



September 12, 2018

VIA CERTIFIED MAIL

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Ronald L. Miller
U.S. Marshal
Robert Dole Federal Courthouse
500 State Avenue, Suite G-22
Kansas City, KS 66101

Damon T. Hininger
President and CEO
CoreCivic
10 Burton Hills Blvd.
Nashville, TN 37215

Linda Thomas
Warden
Leavenworth Detention Center
100 Highway Terrace
Leavenworth, KS 66048

Re: Religious Discrimination at Leavenworth Detention Center

Dear Inspector General Horowitz, U.S. Marshal Miller, Mr. Hininger, and Warden Thomas:

Muslim Advocates, a national civil rights and legal advocacy organization, writes to express concern about the treatment of Muslim women housed in the Leavenworth Detention Center (“LDC”), a contract facility for the U.S. Marshals Service (“USMS”) operated by CoreCivic in Leavenworth, Kansas. Our client, Ms. Valeriece Ealom, is a practicing Muslim woman who has been detained in LDC since November 29, 2017. During this time, CoreCivic employees have repeatedly subjected Ms. Ealom to discriminatory treatment on account of her faith—specifically, her sincerely held religious belief that she must cover her hair with a headscarf. While LDC’s management has been aware of her mistreatment, they have failed to take any meaningful corrective action and USMS has likewise permitted this harassment to continue for months.

Ms. Ealom’s situation is not anomalous; rather it is emblematic of CoreCivic’s broader failures to supervise and train its employees as well as USMS’s failure to monitor its contractors and ensure their compliance with established law. We ask that CoreCivic and USMS take immediate measures to address the pattern of religious discrimination at LDC and ensure that Ms.

Ealom and other Muslim women housed in CoreCivic and U.S. Marshal facilities around the country can practice their faith without fear of harassment or retaliation.

I. CoreCivic Employees at LDC Have Repeatedly and Unlawfully Harassed Ms. Ealom Because of Her Religious Beliefs.

Ms. Ealom has been housed in LDC since November 29, 2017. Like many Muslim women, Ms. Ealom believes it is her fundamental obligation to practice modesty by wearing a headscarf. To that end, in December 2017, two days after arriving at LDC, she submitted verbal and written requests to the facility's chaplain to wear a religious head covering and soon thereafter received permission to do so.

Almost immediately after Ms. Ealom obtained two headscarves and began covering her hair, three CoreCivic corrections officers—Officers Malinowski, Putnam, and Turkin—began to harass her. The officers insisted that she take the “rag” off of her head and threatened to discipline her if she did not comply. Around that time, Ms. Ealom complained verbally of this harassment to her Unit Manager, Brenda Miller. In response, Ms. Miller logged Ms. Ealom’s informal complaint, noting Ms. Ealom’s right to wear the headscarf. Ms. Miller, however, did not speak directly to the officers involved nor did she or any other CoreCivic employee discipline the officers for their behavior.

The officers’ discriminatory abuse continued. On January 9, 2018, Ms. Ealom filed a written grievance after Officer Malinowski once more referred to her headscarf as a “rag.” The only action Ms. Miller took in response to Ms. Ealom’s grievance was to write a note on the grievance form stating that the staff had been instructed that Ms. Ealom may wear her black or white headscarves. No other steps were taken to prevent the officers from further harassing Ms. Ealom because of her religious beliefs.

Ms. Ealom’s complaints and grievance led CoreCivic employees to retaliate against her. Specifically, Officers Putnam and Turkin responded by barring Ms. Ealom’s access to her daily medication in January 2018. When Ms. Ealom attempted to join the line to receive her daily medication, Officer Putnam refused to let her leave her cell while wearing her headscarf. Later that day, Ms. Ealom attempted to go to the medical unit and Officer Turkin ordered her to “take off the rag” before exiting her cell. When Ms. Ealom stated she had a right to wear the headscarf and would not remove it, Officer Turkin threatened to put Ms. Ealom in solitary confinement and stated that any grievance she filed would be shredded. As a result of Officers Putnam and Turkin’s actions, Ms. Ealom never received her medication that day.

