

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 14 2008

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

JIMMY KINSLAW,
Plaintiff,

MATTHEW J. DYKMAN
CLERK

VS.

No. CIV-07-1164 MV/RLP

NEW MEXICO CORRECTIONS DEPT., et al.,
Defendants.

PLAINTIFF'S REPLY
TO THE DEFENDANT'S RESPONSE TO
MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Jimmy Kinslow, pro se, hereby submits his Reply to the NMCD Defendant's Response to the motion for partial summary judgment on Count One of the Verified Complaint, and submits that the following completes the briefing in this matter:

1. To start Mr. Kinslow would pray the Court to take Judicial Notice of the prejudicial fact that, pursuant to official NMCD Policy, all federal and state case law reporters has been removed from the Law Libraries statewide and no New Mexico prisoner is allowed to actually READ any type of case law decisions made by any court, nor are they allowed to Shepardize any case to locate any contrary authority. The NMCD defendants have cited five (5) cases as authority for their opposition to partial summary judgment; the pro se prisoner - plaintiff has no way of knowing if the cited cases actually says what defendants' counsel claims they say; since HE IS NOT ALLOWED TO READ ANY CASE LAW DECISIONS FROM THE LAW LIBRARY.

2. Defendants attempt to weave their defense to the motion around the federal Religious Freedom Restoration Act (RFRA). At no place in either the Verified Complaint or the motion for partial summary judgment does Mr. Kinslow ever cite, invoke or allude to or rely on the federal "RFRA" statute; plaintiff is clearly a state prisoner in a state facility, and the U.S. Supreme Court has invalidated the federal RFRA statute as far as it applies to the State's since it lacked some sort of funding clause.

Congress responded to this ruling by enacting 42 U.S.C. § 2000cc-5, the "Religious Land Use and Institutionalized Persons Act," (RLUIPA), which corrected the previous oversight and does apply to the States, and this is one of the statutes relied on by the plaintiff, not the "RFRA" cited by defendants. The Court needs to ignore defendants' attempt to bring an unconstitutional and invalid statute into play. Besides, plaintiff also relies on 42 U.S.C. § 1983 for his constitutional claims. Defendants entire "Introduction" is a feint, an attempt to confuse both the Court and the unlettered prisoner-plaintiff, and maneuver attention away from the clear issues of this case and cause undue and unnecessary delay.

3. Defendants "arguments" in their Response reaches the absolute height of racial arrogance and pure, naked racial bias and condensation, and it is so historically "paternalistic" that it becomes extremely offensive to ALL Native Americans.

Defendants "admit" they segregate the practitioners of the Native American religions to only those persons who can prove their racial descent from a federally-recognized Native American Tribe, and state that this type of racial exclusion of all other races is to "protect" the Native American culture and belief system, ~~that~~ inferring that without this "protection" we could somehow become infected or something. It is their contention that Native Americans "culture and belief systems" are so delicate and weak that just to survive we need the government to segregate and protect us, or we may "disappear" or die out.

Can the NMO defendants even see just how offensive these types of statements are to Native Americans? Defendants ADMIT that they only allow the practice of our religion to only those persons who can conclusively prove their racial descent from a Native American Tribe, and that absent this racial proof, a person is prohibited from freely practicing any Native American religion, but, according to defendants, ~~that~~ would have the Court to buy into the notion that this type of racial exclusion "IS FOR OUR OWN GOOD" and is to "PROTECT US" and to "PRESERVE OUR CULTURE AND RELIGION." In other words, the NMO considers Native Americans to be little children or something, that we don't know what's good or bad for us, so the government must be our parent or something. All of this paternalistic governmental "protection" has a long history, they almost "protected" us into mass extinction several times over the last few hundred years.

All of the above reasons cited by defendants are simply key code phrases to mask the ugly face of racial exclusion behind soft, utopian-sounding words.

Race cannot, and must not, be a basis for who can practice or not practice a legally-recognized religion. Defendants ADMIT that they use RACE in just such a manner, and this unquestionably violates First Amendment Constitutional principles, federal statutes and state tort law under the New Mexico Religious Freedom Restoration Act.

CONCLUSION

Defendants' mis-citing of the federal RFRA statute should be ignored by the court, plaintiff clearly does not cite nor attempt to rely on this invalidated federal statute. Defendants ADMIT that they have a "policy, practice and/or custom" of using race as a basis for who will be allowed to freely worship a particular religion; therefore, they are liable and the motion for partial summary judgment should be granted and Plaintiff awarded all of the relief asked for in the Verified Complaint.

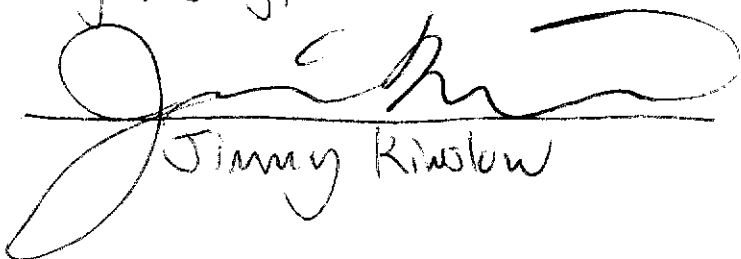
Respectfully submitted,



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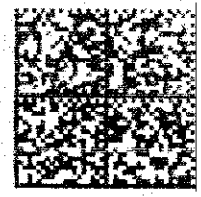
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to Defendants Counsel, Mr. Carlos Elizondo, at P.O. Box 27116, Santa Fe, NM 87502-0116, on this the 9th day of July, 2008.


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