

MUSLIM ADVOCATES

**FULFILLING THE PROMISE OF
FREE EXERCISE FOR ALL:**
Muslim Prisoner Accommodation in State Prisons

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EXECUTIVE SUMMARY

In my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness: and it is my wish and desire, that the laws may always be as extensively accommodated to them, as due regard for the protection and essential interests of the nation may justify and permit. -George Washington¹

Freedom of religion is a core American value, and religious free exercise is enshrined in the Constitution's First Amendment. But these essential rights and liberties have not always been extended equally to all faiths, or to all members of society. Prisoners, and Muslim prisoners in particular, have faced multiple hurdles in obtaining basic accommodations for their devotional practices, holidays, burial practices, and religious diet requirements.

The U.S. Congress twice reiterated America's commitment to religious liberty for *all*, including prisoners, by passing two pieces of bipartisan legislation: the Religious Freedom Restoration Act (1993) and the Religious Land Use and Institutionalized Persons Act (2000). These laws were a direct response to Supreme Court decisions that weakened some of the religious exercise protections the First Amendment offered. But even after Congress passed RFRA and RLUIPA, courts applied the protections unevenly and did not always rigorously question government burdens on religious exercise, as the statutes demanded. In *Holt v. Hobbs* in 2015, the Supreme Court confirmed that the statutes are extremely demanding and require strict scrutiny of prison policies that block religious practice.

Until now, little information has been compiled about the numbers of state prisoners who identify with any particular faith, and there have been few state-by-state comparisons of accommodation policies and practices. Muslim Advocates therefore submitted records requests to 49 states and the District of Columbia to learn more about prisoners' religious preferences and to compare levels of religious accommodation available to Muslims. We also analyzed more than 160 recent Muslim prisoner free exercise cases in which there was a federal court decision or order over a 15-month period.

First, our research shows that within the 34 states that provided data in response to our requests, Muslims are overrepresented in state prisons by a factor of eight relative to the general population. In some state systems, Muslims are overrepresented by a factor of closer to eighteen, with more than 20 percent of prisoners identifying as Muslim. The absolute number of Muslim prisoners has also increased over time, even as prison populations in many states have tended

to decrease in the last few years. Despite Muslims constituting a significant and growing share of prisoners, many state departments of correction still have policies that are outdated, under-accommodating, or non-accommodating of Muslim prisoners.

Second, we analyzed Muslim prisoner cases brought in federal court to identify the free exercise areas that are of most frequent concern to Muslim prisoners. The most commonly litigated problems were difficulties obtaining an adequate religiously compliant diet, as well as problems worshipping in groups.

Third, we compiled each state's religious services policies. We discovered that the level of accommodation of Muslim practices is highly variable across states, even though the same strict legal standard imposed by RLUIPA applies to all states. Our Report highlights the most- and least- accommodating policies with regard to specific Muslim practices. In most cases, the non-accommodating policies are unnecessarily burdensome and not connected to any "compelling" prison interest, and hence, are in violation of federal law.

Muslim Advocates and other Muslim civil rights organizations have sought to halt discriminatory and arbitrary restrictions on prisoners' religious practice, including by representing Muslim prisoners and detainees. But the number of meritorious Muslim prisoner accommodation cases has not abated, and there are far more non-accommodating prisons and detention centers where Muslims cannot practice the basic tenets of their faith.

Given the significant presence of Muslim believers in state prisons, state departments of correction should seek to understand this population's needs and should ensure that their accommodation policies are consistent with the strict standards set by Congress. The patterns of arbitrary restriction of Muslim religious practice identified in this report highlight the need to take steps to fix these systemic problems. Prisoners, institutional actors, legislators, and advocates can and should work together to realize the promise of religious liberty for all. In particular, prisons should take measures to:

- Permit individual, group, and weekly congregational prayer, and train officers on how to facilitate this common Muslim practice.
- Pre-approve work holidays and allow for additional holiday requests and for religious work exemptions.
- Treat the funerary beliefs of prisoners and their family members with respect, and have clear policies allowing prisoners to indicate their burial beliefs.

- Allow religious head coverings throughout the facility and train officers on how to respectfully search religious garments.
- Provide a *halal*-designated meal option and not erect unreasonable obstacles to obtaining and maintaining a religious diet.
- Provide access to common religious property, especially Qur'ans, prayer rugs, head coverings, and prayer beads.
- Not strip prisoners of fundamental religious exercise rights as a form of punishment.

Part I of this Report describes the methodology of the Report, in particular our multifaceted examination of free exercise conditions in state prisons, which was sourced from fifty state records requests and a survey of free exercise cases brought by Muslim prisoners. **Part II** provides background on the history of Muslim prisoners seeking religious accommodation and an overview of the current legal regime governing religious accommodation in prison. **Part III** presents the key findings of the Report, including our findings on: the numbers of Muslim prisoners by state; trends in Muslim prisoners' (largely pro se) litigation efforts; and the most- and least- accommodating state policies by religious practice issue area. **Part IV** concludes with recommendations that, if followed, would enable departments of corrections to meaningfully address the patterns of non-accommodation and bias identified in the Report.

I. METHODOLOGY: A Multi-Faceted Examination of Free Exercise Conditions in State Prisons

A. State Religious Preference Data: 35-Jurisdiction Response

In order to assess the current state of religious observance in prisons, Muslim Advocates sent records requests seeking prisoner religious preference data—i.e., the numbers of prisoners identifying with different faith traditions—to 49 states and the District of Columbia. Thirty-four states and the District of Columbia provided useable data, which forms the basis for most of the findings in Part III.A of the Report.

The religious preference statistics are, necessarily, of limited quality, because the format of data provided was highly variable across states. For example, some states provided a “snapshot” of religious preference on a particular day. Other states provided religious preference statistics at intake, or alternately, provided all religious designation requests for the entire year. Some data were from 2017 and some from 2018. Some states utilize just one label for all Muslims, whereas other states distinguish between different Muslim faith traditions in their labeling systems. Despite all these differences, the data, once compiled and compared, provides an important new look at the share of Muslim prisoners in state prisons, and the distribution of Muslim prisoners across state prison systems in the United States.

B. Database of 163 Recent Federal Cases Brought by Muslim Plaintiffs Alleging Free Exercise Violations

In addition to the records requests, Muslim Advocates identified and reviewed 163 Muslim prisoner federal lawsuits over a 15-month period, from October 10, 2017 to January 23, 2019. Our purpose was to gain an understanding of which issues were most important to Muslim litigants, who are typically self-represented, and to discern trends in geography, decision points, and case outcomes over this time period.

In order to find these cases, we used Westlaw alerts and search terms.² This resulted in mostly relevant cases, but also a few cases brought by plaintiffs from other religions or cases from outside the prison context. After screening out those cases, we developed an extensive list of recently-decided free exercise cases brought by Muslim plaintiffs in federal courts. For each case, we tracked basic information, including the jurisdiction and procedural posture of the case.³

We labeled nine general areas where Muslim prisoner plaintiffs sought court assistance. The general issues we coded included restrictions related to: 1) Ramadan practice; 2) the ability to grow facial or head hair; 3) access to religious texts; 4) access to prayer and worship services; 5) clothing; 6) *halal* meals; 7) access to religious property; 8) access to a religious leader; and 9) discriminatory behavior. We also had a general “other” category to capture any issues that did not fall into one of the preceding categories. A single case could bring up multiple issues (e.g. both Friday prayer and *halal* meals).

These cases provide a useful starting point for understanding whether some states are disproportionately represented in Muslim prisoner litigation relative to the total number of individuals who self-identify as Muslim; whether certain accommodation issues or concerns predominate over others; and what religious free exercise burdens Muslim prisoners experience most frequently.

C. Religious Services Policies and Handbooks: 50-State Survey

As part of our state records requests, we also asked each Department of Corrections (“DOC”) to provide copies of their religious programs policy directives and guidance. Forty-three of fifty jurisdictions provided some kind of responsive record. For non-responsive jurisdictions and jurisdictions that provided only incomplete records, we pulled and analyzed policies that were available online.

II. BACKGROUND: Muslim Free Exercise History and Today's Legal Regime

Muslim prisoners have changed the course of prison conditions litigation, especially with regard to religious free exercise. From the first Muslims in America to today, Muslims have sought to maintain their faith and freedom to worship even when faced with dehumanizing conditions of extreme control and restraint.

In the earliest cases on Muslim prisoners' free exercise rights, courts oftentimes failed to protect Muslim prisoners, in large part because of a lack of familiarity and comfort with Muslim practices. More recently, even as Congress sought to reverse the weakening of First Amendment protections by mandating strict scrutiny of restrictions on religious practice, some courts have failed to apply this standard equally to prisoners of all faiths. Notwithstanding a protective legal standard on paper, the reality today is that Muslim prisoners still struggle to vindicate their fundamental rights to worship, in an environment where many prisons and courts provide few accommodations.

A. Early America and the Preservation of African Muslim Practices Under Conditions of Slavery

Muslims have been part of the American story since the beginning.⁴ Today about 1 percent of the U.S. population identifies as Muslim.⁵ But the Smithsonian Institution estimates that in the late 1700s, Muslims accounted for closer to 5 percent of the population, due to the significant percentage of African Muslims captured and sold into slavery.⁶ The early presence of Muslims is not surprising given the religious make up of West Africa at the time. When the first Africans were brought forcibly to the "New World," Islam was prevalent in West Africa, in territories governed by both Muslim and non-Muslim rulers.⁷

As a result of the transatlantic slave trade, the first examples of Muslims in America seeking to practice their faith from a position of severe restriction was in this context of slavery. Under these conditions, Muslims strove to preserve their distinctive religious beliefs and practices, both within the larger, majority Christian society and within the enslaved community itself.⁸

European and American observers noted characteristic Muslim practices among some slaves.⁹ The most noticeable and frequently commented upon distinctions were: retention of Muslim dress codes (including a tradition of both men and women wearing skull caps, turbans, or veils, and not seeking out western clothes)¹⁰; maintenance of Muslim names¹¹ (Moustapha was popular in the

Carolinas¹²); and observance of dietary rules regarding pork and alcohol, *halal* requirements, and fasting during Ramadan.¹³ Enslaved Muslims were sometimes literate and wrote in Arabic to preserve their faith, to leave messages for their children, and to promote values of self-discipline and education.¹⁴

B. Muslim Prisoners Spearhead Prison Conditions Litigation in the 1960s and 1970s

In more recent history, pathbreaking litigation by Muslim prisoners resulted in the recognition of important religious free exercise rights for state prisoners of all faiths. Muslims deprived of their liberty through incarceration challenged the legality of their conditions of confinement. But courts initially refused to consider whether certain state practices – such as the use of isolation to prevent the spread of prisoner religious activity – violated religious free exercise rights. In fact, the idea that federal rights applied to state prisoners at all was not taken for granted and was something for which Muslim prisoners had to fight.

For example, in a 1961 California Supreme Court decision,¹⁵ the Court found that Black Muslim state prisoners were not covered by the State Constitution’s guarantee of religious freedom. In addition to finding the California Constitution’s protections inapplicable, the State Supreme Court found that the prisoners could not rely on federal constitutional guarantees of free exercise.¹⁶ In that case, ten Black Muslim prisoners at Folsom State Prison sought the removal of restrictions on their religious activities and the right to communicate with their attorney.¹⁷ Prison officials openly admitted that restrictions – including the lack of a place for worship, a ban on religious meetings, a ban on discussing religious doctrine, and confiscation of religious literature – were enforced *only* against Muslim inmates. The prison claimed the overbroad measures were needed, because the prisoners, “by their acts in rejecting the authority of members of the white race . . . present a problem in prison discipline and management.”¹⁸ The Court upheld those discriminatory practices despite that admission.

Eventually the tide began to turn, and in a series of subsequent cases, Muslim prisoners succeeded in gaining federal antidiscrimination and free exercise protections. First, in *Sewell v. Pegelow*, nearly forty Muslim plaintiffs charged that all Muslims in the U.S. Reformatory at Lorton, Virginia were put in isolation and deprived of food and medical attention even though they had violated no disciplinary rules.¹⁹ The court’s language in describing the prisoners evinced a lack of familiarity with Muslim history in the United States.²⁰ The “Negroes professing Islam and . . . known as Muslims” complained that they could not wear religious medals, were denied access to religious advisors, could

not recite prayers, and finally, that officials suppressed their grievance letters to prevent litigation.²¹ The District Court dismissed the complaint on the grounds that the state executive had sole jurisdiction over jail conditions. But the Fourth Circuit reversed, finding that the Muslims' complaint required at least a hearing.²²

The same year, in *Pierce v. La Vallee*,²³ the law inched further towards federal protections for state prisoners. In this case, the Second Circuit ruled in favor of three members of the Nation of Islam, who complained that the Dannemora State Prison in New York denied their requests to purchase Qur'ans, and further, imposed solitary confinement and denied them good time solely based on their religious beliefs.²⁴

In *Pierce*, the district court had refused to look at the prisoners' claims regarding solitary confinement, on the theory that federal courts do not have jurisdiction over state law questions involving unreasonable restrictions on the liberty of prisoners. The Second Circuit reversed and ordered the district court to consider the prisoners' claims about solitary confinement on the merits.²⁵ The impact of the case was to extend federal jurisdiction over conditions at state correctional facilities, though the district court would ultimately find in favor of the prison again on remand.²⁶

One of the prisoner plaintiffs in *Pierce*, Martin Sostre or "Sostre X", would eventually succeed in another solitary confinement case, in which he argued that he was held in solitary confinement for a year at Green Haven prison in New York based only on his legal and political activities and beliefs.²⁷ The judge authored a scathing opinion deeply critical of the prison. Sostre went on to file several subsequent legal challenges. In addition to shedding light on the rampant nature of religious discrimination in prisons, his litigation efforts highlighted universal difficulties faced by prisoner litigants when correctional officers intercept legal mail to disrupt challenges to officer behavior and to prison policy²⁸ – difficulties that continue to exist to this day.²⁹

In another influential case, *Cooper v. Pate*, the Supreme Court ruled in favor of a Muslim prisoner, Thomas Cooper, allowing him to sue the state prison in federal court under the 1871 Civil Rights Act.³⁰ This time, the prisoner was in Illinois, and had alleged that the prison prevented him from purchasing religious literature and denied him other privileges solely on the basis of his religion.

Together, *Cooper* and *Pierce* helped kickstart a tradition of federal courts scrutinizing whether state prison conditions violate federal rights guarantees.³¹ In subsequent years, Muslims gained limited accommodation for additional religious

practices, and they brought judicial and public attention to the issue of free exercise rights for all.³² Their efforts advanced the rights of many other religions deemed “unfamiliar” to prison administrators and jailors.³³ During the Attica prisoner “uprising” in 1971, for example, a prisoner collective would generate a list of fifteen “practical proposals” or requests, including “[g]ive us true religious freedom.”³⁴ And in 1972, the Supreme Court cited *Cooper v. Pate* in allowing religious discrimination claims by a Buddhist inmate to move forward.³⁵

Before Muslim prisoners brought these pathbreaking cases, the courts had treated state prisoners as largely falling outside the protections of the Constitution, and were reluctant to intervene even when outrageous violations of federal rights were alleged. Muslim prisoners’ early litigation helped shift the tides and gain greater protections for the religious rights of prisoners of all faiths.

C. Courts Reduce Prisoners’ Free Exercise Protection in the 80s and Early 90s

Throughout the 60s, 70s, and 80s, the settled Supreme Court interpretation of the free exercise clause was that serious government burdens on religious practice would be subject to “strict scrutiny.”³⁶ The strict scrutiny standard is the highest level of constitutional protection, and provides an important check against government abuses. But starting in 1987, the U.S. Supreme Court took steps to limit prisoners’ rights generally, including in the area of religious free exercise.

In a 1987 decision, *Turner v. Safely*, the Court decided that a restriction on religious exercise would be legal as long as it was based on a reasonable justification – a flexible standard prisons will almost always meet, compared to the previous requirement of “strict scrutiny.” In the words of the Court, a prison regulation related to any “legitimate penological interest” would be found constitutional.³⁷ The same year, in *O’Lone v. Estate of Shabazz*, the court further weakened free exercise protections.³⁸ There, the prison blocked Muslims from attending weekly Friday congregational prayer because of their work assignments. The Supreme Court found that preventing Friday prayer on this basis was constitutional.³⁹ Finally, in a seminal decision in 1990, *Employment Division v. Smith*, the Supreme Court held that government laws that seriously burden religious practice are constitutional as long as they are not specifically directed at religion and are generally applicable.⁴⁰

In the prison context, these decisions had a detrimental effect on prisoners’ ability to practice their faith. This is especially true because the Court held that *any* justification related to a prison’s interest, however minor, could outweigh

prisoners' most fundamental religious concerns. The result of these cases was that prisoners' religious free exercise complaints would receive the least searching form of constitutional scrutiny from courts. These decisions halted and reversed much of the progress Muslim prisoner litigants had made in the preceding decades.

D. Congress Responds to the Deterioration of Free Exercise Rights by Passing RFRA, Then RLUIPA

In two successive bipartisan bills, Congress resuscitated the Constitution's guarantee of religious liberty for all, specifically seeking to counter the impact of the Supreme Court's decision in *Employment Division v. Smith*. The surprising result of these efforts is that federal statutory law now provides greater free exercise protections than the First Amendment as interpreted by the Supreme Court.⁴¹

Under the Religious Freedom Restoration Act (RFRA) of 1993⁴² and a similar law that applies to states, the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000,⁴³ prisons and jails must provide a "compelling" instead of a merely "legitimate" penological interest if they wish to "substantially burden" religious exercise.⁴⁴ Furthermore, even if a prison's interest in burdening religious exercise is compelling, the burden imposed must be "the least restrictive means" of furthering that interest.⁴⁵ If there is a less restrictive alternate policy available, then the prison must use that policy instead of the more restrictive option. The effect of these laws was to return free exercise protections to the level enjoyed prior to the Supreme Court's decision in *Smith*.

Court applications of RFRA and RLUIPA in the prison context have varied widely, and have not always provided the most extensive protections available under the plain terms of the statute. Courts did not generally agree on how the new standard should apply. Some courts tended towards a more deferential review of prison directives, despite Congress's expressed intent and straightforward language requiring otherwise.⁴⁶ In 2015, however, in *Holt v. Hobbs*, the Supreme Court clarified the application of the "substantial burden" and "least restrictive means" prongs of the strict scrutiny test.⁴⁷ The Court concluded that an Arkansas policy violated RLUIPA, because it needlessly banned Muslims from growing beards longer than a half inch.

Muslim claimants have generally not benefited equally from the protections these statutes offer. A comprehensive 2012 study of federal court decisions where plaintiffs raised free exercise claims found that, when other variables were held

constant, claimants from other religious communities were twice as likely to receive religious accommodations as Muslims.⁴⁸ The disparity in outcome tended to increase in appellate court cases.⁴⁹ And if the claimant was a Muslim *prisoner*, the disparity increased significantly: non-Muslim prisoners were three times more successful than Muslim prisoners in vindicating their religious liberty rights.⁵⁰

Related findings of the U.S. Commission on Civil Rights confirm that Muslim prisoners encountered more frequent violations of their rights than other religious groups. The study found that Muslim prisoners filed 42 percent of administrative remedy requests at the prison level, and ultimately litigated 29 percent of RLUIPA cases over the periods of study, strongly suggesting that they receive less accommodation and must resort to grievance mechanisms and litigation at higher rates.⁵¹

E. Conclusion

Muslim prisoners painstakingly fought for and improved their access to religious freedom in prison in the 1960s and 70s, only to have the Supreme Court weaken those protections via *Turner v. Safely* in 1987. Although Congress responded by restoring religious protections for all, Muslim prisoners have not always been able to benefit from those protections. Muslim prisoners are forced to grieve and litigate their accommodation claims at a greater rate than their counterparts from other faith traditions, with lower rates of success.

