No. 22-1876

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOHAMED SALAH MOHAMED A EMAD,

Plaintiff-Appellant,

v.

DODGE COUNTY, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Wisconsin, No. 2:19-cv-00598-LA
The Honorable Lynn Adelman, District Court Judge

OPENING BRIEF AND REQUIRED SHORT APPENDIX FOR PLAINTIFF-APPELLANT

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Appellate Court No: 22-1876

Short Caption: Mohamed Emad v. Dodge County et al

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N/A

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INTRODUCTION

For the 14 months that Mohamed Salah Mohamed Ahmed Emad, a devout Muslim, was detained at Dodge County Detention Facility (the "Jail"), the Jail prohibited him from praying anywhere except his cell. Mr. Emad believes that he must be in a state of ritual cleanliness before praying, a state that is impossible to obtain in the vicinity of a toilet. His cell contained a toilet, so Mr. Emad believed that every time he prayed in his cell, five times a day for the duration of his detention, his obligatory prayers were nullified, violating a central tenet of his religion and disrespecting his God. The Jail denied his repeated requests to pray elsewhere, despite the fact that, as the district court found, its restrictive policy served no penological interest.

The Jail also prohibited Mr. Emad from gathering with other Muslim detainees for Jumu'ah, a sacred Friday afternoon ritual and the most important communal prayer of the week. Per Jail policy, any gathering of detainees had to be led by an outside volunteer. The Jail had no Muslim volunteer. In fact, it hasn't had one for years, and it made no meaningful effort to find one, despite the fact that the Jail has a substantial population of Muslims, many voicing the same religious

needs as Mr. Emad. Mr. Emad did the Friday prayer, too, alone in the confines of his cell, and had no opportunity to pray communally with other Muslims – an essential practice in the Muslim faith – for the entire duration of his detention.

The story was entirely different for Christian detainees. First, they could pray outside their cells. Jail employees interpreted the restrictive policy to apply to prayer that involves kneeling or mats, as Muslim prayer does, but not the seated, verbal prayer of Christian detainees. Christian detainees also regularly engaged in detainee-led group religious activity, from Bible study to group prayer. And they had a host of options for weekly religious programming specific to their faith.

The Jail's prayer-restricting policies and inferior treatment of Muslims violated Mr. Emad's Free Exercise and Equal Protection rights. The district court erred in granting summary judgment to defendants and its decision should be vacated.

JURISDICTIONAL STATEMENT

Mohamed Salah Mohamed Ahmed Emad filed this action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Wisconsin. The district court had jurisdiction over Mr. Emad's

claims under 28 U.S.C. §§ 1331, 1343. The district court entered summary judgment for Defendants on May 3, 2022. SA-019. Mr. Emad timely noticed his appeal on May 18, 2022. SA-020; *see* Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction to review the district court's final order under 28 U.S.C. § 1291.

STATEMENT CONCERNING ORAL ARGUMENT

Appellant respectfully requests that oral argument be granted because this case raises important issues regarding the First Amendment right to religious exercise, in particular the right to pray, *see Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (explaining that the First Amendment "doubly protects" prayer), and the Fourteenth Amendment right to be free from religious discrimination. In light of the complexity and importance of this case, appellant respectfully requests 20 minutes of oral argument.

ISSUES PRESENTED

1. Whether the district court erred in finding defendants are entitled to qualified immunity on Mr. Emad's First Amendment claim

even though they prohibited him, without any justification, from praying individually outside his cell?

2. Whether the district court erred in granting summary judgment to defendants on Mr. Emad's First Amendment claim, even though they prohibited him from participating in the essential and required weekly communal prayer of Jumu'ah where: (a) defendants applied the restriction on detainee-led activities to Muslim, but not Christian, detainees; (b) Mr. Emad had no alternative way to engage in group worship due to the Jail's lack of any Islamic programming; (c) defendants could have accommodated his request with minimal impact on Jail resources; and (d) obvious, easy alternatives to the complete ban existed?

3. Whether the district court erred in granting summary judgment to defendants on Mr. Emad's Equal Protection claim where they permitted silent or verbal seated prayer but prohibited the form of prayer practiced by Muslims, discriminatorily enforced prayer restrictions against Mr. Emad and other Muslims, but not Christian detainees, and failed to make any meaningful effort to provide Islamic

programming, while actively administering a full roster of Christian programming?

STATEMENT OF THE CASE

I. Factual Background[1]

The Dodge County Detention Facility receives a substantial number of Muslim detainees because it chooses to contract with U.S. Immigration and Customs Enforcement ("ICE") to house immigration detainees. ECF 86-2 at 25–26. The record in this case shows that 175 Muslims were admitted to the Jail in 2018 and 2019. ECF 86 ¶ 12. For housing individuals under this contract, the County receives more than $14,000 a day.[2]

The plaintiff-appellant in this case is a devout Muslim. Mr. Emad has been a member of the faith his entire life and is active in the Muslim community in Milwaukee, where he has lived the past 25 years. ECF 86-

[1] Because this appeal arises from a grant of summary judgment, the statement of facts draws all justifiable inferences in plaintiff's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

[2] Defendant Schmidt testified that the County receives $86 per detainee per day. ECF 86-2 at 26. Publicly available data shows that the average daily population of ICE detainees in the Dodge County Detention Facility during fiscal year 2018 was 173. ICE Detention Facilities as of November 2017, NATIONAL IMMIGRANT JUSTICE CENTER, https://immigrantjustice.org/ice-detention-facilities-november-2017.

1 at 24–25, 30. One of the core practices of his faith is daily prayer: He prays five times a day at prescribed times, a practice known as salah. *Id.* at 33–35. Salah is one of the Five Pillars of Islam and is a ritual obligation for any pious Muslim. *Id.*; ECF 86-31 ¶ 2. Mr. Emad believes it is "essential" and "the first thing [he'll] be asked on the day of judgment." ECF 86-1 at 34. He has never missed it. *Id.* at 95.

In addition to the daily practice of salah, Mr. Emad participates in Jumu'ah, a congregational prayer that occurs once a week, just after noon on Fridays. *Id.* at 65–67, 76, 81–82. Muslim teachings place great value on praying in congregation: "Islamic traditions are clear that praying communally, with a group, is always preferable to praying alone." ECF 86-31 ¶ 6. Jumu'ah is typically led by an imam at a mosque, ECF 86-1 at 65, 73–74, but can be done elsewhere and without an imam as long as one prays in a group of two or more, *id.* at 74. This is the most important prayer of the week. *Id.* at 65–66.

Before doing any prayer, Mr. Emad believes, consistent with basic tenets of Islam, that he must be in a state of ritual cleanliness as a sign of respect to God. *See* ECF 86-1 at 38–39; ECF 86-31 ¶ 2. To achieve this, Mr. Emad must cleanse both his body and the place where he will pray

with clean water. ECF 86-1 at 38–40, 48–49, 56–58. He washes his hands, nose, ears, face, arms up to the elbow, and feet up to the ankles, and he washes anything that appears dirty in the surrounding area. *Id.* at 39. He must pray in a clean, pure area; even unseen dirt or feces will invalidate a prayer. *Id.* at 40, 59; ECF 86-31 ¶ 2. For that reason, prayer in a bathroom, or in any room with a toilet, is prohibited, because of the residual presence of urine or feces. ECF 86-1 at 58, 238; ECF 86-31 ¶ 3.

Beginning in March 2018, Mr. Emad was detained for 14 months at Dodge County Detention Facility. ECF 86 ¶ 8. The entire time he was there, he was forced to do all of his prayers – including the Friday prayer that is meant to be conducted in a group – alone, in his cell, a few feet from a toilet. *Id.* ¶¶ 33–35, 43.

In denying Mr. Emad's repeated requests to be allowed to pray in accordance with his faith, Jail officials cited two policies. ECF 86-1 at 237–38, 257–59; ECF 86-19; ECF 86-20. First, the Jail prohibits personal worship in common areas. ECF 86-13 at 30. The inmate handbook specifies that "[p]ersonal worship may be done in your cell or beside your bunk" but "is not permitted in the dayroom areas." *Id.* "Personal worship" is not defined, but Defendant Sheriff Schmidt testified that he

understood the policy to allow personal verbal prayers or bowing one's head to say grace, but to prohibit "more involved" worship. ECF 86-2 at 45–48. And indeed, officers allowed Christian detainees to say grace together over meals or silently pray, *see* ECF 86 ¶¶ 82–85, but Mr. Emad's Islamic form of prayer, which involves prostrating oneself, or touching all limbs and forehead to the ground, was prohibited. ECF 86-1 at 34–35, 237; ECF 86-4 at 115–16; ECF 86-8 at 52.

The other Jail restriction that officers cited when denying Mr. Emad's requests was the prohibition on "[g]roup activities led by inmates." ECF 86-13 at 29. Officers interpreted this to bar a small gathering of detainees to pray, so Mr. Emad could not convene with any other Muslims in the Jail to pray communally for Jumu'ah. ECF 86-1 at 196; ECF 86-19.

The Jail does offer group religious programming, but, according to policy, it must be led by an outside volunteer. ECF 86-3 at 54–55; ECF 86-6 at 112–13; ECF 86-10 at 97; ECF 86-12 at 97–98. There is no Muslim volunteer service provider who comes to the Jail, so there is no programming for Muslims. ECF 86-6 at 44, 85–86. In fact, for at least the last 24 years there has been no programming for Muslim detainees. ECF

86-10 at 31. Program specialists, including Defendants Schlegel, Myers, and Buckner, are charged with finding these volunteers, according to Jail policy. ECF 86 ¶ 19; ECF 86-10 at 28. At an unknown point in time before Mr. Emad's detention – no one is able to say exactly when – a former officer in the Jail's programs department at the Jail may have tried to find a volunteer imam. ECF 86-3 at 53–56; ECF 86-6 at 41–44, 126–28; ECF 86-10 at 95–96. Current members of the programs department (defendants in this case) recall that this officer found imams willing to provide their services, but these candidates requested to be paid, and the Jail chose not to hire any of them. *Id.*

In fact, the weekly religious program offerings during Mr. Emad's detention were predominantly Christian: two Catholic services, one Jehovah's Witness service, two non-denominational Bible studies, two non-denominational worship services, and one interfaith service led by Catholic nuns. ECF 86 ¶ 22; ECF 86-14. Detainees also witnessed Christians regularly gathering for unsupervised group Bible study in the dayroom and library. ECF 86-22 ¶ 9; ECF 86-17 ¶¶ 26–27; ECF 86-29 ¶¶ 5–6; ECF 86-1 at 204–06, 250–54. These gatherings occurred multiple days per week, *see* ECF 86-17 ¶ 26 ("Most days, I witnessed Christian

detainees hold their own Bible study in the day room."); ECF 86-29 ¶ 5 (stating that Bible study occurred "around 2 or 3 times a week" in the dayroom), and involved anywhere between four and 10 detainees, with one leading the seminar. ECF 86-1 at 204, 250–52; ECF 86-29 ¶ 8. These groups would move chairs around to sit in a circle, read aloud from the Bible, and sometimes stand, hold hands, bow heads, and pray together. ECF 86-1 at 204–06, 250–52. Despite the fact that this practice violates the prohibition on detainee-led activities, guards did not stop them. ECF 86-22 ¶ 9 ("The on-duty officer often observed it and never stopped it."); *see also* ECF 86-8 at 46–48 (Jail officer confirming that if small groups of detainees were gathered in a circle, reading a book together and bowing heads in apparent prayer, he wouldn't stop that behavior); ECF 86-17 ¶ 26. Christian detainees were also permitted to pray together over meals in the dayroom. ECF 86-4 at 108.

But because the policy against detainee-led activities *was* enforced against Mr. Emad and other Muslims, he was prohibited from gathering for Jumu'ah at any point during his detention. Instead, he was compelled to pray in his cell, next to the toilet, and forgo the communal Friday

prayer altogether. Cut off from two of the sacred rituals of his faith, Mr. Emad suffered immense distress. ECF 86 ¶ 49.

