

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' Motion to Accept Defendants COLLINS, TAYLOR, HARDACKER, SKIPPER, and MCNEIL'S Motion for Summary Judgment [DE# 81] as Timely Filed

Defendants, through undersigned counsel, moves for the Court to accept Defendants COLLINS, TAYLOR, HARDACKER, SKIPPER, and MCNEIL'S Motion for Summary Judgment [DE# 81] submitted on March 1, 2012, as timely filed, and states as follows:

1. The undersigned did not complete Defendants' Motion for Summary Judgment within the time allotted and missed the submission deadline while resolving issues related to a heavy caseload, and working in the context of paralegal staff shortages and two attorney vacancies within the Corrections Litigation Unit. The undersigned's activities during the relevant time period have included (but are not limited to):

- i) filing Defendants' Motion for Stay of Discovery on January 31, 2012, in case no. 3:11-cv-964-J-37MCR, United States District Court, in and for Middle District of Florida;
- ii) filing Defendants' Motion for an Order Requiring Released Plaintiff to Resubmit his Application for in forma pauperis status on February 2, 2012, in 3:10-cv-139-J-34JRK United States District Court, in and for Middle District of Florida;
- iii) attending mandatory in-office training on February 2, 2012;
- iv) submitting response to petition for writ of certiorari in case no. 1D11-3281, First District Court of Appeal;
- v) filing Defendants' Limited App Appearance and Motion to Quash Service of Process on February 13, 2012, in case no. 8:11-cv-02106-MSS-AEP, United States District Court, Middle District, Tampa Division;
- vi) serving an answer brief on February 14, 2012, in case no. 5D11-3046, Fifth District Court of Appeal;

- vii) attending eFiling Training for the Second Judicial Circuit Court, in and for Leon County on February 16, 2012;
- viii) filing Notice of Pending Settlement on February 21, 2012, in case no. 4:10-cv-429-MP-GRJ, United States District Court, Northern District of Florida;
- ix) filing Defendants Taylor, Thigpen, Singer, Polk, Worthington, Davis, Graham, Dunnagan, Morris and Staten's Answer to Second Amended Complaint and Defenses and Demand for Jury Trial on February 23, 2012, in case no. 3:10-cv-00705-RBD-JRK, Middle District of Florida;
- x) filing Appellees' Limited Appearance, Notice of Concession of Error, and Motion for Remand on February 23, 2012, in case no. 1D11-1814, First District Court of Appeal;
- xi) serving Defendant Atkins's Request for Production of Medical Records on February 24, 2012, in case no. Case No. 5:11-cv-113-RH-GRJ, United States District Court, in and for Northern District of Panama City;
- xii) filing Limited Answer Brief of Appellee on February 27, 2012, in case no. 1D11-4421, First District Court of Appeal;
- xiii) attending telephonic case status conference between parties on February 28, 2012, in 4:09-cv-376-RH/WCS, United States District Court, Northern District of Florida; and
- xiv) serving Defendants Taylor, Thigpen, Singer, Polk, Worthington, Davis, Graham, Dunnagan, Morris and Staten's Request for Production of Medical Records on February 28, 2012, in case no. 3:10-cv-00705-RBD-JRK, Middle District of Florida.

2. Plaintiff has not been consulted regarding this motion as he is incarcerated and proceeding *pro se*. Plaintiff should not be prejudiced if this Court granted this motion. This motion is made in good faith and not for the purpose of delay.

Memorandum of Law

Pursuant to Federal Rule of Civil Procedure, Rule 6(b)(1):

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

- (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires;
- (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Defendants have shown good cause for the Court to allow Defendants' filing due to excusable circumstances of a heavy caseload, paralegal staff shortages, and two attorney vacancies within the Corrections Litigation Unit.

WHEREFORE, Defendants have shown good cause for the Court to accept Defendants' Motion for Summary Judgment [DE# 81] as timely filed.

Respectfully submitted,

PAMELA JO BONDI
Attorney General

/s/ Joy A. Stubbs
Joy A. Stubbs
Assistant Attorney General
Florida Bar No. 0062870

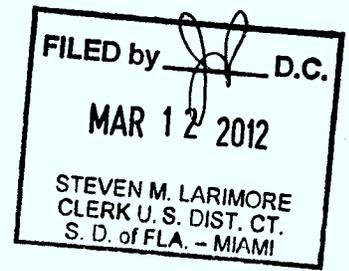
The Capitol, Suite PL-01
Tallahassee, FL 32399-1050
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Facsimile: (850) 488-4872
joy.stubbs@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing will be 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 5th day of March, 2012.