As the remainder of this Report will show, these problems continue to this day. While some states do allow a greater measure of religious free exercise in prison, many Muslims in prison continue to struggle to maintain their religious practices, and face obstacles that range from diet to religious dress to particular forms of worship and devotion.

III. FINDINGS: Numerous Muslim Prisoners Face Obstacles to Practicing Faith and Face Discrepancies in Accommodation from State to State.

As detailed in this Part, our findings give rise to three overall conclusions . First, a large share of state prisoners self-identify as Muslim, and the share of prisoners who identify as Muslim is growing. Second, Muslim prisoners litigate most frequently over violations of their religious dietary beliefs and their ability to pray. Finally, Muslim prisoners face a great discrepancy in levels of accommodation from state to state, and many states have facially arbitrary and needlessly restrictive policies regarding Muslim religious exercise.

A. Muslims in State Prison by the Numbers

Until now, little information has been made available about religious preference data of state prisoners, due to the difficulty of obtaining this information. The data we obtained shows that in some state systems, over 20 percent of prisoners identify as Muslim. The overall share of Muslim prisoners, including Muslim women, also appears to be increasing over time in most of the states that provided religious preference data for multiple years.

Across the 35 jurisdictions that responded to our data requests, around 9 percent of prisoners identified as Muslims—a slightly lower figure than the 12 percent of federal prisoners who self-identify as Muslim.⁵² But without data for all states, including large states like California, no firm conclusions can be drawn about the national average. It is also possible that reported numbers are low, because some prisoners might not self-report their religion despite identifying with or practicing a particular faith tradition. The incentives for self-reporting may vary from state to state.⁵³

1. Muslims Are Overrepresented in State Prisons.

About 9 percent of the state prison population is Muslim, at least among D.C. and the 34 state DOCs that responded to our data request.⁵⁴ The share of Muslim prisoners across states is also highly variable. In Pennsylvania, Maryland, New Jersey, and D.C., more than twenty percent of prisoners identified with a Muslim group.⁵⁵ Pennsylvania, Texas, and Michigan housed the largest absolute numbers of prisoners identifying as Muslim, each with more than 7,000 Muslims in custody. The significant presence of Muslims in prison stands in stark contrast to Muslims' share of the U.S. population as a whole, which is just 1 percent.⁵⁶

2. For Most States, the Share or Number of Muslim Prisoners Is Increasing.

The data also showed that in many states, either the share of incarcerated Muslims or their absolute number is increasing.⁵⁷ This trend is surprising, given that the prison population overall has decreased in recent years in many states, in part due to state efforts to curb mass incarceration.⁵⁸

3. Muslim Women Are Also Overrepresented in Prison.

Although most Muslim prisoners are men, Muslim women are also present in state prisons in significant numbers. In Pennsylvania, about 8 percent of female prisoners identify as Muslim.⁵⁹ In Texas and Wisconsin—states where Muslims account for about 1 percent of the population⁶⁰—Muslim women account for more than 2.5 percent of female prisoners.⁶¹ And anecdotal data from at least one state suggest that the number of Muslim women in prison is increasing dramatically: in Kansas, the number of Muslim women in prison more than tripled in just eight years.⁶²

4. Conclusion

Muslims are overrepresented by a factor of about eight in the thirty-five jurisdictions that provided data. And in recent years the share of prisoners who identify as Muslim, the absolute number of Muslim prisoners, or both has steadily been increasing. That increase makes it all the more important that prisons and jails provide robust accommodation for religious practices that heretofore may have been unfamiliar to many prison administrators.

B. Recent Muslim Prisoner Litigation Database

In addition to requesting religious preference data, Muslim Advocates compiled 163 recent Muslim prisoner lawsuits over a 15-month period.⁶³ The cases were filed in federal court, but came from a mix of federal prisons, state prisons, and state and local jails. Claims from federal prisons were included to provide a holistic view of the kinds of free exercise complaints Muslim prisoners most frequently raise in court filings. These cases vividly illustrate some of the burdens on practice endured by Muslim prisoners. And in the aggregate, they provide important insight into the religious free exercise issues that give rise to the most prevalent sources of grievance.

1. Background: Challenges To Filing a Lawsuit While in Prison

Roughly every three days, one Muslim prisoner is sufficiently aggrieved by the lack of accommodation he or she faces to file a federal lawsuit.⁶⁴ To file such a lawsuit, a prisoner must pay fees and overcome other serious obstacles to litigating, including the inability to obtain legal representation, fear of retaliation, difficulty conducting legal research, and lack of materials for mailing.

Prisoners must pay significant fees to file a federal lawsuit, and must therefore be highly motivated by a free exercise violation to seek assistance from a federal court. Under the Prison Litigation Reform Act (PLRA),⁶⁵ prisoners must

pay full fees even if they are proceeding *in forma pauperis* – a status that ordinarily allows indigent persons to proceed in court without the usual fees. In New York, for example, this means that penniless prisoners must commit to a \$350 filing fee, and then another \$450 if they wish to appeal. These fees are paid in installments which may be garnished from their commissary accounts.⁶⁶ The average minimum daily wages paid to imprisoned workers for non-industry prison jobs is 86 cents.⁶⁷ In purely financial terms, the burden of litigation for many is extremely significant.

2. California Is the Source of the Largest Share of Prisoner Complaints.

The largest share of cases came from California, which was the source of 20 of 163 cases or over 12 percent. California's San Quentin State Prison in particular was a frequent source of free exercise grievances.⁶⁸

The prevalence of California cases suggests a lack of accommodating policies, a large absolute number of Muslim prisoners, or both. California's DOC did not provide Muslim Advocates with religious preference data, and does not have a detailed religious services handbook or policy to guide state prisons on best practices for accommodating prisoners of diverse faiths.⁶⁹

3. The Top Two Accommodation Problem Areas Are Diet and Prayer.

i. Muslim Prisoners Have Trouble Obtaining a Religious Diet.

The most common accommodation problem identified by Muslim prisoners in their federal lawsuits was difficulty receiving a diet accommodation. In the 163 cases identified, more than 39 percent involved food.⁷⁰ Of these diet cases, over 46 percent succeeded, in that they were allowed to proceed to a subsequent phase of review, for example by surviving PLRA screening, a Motion to Dismiss, or Summary Judgment.

In *Stewart v. Sheahan*,⁷¹ a prisoner alleged that the prison failed to provide him religious meals for four consecutive days during the month of Ramadan (during which Muslims refrain from food and drink during daylight hours and break their fast at night). In another diet case, a disabled prisoner explained he had to submit 15 requests for *halal*, or religiously permissible meals, over a period of about nine months before ultimately receiving any accommodation.⁷²

Some Muslim inmates believe they can accept kosher certified meals as sufficiently similar to *halal* certified meals. However, these prisoners often have difficulties obtaining kosher food. Correctional officers in Florida and New York have allegedly denied Muslim inmates kosher meals for not being Jewish, even though there was no *halal* option available at that facility.⁷³ In another recent case, a Muslim prisoner had to wait five months for approval of a kosher diet, after being transferred from a facility where he had already received approval for a religious diet.⁷⁴

Another common meal issue is the denial of requests to observe the feast of *Eid ul-Fitr*, an important Muslim holiday that marks the conclusion of the month of Ramadan. The frequency of claims brought by Muslim inmates about this feast demonstrates the importance of this religious occasion.⁷⁵ Considering that Christian holiday meals and festivity requests are routine or easily granted approval, these claims signal disparate treatment of Muslim prisoners.

ii. *Muslims Face Obstacles to Prayer and Worship.*

Obstacles to prayer and worship were the second most common complaint by Muslim prisoner litigants. Fifty-seven of the 163 cases, or 35 percent, related to restrictions on the ability to pray or worship. Just over a third of those complaints, or 36 percent, were allowed to proceed to the next phase of litigation.

At one institution, Muslim inmates were banned from praying inside the chapel, even though other religious groups were permitted to do so.⁷⁶ The Plaintiff in that case explained that this rule forced him and other Muslim inmates to pray outside in extreme weather conditions including cold, snow, and rain. In another case, a prison banned Muslim prayer in the prison dayroom,⁷⁷ and sent a prisoner to administrative segregation when he attempted to pray with others. In a third, the prison prohibited Muslim prayer in the outdoor yard.⁷⁸ One prison even went so far as to prohibit Muslim inmates from praying in their own cells.⁷⁹

Finally, in two recent cases, prisoners referenced a rule limiting Muslim inmates to one religious service per week as a form of punishment.⁸⁰

4. Conclusion

Despite the significant hurdles to litigating, Muslim prisoners across the country are still motivated to seek court assistance in overcoming practices and regulations that inhibit free exercise. Courts have allowed a significant proportion of those cases to proceed, confirming that many of these claims are meritorious.

C. State Prison Religious Accommodation Policy⁸¹ Survey

Not all prisoners will have the grit, money, endurance, or resolve to pursue a federal lawsuit against the institutions or officials controlling nearly every aspect of their day-to-day life. As a result, we looked beyond recent cases to compare and contrast general correctional policies and directives regarding religious practice across all 50 states and the District of Columbia.

Through this review, we found that the level of accommodation provided to Muslims is highly inconsistent, even though the same RLUIPA standard applies equally to all prisoners. Some states provide an appropriate level of accommodation in their policies, and others seemingly ignore or downplay the basic religious needs of Muslim prisoners. Our review of the policies reveals numerous examples of restrictions on Muslim practice that are needless, excessive, and without any legitimate justification.

Huge discrepancies in the level of accommodation invite an obvious question: If some prisons have allowed or facilitated Muslim practices, why have other prisons not done the same? With RLUIPA's strict scrutiny test, this is exactly the question that Congress instructs courts to ask. Under RLUIPA, the burden is on the prison to show that it has a "compelling" interest that is advanced by burdening a given religious practice.⁸² The prison must also show that it is pursuing its compelling interest in the way that is "least restrictive" of the prisoner's religious practice.⁸³ In other words, if there is an alternative policy that would achieve the prison's interest—and would impose a lesser burden on the prisoner—then that alternative is less restrictive and should be adopted. The prison is required to use the *least* restrictive, or most accommodating, of available options that satisfy its compelling interests. This outcome aligns with the intent of Congress in providing for the maximum religious freedom possible, even in a restrictive setting like prison.⁸⁴

Our statewide survey documents that there are many "less restrictive" and even fully accommodating prison policies that successfully facilitate Muslim practices around prayer, diet, and dress, without compromising compelling government interests in safety. Unfortunately, the survey also reveals examples of cruelly restrictive directives and policies.

In what follows, we compare the most and least restrictive state policies in six areas of common free exercise regulation: group prayer; work exemptions and

proscriptions; religious rights at death; head covering; diet and fasting; religious property; and the religious rights of prisoners in administrative housing or segregation.

1. Daily Prayer, in Groups

Muslims generally believe they are required to perform five daily prayers at specified times, which vary slightly from day to day depending on the time of year. The daily prayers take just a few minutes each, and should be performed under certain conditions including: in a ritually pure state and in modest clothing; in a clean place that is preferably quiet; and facing towards Mecca. Finally, the daily prayers should be performed in a group if other Muslims are present.

The daily prayer obligations of Muslims have no exact analogue in Christianity. Perhaps as a result, prisons sometimes have difficulty understanding the practice. State correctional departments vary in their accommodation of Muslim daily prayer generally and of group prayer in particular. Many policies and handbooks fail to mention this widespread Muslim practice. Other states, however, do provide guidance to prison administrators.

On the more accommodating end of the spectrum, seven state religious handbooks recognize the importance of group prayer in Muslim daily practice and instruct that daily group prayer be allowed where possible.⁸⁵ For example, Indiana's general policy allows prisoners to "gather for religious discussion and/or prayer" provided it is during leisure or recreation periods and is not disruptive, and that no one is coerced into praying.⁸⁶ The Indiana policy further acknowledges with regard to Muslims that "although [a] Muslim may perform religious duty individually, the main thrust of Islam is to show religious life in community."⁸⁷ The policy further notes that preferably the five daily prayers "will be said with the congregation" and even explains that some of the prayers may be vocalized.

Similarly, the New Jersey policy states that daily prayers can be performed "individually or in congregation" at the prescribed times. The policy also notes that prayers can be made at work sites, school, or housing units during break times.⁸⁸

South Carolina's written policy is that prisoners may be allowed to meet as a group for "some" of the daily prayers "depending on space, controlled movement, and level of security."⁸⁹ The South Carolina policy is one of the few that also recognizes, correctly, that it is not polite to walk in front of a Muslim

person while he or she is praying, and that the area for prayer should be quiet and clean.⁹⁰

Other state policies are not as accommodating. They include overbroad policies that require any faith group activity to be directly supervised and pre-authorized,⁹¹ even when they do not typically impose the same requirements on secular group activities such as sports games, card matches, or watching the television. Sometimes, states even target Muslim group practice for special surveillance. In Arizona, the written policy requires a security officer to be present for Muslim weekly congregational service on Fridays, but there is no such requirement for other groups' weekly congregational prayer.⁹²

Other states have adopted a mixed approach that does not ban group prayer entirely but instead tailor inmate-led group prayer supervision rules to the security level and particularities of each housing unit. In Idaho, for example, inmate-led activity, whether religious or secular, receives different levels of scrutiny depending on the housing unit classification. Thus, prisoner-led activity in minimum security facilities requires periodic supervision that is either direct (in person) or indirect (direct line of sight through video or window), but supervision is increased in more secure units.⁹³ Exceptions can be approved by the facility head.⁹⁴ Other states allow prayer leaders who have received prior written permission to lead daily group prayers.⁹⁵

2. Work Exemptions and Work Proscriptions

The Thirteenth Amendment outlawed slavery and involuntary servitude, "except as punishment for a crime whereof the party shall have been duly convicted."⁹⁶ As a result of this exception, forced labor is still practiced in the United States. Prisoners may be forced to work full time under threat of punishment and without any compensation (or meager compensation), in fields, factories, or kitchens.⁹⁷ Courts have ruled that prison laborers are not protected by workers' rights statutes like the Fair Labor Standards Act or the National Labor Relations Act.⁹⁸

There is no compelling reason that prison laborers should not—at the very least—be protected by RLUIPA and RFRA from working jobs that may conflict with their beliefs (for example handling or serving pork or alcohol), or why they should not be permitted time off to complete mandatory religious observances (holidays, daily prayers, etc.).

It should go without saying that a prisoner of faith does not have to work on certain religious holidays. But surprisingly, a few state correctional departments do not explicitly provide for work exemptions or identify days of work proscription for Muslims. In other states, it is unclear the extent to which Muslim workers are able to fulfil their religious obligations while on the job, or whether they are permitted work exemptions.

In Alabama, for example, the official policy is that there are no work exemptions at all.⁹⁹ The policy as written is facially overbroad and not narrowly tailored. Arkansas and Colorado¹⁰⁰ do not even provide an exemption for Ramadan, a month of fasting during which Muslim prisoners do not eat or drink during daylight hours. Depending on how physically demanding a prisoner's work assignment is, the lack of a work exemption could result in serious pressure on prisoners to break their fast. In Ohio, "no specific work proscriptions are noted" for Muslims, though members of other groups get work holidays.¹⁰¹ In Vermont, the policy notes that "there are no work proscriptions required" for Muslims.¹⁰²

By contrast, many other states do provide at least some days of work proscription to Muslim prisoners, though the specific holidays recognized – and the procedures for requesting the day off – vary from place to place. In Arizona, prisoners are apparently likely to receive pre-approved work proscription days, and can additionally request work exemptions that recur on a weekly basis.¹⁰³ Florida allows work breaks during Ramadan if the individual so requests.¹⁰⁴ The other states with some kind of work break for holidays include Indiana¹⁰⁵; Kentucky¹⁰⁶; Maryland¹⁰⁷; New Jersey¹⁰⁸; New Mexico¹⁰⁹; North Carolina¹¹⁰; New York¹¹¹; Oklahoma¹¹²; Pennsylvania (in "rare cases" only)¹¹³; Virginia¹¹⁴; Washington¹¹⁵; and Wisconsin.¹¹⁶ The Illinois policy also recognizes that certain work assignments may violate individuals' beliefs, and considers on a case-by-case basis whether to provide an alternative assignment.¹¹⁷

3. Religious Rights and Burials for Prisoners Who Die in Prison

State policies regarding prisoner death and dying also demand renewed scrutiny. Serious religious liberty violations are likely to occur when state prisons and jails have death and burial policies that do not accommodate religious beliefs in that context.

A recent Supreme Court stay decision dramatically highlighted the indignities and discrimination that may be endured by Muslim prisoners who die in prison or who are killed by the State. In *Dunn v. Ray*,¹¹⁸ a black Muslim prisoner on Alabama's death row, Domineque Ray, wanted an imam to attend his

execution. But Alabama refused his request, even though it regularly allowed a Christian chaplain to attend executions. The Eleventh Circuit stayed Mr. Ray's execution, finding it substantially likely that Alabama violated Ray's First Amendment rights.¹¹⁹ But in a terse stay decision, a 5-4 majority led by Justice Thomas ruled against Ray's religious rights at death.¹²⁰ The state of Alabama killed Mr. Ray shortly after, without the presence of his spiritual advisor. The decision drew immediate bipartisan backlash. Many were shocked by the result, since the Court's conservative majority has shown great solicitude to religious belief in many other contexts.¹²¹ However, that concern has not been steadfastly applied to Muslims.¹²²

A lesser-known aspect of Mr. Ray's case is that he had also requested that he not be subjected to an autopsy, because it conflicted with his religious beliefs. That request was also denied¹²³ and the Supreme Court failed to even mention it when it allowed him to be executed.¹²⁴ This reflects a systematic problem across state prisons and jails. Although the principle of honoring the dead and making respectful arrangements for the disposition of mortal remains has well-established roots in U.S. common law,¹²⁵ that principle is sorely neglected in many state correctional policies.

For example, Muslim burial practices typically forbid mutilation of the body.¹²⁶ Despite this widely shared belief, half of all 38 publicly available policies automatically conduct or request autopsies, or allow the state medical examiner the discretion to conduct one. The other half make no mention of autopsies, but it is unclear what procedures are followed in practice. And while most states allow next of kin to coordinate burial arrangements, several states only allow this after an autopsy has been performed, simply disregarding any lack of consent from either the deceased or next of kin.¹²⁷

Funerary practices often serve as the final connection between a person and the afterlife. In Islam, a prompt burial is typically required, and most Muslims would regard cremation as a serious violation of their beliefs.¹²⁸ With respect to unclaimed mortal remains – another sensitive but overlooked topic – out of the 38 publicly available state correctional policies, six have no stated burial procedures, nine opt for cremation by default, and twelve either provide the explicit option to cremate or provide the facility full discretion to make arrangements for the disposition of the remains.¹²⁹ The states that cremate by default are almost certainly violating the beliefs and dying wishes of prisoners who do not believe in cremation. And the six states with no burial procedures at all similarly run the risk of serious free exercise violations.

