

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

NOV 16 2007

JIMMY KINSLOW,
Plaintiff,

MATTHEW J. DYKMAN
CLERK

vs.

No.

NEW MEXICO CORRECTIONS DEPARTMENT,
JOE WILLIAMS, MIKE HEREDIA,
LUPE MARSHALL, GERMAN FRANCO
and JEFF MULAC,
Defendants.

JURY TRIAL REQUESTED

CN-07-TT64 MV RLP

COMPLAINT

Plaintiff, Jimmy Kinslow, ~~pro se~~, complains of the defendants, New Mexico Corrections Department (hereinafter "NMCD"), Joe Williams, Mike Heredia, Lupe Marshall, German Franco and Jeff Mulac, as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. § 2000cc1-5, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the Constitution of the United States. Therefore, this Court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343.

2. The Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 (a) is invoked to try plaintiff's paralleling state tort claims brought under § 28-22-1 et seq., NMSA 1978, the New Mexico Religious Freedom Restoration Act.

3. Venue is proper pursuant to 28 U.S.C. § 1391 (b), as all events giving rise to plaintiff's claims occurred at the Southern New Mexico Correctional Facility (SNMCF), which is located in Las Cruces, New Mexico, and all defendants reside in this District.

PARTIES

4. Plaintiff, Jimmy Kinslow, is currently incarcerated at the Southern New Mexico Correctional Facility (SNMCF), located at Las Cruces, New Mexico.

5. Defendant New Mexico Corrections Department (NMCD) is an agency and department operating under the authority of the government for the State of New Mexico.

6. Defendant Joe Williams is currently employed as the Secretary of Corrections for the NMCD.

7. Defendant Mike Heredia is currently employed as the Warden at the SNMCF for the NMCD.

8. Defendant Lupe Marshall is currently employed as the Deputy Warden - Programs at the SNMCF for the NMCD.

9. Defendant German Franco is currently employed as the Deputy Warden - Security at the SNMCF for the NMCD.

10. Defendant Jeff Muloc is currently employed as the Chaplain of the SNMCF and coordinates the Native American religious access programs.

11. Each defendant at all times relevant to the events described in this complaint was acting under color of state law.

12. Defendants are being sued in their official capacities for declaratory and injunctive relief only, and, in their individual capacities for monetary damages and injunctive relief.

STATEMENT OF FACTS IN COMMON TO ALL CAUSES OF ACTION

13. Plaintiff, Jimmy Kinslow, is a Native American of the Potawatomi Tribe, whose federal Census Number/Tribal Enrollment Number is 2821A04693.

14. Mr. Kinslow has been a devout practitioner in the Potawatomi spiritual religious traditions since he was twelve (12) years old when he underwent the traditional "Puberty Rites" under the supervision of his full-blooded Great Grandmother, a Potawatomi Medicine Woman, and other Tribal Elders.

13. Mr. Kinslow has adhered to the traditional Potawatomi religious and spiritual traditions and practices throughout his present incarceration beginning in 1978, to date, to the best of his abilities. His religious and spiritual practices are of the single-most important aspect of his life.

14. Mr. Kinslow was returned to the NMCD in October 2004 from Illinois where he had spent the prior nine years, and was sent to the SNMCF in Las Cruces in November 2004 where he was to undergo a series of medical chemotherapy treatments for his serious liver disease.

15. After completing his medical treatments in the summer of 2005 and taking the time necessary to recovering his physical strength, Mr. Kinslow then began requesting of defendants Heredia and Marshall, and the Chaplains Office, that he be allowed to resume his practice of his Native American religious beliefs in conformance with his traditional Potawatomi teachings, beginning in November of 2005. For the year prior to this plaintiff had been told that the prison had no Chaplain so his requests for access to the Sweat Lodge could not be processed or acted on.

16. After making his November 2005 request to be allowed to practice his Native American religious beliefs, Mr. Kinslow was told by defendants Heredia and Marshall that he (Kinslow) was "WHITE," and being "white" he would NOT be allowed access to the prison's Sweat Lodge area in order to practice any Native American religions; that per NMCD Policy CD-101100 the practice of any Native American religions were rigorously restricted to only those persons who could prove to the satisfaction of the prison officials that they were racially descended from an American Indian Tribe, in January 2006.

