No. 24-1817

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SHAREEF CHILDS,

Plaintiff-Appellant,

v.

CHERYL WEBSTER, et al.,

Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Western District of Wisconsin
Case No. 22-cv-256 Hon. James D. Peterson

OPENING BRIEF FOR PLAINTIFF-APPELLANT SHAREEF CHILDS

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April 23, 2025

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-1817

Short Caption: Childs v. Webster

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Attorney's Signature: /s/Brian Wolfman Date: 5/17/2024

Attorney's Printed Name: Brian Wolfman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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Attorney's Signature: /s/ Becca Steinberg Date: 04/20/2025

Attorney's Printed Name: Becca Steinberg

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Attorney's Signature: s/ Regina Wang Date: 5/21/24

Attorney's Printed Name: Regina Wang

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Jurisdictional Statement

Plaintiff-Appellant Shareef Childs sued Defendants under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, and under 42 U.S.C. § 1983, alleging violations of the First Amendment's Free Exercise Clause. The district court had subject-matter jurisdiction under 28 U.S.C. § 1331. App. 005.

The district court's opinion and order, ECF 86, and judgment, ECF 87, both entered on April 15, 2024, granted summary judgment to Defendants, disposing of all parties' claims. Childs timely filed his notice of appeal on May 10, 2024. ECF 89. On the same date, Childs moved to alter and amend the judgment. ECF 88. The district court denied that motion in an order entered on March 20, 2025, ECF 98, ripening this appeal, *see* Fed. R. App. P. 4(a)(4)(B)(i); *Florian v. Sequa Corp.*, 294 F.3d 828, 829 (7th Cir. 2002) (per curiam). This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

RLUIPA and the First Amendment bar prisons from erecting unwarranted barriers to a prisoner's free exercise of religion. Shareef Childs is a Muslim prisoner who seeks to engage in Salah, a ritual that requires Muslims to offer five prayers throughout each day when the sun is at five different positions in the sky. Childs, like many Muslims, believes that if his Salah prayers are offered at the wrong time, they will not be accepted by God. To ensure that his prayers are timely, Childs seeks to use a prayer schedule that lists when the sun will be at each key position in his geographic

location. Prayer schedules can be obtained at local mosques or by typing a city or zip code into a website.

In 2023, Defendants—officials at the Stanley (Wisconsin) Correctional Institution where Childs is incarcerated—distributed inaccurate prayer schedules that caused Childs to offer prayers early, at odds with his sincerely held religious beliefs. When Childs requested an accurate prayer schedule, Defendants denied him access to one. To this day, Defendants still refuse to provide Childs and other Muslim inmates with prayer schedules.

The issues presented are:

I. Whether Defendants' refusal to distribute accurate prayer schedules violates Childs's rights under RLUIPA and the First Amendment's Free Exercise Clause.

II. Whether Childs's First Amendment free-exercise right was clearly established, necessitating the denial of Defendants' claim to qualified immunity.

Statement of the Case

I. Factual background

A. Childs's religious exercise. Shareef Childs is a practicing Muslim incarcerated at Stanley Correctional Institution in Stanley, Wisconsin. App. 118 (¶ 1). He was raised in a Muslim family and has practiced Islam his entire life. App. 022 at 10:9-14.

Childs practices Salah, "one of the fundamental pillars of Islam." App. 159; *see also* App. 130 (¶ 31). Salah consists of five daily prayers. App. 159. Each of the prayers must be performed within its own specific time window. App. 028 at 37:10-22. Each window's start and end times depend on the sun's position in the sky. App. 029 at 38:12-16; App. 047 (¶ 13). Because the Earth rotates, the proper prayer times vary from day-to-day and location-to-location. *See* App. 135-138 (prayer schedules).

Many Muslims believe that "it is best to perform each of the five obligatory prayers as soon as the [window] has commenced, as [Muslims are] not permitted to delay them without a valid reason, and [they] must not be delayed beyond [their] permitted time." App. 159. Childs follows this guidance and strives to offer his prayers "on time" right as the windows open. App. 031 at 48:11-12. Offering a Salah prayer outside of its designated "timeframe can be considered a sin for Muslims." App. 047 (¶ 16). Daniel Coate, a Muslim prison chaplain near Stanley, puts it this way: "God will not accept those [untimely] prayers." App. 047 (¶ 16). Childs believes that failing to perform the daily Salah prayers on time is a "major sin." App. 123 (¶ 31).

Muslims are advised to use schedules tailored to their geographic location to determine when each prayer window starts and ends. App. 159; App. 032 at 52:25-53:10; App. 013. Free people can access these schedules at any mosque, on the internet, or, when the sun is out, they can look at the sun themselves. App. 032 at 51:21-23, 52:25-53:21. Prisoners like Childs lack internet access and "don't get to go outside," so they rely on prison officials

for prayer schedules. App. 032 at 52:1; *see* App. 123 (¶ 30). At Stanley, prisoners may also receive prayer schedules through donations or via mail from loved ones. App. 056-057 (¶ 33). Prior to his time at Stanley, Childs received schedules from every prison in which he had been incarcerated. App. 032-033 at 53:22-54:6.

According to Cheryl Webster—Stanley's Corrections Program Supervisor—Stanley need not provide prayer schedules to inmates because Wisconsin's Division of Adult Institutions (DAI) policies do not compel it to. App. 084 (¶¶ 29-30); App. 087-113. But prior to 2023, Stanley *did* provide prayer schedules to Muslim inmates. *See* App. 084 (¶ 29).

B. Wrong schedules at Stanley in 2023. In January 2023, one of Stanley's chaplains, Craig Lindgren, printed a 2023 yearly prayer schedule so that practicing Muslim inmates would know the proper prayer times for the entire year. App. 056 (¶¶ 30-31). Because these schedules change based on the praying person's geographic location, Lindgren needed to enter the prison's location to receive an accurate schedule. *See* App. 056 (¶ 30).

Lindgren printed, and Childs received, an incorrect prayer schedule. App. 129 (¶ 25); *see also* App. 056 (¶ 31). The schedule he received did not indicate which geographic location it was for, *see* App. 135-136, but it listed prayer times up to fourteen minutes earlier than the correct times for Stanley, *see* App. 137-138.

The parties do not dispute that the schedules were wrong, but they do dispute just how wrong they were. Defendants assert that Chaplain

Lindgren mistakenly printed schedules for Eau Claire, Wisconsin—a city located about 29 miles southwest of Stanley. App. 057 (¶ 35); *see* Map Developers Distance Calculator, https://www.mapdevelopers.com. The prayer times for Eau Claire are two to five minutes later than the correct times for Stanley. *Compare* App. 059-066 *with* App. 067-074. But, as just noted, the incorrect schedule Childs received listed prayer times that were as much as fourteen minutes earlier than the proper prayer times for Stanley. *Compare* App. 135-136 *with* App. 067-074.

The incorrect schedules that Lindgren gave to Childs and other Muslim inmates in January 2023 were still in use in late March 2023, at the start of the holy month of Ramadan. *See* App. 057 (¶ 34); App. 085 (¶ 34); App. 028 at 36:2-5. During Ramadan, Muslims typically fast during the day, eating only before sunrise and after sunset, when the window for the sunset prayer (called Maghrib) opens. App. 023 at 15:10-16; App. 130 (¶ 31). So, for that month, Muslim inmates use prayer schedules to determine not only when to pray, but also when they may eat. *See* App. 023 at 15:10-16 Stanley posted the incorrect schedules in each wing of the prison to notify guards when to pass out pre-sunrise and post-sunset Ramadan meal bags. App. 056 (¶ 31).

When Ramadan began, Childs noticed that the start time of his sunset prayer on his prayer schedule did not coincide with the sun setting outside the prison's windows. *See* App. 028 at 36:5-9; App. 032 at 51:15-20. About one week into Ramadan, several Muslim inmates, including Childs, notified Chaplain Lindgren that their schedules were inaccurate. App. 057 (¶ 34);

App. 122 (¶ 27); App. 145-146. Lindgren notified Webster, and she ordered that the incorrect schedules be removed. App. 057 (¶ 34); App. 085 (¶ 34).

Lindgren then consulted Daniel Coate, the Muslim chaplain at a nearby prison, and asked what he would recommend to "remedy the situation." App. 076. Coate replied that a "2-3 minute difference … shouldn't be an issue." App. 075. Because "Muslims are required to know with certainty" that they are praying at the correct time, Coate suggested that inmates should wait a few minutes to ensure their prayers are within the window. App. 075. In his summary-judgment declaration, Coate added another justification for not taking remedial action: If a Muslim prays at the incorrect time "because of a reason that is out of their control, they will not be considered accountable for the mistake." App. 048 (¶ 19).

Defendants Lindgren and Mohr then found the correct, Stanley-based prayer schedule online, printed out copies, and made them available to the guards so they could accurately deliver Ramadan meal bags. App. 058 (¶ 39); App. 085 (¶ 34).

But the prison officials did not give inmates access to the correct schedule. App. 123 (¶ 30); App. 085 (¶¶ 34-35); App. 139-151. Several Muslim inmates, including Childs, asked Lindgren for updated schedules, but Lindgren told them that the prison would not give them prayer schedules—not because it was unable to, but because the inmates had complained about the earlier, incorrect schedules. App. 028 at 36:12-15; App. 117 (¶ 10). Childs and other Muslim inmates asked another chaplain, Steven Mohr, for accurate prayer

schedules, but Mohr also rejected their request. App. 117 (¶ 11); App. 123 (¶ 30). That denial, too, was retaliatory: Mohr said that Lindgren had instructed him "not to give [them] any more prayer schedules because inmates were complaining" about the incorrect schedules. App. 117 (¶ 11).

