

FILED

FEB 27 2007

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

RAUL MEZA	§
	§
Plaintiff	§
v.	§
	§
BRIAN COLLIER, director of the Texas	§
Department of Criminal Justice Parole	§
Division, in his official and individual	§
Capacities, BRAD LIVINGSTON,	§
executive director of the Texas Department	§
of Criminal Justice, in his official capacity,	§
and RISSIE L. OWENS, JOSE ALISEDA,	§
CHARLES AYCOCK, CONRITH DAVIS,	§
JACKIE DeNOYELLES, LINDA GARCIA,	§
and JUANITA M. GONZALES, in their	§
official capacities as members of the Texas	§
Board of Pardons and Paroles	§
	§
Defendants.	§

CIVIL ACTION NO.
A-05-CA-1008-LY

THIRD AMENDED COMPLAINT

Plaintiff Raul Meza respectfully files this complaint and will show:

STATEMENT OF FACTS

- Defendants have imposed a substantial burden on Plaintiff Raul Meza's religious exercise while he has been incarcerated at the Travis County Correctional Complex (TCCC), Del Valle facility, in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc (2000).
- Pursuant to 42 U.S.C. § 1983, Defendants have, without due process of law, imposed conditions upon Plaintiff Meza's incarceration that are qualitatively different from the punishment typically imposed on other similarly situated parolees, in violation of the Fourteenth Amendment to the U.S. Constitution.
- Pursuant to 42 U.S.C. § 1983, Mr. Meza claims that Defendants violated his Fourteenth Amendment due process rights by imposing additional informal, unauthorized

conditions on his confinement without due process of law.

4. Pursuant to 42 U.S.C. § 1983, Mr. Meza claims that policy and custom of the TCCC's Del Valle facility, described herein, resulted in violations of his Fourteenth Amendment due process rights.

5. Mr. Meza seeks damages, declaratory relief, injunctive relief, attorneys' fees and costs as a result of Defendants' violations.

JURISDICTION AND VENUE

6. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343.

7. Further, Defendants' actions and the events giving rise to the claims occurred in Del Valle, Texas. Accordingly, pursuant to 28 U.S.C. § 1391, venue is proper for this Court.

PARTIES

8. Plaintiff is confined at the TCCC facility in Del Valle.

9. Defendant Brad Livingston is the executive director of the Texas Department of Criminal Justice ("TDCJ").

10. Defendant Brian Collier is the director of the TDCJ Parole Division.

11. In all the actions described herein, Defendant Collier and Defendant Livingston ("TDCJ Defendants") each were acting under color of law and pursuant to legal authority. Defendant Collier is sued in his official and individual capacities; Defendant Livingston is sued only in his official capacity.

12. At all relevant times, Rissie L. Owens, Jose Aliseda, Charles Aycock, Conrith Davis, Jackie DeNoyelles, Linda Garcia, and Juanita M. Gonzales (hereinafter collectively "the Board") were members of the Texas Board of Pardons and Paroles, and, as such, were responsible for upholding the laws of the United States and Texas. At all relevant times, the

Board acted under color of law. The Board is sued in their official capacities for injunctive and declaratory relief.

13. Rissie L. Owens can be served at the Austin offices of the Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701.

14. Jose Aliseda can be served at the San Antonio offices of the Board of Pardons and Paroles, 2902 N.E. Loop 410, Suite 206, San Antonio, TX 78218.

15. Charles Aycock can be served at the Amarillo offices of the Board of Pardons and Paroles, 5809 S. Western, Suite 237, Amarillo, TX 79110.

16. Conrith Davis can be served at the Huntsville offices of the Board of Pardons and Paroles, 1300 11th Street, Suite 520, Huntsville, TX 77342-0599.

17. Jackie DeNoyelles can be served at the Palestine offices of the Board of Pardons and Paroles, 207 E. Reagan, Palestine, TX 75801.

18. Linda Garcia can be served at the Angleton offices of the Board of Pardons and Paroles, 1212 N. Velasco, Suite 201, Angleton, TX 77515.

19. Juanita Gonzales can be served at the Gatesville offices of the Board of Pardons and Paroles, 3408 S. State Highway 36, Gatesville, TX 76528.

STATEMENT OF FACTS

20. On or about March 8, 1982, Plaintiff pled guilty to murder and was sentenced to thirty (30) years imprisonment in Texas Department of Criminal Justice (TDCJ) facilities.