17. Mr. Kinslow has a "blood quantum" of $\frac{1}{8}$ th Potawatomi.

18. Defendants NMCD, Williams, Heredia, Marshall, Franco and Mulac has a policy, practice and/or custom of imposing a substantial burden on the religious exercise of a person residing in or confined to institutions within the State of New Mexico based upon their racial ancestry, restricting their free exercise of religion, by restricting the practice of any Native American religions only to persons who can prove their racial Native American ancestry, under color of state law. Defendant Williams personally signed CD-101100 making race the basis for restricting a persons free exercise of religion official "policy" within the New Mexico prison system.

19. Restricting the practice of Native American religions only to those persons of Native American racial ancestry is unconstitutional. It offends the

fundamental constitutional right to practice the religion of one's choice. NMCD Policy CD-101100 is akin to a requirement that practicing Catholics prove an Italian racial ancestry, Jews to prove a direct Hebrew ancestry or that Muslims trace their roots to Mohammed. Under the Constitution, the freedom to believe, or not to believe, in a religious faith is reserved not to a select class of citizens, but is the basic right of all persons regardless of their racial ancestry. Plus, Native American religious practitioners should possess the same right to seek out converts from the general population as is provided to Christians, Jews or Muslims.

20. Under protest at having to prove his racial ancestry before being allowed to freely express his religious beliefs, Mr. Kinslow contacted the Tribal Rolls Director for the Potawatomi Tribe in Oklahoma requesting copies of his Enrollment Papers or other identification proving his descent.

21. Tribal Rolls Director Charles N. Clark responded in or about ~~January~~ **January** 2006 issuing Mr. Kinslow his "Member Identification Card" ~~with his~~ with his Citizen Potawatomi Nation Tribal Roll Number.

22. Mr. Kinslow then presented this "proof" of his racial descent to defendants Heredia and Marshall in January 2006, with the request that he now be allowed to practice his Potawatomi religious beliefs.

23. Defendants Heredia and Marshall then denied this request, stating that since Mr. Kinslow was in Administrative Segregation he would not be allowed to go to the Sweat Lodge in order to practice his religious beliefs, and that no other reasonable alternative would be provided to offset this substantial burden upon Mr. Kinslow's religious exercise of the Faith of his choice, in January 2006.

24. This absolute denial of Mr. Kinslow's access to the Sweat Lodge in order to freely exercise his religious beliefs based upon his Admin. Seg. placement was in knowing violation of NMCD Policy CD-143000, which provides that Native American prisoners housed in Admin. Seg. will be allowed access to the institution's Sweat Lodge ONCE PER MONTH for six consecutive hours.

25. Mr. Kinslow then filed his Institutional Grievance over the racial discrimination issue and the total denial of religious access on January 25, 2006, but the grievance was never answered and all his efforts to appeal it to the next levels were ignored in violation of CD-150500, and pursuant to CD-150500 (6)(5), since more than 90 working days

has passed without an answer to the 1-25-06 grievance, Mr. Kinslow is deemed by NMCD Policy to have exhausted his administrative remedies for that specific complaint.

26. For the entire period which he was held in Admin. Seg. Mr. Kinslow was completely denied the right to freely express or exercise his sincerely-held Native American religious beliefs, with no other reasonable alternative measures offered or provided to alleviate this unreasonable denial of religious expression, while all other similarly-situated Native American prisoners were allowed regular access to the Sweat Lodge area.

27. Mr. Kinslow, and all other Native American prisoners, can only perform the rituals and ceremonies central to their religious worship at the Sweat Lodge due to the fact that the New Mexico prison system has enacted a "no smoking" policy, and the Native American religious expression involves burning certain herbs and Prayer smoke offerings of tobacco, a Sacred Plant, in Ceremonial Prayer Pipe rituals. Additionally, Potawatomi prayers can only be carried into the Spirit World upon/within the smoke from the Sacred Plant Tobacco.

28. Mr. Kinslow was released from Admin. Seg. into Level III General Population on January 23, 2007, and he immediately renewed his requests to be allowed access to the Sweat Lodge in order to practice his religious beliefs, to defendants Mulac, Heredia, Marshall and Franco in person and in letters, requesting the weekly access for a minimum of six consecutive hours each week pursuant to CD-101101 (J)(1) and § 33-10-1 et seq., NMSA 1978.

