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

REPLY BRIEF FOR PLAINTIFF-APPELLANT TERRENCE EDWARD HAMMOCK

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Introduction and Summary of Argument

For two-and-a-half years, correctional officers at Baltimore County Detention Center refused to serve Terrence Hammock safe food and denied him access to prayer services mandated by his religion. In dismissing Hammock's unsafe-food claim, the district court overlooked allegations about the harm Hammock suffered and imposed an unduly narrow conception of the harm required to state a claim. In dismissing his First Amendment claim, the district court improperly identified a purported justification for restricting Hammock's prayer that Defendants themselves never offered.

Defendants defend the dismissal at the motion-to-dismiss stage by cherry-picking isolated statements from Hammock's pro se pleadings and relying on inapt summary-judgment cases involving failures to adduce sufficient evidence. And in an attempt to obtain qualified immunity, Defendants mischaracterize the constitutional rights on which Hammock's claims actually rely, instead narrowing them to rights to receive hot meals and attend Jumu'ah prayer services. But Hammock has adequately alleged violations of his clearly established constitutional rights: for nearly thirty months he (1) was not served safe food and (2) was denied, without a legitimate penological purpose, the right to attend prayer services mandated by his religion. This Court should reverse and remand so that Hammock can conduct discovery and obtain evidence to support his claims.

Argument

I. Hammock stated a claim under the Fourteenth and Eighth Amendments based on BCDC's prolonged and knowing service of unsafe food.

Hammock has sufficiently alleged both (1) the deprivation of a basic human need that was sufficiently serious and (2) Defendants' awareness of the risks posed by this deprivation. *See* Opening Br. 8-13. Defendants do not dispute that their awareness is evaluated under an objective Fourteenth Amendment standard for the period before Hammock's conviction on December 17, 2021, nor do they dispute they knew that they served Hammock rotten and mice-bitten food that caused him to get sick. *See* Opening Br. 10-13; Resp. Br. 5-9. They dispute only whether Hammock has alleged a sufficiently serious injury to state a claim. But Hammock has sufficiently alleged both a serious injury and a serious risk to his future health.

A. Hammock alleged both a serious injury and a substantial risk of future serious harm.

To establish that "the deprivation of [a] basic human need was objectively 'sufficiently serious,'" a prisoner can allege either "a serious or significant physical or emotional injury resulting from the challenged conditions" or "a substantial risk of such serious harm resulting from the prisoner's exposure to the challenged conditions." *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003) (first quoting *Strickler v. Waters*, 989 F.2d 1375, 1379, 1381 (4th Cir. 1993), then citing *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993)). As our

opening brief explains (at 10-11), Hammock was seriously injured because BCDC's regularly spoiled and unsanitary food made him sick on multiple occasions, and he started losing weight when he stopped eating the unsafe food. JA 11, JA 26. He also faced a substantial risk of serious harm because BCDC did nothing to improve its food service over twenty-nine months, so Hammock could survive only by purchasing food from the commissary. JA 11-12.

The district court considered only "Hammock's assertions that he got sick from the food once and [] lost weight" and determined that these allegations did not sufficiently allege "an injury or 'other diseases' resulting from the food." JA 67 (quoting *Shrader v. White*, 761 F.2d 975, 986 (4th Cir. 1985)). After faulting Hammock for including allegations that the food was cold, Defendants defend the district court's focus on a single allegation of illness, Resp. Br. 3-9, but that myopia does not reflect the full reality of Hammock's allegations.

As we've shown, Hammock got sick on multiple occasions. *See* Opening Br. 10-11; JA 26. His allegation about getting sick from "receiving spoiled and rodent-infested food" on a "regular and ongoing" basis is sufficient to state a claim. *Burkey v. Balt. Cnty.*, 2021 WL 3857814, at *8 (D. Md. Aug. 30, 2021). Hammock might not have provided as detailed factual allegations about his illness as did the plaintiff in *Burkey*, *see* Resp. Br. 7-8, but "[s]pecific facts are not necessary" to state a claim, *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Courts must "construe pro se litigants' filings liberally and therefore

interpret ambiguous statements in favor of those litigants." *Woody v. Nance*, 108 F.4th 232, 239 (4th Cir. 2024). Hammock's allegations that "rotten apples, and meat with mice bites on them [have] gotten Hammock sick," JA 11, sufficiently alleged serious physical injury just like Burkey's allegations that "spoiled bread, milk, meat or molded food has caused ... sickness to myself and others since April 2020," *Burkey*, 2021 WL 3857814, at *8 (quoting Burkey's complaint). These alleged injuries alone demand reversal.[1]

