

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PRISON LEGAL NEWS, et. al.,)	Civil Action No. 2:10-02594-MBS
)	
)	
Plaintiffs;)	
)	
UNITED STATES OF AMERICA,)	COMPLAINT IN INTERVENTION
)	PURSUANT TO 42 U.S.C. § 14141 AND
Applicant for Intervention)	42 U.S.C. § 2000cc. (CIVIL RIGHTS)
)	
)	
)	
v.)	
)	
BERKELEY COUNTY SHERIFF’S)	
OFFICE and SHERIFF H.)	
WAYNE DeWITT,)	
)	
Defendants.)	

THE UNITED STATES OF AMERICA, by its undersigned attorneys, hereby files this Complaint in Intervention and alleges upon information and belief:

INTRODUCTION

1. The Berkeley County Sheriff’s Office and Sheriff H. Wayne DeWitt (collectively, “Defendants”) prohibit receipt and possession of virtually all mail and other expressive materials by persons incarcerated at the Berkeley County Detention Center (“BCDC”). Prisoners at BCDC may not receive books, magazines, newspapers or other expressive materials sent through the mail, regardless of whether the materials are routed directly from publishers or sent by friends, family members or community organizations. In the past two years, Defendants have denied numerous prisoner requests for expressive material, including educational materials required by a correspondence education course, other books, magazines and legal newsletters. Defendants

compound these restrictions by failing to provide a library or any other avenue through which prisoners can access expressive material. These practices violate prisoners' rights secured by the Speech Clause of the First Amendment to the Constitution

2. Defendants also prohibit a wide range of religious materials to BCDC prisoners of various faiths. Prisoners may not possess any religious publications other than the single foundational text for their religions, and Defendants make no accommodation for prisoners whose religious exercise requires access to multiple religious materials. As one example, Defendants denied access to pamphlets, newsletters and other Christian publications sought by an inmate incarcerated at BCDC for much of the past two years. Further, non-Christian inmates often cannot access even the single foundational text BCDC's policy purports to allow. Defendants informed Bryan Adkins, a Jewish prisoner seeking a Torah, that the prison only provides inmates with copies of the King James Bible. To access a Torah, Defendants informed Mr. Adkins that he must locate a family member to personally deliver the book to BCDC. Defendants have erected similar barriers to Muslim prisoners seeking copies of the Koran, informing prisoners Marvin Henderson and JaMichael Howard that they could possess a Koran only if family members personally delivered the holy book to the prison. And even if a prisoner is able to arrange for personal delivery of a religious text, Defendants may not allow the prisoner to receive it. Defendants recently refused to provide a copy of the Koran to Mr. Howard after he arranged for his girlfriend to personally deliver it to the facility.

3. Indeed, the only book, magazine, newspaper or religious publication that Defendants consistently permit prisoners to possess is the Bible. Defendants distribute copies of

the King James Bible to prisoners at no cost and allow prisoners to purchase other versions of the Bible from BCDC's on-site Commissary.

4. These practices discriminate against non-Christian prisoners in violation of the First Amendment's Establishment Clause. Moreover, they substantially burden the religious exercise of all prisoners – Christians, Jews, Muslims or those of other faiths – who require materials other than the Bible to practice their religion. In the past year, Defendants denied Jewish prisoner Bryan Adkins access to a Torah and prohibited Muslim inmate JaMichael Howard from receiving a copy of the Koran. Because Defendants cannot show that imposing a substantial burden on these and other prisoners is the least restrictive means of furthering a compelling government interest, Defendants' policies and practices contravene RLUIPA.

5. The conduct of the defendants constitutes a pattern or practice of denial of a federal right – specifically the Speech and Establishment Clauses of the First Amendment to the Constitution - by a law enforcement agency in violation of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”). In addition, the defendants violate the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (“RLUIPA”) by unlawfully impeding the religious exercise of BCDC prisoners whose religious exercise requires access to materials other than the Bible.

JURISDICTION, STANDING, AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

7. The United States is authorized to initiate this action pursuant to 42 U.S.C. §4141(b) and 42 U.S.C. § 2000cc-2(f).

8. Declaratory and injunctive relief is sought as authorized by 42 U.S.C. § 14141(b) and 42 U.S.C. § 2000cc-2(f).

9. Venue is proper in the District of South Carolina pursuant to 28 U.S.C. § 1391. Defendants reside in South Carolina, and a substantial part of the events or omissions giving rise to this claim occurred in South Carolina.