Childs continued to email Lindgren about the issue, but Lindgren responded only that the schedules provided earlier were given to prisoners as "a courtesy." App. 141. He repeatedly referred Childs to the DAI policies, which do not require prisons to provide prayer schedules. App. 143, 145, 148.

C. The current situation. The inaccurate prayer schedules in the record list prayer times for calendar year 2023 only. App. 059-066. Stanley officials have not given Muslim inmates prayer schedules since the incorrect ones were removed in March 2023. App. 058 (¶ 40); App. 085 (¶ 35); App. 033 at 54:7-8. Thus, Childs lacked an accurate schedule for 2023 and any prison-provided schedule for 2024, despite repeated requests for an accurate schedule. App. 139-151; App. 129-130 (¶¶ 28, 30). He therefore had "no way to gauge" when his religion compelled him to pray. App. 154. Childs had to pray without knowing whether his prayers would be accepted or whether he was committing "major sin[s]" by praying at incorrect times. App. 123 (¶ 31).[1]

[1] Childs has informed us that a visiting imam has recently donated accurate prayer schedules to Childs and other Muslim inmates at Stanley.

II. Procedural background

After exhausting internal prison grievance procedures, Childs sued Defendants Webster and Lindgren in the Western District of Wisconsin under 42 U.S.C. § 1983, alleging violations of the First Amendment's Free Exercise Clause, and under RLUIPA. App. 001-011. Childs later supplemented his complaint to add Chaplain Mohr as a defendant and to allege the claims at issue here: that Defendants had caused him to use an inaccurate prayer schedule and had not given him an accurate one in violation of the First Amendment and RLUIPA. App. 013; *see* ECF 39 (order allowing supplemented complaint).[2]

The relief available to Childs on his Section 1983 free-exercise claim is different from the relief available under RLUIPA. Only declaratory and injunctive relief are available under RLUIPA. *Nelson v. Miller*, 570 F.3d 868, 886-89 (7th Cir. 2009), *abrogated in part on other grounds by Jones v. Carter*, 915 F.3d 1147 (7th Cir. 2019); *Sossamon v. Texas*, 563 U.S. 277, 293 (2011). For his Section 1983 free-exercise claim, Childs may be awarded both injunctive relief and damages, with the availability of damages turning on whether

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But Childs does not know whether this voluntary donation will continue in the future.

[2] Childs also alleged RLUIPA and First Amendment violations based on Defendants' failures to provide Ramadan meal bags and an Eid-al-Fitr feast in 2022. App. 001-011. The district court rejected those claims, ECF 86 at 12-16, and they are not pursued in this appeal.

Defendants establish their entitlement to qualified immunity. *See, e.g.*, *Grayson v. Schuler*, 666 F.3d 450, 451, 455 (7th Cir. 2012).

Defendants moved for summary judgment, ECF 49, arguing that any error in the prayer schedule placed no burden on Childs's religious practice because, according to Chaplain Coate, Muslims typically do not pray at the exact times on the schedules, ECF 53 at 22. Defendants also sought to avoid liability on the ground that Lindgren merely "made a mistake" by printing incorrect schedules. ECF 53 at 25.

The district court granted Defendants' motion. ECF 86. The court assumed that the absence of correct prayer schedules substantially burdened Childs's religious practice because Childs maintained that praying on time is important to that practice. ECF 86 at 16. But the court held that Stanley had not prohibited Childs from possessing a prayer schedule and that "[n]either RLUIPA nor the First Amendment requires prison officials to purchase religious materials for prisoners using government funds." ECF 86 at 17-18. The court assumed that Childs could obtain prayer schedules from friends or family outside the prison and suggested that Muslim inmates could then "share the schedule[s] among themselves." ECF 86 at 18. It therefore granted summary judgment to Defendants on Childs's request for injunctive relief and "almost all of his First Amendment claims for damages." *Id.*

The district court noted that because Defendants "abruptly ended th[e] practice" of providing prayer schedules to inmates, the prisoners may have had "to scramble to obtain" correct ones. ECF 86 at 19. But the court

nonetheless concluded that qualified immunity shielded Defendants from liability because it was "unaware of any" authority requiring prison officials to provide religious materials to prisoners "as a courtesy." ECF 86 at 19-20.

Childs filed a Rule 59(e) motion seeking reconsideration, ECF 88 (which the district court later denied, ECF 98), and a timely notice of appeal, ECF 89.

Summary of Argument

I.A. The district court erred in granting Defendants summary judgment on Childs's RLUIPA and First Amendment free-exercise claims. The parties agree that Childs seeks to engage in religious exercise by performing Salah prayers in accordance with his beliefs. Defendants' distribution of incorrect prayer schedules substantially burdened Childs's religious exercise because that caused his prayers to be offered early through the first three months of 2023. And, beyond that, Defendants' outright refusal to provide any prayer schedules placed an even greater burden on Childs's religious exercise because he did not know when to pray.

B. Defendants cannot justify withholding prayer schedules under RLUIPA. Defendants have offered no valid interest that excuses their withholding, let alone a compelling interest as is required to escape liability under RLUIPA. Instead, Defendants assert that they don't have to accommodate Childs under prison policy. But it should go without saying that the existence of a prison policy that doesn't authorize a particular religious exercise cannot itself serve as a justification for inhibiting that

exercise. The district court also reasoned that Defendants do not have to spend government funds on prayer schedules. That purported interest is not a compelling one because RLUIPA requires prisons to remove barriers to inmates' exercise of religion, even when it produces some additional costs, such as when RLUIPA demands that prisons purchase and prepare religiously compliant foods for prisoners' consumption.

Defendants' failure to state a valid interest that justifies the withholding of Salah prayer schedules also means that they cannot carry their burden under the First Amendment. On this score, the *Turner* factors weigh against Defendants. *See Turner v. Safley*, 482 U.S. 78 (1987). Given their conditions of confinement, inmates lack alternative ways to perform Salah on a timely basis. Defendants can accommodate this practice in multiple ways, such as announcing prayer start times over the loudspeaker or personally notifying inmates. These alternatives would not adversely impact the prison in a substantial way.

II. Defendants are not entitled to qualified immunity on Childs's First Amendment damages claim. First of all, they have not asserted any reasonable belief underlying their decision to withhold prayer schedules from Muslim inmates. Quite the opposite: Childs has produced evidence that their decision not to provide schedules was retaliatory. Qualified immunity should be denied for this reason alone. But even if prison officials believed that their actions were lawful, qualified immunity would still be unavailable to Defendants because prisoners had, at the time of the unlawful

conduct in this case, a clearly-established right to easily-accessible, low-cost prayer materials.

Standard of Review

The district court's grant of summary judgment to Defendants is reviewed de novo, and this Court must "construe all inferences" in favor of Childs, the non-moving party. *Chi. Reg'l Council of Carpenters Pension Fund v. Schal Bovis, Inc.*, 826 F.3d 397, 403 (7th Cir. 2016).

Argument

I. The district court erred in granting Defendants summary judgment on Childs's RLUIPA and First Amendment claims.

The First Amendment prohibits government officials from abridging the free exercise of religion. It demands "government respect for, and noninterference with" religious practices. *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). "The protections embodied by the Free Exercise Clause were codified in RLUIPA," *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 996 (7th Cir. 2006), and are the "product of a long-running congressional effort" to prevent the government from burdening institutionalized people's free exercise of religion, *West v. Radtke*, 48 F.4th 836, 843 (7th Cir. 2022). RLUIPA "generously protects" inmates' religious freedom. *Id.* at 844. The district court erred in concluding that neither RLUIPA nor the First Amendment requires Defendants to provide Childs with accurate prayer schedules.

A. Childs made out free-exercise claims under RLUIPA and the First Amendment.

Defendants' refusal to distribute accurate prayer calendars substantially burdened Childs's performance of Salah prayers. The affirmative elements of RLUIPA and First Amendment free-exercise claims are identical. *See, e.g.*, *Edgewood High Sch. of the Sacred Heart, Inc. v. City of Madison*, 95 F.4th 1080, 1089-90 (7th Cir. 2024). Both RLUIPA and the First Amendment require Childs to show that (1) he sought to engage in religious exercise and (2) Defendants imposed a substantial burden on that exercise. 42 U.S.C. § 2000cc-1(a); *Holt v. Hobbs*, 574 U.S. 352, 357-58 (2015); *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013). The district court correctly assumed that Childs made this showing. *See* ECF 86 at 16.

1. Childs sought to engage in religious exercise.

Religious exercise includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). Through RLUIPA, Congress mandated that First Amendment free-exercise rights should be "construed in favor of a broad protection of religious exercise, to the maximum extent" possible. *Holt*, 574 U.S. at 357-58 (quoting 42 U.S.C. § 2000cc-3(g)).

The parties agree that Childs sought to exercise his religion by using a prayer schedule to guide him through Salah prayer. *See* ECF 53 at 21-23. Childs, like other Muslims, believes that Salah prayers must be offered every day during five time windows that vary depending on the position of the

sun in the worshipper's location. App. 028 at 37:10-18; App. 029 at 41:15-23; App. 130 (¶ 31); App. 159. Schedules are necessary to determine the times at which each window begins and ends. App. 013; App. 032 at 51:23-52:5. Accurate schedules are also important because Childs, and millions of other Muslims, believe in praying "on time," meaning at the very start of each prayer window. *See* App. 159.

