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. 2:21-cv-00151 Hon. James D. Peterson

REPLY BRIEF FOR PLAINTIFF-APPELLANT SHAREEF CHILDS

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Introduction and Summary of Argument

Defendants violated Plaintiff-Appellant Shareef Childs's rights under RLUIPA and the First Amendment when they substantially burdened his religious practice by refusing to distribute accurate prayer schedules without sufficient justification. Because Childs is a prisoner, he cannot obtain prayer schedules online or by going to a mosque, so the prison is required to accommodate his religious practice by providing them.

Under RLUIPA, prisons must provide religious accommodations absent a compelling countervailing justification. Defendants have identified no compelling justification for their refusal to provide prayer schedules, instead arguing that they do not have a duty to provide non-dietary accommodations. That's illogical and at odds with the case law.

Defendants argue that a neutral and generally applicable prison policy cannot violate the First Amendment. But a prisoner makes out a First Amendment free-exercise claim by showing a substantial burden was placed on his religious exercise regardless of the purported neutrality of the prison's policy. Defendants' newly asserted First Amendment interest in resource-efficiency fares no better, as it is unsubstantiated and not rationally related to their decision not to provide prayer schedules. Defendants' reliance on qualified immunity to defeat Childs's First Amendment damages claim also fails because this Court has long recognized that prisons may not deny inmates religious accommodations without a legitimate penological interest.

Argument

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

Prison officials violate RLUIPA if they impose a substantial burden on inmates' free exercise of religion absent a compelling interest, and they violate the First Amendment if they impose that burden without a legitimate penological purpose. Opening Br. 13, 19; *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 996-97 (7th Cir. 2006). Childs has made out free-exercise claims under both RLUIPA and the First Amendment, and Defendants lack an adequate justification for the substantial burden they imposed on his religious practice.

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

1. Childs's religious exercise was substantially burdened under RLUIPA.

Defendants do not contest that Childs sought to engage in religious exercise, *e.g.*, Resp. Br. 25, so the remaining question is whether that exercise was substantially burdened. A substantial burden is one that "forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a religious person's 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); *see* Opening Br. 14. Defendants imposed this substantial burden by

first distributing an incorrect prayer schedule and later refusing to distribute prayer schedules at all. Opening Br. 14-19. Defendants' distribution of an incorrect prayer schedule forced Childs to offer prayers at the wrong time, and Defendants' later refusal to distribute prayer schedules at all inhibited Childs's religious practice. Opening Br. 15-16, 18-19.

As to the inaccurate prayer schedules, Defendants appear to argue that because money damages are not presently available in this Circuit under RLUIPA, *e.g.*, *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), Childs's RLUIPA claim does not encompass the distribution of the incorrect prayer schedules. Resp. Br. 16-17. But as our opening brief explains (at 15-19), Childs's RLUIPA claim covers both the distribution of the incorrect prayer schedule and prison officials' ongoing refusal to distribute a schedule at all, for which Childs seeks injunctive relief requiring Defendants to distribute *accurate* prayer schedules. App. 013. Put another way, appropriate injunctive relief would be premised on the understanding that distribution of inaccurate prayer schedules would (and did) impose a substantial burden on Childs's practice of religion by compelling Childs to violate his belief that he must pray at the beginning of every prayer window. *See* Opening Br. 3-5 (explaining that the prayer schedule Childs received listed prayer times up to fourteen minutes early).[1]

[1] Childs may also have a viable claim for damages under RLUIPA on remand. The Supreme Court recently granted certiorari on the question

The prison's subsequent decision to no longer provide prayer schedules also substantially burdened Childs's religious exercise. Contrary to Defendants' assertion, Resp. Br. 17, RLUIPA requires prison officials to provide religious accommodations to inmates, such as religiously compliant meals. In *Jones v. Carter*, 915 F.3d 1147 (7th Cir. 2019), this Court required a prison to accommodate Jones's religious belief that he was required to eat halal meat, even though the prison was already providing nutritionally adequate food prepared in a religiously compliant manner and Jones could have purchased halal meat himself from the commissary. *Id.* at 1148-51; *see also Schlemm v. Wall*, 784 F.3d 362, 363-65 (7th Cir. 2015) (finding that prison violated RLUIPA by failing to provide venison for a religious holiday); *Ackerman v. Washington*, 436 F. Supp. 3d 1002, 1013-15, 1019 (E.D. Mich. 2020) (citing *Jones*, 915 F.3d 1147, and holding that prison violated RLUIPA by failing to provide cheesecake for a religious holiday), *aff'd*, 16 F. 4th 170 (6th Cir. 2021).

