

# MUSLIM ADVOCATES

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## VIA U.S. MAIL & ELECTRONIC MAIL

April 24, 2020

The Honorable Ralph Northam  
Governor of Virginia  
Office of the Governor  
P.O. Box 1475  
Richmond, VA 23218  
clark.mercer@governor.virginia.gov

The Honorable Mark R. Herring  
Attorney General of Virginia  
Attorney General's Office  
202 North Ninth Street  
Richmond, VA 23219  
mherring@oag.state.va.us

Director Harold W. Clarke  
Virginia Department of Corrections  
P.O. Box 26963  
Richmond, VA 23261-6963  
director.clarke@vadoc.virginia.gov

Dear Governor Northam, Attorney General Herring, and Director Clarke:

Muslim Advocates, the Islamic Circle of North America's Council for Social Justice, and the Virginia Prison Justice Network write to follow up on our letter of last year sent to the Virginia Department of Corrections ("VDOC") raising concerns about violations of religious liberty during Ramadan at VDOC facilities.<sup>1</sup> We seek to remind you of the holy month of Ramadan, which begins today, and of Virginia and VDOC's obligations to ensure that Muslim inmates detained in VDOC facilities are able to practice their faith. We also write to bring to your attention complaints from VDOC inmates that their ability to observe Ramadan is already being improperly curtailed this year.

Last year, as we alerted VDOC, we received alarming reports from Muslim inmates incarcerated in several VDOC facilities that detained Muslims observing Ramadan were regularly not receiving breakfast before fasting began, were being forced to wait an hour or more after sundown before receiving dinner to break their fasts, and were being denied sufficient potable water after fasting hours. This year, we have already received reports that Virginia inmates are facing barriers to Ramadan participation, indicating that last year's concerning trend persists. Such systemic mistreatment jeopardizes the health of inmates observing Ramadan and violates their

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<sup>1</sup> Letter from Nimra H. Azmi, Margaret Breslau, and Rameez Abid to Harold Clarke, Director, Va. Dep't of Corrections (May 24, 2019), available at <https://muslimadvocate.wpengine.com/files/VDOC-Ramadan-Letter.pdf>.



T: 202 897 2622  
F: 202 508 1007



info@muslimadvocates.org  
www.muslimadvocates.org



P.O. Box 34440  
Washington, DC 20043

well-established rights under the Free Exercise Clause of the First Amendment, the Eighth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.* (“RLUIPA”).

We ask that you take immediate steps to ensure that last year’s unlawful conditions at VDOC facilities are not repeated this Ramadan and that incarcerated practicing Muslims are allowed to observe their religious obligations during the month. This means, in part, ensuring that all Muslim inmates who wish to fast are able to do so and that they timely receive adequate food and drink. We understand that the COVID-19 pandemic presents unique challenges to prison operations. Nonetheless, we believe that ensuring safe religious practice for those in VDOC’s care is a paramount obligation of Virginia’s prison facilities. To ensure that these issues do not arise again, we request that you mandate immediate trainings for VDOC staff regarding Ramadan best practices, increase oversight of all facilities’ meal delivery during Ramadan now and in the future, and ensure that all Muslim inmates who wish to fast are able to do so.

**I. Muslim Inmates in VDOC Facilities Face Challenges to their Ramadan Observance.**

Ramadan begins today. The holiest month of the Muslim calendar, Ramadan lasts approximately 30 days. As part of fulfilling their religious duties during the month, observant Muslims must forego all food and all drink, including water, from sunrise until sundown. Muslims are religiously obligated to stop eating immediately upon sunrise and to break their fast promptly upon sunset. During Ramadan, Muslims must consume all food, water, and other necessities, like medication, during non-fasting hours. This year, Ramadan will end on or about May 23.

This year, even prior to Ramadan’s start, the undersigned received accounts from several Muslim inmates at Wallens Ridge State Prison (“Wallens Ridge”) in Big Stone Gap, VA that they are being prevented by prison staff from observing Ramadan. Allegedly due to “too many” inmates requesting the ability to participate in Ramadan at Wallens Ridge, prison management has ordered the chaplain to deny Muslim inmates’ requests to be placed on the list of inmates participating in Ramadan (the “Ramadan List”). Several Muslim inmates have reported that because of this mandate, their requests to be placed on the Ramadan List have been unjustly rejected. Absent placement on the Ramadan List, Muslim inmates are not able to receive meals before fast begins or after fast ends, and thus cannot fast. Accordingly, Wallens Ridge has implemented a policy of arbitrarily denying many Muslim inmates their right to observe their religious obligations. To advance Wallens Ridge’s decision to curtail the number of Muslims that can fast this year, inmates at Wallens Ridge are being told, often improperly, that they have not been designated as Muslim or that they have not submitted requests for such designation (in some circumstances, the inmates were in segregation at the time sign-up was available and were therefore unable to sign up); Wallens Ridge has made clear that it has no intention to appropriately designate such Muslim

