

UNITED STATES DISTRICT COURT  
THE SOUTHERN DISTRICT OF NEW YORK

DWINEL MONROE,

Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION; KATHLEEN GERBING, in her  
individual capacity; HERBERT E. GOULDING,  
in his individual capacity; PETER WOLFF, in his  
individual capacity; HAFIZ MAHMOOD, in his  
individual capacity; RHONDA MURRAY, in her  
individual capacity, and MARIE HAMMOND, in  
her individual capacity,

Defendants.

CASE NO. 16-CV-2818 (KMK)

THIRD AMENDED COMPLAINT

**THIRD AMENDED COMPLAINT**

Plaintiff Dwinel Monroe (“Mr. Monroe” or “Plaintiff”), by and through the undersigned counsel, pursuant to this Court’s Orders of December 27, 2018 and June 8, 2018 (ECF Nos. 92 and 107), respectfully brings this Third Amended Complaint and alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff Mr. Dwinel Monroe, who is fifty-five years old and a practicing Muslim, was incarcerated in four New York State Department of Corrections and Community Supervision (“DOCCS”) facilities from March 8, 2012 to April 6, 2017. During that time, Defendants DOCCS, Kathleen Gerbing, Dr. Herbert Goulding, Peter Wolff, Imam Hafiz Mahmood, Rhonda Murray, and Marie Hammond engaged in discriminatory and unjust conduct against Mr. Monroe that prevented him from practicing his faith. Defendants also failed to reasonably accommodate Mr. Monroe’s disabilities.

2. Among other things, Defendants prevented Mr. Monroe from observing the holy month of Ramadan during the summer of 2015. Mr. Monroe is a Type II diabetic, and as a result needs to take insulin daily. Despite that medical condition, he fasts every Ramadan and manages his diabetes during that period by taking his insulin after sundown. Mr. Monroe has altered his insulin delivery schedule for many years without incident, including while incarcerated within DOCCS facilities.

3. While Mr. Monroe was incarcerated at DOCCS' Otisville Correctional Facility in June 2015, Defendants Dr. Goulding, Imam Mahmood, Ms. Murray, and Mr. Wolff refused to allow Mr. Monroe to modify his insulin delivery schedule, and as a result, made him choose whether to practice his faith or maintain his health. Defendants Dr. Goulding, Imam Mahmood, Ms. Murray, and Mr. Wolff had no legitimate penological interest in depriving Mr. Monroe of insulin, and they fully knew the harm insulin deprivation can cause a diabetic and the impact their actions would have on his ability to observe Ramadan consistent with his religious beliefs. Defendant Gerbing, Superintendent of Otisville, learned of this behavior and failed to redress it.

4. Additionally, while Mr. Monroe was incarcerated at DOCCS' Greene Correctional Facility from October 1, 2015 to April 6, 2017, Defendant Hammond, the facility's Deputy Superintendent of Programs, failed to provide a reasonable accommodation to Mr. Monroe for the severe lumbar pain he experiences, which requires him to use a cane and prevents him from walking more than short distances. As a result of this lack of accommodation, Mr. Monroe was prevented from attending weekly prayer services while he was housed in that facility, even though attending those services are a critical part of Mr. Monroe's Islamic faith.

5. Defendants' actions prevented Mr. Monroe from adhering to his sincerely held religious beliefs and substantially burdened his ability to practice his faith. As a result of their

behavior, Plaintiff suffered—and continues to suffer—significant physical and emotional distress, and he attributes three transient ischemic attacks or “mini strokes”, episodes that temporarily deprive the brain of blood, to the treatment he endured while incarcerated in DOCCS facilities.

6. Mr. Monroe brings this action under the Free Exercise Clause of the First Amendment pursuant to 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (“ADA”), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.* to redress the many harms inflicted by Defendants. Plaintiff seeks actual, compensatory, and punitive damages; an award of costs and attorneys’ fees; and such other and further relief as this Court deems just and proper.

### **JURISDICTION AND VENUE**

7. This Court has original and exclusive jurisdiction pursuant to 28 U.S.C. § 1331.

8. The Southern District of New York has personal jurisdiction over Defendants because they are located in New York or work at New York State facilities.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) as to all Defendants because DOCCS offices are located in the Southern District of New York and all Defendants are New York State residents. Venue is likewise proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to this Complaint necessarily occurred or failed to occur within the Southern District of New York.

10. Plaintiff has exhausted his administrative remedies pursuant to 28 U.S.C. § 2675(a) and 42 U.S.C. § 1997e(b).

### **THE PARTIES**

11. Plaintiff Mr. Monroe is a resident of New York, New York. He is a practicing Muslim and has identified as such for more than 40 years. He suffers from a number of medical

conditions, including Type II diabetes and severe lumbar pain caused by a spinal injury. As such, he must take insulin daily and walk with a cane. From March 8, 2012 until April 6, 2017, he was incarcerated at four DOCCS correctional facilities, where he was denied the ability to fast for Ramadan, participate in Jumma prayer and denied individualized consideration of his requests for disability accommodations.

