

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DWAYNE LAW, JR.,

Plaintiff,

v.

DAVID ZOOK, Baskerville Correctional
Center Warden, in his official capacity only;

ROBERT WHITT, Baskerville Correctional
Center Assistant Warden, in his official
capacity only; and

CAPTAIN L. BUTCHER (First Name
Unknown), Baskerville Correctional Center
Officer, in his official capacity only;

Defendants.

Civil Action No.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

INTRODUCTION

Plaintiff Dwayne Law, Jr. is a Muslim inmate in the custody of Baskerville Correctional Center ("Baskerville") who is being denied a religious accommodation for the month of Ramadan. Defendants Zook, Whitt, Butcher, and Baskerville Correctional Center staff, are impeding Mr. Law's ability to freely exercise his religion by refusing to accommodate his daily Ramadan fast. Mr. Law's sincerely held religious beliefs require him to abstain from food and drink from dawn to sunset during the month of Ramadan. Baskerville officials are denying Mr. Law access to meals during his religiously permitted eating hours, sunset to dawn. Mr. Law hereby respectfully moves this Court under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.*, for a temporary restraining order and/or preliminary injunction compelling Defendants to

accommodate his fast by providing him meals before dawn and after sunset for the duration of Ramadan, which is scheduled to end on or around May 2, 2022.

FACTUAL BACKGROUND

Fasting from dawn to sunset during Ramadan is one of the five pillars of Islam. *See* Complaint ¶ 1 n.1. Ramadan, which is the ninth month of the Islamic calendar, is based off a lunar cycle and so begins about ten days earlier each year. *Id.* This year, Ramadan started on April 2, 2022, and will end on approximately May 2, 2022. *Id.* ¶¶ 3-4. Mr. Law, along with Muslims across the world, fasts for Ramadan in accordance with his sincerely held religious beliefs and the religious traditions of Islam. *Id.* ¶¶ 5, 14, 24.

Mr. Law timely and properly requested to be added to the Ramadan fasting list to receive meals at times when it is permissible to eat during Ramadan, i.e., before dawn and after sunset. *Id.* ¶¶ 26. Despite this request for accommodation, Green Rock officials¹ refused to provide Mr. Law with meals at religiously appropriate times. *Id.* ¶ 3. Upon his transfer to Baskerville, Mr. Law requested to be and was added to the Ramadan list. *Id.* ¶ 31. His fast was accommodated for the first nine days of his time at Baskerville. *Id.* ¶¶ 4, 32. Nevertheless, Mr. Law fasts during daylight hours in accordance with his sincerely held religious beliefs. *Id.* ¶¶ 5, 14, 29. To the extent he is eating, it is food he purchases from the commissary to eat at night which lacks adequate nutritional value. *Id.* ¶¶ 5, 29. Mr. Law is only eating ramen, canned mackerel, and potato chips. *Id.* ¶ 6.

Mr. Law filed a grievance seeking relief from Defendants' refusal to provide him meals that he may eat before dawn and after sunset as required by his religious beliefs. *See id.* ¶¶ 38-42. Because it is Ramadan now and he is being forced to choose between eating nutritious, well-

¹ Prior to his April 7 transfer to Baskerville, Mr. Law was detained by VDOC at Green Rock Correctional Center. This motion seeks no relief against Green Rock officials. As Mr. Law is detained at Baskerville, only Baskerville officials can provide him meals.

balanced meals and observing his faith, Mr. Law asked that Baskerville consider his grievance on an emergency basis. *Id.* ¶ 40. Defendant Butcher denied his request for emergency consideration without explanation. *Id.* Instead, Mr. Law was taken to see Defendant Whitt on April 20, 2022 where Defendant Whitt told Mr. Law to stop making a fuss about Ramadan because he would not be accommodated this year no matter what he did. *Id.* ¶ 41. When Mr. Law explained to Defendant Whitt that this decision forced him to choose between his religious beliefs and eating properly, Whitt replied that Mr. Law was not being so forced because he could eat during the day with non-fasting inmates. *Id.* ¶ 42. Despite Mr. Law’s statements that he was unable to join non-fasting inmates during the day consistent with his religious obligations, Whitt continued to deny his request. *Id.*

ARGUMENT

The standard for granting a temporary restraining order is the same as that for granting a preliminary injunction. *S.C. Progressive Network Educ. Fund v. Andino*, 493 F. Supp. 3d 460, 465 (D.S.C. 2020) (citing *Virginia v. Kelly*, 29 F.3d 145, 146 (4th Cir. 1994)). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held and the merits adjudicated. *Granny Goose Foods v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 432, 439 (1974); *see also Omega World Travel, Inc. v Trans World Airlines*, 111 F.3d 14, 16 (4th Cir. 1997) (“The purpose of interim equitable relief is to protect the movant, during the pendency of the action, from being harmed or further harmed in the manner in which the movant contends it was or will be harmed through the illegality alleged in the complaint.”).