/s/ JOY A. STUBBS
Joy A. Stubbs
Assistant Attorney General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA



JOHNNIE C. BOUIE.

Plaintiff,

v.

Case no.: 10-14277-CIV-Martinez/White

WALTER A. McNEIL, *et al.*,

Defendants.

PLAINTIFF'S PRE-TRIAL STATEMENT

In accordance with this Court's July 11, 2011 order (Doc. # 43 at 1-2 ¶ 4), the Plaintiff respectfully submits the following pre-trial statement:

I.

A. Brief general statement of what the case is about

This is a *pro se* 42 U.S.C. § 1983 First Amended Civil Rights Complaint that arose from an event taking place on March 7, 2008, alleging First and Fourteenth violations of Plaintiff's right to freedom of religion. On March 7, 2008, Plaintiff Bouie arrived at the Okeechobee C.I. Main Chapel, at or about 1:00 p.m. Chaplin Collins and acting Chaplin Hardaker stood at the chapel sanctuary entrance and denied Bouie's free exercise of religion by not permitting him to enter into the chapel sanctuary to participate in congregate worship of his form of Islam (Nation of Islam) apart and separate from other forms of Muslim groups, purportedly because there is only one (1) islam and one (1) Jumah prayer. Chaplin Collins ordered Bouie and several other Nation of Islam adherents to merge their service with another Muslim group or to exit the chapel.

On March 13, 2008, Bouie filed an informal grievance, which was denied on March 17, 2008. On March 27, 2008, Bouie filed a formal grievance to the Warden, it was denied on April 7, 2008.

Bouie filed a Request for administrative Remedy or Appeal to Secretary, Florida Department of Corrections on April 18, 2008; it was denied on May 7, 2008.

On December 17, 2009, Bouie filed the original 42 U.S.C. § 1983 class action Civil Rights Complaint along with an Emergency Motion for a Preliminary Injunction in the United States District Court, Southern District of Florida naming Johnnie C. Bouie # 111099; Dwight Johnson-Baker # 109599; and Willie Bonner # 193504.

On December 21, 2009, a case number (09-14430-CIV-Graham/White) was issued by Magistrate Patrick A. White.

On January 21, 2010, Dwight Johnson-Baker and Willie Bonner received notice of legal mail to be issued on January 22, 2010. Bouie did not receive such legal notice.

The legal mail received by Dwight Johnson-Baker and Willie Bonner was an order from Magistrate P.A. White allowing them ten (10) days to file objections and separate *Informa Pauperis* statements. Bouie did not receive such legal notice and, instead, he was transferred to South Florida Reception Center on January 26, 2010.

On January 28, 2010, Bouie was put on the transport bus, yet again, for a transfer to the Central Florida Reception Center, but, was then taken off of the bus for reasons unknown to him.

On February 4, 2010, Bouie was transferred to Central Florida Reception Center. On February 9, 2010, Bouie was then transferred to Avon Park Correctional Institution, where he is presently housed. Also, on February 9, 2010, Bouie filed a grievance of reprisal to the Secretary of the Department of Corrections.

On February 18, 2010, Bouie received an order from the United States District Court, Southern District of Florida, Judge Donald L. Graham, dismissing Plaintiff's complaint without

prejudice. Plaintiff waited an extensive amount of time anticipating a response from his grievance of reprisal, which he *never* received.

Finally, on October 9, 2010, Bouie filed his first amended 42 U.S.C. § 1983 complaint against certain named Defendants, alleging violations of his First Amendment rights. Thereafter, summons were served.

II.