12. Defendant New York State DOCCS is a New York State agency that is responsible for the confinement and rehabilitation of inmates. Riverview Correctional Facility, Otisville Correctional Facility, Wallkill Correctional Facility, and Greene Correctional Facility are all DOCCS facilities.

13. Defendant Kathleen Gerbing is the Superintendent of Otisville Correctional Facility. She is sued in her individual capacity.

14. Defendant Dr. Herbert E. Goulding was the head physician at Otisville Correctional Facility. He is sued in his individual capacity.

15. Defendant Peter Wolff is a nurse at Otisville Correctional Facility. He is sued in his individual capacity.

16. Defendant Imam Hafiz Mahmood is an imam at Otisville Correctional Facility. He is sued in his individual capacity.

17. Defendant Rhonda Murray is the nurse administrator at Otisville Correctional Facility. She is sued in her individual capacity.

18. Defendant Marie Hammond is the Deputy Superintendent of Programs at Greene Correctional Facility. She is sued in her individual capacity.

**STATEMENT OF FACTS**

**A. Plaintiff Dwinel Monroe Is A Practicing Muslim And A Qualified Person With A Disability.**

19. Plaintiff is a long-time practicing Muslim, who converted to Islam more than 40 years ago in 1975.

20. Mr. Monroe suffers from a range of medical conditions that necessitate regularly administered medication and mobility assistance. He was diagnosed as a Type II diabetic in 1991 and requires timely doses of daily insulin to maintain healthy blood sugar levels. A spinal injury causes Mr. Monroe severe lumbar pain and impairs his ability to walk, stand, and bear weight. Mr. Monroe requires a cane to perform these basic and necessary tasks. Mr. Monroe suffers from asthma and chronic obstructive pulmonary disease (“COPD”), which inhibit his respiration and thus his mobility.

21. From March 8, 2012 to April 6, 2017, Mr. Monroe was incarcerated in four DOCCS facilities. Specifically, he was housed at Riverview Correctional Facility in Ogdensburg, NY from March 8, 2012 to June 2015. He was housed at Otisville Correctional Facility in Otisville, NY from on or about June 5, 2015 to on or about September 15, 2015. He was housed at Wallkill Correctional Facility in Wallkill, NY from on or about September 17, 2015 to on or about October 1, 2015. He was housed at Greene Correctional Facility in Coxsackie, NY from on or about October 1, 2015 until his release on April 6, 2017.

22. Mr. Monroe’s medical conditions and disabilities were catalogued in his DOCCS medical charts and that information was readily available to DOCCS staff throughout the duration of his incarceration. Accordingly, Defendants were aware during the relevant time of Mr. Monroe’s medical conditions and disabilities and his need for accommodations. As such, at the time of his incarceration, Mr. Monroe was a qualified person with a disability.

**B. Ramadan And Prayer Are Obligatory Islamic Practices.**

23. Ramadan, the holiest month of the Muslim calendar, lasts approximately 30 days. As part of honoring the holiness of the month, many observant Muslims forego all food and all drink, including water, from sunrise until sundown. Muslims are also forbidden from taking medication while fasting and only in cases of extreme hardship—for example, severe illness, medical emergency, pregnancy, or highly advanced age—may a Muslim not fast. Taking medication, including insulin, breaks the fast. Even then, Islamic practice dictates that Muslims are obligated to make up the fasts missed during illness as expediently as possible. Those who cannot fast at all are obligated to give charity instead.

24. It is and was during the time he was incarcerated in DOCCS facilities, Plaintiff's sincerely held religious belief that fasting during Ramadan is mandated upon him, is a key component of his practice of Islam, and can only be excused in the most extreme situations. Mr. Monroe further believes that taking any medication, including insulin, would break his fast and that to not fast during Ramadan or to untimely and purposefully break his fast constitutes a grave sin for which he must engage in serious atonement.

25. Alongside fasting, an integral pillar of Islamic practice is prayer. The most important prayer of the week is the Jummah prayer, which occurs in the early afternoon on Fridays and must be prayed in congregation. Jummah prayer services are led by an imam, who, in addition to leading the prayer, gives a sermon, known as a khutbah.

26. It is and was during the time he was incarcerated in DOCCS facilities, his sincerely held religious belief that he is obliged to attend Jummah as an important component of Plaintiff's Islamic practice.

**C. Otisville Correctional Facility Staff Unjustifiably Prevented Mr. Monroe From Fasting During Ramadan.**

27. On or about June 6, 2015, Mr. Monroe was transferred from Riverview to Otisville, a medium security prison. Ramadan began shortly thereafter, on or about June 18, 2015 and continued until on or about July 17, 2015.

28. On or about June 18, 2015, Mr. Monroe informed Otisville's nurse administrator Rhonda Murray and Otisville's head physician, Dr. Goulding, that he was required to fast during Ramadan. He explained Ramadan's importance and the sacred obligation it places on Muslims. He further informed them that he had fasted without incident for many years, but would need to adjust the timing of his insulin dose to after sundown.