Over the 14 months of his detention, he requested over and over again to be able to pray outside his cell. His verbal requests to five or six different officers were all denied. ECF 86 ¶ 36; ECF 86-17 ¶ 10. Mr. Emad also submitted an inmate request slip within a few weeks of entering the Jail "to request a prayer room on Friday around 1:00 pm for our holy day." ECF 86-19. This request was denied because the Jail "do[es] not have a Juma service" and "do[es] not allow inmate/detainee led activities." *Id.* Mr. Emad later filed a written grievance reiterating his request, noting that he "ha[d] not gotten any kind of accommodation for having a space to perform Jumah." ECF 86-20. He observed that his "fellow inmates from Christian faith" had ample opportunities for group religious practice and asked for the Jail to please provide a way to conduct Jumu'ah. *Id.* He added that they did not need a prayer leader if the Jail could not provide one, they just wanted to "perform Friday prayer in congregation peacefully." *Id.* This grievance was denied. The responding officer said offering Jumu'ah was impossible without a religious volunteer, and advised Mr. Emad that he was "more than

welcome to suggest religious providers who would be willing to come to the facility and volunteer to provide services." *Id.* Mr. Emad appealed this grievance, and was again denied. ECF 86-21. The officer responding to his appeal repeated that without a religious volunteer, the Jail could not allow any gathering for Jumu'ah, but "if a volunteer can be found we will see about implementing it." *Id.* At no point during Mr. Emad's detention did Jail employees try to find a volunteer imam. ECF 86-3 at 56; ECF 86-9 at 44; ECF 86-6 at 44; ECF 86-10 at 94–95, 125; ECF 86-12 at 45.

Mr. Emad also offered to modify the Jumu'ah service in order to make it as easy as possible to implement. ECF 86-1 at 245–49. He explained that the service didn't need to be led by an imam, but an officer could supervise. ECF 86-21. He offered to complete Jumu'ah in only 15 minutes, rather than the normal 30. ECF 86-1 at 249. And he offered to conduct the sermon part of Jumu'ah in English instead of Arabic so officers would understand that he was praying and not saying anything bad. *Id.* at 245–47. All of these suggestions were refused. ECF 86 ¶ 47.

These religious needs were not novel to the Jail. Over the period 2016 to 2019, other Muslim detainees asked to do salah outside their cells

in a clean area, and asked for permission to do Friday group prayer together. ECF 86 ¶¶ 51–56. They were also summarily denied. *Id.*

II. **The Proceedings Below**

Mr. Emad filed suit in April 2019, alleging that the Jail's prayer restrictions and treatment of Muslims violated his First Amendment right to free exercise of his religion and his Fourteenth Amendment right to equal protection of the laws.[3] ECF 1. The operative complaint names seven defendants: Sheriff of Dodge County, Dale Schmidt; Jail Administrator, Anthony Brugger; and four officers in the Programs Department, Officers Jeffrey Schlegel, Chris Myers, Matthew Marvin, and Scott Buckner. ECF 52. Additionally, Mr. Emad named Dodge County as a defendant for indemnity purposes. *Id.*

At the close of discovery, defendants sought summary judgment on the grounds that 1) they had not violated any of Mr. Emad's

[3] Mr. Emad also brought claims under the Fifth Amendment against various federal agencies. ECF 1 at 19–22. The district court dismissed these claims, ECF 44, and Mr. Emad is not pursuing them on appeal. In his initial complaint he also brought a claim for inadequate mental healthcare against the Jail's medical care provider, but that claim was resolved through settlement. ECF 1 at 16; ECF 52.

constitutional rights and 2) qualified immunity shielded them from liability. ECF 76.

The district court granted the motion for summary judgment. SA-001. First, it analyzed the prayer restrictions on Mr. Emad under the framework established in *Turner v. Safley*, 482 U.S. 78 (1987): When a prison regulation impinges on detainees' constitutional rights – that is, when it imposes a "substantial burden on a central religious belief or practice," *see Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013), the regulation is valid only if it is "reasonably related to legitimate penological interests." *Turner*, 482 U.S. at 89.

With respect to the prohibition of personal worship in the day room, the district court agreed with Mr. Emad that a reasonable jury could find the policy imposed a substantial burden on his religious exercise because it forced him to pray in a room with a toilet, which is prohibited by his Islamic faith. SA-011. It further agreed that a reasonable jury could find that the policy was not reasonably related to a legitimate penological interest. *Id.* at 12–13. Indeed, it concluded that defendants had failed to connect the policy to any legitimate penological interest at all. *Id.* Nonetheless, the court decided the defendants were entitled to qualified

immunity on the grounds that the constitutional violation in Mr. Emad's case was not clearly established. *Id.* at 13.

The district court also granted summary judgment to defendants with respect to the restriction on congregational prayer. The court did find that one of the *Turner* factors weighed in Mr. Emad's favor – whether a plaintiff has an alternative means of exercising his right. *Id.* at 9. Here, Mr. Emad had no opportunity to participate in Jumu'ah and no alternative way to engage in congregational prayer or group religious practice at all. Even so, the district court thought this factor was outweighed by the other *Turner* factors and held that a reasonable jury could not conclude the policy was not reasonably related to a valid penological interest. *Id.* And it further held that defendants were entitled to qualified immunity because the law was not clearly established. *Id.* at 9–11.

Finally, the district court also granted summary judgment to defendants on Mr. Emad's Equal Protection claim. It acknowledged that Mr. Emad had submitted evidence of worse treatment of Muslims at the Jail relative to Christians – a programming calendar that was devoid of options for Muslims and almost exclusively catered to Christians, as well

as discriminatory enforcement of the two prayer-restricting policies. *Id.* at 16. But the court accepted defendants' assertion that the lack of any Muslim programming was due solely to inability to recruit an imam, not any discriminatory intent. *Id.* And it also thought that Mr. Emad had not shown that the defendants in this case were involved in or aware of any discriminatory enforcement. *Id.*

Mr. Emad filed a timely notice of appeal. SA-020.

SUMMARY OF THE ARGUMENT

Defendants violated Mr. Emad's rights under the Free Exercise and Equal Protection Clauses when they forced him to do salah in his cell, next to a toilet, and deprived him of any opportunity to participate in Jumu'ah, all while privileging the religious practices of Christians. The district court erred in granting summary judgment on these claims.

Under the Free Exercise Clause, a Jail may not substantially interfere with a detainee's ability to practice his faith unless the restriction is "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). Here, the Jail imposed a substantial burden on Mr. Emad's religious exercise: Salah and Jumu'ah are essential practices required of all Muslims, and must be conducted in

a state of ritual cleanliness. Praying near a toilet is "impossible" and invalidates the prayer, and missing Jumu'ah "disconnect[s]" Mr. Emad's heart "from the whole religion," yet Jail officials forced him to endure both burdens throughout his detention. ECF 86-1 at 84; ECF 86-31 ¶ 2.

Neither jail policy that restricted Mr. Emad's religious exercise was reasonably related to legitimate penological interests. First, the ban on personal worship outside one's cell was, as the district court agreed, arbitrary and irrational: The Jail failed to connect it to any legitimate penological interest. Officers at all levels of leadership interpreted and applied the policy in a discriminatory fashion, allowing typically Christian forms of prayer but prohibiting the Muslim form. Defendants are not entitled to qualified immunity for this unconstitutional policy because it is clearly established that depriving a detainee of a central religious practice without justification violates the Free Exercise Clause.

The ban on Jumu'ah was also discriminatory: Christian detainees regularly held detainee-led group religious activities, but the many Muslim detainees who filed requests and grievances over the years to participate in their sacred Friday prayer ritual were summarily denied. *See, e.g.*, ECF 86-23 to -28. The nonenforcement of the policy against

Christian detainees undermines the Jail's claim that this policy serves any interest in maintaining security and order. And any asserted interest in the policy must, under *Turner*, be weighed against Mr. Emad's religious claims, which, here, are particularly strong – he had no alternative way to participate in Jumu'ah or group worship of any kind throughout his entire detention. Moreover, the Jail could have taken any of several easy steps to make some form of Jumu'ah possible: allowing it somewhere that guards already supervise, allocating a program specialist to supervise, or recruiting – and perhaps compensating – a visiting imam. Qualified immunity is inappropriate here, too; the policy is a clear violation of *Turner*, especially the requirement that a regulation "operate[] in a neutral fashion." 482 U.S. at 90.

The Jail's inferior treatment of Muslim detainees like Mr. Emad also violated his Equal Protection rights. The disparate treatment is indisputable: the Jail had no Islamic programming, no Muslim outside volunteer, no Qurans in the library, and it restricted Muslim prayer and group worship but not Christian prayer and group worship. As this Court has said, "[t]he rights of inmates belonging to minority or non-traditional religions must be respected to the same degree as the rights of those

belonging to larger and more traditional denominations." *Maddox v. Love*, 655 F.3d 709, 720 (7th Cir. 2011) (internal citation omitted). The Jail contravened this basic principle.

This Court should reverse the judgment of the district court.

STANDARD OF REVIEW

This Court reviews a district court's decision to grant summary judgment *de novo*. *Schroeder v. Hamilton Sch. Dist.*, 282 F.3d 946, 950 (7th Cir. 2002). Summary judgment is appropriate only where, construing all facts, and drawing all reasonable inferences in favor of the non-moving party, there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *see also* Fed. R. Civ. P. 56(a).

ARGUMENT

I. Defendants violated Mr. Emad's Free Exercise rights by forcing him to pray next to a toilet and forgo Jumu'ah.

To prove a claim under the Free Exercise Clause of the First Amendment, Mr. Emad must first show that defendants imposed a "substantial burden" on a "central religious belief or practice." *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013) (internal citation omitted). Second, he must show that the substantial burden defendants imposed

was not "reasonably related to legitimate penological interests." *Id.* (quoting *O'Lone v. Shabazz*, 482 U.S. 342, 349 (1987)). Here, Mr. Emad satisfies this two-part test as to both challenged regulations – the ban on personal worship outside one's cell, and the ban on praying with other detainees for Jumu'ah.

A. Dodge County Jail's prayer-restricting policies imposed a substantial burden on Mr. Emad's religious beliefs and practice.

A substantial burden is one that "puts substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019) (internal citation omitted). The Jail's policies did just that. The personal worship restriction forced Mr. Emad to do his daily prayers – a required practice – next to a toilet, which he believed not only invalidated the prayers, but also disrespected his God and his entire religion. ECF 86-1 at 256–57. Mr. Emad's expert explained the importance of ritual cleanliness before prayer: It is "impossible" to pray next to a toilet and a "foregone conclusion" that the Islamic faith forbids it. ECF 86-31 ¶¶ 2–3. Compelling Mr. Emad to pray exclusively in his cell, therefore, "put[] substantial pressure on [him] . . . to violate his beliefs." *See Neely-Bey*

Tarik-El, 912 F.3d at 1003; *see also Williams v. Sec'y Pa. Dep't of Corr.*, 450 F. App'x 191, 195–96 (3d Cir. 2011) (forcing Muslim plaintiff to pray in an area where other prisoners could track urine and where he could not properly prostrate himself constituted substantial burden); *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 332–34 (5th Cir. 2009) (preventing plaintiff from praying before a cross and altar created genuine issue of material fact on substantial burden).[4]

The ban on conducting Jumu'ah also imposed a substantial burden on Mr. Emad. Jumu'ah is a "central practice" of his faith: Mr. Emad explained that the practice of Jumu'ah is "very essential for all Muslims" and "something you cannot miss." ECF 86-1 at 65–66. In Islamic tradition, "praying communally . . . is always preferable to praying alone." ECF 86-31 ¶ 6; *see also* ECF 86-1 at 87 (Mr. Emad explaining that praying together "makes you . . . stronger"). And Jumu'ah is the most important communal prayer, as the Quran expressly states. ECF 86-1 at 65–66; ECF 86-31 ¶ 7. Failing to participate violates "fundamental

[4] *Williams* and *Sossamon* are cases interpreting the "substantial burden" standard under the Religious Land Use and Institutionalized Persons Act, not the Free Exercise Clause, but this Court has explained that the term has a similar interpretation in either context. *See Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 996–97 (7th Cir. 2006).

requirements of the Muslim faith." ECF 86-31 ¶¶ 7, 9; *see also O'Lone*, 482 U.S. at 345 (finding that Jumu'ah is "commanded by the Koran"). Mr. Emad believes that if he misses Jumu'ah, his heart will be "sealed or totally disconnected . . . from the whole religion." ECF 86-1 at 84. Instead of praying with other Muslim detainees while at the Jail, Mr. Emad was forced to do the most important communal prayer of the week like all the others – alone, next to the toilet. ECF 86-1 at 13. Denying him the ability to participate in a central and obligatory practice of his religion imposed a substantial burden. *See Neely-Bey Tarik-El*, 912 F.3d at 1003 (finding substantial burden where plaintiff was prevented from "fully participating" in group worship meetings); *Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017) (holding plaintiff adequately alleged substantial burden where prison discontinued group services for Rastafarians).