Some state correctional departments do have written policies that recognize religious beliefs regarding burial. Massachusetts¹³⁰ and Minnesota¹³¹ either require consent to cremate or allow prisoners to opt out of default cremation. Florida details which religions forbid cremation.¹³² Maine will not cremate if the inmate is a member of a religious faith that prohibits it.¹³³ Kentucky¹³⁴ and Ohio¹³⁵ note the cremation restriction and include key components of Islamic burial practices such as washing and time of burial. North Carolina allows burial prayer service for Muslim inmate deaths.¹³⁶ Washington's religious handbook details a highly respectful process that abides by Muslim burial practices.¹³⁷ Arkansas¹³⁸ and California¹³⁹ make passing mention of religious faith in the burial rites.

4. Head Covering

Under religious principles of modesty or dress, many Muslims believe they should cover their heads while praying or in public. Depending on the tradition followed, men may wear a kufi or topi—a knit, brimless, round cap—or in some cases a turban or fez. Women, similarly, may wear a hijab—a veil which typically covers the hair, neck, and chest—or other similar forms of head covering.

Prisons around the country recognize the importance of head covering in different faiths, but have chosen to regulate head-covering in inconsistent and at times confounding ways. For example, an Alabama policy allows the “Koofie” to be worn only during religious services, and fails to mention the hijab at all.¹⁴⁰ Idaho permits religious head covering only during religious ceremonies or within the cell.¹⁴¹ Under an odd rule in Colorado, head coverings are allowed outside of the cell, but only if they are covered with another head covering such as a stocking or baseball cap and are “not visible.”¹⁴² In Texas, prisoners can carry their religious head coverings out of their cells but cannot wear them outside of their cells or the chapel.¹⁴³ Other states, such as Illinois, go so far as to require “written verification” that the head covering is required by the individual's religion in order for the person to be permitted to wear them, even in their “immediate sleeping area during prayer” and in the chapel.¹⁴⁴ Hawai'i has a similar requirement.¹⁴⁵

These restrictions on head covering are arbitrary. As the Colorado policy shows, non-religious headgear is allowed outside of cells. Indeed, numerous prisons actually issue caps or toboggans depending on weather or season. There is no reason to treat secular head covering differently. A baseball cap brim surely obscures the face more so than most Muslim headgear, which is brimless and, with the exception of a face veil, leaves the face unobstructed.

In contrast with these restrictive – and at times ridiculous – policies limiting headgear outside of cells, numerous state policies allow religious headgear throughout the facility: Alaska,¹⁴⁶ Connecticut,¹⁴⁷ Florida,¹⁴⁸ Georgia,¹⁴⁹ Kansas,¹⁵⁰ Kentucky,¹⁵¹ Maryland,¹⁵² Nevada,¹⁵³ New Hampshire,¹⁵⁴ North Carolina,¹⁵⁵ North Dakota,¹⁵⁶ New York,¹⁵⁷ Oklahoma,¹⁵⁸ Rhode Island,¹⁵⁹ South Carolina,¹⁶⁰ Utah,¹⁶¹ and Wyoming.¹⁶² Not all these states recognize the same types of Muslim headgear, however. For example, Utah specifically mentions the kufi, fez, and turban, but does not mention the hijab,¹⁶³ and thus leaves open the possibility that officers will confiscate hijabs as contraband or prevent them from being worn.

As these seventeen accommodating policies show, prisons can adjust to Muslim or other religious head covering practices without compromising order and security. Indeed, under these more accommodating policies, headgear is often subject to color limitations and to search, although the better policies also note that such searches should be respectful.

For example, Washington State instructs its employees that depending on the context, “[a]sking a woman to remove her hijab publicly is tantamount to asking someone to undress in public.”¹⁶⁴ The policy requires that such searches be conducted by a member of the same sex outside the view of members of the opposite sex, unless no same-sex staff is available *and* there is an “urgent legitimate need” for the search to take place.¹⁶⁵ A Maryland policy similarly recognizes the sensitive nature of hijab searches and instructs the officer to conduct first a “simple pat search” while the hijab is still on. If there is a need to search further, then a female officer conducts the search in a private place. The prisoner removes the headgear herself and puts it back on.¹⁶⁶

States also vary in the number of religious head coverings allowed in a prisoner’s personal property. For prisoners who wear the head covering at nearly all times, it is concerning that some facilities only allow one head covering.¹⁶⁷ Other states allow up to three.¹⁶⁸

Finally, some prisons appear to restrict head covering during transportation outside of the prison,¹⁶⁹ while others do not.¹⁷⁰ For example, New York State transports detainees wearing religious head coverings.¹⁷¹ It is not clear why other states could not provide the same accommodation.

5. Diet

For persons with religious beliefs about food, the denial of a religious diet is a daily barrier to carrying out an obligation at the heart of religious exercise.

And as previously discussed, diet is the most common accommodation problem identified by Muslim prisoners in their federal lawsuits. While non-accommodation at a single meal may appear trivial, the cumulative impact of frequent variance from dietary standards over weeks, months, or an entire sentence is substantial.

As the Missouri diet policy recognizes, many religions consider the human body a “repository for the divine.”¹⁷² Compliance with dietary norms may be essential to atonement or even end-of-life repentance through heightened levels of observance.¹⁷³ And as previously noted, Muslims in America have sought to preserve these practices going back hundreds of years.¹⁷⁴ The desire to observe a fully *halal* diet may also be indicative of strengthened or deepening religious practice.¹⁷⁵ This process is particularly important as a manifestation of religious exercise in the prison context, where prisoners may feel separated from their broader faith communities.

Many state policies do provide for full accommodation of Muslim diet requests. Others, however, provide diminished diet substitutes or no substitutes at all, and thus dip below the legal floor set by RLUIPA. And in some cases, the paucity of diet accommodations may coerce individuals into violating their dietary beliefs.

A few key differences among states are worth highlighting. First, some facilities provide designated-*halal* diets and even *halal* meat, while others do not. Second, some prisons impose extremely burdensome procedures on detainees who wish to request any diet accommodation. Third, many prisons fail to specify that diet accommodations should follow a prisoner who is transferred, forcing prisoners to go through a burdensome request process at each new facility.

The result in many states is predictable, recurrent, and entirely avoidable rights deprivations that can last for weeks, months, or even an entire sentence.

i. Halal-Designated v. “Pork-Free” Diets

Nearly all Muslim traditions prohibit the consumption of pork or pork by-products, as well as the consumption of alcohol. But many Muslims understand the rules for *halal* or “permissible” food to be more complex than a simple exclusion of pork and alcohol. In order to be a *halal* source of meat, for example, animals must be slaughtered a certain way. And even non-flesh and vegetable food sources must be processed in a way that avoids contamination or contact with religiously prohibited substances.¹⁷⁶

Prisons can provide certified *halal* diet plans to satisfy the religious needs of their Muslim prisoners. Approximately nine states do have policies explicitly requiring *halal* diet accommodation in some form. Other state policies do not pre-designate a *halal* option but have a process for inmates to request *halal* diets and explicitly recognize in their handbooks that *halal* requirements go beyond the simple avoidance of pork.¹⁷⁷ Most states, however, continue to force Muslims to eat simple “non-pork” vegetarian or vegan diets which may fall short of *halal*, or require Muslims to get special permission to eat a kosher diet, which many but not all Muslims agree is an acceptable alternative to *halal*.

The state policies recommending “pork-free” diets for Muslims merit special discussion.¹⁷⁸ These diets usually do not satisfy the full conception of *halal* observed by many Muslims. Pork-free diets may still include non-*halal* meats or flavoring. And even vegetarian and vegan meals can be problematic for some, who have sincere beliefs that they are not to be vegetarian. Other Muslims simply find the prison version of vegetarian or vegan options to be so nutritionally unvaried and inedible that they are effectively coerced into eating non-*halal* food items that violate their beliefs.

Georgia provides one egregious example of a deeply flawed “pork-free” policy. Despite the name, the accommodation available includes pork products. The diet simply requires that there be “no more than one” pork entrée served per day.¹⁷⁹ Utensils used to prepare pork could still come into contact with non-pork meals, and the pork entrée could cross-contaminate other items in the serving line or kitchen. Meanwhile, “non-pork ham seasoning” can be used on “non-pork” trays.¹⁸⁰ Thus, Muslims can be compelled to eat ham-flavored food and to forgo a meat entrée up to once a day under this “accommodation.”

Fortunately, an increasing number of prisons have policies calling for *halal*-designated diets. Colorado policy lists vegetarian, vegan, and *halal* diets as acceptable Muslim dietary choices.¹⁸¹ The religious diet request form includes a *halal* option.¹⁸² In Maryland, the *halal* diet “shall” be offered to those designated as Shi’ite, Sunni, members of the Nation of Islam, members of the Moorish Science Temple, and members of other groups with the “same basic tenets that require the Halal diet.”¹⁸³ Traditional Ramadan foods like dates for breaking fast must be available for purchase and prisoners must be notified of how to obtain them 60 days in advance of the holiday.¹⁸⁴ Massachusetts¹⁸⁵ and Michigan policies also appear to have *halal*-designated options available, though the Michigan option is also vegan and so may coerce some into violating their beliefs.¹⁸⁶ New Hampshire specifies both a pork-free diet and “Halal or Kosher” diet prepared “under a

certified process for the practice of . . . Muslim[s].”¹⁸⁷ Similarly, Oklahoma diet policy suggests that a *halal* diet is available.¹⁸⁸

The examples do not end there. Rhode Island provides *halal* meat both during and outside of Ramadan.¹⁸⁹ South Dakota policy provides *halal* as an example of a “religious or alternative diet” that “shall normally be provided to approved inmates.”¹⁹⁰ Wyoming does not require *halal* meat but allows it: meat that is “*halal* or *zabahah*” may be utilized if “immediately available through a regular Department approved vendor at a price comparable to Kosher.”¹⁹¹ Although New York state does not specify a *halal* option,¹⁹² New York City Corrections has had a *halal* meal program on the books since the 1980s.¹⁹³

The Washington State policy is one of the most accommodating on the books. First, the chaplain’s handbook sets out a fulsome view of *halal* requirements that goes beyond mere avoidance of pork.¹⁹⁴ The handbook states that “Shi’a Muslims are only allowed to eat Halal meats. They are not allowed to eat kosher meats nor are they allowed to eat any other meat not slaughtered according to the methods prescribed by the Qur’an and Sunnah of the prophet.”¹⁹⁵ The food preparation policy explains in detail the “requirements for obtaining wholesome meat.”¹⁹⁶ And accordingly, “halal” is included among the recognized individual diets in the religious programs policy.¹⁹⁷ At reception and diagnostic centers, individuals select an “initial” religious diet at no cost,¹⁹⁸ and the diet remains in place until otherwise changed.¹⁹⁹

The Wisconsin religious diet policy, as written, is also highly accommodating. It explains that “halal meat meals [are to be] served four times per week, as well as fish entrees (scale fish only).”²⁰⁰ Documentation of *halal* certification must be maintained.²⁰¹ The diet “excludes foods identified in accordance with the strictest interpretation of Islamic law” as both “*Haraam*” (unlawful/forbidden) and “*Mushbooh*” (food which is doubtful or suspect).²⁰² The policy also includes a safety valve: it is still possible for prisoners to request a form of *halal* or any other religious diet not already offered by the facility.²⁰³

ii. *Burdensome Procedures to Obtain Religious Diets*

Another common diet problem is that prisons create burdensome procedures for anyone who wants to request a religious diet, rather than providing a religious meal option automatically.

For example, to obtain a simple meat-substitute diet in Nevada – which is neither expensive nor unusual – a prisoner must pass a diet accommodation

interview.²⁰⁴ Similarly, Iowa prisoners who require anything more complex than a meat substitute diet must obtain chaplain sign-off, and chaplains must report regularly to the food service directors. These Iowa special diet requests must be “complete, furnished in writing” and “rewritten monthly.”²⁰⁵ In Florida, to obtain a “certified food option” meal, prisoners have to pass an oral sincerity assessment with the chaplain, who may then investigate the prisoner’s activity and interview other prisoners and staff about the requesting prisoner’s beliefs and conduct.²⁰⁶ These policies are unduly burdensome for prison administrators and prisoners alike, and create serious risks that prisoners will be denied religious meals for extended periods.

North Dakota has a uniquely problematic policy that essentially guarantees deprivation of religious food. There is a “60-day sincerity test” for anyone who changes their religious preference to a religion with a dietary requirement. “During the sixty days of the sincerity test, the inmate will not be provided the new chosen religious special dietary obligation or tenets. After the sixty days, if the inmate continues to demonstrate sincerity and commitment to the new religion, the dietary obligation or tenets may be accommodated.”²⁰⁷

Prisoners, especially those with medical issues, may face a choice between adequate nutrition and a religious diet. Some institutions, for example in Nevada,²⁰⁸ require prisoners who have been prescribed a medical diet to sign medical releases if they wish to obtain a religious diet. Prisoners who elect a non-religious diet do not have to sign such releases. The medical release appears to be a tacit acknowledgement that even though vegetarian, vegan, or other special diets are “certified” by a dietician, they may in fact be inadequate, nutritionally deficient, or even dangerous for some prisoners. The elements of many alternate and religious diets do not vary according to a weeks-long “cycle” like the main line meals. Instead, prisoners on the religious diet might get the same meal two or three times a day.

iii. Failure to Transfer Diet Preference with the Prisoner

Under the sincerity investigations and procedures outlined above, obtaining a religious diet can take weeks or months, and sometimes involves waiting periods, interviews, and full-fledged background investigations. A fact which makes matters worse, in many states, is that prisoners must start the meal-accommodation request process from the beginning every time they are transferred to a new facility.

Some states allow diet preference approvals to move with the prisoner. For example, Massachusetts requires that “[s]pecial diets . . . continue *without break* upon transfer to another facility.”²⁰⁹ Colorado also has a specific policy for diet continuation upon transfer to another facility.²¹⁰

Other state policies do not include this commonsense rule. And in Pennsylvania, where more than 20 percent of prisoners identify as Muslim,²¹¹ prisoners transferred out of and returned to the *same* facility must still re-apply through a burdensome process, which includes a facility chaplain director consultation with a faith group leader for “unusual” diet requests.²¹²

6. Religious Property: Access to Devotional Items and Items Used in Prayer

Without clear religious property policies, Muslim prisoners face the challenge of having their devotional items desecrated or mishandled,²¹³ or even confiscated repeatedly as contraband.²¹⁴

The most universally important devotional items for Muslims are prayer rugs and schedules, Qur’ans, and head coverings. Other important items include prayer beads and scented oil. Some Muslim believers might require additional or different items. State policies vary widely in their default acceptance of Muslim religious property. On the unduly restrictive side, Kansas requires all religious item requests to be approved through the chaplain, even for something as basic as a Bible or Qur’an.²¹⁵

On the more accommodating end of the spectrum, some states allow any prisoner to access any religious property, regardless of their designated faith group.²¹⁶ More thoughtful policies also recognize that correctional officers may not be familiar with the diversity of religious property for each faith and so may confiscate approved items as contraband. To avoid this problem, facilities in Indiana issue laminated cards or memoranda to prisoners that note their authorized religious items to avoid confiscation. Individual property moves with prisoners when they transfer, unless the new facility prohibits a specific item.²¹⁷

Recognizing the importance of daily prayer in a clean space, Massachusetts requires an extra towel to be issued to Muslims for use as a prayer mat,²¹⁸ while Maryland allows diverse types of religious clothing to be worn at weekly congregational prayer.²¹⁹ Such accommodations could be provided at prisons across the country, but are not.

7. Administrative Segregation and Free Exercise Deprivation as a Form of Punishment

When a state places a prisoner in restrictive or disciplinary housing, do state policies typically mandate that baseline levels of accommodation change? Not all states specify, but a guiding principle is that the removal of religious services and access cannot be used as a form of punishment. Religious exercise is not a discretionary benefit that prisons may offer, but is a right they can only restrict after passing RLUIPA's stringent test.

At least one state actively seeks to prevent prisoners in segregation from becoming Muslim. South Carolina requires extra verifications for someone in restricted housing who wishes to convert to Islam. The state places this extra requirement on no other religious group.²²⁰

Some states have a directive specifically protecting access to religious services for prisoners in segregation. A District of Columbia directive specifies that inmates in restrictive housing "shall" have access to religious guidance.²²¹ Hawai'i specifies that the chaplain may have "one-on-one contact" with special housing prisoners who desire counseling, with approval from the warden.²²² Arizona has a policy requiring the senior chaplain to ensure that "inmates in detention or disciplinary detention have access to and are visited by chaplains as often as possible."²²³

i. Diet

When it comes to diet, New Hampshire notes that the prison "may not sanction an individual by suspending or terminating their religious diet."²²⁴ A New Mexico policy explains that "food shall not be withheld as a disciplinary measure" and generally that special diets for prisoners with beliefs that require adherence to dietary laws shall be available.²²⁵

ii. Property

In many states, prisoners in segregation can access essential religious items, unless there is a compelling reason, for example that a particular item is being abused or poses an articulable threat to safety. Connecticut has onerous rules for obtaining items but provides that the items—including Kufis, beads, and prayer shawls—shall be allowed at *all* security classification levels, except for men on death row.²²⁶

New York State's special housing unit policy provides that "within 72 hours" of admission, each prisoner will be permitted personally owned religious items, including a book, a prayer rug, a prayer shawl, and a kufi or khimar.²²⁷ Arkansas specifically allows religious literature even in "punitive isolation" but makes no mention of other items and thus overlooks many prisoners' needs in this context.²²⁸ Kentucky policy suggests prisoners might not be able to access their prayer rugs while in special housing, but should at minimum be given towels that can be used instead, and that a prayer rug or rug substitute should be "clean and used only for this purpose."²²⁹

California policy allows determinations regarding personal property in special housing to be made on a case-by-case basis, but it has a default rule that medallions, headgear, prayer rugs and prayer shawls are allowed.²³⁰ Washington also takes a case-by-case approach that requires decisions to restrict property to be based on "the offender's behavior and security concerns."²³¹

Under Oregon's restrictive policy, prisoners in special housing can have only "an" emblem or "other religious item" in the cell as long as it is not around the neck,²³² but those in Administrative Segregation or Death Row cannot.

iii. Weekly Congregational Prayer

Michigan allows group weekly services within the same custody level of an institution, except for administrative segregation, where group activity is banned.²³³ Maryland recognizes that groups in protective custody should still have opportunities for weekly congregate worship.²³⁴ New York allows prisoners in "keeplock or confinement" status to submit a written request to attend regularly scheduled congregate services.²³⁵ A separate request is necessary for each service.²³⁶

Some states have overbroad policies categorically forbidding all group activities. Oregon has a complete bar on special housing prisoners participating in group religious activities with other inmates.²³⁷

iv. Conclusion

Some states are clear that it is not acceptable to arbitrarily cut back on prisoners' access to religious services and accommodation just because individuals are in restricted or disciplinary housing. Other states appear to treat certain fundamental free exercise rights as a discretionary privilege, and actively seek to prevent Muslim free exercise in segregation. Although prisons may have different

compelling interests in the context of disciplinary segregation, they have an obligation under RLUIPA to provide the greatest religious liberty possible to all prisoners, including in segregation.

