

RE: Religious practice and Ramadan during the coronavirus pandemic

To prison administrators:

The spread of the new and deadly strain of coronavirus (“COVID-19”) has led to unprecedented threats to incarcerated persons’ health, well-being, and right to worship.

The most important and effective method for protecting incarcerated persons is to decarcerate whenever possible. For those who remain, it’s imperative that prisons, immigration detention facilities, and other places housing incarcerated persons take all measures possible to preserve the health and well-being of the prisoners under their care.<sup>1</sup>

Maintaining the ability to practice one’s faith is particularly important during the current crisis, as people are forced to confront potential exposure to a deadly illness, the possible suffering and mortality of sick loved ones and acquaintances, and greater social isolation and economic hardship.

Prisons remain under an obligation to accommodate religious practice to the maximum extent possible, even as they act to mitigate the health crisis. While these obligations extend to all religions, prisons must be particularly sensitive to the needs of practitioners of minority religions. Muslims, for example, are disproportionately incarcerated in state prisons relative to their share of the general population—and among prisoners, they are more likely to present grievances over religious issues and litigate those issues. As the Muslim holy month of Ramadan approaches, it is vital that prisons understand these obligations and prepare in advance to fulfill them.

Yet even prior to the pandemic, many prison systems had poor records of accommodating the needs of minority religions. In fact, state prison systems often denied prisoners religiously appropriate food, prayer and worship opportunities.<sup>2</sup> While reliable information on the federal prison system, local jails, and immigration detention facilities does not exist, it’s clear that these problems are widespread.

We remain deeply concerned that prisons will use this crisis as an excuse to deny basic religious accommodations to prisoners in their care. This obligation is not only a moral and ethical one; it is enshrined in law under both the U.S. Constitution and many federal and state statutes. In particular, the First Amendment’s Free Exercise Clause requires that any restriction of a prisoner’s religious freedom pass a four-part test to show that it is rationally related to a

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<sup>1</sup> <https://muslimadvocates.org/2020/03/muslim-advocates-urges-swift-action-to-protect-incarcerated-americans-amid-coronavirus-crisis/>

<sup>2</sup> [https://muslimadvocates.org/wp-content/uploads/2019/07/FULFILLING-THE-PROMISE-OF-FREE-EXERCISE-FOR-ALL-Muslim-Prisoner-Accommodation-In-State-Prisons-for-distribution-7\\_23-1.pdf](https://muslimadvocates.org/wp-content/uploads/2019/07/FULFILLING-THE-PROMISE-OF-FREE-EXERCISE-FOR-ALL-Muslim-Prisoner-Accommodation-In-State-Prisons-for-distribution-7_23-1.pdf)



compelling government interest.<sup>3</sup> The Religious Freedom Restoration Act (“RFRA”)<sup>4</sup> and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”)<sup>5</sup> require that any federal or state carceral facility justify any action that substantially burdens on a prisoner’s religious practice by showing that the action is the least restrictive means of advancing a compelling government interest. To the extent that prisons cannot safely house prisoners without additional restrictions on their ability to practice religion, the case for decarceration of prisoners is even stronger.

This letter identifies four areas of accommodation that we believe are most at-risk of being denied during the coronavirus pandemic: religious diets, religious articles, religious services and counselors, and appropriate accommodations for the upcoming holy month of Ramadan.

## 1. PRISONS MUST ACCOMMODATE RELIGIOUS DIETS.

Many prisoners require special diets in order to adhere to their religious beliefs. This includes Jewish prisoners requiring kosher meals, Muslim prisoners requiring halal meals, and some Hindu and Sikh prisoners requiring vegetarian meals. Under existing law, prisons must provide these religious meals, even at the cost of additional resources in money and time.<sup>6</sup> These meals must not only meet the religious requirements of the prisoners, they must provide adequate calories and nutritional values for the prisoners to stay healthy.<sup>7</sup> Prisons must not force prisoners to choose between obtaining their religious diets and enjoying any other benefits they have obtained in prison.<sup>8</sup> The Seventh Circuit, for example, has held that even charging prisoners for religious diets like kosher meals was a violation of RLUIPA because meals are generally available for free.<sup>9</sup>

As the COVID-19 pandemic contributes to disruptions of ordinary supply chains, prisons must ensure that they maintain the existing religious diets of incarcerated people. For example, even before the current outbreak, prisons have managed to serve meat containing pork products to prisoners with a dietary restriction that excludes pork.<sup>10</sup> Care should be taken to ensure that such incidents do not recur.