B. Defendants unconstitutionally prohibited Mr. Emad from praying outside his cell, and are not entitled to qualified immunity.

As the district court correctly found, the Jail had no justification for refusing to allow Mr. Emad to pray anywhere except his cell, under conditions prohibited by his faith. A policy that impinges religious exercise must at the very least be rationally related to some legitimate

penological interest, and the Jail failed to meet even that threshold requirement with respect to the personal worship ban. Magnifying the constitutional violation, the Jail's policy was discriminatory: It restricted Mr. Emad's Islamic form of prayer, but not the seated, verbal prayer that Christian detainees routinely engage in in the dayroom.

Under these circumstances, the district court correctly held that a reasonable jury could find that the personal worship ban violated Mr. Emad's Free Exercise rights. SA-013. It agreed that the Jail had articulated no legitimate government interest in the regulation. But the court erred when it concluded that defendants were entitled to qualified immunity. Qualified immunity "protects government officials from liability for civil damages [when] their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Williams v. City of Chi.*, 733 F.3d 749, 758 (7th Cir. 2013) (internal citation omitted). Determining whether a state official is entitled to qualified immunity involves a two-part analysis: first, "whether the facts, taken in the light most favorable to the plaintiff, make out a violation of a constitutional right," and second, "whether that

constitutional right was clearly established at the time of the alleged violation." *Id.*

Defendants are not entitled to qualified immunity under this test. The facts demonstrate a clear violation of a constitutional right; indeed, a prayer ban that serves no legitimate penological interest is axiomatically unconstitutional under *Turner*, regardless of how the other factors weigh. And multiple threads of clearly established law put this policy firmly outside constitutional limits: Courts have long held that a jail may not prohibit religious exercise without some justification, and especially may not do so in a discriminatory fashion.

1. Defendants' arbitrary prayer restriction is not reasonably related to any legitimate penological interests.

To determine whether a regulation is "reasonably related to legitimate penological interests," courts apply the four-factor test from *Turner v. Safley*, 482 U.S. 78 (1987). First, a policy that substantially burdens religious exercise violates the First Amendment unless the government can show "a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Id.* at 89 (cleaned up). If a rational connection exists, courts

second consider "whether there are alternative means of exercising the right that remain open." *Id.* at 90. Third, courts assess "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Id.* And fourth, "the existence of obvious, easy alternatives" to accommodate the plaintiff's rights "may be evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns." *Id.* While respectful of prison officials' expertise, *Turner*'s "reasonableness standard is not toothless." *Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989). Here, all four *Turner* factors weigh in favor of Mr. Emad.

First and foremost, as the district court correctly found, defendants have failed to connect the personal worship policy to any penological interest. SA-012. To meet this requirement under *Turner*, "prison officials cannot rely on the mere incantation of a penal interest but must come forward with record evidence that substantiates that the interest is truly at risk." *Neely-Bey*, 912 F.3d at 1004. Defendants fail to do so here. In their motion for summary judgment, defendants proffered no independent justification for this policy at all. ECF 76 at 11. They asserted a justification only for the other challenged policy in this case.

They appeared to suggest that the ban on personal worship could be justified on the same grounds – that is, that the policy serves the interests of "maintenance of security, institutional order, and staff safety." *Id.*

But even if we take those as the asserted justifications, defendants failed to explain how a ban on personal prayer actually serves those interests. Nor could they. Everything in the record shows that individual prayer poses no threat to security, institutional order, or staff safety. Correctional officers testified that there was no security concern with prayer in the dayroom, and that the only reason they would deny a request to pray there would be because of the handbook rules. *See, e.g.*, ECF 86-8 at 54–55; ECF 86-18 at 87–90; ECF 86-30 at 76–78. Defendant Schmidt admitted that none of his Jail staff have ever represented to him that prayer or personal worship causes security issues at the Jail. ECF 86-2 at 53–54. In fact, Mr. Emad's corrections expert testified that "the practice of religious beliefs has never led to inmate unrest or security issues" in his experience and when prisoners are "given access to a means of practicing their faith, they observe facility rules to avoid conflict." ECF 86-32 ¶ 5. Any claim that the policy serves security, institutional order,

or staff safety, therefore, is, at most, the type of "reflexive, rote assertion[]" that this court has held is insufficient to establish a legitimate penological interest in the policy. *See Riker v. Lemmon*, 798 F.3d 546, 553 (7th Cir. 2015) (internal citation omitted); *see also Walker v. Sumner*, 917 F.2d 382, 386 (9th Cir. 1990) ("Prison authorities cannot rely on general or conclusory assertions to support their policies."); *Salahuddin v. Goord*, 467 F.3d 263, 277 (2d Cir. 2006) ("Post hoc justifications with no record support will not suffice.").

And another important fact refutes the defendants' purported concerns about Mr. Emad praying in common areas: The record shows that the policy was not neutrally enforced. Christian detainees routinely engage in personal worship in the dayroom without issue. ECF 86-2 at 45–48; ECF 86-4 at 108, 116; ECF 86-6 at 94; ECF 86-8 at 51; ECF 86-16 at 50–51 (Defendant Schmidt, correctional officers, and Defendant Marvin testifying that detainees are permitted to do seated, verbal prayer or bow their heads in silent prayer in the dayroom). Defendants cannot claim that the ban serves important penological interests when they permit Christians to say grace or pray, apparently without compromising security, institutional order, or staff safety. *See Jones v.*

Slade, 23 F.4th 1124, 1137 (9th Cir. 2022) ("[E]vidence that an otherwise legitimate policy is being applied in a discriminatory manner" may "defeat[] the rational relationship between the policy and the government's asserted justification.").

The lack of any penological interest in the policy is sufficient to show that the ban on personal worship violates Mr. Emad's free exercise rights. *See Shaw v. Murphy*, 532 U.S. 223, 229–30 (2001) ("If the connection between the regulation and the asserted goal is 'arbitrary or irrational,' then the regulation fails, irrespective of whether the other factors tilt in its favor."). But the other factors, too, favor Mr. Emad, as the district court again correctly concluded. Mr. Emad had no "alternative means of exercising the right" – he had zero other options for where to pray except in his cell, next to the toilet, under conditions that violated his faith. ECF 86-1 at 95, 177. The impact of accommodating his request to pray elsewhere on guards, other detainees, and the allocation of prison resources would have been negligible, as guards already supervise the dayroom, and prayer already regularly occurs there without issue. *See* ECF 86 ¶ 16. And letting Mr. Emad pray somewhere

else in the pod already under supervision is an obvious, easy alternative to the Jail's arbitrarily restrictive prayer policy.

As the *Turner* factors show, therefore, the ban on personal worship outside of one's cell was not reasonably related to a legitimate penological interest.

2. The right to be free from arbitrary restrictions on religious exercise is clearly established.

Since defendants violated Mr. Emad's constitutional rights, they are not entitled to qualified immunity if those rights were clearly established at the time of Mr. Emad's detention. "Clearly established" for purposes of qualified immunity means that at the time of the challenged conduct, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "[E]xisting precedent must have placed the statutory or constitutional question beyond debate," but plaintiffs do not need to point to a factually identical case. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

Courts must be especially wary of defining too narrowly what rights are clearly established in the context of restrictions on prayer. Prayer is an expressive religious practice with heightened protection under the

Constitution. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (explaining that the First Amendment "doubly protects" prayer); *Sause v. Bauer*, 138 S. Ct. 2561, 2562 (2018) (per curiam) ("There can be no doubt that the First Amendment protects the right to pray."). In *Sause*, the Court reversed a grant of qualified immunity in a case where police had ordered an individual to stop praying during an investigation. *Id.* at 2562–63. The lower court had faulted the plaintiff for not identifying a case involving a similar factual scenario to defeat qualified immunity. *Sause v. Bauer*, 859 F.3d 1270, 1275 (10th Cir. 2017). As the Court therefore signaled, courts may err by defining rights too narrowly in the clearly established inquiry. Indeed, "a plaintiff need not show that the very action in question has previously been held unlawful." *May v. Sheahan*, 226 F.3d 876, 881 (7th Cir. 2000).

In this case, existing precedent places the constitutional question beyond debate. The Jail forced Mr. Emad, over his protestations and without any rationale, to pray in his cell next to a toilet, all while openly allowing prayer in the dayroom by detainees of the majority faith. No reasonable official could think a baseless and discriminatory policy that forces a detainee to violate fundamental tenets of his religion is

constitutional. This flows directly from clearly established law set forth in *Turner* that a regulation is invalid if it is "arbitrary or irrational" – that is, if it lacks a "valid, rational connection" to a legitimate governmental interest. 482 U.S. at 89–90. *Turner* established that to restrict religious exercise, a Jail must at minimum have a legitimate reason for doing so. Embedded within *Turner*'s multifactor test, therefore, is a bright-line rule: Where a Jail has no justification at all for a policy that restricts religious exercise, that presents an easy case under *Turner*, and such a policy can never be constitutional. *Shaw*, 532 U.S. at 229–30; *Riker*, 798 F.3d at 553; *see also, e.g.*, *Jones*, 23 F.4th at 1139 ("The first *Turner* factor is a sine qua non."); *Boles v. Neet*, 486 F.3d 1177, 1181 (10th Cir. 2007) (internal citation omitted) (describing first *Turner* factor as "not simply a consideration to be weighed but rather an essential requirement").

Relying on this clearly established law, this Court, and others, have easily denied qualified immunity where a defendant supplies no justification for a religious exercise restriction. For example, in *Williams v. Lane*, 851 F.2d 867 (7th Cir. 1988), a prison restricted access to religious services for prisoners in protective custody. Defendants

asserted that the policy was "security-motivated," but the trial court found that justification "arbitrary, exaggerated, and pretextual." *Id.* at 875. After affirming the district court's finding that the policy was therefore unconstitutional, *id.* at 878, this Court also rejected the argument that defendants were entitled to qualified immunity, finding it clearly established that "prison officials must demonstrate at a minimum a rational basis for abridging the inmates' religious rights." *Id.* at 882.

Similarly, in *Garner v. Muenchow*, 715 F. App'x 533 (7th Cir. 2017), this Court applied *Turner* to vacate a grant of summary judgment to defendants where defendants "d[id] not cite any penological reasons" for refusing to give a Muslim plaintiff religious materials while providing them to Christian prisoners. *Id.* at 536. The court then rejected the claim of qualified immunity because "the case law clearly prohibits prison officials from intentionally preventing religious practice without penological justification." *Id.* at 537.

The Tenth Circuit held qualified immunity inapplicable on similar grounds in *Boles v. Neet*, 486 F.3d 1177 (10th Cir. 2007). There, prison officials offered only a post hoc justification, unsupported in the record, for refusing to allow a prisoner to wear religious garments. The court held

that *Boles* was an "uncomplicated" case because the defendant had provided no penological interest at all to justify his actions, and "[t]he Supreme Court clearly established in *Turner* that prison regulations cannot arbitrarily and capriciously impinge on inmates' constitutional rights." *Id.* at 1184; *see also Salahuddin*, 467 F.3d at 275–76 ("Qualified immunity is not appropriate at this stage because it was clearly established at the time of the alleged violations that prison officials may not substantially burden inmates' right to religious exercise without some justification."). In light of all this case law applying the straightforward, minimum requirement from *Turner*, no reasonable official could have thought that denying Mr. Emad a place to pray as required by his religion – with no penological justification at all – was constitutional.

Another strand of Supreme Court case law clearly establishes a second important proposition that independently requires denial of qualified immunity: A restriction on religious exercise cannot be constitutional if it is applied in a discriminatory fashion. *See Cruz v. Beto*, 405 U.S. 319, 322 (1972) (per curiam). In *Cruz*, the Supreme Court held that a state would violate the Free Exercise Clause if the Buddhist

plaintiff "was denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts." *Id.* Reiterating this same point, *Turner* established that prison regulations restricting First Amendment rights must "operate[] in a neutral fashion." 482 U.S. at 90; *see also Mayfield v. Tex. Dep't of Crim. Just.*, 529 F.3d 599, 607 (5th Cir. 2008) ("*Turner*'s standard also includes a neutrality requirement.").

This Court applied that clearly established law in *Grayson v. Schuler*, 666 F.3d 450 (7th Cir. 2012). The plaintiff had been forced to cut his dreadlocks, while other prisoners of a different faith were permitted to keep them. Noting that officers are only entitled to immunity if they "commit[] a reasonable error," this Court held immunity inapplicable because no officer could reasonably think a policy that granted an exemption to one religious sect but not another was constitutional. *Id.* at 455.

