IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00245-MSK-MJW

REVEREND MATT HALE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

RESPONSE TO MOTIONS TO RECONSIDER
[DOCS. 162, 164, 165, 166, 170, 171]

The Court should not alter its decision to deny the motions to join submitted by fifteen of Mr. Hale's family members, followers, and supporters outside the prison.[1] The Court has not "misapprehended the facts, a party's position, or the controlling law." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (observing that "[g]rounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice") (citation omitted)); *see also, e.g.*, *Barber ex rel. Barber v. Colo. Dep't of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009) (denial of Rule 59(e) motion for reconsideration is reviewed under an abuse-of-discretion standard and will not be reversed unless the appellate court has "a definite and firm

[1] The BOP responds to all currently pending motions to reconsider, which includes motions brought by Mr. Hale and five others. The persons other than Mr. Hale are referred to as the "Movants" in this response. The Court should deny all pending motions to reconsider, and any future motions like them, for the reasons explained in this response.

conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances").

A. Mr. Hale is not subject to a "mail ban," but he is not allowed to discuss a BOP Security Threat Group or to hold a position of authority in that group.

The crux of the motions to reconsider is that Mr. Hale is allegedly under a "mail ban," but that is not so. The Lieutenant assigned to the Special Investigative Services ("SIS") Department at the federal prison complex in Florence, Colorado, explains the situation. *See* Declaration of Amy Kelley, Ex. 1 hereto.

Mr. Hale's correspondence is being monitored in accordance with his status as a validated leader of a BOP Security Threat Group ("STG") known variously as the "World Church of the Creator," the "Church of the Creator," or the "Creativity Movement" (collectively, the "Creativity Movement"). *Id.* ¶ 8; *see also id.* ¶ 12 (discussing the difficulties of monitoring Plaintiff's communications, in light of "[h]is status as a worldwide leader of the Creativity Movement"). Although Mr. Hale asserts that this group is his "religion," the BOP monitors the group as an STG, i.e., "an inmate group, gang, or organization acting in concert to promote violence, escape, drug, disruptive, and/or terrorist activity." *Id.* ¶ 9. BOP inmates who have been validated as affiliates of the Creativity Movement have documented histories of racially motivated violence or attempted violence, including Mr. Hale himself, as well as William White, who was convicted of soliciting the murder of the foreperson of the jury in Mr. Hale's criminal case. *Id.* ¶¶ 9-11. Benjamin Smith, a follower of Mr. Hale's, "killed two people and wounded nine others for the apparent purpose of avenging the decision to deny Plaintiff a license to practice law in Illinois." *Id.* ¶ 11.

Within the last year, security concerns regarding Mr. Hale's communications have

increased. Mr. Hale was transferred from the ADX to the Federal Correctional Institution in Terre Haute, Indiana ("FCI Terre Haute"), on May 31, 2016, where he had access to an email system. *Id.* ¶¶ 13-14. In June 2016, after Mr. Hale learned the name of the BOP's retained expert in this lawsuit, he sent an email to his followers, seeking information about the "Jew" and "Jew lackey" who "besmeared [Hale's] person[.]" *Id.* ¶ 15. This statement, referring to the BOP's retained expert, was later posted on several white supremacist websites. *Id.* ¶ 15.

Very shortly after that, Mr. Hale spoke by telephone with a follower who referred to Mr. Hale as his "Fuhrer" and "leader," who he "will follow . . . to the ends of the earth! I would jump out of an airplane without a parachute for you! Only kidding." *Id.* ¶ 17. Approximately two weeks later, on July 13, 2016, a second follower sent Mr. Hale an email which informed Mr. Hale that the first follower (who called Mr. Hale his "Fuhrer") had told the second follower that he was willing "to take out any of the judges or prosecutors [in Mr. Hale's case][.]" *Id.* ¶ 17. Then, the following month, Mr. Hale disseminated a "Press Release" in which he castigated the Assistant United States Attorney—now a federal magistrate judge—as a "Jewish crypto-homosexual communist who prosecuted the Reverend Matt Hale, leader of the pro-White and anti-Jewish Church of the Creator." *Id.* ¶¶ 18-19. Mr. Hale further asserted that the federal magistrate judge has "caused enormous grief to me, my family, and my church." *Id.* at ¶ 18.

These communications at FCI Terre Haute led to Mr. Hale's re-referral to the ADX. A BOP Hearing Administrator found that, "[d]ue to his stature and influence the statements in inmate Hale's 'press release' specifically referring to his hope that [the federal magistrate judge] will receive his 'comeuppance' are believed to be another attempt by inmate Hale to orchestrate violence against the judge, either by [Follower #1] or another disciple of similar mindset. As he

continues a pattern of this behavior, it appears he would be unable to function in a less restrictive correctional environment without being a threat to others or to the secure and orderly operation of a less secure correctional facility." *Id.* ¶ 21.[2]

The BOP must take into account the content and context of Mr. Hale's communications and the STG status of the Creativity Movement. *Id.* ¶¶ 16, 20, 22. "The SIS Department manages Plaintiff's communications in the same way that the communications of any other STG member at ADX Florence—and specifically, any other national leader of an STG—are managed." *Id.* ¶ 23. Mr. Hale's incoming and outgoing communications cannot discuss or refer to the STG. *Id.* ¶¶ 24-25. His communications cannot use the honorifics "Reverend" or "Pontifex Maximus," both of which connote rank, stature, and control of the STG. *Id.* ¶ 26. These are the same rules that apply to all other BOP inmates and to all other STGs in the BOP. *Id.* ¶ 28; *see also id.* ¶ 27 (explaining that BOP inmates are not allowed to hold positions of authority in any group outside the prison, including those that are not STGs).

When the BOP was inconsistent in applying these rules to Mr. Hale, potentially dangerous communications were allowed to be sent. *Id.* ¶¶ 18, 25. Now, to reduce the threat of future harm, Mr. Hale is being treated like every inmate. *Id.* ¶¶ 25, 28. But that does not mean he is under a "mail ban." He can send and receive correspondence that complies with these rules, and he has done so. *Id.* ¶¶ 29-30.

[2] The names of non-parties to this lawsuit have been redacted from Attachment 2. Mr. Hale is aware of the identities of those persons.

B. Mr. Hale and the Movants have not established grounds for compulsory or permissive joinder.

Neither Mr. Hale nor any of the Movants has shown that compulsory or permissive joinder is appropriate under the circumstances present here, as this Court has already found.

There has been no change in Mr. Hale's situation that would support compulsory joinder. It remains the case that each of "Mr. Hale's claims can be resolved without consideration of the claims of the Movants," and that the Movants can file their own lawsuits. *See* Doc. 155 at 7.

Furthermore, the circumstances continue to support the Court exercising its discretion to deny permissive joinder. *See* Doc. 155 at 4-5 (noting that the Court may "disallow joinder where it would not serve the purpose of Rule 20 – promoting trial convenience expediting the resolution of disputes") (citations omitted); *see also United States v. N. Colo. Water Conservancy Dist.*, 251 F.R.D. 590, 599 (D. Colo. 2008) (discussing factors to consider before allowing permissive intervention under Fed. R. Civ. P. 24(b)(1)(B), including "(1) whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights; (2) whether the would-be intervenor's input adds value to the existing litigation; (3) whether the petitioner's interests are adequately represented by the existing parties; and (4) the availability of an adequate remedy in another action.").

The BOP would be extremely prejudiced if fifteen or more new plaintiffs are added to the litigation at this advanced stage of the case. Not only would the BOP be required to defend against new legal issues raised by individuals who are not in its custody, it would also be obliged to determine the precise scope of the new plaintiffs' claims. As this Court noted, based on the Movants' filings, the scope of these supposed claims is hard to discern. *See* Doc. 155 at 6 (assuming, "without deciding, that there is some constitutional right that the Movants assert that

is impaired by mail bans imposed against Mr. Hale"). Therefore, in order to know the case it would face at a potential trial, the BOP would be compelled to ask the Court to reopen discovery in order to depose each new plaintiff. Such discovery necessarily would prolong this case, where the parties have completed depositions and the BOP anticipates filing a motion for summary judgment.

Mr. Hale is an able advocate for both himself and the Movants, who obviously share his objectives in this lawsuit. *See Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) ("When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented . . ."). As Mr. Hale has often noted, he has been trained as a lawyer. *See Hale v. Committee on Character and Fitness for the State of Illinois*, 335 F.3d 678, 687 (7th Cir. 2003) (holding that federal court lacked jurisdiction over state court's decision to let stand the rejection of Mr. Hale's application to practice law).

Mr. Hale has put his legal training to use in this case. He has taken depositions and has issued written discovery requests. His filings show that he understands the law and can clearly articulate legal arguments. And having served as the "highest priest" of the Creativity Movement for at least ten years, he is well situated to present a case that will take into account the interests of all those who may desire to communicate with him. Mr. Hale can call those interested persons as witnesses in this case (assuming they otherwise meet the requirements for witnesses) without the Court making them parties.[3]

[3] In response to the BOP's discovery request asking Mr. Hale to identify persons he may call as witnesses at trial, Mr. Hale identified Mr. Quitta and Ms. Henderson, both of whom have sought to join this lawsuit. Docs. 131, 136.

C. Mr. Hale and his followers do not have an unfettered right to communicate.

The Court was correct to express "substantial doubt that the joinder Motions actually assert *any* right to relief against the BOP for restrictions imposed against Mr. Hale." Doc. 155 at 7 n.6 (emphasis in original). It remains the case that "the BOP has no power to restrain or curtai[l] the movants' speech or ability to exercise their religion." *Id.* And Movants *can* write to and receive mail from Mr. Hale, even though they *cannot* discuss the business of a BOP-designated STG in that mail. That is a rule that applies to all BOP inmates and their contacts, who do not have an "unimpeded" right to communicate with each other. *See* Doc. 162 at 4; *see also, e.g.*, *Turner v. Safley*, 482 U.S. 78, 89 (1987) (prison system may impose a regulation that "impinges on inmates' constitutional rights," if the regulation "is reasonably related to legitimate penological interests"); *Hudson v. Palmer*, 468 U.S. 517, 523 (1984) (recognizing that inmates retain only those First Amendment rights "not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system"); *Jones v. N. Carolina Prisoners' Labor Union*, 433 U.S. 119, 126 (1977) ("The concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution.").

Nor do the Movants have a "constitutional guarantee of an audience for permissible expression," as this Court observed. Doc. 155 at 6. Although they cannot discuss the ideology, activities, or business of the Creativity Movement with Mr. Hale, they are free to do so with any number of other persons who are not in federal prison. There appear to be many such persons. According to an article written by a "Rev. Logsdon," Mr. Hale's former position of "Pontifex Maximus" was recently assumed by a man named James Costello. *See* Creativity Movement Toronto, article dated 28 March 2017, available at

http://creativitymovementtoronto.blogspot.com/2017/03/state-of-church-44ac-by-rev-logsdon.html. The Movants can discuss Creativity with these persons and others. They can discuss *any other* topic with Mr. Hale, provided their discussions do not jeopardize public safety or the safety and security of the institution. Ex. 1 ¶¶ 29, 30.

D. Conclusion

The Court should deny the motions to reconsider. Docs. 162, 164, 165, 166, 170, 171.

Respectfully submitted on June 5, 2017.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on June 5, 2017, I served the foregoing document on the following non-CM/ECF participants by U.S. mail:

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