

20-7532 *CHICAGO*
No. _____

Supreme Court, U.S.
FILED
MAR 09 2021
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Noel Christopher Turner — PETITIONER
(Your Name)

vs.

Texas Dep't of Criminal Justice — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Noel Christopher Turner
(Your Name)

Prudhoe Unit - TDCJ
1400 FM 3452
(Address)

Palestine, Texas 75803
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Has Turner's constitutional Due Process rights been violated under the "evading review" and "capable of repetition" standards? Despite the many claims of the Texas Department of Criminal Justice that they have changed their own policy to give him the very relief that he sought... the fact of the matter, no written policy has been changed, amended, or instituted in the span of over two years since these claims were made to the courts by the Texas Department of Criminal Justice. And Turner has since been denied these very rights by the Texas Department of Criminal Justice's Administration. Thus, were not Turner's Due Process rights violated? Is he not afforded equal protection under the law?
- 2) Were Turner's Constitutional Due Process rights violated by not being awarded the "cost of suit" as in the relief of his Original Complaint, since as per common law/case law, Turner has reached the standards set by various U.S. Courts, to be the "Prevailing Party" to recover the Cost of this suit?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Noel Turner v. Texas Department of Criminal Justice, 4:17-CV-00297, U.S. District Court for the Southern District of Texas, Houston, Division. Judgment entered: December 06, 2018

Noel Turner v. Texas Department of Criminal Justice, No. 18-20832, U.S. Court of Appeals for the Fifth Circuit. Judgment entered: November 10, 2020.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B & C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was November 10, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V [1791]: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV [1868]: SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Turner filed his original complaint against the Texas Department of Criminal Justice ("TDCJ"). USDC-DE 1¹, on January 30, 2017. He brings this civil action pursuant to 42 § 1983 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") 42 U.S.C. § 2000cc-1(a), claiming that the TDCJ violated his federal constitutional and statutory religious rights of the tenets of his Jewish faith, in particular, that he should wear a four-inch beard and a Yarmulke (AKA: "Kippa") at all times. Turner sought declaratory and injunctive relief in the form of "[i]mmediately allow plaintiff to grow and keep a four-inch beard in all TDCJ facilities and keep in perpetuity;" and "[i]mmediately allow plaintiff to wear his Yarmulke in all TDCJ facilities, in perpetuity," and "cost of suit".

On March 17, 2017, the TDCJ filed [USDC-DE 9]: (1) a partial motion to dismiss Turner's First Amendment claim based on Eleventh Amendment Immunity, (2) a motion to stay his religious headwear claim based on an impending "NOTICE TO OFFENDERS" allowing offenders to wear religious headwear at all times throughout the TDCJ facilities [USDC-DE 64, Exhibit A], (3) a motion to dismiss his religious beard claim as moot under the new TDCJ "NOTICE TO OFFENDERS" [USDC-DE 67, Exhibit D] dated February 1, 2017 that gives notice to Offenders that they - with approval from TDCJ Unit Administration - to grow religious beards "not to exceed four-inches in length", and (4) an original answer. [USDC-DE 10].

On March 30, 2017, Turner responded in opposition to the TDCJ's partial motion to dismiss [USDC-DE 12]. Turner then filed a motion for leave to file an amended complaint [USDC-DE 15], to which the TDCJ responded in opposition [USDC-DE 17].

¹"USDC-DE" stands for "United States District Court" and "DE" Stands for the Docket Entry Number within this court.

On May 24, 2017, Turner moved for a Rule 11 sanctions [USDC-DE 18] against the TDCJ and replied to the TDCJ's response in opposition [USDC-DE 19] to his motion for leave to file an amended complaint. TDCJ responded to Turner's motion for a Rule 11 sanctions [USDC-DE 20] and moved to stay the dispositive motion deadline [USDC-DE 21]. On October 25, 2017, Turner filed a motion for summary judgment [USDC-DE 55].

