

July 31, 2020

By Email and First Class Mail

Warden Paul Snyder
El Dorado Correctional Facility
1737 US-54
El Dorado, KS 67042



Kansas

PO Box 917
Mission, KS 66201
(913) 490-4100
aclukansas.org

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President

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Executive Director

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Re: El Dorado Correctional Facility and Alleged Religious Discrimination

Dear Warden Snyder,

I am writing on behalf of several Muslim men incarcerated at El Dorado Correctional Facility regarding reported unequal application of COVID-19 jail policies. These incarcerated individuals have expressed concerns about alleged harassment and retaliation from facility staff, including being classified as a gang and being prohibited from praying. In hopes of removing any confusion or potential disparities in treatment, this letter seeks to highlight these concerns and clarify the applicable religious rights to which incarcerated people are entitled.

The First Amendment's Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA – 42 U.S.C. § 2000cc-1) protect prisoners' exercise of religious beliefs. Except in certain circumstances,¹ both the Free Exercise Clause and RLUIPA prohibit prisons from imposing a substantial burden on the religious exercise of an inmate's sincerely held religious beliefs.²

A regulation imposes a substantial burden on these protected rights not only when it mandates an inmate to engage in religiously prohibited conduct or prohibits an inmate from engaging in religiously required acts, but also when it "places a substantial pressure on an adherent either not to engage in conduct motivated by a sincerely held religious belief or to engage in conduct contrary to a sincerely held religious belief."³ The substantiality of a burden is more likely to increase as the frequency of incidents increase.⁴

¹ Kay v. Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007) (citing Boles v. Neet, 486 F.3d 1177, 1182 (10th Cir. 2007) (stating that a prison regulation which violates an inmate's Free Exercise right is reasonably related to a legitimate penological interest); 42 U.S.C. § 2000cc-1(a) (2012) (stating a prison regulation which violates RLUIPA is permissible if the regulation is the least restrictive means of serving a compelling government interest).

² Abdulhaseeb v. Calbone, 600 F.3d 1301, 1313 (10th Cir. 2010) (describing RLUIPA protection); Kay v. Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007) (describing Free Exercise protection);

³ Abdulhaseeb v. Calbone, 600 F.3d 1301, 1315 (10th Cir. 2010) (RLUIPA context); Strope v. Cummings, 381 F. App'x 878, 881 (10th Cir. 2010) (citing the Abdulhaseeb definition and applying it in a Free Exercise case); see also Wares v. Simmons, 524 F. Supp. 2d 1313, 1320



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It is also important to note that whether a religious exercise is a mandated tenet of an inmate's faith is irrelevant. The litmus test for the exercise of an inmate's sincerely held religious beliefs is whether the inmate believes the exercise is necessary, *not whether other adherents believe the act is required.*⁵

I would like to highlight how these constitutional standards apply when incarcerated individuals are threatened with segregation and gang designation and when they are denied the right to pray either in their cells or in the communal dayroom, as they have allegedly been at El Dorado Correctional Facility.

I. Threat of Segregation/Restriction for Praying

One person incarcerated at your facility contacted us expressing concern that he and his fellow Muslims were routinely interrupted during their prayers and threatened with segregation or restriction. The physical act of praying five times a day is a core tenet of the Islamic faith and is certainly the exercise of a religious belief. This is not dissimilar to when Christians prostrate or genuflect while praying. Threatening Muslim inmates with segregation and other restrictions simply for attempting to pray constitutes a "substantial pressure . . . to not engage in conduct motivated by a sincerely held religious belief" and is a violation of those inmates' First Amendment religious rights. There are also concerning accounts of Muslim inmates being interrupted while praying alone in their cells and having their religious paraphernalia, including kufis, confiscated. Please note that it is a violation of an inmate's rights under the First Amendment and RLUIPA to desecrate, discard, or confiscate an inmate's devotional accessories without a legitimate and compelling governmental interest and narrowly tailored application.⁶ It is also worth noting that even segregated inmates are entitled to the use of the day room for communal prayers, and denial of such also constitutes a violation of their constitutional rights.⁷

(D. Kan. 2007) (stating one form of a substantial burden in a Free Exercise case is when the regulation "significantly inhibits or constrains plaintiff's religious conduct or expression").

⁴ Abdulhaseeb v. Calbone, 600 F.3d 1301, 1321 (10th Cir. 2010).