29. Initially, Dr. Goulding granted Mr. Monroe's request.

30. For the first days of Ramadan, Mr. Monroe kept his fasts and reported to the nurse's office after sundown, around 9:00 pm, to receive his medication from the nurse on duty at that time. Mr. Monroe's health was unaffected by either fasting or receiving insulin on the modified schedule. For Mr. Monroe, these first few days of fasting provided him with a great sense of peace and community with the other Muslim inmates who were observing Ramadan alongside him.

31. However, on June 20, 2015, Mr. Wolff, a nurse, informed Mr. Monroe that despite Dr. Goulding's order, he would no longer administer Mr. Monroe's insulin after sundown. Although Mr. Monroe attempted to explain once more his religious obligations under Ramadan, Mr. Wolff stated that if Mr. Monroe wished to take his medication, he would need to break his fast. Mr. Wolff provided Mr. Monroe with no reason for this sudden barrier to his religious practice.

32. Nonetheless, Mr. Monroe continued to fast. On the next evening, June 21, 2015, he reported to the nurse's office before sundown as ordered but refused to take his insulin, because

he was fasting. Mr. Wolff then warned Mr. Monroe that the rules would not be changed for Muslims and if he continued to fast and refuse medication, Mr. Wolff would ticket Mr. Monroe, resulting in disciplinary action.

33. To rectify this situation, Mr. Monroe met with Dr. Goulding on June 22, 2015. Dr. Goulding once more approved the rescheduled insulin delivery to allow Mr. Monroe to continue to fast for Ramadan.

34. For the ten days following Dr. Goulding's renewed approval, Mr. Monroe received his insulin on this altered schedule and fasted without detriment to his health. However, on July 2, 2015, when Mr. Monroe reported to Mr. Wolff after sundown for his insulin, he learned that Dr. Goulding had once again rescinded the order for the modified schedule. No reason had been offered and Mr. Wolff informed Mr. Monroe that he needed to report for his insulin at 7:00 pm, approximately an hour and a half before sundown.

35. Mr. Monroe subsequently wrote to Ms. Murray, who informed him that Mr. Wolff had consulted with Imam Hafiz Mahmood, Otisville's Muslim chaplain. Imam Mahmood informed Mr. Wolff that Muslims did not need to fast in situations involving medical necessity. After Mr. Wolff conveyed this to Dr. Goulding, they rescinded the modified insulin schedule.

36. For the next three days, Mr. Monroe was unable to observe Ramadan and fast.

37. On or about July 6, 2015, another Otisville physician, Dr. Razia Ferdous, examined Mr. Monroe. He apprised her of his desire and willingness to fast for Ramadan and Mr. Wolff's decision to revoke the altered schedule. Seeing no detriment to his health, Dr. Ferdous reinstated the altered medication schedule to permit Mr. Monroe to fast and receive his insulin after sundown.

38. Dr. Ferdous' order allowed Mr. Monroe to return to the modified schedule and he briefly fasted thereafter without any change in his medical condition. However, on or about July

8, 2015, Mr. Wolff once again informed Mr. Monroe that regardless of Ramadan, he would receive his insulin at 7:00 pm or he would not receive it at all. Mr. Wolff informed Mr. Monroe that he had conferred with Imam Mahmood and they had determined that Mr. Monroe did not need to fast this year.

39. In response, Mr. Monroe wrote to Dr. Goulding, challenging this decision. Dr. Goulding called Mr. Monroe to his clinic, where Dr. Goulding informed Mr. Monroe that he had rescinded Dr. Ferdous' order permitting Mr. Monroe to receive his medication at 9:00 pm and keep his fast. Dr. Goulding angrily instructed Mr. Monroe that he could either receive his medication before sundown or he would be denied his insulin wholesale. Once more, Dr. Goulding failed to provide any health or penological reason for not allowing Mr. Monroe to receive his insulin on a modified schedule.

40. Despite this decision, Mr. Monroe continued to fast during Ramadan until the hyperglycemic side effects of insulin deprivation, including pain, dizziness, shaking, and sweating, became so severe and continuous that he was forced break his fast to receive his medication. Being forced to choose between his health and his sincere religious beliefs caused Mr. Monroe significant physical and emotional distress. Ultimately, the choice Mr. Wolff, Dr. Goulding, Imam Mahmood, and Nurse Murray offered him between his daily insulin and his religious practice forced Mr. Monroe to forego fasting for the last five days of Ramadan, which are among the month's most sacred days. When combined with the fasts he was forced to miss earlier in the month, altogether, Mr. Monroe was compelled to forsake eight fasts due to the actions of Dr. Goulding, Mr. Wolff, Imam Mahmood, and Ms. Murray.

41. For Mr. Monroe, the inability to fully participate in the holy month of Ramadan barred him from practicing his faith in accordance with his sincerely held religious beliefs and transformed a peaceful month of worship and community into a trying and dangerous time.

42. No health, security, or other valid penological interest supported preventing Mr. Monroe from receiving his insulin on a modified schedule and fasting in accordance with his sincerely held religious beliefs.

