

MINISTER MICHAEL MALIK ALLAH,
Plaintiff

v.

FATHER FRANCIS MENEI,
CHAPLAIN EDWARD NEIDERHISER,
WILLIAM R. WINDER,
THOMAS STACHELEK,
IMAM HAMID ABDUH,
DONALD VAUGHN,

Defendants. : No. 93-4958

FILED JUN 14 1994

NOW COMES the plaintiff, Minister Michael Malik Allah, by and through his attorneys, Allen D. Black, Esquire, Richard A. Koffman, Esquire, and Jeffrey S. Istvan, Esquire, all of the law firm of Fine, Kaplan and Black, and brings this Complaint against the defendants, averring as follows:

1. This civil rights action arises under the First and Fourteenth Amendments to the United States Constitution; 42 U.S.C. § 1983; and the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb et seq. Plaintiff seeks injunctive relief, actual and punitive damages, reasonable attorneys' fees, and costs of suit for defendants' violation of plaintiffs' civil rights.

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this District. 28 U.S.C. § 1391(b).

4. The requested relief is authorized by 28 U.S.C. §§ 2201 and 2202, and by 42 U.S.C. §§ 1983, 1988, and 2000bb-1(c).

PARTIES

5. Plaintiff, Minister Michael Malik Allah ("Minister Allah"), is a citizen and resident of this District, a minister of Muhammad's Temple of Islam, and an inmate at the Pennsylvania State Correctional Institution at Graterford ("Graterford"). Minister Allah seeks the establishment of Muhammad's Temple of Islam as a recognized faith group at Graterford.

6. Defendant Father Francis Menei, who is sued in both his official and individual capacities, is the Central Administrator of Religion and Family Services for the Pennsylvania Department of Corrections.

7. Defendant Chaplain Edward Neiderhiser, who is sued in both his official and individual capacities, is Graterford's Institutional Chaplaincy Programs Director.

8. Defendant William R. Winder, who is sued in both his official and individual capacities, is Deputy Superintendent of Facility Management at Graterford.

9. Defendant Thomas Stachelek, who is sued in both his official and individual capacities, is Deputy Superintendent for Centralized Services at Graterford.

10. Defendant Imam Hamid Abduh, who is sued in both his official and individual capacities, is the contracted Muslim chaplain at Graterford.

11. Defendant Donald Vaughn, who is sued in both his official and individual capacities, is the Superintendent at Graterford.

FACTS

12. On June 15, 1993, Minister Allah, as a representative of twenty-four (24) Graterford inmates, submitted a letter to defendant William R. Winder, seeking the establishment of "a religious organization under Muhammad['s] Temple of Islam faith within" Graterford. Minister Allah's letter to defendant Winder requested that the members of Muhammad's Temple of Islam at Graterford be afforded the same opportunity to practice their faith as Graterford offers its officially recognized religious communities, including the "Nation of Islam."¹

¹ It should be noted that the term "Nation of Islam," in its broadest sense, may be used to signify a multitude of different Muslim communities. However, as used in this Complaint, the term "Nation of Islam" refers to an officially recognized faith group at Graterford which practices Islam in accordance with the teachings of Minister Louis Farrakhan.

13. On June 21, 1993, defendant Winder sent a memorandum to Minister Allah, with a copy to defendant Vaughn, stating that Minister Allah's "proposal must be reviewed by the Executive Staff and a decision regarding same will be sent to you."

14. On June 23 and June 27, 1993, Minister Allah requested in writing the opportunity to discuss with defendant Stachelek the establishment of Muhammad's Temple of Islam at Graterford. Defendant Stachelek advised Minister Allah to request a meeting with defendant Neiderhiser. Minister Allah's repeated attempts to meet with defendant Neiderhiser proved unavailing.

15. Shortly prior to August 2, 1993, Minister Al Muntaquin Ali (also known as Minister Sweeney Brown), Regional Minister of the Philadelphia area for Muhammad's Temple of Islam, spoke by telephone with defendant Stachelek regarding the procedures for obtaining approval of Muhammad's Temple of Islam as an officially recognized religious group at Graterford. Pursuant to this telephone conversation, Minister Ali provided certain written materials to defendant Stachelek.

16. On August 2, 1993, defendant Stachelek forwarded the materials provided by Minister Ali to defendant Menei. These materials, or at least the memorandum from defendant Stachelek to defendant Menei enclosing the materials, were also forwarded to defendants Vaughn, Neiderhiser, and Hamid Abduh.

17. As of September 15, 1993, defendants had taken no affirmative action with respect to Minister Allah's repeated requests for official recognition of Muhammad's Temple of Islam at Graterford. Therefore, on September 15, 1993, Minister Allah initiated this action by application to proceed in forma pauperis.

18. On September 20, 1993, the Court ordered the Graterford officials responsible for ensuring inmates' rights to undertake a review of the subject matter of Minister Allah's Complaint and file a report to the Court within thirty (30) days.