2. Distributing incorrect prayer schedules and then withholding correct schedules substantially burdens Childs's religious practice.

Childs maintains, and the district court assumed, that Defendants substantially burdened Childs's religious practice by not providing him an accurate prayer schedule. ECF 86 at 16. A substantial burden is one that forces a religious person to "refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs." *Koger v. Bryan*, 523 F.3d 789, 798 (7th Cir. 2008) (citation omitted). A substantial burden thus exists when "a prison attaches some meaningful negative consequence to an inmate's religious exercise, forcing him to choose between violating his religion and incurring that negative consequence." *West*, 48 F.4th at 845. In determining whether a burden is substantial, the court must "'focus[] primarily on the intensity of the coercion applied by the government' and not the centrality of the religious

practice in question." *Id.* (quoting *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013)).

a. Defendants' distribution of inaccurate prayer schedules in 2023 imposed a substantial burden on Childs's religious practice because it caused him to pray too early. Childs believes that if he offers prayers outside the correct time windows, they will not be accepted, and he will have failed his religious obligations. App. 028 at 37:10-22. As Chaplain Coate put it, "[o]ffering [Salah] prayers outside of their allocated timeframe can be considered a sin for Muslims because … God will not accept those prayers." App. 047 (¶ 16). To ensure that his prayers are accepted, Childs follows the common Muslim practice of praying at the start of each window. App. 031 at 48:11-13; *see also* App. 159. Other Muslim prisoners also follow this practice and desire accurate prayer schedules to ensure timely prayers. *See* App. 122 (¶ 29); App. 116-117 (¶¶ 9-11).

Childs maintains that the 2023 schedule he received reflected start and end times that were two to fourteen minutes *early*. *Compare* App. 135-136 *with* App. 137-138. Defendants assert that the schedules were wrong because they erroneously distributed a schedule for Eau Claire, a city southwest of Stanley, causing the prayers to be only two to three minutes *late*. App. 057 (¶¶ 34-36); *supra* at 4-5. But Childs has produced evidence showing that the schedule he received was not the same as the Eau Claire schedule and instead contained greater time differences. *Compare* App. 014, *with* App. 059-074. And, on review from a grant of summary judgment, this Court must

view any disputed fact in Childs's favor. *Chi. Reg'l Council*, 826 F.3d at 402. Either way, Childs was not able to pray on time. The incorrect prayer schedules thus substantially burdened Childs's exercise of religion.

Defendants' contrary arguments miss the mark. Defendants primarily claim that they did not substantially burden Childs's religious exercise because the incorrect prayer schedules were off by only two to three minutes, and Chaplain Coate said that such a small difference would not matter to most Muslims. ECF 53 at 22-23; *see also* App. 048 (¶ 18). That is wrong for two reasons.

First, as explained (at 13-15), Childs's desire to pray at the start of each prayer window is shared by many Muslims, including other prisoners at Stanley. *See* App. 116-117 (¶ 9). This practice is so well-established that an instructional guide to Salah advises Muslims that "it is best to perform each of the five obligatory prayers *as soon as* the time [window] has commenced." App. 159 (emphasis added).

Second, even if Childs was alone in wanting to pray at the top of the window, RLUIPA protects all beliefs, no matter how "idiosyncratic," and even if they are not shared by "all of the members of a religious sect." *Holt*, 574 U.S. at 362 (quoting *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 715–16 (1981)). "The substantial-burden inquiry does not ask whether [Childs's] understanding of his faith obligations is correct" because "[c]ourts are not arbiters of scriptural interpretation." *West*, 48 F.4th at 847 (quoting *Thomas*, 450 U.S. at 716). "A person's religious beliefs are personal to that

individual; they are not subject to restriction by the personal theological views of another." *Ortiz v. Downey*, 561 F.3d 664, 669 (7th Cir. 2009). Childs believes that praying on time, and thus in the correct time window, is crucial to his practice of Salah. That is all that matters. *See id.*

Defendants also assert that they did not violate Childs's rights because their issuance of incorrect schedules was corrected. ECF 53 at 16. That is untrue. Defendants never fixed the problem. Although they apparently printed schedules with the correct 2023 times for Stanley eventually (and only after prisoners complained), they never distributed the schedules to the Muslim inmates. App. 129 (¶¶ 26-28). Instead, in retribution for Childs's and other prisoners' requests for accurate schedules, Defendants refused to provide them to the prisoners. App. 129-130 (¶¶ 26-30); App. 116-117 (¶¶ 9-11). And even though Defendants posted the revised schedules, only officers had access to them so they knew when to distribute Ramadan meal bags. App. 058 (¶ 39); App. 085 (¶ 34); App. 139-140. Indeed, Defendants Lindgren and Webster acknowledged, in December 2023 and January 2024, respectively, that they still do not provide prayer schedules to Muslim inmates. App. 058 (¶ 40); App. 085 (¶ 35).

And, even assuming (counterfactually) that Defendants had corrected their error, a plaintiff can still litigate damages claims "even if the underlying misconduct that caused the injury has ceased." *See Koger*, 523 F.3d at 804 (quoting *Brown v. Bartholomew Consol. Sch. Corp.*, 442 F.3d 558, 596 (7th Cir. 2006)). In addition to seeking injunctive relief, Childs claims damages

flowing from the distribution of incorrect schedules in 2023 and from Defendants' refusal to provide accurate ones to the present day. *See supra* at 7-8 & n.1.

Finally, Defendants argue, and the district court seems to have agreed, that they did not substantially burden Childs's religious exercise because inmates can rely on family, friends, or donations (to the extent that they are available) to obtain prayer schedules. ECF 86 at 18; App. 056-057 (¶ 33). This argument is seriously misguided. RLUIPA and the First Amendment require *prisons* to remove barriers to their inmates' religious exercise. *See Schlemm v. Wall*, 784 F.3d 362, 365 (7th Cir. 2015). If the failure to provide schedules obstructs Childs's religious exercise, the prison cannot rely on the hoped-for charity of family and friends to overcome the obstacle the prison creates. *See Jones v. Carter*, 915 F.3d 1147, 1150-51 (7th Cir. 2019) (finding that a state cannot escape liability under RLUIPA by relying on a prisoner to buy his own religiously compliant meals). This makes sense because a prisoner may not have family, friends, or access to money. *See id.* The bottom line is that Childs asked for an accurate prayer schedule, and RLUIPA and the First Amendment require the prison, and only the prison, to take steps to accommodate him.

b. Defendants' ongoing refusal to provide Childs with any prayer schedules also imposes a substantial burden on his religious exercise because he cannot accurately ascertain when he must pray. As a prisoner, Childs cannot go online himself to find a schedule with the precise prayer

windows. App. 032 at 52:25-53:21. Even on sunny days, Childs often does not have a direct view of the sun and therefore cannot always determine when the sun has reached the key positions in the sky. *See* App. 032 at 52:15-53:5. Finally, he cannot, like a free member of the public, go to a mosque and obtain a complimentary schedule. *See* App. 032 at 53:11-21. Refusing to provide Childs a prayer schedule imposes more than a substantial burden on his exercise of religion—it's an outright bar on the timely offering of Salah prayers.

B. Defendants have not justified withholding the prayer schedules under RLUIPA or the First Amendment.

Because Childs has shown that Defendants substantially burdened his religious exercise in violation of RLUIPA and the Free Exercise Clause, the burden now falls on Defendants to justify withholding the prayer schedules despite that substantial burden. At this point, the analyses under RLUIPA and the First Amendment diverge. Under RLUIPA, Defendants carry the onerous burden of showing that their actions are "in furtherance of a compelling governmental interest" and "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a)(1)-(2). Under the First Amendment, by contrast, the *Turner* factors apply, and Defendants must show that their actions are "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). Because Defendants have not posited any valid interest to justify withholding the schedules, they fail both tests.

1. Defendants' justifications for withholding prayer schedules do not survive strict scrutiny.

Defendants cannot carry their RLUIPA strict-scrutiny burden. Defendants must first "demonstrate that the compelling interest test is satisfied through application of the challenged law to … the particular claimant whose sincere exercise of religion is being substantially burdened." *Holt v. Hobbs*, 574 U.S. 352, 363 (2015) (quotation marks omitted). If Defendants can produce a compelling interest, "[t]he Act requires [them] not merely to explain why [they] denied the exemption but to prove that denying the exemption is the least restrictive means of furthering a compelling governmental interest." *Schlemm v. Wall*, 784 F.3d 362, 365 (7th Cir. 2015) (quoting *Holt*, 574 U.S. at 364). Defendants must "sho[w] that [they] lack[] other means of achieving [their] desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y]." *Holt*, 574 U.S. at 364-65 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)). "[I]f a less restrictive means is available," Defendants "must use it." *Id.* at 365 (quoting *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 815 (2000)).

Defendants' RLUIPA burden is "exceptionally demanding." *West v. Radtke*, 48 F.4th 836, 847 (7th Cir. 2022) (citation omitted). This Court may not show "'unquestioning deference' to prison officials." *Id.* (citation omitted). Instead, it must "examine both sides of the ledger on the same case-specific level of generality: asking whether the government's particular interest in

burdening this plaintiff's particular religious exercise is justified in light of the record in this case." *Id.* at 848 (citation omitted).