DEFENDANTS

10. Defendant Berkeley County Sheriff's Office ("BCSO") is the principal law enforcement agency in Berkeley County, South Carolina. BCSO maintains and operates the Berkeley County Detention Center. The Detention Center is staffed by deputies, corporals, sergeants, and lieutenants from the BCSO. The Berkeley County Sheriff's Office receives federal funding.

11. Defendant H. Wayne DeWitt is, and was at all times relevant to this action, the Sheriff of Berkeley County, South Carolina. He is sued in his official capacity.

12. In his role as Sheriff, Defendant DeWitt exercises ultimate authority over the Berkeley County Detention Center. Defendant DeWitt is responsible for establishing, maintaining, and enforcing BCDC's policies and procedures and has ultimate responsibility for all BCDC employees, agents, and operations.

13. Sheriff DeWitt and the officers at BCSO who carry out its policies are "law enforcement officers" within the meaning of 42 U.S.C. § 14141.

FACTS

Berkeley County Detention Center

14. The Berkeley County Detention Center, also known as the Hill-Finklea Detention Center, is a corrections facility in Moncks Corner, South Carolina that currently incarcerates at least 190 individuals. BCDC is a component of the Berkeley County Sheriff's Office.

15. Prisoners detained at BCDC are housed primarily in either of two units: the general population, known as "B-Pod;" or a heightened security unit, known as "A-Pod."

16. BCDC is an "institution" within the meaning of 42 U.S.C. § 2000cc-1(a).

BCDC's Restrictions on Prisoners' Receipt and Possession of Mail

(1) B-Pod

17. BCDC engages in a pattern or practice of unlawfully prohibiting all prisoners from receiving newspapers, books, magazines, newsletters and most other items through the mail.

18. Guidelines posted on BCDC's website state that "[t]he only mail allowed to be received by prisoners are letters only. [sic] No packages are accepted at the Detention Center. The only exception to this is pictures."

19. Similarly, BCDC's Inmate Handbook establishes that BCDC will reject all mail containing "clippings from newspapers, magazines or books of any kind, internet pictures of any kind," "more than 3 photos," "glued, taped or stapled items of any kind," or "bulk mail materials."

20. BCDC's Inmate Rules further prohibit delivery of any mail sent in envelopes larger than 9" x 8".

21. The Defendants have consistently enforced these rules to deny virtually all reading material to individuals housed at BCDC.

22. Examples of BCDC's unlawful pattern or practice of denying mail to prisoners include, but are not limited to:

- a. denying prisoner Willie Williams' request for materials used in a correspondence education course, despite the course's offer to make "allowances for special mail restrictions, such as no staples." In response to this request, BCDC explained simply that Mr. Williams could not possess the materials "while in B-Pod;"
- b. rejecting a grievance from prisoner Richard Harris seeking an issue of *Prison Legal News* ("PLN") by explaining that "you cannot get any type of newspaper here in jail. That's why you have not got it" [sic];
- c. returning a copy of PLN sent to prisoner Scott Caouette with the notation "no magazines;"
- d. rejecting a PLN mailing sent to prisoner Angel Perez with the notation "no magazines allowed;"
- e. writing "book not allowed" in response to PLN's attempt to send two issues of its newsletter to BCDC prisoners;
- f. returning a PLN issue sent to prisoner Willie Williams on January 19, 2010 with the notation "can not have" [sic];
- g. refusing to deliver PLN issues sent to prisoners Jon Howe and Richard Harris by explaining that "Info Not Allowed;"

- h. denying additional PLN issues sent to Richard Harris with the simple notation that the mailings were “not allowed.”

23. In addition to the specific denials of educational materials and legal magazines cited above, at least eleven BCDC prisoners have filed grievances within the past year asserting that the facility prohibits prisoners from possessing any reading material except for a single religious text.

24. Further, Defendants have taken no steps to mitigate the effect of BCDC’s restrictions on prisoners’ access to reading or educational materials. The facility does not operate a library or offer any other option for prisoners who wish to obtain books, magazines, newspapers, or other educational materials.

25. In short, Defendants effectively prohibit BCDC prisoners from reading anything except, under certain circumstances, a religious book or a personal letter.

(2) A-Pod

26. Prisoners housed in BCDC’s A-Pod unit must comply with the general restrictions on prisoners’ receipt and possession of mail and other reading materials. Like their counterparts in B-Pod, persons incarcerated in A-Pod have no access to a library or other source of reading materials.

27. In addition to these restrictions, A-Pod detainees are not allowed to receive any publications from outside the facility, regardless of their source.

