

2000 WL 34474965 (S.D.N.Y.) (Trial Pleading)
United States District Court, S.D. New York.

Rashaad MARRIA, Plaintiff,

v.

Dr. Raymond BROADDUS, Deputy Commissioner of Programs for the Department of Correctional Services; G. Blaetz, Chairperson of the Green Haven Correctional Facility Media Review Committee; Warith Deen UMAR, Coordinator for Islamic Affairs for the Department of Correctional Services; Glenn Goord, Commissioner of the Department of Correctional Services, Defendants.

No. 97 Civ. 8297 (NRB).
November 3, 2000.

Amended Complaint

Plaintiff Rashaad Marria, by his undersigned attorney, as and for his Amended Complaint alleges the following on personal knowledge or on information and belief.

NATURE OF THE ACTION

1. This action arises from Defendants' policies, customs and practices, which have deprived and continue to deprive Plaintiff of the ability to practice his faith in violation of his constitutional and statutory rights. Plaintiff seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983, the First and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act of 2000, the New York State Constitution, and state law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §.1343 and 28 U.S.C. § 1331 and supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

3. Venue properly lies in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

THE PARTIES

4. Plaintiff is and has been an inmate in the care and custody of the New York State Department of Correctional Services ("DOCS") since June 1995. From December 1995 to March 1996, Plaintiff was an inmate at the Great Meadows Correctional Facility ("Great Meadows") in Washington County, New York. From March 1996 to June 1996, Plaintiff was an inmate at Green Haven Correctional Facility ("Green Haven") in Dutchess County, New York, and from June 1996 to September 1997, he was housed at Elmira Correctional Facility ("Elmira") in Chemung County, New York. From September 1997 to the present, Plaintiff has been housed at Shawangunk Correctional Facility ("Shawangunk") in Ulster County, New York.

5. Defendant Glenn S. Goord ("Goord") is the Commissioner of DOCS. He is sued in his individual and official capacities.

6. Defendant Dr. Raymond Broaddus ("Broaddus") was the Deputy Commissioner of Programs at DOCS at all times relevant to this action. He is sued in his individual and official capacities.

7. Defendant G. Blaetz (“Blaetz”) is the Media Review Committee Chairperson at Green Haven. She is sued in her individual and official capacities.

8. Defendant Warith Deen Umar (“Umar”) was the Coordinator for Islamic Affairs at DOCS at all times relevant to this action. He is sued in his individual and official capacities.

FACTUAL ALLEGATIONS

9. Defendants at all times relevant to this action were and are acting under color of state law.

10. DOCS is a state agency. DOCS receives federal assistance.

The Nation of Gods and Earths

11. The Nation of Gods and Earths (“Nation”) is legally a religion.

12. The Nation began in 1964 when Allah, Clarence 13X Smith, left the Nation of Islam (“N.O.I.”) and founded the Nation of Gods and Earths.

13. The Nation shares some tenets with the N.O.I., including that the white man is the devil and that the white man was made through a selective breeding process called grafting.

14. The Nation also has many tenets distinct from the N.O.I., including the Nation’s belief that black men are Gods and that black women are Earths. The Nation’s way of life and culture is predicated on a belief in God.

15. The Nation mandates that its members study and learn lessons, including the Book of Life, which comprises the Supreme Mathematics, the Supreme Alphabet and the 120 Degrees, on a daily basis. The study of these lessons is required to learn how to live a righteous life.

16. The 120 Degrees are lessons arranged in a question-and-answer format that represent the teachings of Master Fard Muhammad and Elijah Muhammad.

17. The Supreme Mathematics and the Supreme Alphabet were given to the Five Percenters by their Father Allah, Clarence 13X, as a way to understand Islam and man’s relationship to the universe. The Supreme Mathematics and Supreme Alphabet are a form of numerology whereby the universe and Islam are given meaning through the use of the Mathematics and Alphabet system. Pursuant to the Supreme Mathematics, each number has meaning. For example, the number one represents knowledge; the number two represents wisdom; and the number three represents understanding, the product of knowledge and wisdom. The Supreme Mathematics are calibrated with the Supreme Alphabet. For example, “Allah” is the beginning of the alphabet and is coextensive with the number one.

18. The Nation mandates attendance at rallies and “Parliaments,” which are fundamental gatherings prescribed by Father Allah. Parliaments take place on the last Sunday of each month.