Defendants do not point to any valid interest, let alone a compelling one, to justify withholding prayer schedules from Childs and other Muslim inmates. *See generally* ECF 53. The only explanation Defendants provide is that they previously provided schedules to inmates as a "courtesy" and that the Wisconsin DAI policy does not require them to continue to do so. ECF 53 at 22. In other words, the Defendants' purportedly compelling interest is "we don't have to." But RLUIPA says that they *do* have to, absent a justification that survives strict scrutiny. RLUIPA "requires prisons to change their rules to accommodate religious practices." *Schlemm*, 784 F.3d at 365. That is, a "bureaucratic desire to follow the prison system's rules" is not a compelling interest, and a rule's "existence is not a compelling obstacle to change." *Id.* Because Childs needs a prayer schedule to practice his sincerely held religious beliefs, Defendants are required to accommodate him.

And it's not simply that Defendants haven't proferred a valid interest in refusing to provide prayer schedules. The record indicates that Defendants' refusal was grounded in a retaliatory motive. Childs and another inmate maintain that when they requested accurate prayer schedules, Chaplain Mohr said that Chaplain Lindgren told him not to distribute them because "inmates were complaining about the courtesy incorrect schedules that were already provided." App. 117 (¶ 11); *accord* App. 028 at 36:10-15. It should go without saying that a desire to punish inmates for challenging violations of

their RLUIPA rights is not a legitimate interest, let alone a compelling one. *Cf. Mack v. Warden Loretto FCI*, 839 F.3d 286, 300 (3d Cir. 2016) ("[R]etaliating against a prisoner for the exercise of [*any* of] his constitutional rights is unconstitutional." (citation omitted)).

The district court overlooked Defendants' failure to identify a compelling interest and agreed that Childs's claim failed because the prison's policy did not "require[]" Defendants to distribute prayer schedules. *See* ECF 86 at 18-19. The district court also went a step further by attributing to Defendants a justification that they themselves did not proffer—a desire not to spend government funds on religious materials. *See* ECF 86 at 18. This Court should not consider the district court's additional explanation because "it is not the courts' role to simply invent possible objectives that Defendants have not even claimed were the basis for their policy." *Wilcox v. Brown*, 877 F.3d 161, 169 (4th Cir. 2017); *see Ortiz*, 561 F.3d at 668-69.

But even if the district court appropriately could rely on this explanation, it would not hold up under the exacting strict-scrutiny test because "[s]aving a few dollars is not a compelling interest." *Schlemm*, 784 F.3d at 365. To the contrary, RLUIPA requires the expenditure of government resources necessary to facilitate prisoners' religious practices. *See, e.g.*, *Schlemm*, 784 F.3d at 365 (religious holiday meals); *Koger v. Bryan*, 523 F.3d 789, 798 (7th Cir. 2008) (non-meat meals). It would place no burden on Defendants, other than de minimis copying costs, to distribute schedules to Muslim inmates who need them.

Because Defendants have failed to produce any valid interest, a least-restrictive-means analysis is unnecessary. But assuming that Defendants had posited a legitimate interest, an outright refusal to notify Childs when he must pray would be the *most* restrictive means of advancing that interest, not the least. Alternatives that would respect a Muslim inmate's RLUIPA rights include personally informing him of prayer start times or making an announcement over the loudspeaker. Defendants didn't employ these or any other less-restrictive option and instead chose the most burdensome one: outright denial of prayer schedules.

2. Withholding prayer schedules does not serve a legitimate penological interest under *Turner*'s First Amendment test.

Defendants cannot carry the more lenient First Amendment burden of justification either. As explained (at 19), "when a prison regulation impinges on inmates' [First Amendment] rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner*, 482 U.S. at 89. To evaluate whether a prison's actions satisfy this test, a court must consider the "*Turner* factors": (1) whether a "rational connection exists between the regulation and a legitimate government interest," (2) "whether there are alternative means of exercising the right … that remain available," (3) the impact that providing an accommodation would have on the prison, other inmates, and the allocation of resources," and (4) whether "obvious, easy

alternatives" exist. *Williams v. Lane*, 851 F.2d 867, 877 (7th Cir. 1988) (citation omitted); *accord Turner*, 482 U.S. at 89-90.

Factor one. As already explained (at 20-23), Defendants did not provide *any* valid reason to justify withholding prayer schedules from Childs. All they did was offer "reflexive, rote assertions" that their own policies did not require them to do so. *Emad v. Dodge Cty.*, 71 F.4th 649, 653 (7th Cir. 2023) (quoting *Nigl v. Litscher*, 940 F.3d 329, 334 (7th Cir. 2019)). This Court has "cautioned prison officials that they 'cannot rely on the mere incantation of a penal interest but must come forward with record evidence that substantiates that the interest is truly at risk.'" *Id.* at 654 (quoting *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1004 (7th Cir. 2019)). Here, Defendants have not offered even a "mere incantation of a penal interest," *id.*, so this case "can be disposed of [in Childs's favor] under the first factor," *Nigl*, 940 F.3d at 333-34.

Factor two. When evaluating whether alternative means of exercising the right are available, courts examine whether the prisoner is "deprived of all forms of religious exercise" or remains "free to practice [his] religion." *Woods v. O'Leary*, 890 F.2d 883, 887 (7th Cir. 1989); *see also O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987). This Court has distinguished between regulations that impose only a minor restriction on a part of prisoners' religious exercise and those that bar them from performing central tenets of their faith. *See Larry v. Goldsmith*, 799 Fed. App'x 413, 415 (7th Cir. 2020); *Woods*, 890 F.2d at 887; *Williams*, 851 F.2d at 878. In *Larry*, a Muslim prisoner challenged a

regulation that prohibited inmates from getting out of bed after 10:00 pm because it prevented him from perfoming the dusk Salah prayer. 799 Fed. App'x at 414. This Court held that there were alternative means for the prisoner to exercise his faith because he could participate in Muslim services and "freely perform the other prayer cycles that fall outside of quiet hours." *Id.* at 415.

This case is unlike *Larry* because Defendants' failure to provide Childs with prayer calendars, or any notice of accurate prayer start and end times, completely bars him from adhering to one of the "fundamental pillars of Islam." *See* App. 159. Salah can be performed in only one way: by offering a prayer when the sun reaches each key position in the sky. As a prisoner whose resources and freedom of movement are highly restricted, *see supra* at 3-4, Childs needs a schedule to know when to begin each Salah prayer. App. 032 at 51:14-52:5. Childs could not properly exercise his religious rights in 2023 when he performed Salah prayers early in reliance on the inaccurate prayer calendars. He also faced an outright bar on his religious exercise when Defendants refused to provide him an accurate calendar after he complained about the wrong schedules because he then had no way of determining when he had to pray. Even though Childs can access other Muslim religious services at Stanley, none of these services compensate for the obligatory personal prayers that are central to his faith. *See* App. 159.

Factor three. Accommodating Childs would not greatly affect the prison. As noted, all Defendants would have to do is print out schedules for

prisoners who need them. We know that Defendants can manage this because they provided schedules voluntarily prior to Ramadan 2023, when they ceased this practice in apparent retaliation for inmates' assertions of their rights. App. 015-016 (¶¶ 2-5); App. 028 at 36:10-15. Because schedules can (and do) fit two months on a single page, accommodating Childs would require Defendants to print three double-sided pieces of paper a year. *See, e.g.*, App. 135-136. Printing this annual schedule would impose only miniscule costs on the prison. These costs are far less than those of other prison-based religious accommodations, such as meals that comply with religious dietary restrictions, as discussed above (at 22). It would cost even less to inform individual inmates of prayer times or announce them over a loudspeaker and would impose only a small extra duty on guards.

Factor four. Though there's only one way for Childs to perform Salah properly, *see supra* at 13-14, "obvious, easy alternatives" are available to the prison to accommodate him, *Williams*, 851 F.2d at 877 (citation omitted), any of which would be better than refusing to provide him any accommodation at all. Defendants could simply return to their prior practice of distributing schedules to Muslim prisoners. Or they could, as just explained, require guards to personally notify Childs of each prayer time or announce start times over a loudspeaker. In any event, Defendants must do *something*, and their current practice ignores these readily available alternatives.

II. In addition to pursuing injunctive relief, Childs may seek monetary damages because Defendants are not entitled to qualified immunity.

In addition to his claims for injunctive relief under both RLUIPA and the First Amendment, Childs sued Defendants for damages under Section 1983 on his First Amendment claim. The district court held that Defendants are entitled to qualified immunity. ECF 86 at 19. As we now explain, that holding is incorrect, and this Court should reinstate Childs's damages claim.

Qualified immunity is not available to Defendants if Childs "has a good constitutional claim" and if "the right in question was 'clearly established' before the contested events," *Vinning-El v. Evans*, 657 F.3d 591, 592 (7th Cir. 2011) (citation omitted), such that "a reasonable official would understand that what [they are] doing violates that right." *Weinmann v. McClone*, 787 F.3d 444, 450 (7th Cir. 2015). As already shown (at 12-19, 23-26), Childs has a constitutional right to readily-available, low-cost religious materials, so the remaining question is whether that right was clearly established at the time Childs was deprived of it.

A. To begin with, Defendants are not entitled to qualified immunity because they lacked a "reasonable belief" that their actions were constitutional. *Grayson v. Schuler*, 666 F.3d 450, 455 (7th Cir. 2012). Courts may not grant qualified immunity without considering "the nature of any legitimate … interests that might have justified" the officials' decisions, *Sause v. Bauer*, 585 U.S. 957, 960 (2018) (per curiam), or when those officials

"present no evidence" supporting those interests, *Conyers v. Abitz*, 416 F.3d 580, 586 (7th Cir. 2005).