B. A written statement of the facts that the Plaintiff will offer by oral or documentary evidence at trial.

- I. Oral statement of the facts that will be offered.
 - a. Among the first prisoner right's cases were those that dealt with whether or not non-conventional religions, such as the Black Muslim faith, could have the same opportunity for holding congregate services as recognized faiths. Courts have ruled that, consistent with the First Amendment and the Equal Protection Clause, these services could not be prohibited. To be sure, Plaintiff Bouie will provide numerous amounts of caselaw to support the legal theory raised in his claim.
 - b. Plaintiff provides that he participated in his form of religious worship, (Nation of Islam (NOI)), at and within the Okeechobee Correctional Institution's main chapel sanctuary, from August 30, 2006 through March 7, 2008. Plaintiff intends to prove this, and other facts, through offering as evidence: a verified complaint, interrogatories, an answer to the complaint, and the oral testimony of two inmates.
 - c. Plaintiff also provides that during his participation in his form of religious worship, there were never any provocations, incidents of violence; racial or otherwise, disturbances, or any disruptive behavior. He intends to confirm this fact during trial by use of evidence in the form of the verified complaint mentioned and interrogatories.
 - d. In addition, Plaintiff will show that on March 7, 2008, Chaplin Collins violated his right to freedom of religion by refusing to permit Plaintiff to enter the prison chapel, in order for Plaintiff to engage in conduct mandated by his faith. Plaintiff intends to confirm this by offering as evidence the verified complaint, interrogatories, two inmate eyewitnesses, and oral testimony.
 - e. Plaintiff also intends to establish that Defendant Collins' decision to merge the services or refuse Plaintiff's entry to the chapel was not made for any

legitimate reasons, security or otherwise. Plaintiff intends to offer as evidence his verified complaint, interrogatories, the Okeechobee Correctional Institution Monthly Chapel Activities Calendars, Florida Administrative Code, Chapter 33, section 503.001(2)(a-c), and Florida Department of Corrections Policy and Procedure, section 503.002.

- f. Additionally, Plaintiff will illustrate that Defendant Collins did not have a reasonably legitimate penological interest in denying Plaintiff the ability to access the chapel to worship, although Defendant Collins permitted other similarly situated inmates their separate respective services.
- g. Plaintiff will show that the Defendant's treated similarly situated inmates *more* favorably, and the merging of the separate religious services was a result of invidious discrimination against Plaintiff and other NOI adherents because of his race and form of religious beliefs. Plaintiff intends to prove these facts by offering as evidence his verified complaint, two inmate eyewitnesses, whom he anticipates will testify concerning Defendant's demeanor and statements, as well as providing this Court with the Okeechobee Correctional Institution Monthly Chapel Activities Calendars.
- h. It will also be confirmed that the Defendant's actions constituted a violation of the First Amendment to the United States Constitution.
- i. Furthermore, Plaintiff provides that accommodating exercise or practice of his form of religion would not and did not have any type of detrimental impact on other inmates or prison staff. Neither would the accommodation have any impact on the allocation of prison resources. It is the intention of the Plaintiff to establish this through his verified complaint and interrogatories.
- j. Moreover, Plaintiff will demonstrate that his religious services did not constitute any threat of potential violence or any disruption of institutional security. Plaintiff's objective is to prove these facts through the presentation of his oral testimony, his verified complaint, and the interrogatories. Although Defendants have not produced any evidence of these types of security considerations, Plaintiff anticipates they will be addressed. The considerations were never shown to have been directly implicated to justify effectively banning NOI group religious activities that they had, nonetheless, been allowing for the previous eighteen months. Therefore, Plaintiff contests, the Defendant's violated his right to free exercise of religion.
- k. In denying Plaintiff's request for Nation of Islam services, the Defendants did violate his First Amendment rights and will be verified through offering as evidence his verified complaint, the Okeechobee Correctional Institution Monthly Chapel Activities Calendars, the Florida Department of Corrections

Religion Technical Guide, and caselaw in support of the Plaintiff's legal theory.

