

cc: [unclear]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

NATIVE AMERICAN COUNCIL OF
TRIBES, and DALE LOUIS CLARK
& TONY SHUNK, Legal Advisors,
Individually and on behalf of
all those similarly situated,

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Plaintiffs,

v.

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HERMAN SOLEM, Warden, and
FRANK BROST, TED SPAULDING,
SYDNA CHEEVER, LAMBERT HOLLAND,
CAROLE HILLARD, JIM SMITH,
BRIAN WALLIN, AND VERA ALLEN,
members of the South Dakota
Board of Charities and Cor-
rections, and WILLIAM JANKLOW,
Governor, Individually and in
their official capacities,

Defendants.

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CIV81-408

ORDER ALLOWING FILING IN
FORMA PAUPERIS AND ORDER
TO DISMISS ACTION AND ORDER
DENYING TEMPORARY RESTRAINING
ORDER

The Plaintiffs having moved this Court to be allowed to proceed in forma pauperis in the above entitled matter, and the Court having reviewed the Plaintiff's Affidavit of Indigence,

IT IS HEREBY ORDERED that the above entitled action may be filed without payment of the filing fee.

The "inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the constitution...." Bell v. Wolfish, 441 U.S. 520, 526 (1979); see also Swann v. Charlotte Mecklingburg Bd. of Education, 420 U.S. 1 (1979), Rizzo v. Goode, 423 U.S. 362 (1976) in which the Court stated that "federal judicial power may be exercised only on the basis of a constitutional violation." The Court finds that a refusal by the South Dakota Prison authorities to allow family members of Native American inmates inside the penitentiary for sacred ceremonies celebrated by the Native American does not give rise to a constitutional violation. There is no prohibition placed on the inmates' celebration of the sacred ceremonies.

The Court further finds that the additional allegations made by the Plaintiffs in their complaint concerning dental and medical care, and possible discriminatory actions are totally encompassed by the pending cases of Cody et al. v. William Janklow etc. et al., CIV80-4039, and Wabasha et al. v. Janklow et al., CIV79-4064.


THEREFORE, IT IS ORDERED that the Plaintiffs' motion for a Temporary Restraining Order is denied and further that the above action be dismissed.


Dated at Sioux Falls, South Dakota, this 12 day of June, 1981.

BY THE COURT:


Senior Judge

ATTEST:


Clerk

By 
Deputy Clerk