

CLOSED

**U.S. District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE #: 2:96-cv-05555-PMD-RSC**

Five Percenters v. Moore, et al
Assigned to: Judge Patrick Michael Duffy
Referred to: Magistrate Judge Robert S Carr
Demand: \$0
Case in other court: 98-06032/JoyHargett
98-07337/YevoneJeffreys
Cause: 42:1983pr (Other)

Date Filed: 10/25/1996
Date Terminated: 08/21/1998
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

**Long Term Administrative Segregation
of Inmates Designated as Five
Percenters**

represented by **Carl A Brumme , III**
Deceased 29003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gregory Samuel Forman
Gregory Foreman Law Office
171 Church Street
Suite 160
Charleston, SC 29401
803-720-3749
Email: gregory.forman@scbar.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert E Toone
Southern Center for Human Rights
83 Poplar Street NW
Atlanta, GA 30303-2122
404-688-1202
TERMINATED: 02/23/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Bensing
Southern Center for Human Rights
83 Poplar Street NW
Atlanta, GA 30303-2122
404-688-1202
TERMINATED: 08/12/1998

V.

Defendant

Commissioner Michael Moore

represented by **Andrew F Lindemann**
Lindemann Davis and Hughes PA
PO Box 6923
Columbia, SC 29260
803-881-8920
Email: andrew@ldh-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Eckstrom
Nexsen Pruet Jacobs and Pollard
PO Drawer 2426
Columbia, SC 29202
803-771-8900

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

SCDC

TERMINATED: 12/31/1996

Defendant

William Catoe

*Deputy Director for Operations,
S.C.DOC*

represented by **Andrew F Lindemann**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Eckstrom
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vinton Devane Lide
Lide and Pauley
PO Box 2189
Lexington, SC 29072
803-808-1799
Fax: 803-808-1887
Email: dee@lidelaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Kenneth McKellar

*Director of Security, S.C. DOC; in their
official and individual capacities*

represented by **Andrew F Lindemann**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Clifford Eckstrom
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vinton Devane Lide
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/14/1996	18	ORDER granting [16-1] motion to extend time until 3/25/97 to file their Memorandum in Opposition to the Plaintiffs' Motion for a Preliminary Injunction, Response to motion reset to 3/25/97 for [12-1] motion for preliminary injunction , Specific Document Filing 4/9/97 for Five Percenters to file a Reply Memorandum (signed by Magistrate Judge Robert S. Carr) (former empl) (Entered: 02/18/1997)
10/25/1996	1	MANAGEMENT ORDER AND SCHEDULING ORDER, all 5% cases have been consolidated for management and shall bear the case number 2:96-5555-23AJ and shall be known as Long Term Administrative Segregation of Inmates Designated as Five Percenters. All dispositive and non dispositive motions are denied with leave to refile them in the consolidated file. Counsel representing defendants are directed to designate by 11/30/96 a lead counsel through whom all defense activities shall be coordinated. All plaintiffs are directed to submit all pleadings, correspondence and discovery requests and responses through Robert E. Bensing, Esquire who shall coordinate all discovery and motions on behalf of all plaintiffs. No plaintiff may serve or file any pleading, notice or motion without an affidavit that such has been

