

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(3)-(4). The matters in controversy arise under 42 U.S.C. § 1983.

2. Venue properly lies in this District pursuant to § 1391(b)(2) because the events giving rise to this cause of action occurred at OCI in Okeechobee, Florida, which is located within the United States District Court for the Southern District of Florida.

PARTIES

3. At all time relevant hereto, the plaintiff, Johnnie C. Bouie, Jr., was a state prisoner incarcerated by the FDOC at OCI. Shortly after initiating this federal civil rights action, though, Mr. Bouie was transferred to Avon Park Correctional Institution (APCI), where he remains incarcerated to this very day.

4. At all times relevant hereto, the first defendant, Walter McNeil, was the Secretary of the FDOC, with supervising authority and responsibility over all of the other named defendants.

5. At all time relevant hereto, the second defendant, Alex Taylor, was the Chaplaincy Services Administrator overseeing religious services and activities for the FDOC at all state correctional institutions in the State of Florida.

6. At all time relevant hereto, the third defendant, Powell Skipper, was the Warden at OCI.

7. At all time relevant hereto, the fourth defendant, Shawn Collins, was the Lead Chaplain overseeing religious services and activities for the FDOC at various state correctional institutions in Region IV, including OCI.

8. At all time relevant hereto, the fifth defendant, James Hardaker, was the Acting Chaplain and a Classification Officer at OCI.

FACTS

9. On or about August 22, 2006, Mr. Bouie was transferred to OCI to serve a life sentence.

10. On or about August 22, 2006, Mr. Bouie submitted a written request to the FDOC to attend Nation of Islam Jumah Prayer services. His request was approved on or about August 23, 2006.

11. On or about August 31, 2006, separate and distinct prayer service was conducted for the Nation of Islam and Wahabbi Sunni Muslim faiths. Both worship services were held at the same time in the Main Chapel Sanctuary at OCI: While the Nation of Islam services – Mr. Bouie’s religious preference – were being held there, the Wahabbi Sunni Muslim services were also being held behind a partition in the back of the Sanctuary.

12. Mr. Bouie affirmatively asserts that during an 18-month period from August 31, 2006, through March 7, 2008, seven to eleven Nation of Islam adherents attended and worshiped in their prayer services there in the Main Unit

Chapel Sanctuary at OCI. These prayer services were first held under the direction of OCI Chaplain Smith, then OCI Chaplain Lowry, and then the fifth defendant, OCI Acting Chaplain Hardaker.

13. There were no security breaches or incidents of violence, racially or otherwise, during any of these separate and distinct prayers services.

14. Even so, when Mr. Bouie arrived at the Main Unit Chapel at OCI on March 7, 2008, at or about 1:30 p.m., he and other Nation of Islam adherents were accosted by the fifth defendant, FDOC Region VI Lead Chaplain Collins, and OCI Acting Chaplain Hardaker, at the entrance to the Sanctuary, where the lights had been turned off (they had always been turned on for Nation of Islam worship and prayer services).

15. Without any prior notice or any provocation, incidents, or disturbances by Mr. Bouie and/or any other Nation of Islam adherent, FDOC Region IV Lead Chaplain Collins and OCI Acting Chaplain Hardaker ordered Mr. Bouie to *either* “merge” his sincerely held religious faith and prayer services with the Wahabbi Sunni Muslims behind the partitioned area in the back of the Main Chapel Sanctuary at OCI *or* immediately exit the building.

16. If he failed to act immediately, Mr. Bouie knew that a “security” concern would be created by FDOC Region IV Lead Chaplain Collins based upon his statement to Mr. Bouie that he was going to notify the Security Department at

OCI that he was causing a disturbance in the Main Chapel, *i.e.*, creating a hostile, dangerous, and unsafe environment for prison officials and inmates alike; and that he would be handcuffed and placed in administrative confinement pending disciplinary action by the FDOC.

17. Mr. Bouie then explained the Nation of Islam program to FDOC Region IV Lead Chaplain Collins and OCI Acting Chaplain Hardaker, as well as why the theological and practices of Nation of Islam adherents widely differ in their interpretation of the Holy ^{Qur'an} Qur'an and thus are in extreme opposition of the Wahabbi Sunni Muslim's beliefs and practices, *see* Exhibit A, including that:

- A. Mr. Bouie and other peaceful Nation of Islam adherents believe that Allah (God) appeared in the form of Master Fard Muhammad;
- B. Wahabbi Sunni Muslims – a generally hostile and intolerant group – are in total opposition to this tenet of the Nation of Islam, *see* Exhibit B;
- C. Wahabbi Sunni Muslim believe that Allah (God) never appeared in the person of anyone;
- D. Mr. Bouie believes that Master Fard Muhammad is the Great Mahdi, *i.e.*, God in person, and that the Great Mahdi will guide the Muslim world back on the straight path; which Muhammad started over 1,400 years ago;
- E. Mr. Bouie believes that the Honorable Elijah Muhammad is the Messiah;
- F. Mr. Bouie believes that the Honorable Elijah Muhammad is Allah's (God's) last messenger to mankind;
- G. Mr. Bouie believes that Allah (God) raised a messenger in every Nation, who spoke the language of the people;

H. Mr. Bouie beliefs and tenets are vehemently opposed by the Wahabbi Sunni Muslims;

I. Wahabbi Sunni Muslims refuse to greet and recognize Mr. Bouie as a legitimate Muslim;

J. Wahabbi Sunni Muslims refuse to line up in prayer ranks along side or behind Mr. Bouie;

K. Wahabbi Sunni Muslims refuse to allow him to call the Adhan (the call to prayer); and

L. Wahabbi Sunni Muslims refuse to allow Mr. Bouie to give Khutbahs (meaning religious talks) sermons during Jumah (Friday) prayer services or to speak on their faith or to watch videos of his faith during Taleem (Quranic studies).

18. OCI Acting Chaplain Hardaker then acknowledged that there was separate worship and prayer services for the Nation of Islam adherents and Sunni Muslims at OCI prior to March 7, 2008.

19. However, FDOC Region IV Lead Chaplain Collins intervened, stating, "I do not need to be taught Islam."

20. FDOC Region IV Lead Chaplain Collins then asked Mr. Bouie whether he was in a gang, and without hesitation, Mr. Bouie truthfully answered, "No, sir."

21. Even so, FDOC Region IV Lead Chaplain Collins continued with his efforts to provoke Mr. Bouie, telling him in a sarcastic and belligerent manner, "As-Salaam Alaikum," *i.e.*, "My Lord and Savior is Jesus."

22. FDOC Region IV Lead Chaplain Collins then stated to Mr. Bouie, “There is only one Islam, and the Nation of Islam will not be tolerated on Okeechobee’s compound as long as I have the say so.”

23. Thus, Mr. Bouie believes that the intentional, mean-spirited, and discriminatory actions of FDOC Region IV Lead Chaplain Collins favored the Wahabbi Sunni Muslims over the Nation of Islam adherents and violated his rights under the First Amendment to the United States Constitution to exercise his religious beliefs and practices in accordance with the Nation of Islam.

24. In any event, after becoming fearful of FDOC Region IV Lead Chaplain Collins and what he and/or the Wahabbi Sunni Muslims could do to him and the other Nation of Islam adherents after this surprise encounter, including, but not limited to, further harassment, retaliation, and physical harm, Mr. Bouie exited the Main Unit Chapel at OCI.

25. By his own admission to Mr. Bouie, “I do not need to be taught Islam,” FDOC Region IV Lead Chaplain Collins knew or should have known the critical differences between the Nation of Islam and Wahabbi Sunni Muslims, and he should not have favored the Wahabbi Sunni Muslims over the Nation of Islam adherents.

26. FDOC Region IV Lead Chaplain Collins had not only the authority but a legal duty to ensure that the followers of all faiths at OCI – including Mr. Bouie

and all of the Nation of Islam adherents – were provided an equal opportunity to practice their beliefs and participate in prayer services, a right guaranteed by the First Amendment to the United States Constitution, and yet he failed to do.

27. Further, even though OCI Acting Chaplain Hardaker, who was knowledgeable and otherwise trained in religious studies, pastoral care, and religious programming, admitted to Mr. Bouie that there had been separate worship and prayer services for the Nation of Islam adherents and Wahabbi Sunni Muslims at OCI prior to March 7, 2008, he knowingly and willfully allowed the intentional, mean-spirited, and discriminatory actions of FDOC Region IV Lead Chaplain Collins to deprive Mr. Bouie of his constitutional rights to continue under his direction.

28. Thus, continuing to fear his forced participation in the adverse religious practices and prayer services for the Sunni Muslims (and to avoid disciplinary action by the FDOC), Mr. Bouie resorted to the only other legal recourse available to him by participating the grievance process pursuant to Chapter 33-103 of the Florida Administrative Code.

29. Indeed, on March 13, 2008, Mr. Bouie submitted an informal grievance to OCI Acting Chaplain Hardaker pursuant to Chapter 33-103.005 of Florida Administrative Code, attaching what he believed was valid documentation showing that his constitutional rights were being violated. *See Exhibit C.*

30. Notwithstanding, on March 17, 2008, OCI Acting Chaplain Hardaker denied Mr. Bouie's informal grievance without properly addressing the issue that he had raised. *See id.*

31. Mr. Bouie thus believes that OCI Acting Chaplain Hardaker knew or should have known the applicable FDOC policies and that the Nation of Islam is a distinct and separate theology and ideology from the Sunni Muslims, especially when responding to his informal grievance, and he should not have favored the Wahabbi Sunni Muslims over the Nation of Islam adherents.

32. Consequently, on March 27, 2008, Mr. Bouie had to file a formal grievance to OCI Warden Skipper pursuant to Chapter 33-103.006 of the Florida Administrative Code, complaining that OCI Acting Chaplain Hardaker denied his informal grievance without properly addressing the issue that he had raised. *See Exhibit D.*

33. Still, on April 7, 2008, OCI Warden Skipper denied Mr. Bouie's formal grievance. *See Exhibit E.*

34. Mr. Bouie thus believes that OCI Warden Skipper knowingly and willfully allowed FDOC Region IV Lead Chaplain Collins and OCI Acting Chaplain Hardaker to continue to deprive him of his constitutional rights since OCI Warden Skipper was in a supervisory position that easily allowed him to

immediately remedy the situation at OCI by exercising his power and legal duty to protect Mr. Bouie's constitutional rights.

35. Mr. Bouie asserts that the attached documentation, *see* Exhibit F, shows that there was *at least* eight different denominations of Christians and three different groups of Jews were having separate worship and prayer services scheduled and held there at the Main Unit Chapel at OCI during the sample months of April 2008, September 2008, and August 2009.

36. Mr. Bouie believes that the attached documentation, *see* Exhibit F, is relevant here because it shows that none of those Christian and Jewish denominations were forced to "merge" with the other as Mr. Bouie and the Nation of Islam adherents were ordered to do with the Sunni Muslims or, alternatively, stop worshipping and praying in the Main Unit Chapel at OCI.

37. Indeed, OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker have allowed each and every religious denomination – except Mr. Bouie and the Nation of Islam adherents – to conduct their own separate worship and prayer services at OCI.

38. On April 18, 2008, Mr. Bouie appealed OCI Warden Skipper's denial of his formal grievance to FDOC Secretary McNeil and FDOC Chaplaincy Services Administrator Taylor pursuant to Chapter 33-103.006 of the Florida Administrative Code. *See* Exhibit G.

39. On May 7, 2008, FDOC Secretary McNeil and FDOC Chaplaincy Services Administrator Taylor denied Mr. Bouie's appeal, explaining: "It is [the] policy of the [FDOC] to provide religious activities for Muslims that are inclusive of the various Islamic groups; This policy includes Juma prayer." *See* Exhibit H.

40. Even so, Chapter 33-503.001(2)(a) of the Florida Administrative Code provides: "It is the policy of the [FDOC] to extend to all inmates the greatest amount of freedom and opportunity for pursuing individual religious beliefs and practices consistent with the security and good order of the institution." *See* Exhibits I and J.

41. Thus, FDOC Secretary McNeil and FDOC Chaplaincy Services Administrator Taylor knowingly and willingly allowed OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker to continue to deprive Mr. Bouie of his constitutional rights since they both were in supervisory positions that easily allowed them to immediately remedy the situation at OCI by exercising their powers and legal duties to protect Mr. Bouie's constitutional rights.

42. Further, the intentional, mean-spirited, and discriminatory actions of FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker were obviously not the least restrictive means to impose

restrictions because they had previously allowed the Nation of Islam adherents and Sunni Muslims to worship and pray separately in the Main Unit Sanctuary at OCI without any time, space, safety, or security problems prior to March 7, 2008.

43. FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker violated his rights under the First Amendment to the United States Constitution to exercise his religious beliefs and practices in accordance with the Nation of Islam without interference of the government and its agencies, namely the FDOC from March 7, through January 23, 2010.

44. FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker have substantially burdened Mr. Bouie, and yet they had no compelling interest in preventing him from exercising his religious beliefs and practices in accordance with the Nation of Islam and in effectively banning him from participating in congregational prayer in Main Unit Sanctuary at OCI from March 7, through January 23, 2010.

45. The intentional, mean-spirited, and discriminatory actions of FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker also made Mr. Bouie feel unstable and fearful since he had no

idea when and where they and/or the Security Department at OCI would retaliate against him.

46. In fact, shortly after Mr. Bouie provided FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker notice that he was going to file a civil rights complaint under § 1983, he suffered a retaliatory transfer from OCI to APCI in January 2010 to separate him from fellow Nation of Islam adherents at OCI.

47. The intentional, mean-spirited, and discriminatory actions of FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker subjected Mr. Bouie to atypical and significant hardships by preventing him from exercising his religious beliefs and practices in accordance with the Nation of Islam and by effectively banning him from participating in congregational prayer in Main Unit Sanctuary at OCI from March 7, 2008, through January 23, 2010.

CONCLUSION

48. Prior to March 7, 2008, separate worship and prayer services were being scheduled and held in the Main Unit Chapel at OCI for eight different

denominations of Christians, three different groups of Jews denominations, and two sects of Muslims.

49. However, intentional, mean-spirited, and discriminatory actions of FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker have essentially shut down worship and prayer services for one of the two sects of Muslims at OCI, favoring the Wahabbi Sunni Muslims over the Nation of Islam adherents, and violating Mr. Bouie's rights under the First Amendment to the United States Constitution to exercise his religious beliefs and practices in accordance with the Nation of Islam.

RELIEF

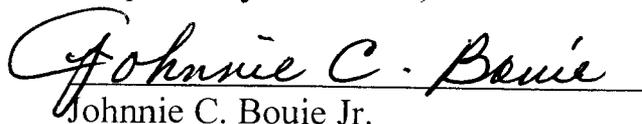
50. First of all, Mr. Bouie seeks a declaratory judgment finding that FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker, individually and/or collectively, violated his rights under the First Amendment to the United States Constitution to exercise his religious beliefs and practices in accordance with the Nation of Islam.