19. Additionally, members of the Nation observe holy days, including the birthdays of Master Fard Muhammad and Elijah Muhammad. Members of the Nation fast on the anniversary of the birth and of the death of Clarence 13X.

20. The Nation has a cultural emblem commonly referred to as a Universal Flag that represents the Nation of Gods and Earths. It is comprised of a five-pointed star, symbolizing, among other things, the black child; a crescent moon, symbolizing, among other things, the black woman; the number “7”, symbolizing, among other things, the Original Man; and an eight-pointed star, symbolizing, among other things, the eight lessons contained in the 120 Degrees. The words “In the Name of Allah” encircle the emblem. Members of the Nation gain much understanding of Islam and the universe by studying and implementing the symbols in the flag in conjunction with the Supreme Mathematics and the Supreme Alphabet.

21. In addition to the 120 Degrees and formal lessons, many members of the Nation who have gained knowledge and understanding write their own “plus” lessons in which they expound on their understanding of the Nation’s teachings. These lessons are shared with other members of the Nation.

22. Members of the Nation are taught through their lessons to teach their beliefs to others. This conforms with the definition of the Five Percent.

23. The Nation believes that all poor righteous teachers fall within the Five Percent. The Five Percent teach freedom, justice, and equality to all human families of the planet earth and do not believe in the teachings of the Ten Percent. The Nation teaches that the Ten Percent are those who live off of the labor of the remaining Eighty-Five percent, the poor and unconscious masses who the Ten Percent enslave and mollify with their Eurocentric belief system in a “mystery God” that they cannot see.

24. Therefore, while members of the Nation are commonly referred to as “Five Percenters,” membership in the Five Percent is broader than the Nation’s membership and encompasses all of the poor righteous teachers who struggle against the Ten Percent, including all Muslims.

25. The Nation is legally a religion, not a gang. The Nation does not partake in unlawful activities.

The Five Percenter Newspaper

26. Clarence 13X began the Allah Youth Center in Mecca, which is located in Harlem, New York, with the assistance of the City of New York and the Urban League.

27. It is from the Allah Youth Center in Mecca that *The Five Percenter* newspaper is published. This newspaper contains current events relevant to the Nation of Gods and Earths, information about community activities, letters to the editor, editorials, and important Five Percenter lessons, including teachings from the 120 Degrees and the Supreme Mathematics and Supreme Alphabet.

Plaintiff’s Membership in the Nation of Gods and Earth

28. Plaintiff is a member of the Nation.

29. He has been a member of the Nation since August 1994.

30. Plaintiff sincerely holds the beliefs described in paragraphs 11 through 25.

31. Plaintiff’s beliefs and way of life as a member of the Nation hold the same significance to him that Christianity does to an observant Christian, or that Judaism does to an observant Jew.

32. Plaintiff observes the holy days.

33. Plaintiff studies the lessons he has available to him, to which he has access only as a result of this pending lawsuit, on a daily basis.

34. Plaintiff needs access to the Five Percenter lessons, Supreme Mathematics, Supreme Alphabet, and 120 Degrees, and other teachings specific to the Nation, including *The Five Percenter* newspaper, to continue to grow and prosper in his way of life. There is no substitute for the lessons that these Five Percenter materials provide. Plaintiff has been denied access to all of these materials by DOCS officials.

35. The parties to this action have stipulated that prison officials will deny Plaintiff access to the *Five Percenter* newspaper at any correctional facility operated by DOCS where Plaintiff may be housed. (See Stipulation and Order of Dec. 17, 1999,

attached hereto as Exhibit A.)

36. Because of the restrictions DOCS and DOCS' officials placed on activities concerning Five Percenter, Plaintiff is not permitted to actively communicate with other members of the Nation about Five Percenter activities, nor is he permitted to attend the rallies and Parliaments prescribed by the Nation's teachings.

The Five Percenter Literature Sent to Plaintiff *Through the Mail During His Incarceration*

37. In March 1996, while incarcerated at Great Meadows, Plaintiff submitted a Disbursement Request to be paid to the Allah School in Mecca in order to obtain a subscription to *The Five Percenter* newspaper. This disbursement was approved by Great Meadows officials.

38. Plaintiff was transferred to Green Haven Correctional Facility in March 1996 and his subscription to *The Five Percenter* newspaper followed him. He received at least one issue while at Green Haven.