Defendants argue that food cases like *Jones* are inapposite because they present a unique context in which the alternative to prisons providing the religious accommodation "is inmates starving or becoming malnourished." Resp. Br. 22 (quoting *Schlemm v. Wall*, 165 F. Supp. 3d 751, 763 (W.D. Wis. 2016)). But Jones was not at risk of starving. *Jones*, 915 F.3d at 1148. Indeed, this Court rejected the DOC's contention that "nothing less than the coercive

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whether money damages are available under RLUIPA. *See Landor v. La. Dep't of Corr. & Pub. Safety*, 2025 WL 1727386 (U.S. June 23, 2025).

pressure of the choice between violating his religion and facing starvation qualifies as a substantial burden under RLUIPA." *Id.* at 1149. Prisons impose a substantial burden whenever they constrain or inhibit religious activity. *See Koger*, 523 F.3d at 798.

Defendants further argue that Childs's prayer schedules are a devotional accessory that they are not required to provide under *Cutter v. Wilkinson*, 544 U.S. 709 (2005). Resp. Br. 17-18. There, the Court noted that prisons need not purchase devotional accessories for inmates even as it recognized that RLUIPA protects prisoners who are unable to freely attend to their religious needs and require accommodations. *Cutter*, 544 U.S. at 720 n.8, 721. That is, *Cutter* requires prisons to provide religious accommodations that prisoners need to practice their religion. *Id.* at 720-21; *see also Harper v. Giese*, 2020 WL 7047822, at *6 (E.D. Wis. Dec. 1, 2020) (allowing prisoner to proceed on free-exercise claim based on defendants' "refus[al] to provide him with a clean prayer rug/towel and prayer schedule" because "affirmative obligations may be appropriate '[w]hen a prisoner has no way to practice his religion without assistance from the prison'") (citation omitted).

Like the inmate in *Jones*, Childs needs an accommodation to practice his religion. Because he is incarcerated, he cannot check online resources or the exact position of the sun to determine when he should be praying. App. 032 at 51:14-52:5, 52:22-53:8. So when the prison refused to provide him an accurate prayer schedule or otherwise tell him when he is supposed to pray, the prison placed a substantial burden on his ability to perform the Salah

prayer at appropriate times. *See Harper*, 2020 WL 7047822, at *6 (allowing prisoner to proceed on free-exercise claim based on failure to provide prayer schedules on the assumption "he had no ability to research a prayer schedule on his own"); *El-Tabech v. Clarke*, 2008 WL 1995304, at *1 (D. Neb. May 5, 2008) (noting that a prisoner's free-exercise and RLUIPA rights were violated by a prison's "refusal to post and reasonably accommodate his daily prayer schedule").

2. Because he has established a substantial burden, Childs has also made out a free-exercise claim under the First Amendment.

This Court's precedent clearly establishes that once a prisoner has shown a substantial burden on his sincere religious beliefs, he has made out a First Amendment free-exercise claim, and the prison's action may be upheld only if it is reasonably related to a legitimate penological interest under *Turner v. Safley*, 482 U.S. 78 (1987). *See, e.g.*, *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013).

Defendants say tension exists between the *Turner* factors typically used to evaluate prison regulations and *Employment Division v. Smith*, 494 U.S. 872 (1990), which held that regulations of general applicability do not violate the Free Exercise Clause. Resp. Br. 31-32. Defendants maintain that they cannot violate the First Amendment when they substantially burden an inmate's religion if in doing so they are enforcing a neutral and generally applicable

policy—which they assert here is their policy against spending funds on an inmate's personal property. Resp. Br. 32-33.

That's wrong. This Court has recognized that neutral policies can still violate the Free Exercise Clause if they impose a substantial burden on religion. *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 996 (7th Cir. 2006). This makes sense as only *Turner*—and not *Smith*—concerns the application of the First Amendment in the prison context. *See Sasnett v. Litscher*, 197 F.3d 290, 292 (7th Cir. 1999), *abrogated on other grounds by Bridges v. Gilbert*, 557 F.3d 541 (7th Cir. 2009); *see also Flagner v. Wilkinson*, 241 F.3d 475, 481 (6th Cir. 2001) (stating that *Turner* remains the proper standard for prison cases after *Smith*); *Salaam v. Lockhart*, 905 F.2d 1168, 1171 & n.7 (8th Cir. 1990) (same); *Ward v. Walsh*, 1 F.3d 873, 877 (9th Cir. 1993) (same). Even Defendants recognize that *Smith* did not overrule *Turner* or *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), another prison-specific decision that applied the *Turner* factors. Resp. Br. 32. Thus, the relevant determination is whether the prison's policies imposed a substantial burden on Childs's religious exercise. As shown above (at 2-6) and in our opening brief (at 14-19), they have.