The same result is required here. The restriction did not operate in a neutral fashion – Christian detainees were permitted to pray in the dayroom, unlike Muslims. ECF 86-4 at 108, 116; ECF 86-6 at 94; ECF 86-8 at 51; ECF 86-16 at 50. The policy itself contemplated this unequal

treatment, as Defendant Schmidt testified; it allowed personal verbal prayers or bowing one's head to say grace, but not "more involved" worship that involves "mats . . . or other things," as Muslim prayer does. ECF 86-2 at 45–48. No reasonable official could think a policy that suppresses the prayer of one religion but not another constitutional.

Even if prior case law did not put defendants on notice, they are still not entitled to qualified immunity because they committed an "obvious" constitutional violation. *See Hope v. Pelzer*, 536 U.S. 730, 741, 745 (2002) ("[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question."); *Taylor v. Ways*, 999 F.3d 478, 492 (7th Cir. 2021). It is obvious that restricting a detainee's ability to pray without justification – and not applying that same restriction to Christian detainees – violates the fundamental right to practice one's religion to the extent consistent with penological interests. Indeed, at each step of the analysis in this case the outcome is obvious. It is obvious that there was no rational basis for the personal worship restriction: Many of the Jail employees deposed could not come up with a reason for the policy at all. *See, e.g.*, ECF 86-18 at 87 (Sergeant Polsin explaining that the policy is "just a position that the

facility took and we went with it"), 89–91 (stating there is no heightened security risk from individual prayer); ECF 86-8 at 53–55 (Officer Kluck testifying that he does not know why the policy is in place or the reason for the policy). And even though Defendant Schmidt suggested that security was at stake, he could not identify any security risks from solo prayer. ECF 86-2 at 52–54. It is also obvious the policy is discriminatory: Officers readily admitted that seated verbal prayer in the dayroom was allowed, and Defendant Schmidt said the text of the policy itself dictated this different treatment. The unlawfulness of this conduct is "sufficiently clear" to preclude qualified immunity. *See Taylor*, 999 F.3d at 492.

C. Defendants unconstitutionally prohibited Mr. Emad from conducting Jumu'ah, and are not entitled to qualified immunity.

The Jail's prohibition on gathering for Jumu'ah is also invalid under *Turner*. Any claim that the policy serves penological interests is belied by the fact that the policy is frequently not enforced against Christian detainees. As the record shows, unsupervised Bible study was a regular occurrence at the Jail, sanctioned by guards – though Jumu'ah was banned. Moreover, the fact that Christians engaged in small group worship in common areas without undermining security or institutional

order underscores the fact that the policy is an "exaggerated response" to penological concerns – exactly what the Supreme Court warned will *not* satisfy *Turner*. *See id.* And the Jail's claimed – and disproven – interest in security must be weighed against Mr. Emad's very strong religious claims here: He had no alternative way to engage in Jumu'ah or group religious activity of any kind, leaving him without any ability to pray communally, a practice of paramount importance to his faith. The Jail could have implemented any number of alternatives to provide a Jumu'ah service to detainees but did not, highlighting the unreasonableness of the policy. At the very least, the record is rife with material issues of fact on three out of four *Turner* factors that preclude summary judgment.

1. The policy is not reasonably related to any legitimate penological interests.

Defendants claim that the ban on detainee-led group activities serves the interests of security, institutional order, and staff safety, but "*Turner* requires prison authorities to show more than a formalistic logical connection between a regulation and a penological objective," *Beard v. Banks*, 548 U.S. 521, 535 (2006). For a "valid, rational connection" to exist, the regulation must be applied consistently. *Turner*,

482 U.S. at 89. This neutrality requirement is critically important: It "ensures that the prison's application of its policy is actually based on the justifications it purports." *Mayfield*, 529 F.3d at 609. Facial neutrality is not determinative, either; the Free Exercise Clause "forbids subtle departures from neutrality and covert suppression of particular religious beliefs." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). "[E]vidence that an otherwise legitimate policy is being applied in a discriminatory manner" may "defeat[] the rational relationship between the policy and the government's asserted justification." *Jones*, 23 F.4th at 1137.

Applying these principles, this Court has refused to accept a prison's or jail's rationale for a policy in the face of evidence of inconsistent enforcement of that policy. *See Grayson*, 666 F.3d at 453 (declining to accept prison's security rationale for policy where Rastafarians, but not members of other faiths, could have dreadlocks, because prison "failed to give a reason for thinking" the groups posed different security risks); *Reed v. Faulkner*, 842 F.2d 960, 964 (7th Cir. 1988) (finding regulation could not be upheld under *Turner* where

plaintiff showed "an apparent pattern of arbitrary enforcement of the regulation").

Similarly, in *Mayfield*, the Fifth Circuit vacated a grant of summary judgment to defendants in light of evidence that a purportedly neutral policy requiring the presence of an outside volunteer during all religious gatherings was not, in fact, enforced against all religious sects. *See* 529 F.3d at 608–10. Although the policy was rationally related to legitimate concerns about prison security and staff and space limitations, the plaintiff submitted affidavits from two prisoners stating that they were not required to have an outside volunteer present for their religious gatherings. *Id.* at 608. The Fifth Circuit held that summary judgment could not be granted in the face of such evidence: "Were we to ignore *Turner*'s neutrality requirement, we would allow prison regulators to justify a policy based on a legitimate interest applicable to the overall prison population, while applying the policy in an arbitrary or discriminatory manner in violation of a particular subgroup's First Amendment Rights." *Id.* at 609; *see also Dingle v. Zon*, 189 F. App'x 8, 10 (2d Cir. 2006) (vacating grant of summary judgment because defendants had "failed to satisfy the first prong of *Turner*" where record contained

inmate affidavits demonstrating unequal application of policy); *Jones*, 23 F.4th at 1137 ("Jones has proffered sufficient evidence of inconsistent application of [prison's mail policy] to preclude summary judgment.").

In this case, the record contains similar evidence of unequal application of the ban on detainee-led group activities. Mr. Emad submitted declarations from three other detainees, including one other Muslim, one Buddhist, and one Christian, who stated that Christians hold group Bible study in the dayroom in the presence of guards multiple days a week, and guards observe but do not stop it. ECF 86-17 ¶¶ 26–27; ECF 86-22 ¶ 9; ECF 86-29 ¶¶ 5–6; ECF 86-1 at 204–06, 250–54. Guards also would allow detainees to pray together while seated at a table. ECF 86-4 at 108 (Lieutenant Hundt explaining that group prayer over a meal isn't covered by the policy by saying, "I wouldn't consider saying grace an activity."); ECF 86-8 at 51 (Officer Kluck testifying that if he saw a group of detainees "bowing their heads and saying a simple grace before a meal," he would allow that to occur.). Guards would also allow Christians to conduct Bible study in the library. ECF 86-17 ¶ 27; ECF 86-29 ¶ 6. This evidence of inconsistent application of the policy "defeats the

rational relationship" to any asserted justification and "precludes summary judgment." *See Jones*, 23 F.4th at 1137.

The district court did not properly account for the significance of Mr. Emad's evidence of non-neutral enforcement: It thought this evidence did not affect the analysis on the first *Turner* factor because Mr. Emad had not shown that the particular defendants in this case were aware of or involved in the discriminatory enforcement. SA-008. That is wrong for two reasons. First, a reasonable jury could conclude from evidence in the record that the defendants were in fact aware of and approving of this practice. Christian group prayer in the dayroom was routine and conspicuous: Bible study occurred multiple times a week – sometimes daily – for 30 to 45 minutes, involved moving chairs and sitting in groups of up to 10 people, as well as reading aloud, standing, holding hands, and bowing heads. ECF 86-1 at 207, 251–53; ECF 86-29 ¶ 8. The Jail is a small facility – it has an average daily population of around 300 people, and Mr. Emad's pod had only 56 single cells. ECF 86 ¶¶ 12, 16. Defendant Brugger spends time on-site at the facility and walks through the living areas, in addition to hearing daily updates from his direct reports about jail affairs, and he in turn shares information

with Defendant Schmidt through twice-weekly meetings. ECF 86-3 at 23–24; ECF 86 ¶ 11. A reasonable jury could infer from this evidence that the regular practice of unsupervised Bible study could not escape notice, especially in light of the overall size of the Jail, and that defendants were aware of it.

The district court was wrong to discount the evidence of discriminatory enforcement for a second reason: The evidence undermines the Jail's purported rationale for the policy, regardless of whether the named defendants participated in it. That is, if Christians can gather for Bible study in the dayroom and library without negatively affecting Jail operations, there's no reason to think Muslims cannot do the same and gather for their brief prayer ritual. Rather, this shows the Jail's restrictive policy is an "exaggerated response" to penological concerns, which does not satisfy *Turner*'s reasonable relationship standard. *See* 482 U.S. at 91. Indeed, a correctional officer at the Jail even testified that group prayer in the dayroom had never, and would never, pose a security risk. ECF 86-8 at 48. And there's additional reason to think security concerns were actually minimal: Mr. Emad was a civil immigrant detainee and the Jail classified him as a low security risk and

housed him in a low-risk pod. ECF 86 ¶¶ 8, 15. A reasonable jury could therefore conclude that a small group of detainees gathering for group worship does not actually pose a security threat and that "the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational," *Turner*, 482 U.S. at 89–90.

The remaining *Turner* factors also favor Mr. Emad. *Turner*'s second factor – "whether there are alternative means of exercising the right that remain open," *id.* at 90 – weighs strongly in Mr. Emad's favor, as the district court found. SA-009. Mr. Emad had no alternatives. He was never allowed to conduct Jumu'ah in any manner, and had no way to engage in group worship of any kind, because he could not gather with other Muslims in prayer, and the Jail did not provide any organized Islamic programming. ECF 86 ¶ 24. Because "the reasonableness of [a] ban on inmates' conducting their own religious services is related to the availability of substitutes," *Johnson-Bey v. Lane*, 863 F.2d 1308, 1311 (7th Cir. 1988), this factor weighs strongly in support of finding the ban unreasonable. *Cf. Al-Alamin v. Gramley*, 926 F.2d 680, 687–88 (7th Cir. 1991) (finding ban on prisoner-led services survived *Turner* scrutiny where Muslim prisoners were able to consistently participate in Jumu'ah

because prison provided a compensated imam and would provide alternate supervision when imam could not be present).

The third and fourth factors – which focus on the consequences of accommodating Mr. Emad's request, or the existence of obvious, easy alternatives – are interrelated here. If accommodation would not have a "significant ripple effect" on the jail, or "if an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests," then "a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." *Turner*, 482 U.S. at 90–91; *see also Jehovah v. Clarke*, 798 F.3d 169, 178–79 (4th Cir. 2015) (reversing grant of summary judgment to defendants where plaintiff proposed several alternatives to the ban on serving wine at communion in jail and "[a] reasonable jury could find that at least one of these alternatives is so 'obvious' and 'easy' as to suggest that the ban is 'an exaggerated response.'").

There exist a host of ways that the Jail could have accommodated Jumu'ah at minimal to no burden at all. Defendants could have allowed Jumu'ah to occur in the dayroom, a place that guards already supervise – indeed, where they evidently already supervise the group religious

activities of Christian detainees without issue. ECF 86 ¶ 16. Additionally, the Jail could provide alternate supervision by allocating a program specialist. The record shows that there are generally three program specialists working at the Jail on Friday afternoons around 1 p.m., when Jumu'ah takes place. ECF 86 ¶ 59. One of these employees could spend 15 minutes supervising the service.

Alternatively, the Jail could attempt to recruit a volunteer imam (again, they did this at no point during Mr. Emad's 14-month detention, ECF 86 ¶¶ 58, 61, 62, 64), or could compensate an imam (defendants reported there are imams available who would do the service if paid, ECF 86-3 at 54). An "obvious, easy alternative" for purposes of *Turner* need not be "entirely cost-free; costs that are insubstantial in light of the overall maintenance of the prison are acceptable." *Salaam v. Lockhart*, 905 F.2d 1168, 1171 (8th Cir. 1990); *see also Beerheide v. Suthers*, 286 F.3d 1179, 1191–92 (10th Cir. 2002) (finding policy unreasonable where cost of proposed alternative would require a small percentage of overall budget).

