

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

NICKOLUS G. TOEPFER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:20-CV-150-LPR-JTR
)	
PHIL REYNOLDS, Sheriff, Woodruff County;)	JURY DEMANDED
and JIM DUNHAM, Chief Deputy,)	
)	
Defendants.)	
)	
)	

PLAINTIFF’S THIRD AMENDED COMPLAINT

Plaintiff Nickolus G. Toepfer, by and through counsel, and for his complaint against the Defendants, alleges as follows:

INTRODUCTION

1. This action arises from Defendant jail officials’ refusal to accommodate or tolerate a Muslim inmate’s beliefs in violation of his religious freedom and civil rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1 *et seq.*, and Arkansas law.
2. Defendants denied Mr. Toepfer’s repeated pleas for access to a prayer rug and Qur’an, for a pork-free diet, and for adjustments to mealtimes so he could fast for Ramadan. And Defendants not only refused Mr. Toepfer’s requests in blanket fashion, but subjected him to derision, threats, and dilapidated jail conditions.
3. Federal and state law broadly protect the religious exercise of institutionalized persons. Both the United States and Arkansas constitutions guarantee the Free Exercise of religion to inmates and prohibit jails from favoring one religion or belief

over another as an Establishment of Religion. On top of those constitutional protections, Congress has also provided strong religious freedom protections to inmates by passing RLUIPA, which forbids state and local officials from violating an inmate's religious beliefs unless their action is the least restrictive means of achieving a compelling interest. 42 U.S.C. § 2000cc-1(a). Similarly, the Arkansas Civil Rights Act protects rights secured by the state constitution, including the Religious Liberty Clause, tracking the analysis applied under section 1983. Ark. Code Ann. § 16-123-105.

4. These laws require jail officials to provide inmates “with food sufficient to sustain them in good health and that satisfies the dietary laws of their religion.” *Kind v. Frank*, 329 F.3d 979, 981 (8th Cir. 2003) (internal quotation marks and alteration omitted). In dispensing accommodations, jail officials must avoid favoring any religion over another. Indeed, doing so would run afoul of the Establishment Clause’s “clearest command.” *Larson v. Valente*, 456 U.S. 228, 244 (1982).
5. Defendants ignored Mr. Toepfer’s requests for a pork-free diet. In fact, they served him pork almost every meal of every day. As a result, Mr. Toepfer was forced to choose between starving and violating his religious commandments by eating pork.
6. Defendants ignored Mr. Toepfer’s repeated requests to adjust his mealtimes for Ramadan. They took away his plates and utensils after each designated mealtime, forcing him to scrape his food onto a piece of paper and leave it out for hours in unsanitary conditions.
7. Defendants repeatedly ignored or denied Mr. Toepfer’s requests for religious writings and items, despite granting the same requests for Christian prisoners.
8. Defendants mocked his “bullshit” faith, told him to pray to the “correct” God, and refused to acknowledge that a white man of European descent could convert to Islam.

9. Defendants’ actions against Mr. Toepfer—through their repeated denials and refusals to acknowledge Mr. Toepfer’s religious accommodation requests, their preference for Christian prisoners, and their mistreatment of Mr. Toepfer for his Islamic faith—violate the First Amendment, RLUIPA, and Arkansas law.

PARTIES

10. Plaintiff Nickolus G. Toepfer resides in Indiana. He is currently incarcerated at Westville Correctional Facility. During the events discussed in this Complaint, he was an inmate at the Woodruff County Jail (the “Jail”).
11. Defendant Phil Reynolds was, at all relevant times, the Sheriff of Woodruff County, Arkansas. Plaintiff sues him in his official and individual capacities.
12. Defendant James Dunham was, at all relevant times, the Chief Deputy and Jail Administrator of Woodruff County, Arkansas. Plaintiff sues him in his official and individual capacities.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction for the RLUIPA and federal constitutional claims), 28 U.S.C. § 1983 (deprivation of constitutional rights), and 28 U.S.C. § 1367 (supplemental jurisdiction for the Arkansas law claim, which arises from the same core nucleus of operative facts as the federal claims).
14. Venue is proper in the Eastern District of Arkansas under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action took place in this district—at or around the Woodruff County Jail in Augusta, Arkansas.