21. On or about September 8, 1989, Plaintiff was sentenced to four (4) additional years imprisonment, to be served consecutively to the thirty (30) year term, for possession of a deadly weapon in a penal institution.

22. TDCJ released Plaintiff to the custody of Defendant Sheriff of Travis County on or about September 25, 2002, on "mandatory supervision." Plaintiff's release on mandatory

supervision was required by statute because his calendar time served plus “good time” credits accumulated totaled the maximum length of his sentence. *See* Tex. Crim. Pro. Art. 42.18(8)(c) (1987).

23. Mandatory supervision is “the release of a prisoner from imprisonment, but not on parole, and not from the legal custody of the state, for rehabilitation outside prison walls under such conditions and provisions for disciplinary supervision as the board may determine.” Tex. Crim. Pro. Art. 42.18(2)(b) (1987). The purpose of mandatory supervision is “to aid all prisoners to readjust to society upon completion of their period of incarceration.” Tex. Crim. Pro. Art. 42.18(1) (1987).

24. Parolees on mandatory supervision at TCCC are allowed to search for a job in the community and to leave the facility to work when they have secured employment. The parolees then return to the facility at night.

25. Defendants have not allowed Plaintiff the same opportunities as other parolees. They have placed him on “lock down” status since his arrival at TCCC in 2002, and have confined him in the jail most of the time. Other parolees are not on perpetual “lock down” status and may leave the jail with considerably greater freedom. Other parolees are allowed to formulate a weekly schedule of activities outside of the jail, such as doctors’ appointments, job interviews, visits to the Department of Public Safety to obtain driver’s licenses, etc. Mr. Meza is routinely denied these same opportunities.

26. Mr. Meza has made numerous good faith attempts to secure employment, but Defendants have thwarted him. Since about June of 2004, Defendants have allowed Plaintiff only five hours per week of time at Project RIO (Reintegration of Offenders), the parolee employment search program. They allow other parolees virtually unlimited time at Project RIO. Prior to June 2004, Defendants did not allow Mr. Meza any access to these resources, even

though his conditions of parole explicitly require him to “actively seek employment.”

27. Before Mr. Meza can interview for a job, employment opportunities must be screened by Defendants to ensure potential employment locations meet the conditions of his mandatory supervision. Defendants habitually delay in screening the potential employers that Plaintiff has located, causing the identified positions to be filled before Mr. Meza has the opportunity to interview for them. Other parolees do not experience these chronic delays in their job searches.

28. On the rare occasion when Mr. Meza is able to secure a job interview, several armed guards accompany him to the interview. On or about November 3, 2004, Mr. Meza had a job interview with Southern Education, and armed guards escorted him there. Unsurprisingly, Plaintiff was unable to secure employment under these conditions. Armed guards do not accompany other TCCC parolees to job interviews.

29. Defendants have also told Mr. Meza that, should he find a job, an armed parole officer will have to go to the job site with him every day. The Board has made this requirement a condition of Mr. Meza’s mandatory supervision. Potential employers have told Mr. Meza they cannot hire him for this reason. Other parolees do not face this additional obstacle.

30. On August 21, 2006, Mr. Meza had a job interview for a construction position with Missions of Hope Ministries. Missions of Hope Ministries offered Mr. Meza the position the next day. TDCJ, Collier and the Board, however, intentionally delayed approving this employment opportunity until the position was no longer available.

31. Before Mr. Meza can accept any job opportunity, the offer of employment must be screened by TDCJ’s investigators, and then approved by the Board. No other parolee is required to have his job opportunities approved by the Board. No condition of Mr. Meza’s release states that job opportunities will have to be approved by the Board.

32. As the director of the Parole Division, Collier has personally overseen all decisions regarding Mr. Meza's parole. Over the past three years, Mr. Meza's counsel attempted to negotiate removal of these informal conditions with TDCJ officials, including Collier. He was personally aware of the violations of Mr. Meza's due process rights, but deliberately continued to impose these informal, illegal conditions. Collier reasonably should have known he was violating Mr. Meza's due process rights.

33. Because Defendants' actions have prevented him from securing a job, Mr. Meza's liberty is considerably more restricted than other parolees on mandatory supervision at TCCC. Defendants allow other parolees to leave the facility and work in the community.

