

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

YAHYA (JOHN) LINDH, on his own behalf and)	
on behalf of those similarly situated,)	
)	
Plaintiff,)	
)	
v.)	No. 2:14-cv-142
)	
DIRECTOR, FEDERAL BUREAU OF)	
PRISONS, in his official capacity;)	
WARDEN, FEDERAL CORRECTIONAL)	
INSTITUTION, TERRE HAUTE, INDIANA,)	Complaint-Class Action
in his official capacity,)	
)	
Defendants.)	

Class Action Complaint for Declaratory and Injunctive Relief

Introduction

1. Plaintiff, Yahya Lindh, also known as John Lindh, is a prisoner in the Communications Management Unit (“CMU”) at the Federal Correctional Institution in Terre Haute, Indiana (“FCI-Terre Haute”). The only visitation allowed to prisoners in the CMU at FCI-Terre Haute, aside from attorney visits, is non-contact visitation where the prisoner is escorted from the prisoner area in the CMU across a hallway into the visiting area. The visitation takes place through solid plexiglass with the visitor and prisoner speaking through telephones. Despite the fact that there is no contact between the visitor and the prisoner it is the policy of the Warden of FCI-Terre Haute that no visit can occur without at least one, and sometimes two, visual searches of the prisoner that includes a visual inspection of all body surfaces and body cavities. Given the circumstances of visitation in the CMU, this violates the Fourth Amendment to the United States Constitution.

Yahya Lindh is Muslim and it is a clear tenet of Islam that Muslim men are prohibited from wearing pants below their ankles. Despite this, it is a formal policy of the Director of the Federal Bureau of Prisons that “Islamic inmates may not hem or wear their pants above the ankle.” This policy imposes a substantial, and unjustified, burden on the religious exercise of Mr. Lindh and all Muslim prisoners with the Federal Bureau of Prisons and violates the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb-1.

2. Mr. Lindh requests the issuance of appropriate injunctive and declaratory relief on his behalf and on behalf of two classes of similarly situated persons.

Jurisdiction, venue, cause of action

3. This Court has jurisdiction of this cause pursuant to 28 U.S.C. §§ 1331, 1346.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

5. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202 and by Rule 57 of the Federal Rules of Civil Procedure.

6. This action is brought pursuant to the Fourth Amendment to the United States Constitution and RFRA, 42 U.S.C. § 2000bb-1(c).

Parties

7. Yahya Lindh is an adult person currently confined in the CMU at FCI Terre Haute.

8. The Director of the Federal Bureau of Prisons is the duly appointed head of the agency and is sued pursuant to Rule 17(d) of the Federal Rules of Civil Procedure.

9. The Warden of the Federal Correctional Institution, Terre Haute, Indiana, is the duly appointed warden of the institution within which is located the CMU and is sued pursuant to Rule 17(d) of the Federal Rules of Civil Procedure.

Class action allegations

10. This action is brought by plaintiff on his own behalf and on behalf of two classes of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

11. The first class, denominated as Class A, is defined as:

all persons currently and in the future confined in the Communications Management Unit at the Federal Correctional Institution – Terre Haute.

12. As defined, Class A meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

a. The class is so numerous that joinder of all members is impracticable. It is believed that the CMU currently holds approximately 48 prisoners and that at any one time it holds between 40 and 50 prisoners.

b. There are questions of law or fact common to the class – whether requiring visual searches of prisoners including a visual inspection of all body surfaces and body cavities before and/or after non-contact visits violates the Fourth Amendment to the United States Constitution.

c. The claims of Mr. Lindh are typical of those of the class.

d. Mr. Lindh will fairly and adequately represent the class.

13. The further requirements of Rule 23(b)(2) are met with regard to Class A as the Warden of FCI Terre Haute has, at all times, acted and refused to act on grounds that generally apply to the class so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole

14. The second class, denominated as Class B, is defined as:

all male Muslim prisoners confined within the Bureau of Prisons.