In *Grayson*, an African Hebrew Israelite prisoner brought a free-exercise claim against a correctional officer who forcibly shaved his dreadlocks. 666 F.3d at 451-52. The officer attempted to shield himself with the prison's policy manual, which allowed only Rastafarians (not African Hebrew Israelites) to wear dreadlocks. *Id.* at 452. This Court recognized that shaving the plaintiff's hair could be constitutional if the decision was based on security concerns or the prisoner's insincere religious belief, but "nowhere in the record" could the Court find any such "articulated ground." *Id.* at 453. Accordingly, qualified immunity was unavailable as there was "no suggestion that the defendant ordered the plaintiff's dreadlocks shorn because of a[ny such] reasonable belief." *Id.* at 455.

Similarly, in *Sause*, the plaintiff alleged that police officers violated the Free Exercise Clause when they suddenly entered her apartment and ordered her to stop praying. 585 U.S. at 958. The briefing on appeal was not comprehensive, so the Court did not know what justified the officers' entrance into the apartment. *Id.* at 959-60. It thus refused to decide the officers' entitlement to qualified immunity because that question could not be resolved without "consideration of the ground on which the officers were present in the apartment and the nature of any legitimate law enforcement interests that might have justified [their actions]." *Id.*

Here, there is simply no record evidence that would allow this Court to consider "the ground on which" Defendants denied Childs access to accurate prayer schedules, *Sause*, 585 U.S. at 960, let alone to assess the reasonableness of that ground. Defendants submitted the Wisconsin DAI policy, which does not require prisons to provide religious calendars to prisoners, *see generally* App. 087-113, and affidavits from Defendants Webster and Lindgren invoking the policy, but they offered no explanation to justify the burden they have placed on prisoners' religious exercise, App. 056 (¶ 32); App. 080-084 (¶¶ 9-30). Because Defendants did not proffer a reasonable belief that *some* legitimate concern outweighed Childs's religious interests in timely prayer, qualified immunity is not available.

Indeed, the record here negates any "reasonable belief" that a legitimate concern outweighed Childs's religious rights. *See Grayson*, 666 F.3d at 455. Childs has produced evidence that Defendants are withholding these schedules "because the inmates complained." App. 028 at 36:12-15; *see also* App. 117 (¶¶ 10-11). That retaliatory justification cannot reasonably be thought constitutional, so it cannot support qualified immunity. This Court should reverse the district court's qualified-immunity holding on this ground alone.

B.1. Qualified immunity is inappropriate here for other, independent reasons. The district court granted qualified immunity because it found no authority clearly establishing that prison officials "violate the Free Exercise Clause by choosing not to provide religious materials to prisoners as a

courtesy." ECF 86 at 19-20. The district court was mistaken. Childs's right to readily available, low-cost prayer "articles" is clearly established. *Ortiz v. Downey*, 561 F.3d 664, 669 (7th Cir. 2009); *see also Rivera v. Raines*, 2018 WL 4608283, at *5 (S.D. Ill. Sept. 5, 2018) (holding that it is "well-established that prison officials violate a prisoner's free exercise rights when they needlessly and intentionally prevent him from performing acts of central significance to his faith"); *Johnston v. Duncan*, 2020 WL 470612, at *2 (N.D. Ind. Jan. 27, 2020) (prison unlawfully refused to provide adequate prayer rug, prayer oils, and kufi "without a legitimate reason").

In *Ortiz*, this Court held that a prisoner stated a free-exercise claim by alleging that the prison refused to provide him rosary beads and a prayer booklet, both of which were "require[d]" for his prayer. 561 F.3d at 666. The Court observed that there was "no evidentiary record from which the district court could conclude that" the prisoner's requests burdened the prison in any meaningful way. *Id.* at 669. Like the plaintiff in *Ortiz*, Childs maintains that the prison refused to provide him an item necessary for prayer, and Defendants submitted no evidence justifying their refusal to provide him that item.

Further, this Circuit has a history of requiring prisons to provide prisoners with religious materials that impose significantly greater institutional expense than the mere pieces of paper Childs seeks (and which the prison previously provided), such as religious meal plans not otherwise mandated by prison policies. *See, e.g.*, *Jones v. Carter*, 915 F.3d 1147, 1152 (7th

Cir. 2019); *Nelson v. Miller*, 570 F.3d 868, 879 (7th Cir. 2009), *abrogated in part on other grounds by Jones*, 915 F.3d at 1149; *see also Hunafa v. Murphy*, 907 F.2d 46, 47-48 (7th Cir. 1990) (rejecting purported penological objectives underlying refusal to provide Muslim inmates with pork-free meals).

2. The district court thought it significant that it found no "controlling precedent regarding the provision of prayer schedules" specifically. ECF 86 at 20. That analysis was misguided. "[T]here does not have to be a case directly on point" for a right to be clearly established. *District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018) (quotation marks omitted). That is, Defendants are not absolved of liability because this Court doesn't have a Salah-prayer-schedule case. As just explained, the free-exercise violation here is the right to readily available, low-cost religious materials and prayer objects, and those rights were clearly established at the time Defendants violated Childs's right to exercise his religion. It's no wonder, then, that other federal courts have appreciated that denying prayer schedules, like the denial of other low-cost objects that facilitate prayer, violates the First Amendment. *See Khan v. Barela*, 808 Fed. App'x 602, 616 (10th Cir. 2020); *Samuels v. Henry*, 2024 WL 2191970, at *5 (N.D. Tex. Jan. 31, 2024), *rec. adopted in relevant part*, 2024 WL 1827815 (N.D. Tex. Apr. 26, 2024); *Cannon v. Jones*, 2023 WL 5721647, at *5 (E.D. Mo. Sept. 5, 2023).

For all these reasons, this Court should reinstate Childs's Free Exercise Clause claim for damages.

Conclusion

This Court should reverse and remand for a trial on Childs's claims for injunctive and monetary relief.

Respectfully submitted,

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April 23, 2025

Certificate of Compliance

In accordance with Federal Rule of Appellate Procedure 32(g), I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) and Circuit Rule 32(c) because it contains 7,704 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2016, set in Palatino Linotype in 14-point type.

/s/ Brian Wolfman

Brian Wolfman

Attached Appendix

Certificate of Compliance with Circuit Rule 30

In accordance with Circuit Rule 30(d), I certify that this appendix contains all of the materials required by Circuit Rule 30(a) and that the separately submitted appendix contains all of the materials required by Circuit Rule 30(b).

/s/ Brian Wolfman

Brian Wolfman

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHAREEF CHILDS,

Plaintiff,

v.

OPINION and ORDER

CHERYL WEBSTER, CRAIG LINDGREN, SR., and STEVE MOHR,

22-cv-256-jdp

Defendants.[1]

Plaintiff Shareef Childs, without counsel, is a prisoner at Stanley Correctional Institution who is a practicing Muslim. Childs alleges that in 2022 defendant prison officials blocked him from participating in Ramadan meals and the Eid al-Fitr feast and that in 2023 they refused to give him correct prayer schedules for Ramadan. I granted Childs leave to proceed on claims under the Free Exercise Clause of the First Amendment to the United States Constitution and under the Religious Land Use and Institutionalized Persons Act. *See* Dkts. 14 and 38.

Currently before the court are a series of submissions, including defendants' motion for summary judgment. Dkt. 49. I will grant defendants' motion for summary judgment and dismiss the case in its entirety. The evidence shows that most of the deprivations were caused by errors by Childs and staff in navigating the procedures for religious observances. And I conclude that the First Amendment does not entitle Childs to printed prayer schedules at state expense.

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[1] I have amended the caption to reflect defendants' full names as stated in their filings. Plaintiff Childs's first name is spelled "Shareff" in DOC records, but because Childs spells his first name "Shareef" in his filings I will use that spelling in this opinion.

PRELIMINARY MATTERS

Defendant Mohr died in December 2023. Childs filed a motion to substitute a successor as defendant, Dkt. 58, but the parties followed with a stipulation agreeing that the state would continue to defend Mohr and pay damages that may be awarded against him in this case, Dkt. 59. I will deny Childs's motion to substitute as moot.

Childs filed an unsigned motion for extension of time to submit a dispositive motion of his own, arguing that defendants refused to properly answer his discovery requests. Dkt. 47. After the clerk of court directed Childs to submit a signed copy, he followed with a new motion to strike defendants' motion for summary judgment and reset the dispositive motions deadline pending resolution of the parties' discovery disputes. Dkt. 56. But Childs did not file a formal motion to compel discovery as the court discussed in its preliminary pretrial conference order. Dkt. 20, at 11. ("If the parties do not bring discovery problems to the court's attention quickly, then they cannot complain that they ran out of time to get information that they needed for summary judgment or for trial."). So it is too late for him to amend the schedule to work out discovery disputes now. In any event, Childs has filed a voluminous response to defendants' motion for summary judgment, and the parties' filings make clear what facts they dispute. Regardless of Childs's failure to file a summary judgment motion of his own, I would consider entering judgment in his favor if it were appropriate to do so. I will deny his motions to amend the schedule.

There were a series of irregularities in the parties' summary judgment submissions that I must address. Defendants move to amend their proposed findings of fact to correct a mistake made in their original set of proposed findings. Dkt. 70. Defendants addressed Childs's claims about Ramadan meal accommodations in 2022 by submitting a prison policy about religious

meals dated as effective in January 2023, after the events at issue. *See* Dkt. 52-1. Defendants seek to amend their proposed findings citing this incorrect version of the policy and they have submitted the correct version of that policy, effective during the events at issue. *See* Dkt. 72-1. The relevant portions of the policies are identical. I will grant this motion and allow defendants to correct their mistake.