30. Defendant Mulac saw Mr. Kinslow on February 12, 2007, and told him that he was scheduled for access to the Sweat Lodge on February 25, 2007, since his "proof" of racial ancestry was proven to the prison officials satisfaction after calling the Tribal Rolls Office in Oklahoma.

31. On February 22, 2007, defendant Mulac told Mr. Kinslow that his 02-25-07 scheduled Sweat Lodge was cancelled upon the direct orders of defendants Marshall, Franco and Heredia, and that he would NEVER be allowed access to the Sweat Lodge area, and that no other alternative access would be provided in order to accommodate Mr. Kinslow's ability to practice his Native American religious beliefs, in a knowing and deliberate denial of access in order to allow him free exercise of religion.

32. Upon the recommendation of Unit Manager James Thomas in his Informal Complaint, Mr. Kinslow filed his Formal Grievance on February 23, 2007, and Grievance Officer Pablo Martinez acknowledged receipt of the grievance on February 27, 2007, assigning it the Grievance File No. 07-02-026.

33. On February 24, 2007, Mr. Kinslow wrote the Compliance Monitor's Office over this total denial of access to the Sweat Lodge, and ACA Compliance Monitor Florence Garcia responded on February 26, 2007 in a Memo stating that Mr. Kinslow would not ever be allowed access to the Sweat Lodge area in order to be able to freely exercise his religious beliefs, also stating that she could find no "proof" of his racial descendancy to satisfy the required "blood" documentation. Obviously, it was known that this acted as an absolute bar to Mr. Kinslow's ability to freely express his sincere religious and spiritual beliefs.

34. Mr. Kinslow's 02-23-07 Grievance (No. 07-02-026) was not answered until April 30, 2007, after several complaints, when Unit Manager James Thomas called plaintiff into his office to discuss the grievance, which upheld the defendants decision to ban Mr. Kinslow from being able to freely worship the Creator at the Sweat Lodge. Unit Manager Thomas did not agree with this decision, and with Mr. Kinslow's permission "appealed" the denial of the grievance directly to the NMCD's Office of General Counsel for a legal decision in the appeal, and he also forwarded the appeal to the ACA Compliance Monitor's Office, on April 30, 2007.

35. On May 5, 2007, Mr. Kinslow filed his 'Notice of Claim' with the Risk Management Division in compliance with 41-4-16, NMSA 1978, to preserve his right to file a complaint for violations under the New Mexico Religious Freedom Restoration Act, § 28-22-1 et seq., NMSA 1978, for the defendants violation of the Native American Counseling Act provisions, § 33-10-1 et seq., NMSA 1978, and the federal claims.

36. On May 16, 2007, Unit Manager James Thomas informed Mr. Kinslow that in response to his grievance appeal (File No. 07-02-026), that the NMCD's Deputy General Counsel George F. Heidke had telephoned him (Thomas), Chaplain Mulac, Dep. Wardens Marshall and Franco, and Warden Heredia, and had personally told each of them that by law they had to give Mr. Kinslow access to the Sweat Lodge for the statutorily-required minimum of six consecutive hours per week. This decision fully exhausted administrative remedies for this issue through the institutions grievance procedures.

37. Defendants Heredia, Marshall, Franco and Mulac apparently resisted implementing this decision for over two more months during which they continued to refuse Mr. Kinslow the right of access to the Sweat Lodge, finally relenting and allowing plaintiff to go to the Sweat Lodge on July 27, 2007.

38. But defendants Heredia, Marshall, Franco and Mulac then did, in obvious anger over being forced to allow Mr. Kinslow access to the Sweat Lodge, retaliated by refusing to provide him with any of the required items and materials he needed in order to actually perform his rituals, Ceremonies or Sacred Prayers, to wit, providing NO Sacred Plant Tobacco, NO Sage, NO Sacred Pipe required to perform Prayers and the Sweat Lodge Ceremony, etc., all items which were clearly required in order to freely express his religious beliefs and spiritual practices. Defendants additionally, in retaliation, declare that Mr. Kinslow would only be allowed access to the Sweat Lodge once a month instead of the legally-required weekly access of a minimum six hours, and that he would only be allowed to go by himself which would prevent him from having any help with the enormous amount of preparatory work involved in conducting a Sweat Lodge Ceremony.