⁵ Yellowbear v. Lampert, 741 F.3d 48, 54 (10th Cir. 2014) (RLUIPA context); Kay v. Bemis, 500 F.3d 1214, 1220 (10th Cir. 2007) (Free Exercise context). See also Williams v. Wilkinson, 645 F. App'x 692, 700 (10th Cir. 2016) (Under RLUIPA, "the fact that a prisoner's sincerely-held belief is idiosyncratic compared to a more widely shared interpretation of a particular religion does not change the subjectivity of the inquiry . . .").

⁶ Cutter v. Wilkinson, 544 U.S. 709, 716–17 (2005) (noting that the "compelling governmental interest/strict scrutiny" test of the RFRA was brought over the the RLUIPA as a means of providing prisoners redress against unwarranted confiscation); see also Charles v. Verhagen, 348 F.3d 601, 604 (7th Cir. 2003) (finding that a prison's prohibition on a Muslim inmate's possession of prayer oil violated his right to free exercise of religion).

⁷ Giampetruzzi v. Malcolm, 406 F. Supp. 836, 841 (S.D.N.Y. 1975) ("We conclude that, like other inmates, the plaintiffs are entitled to the use of a day room (presumably the day room



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II. Threat of Gang Classification

We have also received numerous claims that Muslim inmates have been told by staff they are classified as a security threat group (“STG” or gang) and subject to increased surveillance and scrutiny. This designation makes it harder for religious adherents to get access to resources, negatively affects their treatment by prison staff, and could hamper their paroling process. All of these negative consequences to STG classification create a “substantial burden” on a Muslim inmate’s free exercise of his faith.

Again, absent a clearly articulated rationale for such a decision as well as a narrowly tailored approach, the designation of a peaceful and lawfully recognized religious group as a security threat group is violative of the Muslim inmates’ constitutional and statutory rights.⁸ Denying the free exercise of religion by arbitrarily designating practitioners as “gang members” places an undue and substantial burden on the practice of their protected rights.⁹ Doing so also constitutes a “substantial pressure” to not engage in said religious conduct, and is violative of their constitutional right to freely exercise their faith.¹⁰

III. Recommendations

Regarding the above concerns and in light of the various legal standards, the jail either has or could substantially burden an inmate’s religious exercise. To help remedy these concerns, we submit a few proposed changes regarding the jail’s policies for your consideration below.

First, all religious paraphernalia confiscated without legitimate and clearly articulated security concerns should be returned to the incarcerated people to whom they belong. To require that these incarcerated people re-purchase religious instruments that were unlawfully confiscated would not only be in violation of their rights, but it would also engender distrust.

adjacent to the 1B area) for reasonable use during the period in which they are entitled to be outside of their cells. Use of the day room is feasible from a security standpoint.”)

⁸ Muslims are acknowledged by courts as a religious group protected by the RLUIPA and by the First Amendment’s guarantees of free exercise of religion. *See, e.g. Abdulhaseeb, supra* note 2.

⁹ *Ind v. Colo. Dep’t of Corr., Civil Action*, 2013 U.S. Dist. LEXIS 146717, at *19 (D. Colo. Oct. 10, 2013) (“[t]herefore, a reasonable person could conclude that there are real and serious consequences when a prisoner is classified as a member of an STG and that these consequences place “substantial pressure on an adherent either not to engage in conduct motivated by a sincerely held religious belief or to engage in conduct contrary to a sincerely held religious belief.”)

¹⁰ *Id.*; *see also Abdulhaseeb, supra* note 4.



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Second, the jail should ensure inmates have reasonable access to the day room for the purposes of communal prayer. Other religious and ethnic affinity groups have been permitted to use the space, so there is no justification for prohibiting access to Muslim inmates.

Finally, inmates that are peaceably practicing their religion should not be subject to gang classification. There is nothing about Muslim inmates that makes them uniquely more dangerous or more deserving of scrutiny than Christian, Jewish, or atheist inmates. Classifying Muslim inmates as part of a security threat group serves only to stigmatize them and make their path to parole more fraught. It is discriminatory. The classification should be removed immediately.

We look forward to your timely response to this letter and actions to address the issues outlined herein. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lauren Bonds'.

Lauren Bonds
Legal Director, ACLU of Kansas
lbonds@aclukansas.org

cc: Jeff Cowger, KDOC Counsel