34. Mr. Meza has been denied educational opportunities that are offered to other parolees at TCCC, even though his conditions of parole require him to "attend educational and vocational training classes." Mr. Meza has not been allowed to attend computer orientation classes, job search classes and resume writing classes offered to other parolees at TCCC. Mr. Meza has only been allowed to attend three one-day seminars offered at Project RIO, and even then has been pulled out of the classes in the middle of the seminars because he is only allowed two and a half hours twice a week at Project RIO.

35. Denying Mr. Meza these educational opportunities also has negatively impacted his job search and thus unduly restrained his liberty. For example, in order to take full advantage of the limited amount of time he has access to Project RIO, Mr. Meza needs effective computer skills. Due to his long incarceration and Defendants' refusal to allow him the same educational opportunities they offer other parolees, Plaintiff has been unable to develop these necessary skills along with other parolees.

36. Mr. Meza has not been allowed to obtain a driver's license, a privilege allowed to other parolees at TCCC. Indeed, Mr. Meza's conditions of parole imply he should be allowed to

obtain a driver's license, as the conditions explicitly require him to "obey driving restrictions," "obtain and keep in [his] possession a Texas Department of Public Safety (DPS) Personal Identification Card or Driver's License," and "leave all keys to any motor vehicle that [he has] use of with facility staff" of any half-way house he may be allowed to reside at. Without a driver's license, certain employment opportunities are unavailable to Mr. Meza (such as auto repair positions). Mr. Meza has been denied employment by auto repair facilities because he does not have a driver's license.

37. Defendants have not afforded Mr. Meza any due process of law to justify his disparate treatment at TCCC. No conditions of Plaintiff's mandatory supervision justify this disparate treatment.

38. The conditions imposed on Mr. Meza's mandatory supervision by the Board are irrational, arbitrary and capricious. For example, Mr. Meza is required to wear an electronic global positioning tracking monitor at all times. The monitor informs Defendants of Mr. Meza's location at all times. Mr. Meza is also not allowed to leave TCCC without being accompanied by a parole officer, despite the electronic monitor. These conditions are intentionally redundant and thus arbitrary and capricious. These conditions were imposed without due process of law, and have an intentionally discriminatory purpose. Only one other parolee in the state has conditions as onerous as those imposed on Mr. Meza.

39. The Parole Division, at Collier's direction, intentionally refuses to provide Mr. Meza with a parole officer to accompany him so that he may leave the jail. This creates a *de facto* qualitative restriction on Mr. Meza's liberty, which has been imposed without due process of law.

40. On February 23, 2005, Mr. Meza received a notice informing him the Board was reimposing sex offender conditions on his parole, and that he had one month to respond. Mr.

Meza promptly filed a response. This notice was never served on his attorneys, who TDCJ and the Board knew represented him, in violation of Rule 4.02(a) of the Texas Disciplinary Rules of Professional Conduct. (Three members of the Board, Aliseda, Aycock and Garcia, are attorneys licensed in the State of Texas who are required to comply with the Texas Disciplinary Rules of Professional Conduct.)

41. TDCJ and the Board ignored Mr. Meza's response, and imposed sex offender conditions on his parole without affording him due process, in violation of the holding of *Coleman v. Dretke*, 395 F.3d 216 (5th Cir. 2004). Mr. Meza's attorneys contacted TDCJ regarding this abuse of due process, and were ignored. The sex offender conditions remain imposed on Mr. Meza's parole.

42. Mr. Meza is a Christian. His religious faith is sincere and heartfelt, and assisted his efforts to rehabilitate himself.

43. In order to attend worship services at the TCCC, Defendants require inmates to dress in prison uniforms. Plaintiff finds this requirement demeans his religious activities, and acts as a substantial burden on his religious exercise. Other parolees are allowed to leave the jail to attend worship services. Mr. Meza is forced to attend services with inmates at the jail instead of in the community, like other parolees.

44. On September 13, 2006, Mr. Meza's beloved cousin died in an auto accident in Austin. Mr. Meza requested permission to attend her funeral mass and services on September 15, 2006. Prisoners confined by TDCJ are allowed "emergency absence" to "attend a funeral." Tex. Gov't Code § 501.006 (2006). TDCJ denied Mr. Meza the opportunity to participate in these services. Refusing Mr. Meza the opportunity to attend these services was a substantial burden on his religious exercise.

CAUSES OF ACTION

I. Religious Land Use and Institutionalized Persons Act ("RLUIPA")

45. Mr. Meza alleges a cause of action because TDCJ and the Board do not allow Mr. Meza to attend worship services in the community, like other parolees, and did not allow him the opportunity to attend his cousin's funeral. Defendants' actions and policies impose substantial burdens on Mr. Meza's religious freedom.