When Childs submitted his brief opposing defendants' summary judgment motion on his deadline for doing so, only a portion of his supporting materials arrived along with it. *See* Dkts. 61–65. Many of his exhibits arrived a couple of weeks later, even though the accompanying envelopes show that he placed those documents in the prison mail stream days in advance of his deadline. *See* Dkt. 74. It's unclear why this happened, although it is perhaps because Childs has been placing the incorrect zip code on his mailings to this court—for Childs's future reference the correct zip code is 53703. I will accept Childs's belatedly received materials and I will consider them in ruling on defendants' summary judgment motion.

Defendants move to amend their reply to their proposed findings of fact. Dkt. 76. They filed their original reply on their deadline for doing so, but Childs's exhibits in support of his opposition arrived after their reply. They seek to amend their reply in light of the information contained in those belatedly received exhibits. Childs opposes that request. But defendants are entitled to see Childs's opposition before replying. I will grant defendants' motion and accept their amended reply, Dkt. 77.

Despite my acceptance of Childs's belatedly received summary judgment opposition filings, there still appeared to be a part of his opposition missing. In his filings, Childs referred to his own proposed findings of fact (in a document labeled as "Exhibit 23") but those proposed findings did not initially appear on the docket. Instead, the docket entry labeled as Childs's

proposed findings, Dkt. 63, was a copy of Childs's responses to defendants' proposed findings of fact, a document already docketed at Dkt. 62. I asked the clerk of court to double-check the original hard copy of Childs's materials; we discovered that Dkt. 63 was entered in error, and that Childs had indeed included a copy of his proposed findings in his original mailing. I had the clerk's office docket those proposed findings as Dkt. 84.

Because the Wisconsin Department of Justice has agreed to waive service of hard copies of prisoners' submissions and instead rely on the electronically docketed copies of submissions, defendants did not see Childs's proposed findings before filing either their original or amended replies. Childs asks that his proposed findings be accepted as undisputed, Dkt. 78. I will deny that motion because defendants did not have an opportunity to respond to Childs's proposed findings. But I also won't ask defendants to file a response. It is clear from the parties' various submissions what facts they dispute. And so Childs is aware, because he is the party opposing summary judgment, I will resolve all factual disputes in his favor at this stage of the proceedings.

UNDISPUTED FACTS

The following facts are undisputed unless otherwise noted.

A. Parties

Plaintiff Shareef Childs is a practicing Muslim who is incarcerated at Stanley Correctional Institution (SCI). Defendants all worked at that prison during the relevant events. Defendants Craig Lindgren, Sr. and Steven Mohr were chaplains. Defendant Cheryl Webster was a corrections program supervisor responsible for coordination and supervision of "specialized programs" at the prison, including religious services and activities.

B. 2022 Ramadan meal bags

Muslims participate in Ramadan, a holy month of fasting and prayer. During this month, observant Muslims fast from sunrise to sunset. In 2022, Ramadan began on April 2 and ended on May 1.

To accommodate the Ramadan fasting schedule, DOC prisons prepare meal bags that are delivered to inmates to consume after sunset and before sunrise. But inmates must sign up in advance for the meal bags. Division of Adult Institutions Policy and Procedure 309.61.03 governs how facilities administer multi-day religious fasting periods: each year, inmates must request an accommodation at least 60 days before the first meal in the special period, using a DOC-2935 form. Defendants state that it is important for inmates to submit their forms by that deadline so that SCI staff has enough time to prepare the meal plans.

Childs arrived at SCI in October 2021. Upon arrival he submitted a request—not on a DOC-2935 form—asking to be added to "all Islamic services." Defendant Webster interpreted this request as one to participate in Jumu'ah prayer services and Talim study group; Webster did not add Childs to the Ramadan meal group because that was done through a separate DOC-2935 form.

The deadline for inmates to sign up for Ramadan meal bags in 2022 was February 1. This deadline was posted in the chapel for months prior, announced numerous times at both the Jumu'ah prayer services and Talim study group sessions, and was stated in a memo. Childs didn't submit a DOC-2935 form by this date.

On February 10, Childs sent an email to the warden's office asking to be added to the Ramadan meal list. The warden's office emailed the request to defendant Chaplain Lindgren, who denied the request and told Childs to appeal to Webster. Webster also denied the request.

In early March, Childs sent Lindgren an email stating that he thought that selecting "Islam" as his Umbrella Religious Group when he arrived at SCI meant that he would be signed up for Ramadan meal bags, and that this is how those meals were handled at other DOC institutions where he had been incarcerated. Lindgren contacted the chaplain at one of those other locations, who denied that staff signed inmates up for Ramadan meal bags by any process other than the DOC-2935 form as outlined in DAI Policy and Procedure 309.61.03.

Nonetheless, Lindgren discussed Childs's situation with Webster. They concluded that Childs misunderstood the signup procedures and did not know that he was supposed to submit a DOC-2935 form. Webster decided to grant Childs an exemption from the rule and add him to the Ramadan meal list. Webster told the chapel inmate clerk to add Childs to the list. But Childs was not added to the list.

Childs received a meal bag the morning of the first day of Ramadan, Saturday April 2, 2022. But when he went to the officer's station to pick up his evening meal bag, he was told that he was not on the Ramadan list and so could not be given a meal bag. Childs sent defendant Lindgren an email about the problem, but both Lindgren and Webster weren't working that weekend and did not see the email until the following Monday. Childs did not receive either meal bag on Sunday or the pre-sunrise meal bag on Monday. Childs states that the lack of food caused him to be unable to properly focus or pray.

On Monday, Webster and Lindgren discussed Childs's email and added him to the Ramadan meal list. Childs began receiving meal bags that night.

C. 2022 Eid al-Fitr celebratory meal

At the end of Ramadan, Muslims celebrate the end of the fast with a celebration called Eid al-Fitr. The DOC offers a congregate meal in the chapel area after prayer so that the

Ramadan participants can eat together as a group instead of on their separate units. The meal itself is the same meal served at the prison that day.

On April 26, 2022, defendant Chaplain Lindgren sent out a memo to all inmates who were on the Ramadan participant list asking them whether they wished to participate, and for the inmates to fill out, sign, and return the document to the chapel by April 28 if they wanted to participate in the Eid al-Fitr meal on May 2. Prison officials needed a few days lead time to properly set aside each participating inmate's meal to be served at the chapel instead of at the inmate's unit.

Childs states that on April 27 he placed the form to participate in the feast in the prison mail. Childs states that a few days later the form was returned to him with Lindgren's initials circled on it, leading him to think that Lindgren had signed him up for the feast. Lindgren disputes this, stating that he did not receive the memo back from Childs indicating that he wanted to sign up for the Eid al-Fitr meal, so he did not add Childs to the list. Lindgren states that when he received a completed form from an inmate, he would respond by sending a dated confirmatory letter with his initials; he would not have sent back the signup memo itself.

The Eid al-Fitr feast was held in the chapel the evening of May 2, 2022. About an hour before, a list of participating inmates was posted; Childs was not on that list. Childs notified staff that he had signed up for the feast. Staff called Lindgren at the chapel, but Lindgren denied Childs's request to attend.

Terry Jackson, another inmate on Childs's unit, was signed up to attend the feast. Childs asked Jackson to take Childs's completed and returned signup form to Lindgren. Jackson gave Lindgren the form. Lindgren states that the form "did not have a date stamp or any indications that it had been sent to or received by the Chapel." Dkt. 51 ¶ 25. Lindgren states that he gave

the document back to Jackson. Jackson submits a declaration stating that Lindgren kept the form. Neither side included the form in their summary judgment materials.

Lindgren called over to Childs's unit to tell staff that he had not received the form from Childs before the deadline, so there was no meal for Childs at the chapel, but that he was welcome to join the group for prayers beforehand. Childs came to the chapel for prayers but he did not eat a meal at the chapel. By the time Childs got back to his unit there wasn't a meal waiting there for him either. Childs says that he therefore didn't properly break his fast as required in Islam.

D. 2023 Ramadan prayer schedules

Muslims observe five prayer times each day, based on the time of day and position of the sun: (1) Fajr, between dawn and sunrise; (2) Zuhr or Dhuhr, beginning at noon time; (3) Asr, a mid-afternoon prayer when the sun is about two-thirds of the way in the sky; (4) Maghrib, beginning when the sun is setting; and (5) Isha, after the sunset. Each set of prayers takes several minutes, rarely more than ten.

It is important to know the timeframes for each prayer: Muslims are generally required to offer the prayers within their specific timeframes, otherwise the prayers will not be accepted. Many outlets publish prayer schedules to assist Muslims in knowing what time each prayer period starts. The times depend on the position of the sun, so to be accurate a schedule must be tailored to a person's location. At SCI, prison officials provided yearly prayer schedules to Muslim inmates as a courtesy. In January 2023, defendant Chaplain Lindgren distributed copies of the yearly prayer schedule to Muslim inmates. As part of preparations for Ramadan in 2023 (beginning March 23) defendant Webster distributed a memo to SCI staff explaining

the timing of Ramadan meal bags in relation to the Fajr and Maghrib prayer times and directing staff to use a prayer schedule that she had downloaded to an internal computer network drive.

