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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
)	ANDREW IBARRA
)	
PHILIP VALDEZ, et al,)	
)	
Defendants.)	

I, Andrew Ibarra, 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 J-Pod, which is located in the North Wing of ICC.
3. I am not a member of a gang. However, I am aware that some prisoners believe that I am gang affiliated.
4. The administrators of ICC try to keep rival gangs separated because they know that violence often results otherwise. That's why I was placed in the North Wing because the gang to which some prisoners believe I am affiliated lives in the North Wing. Members of a rival gang have been assigned to live in ICC's West Wing, in order to keep the two gangs separated.
5. I was informed the morning of October 9, 2009, by Officer Harold that I was going to be moved to the West Wing of ICC. I knew immediately that I would be in danger of being assaulted by members of the rival gang in West Wing. I instantly told Officer Harold that I did not want to be moved to the West Wing and indicated it would be dangerous for me to move there. Officer Harold told me that I would need to speak with Sgt. Beach.
6. I immediately went to see Sgt. Beach. Accompanying me was Joe Rocha, who also had been told to move to the West Wing, and Leon Murray, a prisoner who has assisted me in other situations. We went to Sgt. Beach's office and asked his help in rescinding the order to move me and Mr. Rocha. Sgt. Beach refused to help. I then located Officer Courtwright, and asked her to help me, but she did not help me. Officer Harold told me that if I refused to move, I would be issued a Disciplinary Offense Report (DOR), which would hurt my chances of obtaining a parole.
7. I was moved to West Wing over my strong objections.
8. Also moved to West Wing with me were Joe Rocha and Joshua Kelly. Both of them are members of the gang which have been assigned for security purposes to live in the North Wing. I therefore knew that they would be at risk of assault in the West Wing, as I was.
9. A short while after our arrival, it was time for dinner, and our Pod was escorted to the chow hall. While Mr. Rocha, Mr. Kelly, and I were eating dinner, we were attacked by ten to fifteen prisoners. I believe I stood up to defend myself but I was hit in the head almost immediately and knocked unconscious.
10. After the assault, I was taken to segregation, and I was issued a Disciplinary Offense Report (DOR) for fighting.

11. Under no circumstances should I have been issued a DOR for fighting. For one thing, ICC staff should not have transferred me to the West Wing in the first place, and it was their error that caused this incident to occur. Second, I had not been fighting. I simply tried to defend myself from an unprovoked and surprise attack, and was knocked unconscious almost immediately.
12. I wanted to challenge two things that had occurred to me. First, I wanted to challenge the DOR because I was not guilty of fighting. Second, I wanted to complain about the fact that staff had placed me at risk of being assaulted. I was assaulted as a result of their disregard for my safety. Staff failed to protect me from assault.
13. The day I was placed in segregation, I asked Officer Soto for a Concern Form so that I could complain about the fact that staff had placed me in danger.
14. Officer Soto told me that he didn't have any Concern Forms. He asked me why I wanted one and I told him that I wanted to complain about the fact that I had been assaulted because staff had failed to protect me. Soto said that I could not file a concern form or a grievance over that issue because I needed to raise the issue through the DOR process.
15. I wasn't positive that Soto was correct. I wanted to make certain that I exhausted the administrative process concerning my complaint that staff had failed to protect me from assault. I therefore asked officers in segregation during the next several days for grievance forms. However, I was repeatedly told that there weren't any forms and that I needed to raise the issue as part of the DOR process.
16. I was able to obtain a grievance form from another prisoner in segregation. I filled it out and gave it to one of the guards. It was addressed to Sgt. Beach. In it, I complained about the fact that staff had failed to protect me from being assaulted.
17. My grievance was routed to Case Manager Fink, the Case Manager for J-Pod, where I had been living. *She responded that I was not allowed to use the grievance process to complain about the move to West Wing and about my assault and that I must raise this issue as part of the DOR process.* I do not have Ms. Fink's response but I assume Ms. Fink filed her copy with ICC. *Thus, Ms. Fink confirmed what Officer Soto had told me: that I had to raise all of my issues as part of the DOR process.*
18. Prior to my DOR hearing, I requested that Sgt. Beach and Ms. Courtwright appear as witnesses on my behalf at the hearing, as they could prove that I had objected to being moved to West Wing and that I had told them that I was at risk of being assaulted.

19. However, for reasons not explained to me, neither Beach nor Courtwright appeared at my hearing. At the hearing, which was recorded, I told the hearing officer that I was not guilty of fighting. I explained that staff had made a mistake in the first place by moving me to West Wing. I also explained that all I did was defend myself. Nevertheless, the hearing officer found me guilty of fighting.
20. I firmly believe that I should not have been found guilty of fighting. Therefore, I filled out a Disciplinary Appeal and submitted it to Warden Valdez on October 23, 2009. A copy of my appeal is attached as "Ibarra Exhibit 1."
21. As Ibarra Exhibit 1 reveals, *I followed the advice of staff* and raised my failure to protect issue through the DOR process. (Ibarra Exhibit 1 refers to an attached statement. I did not keep a copy of that statement but ICC should have the original. The statement explains that I should not have been found guilty of fighting. Staff should not have moved me to West Wing in the first place and, in any event, I had not been fighting.)
22. As Exhibit 1 shows, Warden Valdez responded to my appeal on October 29, 2009. The Warden admitted: "you advised staff of your concerns." Nevertheless, the Warden affirmed my conviction, although he reduced the severity of the offense from a Class A offense to a lesser Class C offense.
23. My sister complained to the Warden by letter that I had been moved to an unsafe place and should not have been issued a DOR. A few days later, I was taken from my cell and interviewed by Jeff Kirkman, an employee of the Idaho Department of Corrections (IDOC), who helps monitor the contract between IDOC and Corrections Corporation of America (CCA), which administers ICC.
24. Mr. Kirkman admitted that I should not have received a DOR. He said he would have it removed. He recommended that I file another Disciplinary Appeal. He gave me an instruction sheet for filing an appeal and he said that I should follow those instructions and send the appeal to IDOC staff. I asked him if I should file a grievance about the fact that staff had placed me at risk of assault. *As with Officer Soto and Ms. Fink, Mr. Kirkman told me that I should pursue this issue as part of the DOR process and not through the Grievance process.*
25. On January 27, 2010, I filed the form that Mr. Kirkman had recommended. A copy is attached as "Ibarra Exhibit 2." Consistent with Mr. Kirkman's advice, I included in my DOR appeal my complaint that staff had failed to protect me from assault. I stated: "That I was just sitting in the chow hall eating, minding my own business when the incident that happened, happened. Also I informed staff that they were putting me in a bad situation by moving me from J Block to W Pod, and was moved anyways."

26. My appeal was answered on February 2, 2010. As shown on the bottom of Ibarra Exhibit 2, my appeal was rejected. The person who signed the appeal stated: "Based on the information reviewed, I noted that the original DOR was modified to a Class C. I find that the Class C is appropriate as well as the sanctions."
27. I followed ICC's administrative exhaustion process exactly as staff told me to do it. Initially, I was uncertain whether I needed to raise the failure to protect issue as part of the DOR process or whether I needed to raise it as a separate grievance. However, Officer Soto told me that I needed to raise that issue as part of the DOR process. This was later confirmed by Ms. Fink and by Mr. Kirkman.
28. I followed the directions of prison officials and filed all of the appeals they said I could file. To my knowledge, and based on what staff instructed me, I fully exhausted every administrative remedy available at ICC regarding the failure to protect issue.

Dated this 19 of July, 2010.



Andrew Ibarra