IV. RECOMMENDATIONS: Best Practices for State DOCs and Benchmarks for Prisoner Rights Advocates

In light of these findings, we make the following recommendations to state Departments of Corrections, and provide the following guidelines to prisoners' rights advocates monitoring conditions of confinement around the country or working with Muslim clients:

- A. Prayer: Prisons should permit individual, group, and weekly congregational prayer, and should train officers on how to facilitate this common Muslim practice.**
- Ensure that there is a clean dry place available five times a day, for individual and group prayer.
 - Instruct administrators on the importance of daily prayer, and provide information on the daily prayer schedule and prayer direction. Post this information in dormitories and units where Muslims live.
 - Note the importance of group prayer in a religious services handbook created in consultation with Muslim chaplains or imams.
 - Design a policy to facilitate group prayer in dormitories, work sites, and recreation yards.
 - Narrowly tailor any restrictions on group prayer to each unit or individual security designation and documented history. Do not allow an outright ban on group prayer.
- B. Work Proscriptions and Exemptions: Prisons should pre-approve work holidays and allow for additional holiday requests and for religious work exemptions.**
- Provide a yearly work proscription calendar that grants Muslims days off on appropriate holidays. Allow individuals to request additional work proscription days depending on their beliefs.
 - Allow Muslim prisoners to leave work to attend weekly Friday prayer in congregation. Allow a few hours off each Friday for the weekly congregational prayer.

- Allow Muslims at work to pause for a few minutes to complete their daily prayers, in groups.
 - Provide prisoners the option of reduced hours or no hours during Ramadan, in light of the physical strain of fasting.
 - Do not require Muslims to do work that violates their beliefs.
- C. Burial: Prisons should treat the funerary beliefs of prisoners and their family members with the utmost respect, and should have clear policies allowing for prisoners to indicate their burial beliefs.**
- Provide a clear method for prisoners or next of kin to opt out of default burial or autopsy policies.
 - With regard to autopsies, clarify specific circumstances where there may be a compelling state interest in conducting an autopsy.
 - Do not automatically cremate Muslim dead, and institute a policy of recording and respecting prisoners' end of life preferences.
- D. Head Covering: Prisons should allow religious head coverings throughout the facility and should train officers on how to respectfully search religious garments.**
- Allow religious head coverings throughout the facility.
 - Instruct corrections officers on how to conduct respectful searches of all religious property, including modest garments and head coverings.
 - Allow more than one head covering to be maintained in a prisoner's property.
 - Allow head coverings to be worn on trips and during transfers outside of the prison.
 - Base any restrictions on head covering on specific, documented, and compelling concerns with regard to a given individual or unit.
- E. Diet: Prisons should provide a halal-designated meal option and should not erect unreasonable obstacles to obtaining and maintaining that special diet.**
- During Ramadan, provide double-portioned meals at dinner, and the same breakfast that would otherwise be available. Do not reduce the amount or quality of food.

- Allow prisoners to organize special meals for religious feast days, either by using an authorized vendor or by allowing authorized volunteer groups to provide such meals.
- Provide *halal*-certified diets to Muslims who request them, and implement a policy recognizing that Muslim dietary requirements often go beyond being merely “pork-free.”
- Design religious diets with a reasonable meal cycle and level of nutrition.
- Do not refuse Muslim requests for a kosher diet.
- Make obtaining a religious diet easy or automatic.
- If a religious diet is retracted for a compelling reason, provide a justification to the prisoner and after a reasonable period of time, allow the prisoner to reapply for the diet.
- Transfer diet approvals with the prisoner, even as he or she is moved to new facilities.

F. Religious Property: Prisons should provide access to common religious property, especially Qur’ans, prayer rugs, head coverings, and prayer beads.

- Once a prisoner is designated as belonging to a particular faith, make permission to keep appropriate faith items automatic, absent a specific documented safety concern at a unit or with a particular prisoner.
- Use property cards to prevent accidental or malicious confiscation of religious property as contraband.
- Transfer an individual’s religious property when prisoner is moved to a different location.
- Instruct corrections officers on how to conduct a respectful search of religious items.
- Issue regularly laundered towels or sheets that can be used as prayer rugs, for Muslim prisoners who cannot afford to purchase a rug.
- Reach out to local and national Muslim organizations for donations of Qurans, head coverings, and rugs, and provide them for free to inmates who request them.
- Provide access to common religious items through commissary or outside vendors, and allow family members to send devotional items to loved ones.

G. Administrative Segregation and Restrictive Housing: Prisons should not strip prisoners of fundamental religious exercise rights as a form of punishment.

- Do not take away religious property or cut off religious programming to punish or control prisoners.
- Allow inmates to access showers every day and wash facilities at any time, for ritual ablutions.
- Ensure there is a clean dry place for prayer available five times daily.
- Allow group prayer within the same security level.
- If group activity is not possible for an inmate or unit, offer indirect participation in key congregational activities, for example through closed circuit television.

V. APPENDIX A: Religious Preference Statistics

A. TABLE 1: Prisoners Identifying with a Muslim Group, by State

State Year and method	All Muslims for Period	All Prisoners for Period*	% Muslim Prisoners
Arizona Snapshot 2018 ²³⁸	1,291	41,599	3.1
Arkansas Snapshot 2018 ²³⁹	1,970	17,283	11.4
Colorado Total in 2017 ²⁴⁰	283	6,002	4.7
Connecticut Snapshot 2013 ²⁴¹	1,675	17,191	9.7
D.C. (jail only) Total in 2017 ²⁴²	1,232	5,219	23.6
Delaware Snapshot 2018 ²⁴³	516	5,235	9.9
Florida Snapshot 2018 ²⁴⁴	4,907	94,278	5.2
Georgia Snapshot 2019 reported at entry, active inmates ²⁴⁵	1,485	23,876	6.2
Idaho Total Admits 2017 ²⁴⁶	19	3,009	0.6
Illinois Snapshot 2018 ²⁴⁷	5,377	62,964	8.5
Indiana Snapshot 2018 ²⁴⁸	1,490	26,329	5.7
Kansas Snapshot 2018 ²⁴⁹	419	7,789	5.4
Kentucky Snapshot 2018 ²⁵⁰	791	24,261	3.3
Maryland Snapshot 2018 ²⁵¹	5,084	18,562	27.4
Massachusetts Snapshot 2018 ²⁵²	774	7,919	9.8
Michigan Snapshot 2017 ²⁵³	7,416	39,666	18.7
Minnesota Snapshot 2018 ²⁵⁴	483	9,849	4.9
Mississippi Snapshot 2018 ²⁵⁵	685	19,284	3.6

Missouri Snapshot 2018 ²⁵⁶	3,160	31,216	10.1
Nebraska Snapshot 2018 ²⁵⁷	333	4,829	6.9
Nevada Snapshot 2015 ²⁵⁸	648	15,760	4.1
New Hampshire Snapshot 2018 ²⁵⁹	157	2,027	7.7
New Jersey Snapshot 2018 ²⁶⁰	4,033	19,950	20.2
New York Total Admits 2018 ²⁶¹	7,838	40,533	19.3
North Carolina Unclear, 2018 ²⁶²	5,275	98,937	5.3
North Dakota Total Admits 2017 ²⁶³	23	1,499	1.5
Ohio Snapshot 2018 ²⁶⁴	3,406	40,542	8.4
Pennsylvania Snapshot 2017 ²⁶⁵	10,264	48,438	21.2
Rhode Island Total Admits 2017 ²⁶⁶	196	9,817	2.0
South Carolina Anytime 2017 ²⁶⁷	1,806	27,591	6.6
South Dakota Snapshot 2017 ²⁶⁸	43	3,984	1.1
Texas Snapshot 2018 ²⁶⁹	8,715	145,022	6.0
Utah Total Admits 2017 ²⁷⁰	136	6,252	2.2
Vermont Snapshot 2018 ²⁷¹	30	920	3.3
Wisconsin Snapshot 2018 ²⁷²	2,922	23,488	12.4
TOTAL	84,882	951,120	8.9

* The endnote for each state indicates with greater specificity how the totals were calculated. Where some prisoners were marked affirmatively as having “no preference” (and the like), they are included in the total. But if state data included labels for both “no preference” and “unknown,” then the unknown prisoners were omitted from the total in this Table. We assume many of the “unknown” do have a preference, but were not asked. Also note that some states provided preference data of prison admits only for the year, so those totals do not represent the total incarcerated population in those states. Finally, some states provided data that amalgamated prisoners and individuals under other forms of state supervision (jail, probation, parole). Where there is a marked disparity between our total and the approximate prisoner population according to other sources, we add comparison population data in the relevant endnote.

B. TABLE 2: Muslim Share of Prisoners Over Time in Select States that Provided Longitudinal Data

Note: Seventeen states provided longitudinal data for at least five years

ARIZONA²⁷³ (increasing share and number of Muslim prisoners, as the total number of prisoners increases)

Year	Muslim Share of Population (%)	Number of Muslim prisoners / Total Prisoners
2010	2.7	1,079 / 39,992
2011	2.7	1,091 / 39,829
2012	2.7	1,086 / 39,845
2013	2.7	1,117 / 40,969
2014	2.7	1,131 / 42,097
2015	2.8	1,195 / 42,484
2016	2.9	1,199 / 41,968
2017	3.0	1,256 / 41,613
2018	3.1	1,291 / 41,599

COLORADO²⁷⁴ (increasing share and number of Muslim prisoners in running total each year, as the total number of prisoners increases)

Year	Muslim Share of Bookings that Year (%)	Total Muslims that Year / Total that Year
2010	2.5	100 / 4,066
2011	3.2	122 / 3,827
2012	3.3	120 / 3,684
2013	3.9	161 / 4,133
2014	4.1	192 / 4,744
2015	3.8	168 / 4,394
2016	3.6	172 / 4,827
2017	4.7	283 / 6,002
2018	5.0	174 / 3,517

D.C.²⁷⁵ (increasing share and number of Muslims booked, as the total number booked slightly increases)

Year	Muslim Share of Population (%)	Total Muslims Booked that Year / Total Booked that Year
2010	19.7	980 / 4,973
2011	20.3	1,013 / 4,989

2012	20.5	951 / 4,641
2013	21.5	943 / 4,395
2014	22.0	886 / 4,030
2015	21.6	879 / 4,074
2016	21.2	1109 / 5,219
2017	20.7	1232 / 5,946
2018	25.5	1115 / 4,378

GEORGIA²⁷⁶ (sharply increasing share and number of Muslim admissions as the total number of admissions decreases)

Year	Muslim Share of Admissions (%)	Number of Muslim Admissions / Total Admissions
2010	2.8	309 (10 women) / 11,226
2011	2.2	109 (11 women) / 4,852
2012	3.0	149 (10 women) / 4,986
2013	2.7	119 (12 women) / 4,432
2014	3.9	221 (20 women) / 5,730
2015	4.7	333 (9 women) / 7,025
2016	4.8	388 (18 women) / 8,017
2017	5.8	409 (17 women) / 7,050
2018	6.8	478 (24 women) / 6,996

INDIANA²⁷⁷ (increasing share and number of Muslim prisoners, as the total number of prisoners decreases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	4.2	1,125 (9 women) / 26,610
2011	4.3	1,146 (4 women) / 26,866
2012	4.6	1,270 (9 women) / 27,484
2013	4.6	1,291 (10 women) / 27,985
2014*	4.7	1,309 (8 women) / 28,005
2015	5.0	1,371 (11 women) / 27,246
2016	5.4	1,389 (9 women) / 25,691
2017	5.6	1,433 (13 women) / 25,403
2018	5.7	1,490 (10 women) / 26,329

* snapshot taken in January 2014 (for all other years the snapshot was taken in July).

KANSAS²⁷⁸ (increasing share and number of Muslim prisoners, as total number of prisoners increases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	4.5	318 (15 women) / 7,043
2011	5.0	359 (15 women) / 7,188
2012	5.2	384 (14 women) / 7,339
2013	5.2	385 (22 women) / 7,466
2014	5.0	376 (27 women) / 7,516
2015	5.2	399 (33 women) / 7,690
2016	5.1	390 (37 women) / 7,615
2017	5.2	397 (44 women) / 7,625
2018	5.4	419 (51 women) / 7,789

KENTUCKY²⁷⁹ (increasing share and number of Muslim prisoners, as the total number of prisoners also increases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	3.0	628 / 20,928
2011	3.0	656 / 21,779
2012	2.9	651 / 22,099
2013	3.2	674 / 20,879
2014	3.2	680 / 21,473
2015	3.3	715 / 21,967
2016	3.3	767 / 23,580
2017	3.3	803 / 24,055
2018	3.3	791 / 24,261

MICHIGAN²⁸⁰ (sharply increasing share and number of Muslim prisoners, as the total number of prisoners is decreasing)

Year	Muslim share of Population (%)	Absolute Number of Muslim prisoners / Total Prisoners
2010	14.6	6,455 / 44,113
2011	15.2	6,518 / 42,904
2012	14.1	6,146 / 43,594
2013	13.9	6,068 / 43,704
2014	16.4	7,108 / 43,359
2015	17.3	7,376 / 42,628
2016	18.0	7,387 / 41,122

2017	18.7	7,416 / 39,666
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MINNESOTA²⁸¹ (increasing share and number of Muslim prisoners, as the total number of prisoners is slightly increasing)

Year	Muslim Share of Population (%)	Absolute Number of Muslim Prisoners
2010	3.8	369 / 9,619
2011	4.1	387 / 9,429
2012	4.5	416 / 9,345
2013	4.1	385 / 9,452
2014	4.0	387 / 9,768
2015	4.6	454 / 9,943
2016	4.5	459 / 10,105
2017	4.4	439 / 9,869
2018	4.6	458 / 9,963
2019	5.1	480 / 9,479

MISSOURI²⁸² (increasing share and number of Muslim prisoners, as the total number of prisoners is slightly increasing)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	7.5	2,302 / 30,622
2011	8.1	2,490 / 30,832
2012	8.6	2,683 / 31,247
2013	9.2	2,889 / 31,535
2014	9.3	2,971 / 31,939
2015	9.1	2,954 / 32,329
2016	9.6	3,101 / 32,461
2017	9.6	3,131 / 32,600
2018	10.1	3,160 / 31,216

NEW YORK²⁸³ (increasing share but decreasing number of Muslim prisoners admitted, as the total number of prisoners admitted decreases)

Year	Muslim Share of Population (%)	Total Muslims Admitted that Year / Total Admitted that Year
2010	18.5	9,354 / 50,690
2011	18.4	8,916 / 48,573
2012	17.7	8,265 / 46,724
2013	17.7	8,163 / 45,997
2014	17.6	7,952 / 45,246

2015	17.8	7,943 / 44,569
2016	18.2	7,973 / 43,866
2017	19.0	8,141 / 42,865
2018	19.3	7,838 / 40,533

PENNSYLVANIA²⁸⁴ (increasing share and number of Muslim prisoners, as the total number of prisoners decreases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	19.5	9,991 / 51,321
2011	19.6	10,100 / 51,638
2012	19.9	10,177 / 51,184
2013	20.5	10,542 / 51,512
2014	21.0	10,636 / 50,756
2015	20.7	10,342 / 49,914
2016	20.6	10,176 / 49,301
2017	21.2	10,264 / 48,438

SOUTH CAROLINA²⁸⁵ (slightly decreasing share and number of Muslim prisoners, as the total number of prisoners in custody per year decreases).

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	6.6	2,249 / 33,913
2011	6.7	2,163 / 32,289
2012	6.8	2,122 / 31,016
2013	6.8	2,058 / 30,161
2014	6.5	1,931 / 29,519
2015	6.6	1,865 / 28,473
2016	6.5	1,857 / 28,523
2017	6.5	1,806 / 27,591

SOUTH DAKOTA²⁸⁶ (slightly increasing share and number of Muslim prisoners, as the total number of prisoners increases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2013	1.0	36/3654
2014	1.0	36/3584
2015	1.1	40/3566

2016	1.2	47/3819
2017	1.1	43/3984

TEXAS²⁸⁷ (increasing share and number of Muslim prisoners, as the total number of prisoners decreases)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2010	4.5	6,896 / 154,795
2011	4.5	7,022 / 156,522
2012	4.5	6,928 / 152,303
2013	4.5	6,811 / 150,784
2014	4.7	7,041 / 150,361
2015	5.0	7,478 / 148,146
2016	5.6	8,189 / 147,053
2017	5.9	8,537 / 145,341

UTAH²⁸⁸ (slightly decreasing share and increasing number of Muslim admits, with alarming increase in 2017, as total number of admits increases)

Year	Muslim Share of Population (%)	Total Muslims Booked that Year / Total Booked that Year
2010	2.2	74 / 3,392
2011	1.6	52 / 3,267
2012	2.2	69 / 3,152
2013	1.9	60 / 3,107
2014	2.0	59 / 2,937
2015	1.8	50 / 2,816
2016	1.7	56 / 3,311
2017	2.2	136 / 6,252

WISCONSIN²⁸⁹ (relatively stable share and increasing number of Muslim prisoners, as number of prisoners increases.)

Year	Muslim Share of Population (%)	Number of Muslim Prisoners / Total Prisoners
2013	12.5	2,783 / 22,292
2014	12.9	2,907 / 22,538
2015	13.4	2,990 / 22,307
2016	13.0	2,976 / 22,918
2017	12.4	2,890 / 23,251

C. TABLE 3: Muslim Women in State Prisons

YEAR / STATE	Number of Muslim Women	Muslim Share of Women (%)	Number of Muslim Men	Muslim Share of Men (%)
2018 / Colorado ²⁹⁰	5	0.9	169	5.7
2018 / Delaware ²⁹¹	9	2.7	507	10.3
2019 / Georgia ²⁹²	43	1.7	1,442	6.8
2018 / Kansas ²⁹³	51	6.7	368	5.2
2018 / Missouri ²⁹⁴	33	0.1	3,127	11.2
2018 / Nebraska ²⁹⁵	18	5.0	315	7.1
2018 / New Hampshire ²⁹⁶	3	2.6	151	8.1
2017 / Pennsylvania ²⁹⁷	228	7.9	10,036	22.0
2017 / South Carolina ²⁹⁸	40	1.7	1766	7.0
2018 / Texas ²⁹⁹	279	2.3	8,436	6.3
2017 / Utah ³⁰⁰	10	1.1	126	2.4
2018 / Wisconsin ³⁰¹	40	2.6	2,589	13.7

VI. APPENDIX B: Analysis of 163 Muslim Prisoner Cases in Federal Court

A. TABLE 1: Prevalence of States as a Source of Muslim Free Exercise Complaints

Muslim Litigants from October 10, 2017 – January 23, 2019

*only states with 8 or more cases for the period are shown

State	Cases	Percentage of all cases gathered	Number of Muslim Prisoners ³⁰²
CA	20	12.3	unknown
NY	13	8.0	7,838
VA	10	6.1	unknown
GA	9	5.5	1,485
NC	8	4.9	5,275
TX	8	4.9	8,715
WI	8	4.9	2,922

B. TABLE 2: Procedural Posture of the 163 Cases

Muslim Litigants from October 10, 2017 – January 23, 2019

Posture	Cases	Percentage
Summary Judgement	59	36.2
PLRA screening	41	25.2
Motion to Dismiss	37	23.0
Other	10	6.1
Injunction	9	5.5
Appeal	7	4.3

C. TABLE 3: Accommodation Requests Raised in 163 Cases and Likelihood of Success*

Muslim Litigants from October 10, 2017 – January 23, 2019

Issue	Total Cases	Survived**	Percent Survived	Dismissed	Percent Dismissed
Ramadan	34	16	47.1	18	52.9
Facial Hair	15	5	33.3	10	66.7

Religious Text	8	1	12.5	7	87.5
Prayer	57	20	35.1	37	64.9
Clothing	16	2	12.5	14	87.5
Dietary Restrictions	64	30	46.9	34	53.1
Ritual Items	20	7	35.0	13	65.0
Discriminatory Behavior	16	4	25.0	12	75.0
Access to Religious Leaders	11	4	36.4	7	63.6
Other	18	7	38.9	11	61.1

* Some plaintiffs sought accommodation of more than one religious practice (e.g. a single prisoner's case could seek accommodation of group prayer and also of *halal* diet).

