

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

MAY 27 1997

JOLENE YELLOWQUILL,

Plaintiff

V.

WAYNE SCOTT, LINDA MOTEN,
JERRY GROOM, CHAPLAIN T.
CROSBY

Defendants

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Michael N. Milby, Clerk

C.A. NO. H-95-1080

**ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER AND DENYING AS MOOT PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

Before the Court is Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order. After reviewing the submissions of the parties, the applicable law, the evidence submitted during the Court's hearing on Friday, May 23, 1997, and the arguments of counsel, the Court GRANTS IN PART AND DENIES IN PART Plaintiff's Motion.

A. Bond and Standing

The Court waives the bond requirement of Rule 65. FED. R. CIV. P. 65; *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, (5th Cir.), *cert. denied*, — U.S. —, 117 S.Ct. 77, 136 L.Ed.2d 36 (1996). Because Defendants are, at this time, actively prohibiting Plaintiff from participating in a central tenet of her religion, Plaintiff has standing to seek injunctive relief. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S.Ct. 1660, 1670, 75 L.Ed.2d 675 (1983); *Gladden v. Roach*, 864 F.2d 1196, 1198 (5th Cir.), *cert. denied*, 491 U.S. 907, 109 S.Ct. 3192, 105 L.Ed.2d 700 (1989).

B. Plaintiff's Motion for Preliminary Injunction

Plaintiff has moved for a temporary restraining order as well as preliminary injunction. Because the restrictions upon Plaintiff's participation in the weekly sacred pipe ceremony are scheduled to expire on June 15, 1997, Plaintiff cannot at this time demonstrate the threat of irreparable harm after that date. A preliminary injunction is therefore unnecessary. The Court denies Plaintiff's Motion for Preliminary Injunction as moot. Should Defendants again impose restrictions on Plaintiff's participation in the sacred pipe ceremony after June 15, 1997, Plaintiff may again request injunctive relief.

C. Plaintiff's Motion for Temporary Restraining Order

To be entitled to injunctive relief, Plaintiff must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any damage the injunction may do to the opponent; and (4) that the injunction will not disserve the public interest. *House the Homeless, Inc. v. Widnall*, 94 F.3d 176, 180 (5th Cir. 1996), *cert. denied*, – U.S. –, 117 S.Ct. 1434 (1997); *DSC Communications Corp. v. DGI Technologies, Inc.*, 81 F.3d 597, 600 (5th Cir. 1996); *Landmark Land Co. v. Office of Thrift Supervision*, 990 F.2d 807, 810 (5th Cir. 1993).

1. Irreparable Injury

“It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction.” *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B Nov. 1981); *see also Elrod v. Burns*, 427 U.S. 347, 373-74, 96 S.Ct. 2673, 2689-90, 49 L.Ed.2d 547 (1976); *Hooters, Inc. v. City of Texarkana, Texas*, 897 F.Supp. 946, 949 (E.D. Tex. 1995). The restrictions placed

on Plaintiff's ability to participate in the sacred pipe ceremony deprive Plaintiff of the primary method by which she may pray and further her sincerely-held religious beliefs. Irreparable harm is therefore established.

2. *Balance of Interests*

Plaintiff seeks to engage in religious worship while incarcerated – a right she maintains despite her confinement. *See Cruz v. Beto*, 405 U.S. 319, 322, 92 S.Ct. 1079, 1081-82, 31 L.Ed.2d 263 (1972); *Eason v. Thaler*, 73 F.3d 1322, 1327 (5th Cir. 1996); *Al-Ra'id v. Ingle*, 69 F.3d 28, 33 (5th Cir. 1995) (“[e]ven in prison, the right to practice one’s religious beliefs is constitutionally protected.”). Defendants maintain an important interest in the orderly, safe and secure operation of the Mountain View Unit. Under the Disciplinary Rules and Procedures which govern the conduct of inmates in TDCJ-ID custody, alternative disciplinary means that have yet to be used are available to discipline Plaintiff for any violations of prison policy while securing the orderly administration of the institution. The Court therefore determines that a temporary restraining order protects Plaintiff’s rights while exacting little harm on the interests of Defendants. In this particular instance, Plaintiff’s interests prevail over Defendants’ interests. *See Cruz*, 405 U.S. at 322; 92 S.Ct. at 1081-82; *Eason*, 73 F.3d at 1327; *Al-Ra'id*, 69 F.3d at 33.

3. *Public Interests*

The Court finds that a temporary restraining order will not disserve the public interest. Defendants have been conducting the sacred pipe ceremony on a weekly basis for approximately one and one half years and, other than the problems discussed at the hearing, the public’s interests have not been adversely affected. Moreover, “the public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve.”

Nobby Lobby, Inc. v. City of Dallas, 767 F.Supp. 801, 821 (N.D. Tex. 1991), *aff'd*, 970 F.2d 82 (5th Cir. 1992).