B. Defendants have not justified their failure to provide prayer schedules under RLUIPA or the First Amendment.

Because Childs's religious exercise was substantially burdened, Defendants are required to justify their actions under both RLUIPA and the First Amendment. Opening Br. 19. They have not.

1. Defendants have failed to show that the burden on Childs's religious practice is narrowly tailored to further a compelling interest.

Under RLUIPA, Defendants must show that their action imposing a substantial burden on religion "is in furtherance of a compelling governmental interest" and is "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a)(1)-(2). Defendants never attempt to assert a compelling interest that justifies not providing Childs with a prayer schedule. Resp. Br. 26-27. Even if Defendants had asserted a compelling interest, their outright refusal of any accommodations that would inform Childs when he should pray would not be the least restrictive means of achieving that interest. That is, we have identified alternative means—personally informing Childs of prayer start times or making an announcment over the loudspeaker, *see* Opening Br. 23—and Defendants have said nothing in response. Defendants thus have not met RLUIPA's "exceptionally demanding" standard. *West v. Radtke*, 48 F.4th 836, 847 (7th Cir. 2022) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)).

2. Withholding the prayer schedules does not serve a legitimate penological interest under *Turner*.

As explained (at 6), once a substantial burden has been established, the prison's action is valid under the First Amendment only if it is reasonably related to a legitimate penological interest under *Turner*. The first *Turner* factor looks at whether a rational connection exists between the prison

regulation and the asserted government interest. *Turner v. Safley*, 482 U.S. 78, 89 (1987). Because a "regulation cannot be sustained where the logical connection between the regulation and asserted goal is so remote as to render the policy arbitrary or irrational," this first factor can be dispositive when the required logical connection is lacking. *Riker v. Lemmon*, 798 F.3d 546, 553 (7th Cir. 2015) (citation omitted).

Here, Defendants did not provide the district court with any reason for their actions, *see* ECF 53 at 22, and they now belatedly assert only a vaguely described interest in "resource-efficiency," Resp. Br. 36. But this Court has recognized that *Turner* factor one requires a prison to come forward with "some evidence supporting their concern" that accommodating the prisoner's request would affect their claimed interest. *Nigl v. Litscher*, 940 F.3d 329, 334 (7th Cir. 2019) (citing *Riker*, 798 F.3d at 553). Defendants concede that "no record evidence" substantiates their purported cost concerns. Resp. Br. 36. And though Defendants express conjectural fears about "the cost of providing *all* inmates with *all* devotional accessories they might request," Resp. Br. 37, this case concerns only prayer schedules, and Defendants have presented no evidence that any other inmates have requested *any* (let alone costly) religious accommodations. Without record support, Defendants' "reflexive, rote assertions" of a penological interest are insufficient. *Emad v. Dodge County*, 71 F.4th 649, 653 (7th Cir. 2023) (citing *Nigl*, 940 F.3d at 334).

Even if this Court considers the Defendants' newfound interest in resource efficiency, a rational connection is lacking between that interest and refusing to provide Childs's prayer schedule. Our opening brief explains (at 26) that accommodating Childs would require Defendants to print three double-sided pieces of paper a year. It's not clear why providing this accommodation would have any effect on prison resources, especially given that prayer schedules are already provided to guards so they can distribute Ramadan meal bags, App. 058 (¶ 39), and had been provided to inmates in the past without any expressed resource concerns, App. 056 (¶¶ 30-31); App. 084 (¶ 29). Thus, the connection between the prison's asserted interest and their denial of the prayer schedules is illogical at best.

Although *Turner* factor one is dispositive here, a majority of the other factors also weigh in Childs's favor. As to factor three—the potential impact that providing the accommodation would have on the prison—Defendants argue that providing the prayer schedule might drain scarce resources. Resp. Br. 38. But as just shown, Defendants have put forward no evidence that other inmates have made costly requests, the cost of providing prayer schedules is non-existent or de minimis, and they previously accommodated Childs. (In fact, evidence suggests that the real reason the schedules were withheld was to retaliate against Childs and other inmates for seeking to exercise their rights. *See* Opening Br. 21-22; *infra* at 12.)