19. On October 8, 1993, defendant Menei sent a memorandum to defendant Stachelek stating that the materials submitted concerning Muhammad's Temple of Islam were "insufficient," because they allegedly did not supply: (1) the group's goals, objectives and beliefs; (2) a request for recognition by an outside religious authority; and (3) reasons why the religious needs of the group could not be satisfied by the existing Islamic faith groups practicing at Graterford.

20. On October 22, 1993, defendant Neiderhiser sent a letter to Minister Ali incorporating the statements contained in defendant Menei's October 8, 1993 memorandum. The letter further stated that "[a]ny additional materials [Minister Ali] would wish to submit in order to continue [his] request would be appropriately forwarded to Father Menei at the Department for

further consideration." Defendant Neiderhiser also sent a copy of his letter to defendant Stachelek.

21. On November 3, 1993, defendants filed a "Report in Response to the Court's September 20, 1993 Order and/or Defendants' Motion for Summary Judgment."

22. On November 10, 1993, Minister Ali sent a letter to Father Menei which: (1) set forth the goals, objectives and beliefs of Muhammad's Temple of Islam; (2) set forth the reasons why the religious needs of the followers of Muhammad's Temple of Islam could not be met by the existing faith groups at Graterford; and (3) requested that Muhammad's Temple of Islam "be established as a distinct entity at Graterford in order to give full religious expression to its members."

23. On November 18, 1993, Minister Allah filed a response to defendants' summary judgment motion, entitled "Motion in Objection to Defendants' Motion for Summary Judgment." Minister Ali's November 10, 1993 letter to defendant Menei was appended thereto as Exhibit A.

24. On November 22, 1993, the Court denied defendants' motion for summary judgment and ordered defendants to file, within thirty (30) days, a supplemental report specifying the factual basis for defendants' contention that Muhammad's Temple of Islam is religiously identical to the Nation of Islam.

25. In December 1993, Minister Allah and Minister Rasul Muhammad, inmate minister of the Nation of Islam at

Graterford, jointly submitted to the Court a signed document identifying sixteen (16) important differences between the Nation of Islam and Muhammad's Temple of Islam. In this document, Ministers Allah and Muhammad stated that "both seperate [sic] Religious Organizations have tried to work together as One, but the differences of Our Religious principles will not permit Us to Co-exist in the same place of Worship." Ministers Allah and Muhammad further agreed that "it would be best to give 'MUHAMMAD'S TEMPLE OF ISLAM INC.' a seperate [sic] place of worship so that they can worship their Religion freely and without hinderence [sic]."

26. On January 19, 1994, Minister Allah filed with the Court a document entitled "Exhibits." Exhibit A comprised a letter dated December 18, 1993 from Minister Levi Karim, the publisher of Muhammad's Temple of Islam's official newspaper, Muhammad Speaks. Minister Karim's letter states:

Please be advised that Brother Minister Almuntaquin Ali, who is also known as Mr. Sweeney Brown Jr., is not only a registered Muslim, in good standing, with the Nation of Islam, but also the Official Regional Minister of the Philadelphia area.

Minister Ali is responsible for representing Islam, as taught by Messenger Elijah Muhammad in the Philadelphia area and for seeing to it that the Muhammad Speaks Newspaper and other Islamic material is delivered to those who desire it in his area.

For more information, you may contact me here at headquarters, in Detroit, Michigan.

27. On January 31, 1994, defendants filed a "Supplemental Report and/or Defendants' Renewed Motion for

Summary Judgment." As grounds for their renewed Motion, defendants alleged that: (1) "Muhammad's Temple of Islam and the Nation of Islam are religiously identical"; and (2) "Graterford has not been provided with the documentation necessary for Muhammad's Temple of Islam or its proposed external minister, Minister Al Muntaquin Ali, to be officially recognized at Graterford."

28. In support of their renewed Motion, defendants submitted a Declaration of Imam Shamsud-Din Ali, a practitioner of Orthodox Islam. Imam Ali is not a member of either Muhammad's Temple of Islam nor of the Nation of Islam, neither of which practices Orthodox Islam.

29. Defendants also submitted a Declaration of Edward A. Neiderhiser in support of their renewed Motion. In that Declaration, defendant Neiderhiser states:

Although Minister Ali has frequently spoken to me about Muhammad's Temple of Islam's national leadership in Detroit, no literature reflecting any national organization or authenticating Minister Ali as its representative has been forthcoming. (It should also be noted that Malik Allah has never attached these alleged legitimizing [sic] documents to any of his filings with the Court.)

30. On February 23, 1994, the Court entered a Memorandum and Order denying defendants' renewed motion for summary judgment, noting that "defendants' position leaves the plaintiff and other similarly situated members of his faith with one of two choices: either choose to have an outside coordinator and worship services controlled by the Nation of Islam or choose

to have no outside coordinator and no group worship services." Memorandum and Order at 20. The Court further observed that "[t]he defendants' position appears to favor the Nation of Islam over the Temple of Islam." Id. at 21.

