



Washington University in St. Louis

SCHOOL OF LAW

Appellate Clinic

July 10, 2020

Patricia S. Connor, Clerk  
U.S. Court of Appeals for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, Virginia 23219

Re: *Burke v. Clarke*, 19-6523

Dear Ms. Connor:


Appellant Randy Burke submits this letter pursuant to Fed. R. App. P. 28(j), to notify the Court that its recent decision in *Smith v. Collins*, No. 18-7313 (July 10, 2020), is directly relevant to issues presented in his appeal.

*Smith* involves a Rastafarian inmate at Wallens Ridge Prison who was placed in administrative segregation for violating the prison's grooming policy after he refused to cut his dreadlocks because it would violate his religion. Smith argued that the administrative segregation violated his liberty interest under the Due Process Clause of the Fourteenth Amendment. This Court held there was "at least a genuine issue of material fact as to whether Smith's condition of confinement in administrative segregation at Wallens Ridge imposed an atypical significant hardship, such that he had a protected liberty interest." Op. at 27. In arguing against Smith's claim, the State Defendants asserted that Mr. Smith "was in control of his own fate," and that he should have asserted "a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA) or Free Exercise Clause . . . ." Op. at 22--23. This Court rejected this argument, reasoning "Smith's status a religious objector makes the 'choice' of complying with the grooming policy a non-choice . . . ." Op. at 23.

Like Smith, Mr. Burke is a Rastafarian incarcerated at Wallens Ridge, and because he refused to cut his hair, he too was placed in administrative segregation with all the burdens described in the *Smith* opinion. Mr. Burke's appeal, however, argues that the "non-choice" defendants presented him with violated RLUIPA and

the Free Exercise Clause—the claims the State Defendants said Smith should have raised. Given the similarities between the two cases, Appellant wanted to alert the Court to *Smith*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. S. Harawa', with a long horizontal flourish extending to the right.

Daniel S. Harawa

*Counsel for Appellant Randy Burke*