On December 1, 2017, the district court denied Turner's motion for summary judgment and granted TDCJ's partial motion to dismiss Turner's First Amendment claim without prejudice for want of jurisdiction as barred by the Eleventh Amendment immunity. [USDC-DE 58 & 59]. In these orders, the district court also conditionally dismissed Turner's request to wear a four-inch beard in perpetuity, allowing Turner to submit a supplemental complaint [USDC-DE 66] to plead sufficient facts to support his claims, and stayed the determination of Turner's religious headwear claim pending its review of TDCJ's alleged forthcoming religious headwear policy.

On May 16, 2018, Turner filed a motion to set Trial date [USDC-DE 72]. On May 22, 2018, Turner entered a motion for Temporary Restraining Order to stop him from being forced to comply with the Annual Shave requirement of the TDCJ [USDC-DE 73]. On July 11, 2018, Turner filed a motion to subpoena of Designated Documents, [USDC-DE 81]. Then on July 11, 2018 Turner filed a motion to Produce and Disclose Policies [USDC-DE 85]. On July 12, 2018, Turner submitted a proposed settlement agreement [USDC-DE 88] which the TDCJ rejected. On December 5, 2018, the district court denied Turner's motions [USDC-DE 72, 73, 81 & 85].

On June 20, 2018, the TDCJ filed a motion for summary judgment based on mootness [USDC-DE 75]. Turner objected to the TDCJ's motion for summary judgment on July 11, 2018, and moved to strike. [USDC-DE 83].

The district court granted summary judgment in favor of the TDCJ and issued a final judgment dismissing Turner's claims against the TDCJ without prejudice

as moot. [USDC-DE 96 & 97]. Turner then filed a timely notice of appeal. [USDC-DE 100].

On December 20, 2018 Turner filed a motion for appointment of counsel with a declaration in support [USDC-DE 102 & 103], due to complexity of the case. The district court denied this motion. [USDC-DE 106].

On March 22, 2019, Turner filed his appeal in the United States Court of Appeals for the Fifth Circuit. Presenting the following ISSUES FOR REVIEW:

(1) Is this case "moot" or is it still live and Turner continues to have a "legally cognizable interest in its outcome"?; (2) Is TDCJ's claims of policy changes and that Turner is getting "exactly what he sought", a way for TDCJ to be "capable of repetition yet evading review"?; (3) Is TDCJ's current "NOTICES" and policies "void due to vagueness"?; (4) Is TDCJ's denial of wearing a single ply/layer, white cloth Yarmulke that is donated from a religious organization as per the current TDCJ policy [Chaplaincy Manual 05.01], but allowing other faiths to do so, a violation of Turner's rights to Equal Protection and of RLUIPA (an undue burden on Turner's right) due to his being poor (indigent)?; (5) Is Turner the "prevailing Party" and due the filing cost [District Court] and cost of Indigent Supplies levied against his Trust Fund Account for: paper, carbon paper, business envelopes, writ envelopes, pens and postage; pursuant to this case?; and (6) Was Turner denied his Due Process? Attached to this appeal brief were the following exhibits: Exhibit A) "Standards of Behavior" from the TDCJ's Offender Orientation Handbook, p.11 in which it states that Turner would have to shave once a year. (II)(A)(4)(e); Exhibit B) Unit Classification Procedure, Policy No. 6.01, which on page 2, (II)(E)(a-f) clearly states that Turner will have to shave for a photo update; Exhibit C) TDCJ's Commissary Rules from the Offender Handbook pp. 17-18 which prohibits Turner from seeking a donated Yarmulke on the Unit; Exhibit D) TDCJ's definition of "Contraband" from the Offender Orientation Handbook p. 21; Exhibit E) TDCJ's disciplinary offense code for Possession of Contraband

from the "Disciplinary Rules and Procedures for Offenders" [as Turner having another offender on the unit to purchase a Yarmulke for him would become "contraband" as per TDCJ's definition].(a); and Exhibit F) Safe Prisons/PREA SEXUAL ABUSE PREVENTION STRATEGIES from the Offender Orientation Handbook pp. 28&29 [clearly warns that to accept commissary item(s) from another could lead to Sexual Assault].