A plaintiff seeking immediate injunctive relief must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of hardships tips in his favor, and that an injunction is in the public interest. *Metro.*

Reg'l Info. Sys., Inc. v. Am. Home Realty Network, Inc., 722 F.3d 591, 595 (4th Cir. 2013) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

In the instant matter, the Defendants are refusing to provide Mr. Law with any food before dawn and after sunset in accordance with his sincerely held religious beliefs during the holy month of Ramadan, which began on April 2, 2022, and ends on or around May 2, 2022. A temporary restraining order is necessary to make sure Mr. Law is fed meals through the remainder of Ramadan without violating his faith. Plaintiff respectfully brings his claims to this Court after Defendants have denied his multiple attempts to grieve this matter. Plaintiff further asks that the temporary restraining order be converted into a preliminary injunction as soon as a hearing may be held, and last through the pendency of Ramadan.

I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS BECAUSE DEFENDANTS' REFUSAL TO ACCOMMODATE HIS RAMADAN FAST VIOLATES FEDERAL LAW

A. Mr. Law Satisfied the Prison Litigation Reform Act's Exhaustion Requirement, and to the Extent He Failed to Exhaust, No Remedy Was Available.

Under the Prison Litigation Reform Act of 1995 ("PLRA"), "[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e. Mr. Law seeks this Court's intervention because Baskerville Correctional Center officials have both refused to consider his Ramadan-observance grievance on an emergency basis and have made clear to him that continuing the regular grievance process will be futile.

Upon his removal from Baskerville's Ramadan list on April 17, 2022, Mr. Law was told that the grievance process he began on April 1, 2022, at Green Rock Correctional Center ("Green Rock") had lapsed and he would need to start a new process. *See* Complaint ¶ 38. The Virginia Department of Corrections requires an inmate to lodge an informal complaint before a formal

grievance may be filed. *Id.* ¶ 45. Because of this requirement, Mr. Law may not have been able to even begin the formal process at Baskerville until Ramadan ended.² Even if Baskerville had honored the original grievance filed at Green Rock on April 1, 2022, Baskerville would have had thirty days to respond—the entire length of Ramadan. An expedited grievance process exists for situations presenting an immediate risk of irreparable harm. *Id.* ¶ 39. Understanding this, Mr. Law requested that his grievance be categorized as an emergency because he would face irreparable harm if unable to fast during Ramadan. *Id.* ¶ 40.

Determined to observe Ramadan properly in a healthy and safe manner, Mr. Law began the grievance process again at Baskerville. *Id.* ¶ 41. Rather than treat his concerns seriously, Defendant Whitt called him into a meeting and ordered him to stop raising complaints and lodging grievances because they were not going to permit him to have his fast accommodated this year no matter what he did. *Id.* When Mr. Law explained that their refusal to accommodate him forced him to choose between his health and his sincerely held religious beliefs, Whitt told him that no such choice was necessary because Mr. Law could simply attend meals during the daytime with non-fasting inmates. *Id.* ¶ 42. Of course, Whitt knew that Mr. Law would not be permitted to bring food back to his cell to eat at night. *Id.*

Defendants’ failure to permit Mr. Law to utilize the emergency grievance process for this time-sensitive issue despite the serious impact on his health and religious practices, coupled with their order that he stop pursuing his request for accommodations, leave Mr. Law with no available remedy and excuses any further need for appeal or exhaustion. PLRA plaintiffs need not exhaust “unavailable” remedies. *Ross v. Blake*, 578 U.S. 632, 643 (2016). Administrative remedies are

² Mr. Law was removed from Baskerville’s Ramadan list on April 17, 2022. The fifteen-day deadline could bring the formal grievance process start date to May, 2 2022, the last day of Ramadan.

unavailable when “the facts on the ground demonstrate no . . . potential [for relief] exists,” or when “prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Id.* at 643-44.