Turning to factor four—whether clear and easy alternatives exist—our opening brief (at 26) showed that alternatives include simply distributing

accurate prayer schedules or having guards inform Childs and other inmates when it is time to pray. Opening Br. 26. Defendants argue that the latter alternative would "require[] prison officials to serve double duty as religious instructors." Resp. Br. 38. But prison officials are not being asked to lead or join inmates in prayer. Rather, they would simply alert inmates to times of the day for prayer that inmates are unable to readily ascertain themselves because of their confinement. *See* Opening Br. 26. Even then, if Defendants wish not to announce the time for prayers, they can simply distribute the prayer schedules as they had been doing previously (and, as noted, as they currently do so that officers can distribute Ramadan meals).

II. Defendants are not entitled to qualified immunity.

Nor can Defendants escape liability for damages via qualified immunity.

A. Our opening brief explains (at 27-29) that 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). Defendants argue that *Grayson* is limited in the free-exercise context to situations in which prison officials' defense is based on either the claimed insincerity of a prisoner's religious beliefs or on prison security. Resp. Br. 41. But *Grayson* recognized more generally that qualified immunity is unavailable when the record lacks support for "any other articulated ground" for failing to accommodate an inmate's religious beliefs. *See Grayson*, 666 F.3d at 453. Like in *Grayson*, Defendants here have failed to

present evidence that they honestly believed that their rejection of a religious accommodation was supported by a legitimate penological interest, so they are not entitled to qualified immunity. *Id.* at 455.

We also explained that qualified immunity requires an evaluation of the legitimate interests that might have justified the official's decision. Opening Br. 27-29. It is therefore unavailable when evidence of the basis for the officials' decision is lacking. *See Sause v. Bauer*, 585 U.S. 957, 960 (2018) (per curiam). Defendants assert that the reason for their actions was Wisconsin's policy against using funds to purchase personal property for inmates. Resp. Br. 41. But Childs has presented evidence that the prayer schedules actually were withheld because he and other inmates complained about the incorrect schedules, App. 028 at 36:12-15, an unlawful, retaliatory motive. This conflict over the reason Defendants made their decision to withhold the prayer schedules means a dispute exists over whether Defendants were motivated by a legitimate interest. Qualified immunity is therefore not appropriate at summary judgment.

B. Qualified immunity is unavailable for another, independent reason: Childs's right to receive accommodations that he needs to practice his religion in prison was clearly established. Opening Br. 29-31. Inmates have a long-established right to religious accommodations when no legitimate penological interest justifies their denial. This principle was established in *Turner v. Safley*, 482 U.S. 78 (1987), and *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), and later recognized by this Court, *see, e.g.*, *Conyers v. Abitz*, 416

F.3d 580, 586 (7th Cir. 2005) (recognizing that the "law was clearly established that prison officials must have a legitimate penological interest before imposing a substantial burden on the free exercise of an inmate's religion"). For example, this Court found that a district court erred by dismissing a free-exercise claim where an inmate alleged that his prison "denied him religious articles and the opportunity to attend Mass without adequate penological justification." *Ortiz v. Downey*, 561 F.3d 664, 670 (7th Cir. 2009).

Defendants attempt to distinguish *Ortiz* by arguing that the prisoner in *Ortiz* was denied access to religious materials, while they simply did not provide Childs with religious materials he requires. Resp. Br. 42. But regardless of whether the prison blocks access to religious materials or refuses to provide them, it is clearly established that prisons may not deny prisoners' requests for necessary religious accommodations without a legitimate penological interest. *See Ortiz*, 561 F.3d at 670; *Conyers*, 416 F.3d at 586. Indeed, that is how other cases have read *Ortiz*. *See Johnston v. Duncan*, 2020 WL 470612, at *2 (N.D. Ind. Jan. 27, 2020) (citing *Ortiz*, 561 F.3d at 669-670, and finding that inmate stated a First Amendment claim where prison denied him a prayer rug and prayer oils without a legitimate reason); *Williamson v. Twaddell*, 2012 WL 3836129, at *4-5 (C.D. Ill. Sept. 4, 2012) (citing *Ortiz*, 561 F.3d at 669, and finding that inmate stated a First Amendment claim based on the prison's failure to provide a kosher diet); *see also Harper v. Giese*, 2020 WL 7047822, at *6 (E.D. Wis. Dec. 1, 2020) (finding that inmate

alleged First Amendment violation where prison "refused to provide him with a clean prayer rug/towel and a prayer schedule"). Though Defendants argue that non-controlling precedent is insufficient to clearly establish Childs's right to have his religion accommodated, Resp. Br. 42-43, we cite these non-binding decisions now only to illustrate how rights that have been clearly established—as in *Ortiz*—have been applied in similar contexts.

Because Defendants violated a well-established principle by denying Childs's request for a prayer schedule, qualified immunity does not bar his damages claim.

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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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 3,256 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
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