



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

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Washington, D.C. 20531

January 21, 2014

Beth Hickman  
Senior Deputy Attorney General  
Bureau of Litigation  
State of Nevada Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717

Re: Notice of Findings  
[REDACTED] v. Nevada Dep't of Corr. (13-OCR-464)

Dear Ms. Hickman:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Nevada Department of Corrections (NDOC), in connection with the administrative Complaint that [REDACTED] (Complainant), has filed against the NDOC. In his Complaint, the Complainant alleges that the NDOC discriminated against him based on national origin and retaliated against him in violation of Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), and their implementing regulations.

The OCR has completed our review of the documentation provided by both the NDOC and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

The Complainant was born outside of the United States and is a naturalized United States citizen. On or about June 27, 2013, the Complainant completed payroll forms for the month of July in connection with his job with the Education Division at the High Desert State Prison, NDOC. The Complainant was one of three inmates who worked in the Education Division at that time and was hired prior to the other two inmates. Officer [REDACTED] of the NDOC told the Complainant and the other two inmate employees that they should return to work following the July Fourth holiday. On July 7, 2013, the Complainant and the two other inmate employees reported to the Education Division for work, but Officer [REDACTED] told the Complainant to go back to his unit and that he was not

needed. The Complainant attempted to report for work with the other inmates three more times that week, and each time, Officer ██████ told him to go back to his unit and would not let him work, although he allowed the other inmates to work. The week of July 14, the Complainant attempted to report for work again, and Officer ██████ again ordered him to go back to his unit and told him that "you Aliens" come to America and take the citizen's jobs, and that this is not going to happen in prison. Officer ██████ has also made fun of the Complainant's accent and several times has pretended that he does not understand what the Complainant is saying. The Complainant filed a grievance with the NDOC on August 15, 2013, regarding Officer ██████ failure to let him work and obtain work credit, but the NDOC never replied to his grievance and subsequently terminated his employment. The Complainant provided the OCR with a pink copy of an "Inmate Request Form" addressed to Officer ██████ dated August 15, 2013, in which the Complainant alleged that Officer ██████ did not provide him with the opportunity to come to work in July and August based on his national origin.

The Complainant asserts that the NDOC is denying him the chance to work based on the fact that he was not born in the United States and terminated him in retaliation for filing a grievance.

In the NDOC's Position Statement in response to these allegations, the NDOC denies that it discriminated against the Complainant based on his national origin. The NDOC stated that the Complainant was a math tutor for the High Desert State Prison, and that beginning on July 7, 2013, there were no longer students for him to tutor. In regard to the other inmates who the Complainant states were allowed to work, the NDOC said that it employed those inmates as porters and they were assigned to refinish the floors and paint. The NDOC stated that ██████ denies making any comments that the Complainant alleges, and the NDOC said it has no record of a grievance being filed on or about August 15, 2013, by the Complainant. In regard to the Complainant's allegation that the NDOC terminated his employment and retaliated against him, the NDOC denied that this occurred and said that a Full Classification Committee, of which Officer ██████ was not a member, unassigned the Complainant from his duties as a math tutor at the end of the school year.

#### Policies and Procedures Relevant to the Allegations

On the NDOC's website at [www.doc.nv.gov](http://www.doc.nv.gov), the OCR located a copy of NDOC Administrative Regulation 506, *Reclassification Schedule*, (effective 10/15/13, superseding AR 506 (6/17/12) and AR 506 (temporary, 6/05/13)). This policy states that inmates shall undergo regular or periodic reclassification by a classification committee at least once every six months, and that this includes a review of all case factors relevant to custody, housing, and assignments.

Legal Analysis

Title VI provides that “[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Additionally, the Safe Streets Act, under which the NDOC receives DOJ funding, contains a discrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). The prohibition against national origin discrimination includes discriminating against individuals based on place of origin or birth. See *Coghlan v. Am. Seafoods Co. LLC*, 413 F.3d 1090, 1094 (9<sup>th</sup> Cir. 2005); *Klimas v. U.S. Dept. of Treasury*, No. 92-70264, 1994 WL 41245, at \*2 (9<sup>th</sup> Cir. Feb. 11, 1994). To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. *Id.*

The DOJ’s regulations implementing Title VI also prohibit recipients from retaliating against individuals for filing a complaint of discrimination. 28 C.F.R. § 42.107(e). To establish a retaliation claim under Title VI, the evidence must demonstrate the following: (1) the complainant engaged in protected activity; (2) the complainant was subjected to an adverse action; and (3) there is a causal link between the adverse action and the protected activity. *Chandamuri v. Georgetown Univ.*, 274 F.Supp.2d 71, 84 (D.D.C. 2000). Additionally, in the context of a retaliation claim under 42 U.S.C. § 1983, the United States Court of Appeals for the Ninth Circuit has held that in the prison setting, a viable claim of retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9<sup>th</sup> Cir. 2005).

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the NDOC, and finds that the evidence is insufficient to demonstrate that the NDOC discriminated against the Complainant based on national origin. The NDOC has provided a legitimate, nondiscriminatory reason for why the Complainant no longer received work as math tutor and why other inmates, who were in different positions, continued to work. While the Complainant alleges that Officer ██████ made a discriminatory statement regarding his national origin, the officer denies making that statement, and the evidence before the OCR is insufficient to demonstrate exactly what occurred.

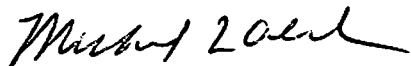
In regard to the Complainant’s allegation that the NDOC retaliated against him when it terminated his assignment as a tutor, the NDOC denied that it received a grievance from

the Complainant regarding Officer ██████ conduct; it is unclear whether the NDOC did receive a copy of the Inmate Request Form that the Complainant provided to the OCR. Nonetheless, the Inmate Request Form was addressed to Officer ██████, and Officer ██████ was not a member of the Full Classification Committee that the NDOC said unassigned the Complainant from his job as a tutor. While the NDOC did not explain why the Full Classification Committee took this action, there is insufficient evidence that the Full Classification Committee was aware of the Complainant's Inmate Request Form alleging national origin discrimination or that its action was because of the Complainant's protected activity.

It is not clear to the OCR whether the Complainant is also alleging that the NDOC retaliated against him for filing his Complaint with the OCR, which the OCR received on August 29, 2013. However, the Complainant alleged retaliation in a September 11, 2013, letter to the OCR, and the OCR did not notify the NDOC of the Complainant's Complaint until November 13, 2013. There is no evidence before the OCR that anyone in the NDOC was aware of the Complaint filed with the OCR prior to November 13, 2013 or prior to the Full Classification Committee's unassignment of the Complainant.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that the NDOC acted with an intent to discriminate or retaliate against the Complainant in violation of the laws that we enforce. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,



Michael L. Alston

Director