Lastly, prisons should not restrict the ability of prisoners to change their religious designation. In the midst of crisis, prisoners may convert or discover a new religion. Prisons

<sup>3</sup> See *Turner v. Safley*, 482 U.S. 78, 89 (1987).

<sup>4</sup> 42 U.S.C. § 2000bb et seq.

<sup>5</sup> 42 U.S.C. § 2000cc et seq.

<sup>6</sup> See *Lovelace v. Lee*, 472 F.3d 174, 198 (4th Cir. 2006).

<sup>7</sup> See *Shrader v. White*, 761 F.2d 975, 986 (4th Cir. 1985).

<sup>8</sup> See *Shilling v. Crawford*, 536 F. Supp. 2d 1227, 1233 (D. Nev. 2008).

<sup>9</sup> *Jones v. Carter*, 915 F.3d 1147, 1150–51 (7th Cir. 2019).

<sup>10</sup> See *Dowl v. Williams*, No. 3:18-cv-0119, 2018 WL 2392498, at \*2 (D. Alaska May 25, 2018).



must ensure that their paperwork is up-to-date so that prisoners can promptly receive their new religious diets, including (as noted below) permitting new or returning Muslims to participate in Ramadan.<sup>11</sup>

## 2. PRISONS MUST PROVIDE ACCESS TO RELIGIOUS ARTICLES

Many people worship with religious articles, including holy books (such as the Bible, the Qur'an, or other holy texts) or articles used for worship (such as the prayer oil many Muslims use for ritual purification before prayer, or the sage that Native Americans use in their ceremonies). Prisons must provide reasonable accommodations for prisoners who require these articles in order to worship.<sup>12</sup>

Prisons must ensure that prisoners do not face difficulties in obtaining these items during the current crisis. This is a time when many prisoners are calling on their faith for support. Prisons should do everything they can to expedite mail bringing religious articles to the prison. If there are health concerns about prisoner possessions or if relocation of prisoners is necessary, prisons must take special care to ensure that religious articles are preserved and moved with the prisoners whenever possible.

## 3. PRISONS MUST PROVIDE ACCESS TO WORSHIP SERVICES AND COUNSELORS

Prisoners during incarceration face many barriers to worshipping and meeting with spiritual leaders and counselors. Prisons must follow guidance about social distancing and limiting in-person contact in any way that will endanger the safety of prisoners. However, prisons in the past have all too often provided insufficient justifications or even false pretexts to deny prisoners their right to assemble for worship. For example, then-Judge Neil Gorsuch wrote an opinion for the Tenth Circuit Court of Appeals in which he held that the Wyoming Department of Corrections had failed to justify its refusal to permit Native Americans the chance to assemble for worship when it permitted movements throughout the prison for other reasons, like medical emergencies.<sup>13</sup> Group worship should be restricted only to the extent and for the amount of time that is absolutely necessary.

If worship services cannot safely be held in-person, prisons must do everything they can to implement telepresence options.<sup>14</sup> For example, the Fourth Circuit Court of Appeals recently held that the Virginia Department of Corrections had failed to justify its refusal to permit a

<sup>11</sup> See *Mitchell v. Robicheaux*, No. 16-cv-1148, 2020 WL 1492673, at \*9 (E.D. Cal. Mar. 27, 2020).

<sup>12</sup> See *Harris v. Escamilla*, 736 F. App'x 618, 620–21 (9th Cir. 2018) (prisoner may have cause of action for damages for being deprived of Qur'an to use in worship services).

<sup>13</sup> *Yellowbear v. Lampert*, 741 F.3d 48, 64 (10th Cir. 2014).

<sup>14</sup> See *Crawford v. Clarke*, 578 F.3d 39, 42 (1st Cir. 2009).



Muslim prisoner in solitary confinement to attend Jumu'ah worship services<sup>15</sup> via closed-circuit television, even though televisions were banned from that prisoner's unit for other purposes.<sup>16</sup>

Prisons must also maintain as many separate services as possible. Even different sects of the same faith may worship differently, such as the Sunni Muslim community and the Nation of Islam. Prisons are under an obligation to provide as many separate call-outs for different religious sects as they can, even during the COVID-19 crisis. Keeping in-person call-outs of different religions separate has the added benefit of reducing exposure to large populations, which decreases any risk of disease transmission.