The Jail contested all of these options by asserting that they would be too burdensome, but the record lacks any specific information

demonstrating this. That is insufficient for *Turner* purposes. Defendants cannot simply cite generalized concerns to dismiss an alternative; they must support their concerns with some evidence. *Hunafa v. Murphy*, 907 F.2d 46, 48 (7th Cir. 1990) (reversing grant of summary judgment to defendants where defendants asserted concerns with accommodating plaintiff's religious request but "ma[de] no attempt to estimate their magnitude"); *see also Wall v. Wade*, 741 F.3d 492, 501 (4th Cir. 2014) ("[T]he record is void of any specific information regarding these purported costs, and we are not content to permit a prison to deny an inmate's constitutional right in the face of such generalized concerns."). This is important because a court applying *Turner* is tasked with weighing the prison's concerns against the plaintiff's religious claims, *Hunafa*, 907 F.2d at 48, and that is impossible to do where the prison does not provide sufficient information to assess the magnitude of its concerns.

Rather than containing any substantiation for why Mr. Emad's proposed alternatives would be burdensome, the record suggests that defendants just never considered these "obvious, easy alternatives," *Turner*, 482 U.S. at 90. When questioned about the availability of a

program specialist to supervise the Friday service, given that generally three work on Friday afternoons, Defendant Marvin, the head of that department, was able to say only, "I'm not sure that would fall under their duties," and that "other duties . . . certainly could take place at the same time as a Jumu'ah service." ECF 86-6 at 110–11. Defendant Buckner testified that he had never considered this option, but could not say whether there was capacity for it because a program specialist "could have been on vacation" or "could have been sick." ECF 86-12 at 121–22.

And regarding paying an imam, Defendant Schmidt testified that there was no policy preventing payment to outside religious volunteers, but he had never considered creating a budget to pay religious leaders. ECF 86-2 at 97–100, 116. Defendant Brugger testified that the Jail just does not pay volunteers, he does not know why, and he never asked his superiors if they could. ECF 86-3 at 55–57. He did not even know how much the available imam wanted to charge. *Id.* at 55.

In the absence of record evidence to the contrary, a reasonable jury could easily find that one of these alternatives cast doubt on the Jail's defense of its infringement of Mr. Emad's rights. *See Shakur v. Schriro*, 514 F.3d 878, 888 (9th Cir. 2008) (vacating grant of summary judgment

to defendants, even though multiple factors weighed in their favor, because "the district court made insufficient findings with respect to the third and fourth *Turner* factors").

Accordingly, the *Turner* factors weigh in Mr. Emad's favor. At the very least, numerous fact issues preclude summary judgment, especially considering the strength of Mr. Emad's religious claims, which involved wholesale denial of an important weekly ritual for which he had no substitutes.

2. Defendants are not entitled to qualified immunity.

Defendants contravened clearly established law when they unconstitutionally denied Mr. Emad the opportunity to conduct Jumu'ah. It is clearly established that a policy that is not reasonably related to legitimate penological interests is unconstitutional. *Turner*, 482 U.S. at 89; *Williams v. Lane*, 851 F.2d 867, 876 (7th Cir. 1988). And it is further clearly established that a policy must "operate[] in a neutral fashion" to be constitutional. *Turner*, 482 U.S. at 90; *see also Grayson v. Schuler*, 666 F.3d 450, 455 (7th Cir. 2012). The ban on detainee-led activities violates both principles: It was inconsistently enforced against some religious sects but not others, untethering it from any legitimate penological

interests, and it completely deprived Mr. Emad of a sacred ritual despite the existence of a host of easy alternatives to accommodate some form of it. This policy "could not reasonably be thought constitutional," *Grayson*, 666 F.3d at 455.

The district court improperly focused on Seventh Circuit cases that have upheld bans of prisoner-led worship services in dissimilar circumstances. *See, e.g.*, *Johnson-Bey*, 863 F.2d at 1308; *Turner v. Hamblin*, 590 F. App'x 616 (7th Cir. 2014). Unlike those cases, this one involves a regulation that was not neutrally enforced – and on that issue the case law clearly points in the opposite direction. Moreover, in those cases, despite restrictions on detainee-led activities, the plaintiffs retained meaningful access to group worship. *Turner*, 590 F. App'x at 618 (Jumu'ah regularly available, but canceled on occasion); *Johnson-Bey*, 863 F.2d at 1309 (prison identified candidates to come lead group services). Here, of course, Muslim detainees had no access to group worship of any kind – even sporadic Jumu'ah. The cited cases, then, merely emphasize how clearly unreasonable the Jail's conduct was in this case.

II. Defendants violated Mr. Emad's Equal Protection rights by treating him and other Muslims worse than Christian detainees.

Prison officials may not discriminate on the basis of religion except to the extent required by the exigencies of prison administration. *May v. Sheahan*, 226 F.3d 876, 882 (7th Cir. 2000); *Garner v. Muenchow*, 715 F. App'x 533, 537 (7th Cir. 2017). Defendants violated this law by systematically treating Muslims worse than Christians without penological justification. The Jail had no Islamic programming at all; programming was predominantly directed at Christians. ECF 86-14, Religious Programming Schedule 2018-2019. There were no Qurans among the religious texts at the Jail library. ECF 86-1 at 191, 236. Christians were allowed to pray in the dayroom. ECF 86-2 at 45–48; ECF 86-4 at 108, 116; ECF 86-6 at 94; ECF 86-8 at 51. Muslims were not. ECF 86-1 at 34–35; ECF 86-4 at 115–16; ECF 86-8 at 52. And Christians were allowed to conduct detainee-led group religious activities in the dayroom, including Bible study and group prayer. ECF 86-4 at 108; ECF 86-17 ¶¶ 26–27; ECF 86-22 ¶ 9; ECF 86-29 ¶¶ 5–6. Muslims, on the other hand, were not. ECF 86 ¶ 48.

The defendants' disparate treatment of Muslims comprises at least two separate equal protection violations: First, officials discriminatorily enforced prayer restrictions against Muslim detainees but not against similarly situated Christian detainees. And second, officials overwhelmingly allocated programming resources to Christians and ignored the group worship needs of Muslims, despite their substantial numbers in the Jail.

A. Defendants discriminatorily enforced prayer restrictions.

A plaintiff may prevail on a claim brought under the Equal Protection Clause by proving that: (1) he was intentionally treated differently than similarly situated detainees because of his membership in a protected class; and (2) there is no rational relationship between the dissimilar treatment and any legitimate penal interest. *See May*, 226 F.3d at 882; *Schroeder v. Hamilton Sch. Dist.*, 282 F.3d 946, 950–51 (7th Cir. 2002).

The Jail treated Muslim detainees worse than Christian detainees by selectively enforcing multiple restrictive policies against Muslims but not Christians. It heavily limited how and where Mr. Emad could pray, but Christians could pray wherever they liked. Mr. Emad was told

repeatedly that he could not pray outside his cell. ECF 86 ¶ 36; *see also* ECF 86-13 at 30. Defendant Schmidt admitted that this policy did not apply equally to all types of prayer. ECF 86-2 at 45–48. Bowing your head and saying a "quiet prayer" is allowed. *Id.* Prayer that involves "clothing, or mats, or other things that they might need in front of them" is not. *Id.* Other officers also differentiated between individual prayer by Christians and Muslims. Officer Kluck testified that if he saw a detainee "saying grace or praying alone out in the dayroom" he wouldn't stop them because he "[doesn't] have an issue with it," but if a Muslim was "on their knees or praying on the floor," he would stop them. ECF 86-8 at 51. Officer Baker testified that detainees are allowed to pray in the dayroom – for example, she has observed and allowed individuals to "fold their hands and . . . bow their heads" in prayer. ECF 86-16 at 50. Defendant Marvin said the same, *see* ECF 86-6 at 94 (affirming that detainees are allowed to say grace before eating a meal), as did Lieutenant Hundt, *see* ECF 86-4 at 108 ("I wouldn't object to them, any religion, saying grace."), 116 (stating that verbal prayer while seated at a table is permitted but prayer that involves "pulling out their prayer rug" and "fac[ing] the east to pray" would not be permitted).

The detainee-led activities ban was also not neutrally enforced: Guards allowed Christians to conduct organized Bible study, as well as bow their heads and pray together before meals. ECF 86-17 ¶¶ 26–27; ECF 86-22 ¶ 9; ECF 86-29 ¶¶ 5–6; ECF 86-1 at 204–06, 250–54; ECF 86-4 at 108; ECF 86-8 at 51. Muslims were systematically denied equivalent opportunities to pray together at the Jail – every request for Jumu'ah was denied. ECF 86-19 to -28.

A reasonable jury could easily find that this less favorable treatment was intentional. Officials from the highest levels of leadership down to correctional officers testified to an express understanding of the personal worship policy that restricted Muslims but not Christians, so there can be no meaningful argument that this disparate treatment was not deliberate. And with respect to group worship, the record shows that group religious activity by Christians was an almost daily occurrence, not an isolated instance. ECF 86-22 ¶ 9; ECF 86-17 ¶¶ 26–27; ECF 86-29 ¶ 5; ECF 86-1 at 204–06, 250–54. From this sustained pattern of inferior treatment, a reasonable jury could infer that Jail officials were acting intentionally. *See Garner*, 715 F. App'x at 537 ("To overcome summary

judgment, [plaintiff] need only present evidence from which a reasonable jury could infer discrimination.").

In a very similar case, the Tenth Circuit reversed a grant of summary judgment to prison officials on a claim that they discriminated against a Muslim prisoner by prohibiting him, but not Christian prisoners, from praying in the dayroom. *Tenison v. Byrd*, 826 F. App'x 682, 688–89 (10th Cir. 2020). The plaintiff asserted, supported by the affidavit of another prisoner, that Christian prisoners prayed and had communion services in the common room. Additionally, a prison official made a very similar admission to Defendant Schmidt's in this case, acknowledging that while prayer was generally prohibited in the common room, a prisoner would not be "asked to refrain from bowing their heads and engaging in silent prayer while in the Dayroom." *Id.* at 689. The court reasoned: "Construed in the light most favorable to [the plaintiff], this is an admission that prison officials knowingly allow a type of prayer practiced by Christians (though not typically by Muslims) in the [] dayroom." *Id.* The court concluded there was sufficient evidence for a reasonable factfinder to find intentional disparate treatment, and

reversed the grant of summary judgment. The same result is required here.

There is also no "rational relation" between the dissimilar treatment in this case and any "legitimate penal interest." *See Williams*, 851 F.2d at 881. As the district court noted, defendants have provided no legitimate justification for the personal worship ban at all, let alone any reason to treat the prayer of Muslims differently than the prayer of Christians. Defendant Schmidt suggested that "more involved" prayer in the dayroom might cause disturbances or pose security risks, ECF 86-2 at 46, but, as the district court concluded, that unsupported assertion did not survive even deferential review, SA-012. *See Williams*, 851 F.2d at 881 (affirming finding of equal protection violation where defendants' "purported justification" for differential treatment was discredited by the district court). And indeed, there is no reason to think that Muslim prayer – which involves kneeling and touching one's limbs to the ground – poses different risks than the type of prayer that was allowed – which involves sitting and bowing one's head. Nor does Jumu'ah pose different security risks than Bible study or group prayer by Christians. Absent a

legitimate penal interest, the differential treatment here violated Mr. Emad's constitutional rights.

The district court reached a different conclusion, but its reasoning cannot be sustained. The court thought that neither Defendant Schmidt nor Brugger could be held liable because there was no direct evidence that they knew about the discriminatory enforcement of the two prayer-restricting policies. SA-016. That is wrong for two reasons.

First, as to Defendant Schmidt, the district court's holding is simply belied by the evidence. Defendant Schmidt admitted that his own interpretation of the policy involved discriminating between types of prayer, ECF 86-2 at 45–48, and his testimony was corroborated by numerous non-defendant officers who said that indeed, they allowed seated, verbal prayer but not Islamic prayer. Defendant Schmidt was clearly aware of exactly how the policy operated, and there can be no serious contention that he was ignorant of the discrimination here.

And second, even as to the discriminatory enforcement that Defendants Schmidt and Brugger claim no knowledge of, there is sufficient evidence for a jury to discredit those claims. Mr. Emad introduced evidence that the permissive attitude toward Christian

prayer was ingrained and widespread. ECF 86-17 ¶¶ 26–27; ECF 86-22 ¶ 9; ECF 86-29 ¶¶ 5–6. As detainees described, Christian Bible study in the dayroom was conspicuous and routine – and regular group activities within a small facility are unlikely to escape notice. A reasonable jury could disbelieve Defendant Brugger's claims of ignorance and conclude, instead, that the individual in charge of overseeing all operations of the Jail would have observed this practice while walking through the living areas of the Jail and learned about it through his staff. This is "evidence from which a reasonable jury could infer discrimination." *Garner*, 715 F. App'x at 537.