		coordinated with Mr. Bensing. Plaintiff's wishing to repudiate representation by Mr. Bensing must do so in writing to the court and Mr. Bensing by 11/30/96. Deadline set for filing of all motions 6/1/97 ; Discovery cutoff 5/1/97; Also this action is stayed from 10/30/96 to 11/18/96 to accommodate plaintiff's counsel. Cases under management are as follows: 2:95-1946, 2:95-2065, 2:95-2099, 2:95-2169, 2:95-2194, 2:95-2195, 2:95-2282, 2:95-2360, 2:95-2361, 2:95-2376, 2:95-2567, 2:95-2625, 2:95-2647, 2:95-2649, 2:95-2899, 2:95-2929, 2:95-2958, 2:95-2977, 2:95-2979, 2:95-3017, 2:95-3115, 2:95-3168, 2:95-3285, 2:95-3310, 2:95-3351, 2:95-3381, 2:95-3489, 2:95-3648, 2:95-3657, 2:95-3773, 2:95-3828, 2:95-3972, 2:95-3973, 2:95-3975, 2:95-3979, 2:95-4008, 2:96-71, 2:96-129, 2:96-184, 2:96-205, 2:96-235, 2:96-270, 2:96-274, 2:96-287, 2:96-381, 2:96-571, 2:96-898, 2:96-1305, 2:96-2419. (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 11/08/1996)
11/08/1996		Deadline updated; Specific Document Filing 11/30/96 for SCDC, for Michael Moore as to lead counsel, for Five Percenters as to any plaintiff wishing to repudiate representation by Mr. Bensing in writing to the court and Mr. Bensing (former empl) (Entered: 11/08/1996)
12/06/1996	2	MOTION by plaintiff Five Percenters for leave to file Amended Complaint (former empl) (Entered: 12/10/1996)
12/06/1996		** Added MAG flag indicating Magistrate Judge involvement. (former empl) (Entered: 12/10/1996)
12/06/1996		Motion(s) referred: [2-1] motion for leave to file Amended Complaint referred to Magistrate Judge Robert S. Carr (former empl) (Entered: 12/10/1996)
12/06/1996		** Added MO-CAR flag indicating motion(s) referred to Magistrate Judge Carr. (former empl) (Entered: 12/10/1996)
12/06/1996	3	MEMORANDUM by plaintiff Five Percenters in support of [2-1] motion for leave to file Amended Complaint (former empl) (Entered: 12/10/1996)
12/30/1996	4	ORDER that the pro se plaintiffs' request for their claim not to be consolidated with other five-percenters claims is denied, that the pro se plaintiffs are to advise the court in writing their desire to dismiss the five-percenter claim, that the pro se plaintiffs are not relieved of the obligation to coordinate with Mr. Bensing all documents to be filed, that all pro se plaintiffs are not to file any pleading without an affidavit, that pleadings filed by Mr. Bensing on behalf of other plaintiffs are not to be considered filed on behalf of the pro se plaintiffs, that defendants are to serve pleadings on the pro se plaintiffs as well as on Robert E. Bensing and that pro se plaintiffs are to serve the defendants' counsel copies of all pleadings submitted to the court MLD EOD 1-3/97 (signed by Magistrate Judge Robert S. Carr) (gjoh) (Entered: 01/03/1997)
12/31/1996	6	Stipulation by defendant Michael Moore, defendant SCDC to filing of amended complaint (former empl) (Entered: 01/07/1997)
12/31/1996	7	AMENDED COMPLAINT by plaintiff Five Percenters , (Answer due 1/10/97 for SCDC, for Michael Moore) amending against defendant William Catoe, Kenneth McKellar (former empl) (Entered: 01/07/1997)
01/02/1997	5	LETTER by plaintiff Five Percenters stating that the parties have agreed to stipulate to the filing of the amended complaint (gjoh) Modified on 01/03/1997 (Entered: 01/03/1997)
01/02/1997		Minute entry: mooted [2-1] motion for leave to file Amended Complaint (see letter filed 1-2-97 as to stipulation by parties to amended complaint) (gjoh) (Entered: 01/03/1997)
01/03/1997		** Removed MO-CAR flag. (gjoh) (Entered: 01/03/1997)
01/10/1997	8	RESPONSE by plaintiff Five Percenter Wayne Spears, #185523, Civil Action Number 2:95-2282 in opposition to [4-1] order denying plaintiff's wish for his Five Percenter claim not to be consolidated with all other five percenter claims (former empl) (Entered: 01/10/1997)