On May 6, 2019, the TDCJ filed in opposition to Turners appeal.

On June 7, 2019, Turner filed his response to TDCJ's brief in opposition to his appeal.

On April 5, 2020, Turner filed a motion for an Emergency Preliminary Injunction due to the violations of his religious rights; with four affidavits in exhibit.

On June 8, 2020, Turner filed a second motion for Preliminary Injunction due to violaitons of his religious rights.

On July 15, 2020, TDCJ filed its opposition to Turner's motion for Preliminary Injunction which he filed on June 8, 2020.

On Junce 30, 2020, the U.S. Coaurt of Appeals - Fifth Circuit, ordered that Turner's Emergency Motion for Preliminary Injunction is "Carried with the Case".

On July 16, 2020, Turner filed a motion to "Have Appellee's attorney to produce and serve claimed documents that do not exist in the record". As the TDCJ's response in opposition to Plaintiff-Appellants motion for Injunction pending appeal (DOC.#005115469221) is based upon eight exhibits in the Record which in fact do not exist.

On July 24, 2020, the Fifth Circuit Court ordered that Turner's "Motion to have Appellee's attorney to produce and serve claomded documents that do not exist in the record is GRANTED."

On August 26, 2020, Turner filed a motion to enforce court's order, to have the TDCJ produce and serve thses non-existing documents. Turner also, on this date, filed a motion for Panel Rehearing on the Preliminary Injunction filed on June 26, 2020.

On September 3, 2020, the Fifth Circuit court Ordered that appellant's motion to enforce courts' order of June 30, 2020 is GRANTED. Documents should be produced by September 9, 2020.

On September 10, 2020, TDCJ filed a motion for leave and extention of time to produce documents [evidently they also, could not locate these in the Record filed in the Courts].

On September 15, 2020 the court granted the extention of time and gave TDCJ "to and including, September 18, 2020 to comply with the courts' order of September 3, 2020 to produce documents that to not exist in the record is GRANTED".

On September 16, 2020, Turner filed his "objections for leave and extention of time to produce documents by appellee's" and on September 23, 2020, Turner filed his "objections for extentions of time to appellee and appellant's moption for judgment due to Dilitory Conduct by appellee".

On Septmeber 24, 2020, the court denied Turner's mo tion to strike appellee's response filed on June 26, 2020, incorporated within the response to appellee's motion for an extention of time to comply with the court's order of September 3, 2020 to produce documents, is DENIED."

On September 25, 2020, TDCJ files a motion for leave to file response in opposition to plaintiff-appellant's motion for Injunction pending appeal out of time."

On September 28, 2020, Turner filed a second motion to enforce courts order, to have TDCJ produce and serve the non-existing documents..

On September 29, 2020, the court ordered...."motion to withdraw the response in opposition filed June 26, 2020 to Appellan ts motion for injunction pending appeal is GRANTED. It is further ordered that appellee's motion for injunction pending appeal is GRANTED".

On October 1, 2020, Turner filed a motion to enforce courts's order with the request for judgment for intrinsic fraud by appellee.

On October 7, 2020, Turner filed his objection to courts' order with notice of writ of mandamus.

On October 12, 2020, Turner filed a motion to remove appellee's filings for manifest noncompliance with the rules governing the Fifth Circuit and Federal Rules of Appellate Procedures.

On October 15, 2020, Turner filed a motion for leave to file response to appellee's amended response in opposition to appellant's motion for injunction pending appeal out of time. And filed a motion for the court to enter ruling on appellant's second Emergency Preliminary Injunction Pending Appeal.

On October 20, 2020, the court ordered, "that Appellant's motion to remove Appellee's filing for manifest non-compliance with the Rules governing the Fifth Circuit and Federal Rules of Appellate Procedures is DENIED".

On October 26, 2020, the court ordered, "that Appellant's motion for leave to file response to appellee's amended response in opposition to appellant's motion for injunction pending appeal out of time is DENIED".

