No. 24-6375

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TERRENCE EDWARD HAMMOCK,

Plaintiff-Appellant,

v.

GAIL WATTS et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland at Baltimore
Case No. 1:22-cv-00482

BRIEF FOR PLAINTIFF-APPELLANT TERRENCE EDWARD HAMMOCK

Viktor K. Dolberg
Annie Farrell
Giancarlo Vargas
Student Counsel

Regina Wang
Brian Wolfman
Becca Steinberg
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6741

Counsel for Plaintiff-Appellant Terrence Edward Hammock

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Statement of Jurisdiction

Plaintiff-Appellant Terrence Edward Hammock sued Baltimore County Detention Center (BCDC) correctional officials (Defendants) under 42 U.S.C. § 1983, alleging that his Fourteenth, Eighth, and First Amendment rights were violated while he was detained at BCDC. JA 9-21. The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

On March 10, 2023, the district court granted Defendants' motion to dismiss, or alternatively, for summary judgment, but it declined to dismiss some claims against a defendant not employed by BCDC. JA 82-83. On April 1, 2024, the district court granted summary judgment to that defendant, disposing of all of Hammock's remaining claims, and entered a final judgment. JA 91. Hammock filed a timely notice of appeal on April 10, 2024. JA 84. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

I. Whether the district court erred in dismissing Hammock's claims against Defendants for unconstitutional conditions of confinement when he was served rotten and contaminated food consistently for more than two years.

II. Whether the district court erred in dismissing Hammock's claims against Defendants for violating his First Amendment right to freely exercise his religion when he was not permitted to attend Islamic Jumu'ah services for more than two years.

Statement of the Case

I. Factual background

Because the district court dismissed Hammock's case against Defendants for failure to state a claim, this factual background describes Hammock's pleaded allegations, *see* JA 9-32, which should be taken as true, *see Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014).[1]

On September 20, 2019, Hammock was first detained at BCDC as he awaited trial. JA 10. On December 17, 2021, Hammock was convicted, but he remained confined at BCDC pending sentencing. JA 55.

A. Contaminated-food claim. From Hammock's first day at BCDC, Defendants served him spoiled and unsafe food, including rotten apples and mice-bitten meat. JA 10-11, JA 26-27. When Hammock asked for safe food, Defendants told him that he could not receive substitute meals. JA 11. After eating BCDC's unsafe food, Hammock got sick several times. JA 26, JA 11-12. Although Hammock complained to Defendants that BCDC's food caused

[1] This brief refers to the correctional officers implicated in Hammock's claims collectively as "Defendants." Hammock's Fourteenth and Eighth Amendment claims were brought against Gail Watts, Officer J. Sherman, Sgt. Bond, Major Alford, Sgt. A. Dupree, Sgt. A. Kelly, Sgt. B. Little, J. Paige, Sgt. C.E. Carter, Sgt. B. Rose, Dietary Sgt. G. Carter, and Dietary Officer J. Dorsey for serving him rotten, mice-bitten food. JA 11. His First Amendment claim was brought against Watts, Bond, Alford, Dupree, Kelly, Little, Paige, C. E. Carter, and Rose for preventing him from attending Jumu'ah services. JA 12-13. He also sued Commissary Owner Mr. Dave, Library Officers Alston and Brown, Doctors of University Hospital, and Dr. Zowie Barnes, *see* JA 9, but he is not pursuing claims against those people in this appeal.

him to get sick, they "did nothing to solve the problem." JA 11, JA 26. Because Defendants served Hammock only unsafe food, he refused to eat it and started losing weight. JA 11-12, JA 26. To get by, Hammock purchased substitute meals from the commissary using money from his family. JA 11-12.

Hammock submitted multiple internal complaints to alert Defendants to the prison's unsafe food, but they did not "correct any of these wrongs" for the thirty months before he filed the operative pleadings. JA 10-11, JA 26-27. Hammock also sent two letters to Defendant Gail Watts—the Director of Corrections—complaining about BCDC's unsafe food. JA 26-27. Although the letters were marked "received" by Watts and processed by BCDC as internal complaints, JA 25-27, Hammock still did not receive safe food, JA 22.

B. Free-exercise claim. Jumu'ah is a weekly congregational prayer service that Muslim men must attend on Fridays.[2] As a Muslim, JA 12, JA 22, Hammock believes attending Jumu'ah services every Friday is a mandatory part of his religion, JA 23. Yet, from September 2019 to March 2022, Hammock was not allowed to attend these services. JA 12, JA 22-23. Hammock sent a letter to Director Watts complaining about BCDC's refusal to let him attend Jumu'ah services. JA 27. Although BCDC marked the letter

[2] *See Jumu'ah (Friday Congregational) Prayer*, IslamOnline, https://islamonline.net/en/jumuah-friday-congregational-prayer/ [https://perma.cc/RWW4-GT78].

"received" and processed it as an internal complaint, JA 25, JA 27, Hammock was still not permitted to attend these services, JA 22. And although other Defendants knew of Hammock's inability to attend Jumu'ah services, they too ignored his repeated complaints and took no action to allow him to attend. JA 12-13, JA 22-23, JA 27-28, JA 30.[3]

In March 2022, a memo in Hammock's protective-custody unit directed detainees to submit a request if they wished to be placed on the religious-services list. JA 22-23. On March 10, 2022, Hammock filed a request to attend Jumu'ah services. JA 22-24. But again, Defendants rejected his request, this time asserting that he could not attend Jumu'ah because he was in protective custody. JA 23-24.