46. Under RLUIPA, "no government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution" unless the burden furthers a "compelling governmental interest," and does so by "the least restrictive means." 42 U.S.C. §§ 2000cc-1(a)(1)-(2). A religious exercise is any exercise of religion, whether or not compelled by, or central to, a system of religious belief. 42 U.S.C. §§ 2000cc-5(7)(A).

47. The Act covers government-run institutions, including jails and transitional facilities. TCCC falls under RLUIPA's definition of government, and, therefore, is responsible for accommodating Mr. Meza's religious beliefs.

II. Section 1983

48. The TDCJ Defendants and the Board impose qualitatively different conditions of confinement upon Mr. Meza than other similarly situated parolees. The informal imposition of these additional conditions upon Mr. Meza alone violates his due process rights.

49. The TDCJ Defendants enforce informal restrictions on Mr. Meza's liberty that have not been justified by due process and are not provided for in any of his conditions of parole. They habitually treat Mr. Meza differently from other similarly situated parolees on mandatory supervision so as to deny Mr. Meza the opportunities afforded to others.

50. The Board has imposed sex offender conditions on Mr. Meza's parole without providing him due process, in violation of law and his Fourteenth Amendment rights.

51. Defendant Collier personally oversees all decisions regarding Mr. Meza's parole. Collier has been informed that the qualitatively different treatment of Mr. Meza violates his due process rights, but continues to enforce the illegal and informal conditions which are unspecified in Mr. Meza's conditions of parole.

52. The Board has imposed irrational, arbitrary and capricious conditions on Mr. Meza's mandatory supervision without affording him due process of law. These conditions are qualitatively different than the conditions imposed on other parolees released after completion of their sentences for similar convictions.

DAMAGES

53. Mr. Meza is entitled to compensatory relief from all Defendants, jointly and severally, for lost wages and loss of liberty.

54. Plaintiff also seeks punitive damages from the TDCJ Defendants.

DECLARATORY JUDGMENT

55. Mr. Meza seeks declaratory judgment to vindicate his rights under Section 1983 and RLUIPA with respect to Defendants' violations.

56. Mr. Meza is entitled to declaratory judgment concerning Defendants' violations of his due process rights.

INJUNCTIVE RELIEF

57. Mr. Meza seeks injunctive relief, permanently enjoining Defendants from:

- a. Failing to reasonably accommodate his religious exercise, including requiring parolees to wear jail uniforms in order to attend worship services and imposing worship service policies not serving a compelling governmental interest; and,
- b. Continuing to subject Mr. Meza to qualitatively different conditions of confinement without due process of law; and,
- c. Imposing sex offender conditions upon his parole without due process of law.

58. Inasmuch as Defendants have acted in the events described herein, they will continue to act accordingly. Without injunctive relief, Defendants will continue their outrageous conduct, thereby unduly limiting Mr. Meza's liberty without due process.

ATTORNEYS' FEES AND COSTS

59. Mr. Meza is entitled to reasonable attorneys' fees, litigation costs, and court costs, pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

THEREFORE, Mr. Meza respectfully prays that this Court grant the following relief:

- A. Enter judgment on his behalf against the TDCJ Defendants in their individual capacities and the Travis County Sheriff, jointly and severally, for monetary damages sufficient to compensate Plaintiff for his lost wages;
- B. Issue declaratory relief that Defendants' conduct constituted illegal deprivation of Plaintiff's due process rights;
- C. Order injunctive relief against Defendant Collier in his official capacity to end further prevention of the exercise of religious freedom of Plaintiff and TCCC parolees to prohibit the violation of Mr. Meza's rights under RLUIPA;
- D. Grant reasonable attorneys' fees, litigation expenses, and court costs; and
- E. Grant all other and additional relief to which Mr. Meza may be entitled, at law or in equity.

DATED: February 23, 2007.

Respectfully Submitted,



James C. Harrington
State Bar No. 09048500
Scott Medlock
State Bar No. 24044783

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Dr.
Austin, TX 78741

(512) 474-5073 [phone]

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

A true copy this document was sent to Assistant Attorney General of Texas, Celamaine Cunniff, P.O. Box 12548, Capitol Station, Austin, TX, 78711, via fax, 512-495-9139, on February 23, 2007.



/s/ Scott Medlock

Scott Medlock