43. While Mr. Monroe was enduring this treatment, he filed a number of formal grievances with Otisville officials. On or about July 28, 2015, Superintendent Gerbing denied one of those grievances. In her denial, Superintendent Gerbing cited to “Islamic jurisprudence” and asserted that “special accommodations for medication distribution are not required.” *See Ex. 1*. In taking this action, Superintendent Gerbing failed to hold any of her staff accountable for denying Mr. Monroe insulin for days during Ramadan and took no measures to address the facility’s practice of forcing individuals like Mr. Monroe to choose between their health and their faith.

44. On October 28, 2015, the DOCCS Central Office Review Committee (“CORC”) conducted a hearing and upheld the “determinations of the Superintendent,” asserting that “[T]he Islamic jurisprudence provides for an observer of Ramadan to be exempt from fasting when it is medically necessary to take medications for their health and that special accommodations for medication distribution are not required.” *See Ex. 1*. Neither CORC nor the Superintendent provided any other reasoning, indicating that their denial was premised exclusively on their own understanding of Islamic jurisprudence—as opposed to an impact on prison resources or concerns for Mr. Monroe’s health. Neither CORC nor Superintendent Gerbing—like Dr. Goulding, Imam Mahmood, Ms. Murray, or Mr. Wolff previously—acknowledged Mr. Monroe’s sincerely held religious belief that he needed to continue to fast throughout Ramadan.

45. Mr. Monroe was incarcerated in different DOCCS facilities during Ramadan in 2012, 2013, 2014, and 2016. During these years, DOCCS staff provided him insulin on a modified schedule so that Mr. Monroe could fast during Ramadan without jeopardizing his health.

**D. Greene Correctional Facility Prevented Mr. Monroe From Participating In Jummah Prayer Services Despite His Sincerely Held Religious Beliefs.**

46. On October 1, 2015, Mr. Monroe was transferred to Greene Correctional Facility.

47. Greene has a North Side and a South Side that are located approximately one mile apart. Mr. Monroe was housed in dormitories on the South Side but the vast majority of Greene's programs, including Jummah prayer services, were hosted on the North Side. Unable to traverse the distance between the North and South Sides due to his back pain and difficulty walking, all programs on the North Side—and many areas of the South Side—were inaccessible to Mr. Monroe.

48. At the time Mr. Monroe was transferred to Greene, no Jummah prayer services were offered on the South Side. It was (and remains) Mr. Monroe's sincerely held religious belief that Islamic practice necessitates congregational prayer on Fridays.

49. Several weeks after arriving at Greene, on or around October 22, 2015, Mr. Monroe filed a grievance to the Deputy Superintendent of Programs at Greene, Defendant Marie Hammond, requesting access to Jummah prayer services either through a bus or transfer to another facility. Mr. Monroe did not receive an adjudication to his grievance for over two months, until January 2, 2016.

50. In the intervening time that Mr. Monroe received no update from any DOCCS officials, he was deprived of the ability to attend Jummah prayer services, causing substantial burden to the free exercise of his sincerely held religious beliefs.

51. In her adjudication, Defendant Hammond rejected Mr. Monroe's request for bus access to Jummah prayer services and refused to transfer him to another facility. Instead, it was decided that to accommodate Mr. Monroe's disability and allow him to abide by his sincerely held religious beliefs, Jummah prayer services would be moved to the South Gym, which was proximate to Mr. Monroe's dormitories and would therefore be accessible to him. *Id.*

52. However, Jummah prayer services were never convened at the South Gym. Instead, there was a several months' delay during which the prayer services were not moved and even the superintendent of Greene acknowledged that the accommodation was not handled in a timely manner. *See Ex. 2.* Even after this delay, the services were not moved to the South Gym but rather to a visiting room on the South Side that was still at a significant distance from Mr. Monroe's dormitories such that Mr. Monroe could not access Jummah prayer services without experiencing severe pain from his mobility and respiratory disabilities. As such, Mr. Monroe continued to be denied meaningful access to Jummah prayer, even though it was (and remains) a core tenet of his Islamic practice.

53. As a result, Mr. Monroe was forced to miss Jummah prayer services for the duration of his period at Greene, a time span that covered approximately 75 Friday services.

**E. DOCCS Denied Mr. Monroe His Cane At Both Otisville And Walkill Correctional Facilities.**

54. When Mr. Monroe was housed in DOCCS' Riverview facility, he was permitted to use a cane as an accommodation for his disability. However, when he was transferred from Riverview to Otisville in June 2015, he was informed that the facility's policy barred inmates from possessing and using canes at Otisville.

55. During his initial medical intake at Otisville, Mr. Monroe explained his need for his cane, his back pain, and his difficulty traversing the hilly Otisville campus. Absent any

individualized consideration of Mr. Monroe's circumstances and his reasonable request, his request for a cane was categorically denied by Otisville's medical staff. They pointed to a general Otisville policy barring disabled inmates from possessing canes, and instead provided him a year-long bus and bottom bunk passes.

