FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
NOV 24 1998
JAMES W McCORMACK, CLERK
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

LARRY WAYNE JONES
ADC #70147 PLAINTIFF

VS. NO. PB-C-78-113

JAMES MABRY, ET AL. DEFENDANTS

FINDINGS AND RECOMMENDATIONS

Now pending before the Court is plaintiff's motion for contempt/and or breach of contract citation (docket entry #450). According to the motion, plaintiff is a "charter member of 'Nazarite' plaintiff class in Briggs, et al. v. Housewright, et al., PB-C-78-113". The motion asserts that pursuant to a Judgment filed on October 31, 1979, the parties agreed to adhere to the terms of that certain Mediated Settlement Agreement filed on October 24, 1979 (the "1979 Settlement Agreement"). The 1979 Settlement Agreement is attached as an exhibit to plaintiff's motion and states in pertinent part:

> 2. Defendants agree that the Arkansas Department of Corrections will not interfere with the practice of religion by any inmate, insofar as the practice of religion does not abridge or interfere with the rules and regulations of the Arkansas Department of Corrections and with the legitimate correctional interests of security, safety, and rehabilitation as set out in the following paragraph of the Inmate Handbook:

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> An inmate may abstain from eating those food items served to the general population which are prohibited by his religion. The inmate may receive added portions of non-rationed food items from the serving line which in no way cause a violation of the restriction of the faith he professes.

and as set out in the personal hygiene and grooming regulations of the Board of Corrections, September 16, 1979, and attached herewith.

> . . .6. Plaintiffs and defendants agree to abide by the rules of the Arkansas Department of Corrections relating to personal hygiene and grooming, as approved by the Board of Corrections of 16 September 1979 and incorporated herewith.

The personal hygiene and grooming regulations effective in October 1979 provide in relevant part:

> E. Barber or beautician service shall be provided as needed. Hair shall be kept neat and clean. There shall be no standard hair length or style required.
>
> 1. Male inmates may have sideburns, mustaches, and beards. So long as good grooming standards are maintained (neat and clean), hair styles - including hair length, mustaches, sideburns, and beards - will be left to individual choice.
>
> 2. All inmates, male and female, shall keep their hair neat and clean and follow reasonable health and safety standards. . . .

See Plaintiff's Appendix 4, Personal Cleaning and Grooming for Inmates, dated September 16, 1979 (the "1979 Grooming Regulations").

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In violation of the 1979 Settlement Agreement, which incorporates by reference the 1979 Grooming Regulations, the motion asserts that as of April 20, 1998, defendants "have required plaintiff, against his will, to cut his hair, shave his beard, and trim his mustache and sideburns in accordance with the recently adopted 'official standardized form' governing both hair length and grooming style". The current grooming policy, Administrative Directive 98-04, Personal Cleaning and Grooming for Inmates, effective April 20, 1998 (the "1998 Grooming Policy"), provides as follows:

I. POLICY:

> To provide for the health and hygiene of incarcerated offenders, and to maintain standard appearance throughout the period of incarcerations, minimizing opportunities for disguise and for transport of contraband and weapons.

II. PROCEDURES:

> A. All inmates, including current inmates, are expected to conform with the grooming policy. New inmates whose hair does not meet standards will have their hair cut during the intake process prior to being photographed.
>
> B. Inmates' hair must be worn loose, clean and neatly combed. No extreme styles are permitted, including but not limited to corn rows, braids, dread locks, Mohawks, etc. The hair of male inmates mut be cut so as to be above the ear, with sideburns no lower that the middle of the ear lobe and no longer in the back

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> than the middle of the nape of the neck. Female inmates may wear their hair no longer that shoulder length.
>
> C. No inmates are permitted to wear or possess hair pieces.
>
> D. No inmates will be permitted to wear facial hair other than a neatly trimmed mustache that does not extend beyond the corner of the mouth or over the lip. Medical staff may prescribe that inmates with a diagnosed dermatological problem may wear facial hair no longer than one quarter of an inch. Inmates must present MSF 207 upon demand.
>
> E. Nails on hands and feet will be clipped so as not to extend beyond the tips of fingers or toes.
>
> F. Inmates will maintain standards of hygiene so as not to create a health hazard or public nuisance. If personal hygiene falls below these standards, the Chief of Security may order that the necessary steps be taken to force compliance. For mental health services and medical housing, this authority is vested in the staff person, supervising the treatment area.
>
> G. Hygiene, but not grooming standards, are applicable to individuals housed in jails operated by ADC. Grooming standards may be deemed applicable for individuals with escape histories or who have been known to smuggle weapons or contraband in their hair.

<u>See</u> Plaintiff's Appendix 5.

In response, defendants Norris and Harmon have filed a motion for ruling or in the alternative, motion for immediate termination or modification of the settlement agreement (docket entry #498). Defendants' motion raises numerous arguments. Most significantly, defendants contend that the 1979 Settlement

Agreement should be terminated pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (codified in part at 18 U.S.C. § 3626), enacted on April 26, 1996 ("PLRA"). The termination provisions of PLRA, 18 U.S.C. § 3626(b)(2), specify that defendants are entitled to "immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal rights, and is the least intrusive means necessary to correct the violation of the Federal rights." Under 18 U.S.C. § 3626(b)(3), a court may not terminate relief if it finds that there is a "current and ongoing violation of the Federal right" and that the relief is narrowly drawn, extends no further than necessary and is the least intrusive means possible to correct the violation. Prospective relief is defined as "all relief other than compensatory monetary damages," id. § at 3626(g)(7) and relief expressly includes "consent decrees." Id. at § 3626(g)(9). Congress specified that the termination provisions of PLRA would apply to consent decrees which were entered into prior to the passage of PLRA. In a separate section entitled "Application of Amendment", Congress stated:

> Section 3626 of title 18, United States Code, as amended by this section, shall apply with respect to all prospective relief whether such relief was originally granted or amended before, on, or after the date of the enactment of this title.