51. Next, Mr. Bouie seeks nominal and compensatory damages to be awarded by this Court based upon FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead

chaplain Collins, and OCI Acting Chaplain Hardaker, individually and/or collectively, violating his rights under the First Amendment to the United States Constitution to exercise his religious beliefs and practices in accordance with the Nation of Islam.

52. Finally, Mr. Bouie seeks punitive damages to be awarded by a jury for every week of prayer and worship opportunity mentioned herein based upon FDOC Secretary McNeil, FDOC Chaplaincy Services Administrator Taylor, and OCI Warden Skipper, FDOC Region IV Lead Chaplain Collins, and OCI Acting Chaplain Hardaker, individually and/or collectively, violating his rights under the First Amendment of the United States Constitution to exercise his religious beliefs and practices in accordance with the Nation of Islam.

Respectfully submitted,



Johnnie C. Bouie Jr.

Avon Park Correctional Institution

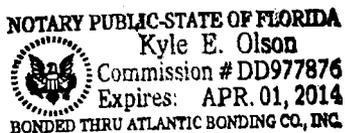
P.O. Box 1100

Avon Park, FL 33826-1100

Plaintiff *In Propria Persona*

STATE OF FLORIDA)
)
COUNTY OF POLK)

SWORN AND SUBSCRIBED TO before me, the undersigned authority, on
this 9th day of October, Anno Domini 2010.





NOTARY PUBLIC
STATE OF FLORIDA

produced identification D.O.C. # 111099

personally known

Exhibit A

CHAPTER

ARTICLE I. NAME

This body of Registered Muslims shall be known as **THE MUHAMMAD MOSQUE** and/or **THE LOST FOUND MEMBERS OF THE NATION OF ISLAM IN THE WEST.**

ARTICLE II. PURPOSE

The purpose of **THE MUHAMMAD MOSQUE** and/or **THE LOST FOUND NATION OF ISLAM IN THE WEST** is:

1. The indoctrination in the religious principles of Islam and the leading of an Islamic life as taught and exemplified by **The Honorable Elijah Muhammad, our Lord, our Saviour, and our Redeemer — The Messiah.**
2. To conduct religious services, business meetings, acquire real and personal property, to perpetuate the principles of Islam as taught by **The Honorable Elijah Muhammad.**

ARTICLE III. WHAT THE MUSLIMS WANT

1. We want freedom. We want a full and complete freedom.
2. We want justice, equal justice under the law. We want justice applied equally to all, regardless of creed or class or color.
3. We want equality of opportunity. We want equal membership in society with the best in civilized society.

4. We want our people in America whose parents or grandparents were descendants from slaves, to be allowed to establish a separate state or territory of their own — either on this continent or elsewhere. We believe that our former slave masters are obligated to provide such land and that the area must be fertile and minerally rich. We believe that our former slave masters are obligated to maintain and supply our needs in this separate territory for the next 20 to 25 years — until we are able to produce and supply our needs.

Since we cannot get along with them in peace and equality, after giving them 400 years of our sweat and blood and receiving in return some of the worst treatment human beings have ever experienced, we believe our contributions to this land and the suffering forced upon us by white America, justifies our demand for complete separation in a state or territory of our own.

5. We want freedom for all Believers of Islam now held in federal prisons. We want freedom for all Black men and women now under death sentence in innumerable prisons in the North as well as the South.

We want every Black man and woman to have the freedom to accept or reject being separated from the slave master's children and establish a land of their own.

We know that the above plan for the solution of the Black and white conflict is the best and only

- answer to the problem between the two people.
6. We want an immediate end to the police brutality and mob attacks against the so-called Negro throughout the United States.

We believe that the Federal government should intercede to see that Black men and women tried in white courts receive justice in accordance with the laws of the land — or allow us to build a new nation for ourselves, dedicated to justice, freedom and liberty.

7. As long as we are not allowed to establish a state or territory of our own, we demand not only equal justice under the laws of the United States, but equal employment opportunities—**NOW!**

We do not believe that after 400 years of free or nearly free labor, sweat and blood, which has helped America become rich and powerful, that so many thousands of Black people should have to subsist on relief, charity or live in poor houses.

8. We want the government of the United States to exempt our people from **ALL** taxation as long as, we are derived of equal justice under the laws of the land.

9. We want equal education — but separate schools up to 16 for boys and 18 for girls on the condition that the girls be sent to women's colleges and universities. We want all Black children educated, taught and trained by their own teachers.

Under such schooling system we believe we will make a better nation of people. The United States government should provide, free, all necessary

text books and equipment, schools and college buildings. The Muslim teachers shall be left free to teach and train their people in the way of righteousness and decency and self respect.

10. We believe that intermarriage or race mixing should be prohibited. We want the religion of Islam taught without hinderance or suppression.

ARTICLE IV. WHAT THE MUSLIMS BELIEVE

1. We believe in the One God Whose proper Name is Allah.
2. We believe in the Holy Qur'an and Scriptures of all the Prophets of God.
3. We believe in the truth of the Bible, but we believe that it has been tampered with and must be reinterpreted so that man and mankind will not be snared by the falsehoods that have been added to it.
4. We believe in Allah's Prophets and the Scriptures they brought to the people.
5. We believe in the resurrection of the dead — not in physical resurrection — but in mental resurrection. We believe that the so-called Negroes are most in need of mental resurrection, therefore, they will be resurrected first.

Furthermore, we believe we are the people of God's choice, as it has been written, that God would choose the rejected and the despised. We can find no other persons fitting this description in these last days more than the so-called

Negroes in America. We believe in the resurrection of the righteous.

6. We believe in the judgment; we believe the first judgment will take place as God revealed...in America...
7. We believe this is the time in history for the separation of the so-called Negroes and the so-called white Americans. We believe that the Black man should be free in name as well as in fact. By this we mean that he should be freed from the names imposed upon him by his former slave masters; names which identified him as being the slave master's slave. We believe that if we are free indeed, we should go in our people's names — Black peoples of the earth.
8. We believe in justice for all, whether in God or not; we believe as others, that we are due equal justice as human beings. We believe in equality — as a nation — of equals... We do not believe that we are equal with our slave masters in the status of "freed slaves".

We recognize and respect American citizens as independent peoples and we respect their laws which govern this nation.

9. We believe that the offer of integration is hypocritical and is made by those who are trying to deceive the Black peoples into believing that their 400-year-old open enemies of freedom, justice and equality are, all of a sudden, their "friends". Furthermore, we believe that such deception is intended to prevent Black people

from realizing that the time in history has arrived for their separation from the whites of this nation.

If the white people are truthful about their professed friendship toward the so-called Negro, they can prove it by dividing up America with their slaves.

We do not believe that America will ever be able to furnish enough jobs for her own millions of unemployed, in addition to jobs for the 30,000,000 Black people as well.

10. We believe that we who declare ourselves to be righteous Muslims, should not participate in wars which take the lives of humans. We do not believe this nation should force us to take part in such wars, for we have nothing to gain from it unless America agrees to give us the necessary territory wherein we may have something to fight for.
11. We believe that our women should be respected and protected as the women of other nationalities are respected and protected.
12. We believe that Allah (God) appeared in the person of **Master W. Fard Muhammad**, July, 1930; the long-awaited "Messiah" of the Christians and the "Mahdi" of the Muslims.

We believe further and lastly that **Allah is God** and besides **HIM** there is no God and He will bring about a universal government of peace wherein we all can live in peace together.

Exhibit B

Ex. A

New York Muslim Prison Chaplains Purged

by Matthew T. Clarke

Imam Warith Deen Umar helped found the advocacy group National Association of Muslim Chaplains (NAMC) in 1976. Since then, the 58-year old cleric and NAMC have come to exercise near monopolistic influence over the selection of Muslim prison chaplains in New York state prisons, according to critics. Umar has personally recruited and trained dozens of prison clerics and ministered to thousands of prisoners. The government of Saudi Arabia helped finance Umar's two trips to that Muslim monarchy and continues to finance his dissemination of their harsh form of fundamentalism known as Wahhabism, a Saudi Arabian offshoot of Sunni Islam. Wahhabism stresses a literal reading of the Quran and is intolerant of people who do not follow its absolutist teachings.

Of his youth in Illinois, Umar says, "I went to jail too many times to count." Living in New York in 1971, Umar and a group of radicals he befriended were overheard bragging about their plans murder police. Caught with a 9mm pistol and crude homemade bombs, Umar visited Louis Farrakahn before being sent to prison for two years. That meeting led to a prison conversion to Islam and a name change from Wallace Gene Marks to Wallace 10X. Umar became one of New York's first Muslim prison chaplains shortly after his release in 1975. Later he changed his name to Warith Deen Umar.

Umar says that the focus of his preaching is "on work, family, and getting an education," but prison "is the perfect recruitment and training grounds for radicalism and the Islamic religion." Umar retired from his state prison chaplaincy in August, 2002, but continued as a contract Muslim chaplain for the federal prison in Otisville, NY. He also continued to visit New York state prisons as an unpaid volunteer chaplain. These visits continued even after New York barred him from its prisons on February 4, 2003, for stating that the 9-11 hijackers should be honored as martyrs. His statement also resulted in the termination of his federal contract.

New York State Senator Michael F. Nozzolio, Chairman of the Senate Crime Victims, Crime, and Correction Committee, is upset about the selection process

for Muslim chaplains in New York state prisons which, until recently, relied almost exclusively on Umar to select its clerics. He characterized it as "too trusting, too loose and too naive."

The early 2002 arrest of Osameh Al Wahaidi, the Muslim chaplain at Auburn Correctional Facility, brought the propriety of the selection process to the front burner. Al Wahaidi, who is a citizen of Jordan residing in the U.S. on an R-visa, is charged with helping to raise money that was illegally sent to Iraq.

Two other New York Muslim prison chaplains, both selected by Umar, were fired for anti-American activity. "Sufwan El Hadi, imam at Cape Vincent Correctional Facility, was fired for saying that September 11th was God's punishment and that the victims got what they deserved," the Associated Press reported. The AP reported that the comment was made on September 13, 2001, but Hadi denied making the comment. "Aminah Akbar, chaplain at the Albion Correctional Facility for women, was fired for praising Osama Bin Laden as a hero, AP said. She also denied making the comment," which was allegedly made six weeks after 9-11. It was also political speech she had a First Amendment right to make, even if unpopular or foolish, so long as it was not inflammatory or a danger to prison security. Following labor arbitration Akbar was allowed to retire instead of being fired.

In an environment increasingly resembling a religious witch hunt, Nozzolio suggested that the prison system be forced to investigate all of its Muslim clerics. He also questions the need for 42 state-paid clerics for the 9,800 Muslim prisoners in the state's 65 prisons, noting that the federal system is able to get by with 10 Muslim clerics for 9,000 Muslim prisoners at 102 prisons.

"This is taxpayer money we are talking about," Nozzolio said. "Even if they are preaching the word of God and not the word of al-Qaida, we need to look at whether this is appropriate staffing."

Prisoners who are members of the minority Shiite sect of Islam also complain about the overwhelmingly Sunni prison chaplains. They claim that Sunni chaplains often stir up passions of their flock against Shiites by repeating an ancient

religious slur (that Shiites began as an anti-Islamic Jewish conspiracy) in their sermons. Other complaints include Sunni chaplains calling Shiite prisoners "infiltrators and snitches" during Friday services.

In July, 1999, Frankie Cancel, a New York Shiite prisoner incarcerated at Fishkill Correctional Facility, won a ruling from a New York state judge (who is Jewish) that Shiites were entitled to their own religious services. Umar then visited Fishkill, announcing during Friday services that the ruling was a threat to Islam and Cancel and other Shiites were part of a Jewish conspiracy to undermine Islam. He said the Muslim community needed to be protected and told the prisoners to get ready for a "mission." He told them he had his "guns ready." Cancel and other Shiites interpreted this as a threat. Umar denied making the comment.

An appeals court upheld the ruling in Cancel's favor, but left much to prison officials' discretion. The prison officials have granted Shiites separate religious classes and told chaplains not to "disparage" them. See: *Cancel v. Goord*, 278 AD.2d 717, 181 Misc.2d 303.

Cancel filed a federal lawsuit seeking monetary damages for violations of his right to practice his religion. The judge threw out most of the defendants, but not Umar. Cancel was released from prison in 2002. See: *Cancel v. Mazzuca*, 205 F.Supp.2d 1284 (SD NY 2002).

It is estimated that there are 200,000 to 340,000 Muslim prisoners nationwide. They comprise 10 to 17% of state prison and jail prisoners. This seems to stir up fear in the hearts of fundamentalist Christian prison chaplains. Chuck Colson, of Watergate fame and founder of a nationwide prison ministry, says that Christianity "is something far superior" to the Muslim faith, which he refers to as "a religion which breeds hate." This attitude is apparent in New York where the firings of a few Muslim prison chaplains threatens to become a full-scale witch hunt due more to unfounded fear than logic. A prime example of this is the March 2003, reassignment of Amin Awad, Muslim chaplain at New York City's Riker's Island Jail. Awad is banned from contact

STATE OF FLORIDA

INMATE REQUEST

DEPARTMENT OF CORRECTIONS

Mail Number: _____

Team Number: _____

Institution: _____

(Instructions on Back)

Exhibit C

- Classification Medical Dental
 Security Mental Health Other

FROM:	Inmate Name	DC Number	Quarters	Job Assignment	Date
	<i>Johanne S. Bouris</i>	<i>111999</i>	<i>A1152</i>	<i>ED Tech</i>	

REQUEST *INFORMAL Grievance*

This Informal grievance is submitted under the Authority of F.A.C. 33-103.005; F.S. 20.135 (1) (c) (1981). This grievance is predicated upon the following: On 3/7/08 about 1:30 this inmate and several other Black Muslims / Nation of Islam adherent was stopped and questioned in the Chapel sanctuary where the Nation of Islam have been conducting their own Juma. worship service. We were told by Regional Chaplain Mr. Collins that there is only one Islam and we had to combine with the Sunni Muslims. Mr. Collins was well aware that two (2) Islamic Communities were on this compound. He asked us in the presence of Acting Chaplain Mr. [unclear] were we bona members and we stated no sir. Acting Chaplain [unclear] confirmed that there are two Islamic Communities and we conduct separate worship services. Mr. Collins stated this can not continue.