STATEMENT OF FACTS

Plaintiff’s Islamic Faith

15. Mr. Toepfer is an observant Muslim. He follows the teachings of the Qur’an and the Prophet Muhammad.

16. Islam is among the world's largest religions with an estimated 2 billion adherents worldwide, including approximately 4 million in the United States.
17. In the year before his incarceration at the Jail, Mr. Toepfer saw the positive changes others made in their lives after converting to Islam. Motivated by a desire to lead a moral life and dedicate himself to God, he converted to Islam by reciting the Shahada, a statement of faith.
18. Mr. Toepfer converted to Islam before his incarceration at the Jail.
19. As a Muslim, Mr. Toepfer sincerely believes he may not eat pork or food that has been contaminated with pork.
20. The Qur'an, Islam's holy book, strictly forbids consuming pork, whether directly or through contamination.
21. Mr. Toepfer believes refraining from pork is an important test of believers' faith.
22. Mr. Toepfer believes he must study the Qur'an regularly.
23. Mr. Toepfer believes regularly studying the Qur'an is especially important for new Muslims. It serves as a source of knowledge and a daily reminder of Islam's first central pillar: that there is no god worthy of worship except for the one God, and Muhammad is his final Messenger.
24. Mr. Toepfer believes he is required to pray five times a day. Offering five daily prayers is one of Islam's five central pillars. The practice allows believers to connect with their Lord and seek support and forgiveness.
25. In line with the Prophet Muhammad's instruction that "cleanliness is half of the faith," Mr. Toepfer believes praying on a dedicated clean surface like a prayer rug is an important and required tenet of the faith.
26. Before entering the Jail, Mr. Toepfer observed these religious requirements—studying the Qur'an, praying five times daily on a clean, dedicated surface, and abstaining from pork.

27. Mr. Toepfer sincerely believes he must fast during Ramadan. He believes that during the month of Ramadan, God requires him to abstain from eating food and drinking water, from dawn until sunset each day.
28. Observing the month of Ramadan is one of the five pillars of Islam.
29. Mr. Toepfer believes fasting for the month of Ramadan is among the good deeds most beloved by God.

Plaintiff's Arrival at Woodruff County Jail

30. Mr. Toepfer was arrested and placed in the Woodruff County Jail on April 20, 2020.
31. Due to the unsafe and unsanitary condition of the Jail, which was built in 1972, the Jail was preparing to move to a new facility.
32. The Jail shut down temporarily in 2014 due to mold and other safety concerns arising from the facility's uncleanliness.
33. In an interview, Sheriff Reynolds admitted that the electrical and plumbing at the old jail was "just trouble full time."¹
34. The Jail had poor lighting and no running water in the cells other than toilets.
35. "It's not hard to see why we need a new facility at all," Sheriff Reynolds said in another interview about the old facility.²
36. Mr. Toepfer was housed in the Jail, and he was told they would be moving to the new facility in a matter of weeks.
37. His only source of water was a pitcher placed outside his cell.
38. He never saw Jail staff clean the facilities.
39. Only three other inmates were housed in the facility while Mr. Toepfer was there.

¹ Mark Buffalo, *Woodruff County Breaks Ground on New Jail*, Arkansas Democrat Gazette (Feb. 5, 2019, 10:39 a.m.), <https://www.arkansasonline.com/news/2019/feb/05/woodruff-county-breaks-ground-new-jail/>.

² *Woodruff County Breaks Ground on \$5.5 Million Detention Center*, KARK (Jan. 18, 2019), <https://www.kark.com/news/local-news/woodruff-county-breaks-ground-on-5-5-million-detention-center/>.

40. Mr. Toepfer, like all other inmates, was provided a computer tablet upon request which allowed him to submit electronic requests and grievances to the Jail administrator, Mr. Dunham.
41. Mr. Dunham and other Jail officials received requests and grievances from inmates on their own computer tablets.
42. When prisoners complained about conditions, Sheriff Reynolds, Mr. Dunham, and other Jail officials dismissed their concerns because “they were moving to a new facility soon.”