inmates as Muslim. That the right of those in VDOC's care to practice their faith and observe Ramadan is already being impeded indicates that last year's issues persist, not only at Wallens Ridge, but throughout the VDOC system, and is of the utmost concern.

Unfortunately, this year's issues only echo a long-standing trend in VDOC facilities. Last year, as we informed VDOC, the undersigned received repeated reports that inmates in VDOC facilities faced substantial hurdles in their efforts to fast during Ramadan. During Ramadan 2019, at Red Onion State Prison ("Red Onion") in Pound, Virginia, prison staff repeatedly failed to serve breakfast before sunrise to inmates known to be fasting. Accordingly, Muslim inmates received their morning meals after their fasts had begun, meaning that they had to choose between their morning meal or observing their faith and going without any food or drink until the evening. Requiring inmates to make this choice is untenable, illegal, and unconstitutional. Inmates at both Red Onion and River North Correctional Center ("River North") in Independence, Virginia also reported being forced to wait an hour or more after sundown, after having maintained a sixteen-hour fast in the summer, before receiving dinner and water to break their fasts. River North staff also denied inmates access to sufficient potable water after fasting hours. At both facilities, non-fasting inmates, unlike Muslim inmates, received their food on time, were able to eat meals, and had access to drinkable water throughout the day. We believe that last year's Ramadan-related abuses were not confined to Red Onion and River North; rather, these instances reflect a broader problem with respecting the rights of incarcerated people to observe Ramadan at most, if not all, VDOC facilities. As this year's reports from Wallens Ridge underscore, these past hurdles and others will continue to arise absent decisive action by VDOC and Virginia state officials.

## **II. VDOC Is Legally Mandated to Accommodate Muslim Inmates' Ramadan Practice.**

The Supreme Court has long held that "prison walls do not form a barrier separating prison inmates from the Constitution," *Turner v. Safley*, 482 U.S. 78, 84 (1987), and that inmates "clearly retain" First Amendment protections, including the right to free exercise of religion. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). RLUIPA further protects state detainees' free exercise of religion by subjecting all substantial burdens on religious exercise to the strictest standard of constitutional scrutiny. *See* 42 U.S.C. § 2000bb *et seq.* A substantial burden is a burden that places "substantial pressure" on an individual to modify his behavior and violate his beliefs or one that forces a person to choose between following his religion and forfeiting government benefits. *See Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006). Under both the First Amendment and RLUIPA, an individual's religious exercise can only be substantially burdened if the government can provide a compelling reason for creating the burden. *See* 42 U.S.C. § 2000cc *et seq.* (requiring a compelling interest and narrowly tailoring any restrictions to achieve that purpose); *Turner*, 482 U.S. at 89 (requiring the restriction to be reasonably related to a

legitimate penological objective). If a compelling interest does not exist, the burden is impermissible. *See id.*

The Fourth Circuit has held that the observance of Ramadan is a religious exercise either central to or compelled by Islam and protected under RLUIPA. *See Lovelace*, 472 F.3d at 186–87. As such, burdens on the ability of Muslim inmates to observe the Ramadan fast constitute violations of RLUIPA. *Id.* To that end, the Fourth Circuit has expressly found that a prison’s failure to designate an inmate on the Ramadan observance list qualifies as a substantial burden on the inmate’s religious practice under RLUIPA, because it results in the inmate’s exclusion from Ramadan meals and thus denies him the right to fast during daylight hours. *Id.* at 187.