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

(See Attachments 1, 2, 3)

DO NOT WRITE BELOW THIS LINE

RESPONSE *Referred to Chapel* **DATE RECEIVED:** *3/13/08*

The chapel has authorized services for different faiths. The Muslim faith services are held on Fri. afternoons. You may attend them or any other services on the chapel calendar

[The following pertains to informal grievances only:
 Based on the above information, your grievance is _____ (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Signature): _____ Date: _____

Distribution: White -Returned to Inmate Pink -Retained by official responding, or if the response is to an informal grievance then forward to be placed in inmate's file.
 Canary -Returned to Inmate

- Continuation of Internal Grievance -

Since the mid 1960's, the Florida Department of Corrections have allowed worship services of recognized religions, including the Jewish, Roman Catholic, Black Muslims / Nation of Islam and various Protestant denominations are freely allowed within prisons, subject to oversight by the prison chaplain and in accordance with applicable prison regulations.

By an order entered by the United States District Court for the Middle District of Florida on April 30, 1971 in Moore v. Thompsons (case no. 69-263 - CIV - J and cases consolidated therewith), the Florida Department of Corrections was required not only to allow worship service, but to allow texts and periodicals of the Black Muslim / Nation of Islam Faith.

In August 1985 Mr. William E. Counselman, Chaplaincy Service Administrator for the Florida Department of Corrections set precedence when he convened a meeting of chaplains from all of the department correction facilities.

The Chaplaincy Administrator at that meeting stressed the need for a uniform application of the regulations and policies of the Department of Corrections by the chaplains at the various states prisons.

At that meeting the Chaplaincy Administrator communicated the announced policy of the Department that prison chaplains were to treat all religions held by inmates in an "even handed" manner.

Continuation of Informal Grievance -

The courts have since found that prior to the August 1985 Chaplains Meeting convened by Administrator Counsellman, that there were unquestionable sporadic and uncoordinated application of prison regulations and policies among the Florida prison officials in their dealings with Black muslim/ Nation of Islam.

Such sporadic and uncoordinated application of prison regulations and policies by Regional Chaplain Mr. Collins is denying me and those who adhere to the teachings of the Nation of Islam, which is a bona fide religious community. This pattern of resistance by chaplains throughout the Florida prisons is indicative of a bias against, or at best, a grudging acceptance, of the Black muslims/ Nation of Islam, the pervasive nature of which necessitates the court's intervention in the issue in dispute here.

Regional Chaplain Mr. Collins has violated section 3 of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1 (a) - (2). See *Cutter v. Wilkerson*, 125 S. Ct. 2113 (2005).

Mr. Collins is in violation of RLUIPA for failing to accommodate my religious exercise in a variety of ways, including denying me the same opportunity for group Juma Prayer worship service for my non traditional faith as is granted to adherents of mainstream religions are permitted.

To force me to combine my non mainstream worship service which are in extreme opposition to each other with a sect of muslims that are intolerant of people who do not follow its absolutist teachings are placing me in harms way wherein I'll be denigrated and disparaged.

Continuation of Informal Grievance.

There are at least eight (8) different Christian denominations on this compound, neither is forced to combine their worship services.

There are three (3) Jewish services, the Assembly of Yahweh; The Hebrew Israelites; and the Jewish Service. Neither are made to combine their services.

The Hebrew Israelites are very similar in context and ideological perspective patterned their legal issues to that of the Black Muslims / Nation of Islam and were awarded their own worship service and literature text in 1985.

Upon arriving here at Okeechobee, C. I. on 23 August 06, there have been no incidents of violence, racially or otherwise during this one and half year within the Florida prison system as a result of the Black Muslims / Nation of Islam conducting their own Sunna Prayer worship services.

It is the policy of the Florida Department of Corrections that religious services, prayer meetings and the like should be permitted to all inmates regardless of their nature but always within the constraints of the need for the maintenance of security within the institution.

Resolution Sought

To be allowed the same opportunity afforded to the above named similar situated groups. The Nation of Islam for the past year and half have been allowed to conduct their own Sunna Prayer worship service in the front part of sanctuary while the Sunni Muslims are behind the partition, or split time as is done during Kairas. The Sunnis have an hour and the Nation have an hour. 1:30-3:30

Respectfully Submitted

DEPARTMENT OF CORRECTIONS

APR 07 2008

REQUEST FOR ADMINISTRATIVE REMEDY OR

Exhibit D

TO: Warden Assistant Warden Secretary, Florida Department of Corrections

From: Bowie Johnnie C. Jr. 111099 Okeechobee, C. I.
Last First Middle Initial Number Institution
0803-404-121

Part A - Inmate Grievance

This is an institutional level appeal filed under ch. 33-103.006, F.S. 20.315 (1) (c) (1981). I am respectfully seeking further review of a denial of my informal grievance log # 03-93.

The response did not address my complaint. On 22 August 06 I arrived at Okeechobee, C. I. I submitted a request to Chapel to attend Juma Prayer worship service, under the Nation of Islam.

I attended Juma Prayer worship on or about 31 August 06. The Nation of Islam held their own Juma Prayer service in the front of chapel sanctuary. The Sunni Muslims held their Juma Prayer service in the back of sanctuary behind the partition.

Chaplain Smith was the head chaplain at that time. He saw the need to allow separate Juma services.

After Chaplain Smith termination Ms. Lowry became senior Chaplain and she too to keep the groups separated.

Both Chaplains recognized that the central tenets of each group were in extreme opposition and very hostile toward each other. The only time the groups combined were during Ramadan meals and the two (2) feasts.

All the shift captains, D9 sergeants and officers are fully aware that there are two Islamic groups on this compound. Please see exhibit A for further information on this Sunni group and why it is virtually impossible for putting the groups together.

The above named Chaplains followed the rules, regulations and policies as are set forth in 33-503.001 (2)(a), (b)(4)(c) 7.,

3/27/08

DATE

Johnnie C. Bowie 111099

SIGNATURE OF GRIEVANT AND D.C. #

(- See Attachments - 1, 2, EX. A)

*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS:

8d

Johnnie Bowie

Signature

- Continuation of Part A -

and FDC Procedure, 503.002 (1)(e)(4)(7)(2) specific procedures.

They provided accommodation in accordance to Ch. 33-503.001 (2) (a), wherein it clearly states:

"It is the policy of the Department to extend to all inmates the greatest amount of freedom and opportunity for pursuing individual religious beliefs and practices consistent with the security and good order of the institution.

Chaplain Smith and Chaplain Lowry were also in compliance with two court orders issued on April 30, 1971 and Jan. 2, 1986. Those memorandums set precedence wherein they stated: "All persons currently confined, or who will be confined in the future, in institutions operated by Florida's Department of Corrections and who are members of, or seek to learn about, The Black Muslims/Nation of Islam beliefs with other individuals and worship according to the tenets of the Black Muslims/Nation of Islam Faith.

On 3/7/08, acting Chaplain Mr. Hardaker and Regional Chaplain Mr. Collins promulgated their own rules regulation and policy while acting under the color of state law.

- Continuation of Part A -

From 3/7/08 to this date my constitutional rights have been violated. I am being discriminated against because of my non-traditional Islamic faith. I am being compelled to attend worship service that do not adhere to the tenets of my sincerely held beliefs.

Remedy

The Nation of Islam is a recognized bona fide faith. I seek the same opportunity for group worship that are granted to adherents of the eight Christian denominations here and the three Jewish denominations. Just as other non-mainstream religions adherents such as the satanist, wicca, Asatru and the Church of Jesus Christ Christian. I have a guaranteed constitution right to the same accommodations to exercise my religious beliefs.

3/27/08

Respectfully
Johnnie C. Bowie
111099

APR 07 2008

Exhibit E

PART B - RESPONSE

<u>BOUIE, JOHNNIE</u> INMATE	<u>111099</u> NUMBER	<u>0803-404-121</u> GRIEVANCE LOG NUMBER	<u>(404) OKEECHOBEE C.I.</u> GRIEVANCE INSTITUTION	<u>D2115L</u> HOUSING LOCATION
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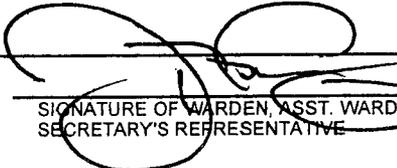
Your Request for Administrative Remedy or Appeal has been received and evaluated, along with your attached informal grievance and response, and the following has been determined:

Worship service for the Muslim inmates is held on Friday afternoons at 1:00 p.m. or close to that time.

There is no separate time scheduled for different Muslim groups to meet. The Nation of Islam can meet with the Muslims. Although we try to accommodate all religious beliefs and their variant beliefs, Nation of Islam is Muslim and should gather with all the Muslim inmates for Jumah prayer.

Based on the above information, your grievance is DENIED.

You may obtain further administrative review of your complaint by obtaining form DC1-303, Request for Administrative Remedy or Appeal, completing the form, providing attachments, and forwarding your complaint to the Bureau of Inmate Grievance Appeals, 2601 Blair Stone Road, Tallahassee, FL 32399-2500.

<hr/> SIGNATURE AND TYPED OR PRINTED NAME OF EMPLOYEE RESPONDING	 <hr/> SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE	<u>4-07-08</u> <hr/> DATE
--	---	------------------------------

COPY DISTRIBUTION -INSTITUTION / FACILITY

- (2 Copies) Inmate
- (1 Copy) Inmate's File
- (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE

- (1 Copy) Inmate
- (1 Copy) Inmate's File - Inst./Facility
- (1 Copy) C.O. Inmate File
- (1 Copy) Retained by Official Responding

OKECHOBEE CORRECTIONAL INSTITUTION CHAPEL ACTIVITIES CALENDAR

APRIL 2008

SUN	MON	TUE	WED	THU	FRI	SAT
<p>6. 8:30 am - 10:30 am 1. SUNDAY WORSHIP /PASTOR FRIES 1:00 pm - 3:30 pm CLOSED 6:00 pm - 7:30 pm CLOSED</p>	<p>7. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA) 6:00 pm - 7:30 pm CLOSED</p>	<p>8. 8:30 am - 10:30 am 1. EPISCOPAL SERVICE 1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH 6:00 pm - 7:30 pm CLOSED</p>	<p>9. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. A.A. MEETING 2. JEHOVAH WITNESS (ENG) 6:00 pm - 7:30 pm CLOSED</p>	<p>10. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. HEBREW ISRAELITE 6:00 pm - 7:30 pm CLOSED</p>	<p>11. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. JUMAAH PRAYER 2. JEWISH SERVICE 3. JEHOVAH WITNESS (SPA) 6:00 pm - 7:30 pm CLOSED</p>	<p>12. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. KAIROS REUNION (SPA) 2. S.D.A. BIBLE STUDY (BIL.) 6:00 pm - 7:30 pm CLOSED</p>
<p>13. 8:30 am - 10:30 am 1. SUNDAY WORSHIP /PASTOR FRIES 1:00 pm - 3:30 pm 1. KAIROS REUNION (ENG) 6:00 pm - 7:30 pm CLOSED</p>	<p>14. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA) 6:00 pm - 7:30 pm CLOSED</p>	<p>15. 8:30 am - 10:30 am 1. EPISCOPAL SERVICE 1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH 6:00 pm - 7:30 pm CLOSED</p>	<p>16. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. A.A. MEETING 2. JEHOVAH WITNESS (ENG) 6:00 pm - 7:30 pm CLOSED</p>	<p>17. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. HEBREW ISRAELITE 6:00 pm - 7:30 pm CLOSED</p>	<p>18. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. JUMAAH PRAYER 2. JEWISH SERVICE 3. JEHOVAH WITNESS (SPA) 6:00 pm - 7:30 pm CLOSED</p>	<p>19. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. S.D.A. BIBLE STUDY (BIL.) 2. GREATER LOVE 6:00 pm - 7:30 pm 1. SOLID ROCK</p>
<p>20. 8:30 am - 10:30 am 1. SUNDAY WORSHIP /PASTOR FRIES 1:00 pm - 3:30 pm MATTHEW 25 6:00 pm - 7:30 pm CLOSED</p>	<p>21. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA) 6:00 pm - 7:30 pm CLOSED</p>	<p>22. 8:30 am - 10:30 am 1. EPISCOPAL SERVICE 1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH 6:00 pm - 7:30 pm CLOSED</p>	<p>23. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. A.A. MEETING 2. JEHOVAH WITNESS (ENG) 6:00 pm - 7:30 pm CLOSED</p>	<p>24. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. HEBREW ISRAELITE AT EDUCATION 3:30 pm - 7:30 pm KAIROS</p>	<p>25. 7:30 am - 11:00 am KAIROS 11:00 am - 3:30 pm KAIROS 1. JUMAAH PRAYER AT EDUCATION 2. JEWISH SERVICE AT EDUCATION 3. JEHOVAH WITNESS (SPA) AT EDUCATION 3:30 pm - 7:30 pm KAIROS</p>	<p>26. 7:30 am - 7:30 pm KAIROS</p>
<p>27. 7:30 am - 6:00 pm KAIROS 7:30 am - 6:00 pm TABERNAACLE OF PRAYER</p>	<p>28. 1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA) 6:00 pm - 7:30 pm CLOSED</p>	<p>29. 8:30 am - 10:30 am 1. EPISCOPAL SERVICE 1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH 6:00 pm - 7:30 pm CLOSED</p>	<p>30. 8:30 am - 10:30 am CLOSED 1:00 pm - 3:30 pm 1. A.A. MEETING 2. JEHOVAH WITNESS (ENG) 6:00 pm - 7:30 pm CLOSED</p>	<p>HOLY DAYS</p> <p>(HEB) 4/10/08 - 4/06/08 FEAST OF UNLEAVENED BREAD. (AOY) 4/07/08 NEW YEARS DAY. BEGIN AT SUNDOWN 4/06/08. (AOY) 4/20/08 PASSOVER. BEGIN AT SUNDOWN 4/19/08. (AOY) 4/21/08 1ST DAY FEAST OF UNLEAVENED BREAD. BEGIN AT SUNDOWN 4/20/08. (JEW) 4/20/08 - 4/21/08 PASSOVER. BEGIN AT SUNDOWN 4/19/08. (JEW) 4/28/08 - 4/27/08 PASSOVER LAST DAYS. BEGIN SUNDOWN 4/25/08. (AOY) 4/27/08 LAST DAY FEAST OF UNLEAVENED BREAD. END AT SUNDOWN 4/27/08.</p>		

SUBJECT TO CHANGE WITHOUT NOTICE.