First Request for Religious Accommodations

43. In 2020, Ramadan began at sundown the evening of Thursday, April 23—three days after Mr. Toepfer’s arrival at the Jail.
44. It was Mr. Toepfer’s first Ramadan. He hoped to please God by observing the holy month as required by his faith.
45. Mr. Toepfer also believes he has a religious obligation to deepen his understanding of Islam, especially as a new believer, and hoped to fulfill that obligation and better conform his life to God’s commands by studying the Qur’an.
46. The day after he entered the Jail, on April 21, Mr. Toepfer formally requested religious accommodations using a computer tablet he had been given for submitting requests and grievances to Jail officials including the Jail administrator, Mr. Dunham.
47. Mr. Toepfer requested “that [his] religious rights be granted,” writing: “I am Muslim and need a prayer rug and Quran. I also am going to be participating in Ramadan and need the correct portions before dawn and after dusk. It begins on Thursday the 23rd for 30 days. Thank you.”
48. Mr. Dunham waited two days—until the morning of the day Ramadan was to begin—to respond.
49. Mr. Dunham denied Mr. Toepfer’s request for a prayer rug and Qur’an.

50. Mr. Dunham only made the cursory statement that Mr. Toepfer “should have them at [his] home” and “could have [his] family bring them.”
51. Mr. Toepfer’s family was unable to help. His family lived several states away, was not Muslim, and did not have Islamic religious materials to give him.
52. Mr. Dunham did not offer any alternatives for obtaining religious items, such as contact information for any chaplaincy programs, mosques, or other religious groups.
53. Christian inmates at the Jail had access to Bibles and Christian literature.
54. The Jail claims to allow inmates to have religious manuals and articles so long as they do not pose a threat to security, and it never contended that prayer rugs or a Qur’an would pose a security threat.
55. Mr. Dunham ignored the request for Ramadan dietary accommodations.

Defendants’ Denial of Plaintiff’s Multiple Requests for Religious Accommodations

56. Soon after arriving at the Jail, Mr. Toepfer began repeatedly asking Jail officials, including Mr. Dunham and Sherriff Reynolds, for religious items, Ramadan accommodations, and a pork-free diet.
57. He made these requests to Mr. Dunham in person every day, in addition to his written requests.
58. He also made verbal requests to Sheriff Reynolds when he came by the facility, which was every few days.
59. Sheriff Reynolds ignored him. Mr. Dunham gave dismissive responses.
60. Defendants repeatedly denied Mr. Toepfer’s requests.

Spiritual, Emotional, and Physical Harm to Plaintiff

61. The Jail’s denials caused spiritual, emotional, and physical harm to Mr. Toepfer.
62. Mr. Toepfer was not able to abide by his religion’s cleanliness requirements during prayers because Defendants denied his requests for a prayer rug.

63. He resorted to using his bath towel as a makeshift rug to separate him from the ground. The towel was not a proper prayer rug, however, because he had to use it for other purposes and the towel was washed, at most, weekly.
64. Compounding the problem of using an unclean towel, Mr. Toepfer's cell was also unclean. The Jail had previously been shut down for health and safety reasons, with a local judge noting that it did not meet standards for jails as set forth by the state.³
65. The Jail was permanently decommissioned soon after Mr. Toepfer left.
66. Defendants prevented Mr. Toepfer from studying the scripture daily and deepening his knowledge of the faith as a new convert by denying the request for a Qur'an.
67. Because he did not have a Qur'an, he did not know the proper wording of the required daily prayers or in which direction to pray.
68. In addition to the failure to provide religious materials, the Jail's meals and denial of any dietary accommodations forced Mr. Toepfer to choose between violating his religious beliefs or eating inadequate, unsanitary meals.
69. The Jail consistently served pork in his meals—often for all three meals each day: ham for breakfast, ham sandwich for lunch, and ham-based meal or hamburger for dinner.
70. With some meat items, like hamburgers, Defendants refused to confirm whether the meat contained pork.
71. By serving pork in a tray with other food, the non-pork food was often contaminated with pork.
72. Defendants consistently served the same pork-containing meals each day. On information and belief, Defendants served those same meals day in and day out because they were trying to run down the Jail's stock of those meals before moving to a new facility.

³ Buffalo, *supra*, footnote 1.

73. Mr. Toepfer had no opportunity to obtain other food while in the Jail.
74. At first, Mr. Toepfer refused to eat the pork and pork-contaminated foods he was served. He went hungry and lost weight.
75. Out of necessity, Mr. Toepfer eventually ate pork. Eating pork caused him considerable mental anguish and religious guilt. He developed stomach problems from eating pork and from the unsanitary conditions in which he had to keep his food while he maintained his fast.
76. Mr. Toepfer subsequently struggled to achieve a religious connection due to his mental anguish and religious guilt.