39. By being denied the items and materials necessary to actually perform the rituals and ceremonies involved, and in sufficient quantities, this was the same ~~in~~ actual effect as if Mr. Kinslow was still being denied access to the Sweat Lodge in the first place, and defendants well knew this.

40. Mr. Kinslow was next allowed to go to the Sweat Lodge on August 17, 2007, but was again denied any Sage, Smudge Sticks required for purification, no Flat Cedar, and less than a gram of the Sacred Plant Tobacco for use at the Sweat Lodge area, when he required at least 1/2 oz. in order to perform his Prayer Rituals, and he was refused a Sacred Pipe.

41. On August 24, 2007 the new Unit Manager Brian Johnson, at defendant Marshall's direction, gave Mr. Kinslow another Memo dated 8-10-07 stating that he would not ever be allowed weekly access, that Policy (and State law) did not state that Mr. Kinslow was entitled to weekly access to the Sweat Lodge, and he told Mr. Kinslow that he and Ms. Marshall would not approve his request to at least be allowed to perform a short 2-hour Prayer Ceremony at the Unit for the 3 weeks he was not allowed to go to the Sweat Lodge as a reasonable compromise.

42. On September 14, 2007, Mr. Kinslow was again allowed to go to the Sweat Lodge after a month had passed, but was again denied any Sage, and was issued less than a gram of the Sacred Plant

Tobacco, which was deliberately mixed with Cedar, making it impossible for use in Prayers or to use in the Sacred Ceremonial Pipe which was finally provided. Cedar must not ever be used in a Sacred Pipe, it would be a sacrilege, and to Pray tobacco must be used in the Pipe.

43. On September 17, 2007, Mr. Kinslow ~~asked~~ defendant Mulac and Unit Manager Johnson that he be given access to the Sweat Lodge for a few hours on ~~either~~ September 24th or 25th, days set aside by the state and federal governments as American Indian Religious Holy Days in order to commemorate the Native American Tribes, so that he could perform Prayers and memorialize the forceful removal of the Potawatomi Tribes from their ancestral lands, and to honor the traditional changing of the seasons.

44. This request to observe the American Indian Religious Holy Days was DENIED on September 24th, when defendant Mulac told Mr. Kinslow that defendants Marshall, Franco and Heredia had rejected his request, stating that plaintiff would only be allowed monthly access and no more, and that his request for the proper quantities of the Sacred Plant Tobacco needed in order to conduct Prayers was DENIED, that he would only be given a small amount for use at the Sweat Lodge. These denials was made despite their actual knowledge that the quantity provided is insufficient to conduct Prayers or other Rituals.

45. Defendants NMCD, Heredia, Marshall, Franco and Mulac has a policy, practice and/or custom of imposing substantial burdens on prisoners religious exercise of their Native American faith by dictating and unreasonably restricting or in cases denying the items and materials necessary for Native American prisoners to practice their traditional religious beliefs, or allowing proper physical access to the only areas of the institution where Native American prisoners are allowed to freely practice their religious beliefs.

46. Defendants NMCD, Heredia, Marshall, Franco and Mulac has a policy, practice and/or custom of making it impossible for devout Native American prisoners to practice daily observances in conformance with their sincere religious beliefs, substantially burdening and discouraging their free exercise of religion while offering no reasonable alternatives to offset these unreasonable restrictions,

47. These Policies, practices and/or customs are not in furtherance of a legitimate governmental interest, they are not the least restrictive means of furthering any compelling legitimate governmental interest, are not rules of general applicability to all other similar religious beliefs, and it discriminates against the practitioners of the Native American religions.

CAUSES OF ACTION

COUNT ONE: RACIAL DISCRIMINATION

48. Defendants policy, practice and/or custom of restricting the practice of Native American religion to only those persons who can prove Native American racial ancestry, and forcing plaintiff to first prove his racial ancestry before being allowed to freely exercise his sincere religious beliefs constituted an unreasonable and substantial burden upon plaintiff's free exercise of the religious belief of his choice based upon his race, in violation of his statutory rights secured under 42 U.S.C. § 2000cc 1-5, and entitles him to full judicial relief under this statute.