** The "survived" column indicates whether the claim for accommodation on that issue was allowed to proceed to the next stage of the pretrial litigation process, but does not indicate whether the accommodation sought was ultimately granted.

D. TABLE 4: Institutions Producing the Highest Number of Complaints

Note: the top eight facilities were state, not federal, prisons. Together they account for 17 percent of the 163 cases.

Institution	Cases	Percentage
Chippewa Correctional Facility (MI)	4	2.5
Red Onion State Prison (VA)	4	2.5
San Quentin State Prison (CA)	4	2.5
Franklin Correctional Facility (NY)	3	1.8
Green Bay Correctional Institution (WI)	3	1.8
Lanesboro Correctional Institution (NC)	3	1.8
Richard J. Donovan Correctional Facility (CA)	3	1.8
Wallens Ridge State Prison (VA)	3	1.8

ENDNOTES

¹ Letter to the Religious Society Called Quakers, Oct. 1789, in 30 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES, 1745-1799, at 416 (John C. Fitzpatrick ed., 1940).

² The search used was "(RLUIPA or RFRA) AND (prison or immigration or jail) AND (muslim! or moslem! or islam! or moors or "five percent" or "5% nation" or Sunni! or Shia! or Shiite! or Sufi!)."

³ The procedural postures are: (1) Prison Litigation Reform Act (PLRA) pre-screening, (2) motion to dismiss, (3) summary judgment, (4) injunctive relief, (5) appeal, or (6) other. First, the Prison Litigation Reform Act of 1995 intended to decrease the number of frivolous lawsuits brought by prisoners, and implemented a screening procedure whereby prisoners must first exhaust the administrative remedies outlined by their respective correctional facilities before bringing any claims to the court. In this phase of litigation, courts first examine whether the plaintiff has exhausted their administrative remedies. If he has, the court will allow the case to proceed. After this point, the plaintiff could face motions to dismiss or motions for summary judgment brought by the defendants. A motion to dismiss is granted if the court determines that even if all of the plaintiff's allegations were found to be true, they would not be legally sufficient to state a claim upon which relief can be granted. Summary judgment is granted when the court finds there is no dispute of material fact to send to trial. Finally, the court can issue an order granting a preliminary injunction, temporary restraining order, or final injunction, in which would the defendant is being ordered to change its practices in some way. After the case has been heard by the district court, either party may try to appeal the case to the federal court of appeals.

⁴ This fact frequently comes as a surprise both to non-Muslims and to recently-arrived Muslims. SYLVIANE A. DIOUF, *SERVANTS OF ALLAH 2* (2d ed. 2013).

⁵ *Demographic Portrait of Muslim Americans*, PEW RESEARCH CENTER (July 26, 2017), <http://www.pewforum.org/2017/07/26/demographic-portrait-of-muslim-americans>.

⁶ Sidedoor Podcast Ep. 17: Enslaved and Muslim in Early America, SMITHSONIAN INSTITUTION, at 3:40 (Jan. 30, 2018); *African Muslims in Early America: Religion, Literacy and Liberty*, SMITHSONIAN NAT'L MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE (Jan. 11, 2019), <http://nmaahc.si.edu/explore/stories/collection/african-muslims-early-america>.

⁷ DIOUF, *supra* note 4, at 21.

⁸ DIOUF, *supra* note 4, at 18.

⁹ DIOUF, *supra* note 4, at 100.

¹⁰ DIOUF, *supra* note 4, at 102-04.

¹¹ For example, a list compiled from records from all over the United States contained about 150 names of Arabic origin amid 12,000 African names. DIOUF, *supra* note 4, at 298 nn.48-50 (2013).

¹² DIOUF, *supra* note 4, at 298 n.51 (2013).

¹³ DIOUF, *supra* note 4, at 119-123 (citing numerous reports of plantation owners in the U.S. and Brazil).

¹⁴ DIOUF, *supra* note 4, at 7; see also ALA ALRYYES, *A MUSLIM AMERICAN SLAVE: THE LIFE OF OMAR IBN SAID* (2011); MUHAMMED ABDULLAH AL-AHARI, *BILALI MUHAMMAD: MUSLIM JURISPRUDIST IN ANTEBELLUM GEORGIA* (2010).

¹⁵ *In re Ferguson*, 361 P.2d 417, 418 (Cal. 1961) (describing tensions between Black Muslim prisoners and guards, and summarizing how Muslim prisoners had been segregated into an "old and filthy part of Folsom prison," and that physical force was used without just cause).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 361 P.2d at 420.

¹⁹ Sewell v. Pegelow, 291 F.2d 196, 197 (4th Cir. 1961).

²⁰ DIOUF, *supra* note 4, at 132-134 (noting how the American system of racial classification did not recognize intermediate strata between black and white, and how Americans often confused Muslim Africans with Arabs, Turks, and other groups).

²¹ 291 F.2d at 197.

²² 291 F.2d at 198 (“It has been argued to us that if a hearing is ordered in this instance it will encourage a flood of such petitions, but our answer must be the same as that given by the Second Circuit: ‘We must not play fast and loose with basic constitutional rights in the interest of administrative efficiency.’”) (citation omitted).

²³ 293 F.2d 233 (2d Cir. 1961).

²⁴ 293 F.2d at 234.

²⁵ 293 F.2d at 236.

²⁶ Unfortunately, however, the District Court held that the evidence established the deprivation of good time and segregation was not imposed in violation of constitutional rights to religious freedom. *Pierce v. LaVallee*, 212 F. Supp. 865, 870 (N.D.N.Y. 1962), *aff’d*, 319 F.2d 844 (2d Cir. 1963) (expressing the Court’s view that “such an organization is a likely fomenting point for the unrest and frustration of confined inmates”). *See also* Joseph Shapiro, *How One Inmate Changed the Prison System from the Inside*, NPR CODE SWITCH (Apr. 14, 2017) (detailing the life and revolutionary activism of one of the plaintiffs in *Pierce*, Martin Sostre).

²⁷ *Sostre v. Rockefeller*, 312 F. Supp. 863, 866 (S.D.N.Y. 1970) (in which Judge Constance Baker Motley recognizes that Sostre’s prior legal activity “resulted in the elimination of some of the more outrageously inhumane aspects of solitary confinement in some of the state’s prisons”), *aff’d in part, rev’d in part sub nom Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971).

²⁸ *See sources cited supra* note 27.

²⁹ *See generally* Brief of Muslim Advocates as Amicus Curiae in Support of Plaintiff-Appellee’s Brief and Affirmance, *Mayfield v. Muhammad* (8th Cir. Nov. 28, 2018) (No. 18-2396), <http://www.muslimadvocates.org/files/Final-Amicus-brief-with-file-stamp.pdf>.

³⁰ 378 U.S. 546 (1964).

³¹ Christopher E. Smith, *Black Muslims and the Development of Prisoners’ Rights*, 24 J. BLACK STUDIES 131, 141 (1993).

³² *Id.* at 140.

³³ *Id.*

³⁴ HEATHER A. THOMPSON, *BLOOD IN THE WATER: THE ATTICA PRISON UPRISING OF 1971 AND ITS LEGACY* 79 (2016).

³⁵ *Cruz v. Beto*, 405 U.S. 319 (1972). In *Cruz*, a Buddhist incarcerated in a Texas prison claimed that prison officials had retaliated against him for sharing his religious beliefs with other inmates. He also charged that prison officials had denied him access to his religious adviser and in general discriminated against Buddhists by not making provisions for Buddhist inmates similar to those provided for Christian and Jewish inmates.

³⁶ *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 909 (1990) (Blackmun, J., dissenting).

³⁷ The case actually involved a mail restriction and marriage restriction, but the holding impacted the level of constitutional review available to prisoners generally. 482 U.S. 78, 89 (1987) (“[W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”).

³⁸ 482 U.S. 342 (1987).

³⁹ 482 U.S. at 350-51.

⁴⁰ 494 U.S. 872 (1990).

⁴¹ In fact, Congress has passed more than 200 laws or amendments to provide protection for religious groups, often in reaction to controversial cases. JOHN WITTE, JR. & JOEL A. NICHOLS, *RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT* 149-153 (2016) (also arguing that these laws are ultimately created by a political majority and so can be reversed, and are no substitute for a robust First Amendment that protects religious minorities).

⁴² 42 U.S.C. §2000bb.

⁴³ 42 U.S.C. §2000cc.

⁴⁴ 42 U.S.C. §2000bb-1; 42 U.S.C. §2000cc-1.

⁴⁵ *Id.*

⁴⁶ James D. Nelson, *Incarceration, Accommodation, and Strict Scrutiny*, 95 VA. L. REV. 2053, 2054 (2009) (noting a divide in the circuits in their application of the strict scrutiny test).

⁴⁷ 135 S. Ct. 853 (2015).

⁴⁸ Gregory C. Sisk & Michael Heise, *Muslims and Religious Liberty in the Era of 9/11: Empirical Evidence from the Federal Courts*, 98 IOWA L. REV. 231 (2012).

⁴⁹ *Id.*

⁵⁰ *Id.* at 276-77 (Muslims succeeded in federal court at a rate of 15.5% in prison cases and 17.9% in non-prison cases; by contrast other claimants succeeded in federal court at a rate of 44.8% in prisoner cases and 37.8% in non-prison cases).

⁵¹ *Enforcing Religious Freedom in Prison*, U.S. Commission on Civil Rights, tbl.3.8, at 70; tbl.4.1, at 82 (Sept 2008).

⁵² *Inmate Religion Stats*, BOP FOIA Records Available Online (June 2016),

<http://www.bop.gov/foia/docs/inmatereligionstatsjune2016.pdf> (1.4% identified as “Moorish,” 6.5% identified as “Muslim,” and 1.9% as “Nation”).

⁵³ For example, if one must be designated as “Muslim” to participate in Ramadan but there is no such requirement for Friday prayer, this would tend to incentivize reporting by only the most practicing. But if someone wished only to attend Friday prayers and didn’t participate in Ramadan, perhaps they would not self-report.

⁵⁴ The percentages in each state are summarized and compiled in the Appendix to this Report. See *infra* Appendix A, Table 1.

⁵⁵ *Id.*

⁵⁶ Besheer Mohamed, *New Estimates Show U.S. Muslim Population Continues to Grow*, PEW (Jan. 3, 2018), <http://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow>.

⁵⁷ See *infra* Appendix A, Table 2.

⁵⁸ Nicole Lewis, *The U.S. Prison Population is Shrinking*, THE MARSHALL PROJECT (Apr. 24, 2019), <http://www.themarshallproject.org/2019/04/24/the-us-prison-population-is-shrinking> (reporting that the number of people in U.S. prisons fell to a nine year low of just under 1.5 million last year, a 1.3 percent decrease, but that in some states, rates of incarceration increased over the last year).

⁵⁹ See *infra* Appendix A, Table 3.

⁶⁰ *Muslims by State*, PEW RESEARCH CENTER (2019), <http://www.pewforum.org/religious-landscape-study/religious-tradition/muslim>.

⁶¹ See *infra* Appendix A, Table 3

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- ⁶² The number increased from 15 to more than 50 in eight years. *See infra* Appendix A, Table 2, Kansas.
- ⁶³ *See infra* Appendix B.
- ⁶⁴ We counted 163 federal cases from October 10, 2017 to January 23, 2019 (a period of 470 days).
- ⁶⁵ 28 U.S.C. § 1915(b).
- ⁶⁶ For a more comprehensive discussion of PLRA filing and fee requirements, see *Chapter 14, The Prison Litigation Reform Act*, in *A JAILHOUSE LAWYER'S MANUAL* (2017).
- ⁶⁷ Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POLICY INITIATIVE (Apr. 10, 2017), <http://www.prisonpolicy.org/blog/2017/04/10/wages>.
- ⁶⁸ *See infra* Appendix B, Table 4: Institutions Resulting in Highest Number of Complaints; *see also* *Evans v. Brown*, No. 16-cv-07318-YGR (PR), 2018 WL 3219418 (N.D. Cal. July 2, 2018); *Smith v. Cruzen*, No. 14-CV-04791 LHK (PR), 2017 WL 4865565 (N.D. Cal. Oct. 26, 2017); *Saif'ullah v. Cruzen*, No. 15-CV-01739 LHK (PR), 2017 WL 4865601 (N.D. Cal. Oct. 26, 2017); *Saif'ullah v. Albritton*, No. 15-CV-05600 LHK (PR), 2017 WL 6558719 (N.D. Cal. Dec. 21, 2017).
- ⁶⁹ Letter from Charles Richley, Comty. Res. Manager, Cal. Div. Adult Insts., to Joseph (Yusuf) Saei, Legal Fellow, Muslim Advocates, at 1 (Jan. 7, 2019) (responding to California public records request by stating "CDCR does not have a 'Religious Services Manual'" and instead "operate[s] from the California Code of Regulations").
- ⁷⁰ *See infra* Appendix B, Table 1 (noting 64 of 163 cases involved dietary restriction complaints)
- ⁷¹ No. 2018 WL 5634869, 2018 WL 5634869 (W.D.N.Y. Oct. 29, 2018).
- ⁷² *Lewis v. Cates*, No. 15cv791-DMS-MDD, 2017 WL 6422578 (S.D. Cal. 2017); *see generally* Complaint Under the Civil Rights Act § 1983, *Lewis v. Cates*, 2018 WL 5634869 (W.D.N.Y. Oct. 29, 2018) (No. 15cv791-DMS-MDD), ECF No. 1.
- ⁷³ *See Sims v. Wegman*, No. 1:14-cv-00415-AWI-EPG (PC), 2018 WL 1806461 (E.D. Cal. filed Apr. 17, 2018); *Savastano v. LaClair*, No. 9:17-CV-0364 (TJM/DEP), 2018 U.S. Dist. LEXIS 93435 (N.D.N.Y. May 31, 2018); *Hall v. Annucci*, No. 9:17-CV-1069 (GTS/DEP), 2018 WL 1635023 (N.D. N.Y. Apr. 4, 2018).
- ⁷⁴ *Green v. Paramo*, No. 18-cv-00480-BAS-AGS, 2018 WL 6062359 (S.D. Cal. Nov. 20, 2018).
- ⁷⁵ *See Shakur v. Thomas*, No. 9:14-CV-00427 (MAD/TWD), 2018 WL 3217170 (N.D.N.Y. July 2, 2018); *Watford v. Harner*, No. 18-cv-1313-MJR, 2018 WL 3427805 (S.D. Ill. July 16, 2018); *Johnson v. Lopez*, No. 2:15-cv-00884-JAD-NJK, 2018 WL 1567351 (D. Nev. Mar. 30, 2018); *Muhammad v. Barksdale*, No. 7:16-cv-00328, 2018 WL 3371123 (W.D. Va. July 10, 2018); *Abd-Ali v. Sibanda*, No. 16-1643 Pittsburgh, 2019 WL 244554, (W.D. Pa. Jan. 17, 2019).
- ⁷⁶ *Soriana v. Spearman*, No. 2:17-cv-1617 DB P, 2018 WL 4292270 (E.D. Cal. filed Sept. 7, 2019).
- ⁷⁷ *Sterling v. Sellers*, No. 5:16-CV-00013-MTT-MSH, 2018 WL 4689462 (M.D. Ga. Sept. 29, 2018).
- ⁷⁸ *Wright v. Stallone*, No. 9:17-CV-0487 (LEK/TWD), 2018 WL 671256 (N.D.N.Y. Jan. 31, 2018).
- ⁷⁹ *Knott v. McLaughlin*, No. 5:17-cv-36-MTT-CHW, 2017 WL 6820151 (M.D. Ga. Nov. 1, 2017).
- ⁸⁰ *See Hargrove v. Frisby*, No. 1:17-cv-748, 2018 WL 2937466 (S.D. Ohio filed June 12, 2018); *Hardy v. Agee*, No. 16-2005, 2018 U.S. App. LEXIS 5648 (6th Cir. filed Mar. 5, 2018).
- ⁸¹ This part of the report focuses on written policies. It is possible that accommodating written policies are not fully implemented or followed in some places, or that some places with non-accommodating written policies in fact provide higher levels of accommodation.
- ⁸² 42 U.S.C. § 2000bb; 42 U.S.C. § 2000cc. Compelling interests must be demonstrated and not merely asserted and typically include security and order. *Spratt v. R.I. Dep't Corr.*, 482 F.3d 33, 39 (1st Cir. 2007); *Kroger v. Bryan*, 523 F.3d 789, 800-01 (7th Cir. 2008). Less-than-compelling interests include cost reduction or convenience. *See e.g.*, *Shalkur v. Schriro*, 514 F.3d 878, 890 (9th

Cir. 2008) (rejecting cost reduction as a compelling interest); *Lovelace v. Lee*, 472 F.3d 174, 190 (4th Cir. 2006) (rejecting notion that administrative convenience is a compelling interest).

⁸³ 42 U.S.C. § 2000bb-1(b)(2); 42 U.S.C. § 2000cc-(a)(1)(B).

⁸⁴ Brief of Muslim Advocates as Amicus Curiae in Support of Plaintiff-Appellee’s Brief and Affirmance, *Mayfield v. Muhammad*, at 15 (8th Cir. Nov. 28, 2018) (No. 18-2396), <http://www.muslimadvocates.org/files/Final-Amicus-brief-with-file-stamp.pdf>.

⁸⁵ *Chaplaincy Handbook of Religious Beliefs and Practices*, Ill. Dep’t Corr., at 133 (Mar. 2018); *Handbook of Religious Beliefs and Practices*, Ind. Dep’t Corr., Sec. X-3, at 23-24 (Jan. 2018); *Religious Services Handbook*, Mass. Dep’t Corr., at 63 (Jan. 2018); *Religious Profiles, Al-Islam/Muslim*, Mo. Dep’t Corr., at 1 (Aug. 2018); *Religious Practices Reference Manual*, N.C. Dep’t Corr. Div. Prisons, at 93 (Apr. 18, 2012); *Inmate Religion*, S.C. Dep’t Corr. PS-10.05, at 17 (Aug. 6, 2015); *Handbook of Religious Beliefs and Practices*, Wash. Dep’t Corr., at 42 (2013).

⁸⁶ *Development and Delivery of Religious Services*, Ind. Dep’t Corr. No 01-03-101, at 16 (Jan 1, 2018).

⁸⁷ *Handbook of Religious Beliefs and Practices*, Ind. Dep’t Corr., Sec. X-3, at 23 (Jan. 2018).

⁸⁸ *Scheduling of Religious Activities and Use of Ritualistic Elements for Islam*, N.J. Dep’t Corr. PCS.002.REL.004.ISLAM, at 5 (May 1, 2015) (applies only to level 1 areas).