15. As defined, Class B meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure.

a. The class is so numerous that joinder of all members is impracticable. The exact number of Muslim prisoners within the Bureau of Prisons is not yet known. However, the Center for Constitutional Rights reports that Muslims represent 6% of the general federal prison population, Center for Constitutional Rights, *CMUs: The Federal Prison*

System's Experiment in Social Isolation, <http://ccrjustice.org/cmu-factsheet> (last visited on May 2, 2014), and there are more than 173,000 prisoners confined in the custody of the Bureau of Prisons, with more than 32,000 other federal prisoners in either privately managed or other types of facilities. Federal Bureau of Prisons, *Statistics*, http://www.bop.gov/about/statistics/population_statistics.jsp (last visited on May 2, 2014). More than 93% of the prisoners are male. Federal Bureau of Prisons, *Statistics-Inmate Gender*, http://www.bop.gov/about/statistics/statistics_inmate_gender.jsp (last visited May 2, 2014). The number of Muslim male prisoners (6% of at least 93% of 173,000 or 9,653) is therefore large.

b. There are questions of law or fact common to the class – whether prohibiting Muslim prisoners from wearing pants above the ankles violates the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

c. The claims and defenses of the representative party are typical of those of the class.

d. Mr. Lindh will fairly and adequately represent the interests of the class.

16. The further requirements of Rule 23(b)(2) are met with regard to Class B as the Director of the Federal Bureau of Prisons has, at all times, acted and refused to act on grounds that generally apply to the class so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole

17. Kenneth J. Falk and Gavin M. Rose are appropriate to be appointed as class counsel for both classes and should be so appointed.

Factual background

The CMU at FCI-Terre Haute

18. The CMU is located within FCI-Terre Haute.

19. The CMU was created to house prisoners whose communications with persons inside and outside of prison have been determined by the government to need close monitoring so as to ensure the safety, security, and orderly operation of BOP facilities and to ensure the protection of the general public.

20. The CMU was opened in 2006.

21. The CMU is a self-contained general population unit which means that all meals, religious services, and educational, recreational, vocational, and administrative programming and activities for the CMU prisoners take place inside the unit.

22. The CMU contains 55 cells that could hold two prisoners each.

23. However, at the current time there is no double-celling on the unit.

24. At the current time there are approximately 48 prisoners in the CMU.

Visitation in the CMU

25. Aside from attorney visits, law enforcement interviews, or other extraordinary circumstances, visits at the CMU are non-contact, with no physical contact possible between visitors and prisoners.

26. Within the CMU, separated by a locked door from the areas that prisoners are allowed regular access to, there are two rooms separated by a plexiglass window.

27. Formerly, when a CMU prisoner had a visit he would be escorted to one of the rooms and locked in without being searched by guards, either before or after the visit.

28. His visitor would enter into the other room and the visit would take place through the plexiglass with the parties conversing by phone.

29. A guard always remains immediately outside the visiting rooms.

30. The visiting room in which the non-prisoner is seated has a glass door so that the guard can observe the visitor and also the prisoner through the plexiglass window.

31. There are both audio and video devices in the visiting rooms and all visits are recorded.

The imposition of searches

32. 28 C.F.R. §552.11 governs the searches of prisoners within the BOP.

33. 28 C.F.R. § 552.11(c) defines a “visual search” as a “visual inspection of all body surfaces and body cavities.”

34. The regulation provides that:

Staff may conduct a visual search where there is reasonable belief that contraband may be concealed on the person, or a good opportunity for concealment has occurred. For example, placement in a special housing unit (see 28 CFR part 541, subpart B), leaving the institution, or reentry into an institution after contact with the public (after a community trip, court transfer, or after a “contact” visit in a visiting room) is sufficient to justify a visual search. The visual search shall be made in a manner designed to assure as much privacy to the inmate as practicable.

28 C.F.R. § 552.11(c)(1).

35. The BOP’s Program Statement Number 5521.05, entitled Searches of Housing Units, Inmates, and Inmate Work Areas, provides, by way of further explanation, that:

28 CFR 541, subpart B, refers to the Program Statement on Inmate Discipline and Special Housing Units. Except in minimum security institutions, inmates must undergo a visual search when leaving the institution, for whatever reason (even when being released). Examples of other situations requiring visual searches include:

- processing an inmate into an institution through Receiving and Discharge,
- placing an inmate in the Control Unit, and
- conducting periodic visual searches of inmates returning from outside work details.

Program Statement 5521.05 ¶6 at p. 3.

36. Until approximately October of 2012, when CMU prisoners went to their non-contact visits they were not subjected to a visual search where they had to strip and expose their body cavities inasmuch as the visits were non-contact, the prisoners did not leave the CMU, they were escorted to the visit by correctional officers, and they and their visitors were under constant observation during the visits.