49. Defendants policy, practice and/or custom of restricting the practice of Native American religion to only those persons who can prove Native American racial ancestry, and forcing plaintiff to first prove his racial ancestry before being allowed to freely exercise his sincere religious beliefs violated plaintiff's fundamental rights under the Free Exercise Clause of the First Amendment to the Constitution of the United States and entitles him to full judicial relief under federal law pursuant to 42 U.S.C. § 1983 for racial discrimination.

50. Defendants policy, practice and/or custom of restricting the practice of Native American religion to only those persons who can prove Native American racial ancestry, and forcing plaintiff to first prove his racial ancestry before being allowed to freely exercise his sincere religious beliefs unreasonably restricted his free exercise of religion, which constituted a state tort violation under the New Mexico Religious Freedom Restoration Act (§ 28-22-1 et seq., NMSA 1978) of the plaintiff's state statutory and constitutional rights under the Native American Counseling Act (§ 33-10-1 et seq., NMSA 1978) and the Free Exercise Clause of the State Constitution, entitling him to declaratory and injunctive relief and monetary damages pursuant to the Tort Claims Act (§ 41-4-1 et seq., NMSA 1978) under current state law.

Prayer For Relief Under Count One

51. Plaintiff seeks DECLARATORY RELIEF against Defendants NMCD, Heredia, Williams, Marshall, Franco and Mulac in their Official Capacities pursuant to 42 U.S.C. § 2000cc 1-5 and 42 U.S.C. § 1983 and § 28-22-4 (A)(D), NMSA 1978, as follows:

(i) that NMCD Policy CD-101100 of restricting the practice of the

Native American religion only to those persons who can prove their Native American racial ancestry is unconstitutional on its face ;

(ii) that the NMCD's policy and practice and custom of restricting the practice of the Native American religion solely to those persons able to prove their Native American racial ancestry imposed an unreasonable substantial burden upon Plaintiff's (and all other NMCD prisoners) Free exercise of the religion of their choice in violation of the Free Exercise Clause of the First Amendment to the United States Constitution based upon race, an impermissible action serving no legitimate governmental purpose ; and,

(iii) that Defendants NMCD, Williams, Heredia, Marshall, Franco and Mulac's vigorous enforcement of the racial requirements of NMCD Policy CD-101100 knowingly and deliberately subjected Plaintiff to racial discrimination in order to deny his free exercise of religion in violation of both federal and state law.

52. Plaintiff seeks INJUNCTIVE RELIEF against Defendants NMCD, Williams, Heredia, Marshall, Franco and Mulac in their Official capacities under Court One pursuant to 42 U.S.C. § 2000cc1-5 and 42 U.S.C. § 1983 and § 28-22-4 (A)(1), NMSA 1978, as follows:

(i) that those portions of CD-101100 requiring proof of Native American racial ancestry before being allowed to practice or for any non-Native American NMCD prisoner from choosing to practice any Native American religion of his choice be EXPUNGED, and the Policy rewritten under the supervision of a Court Appointed Special Master conversant in the Native American religious and spiritual belief system to allow equal access for all NMCD prisoners to the Native American religions regardless of their race ; and,

(ii) that all Defendants, and all future successors, be forever enjoined from ever again placing any type of racial requirement or any other type of prerequisites which would prevent or restrict any prisoner the freedom to believe, or not to believe, in a religious faith, or limiting a religious faith only to a select class of persons while excluding others.

53. Plaintiff seeks COMPENSATORY DAMAGES against Defendants NMCO, Williams, Heredia, Marshall, Franco and Mulac in their Individual Capacities, separately and individually, for their knowing and deliberate denial of his free exercise of religion based upon proving racial ancestry, as follows:

(i) Monetary damages pursuant to violations of 42 U.S.C. § 2000cc1-5 under Court One in an amount to be ~~determined~~ by a Jury upon the trial of the case;

(ii) Monetary damages against Defendants for their separate federal statutory violations of Plaintiff's fundamental rights under the Free Exercise Clause of the First Amendment to the United States Constitution under Court One pursuant to 42 U.S.C. § 1983, in an amount to be determined by a Jury upon the trial of the case; and,

(iii) Monetary damages pursuant to the Tort Claims Act (§ 41-4-1 et seq., NMSA 1978) of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) authorized under § 28-22-4 (A)(2), NMSA 1978, for each Defendants' separate violations of the Native American Counseling Act, § 33-10-1 et seq., NMSA 1978, and violations of the Free Exercise Clause of the New Mexico State Constitution.