(AOY) = ASSEMBLY OF YAHWEH

OKECHOBEF CORRECTIONAL INSTITUTION CHAPEL ACTIVITIES CALENDAR

SEPTEMBER 2008

SUN	MON	TUE	WED	THU	FRI	SAT
<p>8:30 am - 10:30 am 1. SUNDAY WORSHIP /PASTOR FRIES</p> <p>1:00 pm - 3:30 pm 1. CHAIN BREAKERS</p> <p>6:00 pm - 7:30 pm 1. PASTOR FIRES REVIVAL</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm CLOSED</p> <p>6:00 pm - 7:30 pm CLOSED</p> <p style="text-align: center;">LABOR DAY</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. JEHOVAH WITNESS (ENG)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am 1. PRAISE TEAM</p> <p>1:00 pm - 3:30 pm 1. HEBREW ISRAELITE</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. JUMA'AH PRAYER 2. JEWISH SERVICE</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. S.D.A. BIBLE STUDY (BL)</p> <p>2. S.D.A. BIBLE STUDY (BL)</p> <p>6:00 pm - 7:30 pm CLOSED</p>
<p>8:30 am - 10:30 am 1. SUNDAY WORSHIP /PASTOR FRIES</p> <p>1:00 pm - 3:30 pm 1. KAIROS REUNION (ENG)</p> <p>2. S.D.A. BIBLE STUDY (BL)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. JEHOVAH WITNESS (ENG)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am 1. PRAISE TEAM</p> <p>1:00 pm - 3:30 pm 1. HEBREW ISRAELITE</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. JUMA'AH PRAYER 2. JEWISH SERVICE</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. S.D.A. BIBLE STUDY (BL)</p> <p>2. GREATER LOVE</p> <p>6:00 pm - 7:30 pm CLOSED</p>
<p>8:30 am - 10:30 am 1. SUNDAY WORSHIP /PASTOR FRIES</p> <p>1:00 pm - 3:30 pm 1. MATTHEW 25</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE 2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. JEHOVAH WITNESS (ENG)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am 1. PRAISE TEAM</p> <p>1:00 pm - 3:30 pm 1. HEBREW ISRAELITE AT EDUCATION</p> <p>3:30 pm - 7:30 pm KAIROS</p>	<p>8:30 am - 10:30 am 1. JUMA'AH PRAYER AT EDU</p> <p>2. JEWISH SERVICE AT EDU</p> <p>3:30 pm - 7:30 pm KAIROS</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm KAIROS</p>
<p>7:30 am - 7:30 pm KAIROS</p>	<p>1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE</p> <p>2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE</p> <p>2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am 1. PRAISE TEAM</p> <p>1:00 pm - 3:30 pm 1. HEBREW ISRAELITE AT EDUCATION</p> <p>3:30 pm - 7:30 pm KAIROS</p>	<p>8:30 am - 10:30 am 1. JUMA'AH PRAYER AT EDU</p> <p>2. JEWISH SERVICE AT EDU</p> <p>3:30 pm - 7:30 pm KAIROS</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm KAIROS</p>
<p style="text-align: center;">HOLY DAYS</p> <p>(ISLAMIC) 9-01-08 - 9-30-08 RAMADAN</p> <p>(HEB) 9-13-08 24 HRS BEG SUNDOWN</p> <p>(HEB) 9-22-08 24 HRS BEG SUNDOWN</p> <p>(HEB) 9-27-08 - 10-3-08 FEAST OF TABERNACLES</p> <p>(JEW) 9-30-08 - 10-1-08 49 HRS BEG SUNDOWN</p> <p>9-29-08 ROSH HASHANAH</p>	<p>1:00 pm - 3:30 pm 1. BIBLE STUDY - PASTOR FRIES (SPA)</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE</p> <p>2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm 1. CATHOLIC SERVICE</p> <p>2. ASSY. OF YAHWEH</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am 1. PRAISE TEAM</p> <p>1:00 pm - 3:30 pm 1. HEBREW ISRAELITE</p> <p>6:00 pm - 7:30 pm CLOSED</p>	<p>8:30 am - 10:30 am 1. JUMA'AH PRAYER AT EDU</p> <p>2. JEWISH SERVICE AT EDU</p> <p>3:30 pm - 7:30 pm KAIROS</p>	<p>8:30 am - 10:30 am CLOSED</p> <p>1:00 pm - 3:30 pm KAIROS</p>

(AOV)=ASSEMBLY OF YAHWEH; (BL)=BILINGUAL; (BU)=BUDDHA; (CAT)=CATHOLIC; (HEB)=HEBREW/ISRAELITE; (ISL)=ISLAMIC; (JEW)=JEWISH; (JUM)=JEHOVAH WITNESS; (SAM)=SAMANTUARY; (SPA)=SPANISH; (WIC)=WICCA; REVISED: 9/10/2008 12:29 PM

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

Exhibit

G

QUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

RECEIVED

APR 21 2008

TO: Warden Assistant Warden Secretary, Florida Department of Corrections

DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCES

From: Bowie Johnnie C. Jr. 111099 Okee C. I.

Last First Middle Initial Number Institution

Part A - Inmate Grievance

08-6-11451

I respectfully seek further administrative review in accordance with Fla. Admin. Code 33-103.007. The informal Log # 03-93 decision rendered 3/17/08 and the denial of the institutional level appeal, attached hereto, Log # 0803-404-121.

Herein, I submit that the response at the institutional level avoided the issue. The response is not in compliance with standing Court Order of Middle District of Florida on April 26, 1971.

Please review Moore v. Thompkins (case no. 69-263-civ-3 and cases consolidated therewith). The response is not in compliance with standing Court Order of the Southern District Fla. July 18, 1986.

Neither is the response in compliance with Fla. Admin. Code 33-503.001 (2)(a), or Fla. Dept. Corr. Procedure 503.002 (1)(e) (4) (a) (7)(a) specific procedures.

There is also a violation of section 3 of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1(a)-(2). Please review Cutter v. Wilkinson, 125 S. Ct. 2113 (2005).

My first and fourteenth Amendment rights have been violated since 3/17/08. None of the eight (8) Christian services are combined. None of the four (4) Jewish services combine.

Remedy

Same as sought in informal and formal.

4/18/08
DATE

SEE ATTACHED
RESPONSE

Johnnie C. Bowie 111099
SIGNATURE OF GRIEVANT AND D.C. #

MAILED / FILED
WITH AGENCY CLERK

MAY 09 2008

Exhibit H

Department of Corrections
Bureau of Inmate Grievance Appeals

PART B - RESPONSE

BOUIE, JOHNNIE INMATE	111099 NUMBER	08-6-11451 GRIEVANCE LOG NUMBER	(404) OKEECHOBEE C.I. GRIEVANCE INSTITUTION	D2115L HOUSING LOCATION
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Your administrative appeal has been reviewed and evaluated. The response that you received at the institutional level has been reviewed and is found to appropriately address the concerns that you raised at the institutional level as well as the Central Office level.

It is the policy of the Department to provide religious activities for Muslim inmates that are inclusive of the various Islamic groups. This policy includes Jumah prayer services.

Your administrative appeal is denied.

C. GREENE

SIGNATURE AND TYPED OR PRINTED NAME
OF EMPLOYEE RESPONDING

SIGNATURE OF WARDEN, ASST. WARDEN, OR
SECRETARY'S REPRESENTATIVE

DATE

[Handwritten Signature] *5/7/08*

COPY DISTRIBUTION - INSTITUTION / FACILITY
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COPY DISTRIBUTION - CENTRAL OFFICE
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*50805 Rule 33-503.001, F.A.C.

**FLORIDA ADMINISTRATIVE CODE ANNOTATED
TITLE 33. DEPARTMENT OF CORRECTIONS
CHAPTER 33-503. CHAPLAINCY SERVICES**

*Current with rules included in the June 13, 2008 issue of the Florida Administrative Weekly;
see scope message for specific rules in effect.*

33-503.001. Chaplaincy Services.

(1) Organization and Functions.

(a) The Chaplaincy Services Section of the Office of Classification and Programs is responsible for:

1. Developing and evaluating religious programs throughout the Department,
2. Coordinating all religious activities within the Department,
3. Providing general assistance and guidance to chaplains, and
4. Representing the Department, with the approval of the Secretary, on all religious matters.

(b) The Chaplaincy Services Administrator is the chief administrative officer of the Chaplaincy Services Section and directs and coordinates all activities of the section.

(c) The Chaplain of each institution is directly responsible to the area Chaplaincy services specialist and coordinates activities with the institution's security staff. He plans, coordinates and supervises all religious activities and services at the institution. He is responsible for the moral and spiritual well-being of all inmates, including the non-religious.

(2) Policy.

(a) It is the policy of the Department to extend to all inmates the greatest amount of freedom and opportunity for pursuing individual religious beliefs and practices consistent with the security and good order of the institution.

(b) Programs of the Department and activities of the Chaplains shall be designed to assist inmates in the expansion of their knowledge and understanding of and commitment to the beliefs and principles of their respective religions.

(c) There shall be no discrimination for or against an inmate based on his religious beliefs or practices, but:

1. An inmate's religious practices may be relevant to an assessment of his adjustment and progress toward rehabilitation, and
2. Religious beliefs do not justify violation of Department or institutional rules and regulations.

Exhibit J

Procedure 503.002

a religious obligation or observation. Special foods may be donated in order to meet specific religious obligations. Such foods will be subject to the warden's approval.

SPECIFIC PROCEDURES:

- (1) The department will extend the opportunity to participate in religious activities and programs to all inmates supervised by or incarcerated in a department-operated or contracted institution. Participation and availability of such activities and programs is subject to restrictions consistent with the security and good order of the institution. **(4-4517, 4-ACRS-5A-22)**
 - (a) Chaplaincy services will be provided by the department to incorporate religious beliefs and practices into the process of changes for inmates as an important tool for positively impacting public safety and promoting the reintegration of inmates into society. **(4-4512)**
 - (b) The department will provide religious services based on inmate requests, recognized areas of need for an inmate, and the availability of resources.
 - (c) When a religious leader of an inmate's religious faith/affiliation is not represented through chaplaincy staff or a volunteer, the chaplain will make a reasonable effort to assist an inmate in contacting a person credentialed by that religious faith/affiliation. **(4-4519)**
 - (d) An inmate's participation in a religious activity and her/his attendance at a religious service of worship will be voluntary. **(4-ACRS-5A-22, 4-4517)**
 - (e) Chaplaincy services will not discriminate in the treatment of the religious beliefs of an inmate. **(4-4517, 4-4518)**
 - (f) An employee, contracted personnel, or volunteer will not discredit the religious beliefs of any inmate or compel an inmate to make a change of religious faith/affiliation. **(4-4517, 4-4518)**
 - (g) A chaplain will be permitted to provide moral and spiritual counseling to an employee if requested.
- (2) **CHAPLAINCY SERVICES:**
 - (a) The chaplaincy services administrator will coordinate all program activities of chaplaincy services, provide guidance to the institutions on religious matters, and represent the department in all religious issues. **(4-4512)**
 - (b) All personnel who are assigned to a department facility will be under the general supervision of the warden. **(4-4512)**
 - (c) The chaplain will report to the lead chaplain any issues related to chaplaincy services and religious programs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOHNNIE BOUIE, DC#111099,

Plaintiff,

vs.

CASE NO. 10-14277-JEM

WALTER A. MCNEIL, et al.,

Defendants.

Defendant McNeil's Motion to Dismiss

Defendant **McNeil**,¹ through undersigned counsel, moves to dismiss Plaintiff's complaint. (Doc. 1) As grounds, Defendant states:

1. Plaintiff fails to state a claim on which relief may be granted.
2. Plaintiff's claims against Defendant in his official capacity are barred by the Eleventh Amendment.
3. Defendant is entitled to qualified immunity for claims against him individually.
4. Plaintiff is not entitled to a declaratory judgment finding his rights were violated.
5. Plaintiff's claims for compensatory or punitive damages are barred by Section 1997e(e).

Plaintiff's Allegations

Plaintiff has filed a civil rights complaint wherein he alleges that Defendant McNeil has violated his constitutional rights by failing to provide Plaintiff, a Nation of Islam (N.O.I.) follower, chapel services separate and apart from the Islamic services provided by Okeechobee Correctional Institution which he alleges "effectively banned him from participating in

¹ Defendant does not waive the service of process requirement as to any unserved or improperly served persons or entities. Nothing in this motion shall be construed as an appearance on behalf of or a waiver of service of process as to any unserved or improperly served persons or entities.

congregational prayer in Main Unit Sanctuary at OCI from March 7, 2008, through January 23, 2010.” (Doc. 1, pp. 10-13.) The Plaintiff alleges from August 31, 2006 through March 7, 2008, he was allowed, as a member of the N.O.I., to attend and worship in their prayer services at the Main Unit Chapel Sanctuary at Okeechobee Correctional Institution. (Doc. 1, pp. 3-4) Plaintiff alleges that on March 7, 2008, when he arrived at the Main Unit Chapel he was informed that he had to “„merge“ his sincerely held religious faith and prayer services with the Wahabbi Sunni Muslims behind the portioned area in the back of the Main Chapel Sanctuary at OIC or immediately exit the building.” (Doc. 1, p. 4) Plaintiff alleges that Wahabbi Sunni Muslims refused to recognize him as a legitimate Muslim, that they refused to line up in prayer ranks along side or behind him, that they refused to allow him to call the Adhan, and that they refused to allow him to give Khutbahs sermons during Jumah prayer services or to speak on their faith or to watch videos of his faith during Taleem. (Doc. 1, p. 6) Plaintiff alleges that Defendant McNeil was in a supervisory position that easily allowed him to immediately remedy the situation and that by failing to do so he violated Plaintiff’s First Amendment rights. (Doc. 1, p. 11) Plaintiff seeks declaratory relief in addition to nominal, compensatory and punitive damages from Defendant McNeil. (Doc. 1, p. 14-15)

MEMORANDUM OF LAW

I. Plaintiff’s claims should be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) and (iii).

Because Plaintiff is proceeding in forma pauperis, his complaint is subject to the provisions of 28 USC §1915(e)(2), which provide:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

28 USC § 1915. Plaintiff's complaint should be dismissed pursuant to provisions (ii) and (iii) of the aforementioned statute.

A. Provision (ii) – failure to state a claim on which relief may be granted.

Plaintiff's allegations, considered separately or collectively, and read in the light most favorable to Plaintiff, are insufficient to state a claim on which relief may be granted. In determining whether a complaint should be dismissed pursuant to §1915(e)(2)(b)(ii), courts utilize the same guidelines as when proceeding under Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1485 (11th Cir.1997). The allegations are accepted as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. of Educ., 120 F.3d 1390, 1393 (11th Cir.1997); see also Welch v. Laney, 57 F.3d 1004, 1008 (11th Cir.1995). The complaint may be dismissed if the facts as plead do not state a claim to relief that is plausible on its face. Jackson v. Ellis, 2008 WL 89861 (N.D.Fla.)² Plaintiff alleges that by not separating the prayer services for the N.O.I. and the Wahabbi Sunni Muslims that Defendant has violated Plaintiff's First Amendment rights. Plaintiff has failed to state a cause of action on which relief may be granted.