- l. Plaintiff's request for separate congregational services for his sect was not frivolous and the denial of said request violated the Equal Protection Clause of the United States Constitution.
- m. Plaintiff argues that the Defendants promulgated a policy of providing religious activities for Muslims that were inclusive of various Islamic groups. This policy included *Jumah* prayer, but, provided special treatment to the *Sunni* Muslims that advanced their religious rights and denied the Plaintiff his, in effect, setting back his practice of his form of religion. Therefore, the Defendants acted in favor of the *Sunni* Muslims while acting under the color of authority of the State of Florida's Department of Corrections. Plaintiff intends to demonstrate such by offering his verified complaint, the FDOC Religion Technical Guide, and F.A.C., Chapter 33, § 503.001(2)(a-c).
- n. Plaintiff will attest that the Defendants could only impose restrictions on Plaintiff's exercise of religion that was "reasonably related" to the legitimate goals of Okeechobee Correctional Institution. Plaintiff argues that he was prevented from performing his chosen form of religious practice with *no* justification regarding the operation, safety, or security concerns of O.C.I. This will easily be shown through the answers to interrogatories.
- o. Plaintiff can and will show that the denial of religious services by compelling Plaintiff to worship with other Muslims was antagonistic to his sect, targeting his religion alone. Also, he will show that the antagonism was intentional, discriminatory, and pointedly against him and the other members of his religion. Plaintiff provides as evidence his verified complaint, two inmate eyewitnesses, and oral testimony.
- p. Plaintiff presents that the Defendant's position left Plaintiff, and other similarly situated members of his faith, with one of two choices; 1) to choose to attend worship services controlled by antagonistic *Sunni* Muslims¹, or 2) choose to have no group worship services at all, which is what occurred between March 7, 2008 and January 23, 2010. This will be proven by offering evidence in the form of Plaintiff's verified complaint and the oral testimony of inmate witnesses, Dwight Johnson-Baker and Willie Bonner.

¹ While the First and Fourteenth Amendments do *not* require that prison inmates have access to religious advisors whose own views are completely congruent to their own, their protections are certainly *not* satisfied where *Sunni* Muslims dominated or controlled a group service that was responsible for 6 non-*Sunni* inmates spiritual guidance; especially where the non-*Sunni* members overtly despised the deeply held beliefs of inmates under their control.

- q. There will be shown that the restriction on the time, place, and supervision of the Plaintiff's exercise of his First Amendment rights were impermissible if that restriction is 1) discriminatory, 2) not in furtherance of a compelling State purpose, and 3) overly broad and not tailored to accomplish State purposes in the least restrictive manner possible under the circumstances.

In this instance, the restriction did not meet the three-pronged test and thus, does not muster constitutionality. Plaintiff intends to demonstrate this by offering his verified complaint and interrogatories as evidence.

- r. Ultimately, Plaintiff will prove that he was retaliated against for filing administrative grievances, his 42 U.S.C. § 1983 complaint, and an Emergency Preliminary Injunction in the United States District Court, Southern District of Florida. The retaliation resulted in the transfer of Plaintiff to Avon Park Correctional Institution.

Plaintiff intends to establish this by offering evidence by submitting the verified first Amended Complaint, his Emergency motion filed for a Preliminary Injunction, sworn affidavits (attached) of Dwight Johnson-Baker, Willie Bonner, and Gary Meyers, Plaintiff's own oral testimony, and numerous caselaw in support of the legal theory of his claim.

III.

C. A list of all exhibits to be offered into evidence at trial

I. Okeechobee Posted Monthly Chapel Activities Calendars;

(a) the substance of this evidence will identify eight (8) Christian denominations and four (4) Jewish denominations that were similarly situated to the Plaintiffs. The calendar lists the Christian denominations as: Baptist, Methodist, Pentecostal, Protestant, Lutheran, Episcopal, Presbyterian, and Seventh Day Adventist. The calendar lists the Jewish denominations as: House of Yahweh, Assembly of Yahweh, Hebrew Israelite Ben Yahweh, and Jewish Service.

(b) It will demonstrate that those religious denominations were permitted to conduct separate services for their denominations or sects and the Plaintiff's form of religion was not.

(c) It will demonstrate that those other religious groups, similarly situated, received more favorable treatment than that of the Plaintiff.

(d) It will demonstrate that the Plaintiff, a State prisoner, sought to hold congregational services for his sect of Islam, was similarly situated to other inmates that were permitted to conduct separate services for their denominations or sects.

(e) It will demonstrate that the regulation of the State Department of Corrections provided inmates with group congregational services for various religions, rather than separate services for each denomination or sect within each separate religion, as the Defendant's did with the targeted group in violation of Plaintiff's First and Fourteenth Amendment rights.

(f) Lastly, it will demonstrate that the Plaintiff's requested religious accommodations would not unreasonably burden the prison system because Plaintiff has presented evidence that other groups received more favorable treatment. (Not to mention that the Nation of Islam met separately for eighteen months prior to the Defendant's illegal conduct.)

2. Numerous caselaw on clearly established rights of Equal Protection (including but not limited to):

(a) *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985);

(b) *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 736 (1982).

3. Florida Administrative Code Chapter 33, Section 503.001 'Chaplaincy Services'

The substance of Chapter 33, § 503.001 was created by the Department of Corrections and it is established that FDOC officials *must* follow their own rules.