Within the first few days of Ramadan, Childs and other inmates notified Lindgren that the prayer schedules that Lindgren had distributed to them were not accurate. Lindgren investigated and discovered that he had mistakenly provided the inmates with a schedule for Eau Claire instead of Stanley; Eau Claire is about 30 miles away. The parties dispute exactly how much the schedules differed; defendants say about two to three minutes and provide schedules from islamicfinder.org showing differences of two to four minutes in prayer times. *See* Dkts. 51-7 and 51-8. Childs says that the difference were as much as seven minutes, producing a schedule showing differences of as large as nine minutes. *See* Dkt. 74-22. The source of this schedule is unclear—it doesn't state a location or author—but I will infer that it was the schedule that Lindgren provided inmates in January 2023. Regardless, it's undisputed that Lindgren thought that he had mistakenly provided inmates with an Eau Claire schedule with a two-to-three minute difference from Stanley's schedule. Webster ordered the incorrect schedules to be removed from where they were posted.

Defendant Chaplains Lindgren and Mohr downloaded the correct schedule for Stanley and posted it on each wing of the units so that officers knew when to distribute Ramadan meal bags. The parties do not explain exactly what it means to post the schedules on each wing, but I take them to agree that this did not give inmates ready access to the schedule. There's no indication that the schedule that Webster had previously downloaded for officers' use was incorrect, but that schedule was never provided to inmates.

Lindgren emailed Fox Lake Correctional Institution Chaplain Daniel Coate about the problem with the schedules. Coate is a member of the DOC's Religious Practices Advisory

Committee and practicing Muslim. Lindgren stated that he had provided inmates with a schedule from Eau Claire that was off by two to three minutes, and that he believed that he had done so because Eau Claire "is the largest city in our vicinity." Dkt. 51-9, at 2. Coate responded that "if there is only a 2–3 minute difference in the prayer times, it shouldn't be an issue. No one should be praying or breaking their fast right at the time listed on the timetable." *Id.* at 1. Coate stated that Muslims shouldn't start their prayers right at the time listed on a schedule because schedules "are not 100% accurate" and clocks are not necessarily accurate about the time either. *Id.* Coates stated that he tells inmates to wait at least three to five minutes to ensure that their prayers are within the appropriate timeframe. *Id.* He finished by saying that "it is the responsibility of the individual to reach certainty that the time has entered." *Id.*

After the error was discovered, Lindgren and Mohr did not give inmates new courtesy copies of the correct Stanley schedule, even when asked by Childs and other inmates. When Childs filed grievances about being misled by incorrect prayer times, the institution complaint examiner told him that SCI staff would no longer provide courtesy copies of the schedules and that Chaplain Coate had stated that it is each inmate's responsibility to know when the correct prayer time is.

I will discuss additional facts as they become relevant to the analysis.

ANALYSIS

I granted Childs leave to proceed on claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause of the First Amendment regarding the following three events:

- Defendants Webster and Lindgren did not add Childs to the 2022 Ramadan meal list.
- Defendants Webster and Lindgren did not add Childs to the 2022 Eid al-Fitr feast list.
- Defendants Lindgren and Mohr refused to give him correct prayer schedules for Ramadan in 2023.

A. Legal standards

To prevail on a First Amendment free exercise claim, a prisoner must show two things: the defendants imposed a "substantial burden" on his religious exercise; and (2) the burden was not reasonably related to a legitimate penological interest. *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019); *Thompson v. Holm*, 809 F.3d 376, 379 (7th Cir. 2016). A substantial burden puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thompson*, 809 F.3d at 379.

RLUIPA prohibits correctional facilities receiving federal funds from imposing a substantial burden on a prisoner's religious exercise unless the burden is the "least restrictive means" of furthering a "compelling governmental interest." 42 U.S.C. § 2000cc-1(a)(1)–(2).

I granted Childs leave to proceed on individual-capacity RLUIPA claims for damages against each of the defendants. I had allowed Childs to proceed on these claims after the Supreme Court's decision in *Tanzin v. Tanvir*, 592 U.S. 43 (2020), which I reasoned made "the availability of monetary damages in RLUIPA cases . . . an open question." Dkt. 14 at 5. But I later reconsidered that point, concluding that *Tanzin* didn't affect the precedential value of previous cases concluding that damages are unavailable under RLUIPA. *Russell v. Lange*, Case No. 22-cv-333-jdp, Dkt. 14 at 5 (W.D. Wis. Jan. 11, 2023); *see also Greene v. Teslik*, Case No. 21-2154, 2023 WL 2320767, at *2 (7th Cir. Mar. 2, 2023) (holding that "RLUIPA

authorizes only injunctive relief against state officials"). So I will dismiss Childs's RLUIPA damages claims and consider only his claims for injunctive relief.

B. 2022 Ramadan meal bags

Childs alleges that defendants Corrections Program Supervisor Webster and Chaplain Lindgren failed to add Childs to the 2022 Ramadan meal list. It is undisputed that Childs did not receive four Ramadan meal bags over the first weekend of Ramadan in 2022 because he wasn't on the list for those meals. Defendants argue that this wasn't a substantial burden on his religious exercise because he was deprived of only four meals and inmates without meal bags may still make food purchases from the canteen or take at least some food from the cafeteria back to their cells. But Childs disputes that he had enough other food during this time, so for purposes of this opinion I will assume that his religious exercise was substantially burdened.

Nonetheless, I've previously concluded that in general the DOC's 60-day deadline for prisoners to sign up for Ramadan meals is the least restrictive means of achieving the DOC's compelling interests in orderly prison administration and cost control and thus violates neither RLUIPA nor the Free Exercise Clause. *See Williams v. Boughton*, No. 18-cv-934-jdp, 2020 WL 4464509, at *4 (W.D. Wis. Aug. 4, 2020) ("the 60-day deadline is reasonably related to the state's interest in having enough time to plan, budget for, and prepare religious meals"); *Dangerfield v. Ewing*, No. 18-cv-737-jdp, 2020 WL 94758, at *4 (W.D. Wis. Jan. 8, 2020). And the events that occurred here were the result of Childs's confusion over precisely how to sign up for Ramadan meal bags. Now that Childs is fully aware of the proper procedure—and Childs hasn't filed anything suggesting that signup was a problem in 2023 or this year's Ramadan, beginning March 10—there is no reason to think that he needs injunctive relief on this claim.

So I will grant summary judgment to defendants on Childs's RLUIPA claim regarding meal bags.

As for his First Amendment claim for damages regarding the 2022 meal bags, Childs contends that he did sign up for the list by telling prison officials when he arrived at SCI that he wanted to participate in "all" Islamic services. But under DOC policy, that wasn't the way inmates signed up for Ramadan meals each year. Instead, inmates had to submit a DOC-2935 form each year at least 60 days before the first say of Ramadan. Childs disputes that the original policy submitted by defendants was in place during Ramadan 2022 because it was dated effective January 2023. Defendants mistakenly submitted that version of the policy to the court, but they've fixed that mistake by submitting the correct version of the policy. In any event, both versions of the policy have the same requirement to fill out the DOC-2935 form.

Childs states that he was not required to use this form at other prisons; defendants dispute this fact. Although I must resolve this dispute in Childs's favor, the practice at other prisons loosening the DOC's official requirements to be placed on the Ramadan-meal list isn't enough to show that the SCI defendants violated his First Amendment rights. It's undisputed that SCI required the DOC-2935 form and informed inmates of that requirement. Childs's initial absence from the Ramadan list was caused by Childs's own failure to sign up using the DOC-2935 form.

Then, after Childs complained about not being on the list, Lindgren and Webster agreed to add him to the list due to Childs's confusion over how to properly sign up at SCI. Webster states that she told the inmate clerk to add Childs's name to the list. The clerk apparently did not add Childs's name to the list because Childs was denied his second through fifth meal bags over the weekend (it is unclear why Childs received the first one).

Childs argues that defendants' reliance on an inmate clerk violated the DAI 309.61.03 policy because under that policy the chaplain was tasked with compiling the list of inmates needing Ramadan meal bags. That's not what the policy actually says: it states that the chaplain or the chaplain's "designee" should compile the list. *See* Dkt. 72-1, at 7. But in any event, even had defendants violated the policy, that in itself does not violate the Constitution. *Langston v. Peters*, 100 F.3d 1235, 1238 (7th Cir. 1996). Defendants' use of an inmate clerk does not suggest that they intended to block Childs from practicing his religion.

Childs also argues that his omission from the list proves that Webster intentionally left him off the list after saying that she would add him. But the series of events in context do not allow for a reasonable inference that Webster intentionally left him off the list. When Lindgren and Webster returned to work on Monday, April 4, they received Childs's new complaint about being denied Ramadan meal bags over the weekend and discussed the complaint over email, with Lindgren stating the following: "Ms. Webster, Was this the inmate we discussed that requested to be added to all 'Services,' and we thought there may have been a misunderstanding and allowed him to join? I think it may have been. If so we can add him on." Dkt. 74-7, at 8 (edited for spelling). They immediately added Childs to the list and he began receiving meal bags. The only reasonable inference from this series of events is that Lindgren and Webster granted Childs an exemption from the DOC-2935 requirement and worked to place him on the list. Even if there was a mix-up in initially implementing Childs's exemption from the requirement that he use the DOC-2935 form, a jury couldn't reasonably infer that the delay was caused by intentional actions of Lindgren or Webster. *See Garner v. Muenchow*, 715 F. App'x 533, 536 (7th Cir. 2017) (Prison official's interference with religious practice must be "intentional[] and substantial[]"); *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010)

("negligence, even gross negligence, does not violate the Constitution"). So I will grant defendants' motion for summary judgment on Childs's First Amendment claim for damages regarding the 2022 meal bags.

