

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--------------------------------------|---|-----------------------------------|
| THE NATION OF ISLAM, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action No. 12-82 |
| v. |) | Judge Cathy Bissoon |
| |) | Magistrate Judge Maureen P. Kelly |
| PENNSYLVANIA DEPARTMENT of |) | |
| CORRECTIONS, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

“Kerry X [Marshall]” as he styles himself in the instant civil action (“Plaintiff”), is an inmate currently incarcerated at the State Correctional Institution at Fayette (“SCI-Fayette”), which is located within the territorial limits of the United States District Court for the Western District of Pennsylvania. The gravamen of Plaintiff’s complaint is that, while he and other prisoners were housed at SCI-Mahanoy, in Frackville, Pennsylvania,¹ Defendants prevented them from practicing their form of Islam. Plaintiff purports to file this civil rights action both as a class action and on behalf of four other inmates who were housed at SCI-Mahanoy.

This matter was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrate Judges. On February 1, 2012, the magistrate judge issued a report and recommendation recommending that Plaintiff’s putative class action claims be dismissed, the four other putative Plaintiffs who did not sign the complaint be dismissed without prejudice, and that this case be transferred to the Middle District of Pennsylvania. (Doc. 2). This Court received Plaintiff’s objections to the report on February 16, 2012. (Doc. 3). On the same day,

¹ Frackville, which is located in Schuylkill County, is within the territorial confines of the United States District Court for the Middle District of Pennsylvania. 28 U.S.C. § 118(b).

Plaintiff also filed a motion to appoint counsel, (Doc. 4), and a motion for class certification. (Doc. 5).

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation (Doc. 2), the following ORDER is entered:

AND NOW, this 17th day of February, 2012,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 1) is provisionally GRANTED. Calculation of the initial payment, pursuant to 28 U.S.C. § 1915(b), is deferred to the United States District Court for the Middle District of Pennsylvania.

IT IS FURTHER ORDERED that Plaintiff's putative class action claims are DISMISSED.

IT IS FURTHER ORDERED that putative Plaintiffs James Jihad Butler, Shawn Mustafa Saunders, James Shakoor Townsend, and Melvin Ali Lindsey are DISMISSED, WITHOUT PREJUDICE to joining this case by filing pleadings with the Middle District of Pennsylvania which comport with the applicable Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that Plaintiff's motion to appoint counsel (Doc. 4) is DENIED, WITHOUT PREJUDICE to Plaintiff refileing such a motion in the Middle District of Pennsylvania.

IT IS FURTHER ORDERED that Plaintiff's motion for class certification is DENIED, WITHOUT PREJUDICE to Plaintiff refileing such a motion in the Middle District of Pennsylvania.

IT IS FURTHER ORDERED that the magistrate judge's report and recommendation (Doc. 2) is adopted as the opinion of the Court with respect to this issue.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to transfer, forthwith, this case to the United States District Court for the Middle District of Pennsylvania.

BY THE COURT:

s/Cathy Bissoon
CATHY BISSOON
UNITED STATES DISTRICT JUDGE

cc:
Kerry X [Marshall]
BE-7826
SCI Fayette
P.O. Box 9999
LaBelle, PA 15450