Subsequent Requests and Grievances

77. Mr. Toepfer continued to request accommodation—both verbally and in writing.
78. On April 23, he submitted another request on his tablet, noting that his first request had not been answered. He reminded the officials that “[t]onight [was] the beginning of Ramadan and [he] need[ed] to be accommodated with proper meal portions at the proper times.” He reiterated that it was “very important to [him]” and thanked the officials in advance.
79. Jail officials did not respond.
80. Later that day, and concerned that Ramadan was about to begin with no accommodation, Mr. Toepfer submitted a grievance, emphasizing that his previous requests had not been answered.
81. Defendants again ignored Mr. Toepfer’s request and provided no accommodation as Ramadan began.
82. The next day, April 24, Mr. Dunham responded as he had before. He restated his previous answer about allowing family members to bring religious materials, and disparaged Mr. Toepfer’s faith, saying that “if [he were] Muslim [he] should have those items at home.” Mr. Dunham said nothing about Mr. Toepfer’s request for Ramadan accommodations.

83. At no time did Mr. Dunham ask for more information about Mr. Toepfer's requests for accommodation.

Ramadan Fasting

84. Mr. Toepfer began fasting for Ramadan on April 24. His fast was made more difficult by Defendants' failure to provide any accommodations.

85. Despite Mr. Toepfer's request to provide meals before dawn and after sundown, Defendants provided his meals at the normal times.

86. They provided no options for Mr. Toepfer to refrigerate or store his food for later consumption.

87. Because Defendants took away his plates and utensils after each designated mealtime, Mr. Toepfer had to scrape his lunch and dinner onto a piece of paper to save the food until after sundown. He then had to eat the food with his hands, without the ability to wash them beforehand.

88. There was no running water in the cells, so Mr. Toepfer had to retrieve drinking water from a jug outside the bars of his cell.

89. The cell where he kept his food was unsanitary; rats often crossed the floor.

90. Leaving his food out made much of the food inedible or unsanitary, having spoiled or soaked through the paper, by the time Mr. Toepfer was able to eat it.

91. The Jail's policy was not to allow inmates to keep food in their cells beyond mealtimes.

92. Jail officials were upset that Mr. Toepfer was "hoarding" his food and often threatened to take the food away from him. They once forced him to flush his food down the toilet.

93. Another complication for Mr. Toepfer was that his cell had no windows, so he was often unable to determine the proper times for his sunrise-to-sunset fast.

94. The next day, April 25, Ramadan continued with no accommodation. Mr. Toepfer filed another official grievance, again asking to be provided with a prayer rug, a

Qur'an, and Ramadan accommodations. Defendants again refused to provide a prayer rug or Qur'an and did not respond to Mr. Toepfer's request for Ramadan accommodations.

95. Two days after his second grievance, on April 27, Mr. Toepfer submitted another grievance asking again for the same accommodations.
96. Thirty minutes after Mr. Toepfer filed his third grievance, Mr. Dunham told him—falsely—that prison officials from Indiana would be arriving in two days to transfer him. Mr. Dunham did not respond to Mr. Toepfer's request for religious accommodation and religious materials.
97. On April 29, Mr. Toepfer submitted a fourth grievance, lamenting that “no effort [had] been made in any way” to help him get religious materials or accommodate his “right to participate in the Ramadan.”
98. Jail officials did not provide any accommodations in response.
99. On May 2, Mr. Toepfer submitted his fifth grievance, pointing out that his “request[s] and grievances about [his] right to religion [had] not been answered.”
100. Mr. Dunham's response again ignored the request to accommodate meal times and repeated his earlier claim that Mr. Toepfer “can have [his] family bring [him his] religious items.”
101. Despite Mr. Toepfer's continued requests and grievances, Defendants continued to serve him pork, deny Ramadan accommodations, and reject his requests for a prayer rug and Qur'an throughout his stay at the Jail.

Anti-Muslim Threats and Intimidation

102. One day, before being transferred to Indiana, Jail officials handcuffed Mr. Toepfer and took him to Sheriff Reynolds without explanation.
103. Sheriff Reynolds marched Mr. Toepfer to an unmarked pickup truck, placed him in the passenger seat, and started driving without telling Mr. Toepfer where they were going.

