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NATIVE AMERICAN
SOCIETY

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UNITED STATES DISTRICT COURT
SANTA FE, NEW MEXICO

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DEC 5 1980

James W. Clark
CLERK

DAVID FREASE, JAMES SILAS,)
 GILBERT BENALLIE, GEORGE NAMOKI,)
)
 Plaintiffs,)
)
 v.)
)
 JERRY GRIFFIN, Warden, et al.,)
)
 Defendants.)

BY _____ DEP. CLERK

Civ. No. 79-693-C

CONSENT ORDER,
JUDGMENT AND DECREE

This is a 42 U.S.C. 1983 action filed by Indian prisoners of the New Mexico State Penitentiary on September 11, 1979, against the Warden and other state officials. Plaintiffs seek to worship through the use of a traditional Indian sweat lodge and to wear their hair in the manner that their native religious belief requires. Plaintiffs claim that defendants' action in refusing the above-mentioned activities violates rights secured to plaintiffs by the First and Fourteenth Amendments to the United States Constitution. Defendants have denied such allegations.

Since the date of the filing of this action, defendants took the initiative to thoroughly investigate the claims of the plaintiffs in order to assess their basis in traditional Indian religion and to ascertain the experiences of other prisons which permit similar practices. Based on said investigation, and as a part of the parties' settlement negotiations, defendants have instituted appropriate changes in the penitentiary's inmate grooming policy and have permitted the construction and use of a sweat lodge for the religious use of prisoners on a trial basis. The parties are now in a position to agree to the entry of the within judgment.

Frease v. Griffin



PC-NM-002-001

Defendants, in so agreeing, do not admit or concede that they have acted unconstitutionally.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendants and their successors in office are ordered as follows:

1. Defendants will continue to permit Native American prisoners to wear their hair in traditional Native styles for religious purposes.^{1/}

2. Defendants will advise the New Mexico Parole Board of the contents of this Consent Order, Judgment and Decree, and request the parole records of David Frease and James Silas to reflect that the disciplinary actions at issue herein taken against these plaintiffs arose as a result of a conflict between the religious beliefs held by these prisoners and the institution's grooming code.

3. Defendants have permitted the use of a sweat lodge at the Penitentiary of New Mexico in a location designated by the Warden after consultation with Indian spiritual leaders. Defendant shall continue to permit reasonable prisoner access to said sweat lodge for religious uses. Plaintiffs shall bear all costs attended to the use of a sweat lodge. However, nothing herein shall prevent defendants from providing voluntary nominal support or services for the use of the sweat lodge.

^{1/} On June 23, 1980, defendants issued Policy Statement PNM-77-IM-60002.2 so as to permit exceptions to the institution's haircut regulations for Native religious purposes. Said Policy Statement is attached hereto and is incorporated herein in total by reference, and reads in pertinent part:

"Native American inmates, due to their longstanding religious and cultural tradition and heritage will be allowed to wear long hair."

4. The sweat lodge shall be available for attendance by all inmates regardless of race or religious belief on the same basis as other approved religious ceremonies or services. Persons participating in the sweat lodge ceremony will be appropriately clad at all times outside the sweat lodge.

5. The Warden shall have the same authority to schedule routine access to the sweat lodge as he has with respect to any other prison activity or approved religious services.

6. The sweat lodge shall at all times be subject to observation and inspection by security personnel on the same basis as any other religious observance or ceremony at the institution; such personnel, however, shall be instructed to conduct themselves in this regard in the same manner they would during the course of any other religious service in the institution.

7. 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:

- (a) The party wishing to apply for relief or his authorized representative shall, at least 30 days prior to 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.

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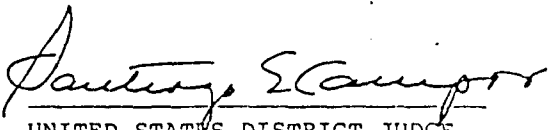
(b) The recipient of said notice shall reply in writing to the party giving notice within 15 days after receipt, and the parties or their representatives shall then meet to discuss the problem.

8. The Court limits the application of this Order to the New Mexico Penitentiary located at Santa Fe, New Mexico.

9. All of plaintiffs' counsel, with the exception of attorney Yalman, waive any claim they may have for costs, expenses and reasonable attorney fees. Attorney Yalman reserves her right to apply to the Court for costs, expenses and reasonable attorney fees directly incurred by her in connection with this action.

10. All other claims raised in the Complaint herein are hereby dismissed with prejudice.

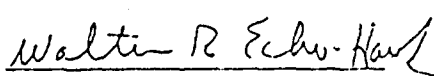
Dated this 3rd day of DECEMBER, 1980.