56. Mr. Monroe subsequently filed requests for reasonable accommodation seeking the use of his cane while incarcerated in Otisville. These requests were never granted.

57. The bus proved to be a deficient accommodation, regularly failing to transport Mr. Monroe where he needed to go and not alleviating Mr. Monroe's trouble navigating the halls and rooms of the prison buildings themselves. Without his cane, Mr. Monroe was denied meaningful access to the prison services, programs, and activities held at Otisville, such as the Puppies Behind Bars program, college courses through John Jay College, and the Compadre Helper Program.

58. Likewise, while at Wallkill, Mr. Monroe filed a request for reasonable accommodation requesting the return of his cane and an elevator pass. However, he was informed by Wallkill's Deputy Superintendent of Programs Marlyn Kopp that the facility had a general policy forbidding disabled inmates from using canes and that the elevator was only used for laundry. He was accordingly denied an accommodation to use his cane on the basis of this broad policy and without any individualized consideration of his needs and circumstances.

59. As a result of this denial, Mr. Monroe could not walk anything but the shortest distances without grave difficulty or pain. As such, Mr. Monroe was deprived of meaningful access to Wallkill's programs and facilities like the Correctional Industries program and vocational training programs to which he was otherwise legally entitled and nondisabled inmates were able to access.

**F. Mr. Monroe Has Exhausted All His Administrative Remedies.**

60. Mr. Monroe has fully exhausted his administrative remedies regarding his observance of Ramadan at Otisville.

61. Mr. Monroe has fully exhausted his administrative remedies regarding his access to Jummah prayer services at Greene.

62. Mr. Monroe has fully exhausted his administrative remedies regarding his request for an accommodation to use his cane at Otisville.

63. Mr. Monroe has fully exhausted his administrative remedies regarding his request for an accommodation to use his cane at Wallkill.

**G. Procedural Posture**

64. Mr. Monroe first filed his Complaint *pro se* on April 14, 2016 (ECF No. 2). He filed his First Amended Complaint on September 30, 2016 (ECF No. 42) and his Second Amended Complaint on October 26, 2016 (ECF No. 48).

65. On December 27, 2017, this Court issued an opinion and order granting in part and denying in part Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint (ECF No. 92). In its opinion, the Court denied that motion as to Plaintiff's Free Exercise claims regarding the scheduling of his medication during Ramadan against Defendants Dr. Goulding, Mr. Wolff, Ms. Murray, and Imam Mahmood; the Court also refused to dismiss those claims on qualified immunity grounds. The Court dismissed the remainder of Plaintiff's claims without prejudice and ordered that an amended complaint be filed within 30 days of the order's date.

66. During a February 1, 2018 status conference, the Court granted Mr. Monroe until March 1, 2018 to file his amended complaint.

67. On March 1, 2018, Plaintiff—for the first time represented by counsel—successfully sought an extension of this deadline; that deadline was subsequently extended until July 18, 2018 (ECF Nos. 98, 101, 106).

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the Free Exercise Clause of the First Amendment**

(Against Gerbing, Goulding, Mahmood, Murray, and Wolff in their individual capacities)

68. Plaintiff repeats and realleges the allegations in the preceding paragraphs.

69. Mr. Monroe is a practicing Muslim who believes that fasting during Ramadan is a core tenet of his faith. Mr. Monroe suffers from diabetes and requires daily doses of insulin to maintain his health. A dose of insulin administered during fasting hours would break his fast. At no time did Mr. Monroe wish to forsake his fast nor did he experience any medical issues while fasting and receiving his insulin after sundown.

70. Defendants Dr. Goulding, Mr. Wolff, Ms. Murray, and Imam Mahmood substantially burdened Mr. Monroe's religious practice by preventing him from fasting during Ramadan for a total of eight days wherein they refused to alter his insulin delivery schedule to after sundown.

71. Moreover, Defendants Dr. Goulding, Mr. Wolff, Ms. Murray, and Imam Mahmood attempted to force Mr. Monroe to surrender his Ramadan fast by deliberately withholding his insulin for five days and threatening him with ticketing. Defendant Superintendent Gerbing failed to redress this behavior in any way after learning of it.

72. No legitimate penological purpose supported Defendants Superintendent Gerbing, Dr. Goulding, Mr. Wolff, Ms. Murray, and Imam Mahmood's denial of Mr. Monroe's request to receive his medication after sundown.

**COUNT II**

**Violation of the Free Exercise Clause of the First Amendment**  
(Against Hammond in her individual capacity)

73. Plaintiff repeats and realleges the allegations in the preceding paragraphs.

74. Mr. Monroe is a practicing Muslim who believes that praying the communal Jummah prayer is a core tenet of his faith.

75. Defendant Hammond substantially burdened Mr. Monroe's religious practice by preventing him from participating in Jummah approximately 75 times during the course of his incarceration by holding it in a location at Greene inaccessible to Mr. Monroe.

