

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RAUL MEZA	§	
Plaintiff	§	
v.	§	Cause No. 1:05-cv-01008-LY
	§	
BRAD LIVINGSTON, Executive	§	
Director of the Texas Department of	§	
Criminal Justice, in his official capacity;	§	
and STUART JENKINS, director of the	§	
Texas Department of Criminal Justice	§	
Parole Division, in his official capacity;	§	
	§	
Defendants.	§	

SIXTH AMENDED COMPLAINT

Plaintiff Raul Meza respectfully files this amended complaint and will show:

STATEMENT OF THE CASE

1. Raul Meza is a mandatory supervision parolee.
2. The Texas Department of Criminal Justice Parole Division (“the Department”) treats Mr. Meza significantly differently than other mandatory supervision parolees who are similarly situated – people with similar convictions, backgrounds, and parole conditions.
3. The Department’s special attention dramatically interferes with Mr. Meza’s opportunity to readjust to society. For years, the Department has exercised its discretionary authority to isolate him from his family, deny him employment, and otherwise punished him.
4. The Department has no reason to treat Mr. Meza differently than other similarly-situated parolees, and yet it does. This special attention violates his 14th Amendment right to equal protection.
5. The Department will continue this course as long as Mr. Meza is on mandatory supervision if there is no judicial intervention to stop it. Therefore, Mr. Meza seeks declaratory relief, injunctive relief, attorneys’ fees and costs.

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 Travis County, Texas, and TDCJ maintains headquarters in Austin. TEX. GOV'T CODE 492.014 (b). Accordingly, pursuant to 28 U.S.C. § 1391, venue is proper for this Court.

PARTIES

8. Plaintiff, Raul Meza, and resides in Travis County on mandatory supervision parole.

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

10. Defendant Stuart Jenkins is the director of the TDCJ Parole Division.

11. In all the actions described herein, Defendant Jenkins and Livingston are acting under color of law and pursuant to legal authority. They are sued only in their official capacities for injunctive and declaratory relief.¹

STATEMENT OF FACTS

A. Mr. Meza is on mandatory supervision for a possessing a weapon in prison in 1989.

12. Mr. Meza was sentenced to thirty years in state prison on March 8, 1982. That sentence ended in 2012.

13. On September 8, 1989, he was also sentenced to four additional years imprisonment, to be served consecutively with his original term, for possession of a deadly weapon in a penal institution. That is the conviction for which he is currently on mandatory supervision.

14. The purpose of mandatory supervision is rehabilitation. TEX. CRIM. PRO. ART. 42.18(2)(b) (1987). It was meant "to aid all prisoners to readjust to society upon completion of their period of incarceration." TEX. CRIM. PRO. ART. 42.18(1) (1987).

¹ Because Defendants Livingston and Jenkins are sued in their official capacities, this complaint will refer to them simply as "the Division."

15. Mr. Meza was downgraded from “super intensive” supervision to “moderate security” supervision in 2010, and his therapist reports Mr. Meza has made remarkable progress in his treatment. In September 2013, his therapist recommended he be allowed to graduate and leave treatment, noting Mr. Meza:

- Completed 318 sessions, with components on empathy, thinking errors and social skills;
- Has shown significant emotional improvement;
- “He continues to be a significant leader in group, freely and opening discussing his offense, taking full responsibility for his behavior”
- “He identifies errors in others’ thinking accurately”
- “His performance has been consistent, he has passed his Polygraphs, and is doing well in [treatment]”
- “The reduction in his Supervision level is to be in everyone’s favor.”

B. The Department singles-out Mr. Meza for especially onerous treatment for no reason.

16. A state violates the Fourteenth Amendment when it intentionally treats a person differently from others who are similarly situated without a rational justification. *Newman Marchive Partnership, Inc. v. Hightower*, 349 Fed.Appx. 963, 965 (5th Cir. 2009). It doesn’t matter if the treatment itself – when viewed in isolation – is reasonable. The *choice* to treat a person differently than his peers must also be rational. *Id.* (citing *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440-42 (1985)) (emphasis added).

17. There are many mandatory supervision parolees similarly situated to Mr. Meza. Neither of his convictions are unique, nor were the circumstances of the crimes. There are other people are mandatory supervision today with the same convictions and background as Mr. Meza. There are other parolees with the same conditions of parole.

