

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Case No. 07-cv-02483-LTB-KLM

OMAR REZAQ,
Plaintiff,

v.

MICHAEL NALLEY,
RON WILEY,
MICHAEL MUKASEY, and
FEDERAL BUREAU OF PRISONS,
Defendants.

ORDER

This case is before me on the Motion of the Defendants to Alter Judgment to Tax Costs Against Plaintiff (Doc 169). Plaintiff has filed his response in opposition to the motion. Although a prevailing Defendant is ordinarily awarded costs under Fed. R. Civ. P. 54(d)(1), for the following reasons I exercise my discretion to deny them an award of costs.

First, Plaintiff is a prisoner of the Federal Bureau of Prisons, indigent and is prohibited from earning any appreciable amount of money. Second, although Defendants prevailed upon motion practice, this case was difficult involving close complex legal issues. Third, the issues raised by the Plaintiff were not frivolous in that he challenged extended placement in the conditions of solitary confinement at the most restrictive prison in the Bureau of Prisons system which appear to have motivated alterations to the prison policy challenged in this action. And finally, an award of costs in this case would tend to frustrate the intent of Congress in enacting the Equal Access to Justice Act.

I therefore conclude that the Plaintiff has overcome the presumption of costs award under Fed. R. Iv. P. 54(d). Accordingly

IT IS ORDERED that the Defendants' Motion to Alter Judgement to Tax Costs Against Plaintiff (Doc 169) is DENIED.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge

DATED: January 12, 2011