4. *Likelihood of Success on the Merits*

The Court has determined that analysis of the three factors above favors the entry of a temporary restraining order. Accordingly, Plaintiff need only show “some” likelihood of success on the merits. *Productos Carnic, S.A. v. Central American Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980); *Entertainment & Sports v. Edinburg Comm. Hotel*, 735 F.Supp. 1334, 1342 (S.D. Tex. 1986). Even if Plaintiff was required to show the higher standard of a substantial likelihood of success on the merits, Plaintiff has met her burden.

Plaintiff raises a claim under the Religious Freedom Restoration Act of 1993 (“RFRA”). 42 U.S.C. § 2000bb *et seq.* RFRA applies to claims by prison inmates. *Hicks*, 69 F.3d at 25-26; *Werner v. McCotter*, 49 F.3d 1476, 1479 (10th Cir.), *cert. denied*, – U.S. –, 115 S.Ct. 2625, 132 L.Ed.2d 866 (1995). RFRA provides that “Government shall not substantially burden a person’s exercise of religion even if the burden is from a rule of general applicability” unless the Government can demonstrate that the burden furthers a compelling governmental interest and is the least restrictive means for doing so. 42 U.S.C. § 2000bb-1.

Defendants are actively preventing Plaintiff from participating in the Unit’s sacred pipe ceremony – a central tenet of the Plaintiff’s religion. The Court finds that this absolute prohibition substantially burdens the free exercise of a central tenet of Plaintiff’s religion. 42 U.S.C. § 2000bb-1(a); *Hicks*, 69 F.3d at 26 n. 22; *Jolly v. Coughlin*, 76 F.3d 468, 476 (2nd Cir. 1996); *Werner*, 49 F.3d at 1480 n. 2. Defendants must therefore demonstrate that their conduct

further a compelling governmental interest and is the least restrictive means to advance that interest. 42 U.S.C. § 2000bb-1(b); *Mack v. O'Leary*, 80 F.3d 1175, 1180 (7th Cir. 1996).

Certainly, Defendants maintain a compelling governmental interest in the safe, secure, and orderly operation of their correctional facilities. Likewise, enforcement of legitimate regulations governing inmate conduct furthers Defendants' interests. The Court finds, however, that, in this discrete circumstance, Defendants have not used the least restrictive means to advance their interests.

Under the Disciplinary Rules and Procedures for Inmates which govern inmate conduct and discipline, Defendants have at their disposal other alternatives to punish Plaintiff's infractions. While Plaintiff's prior disciplinary infractions for possession of tobacco products demonstrate that at some point, Defendants may have no other alternative than to prohibit Plaintiff's attendance at the sacred pipe ceremony, ~~that~~ [†] that point has not yet been reached, however. Thus, Plaintiff has demonstrated a substantial likelihood of success on the merits of her RFRA claim.

The Court therefore grants Plaintiff's Motion for a Temporary Restraining Order and ORDERS relief as follows:

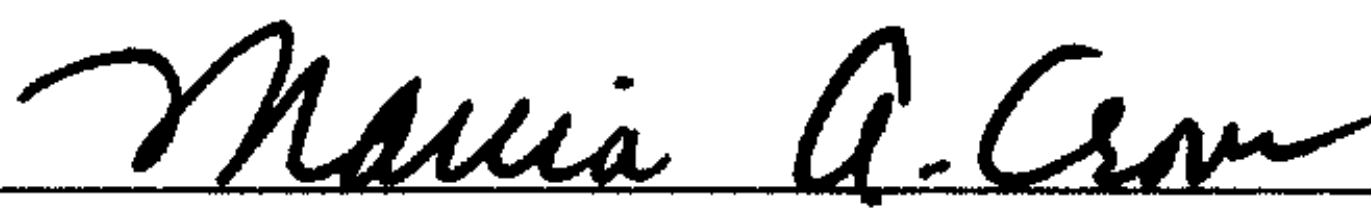
1. For ten days, Defendants shall revoke the prohibition against Plaintiff's participation in the sacred pipe ceremony at the Mountain View Unit of the Texas Department of Criminal Justice – Institutional Division. This ten day period shall be computed according to Rule 6 of the Federal Rules of Civil Procedure and shall begin on the date this Order is entered. FED. R. CIV. P. 65. Defendants shall permit Plaintiff to participate in the sacred pipe ceremonies scheduled for May 27, 1997, June 3, 1997 and June 10, 1997.
2. Plaintiff shall follow TDCJ-ID rules with respect to inmate tobacco possession. Plaintiff's failure to comply with such rules shall void the terms of this Order and subject Plaintiff to the full panoply of sanctions under Defendants' Disciplinary Rules and Procedures for Inmates.

Likewise, Plaintiff's failure to comply with TDCJ-ID rules regarding inmate tobacco possession shall be considered a violation of this Court's Order and shall subject Plaintiff to proceedings for contempt of court.

3. Defendants' ability to punish Plaintiff for any other disciplinary infraction remains unaffected by this Order.

IT IS SO ORDERED.

SIGNED at Houston, Texas, this 22th day of May, 1997.



MARCIA A. CRONE
UNITED STATES MAGISTRATE JUDGE