To the extent Plaintiff challenges the Defendant's actions pursuant to the Free Exercise Clause of the First Amendment; he has not demonstrated a violation. A prisoner is not entitled to an unfettered exercise of his religious belief, rather, a "reasonable opportunity" to exercise and practice his religion. Cruz v. Beto, 405 U.S. 319, 322, 92 S.Ct. 1079, 1081, 31 L.Ed.2d 263 (1972) (per curiam). Additionally, "while inmates maintain a constitutional right to freely exercise their sincerely held religious beliefs, this right is subject to prison authorities' interests in

² Copies of the Westlaw opinions cited by Defendants will be provided to Plaintiff.

maintaining safety and order.” Jackson, at *2 (citing O’Lone v. Estate of Shabazz, 482 U.S. 342, 345, 107 S.Ct. 2400, 2402, 96 L.Ed.2d 282 (1987); Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987); Cruz, 405 U.S. at 322, 92 S.Ct. at 1081)). A prison regulation may impinge on an inmate's constitutional rights when the regulation is reasonably related to legitimate penological interests. Turner, 482 U.S. at 89, 107 S.Ct. at 2261. In order to determine whether a prison policy is reasonable, a court must determine (1) whether there is a “valid, rational connection” between the prison regulation and the legitimate governmental interest put forth to justify the regulation; (2) whether, under the restriction imposed, a prisoner has alternative means for exercising the asserted constitutional right; (3) the impact that accommodating the asserted constitutional right will have on prison staff, inmates, and the allocation of prison resources; and (4) whether the regulation in question is an “exaggerated response” to prison concerns. Id. at 89-91, 107 S.Ct. at 2261-62.

Assuming *arguendo*, that the Institution’s policy of providing religious services for a broad range of religious groups and not specific sects or subsets, does impinge on Plaintiff’s First Amendment rights, similar policies have survived Turner analysis against similar claims. See Boxer v. Donald, 169 Fed.App. 555, 2006 WL 463243 (11th Cir. 2006)(holding that the denial of inmate's request for Lost-Found Nation of Islam services did not violate his First Amendment rights); Shabazz v. Barrow, 2008 WL 647524, 1 (M.D.Ga.,2008)(finding no First Amendment violation where a member of the Nation of Islam was denied a separate worship service); Nation of Islam v. Michigan Dept. of Corrections, 1995 WL 631589, 1 (6th Cir. 1995) (finding that the decision to deny the Nation of Islam prisoners' request for individual services and meetings was reasonable).

In Al-Hakim v. Taylor, et al., 4:01cv187, the United States District Court for the Northern District reviewed the case of an inmate of the Florida Department of Corrections. Among his contentions, Al-Hakim claimed that the Nation of Islam did not have an official scheduled place and time for worship services at Wakulla C.I. See Defendants' Appendix 1, at page 2 (Report and Recommendation of Magistrate William C. Sherrill, 4:01cv187). Despite Plaintiff's allegation that the Department had combined the Nation of Islam service with that of another Muslim group,³ the Magistrate wrote:

Lack of available space and volunteers are limitations which make it reasonably necessary to combine services for groups of similar faiths. Various Islamic groups undoubtedly have distinctions and differences in their beliefs, but that does not mean that they cannot combine to worship. Indeed, the evidence shows that Christian religious groups combine to worship as well.

See Defendant's Appendix 1, at page 17.

Accordingly, to the extent Plaintiff claims the Defendant's actions were a violation of the First Amendment, he has failed to state a claim upon which relief may be granted.

B. Provision (ii) - seeks monetary relief against a defendant who is immune from such relief.

i. 11th Amendment Immunity

To the extent Plaintiff sues Defendant in his official capacity; Defendant is immune from suit for monetary damages in federal court pursuant to the Eleventh Amendment. The Eleventh Amendment provides immunity by restricting federal courts' judicial power:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. Amend. XI.

³ See Defendant's Appendix 1, at page 10.

The Eleventh Amendment protects a State from being sued in federal court without the State's consent. McClendon v. Georgia Dep't of Cmty. Health, 261 F.3d 1252, 1256 (11th Cir. 2001). Eleventh Amendment immunity also bars suits brought against employees or officers sued in their official capacities for monetary damages because those actions actually seek recovery from state funds. See Kentucky v. Graham, 473 U.S. 159, 165-68, 87 L. Ed. 2d 114, 105 S. Ct. 3099 (1985); Hobbs v. Roberts, 999 F.2d 1526, 1528 (11th Cir. 1993). Eleventh Amendment immunity applies unless Congress validly abrogates that immunity or the state waives the immunity and consents to be sued. See Carr v. City of Florence, Ala., 916 F.2d 1521, 1524 (11th Cir. 1990). It is well established that Congress did not intend to abrogate a state's Eleventh Amendment immunity in § 1983 damage suits. See Quern v. Jordan, 440 U.S. 332, 340-45, 59 L. Ed. 2d 358, 99 S. Ct. 1139 (1979); Cross v. State of Ala., State Dep't of Mental Health & Mental Retardation, 49 F.3d 1490 (11th Cir. 1995). Additionally, Florida has not waived its sovereign immunity or consented to be sued in damage suits brought pursuant to § 1983. See Gamble v. Florida Dep't of Health & Rehabilitative Servs., 779 F.2d 1509, 1513 (11th Cir. 1986); Zatler v. Wainwright, 802 F.2d 397, 400 (11th Cir. 1986); Schopler v. Bliss, 903 F.2d 1373, 1379 (11th Cir. 1990).

Plaintiff brings this action in federal court pursuant to 42 U.S.C. §1983. Plaintiff fails to allege or prove that Congress has abrogated the State of Florida's immunity from suits of this nature, or that the State of Florida has otherwise waived its immunity from suit. Moreover, states and state officials acting in their official capacities are not persons for the purposes of lawsuits brought pursuant to Title 42 U.S.C. §1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304, (1989). Thus, to the extent that Plaintiff is suing Defendant in his official capacity, his complaint must be dismissed.

ii. Qualified Immunity

To the extent Plaintiff sues Defendant in his individual capacity; he is entitled to qualified immunity. “Qualified immunity allows government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, and protects from suit “all but the plainly incompetent or one who is knowingly violating the federal law.” Lee v. Ferraro, 284 F.3d 1188, 1194 (11th Cir. 2002)(quoting Willingham v. Loughnan, 261 F.3d 1178, 1187 (11th Cir 2001)). “Qualified immunity offers complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Kingsland v. City of Miami, 382 F.3d 1220, 1231 (11th Cir.2004) (quotations marks omitted). The defense of qualified immunity serves important public policies. Ray v. Foltz, 370 F.3d 1079, 1082 (11th Cir. 2004)(citing Richardson v. McKnight, 521 U.S. 399. 408-11(1997)). Qualified immunity protects “government”’s ability to perform its traditional functions by providing immunity where necessary to preserve the ability of government officials to serve the public good or to ensure that talented candidates were not deterred by the threat of damage suits from entering public service.” Id. (citing Richardson at 408). As such, the doctrine provides immunity from suit, and is not just to be considered as a defense to be raised at trial. Id.

To be entitled to qualified immunity, a defendant must first establish that he was acting within the scope of his discretionary authority. Mathews v. Crosby, 480 F.3d 1265, 1269 (11th Cir. 2007), cert. denied, --- U.S. ----, 128 S.Ct. 865, 169 L.Ed.2d 723 (2008). Here, it is apparent from the face of the complaint that Plaintiff has sued Defendant for performing official duties within the scope of his discretionary authority as an official of the Florida Department of Corrections.

Once the defendant has established that he or she was acting within his or her discretionary authority, “the burden shifts to the plaintiff to show that qualified immunity is not appropriate.” Id. When evaluating a claim for qualified immunity, a court must determine (1) whether the facts alleged, viewed in the light most favorable to the plaintiff, show that the officer's conduct violated a constitutional right, and (2) whether, under the facts alleged, there was a violation of “clearly established law.” See Pearson v. Callahan, 555 U.S. ----, 129 S.Ct. 808, 820-21, 172 L.Ed.2d 565 (2009) (modifying Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)). In applying either prong of the Saucier test; the facts alleged by Plaintiff do not demonstrate that Defendant is not entitled to qualified immunity.

To the extent Plaintiff contends that the Defendant violated the Free Exercise Clause of the First Amendment, Plaintiff has not alleged or demonstrated a violation of the First Amendment. See supra, Section I, A. In addressing the second prong, whether Defendant violated a clearly established constitutional right, there is no binding precedent that would have made it clear to Defendant that any of the alleged actions or inactions violated Plaintiff’s constitutional rights. “In order to determine whether a right is clearly established, we look to the precedent of the Supreme Court of the United States, this Court's precedent, and the pertinent state's supreme court precedent, interpreting and applying the law in similar circumstances.” See Oliver, 586 F.3d at 905, 90. If there is no precedent on point, a right is clearly established only if the law has “earlier been developed in such [a] concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that what he is doing violates federal law.” Crawford v. Carroll, 529 F.3d 961, 977-78 (11th Cir.2008) (quotation marks omitted). “We have noted that „[i]f the law does not put the [official] on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is

appropriate.” See Vinyard v. Wilson, 311 F.3d 1340, 1350 (11th Cir.2002) (quoting Saucier v. Katz, 533 U.S. 194, 202, 121 S.Ct. 2151, 2156-57, 150 L.Ed.2d 272 (2001)).

As demonstrated supra, there is no precedent or law mandating that prisoners belonging to specific sects or subsets of religious denominations receive separate religious services. See supra, Section I.A. On the contrary, case law from this circuit supports the opposite conclusion. See supra, Section I.A. and Boxer v. Donald, 169 Fed.App. 555, 2006 WL 463243 (C.A.11(Ga.)). Accordingly, to the extent Plaintiff raises a First Amendment claim, Defendant is entitled to qualified immunity.

II. Respondeat Superior is not cognizable in a Section 1983 action.

To the extent Plaintiff attempts to hold Defendant McNeil liable for the actions of his subordinates in denying his grievance appeal, Plaintiff is not entitled to relief. The doctrine of respondeat superior is not applicable to section 1983 actions. See La Marca v. Turner, 995 F. 2d 1526 (11th Cir. 1993); and Williams v. Bennett, 689 F.2d 1370 (11th Cir. 1982). Supervisory authority does not create liability for the acts of subordinates under section 1983, "without any evidence that the supervisory employee participated in or condoned the alleged deprivations." Geter v. Wille, 846 F. 2d 1352, 1355 (11th Cir. 1988). "The mere right to control, without any control or direction having been exercised and without any failure to supervise is not sufficient to support 42 U.S.C. 1983 liability." Monell v. Department of Social Services, 436 U.S. 658, 694 n. 58, 98 S.Ct. 2018, 2037 (1979).

III. Section 1997e(e) bars claims for compensatory and punitive damages for mental or emotional injury suffered while in custody where there is no showing of physical injury.

Because no injury exists, no damages for mental or emotional injury are available. It is well settled in the law of the Eleventh Circuit, that compensatory and punitive damages are not available in the absence of an injury. The Prison Litigation Reform Act of 1995 amends Section

7(e) of the Civil Rights of Institutionalized Persons Act to require a prior showing of physical injury before an inmate can bring a civil action for mental or emotional injury suffered while in custody. Because Plaintiff has shown no physical injury attributable to the Defendant with respect to his claims, compensatory and punitive damages cannot be had. In Smith v. Allen, 502 F.3d 1255, 1271 (11th Cir. 2007), the Court held that the plaintiff prisoner who demonstrated no physical harm was not entitled to compensatory or punitive damages. Since the issuance of Smith v. Allen, the Eleventh Circuit has issued an unpublished opinion stating that under the law of the circuit, § 1997e(e) bars claims where the prisoner plaintiff does not allege any physical injury. See Frazier v. McDonough, 264 Fed. Appx. 812, 815 (11th Cir. 2008).

IV. Plaintiff has failed to state a cause of action entitling him to declaratory relief.

Plaintiff is no longer incarcerated at Okeechobee Correctional Institution. (Doc. 1, p. 13) Plaintiff is currently incarcerated at Apalachee Correctional Institution. (Id.) As demonstrated above, Plaintiff's religious rights were not violated. See supra Section I, A. Additionally, a favorable decision on his request for declaratory relief regarding whether the actions taken by officials at Okeechobee Correctional Institution in having the N.O.I. and Wahabbi Sunni Muslims worship together would not benefit him as he is no longer housed at Okeechobee Correctional Institution. See Spears v. Thigpen, 846 F.2d 1327, 1328 (11th Cir.), cert. denied, 488 U.S. 1046 (1989) (finding that "an inmate's request for injunctive and declaratory relief in a section 1983 action fails to present a case or controversy once an inmate has been transferred."); Wahl v. McIver, 773 F.2d 1169, 1173 (11th Cir.1985).

Further, although the Eleventh Amendment does not generally prohibit suits seeking only prospective injunctive or declaratory relief (Green v. Mansour, 474 U.S. 64, 106 S.Ct 423, 88 L.Ed.2d 371 (1985)), the Ex parte Young exception to the Eleventh Amendment "applies only to

ongoing and continuous violations of federal law.” Summit Medical Associates, P.C. v. Pryor, 180 F.3d 1326, 1337 (11th Cir.1999)(citations omitted). "In other words, a plaintiff may not use the doctrine to adjudicate the legality of past conduct." Id. (citations omitted). Therefore, any claims regarding alleged past conduct are not amenable to declaratory or injunctive relief.

CONCLUSION

Wherefore, based on the foregoing, Defendant respectfully requests that this Court dismiss Plaintiff’s Complaint as to the allegations against Defendant McNeil.

Respectfully Submitted,

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/s/Joy A. Stubbs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to: Johnnie Bouie Jr., 111099, Avon Park Correctional Institution, P.O. Box 1100, County Road 64 East, Avon Park, Florida 33826-1100 on this 14th day of March, 2011.

/s/ JOY A. STUBBS

Joy A. Stubbs

Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARZUQ AL-HAKIM,

Plaintiff,

vs.

4:01cv187-WS

ALEX TAYLOR,
WILLIAM S. SMITH,
J. TREADWELL,
J.F. WATSON,
and M.L. DENSON,

Defendants.

_____ /

THIRD REPORT AND RECOMMENDATION

Plaintiff, an inmate proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 alleging First Amendment violations. Doc. 1. Defendants filed a special report, doc. 50, with numerous attachments and Plaintiff filed a response and cross motion for summary judgment. Doc. 52. Plaintiff was advised of his obligation to respond to the special report which was construed as a motion for summary judgment. Doc. 54. Having filed his response prior to issuance of that order, Plaintiff thereafter filed a "notice of filing Plaintiff's affidavit in opposition to summary judgment." Doc. 55.

8-22-02 by ag

CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
TALLAHASSEE, FLA.