31. On April 15, 1994, the Court appointed Fine, Kaplan & Black to represent Minister Allah in this matter.

VIOLATIONS ALLEGED

COUNT I -- VIOLATION OF THE FIRST AMENDMENT

32. The allegations of paragraphs 1 through 31 are incorporated herein.

33. Minister Allah's right to practice the religion of his choice is protected by the First Amendment to the United States Constitution.

34. By refusing to recognize Muhammad's Temple of Islam within Graterford, defendants have unconstitutionally abridged Minister Allah's freedom of religion, in violation of the First Amendment, as incorporated by the Fourteenth Amendment.

35. By favoring the Nation of Islam over Muhammad's Temple of Islam, defendants have also violated the Establishment Clause of the First Amendment.

COUNT II -- VIOLATION OF EQUAL PROTECTION

36. The allegations of paragraphs 1 through 35 are incorporated herein.

37. Defendants' conduct favors the Nation of Islam over Muhammad's Temple of Islam, in violation of Minister Allah's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT III -- RELIGIOUS FREEDOM RESTORATION ACT OF 1993

38. The allegations of paragraphs 1 through 37 are incorporated herein.

39. Defendants have substantially burdened Minister Allah's exercise of religion in the absence of a compelling governmental interest which would justify that burden.

40. Defendants' conduct violates the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb et seq.

COUNT IV -- PUNITIVE DAMAGES

41. The allegations of paragraphs 1 through 40 are incorporated herein.

42. Defendants have acted with reckless disregard for and callous indifference to Minister Allah's federal constitutional and statutory rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Minister Michael Malik Allah prays this Court for:

A. A Judgment that defendants have violated Minister Allah's rights under the First and Fourteenth Amendments to

the United States Constitution, and under the Religious Freedom Restoration Act of 1993;

B. An Order that defendants:

(1) grant official recognition to Muhammad's Temple of Islam at Graterford;

(2) provide Minister Allah and the other followers of Muhammad's Temple of Islam at Graterford with an appropriate place to worship in the manner commanded by their faith on Wednesday evenings from 6:00 p.m. until 8:00 p.m.; on Friday afternoons from 1:00 p.m. until 3:00 p.m.; and for two consecutive hours on Monday afternoons or evenings;

(3) permit Muhammad's Temple of Islam's outside ministers to enter the prison and conduct services and other religious programs for plaintiff and the other followers of Muhammad's Temple of Islam at Graterford;

C. An award of compensatory damages for defendants' violation of Minister Allah's federal constitutional and statutory rights;

D. An award of punitive damages for defendants' reckless disregard for and callous indifference to Minister Allah's federal constitutional and statutory rights;

the United States Constitution, and under the Religious Freedom Restoration Act of 1993;

B. An Order that defendants:

(1) grant official recognition to Muhammad's Temple of Islam at Graterford;

(2) provide Minister Allah and the other followers of Muhammad's Temple of Islam at Graterford with an appropriate place to worship in the manner commanded by their faith on Wednesday evenings from 6:00 p.m. until 8:00 p.m.; on Friday afternoons from 1:00 p.m. until 3:00 p.m.; and for two consecutive hours on Monday afternoons or evenings;

(3) permit Muhammad's Temple of Islam's outside ministers to enter the prison and conduct services and other religious programs for plaintiff and the other followers of Muhammad's Temple of Islam at Graterford;

C. An award of compensatory damages for defendants' violation of Minister Allah's federal constitutional and statutory rights;

D. An award of punitive damages for defendants' reckless disregard for and callous indifference to Minister Allah's federal constitutional and statutory rights;

CERTIFICATE OF SERVICE

I, Susan J. Torrance, do hereby certify that, on June 27, 1994, I caused to be served a true and correct copy of plaintiff's Amended Complaint, by first class mail, postage prepaid, upon:

Denise A. Kuhn
John G. Knorr, III
OFFICE OF ATTORNEY GENERAL
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-2402

Attorneys for Defendants
Father Francis Menei and
Chaplain Edward Neiderhiser

Susan J. Torrance
Susan J. Torrance

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MINISTER MICHAEL MALIK ALLAH,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
FATHER FRANCIS MENEI,	:	
CHAPLAIN EDWARD NEIDERHISER,	:	
WILLIAM R. WINDER,	:	
THOMAS STACHELEK,	:	
IMAM HAMID ABDUH,	:	
DONALD VAUGHN,	:	
	:	
Defendants.	:	No. 93-4958

DECLARATION OF C. ERIC LINCOLN, Ph.D.

1. My name is C. Eric Lincoln. I am William Rand **KENAN** Professor of Religion (Emeritus) at Duke University. A copy of my curriculum vitae is attached.

2. I have studied the Black Muslim movement since 1956, when I was teaching courses in religion and philosophy at Clark College in Atlanta, Georgia. Indeed, I coined the phrase "Black Muslims" in 1956.

3. I am the author of the book, The Black Muslims in America, which was first published in 1961, and is currently in its third edition.