28. BCDC Sergeant Rosemary Sanders affirmed this policy in a prior court proceeding, in which she swore in an affidavit that “prisoners in A-Pod are not allowed to receive publications from outside of the detention center”

29. Defendants' absolute proscription on A-Pod detainees' receipt of outside publications, combined with their refusal to make any reading materials available at the prison site, effectively precludes individuals housed at A-Pod from accessing any educational, religious, legal, or other materials.

BCDC's Restrictions on Prisoners' Possession of Religious Materials

30. Defendants' restrictions on possessing religious material substantially burden the religious exercise of all prisoners who require more than a single text to practice their religions. Defendants have admitted in prior court proceedings that a prisoner is allowed to possess only his or her "primary religious book," not pamphlets, newsletters or multiple religious texts. Further, the "primary religious book" must be hand-delivered; prisoners cannot order religious materials through the mail.

31. Adherents of numerous religions rely upon documents contained in multiple books, pamphlets or other publications to aid in the exercise of their faith. Defendants' practice of denying all materials beyond a single religious text makes no exception for these individuals.

32. And even the meager accommodation of purportedly allowing prisoners to receive a single, personally-delivered religious text is unavailable to prisoners housed in BCDC's A-Pod unit. In an affidavit submitted in prior litigation, BCDC Sergeant Rosemary Sanders attested that while all prisoners "are allowed to possess a copy of the Holy Bible . . . prisoners in A-Pod are not allowed to receive publications from outside of the detention center, including religious publications."

33. Indeed, BCDC officials have previously admitted that prisoners housed in their facility may only possess a Bible. Sergeant Kendra Habersham stated in an email to PLN that

“prisoners are only allowed to receive soft back bibles in the mail directly from the publisher. They are not allowed to have magazines, newspapers, or any other type of books.” Sergeant Habersham’s email is corroborated by an Associated Press story stating that BCDC “confirmed . . .that it doesn’t have a library and that the only reading material its roughly 450 prisoners are allowed to have are paperback Bibles.” Similarly, a recent editorial published in the *Aiken Standard* opined that “If you get locked up in Moncks Corner . . . you’d better be a devoted reader of the good book because the Bible is the only book you’ll be able to possess.”

34. Through these policies and practices, Defendants have imposed, and continue to impose, substantial burdens on the religious exercise of BCDC prisoners. Defendants’ practices deprive prisoners of texts and other written materials central to their religious exercise. Specifically, Defendants impose a substantial burden on the religious practice of current BCDC prisoner JaMichael Howard by forbidding him from possessing the Koran. Defendants refused to deliver a copy of the Koran to Mr. Howard even after his girlfriend provided the book to BCDC.

35. Defendants have no compelling government interest in burdening the religious exercise of Mr. Howard and other prisoners who wish to possess religious texts other than the Bible.

36. Similarly, Defendants’ policy and practice of denying such materials is not the least restrictive means of furthering a compelling government interest. Indeed, Defendants’ restrictions prohibit many items permitted by other penal institutions with similar compelling interests, such as the Federal Bureau of Prisons and South Carolina Department of Corrections.

37. The substantial burdens imposed on the religious exercise of Mr. Howard and other BCDC prisoners affects, or removal of those substantial burdens would affect commerce with foreign nations, among the several States, or with Indian tribes. Indeed, the substantial burden on these prisoners' religious exercise stems directly from Defendants' prohibition on materials shipped through the mail, often from out of state vendors – a core instrumentality of interstate commerce.

38. Not only do Defendants burden prisoners of various faiths by forbidding possession of most religious materials, Defendants engage in a pattern or practice of conduct that unlawfully favors Christian prisoners over non-Christian ones.

39. Specifically, Defendants' policies and practices make King James Bibles freely available to all prisoners while erecting significant barriers to accessing other religious texts.

40. Defendants maintain copies of the King James Bible at the detention center and provide a copy of the Bible at no cost to any prisoner who requests it.

41. In addition to this cost-free access to King James Bibles that BCDC maintains on site, Christian prisoners have the option to purchase other versions of the Bible from BCDC's commissary.

42. Defendants make no comparable accommodations for prisoners who seek religious texts other than the Bible, such as the Torah or Koran. BCDC does not provide prisoners of non-Christian faiths copies of their religious texts on site, nor do Defendants make non-Christian religious materials available for purchase in BCDC's commissary.