II. Procedural history

Hammock sued Defendants under Section 1983 in the District of Maryland. JA 9, JA 21. As relevant here, Hammock alleged that Defendants violated the Fourteenth and Eighth Amendments by serving him rotten, mice-bitten food, and the First Amendment's Free Exercise Clause by preventing him from attending Jumu'ah services. JA 11-13. After Defendants filed a motion to dismiss or, in the alternative, for summary judgment, Hammock filed a motion for appointment of counsel to assist him in

[3] This brief uses the spelling "Jumu'ah" to align with the spelling used in relevant cases, *e.g.*, *Lovelace v. Lee*, 472 F.3d 174, 191 (4th Cir. 2006), but there are alternative spellings, including "Jumah," the spelling Hammock used in his complaint, JA 12-13.

investigating his claims, obtaining discovery, and communicating with Defendants' counsel. JA 53, JA 4-5.

The district court denied Hammock's motion for appointment of counsel and dismissed all of Hammock's claims against Defendants. JA 60, JA 67, JA 69-71, JA 73, JA 77, JA 81. On the food-contamination claim, the district court held that "Hammock's assertions that he got sick from the food once and has lost weight are insufficient" to state a claim under the Fourteenth Amendment. JA 67. On the free-exercise claim, the district court held that failure to conduct Jumu'ah services during the COVID-19 pandemic was "reasonably related to the legitimate penological interests" of health and safety. JA 69. As for the period before and after the imposition of COVID restrictions, the district court held that Hammock was in protective custody so denying him access to Jumu'ah services was reasonably related to a legitimate penological interest. JA 69-70.

Summary of Argument

I. The district court erred in dismissing Hammock's conditions-of-confinement claim alleging that Defendants served him rotten and contaminated food for over two years. Hammock was seriously injured and his health was put at substantial risk by the food at BCDC, which included rotten fruit and mice-bitten meat. Defendants were deliberately indifferent because they objectively should have known, and subjectively did in fact

know, of the risk the contaminated food posed to Hammock's health, in violation of the Fourteenth and Eighth Amendments.

Defendants are not entitled to qualified immunity on Hammock's conditions-of-confinement claim because they violated clearly established law when they consistently provided Hammock unsafe food for more than two years.

II. Hammock also stated a free-exercise claim. Defendants substantially burdened Hammock's religious practice by refusing to let him attend Jumu'ah services. The district court dismissed Hammock's claim because it determined that the restriction on his free-exercise right was reasonably related to legitimate penological interests. That holding is wrong because Defendants have not identified penological interests that account for the entire two-and-a-half years that they infringed on Hammock's free-exercise right. So, this Court should remand Hammock's free-exercise claim without conducting an analysis under *Turner v. Safley*, 482 U.S. 78 (1987). Even if this Court scrutinizes Hammock's claim under *Turner*, it should find that Hammock adequately alleged that Defendants' infringement on his religious beliefs before and after COVID restrictions was not reasonably related to a legitimate penological interest.

Defendants are not entitled to qualified immunity on Hammock's free-exercise claim because they violated clearly established law when they arbitrarily denied Hammock access to services mandated by his religion.

Standard of Review

A grant of a motion to dismiss for failure to state a claim is reviewed de novo. *Jackson v. Lightsey*, 775 F.3d 170, 177-78 (4th Cir. 2014). A complaint should not be dismissed for failure to state a claim if it presents "factual allegations 'that state a claim to relief that is plausible on its face.'" *Id.* at 178 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In applying this standard, this Court takes "all facts pleaded as true" and "draw[s] all reasonable inferences" in Hammock's favor. *Id.* Hammock's pro se complaint, "however inartfully pleaded," must be construed liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). "[L]iberal construction of pleadings is particularly appropriate where, as here, there is a [p]ro se complaint raising civil rights issues." *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978).

When the district court granted Defendants' motion to dismiss or, in the alternative, for summary judgment, it treated Defendants' motion as one for dismissal for failure to state a claim because it considered matters contained in Hammock's pleadings alone and then applied the motion-to-dismiss standard. *See* JA 61-62, JA 67, JA 69; Fed. R. Civ. P. 12(d); *see also Pueschel v. United States*, 369 F.3d 345, 353 n.3 (4th Cir. 2004).[4]

[4] The district court wrongly suggested it could treat Defendants' motion as one for summary judgment because "Hammock [did] not allege[] that he requires discovery to properly oppose" the motion. JA 63. On the contrary, Hammock moved for appointment of counsel to help him with discovery after Defendants filed their motion to dismiss, JA 53, but the district court

In resolving the motion to dismiss, the district court acted within its discretion in considering Hammock's supplemental pleading (ECF 7) under Federal Rule of Civil Procedure 15(d). *See Franks v. Ross*, 313 F.3d 184, 198 (4th Cir. 2002); JA 61-62. Consistent with that Rule, this supplemental pleading set out events that occurred after Hammock filed his complaint. *Compare* JA 21 (original complaint, filed February 18, 2022), *with* JA 22-23 (supplemental pleading setting out events that occurred after February 18, 2022), *and* JA 24-29 (same as to exhibits to supplemental pleading).

Argument

I. Hammock stated a claim that Defendants violated the Fourteenth and Eighth Amendments by serving him unsafe food continuously for more than two years.

Because detaining someone in "unsafe conditions" is "cruel and unusual punishment," correctional officials violate the Eighth Amendment when they are deliberately indifferent to a prisoner's health or safety. *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993). And because it is unconstitutional punishment to hold convicted criminals in unsafe conditions, it is necessarily also unconstitutional, under the Fourteenth Amendment, to hold pretrial detainees in unsafe conditions because pretrial detainees "may not be punished at all." *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982).