76. No legitimate penological purpose supported Defendant Hammond's denial of Mr. Monroe's request for access to Jummah.

**COUNT III**

**Violation of Title II of the Americans with Disabilities Act**  
**42 U.S.C § 12101, et seq.**

(Against New York State Department of Corrections and Community Supervision)

77. Plaintiff repeats and realleges the allegations in the preceding paragraphs.

78. Mr. Monroe is a qualified person with a disability. He suffers from serious lumbar pain which inhibits his ability to walk, run, and lift weight; he also suffers from asthma and COPD which inhibits his respiratory functions. These issues are catalogued in his medical history and were known to DOCCS at the time of his incarceration.

79. At all times, DOCCS was a public entity that received federal funding and was bound to comply with Title II of the ADA. Mr. Monroe requested reasonable accommodations to allow him meaningful access to Greene's services, programs, and activities on the North Side, including Jummah prayer services, to which he was legally entitled.

80. Officials at Greene failed to hold Jummah prayer services in an area accessible to Mr. Monroe, resulting in a denial of a reasonable accommodation and Mr. Monroe's exclusion

from Jummah prayer services as well as all other programs, and activities convened on the North Side to which other non-disabled inmates were afforded access.

81. Mr. Monroe also requested a reasonable accommodation of a cane to allow him mobility and meaningful to access Otisville and Wallkill's services, programs, and activities to which he was legally entitled. He was denied this accommodation and was excluded from these services, programs, and activities to which other non-disabled inmates were afforded access.

82. These denials were based not on an individualized consideration of Mr. Monroe's circumstances, including the accommodation requested and Mr. Monroe himself, as mandated under Title II of the ADA, but on a general policy barring the use of canes in Otisville and Wallkill.

**COUNT IV**

**Violation of Section 504 of the Rehabilitation Act of 1973**

**29 U.S.C. § 701, *et seq.***

(Against New York State Department of Corrections and Community Supervision)

83. Plaintiff repeats and realleges the allegations in the preceding paragraphs.

84. Mr. Monroe is a qualified person with a disability. He suffers from serious lumbar pain which inhibits his ability to walk, run, and lift weight; he also suffers from asthma and COPD which inhibits his respiratory functions. These issues are catalogued in his medical history and were known to DOCCS at the time of his incarceration.

85. At all times, DOCCS was at all relevant times and continues to be a public entity that received federal funding and was bound to comply with Section 504 of the Rehabilitation Act of 1973. Mr. Monroe requested reasonable accommodations to allow him meaningful access to Greene's services, programs, and activities on the North Side, including Jummah, to which he was legally entitled.

86. Officials at Greene failed to hold Jummah prayer services in an area accessible to Mr. Monroe, resulting in a denial of a reasonable accommodation and Mr. Monroe's exclusion

from Jumah as well as all other programs and activities convened on the North Side to which other non-disabled inmates were afforded access.

87. Mr. Monroe requested a reasonable accommodation of a cane at Otisville and Wallkill to allow him meaningful access to Otisville and Wallkill's services, programs, and activities to which he was legally entitled. He was denied this accommodation and was excluded from these services, programs, and activities to which other non-disabled inmates were afforded access.

88. These denials were based not on an individualized consideration of Mr. Monroe's circumstances, including the accommodation requested and Mr. Monroe himself, but on a general policy barring the use of canes in Otisville and Wallkill in contravention of the Rehabilitation Act.

**DEMAND FOR A JURY TRIAL**

Plaintiff requests a trial by jury for all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands trial by jury and respectfully requests that this Court:

A. Award Plaintiff actual, compensatory, punitive, and any other damages that the Court may deem appropriate against Defendants;

B. Award Plaintiff reasonable attorneys' fees and expenses for the cost of this action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 12205; and

C. Award Plaintiff such other relief as the Court may deem just and proper.

Dated: Washington, D.C.  
July 18, 2018

Respectfully submitted,

/s/ Nimra H. Azmi  
Johnathan J. Smith (Bar No. JS3221)

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*Attorneys for Plaintiff Mr. Dwinel Monroe*

\*Admitted in New York and supervised by  
members of the D.C. Bar.

**CERTIFICATE OF SERVICE**

I certify that on this 18th day of July 2018, a copy of **PLAINTIFF MR. DWINEL MONROE'S THIRD AMENDED COMPLAINT** was electronically filed with Clerk of Court using CM/ECF, which will send notification to the registered attorneys of record of all previously named Defendants that the document has been filed and is available for viewing and downloading. I further certify that Defendant DOCCS will be notified and served as required by the Federal Rules of Civil Procedure and the Local Rules of this Court.

