



# COMMONWEALTH of VIRGINIA

*Department of Corrections*

HAROLD W. CLARKE  
DIRECTOR

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May 4, 2020

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

Subject: Your letter of April 24, 2020 regarding Ramadan 2020

Dear Nimra Azmi,

I am in receipt of your letter dated April 24, 2020 addressed to the Honorable Ralph Northam, Governor of the Commonwealth of Virginia, the Honorable Mark Herring, Attorney General of the Commonwealth of Virginia, and myself, regarding the practice of Ramadan 2020.

The 2020 observance of Ramadan began on (April 24, 2020,) at all DOC facilities with morning meals being provided prior to Astronomical Twilight and the evening and supplemental bag meals are being provided within 40 minutes of sunset. This feeding schedule will be followed throughout the observance of Ramadan, taking into consideration the time differences that exist between Astronomical Twilight and Sunset on Day 1 and Day 30 (May 23, 2020).

You have raised the following concerns in your letter:

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

- **Participation in Ramadan.** You mention an issue reported by offenders at Wallens Ridge State Prison.

On July 1, 2019, the Offender Religious Program (OP 841.3) was revised and all offenders were afforded the opportunity to sign-up anew for the religious program of their choice. Offenders were to complete and return the Request to Attend Religious Activities form to the designated institutional staff member to be enrolled in the faith practice of their choice as offered at their facility (which included the right not to sign-up for a religious group at the time the form is completed). Offenders do not have to attend these religious services, cannot be removed for non-attendance, and participation in holy day observances for the various faith practices represented at DOC facilities is predicated on the Request to Attend Religious Activities form on file at the time of sign-up for religious holy days. Offenders can change religious faith groups at each designated Quarterly Sign-up period as established by the various facilities (generally at the end of quarter or the first day of the new quarter).

- 2. Serving of meals during Ramadan.** You mention Red Onion State Prison and River North Correctional Center as two locations that offenders reported meals being served after Astronomical Twilight or hours after sunset last year.

- Muslim and World Community of Islam offenders observing Ramadan, and NOI/MSTA offenders observing the Month of Fasting, fast only during the day (from astronomical twilight to sunset). They must be fed a breakfast meal before astronomical twilight and a dinner meal after sunset (with all foods coming from the respective special menus), taking into consideration the full 30 days of the observance.
- Astronomical Twilight in all three regions of the VADOC, the clock time for astronomical twilight goes counterclockwise from day 1 through day 30 and the difference at day 30 is approximately 40 minutes. Astronomical Twilight meals should be set in accordance with the astronomical twilight time on day 30.
- Sunset in all three regions of the VADOC, the clock time for sunset goes clockwise and so the sunset meal, fast breaking prayer (if observed), should be set in accordance with sunset on day 30.
- A bag meal (“third meal”) will be distributed to participating Muslim, World Community of Islam and NOI/MSTA offenders... However, due to health and safety standards, the bag meal must be consumed or discarded within 4 hours of reception. It is mandatory that every offender who plans to observe Ramadan/Month of Fasting fill out the “4-Hour Rule” Form and submit it to Food Service prior to the beginning of the fast date.
- Participants are allowed at least 20 minutes to consume this meal, which is consistent with American Correctional Association (ACA) guidelines. Institutional staff are required to make an entry in the housing unit, dining hall, and Restrictive housing unit log book documenting the time that the Ramadan/Month of Fasting meals is called, the time that the offenders go to their respective dining area or the meals are delivered to the unit, and the time when the last offender has been served the Ramadan/Month of Fasting meal each day. All facilities, utilizing food carts to deliver hot meals, are to have these meals delivered within 40 minutes after sunset.

The changes to the Ramadan 2020 observance were made in conjunction with conversations with GracelInside (contracting agency for chaplaincy services) and Muslim Chaplain Service of Virginia, Inc. (subcontracting agency through GracelInside for Islamic Services). Thank you for your concern and your advocacy for these individuals.

Sincerely,



Harold W. Clarke  
Director

cc: The Honorable Ralph Northam, Governor  
The Honorable Mark Herring, Attorney General  
A. David Robinson, Chief of Corrections Operations  
Melissa Welch, Operations Support  
Mark Engelke, Statewide Food Service Director

# MUSLIM ADVOCATES

VIA U.S. MAIL & ELECTRONIC MAIL

April 24, 2020

The Honorable Ralph Northam  
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The Honorable Mark R. Herring  
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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

<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.wpeengine.com/files/VDOC-Ramadan-Letter.pdf>.



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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

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,