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denied Hammock's request, JA 81; *see Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244-45 (4th Cir. 2002) (nonmoving party need not file a formal Rule 56(f) affidavit to preserve a claim that the party had inadequate opportunity for discovery).

To state a claim for deliberate indifference based on conditions of confinement, a prisoner first must allege a "deprivation of a basic human need" that is "objectively 'sufficiently serious.'" *Rish v. Johnson*, 131 F.3d 1092, 1096 (4th Cir. 1997) (cleaned up) (quoting *Strickler v. Waters*, 989 F.2d 1375, 1379 (4th Cir. 1993)). To establish this first element, the prisoner must show "a serious or significant physical or emotional injury resulting from the challenged conditions," *id.* (quoting *Strickler*, 989 F.2d at 1381), or "a substantial risk of such serious harm resulting from the prisoner's unwilling exposure to the challenged conditions," *id.*

The second element of a deliberate-indifference claim concerns the defendant's awareness of these injuries or risks. The standard for this element is objective or subjective, depending on whether the plaintiff is a pretrial detainee or a prisoner. *Short v. Hartman*, 87 F.4th 593, 608-10 (4th Cir. 2023). A pretrial detainee must show that the defendant's conduct was "objectively unreasonable," meaning the defendant acted or failed to act "in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)). On the other hand, a convicted prisoner must allege facts showing subjective deliberate indifference by prison officials, meaning "a prison official actually kn[e]w of and disregard[ed] an objectively serious … risk of harm." *Rish*, 131 F.3d at 1096.

Hammock was a pretrial detainee until he became a convicted prisoner on December 17, 2021. JA 55. As we now show, Hammock met the first

element for a conditions-of-confinement claim based on the serious injuries and substantial risk created by BCDC's spoiled and unsafe food. He also met the second element under both the objective test for pretrial detainees and the more-demanding subjective standard for convicted prisoners. So, this Court should reverse and remand for further proceedings on Hammock's conditions-of-confinement claim. *See Hammock v. Andoh*, 2024 WL 33694, at *1 (4th Cir. Jan. 3, 2024).

A. Hammock was seriously injured and faced a substantial risk of harm when he was served unsafe food consistently for more than two years.

The district court held that Hammock could not state a constitutional claim based on harm from BCDC's unsafe food because Hammock only "lost weight" and got sick "once" from eating BCDC's contaminated food. *See* JA 67. That is factually and legally incorrect. First, Hammock was seriously injured because he got sick not once, but several times. JA 26. Second, as explained below, Hammock alleged both that he was seriously injured by BCDC's unsafe food *and* that he was continuously exposed to a substantial risk of harm for two-and-a-half years. Both are grounds for finding a sufficiently serious deprivation to satisfy the first element of a conditions-of-confinement claim. *Rish v. Johnson*, 131 F.3d 1092, 1096 (4th Cir. 1997).

BCDC's rotten and mice-bitten food seriously injured Hammock. Although receiving contaminated food a "single" time may not violate the Constitution, "frequent or regular injurious incidents" relating to unsafe

food "raise[] what otherwise might be merely isolated negligent behavior to the level of a constitutional violation." *Brown v. Brock*, 632 Fed. App'x 744, 747 (4th Cir. 2015) (per curiam). Thus, when a prisoner pleads he received unsafe food on a "regular and ongoing" basis, and as a result got sick, he satisfies the objective prong. *Burkey v. Balt. Cnty.*, 2021 WL 3857814, at *8 (D. Md. Aug. 30, 2021). For example, in *Burkey v. Baltimore County*, a prisoner stated a deliberate-indifference claim when he alleged that he received spoiled and rodent-infested food from BCDC—the institution where Hammock was detained—for three months, causing the prisoner to get sick. *Id.* As in *Burkey*, Hammock alleges that he was served "rotten apples, and meat with mice bites" by BCDC for thirty months. JA 11, JA 26. Hammock got sick several times from eating this unsafe food. JA 11, JA 26. And when Hammock therefore chose to stop eating this food, he began losing weight. *See* JA 11, JA 26.

The food at BCDC also posed an ongoing substantial risk of harm to Hammock. Prisoners "need not await a tragic event," like a serious illness or malnutrition, to obtain "a remedy for unsafe conditions." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). After Hammock got sick several times from eating BCDC's unsafe food, BCDC did nothing to improve its food service. JA 26, JA 11. Hammock thus was subjected to a significant risk that he would suffer additional bouts of sickness if he resumed eating BCDC's rotten and mice-bitten food. *See* JA 26; *see also* JA 11.

After losing weight and getting sick multiple times from BCDC's food, Hammock was forced to buy substitute meals at the commissary for twenty-nine months. JA 11-12. That Hammock could purchase these substitute meals in no way diminishes the prison's responsibility to provide constitutionally adequate food. *See Pendleton v. Jividen*, 96 F.4th 652, 657-58 (4th Cir. 2024) (holding that a prisoner's First Amendment right to a prison-provided special religious diet was violated even though the prisoner could buy religiously compliant food from the commissary). It only underscores that safe food is a "basic human need." *Rish*, 131 F.3d at 1096 (quoting *Strickler v. Waters*, 989 F.2d 1375, 1379 (4th Cir. 1993)).

B. Defendants were deliberately indifferent in failing to address the serious injuries and risks created by BCDC's food.

For the time that Hammock was a pretrial detainee, he need show only that Defendants objectively should have known about the risks posed by his dangerous conditions of confinement. For his post-conviction period, he must satisfy the stricter subjective test by showing that Defendants actually knew of the risks posed by his dangerous conditions. *See Short v. Hartman*, 87 F.4th 593, 607 (4th Cir. 2023). Hammock adequately alleged deliberate indifference under both tests.