And there's more. Hammock also alleged a serious risk to his future health from being served unsafe food for twenty-nine consecutive months. *See Helling*, 509 U.S. at 33; JA 11, JA 26. His Fourteenth and Eighth Amendment claims therefore survive dismissal for an additional reason: Defendants were deliberately indifferent to an "increased risk of future injury—here, a foodborne illness or worse." *Byrd v. Hobart*, 761 F. App'x 621, 624 (7th Cir. 2019); Opening Br. 10-11. Although Defendants are correct that *Helling* involved second-hand smoke and not food, *see* Resp. Br. 8-9, this Court has held that a prisoner can state an "Eighth Amendment claim

[1] *See also Brown v. Brock*, 632 F. App'x 744, 747 (4th Cir. 2015) ("Allegations of unsanitary food service facilities are sufficient to state a cognizable constitutional claim, so long as the deprivation is serious and the defendant is deliberately indifferent to the need."); *Ramos v. Lamm*, 639 F.2d 559, 570-72 (10th Cir. 1980) (affirming judgment in prisoners' favor on their Eighth Amendment claim based on unsanitary food services); *French v. Owens*, 777 F.2d 1250, 1255 (7th Cir. 1985) (affirming that defendants violated the Eighth Amendment where "[t]he kitchen, commissary and food storage areas were unsanitary and infested with mice and roaches").

regarding conditions of confinement" generally by "demonstrat[ing] a substantial risk of such serious harm resulting from the prisoner's exposure to the challenged conditions," *De'Lonta*, 330 F.3d 630 at 634 (citing *Helling*, 509 U.S. at 33-35). Thus, "[j]ail employees may not ignore a dangerous condition of confinement on the ground that the complaining inmate shows no serious current symptoms," *Webb v. Deboo*, 423 F. App'x 299, 300 (4th Cir. 2011), and "evidence of frequent or regular injurious incidents of [contaminated] food raises what otherwise might be merely isolated negligent behavior to the level of a constitutional violation," *Brown*, 632 F. App'x at 747.

Indeed, the decision on which Defendants rely acknowledges that, even at summary judgment, a prisoner need not present "medical or scientific evidence elucidating the level of risk of physical injury his conditions of confinement exposed him to . … [w]hen laypersons are just 'as capable of comprehending the primary facts and of drawing correct conclusions from them[.]'" *Jones v. Solomon*, 90 F.4th 198, 209 (4th Cir. 2024) (cited at Resp. Br. 6). Here, laypersons are capable of comprehending the risks of being served rotten and mice-bitten food for twenty-nine months. *See also McCoy v. Garikaparthi*, 609 F. App'x 448, 449 (9th Cir. 2015) (reversing dismissal of prisoner's Eighth Amendment claim where prisoner alleged he began vomiting from the food he was served, so he could receive adequate food only through the canteen or from other inmates, as described in *McCoy v. Garikaparthi*, 2014 WL 5305856, at *2 (E.D. Cal. Oct. 15, 2014)).

Hammock's prolonged exposure to unsafe food poses a much greater risk of serious harm than the harm from one or two contaminated meals held insufficient in the cases Defendants cite. Resp. Br. 7-8. *See Harrison v. Moketa/Motycka*, 485 F. Supp. 2d 652, 656 (D.S.C. 2007), *aff'd sub nom. Harrison v. Moteka*, 235 F. App'x 127 (4th Cir. 2007) (finding insufficient allegations of cold food and "two allegedly nutritionally deficient breakfasts"); *Islam v. Jackson*, 782 F. Supp. 1111, 1113-14 (E.D. Va. 1992) (finding insufficient an allegation of actually contaminated food on one occasion); *Bedell v. Angelone*, 2003 WL 24054709, at *14 (E.D. Va. Oct. 3, 2003), *aff'd sub nom. Bedell v. Vt. D.O.C.*, 87 F. App'x 323 (4th Cir. 2004) (finding insufficient allegations of "rotten potatoes and oranges" on a single date to which prison officials responded with adequate remedial measures).