39. On March 27, 1996, while at Green Haven, Plaintiff received a Referral Notice stating that the March 1996 issue of *The Five Percenter* addressed to him arrived at the facility and was being held by the Media Review Committee. The notice stated that he could submit a written statement in support of his receiving the publication to Defendant G. Blaetz, Chairperson of the Facility Media Review Committee. The notice further advised that this needed to be done promptly, as the decision of whether or not to grant a prisoner access to his materials usually must be reached within ten working days of the notice.

40. Plaintiff promptly sent a response to the Media Review Committee.

41. On April 1, 1996, Plaintiff received a letter from Defendant Blaetz stating that *The Five Percenter* newspaper had been sent to the Coordinator for Islamic Affairs, but Plaintiff was not given his address or contact information.

42. Plaintiff received another Referral Notice dated April 25, 1996 that informed him that the April 1996 issue of *The Five Percenter* addressed to him was being held for review by the Media Review Committee and that he could submit a written statement to Defendant Blaetz in support of his receipt of the publication. The notice again advised Plaintiff that this would need to be done promptly since the Committee usually must reach a decision within ten working days of the date of the notice.

43. Plaintiff promptly responded to the Referral Notice and then received another notice stating that his *Five Percenter* newspaper had been sent to the Coordinator of Islamic Affairs.

44. Because Plaintiff did not have any contact information for the Coordinator for Islamic Affairs, he wrote to Commissioner Coombe explaining the events that transpired around his March and April 1996 issues of *The Five Percenter* and requesting his assistance, including an explanation as to why the ten-day Media Review Process was taking longer than ten days. Plaintiff also requested the address of the Coordinator for Islamic Affairs.

45. In June 1996, Defendant Broaddus, then Deputy Commissioner for Program Services, responded to Plaintiff's letter to Commissioner Coombe. Defendant Goord, who was Acting Commissioner at the time, had referred Plaintiff's letter to Broaddus. Defendant Broaddus's response to Plaintiff stated that a member of his staff investigated Plaintiff's complaint and determined that, pursuant to *Muhammad v. Coughlin*, all Five Percenter publications had to be sent to the Coordinator for Islamic Affairs. Broaddus's letter further stated that the ten-day time limit for review of publications set forth in DOCS Directive 4572 was suspended in these instances.

46. Plaintiff was at Elmira when he received the letter from Defendant Broaddus.

47. Since Defendant Broaddus did not supply Plaintiff with the Coordinator for Islamic Affairs' address, Plaintiff asked other inmates for the address. Upon learning the address, Plaintiff sent Defendant Umar, then the Coordinator for Islamic Affairs, a letter concerning the status of his *Five Percenter* newspapers. Defendant Umar never responded to this letter.

48. During this entire time period, Plaintiff believed his *Five Percenter* newspapers were in the Media Review Process, but that a decision was delayed because additional members of the Media Review Committee, including Defendant Umar, were reviewing the newspapers. Defendant Broaddus's letter led Plaintiff to believe that the standard procedure for dealing with *The Five Percenter* newspaper was to send it to the Media Review Committee which included, pursuant to *Muhammad v. Coughlin*, sending it to the Coordinator for Islamic Affairs, and that because of this procedure, the response from the Media Review Committee would take longer than ten days.

49. Plaintiff was never informed as to what happened to his March and April 1996 editions of *The Five Percenter*.

50. Plaintiff was never given the opportunity to determine the disposition of either of these *Five Percenter* newspapers. In direct contradiction of 7 NYCRR Section 712.1-712.3 and of DOCS Directives 4422, 4572, and 4910, Plaintiff was never given the opportunity to have the objectionable portions of his newspapers redacted, or to have them sent to someone outside the facility at his own expense, or to have them destroyed.

51. At Elmira, Plaintiff again began receiving his subscription to *The Five Percenter* newspaper and received approximately four or five copies there.

52. While Plaintiff received several copies of *The Five Percenter* newspaper at Elmira, the June 1996 issue was withheld from him for review by the Facility Media Review Committee.

53. The Media Review Committee determined that the June 1996 issue was inconsistent with the Media Review guidelines and thus did not give it to Plaintiff. He was informed that he could appeal this decision, consistent with Media Review Directive 4572.

54. After the June 1996 issue was withheld at Elmira, Plaintiff did receive additional issues of *The Five Percenter* at Elmira.

55. Additionally, while at Shawangunk, as well as at other facilities, Plaintiff's cell was searched and correctional officers examined Plaintiff's Five Percenter literature, including copies of *The Five Percenter* newspaper, which has a banner proclaiming its name in largepoint type. These officers did not confiscate the literature or give Plaintiff tickets for having it in his possession.