Whenever it is safe, prisoners must be permitted to meet with outside spiritual leaders, such as chaplains or other community advisors. Many prisoners face challenges in receiving access to spiritual leaders or counselors of their faith. Most prison chaplains are Christian,<sup>17</sup> meaning that practitioners of minority faiths are significantly less likely to have access to a spiritual leader from their faith employed by the prison system. Volunteer spiritual leaders from the outside community may be rare, either because the faith is uncommon in the community where the prison is housed or even because of active harassment of spiritual volunteers by prison officials. Prisons must ensure that prisoners have access to private sessions with these spiritual leaders or counselors whenever possible. If outside visitors must be limited for the safety of those in the facility, calls or telepresence connections must be facilitated by the prisons. In light of the deprivations of ordinary contact that prisoners are likely to experience, prisons should waive or eliminate any fees associated with such contact.

#### 4. PRISONS MUST MAKE ACCOMODATIONS FOR THE RAMADAN HOLIDAY

For many Muslims, fasting during daylight hours in the holy month of Ramadan is one of the pillars of their faith. Ramadan is currently projected to begin around April 24 this year.<sup>18</sup> During this time, prisons must provide many accommodations to prisoners' dietary and other accommodations:

- Providing food outside of daylight hours.<sup>19</sup> These hours vary by when the sun rises and sets in the prison's jurisdiction. The food must be nutritionally adequate and meet any of

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<sup>15</sup> "Jum'uah" is the term for the Friday congregational worship service that most Muslims consider compulsory.

<sup>16</sup> *Greenhill v. Clarke*, 944 F.3d 243, 251 (4th Cir. 2019).

<sup>17</sup> Pew Research Center, *Religion in Prisons: A 50-State Survey* 12 (Mar. 22, 2012), <https://www.pewresearch.org/wp-content/uploads/sites/7/2012/03/Religion-in-Prisons.pdf>.

<sup>18</sup> The exact dates of Ramadan vary across years and even across religious traditions within the same year, as it depends on the sighting of the moon at a certain time of year.

<sup>19</sup> See *Toney v. Harrod*, No. 15-cv-3209, 2017 WL 4758962, at \*4-5 (D. Kan. Oct. 20, 2017) (finding that inmate was entitled to receive a meal prior to the beginning of his Ramadan fast at the required time as part of his religious practice).



the other dietary restrictions the prisoners require, such as that the food be halal. For example, the Sixth Circuit held in 2015 that a 1,300 calorie a day diet during Ramadan violated a Muslim prisoner's civil rights and denied qualified immunity to the Michigan prison officials who designed the meal program.<sup>20</sup>

- Providing medication outside of daylight hours. Many Muslims consider that their fast during Ramadan means that they may not consume medication during daylight hours. If the prisoners request this accommodation, prisons must be prepared to provide it.
- Accommodating an evening prayer. The five daily prayers (or *salah*) that form the practice of many Muslims are supplemented during Ramadan with the inclusion of a sixth evening prayer, called *taraweeh*. Prisons should accommodate these evening prayers.

## V. CONCLUSION

Prisons must respond to the threat that COVID-19 presents to the population in their care and do their utmost to protect their health and safety. As they do so, they must not neglect their obligation to respect prisoners' religious freedom. We would be happy to assist with any difficulties you face in maintaining these measures; please feel free to contact me at [matthew@muslimadvocates.org](mailto:matthew@muslimadvocates.org) if we can be of any service.

Very truly yours,

Muslim Advocates  
American Baptist Churches, USA  
Evangelical Lutheran Church in America  
Franciscan Action Network  
Interfaith Alliance  
Muslim Anti-Racism Collaborative (MuslimARC)  
National Black Muslim COVID Coalition  
National Religious Campaign Against Torture  
Reconstructionist Rabbinical Association  
Unitarian Universalist Association

Alliance of Baptists  
Bend the Arc: Jewish Action  
Faith in Public Life  
Friends Committee on National Legislation  
Islam in Prison  
Muslim Wellness Foundation  
National Council of Churches  
Reconstructing Judaism  
T'ruah: The Rabbinic Call for Human Rights  
Unitarian Universalist Service Committee

<sup>20</sup> See *Welch v. Spaulding*, 627 F. App'x 479, 483–84 (6th Cir. 2015).