43. BCDC prisoner Bryan Adkins recently submitted an affidavit in other litigation attesting that Sergeant Sanders responded to his request for a Torah by stating that she “only

gives out King James versions of the Christian Bible.” Similarly, Marvin Henderson attested that he “requested a copy of the Koran,” but Sergeant Sanders “informed me she does not give Korans.”

44. Defendants compound the effects of this discriminatory practice by prohibiting prisoners from ordering religious materials directly from the publishers of the desired items. Moreover, BCDC’s general restrictions on prisoners’ receipt of mail preclude friends or family members from sending religious materials through the mail.

45. Thus, while BCDC provides Christian prisoners multiple avenues for obtaining copies of the Bible, Defendants do not stock non-Christian religious materials at the detention center and prohibit non-Christian prisoners from receiving such materials from other sources.

46. The only circumstance in which Defendants allow a prisoner to access a religious book other than the Bible is when the book is personally delivered to the detention facility. BCDC’s confusing responses to two recent prisoner grievances suggest the outlines of this policy:

- a. In May 2010, BCDC responded to Mr. Adkins’ request for a Torah by suggesting “have your family bring a Koran in and we will give it to you.”
- b. BCDC issued a similarly confounding response to Mr. Henderson’s request for a Koran, suggesting to him to “have your family bring in a Koran Bible and we will give it to you.”

47. This policy forces BCDC prisoners—who may not live in the local area—to rely upon family members or community organizations to personally deliver needed religious

material. These practices preclude religious exercise by prisoners who cannot arrange for religious materials to be personally delivered to BCDC.

48. Nor do Defendants adhere to even these discriminatory practices. When current BCDC prisoner JaMichael Howard arranged for his girlfriend to personally deliver a copy of the Koran, Defendants refused to deliver it.

**FIRST CLAIM FOR RELIEF:
DEFENDANTS' DENIAL OF ACCESS TO READING MATERIAL
VIOLATES SECTION 14141 AND THE FIRST AMENDMENT**

49. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 48 as if fully set forth herein.

50. Defendants deny detainees and prisoners in their custody access to virtually all outside reading material except letters and the Christian Bible.

51. Defendants' denial of access to outside reading material constitutes a pattern or practice of conduct that deprives prisoners in their custody of rights secured by the Speech Clause of the First Amendment, in violation of Section 14141 and the Constitution of the United States.

**SECOND CLAIM FOR RELIEF:
DEFENDANTS' DENIAL OF ACCESS TO NON-CHRISTIAN
RELIGIOUS TEXTS VIOLATES SECTION 14141
AND THE FIRST AMENDMENT**

52. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 48 as if fully set forth herein.

53. Defendants deny detainees and prisoners in their custody access to non-Christian religious texts but permit access to Christian religious texts.

54. Defendants' privileging of access to Christian religious texts constitutes a pattern or practice of conduct that deprives detainees and prisoners in their custody of rights secured by the Establishment Clause of the First Amendment, in violation of Section 14141 and the Constitution of the United States.

THIRD CLAIM FOR RELIEF:
DEFENDANTS' DENIAL OF ACCESS TO NON-CHRISTIAN
RELIGIOUS TEXTS VIOLATES RLUIPA

55. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 48 as if fully set forth herein.

56. Defendants deny detainees and prisoners in their custody access to non-Christian religious texts but permit access to Christian religious texts.

57. Defendants' denial of access to non-Christian religious texts constitutes a substantial burden on the religious exercise of detainees and prisoners in their custody. Such denial is not the least restrictive means to serve a compelling government interests. Defendants denial of access accordingly violates RLUIPA.

PRAYER FOR RELIEF

58. The United States is authorized, pursuant to Section 14141 and RLUIPA, to seek injunctive and declaratory relief for Defendants' privileging of Christian religious texts, denial of access to outside reading material, and denial of access to non-Christian religious texts.

WHEREFORE, the United States prays that the Court:

- a. Declare that the Defendants have violated the Section 14141 and the Establishment Clause of the First Amendment by denying detainees and prisoners in their custody access to non-Christian religious texts while

permitting Christian religious texts, thereby privileging a single religion over others;

- b. Declare that the Defendants have violated the Section 14141 and the Speech Clause of the First Amendment by denying detainees and prisoners in their custody access to outside reading materials;
- c. Declare that the Defendants have violated RLUIPA by denying detainees and prisoners in their custody access to virtually all non-Christian religious texts;
- d. Direct Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them to permit detainees and prisoners in their custody to have access to outside reading material, including religious texts and to provide access to religious texts that does not privilege a single religion; and
- e. Order such other relief as the interests of justice may require.

Respectfully submitted,

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