01/16/1997	9	SUMMONS(ES) issued for defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar (former empl) (Entered: 01/16/1997)
01/16/1997	10	ANSWER to Complaint by defendant William Catoe, defendant Kenneth McKellar (Attorney Vinton Devane Lide), (former empl) (Entered: 01/22/1997)
01/21/1997	11	ANSWER to Complaint by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar (Attorney David Clifford Eckstrom for defendant Moore in his official and individual capacity and defendants Catoe and McKellar in their official capacity), (former empl) (Entered: 01/22/1997)
02/05/1997	12	MOTION by plaintiffs' Five Percenters for preliminary injunction (former empl) (Entered: 02/06/1997)
02/05/1997	13	MEMORANDUM by plaintiffs' Five Percenters in support of [12-1] motion for preliminary injunction (former empl) (Entered: 02/06/1997)
02/05/1997	14	DOCUMENTS by plaintiff Five Percenters in support of [12-1] motion for preliminary injunction (former empl) (Entered: 02/07/1997)
02/12/1997	15	NOTICE of attorney appearance for plaintiff Five Percenters by Gregory Samuel Forman (former empl) (Entered: 02/13/1997)
02/14/1997	16	MOTION by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar to extend time until 3/25/97 to file their Memorandum in Opposition to the Plaintiffs' Motion for a Preliminary Injunction (former empl) (Entered: 02/18/1997)
02/14/1997	17	AFFIDAVIT of David C. Eckstrom, Esquire by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar Re: [16-1] motion to extend time until 3/25/97 to file their Memorandum in Opposition to the Plaintiffs' Motion for a Preliminary Injunction (former empl) (Entered: 02/18/1997)
02/14/1997		Motion(s) referred: [16-1] motion to extend time until 3/25/97 to file their Memorandum in Opposition to the Plaintiffs' Motion for a Preliminary Injunction referred to Magistrate Judge Robert S. Carr (former empl) (Entered: 02/18/1997)
02/14/1997		** Added MO-CAR flag indicating motion(s) referred to Magistrate Judge Carr. (former empl) (Entered: 02/18/1997)
02/14/1997		Motion(s) no longer referred: [16-1] motion to extend time until 3/25/97 to file their Memorandum in Opposition to the Plaintiffs' Motion for a Preliminary Injunction no longer referred to Magistrate Judge Robert S. Carr (former empl) (Entered: 02/18/1997)
02/18/1997		Motion(s) referred: [12-1] motion for preliminary injunction referred to Magistrate Judge Robert S. Carr (former empl) (Entered: 02/18/1997)
02/24/1997	19	AMENDED MEMORANDUM by plaintiff Five Percenters in support of [12-1] motion for preliminary injunction (former empl) (Entered: 02/24/1997)
03/05/1997	20	RESPONSE by plaintiff Five Percenters in support of [16-1] motion to extend time until 3/25/97 to file their Memorandum in Opposition to the Plaintiffs' Motion for a Preliminary Injunction, If the enlargement is allowed, the Plaintiff's request that they be allowed until 4/9/97, to file their Reply Memorandum. (former empl) (Entered: 03/07/1997)
03/19/1997	21	CERTIFICATE OF SERVICE by plaintiff Five Percenters of third interrogatories and second notice of depositions upon defendants' counsel (former empl) (Entered: 03/20/1997)
03/21/1997	<u>22</u>	ORDER affirming Order of magistrate judge that case is consolidated with all other five percenter cases (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 03/21/1997)
03/27/1997	23	MEMORANDUM by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar in opposition to [12-1] motion for preliminary injunction (former empl) (Entered: 03/28/1997)
03/27/1997	24	AFFIDAVIT of defendant Michael Moore Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)

03/27/1997	25	AFFIDAVIT of William Hayes, Associate Warden, Trenton Correctional Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	26	AFFIDAVIT of Carl J. Frederick Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	27	AFFIDAVIT of Geraldine Miro Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	28	AFFIDAVIT of John Maxey Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	29	AFFIDAVIT of Omar Shaheed Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	30	AFFIDAVIT of Alan L. Waters Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	31	AFFIDAVIT of Kenneth McKellar Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
03/27/1997	32	AFFIDAVIT of Robert C. Walker Re: [23-1] opposition memorandum (former empl) (Entered: 03/28/1997)
04/07/1997	33	REPLY by plaintiff Five Percenters to memorandum in opposition to [12-1] motion for preliminary injunction (gjoh) (Entered: 04/08/1997)
06/03/1997	34	MOTION by defendant William Catoe, defendant Kenneth McKellar to certify issue regarding constitutionality of the Religious Freedom Restoration Act to the United States Attorney General (former empl) (Entered: 06/03/1997)
06/03/1997	35	MEMORANDUM by defendant William Catoe, defendant Kenneth McKellar in support of [34-1] motion to certify issue regarding constitutionality of the Religious Freedom Restoration Act to the United States Attorney General (former empl) (Entered: 06/03/1997)
06/04/1997	36	MOTION by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar for summary judgment (former empl) (Entered: 06/06/1997)
06/04/1997	37	MEMORANDUM by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar in support of [36-1] motion for summary judgment (former empl) (Entered: 06/06/1997)
06/04/1997	38	AFFIDAVIT of defendant William Catoe Re: [36-1] motion for summary judgment (former empl) (Entered: 06/06/1997)
06/04/1997	39	AFFIDAVIT of Joette Scarborough Re: [36-1] motion for summary judgment (former empl) (Entered: 06/06/1997)
06/04/1997	40	SUPPLEMENTAL MOTION by defendant William Catoe, defendant Kenneth McKellar for summary judgment (former empl) (Entered: 06/06/1997)
06/04/1997	41	SUPPLEMENTAL MEMORANDUM by defendant William Catoe, defendant Kenneth McKellar in support of supplemental [40-1] motion for summary judgment (former empl) (Entered: 06/06/1997)
06/06/1997	42	ROSEBORO ORDER directing clerk to forward summary judgment explanation to and directing that party to respond in 34 days. Deadline for response to supplemental [40-1] motion for summary judgment set for 7/10/97 for Five Percenters, [36-1] motion for summary judgment set for 7/10/97 for Five Percenters Signed by Magistrate Judge Robert S. Carr (former empl) (Entered: 06/06/1997)
07/01/1997	43	REPORT AND RECOMMENDATION of Magistrate Judge Robert S. Carr that since RFRA (Religious Freedom Restoration Act) has been found to be unconstitutional, it is recommended that plaintiffs' petition for an injunction under RFRA be denied. Case no longer referred to Magistrate Judge Robert S. Carr Objections to R and R due by 7/21/97 (former empl) (Entered: 07/01/1997)
07/01/1997		Motion(s) no longer referred: [40-1] motion for summary judgment, [36-1] motion for summary judgment, [34-1] motion to certify issue regarding constitutionality of