Subsection (2) states, in relevant part,

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.

This subsection demonstrates that the policy quoted by the Defendants is not the chaplaincy services mandated policy and the Defendant's version is in violation of the establishment clause, running afoul of the constitution.

4. Florida Department of Corrections Policy and Procedure, Section 503.002

This policy and procedure sets forth the specific policies and procedures that the FDOC must adhere to in regard to the Chaplaincy Department.

5. Religion Technical Guide

The substance of this document contains information about specific religions. It identifies the religion's sacred text, holy days, medallions, personal worship practices, group worship practices, basic beliefs, and approved accommodations.

6. Interrogatories

The substance of these documents will demonstrate that the Defendants admit that there were no reported incidents of violence, disturbances, or disruptive behavior stemming from the previous congregational group meetings of the Nation of Islam, *prior* to the Defendant's illegal conduct. The documents will also establish that the policy quoted by the Defendants is not under statutory authority or mandated by F.A.C. Chapter 33, § 503.001(2) **Policy**. All of this material will lend support to Plaintiff's claims.

7. Vehicular Maintenance Records for Chaplain Collins

This document reveals the dates that Chaplain Collins entered and exited the Okeechobee C.I. compound on chaplain related business.

8. Clerk's Notice of Magistrate Judge Assignment

This document is to verify that other inmates were aware of the event that led to the present litigation.

9. Order from United States Magistrate Patrick A. While

This is a preliminary report that recommended that the complaint filed should be dismissed *without* prejudice so that each inmate effected should file separate civil rights

complaints, demonstrating that other inmates believed they were adversely effected by the Defendant's unwarranted policies.

10. Document of Comparison between "Islam" and "Farrakhanism"

The substance of this document provides that "Islam" and "Farrakhanism" are two wholly distinct and separate religions and the document demonstrates the specific differences.

As examples:

- Holy Qur'an surah (chapter) 14:4 explains that Allah (God) sent no messenger but with the language of his people, so that he may explain to them clearly.
- Holy Qur'an surah 4:140 explains that indeed he has revealed the Book that when you hear Allah's messages, disbelieved in and mocked at, sit not with them until they enter into some other discourse for then, indeed, you would be like them.

IV.

D. List of non-inmate witnesses

- (1) Minister Rasul Muhammad
1840 N.W. 55th Street
Miami, Florida 33142

V.

E. List of inmate witnesses

- (1) Dwight Johnson-Baker DC# 109599
Okeechobee Correctional Institution
3420 N.E. 168th Street
Okeechobee, Florida 34972
(941) 357-5400
- (2) Willie Bonner DC# 193504
Okeechobee Correctional Institution
3420 N.E. 168th Street
Okeechobee, Florida 34972
(941) 357-5400
- (3) Johnnie C. Bouie DC# 111099
Avon Park Correctional Institution
P.O. Box 1100
County Road, 64 East
Avon Park, FL 33826-1100
(863) 453-3174

VI.

F. Summary of the testimony that Plaintiff expects
each of the witnesses to give at trial

Non-Inmate Witnesses:

1. Min. Rasul Muhammad is anticipated to testify that he is the eldest son of the Hon. Elijah Muhammad. He will describe and define the similarities and differences between the Nation of Islam and *Sunni* Muslims. He will testify that the Messiah and Mahdi are central tenets of the Nation of Islam's beliefs and that Allah (God) appeared in the person of Master Fard Muhammad. These factors are shown to be in vehement opposition between the Nation of Islam and *Sunni* Muslims.

Inmate Witnesses:

1. Dwight Johnson-Baker is anticipated to testify that he was the acting minister representing the Nation of Islam's programs and activities. He will testify that he conducted separate services for a period of time, before and after the Plaintiff arrived. He will additionally testify that he filed an original 42 U.S.C. § 1983 civil rights complaint and an affidavit for an Emergency Preliminary Injunction, and that, during his tenure, there were no incidents of violence, disturbances, or disruptive behavior in any of the Nation of Islam services. He will also provide testimony of the March 7, 2008 incident and that, as a result of that incident, no other inmates, except for the Plaintiff, were transferred.