Hammock alleged that his food service had been unsafe for thirty months. *See* JA 11-12, JA 26-27. Hammock "ha[d] been complaining" about the quality of food during that entire time, yet Defendants disregarded him and "did nothing to solve the problem." JA 11. Hammock sent two letters to

Defendant Watts, reiterating that the food provided to him was rotten and mice-bitten and that he had gotten sick as a result. *See* JA 11, JA 26-27. These letters were marked "received" and processed by BCDC as internal complaints, JA 25-27, yet Watts did nothing to improve BCDC's food safety, *see* JA 22. Thus, Defendants not only "should have known" of the high risks posed to Hammock by their contaminated food, satisfying the objective test for deliberate indifference, *Short*, 87 F.4th at 611, but in fact *did know* of the risk posed by Hammock's unsafe conditions. Hammock therefore has also satisfied the subjective prong for deliberate indifference under the Eighth Amendment because prison officials had "knowledge of both the inmate's [need] and the excessive risk posed by the official's action or inaction." *Id.* at 612 (quoting *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014)).

C. Defendants are not entitled to qualified immunity for their deliberately indifferent behavior toward Hammock's conditions of confinement.

A motion to dismiss on qualified-immunity grounds should not be granted unless the "Defendants' entitlement to qualified immunity appears on 'the face of the complaint.'" *Thorpe v. Clarke*, 37 F.4th 926, 935 (4th Cir. 2022) (quoting *Brockington v. Boykins*, 637 F.3d 503, 506 (4th Cir. 2011)). In conducting a qualified-immunity analysis, this Court must determine whether the plaintiff alleged a deprivation of a constitutional right. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). As explained above (at 10-13), Hammock alleged that Defendants violated his Fourteenth and Eighth Amendment

rights by serving him unsafe food for over two years, surmounting the first step. This Court must also decide whether the right at issue was "clearly established" at the time of Defendants' alleged conduct. *Id.*

A right is "clearly established" if, at the time of the official's conduct, the law is sufficiently clear that every reasonable official would understand that what he is doing is unlawful. *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018). This Court "need not have recognized a right on identical facts for it to be deemed clearly established." *Quinn v. Zerkle*, 111 F.4th 281, 294 (4th Cir. 2024). Rather, this Court will deny a claim of qualified immunity when it determines that officers have been provided "fair warning, with sufficient specificity," that their actions would violate the Constitution. *Id.* (quoting *Aleman v. City of Charlotte*, 80 F.4th 264, 295 (4th Cir. 2023)). "[S]ome misconduct is so flagrant that the plaintiff need not point to a case precisely on point to demonstrate that an officer was on notice that their conduct violated the law." *Rambert v. City of Greenville*, 107 F.4th 388, 402 n.3 (4th Cir. 2024) (first citing *Hope v. Pelzer*, 536 U.S. 730, 745 (2002); and then citing *Taylor v. Riojas*, 592 U.S. 7, 9, (2020)). Here, Defendants' deliberately indifferent actions did not comport with the clearly established law at the time of their actions.

After the Supreme Court adopted a subjective test for Eighth Amendment deliberate-indifference claims in 1994, *see Farmer v. Brennan*, 511 U.S. 825, 829 (1994), courts applied a subjective test to the second prong of pretrial detainees' deliberate-indifference claims, requiring the detainee to show that

the defendant was subjectively aware of and disregarded a serious risk of harm, *see Short v. Hartman*, 87 F.4th 593, 606-10 (4th Cir. 2023) (recounting development of deliberate-indifference caselaw). Then, in 2015, the Supreme Court clarified that the second prong for claims brought by pretrial detainees under the Fourteenth Amendment must be analyzed using an objective standard, so the detainee is not required to prove the defendant's actual state of mind. *See Kingsley v. Hendrickson*, 576 U.S. 389, 395 (2015). This Court did not explicitly recognize that *Kingsley* abrogated the subjective test for all Fourteenth Amendment deliberate-indifference claims until 2023, *see Short*, 87 F.4th at 604-05, after the conduct at issue here. Accordingly, Hammock assumes for the sake of argument that the "clearly established" law at the time of Defendants' behavior from 2019 to 2022 was the pre-*Short* subjective standard for deliberate indifference. Under that test, Defendants' conduct violated clearly established law.

When "'plaintiffs have made a showing sufficient' to demonstrate an intentional violation of the Eighth Amendment, 'they have also made a showing sufficient to overcome any claim to qualified immunity.'" *Thorpe*, 37 F.4th at 934 (quoting *Beers-Capitol v. Whetzel*, 256 F.3d 120, 142 n.15 (3d Cir. 2001)). That's so because "*qualified* immunity extends only as far as 'the interest it protects'" and "there is no societal interest in protecting those uses of a prison guard's discretion that amount to reckless or callous indifference to the rights and safety of the prisoners." *Id.* at 934 (emphasis in original) (quoting *Smith v. Wade*, 461 U.S. 30, 55 (1983)). Because the pre-*Short*

subjective standard for deliberate indifference requires knowing disregard of the harm (or risk of harm) posed by conditions of confinement, officials who were deliberately indifferent under the subjective standard are not protected by qualified immunity. *See id.* at 933. As explained above (at 12-13), Hammock adequately pleaded that Defendants were deliberately indifferent to his unsafe food conditions under the subjective standard. Accordingly, Defendants are not entitled to qualified immunity on Hammock's claim regarding his conditions of confinement.

