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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO

MARLIN RIGGS, et al,)	Case No. 1:09-cv-00010-BLW
)	
Plaintiffs,)	
)	
vs.)	DECLARATION OF
)	RAY BARRIOS
)	
PHILIP VALDEZ, et al,)	
)	
Defendants.)	

I, Ray Barrios, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746
 as follows:

1. I am over the age of 18 and am competent to testify.

2. On October 9, 2009, I was incarcerated at the Idaho Correctional Center (ICC) in the West Wing. I am not a member of a gang.
3. On that evening, I was in the chow hall eating dinner. All of a sudden, between 10 and 15 prisoners began attacking a few other prisoners in the chow hall. I was seated near the prisoners being attacked. Some of the attacking prisoners started hitting me, too. I rose from the table and tried to defend myself, as I was afraid that I would get injured if I didn't.
4. When the fight ended, officers took me and other prisoners into the hall. I believe that the fight started because a few members of one gang were moved by staff into a housing area inhabited by a rival gang, but I don't know why I was attacked, as I was not associated with them. I just happened to be seated nearby.
5. I was taken to segregation, and I was issued a Disciplinary Offense Report (DOR) for fighting.
6. I should not have been issued a DOR for fighting. For one thing, ICC staff should not have transferred those rival gang members into the West Wing. Something like this was bound to happen. Second, I had not been fighting. I simply tried to defend myself from an unprovoked attack.
7. During my hearing, I told the Hearing Officer that I was not guilty of fighting. I explained that I was an innocent bystander and that staff had created a danger when they moved rival gang members into the West Wing. Moving those prisoners, in my opinion, was very dangerous.
8. I was found guilty of the DOR. I immediately asked a male officer in the segregation unit, whose name I do not recall, for grievance forms so that I could complain about the fact that staff had placed me in danger. When I told the officer that why I wanted a grievance form, he replied (as best as I recall): "I'm not going to give you a grievance form. Here's a DOR appeal form. That's how you're supposed to do it." The officer explained that because I had been issued a DOR, all issues in connection with that incident could be raised only through the DOR process and not through the Grievance process.
9. Attached as "Barrios Exhibit 1" is the Disciplinary Appeal Form that I submitted after speaking with the officer in segregation. I followed his recommendation and raised both issues in my DOR appeal: the failure to protect issue and the fact that I wasn't guilty of fighting. The exhibit shows that I attached a sheet to my appeal. I was not able to retain a copy of my statement but ICC should have the original.

10. As shown on Barrios Exhibit 1, the appellate authority agreed that I was not the aggressor. Therefore, I believe that the charges should have been dismissed. However, the charges were only reduced.
11. Reducing the charges did not adequately address my failure to protect claim. In fact, it was almost meaningless. I still had to remain in segregation and, more importantly, the DOR was not dismissed, thus hurting my chances for parole.
12. A few months later, I wrote to Jeff Kirkman from the Idaho Department of Corrections because I had been told that he might be able to help me get the DOR dismissed.
13. I submitted an appeal form to Mr. Kirkman. A copy is attached as "Barrios Exhibit 2."
14. In my appeal, I raised my failure to protect claim. I stated that "The Administration forced rival gangs to live with each other and they knew or should have known there was going to be violence. I was punished for defending myself as a bystander and the DOR's still in my file." However, the appellate authority denied my appeal.
15. I followed ICC's administrative exhaustion process as best as I could and I carefully followed the advice of the officer in segregation. He told me that I could only raise my inadequate protection claim as part of the DOR process--and not through the Grievance process--so that's what I did.

Dated this 4 of November, 2010.


Ray Barrios