⁸⁹ *Inmate Religion*, S.C. Dep’t Corr. PS-10.05, at 17 (Aug. 6, 2015).

⁹⁰ *Id.*

⁹¹ See e.g., *Faith-Based Programming and Chaplaincy Services*, Ala. Dep’t Corr., 816.01, at 3 (Aug. 20, 2014); *Religious Programs*, Kans. Dep’t Corr. IMPP10-110D, at 3 (Jan. 30, 2018) (requiring permission for two or more prisoners to meet as a group and hold a religious service); *Religious Services*, Conn. Dep’t Corr., Dir. 10.8, at 4 (Dec. 3, 2018) (noting that “all” collective religious activity “shall” be conducted and supervised by chaplain or volunteer with the same religion as the group, and under no circumstances may an inmate conduct a collective activity, and targeting even individual religious displays in directing that “there shall be no demonstrative public individual prayer that would disrupt the orderly operation of the institution, such as in the work or school area, recreation area, day room, etc. All such prayer must be done privately in one’s cell or by one’s bed.”).

⁹² *Id.*

⁹³ *Religious Activities*, Idaho Dep’t Corr. 403.02.01.001, at 7 (Sept. 22, 2017).

⁹⁴ *Id.*

⁹⁵ *Religious Program*, Haw. Dep’t Corr., Pol. No. COR 12.05, at 7 (May 3, 2017).

⁹⁶ U.S. CONST. amend. XIII §1.

⁹⁷ See generally Whitney Benns, *American Slavery, Reinvented*, THE ATLANTIC (Sept. 1, 2015), <http://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177>.

⁹⁸ *Id.*

⁹⁹ Ala. Dep’t Corr. AR 462, at 6 (Aug. 11, 2015).

¹⁰⁰ Ark. Dep’t Corr. Policy & Proc. – Rel. Servs. No. 550, at 76 (Aug. 1, 2017) (“Inmate participants in Ramadan will go about their assigned jobs as usual.”); *Offender Pastoral Care*, Colo. Dep’t Corr. AR 800-01E, at 5 (Mar. 15, 2018) (allowing proscription for Eid-UI-Fitr, Eid-UI-Adha, and during *Jumah* prayer, but not for Ramadan).

¹⁰¹ *Muslim Religious Practices*, Ohio Dep’t Rehab & Corr., DRC 1362, at 3 (Dec. 26, 2012).

¹⁰² *Religious Services Guide*, Vt. Dep’t Corr., at 32 (Mar. 2017).

¹⁰³ *Inmate Religious Activities/Marriage Requests*, Ariz. Dep’t Corr. DO 904, at 7 (June 11, 2016) (explaining that inmates may “request to be excused from work on specified holy days,

documented as ‘no-work’ days for the religion in question,” and that weekly/recurring no work day requests are entertained by Senior chaplains).

¹⁰⁴ But unclear which days and whether it extends to Ramadan if the adherent wishes. *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep’t Corr., at 24 (2015).

¹⁰⁵ *Development and Delivery of Religious Services*, Ind. Dep’t Corr. No 01-03-101, at 27 (Jan. 1, 2018) (instructing that missing work for observance can be approved on written request two weeks in advance, and that extra work details cannot be required on a religiously restricted day).

¹⁰⁶ *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep’t Corr., at 9 (May 2, 2008) (recognizing a work break only for “Eid-UI-Fitr” and “Eid-UI-Adha,” and requiring written request in advance).

¹⁰⁷ Allows accommodation to miss work or school programs, but notification required in advance. *Religious Services Manual*, Md. Dep’t Pub. Safety & Corr. Servs. OPS.140.0002, at 30 (Mar. 20, 2017).

¹⁰⁸ *Scheduling of Religious Activities and Use of Ritualistic Elements for Islam*, N.J. Dep’t Corr. PCS.002.REL.004.ISLAM, at 4-5 (May 1, 2015) (establishing work breaks at *Jumah* prayer times, and on the two Eids in level 1 areas).

¹⁰⁹ *Religious Programs*, N.M. Corr. Dep’t, CD-101300, attach., at 5 (Apr. 10, 2018) (requiring day off from work for Eids, and up to two hour observance for Ramadan group gatherings and *Jumah* prayer).

¹¹⁰ *Religious Practices Reference Manual*, N.C. Dep’t Corr. Div. Prisons, at 89, 95 (Apr. 18, 2012) (noting Ramadan cannot interfere with work assignments).

¹¹¹ *Religious Holy Day Calendar 2018*, N.Y. State Dep’t Corr. & Comm. Supervision, at 16 (Dec. 8, 2017) (instructing that inmates are off work and programs all day for the “Day of Ghadir”, “Mubahilah,” “Eidul Fitr,” and “Eidul Adha,” but for other holy days, inmates should return to work and programs after the holiday prayer).

¹¹² *Religious Services*, Okla. Dep’t Corr., OP-030112, at 9-10 (Apr. 9, 2019) (explaining that there are generally no exceptions unless “mandated” by faith to abstain for a day or participate in a service at a specific time that conflicts, and that work hours must be made up); *Id.* at attach. D “Authorized Religious Work Restrictions” (recognizing only *Jumah*, an hour at sunset and at sunrise in Ramadan, and for community prayer on *Eid ul-Adha*).

¹¹³ *Religious Activity Procedures Manual*, Penn. Dep’t Corr. DC-ADM 819, at 4-18 (Feb. 1, 2013).

¹¹⁴ *Offender Religious Programs*, Va. Dep’t Corr., No. 841.3, attach. 2 “Master Religious Calendar” (June 1, 2019) (noting that work is prohibited for certain Muslim holidays).

¹¹⁵ *Religious Programs*, Wash. Dep’t Corr., DOC 560.200, at 10 (Feb. 17, 2014) (noting that unless it interrupts order of facility, prisoners “will be excused weekly from mandated programs or work to attend a religious activity of their choice” but not more than once per week).

¹¹⁶ *Religious Beliefs and Practices*, Wisc. Dep’t Corr., DAI Policy 309.61.01, at 8 (Oct. 24, 2016) (explaining that generally “[f]acilities shall make reasonable effort to accommodate an inmate’s observance of days of special significance” and all inmates, including those in “involuntary unassigned status” must request proscriptio 30 days in advance).

¹¹⁷ Ill. Admin. Code tit. 20, § 425.100 (“[P]ersons shall be relieved from a work assignment, without pay, on a recognized religious holiday or celebration which prohibits work or if the work assignment violates the specific requirements of the committed person’s faith subject to concerns regarding safety, security, rehabilitation, institutional order, space, and resources.”)(emphasis added).

¹¹⁸ *Dunn v. Ray*, 586 U.S. ___ (Feb. 7, 2019).

¹¹⁹ 586 U.S. at __ (Kagan, J., dissenting).

¹²⁰ *Id.*

¹²¹ Matthew S. Schwartz, *Supreme Court Halts Execution Of 'Texas 7' Inmate Denied Buddhist Spiritual Adviser*, NPR (Mar. 29, 2016), <http://www.npr.org/2019/03/29/707884682/supreme-court-halts-execution-of-texas-7-inmate-denied-buddhist-spiritual-advise>.

¹²² Sirine Shebaya, *The Supreme Court's Ruling in Ray: A Broken Promise of Religious Liberty for All*, ACS BLOG (Feb. 12, 2019), <http://www.acslaw.org/expertforum/the-supreme-courts-ruling-in-dunn-a-broken-promise-of-religious-liberty-for-all>.

¹²³ *Ray v. Comm'r, Ala. Dep't Corr.*, 915 F.3d 689 (11th Cir. 2019) (noting that the warden denied the request, stating she had no decisional authority over the autopsy), <http://media.ca11.uscourts.gov/opinions/pub/files/201910405.ord.pdf>.

¹²⁴ *Dunn*, 586 U.S. at __.

¹²⁵ See generally *U.S. v. Hammer*, 121 F.Supp.2d 794 (M.D. Pa. 2000); *Kickapoo Traditional Tribe of Tex. v. Chacon*, 46 F.Supp.2d 644 (W.D. Tex. 1999); *You Vang Yang v. Sturner*, 750 F.Supp. 558 (D.R.I. 1990); *Montgomery v. Cty. of Clinton*, 743 F.Supp. 1253 (W.D. Mich. 1990); *Kohn v. U.S.*, 591 F. Supp. 568 (E.D.N.Y. 1984), *aff'd*, 760 F.2d 253 (2d Cir. 1985).

¹²⁶ Abdallah S. Daar & A. Khitamy, *Bioethics for clinicians: 21. Islamic bioethics*, 164(1) *CMAJ* 60 (2001).

¹²⁷ *Death of a Prisoner*, Alaska Dep't Corr., 104.04 (July 2018); *Notification of Inmate Hospitalization or Death*, Ariz. Dep't Corr., 711 § 4.4.4 at 4 (May 30, 2013); *Religious Services Policy & Procedure Manual*, Ark. Dep't Corr., No. 655 at 100 (Aug. 1, 2017); *Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation*, Cal. Dep't Corr., § 3999.417 (July 5, 2019); *Offender Death*, Conn. Dep't Corr., 8.2 (Dec. 15, 2005); *Procedure in the Event of an Offender Death*, Del. Dep't Corr., 11-A-09 (July 16, 2010); *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 81 (2015); *Offender Death and Mortality Reviews*, Ga. Dep't Corr., 507.04.67 (Sept. 25, 2018); *Procedure in the Event of an Inmate Death*, Haw. Dep't Corr., COR.10.1A.10 (Dec. 29, 2008); *Death: Procedure in the Event of an Offender's*, Idaho Dep't Corr., 401.06.03.011 (June 11, 2012); *Administration: Deceased Offenders: Notifications and Required Procedures*, Kan. Dep't Corr., 01-114D (Dec. 10, 2015); *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 9 (May 2, 2008); *Prisoner Death*, Me. Dep't Corr., 18.21 (July 17, 2017); *Death Procedures*, Mass. Dep't Corr., 103 DOC 622 (Jan. 2019); *Deaths: Natural, Accidental, Suicide, Homicide*, Mich. Dep't Corr., 04.06.110 (May 28, 1984); *Death of an Incarcerated Offender*, Minn. Dep't Corr., 203.230 (Mar. 5, 2019); *Offender Death*, Mont. Dep't Corr., DOC 4.5.34 (Jan. 4, 2012); *Serious Illness or Injury, Advance Directives & Death*, Neb. Dep't Corr., 115.13 (Oct. 31, 2018); *Inmate Organ and Blood Donation*, Nev. Dep't Corr., 659 (May 15, 2018); *Inmate Death or Serious Injury Procedure*, Nev. Dep't Corr., 420 (Mar. 7, 2017); *Notification to Designated Individuals in Case of Inmate Serious Illness, Injury, Death*, N.H. Dep't Corr., 6.40 (Dec. 15, 2007); *Notification of Serious Illness, Injury or Death of an Inmate and Procedure in the Event of an Inmate Death*, N.M. Dep't Corr., CD-172100 (Oct. 24, 2018); *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 96 (Apr. 18, 2012); *North Dakota Correctional Facility Standards*, N.D. Dep't Corr., Standard 58 at 20 (June 1, 2018); *Muslim Religious Practices*, Ohio Dep't Rehab & Corr., DRC 1362, at 5 (Dec. 26, 2012); *Inmate Death, Injury and Illness Notification and Procedures*, Okla. Dep't Corr., OP-140111 (Apr. 10, 2018); *Management and Administration of Health Care*, Pa. Dep't Corr., 13.1.1 at 9-1 (Nov. 16, 2016); *Death of an Offender or Unresponsive Offender*, S.D. Dep't Corr., 1.4.E.6 (May 13, 2019); *Procedure to be Followed in Cases of Offender Death*, Tex. Dep't Corr., A-11.1 (Oct. 2018); *Disposition of Deceased Inmate Remains*, Utah Dep't Corr., FI14/03.04 (May 1, 2014); *Terminal Illness and Inmate Death - Facilities*, Vt. Dep't Corr.,

Dir. 353 (Mar. 29, 2006); *Notification of Serious Injury, Illness, or Death*, Va. Dep't Corr., 038.4 at 8 (Dec. 1, 2018); *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 47 (2013); *Death of an Inmate*, Wis. Dep't Corr., No. 300.00.09 (Aug. 20, 2018).

¹²⁸ A. R. Gatrads, *Muslim Customs Surrounding Death, Bereavement, Postmortem Examinations, and Organ Transplants*, 309 *BMJ* 521 (1994).

¹²⁹ *Death of a Prisoner*, Alaska Dep't Corr., 104.04 (July 2018); *Religious Services Policy & Procedure Manual*, Ark. Dep't Corr., No. 655 at 100 (Aug. 1, 2017); *Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation*, Cal. Dep't Corr., § 3999.417 (July 5, 2019); *Offender Death*, Conn. Dep't Corr., 8.2 (Dec. 15, 2005). *Procedure in the Event of an Offender Death*, Del. Dep't Corr., 11-A-09 (July 16, 2010); *Procedure in the Event of an Inmate Death*, Haw. Dep't Corr., COR.10.1A.10 (Dec. 29, 2008); *Death: Procedure in the Event of an Offender's*, Idaho Dep't Corr., 401.06.03.011 (June 11, 2012); *Administration: Deceased Offenders: Notifications and Required Procedures*, Kan. Dep't Corr., 01-114D (Dec. 10, 2015); *Deaths: Natural, Accidental, Suicide, Homicide*, Mich. Dep't Corr., 04.06.110 (May 28, 1984); *Offender Death*, Mont. Dep't Corr., DOC 4.5.34 (Jan. 4, 2012); *Serious Illness or Injury, Advance Directives & Death*, Neb. Dep't Corr., 115.13 (Oct. 31, 2018); *Inmate Organ and Blood Donation*, Nev. Dep't Corr., 659 (May 15, 2018); *Inmate Death or Serious Injury Procedure*, Nev. Dep't Corr., 420 (Mar. 7, 2017); *Notification to Designated Individuals in Case of Inmate Serious Illness, Injury, Death*, N.H. Dep't Corr., 6.40 (Dec. 15, 2007); *Notification of Serious Illness, Injury or Death of an Inmate and Procedure in the Event of an Inmate Death*, N.M. Dep't Corr., CD-172100 (Oct. 24, 2018); *North Dakota Correctional Facility Standards*, N.D. Dep't Corr., Standard 58 at 20 (June 1, 2018); *Inmate Death, Injury and Illness Notification and Procedures*, Okla. Dep't Corr., OP-140111 (Apr. 10, 2018); *Management and Administration of Health Care*, Pa. Dep't Corr., 13.1.1 at 9-1 (Nov. 16, 2016); *Death of an Offender or Unresponsive Offender*, S.D. Dep't Corr., 1.4.E.6 (May 13, 2019); *Disposition of Deceased Inmate Remains*, Utah Dep't Corr., FI14/03.04 (May 1, 2014); *Notification of Serious Injury, Illness, or Death*, Va. Dep't Corr., 038.4 at 8 (Dec. 1, 2018).

¹³⁰ *Death Procedures*, Mass. Dep't Corr., 103 DOC 622 (Jan. 2019).

¹³¹ *Death of an Incarcerated Offender*, Minn. Dep't Corr., 203.230 (Mar. 5, 2019).

¹³² *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 81 (2015).

¹³³ *Prisoner Death*, Me. Dep't Corr., 18.21 (July 17, 2017).

¹³⁴ *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 9 (May 2, 2008).

¹³⁵ *Muslim Religious Practices*, Ohio Dep't Rehab & Corr., DRC 1362, at 5 (Dec. 26, 2012).

¹³⁶ *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 96 (Apr. 18, 2012).

¹³⁷ *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 47 (2013).

¹³⁸ *Religious Services Policy & Procedure Manual*, Ark. Dep't Corr., No. 655 at 100 (Aug. 1, 2017).

¹³⁹ *Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation*, Cal. Dep't Corr., § 3999.417 (July 5, 2019); Cal. Penal Code § 5061 (West).

¹⁴⁰ *Religious Program Services*, Ala. Dep't Corr. AR 462, at 22 (curiously, there is no "Koochie" limitation for non-orthodox Muslim groups according to the policy. E.g. NOI and MSTA can wear kufis throughout the facility).

¹⁴¹ *Property: Religious*, Idaho Dep't Corr. 320.02.01.002, at 3 (Sept. 25, 2017).

¹⁴² *Offender Pastoral Care*, Colo. Dep't Corr. AR 800-01, at 10 (Mar. 15, 2018).

¹⁴³ *Notice to Offenders: Change in General Rules*, Tex. Dep't Crim. Justice (Dec. 1, 2017) (on file with Muslim Advocates) (you may carry, but not wear, your approved religious headgear to and from

religious programming); *Offender Property*, Tex. Dep't Crim. Justice, AD-03.72, at 4, 29 (June 3, 2015) (mentioning hijab and kufi).

¹⁴⁴ Ill. Admin. Code tit. 20, § 425.90(e) ("wearing of religious headgear, including but not limited to fezzes, kufis, and yarmulkes, shall be limited only to the committed person's immediate sleeping area during prayer and to the area of religious service provided that verification is submitted that the wearing of the religious headgear is required by the committed person's designated faith").

¹⁴⁵ *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 11 (May 3, 2017) (written request is needed to wear garment outside of religious services, and verification is needed from the "head of the offender's affiliated church").

¹⁴⁶ *Faith-Based Programming and Chaplaincy Services*, Ala. Dep't Corr., 816.01, at 4 (Aug. 20, 2014) (approved head coverings may be worn "throughout the institution but shall be subject to search").

¹⁴⁷ *Inmate Property*, Conn. Dep't Corr., Dir. 6.10, at 17 (June 26, 2013) ("All headwear shall be removed upon demand for inspection."). Hawai'i apparently has a similar policy. *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 11 (May 3, 2017) (written request is needed to wear garment outside of religious services, and verification is needed from the "head of the offender's affiliated church").

¹⁴⁸ *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 24, 87 (2015) (must be white only for men, scarfs may be white or blue and women can have two of each color. Can be "non-issue" headgear).

¹⁴⁹ *Islamic (Muslim) Guidelines*, Ga. Dep't Corr. VA01-008 SOP 106.08, at 3 (July 15, 2010) (Kufis can be worn "at anytime" provided it is white, and women can cover as appropriate).

¹⁵⁰ *Religious Programs*, Kans. Dep't Corr. IMPP10-110D, at 6 & attach. A, at 2 (Jan. 30, 2018) (policy does not specifically mention hijab, just "yarmulkes, koofi, and tams").

¹⁵¹ *Religious Programs*, Ky. Dep't Corr. Policy 23.1, at 4-5 (Nov. 16, 2018) (headwear, including kufis and hijab, may be worn "in the institution" without apparent limitation) (policy also distinguishes between ceremonial and day-to-day headwear).

¹⁵² *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 51-52 (Mar. 20, 2017) (can be any color but can be changed if needed for safety; can be worn at "all times except when a photo ID is being taken" ; staff searches "should have a reasonable cause" ... with regard to female population, "when searching the (Hijab, scarf), the officers shall conduct a simple pat search while the headgear (Hijab, scarf) is on the offender's head" ... if there is concern, a female officer conducts the search in a private place. Only the offender removes the headgear and puts it back on). The policy's appendix also references the Khimar and Jilbab (formless dress that covers arms and body to ankles). *Id.* (Faith Group Accommodations attachment, app. 4, at 26).