FIRST CAUSE OF ACTION

FREE EXERCISE OF RELIGION AND OF ASSEMBLY AS GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983, AS AGAINST DEFENDANTS

56. Plaintiff repeats and realleges paragraphs 1 to 55 as though fully set forth herein.

57. The policies, customs and practices in which Defendants engage under color of State law have deprived and continue to deprive Plaintiff of the right to free exercise of religion as secured to him by the First and Fourteenth Amendments to the United States Constitution.

58. As a result of this violation, Plaintiff has endured great and irreparable loss, damage and injury. Unless this Court orders Defendants to provide Plaintiff with access to *The Five Percenter* newspaper and other Five Percenter literature and to allow Plaintiff to congregate with other members of the Nation, Plaintiff will continue to suffer irreparable harm.

SECOND CAUSE OF ACTION

FREE EXERCISE OF RELIGION AS PROVIDED FOR BY THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000, 42 U.S.C. § 2000cc, AS AGAINST DEFENDANTS

59. Plaintiff repeats and realleges paragraphs 1 to 58 as though fully set forth herein.

60. The policies, customs and practices in which Defendants engage under color of State law impose a substantial burden on Plaintiff's religious exercise in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000-cc.

61. As a result of this violation, Plaintiff has endured great and irreparable loss, damage and injury. Unless this Court orders Defendants to provide Plaintiff with access to *The Five Percenter* newspaper and other Five Percenter literature and to allow Plaintiff to congregate with other members of the Nation, Plaintiff will continue to suffer irreparable harm.

THIRD CAUSE OF ACTION

FREEDOM OF EXPRESSION AS GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983, AS AGAINST DEFENDANTS

62. Plaintiff repeats and realleges paragraphs 1 to 61 as though fully set forth herein.

63. The policies, customs and practices in which Defendants engage under color of State law deprive Plaintiff of the right to free speech as secured to him by the First and Fourteenth Amendments to the United States Constitution.

64. As a result of this violation, Plaintiff has endured great and irreparable loss, damage and injury. Unless this Court orders Defendants to provide Plaintiff with access to *The Five Percenter* newspaper and other Five Percenter literature, Plaintiff will continue to suffer irreparable harm.

FOURTH CAUSE OF ACTION

DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983, AGAINST DEFENDANTS

65. Plaintiff repeats and realleges paragraphs 1 to 64 as though fully set forth herein.

66. Under color of State law, Defendants, by their policies, customs, practices and omissions, have denied Plaintiff his Fourteenth Amendment rights by depriving Plaintiff of his property without due process.

67. As a result of Defendants' actions and omissions, Plaintiff has endured great and irreparable loss, damage and injury. Unless this Court orders Defendants to provide Plaintiff with access to *The Five Percenter* newspaper and other Five Percenter literature, Plaintiff will continue to suffer irreparable harm.

FIFTH CAUSE OF ACTION

FREE EXERCISE OF RELIGION AS PROVIDED FOR BY THE NEW YORK STATE CONSTITUTION, ARTICLE I, SECTION 3 AND NEW YORK CORRECTIONAL LAW SECTION 610 AS AGAINST DEFENDANTS

68. Plaintiff repeats and realleges paragraphs 1 to 67 as though fully set forth herein.

69. Defendants' conduct and policies deprive Plaintiff of his right to free exercise of religion as secured to him by Article I, Section 3 of the New York State Constitution and Section 610 of the New York Correctional Law.

70. As a result of this violation, Plaintiff has endured and continues to endure great and irreparable loss, damage, and injury.

Unless this Court orders Defendants to provide Plaintiff with access to *The Five Percenter* newspaper and other Five Percenter literature, and to allow Plaintiff to congregate with other members of the Nation, Plaintiff will continue to suffer irreparable harm.

JURY DEMAND

71. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

72. Plaintiff seeks judgment:

- a. declaring that Defendants' actions and omissions violated Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act of 2000, Article I Section 3 of the New York State Constitution and Section 610 of the New York Correctional Law;
- b. enjoining Defendants, preliminarily and permanently, from continuing to deny Plaintiff access to Five Percenter materials and the right to congregate with fellow members of the Nation of Gods and Earths;
- c. awarding Plaintiff compensatory damages jointly and severally from each Defendant;
- d. awarding Plaintiff punitive damages from each Defendant;
- e. awarding Plaintiff attorney's fees as well as costs and disbursements incurred in this action; and
- f. granting such other and further relief as the Court may deem just and proper.