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Allegations of the complaint, doc. 1

Plaintiff alleged in his complaint that while he was "giving a Friday religious sermon" while incarcerated at Wakulla Correctional Institution, a correctional officer (Defendant Treadwell) told him to stop teaching and allegedly used force. Doc. 1. Plaintiff states that he was teaching that "the (white) man [is] the Devil who killed Jesus the Black man 2000 years ago." *Id.* Defendant Treadwell allegedly told Plaintiff that he was too loud and to lower his voice. *Id.* Plaintiff claimed that another Muslim group that was also meeting at the same time in the "chow hall was not interrupted." *Id.*

Plaintiff filed a grievance regarding the matter. Doc. 1. Plaintiff was called out to meet with Defendant Watson and discuss Plaintiff's "belief [sic] and teaching." *Id.* Thereafter, Plaintiff was placed in administrative confinement on grounds that he was teaching hate. Plaintiff alleges that his placement was "used as a ruse and to enact retaliation for" his beliefs. *Id.* Defendant Watson allegedly threatened to continue Plaintiff's confinement if he gave "such sermons." Plaintiff contends his rights to freedom of speech, the free exercise of his religious faith, due process, and equal protection are violated. *Id.* Additionally, Plaintiff claimed that during the grievance process he was labeled "a hate teacher," and that the Nation of Islam does not have an "official scheduled place and time for worship service[s] at Wakulla C.I." *Id.*

As relief, Plaintiff seeks a declaratory judgment, and injunction prohibiting the Defendants "from violating the freedom of speech to preach and teach his religion at Wakulla C.I. that Jesus is a Black man and the Devil white man killed him." Doc. 1. Plaintiff also seeks \$100,000.00 monetary damages from each Defendant. *Id.*

Legal standards governing a motion for summary judgment

On a motion for summary judgment Defendants initially have the burden to demonstrate an absence of evidence to support the nonmoving party's case. Celotex Corporation v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2553-54, 91 L. Ed. 2d 265 (1986). If they do so, the burden shifts to Plaintiff to come forward with evidentiary material demonstrating a genuine issue of fact for trial. *Id.* Plaintiff must show more than the existence of a "metaphysical doubt" regarding the material facts, Matsushita Electric Industrial Co., LTD. v. Zenith Radio Corporation, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986), and a "scintilla" of evidence is insufficient. There must be such evidence that a jury could reasonably return a verdict for the party bearing the burden of proof. Anderson v. Liberty Lobby, 477 U.S. 242, 251, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202 (1986). However, "the evidence and inferences drawn from the evidence are viewed in the light most favorable to the nonmoving party, and all reasonable doubts are resolved in his favor." WSB-TV v. Lee, 842 F.2d 1266, 1270 (11th Cir. 1988).

"Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.' " Owen v. Wille, 117 F.3d 1235, 1236 (11th Cir. 1997), *cert. denied* 522 U.S. 1126 (1998), *quoting Celotex*, 477 U.S. at 324, 106 S. Ct. at 2553 (quoting Fed. R. Civ. Proc. 56(c), (e)). The nonmoving party need not produce evidence in a form that would be admissible as Rule 56(e) permits opposition to a summary judgment motion by any of the kinds of

evidentiary materials listed in Rule 56(c). Owen v. Wille, 117 F.3d at 1236; Celotex, 477 U.S. at 324, 106 S. Ct. at 2553.

Either a claimant or defendant may move for summary judgment, with or without supporting affidavits, upon all or any part of a claim. Fed. R. Civ. P. 56(a) and (b). In this case, both Defendants and Plaintiff have filed motions for summary judgment. Doc. 50, 52. Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Plaintiff, as the claimant, "is entitled to a summary judgment only when no genuine issue of material fact exists, the papers on the motion demonstrate his right to relief, and every one of the defenses asserted legally are insufficient." 10A C. Wright, A. Miller, and M. Kane, Federal Practice and Procedure § 2734, at 405 (1983).¹ On the other hand, the burden on a defendant moving for summary judgment is to demonstrate an absence of evidence to support the Plaintiff's case. Celotex Corporation v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986); see *also*, Hammer v. Slater, 20 F.3d 1137, 1141 (11th Cir. 1994) (defendant moving for summary judgment must either show that the non-moving party has no evidence to support its case, or present affirmative evidence demonstrating the non-moving party will be unable to prove its case). Since Plaintiff (as the party with the burden of proof) has a heavier burden on summary judgment, the Court will consider the Defendants' motions first. If Defendants'

¹ A "genuine issue" requires that there be such evidence that a reasonable jury could return a verdict for the party seeking summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986).

motion is denied, the Court will consider whether Plaintiff is entitled to judgment as a matter of law.

Relevant Rule 56 evidence

At the time of the events in question, Plaintiff was incarcerated at Wakulla Correctional Institution. Doc. 50, p. 3; ex. A. On Friday, January 18, 2001, Plaintiff "was asked to lower the volume of his delivery of the Khutbah so as not to interfere with the order of the other activities of the facility; the inmate [Plaintiff] was allowed to continue with his presentation." Doc. 50, ex. B. On that date, "two inmates were attempting to deliver Khutbahs concurrently, which caused an atmosphere of confusion and disorder, and therefore, to preserve the security and good order of the Institution, [an officer] requested that [Plaintiff] reduce the volume of his delivery." *Id.*; *see also* ex. C. Following that incident, Plaintiff's participation in Jumah Services was neither suspended nor revoked, and Plaintiff continued "to actively participate in Jumah on Friday afternoons and in the Islamic Studies offered by Chaplaincy Services every Sunday evening." Doc. 50, ex. B.

Defendants submit that Plaintiff was not interrupted "because of doctrinal teachings, but because he was teaching 'hate' that had the potential to negatively affect the security of the institution." Doc. 50, ex. M. It is the "policy of the Department to extend the greatest amount of freedom and opportunity for the pursuit of religious beliefs and practices" so long as they are "consistent with the security and good order of the institution." *Id.*

Plaintiff sent an informal grievance to Chaplain Hope asking that officers be directed "not to interfere when" Plaintiff is "giving a sermon." Doc. 50, ex. A. Plaintiff

also requested that officers not "supervise Muslim" services or stop sermons by telling "the person to be quiet." *Id.* Plaintiff said that they "shout just like the Chirstians [sic] and other practioners [sic]" *Id.* The response on that grievance advised Plaintiff that the rules allow inmates to "participate in religious services by providing special music, reading scripture, leading in prayer, brief testimonies, etc., but they may not be allowed to lead services or deliver the sermon." *Id.* Nevertheless, the response to Plaintiff's formal grievance indicates that, despite the rule, Plaintiff was "allowed to offer a Khutbah (Sermon from the Koran) during the regularly scheduled Jumah Service, if it [was] presented in an orderly manner." Doc. 50, ex. B.

Plaintiff also directed a grievance, which he designated as an "emergency," to Defendant Watson. Doc. 50, ex. D. The grievance was dated by Plaintiff on March 19, 2001, and responded to by Defendant Watson on March 20, 2001. *Id.* Although much of the grievance is cryptic, Plaintiff does ask that Defendant Watson "instruct the supervisors [to] desist their covert practices upon [Plaintiff] because [he] teach[es] the right order of creation to [his] brothers." *Id.* The response states that if Plaintiff starts "teaching hatred, & racial prejudices, the staff will stop you every time." *Id.* Defendant Watson explained that he had been advised by both staff and other inmates in Plaintiff's Muslim group that Plaintiff was "intent on presenting & teaching issue[s] that are not part of the Muslim religion." *Id.* Defendant Watson's response ended by telling Plaintiff he was "expected to comply with departmental rules & regulations while partiscipating [sic] in Religious activities." *Id.*

At around the same time Defendant Watson received or responded to Plaintiff's "emergency" grievance,² Plaintiff was given a report of administrative confinement. Doc. 50, ex. E. The report stated that Plaintiff was being placed in "administrative confinement pending an investigation per [Defendant] Watson." *Id.* Plaintiff refused to make a statement. *Id.*

On March 20, 2001, Plaintiff submitted an informal grievance to Ms. Newsome complaining that his placement in confinement was discriminatory and that 24 hours had passed without charges being filed against him. Doc. 50, ex. G. It was responded to on March 22nd and advised Plaintiff that his placement in confinement was "appropriate" and that there was no requirement that an inmate be served with a disciplinary report "within 24 hours." *Id.* On that same day, Plaintiff wrote a formal grievance to the Superintendent alleging that he was not given a reason for his confinement and that Ms. Newsome racially discriminates against Black inmates. Doc. 50, ex. H. The grievance was denied. *Id.*

On the same date Plaintiff sent the informal grievance to Ms. Newsome, he also submitted an informal grievance (designated an "emergency") to Superintendent Norwood. Doc. 50, ex. I. The grievance was responded to on March 29th by Defendant Watson instead of Mr. Norwood, and advised Plaintiff that his grievance was not an emergency and that he was "not placed in confinement as redress" but placed there "pending investigation into allegations that [Plaintiff was] teaching hatred & racist views in the Muslim services." *Id.* Furthermore, it indicates that Defendant Watson

² The grievance was dated by Plaintiff on March 19th, and responded to on March 20th. Doc. 50, ex. D. The report of administrative confinement is dated March 19th. Doc. 50, ex. E.

spoke with Plaintiff about his religious views and teachings, and confirmed that Plaintiff was teaching as alleged but, nevertheless, Defendant Watson decided to release Plaintiff from confinement without formal discipline. *Id.* Plaintiff was released from segregation on March 26th and returned to open population. Doc. 50, ex. F.

Plaintiff also grieved his claim that there is a "policy that a[n] officer can stop [Plaintiff] from teaching hatred at any time." Doc. 50, ex. J. Plaintiff argued that it was not an officer's "duty to judge [his] religious" teachings or beliefs and asked that a memo be issued to permit him to freely teach his religious beliefs. *Id.* Plaintiff again reaffirmed that he is "a member of the Nation of Islam and we do teach the white man is the devil of the Holy Bible." *Id.* The response stated that Plaintiff would "not be allowed to teach Hatred, as" stated in his grievance and also denied Plaintiff's request for a memo. *Id.* However, the response also notes that Defendant Watson personally spoke with Plaintiff and expects "total compliance" indicating that Plaintiff would be permitted to continue participating in the Muslim services. *Id.* Indeed, additional evidence submitted by Defendants clearly shows that Plaintiff was scheduled to give a sermon on April 4, 2001. Doc. 50, ex. O.³

Plaintiff appealed to the superintendent the denial of that grievance and claimed his rights to freedom of speech and religion were being infringed. Doc. 50, ex. K. Plaintiff argues that it is unconstitutional for Defendant Watson to "deny [him] nor censor [his] sermons." *Id.* That grievance was responded to by Defendant Denson and stated that Defendant Watson was not restricting Plaintiff's freedom or speech or

³ It does not appear that Plaintiff ultimately gave that sermon as he was placed back in confinement after receiving a disciplinary report for disorderly conduct. See doc. 50, exhibits N, O.

religion. *Id.* The response stated that Plaintiff had verbally acknowledged in his meeting with Defendant Watson that Plaintiff "would teach hate for the white man even if [he was] placed in confinement for doing so." *Id.* It then stated that Plaintiff had the "right to worship as" he chose, and that the Muslim religion was authorized, but that Defendant Denson could not find where the Muslim faith "teaches hate for the white man or that the white man is a devil." *Id.* Nevertheless, Plaintiff was told that he would be "allowed to practice [his] religion the same as other inmates of the Muslim (Islam) faith" but that he could not "teach anything that incites [or] causes unrest in the inmate population that might cause a riotous situation." *Id.*; see also doc. 50, ex. L.

Defendants have submitted evidence that Muslim inmates are "permitted to take the time from assigned duties to pray five times a day" and that "Friday is the most important day of worship in Islam." Doc. 50, ex. B-1. Jumah prayer, which begins "with a formal sermon (Khutbah) and is followed by the prayers, is scheduled on Fridays for Muslim inmates within the Department of Corrections. *Id.* Additionally, "Taleem services are studies on Islamic beliefs, culture and/or history" and are offered at various other times. *Id.*

Plaintiff filed his own affidavit asserting that Defendant Treadwell "used physical force by touching [him] and telling [him] to stop teaching [the] Friday Jumma [sic] sermon because [he] was loud." Doc. 55, attachment (hereinafter "Plaintiff's affidavit"). Plaintiff stated that another inmate was "on the other side of the chow hall likewise giving a sermon in the same loud voice" but Defendant Treadwell never advised the other inmate to lower his voice. Plaintiff's affidavit, p. 1. Plaintiff claims Defendant Treadwell acted with "bias because of the subject matter of the sermon" that Jesus was

a Black man and was killed by White Romans." *Id.* Plaintiff complains that even while at Central Florida Reception Center, staff put Plaintiff in administrative confinement for teaching the above stated doctrine. *Id.*, at 2. Plaintiff acknowledges being transferred away from Wakulla Correctional Institution on July 21, 2000." Plaintiff's affidavit, p. 2.

Plaintiff also submitted another affidavit in which he states that there was "a Nation of Islam study at Taleem" which had been rotating with another Muslim group. Doc. 59, attachment. However, the rotation was stopped and, apparently, the service is now a combined "orthodox" Muslim service. *Id.* Plaintiff contends that the decision to join services was made by "the Chaplaincy Service at D.O.C." *Id.*

Furthermore, Plaintiff has included a letter addressed to him regarding his concerns over "non-Nation of Islam Muslim volunteers and the lack of specific Nation of Islam teaching and videotapes." Doc. 59, attachment. That letter explained that there are currently four Muslim volunteers who conduct weekly Islamic studies and that it is difficult to attract "qualified Muslim volunteers." *Id.* Additionally, it explained that "[i]t is the policy of the department to provide religious activities for Muslim inmates that are inclusive of the various Islamic groups." *Id.* The policy, applicable to Muslim volunteers, is also similarly "followed for Christian religious activities." *Id.* Plaintiff was advised that he could "order and purchase religious literature for" his own personal study. *Id.*

Additional evidence consists of a brochure which describes differences between Islam and Farrakhanism. Doc. 59, attachment. The brochure describes Farrakhanism as being "The Nation of Islam" and states that "[t]he only thing common between [Islam and Farrakhanism] is the jargon, the language used by the both." *Id.* Many differences

between the two groups are evident, and several of those differences appear to be significant. *Id.* Plaintiff also submitted an affidavit from another inmate who states that "the teaching of the Nation of Islam is not identical in practice and many other aspects of Orthodox Islamic teachings." Doc. 62, attachment (Pough affidavit). Plaintiff has also presented copies of grievances in which he complains that other Muslim groups dominate the services. Doc. 63, attachment. The response on the appeal states that "[i]t is the policy of the department to provide religious activities fro Muslim inmates that are inclusive of the various Islamic groups. This policy includes Jumah services." *Id.* The response also advised that "[a] similar practice is followed for Christian religious activities." *Id.* The response given to Plaintiff by Defendant Denson and Chaplain Hope on the formal grievance adds that "Islamic observances include a diverse group of Islamic inmates, that range from extreme orthodox to the Nation of Islamic adherents." *Id.* It is also explained that "[f]reedom of thought and expression is allowed in the services to the extent that it does not hinder the good order and security of the facility." *Id.*

Finally, Plaintiff submitted numerous affidavits of other inmates. Darryl Lorenza Smith's affidavit states that he has heard Plaintiff's sermons and did not believe them to be "hateful or racist nor did his speeches [sic] cause riot with White or Black inmates." Doc. 52, attachment. Inmate Smith also stated that he was present when Defendant Treadwell "used force to stop [Plaintiff] from teaching because of his subject" Inmate Smith stated that Defendant Treadwell "used a false reason as being to [sic] loud when other Muslims was [sic] teaching in the same tone of voice." *Id.* Several other inmates, two of whom identify themselves as Caucasian, stated in their affidavits

that they heard Plaintiff speak and did not find his teachings to be of hatred for white men or any other race. Doc. 52, attachments (Hudson affidavit, Winters affidavit, and Starling affidavit). Additionally, affidavits from two other inmates report that Defendant Watson directed the cancellation of the rotation of worship services which, in effect, keeps "the Nation of Islam teaching out of the program." Doc. 62, attachment (W. Watson affidavit and Johnson affidavit).