37. However, in October of 2012, defendant Warden changed the policy and CMU prisoners were required, both before and after the visit, while being observed by the officer who stood

close by, to strip naked, open their mouths, lift up their genitals, and turn around exposing their buttocks or squat and cough. These are “visual searches” within the BOP policy.

38. Currently, CMU prisoners who are going to non-contact visits continue to be subject to visual searches, which are strip searches, although in the recent past these searches have only occurred before visits. However, to the best of Mr. Lindh’s knowledge there has been no formal change to the Warden’s policy that requires visual searches both before and after the non-contact visits.

39. These searches take place in the bathroom next to the room where the prisoners continue to be locked into during the visits.

40. Visitors continue to visit in the other room with the glass door and the plexiglass window and telephone as described above.

41. Visits continue to be visually supervised by a correctional officer who is physically present outside the glass door and the visits continue to be observed via listening devices and camera.

42. Given that these are non-contact and closely observed visits, there is absolutely no reason for the CMU prisoners to be subjected to the “visual searches,” which are strip searches.

The pants policy

43. The BOP’s Program Statement P5360.09, entitled Religious Beliefs and Practices states, at page 14, in discussing ceremonial religious clothing that is allowed, “Islamic inmates may not hem or wear their pants above the ankle.”

44. Both the Koran and the Hadith (the Hadith are reports and sayings of the Prophet Muhammad) note, on numerous occasions, that wearing one’s lower garment below the ankles, for men, is prohibited.

45. There are some who believe that this prohibition arose out of the fact that at the time of the Prophet, wearing one's garments long, so that they were easily soiled, was deemed to be a sign of arrogance and excessive pride – flaunting the fact that the persons did not care that the garment would get dirty.

46. Today, many Muslims believe that it is sinful if a person knowingly lets his garments go below the ankles.

47. Prisoners within the BOP are provided pants. Some prisoners, including those within the CMU, may also purchase sweat pants and shorts.

48. Even if prisoners are allowed to purchase sweat pants and/or shorts, there are times that they must wear the BOP-issued pants – including during visits, among other times.

49. The pants issued to the prisoners by the BOP are sized as to both waist and in-seam.

50. It would therefore be easy for Muslim prisoners to be issued pants with slightly shorter in-seams so that they would be above their ankles.

51. Because of the above policy Muslim prisoners are not allowed to request and wear pants that are hemmed above the ankle.

52. Mr. Lindh, and other prisoners, have been disciplined for wearing their pants above their ankles.

53. The policy of the Director of the Federal Bureau of Prisons that prohibits Muslim prisoners from wearing their pants above their ankles imposes a substantial burden on plaintiff's religious exercise and the religious exercise of all male Muslim prisoners within the BOP.

54. This policy is not narrowly tailored to promote a compelling governmental interest.

Grievances

55. Plaintiff has fully exhausted his administrative remedies without defendants altering either policy. His grievances are attached as Exhibit A and B.

Irreparable harm

56. Plaintiff and the putative classes are being caused irreparable harm for which there is no adequate remedy at law.

Legal claims

57. The policy of defendant Warden, FCI-Terre Haute, of subjecting CMU prisoners to the visual searches, which are strip searches, if they have non-contact visits is unreasonable and violates the Fourth Amendment to the United States Constitution.

58. The policy of defendant Director, Federal BOP, of prohibiting BOP Muslim prisoners from wearing their pants above the ankle imposes a substantial burden on plaintiff and the putative class's religious exercise and neither furthers a compelling governmental interest, nor is it the least restrictive alternative to further that interest. It is therefore unlawful as violating the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

Request for relief

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with two classes certified as defined above and with Mr. Lindh as the class representative for both classes.
3. Declare that the defendants have violated federal law and the United States Constitution for the reasons noted above.
4. Enter a preliminary injunction, later to be made permanent, enjoining:

- a. Defendant Warden, FCI-Terre Haute, to discontinue the practice of conducting strip searches of CMU prisoners who have non-contact visits.
 - b. Defendant, Director, Federal BOP, from prohibiting Muslim prisoners from wearing their pants above their ankles.
5. Award plaintiffs their attorneys' fees pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 2412.
 6. Award all other proper relief.

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