C. 2022 Eid al-Fitr celebratory meal

Childs alleges that defendants Webster and Lindgren did not add him to the 2022 Eid al-Fitr feast list. But the undisputed facts show that defendant Webster didn't play any role in this deprivation, so I will grant defendants' motion for summary judgment on the claims against her. And there is no indication that this problem carried over into the 2023 or 2024 Ramadan seasons, so I will dismiss Childs's RLUIPA claim for injunctive relief about the feast.

That leaves Childs's claim against defendant Chaplain Lindgren. There are significant disputes about the events surrounding Childs's participation in the 2022 feast. Childs says that he submitted the signup form and that it was returned to him with Lindgren's initials circled, indicating that Lindgren had received it. Lindgren states that he didn't receive a signup form and would not have returned the form to an inmate to confirm receipt; he would have sent a confirmatory letter instead. Neither party has put this form into the record, which each side saying that the other had retained it.

But even if I credit Childs's version of events, and assume that Lindgren did receive the completed form, initial it, send it back to Childs, but fail to put Childs on the Eid al-Fitr list, no reasonable jury could conclude that Lindgren intended to keep Childs off the list. Rather, placed in the proper context, Lindgren's failure to put Childs on the Eid al-Fitr list can only be regarded as an oversight in the handling of the request form. There's no reasonable way for a jury to infer that Lindgren intended to harm Childs's religious practice given that (1) he had already granted Childs an exemption for Ramadan meal bags a month earlier; and (2) he

ultimately invited Childs to come to the feast after inmate Jackson showed him Childs's signup form. Childs's belief that Lindgren meant to harm him is nothing more than mere speculation, which is not enough to defeat a motion for summary judgment. *See Rand v. CF Industries, Inc.*, 42 F.3d 1139, 1146 (7th Cir. 1994) ("[i]nferences and opinions must be grounded on more than flights of fancy, speculations, hunches, intuitions, or rumors").

Childs did come to the feast for prayers but was unable to eat a meal with the other inmates because there were only enough meals for those who signed up. Although I can infer that the loss of a congregate meal did substantially burden Childs's religious practice, Lindgren's error in failing to include him on the list does not violate the First Amendment. *See Garner*, 715 F. App'x at 536; *McGowan*, 612 F.3d at 640. So I will grant defendants' motion for summary judgment on this claim.

D. 2023 Ramadan prayer schedules

Childs alleges that defendant Chaplains Lindgren and Mohr refused to give him correct prayer schedules during Ramadan in 2023, leading to him being unable to pray at the correct times.

Defendants argue that the lack of a prayer schedule is no burden to inmates because, as DOC Muslim Chaplain Coate states, to avoid starting prayer early, Muslims commonly wait several minutes past the stated time on a schedule to account for the variability of clocks and a person's exact physical location in relation to the place posted on the schedule. But Childs states that he needs a prayer schedule because in a prison it is difficult to locate the position of the sun and because it is his personal belief that each prayer must start "on time" as soon as permitted, without delay. Dkt. 73, at 7. I will assume for purposes of this opinion that Childs's religious practice is substantially burdened by not having a schedule.

There are two parts to Childs's claims about the prayer schedules: (1) Lindgren initially provided inmates with incorrect copies of prayer schedules; and (2) after the mistake was discovered, Lindgren and Mohr refused to provide Muslim inmates with new, corrected schedules.

It is undisputed that Lindgren initially provided inmates with incorrect courtesy copies of prayer schedules with prayer times off by at least a couple of minutes that would render Childs unable to start his prayers on time. But there is no evidence in the record suggesting that this was anything other than a mistake by Lindgren, which is not enough to violate the Constitution. *See Garner*, 715 F. App'x at 536; *McGowan*, 612 F.3d at 640.

That still leaves defendants Lindgren's and Mohr's actions after the mistake was discovered. Lindgren and Mohr followed up by obtaining the correct schedule and posting them in each unit so that officers knew when to distribute the Ramadan meal bags. But it is undisputed that prison officials didn't give inmates copies of the new, correct schedule. Childs contends that this was a decision made or enforced by both Lindgren and Mohr. Defendants agree that Lindgren decided not to distribute new courtesy copies directly to inmates. And although defendants argue that Childs cannot prove that Mohr participated in these actions, Childs states that Mohr refused him a schedule too, which is enough to create a genuine dispute of material fact about Mohr's involvement.

But Childs's RLUIPA and First Amendment claims about this issue fail because he doesn't show that defendants were required to provide Muslim inmates with prayer schedules. Childs phrases defendants' conduct as "denying" him a prayer schedule, but that's not quite correct. Defendants didn't *prohibit* inmates from having prayer schedules; they just stopped giving inmates courtesy copies of the schedule after their mistake with the incorrect schedule.

Childs argues that prison policy required defendants to give inmates copies of the prayer schedule, citing a 2022 "Annual Religious Observance Congregate Meals" memorandum. Dkt. 74-31. That document mentions online prayer schedules in the context of prison staff providing Ramadan bag meals to inmates at the appropriate times; it does not say that staff are required to share those schedules with inmates. But even if it did, a violation of a prison policy is not itself a violation of the Constitution. *Langston*, 100 F.3d at 1238.

Neither RLUIPA nor the First Amendment requires prison officials to purchase religious materials for prisoners using government funds. *Cutter v. Wilkinson*, 544 U.S. 709, 720 n.8 (2005) ("Directed at obstructions institutional arrangements place on religious observances, RLUIPA does not require a State to pay for an inmate's devotional accessories."); *Henderson v. Frank*, 293 F. App'x 410, 413–14 (7th Cir. 2008)(correctional officials not required to purchase religious texts for Taoist inmate); *Kaufman v. Schneiter*, No. 07-C-45-C, 2007 WL 5613610, at *2 (W.D. Wis. Apr. 30, 2007) ("[T]he prison is not required under either RLUIPA or the free exercise clause to subsidize plaintiff's religious pursuits by purchasing religious reading material for him."). Defendants state that inmates were free to obtain those schedules from friends, family members, or prison religious volunteers. Another option that defendants do not mention but which seems obvious is that Muslim inmates could share the schedule among themselves. Childs doesn't provide facts showing that he could not use these methods to obtain prayer schedules, and given both the quality and quantity of his submissions in this and other lawsuits, I have no doubt that he is able to do so. And I note that Childs has not filed anything suggesting that he was unable to obtain prayer schedules for 2024's month of Ramadan that has just ended. For these reasons, I will grant summary judgment to defendants on Childs's RLUIPA claim for injunctive relief and almost all of his First Amendment claims for damages.

But that still leaves the immediate aftermath of the discovery of the inaccurate 2023 prayer schedules. Inmates had been accustomed to receiving courtesy copies of the prayer schedules, and then Lindgren and Mohr abruptly ended that practice, leaving Muslim inmates to scramble to obtain accurate schedules after Ramadan had already begun. The parties don't address Childs's damages claim in this amount of detail, but ending the practice of providing courtesy copies of the schedule without warning likely left Childs without recourse for at least a short time, thus substantially burdening his religious practice.

But even had Childs made this precise argument, I would reject it because defendants would be entitled to qualified immunity on this aspect of his First Amendment claims. Under the doctrine of qualified immunity, a plaintiff may not obtain damages for a constitutional violation against a public official unless the plaintiff shows that the official violated clearly established law. *Abbott v. Sangamon County, Ill.*, 705 F.3d 706, 725 (7th Cir. 2013). A clearly established right is one that is sufficiently clear such "that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012). Law is "clearly established" only if it is found in Supreme Court precedent, controlling circuit authority, or "a consensus of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." *Wilson v. Layne*, 526 U.S. 603, 617 (1999). In other words, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

Childs bears the burden of demonstrating that his rights were clearly established to overcome qualified immunity. *Hernandez ex rel. Hernandez v. Foste*r, 657 F.3d 463, 473 (7th Cir. 2011). He fails in that burden because he does not cite any authority—and I am unaware of any—clearly establishing that prison officials violate the Free Exercise Clause by choosing not

to provide religious materials to prisoners as a courtesy. Nor is there any controlling precedent regarding the provision of prayer schedules. So I will grant summary judgment to defendants on this aspect of Childs's First Amendment claims.

Because I am granting summary judgment to defendants on all of Childs's claims, I will dismiss the entire case and direct the clerk of court to enter judgment in defendants' favor.

ORDER

IT IS ORDERED that:

1. Plaintiff Shareef Childs's motion to substitute a successor for defendant Steven Mohr, Dkt. 58, is DENIED as moot.
2. Plaintiff's motions to amend the schedule, Dkts. 47 and 56, are DENIED.
3. Defendants' motion to amend their proposed findings of fact, Dkt. 70, is GRANTED.
4. Defendants' motion to amend their reply, Dkt. 76, is GRANTED.
5. Plaintiff's motion to deem his proposed findings of fact as undisputed, Dkt. 78, is DENIED.
6. Defendants' motion for summary judgment, Dkt. 49, is GRANTED.
7. The parties' remaining motions are DENIED.
8. The clerk of court is directed to enter judgment accordingly and close the case.

Entered April 12, 2024.

BY THE COURT:

/s/

_____
JAMES D. PETERSON
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHAREEF CHILDS,

Plaintiff,

Case No. 22-cv-256-jdp

v.

CHERYL WEBSTER, CRAIG LINDGREN, SR., CAPTAIN RYAN KRINGLE, SERGEANT SAVERS AND STEVEN MOHR,

Defendants.

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants against plaintiff dismissing this case.

s/ Deputy Clerk
Joel Turner, Clerk of Court

4/15/2024
Date