Finally, the district court thought that Defendant Schmidt could not have discriminatory intent because he testified that he believed "more involved" worship, like Muslim prayer, is more likely to disturb other detainees or pose a greater security risk. SA-017. But it does not matter that Defendant Schmidt may have had a reason that he considered benign for treating Muslims differently; all Mr. Emad must show is that Defendant Schmidt intended to single out prayer by Muslims for disparate treatment. *Hassan v. City of New York*, 804 F.3d 277, 297–98 (3d Cir. 2015); *Ashaheed v. Currington*, 7 F.4th 1236, 1244 & n.3, 1251

(10th Cir. 2021) ("Intentional discrimination involves an intent to treat a group differently. . . . [It] can but need not include animus or hostility toward religion."). And Defendant Schmidt's deposition testimony shows just that – he viewed prayer by Muslims and Christians in disparate terms and therefore prohibited prayer by Muslims, while allowing it for Christians. The evidence regarding Defendant Schmidt's purported concern about disruption or security risk from Muslim prayer is, at most, relevant to the question whether the differential treatment in this case was related to a legitimate penal interest. But, as has already been established, it was not.

B. Defendants overwhelmingly allocated programming resources to Christian detainees and ignored the group worship needs of Muslim detainees.

Mr. Emad was deprived of any group religious programming during his entire detention, while Christian detainees had five weekly group programs to choose from. ECF 86 ¶ 22. This is the longstanding status quo: The Jail has not had any programming for Muslims in at least the last 24 years. ECF 86 ¶ 25; ECF 86-10 at 31. This is despite the fact that there was a clear need for it: The Jail has a substantial population of Muslim detainees, ECF 86 ¶ 12, and many of them requested to

participate in Jumu'ah over the years. ECF 86-19 to -28 (grievances and appeals from April 2016, June 2018, April 2018, February 2019, March 2019, and April 2019 requesting to participate in Jumu'ah).

The entire time that Mr. Emad was detained, none of the defendants made any effort to find a volunteer imam. ECF 86-3 at 56; ECF 86-6 at 44; ECF 86-9 at 44; ECF 86-12 at 45. Defendants Buckner, Schlegel, and Marvin have never looked for a volunteer imam in their entire tenures. *Id.* Defendant Myers is the sole exception – he made a couple calls to mosques, but he does not recall when, only that it was "way back." ECF 86-10 at 30–31, 94–95, 125. He has no documentation to prove this occurred. *Id.*

Having for the most part never personally searched, defendants assert that at some point years ago, long before Mr. Emad arrived at the Jail, a former programs specialist tried to find a volunteer imam. ECF 86-6 at 41–42 (Defendant Marvin testifying that the search was in 2015 or earlier); ECF 86-3 at 53 (Defendant Brugger testifying that the search "would have been sometime in the last 9 years. That's about all I can narrow it down."). There are no records of this search. ECF 86-2 at 118–19. The search reportedly did yield candidates, but the imams requested

to be paid, and Defendant Brugger chose not to hire any of them. ECF 86-3 at 53–57. He did not consider paying an imam, even though there is no policy against providing compensation. *Id.* at 56–57. Since that time, throughout Mr. Emad's detention, no one tried again. *Id.*at 56; ECF 86-6 at 124–26.

Instead, the Jail shifted the burden for finding a volunteer to the detainees themselves. In response to one of Mr. Emad's grievances, an officer told him he was "more than welcome to suggest religious providers who would be willing to come to the facility." ECF 86-20. Similarly, an officer responding to another detainee's grievance instructed him to provide the name and phone number "of a credentialed Islamic leader that will come to provide service." ECF 86-26.

There is also no indication that, faced with unmet religious needs, Jail employees considered any alternative way to provide Muslim detainees with group worship opportunities (for example, by having Jail employees supervise a Jumu'ah service). *See, e.g.*, ECF 86-28 (Defendant Brugger rejecting a suggestion of alternate supervision in a grievance appeal).

In contrast to this abdication of responsibility to find some way for Muslims to participate in a sacred weekly ritual, the defendants do expend time and resources administering Christian programming. In order to bring on a new religious volunteer, defendants must review applications, conduct background checks, complete an approval process, coordinate program content and scheduling, and then conduct orientation and training. ECF 86-6 at 17–18, 46; ECF 86-10 at 63–64. The existing schedule of Christian programming also requires ongoing work: Defendants must communicate with the volunteers and coordinate facility and materials needs for each weekly session. ECF 86-10 at 27. In contrast, viewing the record in the light most favorable to Mr. Emad, it has been nine years since any jail official lifted a finger to inquire about the availability of an imam or made any effort to explore alternative options. While it is true that a jail need not provide identical facilities or personnel to every religious sect regardless of practical considerations, it is also true that a jail violates the Equal Protection Clause when it denies an individual "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts." *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (per curiam).

A reasonable jury could infer that this differential treatment amounted to intentional discrimination against Muslims. As the many grievances in the record establish, *see* ECF 86-19 to -28, defendants were aware of the need for group worship opportunities for Muslim detainees. Rather than make any effort to provide any, they relied on the ban on detainee-led activities, and vague recollection of a years-old unsuccessful imam search, to deny requests, year after year. From this evidence, a jury could infer that defendants consciously chose not to address the religious needs of Muslims, and on that basis find them liable for intentional discrimination. In other contexts, this Court has explained that "consciously cho[osing] not to [act]" is sufficient for a jury "to infer [] the specific intent to discriminate." *Locke v. Haessig*, 788 F.3d 662, 670 (7th Cir. 2015). A reasonable jury could thus find specific intent here from the failure to respond in any meaningful way to repeated religious requests from Muslim detainees.

There was no rational relationship between this intentional, differential treatment and any legitimate penal interest. Defendants cannot provide any justification for directing religious programming related resources overwhelmingly at Christian detainees, without any

meaningful, let alone comparable, allocation for Muslim detainees. They suggested in district court that the inability to find a volunteer imam – at some unknown point years ago – justified the lack of any Islamic programming. ECF 76 at 13–14. This fails for two reasons. First, it is a genuine issue of fact whether an imam actually was unavailable. Defendants provided no records of the search a former employee conducted, and none of them have ever personally searched for an imam, with the possible exception of Defendant Myers, who claimed to have engaged in a cursory search "way back" before Mr. Emad's detention, but again has no documentation to prove that he did so. The Jail also may have obtained an imam by offering compensation, using a de minimis portion of the $14,000 it receives *each day* for choosing to house immigration detainees. And second, the claimed inability to find an imam would, at most, explain why there is no volunteer imam-led programming. It would not justify the wholesale failure to offer Muslims any opportunity for group religious activity at all, especially when Mr. Emad and other detainees suggested other ways of meeting this need.

C. Defendants have waived any argument that they are entitled to qualified immunity; and in any event, they are not.

Defendants did not argue in their motion for summary judgment that they were entitled to qualified immunity on Mr. Emad's Equal Protection claims. ECF 76 at 14–17. Qualified immunity is an affirmative defense which "may be deemed as waived if not properly and timely presented before the district court." *Walsh v. Mellas*, 837 F.2d 789, 799 (7th Cir. 1988). They belatedly asserted the defense in their reply brief, but "[a]rguments may not be raised for the first time in a reply brief." *United States v. Diaz*, 533 F.3d 574, 577 (7th Cir. 2008). The district court did not discuss qualified immunity at all in resolving the Equal Protection claims. The argument is therefore waived, and this Court should not address it.

In any event, any assertion of a qualified immunity defense to Mr. Emad's Equal Protection claims would be meritless. The Supreme Court has long recognized that the Equal Protection Clause prohibits religious discrimination in the prison setting. *Cruz*, 405 U.S. at 322. This circuit's caselaw similarly establishes that prisoners' religious needs must be treated equally, except to the extent required by the exigencies of prison

administration. *May*, 226 F.3d at 882; *Maddox*, 655 F.3d at 720 (internal citation omitted) ("The treatment of all inmates must be qualitatively comparable"). Officials violate the Equal Protection Clause when they "den[y] [a prisoner] a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts." *Maddox*, 655 F.3d at 719 (quoting *Cruz*, 405 U.S. at 322) (finding plaintiff stated plausible claim of discrimination where prison "disproportionately allocated [its] religious budget and resources . . . to other religions, and failed to pursue alternatives to allow the inmates to pursue their faith").

That clearly established law governs this case. The Jail treated Muslim detainees worse than Christian detainees: Corrections officers suppressed Muslim prayer while permitting Christian prayer, and program specialists ignored ongoing requests from Muslim detainees for some form of group programming while catering to the programming needs of Christian detainees. No reasonable official could think this unjustified disparate treatment constitutional.

III. This court should also vacate the district court's mootness determination on the issue of whether Dodge County is a proper defendant.

The district court did not reach the merits of the issue of whether Dodge County is a proper defendant for purposes of indemnification; it held that the issue was moot because it granted summary judgment to all defendants, so no one remained to indemnify. In addition to vacating the summary judgment ruling, the Court should vacate this determination so that the district court can address the issue on remand.

CONCLUSION

For the foregoing reasons, this Court should vacate the district court's grant of summary judgment and remand the case for further proceedings.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH FRAP RULE 32(A)(7), FRAP RULE 32(G) AND CR 32(C)

The undersigned, counsel of record for the Plaintiff-Appellant, Mohamed Salah Mohamed A Emad, furnishes the following in compliance with F.R.A.P. Rule 32(a)(7):

I hereby certify that this brief conforms to the rules contained in F.R.A.P. Rule 32(a)(7) for a brief produced with a proportionally spaced font. The length of this brief is 13,425 words.

Dated: November 7, 2022 */s/Meghan Palmer*
Meghan Palmer

STATEMENT CONCERNING THE APPENDIX

Pursuant to Circuit Rule 30(d), I certify that all the materials required by Circuit Rules 30(a) and (b) are included in the attached appendix.

Date: November 7, 2022 */s/Meghan Palmer*

Meghan Palmer

REQUIRED SHORT APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MOHAMED SALAH MOHAMED A EMAD,
Plaintiff,

v. **Case No. 19-cv-0598**

DODGE COUNTY, et al.,
Defendant.

DECISION AND ORDER

Plaintiff Mohamed Salah Mohamed A Emad brings this action under § 1983 alleging that defendants violated his constitutional rights while he was a detainee at Dodge County Detention Facility (the "Jail"). Specifically, plaintiff argues that defendants Sheriff Dale Schmidt, Jail Administrator Brugger, and Officers Jerry Schlegel, Chris Myers, Matthew Marvin, and Scott Buckner violated his rights by preventing him from attending Islamic religious services and prohibiting him from praying outside of his cell which he considered unclean because it contained a toilet. Plaintiff also names Dodge County as a defendant for indemnity purposes. Before me is defendants' motion for summary judgment which I will grant for the reasons explained below.

I. Background

A. Defendants' Roles

Schmidt was the Sheriff of Dodge County. He was responsible for Jail operations but was not involved on a day-to-day basis. He had no personal contact with plaintiff. He had final policy making authority at the Jail. Brugger was the Jail Administrator. He regularly reviewed and updated the Jail's Religious Service Policy. He too had no personal contact with plaintiff. Marvin was either a Programs Specialist or the corporal in

charge of the Programs Department. Schlegel, Myers, and Buckner were Programs Specialists. The Programs Department set the Jail's religious programming schedule and found volunteers to lead religious services.

B. Jail Policies

Two Jail policies are at issue. The first prohibits "Group activities led by inmates." ECF no. 86-13 p. 29. The second provides "Personal worship may be done in your cell or beside your bunk. It is not permitted in the dayroom areas." *Id.* at p. 30. "Personal worship" is not defined, but Schmidt understood the policy to allow personal verbal prayers or bowing one's head to say grace but to prohibit "more involved" worship including ceremony, rituals, special clothing, mats, or other outside items. ECF no. 86-2 pp. 45-48. Schmidt further stated that this "more involved" worship was banned because it was likely to disturb others in the area and create security concerns. *Id.* at 47.