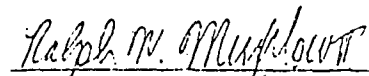

UNITED STATES DISTRICT JUDGE

CONSENTED TO:

FOR THE PLAINTIFFS

FOR THE DEFENDANTS


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Kurt V. Blue Dog
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P O L I C Y S T A T E M E N T

PNM-77-114-60002-2
06-23-80

JUL 23 1980

SUBJECT: INMATE PERSONAL APPEARANCE AND GROOMING

NATIVE AMERICAN RIGHTS

- I. POLICY: It is the policy of the Penitentiary of New Mexico that all inmates present a neat and well groomed appearance at all times.
- II. PURPOSE: The purpose of this subject is to outline the various regulations pertaining to inmate grooming and personal appearance.
- III. RESPONSIBILITY: It is the responsibility of each staff member to insure that inmates maintain a level of personal cleanliness and grooming consistent with necessary safety and sanitation standards. Hair will not be worn in styles which increase risk of injury because of the nature of the inmate's employment.
- IV. BARBERING SERVICE: The Penitentiary of New Mexico provides barbering services for all inmates at the Penitentiary Barber Shop. The cutting of inmate hair in any other location is forbidden.
- V. HAIRCUT REGULATION:
- A. Hair Length
1. Inmate hair length for male inmates will not extend beyond the top of the shirt collar. Artificial hairpieces will not be allowed.
 2. Afro hair styles will not extend more than three inches in length at all times.
 3. Long hair usually requires more attention than short hair. Those who choose to wear long hair must assume the additional responsibility for properly maintaining its cleanliness and appearance.
 4. Native American inmates, due to their long standing religious and cultural tradition and heritage will be allowed to wear long hair.
-
- B. Limitations
1. When the length or style of one's hair is found to present a health, safety or sanitation problem, the inmate may be required to trim or cut his hair or wear a hair net or other covering to alleviate the problem.

2. Additional restrictions on the style of hair may be imposed if necessary for medical or psychiatric reasons, but these reasons must be fully documented.

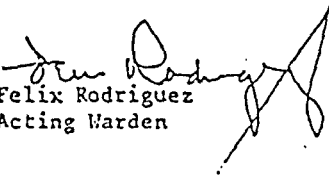
C. Beards and Mustaches

Inmates shall be permitted to adopt any style provided they are kept clean and trimmed.

D. Requirement

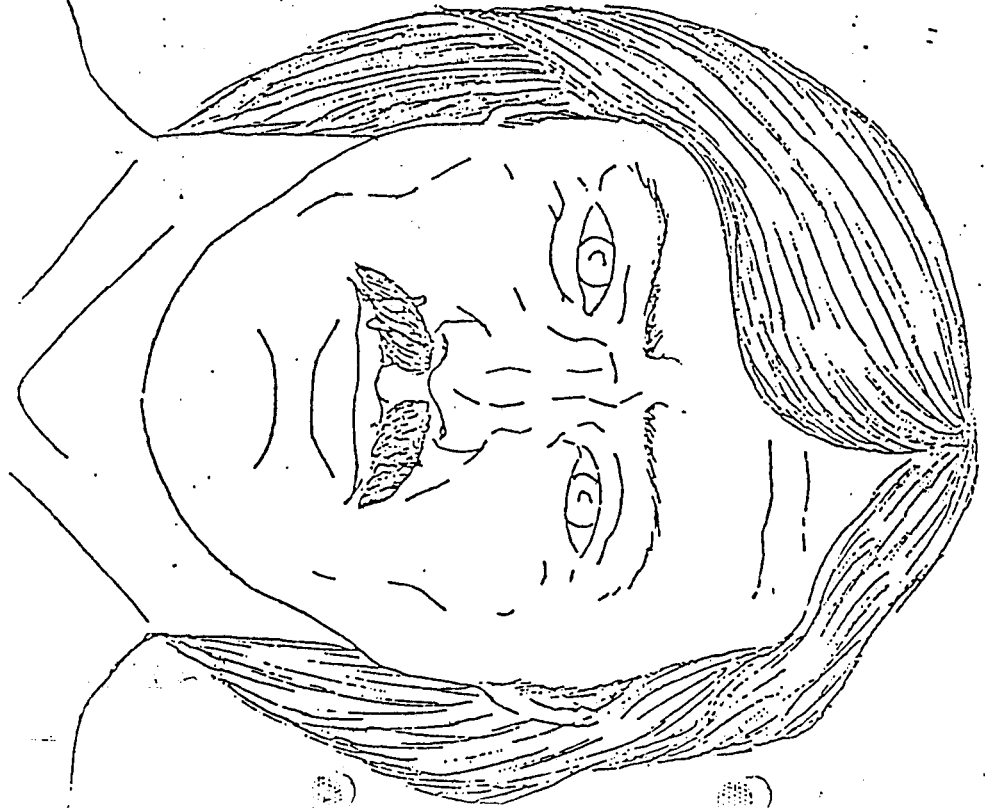
New identification photographs shall be taken of any inmate whose outward appearance changes or is altered as the result of a change in personal appearance. Inmates will be required to pay for photographs unless they are indigent.

- VI. HAIR STYLES: Normal hair styles are necessary for the maintaining of a well groomed appearance. Unusual hair styles that interfere with sanitation and the orderly operation of the penitentiary will not be permitted.
- VII. UNSENTENCED INMATES: All unsentenced inmates will voluntarily, by signature, accept this policy or they will be housed in Cell Block #3.
- VIII. PERSONAL APPEARANCE: This policy affirms the requirements of cleanliness and good grooming. This means hair should be clean and neat. Inmates should maintain regular bathing and grooming.
- IX. CANCELLATION: This Policy Statement cancels PNM-77-1M-60002.1, issued 3-01-77, and all previously issued memoranda on subject.


Felix Rodriguez
Acting Warden

cc: All Policy Holders

ATTACHMENTS: Attached are four (4) pictures that visualize the hair regulations for inmates at the Penitentiary of New Mexico.



Handwritten notes and an arrow pointing towards the top drawing.