18. Yet, the Department treats Mr. Meza significantly differently than parolees with whom

he is similarly situated.

19. “Mr. Meza is specifically limiting his challenge to the actions TDCJ is taking within the scope of its discretion to administer the terms of his parole. His claims do not challenge the terms and conditions the Parole Board itself imposed.”

20. Mr. Meza is confined to his home unless the Department allows him to leave. It uses that authority arbitrarily, and has isolated him from family, church, and employment for years.

21. The Department’s exercise of its discretionary authority severely inhibits Mr. Meza’s ability to maintain ties with his family, attend church, and to be employed – all of which are permitted and encouraged by the terms of his parole.

Separated from Family

22. The Department arbitrarily isolates Mr. Meza from his family.

Mr. Meza’s stepfather recently died. The Department refused to let Mr. Meza visit his stepfather while he was on his death bed; so he did not arrive until five hours after his step father had passed away. Other, similarly situated parolees would have been allowed to visit a parent in their final hours.

23. The Department would not allow Mr. Meza to attend his stepfather’s funeral until after his counsel intervened to plead his case.

24. Mr. Meza fears this will happen again with his mother. The Division has the lawful authority to allow Mr. Meza to visit his mother, but it refuses to exercise it. Other similarly situated parolees would be allowed to visit their aging, infirm mother – at least to *some* extent. Mr. Meza is denied that opportunity because of his history with the Division.

Denied Church

25. The Department refuses to allow Mr. Meza to visit church, unlike other similarly situated parolees.

26. Recently, Mr. Meza requested permission to visit a church in south Austin. In the past, he has been allowed to visit it a handful of times, on an ad hoc basis. Today, however, the Division has flatly denied him permission to go again, without justification. His parole officer simply told him “[the request] went up the chain of command” and was denied.

27. In early 2013, the Department allowed Mr. Meza to attend Sunday services at a Baptist Church in north Austin. But after Mr. Meza had attended three services, the Department inexplicably decided he would no longer be permitted to go.

28. One other parolee, in particular, who is registered sex offender, was attending the same church at the same time as Mr. Meza, and on information and belief, the Department allowed him to continue attending even after it stopped Mr. Meza. There was no reason to treat them differently.

Home

29. A few months ago, Mr. Meza was preparing to move to a new home. It was transitional housing for parolees, and other parolees with whom he is similarly situated live there. The owner approved Mr. Meza as a tenant.

30. Mr. Meza proposed the plan to his parole officer and the officer’s supervisor. They told him the plan was approved, but they needed to “line up a few details” before he could move.

31. But the Division’s assistant regional director called Mr. Meza at the last minute before he moved, and told him he was actually denying the request. He told Mr. Meza that he had decided to deny it because he considered Mr. Meza an “ongoing threat.” He would not give any further explanation.

32. Mr. Meza’s only alternative was to move into substandard housing in a rundown neighborhood. On information and belief, the Division reversed its decision to approve Mr. Meza’s placement at the first home because it was located in a more affluent neighborhood, and

the Division did not want him to live there. There was no penological justification for the decision.

Denied Employment

33. Every travel request Mr. Meza makes to the Department has to be passed up through four levels in its chain-of-command, including:

- His parole officer, Ray Rodriguez;
- His parole officer's supervisor, Kim Solis;
- The acting head of the Parole Division's Austin offices; and
- Jayme Martinez, Assistant Regional Director.

34. Other parolees' travel requests are handled by their immediate parole officer, including parolees similarly-situated to Mr. Meza. But those parolees' travel requests are not reviewed director level, even though there is no reason to treat them differently than Mr. Meza.

35. For over three years, Department routinely refused to approve Mr. Meza's requests to travel to job interviews. Often a week or more would pass before he got any response. Even if the request was ultimately approved, so much time had passed that often the job was no longer be available. The delay was caused by passing all of his requests through hands at so many levels in the Division's chain of command, which does not happen to other mandatory supervision parolees. There is no reason to treat Mr. Meza differently.