/s/ Nimra H. Azmi  
Nimra H. Azmi  
MUSLIM ADVOCATES  
P.O. Box 66408  
Washington, D.C. 20035

*Attorney for Plaintiff Mr. Dwinel  
Monroe*

# Exhibit 1

OTISVILLE CORRECTIONAL FACILITY  
CASE HISTORY & RECORD FOR CORC

NAME: MONROE, DWINEL #12-R-0759

CODE: 16

GRIEVANCE #: OVF-10366-15 (CONSOLIDATED)

REFERENCES:

TITLE: MEDICATION DURING RAMADAN

- 1) SUPT./OVF-10366-15
- 2) DSA/RESPONSE TO OVF-10366-15
- 3) NA1/RESPONSE TO OVF-10366-15
- 4) RN/RESPONSE TO OVF-10366-15

GRIEVANCE: 6/20/15- I AM A MUSLIM, THIS IS THE MONTH OF RAMADAN, I AM FASTING, I WOULD, SHOULD BE ABLE TO TAKE MY MEDICATION WHEN THE FAST A IS OVER. MR. WOLF (NURSE) IS NOT ALLOWING ME TO TAKE MY MEDS, UNLESS I BREAK MY FAST. I AM FASTING AND IT IS MY RIGHT BY LAW, I SHOULD BE ALLOWED TO FAST, IT IS MY RIGHT UNDER THE U.S. CONSTITUTION, A RIGHT TO PRACTICE MY RELIGION THE FREEDOM TO CHOICE TO FAST IS MINE NOT MR. WOLF (NURSE)

ACTION REQUESTED: TO BE ABLE TO GET MEDS AFTER THE FASTING DAY IS OVER DURING THE MONTH OF RAMADAN AND THE 6 DAYS OF SHAWAL.

I.G.R.C. RECOMMENDATION: 7/23/15- FULL COMMITTEE: DENIED; OUTSIDE THE PURVIEW OF THIS COMMITTEE. GRIEVANCE IS DEALING WITH MEDICAL AND RELIGIOUS ISSUES, WHICH ARE OUTSIDE THE AUTHORITY OF THE FACILITY.

SUPERINTENDENT'S RESPONSE: 7/28/15- INMATE WISHES TO BE AFFORDED A LATE MEDICATION RUN DURING RAMADAN SO AS NOT TO BREAK HIS FAST. IT IS NOTED THAT THE GRIEVANT'S CONCERNS REGARDING MEDICATION DURING RAMADAN WERE ADDRESSED IN PRIOR CORC DISPOSITION CLA-6322-12, WHICH STATES IN PART:

"CORC ASSERTS THAT IT IS NOTED IN THE ISLAMIC JURISPRUDENCE THAT WHEN MEDICALLY NECESSARY FOR AN OBSERVER OF RAMADAN TO TAKE MEDICATION FOR THEIR HEALTH THEY ARE EXEMPT FROM FASTING. CORC ALSO ASSERTS THAT SPECIAL ACCOMMODATIONS FOR MEDICATION DISTRIBUTION ARE NOT REQUIRED."

GRIEVANCE IS DENIED.

APPEAL TO C.O.R.C.: 9/8/15- FIRST IT SHOULD BE NOTED THAT RAMADAN TOUCHES EVERY PART OF THE YEAR WHICH IS CALLED CYCLE, WINTER, SPRING SUMMER AND FALL, CORC DEPARTMENT OF CORRECTIONS CAN NOT CHOICE WHICH MONTHS IT SUPPORTS RAMADAN AND WHICH MONTHS IT DOES NOT SUPPORT RAMADAN. THIS GRIEVANCE IS ONLY ABOUT A MUSLIM WHICH CHOOSE TO FAST DURING THE MONTH OF RAMADAN, HE IS NOT ALLOWED TO EAT, DRINK, OR TAKE MEDICATION UNTIL THE SUN GOES DOWN, THE DEPARTMENT OF D.O.C. IS SAYING IF YOU DO NOT TAKE YOUR MEDICATION AT THE TIME WE GIVE IT TO YOU, YOU CAN NOT TAKE NO MEDICATION AT ALL, SO IT IS OUR WAY OR THE HIGH WAY. THIS IS A VIOLATION OF YOUR RIGHT TO PRACTICE YOUR RELIGION, WHICH IS A FIRST AMENMENT RIGHT TO THE NEW YORK, NEW YORK STATE, AND UNITED STATES CONSTITUTION. CORC TALKS ABOUT ISLAMIC JURISPRUDENCE LIKE IT KNOWS THIS RELIGION BUT IT DOES NOT BECAUSE THIS RULE IS UP TO THE PERSON, [MULISM] NOT ANY OUTSIDE PARTY, THE QURAN STATES:

SURA 2: 184

[FASTING FOR A FIXED NUMBER OF DAYS; BUT IF ANY OF YOU IS "ILL" (SICK) OR ON A JOURNEY, THE PRESCRIBED NUMBER [SHOULD BE MADE UP] FROM DAYS LATER. FOR THOSE WHO CAN DO IT [WITH HARDSHIP] IS A RANSOM, THE FEEDING OF ONE, THAT IS INDIGENT BUT HE THAT WILL GIVE MORE, OF HIS OWN FREE WILL- IT IS BETTER FOR HIM. **AND IT IS BETTER FOR "YOU" THAT YE FAST IF YE ONLY KNEW!!**

 <b>Corrections and Community Supervision</b>  ANDREW M. CUOMO      ANTHONY J. ANNUCCI Governor                      Acting Commissioner	Grievance Number OVF-10366-15	Desig /Code 1/22	Date Filed 6/29/15
	Associated Cases OVF-10386-15		Hearing Date 10/28/15
	Facility Otisville Correctional Facility		
<b>INMATE GRIEVANCE PROGRAM</b> <b>CENTRAL OFFICE REVIEW COMMITTEE</b>	Title of Grievance <b>Medication During Ramadan</b>		

### **GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART**

Upon full hearing of the facts and circumstances in the instant cases, and upon recommendation of the Division of Health Services, the action requested herein is hereby accepted only to the extent that CORC upholds the determinations of the Superintendent for the reasons stated.

