

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

RECEIVED CLERK'S OFFICE

Lumumba K. Incumaa,) C/A No. 9:12-cv-3493-DCN
Plaintiff,)
v.)
Bryan P. Stirling, Director)
of South Carolina Department)
of Corrections (SCDC),)
Defendant.)

FEB 10 A 8 26

DISTRICT COURT

By Order dated January 28, 2014 the Court directed the Defendant to submit supplemental briefs and affidavits, if necessary, "showing that the SCDC has acknowledged and given consideration to less restrictive alternatives, especially in light of declining number of incidents involving Five Percenters. The Defendant filed his supplemental memorandum and affidavit of Robert E. Ward on February 27, 2014. Plaintiff herein makes his Reply.

In his Supplemental Memorandum the only thing which the Defendant has stated, which was not stated and/or alluded to in his previous filings in this case, is their consideration of placing gang members in a close custody unit. p.4.

First, the Nation of Gods and Earths (NOGE) is not a gang or STG, and nor is Plaintiff a gang member; and second, to place Plaintiff in a close custody unit as a gang member, which is general population, Plaintiff would not only still be denied the right to exercise the Honor (Holy) days of his God Centered Culture of Islam that is the NOGE, Required to renounce his God Centered Culture of Islam in order to be released from the close custody unit, but he will also no longer be

permitted to receive and possess the text and literature of his God Centered Culture of Islam that is the NOGE, because he is only allowed to possess such text and literature in administrative segregation. A close custody unit is not administrative segregation, it is part of the general prison population.

The NOGE is not a gang or a STG. The NOGE is a God Centered Culture of Islam, and For the Fact that SCDC does not recognize the NOGE as such, clearly shows that the Defendant has not acknowledged and/or given any consideration to any less restrictive alternatives which would remove the substantial burden being imposed on the exercise of Plaintiff's God Centered Culture of Islam that is the NOGE. The Magistrate Judge on page 21 of his Report and Recommendation (R & R) states :

"...at least for purposes of the Defendant's Summary judgment motion, the undersigned concludes that the Defendant's policy restricting Plaintiff from engaging in the Five Percenters' honor day rituals as well as the requirement that Plaintiff, in effect, renounce his religion in order to get out of administrative segregation, is sufficient to create a genuine issue of fact as to whether a substantial burden has been placed on Plaintiff's exercise of his religious beliefs."

The Defendant has not demonstrated and/or stated any least restrictive means which he has acknowledged and/or given consideration to, which would remove this substantial burden, and still further their stated compelling interest.

Further, the change to Policy which the Defendant speaks of in his Supplemental Memorandum p.3, and Robert E. Ward in his affidavit p.4, para. 9, were not made as a "least restrictive alternative" to remove the substantial burden from Plaintiff's exercise of his God

Centered Culture of Islam that is the NOGE. A Fact which the Defendant admits.

The least restrictive means which Plaintiff brought to the attention of the Court, was not just to only segregate individuals after they have committed violent, disruptive and/or criminal acts within the SCDC, but also to remove the STG (Security Threat Group) designation from the NOGE and not hold the NOGE itself accountable for the actions of individuals who claim to be members of the NOGE, which are contrary to the actual teachings, beliefs and practices of the NOGE itself. See Plaintiff's Objections to R & R p.7. The Defendant only used part of Plaintiff's statement to make it appear that Plaintiff is in agreement with what the Defendant is already doing, as it relates to the NOGE within the SCDC.

A least restrictive alternative which the Defendant has, is to remove the STG/gang designation from Plaintiff's God Centered Culture of Islam that is the NOGE, and to discipline and/or segregate those prisoners for their own violent, disruptive and/or criminal acts, such as is being done with Christians, Catholics, Muslims, Wiccans, and every other recognized Faith and/or religion within the SCDC. This is clearly a least restrictive means which would remove the substantial burden being imposed on Plaintiff's exercise of his God Centered Culture of Islam that is the NOGE, as stated by the Magistrate Judge on page 21 of his R & R, and it would still allow the Defendant to further his stated compelling interest. Remove the STG designation from Plaintiff's God Centered Culture of Islam, and the requirement that he must renounce (abandon) his God Centered Culture of Islam in order to get out of administrative segregation (lock-up), and permit Plaintiff, whether in lock-up or in the general prison

population, to exercise his God Centered Culture of Islam that is the NOGE. IF a prisoner who is a member of the NOGE commits violent, disruptive and/or criminal acts, discipline and/or segregate that prisoner for his actions. Do not designate his God Centered Culture of Islam that is the NOGE a STG/gang, when the NOGE itself does not teach, encourage or condone his actions, as is being done with every other recognized Faith and/or religion within the SCDC.