The Virginia Department of Corrections’ grievance process, which takes up to 230 days, *see* Virginia Dep’t of Corrections, *Offender Grievance Procedure*, Operating Procedure 866.1, 13 (Feb. 1, 2021), presents no viable remedy for an unconstitutional condition that begins and ends before the process can be exhausted. The time that officials have to respond to the informal and first-stage formal grievances alone extends beyond the end of Ramadan. It is thus not an “available remedy because it takes too long to provide any relief.” *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1173 (7th Cir. 2020); *Ross*, 578 U.S. 642-43; *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (“unduly prolonged”). As discussed above, Baskerville officials told Mr. Law he was not going to be accommodated even if he utilized the grievance process and outright refused, without any justification, to permit him to utilize the emergency grievance process. The Assistant Warden’s actions are an affirmative rejection to Mr. Law’s grievance as well as a “fact on ground” demonstrating the impossibility of relief. This was also an attempt to intimidate Mr. Law into silence. Accordingly, no further administrative remedies remain available to Mr. Law and he has exhausted them to extent required by the PLRA.

B. Mr. Law is likely to succeed on the merits that Defendants’ application of its Ramadan fasting accommodation as applied to Mr. Law violates RLUIPA.

The Religious Land Use and Institutionalized Persons Act (“RLUIPA”) limits the ability of detention facilities to impose substantial burdens on the religious exercise of inmates. 42 U.S.C. § 2000cc-1. “Congress enacted RLUIPA . . . in order to provide very broad protection for religious liberty” to detainees. *Holt v. Hobbs*, 574 U.S. 352, 356 (2015). Substantial burdens exist when officials, through their acts or omissions, pressure “an adherent to modify his behavior and to

violate his beliefs.” *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (quoting *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981)). It is well-established that observance of Ramadan is a covered religious exercise and that “removal from [a] Ramadan . . . list . . . qualifies as a substantial burden under RLUIPA.” *Id.* at 187.

Mr. Law was denied Ramadan accommodations entirely at Green Rock, accommodated for nine days when he was transferred to Baskerville, and then again denied accommodations for false and varying reasons. Baskerville officials are substantially burdening Mr. Law’s religious exercise by removing him from Baskerville’s Ramadan list and denying him Ramadan accommodations. *See id.*

Defendants may thus only justify their failure to accommodate Mr. Law’s fast during Ramadan if they overcome RLUIPA’s statutorily mandated strict scrutiny analysis. In other words, they must demonstrate that Mr. Law’s removal from Baskerville’s Ramadan list is the least restrictive means to further a compelling government interest. 42 U.S.C. § 2000-cc-1(a); *Lovelace*, 472 F.3d at 189. Defendants cannot satisfy this burden.

Defendants have not provided to Mr. Law a compelling governmental interest in removing him from Baskerville’s Ramadan list. Baskerville has no compelling interest in continuing on with the unlawful restrictions on Mr. Law’s religious activities imposed by officials at other facilities. The plaintiff in *Lovelace* was removed from the Ramadan list as a result of an alleged disciplinary infraction, which was too “superficial” to qualify as a compelling interest. *Lovelace*, 472 F.3d at 190. At the outset, Mr. Law has no disciplinary infractions to consider. Defendants have provided inconsistent reasons for his removal from the Ramadan list: to maintain another facility’s denial of accommodation, Complaint ¶ 33; because he had allegedly missed an accommodated meal, *id.* ¶ 34; because he allegedly took a daytime meal, *id.* ¶ 35; and because, according to Defendant

Butcher, Mr. Law “is not a real Muslim,” *id.* ¶ 36. Here, the alleged issue, if one exists, with Mr. Law’s participation did not even occur at the facility refusing to accommodate his fast and was itself a violation of RLUIPA. *See id.* at 188 (prison officials may not make “blanket assumptions” that an inmate’s non-participation in one religious activity (e.g., group prayer) indicates a “lack of sincerity” with respect to other religious activities (e.g., fasting)). The other reasons given are simply fabricated because Mr. Law did not skip an accommodated meal or take a daytime meal. Defendant Butcher’s opinion about Mr. Law’s religious devotion is certainly not a compelling interest. There simply is no reason not to slightly alter the timing of Mr. Law’s meals until May 2, 2022, especially when Baskerville demonstrated it has the ability to do so.

