

FILED

APR 22 1992

U.S. DISTRICT COURT
PORTLAND, OREGON
[Signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES CERVANTES, individually)
and on behalf of all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
GEORGE BALDWIN and)
C. B. TAYLOR,)
)
Defendants.)

Civil No. 92-70-JE
OPINION

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JELDERKS, Magistrate Judge:

Plaintiff James Cervantes brings this action as named plaintiff in a class action challenging former racial segregation in inmate housing at the Eastern Oregon Correctional Institution (EOCI). Defendants have filed a document captioned "motion for judgment." I construe defendants' motion for judgment as a renewed motion for summary judgment, and deny the motion. In his response to defendant's renewed motion, plaintiff asserts that he, instead, is entitled to summary judgment. I construe plaintiff's response as a renewed motion for partial summary judgment, and grant the motion.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff brings this action based upon a former EOCI policy, abandoned in early 1991, of making at least initial cell assignments based upon the "racial similarity" of inmates. In an opinion and order filed on July 6, 1993, I granted defendants' motion for summary judgment, based upon qualified immunity, and denied plaintiff's motion for partial summary judgment. I noted that even a policy of temporary segregation probably violated constitutional standards. I concluded, however, that defendants were entitled to qualified immunity because they could have reasonably believed that their conduct in maintaining such a policy was lawful.

As noted in my order filed on January 18, 1994, granting plaintiff's motion for reconsideration, my decision to grant summary judgment in defendants' favor was based upon my erroneous conclusion that the parties agreed that segregation under the policy in question was temporary. Besides granting plaintiff's motion for reconsideration, I also allowed the parties to take further discovery as to the duration of segregation following the initial cell assignments made for incoming prisoners. I informed the parties that, should additional evidence establish that the segregation was temporary, I would again grant summary judgment for the defendants, and if the evidence established that it was not, I would grant summary judgment for plaintiffs. I added that, should material issues of fact remain as to the duration of segregation, I would deny both parties' motions, and the issue of duration would be decided by the trier of fact.

Defendants have supported their renewed motion for summary judgment with the affidavit of defendant George Baldwin, Superintendent of EOCI, and with records showing the assignment of "Hispanic" inmates at EOCI celled in both multiple-occupancy cells and in the dormitory-style housing at EOCI. These documents establish that inmates identified as "Hispanic" were generally housed together at EOCI before the housing policy was changed in January 1991. There were two exceptions to this general rule. In the first of these,

inmates identified as "Hispanic" who submitted a written cell change request could be housed with inmates identified as other than "Hispanic" if all inmates involved agreed in writing to a change, and EOCI staff raised no "overriding security concerns." From the documents submitted, it appears that most of the 195 "Hispanic" inmates who were transferred to multiple-occupancy cells occupied by inmates of other ethnic/racial origins before the policy was changed in early 1991 did so pursuant to this policy. Defendants assert that these 195 inmates were celled with inmates identified as "other than Hispanic ... in 376 instances" between March 1, 1989, and January 7, 1991. The second exception to the general segregation policy applied in the dormitory housing, where "Hispanic" inmates were housed with other inmates without regard to race or ethnicity. Documents submitted by defendant establish that some 325 "Hispanic" inmates were housed with other inmates in this manner between March 1, 1989, and early January 1991.

DISCUSSION

Defendants assert that they are entitled to judgment because, with the additional evidence produced following the reopening of discovery, plaintiff "has no way to argue that the initial celling of Hispanics with other Hispanics on entry into [EOCI] was permanent." Though I agree that the dormitory arrangement cited above implicates no equal protection

concerns, the housing of those identified as "Hispanic" in multiple-occupancy cells clearly does. In his earlier affidavit describing celling practices at EOCI, defendant Baldwin stated that "inmates could choose their own celling partners within days of their assignment to EOCI if they applied for new cell partners." Evidence submitted in support of defendants' renewed motion for summary judgment, however, supports only the conclusion that segregation of those identified as "Hispanic" was the general rule at EOCI, that the segregation was ongoing unless an inmate requested a transfer, and that an inmate could transfer to a nonsegregated cell only upon the agreement of prospective cellmates.

Notably absent from defendants' documents is any reference to standards by which staff "overriding security concerns" were evaluated, or to alternative provisions for desegregating if any inmate's request to transfer was rejected. In the absence of such evidence, I can only conclude that defendants' qualified immunity defenses fail. As I noted in my earlier opinion, defendants have not shown "particularized circumstances" required to justify a policy of prison segregation based upon race or ethnicity. I earlier concluded that defendants could reasonably have thought that their policy was legal where segregated celling "was temporary and limited in time to whenever the inmates requested

different celling." A different conclusion is required, however, where an inmate's access to nonsegregated celling depended on the written concurrence of other inmates, and could be denied on the basis of "security concerns" that apparently were not governed by formal guidelines. Under these circumstances, an inmate might--requests to be transferred notwithstanding--serve the entire term of confinement in segregated housing.

As noted in my earlier opinion, courts evaluating a defendant's assertion of qualified immunity ask, first, whether the law governing the official's conduct is clearly established, and, second, whether under that law a reasonable official could have believed the conduct at issue was lawful. Act Up!/Portland v. Bagley, 988 F.2d 868, 871 (9th Cir. 1993). The law prohibiting racial segregation in prisons, except where justified by particular circumstances threatening prison security and discipline, was clearly established at the times in question. A reasonable official in defendants' position could not have believed that defendants' policy, pursuant to which an inmate might unwillingly serve out a sentence in segregated celling, was lawful.

CONCLUSION

I DENY defendants' renewed motion for summary judgment (#93), and GRANT plaintiff's renewed motion for partial summary judgment (#94).

DATED this 27 day of August, 1994.



John Jelderks
United States Magistrate Judge