On November 10, 2020, the court entered judgment against Turner. See Appendix A, this petition.

On December 2, 2020, Turner was transferred from the Jester 3 Unit - a "Jewish Host Unit" as per TDCJ Chaplaincy Policy No. 07.01 & 07.02 - to the Powledge Unit [not a "Jewish Host Unit"] and was told by the unit's Major Harbin, that as per TDCJ policy, Turner could not wear his Yarmulke until authorized by the Unit Chaplain. On December 3, 2020, The Unit Chaplain confirmed what the Major had said on December 2, 2020.

On December 6, 2020, Turner filed a STEP 1 Grievance regarding his being "prohibited from wearing my white Yarmulke/Kippa (that is approved) on the Powledge unit" at all times and in all places". See Appendix D, this petition.

On January 18, 2021, Turner receives the STEP 1 Grievance back (#20201042434) and its response stated: "The Chaplaincy Policy states that the Kippa/Yarmulke

shall be stored in the offender's locker box and used only in the cell, in an area immediately around the offender's bunk in a dormitory and in designated worship areas. No further action." This was processed by the Unit Grievance Investigator - Ms. T. Rainey and verified and signed by Mr. Vernon Mitchell, Assistant Warden, Powledge Unit.

On January 14, 2021, Turner filed his STEP 2 Grievance regarding this matter. See Appendix E, this petition. On March 5, 2021, this STEP 2 was returned with the following response: "

An investigation has been conducted into your complaint. Per Chaplaincy Policy Procedures "Notice to Offenders: Change in General Rules, "Effective January 1, 2020, states, "The following rules pertain to approved yarmulkes and religious headgear for offenders: 1. Donated, Non-white in color: May only be worn in the offenders' cell or at religious programming; Must be carried, and not work, and from religious programming. 2. Commissary purchased or donated, White with holes: May be worn at any time. 3. Yarmulkes and religious headgear are subject to search by staff at any time. Refusal to submit to searches will result in disciplinary action. 4. Yarmulkes or religious headgear found to be altered in any way will be confiscated and will result in disciplinary action." No further action from this office is warranted.

Signed: C.F. HAZLEWOOD, Director of Religious Service

Please note, that Turner was denied by the Unit Major, the Unit Chaplain, and had to process a STEP 1 Grievance to get what the TDCJ had certified to the Courts that Turner was already receiving... but was denied for a month this very thing.

REASONS FOR GRANTING THE PETITION

QUESTION 1. Has Turner's constitutional Due Process rights been violated under the "evading review" and "capable of repetition" standards? Despite the many claims of the Texas Department of Criminal Justice ("TDCJ") that they have changed their own policy to give him the very relief that he sought... the fact of the matter, no written policy has been changed, amended, or instituted in the span of over two years since these claims were made to the courts by the TDCJ. And Turner has since been denied these very rights by the TDCJ Administration. Thus, were not Turner's Due Process rights violated? Is he not afforded equal protection under the law?

STANDARD OF REVIEW

In Already v. Mike, 568 U.S. 85, 133 S.Ct. 721, 184.L.Ed.2d 553 (2013) said: "We have recognized, however that a defendant cannot automatically moot a case simply by ending its unlawful conduct once sued. City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982). Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends. Given this concern, our cases have explained that "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." Friends of the Earth, INC. v. Laidlaw Environmental Services (TOC), INC., 528 U.S. 167, 190, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000)." The court has also said: "[W]e said that in the absence of a class action, the "capable of repetition, yet evading review" doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration

too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." Weinstein v. Bradford, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975); See Illinois Elections Bd. v. Socialist Workers Party, 440 U.S. 173, 187, 99 S.Ct. 983, 991, 59 L.Ed.2d 230 (1979); Sosna v. Iowa, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975).