2. Willie Bonner is anticipated to testify to the amount of time he experienced the separate worship services of the Nation of Islam, *prior* to the Plaintiff arriving at Okeechobee Correctional Institution. He will testify to the incident on March 7, 2008, and he heard conversation and comments made by Chaplain Collins. He will also submit that he filed an 42

U.S.C. § 1983 civil rights complaint and was party to the Emergency Preliminary Injunction filed. He will admit that he did *not* file a response to the court order on January 22, 2010.

3. Johnnie C. Bouie, the Plaintiff in this cause, will testify to all of the facts and arguments presented within the verified complaint as well as provide testimony to support the legal theories asserted. He will testify that his First Amendment right to practice his form of religion was infringed upon by the Defendants for no legitimate penological reason and that when he sought administrative intervention, he was retaliated against in the form of an immediate transfer.

WHEREFORE, the Plaintiff, Johnnie C. Bouie, submits the foregoing pre-trial statement and prays that this Court accepts such or allows for any amendment if it deems necessary.

Respectfully submitted,

Johnnie C. Bouie

JOHNNIE C. BOUIE # 111099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pre-trial statement has been furnished by U.S. mail to the office of Joy A. Stubbs, Counsel of Record, Office of the Attorney General, The Capitol, Suite PL-01, Tallahassee, FL 32399-1050 by placing the document in the hands of an Avon Park Correctional Institution official on this 7th day of March, 2012.

PROCESSED BY THE CLERK OF COURT
ON 3-7-2012
chp
JB

Johnnie C. Bouie

JOHNNIE C. BOUIE # 111099
Avon Park Correctional Institution
P.O. Box 1100
Avon Park, FL 33826-1100

Plaintiff *In Propria Persona*

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.

**MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF QUALIFIED
IMMUNITY OF DEFENDANTS COLLINS, TAYLOR, HARDACKER,
SKIPPER, AND MCNEIL**

COMES NOW, Defendants Collins, Taylor, Hardacker, Skipper, and McNeil, through undersigned counsel, move this Court to stay this matter pending determination of qualified immunity of Defendants Collins, Taylor, Hardacker, Skipper, and McNeil, and in support provide the following:

1. On February 13, 2012, this Court issued an order requiring that the Plaintiff file his pretrial narrative statement to two weeks after the filing of Defendant's Motion for Summary Judgment, and that the Defendants file their pretrial statement within two weeks of the filing of Plaintiff's pretrial statement. (Doc. 80)

2. On March 1, 2012, Defendants filed a dispositive motion for summary judgment. (Doc. 81) Included in the Defendants' motion was assertion of Defendants' entitlement to qualified immunity and argument in support. (Doc. 81, at 25-28)

3. On March 12, 2012, Plaintiff filed his pretrial narrative statement. (Doc. 84)

4. Defendant's pretrial narrative statement is due on March 26, 2012.

5. Plaintiff brought this action with claims against Defendants Collins, Taylor, Hardacker, Skipper, and McNeil in their individual capacities.

6. Because Defendant's Motion for Summary Judgment *inter alia* raises the defense of qualified immunity for all Defendants named in their individual capacities with regard to Plaintiff's claims, Defendants Collins, Taylor, Hardacker, Skipper, and McNeil move the Court for an Order staying all further proceedings in this action, pending the determination of their entitlement to the qualified immunity sought in their Motion for Summary Judgment.

MEMORANDUM OF LAW

The doctrine of qualified immunity was created to permit the resolution of many claims against government officials before "'subject[ing] government officials to either the costs of trial or to the burdens of broad-reaching discovery' in cases where the legal norms the officials are alleged to have violated were not clearly established at the time." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 817-18 (1982) (alteration in original)). "The central purpose of affording public officials qualified immunity from suit is to protect them 'from undue interference with their duties, and from potentially disabling threats of liability.'" Elder v. Holloway, 510 U.S. 510, 513 (1994) (quoting Harlow, 457 U.S. at 806).

Qualified immunity is not only a mere defense to liability; it is an immunity to suit. Mitchell, 473 U.S. at 526-27; *see also* Rieck v. Jensen, 651 F.3d 1188 (10th Cir. 2011). Qualified immunity is both an entitlement not to stand trial (Workman v. Jordan, 958 F.2d 332, 336 (10th Cir. 1992)) and from the burdens of pre-trial discovery. Hannula v. Lakewood, 907 F.2d 129 (10th Cir. 1990). "[W]hen a case can be dismissed on the pleadings or in an early pre-trial stage, qualified immunity also provides officials with the valuable protection from 'the burdens of broad-ranging discovery.'" Johnson v. Fankell, 520 U.S. 911, 915 n.2 (1997) (quoting Harlow, 457 U.S. at 818). As the United States Supreme Court noted in Harlow, "until this threshold immunity question is resolved, discovery should not be allowed." Harlow, 457 U.S. at 818.