In response to this harassment, Ms. Ealom submitted a grievance on January 29, 2018 describing how the officers had denied her medication because of her headscarf and requesting

that LDC’s management educate their staff about religious head coverings. In response to Ms. Ealom filing a grievance, the officers—following their established pattern of discrimination and retaliation—intensified their obstruction of Ms. Ealom’s religious practice over the next several weeks and months. Officer Malinowski retaliated soon after the grievance was filed by confiscating one of Ms. Ealom’s headscarves on the pretext that it was “contraband”. Although Ms. Ealom filed grievances and even raised the matter verbally with the LDC Associate Warden, LDC’s management refused to take any meaningful steps to address the officers’ misconduct.

On several other occasions this year, Officer Malinowski belligerently interrupted Ms. Ealom while she was praying to conduct a cell search; the officers also continued to order her to remove her headscarf. Because of this persistent harassment, Ms. Ealom spoke in June 2018 to LDC Warden Linda Thomas. Warden Thomas stated she would address this issue with the officers. Despite Warden Thomas’s promise, at the end of June 2018, Officer Malinowski confiscated Ms. Ealom’s last remaining headscarf, locked Ms. Ealom in her cell, told Ms. Ealom that “because [she was] Muslim, [she] had to stay in her cell and pray,” and refused to let her out. As a result of Officer Malinowski wrongly confiscating her last headscarf, Ms. Ealom was unable to cover her hair consistent with her sincerely held religious beliefs for four weeks, until she secured a replacement from the chaplain at the end of July.

In total, Officers Malinowski, Putnam, and Turkin have harassed Ms. Ealom on seven or eight occasions since her detention at LDC started in December 2017. As a result of their actions, Ms. Ealom was unable to cover her hair in accordance with her religious beliefs for one month; she also remains fearful that she will face additional harassment and mistreatment in the future.

Ms. Ealom has repeatedly informed LDC’s management about her mistreatment. Since December 2017, she has filed informal complaints, grievances, and even a *pro se* civil action.¹ Despite being aware of the officers’ bigoted and discriminatory conduct, LDC’s management has not taken any meaningful steps to address the situation. In fact, by refusing to take any corrective action, LDC’s management has only blessed further wrongdoing.

II. The Actions of CoreCivic’s Employees Contravene Federal Law.

CoreCivic’s employees have directly violated federal law. The First Amendment forbids burdens on free exercise that are not “reasonably related” to a legitimate penological interest. *Turner v. Safley*, 482 U.S. 78, 89-91 (1987); *see generally Kay v. Bemis*, 500 F.3d 1214 (10th Cir. 2007) (upholding prisoners’ First Amendment claims). Similarly, the Religious Freedom Restoration Act (“RFRA”) protects federal detainees’ free exercise from substantial restrictions by subjecting all such restrictions to the strictest standard of constitutional scrutiny. 42 U.S.C. § 2000bb, *et seq.* RFRA applies to federal detention facilities as well as private contractors, like

¹ *See generally* Complaint, *Ealom v. United States*, No. 18-3045 (D. Kan. 2018).

CoreCivic, that run covered facilities. 42 U.S.C. § 2000bb-2. Under both the First Amendment and RFRA, if an individual's religious exercise is substantially burdened, the government must provide a compelling reason for creating the burden. 42 U.S.C. § 2000bb (requiring a compelling interest and narrowly tailoring any restrictions to achieve that purpose); *Turner*, 482 U.S. at 89 (requiring the restriction to be reasonably related to a legitimate penological objective). If a compelling interest does not exist, the burden is impermissible. *See id.*

By repeatedly ordering Ms. Ealom to remove her headscarf, subjecting her to derogatory slurs, improperly confiscating her headscarf as contraband, and denying her medication in retaliation for filing complaints, Officers Malinowski, Turkin, and Putnam's conduct has substantially and unjustifiably burdened Ms. Ealom's religious exercise. The officers have never offered any justification for their conduct. Nor could they. Their actions clearly run afoul of the protections enshrined in both RFRA and the First Amendment's Free Exercise Clause.

Moreover, it is well-established that prison officials may not retaliate against prisoners for exercising their constitutional rights. *See, e.g., Wesselman v. Ashley*, 899 F.2d 1223 (6th Cir. 1990). Nonetheless, Officers Malinowski, Turkin, and Putnam denied Ms. Ealom her medication, confiscated her properly issued headscarves, interrupted her prayers, locked her in her room, and delayed and attempted to stop her grievances in a series of escalating actions to retaliate against her for submitting complaints and grievances implicating them.