4. Most simply, a Black Muslim is an African American who is a follower of Elijah Muhammad, "Spiritual Leader of the Lost-Found Nation in the West." Black Muslims are distinguished from Orthodox Muslims by their belief that the Honorable Elijah

Muhammad is the Messenger of Allah, directly commissioned by Allah himself, who came in person (under the name of Fard) to wake the sleeping Black Nation and rid them of the whites' age-old dominion.

5. The Black Muslims have also been referred to as the Nation of Islam. The Nation of Islam is an example of a "cosmocentric community." In such communities, the religion is embodied by its leader, not by a sacred text, as in Christianity, Judaism, or Orthodox Islam. The leader is the source of all value and all truth, and is the person in whom all responsibilities inhere. "Salvation," or ultimate reward, is essentially recognition or approbation from the leader and is therefore largely achievable in this life.

6. In a cosmocentric community, there is no intrinsic commitment to any book, creed, ritual, or doctrine apart from its identification with the leader, and that identification does not transcend death. All loyalty is to the living. A dead leader dispenses no approbation, no security, no salvation.

7. In a cosmocentric community, a dead leader is a prima facie contradiction in terms. The dead cannot lead. That is why credulity is so often stretched to such extraordinary extremes to account for the continuing absence of a leader who is no longer visible. Farad, Father Divine, and Elijah Muhammad, like countless others through the ages, have all been deified or immortalized by their followers in an attempt to stave off the-

powerlessness of death.

8. Minister Jabrill Muhammad, biographer and theologian for the Nation of Islam, makes this point clear in his biography of Elijah Muhammad, This Is the One, when he writes, "I have not, and do not believe for one moment that the Honorable Elijah died on February 25, 1975" (p.155). Within Louis Farrakhan's Nation of Islam, it is a tenet of deep belief that Elijah Muhammad is still alive.

9. The ascendancy of Wallace Deen Muhammad left the Nation of Islam reduced to competing fragments, at least a dozen of which are distinctive enough to be separately identified. Four of the fragments made separate claims to be either the legitimate continuation of the Nation of Islam or its only authentic resurrection, and each operates in its name. The lion's share of the Wallace reformation went to Louis Farrakhan, whose Nation is based in Chicago. The plaintiff in this lawsuit represents a smaller, separately identifiable fragment of the original Nation of Islam, Muhammad's Temple of Islam, which is based in Detroit.

10. Muhammad's Temple of Islam's rejection of the belief that Elijah Muhammad is still alive represents a major religious difference between the followers of Muhammad's Temple of Islam and the followers of Farrakhan's Nation of Islam.

11. The refusal of the followers of Muhammad's Temple of Islam to accept the leadership of Louis Farrakhan is also a major religious difference between the two groups. Unlike in the

Judeo-Christian tradition, where the primary allegiance is to a sacred text, cosmocentric communities like the Nation of Islam revolve primarily around their leaders. In such communities, a difference in leadership comprises a critical difference in belief -- it is in no way comparable to the existence of separate Christian or Jewish congregations who have different leaders but essentially the same beliefs. People from the outside who compare Farrakhan's Nation of Islam with Muhammad's Temple of Islam and observe that their beliefs appear to be the same are missing the point, and fail to understand the fundamental importance of leadership in cosmocentric communities. For members of a cosmocentric community, it would be unthinkable to worship with another cosmocentric community whose leaders are different.

12. Farrakhan has done more than keep the faith of Elijah Muhammad: he has enlarged and enhanced it with a new vision and new perspectives. Perhaps Farrakhan's most far-reaching development was leading the Nation of Islam to full participation in the political life of America. In 1983, he registered to vote -- a first for any member of the Nation of Islam -- and then committed the Fruit of Islam to provide security for presidential candidate Jesse Jackson. By contrast, Elijah Muhammad forbade his followers from participating in American politics. The continuing belief of the members of Muhammad's Temple of Islam that they are forbidden to participate in American politics is

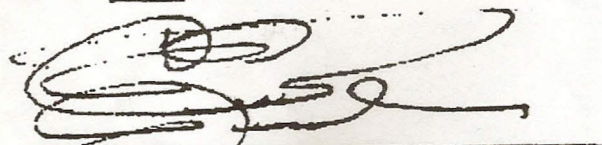
another important difference between their beliefs and those of Farrakhan's Nation of Islam.

13. It is my opinion, based upon my knowledge of the Black Muslim movement and my understanding of the facts of this case, that Muhammad's Temple of Islam and Farrakhan's Nation of Islam are religiously different.

14. It is my opinion, based upon my knowledge of the Black Muslim movement and my understanding of the facts of this case, that the religious needs of the members of Muhammad's Temple of Islam at Graterford cannot be satisfied by participation in the religious activities of Farrakhan's Nation of Islam.

15. It is my opinion, based upon my knowledge of the Black Muslim movement and my understanding of the facts of this case, that the members of Muhammad's Temple of Islam at Graterford should be recognized as a separate religious group from Farrakhan's Nation of Islam, and should be permitted to worship separately from the members of Farrakhan's Nation of Islam.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 4, 1994.