Defendants are not entitled to qualified immunity for another, independent reason. It is "well-established" that prison officials must provide "nutritionally adequate food, 'prepared and served under conditions which do not present an immediate danger to the health and well being of the inmates who consume it.'" *Shrader v. White*, 761 F.2d 975, 986 (4th Cir. 1985) (quoting *Ramos v. Lamm*, 639 F.2d 559, 571 (10th Cir. 1980)). As already explained (at 10-13), Hammock amply pleaded that Defendants violated that right here.

II. Hammock stated a claim that Defendants violated his First Amendment right to freely exercise his religion.

The Free Exercise Clause's protection penetrates prison walls. *Jehovah v. Clarke*, 798 F.3d 169, 176 (4th Cir. 2015). To state a free-exercise claim, a prisoner must allege that "(1) he holds a sincere religious belief; and (2) a prison practice or policy places a substantial burden on his ability to practice his religion." *Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017). Once an

inmate makes this "threshold" showing, *id.* at 168-69; *Firewalker-Fields v. Lee*, 58 F.4th 104, 115 (4th Cir. 2023), the prison bears the burden of offering penological interests that justify its infringement on free-exercise rights for the entire period that the prisoner challenges, *see Wilcox*, 877 F.3d at 169; *Lovelace v. Lee*, 472 F.3d 174, 200 n.9 (4th Cir. 2006); *Firewalker-Fields*, 58 F.4th at 115-16; *Carter v. Fleming*, 879 F.3d 132, 139-40 (4th Cir. 2018). When the prison does so, the prisoner can still prevail if the policy is not reasonably related to legitimate penological interests. *See Wilcox*, 877 F.3d at 169; *Firewalker-Fields*, 58 F.4th at 115-16.

The *Turner* factors are used to evaluate whether a prison policy is reasonably related to a legitimate penological interest: "(1) whether there is 'a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it'; (2) 'whether there are alternative means of exercising the right that remain open to prison inmates'; (3) 'the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally'; and (4) whether there are 'ready alternatives.'" *Greenhill v. Clarke*, 944 F.3d 243, 253 (4th Cir. 2019) (quoting *Turner v. Safley*, 482 U.S. 78, 89-91 (1987)).

Hammock sufficiently alleged a free-exercise claim. Defendants have not offered penological interests that justify denying Hammock access to Jumu'ah services for his entire time at BCDC, so this Court should remand

for further proceedings without engaging in a *Turner* analysis. But even if the Court subjects Hammock's claim to *Turner* scrutiny, the claim survives.

A. Hammock alleged the two elements of a free-exercise claim.

Hammock must first sufficiently allege that he holds a sincere religious belief. He has done so. Hammock believes that, as a Muslim, he must attend Jumu'ah services on Fridays "to listen to the sermon and pray." JA 12, JA 22-23; *see also Greenhill v. Clarke*, 944 F.3d 243, 248 (4th Cir. 2019) ("Jum'ah is a gathering of Muslims for group prayer beginning after the sun reaches its zenith on Fridays, and it constitutes one of the central practices of Islam.").

Second, Hammock must allege that Defendants placed a substantial burden on his ability to practice his religion. He has done that as well. "Defendants place a substantial burden on a person's religious exercise when they 'put[] substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" *Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017) (alteration in original) (quoting *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981)). To determine whether a religious practice was substantially burdened, a court "must not judge the significance of the particular … practice in question." *Id.* at 168 (quoting *Lovelace v. Lee*, 472 F.3d 174, 187 n.2 (4th Cir. 2006)). Hammock alleged a substantial burden on his religious practice by pleading that Defendants denied his requests to attend Jumu'ah, even though his beliefs require him to attend these services. JA 12-13, JA 22-24; *see Wilcox*, 877 F.3d at 168.

B. Defendants have not identified penological interests for the entire period at issue.

At the motion-to-dismiss phase, a district court cannot assess whether the prison's actions are unconstitutional under *Turner* if a prison hasn't identified penological interests for the entire timeframe in which it has substantially burdened an inmate's religious exercise. *Wilcox v. Brown*, 877 F.3d 161, 169 (4th Cir. 2017). That's because, as just explained (at 17), the prison bears the burden of identifying a penological interest to justify its infringement on free-exercise rights. *See id.*; *Carter v. Fleming*, 879 F.3d 132, 140 (4th Cir. 2018); *Lovelace v. Lee*, 472 F.3d 174, 200 n.9 (4th Cir. 2006); *Firewalker-Fields v. Lee*, 58 F.4th 104, 116 (4th Cir. 2023) ("Th[e] first [*Turner*] factor places a burden on the prison to put forward the actual interests that support their policies.").

Defendants identified only one penological interest in their motion to dismiss: barring Hammock from Jumu'ah services based on social-distancing guidance issued by the Centers for Disease Control (CDC) in March 2020 to slow the spread of COVID-19 at detention facilities. JA 68; *see also* ECF 24-1 at 7 (citing *Seth v. McDonough*, 461 F. Supp. 3d 242, 248 (D. Md. 2020)).[5] For present purposes, we don't dispute that preventing the spread

[5] *See* CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Nat'l Comm'n on Corr. Health Care (Mar. 23, 2020), https://www.ncchc.org/wp-content/uploads/CDC_Correctional_Facility_Guidance_032720.pdf

of COVID could be a legitimate penological interest that justified barring Hammock from Jumu'ah services for part of his time at BCDC. But that interest does not account for "the entirety of the challenged [thirty-month] period" that Hammock's religious practice was burdened. *Wilcox*, 877 F.3d at 169. Hammock was detained at BCDC in September 2019, JA 10, six months *before* CDC issued its guidance. And Hammock remained at BCDC for over a year *after* BCDC started offering COVID vaccinations to staff and inmates. *Redd v. Watts*, 2023 WL 4744743, at *4 (D. Md. July 25, 2023).

