

 KeyCite Yellow Flag - Negative Treatment  
Declined to Extend by Joseph v. Fischer, W.D.N.Y., October 24, 2012  
2004 WL 1724984

Only the Westlaw citation is currently available.  
United States District Court,  
S.D. New York.

Rashaad MARRIA, Plaintiff,

v.

Dr. Raymond BROADDUS, Deputy Commissioner  
of Programs; G. Blaetz, Chairperson of Green  
Haven Correctional Facility Media Review  
Committee; Warith Deen Umar, Coordinator for  
Islamic Affairs; and Glenn Goord, Commissioner  
of the New York State Department of Corrections,  
Defendants.

No. 97Civ.8297(NRB). | July 30, 2004.

#### Attorneys and Law Firms

Damore Viola, Sullivan & Cromwell, New York, New  
York, for Plaintiff.

Benjamin Lee, AAG, State of New York Office of the  
Attorney General, New York, NY, for Defendant.

#### Opinion

### OPINION AND ORDER

BUCHWALD, J.

\*1 Plaintiff Intelligent Tarref Allah, formerly known as Rashaad Marria, brought this suit against defendant Glenn S. Goord, Dr. Raymond Broaddus, G. Blaetz, and Warith Deen Umar (both in their individual capacities and in their official capacities as decisionmakers at the New York State Department of Correctional Services (“DOCS”)), alleging that defendants had violated the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) and other laws by refusing to accommodate his religious beliefs as a member of the Nation of Gods and Earths (“Nation”), also known as the Five Percenters. On July 31, 2003, we issued an opinion holding that the Nation was a religion whose sincere adherents were entitled to accommodations under RLUIPA (consistent with legitimate security concerns), granting plaintiff certain of the accommodations he sought, and remanding the remainder of his claims to defendants to reevaluate their policies in light of our holding. *Marria v. Broaddus*, No. 97-8297, 2003 WL 21782633.<sup>1</sup> Consistent with our directive, DOCS engaged

in a reevaluation process and produced a set of proposed protocols which DOCS has furnished to plaintiff and the Court. *See* Appendix. Now pending is defendants’ application for an order adopting these protocols. For the reasons set forth below, defendants’ application is granted.

### DISCUSSION

In our July 31, 2003 opinion, we held that plaintiff was entitled to receive and possess the group’s central text, the 120 Degrees, along with copies of two numerology devices, the Supreme Alphabet and the Supreme Mathematics. We remanded to DOC’s for reevaluation plaintiff’s remaining requests for other materials and symbols, gatherings, and fasts.<sup>2</sup>

Defendants have submitted protocols that provide for access to the 120 Degrees and the Supreme Alphabet and Mathematics, as well as to the Five Percenter newspaper.<sup>3</sup> The Protocols also provide guidelines for handling any other material identified by the Nation as having religious significance. They provide that DOCS will consider accommodations for religious fast days identified by the Nation. Finally, they allow for one-on-one meetings between inmates and outside volunteers affiliated with the Nation.

Plaintiff has agreed that these policies are consistent with our rulings and otherwise unobjectionable, except in one respect: they do not allow meetings, classes or congregate services for inmates. Defendants argue that allowing Nation members to congregate would pose an unmanageable security risk, and therefore that their prohibition of congregation satisfies the test under RLUIPA, *i.e.*, is the “least restrictive means” of furthering “compelling state interest[s].”<sup>4</sup> Plaintiff responds that allowing meetings would not pose a risk sufficient to justify such a restriction of his religious practice.

As we acknowledged in our earlier opinion, defendants did produce some evidence that “prison inmates identified as ‘Five Percenters’ have been associated with instances of violence and disruption” and that the term “Five Percenters” “may somewhat uniquely connote both a religion and a gang in the New York State prison system.” *Marria*, 2003 WL 21782633 at \*18. While we directed defendants to provide access to Nation literature because defendants failed to show that such access would give rise to significant security concerns, we recognized that plaintiff’s other requests, such as the request to congregate, might pose more serious problems, and therefore remanded the case to defendants for further consideration of its policies with respect to these requests.

\*2 The supplementary record that defendants have since submitted to support their proposed protocols satisfies us that allowing plaintiff and other members to congregate would, in fact, pose serious security problems.<sup>5</sup> Deputy Commissioner for Correctional Facilities Lucien LeClaire has attested that group meetings would raise the risk of immediate group violence, Dec. ¶ 18, development of hierarchies that might undermine the authority of prison staff and might lead to violent competition, Dec. ¶ 19, and criminal conspiracies, Dec. ¶ 21. Mr. LeClaire has provided further support for defendants' claim that the Nation has been associated with violence in the New York prison system by identifying specific large-scale disturbances in the past two decades in which Nation members were involved.<sup>6</sup>

Defendants' other declarant, Deputy Commissioner and Counsel for DOCS Anthony J. Annucci, has provided evidence of the fiscal hardship that would be posed by the requested meetings. Specifically, because of a state budget crisis, defendants are presently operating under a hiring freeze, with strict orders to minimize overtime expenditures. Although it is unclear what role, if any, financial hardship should play in comprising a "compelling state interest" under RLUIPA, defendants' financial situation is part of the reality of whether defendants could effectively manage the security challenge of Nation meetings.