ARGUMENT

Turner filed his STEP 1 and STEP 2 Grievances [USDC-DE 20, Exhibit A] requesting "to wear a 4 inch beard and kippa at ALL times & places", and in the STEP 1 Response proves, that the Yarmulke/Kippa was not even addressed in their response/denial. In Turners comfplaint [USDC-DE 1] he asked to "grow and keep a 4 inch beard in all of TDCJ facilities and keep in perpurtuity"; and "to wear his Yarmulke in all TDCJ facilities in perpurtuity". TDCJ files a motion [USDC-DE 9, Exhibit B] in which they submitted a sworn affidavit of Mr. Tony O'Hare, Region I Director that states:

As a result of recent litigation, TDCJ is developing a religious headwear policy for all offenders who believe they must wear some type of religious headwear for their faith preference. Currently, TDCJ is in the process of writing these new policies. As TDCJ's offenders have designated over 247 religious preferences, the development of a uniform policy is not easy or quick as TDCJ must identify and determine how to describe the many types of religious headwer; determine the size, colors, and materials of each approved headwear; the searching procedures; and the other details of the policy to ensure a safe and secure prison environment. TDCJ expects that the religious headwear policy to be released within the year.

This was dated March 2, 2017. As of the March 5, 2021, NO policy exists in writing to allow Turner to wear his religioius headwear outside of his cell/cubical and/or Religious Services. Despite the word "policy" being used in this one paragraph abouve in his sworn affidavit, the ONLY thing that occured was a "NOTICE TO OFFENDERS" - NO policy number, no signatures, and it is not located in the Chaplaincy Manual or Approved Policies/Administrative Directives as of this date. On the Powledge Unit, this "NOTICE" is not in any Housing

Area, ther Units Chaplaincy Bullitin Board in the Main Hallway, or anywhere; the Unit Administration was even uanaware of it, as Turner will show within this petition. TDCJ has released a "NOTICE TO OFFENDERS" [USDC-DE 64 Exhibit A] that only allows offenders who are not indigent to wear a yarmulke at all times and in all places... despite that they have a single ply white cloth yarmulke obtained as Per Chaplaincy Policy 05.01 which has to be approved by the Unit Chaplain, Unit Warden, and then Property Registration Papers issued. Again, Turner is still not getting "exactly what he sought" despite the TDCJ claims that he is.. In Exhibit A [USDC-DE 75, Exhibit A] Tony O'Hares sworn affidavit claims that Turner can use "charitable donations throught out the prison unit" to get a yarmulke from the Unit commissary. In the TDCJ Offender Orientation Handbook (Feb.2017)(Pp. 17-18)(H) it states: "(3) Any item bought from the commissary shall be for personal use only.". In the TDCJ's Offender Orientation Handbook (p. 21)(K)(2)(a) it states: "Contraband is:
a. Any item not allowed when the offender came to the TDCJ, not given or assigned to an offender by the TDCJ, and not bought by an offender for his use from the Commissary." . Then in the TDCJ's Displinary Rules and Procedures for Offenders (Att. B) Level 2 Offense Code 16.0 Possession of Contraband, it states: "(a)... Not bought by an offender for their own use from the commissary". In the TDCJ's Offender Orientation Handbook, PREA (Pp. 28-29)(2) it states: "Do not accept commissary items or other gifts from offendeers. Placing yourself in debt to another offender can lead to the expectations of repaying the debt with sexual favors".

TDCJ's own policies and the Prison Rape Elemination Act (PREA) passed by Congress prevents Turner from donations on the Unit. Due to the amount owed for State Copurt cost of \$887.96 (three convictions), Federal Court Cost of \$700 (two 42 U.S.C. § 1983 suits), and Indigent Supplies owed (\$470.00)... Turner would have to have \$942.50 deposited on his TRUST FUND account to have