Pub.L.104-134, Title I, § 101[a][Title VIII, § 802(b)(1)], April 26, 1996, 110 Stat. 1321-70; renumbered Title I Pub.L. 104-140 § 1(a), May 2, 1996, 110 Stat. 1327.

In Gavin v. Branstad, et al., 122 F.3d 1081 (8th Cir. 1997), inmates assigned to disciplinary segregation at the Iowa State Prison commenced a class action lawsuit in 1978 challenging the constitutionality of the conditions of their confinement. The parties settled the dispute and entered into a settlement agreement approved by the district court in June 1984. The district court retained jurisdiction to enforce the terms of the settlement agreement and four years later, approved a supplement to the agreement. Shortly after the enactment of PLRA, State of Iowa defendants filed a motion to terminate prospective relief in the case. In response, the inmates challenged the constitutionality of PLRA, asserting that the immediate termination provisions violate principals of separation of powers, equal protection and due process. The United States intervened in the case to defend the constitutionality of PLRA. The district court denied State of

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Iowa defendants' motion to terminate relief and decided that the immediate termination provisions PLRA violated the principal of separation of powers by requiring federal courts to reopen final judgments. The United States and State of Iowa defendants appealed the decision of the district court. On appeal, the Eighth Circuit Court of Appeals reversed the decision holding that the 'immediate termination' provisions of PLRA did not violate the separation of powers doctrine, equal protection, or due process.[1]

Based on the Eighth Circuit's decision in Gavin, it is irrefutable that the termination provisions of PLRA are constitutional. Under 18 U.S.C. § 3626(b)(3), a court should not terminate relief if it finds that there is a "current and ongoing violation of a Federal right" and that the relief is narrowly drawn, extends no further than necessary and is the

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Other circuits have upheld the constitutionality of the termination provisions. See Hadix v. Johnson, 133 F.3d 940 (6th Cir. 1998)(PLRA's termination provisions do not violate constitutional separation of powers principles); Dougan v. Singletary, 129 F.3d 1424, 1427 (11th Cir. 1997)(district courts retain jurisdiction to amend consent decrees as significant changes in law and fact may requires); Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649 (1st Cir. 1997)(consent decrees mandating forward-looking injunctions are final judgments subject to revision to extent required by equity); Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996)(judgment providing for injunctive relief remains subject to subsequent changes in the law); and Benjamin v. Jacobson, 124 F.3d 162 (2d Cir. 1997)(termination merely limits remedial jurisdiction of federal courts).

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least intrusive means possible to correct the violation. The statute clearly defines "prospective relief" as "all relief other than compensatory monetary damages". Id. § 3626(g)(7). After careful review of the entire record, the Court finds that neither plaintiff, nor movants[2] have established the facts necessary to meet the standard which would permit the Court to deny defendants' motion to terminate the 1979 Settlement Agreement.[3] Furthermore, no specific court findings meeting the standards of PLRA were made with respect to the 1979 Settlement Agreement. The motion to terminate should be granted.

In his motion for contempt plaintiff essentially argues that defendants should be held in contempt because they "unilaterally" terminated the 1979 Settlement Agreement in April 1998 prior to petitioning the Court for approval. Plaintiff seeks to have defendants ordered into compliance with the terms of the 1979 Settlement Agreement. The inherent power of the

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[2] Inmates Roesevelt Hayes, Winston Holloway, Donald Peterson, Larry Green and Ronnie Briggs have filed motions to be added as plaintiffs in this matter.

[3] Plaintiff cannot establish that the 1998 Grooming Policy is unconstitutional. The Eighth Circuit has made it abundantly clear that hair length regulations do not violate a prisoner's right to free exercise of religion as protected by the First Amendment. Hamilton v. Schriro, 74 F.3d 1545, 1551 (8th Cir. 1996).

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Court to hold one in contempt must be exercised with restraint and discretion. Chambers v. NASCO, Inc., 501 U.S. 32, 34 (1991). In light of the Court's finding that plaintiff has failed to establish facts necessary to meet the standard which would permit the Court to deny defendants' motion to terminate, the Court finds that ordering defendants to comply with the 1979 Settlement Agreement would be meaningless. The motion should be denied.

It is, therefore, recommended that the motion for contempt and/or breach of contract (docket entry #450) be, denied.

It is, further, recommended that the motion for immediate termination of the 1979 Settlement Agreement under the provisions of PLRA (docket entry #498) be, granted. Any pending motions should be denied.

DATED this 24 day of November 1998.

UNITED STATES MAGISTRATE JUDGE

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UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
UNITED STATES POST OFFICE & COURTHOUSE
POST OFFICE BOX 1958
LITTLE ROCK, ARKANSAS 72203

H. DAVID YOUNG
UNITED STATES MAGISTRATE JUDGE

(501) 324-6107

November 24, 1998

Mr. Larry W. Jones
ADC #70147
2501 State Farm Road
Tucker, AR 72168

RE: Jones v. Mabry, et al.
Case No. PB-C-78-113

Dear Mr. Jones:

Attached is a recommended disposition of this case, which has been prepared by this office and submitted to United States District Judge Henry Woods.

Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of this letter. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the hearing before the District Judge (if such a hearing is granted was not offered at the hearing before the Magistrate Judge.

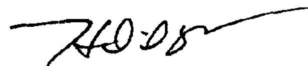
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol, Suite 402
Little Rock, AR 72201

Very truly yours,



H. David Young
United States
Magistrate Judge

HDY/pg
Enclosures

cc: Honorable Henry Woods, United States District Judge
Sara F. Merritt, Attorney General's Office
File