



VIA CERTIFIED MAIL & ELECTRONIC MAIL: director.clarke@vadoc.virginia.gov

May 24, 2019

Director Harold W. Clarke
Virginia Department of Corrections
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Director Clarke:

Muslim Advocates, the Islamic Circle of North America's Council for Social Justice, and the Virginia Prison Justice Network write to bring to your urgent attention violations of the free exercise rights of Muslim inmates detained in Virginia Department of Corrections ("VDOC") facilities during the holy month of Ramadan. We have received repeated reports from several VDOC facilities that detained Muslims observing Ramadan are regularly not receiving breakfast before their fasting begins, are being needlessly forced to wait an hour or more after sundown before receiving dinner, and are being denied access to adequate potable water after fasting hours. Not only does such systemic mistreatment jeopardize the health of inmates who are observing the Ramadan fast, but it also violates their well-established rights under the Free Exercise Clause of the First Amendment, the Eighth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.* ("RLUIPA").

We ask that you take immediate steps to address the unlawful conditions at VDOC facilities before Ramadan ends on or around June 4, 2019, so that all observing Muslims incarcerated in VDOC facilities can timely receive adequate food and drink and practice their faith fully and freely. To ensure that these issues do not arise again, we also request that you mandate trainings for VDOC staff regarding Ramadan practices and increase oversight of all facilities' meal delivery during Ramadan now and in the future.

I. Muslim Inmates in VDOC Facilities Are Not Receiving Adequate Food and Water during Ramadan

Ramadan, the holiest month of the Muslim calendar, lasts approximately 30 days. As part of fulfilling their religious duties during the month, observant Muslims must forego all food and all drink, including water, from sunrise until sundown. Muslims are also religiously obligated to



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stop eating immediately upon sunrise and to break their fast promptly upon sunset. During Ramadan, Muslims must consume all food and water during non-fasting hours. This year, Ramadan started on or about May 6, 2019 and will end on or about June 4, 2019.

We have received repeated reports that inmates in VDOC facilities have faced substantial hurdles in their efforts to fast during Ramadan. At Red Onion State Prison (“Red Onion”) in Pound, Virginia, prison staff have repeatedly and purposefully failed to serve breakfast before sunrise to inmates known to be fasting. Accordingly, Muslim inmates are receiving their morning meals after the fast has begun. This pressures inmates to choose between eating their much-needed morning meal or observing their faith and going without any food or drink until the evening. Inmates at Red Onion have also had to regularly wait an hour or more after sundown before receiving their dinner. Similarly, at River North Correctional Center (“River North”) in Independence, Virginia, Muslim inmates have been compelled to wait an hour or more after sundown—after an already sixteen-hour fast—before receiving their dinners. Furthermore, River North staff have also denied inmates access to adequate potable water after fasting hours and the only clean water they receive during the entire day is the insufficient amount that comes with their often-belated meals. At both facilities, non-fasting inmates, unlike Muslim inmates, receive their food on time, are able to eat meals, and have access to drinkable water throughout the day. We believe that Red Onion and River North are not the only facilities to be impacted by Ramadan-related issues and that this is reflective of a broader problem at VDOC facilities.

II. VDOC Is Legally Mandated to Accommodate Muslim Inmates’ Ramadan Practice

The Supreme Court has long held that “prison walls do not form a barrier separating prison inmates from the Constitution,” *Turner v. Safley*, 482 U.S. 78, 84 (1987), and that inmates “clearly retain” First Amendment protections, including the right to free exercise of religion. *See O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348, 107 S. Ct. 2400, 2404, 96 L. Ed. 2d 282 (1987). RLUIPA further protects state detainees’ free exercise of religion by subjecting all substantial burdens on religious exercise to the strictest standard of constitutional scrutiny. *See* 42 U.S.C. § 2000bb *et seq.* A substantial burden is a burden that places “substantial pressure” on an individual to modify his behavior and violate his beliefs or one that forces a person to choose between following his religion and forfeiting government benefits. *See Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006). Under both the First Amendment and RLUIPA, an individual’s religious exercise can only be substantially burdened if the government can provide a compelling reason for creating the burden. 42 U.S.C. § 2000cc *et seq.* (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.*