just \$1.25 left to buy a yarmulke. (Or depending if they take all of the Federal Court Cost, then if so, he would need \$1,571.71 deposited into his TRUST FUND account in order to have \$1.25 remaining in his account.) Thus, TDCJ's claims are not in fact grounded in TRUTH. The TDCJ allows many Religious Items from prayer rugs, turbans, crosses, combs, etc, to be purchased or donated from outside of the TDCJ, as long as the offender does so according to the TDCJ Chaplaincy Manual approveal process. Indigent Jewish Offenders have in the past and still could if allowed by the TDCJ, to receive donanted, white cloth yarmfule from one of the TDCJ Contract Rabbi's, from The Aleph Institute or from the Jewish Prisoner Services International - both which are used by the TDCJ to verify as to wheather an offender is born Jewish or has undergone a conversion prior to incarceration, as per the TDCJ Chaplaincy Manual Policy 07.02. As these small light weight yarmule can be lost and do become worn due to repeated washing to clean them, thus need to be replaced at times. These Yarmulke look exactly like the ones sold in the TDCJ's Commissaries.

On June 8, 2020, Turner filed to the U.S. Court of Appeals - Fifth Circuit ("5th Circuit") a motion for an Emergency Preliminary Injunction Due To The Violations Of His Religious Rights, with attached affidavits, that the Jester 3 Unit Chaplain - Ms. L. Umitchell - informed us that as per a "New Directive from Huntsville", the only religious headwear authrized for us to wear now has to have "holes" in them.

On June 26, 2020, the TDCJ filed its response in opposition (Doc.#00515469221 at p. 9) and stated:

...Turner seeks injunctive relief in the form of a Court order enjoining TDCJ to allow him to wear his yarmulke in all TDCJ prison facility areas... however, Turner already enjoys his requested relief...Becasue Turner is already permitted to wear his yarmulke as requested in the instant motion, on injunction - his instant motion's sole requested relief - is neither necessary nor proper.

Then on p. 10 of this same Document, the TDCJ states: "Turner provides no competent evidence that TDCJ has implemented any change to the religious Policy at issue. There is no evidence that TDCJ will revoke Turner's privilege to this relief." The 5th Circuit denied Turners motion.

On July 27, 2020, Turner filed a second motion for a Preliminary Injunction with an attached handmade copy of the new policy as exhibit A; with five affidavits of Offenders attesting to the accuracy and validity of the handmade copy of this new policy. TDCJ claims that this "policy" which was/is ONLY a "NOTICE TO OFFENDERS", See USDC-DE 64, Exhibit A and USDC-DE 75, Exhibit D. Turner offered proof to the court that it in fact had been changed. But in the 5th Circuit judgment (Appendix A of this petition) on p.3, the court even stated that "After Turner filed suit, TDCJ twice changed its religious headgear policy to accommodate a Jewish inmates need to always wear a yarmulke". Then on the STEP 2 Grievance (Appendix E of this petition), the response from C.F. Hazlewood, Director of Religious Service, even concedes that "...Commissary Purchased or donated, white with holes: may be worn at any time.". These are the ONLY ones [with holes] that is allowed to be worn at all times and in all places of the TDCJ as Turner has sought since this litigation even started. And, in fact, the TDCJ Commissary continues to sell the exact same type/style of yarmulke today that it started selling years ago... a white yarmulke with NO HOLES in it! The Muslims Kuffi is nitted and has holes... but not the approved and sold by the TDCJ Jewish Religious Headgear. Thus, there is NO yarmulke available for Turner to utilize that will even satisfy this new "NOTICE" and/or the response to the STEP 2 Grievance from C.F. Hazlewood, Director of Religious Services.

Turner was transferred from a "Jewish Host Unit" (TDCJ Chaplaincy Policy 07.01 and 07.02) to the Powledge Unit (NOT a "Jewish Host Unit") on December 2, 2020. At this time, the Powledge Unit's Major informed Turner that according

to current TDCJ policy, he could not wear his white cloth kippa until approved by the Unit Chaplain. Turner Filed a STEP 1 Grievance (Appendix D, this petition) and its written respons, investigated by Ms. T. Rainey - Unit Grievance Investigator, then verified and signed off on by the Unit's Assisnat Warden, Mr. Vernon Mitchell, clearly states:

The Chaplaincy Policy states that the kippa/yarmulke shall be stored in the offenders locker box and used only in the cell, in an area immediately around the offender's bunk in a dormitory, and in designated worship areas. No further action.