The underlying purposes of the qualified immunity doctrine caused the Supreme Court to stress the “importance of resolving immunity questions at the earliest possible stage in the litigation.” Hunter v. Bryant, 502 U.S. 224, 227 (1991) (*per curiam*). “Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive.” Saucier v. Katz, 121 S. Ct. 2151, 2155–56 (2001).

The affirmative defense of qualified immunity may be raised either with a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), or a motion for summary judgment pursuant to Fed. R. Civ. P. 56. *See* Behrens v. Pelletier, 516 U.S. 299, 300–05 (1996). Any adverse District Court qualified immunity decision raising a legal question may be appealed on an interlocutory basis pursuant to the collateral order doctrine. *See* Johnson, 520 U.S. at 915 (“a Federal District Court order rejecting a qualified immunity defense on the ground that the defendant’s actions--if proven—would have violated clearly established law may be appealed immediately as a ‘final decision’ within the meaning of the general federal appellate jurisdiction statute, 28 U.S.C. §1291.”); Johnson v. Jones, 515 U.S. 304, 309–11 (1995). Further, in Behrens, the Supreme Court specifically held that an individual defendant could raise the affirmative defense of qualified immunity at both the motion to dismiss and summary judgment stages and initiate an interlocutory appeal from the denial of the defendant’s entitlement to qualified immunity by a district court on multiple occasions both before and after discovery has occurred. *Id.* at 306–07.

The important policies behind qualified immunity will be subverted in the instant case if any additional proceedings are held before the Court determines the entitlement of the Defendants to qualified immunity. Accordingly, in the interest of judicial economy and the

avoidance of waste for all parties concerned, and to comply with the important policies underlying qualified immunity, this Court should stay all further proceedings herein pending this Court's disposition of the Defendants' Motion for Summary Judgment.

Undersigned counsel has not conferred with Plaintiff regarding this motion, as Plaintiff is incarcerated and proceeding *pro se*. This Motion to Stay is made in good faith and not for the purpose of delay.

WHEREFORE, for all of the foregoing reasons, Defendants Collins, Taylor, Hardacker, Skipper, and McNeil, respectfully request entry of an order staying all further proceedings in this Court, pending resolution of their Motion for Summary Judgment, and all related proceedings.

Respectfully submitted,

**PAMELA JO BONDI
ATTORNEY GENERAL**

/s/Joy A. Stubbs
Joy A. Stubbs
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Facsimile: (850) 488-4872

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 20th day of March, 2012.

/s/ JOY A. STUBBS
Joy A. Stubbs
Assistant Attorney General

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 COLLINS, TAYLOR, HARDAKER,
SKIPPER, and MCNEIL'S Pretrial Statement**

Defendants COLLINS, TAYLOR, HARDAKER, SKIPPER, and McNEIL, pursuant to this Court's order (DE# 43), and Local Rule 16.1, provide their Pretrial Statement. As grounds, Defendants state:

A. Brief general statement of what the case is about

Plaintiff, a state prisoner, is suing Defendants for alleged violation of his First Amendment right of free expression of religion. Plaintiff alleges that he previously worshipped with other inmates who self-identified with the Nation of Islam in the Chapel at Okeechobee Correctional Institution, but that March 7, 2008, the Nation of Islam adherents were merged with another Muslim faith group to form an inclusive service for all schools of thought in the Muslim community.

B. A written statement of the facts that the Defendants will offer by oral or documentary evidence at trial.

Plaintiff has suffered no First Amendment violation. Through testimony and evidentiary support, Defendants will demonstrate that at no time have Defendants prohibited Plaintiff from attending the regularly scheduled communal Muslim faith service instituted at Okeechobee C.I.

on Friday afternoons (i.e. Jumah), beginning March 7, 2008. If Plaintiff did not attend Friday Services at Okeechobee C.I., it is because Plaintiff voluntarily **elected** not to do so. Defendants will, in fact, show that subsequent to March 7, 2008, Plaintiff has voluntarily elected to attend communal Muslim services Avon Park C.I. Moreover, Defendants will show Plaintiff's affinity with, and identification as one of, the Muslim community at large in at least one grievance made prior to March 7, 2008 and one made afterward.