Prisoners have clearly established rights under the Free Exercise Clause of the First Amendment and RLUIPA to receive a diet consistent with their sincerely held religious beliefs. *See Lovelace*, 472 F.3d at 198. Inmates are also entitled to sufficient calories and nutrition while incarcerated. *See Shrader v. White*, 761 F.2d 975, 986 (4th Cir.1985). The Fourth Circuit has held that the observance of Ramadan is a religious exercise either central to or compelled by Islam and protected under RLUIPA. *See Lovelace*, 472 F.3d at 186–87. As such, burdens on the ability of Muslim inmates to observe the Ramadan fast constitute violations of RLUIPA. *Id.* As Virginia federal courts have found, breaking the Ramadan fast with an evening meal upon sundown is a religious exercise covered by RLUIPA. *See Evans v. Jabe*, No. 3:11CV104, 2014 WL 202023, at *8 (E.D. Va. Jan. 17, 2014). Fasting inmates are also entitled to receive a morning meal timely before sunrise. *See Toney v. Harrod*, No. 15-3209-EFM-DJW, 2017 WL 4758962, at *4–5 (D. Kan. Oct. 20, 2017) (finding that inmate was entitled to receive a meal prior to the beginning of his Ramadan fast at the required time as part of his religious practice). Inmates’ religious exercise rights under both the First Amendment and RLUIPA are violated when a prison’s Ramadan meal delivery schedule leads to nutrient deprivation or undue hunger, and adversely impact inmates’ well-being and religious experience. *See Lovelace v. Bassett*, No. 7:07CV00506, 2008 WL 4452638, at *3 (W.D. Va. Sept. 27, 2008).

A Ramadan meal policy that results in Muslim inmates being treated differently from non-Muslim inmates, including being denied the same amount of food or water as non-Muslim inmates, also violates the Equal Protection Clause of the Fourteenth Amendment. *See id.* at *4. Additionally, the Supreme Court has established that the Eighth Amendment imposes a duty on prisons to provide humane conditions of confinement, including ensuring that prisoners receive adequate food and water. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 833 (1994). VDOC has even recognized the fundamental importance of respecting and accommodating inmates’ Ramadan practice in its own regulations. *See, e.g., Operating Procedure* § 841.3.

The Constitution and RLUIPA protect VDOC’s Muslim inmates’ right to observe Ramadan. Yet, by not providing breakfast until after fasting has commenced, VDOC facilities like Red Onion and River North have repeatedly forced Muslim inmates to choose between receiving food for the day and practicing their faith. VDOC facilities have also prevented inmates from following their religious obligation of breaking their fasts in a timely manner, immediately upon sundown, by failing to serve dinner to fasting inmates until an hour or more after sundown. Moreover, in preventing Muslim inmates from being able to access sufficient drinkable water after sundown, VDOC facilities have forced Muslim inmates to choose between sufficient potable water and their religious practice. Such actions clearly run afoul of the protections enshrined in both RLUIPA and the First Amendment. VDOC facilities also violate of RLUIPA and the Fourteenth Amendment by treating Muslim inmates on less than equal terms with other inmates and forcing them to go without meals, adequate clean water, and timely served meals—which are not denied to non-Muslim inmates. In fact, inmates who are not fasting have received access to drinkable

water while Muslim inmates have not. Finally, the Eighth Amendment mandates that prisons provide humane conditions of confinement. Denying fasting inmates more than a cup or two of drinkable water a day falls far short of those obligations. Accordingly, VDOC has systematically burdened the religious exercise of Muslim inmates during Ramadan, discriminated against them, and subjected them to unlawful and inhumane conditions in violation of the Constitution.

III. Conclusion

Only ten days remain before the end of Ramadan. It is therefore imperative that you take immediate steps to ensure that the Muslim inmates currently detained in all VDOC facilities can observe their faith during this critically important time. We request that you ensure that the inmates observing Ramadan at Red Onion, River North, and all other VDOC facilities receive their sunrise and sunset meals on time and are given access to drinkable water throughout the night. We further request that you train VDOC staff regarding Ramadan practices and increase oversight of facilities' meal delivery systems for Ramadan now and in the future.

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

Sincerely,

/s/ Nimra H. Azmi

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