Indian inmates incarcerated in the Kansas State Penitentiary, commenced this action against defendant Patrick McManus, Secretary of Corrections, and other corrections officials, claiming certain deprivations of rights secured to them under the First, Eighth and Fourteenth Amendments as well as the American Indian Religious Freedom Act, 42 U.S.C. § 1996, by filing a pro se complaint. Specifically, plaintiffs claimed that the corrections officials refused them reasonable access to their traditional Indian religion, and that they were discriminated against in various ways in the rehabilitation process.

Since the date of the filing of this action, Defendants have investigated the claims presented by plaintiffs. Defendants believe they are in a position to enter into the following CONSENT JUDGMENT AND DECREE. In so agreeing defendants deny they have violated any rights claimed by plaintiffs.

Upon the pleadings, all proceedings heretofore and herein, and upon agreements of the parties (represented by counsel) and upon the Court's determination that the interests of the plaintiffs have been fairly represented

here, plaintiffs and defendants hereby agree to the following terms and conditions of settlement of all issues arising out of the above-entitled action.

A. Defendants agree to permit the construction of a sweat lodge, within a reasonable time, at the Kansas State Penitentiary, by an Indian medicine man to be agreed upon by the parties.

- (1) Defendants agree to bear all costs and expenses of building the sweat lodge, which will be a dome-like structure, approximately six feet in diameter, constructed with a sapling frame and covered by blankets; and interior will contain a small pit for the sacred rocks, along with a water bucket; the floor of said sweat lodge will be covered with pine or cedar branches, or other materials as designated by the parties' medicine man and approved by defendants.
- (2) It is agreed that use of the sweat lodge will be available to all inmates subject to the same rules and regulations as govern other religious services at the Kansas State Penitentiary.
- (3) The Director of the Kansas State Penitentiary and his delegees shall have the same authority to schedule access to the sweat lodge as he has with respect to any other prison activity or religious observance or ceremony.
- (4) The sweat lodge shall at all times be subject to observation and inspection by security personnel on the same basis as any other religious observation or ceremony at the institution; such personnel shall, however, conduct themselves with respect to the use of the sweat lodge in the same manner they would during the course of any other religious observance in the institution.

(5) Defendants may temporarily suspend usage of the sweat lodge at any time that it presents a threat to prison security; in making this determination, defendants shall apply the same criteria they would with respect to other religious observance at the institution.

B. In order to meet the religious and spiritual needs of the plaintiffs, defendants agree to allow inmates reasonable access to Indian medicine men and recognized spiritual leaders. Defendants agree to make a good faith effort to secure necessary funding for the reasonable expenses of the medicine men and spiritual leaders.

C. Defendants agree to allow religious drum service at Kansas State Penitentiary four times per month at times to be agreed upon by the parties.

- (1) Said services shall be scheduled and have a duration similar to other religious observances or ceremonies.
- (2) Participants of said ceremonies shall be allowed possession of items incident to their religion, such as cedar, sage, sweetgrass and such other items as are necessary and approved by defendants.
- (3) Defendants agree to provide an area for safe storage of items incident to plaintiffs' religion and an area for plaintiffs to conduct their religious ceremonies.

D. None of the parties to this litigation shall apply to the Court for modification or vacation of this judgment or for any other order in relation to enforcement of the judgment until after notice and consultation as hereinafter provided:

- (1) The party wishing to apply for relief or his authorized representative shall, at least thirty

days prior to the application, give written notice to other affected parties or their representatives of the relief for which he intends to apply, specifying the nature of the event, occurrence, or circumstances upon which such application will be based.


- (2) The recipient of said notice shall reply in writing to the party giving notice within fifteen days after receipt, and the parties or their representatives shall then meet to discuss the problem. All such meetings, if any, shall be conducted in good faith by the parties.

Plaintiffs agree to waive all claims they may have, including attorney fees and costs relating to matters raised within their complaint and agree to dismiss the action with prejudice upon implementation of programs herein.

It is further agreed that attorneys for the parties have the consent of their clients to sign this Agreement. The undersigned attorneys represent and warrant that they have the consent of and have been authorized by their clients to sign the foregoing Agreement and that all portions of the Agreement have been explained to the clients by the undersigned.

Dated this 14th day of November, 1980.

Respectfully submitted,


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ATTEST:

/s/ DALE E. SAFFELS

Clerk

District Judge *DD*