After crediting Defendants' interest in social distancing to prevent the spread of COVID, the district court then conceived a second penological interest "for any time periods before or after the imposition of COVID-19 restrictions." JA 69. The district court maintained that Defendants' interference with Hammock's free-exercise rights during these periods was justified under *Turner* by Hammock's "status as a protective custody inmate." JA 69.

The district court's conclusion regarding Hammock's protective-custody status was "premature" at the motion-to-dismiss stage, given that Defendants themselves never identified protective custody as a penological interest. *Wilcox*, 877 F.3d at 169. Instead, the district court conjured this interest on its own from Hammock's supplemental pleading. *See* JA 69-70;

[https://perma.cc/C9AE-C7YS] (attached as ECF No. 36-18 in *Seth v. McDonough*, No. 8:20-cv-01028 (D. Md. Apr. 27, 2020)).

JA 23 (supplemental pleading stating that "[j]ust because Hammock is on PC [protective custody] the officials here and Gail Watts can not ignore, or throw away Hammock constitutional rights"); JA 24 (exhibit of inmate request form Hammock submitted to attend Jumu'ah services, on which someone wrote "Hammock … can't be let out to general population because of the protective custody unit"). It was not the district court's "role to simply invent possible objectives that Defendants have not even claimed were the basis for their policy." *Wilcox*, 877 F.3d at 169.

In any case, the district court misconstrued Hammock's pleadings. Hammock did not rely on the exhibit to his supplemental pleading to demonstrate the "truthfulness" of Defendants' justification. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 168 (4th Cir. 2016). Rather, Hammock attached this document to show that he submitted a request to attend Jumu'ah services on March 10, 2022. JA 23 ("Please (be) advised that Plaintiff Hammock put in a 118 Form on 3-10-22 which is enclosed … ."). Thus, the district court was wrong to treat the rationale in Hammock's rejected request as true. *Goines*, 822 F.3d at 168. As this Court has recognized, "[t]he plaintiff may tell the court what his adversary has said without throwing in the towel." *Id.* (quoting *Gale v. Hyde Park Bank*, 384 F.3d 451, 452 (7th Cir. 2004)).

Because Hammock stated a free-exercise claim and Defendants have not identified a penological interest justifying their infringement on Hammock's free-exercise rights when COVID restrictions were not in place, it was inappropriate to dismiss Hammock's claim at the pleadings stage. This

Court should remand to allow Hammock's claim to proceed to discovery so the district court can properly consider the "prison's rationale for the restrictions and any facts relevant to the *Turner* factors." *Lovelace*, 472 F.3d at 200 n.9.

C. In any event, Hammock alleged that Defendants' refusal to accommodate his religious beliefs was not reasonably related to a legitimate penological interest.

Even if this Court subjects the protective-custody interest that the district court imputed to Defendants to *Turner* scrutiny, it must find that Hammock has alleged sufficient facts showing that this interest was not "reasonably related" to denying him access to Jumu'ah services. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

The first and second *Turner* factors ask "(1) whether there is 'a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it'" and "(2) 'whether there are alternative means of exercising the right that remain open to prison inmates.'" *Greenhill v. Clarke*, 944 F.3d 243, 253 (4th Cir. 2019) (quoting *Turner*, 482 U.S. at 89-91). The district court apparently considered these two factors when it erroneously held that Hammock's free-exercise claim could not withstand *Turner* scrutiny. *See* JA 69. But giving Hammock's "pro se civil rights complaint … its due liberal construction," *Jehovah v. Clarke*, 798 F.3d 169, 180-81 (4th Cir. 2015), an application of these factors to Hammock's facts

demonstrates that Defendants' decision to deny Hammock access to Jumu'ah services before and after COVID restrictions was unreasonable.

***Turner* factor one.** Hammock alleged that preventing him from attending Jumu'ah services from before "the coronavirus made it to the U.S." until the date he filed his pleadings in 2022 was not rationally connected to a protective-custody interest. JA 12, 22. Contrary to the district court's finding, this restriction lacked a rational connection for all "time periods before or after the imposition of COVID-19 restrictions." JA 69 (district-court opinion dismissing Hammock's free-exercise claim). A prison restriction does not have a rational connection to a legitimate penological interest if the "logical connection" between the regulation and the "asserted goal 'is so remote as to render the policy arbitrary or irrational.'" *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 215 (4th Cir. 2017) (quoting *Turner*, 482 U.S. at 89-90). This rationality inquiry is the most important part of the *Turner* analysis because "[i]f the connection between the [prison] regulation and the asserted goal is 'arbitrary or irrational,' then the regulation fails, irrespective of whether the other [*Turner*] factors tilt in its favor." *Shaw v. Murphy*, 532 U.S. 223, 229-30 (2001) (quoting *Turner*, 482 U.S. at 90).

Hammock alleged facts undermining the logical connection between this concern and any protective-custody interest that the district court devised. Though maintaining inmate safety is of course a legitimate concern, *Jehovah*, 798 F.3d at 178, Hammock alleged that Defendants denied him access to Jumu'ah services because he was in protective custody at one time only:

March 2022, JA 23-24. But Hammock also alleged that he had been "deprived to go to Jumah services" since he first arrived at BCDC in September 2019, JA 10, JA 12, six months before the CDC issued guidance for detention officials to slow the spread of COVID, *see supra* at 19-20. Nothing in Hammock's pleadings justifies the district court's choice to defend Defendants' actions before and after COVID restrictions—timeframes the district court and Defendants made no effort to define, JA 68-69—based on Hammock's protective custody. In fact, Hammock's allegations imply that he was not in protective custody in 2019, *see* JA 23, when two inmates entered his "cell and kicked him in his stom[a]ch," JA 15.