C. Eric Lincoln, Ph.D.

C. ERIC LINCOLN, PH.D., D.D., L.L.D., L.H.D., William Rand Kenan, Jr.
Professor of Religion and Culture at Duke University

A graduate of LeMoyné/Owen College, Fisk University, the University of Chicago and Boston University, Professor Lincoln came to Duke University in 1976 after offering the James Gray Lectures in the Duke Divinity School three years earlier. He had taught previously at Clark Atlanta University, Fisk and Union Theological Seminary, with stints as Visiting Professor at Yassar, Dartmouth, The State University of New York at Albany, and the University of Ghana.

Professor Lincoln's primary scholarly contributions have been in the sociology of religion, but he is almost equally well known for his lectures and publications in the sociology of race and ethnic relations. His seminal study, The Black Muslims in America, was acclaimed by the late Professor Gordon Allport as "one of the best technical case studies in the whole literature of social science." Other widely acclaimed works include The Black Church Since Frazier; Race, Religion And The Continuing American Dilemma; The Negro Pilgrimage in America; The Black Experience in Religion; and The Black Church in the African American Experience (with Lawrence H. Hamiya). Professor Lincoln's novel, The Avenue, Clayton City won the Lillian Smith Award for "best Southern fiction" in 1988, and his collected poems, This Road Since Freedom were celebrated by Boston University with a professional presentation at Symphony Hall in 1991, featuring Ossie Davis, Yolanda King, David Arnold, Ruby Dee and Pamela Dillard and Martin Luther King, III.

Professor Lincoln has been published extensively in Encyclopedic works such as the Encyclopedia Britannica, The Encyclopedia American and The World Book Encyclopedia; in the professional journals of sociology and religion, and in the popular media as well. He has lectured at many of the major universities in Western Europe, Africa, the Middle East, the Caribbean and through-out the United States.

C. Eric Lincoln is Founding President Emeritus of The Black Academy of Arts and Letters. He is also a fellow of the American Academy of Arts and Science, the American Academy of Political and Social Sciences; the American Sociological Association; The New York Academy of Sciences; The Society for the Scientific Study of Religion; The Society for the Scientific Study of Black Religion; The Fellowship of Southern Writers, and other professional associations of his interest. His scholarly interests have been underwritten by the Eli Lilly Endowment; The Ford Foundation; The Taconic Foundation; the Twentieth Century Fund; The Field Foundation, etc. Many colleges and universities have recognized his contributions with honorary degrees, including Carleton College, Boston University, Clark University, Clark Atlanta University, St. Michael's College, Emory University, etc. In 1990 he was named Howard Johnson Distinguished Teacher of the Year at Duke. He is listed in Who's Who in America and in Who's Who in the World. He is a native of Athens, Alabama, an avid fisherman, and he writes hymns and ballads for relaxation.

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C Eric Lincoln

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O 1973-76: prof. religion Duke U., Durham,
O N.C., 1976—, William Rand Kenan Jr.
Disting. prof. religion and culture, 1991;
E lectr. in residence Dartmouth, 1962. vis.
prof. social-relations, 1983; intern in coll.
adminstrn. Brown U., 1964-65; resident fellow
Hope Coll., Brown U., 1964-65; resident
chaplain Sch. Theology, Boston U., 1958-59;
dir. Sch. Theology, Boston U. (Panel of
Americans), 1958-60; adj. prof. Sch.
Theology, Boston U. (Human Relations Center).
1963-65; lectr. Harvard, Yale, univs. Madrid
(Spain), Oslo (Norway), Edinburgh (Scotland),
London (Eng.) Sch. Econ., Shiraz, Abu Dhabi
and Oman, 1964; others: external assessor
univs. of, Ghana, 1975; cons. research Office
Edn.; rep. Dept. State at internat. seminar
on Am. Negro Freedom Movement, Paris, France,
1965; participant Internat. Conf. on Color,
Copenhagen, Denmark, 1965; founding pres.
Black Acad. Arts and Letters; vis. prof.
Queens Coll., 1972; E. Franklin Frazier vis.
prof. history, sociology, Clark U., 1992-93.
Author: The Black Muslims in America,
1961, 2d edit., 1973; 1961, My Face is Black,
1964, The Negro Pilgrimage in America, 1967,
Sounds of the Struggle, 1967, Is Anybody
Listening?, 1968, The Black Americans, 1969,
A Profile of Martin Luther King, 1969, rev.
edit., 1985, The Black Experience in
(continued)

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in the published biography.**

