

THE RUTHERFORD INSTITUTE

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August 22, 2011

Via U.S. Mail

Gary C. Mohr, Director
Ohio Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222

Re: Inmate James M. Carr / Restrictions on Christian Separatist Religion

Dear Mr. Mohr,

The Rutherford Institute, a nonprofit civil liberties organization, has been contacted by James M. Carr, Sr., inmate #459-931 in the London Correctional Institution (LCI) concerning the free exercise of his religion, Christian Separatism (CS). Specifically, Mr. Carr seeks the Ohio Department of Rehabilitation and Correction's (ODRC) official recognition of his religion and all the subsequent benefits of that recognition.

The lack of recognition has greatly burdened Mr. Carr's exercise of his religious beliefs. In fact, LCI has routinely withheld religious texts from Mr. Carr that were requested by him and delivered by mail to the prison. At least one of these religious texts, The Christian Separatist Catechism for the Anointed Nation, was withheld by LCI officials even though it was previously approved for delivery by ODRC. On another occasion, LCI officials withheld from Mr. Carr a copy of the CS bible, filing an incorrect administrative form in connection with the action. Mr. Carr alleges that after he filed a grievance over these matters, he was taken into an office by prison officials, stripped naked and checked for gang tattoos. When none were found, the officials gave Mr. Carr a Security Threat Group (STG) Activity Notice, a serious demerit. The CS bible was finally approved for delivery to Mr. Carr over five months later.

Overall, LCI has withheld nineteen religious texts from Mr. Carr. He has appealed every withholding, succeeding fourteen times. This is a startling infringement on Mr. Carr's constitutional right of free exercise of his religion. We request these burdens to be removed and for ODRC to officially recognize CS as a bona fide religion.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) forbids prison authorities from imposing a "substantial burden" on a prisoner's religious exercise unless the burden is necessary to further a "compelling governmental interest," and is done in a way that is "the least restrictive means" possible. LCI's history of arbitrarily withholding religious texts requested by Mr. Carr only to

deliver them several months later imposes a serious burden on the exercise of Mr. Carr's religion. LCI's withholding of Mr. Carr's copy of The Christian Separatist Catechism for the Anointed Nation even when it was previously approved for prison delivery is also a substantial burden. And most egregiously of all, withholding Mr. Carr's CS Bible and then sanctioning him with an STG Activity Notice when he filed a grievance is certainly a substantial burden on his religion.

The U.S. Court of Appeals for the Ninth Circuit has defined the "substantial burden" language in RLUIPA to include "punishments to coerce a religious adherent to forgo her or his religious beliefs." *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005). In this respect, officials at LCI punished Mr. Carr with an STG Activity Notice after he filed a grievance to claim his withheld CS bible. By all appearances, this punishment was meant to coerce Mr. Carr to quit ordering CS religious texts, items LCI officials apparently disapproved of, and thus to abandon his religion while imprisoned. Similarly, the U.S. Court of Appeals for the Fourth Circuit has defined "substantial burden" in the RLUIPA context to mean putting a "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006). LCI's actions of continuously withholding Mr. Carr's religious texts for an extended period of time exert substantial and coercive pressure to modify his behavior of requesting CS literature and thus to reform his beliefs.

The most effective way for ODRC to avoid violating Mr. Carr's religious rights in the future is to officially recognize CS as a religion, bestowing on it the equal rights and protections given to other officially recognized religions. Mr. Carr does not seek preferential treatment. He simply desires his religion to stand on equal footing with other religions.

Official recognition of CS as a bona fide religion is by no means a radical step. ODRC recognized the Ásatrú religion, a revival of German paganism, in 2010. CS, in contrast, is a Bible-based Christian religion. Additionally, departments of corrections in other states, such as Colorado, have already recognized CS as a religion and afforded it equal rights.

While its race-based beliefs might be cited as grounds for denying CS recognition, one federal district court in Ohio has observed as follows:

[I]t is inconsistent with both the letter and spirit of RLUIPA to permit concerns about prison security to trump every request by a prison inmate to receive or view religious literature that has racist or homophobic overtones. Rather, if publications which are genuinely religious in nature do 'not counsel violence [and] there is no evidence that they have ever caused a disruption' in the prison setting, the fact that 'the views expressed in the publications are racist and separatist' cannot by itself justify an absolute ban on such publications.

Mann v. Wilkinson, 2007 WL 4562634 (S.D. Ohio 2007).

Mr. Carr in no way advocates violence as an extension of his religious beliefs. In fact, CS itself does not advocate violence of any kind, even though it promotes racial separatism. There is also no evidence that CS has ever caused a disruption at LCI or any other prison. Mr. Carr communicates with

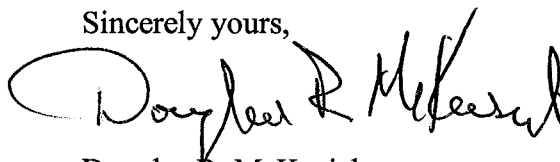
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only a few other LCI inmates about CS, which is collectively only a small fraction of the current inmate population of over 2,000, lessening still the possibility of disruption caused by CS.

Mr. Carr simply wants to practice his religion in peace during his incarceration, unhindered by lengthy delays in delivery of CS literature and free from punishment based on his beliefs. We request ODRC to remove any impediments to this goal and officially recognize CS as a religion practiced by inmates under your supervision.

We need a response to this letter by September 7, 2011 so that we may advise Mr. Carr of his options in protecting his fundamental rights.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Douglas R. McKusick". The signature is written in a cursive style with a large, looping initial "D".

Douglas R. McKusick
Staff Attorney

cc: Wanza Jackson