Even accepting, for argument's sake, that the district court correctly assumed that Hammock was in protective custody before and after COVID restrictions, Hammock's allegations suggest that protective-custody status would not completely bar him from interacting with other inmates. He had a cellmate in 2021. JA 17. And, when he was in protective custody in March 2022, a prison "memo on the [b]oard" in his protective-custody unit directed detainees to submit a request form to be put on the religious-services list. JA 22. Apparently, BCDC thought protective-custody status wouldn't disqualify detainees from attending religious services. So, the decision to bar Hammock from Jumu'ah services bears no "logical connection" to the interest that the district court attributed to Defendants. *Turner*, 482 U.S. at 89.

The district court never properly considered whether a rational connection existed between a protective-custody interest and Defendants'

practice of barring Hammock from Jumu'ah services when COVID restrictions were not in place. Instead, the district court stated only that "the reason [Hammock] ha[d] not been permitted to attend religious services" during this time was "his status as a protective custody inmate." JA 69. The district court's conclusory statement was insufficient to evaluate Defendants' actions. *See Ramirez v. Pugh*, 379 F.3d 122, 127 (3d Cir. 2004) ("[W]hile a court 'need not necessarily engage in a detailed discussion' of the connection between a prison policy and that interest, a 'brief, conclusory statement' is insufficient for evaluating the application of *Turner*'s first prong." (quoting *Wolf v. Ashcroft*, 297 F.3d 305, 308 (3d Cir. 2002))).

Because denying Hammock access to Jumu'ah services before and after COVID restrictions does not bear a rational connection to a protective-custody interest, this practice automatically fails *Turner* scrutiny. *See Shaw*, 532 U.S. at 229-30. Nonetheless, we now discuss the second *Turner* factor because the district court considered it. *See* JA 69.

***Turner* factor two.** Hammock's allegations indicate that Hammock lacked any alternative means of exercising his right to practice Islam. As discussed (at 18), Hammock pleaded that he was not allowed to practice Islam by attending Jumu'ah services, and "[t]here are, of course, no alternative means of attending Jumu'ah." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 351 (1987).

To be sure, the second *Turner* factor is not just about "whether a prisoner had other ways to perform Friday Prayer at noon as [he] pleased." *Firewalker-Fields*, 58 F.4th 104, 117 (4th Cir. 2023). Rather, this Court considers "all the

ways the Muslim prisoner[] could generally engage in [his] religious practice" because "reasonable alternative accommodation of religious practice supports finding a prison regulation reasonable." *Id.* But the district court misread *Firewalker-Fields* as requiring Hammock to plead he was prevented from engaging in individual religious practices. JA 69 (citing *Firewalker-Fields*, 58 F.4th 104).

Instead of focusing narrowly on whether the prison *prevented* individual religious practices entirely (as the district court did here), *Firewalker-Fields* considered how the prison *accommodated* religious practices. This Court concluded that a jail's range of accommodations of the plaintiff's Islamic faith—allowing individual Friday Prayer, a prayer rug, a Quran, a "diet consistent with Islamic practice," requests for "Ramadan-specific eating hours," and invitations to "an imam to visit … on Fridays to engage in prayer"—supported a finding that the jail's policy preventing Jumu'ah services was reasonable. *Firewalker-Fields*, 58 F.4th at 117. In doing so, this Court likened the jail's accommodations to those in *O'Lone v. Estate of Shabazz*, 482 U.S. 342, which similarly found reasonable a restriction on attending Jumu'ah when prisoners were permitted "to participate in other religious observances of their faith," such as communal prayer time and Ramadan-specific eating times, *id.* at 352.

Here, however, Hammock alleged that Defendants did not accommodate his right to practice Islam. JA 12. Instead, Defendants' actions prevented Hammock from "go[ing] to Jumah *and* practic[ing] [Islam] without any

interference[].”JA 12 (emphasis added). Therefore, “applying the requisite liberal construction” to Hammock’s pro se complaint, *Jehovah*, 798 F.3d at 179, Hammock sufficiently alleged that he could not “generally engage in worship” because BCDC broadly impeded Hammock’s religious expression, *Firewalker-Fields*, 58 F.4th at 117. Defendants’ interference with Hammock’s religious practice is a far cry from the alternative accommodations of religious practice this Court found sufficient in *Firewalker-Fields*. *Id.* Indeed, this Court has observed that the Free Exercise Clause mandates reasonable accommodation of Muslim observances. *See Greenhill*, 944 F.3d at 253 (“The Free Exercise Clause requires prison officials to reasonably accommodate an inmate’s exercise of sincerely held religious beliefs.”); *Lovelace v. Lee*, 472 F.3d 174, 198-99 (4th Cir. 2006) (holding a prisoner has a clearly established right to “proper food during Ramadan” and that a prison official violates this right if he denies Ramadan meals “intentionally and without sufficient justification”).