104. As they started driving out of town, Mr. Toepfer, still unaware of what was going on, feared for his safety.
105. Sheriff Reynolds then told Mr. Toepfer that he should pray and ask God for forgiveness if he wanted to make it back to his cell. The Sheriff specified that Mr. Toepfer should pray to the Christian God, not “that bullshit Allah.”
106. Mr. Toepfer feared for his safety and felt intimidated by Sheriff Reynold’s actions and religious animosity.
107. He also feared offending God. The single greatest sin in Islam is to worship another deity or associate anyone or anything with God. For Mr. Toepfer to pray to a different God, as Sheriff Reynolds demanded, would be for Mr. Toepfer to leave Islam.
108. They arrived at a pharmacy that Mr. Toepfer had never seen before. Sheriff Reynolds falsely believed that Mr. Toepfer had robbed this pharmacy.
109. Sheriff Reynolds forced Mr. Toepfer to apologize to an employee of the pharmacy, explaining that this pharmacist was a friend of his and she had been scared by the recent robbery.
110. After Mr. Toepfer apologized out of fear for his safety, Sheriff Reynolds drove Mr. Toepfer back to the Jail.
111. Mr. Toepfer never received religious accommodations. He was transferred to a different facility in Indiana after two weeks.

FIRST CLAIM FOR RELIEF

**Violation of the Free Exercise Clause of the First Amendment to the U.S.
Constitution**

(42 U.S.C. § 1983)

Against Defendants in Their Official and Personal Capacities

112. Mr. Toepfer re-alleges and incorporates by reference all preceding paragraphs herein.

113. The First Amendment forbids government from “prohibiting the free exercise” of religion. U.S. Const. amend. I. That protection may be enforced by a private action against any person acting under “color of state law” via 42 U.S.C. § 1983. *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *see also Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690–91 (1978).
114. Under the First Amendment, “[i]t is well settled that jail and prison inmates have the right to be provided with food sufficient to sustain them in good health and that satisfies the dietary laws of their religion.” *Kind*, 329 F.3d at 981 (internal quotation marks and alteration omitted). Defendants are governmental entities or officials obliged to comply with the First Amendment and are thus subject to liability under section 1983. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).
115. Mr. Toepfer has a sincerely held religious belief that keeping a non-pork diet is mandated by his Islamic faith.
116. Mr. Toepfer sincerely believes praying, including prostrating on a dedicated clean surface five times a day is mandated by his Islamic faith.
117. Mr. Toepfer sincerely believes reading the Qur’an daily is mandated by his Islamic faith.
118. Mr. Toepfer sincerely believes observing the holy month of Ramadan by not eating or drinking between dawn and dusk during Ramadan is mandated by his Islamic faith.
119. Despite Mr. Toepfer’s repeated requests for religious accommodations, Defendants served him pork for nearly every meal, forced him to leave his food out in unsanitary conditions in a windowless cell during Ramadan, and refused to provide him with a Qur’an, prayer rug, or resources to obtain them.
120. To prevail on a free-exercise claim, a prisoner must show that prison officials burdened his religious exercise in a way not reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

121. Prison officials burden religious exercise at a minimum when they (1) “significantly inhibit or constrain conduct or expression that manifests some central tenet of a person’s individual religious beliefs,” (2) “meaningfully curtail a person’s ability to express adherence to his or her faith,” or (3) “deny a person reasonable opportunities to engage in those activities that are fundamental to a person’s religion.” *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008).
122. By forcing Mr. Toepfer to choose between eating pork and going hungry, constraining his ability to observe Ramadan, and preventing him from properly praying—all central tenets and fundamental activities of Mr. Toepfer’s faith—Defendants substantially burdened his free exercise rights.
123. There were no “legitimate penological objectives” that could justify Defendants denying Mr. Toepfer these basic religious accommodations. *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987).
124. Defendants failed to provide meaningful or adequate alternative means of keeping those core Muslim practices. They also ignored several readily available accommodations, such as allowing him to properly fast by serving his food before dawn and after sunset—or at least refrigerating his food while he fasted.
125. Given the small number of inmates at the Jail, it would have been easy and workable for Defendants to have provided basic religious accommodations to Mr. Toepfer.
126. Mr. Toepfer conveyed his requests on repeated occasions to both Defendants, and both Defendants were deliberately indifferent to his religious needs and refused to grant reasonable religious accommodations.
127. Defendants claim that the Jail has a nondiscriminatory written policy to “[r]easonably enable persons to adhere to the dietary laws of their faiths.”
128. But the Jail’s de facto policy or practice is to accommodate the dietary requirements of only those faiths—not including Islam—favored by Defendants or familiar to Defendants.