These actions—in conjunction with the failure of LDC's management to prevent the discrimination against Ms. Ealom from recurring or to take any meaningful action to censure their employees despite being on notice of their misconduct—have substantially burdened Ms. Ealom's right to practice her faith in violation of federal law.

III. USMS Has Failed to Monitor Operations at LDC in Violation of the Federal Performance Based Detention Standards.

For over eight months, Officers Malinowski, Turkin, and Putnam have engaged in a campaign of repeated, coordinated, and consistent harassment of Ms. Ealom. That this pattern persists shows the insufficiency of USMS' oversight and monitoring of LDC.

As a federal contractor housing detainees, CoreCivic must adhere to the Federal Performance Based Detention Standards (“FPBDS”), which define minimum levels of quality for contractor operations in managing LDC.² Under the FPBDS, the facility director must conduct

² See Contract Award for Services at USMS Leavenworth (Jan. 29, 2007), https://www.usmarshals.gov/foia/IGAs_Cap_Agreements/kansas/leavenworth-contract.pdf; *Federal Performance-Based Detention Standards*, U.S. Dep't Justice (Feb. 23, 2011) (“FPBDS”), <https://www.justice.gov/archive/ofdt/fpbds02232011.pdf>.

regular reviews “at least quarterly” of grievance tracking systems “to identify repetitive complaints and areas of concern.”³ The FPBDS also mandate that the facility director provide staff with “annual diversity and sensitivity training,” to “enhance staff members’ ability to communicate with diverse detainees in an effective manner” and prohibit staff from using “demeaning language or racial/ethnic/gender-related slurs within the facility.”⁴

Ms. Ealom’s experiences make clear that USMS has fundamentally failed to ensure that CoreCivic is meeting these standards at LDC. As stated previously, Ms. Ealom has filed repeated grievances about the discrimination she has faced in her efforts to practice her religion. Moreover, Ms. Ealom has even reported these incidents to the U.S. Marshals onsite contract administrator, James Burgess. Yet, multiple quarters have passed without indication that USMS has acted to address CoreCivic’s repeated failures to adequately resolve the officers’ discrimination and harassment.

USMS has long been aware of the inadequacy of its oversight of CoreCivic and LDC in particular. An April 2017 U.S. Department of Justice Office of the Inspector General (“OIG”) audit of LDC found that USMS “failed to provide sufficient oversight of [LDC]”, resulting in “several significant issues with [LDC] operations going unaddressed for extended periods of time.”⁵ Ms. Ealom’s recent experiences only highlight that USMS continues to fail in its responsibility to monitor and correct CoreCivic’s systematic misconduct at LDC.

IV. USMS and CoreCivic Must Immediately Remedy the Situation.

CoreCivic’s staff at LDC should immediately remedy the discriminatory treatment suffered by Ms. Ealom. As part of that process, staff at LDC should return Ms. Ealom’s headscarves and ensure that she can wear them—and adhere to her other sincerely held religious beliefs—without harassment or retaliation for the remainder of her detention. LDC’s management should also take steps to appropriately train, supervise, and discipline all personnel involved in this situation. Moreover, USMS should take measures to more effectively monitor LDC and other CoreCivic facilities. To that end, USMS should ensure that personnel at all CoreCivic facilities are appropriately trained and educated with regard to religious head coverings, religious accommodations, and facility grievance procedures.

³ FPBDS E.3.6, at 55.

⁴ FPBDS E.2.5-2.6, at 54.

⁵ Office Inspector Gen., *Audit of U.S. Marshals Service Contract with CoreCivic to Operate Leavenworth Detention Center*, U.S. Dep’t Justice, at i (Apr. 2017). In particular, OIG found that USMS had failed to actively monitor LDC operations, and instead, typically became aware of incidents only after the fact. *Id.* The USMS representative in charge of monitoring LDC’s performance day-to-day “was located offsite, had no previous contract oversight experience, and received no formal guidance and negligible detention-related training.” *Id.* at ii. He or she “did not develop an inspection program or monitoring procedures,” and OIG deemed this lack of oversight to present “risks that may extend throughout all [USMS’s] other contract detention facilities.” *Id.*

Given the gravity of the situation and the core rights at issue, we request a prompt response to this correspondence. You may reply to Nimra Azmi at nimra@muslimadvocates.org or the address below. We look forward to your response.

Sincerely,

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