Religion, 1974. The Black Church since Frazier, 1974. Race, Religion and the Continuing American Dilemma, 1984. (collected poems) This Road Since Freedom, 1990; fiction: The Avenue. Clayton City, 1987; (with L.H. Namiya) The Black Church in the African American Experience, 1990; gen. editor: C. Eric Lincoln Series in Black Religion; contr. articles N.Y. Times, books, periodicals. Former trustee Boston U., Clark U.; former assoc. dir. Am. Forum for African Study; bd. dirs. African Student Aid Fund. Served with USNR, 1944-45. Named Howard Johnson Disting. tchr. Duke U., 1988; Crusade fellow, 1957; John Hay Whitney fellow, 1957-58; Eli Lilly fellow, 1958; Human Relations fellow, 1959, 60; Fund for Advancement Edn. grantee, 1964; Lilly Endowment grantee, 1976, 78-85; Ford Found. grantee, 1988. Fellow Am. Acad. Arts and Scis.; mem. Soc. of Psychol. Study Social Issues, AAUP, N.Y. Acad. Scis., Nat. Social Sci. Assn., Assn. for Study Negro Life and History, Am., So. sociol. assns., Am. Psychol. Assn., Soc. Sci. Study Religion NAACP (life), Masons (33 deg.), Kappa Alpha Psi (life), Sigma Pi Phi. Home: 2507 Tanglewood Dr Durham NC 27705-5580
Office: Duke U 324 Gray Ave Durham NC 27701-2426

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OF COUNSEL

FAX: (215) 565-5872

October 7, 1994

VIA HAND DELIVERY

Denise A. Kuhn, Esq.
Office of the Attorney General
21 South 12th St., 3rd Floor
Philadelphia, PA 19107-2402

Re: Allah v. Menei, et al., Civil Action No. 93-4958

Dear Denise:

You have asked us to come up with a proposal for settlement of this case. This letter constitutes such a proposal, and is submitted with the understanding that neither you nor your clients will use this letter, or any of its contents, for any purpose other than attempting to settle this case. You have also agreed to keep the contents of this letter confidential, to be shared with no one other than counsel, Commissioner Lehman, and the defendants themselves. Plaintiff's proposal shall remain open until noon on Friday, October 21, 1994.

I. Plaintiff's Proposal

Our client has authorized us to settle this case on the following terms:

1) Defendants agree to grant official recognition and authorization to Muhammad's Temple of Islam to be a faith group at the State Correctional Institution at Graterford ("Graterford"), pursuant to DC-ADM 819 and Department of Corrections Policy No. 7.5.1., entitled "Religious Services." Defendants further agree to grant Muhammad's Temple of Islam all rights and privileges granted to other recognized faith groups at Graterford.

2) Defendants agree to approve Minister Al Muntaquin Ali, a.k.a. Sweeney Brown, Jr., as the external coordinator and minister of Muhammad's Temple of Islam, and to allow Minister Ali and his staff to conduct regular worship services at Graterford,

October 5, 1994

Page 2

pursuant to DC-ADM 819 and Department of Corrections Policy No. 7.5.1.

3) Defendants agree to provide plaintiff and the other members of Muhammad's Temple of Islam at Graterford with an appropriate place to worship in the manner commanded by their faith on Wednesday evenings from 6:00 p.m. until 8:00 p.m.; on Friday afternoons from 1:00 p.m. until 3:00 p.m.; and for two consecutive hours on Monday afternoons or evenings. The place of worship provided by defendants shall be sufficient to accommodate all inmates wishing to attend, along with Minister Ali and his staff.

4) Defendants agree to the appointment of plaintiff as inmate coordinator and minister of the Muhammad's Temple of Islam faith group.

5) Defendants agree to establish an interest-bearing account for Muhammad's Temple of Islam ("the Temple account"), to be administered by plaintiff for as long as he remains at Graterford, and to be administered by the inmate coordinator and minister of Muhammad's Temple of Islam thereafter. Prison officials may oversee expenditures from this account to ensure that those expenditures are made for faith group purposes, rather than for the personal enrichment of the administrator, to the same extent that prison officials oversee expenditures from the accounts of other faith groups.

6) Defendants agree to place in the Temple account the sum of five thousand dollars (\$5,000). These funds will be used solely for faith group purposes, such as purchasing religious books, newspapers, audio cassettes, and videotapes; cabinets for property storage; a color television; a video camcorder; a videocassette recorder; a cassette tape player; rugs; a lecturn; incense and oils. Plaintiff estimates that the above supplies will exhaust most, if not all, of defendants' \$5,000 contribution to the Temple account.

This proposal represents the bottom line at which plaintiff would be willing to settle this case. If defendants are not willing to accept this proposal, plaintiff would prefer to take his chances before a Judge and jury.

II. Why Defendants Should Settle

Defendants have repeatedly stated that the only reason why Muhammad's Temple of Islam has been denied recognition as a faith group at Graterford is that plaintiff has failed to demonstrate that Muhammad's Temple of Islam is religiously different from the recognized faith group at Graterford known as the Nation of Islam. See Defendant Edward A. Neiderhiser's Answers to Plaintiff's First Set of Interrogatories, Nos. 4 and 5; Defendant Francis Menei's Answers to Plaintiff's First Set of Interrogatories, Nos. 4 and 5; Neiderhiser Dep. Tr. at 105.

Earlier this week, we retained as an expert C. Eric Lincoln, Ph.D., the William Rand Kenan Professor of Religion (Emeritus) at Duke University. Professor Lincoln is widely regarded as the leading authority on the Black Muslim movement in the United States, and is the author of The Black Muslims in America, which is currently in its third edition. According to The New York Times Book Review, The Black Muslims in America is "[u]nsurpassed as a sociological study of the sources of Black Muslim belief and practice."