36. Mr. Meza must submit all travel plans to the Department for approval two weeks in advance and cannot deviate from them. Other mandatory supervision parolees with the same parole conditions have flexibility to change their travel plans by calling their parole officers, which permits them to take care of daily affairs and build lives in the free world – which is the goal of mandatory supervision. The Department does not permit Mr. Meza that flexibility. For instance, Mr. Meza was once approved to visit a business in the morning for a job interview, but

the staff person who was scheduled to interview him was unexpectedly absent. Another staff person asked him to return in the afternoon, but the Department would not let him return. Needless to say, he was not hired. The Department does not treat similarly situated parolees this way, and has no reason to treat Mr. Meza differently.

37. Mr. Meza was recently hired at an auto body shop, in February 2014, for the first time after three years of mandatory supervision – a length of time unique among similarly-situated parolees. The Department caused his long-term unemployment. It only stopped because of pressure from this litigation. If he were to lose his current job while this litigation was not ongoing, the Department would resume its behavior. The Department treats other mandatory supervision parolees differently, and does not actively interfere with their efforts to have employment.

CAUSE OF ACTION –EQUAL PROTECTION

38. The Department intentionally treats Mr. Meza differently than similarly situated mandatory supervision parolees, for no reason rationally related to any legitimate government interest.

39. The terms and conditions of Mr. Meza's parole are onerous but not unique. On information and belief, the Parole Board has imposed the same set of conditions on other parolees. Yet TDCJ treats Mr. Meza differently than other parolees who bear the same terms and conditions of parole, for no legitimate or logical reason.

40. Objectives "such as a bare desire to harm a politically unpopular group are not legitimate state interests." *City of Cleburne, Tex.*, 473 U.S. at 446-47 (citing *U. S. Dept. of Agriculture v. Moreno*, 413 U.S. 528, 534-35 (1973)). Nor may the State, even when it cites a legitimate state interest, "rely on a classification whose relationship to [the] asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Id.*

41. The Department treats Mr. Meza as a “class of one,” in violation of his right to equal protection under the law. *Newman Marchive Partnership*, 349 Fed.Appx. at 965.

42. To put it simply, TDCJ treats Mr. Meza differently from other parolees because of who he is (Raul Meza) rather than what he is (the total sum of his parts). It is purposefully treating him differently than similarly situated parolees with the same terms and conditions of parole, without a legitimate justification.

43. If the relevant penological factors surrounding Mr. Meza (e.g. terms and conditions of parole, background, conviction, success during parole) were written on a notecard without his name and shuffled with a dozen more note cards describing other anonymous parolees similarly situated to Mr. Meza in each penologically-relevant respect, and if TDCJ then used those note cards to determine how they would administer those individuals’ parole, Mr. Meza would not be treated differently than the other parolees in the stack.

DECLARATORY JUDGMENT

44. Mr. Meza seeks a declaratory judgment that Defendants are violating his right to equal protection under the law. 28 U.S.C. § 2201.

45. Mr. Meza seeks a declaration stating:

- a. Defendants intentionally treat Mr. Meza differently than other people who are similarly situated;
- b. Defendants have no rational basis for the difference in treatment;
- c. Defendant is making choices with “discriminatory purpose.”

INJUNCTIVE RELIEF

46. Inasmuch as Defendants have acted in the events described herein, they will continue to act accordingly. Without injunctive relief, Defendants will continue to violate Mr. Meza’s right to equal protection.

47. Therefore, Mr. Meza asks this Court to issue an injunction ordering Defendants treat Mr. Meza in the same manner it treats all similarly situated parolees. 42 U.S.C § 1983.

ATTORNEYS' FEES AND COSTS

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

PRAYER FOR RELIEF

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

- A. Issue declaratory relief that Defendants' conduct constituted illegal deprivation of Plaintiff's right to equal protection;
- B. Enjoin Defendants from violating Plaintiff's rights to equal protection;
- C. Grant reasonable attorneys' fees, litigation expenses, and court costs; and
- D. Grant all other and additional relief to which Mr. Meza may be entitled, at law or in equity.

DATED: July 28, 2014

Respectfully submitted,

/s/ Brian McGiverin
Brian McGiverin
Texas Bar No. 24067760
brian@texascivilrightsproject.org

Wayne Krause Yang
State Bar No. 24032644
James C. Harrington
Texas Bar No. 09048500

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Dr
Austin, Texas 78741
Tel. (512) 474-5073
Fax (512) 474-0726

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on all counsel of record who have appeared in this matter through the Electronic Case Files System of the Western District of Texas.

/s/ Brian McGiverin

Brian McGiverin