The God Centered Culture of Islam that is the NOGE itself does not teach and/or condone violent, disruptive or criminal acts. The NOGE has had a legitimate law abiding existence in the United States of America since 1964, and teaches its members to live a daily life of Peace, Righteousness and Civilization, even while in prison. Everyday God, as we understand him, is First and centermost in our life. IF an individual who claims to be a member of the NOGE chooses to do and live contrary to this, it is not the NOGE itself to blame and hold accountable for them Free will choices and actions, especially if the NOGE itself does not teach and/or condone those choices and actions.

The Defendant states that Ward "rejects any suggestion that the downward trend in assaults means that the Five Percenters are no longer a threat." Plaintiff submits that the NOGE itself has never been and still is not a threat, it is those individual prisoners who claim to be members of the NOGE and do things which are contrary to the actual teachings, beliefs and practices of the NOGE itself, such as violent, disruptive and criminal acts, who are the threat which the Defendant and Ward speaks of. The same as with Judaism, Catholicism, Christianity, etc.

The Defendant states that "Ward indicates that there has been no basis for any SCDC Director to have removed the Five Percenters from the list of designated STG's." Being involved with the National Institute of Corrections (NIC), attend conferences and have discussions with other operations professionals in other states, Plaintiff is sure that Ward, and thus the Defendant, is aware of the fact that other state correctional departments in the United States no longer designate the NOGE a STG, and are now fully accommodating the practice of the God Centered Culture of Islam that is the NOGE within their general prison populations, with no "dire consequences." Some of these states department of corrections include Texas, Ohio, Rhode Island, California, Massachusetts, Michigan, New York, and New Jersey, the very state which SCDC Director relied upon to designate the NOGE (Five Percenters) a STG in 1995. Thus, showing a basis to remove the NOGE (Five Percenters) from the list of designated STG's, and it's feasibility.

The Defendant states that Ward rejects that the Five Percenters who are currently classified as Validated-STG-SD and in security detention, could be released into the general population without dire consequences. The Defendant makes it appear that there are a great number of SCDC prisoners in security detention as Validated Five Percenters, and if released into the general population, the SCDC will be overtaken by violent, disruptive and criminal acts. As far as Plaintiff is aware, there are only two prisoners in SCDC who are in security detention as Validated Five Percenters. Plaintiff is one, and the other has already renounced and is now a muslim. Plaintiff has not had a disciplinary conviction in eighteen (18) years. Ward's rejection and prediction is clearly an

exaggeration of the Facts as they currently exist.

Plaintiff has not had a disciplinary conviction in eighteen (18) years, but the Defendant still classify him as a security threat, based solely on the fact that Plaintiff is a member of the NOGE, a God Centered Culture of Islam, which in no way taught (teach), encouraged or condoned any of his past actions which were contrary to the actual teachings, beliefs and practices of the NOGE itself. The Defendant is completely ignoring these facts, and are instead continuing to persecute Plaintiff with confinement to the punitive and restrictive conditions of lock-up (administrative segregation) for his conscience choice not to renounce (abandon) his God Centered Culture of Islam that is the NOGE.

The Defendant has not satisfied his burden of persuasion on the "least restrictive means" analysis of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The affidavit of Robert E. Ward, which he relies upon, does not state any "less restrictive alternatives" which they have acknowledged and/or given some consideration to, which would remove the substantial burden held by the Magistrate Judge which is being imposed on Plaintiff's exercise of his God Centered Culture of Islam (i.e. Religion) that is the NOGE. The NOGE is not a STG or a gang, and it should not be classified or treated as one.

CONCLUSION

Based on the foregoing Reply and Facts, Plaintiff requests the Court to deny the Defendant's Motion For Summary judgment, and the case be set for trial, OR the requested Relief Granted.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

March 7, 2014
Ridgeville, South Carolina

Respectfully I Am,

Lumumba K. Incumaa

Lumumba K. Incumaa # 155651
aka Theodore Harrison, Sr.
Lieben Correctional Institution
P.O. Box 205
Ridgeville, S.C. 29472

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Lumumba k. Incumaa,)	CIA No. 9:12-cv-3493-DCN
Plaintiff,)	
v.)	
Bryan P. Stirling, Director)	CERTIFICATE OF SERVICE
of South Carolina Department)	
of Corrections (SCDC),)	
Defendant.)	

I, Lumumba k. Incumaa, Pro Se Plaintiff hereby certify that on the 7th day of March, 2014, I served the following:

1. Plaintiff's Reply To Defendant's Supplemental Memorandum And Affidavit of Robert E. Ward.

in the above-captioned civil action, to the Defendant's Attorney of record, by depositing a copy of same in the U.S. Mail, postage prepaid and properly addressed as follows:

Davidson & Lindemann, P.A.
 Andrew F. Lindemann
 1611 Devonshire Drive, Second Floor
 Post Office Box 8568
 Columbia, S.C. 29202

Lumumba k. Incumaa
 Lumumba k. Incumaa
 Pro Se Plaintiff