This was dated January 1, 2021... two years and one month after the release of the TDCJ's "NOTICE TO OFFENDERS" (dated December 1, 2017) regarding the wearing of religious headgear in all places and at all times. [USDC-DE 75, Exhibit D].

When in fact, there is NO new "policy" allowing the wearing of Religious headgear outside of immediate living area or services, in the TDCJ Chaplaincy Poliocy Manuel. On the Powledge Unit, there is no posted "NOTICE" anywhere... as the STEP 1 Grievance clearly shows taht: 1) the current Policy prohibits Turner from wearing his yarmulke at all times and in all palces of the TDCJ, and 2) taht any "NOTICE" contrary to this was/is unkown to the Powledge Units Administration - Unit Warden, Assistant Warden, Major, Grievance Investigator, and the Chaplain.

So, yes, TDCJ is evading review by it's many claims which their own policies prove that these claims to be false. It is easy to see that Turner is under TDCJ total authority and by lack of an injuction from the court, this is capable of repetition.

QUESTION 2. Were Turner's Constitutional Due Process rights violated by not being awarded the "cost of suit" as in the relief of his Original Complaint, since as per common law/case law, Turner has reached the standards set by various U.S. Courts, to be the "Prevailing Party" to recover the cost of this suit?

STANDARD OF REVIEW

In Hewitt v. Helms, 282 U.S. 755, 760-61, 107 S.Ct. 2672, 2676, 96 L.Ed.2d 654 (1987) "It is settled law, of course, that relief need not be judicially decreed in order to justify a fee award under §1988, A lawsuit sometimes produces voluntary action by the defendant that affords the plaintiff all or some of the relief he sought through a judgment - e.g., a monetary settlement or a change in conduct that redresses the plaintiff's grievances. When that occurs, the plaintiff is deemed to have prevailed despite the absence of a formal judgment in his favor. See Maher v. Gagne, 448 U.S. 122, 129, 100 S.Ct. 2570, 2575, 65 L.Ed.2d 653 (1980). Main v. Thiboutot, 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555, (decided this day, we hold that §1988 applies to all types of §1983 actions.); Texas State Teachers v. Garland Indep. School Dist., 489 U.S. 782, 791-92, 109 S.Ct. 1486, 1493, 103 L.Ed.2d 866 (1989)(... the plaintiff must be able to point to a resolution to the dispute which changes the legal relationship between itself and the defendant); Rhodes v. Stewart, 488 U.S. 1, 3-4, 109 S.Ct. 2020, 203, 102 L.Ed.2d 1 (1988)(... affect the behavior of the defendant toward the plaintiff.); Farrar v. Hobby, 506 U.S. 103, 109, 113 S.Ct. 566, 571, 121 L.Ed.2d 494 (1992)(Under our "generous formulation" of the term, Plaintiffs may be considered "prevailing parties" for attorney fees purpose, if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.); Scham v. District Courts Trying Criminal Cases, 148 F.3d 554, 557 (5th Cir. 1998)

(to attain prevailing party status the plaintiff must show 1) the goals of the lawsuit were achieved, and 2) the suit caused the defendants to remedy the [defendant's behavior].(quoting Watkins v. Fordice, 7 F.3d 453, 456 (5th Cir. 1993) quoting: Farrar v. Hobby, U.S., 113 S.Ct. 566, 573, 121 L.Ed.2d 494 (1992)).

In Watkins v. Fordice, 7 F.3d 453, 456 (5th Cir. 1993) the court clearly stated "the lawsuit must be "substantial factor or significant catalyst in motivating the defendants to end their unconstitutional behavior. (quoting Posada v. Lamb County, 716 F.2d 1066, 1072 (5th Cir. 1983)(quoting Williams v. Leatherbury, 672 F.2d 549, 551 (5th Cir. 1982).