Professor Lincoln has reviewed the facts of this case, and he has expressed some of his conclusions in the attached Declaration. We have also attached some biographical data on Professor Lincoln, showing his impressive academic credentials.

As you will see from reviewing his Declaration, Professor Lincoln is of the opinion that:

(1) "Muhammad's Temple of Islam and Farrakhan's Nation of Islam are religiously different";

(2) "the religious needs of the members of Muhammad's Temple of Islam at Graterford cannot be satisfied by participation in the religious activities of Farrakhan's Nation of Islam"; and

(3) "the members of Muhammad's Temple of Islam at Graterford should be recognized as a separate religious group from Farrakhan's Nation of Islam, and should be permitted to worship separately from the members of Farrakhan's Nation of Islam."

As plaintiff has contended since at least June, 1993, defendants' conclusion that Muhammad's Temple of Islam and

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Farrakhan's Nation of Islam are religiously identical is demonstrably incorrect. A jury given the choice between crediting the testimony of a recognized academic expert on African-American Religion or two Orthodox Muslim Imams who left the Nation of Islam and the American Muslim movement many years ago, is virtually certain to believe the recognized academic expert, especially given the fact that at least one of the Imams has a vested interest in this case. If the jury believes Professor Lincoln's expert opinion that the two non-Orthodox Muslim groups are religiously different, defendants' entire defense disintegrates.

If plaintiff prevails at trial, defendants will be liable for plaintiff's attorneys' fees and costs, as well as Professor Lincoln's fees and costs. 43 U.S.C. § 1988. At present, plaintiff's attorneys' fees and costs amount to \$ 33,265.32. (This amount does not include any of Professor Lincoln's fees or costs.) Of course, as trial approaches, this number will increase rapidly.

In addition, defendants may well be found liable at trial for compensatory and/or punitive damages. Defendants are unlikely to prevail on their argument that they are entitled to qualified immunity for several reasons. For one thing, defendant Menei has testified that the final decision to deny recognition to Muhammad's Temple of Islam was made sometime after Christmas, 1993. Menei Dep. Tr. at 95. Therefore, when the decision was made, the Religious Freedom Restoration Act of 1993 ("the Act") had been signed into law. Thus, when the decision was made, the law was clearly established that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the application of the burden "is in furtherance of a compelling governmental interest," and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. By continuing to deny recognition to Muhammad's Temple of Islam at Graterford, defendants are substantially burdening plaintiff's exercise of religion without a compelling justification. In light of the clear statutory command of the Act, defendants' actions likely are not shielded by qualified immunity.

For the above reasons and others, settlement on the terms proposed in this letter would be highly advantageous to defendants. Unlike some prisoner plaintiffs, the plaintiff in this case does not seek any personal enrichment, only the

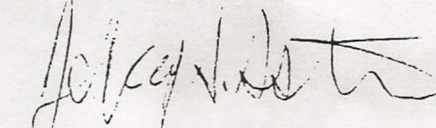
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Page 5

recognition and nominal funding of his religious group. Moreover, plaintiff has demonstrated a capability to shoulder meaningful responsibilities, as evidenced by his service as chairman of the N.A.A.C.P.'s community outreach program at Graterford.

Plaintiff is dedicated to using the Muhammad's Temple of Islam faith group as a vehicle for accomplishing worthwhile objectives at Graterford, such as providing job training and other forms of counseling to inmates, especially young inmates. Plaintiff envisions working with the Graterford administration on behalf of Muhammad's Temple of Islam to improve the quality of life for inmates and prison authorities, and to prepare inmates to lead a law-abiding, productive life upon leaving the institution. A settlement of this case would help pave the way for the accomplishment of these desirable goals.

We believe this proposal is eminently reasonable and fair to all parties, and we hope you and your clients will give it the careful consideration it deserves.

Sincerely,



Richard A. Koffman
Jeffrey S. Istvan

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Attachments

FINE, KAPLAN AND BLACK

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AARON M. FINE
OF COUNSEL

FAX: (215) 568-5872

September 26, 1994

BY FEDERAL EXPRESS

Minister Levi Karim
11817 Christy Street
Detroit, MI 48205

Re: Michael Malik Allah v. Father Francis Menei, et al.

Dear Minister Karim:

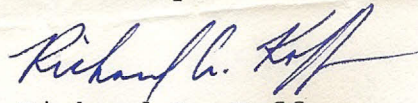
Thank you for taking the time to speak with Jeff Istvan and me earlier today. Your comments were extremely informative and helpful.

Enclosed is a Declaration that I drafted after our telephone conversation. Please review it, and if it is accurate, please sign it and return it to me in the enclosed FEDEX LETTER envelope. (My law firm has pre-paid the postage.)

If you would like me to make any revisions, just write them in and return the Declaration to me in the enclosed envelope, and I will send you a revised draft.

I appreciate your assistance in this matter, and hope we will soon succeed in obtaining recognition for Muhammad's Temple of Islam at Graterford.