Legal Analysis

Analysis begins with the well-established understanding that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 285, 68 S. Ct. 1049, 1060, 92 L. Ed. 1356 (1948). A prisoner retains only those rights that are "not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495 (1974). While prisoners retain some First Amendment rights, including the First Amendment right of free exercise of religion, regulations or policies "alleged to infringe constitutional rights [in prison] are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights." O'Lone v. Estate of Shabazz, 482 U.S. 340, 349, 107 S. Ct. 2400, 2404, 96 L. Ed. 2d 282 (1987).⁴ O'Lone directs courts to give respect and deference to the judgment of prison administrators

⁴ In City of Boerne v. Flores, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997), the Court held the Religious Freedom Restoration Act, (RFRA) 42 U.S.C. § 2000bb, *et seq.*, unconstitutional as exceeding Congress's authority under the Constitution. The Court's decision marks the return to the standard employed in O'Lone v. Shabazz, 482 U.S. 342 (1987) in the context of prison cases.

even in First Amendment challenges raised within the confines of prison. *Id.* Prison officials "are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. . . ." Procunier v. Martinez, 416 U.S. 396, 404-05, 94 S. Ct. 1800, 1807, 40 L. Ed. 2d 224 (1974).⁵ Courts are simply "ill equipped to deal with the increasingly urgent problems of prison administration and reform." Procunier, 416 U.S. at 404-05, 94 S. Ct. at 1807. Therefore, this Court is required to uphold prison regulations challenged by inmates if they are "reasonably related to legitimate penological interests." O'Lone, 482 U.S. at 350, *utilizing the standard of* Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).

For Plaintiff to succeed on his free exercise and freedom of speech claim, Plaintiff must demonstrate that prison officials have employed a policy or regulation, not reasonably related to any legitimate penological interest or security measure, which burdens a practice of his religion or prevents him from engaging in conduct or having a religious experience which the faith mandates. This interference must be more than an inconvenience; the burden must be substantial and significantly interfere with Plaintiff's practice of his religious beliefs. *Cf.* Thornburgh v. Abbott, 490 U.S. 401, 418, 109 S. Ct.

⁵ Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. . . . Judicial recognition of that fact reflects no more than a healthy sense of realism.

Procunier, 416 U.S. at 404-05, 94 S. Ct. at 1807.

1874, 1884, 104 L. Ed. 2d 459 (1989) (noting that O'Lone found prison regulations valid in part because the prisoners were permitted to participate in other Muslim religious ceremonies). Also relevant is whether an "alternative means of exercising the right . . . remain open to prison inmates." O'Lone, 482 U.S. at 351. An "absence of ready alternatives" may be "evidence of the reasonableness of a prison regulation." Turner, 482 U.S. at 90, 107 S. Ct. at 2262. Yet, it does not mean that prison officials "have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint." Turner, 482 U.S. at 90-91, 107 S. Ct. at 2262. This is a "reasonableness" test, not a "least restrictive" alternatives test. *Id.*, at 91, 107 S. Ct. at 2262.

In the case at bar, there is evidence that Plaintiff was told to lower his voice. There is also evidence that Plaintiff admits he was "shouting." However, being told to be more quiet is not unconstitutional, whether in prison or outside of prison. Furthermore, that another inmate was not told to lower his voice is not evidence of discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment. There were two groups meeting in a single space. Common sense requires that one group could not shout or it would disturb the other group. Moreover, Plaintiff has not presented any evidence that he was discriminated against because he has not shown that similarly situated persons were treated differently by the state actor without reasonable and non-arbitrary grounds. See Hendking v. Smith, 781 F.2d 850 (11th Cir. 1986). A showing that Plaintiff was treated differently from similarly situated inmates is essential to demonstrating an equal protection violation. See Fuller v. Georgia State Bd. of Pardons and Paroles, 851 F.2d 1307, 1310 (11th Cir. 1988). Yet Plaintiff has not

shown that any alleged discrimination was on account of his race, his religion, or some other identifiable basis. Peck v. Hoff, 660 F.2d 371, 373 (8th Cir. 1981) (without allegation that class to which plaintiff belonged received treatment which was "invidiously dissimilar to that received by other inmates," there was no basis for an equal protection claim). Plaintiff has not shown that Defendants acted with a discriminatory purpose in telling him to lower his volume; rather, the evidence reveals Plaintiff was simply speaking too loudly under the circumstances.

The evidence also shows that Plaintiff was attempting to teach, and continued to desire to teach, his religious belief that Jesus was a Black man and that the White man killed him, and that the White man is the Devil. Well established law does not permit prison officials to censor inmate communication simply because they disagree with the belief expressed or desire to eliminate "factually inaccurate statements." Procurier, 416 U.S. at 413, 94 S.Ct. at 1811. Defendants, however, have asserted that their actions were to promote the legitimate "penological interests of orderliness and security within the prison setting." Doc. 50, p. 15.

The record in this case reveals a disagreement over whether Plaintiff's statements are hatred. However, that dispute is not material and need not prevent ruling on the summary judgment motion. Whether or not such statements evidence "hatred," it is obvious that the statements were meant to arouse emotions among prisoners *against* "the White man." Such statements are made to cause separation between the Black and White races. A sermon instructing "the White man" is "the Devil" is intended to be a comment on the entire Caucasian race, and calling a race of people "the Devil" can reasonably be interpreted as promotion of prejudice against that

group of people. Plaintiff has argued that his comments did not incite a riot. However, even if the comments would "not lead directly to violence, [they could] exacerbate tensions and lead indirectly to disorder." Thornburgh, 490 U.S. at 416, 109 S.Ct. at 1883. Prison officials are permitted to exclude and prevent communications "that, although not necessarily 'likely' to lead to violence, are determined . . . to create an intolerable risk of disorder under the conditions of a particular prison at a particular time." Thornburgh, 490 U.S. at 417, 109 S.Ct. at 1883. In other words, prison officials need not await the outbreak of a riot to take reactive, defensive action but are permitted to assess the potential for problems and take proactive measures. Defendants actions were justified and permitted by the Constitution.

Within society at large, there is little doubt that Plaintiff could freely express his beliefs and could preach them on a street corner, to the extent that his words are not "fighting words" meant to incite harm against a group of people. But inside the walls of a prison, such expressions take on a different significance. In prison, racial tensions exist just under the surface and may be ignited by a tiny spark of even an unintended comment. It is commonly noted that prisons are a "volatile" environment. Thornburgh, 490 U.S. at 413 , 109 S.Ct. at 1881. For that very reason, "it is essential that prison officials be given broad discretion to prevent [] disorder." *Id.*

There is a legitimate governmental interest in maintaining a safe and secure prison, and prison officials "have the right, acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails." Lee v. Washington, 390 U.S. 333, 334, 88 S.Ct. 994, 995, 19 L.Ed.2d 1212 (1968) (upholding a decree "that certain Alabama statutes

violate the Fourteenth Amendment to the extent that they require segregation of the races in prisons and jails." Because courts must give prison officials "latitude in anticipating the probable consequences of allowing certain speech in a prison environment," Procurier, 416 U.S. at 414, 94 S.Ct. at 1812, *quoted in* Thornburgh, 490 U.S. at 409, 109 S.Ct. at 1879, telling Plaintiff not to teach that the White man is the Devil is permitted.

The exercise of Plaintiff's individual rights must be balanced by "due regard for the 'inordinately difficult undertaking' that is modern prison administration." Turner, 482 U.S. at 85, 107 S.Ct. at 2259, *cited in* Thornburgh, 490 U.S. at 407, 109 S.Ct. at 1878. That balance is met under these facts where the evidence shows Plaintiff was given instruction about what he would not be permitted to teach, and was still scheduled in the future to give sermons and continued to participate in religious activities.

Plaintiff also had other avenues of religious expression open to him to further his particular Islamic faith. Lack of available space and volunteers are limitations which make it reasonably necessary to combine services for groups of similar faiths. Various Islamic groups undoubtedly have distinctions and differences in their beliefs, but that does not mean that they cannot combine to worship. Indeed, the evidence shows that Christian religious groups combine to worship as well.

In this case, accommodation of Plaintiff's asserted right to speak as he desires in a sermon could detrimentally affect the prison environment. In sum, the policy here which limits what Plaintiff could say in his sermons is in line with O'Lone and meets the reasonableness test of Turner v. Safley. No violation to Plaintiff's First Amendment rights has been shown.

As for Plaintiff's claim that he was placed in administrative confinement on grounds that he was teaching hate, Defendants have argued that Plaintiff did not exhaust administrative remedies. Doc. 50, p. 11. In reviewing the grievances submitted, it does not appear that Plaintiff filed an appeal to the Secretary's Office as to this claim, a required third step in the grievance process. Thus, there is merit to Defendants' argument.

Nevertheless, even had Plaintiff completed all three steps, this claim would still fail. Plaintiff filed a cryptic grievance to Defendant Watson about being a Muslim and having the "authority to decipher the symbols of hate and racism". Plaintiff then requested Defendant Watson to require officers "to desist their covert practices upon [Plaintiff] because" he taught "the right order of creation to [his] brothers." Receiving such a strange grievance, Defendant Watson acted appropriately in putting Plaintiff in administrative confinement so that an investigation could be made. The investigation revealed the substance of Plaintiff's sermons and what Plaintiff desired to say. After Defendant Watson confirmed that Plaintiff's comments in the sermons were, in his opinion, "teaching hatred & racist views," and after talking with Plaintiff about his religious teachings, Plaintiff was released from confinement. It is permissible to stop activity in a prison until it can be determined whether continuation of that activity would be detrimental to prison safety. Plaintiff was put in a segregated area while the investigation was conducted and released after only a week. No injury has been shown to Plaintiff and the investigation into sermons which had the potential to cause unrest in the inmate population was a reasonable response by prison officials. Plaintiff has not

has not come forward with any evidence to the contrary and has not shown that the investigation was "a ruse" as alleged by Plaintiff in the complaint.

In light of the foregoing, it is respectfully **RECOMMENDED** that Defendants' motion for summary judgment, doc. 50, be **GRANTED**, and that judgment be entered in favor of Defendants on all claims. Accordingly, Plaintiff's cross motion for summary judgment, doc. 52, should be **DENIED**.

IN CHAMBERS at Tallahassee, Florida, this 22nd day of August, 2002.


WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARZUQ AL-HAKIM,

Plaintiff,

v.

4:01cv187-WS

ALEX TAYLOR, et al.,

Defendants.

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Before the court is the magistrate judge's third report and recommendation (doc. 79) docketed August 22, 2002. The magistrate judge recommends that the defendants' motion for summary judgment be granted. The plaintiff has filed objections (doc. 80) to the report and recommendation.

Upon review of the record, this court has determined that the recommendation should be adopted.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation is adopted and

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incorporated by reference in this order of the court.

2. The defendants' motion for summary judgment (doc. 50) is GRANTED.
3. The plaintiff's cross motion for summary judgment (doc. 52) is DENIED.
4. The clerk shall enter judgment in the defendants' favor on all claims.

DONE AND ORDERED this 18th day of September, 2002.


WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOHNNIE BOUIE, DC#111099,

Plaintiff,

vs.

CASE NO. 10-14277-JEM

WALTER A. MCNEIL, et al.,

Defendants.

Defendants HARDACKER and SKIPPER'S Motion to Dismiss

Defendants HARDACKER and SKIPPER¹ through undersigned counsel, move to dismiss Plaintiff's complaint. (Doc. 1) As grounds, Defendants state:

1. Plaintiff fails to state a claim on which relief may be granted.
2. Plaintiff's claims against Defendants in their official capacities are barred by the Eleventh Amendment.
3. Defendants are entitled to qualified immunity for claims against them individually.
4. Plaintiff is not entitled to a declaratory judgment finding his rights were violated.
5. Plaintiff's claims for compensatory or punitive damages are barred by Section 1997e(e).

Plaintiff's Allegations

Plaintiff has filed a civil rights complaint wherein he alleges that Defendants have violated his constitutional rights by failing to provide Plaintiff, a Nation of Islam (N.O.I.) follower, chapel services separate and apart from the Islamic services provided by Okeechobee Correctional Institution which he alleges "effectively banned him from participating in

¹ Defendants do not waive the service of process requirement as to any unserved or improperly served persons or entities. Nothing in this motion shall be construed as an appearance on behalf of or a waiver of service of process as to any unserved or improperly served persons or entities.

congregational prayer in Main Unit Sanctuary at OCI from March 7, 2008, through January 23, 2010.” (Doc. 1, pp. 10-13.) The Plaintiff alleges from August 31, 2006 through March 7, 2008, he was allowed, as a member of the N.O.I., to attend and worship in their prayer services at the Main Unit Chapel Sanctuary at Okeechobee Correctional Institution. (Doc. 1, pp. 3-4) Plaintiff alleges that on March 7, 2008, when he arrived at the Main Unit Chapel he was informed that he had to “„merge“ his sincerely held religious faith and prayer services with the Wahabbi Sunni Muslims behind the portioned area in the back of the Main Chapel Sanctuary at OIC or immediately exit the building.” (Doc. 1, p. 4) Plaintiff alleges that Wahabbi Sunni Muslims refused to recognize him as a legitimate Muslim, that they refused to line up in prayer ranks along side or behind him, that they refused to allow him to call the Adhan, and that they refused to allow him to give Khutbahs sermons during Jumah prayer services or to speak on their faith or to watch videos of his faith during Taleem. (Doc. 1, p. 6) Plaintiff seeks declaratory relief in addition to nominal, compensatory and punitive damages from Defendants. (Doc. 1, p. 14-15)

MEMORANDUM OF LAW

I. Plaintiff’s claims should be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) and (iii).

Because Plaintiff is proceeding in forma pauperis, his complaint is subject to the provisions of 28 USC §1915(e)(2), which provide:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal--
 - (i) is frivolous or malicious;
 - (ii) fails to state a claim on which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

28 USC § 1915. Plaintiff’s complaint should be dismissed pursuant to provisions (ii) and (iii) of the aforementioned statute.