Hammock has sufficiently alleged both a serious injury and a substantial risk of serious injury, and BCDC's other cases about the evidence plaintiffs must present at *summary judgment* do not speak to the propriety of granting Defendants' *motion to dismiss* here. In *Shrader v. White*, this Court determined, on review of a grant of summary judgment, that prisoners presented "insufficient evidence that the problems [with unsanitary food services] persisted continuously without corrective action" and no "evidence of outbreaks of food poisoning, diarrhea, or other diseases which are indicative of unhealthy conditions in the preparation or handling of food." 761 F.2d at 986. Similarly, in *Lopez v. Robinson*, 914 F.2d 486 (4th Cir. 1990), this Court assumed inadequate ventilation violated clearly established law but

determined that the undisputed evidence showed the prison's ventilation system was adequate and the record disclosed no harm of constitutional magnitude. *Id.* at 490-91. Here, pre-discovery, it is too early to determine whether Hammock will run into the same evidentiary problems. To the contrary, armed with discovery, Hammock may present evidence that BCDC's food was "prepared and served under conditions which d[id] [] present an immediate danger to [his] health and well being." *Shrader*, 761 F.2d at 986 (quoting *Ramos*, 639 F.2d at 571).

B. Hammock alleged awareness of the injuries and risks of injury posed by the unsafe food.

Defendants do not dispute that they were deliberately indifferent under both the objective test for pre-trial detainees and the stricter subjective test for convicted prisoners. *See* Resp. Br. 3-9. Because Hammock complained to Defendants about BCDC's unsafe food service throughout the twenty-nine months it persisted, *see* JA 10-11, 26-27, Defendants both "should have known" and, in fact, did know of the injuries caused and serious risks posed by Hammock's unsafe food. *Short v. Hartman*, 87 F.4th 593, 606, 611 (4th Cir. 2023); *see* Opening Br. 12-13.

II. Hammock stated a First Amendment claim based on the substantial burden placed on his ability to practice Islam.

As our opening brief shows (at 16-18), Hammock stated a free-exercise claim by alleging that (1) as a Muslim, he holds a sincere religious belief that he is required to attend Jumu'ah services and (2) BCDC placed a substantial

burden on his religious practice by denying him access to Jumu'ah services for thirty months. JA 10, 12, 22-23; *see Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017). Defendants do not appear to dispute that Hammock alleged a substantial burden on his religious practice. *See* Resp. Br. 9-14.

A. Defendants did not offer penological interests for the entire challenged period.

Because Hammock made this threshold showing, dismissal is improper unless "the government can demonstrate that the policy is reasonably related to the achievement of a legitimate penological objective." *Wilcox*, 877 F.3d at 169 (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). "The prison bears the burden of offering the interests that support its policy," *Lumumba v. Kiser*, 116 F.4th 269, 282 (4th Cir. 2024), which it "must present … to the district court in the first instance," *Carter v. Fleming*, 879 F.3d 132, 140 (4th Cir. 2018). This Court has therefore determined that a prison policy cannot be upheld where "the defendants have failed to advance any penological, or other, justification" for impinging on the plaintiff's free-exercise rights. *Ali v. Dixon*, 912 F.2d 86, 90 (4th Cir. 1990).

Defendants failed in the district court to offer penological interests that justified their infringement on Hammock's free-exercise rights for the entire thirty-month period. *See* Opening Br. 16-20. Defendants acknowledge that the only penological justification they offered was the need for social distancing during the COVID-19 pandemic, Resp. Br. 9-10, which does not

cover the entire period Hammock was deprived access to Jumu'ah services, from September 2019 to March 2022, JA 12, 22-23; *see* Opening Br. 19-20, 24.

Instead of holding Defendants to their burden, the district court improperly identified for itself another penological interest to cover the entire period, finding that the prison had an interest in not permitting Hammock to attend religious services because of his protective-custody status for "any time periods before or after the imposition of COVID-19 restrictions." JA 69. The district court thought it could offer this protective-custody interest by treating as true the handwritten justification provided on an attachment to Hammock's supplemental pleadings. *See* Opening Br. 20-21; JA 69 ("Hammock's pleading reflects that the reason he has not been permitted to attend religious services is his status as a protective custody inmate"); *see also* JA 24 (handwritten response on Hammock's request form to attend Jumu'ah services indicating that "Mr. Hammock 4G can't be let out to general population because of the protective custody unit sorry!").

The district court erred in accepting Hammock's protective-custody status as the real reason Defendants denied him access to Jumu'ah services. "[I]n cases where the plaintiff attaches or incorporates a document for purposes other than the truthfulness of the document, it is inappropriate to treat the contents of that document as true." *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 167 (4th Cir. 2016). Here, there were other purposes. Hammock referred to his protective custody to show that he had properly followed instructions for inmates in that situation to request religious services, not to

show that protective custody was Defendants' penological justification for denying him access to religious services. Hammock alleged that a memo in his protective-custody unit instructed inmates to put their request to attend religious services on a Form #118 "before 3-20-22," and "Hammock put in a 118 form on 3-10-22 which is enclosed." JA 22-23. The request form included a handwritten note—penned by an unknown author—asserting that Hammock could not be let out of the protective-custody unit. JA 24. But BCDC has never argued that was its justification for denying Hammock access to Jumu'ah services. *See* Opening Br. 20-21, Resp. Br. 9.

