

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TABARI S STRONG,

Plaintiff,

VS.

BRAD LIVINGSTON, *et al*,

Defendants.

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CIVIL ACTION NO. C-12-106

**OPINION AND ORDER DISMISSING PLAINTIFF'S § 1983 FREE EXERCISE
CLAIMS, GRANTING DEFENDANTS' MOTION TO ABATE AND
DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION FOR
A TEMPORARY RESTRAINING ORDER**

Plaintiff, a Muslim prisoner incarcerated at TDCJ-CID's McConnell Unit in Beeville, Texas, filed this lawsuit pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-2(a). He complains that TDCJ's prohibition against wearing a beard violates his constitutional and statutory rights. Plaintiff's § 1983 free exercise claims have already been squarely decided against plaintiff by our Circuit Court in *Green v. Polunsky*, 229 F.3d 486 (5th Cir 2000), and those claims are dismissed.

Pending before the court are two motions related to plaintiff's remaining RLUIPA claims: (1) defendants' motion to abate this action pending a decision by the Fifth Circuit in *Garner v. Livingston* (D.E. 14); and (2) plaintiff's application for a temporary restraining order and preliminary injunction permitting him to wear a quarter-inch beard pursuant to the District Court's order in the *Garner* case (D.E. 3).

Defendants have moved to abate action on plaintiff's RLUIPA claim because the identical issue is presently before the Fifth Circuit Court of Appeals in *Garner v. Morales*, No. 11-40653. The Fifth Circuit heard oral argument in June of 2012, and a decision is expected within the next 60-90 days. The Court agrees that abatement would be the most efficient use of judicial resources, as a decision is expected soon. Accordingly, defendants' motion to abate this action pending a decision by the Fifth Circuit in *Garner* (D.E. 14) is granted.

Plaintiff has also moved for a temporary restraining order and for a preliminary injunction permitting him to wear a quarter-inch beard while this case is pending. Because plaintiff's free exercise rights are not implicated and a decision is expected soon in the *Garner* case, plaintiff's motion (D.E. 3) is denied without prejudice. If the *Garner* case is decided in plaintiff's favor, he may re-file his motion for relief.

ORDERED this 12th day of August, 2012.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE