

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

MARK A. KOCH,

Plaintiff,

vs.

CIV-90-1872-PHX-ROS (JBM)

SAMUEL LEWIS, ROGER CRIST,
ERNIE SALAZAR, FRED BALLARD,
CHUCK GOLDSMITH, LIEUTENANT
MARTIN, CMO LAMB, SGT. NAJAB
SGT. GAY, et al.,

Defendants.

MEMORANDUM AND ORDER

On May 21, 1998, I issued a Memorandum and Order (docketed May 27, 1998) in which, among other things, I delayed ruling upon plaintiff's motion for a declaratory judgment and directed the defendants to file a response. I there recognized that security classifications do not normally implicate due process concerns but that the duration of an unexplained change in security classification might affect that analysis.

In their response, defendants provide a detailed chronology of plaintiff's security classifications. His classification was never at the highest security level until after he was validated as a member of a security threat group (STG), specifically the Aryan Brotherhood, on February 21, 1996. He was reclassified as P-5/I-5 on March 1, 1996. His level dropped to I-4 after his six-month classification review on March 11, 1997, but it was returned to I-5 on December 24, 1997, pursuant to a policy change. Under the new policy score reductions for STG-validated inmates are prohibited unless the inmate renounces membership and debriefs to the satisfaction of the STG committee. Plaintiff has been at the higher classification for far

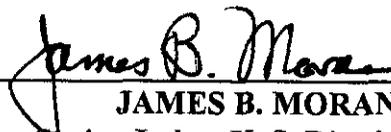
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shorter a time than he previously indicated and a means exists by which he can trigger reconsideration.

He has had, as well, a reclassification review in March of this year – and that relates to another matter. Defendants, very tardily, responded to certain discovery requests by plaintiff. That led to a motion to compel, an order by Magistrate Judge Virginia A. Mathis granting the motion in part and denying it in part, and an appeal. The appeal solely relates to the ordered production of plaintiff's STG file and emphasizes, to a far greater extent than was disclosed in the filing with Judge Mathis, the Arizona Department of Corrections (ADOC) security concerns if the contents of that file are published to the plaintiff.

When we were in Phoenix on August 13, 1998, ADOC suggested an alternate means of compliance, a suggestion I accepted. A representative of ADOC produced the entire file to the court and assisted my review of that file. That review provided an ample basis for the ADOC's concern over disclosure. It also satisfied me that the six-month classification review is a thorough and highly structured process and that the process was fully followed here. If plaintiff has a liberty interest in his classification (which, in the circumstances presented here, is highly doubtful), he has been accorded due process. Accordingly, the motion for a declaratory judgment is denied and the appeal from the production order is granted in part and denied in part.



JAMES B. MORAN
Senior Judge, U. S. District Court

Sept. 1, 1998.

copies to all counsel of record