Sincerely,



Richard A. Koffman

Enclosures

P.S. I have also enclosed a copy of the Amended Complaint we filed on June 14, 1994.

FINE, KAPLAN AND BLACK

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FAX: (215) 568-5872

October 3, 1994

BY FEDERAL EXPRESS

Minister Levi Karim
11817 Christy Street
Detroit, MI 48205

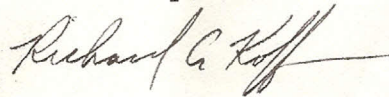
Re: Michael Malik Allah v. Father Francis Menei, et al.

Dear Minister Karim:

Thank you for taking the time to review the draft Declaration I sent you last week. Enclosed for your review is a new Declaration, revised according to your instructions. If it meets with your approval, please sign it and return it to me in the enclosed envelope (postage has been pre-paid).

I greatly appreciate your assistance in this matter, and hope we will soon succeed in gaining recognition for Muhammad's Temple of Islam at Graterford.

Sincerely,



Richard A. Koffman

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Enclosure

P.03

: CIVIL ACTION

[illegible]

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: No. 93-4958

DECLARATION OF LEVI KARIM

1. My name is Levi Karim. I am a minister and spokesman of Muhammad's Temple of Islam, and the publisher of its national newspaper, Muhammad Speaks, which has a monthly circulation of approximately 20,000 to 25,000 copies.

2. Muhammad's Temple of Islam has its national headquarters in Detroit, Michigan, where Muhammad Speaks is published.

3. Minister Al Muntaquin Ali, also known as Sweeney Brown, Jr., of Philadelphia, Pennsylvania, is the regional minister of Muhammad's Temple of Islam for the East Coast region.

4. Minister Michael Malik Allah, also known as Michael Wilson, is a member in good standing of Muhammad's Temple of Islam.

5. No official from the State Correctional Institution at Graterford or from the Pennsylvania Department of Corrections has

ever contacted me to request information about Muhammad's Temple of Islam.

6. I wrote the attached letter, dated December 18, 1993.^{*/} No official from the State Correctional Institution at Graterford or from the Pennsylvania Department of Corrections has ever contacted me to request additional information beyond that contained in my December 18, 1993 letter.

7. Muhammad's Temple of Islam is significantly different from the group within the Nation of Islam that follows Minister Louis Farrakhan. The differences between the two groups are not solely leadership-related. Rather, there are substantial differences in fundamental beliefs and practices. For example, our group believes The Most Honorable Elijah Muhammad to be dead, while Farrakhan's group professes a belief that he is still alive. Our group believes that the teachings of The Most Honorable Elijah Muhammad forbid us from participating in politics, while Farrakhan's group allows its members to participate in politics. Our group observes the fast of Ramadan each year in December, while Farrakhan's group marks Ramadan by the Arabic calendar, fasting for one month each year during the spring or summer. Our group prays standing erect, with our hands extended, facing East, while Farrakhan's group prays while kneeling. While these are not the only differences between the

^{*/} I also wrote a letter to another correctional facility in Pittsburgh, Pennsylvania informing the institution of two ministers there.

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TO

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two groups, they provide a representative sample.

8. Had anyone from the State Correctional Institution at Graterford or the Pennsylvania Department of Corrections asked me, I would have informed them of the substantial differences between Muhammad's Temple of Islam and Farrakhan's Nation of Islam.

9. The recognition of Muhammad's Temple of Islam at Graterford would benefit those who run the institution, because The Most Honorable Elijah Muhammad teaches obedience to authority.

10. I believe that the inmates at Graterford who are members of Muhammad's Temple of Islam, including Michael Malik Allah, should be given the freedom to serve their God in their own way. The members of Muhammad's Temple of Islam should not be forced to worship with the followers of Louis Farrakhan, whose fundamental beliefs and practices are significantly different.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 10, 1994.


Minister Levi Karim

the date on which he signs this release/settlement. The provisions of this paragraph are essential to this release/settlement. If any of them is held invalid, this release/settlement shall be null and void.

IT IS AGREED AND UNDERSTOOD THAT, if the foregoing six (6) enumerated intentions are not in place on or before January 16, 1995, this release/settlement is null and void. If, however, the foregoing six (6) enumerated intentions are in place on or before January 16, 1995, Michael Malik Allah, by his attorneys, Richard A. Koffman, Esquire, and Jeffrey S. Istvan, Esquire, will execute the attached stipulation of voluntary dismissal without prejudice (Exhibit A) as to all the defendants named in this case by no later than January 20, 1995.

Michael Malik Allah

Michael Malik Allah
Plaintiff

12/15/94
Date

Richard A. Koffman, Esquire
Jeffrey S. Istvan, Esquire
Fine, Kaplan and Black
Counsel for Plaintiff

12/15/94
Date

Sworn and subscribed

before me this 15th day

of December, 1994.



Denise A. Kuhn
Senior Deputy Attorney General
Counsel for Defendants

December 12, 1994
Date