C. Plaintiff's Allegations

Plaintiff is a Muslim who was detained for fourteen months at the Jail from March 12, 2018, to May 13, 2019. As part of his religious practice, plaintiff engages in daily prayer five times a day at prescribed times, a practice known as salah. Plaintiff believes that Islam requires Muslims, when they are physically able, to prostrate when praying, touching all of their limbs and forehead to the ground, in order to show humility to God. Plaintiff believes that salah must be conducted in a clean and pure environment and that prayer in any room with a toilet is prohibited because toilets are unclean spaces. Plaintiff also believes that Islam compels attendance at weekly Jumu'ah, or congregational prayer, each Friday just after noon. Plaintiff believes that Jumu'ah must be conducted with two or more people in a clean space. Jumu'ah is typically led by an imam at a

mosque, but plaintiff believes it is acceptable to conduct Jumu'ah without an imam and in a location other than a mosque as long as one prays in a group of two or more. Jumu'ah is composed of a short sermon, called a khutbah, followed by prayer.

While plaintiff was detained at the Jail, he was housed in a small cell with a bed, bookshelf, toilet, and sink. As a result of the Jail's policy requiring personal worship to take place in a detainee's cell, plaintiff prayed five times a day in his cell next to a toilet. Plaintiff asked several officers, whom he does not identify, if he could pray outside of his cell in an area without a toilet but his requests were denied. The Jail did not offer Jumu'ah services or other religious programming aimed at Muslims. Outside volunteers led all religious programming, and most of it was Christian in nature. Prior to plaintiff's detention, the Programs Department attempted to find an imam to provide Islamic services at the Jail, but the imams asked to be paid, and the Programs Department opted not to hire one. On March 28, 2017, plaintiff filed an inmate request slip asking that the Jail allocate a room for him to conduct Jumu'ah with other Muslim detainees. Defendant Buckner denied the request, stating the Jail does not allow detainee-led activities. Plaintiff later filed a written grievance requesting space to conduct Jumu'ah and pointing out that Christian detainees and inmates were given space to conduct Bible studies and seminars.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is required where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When considering a motion for summary judgment, I view the evidence in the light most favorable to the non-moving party and must grant the motion if no reasonable juror could find for that party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986).

III. ANALYSIS

A. Personal Involvement

Section 1983 creates a cause of action based upon personal liability and predicated upon fault. An individual cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation. *McBride v. Soos*, 679 F.2d 1223, 1227 (7th Cir. 1982); *Adams v. Pate*, 445 F.2nd 105, 107 (7th Cir. 1971). A showing of personal involvement requires "a causal connection between (1) the sued officials and (2) the alleged misconduct." *Colbert v. City of Chi.*, 851 F.3d 649, 657 (7th Cir. 2017). "[D]irect participation" is not necessary; rather, it is enough that the official "acquiesced in some demonstrable way in the alleged constitutional violation." *Palmer v. Marion Cty.*, 327 F.3d 588, 594 (7th Cir. 2003); *see also Knight v. Wiseman*, 590 F.3d 458, 463 (7th Cir. 2009) ("To be personally responsible, an official must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye." (edited for clarity)). Defendants argue that defendants Schmidt, Brugger, and Schlegel cannot be held liable under § 1983 because they had no personal contact with the plaintiff. Plaintiff counters that Schmidt and Brugger, as the Sheriff and Jail Administrator, were the chief policy makers for the jail and therefore may be liable to the extent jail policies violated plaintiff's constitutional rights. Plaintiff also argues that Schlegel, as a program specialist, was responsible for setting religious programming at the Jail and may be liable to the extent that the religious programming was constitutionally deficient. Plaintiff is correct. If a supervisor designed or is aware of an institution's policy that caused a constitutional injury, he may be individually liable for that injury. *Daniel v. Cook County*, 833 F.3d 728, 737 (7th Cir. 2016). Defendants do not dispute that Schmidt and Brugger had the authority to change policies or that both

were aware of the relevant policies. If plaintiff can show that one of these policies caused a constitutional injury, Schmidt and Brugger may be held personally liable. Similarly, if plaintiff can show that Schlegel's religious programming was constitutionally deficient and caused an injury, he may be held personally liable for that injury.

B. Free Exercise Claims

To survive a motion for summary judgment on his free exercise claims, plaintiff must "submit evidence from which a jury could reasonably find that the defendants personally and unjustifiably placed a substantial burden on his religious practices." *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019) (citations omitted). A substantial burden is one that "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981). Even if a "regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *O'Lone v. Shabazz*, 482 U.S. 342, 349 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). [1] This "reasonableness test" is "less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights," in recognition that "limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives." *Id.* at 349-350 (citations omitted).

[1] *O'Lone* and *Turner* addressed whether the policies of a prison, rather than a jail, were reasonably related to legitimate penological interests but the same standards apply to jail polices. *See Miller v. Downey*, 915 F.3d 460, 464 (7th Cir. 2019).

The Supreme Court has set forth a four-factor test, known as the *Turner* test, to determine whether a regulation is unreasonable.[2] *Turner*, 482 U.S. at 84-91. First, there must be a "'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it." *Id.* at 89. Second, I must consider whether there are "alternative means of exercising the right that remain open" to the plaintiff. *Id.* at 90. Third, I must consider whether accommodation of the right will have a "ripple effect" on fellow inmates, staff, or institutional resources generally. *Id.* And, fourth, I must consider whether there are obvious, easy alternatives to accommodate the plaintiff's rights. *Id.* In evaluating whether there is a valid, rational connection between a restriction and the government's legitimate penological interests, the initial burden of proof rests on the defendant government officials. *Singer v. Raemisch*, 590 F.3d 529, 536-37 (7th Cir. 2010). Once the defendants offer a "plausible explanation" for the restriction, the burden shifts to the plaintiff to present evidence undermining the officials' explanation. *Id.* Plaintiff argues that defendants violated his constitutional right to free exercise in three ways: (1) by prohibiting inmates or detainees from leading Jumu'ah; (2) by prohibiting prayer in the day room areas, leaving him no option but to pray in his cell with a toilet; and (3) by failing to recruit Islamic religious leaders to lead Jumu'ah.

1. Prohibition of Inmate-Led Group Activities

Plaintiff asserts that the policy prohibiting inmate-led group activities violated his rights because it prevented him from participating in Jumu'ah. Although plaintiff does not

[2] Plaintiff was a civil detainee rather than a prisoner, but the parties agree that the *Turner* test applies. The Seventh Circuit has applied the *Turner* test to civil detainees. *Brown v. Phillips*, 801 F.3d 849, 852 (7th Cir. 2015).

specify which defendants he brings this claim against, Schmidt and Brugger are the only defendants who conceiveably could be found liable for a violation caused by the policy. Buckner denied plaintiff permission to conduct Jumu'ah without an outside leader, but plaintiff does not allege that Buckner had authority to grant the request or to change the policy. Without such authority, Buckner had no option but to deny the request. Thus, plaintiff cannot show that Buckner intentionally caused any resulting violation.

Even assuming that the policy placed a substantial burden on plaintiff's religious practices, plaintiff does not show that it was not reasonably related to a legitimate penological interest. Defendants argue that the prohibition on inmate-led activities serves the interests of security, institutional order, and staff safety. Specifically, defendants argue that without an outside religious leader, any individual could falsely claim that he was leading a religious group in order to hide his efforts to organize criminal or gang related activity. Defendants also point to the opinion of their expert witness, Jeff Carter, a former National Jail Consultant, who agrees that having an outside religious leader serves the interests of safety and security. Preventing gang and other organized criminal activity is a valid penological interest. *Singer v. Raemisch*, 593 F.3d 529, 535 (7th Cir. 2010). And the Seventh Circuit has repeatedly held that prohibiting inmate-led religious services is a valid and rational way to prevent such activity. *See, e.g., Johnson-Bey v. Lane*, 863 F.2d 1308, 1310-11 (7th Cir. 1998); *Hadi v. Horn*, 830 F.3d 779, 784-85 (7th Cir. 1987).

Plaintiff argues that the policy is nonetheless not rationally connected to a legitimate security concern because it is not consistently applied. Specifically, plaintiff argues that defendants permitted Christian detainees to participate in communal prayer and Bible study in the dayroom. Multiple detainees stated that they observed groups of

Christian detainees or inmates praying together or reading the bible in the dayroom or library and that jail officers did not interfere. Several jail officers also stated that they allowed Christian inmates to pray together at a table, read the Bible out loud together, and say grace together before a meal.

If a policy is enforced in a discriminatory manner, it may call into question the proposed security rationale behind the policy. *See Grayson v. Schuler*, 666 F.3d 450, 453 (7th Cir. 2012). But plaintiff does not allege that Schmidt or Brugger were aware of the discriminatory enforcement. None of the jail officers who stated they allowed group prayer in the dayroom are named defendants, and none stated that they reported the incidents to Schmidt or Brugger. The detainee witnesses do not even name the jail officers they believe allowed the group prayer. Section 1983 does not permit *respondeat superior* liability so Schmidt and Brugger cannot be held liable for discriminatory enforcement in which they did not participate and/or of which they were unaware.

Next plaintiff argues that defendants cannot show that allowing Jumu'ah presents a real security threat, especially for "low risk" civil detainees such as himself. Plaintiff points to the testimony of his own expert, Phil Stanley, a former prison warden, who opines that Jumu'ah is not related to gang activity. But defendants are not arguing that Jumu'ah is inherently a gang-related activity; their stated security concern is that an inmate or detainee could lie about his intentions to conduct a religious service and use the service as cover for prohibited activities. Plaintiff's evidence does not undermine defendants' assertion. Nor were defendants required to make an exception to the general policy prohibiting inmate-led activities to allow "lower risk" groups to conduct inmate-led services. *Turner* does not require institutions to address valid concerns with the least

restrictive alternative. 482 U.S. at 90-91. Defendants have shown that the prohibition on inmate-led activities is rationally related to a legitimate interest, and plaintiffs' evidence does not undermine their showing. Accordingly, the first *Turner* factor weighs in favor of defendants.

The second *Turner* factor, whether plaintiff had an alternative means of exercising his right, weighs in favor of plaintiff. Because the Jail offered no Islamic religious programming, plaintiff did not have any other opportunities to participate in congregational prayer or group worship. The third factor, whether accommodating the request is likely to have a ripple effect on guards or resources, weighs in favor of the defendants. Defendants argue that allowing Muslim detainees to conduct Jumu'ah services without an outside leader would lead to requests from other groups to conduct their own group activities without an outside leader, putting a strain on guards and jail resources. Plaintiffs do not dispute this argument. The fourth factor, whether there are obvious easy alternatives to accommodating the plaintiff, also weighs in favor of defendants. Plaintiffs suggest that defendants could have hired an imam or assigned a guard to supervise services. Defendants counter that hiring an imam would be expensive and that they do not have sufficient staff to supervise Jumu'ah. Neither appears the be the "easy or obvious" solution contemplated by *Turner*. Considering these factors together, I find that a reasonable jury could not conclude that the policy was not reasonably related to a valid penological interest.

Finally, even if plaintiff were able to show defendants violated his rights by banning inmate-led group activities, his claim would fail because defendants are entitled to qualified immunity. Qualified immunity shields defendants from liability for monetary

damages if "their actions do not violate clearly established constitutional or statutory rights." *Harlow v. Fitzgerald*, 547 U.S. 800, 818 (1982). To demonstrate a right is clearly established, plaintiff must point to a Supreme Court case, a case from the Seventh Circuit, or "a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." *Wilson v. Layne*, 526 U.S. 603, 617 (1999). Courts are required to define the clearly established right at issue on the basis of the specific context of the case. *Tolan v. Cotton,* 134 S. Ct. 1861, 1866 (2014). Existing precedent must have placed the question "beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

Plaintiff has not identified a Seventh Circuit or Supreme Court case establishing an inmate's right to congregational services or inmate-led services. Indeed, Seventh Circuit precedent would suggest to a reasonable officer that no such right exists. The Seventh Circuit has previously held that prisons "need not … allow inmates to conduct their own religious services, a practice that might not only foment conspiracies but also create (though more likely merely recognize) a leadership hierarchy among the prisoners" *Johnson-Bey*, 863 F.2d 1308, 1310 (7th Cir. 1988). The Seventh Circuit also affirmed the finding of qualified immunity in a case similar to this one, reasoning that even presuming that weekly Jumu'ah attendance was a fundamental tenet of Islam, such cases as *Johnson-Bey* and *Hadi* confirmed that prisons can constitutionally preclude inmates from leading services for security reasons. *Turner v. Hamblin*, 590 Fed. App'x 616, 620 (7th Cir. 2014). In light of these cases, I cannot say that reasonable officials would have understood that banning detainee-led services violated a constitutional right and defendants are therefore entitled to qualified immunity on this issue.