Regardless, this second factor regarding “alternative means of exercising the right that remain open to prison inmates” is not “conclusive”; the availability of alternative means just provides “some evidence” about whether Defendants’ actions were reasonable. *Firewalker-Fields*, 58 F.4th at 116-17 (first quoting *Turner*, 482 U.S. at 90; and then quoting *Overton v. Bazzetta*, 539 U.S. 126, 135 (2003)). Because Hammock’s allegations undermine any rational relation between barring him from Jumu’ah services

and the (district court's) protective-custody interest, *see supra* at 20-22, Defendants' actions were clearly unreasonable.

D. Defendants are not entitled to qualified immunity for preventing Hammock from attending Jumu'ah services.

As explained above (at 13-14), Defendants are not entitled to qualified immunity if Hammock alleged a deprivation of a constitutional right that was clearly established at the time of their alleged conduct. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Hammock alleged that Defendants violated his First Amendment rights by arbitrarily preventing him from attending Jumu'ah services for over two years. *See supra* at 18-27. This Court must then decide whether the free-exercise right at issue was clearly established when Defendants committed the violation. It was.

The Free Exercise Clause "forbids the adoption of laws designed to suppress religious beliefs or practices." *Wall v. Wade*, 741 F.3d 492, 498 (4th Cir. 2014) (quoting *Morrison v. Garraghty*, 239 F.3d 648, 656 (4th Cir. 2001)). "This encompasses policies that impose a substantial burden on a prisoner's right to practice his religion." *Id*. This Court's precedent accordingly establishes that correctional officers cannot burden a prisoner's right to attend religious services that are required by the prisoner's religion without offering a "legitimate penological objective." *Lovelace v. Lee*, 472 F.3d 174, 200 (4th Cir. 2006) (quoting *Young v. Coughlin*, 866 F.2d 567, 570 (2d Cir. 1989)). That precedent gives "fair warning" to reasonable officers, *Quinn v. Zerkle*, 111 F.4th 281, 294 (4th Cir. 2024) (quoting *Aleman v. City of Charlotte*, 80 F.4th

264, 295 (4th Cir. 2023)): Barring a prisoner from attending Jumu'ah services without offering penological justifications for the entire exclusion period, like Defendants did here, is unconstitutional.

This Court may also rely on other circuits' caselaw, *see Ray v. Roane*, 948 F.3d 222, 230 (4th Cir. 2020), which further clearly establishes that prison officials may not prevent an inmate from attending required religious services without legitimate penological interests, *see Mayweathers v. Newland*, 258 F.3d 930, 938 (9th Cir. 2001) (holding prison officials could not prevent prisoner from attending Jumu'ah services without a legitimate penological interest); *see also Pleasant-Bey v. Shelby Cnty.*, 2019 WL 11769343, at *5 (6th Cir. Nov. 7, 2019) (holding a prison could violate a prisoner's free exercise rights if it prohibited a prisoner from attending an Id Ul Fitr feast without a legitimate penological interest).

III. On remand, this Court should instruct the district court to reconsider whether to appoint counsel for Hammock so that he can properly take discovery.

On remand, the parties will take discovery on the food conditions at BCDC and the prison's justifications for denying Hammock access to Jumu'ah services. To facilitate that process, the district court should also reconsider its decision to deny Hammock the assistance of counsel in conducting discovery. *See* JA 81. This Court has found that a pro se litigant was entitled to counsel to represent him on his deliberate-indifference claim when he (1) had a colorable claim, (2) was "uneducated generally and totally

uneducated in legal matters," and (3) could not "leave the prison to interview witnesses such as the doctors." *Whisenant v. Yuan*, 739 F.2d 160, 163 (4th Cir. 1984).

As demonstrated above, Hammock has stated colorable claims. Hammock is also uneducated in legal matters and cannot, as he puts it, "investigate, prepare and get discovery, and communicate with defendants counsel." JA 53. As this Court recently observed, even when a pro se litigant's claims are not particularly complex, a simple lack of "general education and legal knowledge could warrant appointment of counsel." *Jenkins v. Woodard*, 109 F.4th 242, 248 (4th Cir. 2024); *see also* ECF 44 in *Hammock v. Watts*, No. 8:19-cv-03575 (D. Md. May 24, 2021) (granting Hammock's motion for counsel in separate litigation against correctional officers after his claims survived a motion to dismiss "in light of the need for this case to proceed to discovery"). That observation is apt here.

Conclusion

This Court should reverse the district court's dismissal and remand for further proceedings on Hammock's food-contamination and free-exercise claims.

Respectfully submitted,

/s/ Regina Wang
Regina Wang
Brian Wolfman
Becca Steinberg
GEORGETOWN LAW
APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
(202) 661-6741

Viktor K. Dolberg
Annie Farrell
Giancarlo Vargas
Student Counsel

Counsel for Plaintiff-Appellant Terrence Edward Hammock

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Request for Oral Argument

Oral argument would aid this Court in resolving this appeal. Argument will allow this Court to explore how the contaminated food at BCDC injured Hammock and posed an unreasonable risk of future harm in violation of the Eighth Amendment. It will also help the Court decide whether, and if so how, the *Turner* analysis should apply at the motion-to-dismiss stage, when the proffered penological justification does not cover the entire period at issue.

Certificate of Compliance

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,967 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(a)(1). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in 14-point Palatino Linotype, a proportionally spaced typeface.

/s/ Regina Wang
Regina Wang

Counsel for Plaintiff-Appellant
Terrence Edward Hammock

December 20, 2024

Certificate of Service

I certify that on December 20, 2024, I electronically filed this Brief of Plaintiff-Appellant Terrence Edward Hammock using the CM/ECF System, which will send notice of the filing to the following registered CM/ECF users: counsel for Defendants-Appellees Bambi Glenn (bglenn@baltimorecountymd.gov).

/s/ Regina Wang

Regina Wang