We find, therefore, that the evidence supports defendants' determination that the law does not require them to allow Nation congregation. In reaching this conclusion, we find it significant that the protocols *do* provide for one-on-one meetings with outside volunteers.

### **CONCLUSION**

Based on the foregoing, defendants' application for an order adopting DOCS's proposed protocols is granted. All issues now having been resolved, the Clerk of the Court is respectfully requested to close this case on the Court's docket.

IT IS SO ORDERED.

### **APPENDIX**

#### **PROTOCOLS FOR SINCERE ADHERENTS OF NATION OF GODS AND EARTHS RELIGIOUS PRACTICES**

The following protocols, which have been accepted by the appropriate federal court, shall be in effect as provided herein:

1) Any inmate who professes to be a sincere religious adherent of the Nation of Gods and Earths and who wishes to be afforded the accommodations provided herein shall submit his or her name and department identification number (DIN) to the facility deputy superintendent for programs or functional equivalent.

2) DOCS will allow any inmate who professes to be a sincere adherent of the Nation of Gods and Earths to possess the 120 degrees for personal study, provided however, that such inmate will not be permitted to display the 120 degrees nor to remove from the 120 degrees the Universal Flag, or any other Nation of Gods and Earths symbol or emblem, for any separate display, copying or other use. Furthermore, if any such materials are sent to an inmate who has not submitted his or her name as a sincere adherent to the deputy superintendent for programs, then such materials will be returned by the facility to the sender.

\*3 3) DOCS will allow any inmate who professes to be a sincere adherent of the Nation of Gods and Earths to possess the Supreme Alphabet and Mathematics for personal study, provided however, that such inmate will not be permitted to display the Supreme Alphabet nor to remove from the Supreme Alphabet and Mathematics the Universal Flag, or any other Nation of Gods and Earths symbol or emblem for any separate display, copying or other use. Furthermore, if any such materials are sent to an inmate who has not submitted his or her name as a sincere adherent to the deputy superintendent for programs, then such materials will be returned by the facility to the sender.

4) DOCS will arrange for the Five Percenter newspaper to be maintained within the law library at each correctional facility law library through a facility subscription, provided however, that the newspaper shall first have been reviewed and processed in accordance with the media review guidelines as set forth in 7 N.Y.C.R.R. Part 712 and Directive # 4572. To ensure uniformity, all media review determinations will be conducted by a Central Office Media Review Committee. If any redactions are required, the Central Office Committee will send the appropriate notice to all facilities and to the editor of the Five Percenter Newspaper. A copy of any such notice shall thereafter be posted in each facility's law library and general library.

5) DOCS will apply the above-referenced media review guidelines to any other documents or literature which are identified by an outside Nation of Gods and Earths organization as having religious significance for sincere adherents, provided that such outside organization is

**Marria v. Broaddus, Not Reported in F.Supp.2d (2004)**

identified by the Office of Ministerial and Family Services in accordance with Directive # 4202 and provided further that the Universal Flag, or any other Nation of Gods and Earths symbol or emblem may not be removed from such documents or literature for any separate display, copying or other use. Furthermore, if any such materials are sent to an inmate who has not submitted his or her name as a sincere adherent to the deputy superintendent for programs, then such materials will be returned by the facility to the sender.

6) DOCS will consider a request from an approved outside organization of the Nation of Gods and Earths in connection with the identification of days to be observed as religious fast days for sincere adherents within the confines of their individual housing locations.

7) DOCS will allow an inmate who professes to be a sincere adherent of the Nation of Gods and Earths to meet one-on-one in the facility legal visiting room during normal visiting hours with an outside volunteer affiliated with the Nation of Gods and Earths, who has been identified and designated as a volunteer by the Office of Ministerial and Family Services in accordance with Directive # 4202.

8) DOCS will ensure that each facility posts and maintains a copy of this document in the law library and general library.

Footnotes

- 1 That opinion contains a fuller account of the Nation's beliefs and practices.
- 2 We note that DOCS had not, as an administrative matter, previously performed the balancing required by RLUIPA as, pursuant to its non-recognition policy, it had treated the Nation as a gang and not a religion.
- 3 Specifically, inmates who identify themselves to DOCS may possess the 120 Degrees and the Supreme Alphabet and Mathematics, provided they do not display them or any symbols taken from them or transfer them to inmates who have not so identified themselves. Moreover, the newspaper will be available in prison law libraries, subject to standard media review.
- 4 See 42 U.S.C. § 2000cc-1(a) ("No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution ... unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.")
- 5 Because we find defendants' submission persuasive, we do not address the question of which burdens apply at this stage in the litigation.
- 6 We also take note that other courts have found the Nation to be a security threat based on the record before them. *E.g., Fraise v. Terhune*, 283 F.3d 506 (3d Cir.2002) (quotation omitted) ("[E]vidence links the group with numerous incidents of prison violence. Indeed, according to the Holvey report, many in the law enforcement community consider the Five Percent Nation to be 'one of the greatest threats to the social fabric' of the prisons."); *Self-Allah v. Annucci*, No. 97-607, 1999 WL 299310 (W.D.N.Y. March 25, 1999) ("Defendants have clearly shown that the Five Percenters act as an organized group within the prison system to receive new members, intimidate members of rival groups, and participate in criminal activity, including extortion, robbery, assaults and drug trafficking.").