Because Hammock "did not rely on [BCDC's justification] to form the basis for his claim, and did not adopt [BCDC's justification] as true by attaching it to his complaint. … , the district court erred by treating [BCDC's justification] as true," *Bell v. Landress*, 708 F. App'x 138, 139 (4th Cir. 2018) (holding that district court erred by treating factual statements in an attached report as true); JA 22-23. Quite the opposite. As just explained, Hammock alleged that a memo explained that religious services were available to protective-custody inmates. JA 22-23. Other considerations further undermine the district court's assumption that Hammock's protective-custody status prevented him from attending Jumu'ah services before and after COVID restrictions. JA 69-70. Defendants acknowledge that other inmates were permitted to enter Hammock's cell in 2019 and that Hammock had a cellmate in 2021, Resp. Br. 10 n.2, indicating that a protective-custody

justification would not have prevented him from congregating with other inmates during those times, *see* Opening Br. 23-24.

B. In any case, the *Turner* factors weigh in Hammock's favor.

Even under the *Turner* factors, Hammock's claim survives and must be remanded for further factual development. Because defendants often lack evidence that a restriction is related to legitimate penological interests when they must accept plaintiffs' pleaded facts, courts often cannot "conclusively resolve the *Turner* analysis in defendants' favor at the pleading stage." *Tiedemann v. von Blanckensee*, 72 F.4th 1001, 1015 (9th Cir. 2023).

In *Firewalker-Fields v. Lee*, this Court explained that the "burden [is] on the prison to put forward the actual interests that support their policies." 58 F.4th 104, 116 (4th Cir. 2023). It therefore applied the *Turner* factors to the jail's asserted justifications to determine that the jail's policies were "reasonably related to the legitimate penological purposes of security and resource-allocation." *Id.* at 120. Here, however, Defendants have not offered any justification for preventing Hammock from attending Jumu'ah before or after the COVID-19 pandemic, *see* Opening Br. 19-20, and "a factfinder could certainly conclude that arbitrary interference with a detainee's exercise of his constitutional rights is not 'reasonably related' to any 'legitimate penological interests,'" *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 218 (4th Cir. 2017) (holding that questions of fact precluded summary judgment on deaf prisoner's claim that he was denied access to an accommodation without

justification). Without this rational connection, "the regulation fails, irrespective of whether the other [*Turner*] factors tilt in its favor." *Shaw v. Murphy*, 532 U.S. 223, 229-30 (2001). Though Defendants argue that Hammock's claim fails because he has not pleaded facts relevant to the fourth *Turner* factor—offering easy alternatives to the policy that burdens his practice, Resp. Br. 12-13—other factors do not matter because BCDC's practice already fails under the first factor, *see Turner*, 482 U.S. at 89-90.

III. Defendants are not entitled to qualified immunity.

Not only has Hammock sufficiently pleaded a violation of his rights, *see supra* at 2-12, but the "pre-existing law was not in controversy," *Ortiz v. Jordan*, 562 U.S. 180, 190 (2011), so Defendants are not entitled to qualified immunity.

Prison officials may not deliberately refuse to 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)). Nor may they arbitrarily deny a prisoner access to 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)).

Defendants cannot avoid this conclusion and obtain qualified immunity by (1) reimagining Hammock's claimed right to safe food as a right to hot food, or (2) recasting the prohibition against denying religious access without legitimate justification as a general right to attend Jumu'ah services. *Contra* Resp. Br. 16. Hammock alleged that his food service was unsafe for twenty-nine months, and Defendants disregarded his complaints about the quality of the food and his resulting sickness. JA 11-12, JA 26-27. He also alleged that from September 2019 to March 2022 he was not allowed to attend prayer services that were a mandatory part of his religion. JA 12, JA 22-23. Defendants did not offer a legitimate penological justification for substantially burdening his religious practice for many months in that period. *See* Opening Br. 19-21. Defendants have "invoke[d] qualified immunity at the motion to dismiss, before any of the evidence is in," and "on the facts Plaintiff[] ha[s] pleaded, Defendants cannot succeed." *Thorpe v. Clarke*, 37 F.4th 926, 930 (4th Cir. 2022).

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,

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This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,060 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.

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February 5, 2025

Certificate of Service

I certify that on February 5, 2025, 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).

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