Prisoners have clearly established rights under the Free Exercise Clause of the First Amendment and RLUIPA to receive a diet consistent with their sincerely held religious beliefs. *See Lovelace*, 472 F.3d at 198. As Virginia federal courts have found, breaking the Ramadan fast with an evening meal upon sundown is a religious exercise covered by RLUIPA. *See Evans v. Jabe*, No. 3:11CV104, 2014 WL 202023, at \*8 (E.D. Va. Jan. 17, 2014). Inmates are also entitled to sufficient calories and nutrition while incarcerated. *See Shrader v. White*, 761 F.2d 975, 986 (4th Cir. 1985). Fasting inmates are also entitled to receive a morning meal timely before sunrise. *See Toney v. Harrod*, No. 15-3209-EFM-DJW, 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). Inmates’ religious exercise rights under both the First Amendment and RLUIPA are violated when a prison’s Ramadan meal delivery schedule leads to nutrient deprivation or undue hunger, and adversely impact inmates’ well-being and religious experience. *See Lovelace v. Bassett*, No. 7:07CV00506, 2008 WL 4452638, at \*3 (W.D. Va. Sept. 27, 2008).

A Ramadan meal practice or custom, like that operative last year at Red Onion and River North, that results in Muslim inmates being treated differently from non-Muslim inmates, including being denied the same amount of food or water as non-Muslim inmates, also violates the Equal Protection Clause of the Fourteenth Amendment. *See id.* at \*4. Additionally, the Supreme Court has established that the Eighth Amendment imposes a duty on prisons to provide humane conditions of confinement, including ensuring that prisoners receive adequate food and water. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 833 (1994). VDOC has even recognized the fundamental importance of respecting and accommodating inmates’ Ramadan practice in its own regulations. *See, e.g., Operating Procedure* § 841.3.

The U.S. Constitution and RLUIPA protect VDOC’s Muslim inmates’ right to observe Ramadan. Wallens Ridge’s arbitrary refusal to place Muslim inmates on its Ramadan List violates those Muslim inmates’ rights under RLUIPA and the First Amendment by effectively preventing them from fasting during Ramadan—simply because they are one of “too many” Muslim inmates

in their care who are required to observe the holy month. Likewise, various practices at VDOC facilities last Ramadan also violated the constitutional and statutory religious rights of Muslim inmates. By not providing breakfast until after fasting had commenced or providing dinner long after sundown, VDOC facilities like Red Onion and River North repeatedly forced Muslim inmates to choose between receiving food for the day and practicing their faith. In preventing Muslim inmates from being able to access sufficient drinkable water after sundown, VDOC facilities forced Muslim inmates to choose between sufficient potable water and their religious practice. Such actions clearly run afoul of the protections enshrined in both RLUIPA and the First Amendment. Last year, VDOC facilities also violated RLUIPA and the Fourteenth Amendment by treating Muslim inmates on less than equal terms with other inmates and forcing them to go without meals, adequate clean water, and timely served meals—which are not denied to non-Muslim inmates.

Accordingly, during Ramadan 2019, VDOC systematically burdened the religious exercise of Muslim inmates, discriminated against them, and subjected them to unlawful and inhumane conditions in violation of the Constitution. Without taking immediate corrective action, as the incidents at Wallens Ridge show, VDOC and Virginia are poised to repeat that unlawful and unjust pattern this year.

### **III. Conclusion**

Ramadan begins today. It is therefore imperative that you take immediate steps to protect the right of Muslim inmates currently detained in all VDOC facilities to observe their faith during this critically important time and guarantee that last year's missteps are not repeated. We request that you ensure that inmates observing Ramadan at all VDOC facilities are able to be designated as observing Ramadan, receive their sunrise and sunset meals on time, and are given access to drinkable water throughout the night. We further request that you educate VDOC staff on Ramadan traditions, train them on best practices for ensuring the Muslim inmates can observe the month, and increase oversight of facilities' meal delivery systems for Ramadan now and in the future.

Given the gravity of the situation and its time-sensitive nature, we request a prompt response to this correspondence. We also understand that COVID-19 may present unique challenges to Virginia and VDOC as they seek to balance religious practice with pandemic preparedness. We are happy to collaborate on and discuss options that would permit Virginia and VDOC to effectively address both needs. We look forward to your response.

Very truly yours,

/s/ Nimra H. Azmi

Nimra H. Azmi  
Staff Attorney  
Muslim Advocates  
P.O. Box 34440  
Washington, D.C. 20043  
nimra@muslimadvocates.org

/s/ Margaret Breslau

Margaret Breslau  
Chair, Coalition for Justice  
(Blacksburg)  
Co-Founder, Virginia Prison  
Justice Network  
justicebburg@gmail.com

/s/ Rameez Abid

Rameez Abid  
Outreach Director  
ICNA Council for Social Justice  
1952 Gallows Road, Suite 102  
Vienna, VA 22182  
info@icnacsj.org