54. Plaintiff seeks the imposition of PUNITIVE DAMAGES under his federal claims against each Defendant, in their Individual Capacities, in an amount to be determined by a Jury upon the trial of the case.

55. Plaintiff would additionally seek reasonable attorney fees and costs under Court One under both the federal and state statutes.

56. Plaintiff demands a jury trial on all issues under Court One.

COUNT TWO: DENIAL OF FREE EXERCISE OF RELIGION

57. Defendants policy, practice and/or custom described in the Complaint where they first completely denied Plaintiff with access to the Sweat Lodge for 995 days, then unreasonably restricting his access to once a month at the Sweat Lodge and then knowingly denying him the items and materials necessary to the practice of his sincere Native American religious beliefs, constituted the unreasonable substantial burden upon his free exercise of religion in violation of 42 U.S.C. § 2000cc1-5, entitling Plaintiff to full judicial relief under this federal statute.

58. The Defendants policy, practice and/or custom described in the Complaint where they first completely denied Plaintiff access to the Sweat Lodge for the first 995 days, then unreasonably restricted his access to the Sweat Lodge to once per month while additionally denying him the items and materials necessary to the practice of his sincere Native American religious beliefs or the necessary quantities of the items and materials central to his religious expression, effectively denied Plaintiff of his fundamental rights secured under the Free Exercise Clause of the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, entitling Plaintiff to full judicial relief under this federal statute.

59. Defendants policy, practice and/or custom described in the Complaint where they first completely denied Plaintiff access to the Sweat Lodge for the first 995 days, then unreasonably restricted his access to the Sweat Lodge to once per month while then knowingly and deliberately denying him the items and materials necessary to the practice of his sincere Native American religious beliefs or the necessary quantities of the items and materials central to his religious expression, effectively denied and/or unreasonably restricted Plaintiff's right to Free exercise of religion secured under the Free Exercise Clause of the State of New Mexico Constitution and state statutory law, constituting a state tort in violation of the New Mexico Religious Freedom Restoration Act, (§ 28-22-1 et seq., NMSA 1978) For the Defendants knowing and deliberate violation of Plaintiff's statutory rights pursuant to the New Mexico Native American Counseling Act, (§ 33-10-1 et seq., NMSA 1978), entitling him to declaratory and injunctive relief, and monetary damages pursuant to the Tort Claims Act (~~41~~ 4-1 et seq., NMSA 1978) under current state law.

Prayer For Relief Under Count Two

60. Plaintiff seeks DECLARATORY RELIEF against Defendants NMCD, Williams, Heredia, Marshall, Franco and Mulac, in their Official Capacities under Count Two, pursuant to 42 U.S.C. § 2000cc 1-5, 42 U.S.C. § 1983 and § 28-22-4 (A)(1), as follows:

- (i) that the Defendants refusal to allow Plaintiff access to the Institutions Sweat Lodge for the first 810 days of his confinement in administrative segregation, and the refusal to provide any type of alternative access, violated the Plaintiff's rights secured under the Free Exercise Clause of the First Amendment to the United States Constitution;

(ii) that NMCD Policy CD-143000 restricting Native American prisoners confined in administrative segregation from access to the Sweat Lodge to only once per month violates the First Amendment's Free Exercise Clause in that it serves to punish the prisoner's alleged misbehavior by restricting his opportunity to freely exercise his religious beliefs. If allowing Native American prisoners monthly access does not pose a threat to the security of the institution, then allowing weekly access in compliance with § 33-10-4 (B)(2) & (3) would not threaten security. The withholding or limiting access to religious worship is not a constitutional method of punishment, and any prison policy allowing it is unconstitutional.