¹⁵³ *Religious Practice Manual*, Nev. Dep't Corr., at 23 (Sept. 5, 2017) ("Only AR 810 recognized religious head covers are allowed. Such head covers may be worn anywhere and at any time in the institution/facility.").

¹⁵⁴ *Religious Programming and Diets*, N.H. Dep't Corr. PPD 7.17, at 6 (Oct. 15, 2017) (stating that "[i]ndividuals under DOC custody are permitted to wear religious head coverings at any time on DOC property or inside all facilities" but the head coverings must be removed "during all formal standing and emergency facility counts," must be removed for search if requested, and "are not permitted inside temporary holding cells"). Note however the list of permissible inmate property seems unclear and includes kufis but fails to include other religious headgear. *Issuance and Control of Inmate Property*, N.H. Dep't Corr. 9.02, at 7 (Mar. 1, 2013).

¹⁵⁵ *Religious Practices Reference Manual*, N.C. Dep't Corr. Div. Prisons, at 91, 96 (Apr. 18, 2012) ("Kufis and scarves may be worn at all times except when ordered to remove them for searches.").

¹⁵⁶ *Religious Programs*, N.D. Dep't Corr. & Rehab., 5E-1, at 5, 17-19 (Dec. 19, 2017) (stating that religious head coverings "shall be allowed," and that religious head coverings, "with the exceptions of bandanas and fezzes" may be worn at religious services. Person may be asked to have covering searched and may be "directed to unfold or unwrap" the item for inspection. Muslim head coverings "may" be limited to use during services and in living quarters).

¹⁵⁷ *Religious Holy Day Calendar 2018*, N.Y. State Dep't Corr. & Comm. Supervision, at 16, 23, 25, 47-48, 57 (Dec. 8, 2017) (on file with Muslim Advocates) (also allowing kufi with tassel for adherents of the Nation of Gods and Earths).

¹⁵⁸ *Religious Services*, Okla. Dep't Corr., OP-030112, attach. B, at 3 (Apr. 9, 2019) (noting that while color and style must be approved, religious headgear "may be worn at all times"). *Cf. id.* attach. A, at 2 (noting the fez is only to be worn during religious ceremonies and stored at all other times).

¹⁵⁹ Memorandum from Matthew Kettle, Ass't Dir., Insts. & Ops., to All Staff (Nov. 6, 2017) (on file with Muslim Advocates) (permitting adherents to Islam and the Nation of Gods and Earths to wear kufis). Memorandum from Matthew Kettle, Ass't Dir., Insts. & Ops., to All Staff (Apr. 9, 2018) (on file with Muslim Advocates) (noting that in addition to kufis and yarmulkes for men, hijabs can be worn "anywhere within the secure facilities except for correctional industries").

¹⁶⁰ *Inmate Religion*, S.C. Dep't Corr. PS-10.05, at 19 (Aug. 6, 2015) (mentioning kufis and "scarves" for Muslim women, which may be worn throughout the facility, indoors and outdoors" and noting that RHU prisoners can have one kufi only, instead of two. The kufi must be white).

¹⁶¹ *Access to Religious Programs*, Utah Dep't Corr., FH03/04.06, 4.08, at 22, 23 (Aug. 27, 2012) (noting that "approved religious head apparel" may be worn at "any time or in any area of the institution").

¹⁶² *Inmate Religious Activities*, Wyo. Dep't Corr., Policy and Procedure # 5.600, at 19 (July 1, 2018) (stating that head coverings approved "for religious purposes" may be worn "throughout the facility, indoors and outdoors" and warden can restrict use of head covering if there is "specific articulable" reason or circumstance).

¹⁶³ *Access to Religious Programs*, Utah Dep't Corr., FH03/04.06, 4.08, at 22, 23 (Aug. 27, 2012).

¹⁶⁴ *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 41 (2013).

¹⁶⁵ *Id.*

¹⁶⁶ *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 51-52 (Mar. 20, 2017) (stating that staff searches "should have a reasonable cause" ... with regard to female population). The policy appendix also references the Khimar and Jilbab (formless dress that covers arms and body to ankles). *Id.* (Faith Group Accommodations attachment, app. 4, at 26).

¹⁶⁷ *Religious Programs*, N.M. Corr. Dep't, CD-101300, Attachment, at 5 (Apr. 10, 2018) (stating that prisoners may possess one hijab or one kufi).

¹⁶⁸ *Muslim Religious Practices*, Ohio Dep't Rehab. & Corr., DRC 1362, at 3-4 (Dec. 26, 2012) (mentioning that Muslim men may have one "white or beige kufi" and Muslim women may have up to three white or beige headscarves).

¹⁶⁹ *See e.g., Religious Activity Procedures Manual*, Penn. Dep't Corr. DC-ADM 819, at 3-7 (Feb. 1, 2013); ("Inmates scheduled for transport are not permitted to wear religious headgear in accordance with Department policy 6.3.1, Section 22.").

¹⁷⁰ See e.g., *Transferring Inmate Property*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4917, at 4 (Apr. 25, 2019) (noting approved religious head covering such as khimar or kufi can be worn during transport).

¹⁷¹ *Id.*

¹⁷² *Dietary Provisions and Religious Practices*, Mo. Dep't Corr., at 1 (Feb. 28, 2012).

¹⁷³ FEBE ARMANIOS & BOĞAÇ ERGENE, HALAL FOOD: A HISTORY 6, 249 (2018).

¹⁷⁴ See *supra* Part II(A).

¹⁷⁵ ARMANIOS, *supra* note 173, at 249.

¹⁷⁶ *Id.* at 146.

¹⁷⁷ States acknowledging the complexity of halal requirements generally note the requirements for halal meat, and note other contaminants and processing prohibitions. See e.g. *Chaplaincy Handbook of Religious Beliefs and Practices*, Ill. Dep't Corr., at 135 (Mar. 2018); *Handbook of Religious Beliefs and Practices*, Ind. Dep't Corr., Sec. X-3, at 24 (Jan. 2018); *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 7 (May 2, 2008).

¹⁷⁸ The following policies evince a limited "pork free" conception of halal requirements (i.e. a view that if there's no pork in it, it is halal compliant): Ala. Dep't Corr. AR 701 (Mar. 19, 2014); Ark. Dep't Corr. Policy & Proc. – Rel. Servs. No. 630 (Aug. 1, 2017); *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 24 (2015); *Islamic (Muslim) Guidelines*, Ga. Dep't Corr. VA01-008 SOP 106.08, at 5 (July 15, 2010); *Religious Services, General Guidelines*, Me. Dep't Corr. Policy 24.3, at 4 (Feb. 15, 2009) (FSM "shall" provide pork free and vegetarian diets to meet the request); *Dietary Provisions and Religious Practices*, Mo. Dep't Corr. (Feb. 28, 2012); *Inmate Religion*, S.C. Dep't Corr. PS-10.05, at 18 (Aug. 6, 2015); *Religious Diet Program for Inmates*, Wyo. Dep't Corr., Policy and Procedure # 5.601, at 18-19 (Apr. 15, 2018).

¹⁷⁹ *Islamic (Muslim) Guidelines*, Ga. Dep't Corr. VA01-008 SOP 106.08, at 5 (July 15, 2010).

¹⁸⁰ *Id.*

¹⁸¹ *Offender Pastoral Care*, Colo. Dep't Corr. AR 800-01E, at 23 (Mar. 15, 2018).

¹⁸² *Medical and Religious Diets*, Colo. Dep't Corr. AAR 1550-15F, at 15 (Apr. 15, 2018).

¹⁸³ *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs. OPS.140.0002, at 44 (Mar. 20, 2017).

¹⁸⁴ Md. Code Regs. 12.03.02.10 (2019).

¹⁸⁵ *Religious Services Handbook*, Mass. Dep't Corr. at 63 (Jan. 2018).

¹⁸⁶ *Religious Beliefs and Practices of Prisoners*, Mich. Dep't Corr., PD 05.03.150, at 6 (Oct. 15, 2015).

¹⁸⁷ *Religious Programming and Diets*, N.H. Dep't Corr. PPD 7.17, at 5 (Oct. 15, 2017).

¹⁸⁸ *Religious Services*, Okla. Dep't Corr., OP-030112, at 10-11 (Apr. 9, 2019); *Id.* attachment C.

¹⁸⁹ Memorandum from Michael Bonneau, Assoc. Dir., R.I. Dep't Corr., to "Distribution" (May 1, 2018) (on file with Muslim Advocates) (noting that with regard to the evening meal portions are to be "larger than the regular portion" during Ramadan but "the portion size of halal meat remains the same.").

¹⁹⁰ *Inmate Religious and Alternative Diets*, S.D. Dep't Corr. 1.5.F.2, at 3 (Dec. 2017).

¹⁹¹ *Religious Diet Program for Inmates*, Wyo. Dep't Corr., Policy and Procedure # 5.601, at 18-19 (Apr. 15, 2018).

¹⁹² *Food Service Operations Manual*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4310 at 20 (Apr. 2018), <http://www.doccs.ny.gov/directives/FSOM.pdf>.

¹⁹³ *Kosher/Halal Meal Program*, City of N.Y. Dep't Corr., Directive #3250 (Dec. 2, 1981); *Preparation/Processing of Kosher/Halal Meals*, City of N.Y. Dep't Corr., Classification #3254R-A (Sept. 15, 1986).

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- ¹⁹⁴ *Handbook of Religious Beliefs and Practices*, Wash. Dep't Corr., at 45-46 (2013).
- ¹⁹⁵ *Id.* at 46.
- ¹⁹⁶ *Id.*
- ¹⁹⁷ *Religious Programs*, Wash. Dep't Corr., DOC 560.200, at 6 (Feb. 17, 2014); *Food Services Program*, Wash. Dep't Corr., DOC 240.100, at 4 (Apr. 6, 2015).
- ¹⁹⁸ *Id.*
- ¹⁹⁹ *Id.*
- ²⁰⁰ *Religious Diets*, Wis. Dep't Corr., DAI policy 309.61.03, at 2 (July 1, 2017).
- ²⁰¹ *Id.* at 2.
- ²⁰² *Id.* at 2.
- ²⁰³ *Id.* at 4.
- ²⁰⁴ *Inmate Common Fare/Religious Diet*, Nev. Dep't Corr. AR 814, at 3 (June 17, 2012).
- ²⁰⁵ *General Food Service Operations*, Iowa Dep't Corr., IS-FS-01, at 3 (Dec. 2015).
- ²⁰⁶ *Religious Diet Program*, Fla. Dep't Corr., Procedure No. 503.006, at 4-5 (May 22, 2013) (outlining sincerity assessment requirements; *See also*, *United States v. Sec'y, Fla. Dep't of Corr.*, No. 12-22958-CIV, 2013 WL 6697786, at *5 (S.D. Fla. Dec. 6, 2013) (describing Procedure No. 503.006, which is available at ECF No. 55-12), *judgment vacated, appeal dismissed*, 778 F.3d 1223 (11th Cir. 2015) (granting preliminary injunction as the policy likely substantially burdens prisoners' free exercise rights) (subsequently dismissed as moot); *Chaplaincy Service: Religion Technical Guide for Selected Religious Groups*, Fla. Dep't Corr., at 24 (2015) (noting that "[t]his edition includes reference to the Department's new Religious Diet Program," continuing to incorporate by reference Procedure No. 503.006, and misstating the outcome of *Sec'y, Fla. Dep't Corr.* by noting "[i]n the process, the Federal Courts have validated the department's sincerity assessment of inmates getting into and remaining in the Religious Diet Program" (the case was dismissed as moot and the policy was not validated)). The Florida diet program provides that the chaplain may verify inmate responses by interviewing staff, inspecting records, conducting internet searches to learn about diet requirements of other religions, and telephoning and emailing clergy.
- ²⁰⁷ *Religious Diet Program*, Fla. Dep't Corr., Procedure No. 503.006, at 4-5 (May 22, 2013).
- ²⁰⁸ *Religious Programs*, N.D. Dep't Corr. & Rehab., 5E-1, at 5 (Dec. 19, 2017).
- ²⁰⁹ *Inmate Common Fare/Religious Diet*, Nev. Dep't Corr., AR 814, at 5-6 (June 17, 2012).
- ²¹⁰ *Religious Services Handbook*, Mass. Dep't Corr., at 10 (Jan. 2018) (emphasis added).
- ²¹¹ *Medical and Religious Diets*, Colo. Dep't Corr., AAR 1550-15, at 6-7 (Apr. 15, 2018).
- ²¹² *See infra* Appendix A, Table 1.
- ²¹³ *Religious Activity Procedures Manual*, Penn. Dep't Corr., DC-ADM 819, at 1-10, 4-17 (Feb. 1, 2013).
- ²¹⁴ *See e.g.*, *Harris v. Escamilla*, 736 Fed. App'x 618 (9th Cir. 2018) (in which a California corrections officer threw an inmate's Qur'an to the floor, stomped on it with his boot, and kicked it under a bunk bed).
- ²¹⁵ *Complaint for Violation of Civil Rights (Prisoner Complaint)* at 5, *Ealom v. United States*, 2018 WL 1899125 (D. Kan. Feb. 28, 2018) (No. 5:18-cv-03045); *Muslim Civil Rights Group Raises Concerns with Leavenworth Prison for Harassment and Discrimination*, MUSLIM ADVOCATES (Sept. 12, 2018), <http://muslimadvocates.org/2018/09/muslim-civil-rights-group-raises-concerns-with-leavenworth-prison-harassment-and-discrimination>.
- ²¹⁶ *Kans. Dep't Corr.*, IMPP10-110D, at 4 (Jan. 30, 2018).

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- ²¹⁶ *Religious/Spiritual Programming*, Mo. Dep't Corr., IS17-1.1, at 12-13 (Jan. 18, 2015). Nevada in contrast only allows folks with declared faith via declaration form keep personal religious property allowed for that faith. *Religious Practice Manual*, Nev. Dep't Corr., at 27 (Sept. 5, 2017).
- ²¹⁷ *Development and Delivery of Religious Services*, Ind. Dep't Corr., No 01-03-101, at 29 (Jan. 1, 2018).
- ²¹⁸ *Religious Services Handbook*, Mass. Dep't Corr., at 63 (Jan. 2018).
- ²¹⁹ *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs., OPS.140.0002, app. 4, at 27 (Mar. 20, 2017) (Faith Group Accommodations Overview).
- ²²⁰ *Inmate Religion*, S.C. Dep't Corr., PS-10.05, at 16, 19 (Aug. 6, 2015).
- ²²¹ *Religious Programs*, D.C. Dep't Corr., PP 4410.1H, at 1 (Jan. 31, 2019).
- ²²² *Religious Program*, Haw. Dep't Corr., Pol. No. COR 12.05, at 16 (May 3, 2017).
- ²²³ *Inmate Religious Activities/Marriage Requests*, Ariz. Dep't Corr. DO 904, at 2 (June 11, 2016).
- ²²⁴ *Religious Programming and Diets*, N.H. Dep't Corr., PPD 7.17, at 5 (Oct. 15, 2017).
- ²²⁵ *Food Service Procedures*, N.M. Corr. Dep't, CD-150900, at 3, 5-6 (Oct. 31, 2018).
- ²²⁶ *Male Property Matrix*, Conn. Dep't Corr., Dir. 6.10 attach. C/3 (Dec. 29, 2014), <http://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0610attcmalepdf.pdf?la=en>; *Female Property Matrix*, Conn. Dep't Corr., Dir. 6.10 attach. B/2 (Dec. 29, 2014), <http://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0610attbfemalepdf.pdf?la=en>; *Religious Services*, Conn. Dep't Corr., Dir. 10.8, at 3 (Dec. 3, 2018).
- ²²⁷ *Special Housing Units*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4933, at 7 (Apr. 18, 2019).
- ²²⁸ *Literature*, Ark. Dep't Corr., Policy & Proc. – Rel. Servs. No. 705 (Aug. 1, 2017).
- ²²⁹ *Kentucky Department of Corrections Religious Reference Manual*, Ky. Dep't Corr., at 8 (May 2, 2008).
- ²³⁰ *Religious Personal Property Matrix*, Cal. Div. Adult Ops. (June 27, 2013), http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202018/RELIGIOUS-PERSONAL-PROPERTY-MATRIX-12-9-13.pdf.
- ²³¹ *Religious Programs*, Wash. Dep't Corr., DOC 560.200, at 10 (Feb. 17, 2014).
- ²³² *Inmate Religious Items*, Or. Admin. R. 291-143-0110 (Nov. 1, 2017).
- ²³³ *Religious Beliefs and Practices of Prisoners*, Mich. Dep't Corr., PD 05.03.150, at 4 (Oct. 15, 2015); *Segregation Standards*, Mich. Dep't Corr., PD 04.05.120, at 6 (Sept. 27, 2010).
- ²³⁴ *Religious Services Manual*, Md. Dep't Pub. Safety & Corr. Servs., OPS.140.0002, at 27 (Mar. 20, 2017).
- ²³⁵ *Religious Programs and Practices*, N.Y. State Dep't Corr. & Comm. Supervision, No. 4202, at 7 (Oct. 19, 2015).
- ²³⁶ *Id.*
- ²³⁷ *Religious Activities*, Or. Admin. R. 291-143-0080(3) (2017).
- ²³⁸ The numbers provided are a snapshot of July 31, 2018. *Frequency of Religion of Confined Population as of 31 Jul 2018*, Ariz. Dep't Corr. (Oct. 16, 2018) (on file with Muslim Advocates) (identifying 1291 prisoners with “Islam Muslim”).
- ²³⁹ The numbers provided are a snapshot of October 25, 2018. *ADC Inmates by Religion as of 10-25-2018*, Ark. Dep't Corr. (on file with Muslim Advocates) (identifying 1193 prisoners with “Islam” and 777 with “Muslim”). Note that the total in Table 1 omits 582 prisoners with unknown preferences.
- ²⁴⁰ “Demographics CY2017,” *Religion Data Final*, Colo. Dep't Corr. (on file with Muslim Advocates) (identifying 26 inmates as “Moorish Science Temple of America” and 257 as “Islam/Muslim”). Cf. *Detailed State Data*, SENTENCING PROJECT (2019),

<http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 20 thousand in 2017).

²⁴¹ Memo from Anthony J. Bruno, Dir. of Religious Servs., Conn. Dep't Corr., to Monica Rinaldi, Dir. of Programs and Treatment, Conn. Dep't Corr. (Oct. 8, 2013) (on file with Muslim Advocates). 18 percent of the prison population declared "no religion" or refused to provide any information. This population is included in the total population figure. Also note the responsive record provided may include the Connected jail population. Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 12 thousand in 2013).

²⁴² The numbers provided were labeled "total for the year." We add together Muslim (365) Moorish (150) and Sunni Muslim (717). *Count of PCP*, D.C. Dep't Corr. (July 23, 2018). For comparison purposes, the average daily population in the DOC and the Central Detention Facility in 2017 was 3,181. *DC Department of Corrections Facts and Figures*, D.C. Dep't Corr. 5 (Apr. 2017),

<http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20April%202017.pdf>.

²⁴³ The numbers provided are a snapshot of the Level V (Incarceration) Population on July 10, 2018, does not include Level IV ("quasi incarceration"). *Response to Items #5 and #8*, Del. Dep't Corr. (July 19, 2018) (on file with Muslim Advocates).