A. Provision (ii) – failure to state a claim on which relief may be granted.

Plaintiff’s allegations, considered separately or collectively, and read in the light most favorable to Plaintiff, are insufficient to state a claim on which relief may be granted. In determining whether a complaint should be dismissed pursuant to §1915(e)(2)(b)(ii), courts utilize the same guidelines as when proceeding under Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1485 (11th Cir.1997). The allegations are accepted as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. of Educ., 120 F.3d 1390, 1393 (11th Cir.1997); see also Welch v. Laney, 57 F.3d 1004, 1008 (11th Cir.1995). The complaint may be dismissed if the facts as plead do not state a claim to relief that is plausible on its face. Jackson v. Ellis, 2008 WL 89861 (N.D.Fla.)² Plaintiff alleges that by not separating the prayer services for the N.O.I. and the Wahabbi Sunni Muslims that Defendants have violated Plaintiff’s First Amendment rights. Plaintiff has failed to state a cause of action on which relief may be granted.

To the extent Plaintiff challenges the Defendants’ actions pursuant to the Free Exercise Clause of the First Amendment; he has not demonstrated a violation. A prisoner is not entitled to an unfettered exercise of his religious belief, rather, a “reasonable opportunity” to exercise and practice his religion. Cruz v. Beto, 405 U.S. 319, 322, 92 S.Ct. 1079, 1081, 31 L.Ed.2d 263 (1972) (per curiam). Additionally, “while inmates maintain a constitutional right to freely exercise their sincerely held religious beliefs, this right is subject to prison authorities' interests in maintaining safety and order.” Jackson, at *2 (citing O’Lone v. Estate of Shabazz, 482 U.S. 342, 345, 107 S.Ct. 2400, 2402, 96 L.Ed.2d 282 (1987); Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987); Cruz, 405 U.S. at 322, 92 S.Ct. at 1081)). A prison regulation may

² Copies of the Westlaw opinions cited by Defendants will be provided to Plaintiff.

impinge on an inmate's constitutional rights when the regulation is reasonably related to legitimate penological interests. Turner, 482 U.S. at 89, 107 S.Ct. at 2261. In order to determine whether a prison policy is reasonable, a court must determine (1) whether there is a “valid, rational connection” between the prison regulation and the legitimate governmental interest put forth to justify the regulation; (2) whether, under the restriction imposed, a prisoner has alternative means for exercising the asserted constitutional right; (3) the impact that accommodating the asserted constitutional right will have on prison staff, inmates, and the allocation of prison resources; and (4) whether the regulation in question is an “exaggerated response” to prison concerns. Id. at 89-91, 107 S.Ct. at 2261-62.

Assuming *arguendo*, that the Institution’s policy of providing religious services for a broad range of religious groups and not specific sects or subsets, does impinge on Plaintiff’s First Amendment rights, similar policies have survived Turner analysis against similar claims. See Boxer v. Donald, 169 Fed.App. 555, 2006 WL 463243 (11th Cir. 2006)(holding that the denial of inmate's request for Lost-Found Nation of Islam services did not violate his First Amendment rights); Shabazz v. Barrow, 2008 WL 647524, 1 (M.D.Ga.,2008)(finding no First Amendment violation where a member of the Nation of Islam was denied a separate worship service); Nation of Islam v. Michigan Dept. of Corrections, 1995 WL 631589, 1 (6th Cir. 1995) (finding that the decision to deny the Nation of Islam prisoners' request for individual services and meetings was reasonable).

In Al-Hakim v. Taylor, et al., 4:01cv187, the United States District Court for the Northern District reviewed the case of an inmate of the Florida Department of Corrections. Among his contentions, Al-Hakim claimed that the Nation of Islam did not have an official scheduled place and time for worship services at Wakulla C.I. See oc. 24-1, at page 2 (Report

and Recommendation of Magistrate William C. Sherrill, 4:01cv187). Despite Plaintiff's allegation that the Department had combined the Nation of Islam service with that of another Muslim group,³ the Magistrate wrote:

Lack of available space and volunteers are limitations which make it reasonably necessary to combine services for groups of similar faiths. Various Islamic groups undoubtedly have distinctions and differences in their beliefs, but that does not mean that they cannot combine to worship. Indeed, the evidence shows that Christian religious groups combine to worship as well.

See Doc. 24-1, at page 17.

Accordingly, to the extent Plaintiff claims the Defendants' actions were a violation of the First Amendment, he has failed to state a claim upon which relief may be granted.

B. Provision (ii) - seeks monetary relief against a defendant who is immune from such relief.

i. 11th Amendment Immunity

To the extent Plaintiff sues Defendants in their official capacities; Defendants are immune from suit for monetary damages in federal court pursuant to the Eleventh Amendment.

The Eleventh Amendment provides immunity by restricting federal courts' judicial power:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. Amend. XI.

The Eleventh Amendment protects a State from being sued in federal court without the State's consent. McClendon v. Georgia Dep't of Cmty. Health, 261 F.3d 1252, 1256 (11th Cir. 2001). Eleventh Amendment immunity also bars suits brought against employees or officers sued in their official capacities for monetary damages because those actions actually seek

³ See Doc. 24-1, at page 10.

recovery from state funds. See Kentucky v. Graham, 473 U.S. 159, 165-68, 87 L. Ed. 2d 114, 105 S. Ct. 3099 (1985); Hobbs v. Roberts, 999 F.2d 1526, 1528 (11th Cir. 1993). Eleventh Amendment immunity applies unless Congress validly abrogates that immunity or the state waives the immunity and consents to be sued. See Carr v. City of Florence, Ala., 916 F.2d 1521, 1524 (11th Cir. 1990). It is well established that Congress did not intend to abrogate a state's Eleventh Amendment immunity in § 1983 damage suits. See Quern v. Jordan, 440 U.S. 332, 340-45, 59 L. Ed. 2d 358, 99 S. Ct. 1139 (1979); Cross v. State of Ala., State Dep't of Mental Health & Mental Retardation, 49 F.3d 1490 (11th Cir. 1995). Additionally, Florida has not waived its sovereign immunity or consented to be sued in damage suits brought pursuant to § 1983. See Gamble v. Florida Dep't of Health & Rehabilitative Servs., 779 F.2d 1509, 1513 (11th Cir. 1986); Zatler v. Wainwright, 802 F.2d 397, 400 (11th Cir. 1986); Schopler v. Bliss, 903 F.2d 1373, 1379 (11th Cir. 1990).

Plaintiff brings this action in federal court pursuant to 42 U.S.C. §1983. Plaintiff fails to allege or prove that Congress has abrogated the State of Florida's immunity from suits of this nature, or that the State of Florida has otherwise waived its immunity from suit. Moreover, states and state officials acting in their official capacities are not persons for the purposes of lawsuits brought pursuant to Title 42 U.S.C. §1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304, (1989). Thus, to the extent that Plaintiff is suing Defendants in their official capacities, his complaint must be dismissed.

ii. Qualified Immunity

To the extent Plaintiff sues Defendants in their individual capacities; Defendants are entitled to qualified immunity. "Qualified immunity allows government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, and protects

from suit “all but the plainly incompetent or one who is knowingly violating the federal law.” Lee v. Ferraro, 284 F.3d 1188, 1194 (11th Cir. 2002)(quoting Willingham v. Loughnan, 261 F.3d 1178, 1187 (11th Cir 2001)). “Qualified immunity offers complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Kingsland v. City of Miami, 382 F.3d 1220, 1231 (11th Cir.2004) (quotations marks omitted). The defense of qualified immunity serves important public policies. Ray v. Foltz, 370 F.3d 1079, 1082 (11th Cir. 2004)(citing Richardson v. McKnight, 521 U.S. 399. 408-11(1997)). Qualified immunity protects “government”’s ability to perform its traditional functions by providing immunity where necessary to preserve the ability of government officials to serve the public good or to ensure that talented candidates were not deterred by the threat of damage suits from entering public service.” Id. (citing Richardson at 408). As such, the doctrine provides immunity from suit, and is not just to be considered as a defense to be raised at trial. Id.

To be entitled to qualified immunity, defendants must first establish that they was acting within the scope of his discretionary authority. Mathews v. Crosby, 480 F.3d 1265, 1269 (11th Cir. 2007), cert. denied, --- U.S. ----, 128 S.Ct. 865, 169 L.Ed.2d 723 (2008). Here, it is apparent from the face of the complaint that Plaintiff has sued Defendants for performing official duties within the scope of their discretionary authority as officials of the Florida Department of Corrections.

Once the defendant has established that he or she was acting within his or her discretionary authority, “the burden shifts to the plaintiff to show that qualified immunity is not appropriate.” Id. When evaluating a claim for qualified immunity, a court must determine (1) whether the facts alleged, viewed in the light most favorable to the plaintiff, show that the officer's conduct

violated a constitutional right, and (2) whether, under the facts alleged, there was a violation of “clearly established law.” See Pearson v. Callahan, 555 U.S. ----, 129 S.Ct. 808, 820-21, 172 L.Ed.2d 565 (2009) (modifying Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)). In applying either prong of the Saucier test; the facts alleged by Plaintiff do not demonstrate that Defendants are not entitled to qualified immunity.

To the extent Plaintiff contends that the Defendants violated the Free Exercise Clause of the First Amendment, Plaintiff has not alleged or demonstrated a violation of the First Amendment. See supra, Section I, A. In addressing the second prong, whether Defendants violated a clearly established constitutional right, there is no binding precedent that would have made it clear to Defendants that any of the alleged actions or inactions violated Plaintiff’s constitutional rights. “In order to determine whether a right is clearly established, we look to the precedent of the Supreme Court of the United States, this Court’s precedent, and the pertinent state’s supreme court precedent, interpreting and applying the law in similar circumstances.” See Oliver, 586 F.3d at 905, 90. If there is no precedent on point, a right is clearly established only if the law has “earlier been developed in such [a] concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant’s place, that what he is doing violates federal law.” Crawford v. Carroll, 529 F.3d 961, 977-78 (11th Cir.2008) (quotation marks omitted). “We have noted that „[i]f the law does not put the [official] on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.”” See Vinyard v. Wilson, 311 F.3d 1340, 1350 (11th Cir.2002) (quoting Saucier v. Katz, 533 U.S. 194, 202, 121 S.Ct. 2151, 2156-57, 150 L.Ed.2d 272 (2001)).

As demonstrated supra, there is no precedent or law mandating that prisoners belonging to specific sects or subsets of religious denominations receive separate religious services. See

supra, Section I.A. On the contrary, case law from this circuit supports the opposite conclusion. See supra, Section I.A. and Boxer v. Donald, 169 Fed.App. 555, 2006 WL 463243 (C.A.11(Ga.)). Accordingly, to the extent Plaintiff raises a First Amendment claim, Defendants are entitled to qualified immunity.

II. Respondeat Superior is not cognizable in a Section 1983 action.

To the extent Plaintiff attempts to hold Defendants liable for the actions of subordinates, Plaintiff is not entitled to relief. The doctrine of respondeat superior is not applicable to section 1983 actions. See La Marca v. Turner, 995 F. 2d 1526 (11th Cir. 1993); and Williams v. Bennett, 689 F.2d 1370 (11th Cir. 1982). Supervisory authority does not create liability for the acts of subordinates under section 1983, "without any evidence that the supervisory employee participated in or condoned the alleged deprivations." Geter v. Wille, 846 F. 2d 1352, 1355 (11th Cir. 1988). "The mere right to control, without any control or direction having been exercised and without any failure to supervise is not sufficient to support 42 U.S.C. 1983 liability." Monell v. Department of Social Services, 436 U.S. 658, 694 n. 58, 98 S.Ct. 2018, 2037 (1979).

III. Section 1997e(e) bars claims for compensatory and punitive damages for mental or emotional injury suffered while in custody where there is no showing of physical injury.

Because no injury exists, no damages for mental or emotional injury are available. It is well settled in the law of the Eleventh Circuit, that compensatory and punitive damages are not available in the absence of an injury. The Prison Litigation Reform Act of 1995 amends Section 7(e) of the Civil Rights of Institutionalized Persons Act to require a prior showing of physical injury before an inmate can bring a civil action for mental or emotional injury suffered while in custody. Because Plaintiff has shown no physical injury attributable to the Defendant with respect to his claims, compensatory and punitive damages cannot be had. In Smith v. Allen, 502

F.3d 1255, 1271 (11th Cir. 2007), the Court held that the plaintiff prisoner who demonstrated no physical harm was not entitled to compensatory or punitive damages. Since the issuance of Smith v. Allen, the Eleventh Circuit has issued an unpublished opinion stating that under the law of the circuit, § 1997e(e) bars claims where the prisoner plaintiff does not allege any physical injury. See Frazier v. McDonough, 264 Fed. Appx. 812, 815 (11th Cir. 2008).

IV. Plaintiff has failed to state a cause of action entitling him to declaratory relief.

Plaintiff is no longer incarcerated at Okeechobee Correctional Institution. (Doc. 1, p. 13) Plaintiff is currently incarcerated at Apalachee Correctional Institution. (Id.) As demonstrated above, Plaintiff's religious rights were not violated. See supra Section I, A. Additionally, a favorable decision on his request for declaratory relief regarding whether the actions taken by officials at Okeechobee Correctional Institution in having the N.O.I. and Wahabbi Sunni Muslims worship together would not benefit him as he is no longer housed at Okeechobee Correctional Institution. See Spears v. Thigpen, 846 F.2d 1327, 1328 (11th Cir.), cert. denied, 488 U.S. 1046 (1989) (finding that "an inmate's request for injunctive and declaratory relief in a section 1983 action fails to present a case or controversy once an inmate has been transferred."); Wahl v. McIver, 773 F.2d 1169, 1173 (11th Cir.1985).

Further, although the Eleventh Amendment does not generally prohibit suits seeking only prospective injunctive or declaratory relief (Green v. Mansour, 474 U.S. 64, 106 S.Ct 423, 88 L.Ed.2d 371 (1985)), the Ex parte Young exception to the Eleventh Amendment "applies only to ongoing and continuous violations of federal law." Summit Medical Associates, P.C. v. Pryor, 180 F.3d 1326, 1337 (11th Cir.1999)(citations omitted). "In other words, a plaintiff may not use the doctrine to adjudicate the legality of past conduct." Id. (citations omitted). Therefore, any claims regarding alleged past conduct are not amenable to declaratory or injunctive relief.

CONCLUSION

Wherefore, based on the foregoing, Defendants respectfully request that this Court dismiss Plaintiff's Complaint as to the allegations against Defendants.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to: Johnnie Bouie Jr., 111099, Avon Park Correctional Institution, P.O. Box 1100, County Road 64 East, Avon Park, Florida 33826-1100 on this 23rd day of March, 2011.

/s/ JOY A. STUBBS

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