(iii) that the actions of Defendants in denying Plaintiff access to the Sweat Lodge from January 23, 2007 until July 27, 2007 after his release into Level IV General Population violated Plaintiff's rights secured under the Free Exercise Clause of the First Amendment and state law under statute § 33-10-4 (B)(2+3), NMSA 1978;

(iv) that the Defendants actions in only allowing Plaintiff monthly access to the Sweat Lodge when by state statute (33-10-4 (B)(3)) he was entitled to weekly access denied his free expression of religion rights secured under the Free Exercise Clause of the First Amendment;

(v) that the Defendants actions in refusing to provide Plaintiff with the necessary items and materials required in the practice of his Native American religious beliefs, and denying the necessary quantities, served to impose an improper substantial burden upon the Plaintiff effectively preventing him from religious worship, violating the Free Exercise Clause and state statute § 33-10-4 (B)(2).

61. Plaintiff seeks INJUNCTIVE RELIEF against Defendants NMCD, Williams, Heredia, Marshall, Franco and Mulae, in their Official Capacities under Court Two pursuant to 42 U.S.C. § 2000c1-5, 42 U.S.C. § 1983 and § 28-22-4 (A)(1), NMSA 1978, as follows:

(i) that the portion of NMCD Policy CD-143000 restricting Native American prisoners confined within administrative segregation to only once a month access to the Sweat Lodge be expunged as unconstitutional, and Policy rewritten to allow weekly access in compliance with state law § 33-10-4 (B)(3) under the supervision of a Court Appointed Special Master conversant in Native American religious and spiritual practices;

(ii) that Defendants will immediately begin allowing Plaintiff with weekly access to the Sweat Lodge, and are forever enjoined from denying or restricting his weekly access absent any emergency situation; and,

(iii) that Defendants will from this day forward provide Plaintiff with those items and materials necessary in the practice of his Native American religious rites and ceremonies, in the required quantities, and are forever enjoined from denying and/or limiting the quantity of the materials to levels where Plaintiff finds it impossible to perform his religious rites and ceremonies.

62. Plaintiff seeks COMPENSATORY DAMAGES against Defendants NMCD, Williams, Heredia, Marshall, Franco and Mulac, in their Individual Capacities under Count Two, separately and individually, for their knowing and deliberate denial of Plaintiff's free exercise of religion, as follows:

(i) Monetary damages pursuant to violations of 42 U.S.C. 2000cc 1-5 under Count Two in an amount to be determined by a Jury upon the trial of this case;

(ii) Monetary damages against Defendants for their separate Constitutional and federal statutory violations of Plaintiff's fundamental rights under the Free Exercise Clause of the First Amendment to the United States Constitution under Count Two pursuant to 42 U.S.C. § 1983, in an amount to be determined by a Jury upon the trial of this case; and,

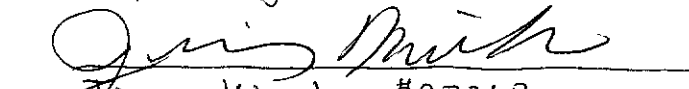
(iii) Monetary damages pursuant to the Tort Claims Act (41-4-1 et seq., NMSA 1978) of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) authorized under § 28-22-4 (A) (2), NMSA 1978, for each Defendants separate violations of the New Mexico Native American Counseling Act, § 33-10-1 et seq., NMSA 1978, and violations of the Free Exercise Clause of the New Mexico State Constitution.

63. Plaintiff seeks the imposition of PUNITIVE DAMAGES under his federal claims for Count Two against each Defendant, in their Individual Capacities, in an amount to be determined by a Jury upon the trial of this case.

64. Plaintiff would additionally seek reasonable attorney fees and costs under Count Two under both the federal and state statutes.

65. Plaintiff demands a Jury Trial on all issues under Count Two.

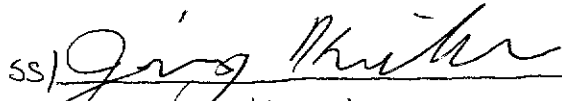
Respectfully submitted,


Jimmy Kinslow #27363
SNM&F, Unit 2BD-109
P.O. Box 639
Las Cruces, NM 88004-0639

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Jimmy Kinslow, do hereby declare under the penalties for perjury that the foregoing facts contained in this Complaint are true and correct to the best of my knowledge and belief, and that this action is not taken in bad faith nor is it frivolous, nor have I ever had a legal action dismissed under § 1915 for a failure to state a claim or frivolous.

DATED: October 31, 2007

ss/ 
Jimmy Kinslow

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with 2B D-109
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MATTHEW J. DYKMAN
CLERK