Defendants cannot demonstrate that their “imposition of [a substantial] burden on [Mr. Law]” – i.e., denying him meals outside of daylight hours during Ramadan – fulfills a compelling government interest by the least restrictive means. *See* 42 U.S.C. § 2000(a)(1). Even assuming a compelling interest, Defendants cannot show that Mr. Law’s removal from its Ramadan list is the least restrictive means of achieving it. Defendants are currently accommodating other fasting Muslim inmates. Even if including Mr. Law at this stage incurs some cost for the facility, Congress made clear that RLUIPA “may require a government to incur expenses in its own operations to avoid imposing substantial burden on religious exercise.” *Holt*, 574 U.S. at 358 (quoting 42 U.S.C. § 2000cc-3(c)). Whatever their interest, Defendants need not entirely prevent Mr. Law’s fast to achieve it.

Thus, Mr. Law is likely to succeed on the merits of his RLUIPA claim.

II. THE REMAINING PRELIMINARY INJUNCTION FACTORS WEIGH IN FAVOR OF ENJOINING DEFENDANTS TO PROVIDE PLAINTIFF WITH MEALS BEFORE DAWN AND AFTER SUNSET DURING RAMADAN

After demonstrating a likelihood of success on the merits, the party seeking a temporary restraining order or preliminary injunction must show that (a) he is likely to suffer irreparable harm in the absence of preliminary relief, (b) the balance of hardships tips in his favor, and (c) a preliminary injunction is in the public interest. *Metro. Reg'l Info. Sys., Inc.*, 722 F.3d at 595. Each factor clearly favors Mr. Law, thus a temporary restraining order and/or preliminary injunction against Baskerville's refusal to accommodate his Ramadan fast is appropriate to alleviate the substantial burden on his religious observance.

A. Irreparable Harm

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This principle applies equally to violations of RLUIPA, in which "the echoes of these constitutional principles are unmistakable." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1239 (11th Cir. 2004); see *Lovelace*, 472 F.3d at 187 (applying First Amendment principles to the interpretation of RLUIPA and quoting *Midrash Sephardi* for this purpose).

Absent relief from this Court, Mr. Law will continue to face the choice of adhering to his sincerely held religious belief of daytime fasting during Ramadan or abandoning the practice and violating that sincerely held religious belief in order to have access to adequate meals. He will continue to go hungry, without access to meals or prison-provided nutrition, for the remainder of Ramadan. This forced choice constitutes irreparable harm and warrants a temporary restraining order and/or preliminary injunction requiring Defendants to appropriately accommodate Mr. Law's religious practice by providing meals before dawn and after sunset.

B. Balance of Hardships

If an injunction were granted, it would not present a hardship to Defendants. An injunction would simply require that Mr. Law be provided with meals at slightly different times—before dawn and after sunset—which Baskerville has already demonstrated that it can do so, both by accommodating other fasting inmates and by accommodating Mr. Law when he first arrived. In contrast, the hardship faced by Mr. Law is substantial as it is not only adversely affecting his health but also compromising his ability to adhere to his sincerely held religious beliefs. Since Defendants terminated Mr. Law’s accommodations, Mr. Law has been unable to obtain food from Baskerville in accordance with his religious beliefs. Instead, he has been forced to live off of what he can afford from the commissary and has experienced weight loss and issues with bowel movements. Complaint ¶ 6. These conditions, forced upon Mr. Law by the Defendants, severely hamper the practice of his Muslim faith and present potentially severe health consequences.

C. Public Interest

“[T]here is the highest public interest in due observance of all constitutional guarantees.” *United States v. Raines*, 362 U.S. 17, 27 (1960). Furthermore, “[t]he public also benefits from ensuring that the policies of federal law are enforced and upheld.” *United States v. Westvaco Corp.*, No. MJG-00-2602, 2015 WL 10323214, at *9 (D. Md. Feb. 26, 2015); *see also California Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, 852-53 (9th Cir. 2009) (“[I]t would not be . . . in the public interest to allow the state . . . to violate the requirements of federal law.”). Indeed, RLUIPA’s very existence demonstrates that “the United States has a substantial interest in ensuring state prisons that receive federal funds protect the federal civil rights of prisoners.” *Benning v. Georgia*, 391 F.3d 1299, 1307 (11th Cir. 2004). The issuance of a temporary restraining order and/or preliminary injunction to protect Mr. Law’s religious exercise guaranteed by the federal Constitution and RLUIPA is well within the public interest.

III. CONCLUSION

The Plaintiff respectfully requests that the Court issue a temporary restraining order and/or preliminary injunction requiring Defendants to add Mr. Law to Baskerville's Ramadan fasting list and supply him with meals before dawn and after sunset during Ramadan, as well as any other relief the Court deems appropriate.

Dated: April 25, 2022

Respectfully submitted,

By: /s/ Eden Heilman

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