The cases cited by plaintiff do not alter this conclusion. Rather, they establish, at a general level, that jail officials may not prevent religious practice without a valid penological interest.[3] They do not address the issue of whether a ban on detainee-led services can constitute a violation of plaintiff's constitutional rights. Accordingly, I will grant defendants' motion for summary judgment as regards the prohibition on inmate-led group activities.

2. Prohibition of Personal Worship in the Day Room

Plaintiff next argues that the policy prohibiting personal worship in the dayroom violated his rights because it forced him to conduct salah in his cell next to a toilet. Again, only Schmidt or Brugger could be liable for violations caused by this policy; plaintiff does not allege other defendants enforced the policy or had the authority to change it. Defendants first argue that plaintiff cannot show that having to pray in a room with a toilet was a substantial burden on his religious practice. I disagree. Plaintiff discussed at length during his deposition why he believed that prayer next to a toilet was prohibited by his Islamic faith. Plaintiff also points to the expert opinion of Professor Brandon Ingram, a specialist in the study of Islam, who stated it is a "foregone conclusion" that prayer next to a toilet is not permissible. This is sufficient evidence for a jury to find his free exercise was substantially burdened.

Defendants argue that plaintiff does not cite any "admissible, authenticated Islamic law" that suggests he is prohibited from praying in room with a toilet. But plaintiff is not

[3] Plaintiff also cites to cases establishing that otherwise reasonable policies may not be enforced in a discriminatory manner. However, plaintiff offers no evidence that defendants enforced the policy in a discriminatory manner.

required to present such evidence; the test is not whether a restriction violates an official tenet of a sect, but whether the *plaintiff* is substantially burdened in practicing his sincerely held beliefs. *Ortiz v. Downey*, 561 F.3d 664, 669 (7th Cir. 2009) ("A person's religious beliefs are personal to that individual; they are not subject to restriction by the personal theological views of another.")

The next question is whether the policy is reasonably related to a legitimate penological interest, which requires a consideration of the *Turner* factors. Regarding the first factor, defendants argue that the prohibition serves, "various legitimate penological interests, including maintenance or security, institutional order, and staff safety." ECF no. 76 p. 11 (internal citations omitted). But defendants do not otherwise explain how a prohibition on personal worship in the dayroom serves those interests. Their arguments address only the security concerns related to group worship, not to individual worship. Defendant Schmidt stated that personal worship in the dayroom could cause disturbances or pose security risks, but similarly did not elaborate on what those security risks might be. Defendants cannot "avoid court scrutiny by reflexive, rote assertions." *Nigl v. Litscher*, 940 F.3d 329, 334 (7th Cir. 2019) (quoting *Riker v. Lemmon*, 798 F. 3d 546, 553 (7th Cir. 2015). Rather, they must "articulate their legitimate governmental interest in the regulation and provide some evidence supporting their concern." *Id.* Defendants have not done so here, and the first factor of the *Turner* test therefore weighs in favor of the plaintiff.

The remaining *Turner* factors also weigh in favor of plaintiff. Regarding the second factor, plaintiff did not have other opportunities to practice his religion as there were no Muslim religious services offered and personal worship was allowed only in an area he considered unsuitable. Regarding the third factor, plaintiff argues that individual prayer in

the dayroom would not create a "ripple effect" disturbing guards or affecting prison resources because guards are already present in the dayroom and would be able to easily supervise personal prayer. Defendants do dispute this argument. Finally, plaintiff identifies obvious, easy alternatives to the policy, such as allowing him to pray elsewhere in his cell pod in rooms without a toilet, all of which were already supervised by officers. Again, defendants do not dispute this argument. Because all four *Turner* factors weigh in favor of plaintiff, I find a reasonable jury could conclude that the policy was not reasonably related to a valid penological interest.

That is not the end of the matter, however. Because defendants have raised a qualified immunity defense, plaintiff must show that it was clearly established that prohibiting him from praying in certain areas or limiting personal worship to a room with a toilet violated the Free Exercise Clause. *See Mannoia v. Farrow*, 476 F.3d 453, 457 (7th Cir. 2007)). To do so, plaintiff must point to a Supreme Court case, a case from the Seventh Circuit, or "a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." *Wilson*, 526 U.S. at 617. The case law must have put the question beyond debate. *Ashcroft*, 563 U.S. at 741.

Plaintiff fails to meet this burden. Plaintiff does not identify any case which addresses whether an institution may limit worship to certain areas, nor have I been able to find any such cases. Without such a case, I cannot conclude that a reasonable official would have been on notice that he was violating plaintiff's rights by prohibiting worship in the dayroom or limiting personal worship to a room with a toilet. I will note that a recent case in this district with nearly identical facts reached the same conclusion. In *Gill v. Michel*, the court found a genuine dispute of fact as to whether plaintiff's rights were

violated when he was required to conduct salah in a room with a toilet, but nonetheless found that defendants were protected by qualified immunity because, under existing case law, a reasonable official would not have known he was acting unlawfully by prohibiting prayer in the dayroom. No. 17-CV-873-PP, 2019 WL 4415638 at *9 (E.D. Wis. Sept. 16, 2019). Accordingly, I will grant defendant's motion for summary judgment as regards this claim

3. Failure to Recruit an Imam

Plaintiff also suggests that defendants violated his rights by failing to recruit Islamic religious leaders to lead Jumu'ah at the Jail. It is not clear from plaintiff's brief whether he means to bring this issue as a separate free exercise claim and because his argument is undeveloped, I will not address the issue at length. It is sufficient to say that the claim is barred by qualified immunity. The Free Exercise Clause does not require a jail to provide a "chaplain, priest, or minister" for each sect without regard to the extent of the demand. *Cruz v. Beto*, 405 U.S. 319, 322 n. 2 (1972). A recent unpublished Seventh Circuit decision explained that prisons and jails "are not required to arrange for religious leaders to perform communal religious services, so [the district court] properly concluded that the absence of an imam at the jail, despite the efforts to recruit one, does not violate the Free Exercise Clause." *Thompson v. Bukowski*, 812 Fed. App'x. 360, 364 (7th Cir. 2020). Here, it is undisputed that defendants made some efforts, however minimal, to locate volunteer imams. Plaintiff has not identified a case holding that the Constitution imposes *any* burden on officials to locate volunteers or pay for religious leaders, let alone a case that would have put defendants on notice that their efforts were constitutionally deficient. Because defendants could not have known from

existing precedent that their efforts violated the law, they are entitled to qualified immunity and I will grant defendants' motion for summary judgment as regards this issue.

C. Equal Protection Claims

Plaintiff also argues that the defendants violated his rights under the Equal Protection Clause. The Equal Protection Clause prohibits state actors from purposefully treating an individual differently because of his membership in a particular class. *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000). A legitimate secular reason for any difference in treatment is fatal to the plaintiff's claim. *Kaufman v. McCaughtry*, 419 F.3d 678, 683 (7th Cir. 2005); *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988) (difference in treatment must only be non-arbitrary). The plaintiff must also show that defendants acted, or failed to act, because the plaintiff is a Muslim. *Jackson*, 726 F.Supp. 2d at 1005 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) ("Where the claim is invidious discrimination … our decisions make clear that the plaintiff must plead and prove that the defendant acted with discriminatory purpose" and that defendant "undert[ook] a course of action because of, not merely in spite of, the action's adverse effects upon an identifiable group.")); *see also West v. Kingsland*, 679 F. App'x 482, 485 (7th Cir. 2017) (to avoid summary judgment, plaintiff needs evidence that the defendants acted with discriminatory purpose, meaning that their actions were motivated at least partly by a desire to adversely affect Muslims).

Plaintiff argues that the defendants violated his equal protection rights in three ways: (1) the religious programming offered at the Jail was primarily Christian and the Jail did not provide any Islamic religious programming; (2) The Jail's policy prohibiting

detainee-led group activities was not neutrally enforced; and (3) the Jail's policy prohibiting personal worship in the dayroom was not neutrally enforced.

Defendants do not dispute that the Jail offered no Islamic religious programming. But they argue this was due to a secular reason: they were unable to locate any Muslim religious leaders who were willing to provide Islamic religious services on a volunteer basis. Plaintiff argues that defendants should have made additional efforts to find a volunteer, but he points to no evidence that the efforts made to find a Muslim volunteer were any different than the efforts made to find volunteers for other religions. Nor does he point to any evidence from which a jury could infer that the failure to find a volunteer imam was motivated by a desire to adversely affect Muslims. Without such evidence, plaintiff cannot show that defendants violated his equal protection rights, and I will grant defendants' motion for summary judgment as regards this issue.

Plaintiff next argues that the policies banning inmate-led group activities and personal worship in the dayroom were not neutrally enforced in violation of the Equal Protection Clause. But plaintiff does not allege that any defendants were involved in or aware of any discriminatory enforcement. Again, Schmidt and Brugger can be liable only to the extent the policies themselves caused a constitutional violation, and plaintiff himself acknowledges the policies were facially neutral. ECF no. 85 p. 23 ("while the Jail maintained facially neutral policies prohibiting detainee-led group activities and personal worship in the common areas, these policies were solely deployed against Muslim detainees.") Bruckner denied a request to allow detainee led Jumu'ah, but plaintiff does not allege that Bruckner allowed Christians to conduct group prayer or was aware of any discriminatory enforcement. Plaintiff does not allege the remaining defendants had

any role in the enforcement of the policies. In other words, plaintiff has not offered any evidence that any defendant participated in discriminatory enforcement of the policies.

Plaintiff next argues that defendant Schmidt believed the policy banning personal worship in the dayroom did not prohibit verbal prayers but did prohibit "more involved" worship that involved special clothing, outside items, or mats. Plaintiff argues this definition of “personal worship” would prohibit Muslim inmates from practicing salah but would not prohibit most Christian prayers. But even if Schmidt knew the policy had a greater impact on Muslims than Christians, that alone is not sufficient evidence for a jury to infer that Schmidt *intended* the policy to single out Muslims. Indeed, the only other evidence regarding of Schmidt’s intent in approving the policy indicates he believed “more involved” worship was more likely to disturb other inmates or pose a greater security risk. A reasonable jury could not infer from this evidence that Schmidt approved of the policy with the intent to adversely impact Muslims. Accordingly, I will grant defendants’ motion for summary judgment as regards these claims.

D. Dodge County

Plaintiff has named Dodge County as a defendant in this action, solely for indemnification purposes. Defendants argue that Dodge County is not a proper defendant. Because I have granted defendants’ motion for summary judgment as regards all of plaintiff’s other claims, Dodge County cannot be required to indemnify the other defendants and this issue is moot.

IV. CONCLUSION

For the reasons stated, **IT IS ORDERED** that defendants' motion for summary judgment at ECF no. 75 is **GRANTED**. The Clerk of Court is directed to enter judgment in favor of the defendants in this case.

Dated at Milwaukee, Wisconsin, this 3rd day of May, 2022.

/s/Lynn Adelman
LYNN ADELMAN
United States District Judge

United States District Court

EASTERN DISTRICT OF WISCONSIN

JUDGMENT IN A CIVIL CASE

MOHAMED SALAH MOHAMED A EMAD,
Plaintiff

v.

CASE NUMBER: 19-cv-0598

DODGE COUNTY, et al.,
Defendants

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the plaintiff shall take nothing by his complaint and judgment is entered in favor of the defendants on the merits.

May 3, 2022
Date

Gina M. Colletti
Clerk

/s/K. Rafalski
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

MOHAMED SALAH MOHAMED AHMED EMAD, Plaintiff, v. DODGE COUNTY, DOGE COUNTY SHERIFF DALE SCHMIDT, JAIL ADMINISTRATOR ANTHONY BRUGGER, CORPORAL MATTHEW MARVIN, OFFICER JEFFREY SCHLEGEL, OFFICER CHRIS MYERS, and OFFICER SCOTT BUCKNER, Defendants.	)	Case No. 19-cv-0598 The Hon. Lynn Adelman Magistrate Judge Joseph

NOTICE OF APPEAL

Plaintiff Mohamed Salah Mohamed Ahmed Emad gives notice that he appeals as to all defendants this Court's final judgment entered on May 3, 2022, to the United States Court of Appeals for the Seventh Circuit.

Dated: May 18, 2022

Respectfully submitted,

By: /s/ Vanessa del Valle

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document upon all persons who have filed appearances in this case via the Court's CM/ECF system on May 18, 2022.

/s/ Vanessa del Valle