		the Religious Freedom Restoration Act to the United States Attorney General, [12-1] motion for preliminary injunction no longer referred to Magistrate Judge Robert S. Carr (former empl) (Entered: 07/01/1997)
07/01/1997		** Removed MO-CAR flag. (former empl) (Entered: 07/01/1997)
07/01/1997		** Removed Mag Flag. (former empl) (Entered: 07/01/1997)
07/07/1997	44	RESPONSE by plaintiff Five Percenters to [40-1] motion for summary judgment, [36-1] motion for summary judgment (former empl) (Entered: 07/07/1997)
07/07/1997	45	REPLY by plaintiff Five Percenters to Defendants' [41-1] support memorandum for motion to summary judgment (former empl) (Entered: 07/07/1997)
07/09/1997	46	OBJECTION by plaintiff Five Percenters to [43-1] report and recommendations (former empl) (Entered: 07/10/1997)
07/23/1997	47	REPORT AND RECOMMENDATION of Magistrate Judge Robert S. Carr that the defendants' motion for summary judgment be granted in all respects except as to the plaintiffs' fourth claim which concerns the ban on Five Percenters' literature. Further with regard to the plaintiffs' claim concerning the banning of Five Percenters' literature, it is recommended that the defendants be granted qualified immunity protection from money damages and that this claim go forward for a determination by a finder of fact as to whether the Five Percenter Nation is a religion and if so whether the plaintiffs are entitled to prospective equitable relief. Case no longer referred to Objections to R and R due by 8/13/97 (former empl) (Entered: 07/25/1997)
08/05/1997	48	OBJECTION by plaintiff Five Percenters to [47-1] report and recommendations regarding summary judgment (pchi) (Entered: 08/05/1997)
08/11/1997	49	OBJECTION by defendant Michael Moore, defendant William Catoe, defendant Kenneth McKellar to [47-1] report and recommendations (former empl) (Entered: 08/13/1997)
12/03/1997	<u>50</u>	ORDER granting in part as to the Plaintiffs' Eighth Amendment claim; as to Plaintiffs' Equal Protection claim; as to Plaintiffs' claim that placement of the Five Percenter in heightened-security segregated custody violates their First Amendment rights; as to Defendants' claim that they are entitled to qualified immunity, denying in part [40-1] motion for summary judgment as to Plaintiffs' claim that Defendants' total ban on inmate possession of Five Percenters literature violates their First Amendment rights, granting in part, denying in part [36-1] motion for summary judgment, granting [12-1] motion for preliminary injunction (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 12/03/1997)
12/29/1997	51	NOTICE OF APPEAL by plaintiff Five Percenters Re: [50-1] order Fee Status: PAID (snel) (Entered: 12/29/1997)
12/29/1997		Notice of appeal and certified copy of docket to USCA, USDJ, counsel: [51-1] appeal by Five Percenters (snel) (Entered: 12/29/1997)
01/13/1998		NOTICE of Docketing ROA from USCA Re: [51-1] appeal by Five Percenters USCA NUMBER: 98-6032/Joy Hargett (snel) (Entered: 01/13/1998)
02/02/1998	52	ORDER OF USCA (certified copy) voluntarily dismissing [51-1] appeal by Five Percenters without prejudice pursuant to FRAP 42(b) (snel) (Entered: 02/02/1998)
03/06/1998	53	MOTION by plaintiff Five Percenters for Robert E. Toone to appear pro hac vice (former empl) (Entered: 03/18/1998)
03/06/1998	54	NOTICE of attorney appearance for plaintiff Five Percenters by Robert E Toone (former empl) (Entered: 03/18/1998)
03/20/1998	55	ORDER granting [53-1] motion for Robert E. Toone to appear pro hac vice (signed by Magistrate Judge Robert S. Carr) (former empl) (Entered: 03/20/1998)
05/26/1998	56	NOTICE of attorney appearance for plaintiff Five Percenters by Carl A Brumme III (former empl) (Entered: 05/26/1998)

