

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOHN LINDH, BRIAN CARR, ALI)
ASAD CHANDIA,)

Plaintiffs,)

v.)

No. 2:09-cv-215 JMS-WGH

WARDEN, FEDERAL CORRECTIONAL)
INSTITUTION, TERRE HAUTE,)
INDIANA,)

Defendant.)

Second Amended Complaint for Declaratory and Injunctive Relief

Introduction

1. Plaintiffs John Lindh, Brian Carr, and Ali Asad Chandia are Muslim prisoners confined to the Communications Management Unit (“CMU”) at the Federal Correction Institution in Terre Haute, Indiana. The majority of the prisoners in the unit are Muslim. Despite the fact that plaintiffs’ religion commands them to pray five times daily, and they consider group prayer to be mandatory and superior to individual prayer, congregational prayer is only allowed for one hour a week. This rule is imposed by defendant despite the fact that the prisoners are out of their cells for virtually the entire day and are allowed to engage in a whole variety of congregational activities both in the unit and an outside recreation area. The defendant’s prohibition on congregational worship imposes a substantial burden on plaintiffs’ exercise of religion and neither furthers a compelling governmental interest nor represents the least restrictive means of furthering a compelling governmental interest. It therefore violates the Religious Freedom Restoration Act (“RFRA”), 42

U.S.C. § 2000bb-1. Appropriate declaratory and injunctive relief is requested.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202 and by Rule 57 of the Federal Rules of Civil Procedure.
5. This action is brought pursuant to RFRA, 42 U.S.C. § 2000bb-1(c).

Parties

6. John Lindh, Brian Carr, and Ali Asad Chandia are adult persons currently confined in the CMU at the Federal Correctional Institution in Terre Haute, Indiana.
7. The Warden of the Federal Correctional Institution, Terre Haute, Indiana, is sued pursuant to Rule 17(d) of the Federal Rules of Civil Procedure and is the duly appointed Warden of the Institution.

Legal Background

8. RFRA provides, in pertinent part at 42 U.S.C. § 2000bb-1:

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Factual Allegations

9. The CMU has been created to house certain prisoners who are deemed to require additional monitoring of their communications.

10. As compared to other units within the BOP, the CMU features fewer opportunities for telephone calls and visits.

11. The prisoners within the CMU are housed in individual cells.

12. The prisoners within the CMU are allowed out of their cells from approximately 6:00 a.m. until 9:15 p.m., except for one 30-45 minute “count” period during the week and two such periods during the weekends.

13. During this time they are allowed to engage in a wide variety of congregational activities, including recreation, watching television, playing cards, or sitting at tables or in chairs conversing. They are also allowed to go to their cells or the cells of other prisoners.

14. The CMU contains a multi-purpose room in which classes are held via videotape. However, the multi-purpose room is generally vacant.

15. Plaintiffs are Muslims as are a large majority of the approximately 40 persons on the CMU.

16. Prayer is the second pillar of Islam and it is obligatory on Muslims to pray five times a day.

17. Every Friday, all Muslims engage in the Jum'ah prayer which the Qur'an mandates be done in a group.

18. At the CMU plaintiffs and the other Muslim prisoners are allowed to go to the multi-purpose room for the Jum'ah prayer.

19. However, in the Hadith, the collections of sayings of the Prophet, numerous statements are made that group prayer for all the mandated prayers is preferred and that such prayer multiplies the blessings and utility of prayer.

20. One of the four orthodox schools of Islamic jurisprudence holds that group prayer is mandatory and not merely preferred.

21. All plaintiffs are Sunni Muslims who believe that group daily prayer is a religious requirement.

22. Therefore, whenever possible, Muslims will pray together during the five daily prayers.

23. These daily prayers are very short, and take only a few minutes. The prayers follow a prescribed sequence of actions and words and the prisoners do not converse among themselves during the prayers.

24. When the CMU was opened, Muslim prisoners were allowed to meet together in the multi-purpose room to engage in daily prayers for approximately six months.

25. However, the defendant has now prohibited all congregational prayer for plaintiffs and the other Muslim prisoners, even though the multi-purpose room is generally unoccupied and a schedule could easily be created so that group prayer could occur in the multi-purpose room without any disruption to other scheduled events.

26. The prohibition was temporarily lifted during the month of Ramadan in 2009

when Muslim prisoners were allowed to go to the multi-purpose room in the CMU for three of the five daily regular daily prayers required of Muslims. Following Ramadan in 2009, the prohibition was reinstated.

27. During the month of Ramadan in 2010 Muslim prisoners in the CMU were allowed to go to the multi-purpose room in the CMU for one of the five regular daily prayers. Following Ramadan in 2010, the prohibition was reinstated.

28. Plaintiffs desire to be able to engage in congregate prayer for all daily prayers that take place during the time that CMU prisoners are otherwise allowed out of their cells.

29. The prohibition imposes a substantial burden on plaintiffs' religious exercises.

30. Plaintiffs have timely and properly pursued all grievances, at each level, provided by the BOP to challenge the denial of the use of the multi-purpose room for group prayer.

31. Copies of the grievances and responses for plaintiff Lindh are attached to this complaint as Exhibit A.

32. Copies of the grievances and responses for plaintiff Carr are attached to this complaint as Exhibit B. At the time that Mr. Carr filed his original complaint in Cause No. 2:10-cv-0175 JMS-WGH, which was consolidated with this case on September 9, 2010 (Doc. No. 61), his grievance was pending at the final level review at the office of General Counsel for the Bureau of Prisons for more than the original 40 days provided by federal regulations and for more than the additional 20 days extended by the Bureau of Prisons. Accordingly, pursuant to 28 C.F.R. § 542.18, the grievances have been deemed to be denied.

33. Copies of the grievances and responses for plaintiff Chandia are attached to this complaint as Exhibit C. Mr. Chandia's grievance has been pending at the final level of

review at the office of General Counsel for the Bureau of Prisons for more than the original 40 days provided by federal regulations and for more than the additional 20 days extended by the Bureau of Prisons. The BOP had until November 7, 2010, to make its response at the final (Central Office) grievance level and did not do so. Accordingly, pursuant to 28 C.F.R. § 542.18, the grievances have been deemed to be denied.

34. The defendant's actions in this matter are not substantially justified.

35. The actions of defendant are causing plaintiffs irreparable harm for which there is no adequate remedy at law.

Claim for relief

36. The failure of the defendant to allow plaintiffs to participate in daily group prayer imposes a substantial burden on plaintiffs' religious exercise and neither furthers a compelling governmental interest, nor is it the least restrictive alternative to further that interest. It is therefore unlawful as violating the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

Request for relief

WHEREFORE, plaintiffs requests that this Court:

- a. Accept jurisdiction of this case and set it for hearing.
- b. Declare that defendant is violating federal law as noted above.
- c. Enter a preliminary injunction, later to be made permanent, enjoining defendant to allow the plaintiff-Muslim prisoners to engage in daily group prayers during the times that prisoners are otherwise allowed out of their cells.
- d. Award plaintiffs their costs and reasonable attorney's fees pursuant to 28 U.S.C. § 2412.
- e. Award all other proper relief.

No.

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Certificate of Service

I hereby certify that on this 25th day of January, 2011, a copy of the foregoing was filed electronically with the Clerk of this Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and the parties may access this filing through the Court's system.

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