ARGUMENT

When Turner filed his STEP 1 Grievance [USDC-DE 2, Exhibit A] on November 20, 2016, TDCJ's response was "In accordance with SM-06.16, Religious beards shall not extend more than one-half ($\frac{1}{2}$) inch in length outward from the face." When he filed his STEP 2 Grievance [USDC-DE 2, Exhibit A] on December 17, 2016, it was answered by "Vance Drum Director of Chaplaincy Operations". He would have been in the loop on Religious Policy changes thus when he denied Turner's STEP 2, he would have indicated policy was forthcoming..... yet he did not. When Turner filed his suit, he was not allowed to grow a four-inch beard, he was not allowed to keep it in perpetuity, this is proven by the STEP 1 and STEP 2 Grievances, it is also provable by TDCJ's SM-06.16 [USDC-DE 9, Exhibit A] (II)(D)(3), that clearly states a clean shaven yearly photo, with the threat of disciplinary and Use of Force if Turner did not comply.

As for Religious headwear, until Turner filed, there was NO way TDCJ would allow him to wear any yarmulke outside of his cell and services. Proof of this is Mr. Tony O'Hare's Sworn Affidavit [USDC-DE 9, Exhibit B] dated March 2, 2017, that claims a policy to allow Turner to do so was forthcoming in

a years time.

As now, after litigating for more than three (3) years, Turner is allowed to grow a four-inch beard. TDCJ claims that he no longer has to shave for photo updates, See Mr. Tony O'Hare's sworn affidavit [USDC-DE 77, Exhibit A] dated 19 June, 2018 that states such. But all written policy still has Turner shaving each third year.... policy hidden by the TDCJ. They sent the first SM-06.16 to Turner - NO Security Issues doing that... but once they revised it, they claim it has to be "sealed" becasue of security issues. Once Turner receive dthe Record on loan, he saw the redated part taht was sucha security issue.... it was the: GROOMING STANDARDS. B. FEMALE OFFENDERS. This sur would have cause a great calamity in the Male population to know such rules existed for FEMALE OFFENDERS. This was a ploy to hidge behind, by referecing to unit classification procedures Manual 6.01, "Updating Offender Photographs". See Turner's 5th Circuit Appeal Briefs Addendum Exhibit B. (II)(3)(C), that requires a three year clean shaven photo. It is longer than the annual but not what Turner sought in his complaint. Despite TDCJ claiming that he is getting such [USDC-DE 9].

On January 2, 2018, TDCJ sent Turner a NOTICE TO OFFENDERS [USDC-DE 64, Exhibit A] that was Turners first time seeing this notice. This notice allowed Turner to wear a yarmulke at all times in all places if he purchased it from the TDCJ's Commissary, otherwise, the one he had, by approval and issued Property Registration Papers for, he can only wear in his cell and sercies. This yarmulke was peresonally donated to Turner by Rabbi David Goldstein - TDCJ's Lead Contract Rabbi.

Despite NOT getting exactly what Turner sought, despite TDCJ's claims that he is [USDC-DE 9] which states: "there is no longer exists any live controversy between parties with respect to the frowing of a four-inch beard

because Turner has been granted exactly what he sought"; but as Turner has shown in the course of this litigation, this is NOT TRUE. But it does prove that Turner is the "prevailing party" as per the courst standard (see Standard of Review for trhis Question) he did get some of the relief he sought by a change of conduct that redressed his complaint. See Hewitt v. Helms, 282 U.S. 755, 760-61, 107 S.Ct. 2672, 2676, 96 L.Ed.2d 654 (1987). Turner did achieve some of what he sought and caused the defendant to remedy their behavior. Farrar v. Hobby, 113 S.Ct. 566, 573, 121 L.Ed.2d 494 (1992). See Watkins v. Fordice, 7 F.3d 453, 456 (5th Cir. 1993).

Thus Turner is owed the "cost of suit" [USDC-DE 1] as in Original Complaint.
Federal Court Fees: \$350.00
INDIGENT SUPPLIES: \$125.00
TOTAL: 480.00 (to be removed from charges/fees levied against Turner's TDCJ
TRUST FUND account)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Neil Christopher Turner

Date: March 8, 2021