CORC asserts that the Islamic jurisprudence provides for an observer of Ramadan to be exempt from fasting when it is medically necessary to take medications for their health, and that special accommodations for medication distribution are not required. It is noted that the Imam was consulted on 6/18/15 to verify if administering the grievant's medication during the Ramadan fast would violate the religious tenets, and that no information regarding his medical conditions were disclosed. In addition, Nurse W... denies interfering with his religious fast, refusing him medication or violating his medical confidentiality.

Additionally, CORC notes that Doctor G... ordered on 6/22/15 for the grievant to receive finger sticks at 4:15pm and to return to the clinic after sundown to receive his insulin. However, this order was subsequently rescinded by Doctor G... on 7/2/15 and he was advised to report to the clinic at 7:00pm for his insulin.

CORC asserts that, consistent with HSPM, Item #1.43 - Specialty Care Referrals, the Facility Health Services Directors (FHSD) have the sole responsibility for providing treatment to the inmates under their care. CORC also asserts that the grievant has the right to refuse medical treatment at the point of service in accordance with HSPM, Item #1.04 and Item #7.18, and upholds the discretion of the provider to determine medication administration times.

In regard to the grievant's appeals, CORC has not been presented with sufficient evidence to substantiate a violation of his rights or malfeasance by staff. CORC notes that he has since been transferred, and advises him to address medication issues via sick call and religious concerns to the Coordinating Chaplain.

RAS/

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# Exhibit 2

**NYSDOCCS- Greene Correctional Facility  
Inmate Grievance Program- Case History & Record**

<b>Log #:</b>	GNE 8784-16	<b>Date Filed:</b>	5/3/16
<b>Name:</b>	MONROE, DWINEL	<b>IGRC:</b>	5/4/16
<b>DIN #:</b>	12R0759	<b>Supt. Date:</b>	6/2/16
<b>Code: (I_X_ / D__)</b>	42	<b>Supt. Decision:</b>	6/9/16
<b>Title:</b>	Requesting Reasonable Accommodations	<b>Appeal:</b>	6/17/16

**Grievance:** 4/14/16

"I filed a request for Reasonable Accommodations with the Dep of Programs and the Dep of Administration, and I also sent a copy to Inmate Grievance Director just in case this process does not work. I am requesting access to the Northside of the Jail, and I am stating that Juma Services have never been in the South Gym like the Dep of Programs states, so I would like this matter addressed."

Action Requested: "To be moved to Fishkill, Woodbourne, back to Otisville, Downstate or where my preference hub was granted by Central Office."

**IGRC response:** 5/4/16

The investigation provided indicates grievant's Request for Reasonable Accommodations was received and is pending determination. Committee notes that it appears his request has not been handled in a timely fashion. **Grievance is accepted only to the extent noted above.**

**Superintendent's response:** 6/9/16

Grievant submitted a Request for Reasonable Accommodations dated 3/25/16 for the purpose of accessing the NA, DMV and Phase III and Re-entry programs on the North Side of the facility.

A determination was made by DSP H. on 6/2/16. It is acknowledged that the grievant's request was not handled in a timely manner. This issue will be addressed with all staff involved in the process.

However, there is no indication the grievant has a need to access the North Side for the programs he refers to at this time. Grievant is not a candidate for the DMV program as he has less than the required 24 months remaining on his sentence. There is no record of the grievant requesting to participate in NA. When the grievant comes within 120 days of his CR date, the facility will provide a Phase III group on the South Side.

Grievant can refer to the CORC decision for his prior complaint GNE 8567-15 which states the reasons for his placement at Greene C.F.. Requests for transfer can be addressed with his assigned ORC. It is also noted that grievant's complaint GNE 8623-15 is pending CORC disposition. Although the determination for his 12/17/15 request and the Supt. response stated Juma Services would be offered in the South Gym it was later determined this location was not appropriate. However, the services were moved to alternative locations on the South Side to accommodate the grievant and another inmate.

**Grievance is affirmed only to the extent noted above.**

**NYSDOCCS- Greene Correctional Facility  
Inmate Grievance Program- Case History & Record**

**CORC appeal (8784-16):** 6/17/16

"This Request is for Access to these Programs. I can only walk "one block" whether the program is on the Northside or the Southside. This inmate can only walk to the Southside Gym. As of this date there is no program in the gym!! So inmate is requesting transfer or inmate bus to programs."