Defendants will show that the Department of Corrections has an interest in extending to all inmates the greatest amount of freedom and opportunity for pursuing individual religious beliefs and practices, maintaining the orderly operation of institutions, and fairly distributing the limited resources of time, space, and supervision. Chaplaincy functions amid the operations of the institution at large. While chaplains can provide input, chaplains cannot override determinations made regarding inmate movement, classification, or security.

The long standing policy of providing a communal service for all Muslims is rationally related to these interests as institutional chapels are multipurpose buildings, with inmates using the chapel for purposes of study, personal contemplation, as well as congregant worship by groups of varying sizes, and as provision of chaplaincy services is affected by staff shortages and the administrative responsibilities chaplains must perform, necessitating heavy reliance upon approved volunteers to conduct group services. Recent budget cuts have affected the ability of chaplains to provide as many services to inmates. Consolidating groups with major doctrinal similarities promotes efficient use of chaplaincy resources for the institution's inmate population. Holding separate services for Nation of Islam inmates undermines the fair distribution of limited resources of time, space, and supervision.

The Florida Department of Corrections has more than 100,000 inmates. 111 faith codes, an indexing of the religious preference registrations, are represented (although it is not possible to list all faiths). In September of 2009, Chaplaincy Services counted 3,685 inmates within the inmate population as identifying with a faith group that made up the Muslim category. The category of Muslim is currently made up of six separate Muslim faith groups. These are: the generic selection "Muslim", Shiite, Sunni, Sufi, Nation of Islam, and Moorish Science.

The policies of providing an inclusive nondenominational service for Christians and an inclusive service for Muslims were already in place when Chaplain Taylor took the role of Chaplaincy Services Administrator in July of 1999. These policies further the Department's interest in affording the greatest number of inmates the opportunity to access institutional chapels where use is subject to appropriate time, space, and supervision. Many demands are placed on the Chapel, with inmates engaging in study, personal contemplation, as well as group worship of varying sizes. The scheduling of activities for some necessarily crowds out the activities of others. Additional noise and overflow can impact effective supervision. Moreover, provision of chaplaincy services is affected by staff shortages and the administrative responsibilities chaplains must perform, necessitating heavy reliance upon approved volunteers to conduct group services. Separate services for Muslims would disrupt the orderly operation of facilities. It would set a precedent that would be impossible to maintain for all of the numerous faith groups currently combined in the weekly nondenominational Christian service.

Given that inmates regularly move and transfer among the Departments' institutions, Chaplaincy Administrative Services strives to standardize religious accommodations for inmates at all of the Department's institutions as reasonably as possible. Chaplaincy leadership tries to ensure that the Department's practice of providing inclusive Muslim services is consistently

followed. Chaplain Collins followed correct policy and practice in ending the separate Muslim services at Okeechobee C.I. on March 7, 2008 and announcing a single service for all Muslim faith groups.

Regarding Christians, there are more than 70,000 inmates identifying in some manner with Christian doctrine. There is an inclusive group that meets weekly at every institution which is termed nondenominational (however, non-Christians are welcome to this service as well), however, for safety reasons, the nondenominational weekly service cannot accommodate 70% of an institution's inmate population. Where denominational group activities are scheduled, however, depends on a variety of factors including time, space, and supervision which usually falls to an approved volunteer offering to meet a specific group need. Proportionate access to the chapel may be a factor as well. In chapel scheduling, multiple opportunities for religious expression are provided to ensure the greatest number of inmates have access the chapel.

In the Department of Corrections, different schools of Muslim teaching in the inmate population have participated in communal services and activities together for more than thirteen years for Jumah, feast days, and Ramadan. Muslim services are conducted in such a manner as to be non-sectarian and provide for all Muslim inmates regardless of the different schools of teaching among the various Muslim faith groups. Jumah generally starts with a short sermon known as the Khutbah and is followed by the prayers. Khutbah in this setting is to begin and end with the focal point being passages from the Koran. If a volunteer is not present, the local chaplain may, in his or her discretion, select inmate speakers for the Khutbah on a rotation basis. Should an inmate feel that an aspect of the service has become overtly sectarian or political, the grievance procedure is available to bring the matter to local chaplain's attention.