06/01/1998	57	MOTION by plaintiff Five Percenters to compel religious material (former empl) (Entered: 06/01/1998)
06/30/1998	58	ORDER referring case back to Magistrate Judge Carr for further proceedings in accordance with the court's order of 12/2/97 (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 07/01/1998)
07/01/1998		CASE REFERRED to Magistrate Judge Robert S. Carr (former empl) (Entered: 07/01/1998)
07/24/1998		Pre-trial conference held before Magistrate Judge Robert S. Carr Court reporter: Norma Jean Carrow. (former empl) (Entered: 07/27/1998)
08/12/1998		NOTICE of Hearing, set status conference for 12:00 8/28/98 before Magistrate Judge Robert S. Carr (former empl) (Entered: 08/12/1998)
08/21/1998	<u>59</u>	CONSENT ORDER is entered into as a settlement of the remaining controversy between the parties at the District Court level; the Defendants agree that the Preliminary Injunction shall be made a Permanent Injunction; Plaintiff's will file their motion for attorney fees and costs after appeal and, if appropriate, further proceedings in the District Court on remand (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 08/24/1998)
08/21/1998		Case closed (former empl) (Entered: 08/24/1998)
08/24/1998		** Removed HRG flag. (former empl) (Entered: 08/24/1998)
09/04/1998	60	NOTICE OF APPEAL by plaintiff Five Percenters Re: [59-1] order Fee Status: PAID/#200-7713 (snel) (Entered: 09/04/1998)
09/08/1998		Notice of appeal and certified copy of docket to USCA, USDJ, counsel: [60-1] appeal by Five Percenters (snel) (Entered: 09/08/1998)
09/18/1998		NOTICE of Docketing ROA from USCA Re: [60-1] appeal by Five Percenters USCA NUMBER: 98-7337/Yevone Jeffreys (snel) (Entered: 09/18/1998)
10/05/1998	61	Certificate that the Record on Appeal is Complete for [60-1] appeal by Five Percenters (snel) (Entered: 10/05/1998)
04/23/1999	62	Opinion of the 4th Circuit affirming USDC decision re: [60-1] appeal by Five Percenters (snel) (Entered: 04/26/1999)
06/01/1999	63	JUDGMENT OF USCA (certified copy) affirming USDC decision Re: [60-1] appeal by Five Percenters (snel) (Entered: 06/01/1999)
11/19/1999		Record on Appeal returned from U.S. Court of Appeals: [51-1] appeal (jwol) (Entered: 11/19/1999)
02/14/2000	64	MOTION to substitute attorney (former empl) (Entered: 02/22/2000)
02/14/2000	65	MOTION for Stephen Bright to appear pro hac vice (former empl) (Entered: 02/22/2000)
02/23/2000	<u>66</u>	ORDER granting [64-1] motion to substitute attorney; terminated attorney Robert E Toone for Five Percenters (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 02/24/2000)
02/23/2000	<u>67</u>	ORDER granting [65-1] motion for Stephen Bright to appear pro hac vice (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 02/24/2000)
04/20/2000	<u>68</u>	ORDER that the Court approves the settlement of the parties. The Court further orders that, upon payment by the Defendants to the Southern Center for Human Rights of the amount of \$5,000.00, the Defendants' liability under 42:1983 will be forever discharged and extinguished. This Court will not entertain any additional petitions for attorney's fees and costs in this action (signed by Judge Patrick Michael Duffy) (former empl) (Entered: 04/21/2000)
05/02/2005	<u>69</u>	Letter from Frederick Green requesting copies. (Attachments: # <u>1</u> Envelope) (jtho,) (Entered: 05/05/2005)