²⁴⁴ The numbers provided are a snapshot of March 31, 2018. *Religious Preference Statewide*, Fla. Dep't Corr. (June 5, 2018) (on file with Muslim Advocates) (identifying 12 prisoners with "Muslim, Sufi"; 23 with "Muslim, Shiite"; 40 with "Moorish Science"; 205 with "Muslim, Sunni"; 658 with "Nation of Islam"; and 3,969 with "Muslim"). Cf. *Detailed State Data*, Sentencing Project (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 98 thousand in 2017).

²⁴⁵ The numbers provided are a snapshot of February 1, 2019, self-reported at entry to prison, all active inmates. See *Inmate Statistical Profile: All Active Inmates*, Ga. Dep't Corr. 8 (Feb. 1, 2019) (identifying 1,485 prisoners with "Islam."), http://www.gdc.ga.gov/sites/all/themes/gdc/pdf/Profile_all_inmates_2019_01.pdf. Note that 1,638 prisoners reported "None" as a religious affiliation, while a total of 30,994 prisoners either were not asked or for some reason failed to report on their religious preferences. We include in the total those reporting "none" but omit the unreported prisoners from the total. Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 53 thousand in 2017).

²⁴⁶ *IDOC Religious Activities 2010-2017*, Idaho Dep't Corr. (on file with Muslim Advocates) (identifying 7 prisoners with "Islam"; and 12 with "Black Muslim"). Note that the total in the Table omits unreported data for 4,628 prisoners. Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 8 thousand in 2017).

²⁴⁷ The numbers provided are as of June 27, 2018. *Resident Characteristics by Religion*, Ill. Dep't Corr. (on file with Muslim Advocates) (identifying 3,579 prisoners with "Al Islam"; 300 with "Al-Islam (Muslim)"; 807 with "Moorish Science Temple"; 1 with "Mrish Sci Tmpl Amer Rein" (sic); 338 with "Nation of Islam"; and 352 with "Nation of God and Earth"). The responsive record provided may include the Illinois jail population. Cf. *Detailed State Data*, Sentencing Project (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at roughly 41 thousand and the jail population at 21 thousand in 2017).

²⁴⁸ The numbers provided are as of July 2, 2018. *Religion and Select Demographics by Snapshot Date*, Ind. Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates) (identifying 2,057 prisoners as "Muslim" and 837 prisoners as "MSTA/Moor").

²⁴⁹ The numbers provided are from a snapshot at the end of fiscal year June 30, 2018. *Fiscal Year 2018 Population Incarcerated: Gender by Religion Preference (self-reported)*, Kan. Dep't Corr. (2018) (on file with Muslim Advocates). Note that the total in the Table omits prisoners whose religious tradition is marked "unknown." Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 10 thousand in 2017).

²⁵⁰ *2018 Religion Count*, Ky. Dep't Corr. (Dec. 17, 2018) (on file with Muslim Advocates) (identifying 673 prisoners as "Islam"; 70 as "Muslim"; and 48 as "Nation of Islam").

²⁵¹ The numbers provided are from a snapshot of August 6, 2018. *Religious Preference Totals for Department*, Md. Dep't Pub. Safety & Corr. (Aug. 2018) (on file with Muslim Advocates) (identifying 5 prisoners as "Islam Supreme Grand Res. Moorish"; 2,973 as "Islam Sunni"; 5 as "Islam Shi'a"; 235 as "Islam Nation of Islam - Lost-Found"; 1,038 as Islam Nation of Islam - Farrakhan; 33 as "Islam Nation of Islam - Caliph Muhammad"; 513 as Islam Moorish Temple of America"; 183 as "Islam Moorish Small Circle"; and 99 as "Islam"). Note that the total in the Table omits unlisted data for 58 prisoners.

²⁵² The numbers provided are from a snapshot of March 26, 2018. *Active Population Religions 3-26-2018*, Mass. Dep't Corr. (identifying 579 prisoners as "Islam"; 114 as "Nation of Islam"; and 81 as "Nation of Gods and Earth"). Note that the total in the Table omits unreported data for 86 prisoners.

²⁵³ *2017 Total Prisoner Faith Preferences*, Mich. Dep't Corr. (on file with Muslim Advocates) (identifying 2,406 prisoners as "Moorish Science Temple"; 2,163 as "Islam"; and 2,847 as "Nation of Islam").

²⁵⁴ The numbers provided are as of July 1, 2018. *Adult Prison Population Summary*, Minn. Dep't Corr. (2018), http://mn.gov/doc/assets/Minnesota%20Department%20of%20Corrections%20Adult%20Prison%20Population%20Summary%207-1-2018_tcm1089-347924.pdf.

²⁵⁵ The numbers provided are as of June 23, 2018. *Active Inmate Population by Religious Preference*, Miss. Dep't Corr. (June 23, 2018) (on file with Muslim Advocates) (identifying 684 prisoners as "Islam" and 1 as "Sunni" (sic)).

²⁵⁶ The numbers provided are as of September 7, 2018. *Declared Religion of Incarcerated Offenders by Gender*, Mo. Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 1840 prisoners as "Al-Islam/Muslim"; 70 as "Moorish"; 780 as "Moorish Science Temple of America"; 120 as "Muslim"; 348 as "Nation of Islam"; and 2 as "Sufi").

²⁵⁷ The numbers provided are as of August 15, 2018. *NDCS Religions*, Neb. Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 1 prisoner as "Al-Islam"; 155 as "Islam/Muslim"; 19 as "Moorish Science Temple"; 157 as "Muslim/Islam"; and 1 as "Nation of Islam"). Note that the total in the Table omits unlisted data for 348 prisoners.

²⁵⁸ *Faith Groups 2014 & 2015*, Nev. Dep't Corr. (on file with Muslim Advocates) (identifying 632 prisoners as "Islam" and 16 as "Moorish Science Temple"). Note that the total in the Table omits unlisted data for 1070 prisoners. Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 14 thousand in 2017).

²⁵⁹ The numbers provided are as of August 7, 2018. *NH Correctional Facility for Women – Client Religion Report*, N.H. Dep’t Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 3 inmates as “Muslim” out of 170 total prisoners, though of the total population, 56 had “unknown” religious preferences); *NH State Prison for Men – Client Religion Report*, N.H. Dep’t Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 91 inmates as “Muslim” and 5 inmates as “Nation of Islam” out of 1,391 total prisoners, though of the total population, 117 had “unknown” religious preferences); *Northern NH Correctional Facility – Client Religion Report*, N.H. Dep’t Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 52 inmates as “Muslim” and 3 inmates as “Nation of Islam” out of 640 total prisoners, though of the total population, 53 had “unknown” religious preferences); *Secure Psychiatric Unit – Client Religion Report*, N.H. Dep’t Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 3 inmates as “Muslim” out of 75 total prisoners, though of the total population, 23 had “unknown” religious preferences). The New Hampshire Department of Corrections also operates three Transitional Housing Units and One Transitional Work Center. *Community Corrections*, N.H. Dep’t of Corrections, <http://www.nh.gov/nhdoc/divisions/community/index.html> (last visited Feb. 26, 2019). As of August 7, 2018, there were 291 individuals incarcerated in these facilities, 13 of whom are identified as Muslim, though of the total population, 51 had “unknown” religious references. *Community Corrections – Client Religion Report*, N.H. Dep’t Corr. (Aug. 7, 2018) (on file with Muslim Advocates). Because New Hampshire is the only state for which Muslim Advocates has religious preference data on individuals in such transitional units, the figure has little comparison value and is not included in the total figures listed in this report.

²⁶⁰ The numbers provided are as of June 21, 2018. *Inmate Management Religion Report*, N.J. Dep’t Corr. (June 21, 2018) (on file with Muslim Advocates).

²⁶¹ *Security Level and Facility by Religious Affiliation*, N.Y. Dep’t Corr. (on file with Muslim Advocates) (identifying 6015 prisoners as “Islam” and 1823 as “Nation of Islam”). Note that the total in the Table omits 6,926 prisoners listed as having unknown preferences. *Cf. Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 50 thousand in 2017).

²⁶² It is unclear what the numbers provided to our record request represent, but it could be total admits over many years, or could be a snapshot that includes parolees. The state’s responsive records on religious preference are dated Dec. 31, 2018 and also report a “frequency missing” of about 75 thousand. *Statistics Request: Offender Religious Preferences 2018* N.C. Dep’t Public Safety (Feb. 21, 2019) (on file with Muslim Advocates) (identifying 1417 prisoners as “Moorish Science” and 3858 as “Islamic”). Note also that the total in the Table omits 9,884 prisoners whose preferences were unknown. *But see Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 35 thousand in 2017).

²⁶³ The number provided is total admissions for the year. *Admissions 2010 through 2018*, N.D. Dep’t Corr. (June 7, 2018) (on file with Muslim Advocates) (identifying 20 admissions as “Muslim” and 3 as “Islam.” Note that the total in the Table omits 18 prisoners for whom religious preference data was unavailable.

²⁶⁴ *Religious Preference Counts 2018*, Ohio Dep’t Corr. (2018) (on file with Muslim Advocates) (identifying 263 prisoners as “Islam-Formerly Black Muslim”; 30 as “Islam (Shiite)”; 1804 as “Islam”; 52 as “Islam (Hanafi)”; 209 as “Islam (Moorish Science)”; 278 as “Islam (Nation of Islam)”; and 770 as “Islam (Sunni)”). Note that the total in the Table omits 8,556 prisoners whose preferences were unavailable. *Cf. Detailed State Data*, SENTENCING PROJECT (2019),

<http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 51 thousand in 2017).

²⁶⁵ The number provided is as of year-end. See *Response to Items 5 and 6*, Penn. Dep't Corr. (2018) (on file with Muslim Advocates).

²⁶⁶ Admissions for 2017 captures the self-identified religion of prisoners admitted in 2017, not all prisoners in custody in 2017. *Copy of Sent Commits 1-10 to 8-18*, R.I. Dep't Corr. (Aug. 2018) (on file with Muslim Advocates). Rhode Island reports show a significant number of releases each year, see generally *Fiscal Year 2017 Annual Population Report*, R.I. Dep't Corr. (Oct. 2017), which helps explain why the total prison population is closer to 2,000, see *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 2 thousand in 2017).

²⁶⁷ The numbers provided are for all prisoners in SCDC custody at any time for any length of stay between Jan. 1 2017 to Dec. 31, 2017. *FOIA for Records Request Item 6*, S.C. Dep't Corr. (2018) (on file with Muslim Advocates). Note that the total in the Table may include parolees, jail, or other populations, as the number provided appears high given state numbers available through the Sentencing Project. Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 20 thousand in 2017).

²⁶⁸ The numbers provided are as of December 31, 2017. Letter from Denny Kaemingk, Cabinet Sec'y, S.D. Dep't Corr., to Joseph Saei, Legal Fellow, Muslim Advocates (Aug. 14, 2018).

²⁶⁹ The numbers provided are as of June 30, 2018. *Texas DOC Records Request*, Tex. Dep't Crim. Justice (2018) (on file with Muslim Advocates). Cf. *Detailed State Data*, SENTENCING PROJECT (2019), <http://www.sentencingproject.org/the-facts/#detail>, (pinning the state prison population at close to 158 thousand in 2017).

²⁷⁰ *Religion Data by Several Variables - 2010 through July 12, 2018*, Utah Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates) (identifying 136 prisoners as "Islamic/Muslim").

²⁷¹ The numbers provided are as of approximately August 14, 2018. *Current Population, Religion*, Vt. Dep't Corr. (Aug. 14, 2018) (on file with Muslim Advocates) (identifying 20 prisoners as "Islam"; 1 as "Islam-Nation of Islam, Lost-Found"; 3 as "Islam-Other"; 1 as "Islam-Shi's" (sic); and 5 as "Islam Sunni"). Note that the total in the Table omits 834 prisoners for whom religious preference is unlisted.

²⁷² The numbers provided are as of June 30, 2018. *DAI-Wide Religious Preference over Time*, Wisc. Dep't Corr. (June 30, 2018) (on file with Muslim Advocates).

²⁷³ *Frequency of Religion 2010-2018*, Ariz. Dep't Corr. (Oct. 16, 2018) (on file with Muslim Advocates).

²⁷⁴ The numbers provided are the running total for 2017 (not total Muslim prisoners in custody, but total submitted as "Muslim" or "Moorish Science" for that year). *Religion Data Final*, Colo. Dep't Corr. (on file with Muslim Advocates).

²⁷⁵ For purposes of this chart, we lump together Muslim, Moorish, and Sunni Muslim prisoners. *Count of PCP*, D.C. Dep't Corr. (July 23, 2018) (on file with Muslim Advocates).

²⁷⁶ The numbers provided reflect religious affiliation self-reported at entry to prison during that calendar year only. *Profiles of Inmate Admissions: Archived Annual Reports*, Ga. Dep't Corr. (2016), http://www.dcor.state.ga.us/Research/Annual_CY_profile_inmate_admissions (click "archived annual reports").

²⁷⁷ *Religion and Select Demographics by Snapshot Date*, Ind. Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates) (identifying prisoners as "Muslim" and "MSTA/Moor").

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- ²⁷⁸ *Fiscal Year 2010- 2018 Population Incarcerated: Gender by Religion Preference (self-reported)*, Kan. Dep't Corr. (2018) (on file with Muslim Advocates). Note that the total in the Table omits prisoners whose religious tradition is marked "unknown."
- ²⁷⁹ *2010-2018 Religion Count*, Ky. Dep't Corr. (Dec. 17, 2018) (on file with Muslim Advocates).
- ²⁸⁰ *2010-2017 Total Prisoner Faith Preferences*, Mich. Dep't Corr. (on file with Muslim Advocates).
- ²⁸¹ The numbers provided snapshots for each year on January 1st. *Historical Offender Population Summary Reports*, Minn. Dep't Corr. (2019), <http://mn.gov/doc/data-publications/offender-statistics/historical-population-summary-reports>.
- ²⁸² *Declared Religion of Incarcerated Offenders 2010-2017*, Mo. Dep't Corr. (on file with Muslim Advocates). For the 2018 row, see *supra* note 256.
- ²⁸³ *Security Level and Facility by Religious Affiliation*, N.Y. Dep't Corr. (on file with Muslim Advocates). Note that the total in the Table omits prisoners whose preferences are marked "unknown" or "missing."
- ²⁸⁴ The numbers provided were marked year-end. *Response to Items 5 and 6*, Penn. Dep't Corr. (2018) (on file with Muslim Advocates).
- ²⁸⁵ The numbers provided are for all prisoners in SCDC custody at any time for any length of stay between Jan. 1, 2017 to Dec. 31, 2017. *FOIA for Records Request Item 6*, S.C. Dep't Corr. (2018) (on file with Muslim Advocates).
- ²⁸⁶ The numbers provided are as of December 31, 2017. Letter from Denny Kaemingk, Cabinet Sec'y, S.D. Dep't Corr., to Joseph Saei, Legal Fellow, Muslim Advocates (Aug. 14, 2018).
- ²⁸⁷ *Texas DOC Records Request*, Tex. Dep't Crim. Justice (2018) (on file with Muslim Advocates).
- ²⁸⁸ *Religion Data by Several Variables - 2010 through July 12, 2018*, Utah Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates).
- ²⁸⁹ The numbers provided are snapshots from November 18, 2013, September 14, 2014, December 31, 2015 December 31, 2016, and December 31 2017. *DAI-Wide Religious Preference over Time*, Wisc. Dep't Corr. (June 30, 2018) (on file with Muslim Advocates).
- ²⁹⁰ "Demographics CY2018," *Religion Data Final*, Colo. Dep't Corr. (on file with Muslim Advocates) (identifying 5 inmates who are women as "Islam/Muslim," 159 inmates who are men as "Islam/Muslim," and 10 inmates who are men as "Moorish Science Temple of America" out of 571 total prisoners who are women and 2,946 total prisoners who are men.)
- ²⁹¹ The numbers provided are a snapshot of the Level V (Incarceration) Population on July 10, 2018, does not include Level IV ("quasi incarceration"). *Response to Items #5 and #8*, Del. Dep't Corr. (July 19, 2018) (on file with Muslim Advocates).
- ²⁹² The numbers provided reflect self-reported preference at entry to prison. See *Inmate Statistical Profile: All Active Inmates*, Ga. Dep't Corr. 8 (Feb. 1, 2019), http://www.gdc.ga.gov/sites/all/themes/gdc/pdf/Profile_all_inmates_2019_01.pdf; see *supra* note 245.
- ²⁹³ The numbers provided reflect snapshots at the end of the fiscal year, June 30, 2018. The percentage of Muslim-identifying women increased from 3.09% in 2010 to 6.72% in 2018, while the absolute number of Muslim women jumped from 15 to 51 in the same period. See *Fiscal Year 2010-18 Population Incarcerated: Gender by Citizenship/Nationality (Self-Reported)*, Kan. Dep't Corr. (2018) (on file with Muslim Advocates).
- ²⁹⁴ The numbers provided are as of September 7, 2018. *Declared Religion of Incarcerated Offenders by Gender*, Mo. Dep't Corr. (2018) (on file with Muslim Advocates) (identifying 1840 prisoners as "Al-Islam/Muslim"; 70 as "Moorish"; 780 as "Moorish Science Temple of America"; 120 as "Muslim"; 348 as "Nation of Islam"; and 2 as "Sufi").

²⁹⁵ *NDCS Religions*, Nebraska Dep't Corr. (Aug. 15, 2018) (due to summary purpose of this chart, I lump together "Al-Islam" "Moorish Science Temple" "Muslim/Islam" and "Nation of Islam" subgroups) (on file with Muslim Advocates).

²⁹⁶ The numbers provided are as of August 7, 2018. *NH Correctional Facility for Women – Client Religion Report*, N.H. Dep't Corr. (Aug. 7, 2018) (on file with Muslim Advocates) (identifying 3 inmates as "Muslim" out of 170 total prisoners, though of the total population, 56 had "unknown" religious preferences). Note that the total in the Table omits prisoners whose preference is marked "unknown." Also note that the Table does not include inmates held in the Secure Psychiatric Unit, as that unit holds both men and women and the report does not separate inmates by sex.

²⁹⁷ The numbers provided were marked year-end. The percentage of Muslim-identifying women slightly decreased from 9.6% in 2010 to 7.89% in 2018. *See Response to Items 5 and 6*, Penn. Dep't Corr. (2018) (on file with Muslim Advocates).

²⁹⁸ The numbers provided are for all prisoners in SCDC custody at any time for any length of stay between Jan. 1 2017 to Dec. 31, 2017. The percentage of Muslim women increased from 1.6% in 2010 to 1.83% in 2018. *FOIA for Records Request Item 6*, S.C. Dep't Corr. (2018) (on file with Muslim Advocates).

²⁹⁹ The numbers provided are as of June 30, 2018. The percentage of Muslim women decreased slightly from 2.74% in 2010 to 2.33% in 2018. *Texas DOC Records Request*, Tex. Dep't Crim. Justice (2018) (on file with Muslim Advocates).

³⁰⁰ *Religion Data by Several Variables – 2010 through July 12, 2018*, Utah Dep't Corr. (2018) (Excel spreadsheet on file with Muslim Advocates).

³⁰¹ *Religious Preference by Site*, Wisc. Dep't Corr. (June 30, 2018) (on file with Muslim Advocates). The men's number only includes "male institutions" not "male centers."

³⁰² *See supra* Appendix A, Table 1.