129. Sheriff Reynolds implausibly claims that he was “not familiar with Plaintiff’s faith and do[es] not know what [meal] portions or times to which he referred,” in his Ramadan accommodation request. Even if that were true, Defendants could have easily determined—either through cursory research or simply by asking Mr. Toepfer—how to accommodate Mr. Toepfer’s observance of Ramadan. Despite Mr. Toepfer’s persistent requests, Defendants showed no interest in doing so.
130. Neither Sheriff Reynolds nor Mr. Dunham accommodated Mr. Toepfer’s request for religious dietary accommodations.
131. Defendants also claim the Jail’s written policy is non-discriminatory, “[p]ermit[ing] receipt of any religious literature and publications that can be legally transmitted through the United States Mails.”
132. But the Jail’s de facto policy or practice discriminates. Defendants provide Christian materials to inmates and refuse to provide religious materials for other faiths such as Islam. Moreover, Defendants provided Mr. Toepfer no viable means of soliciting or obtaining religious literature or items.
133. Defendants also claim the Jail has a written policy to “[a]rrange so that persons in custody may reasonably worship or meditate at the time prescribed by their faith.”
134. But the Jail’s de facto policy or practice is to ignore requests for Ramadan religious exercise at the times prescribed by Islam.
135. “[A] de facto policy of ignoring or deviating from its free-exercise-compliant policies” can support an official capacity claim against the officials. *Mbonyunkiza v. Beasley*, 956 F.3d 1048, 1054–55 (8th Cir. 2020). Defendants followed a de facto policy and custom of refusing religious dietary requirements or other religious accommodations, ignoring or deviating from written policies it might have had requiring them to provide such accommodations.
136. Moreover, a choice by a municipal official with final decision-making authority—such as Defendants, and particularly Sheriff Reynolds—may also serve as the basis

of official-capacity liability. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 482–85 (1986).

137. As a proximate result of Defendants’ unlawful actions under the Free Exercise Clause of the First Amendment, Mr. Toepfer has suffered physical harm and spiritual, emotional, and mental distress.

138. Accordingly, Mr. Toepfer seeks all appropriate and available relief, as well as attorney’s fees and costs.

SECOND CLAIM FOR RELIEF

Violation of the Establishment Clause of the First Amendment to the U.S.

Constitution

(42 U.S.C. § 1983)

Against Defendants in Their Official and Personal Capacities

139. Mr. Toepfer re-alleges and incorporates by reference all preceding paragraphs herein.

140. The First Amendment forbids government “establishment of religion.” U.S. Const. amend. I. That prohibition requires the government to commit to the “principle of denominational neutrality.” *Larson v. Valente*, 456 U.S. 228, 246 (1982). Violations of this neutrality may be enforced by a private action against any person acting under “color of state law” via 42 U.S.C. § 1983. *Hafer v. Melo*, 502 U.S. 21, 25 (1991).

141. Defendants are local government officials obliged to comply with the First Amendment and are thus subject to liability under section 1983. *Id.*; *see also Monell*, 436 U.S. at 690–91.

142. Defendants violated the Establishment Clause by preferencing Christian religions over Mr. Toepfer’s Islamic faith.

143. Defendants provided Christian religious materials to Christian prisoners but refused all reasonable requests by Mr. Toepfer to provide (or enable access to) Muslim religious materials.

144. Defendants also singled out Mr. Toepfer for special punishment for being Muslim. Defendants threatened him, intimidated him by taking him on an extra-judicial excursion outside the Jail, made derogatory remarks about his “bullshit” faith, questioned his sincerity, and demanded that he pray to the “correct” God.
145. By singling out one religious denomination for mistreatment and disfavor, Defendants violated the “clearest command of the Establishment Clause.” *Larson*, 456 U.S. at 244.
146. Although Defendants claim that the Jail has religiously neutral written policies accommodating the timing of religious exercise, religious dietary requirements, and the availability of religious materials, those policies are unavailing. As alleged above, Defendants and other Jail officials followed a de facto policy of denying or ignoring Mr. Toepfer’s requests for a pork-free diet, Ramadan-compliant meal times, a Qur’an, and a prayer rug.
147. These actions, by officials with final policymaking authority, constituted a pattern, practice, and custom of violating the Establishment Clause.
148. This pattern, practice, and custom was the moving force behind the violation of Mr. Toepfer’s constitutional rights. As a proximate result of Defendants’ unlawful actions under the Establishment Clause, Mr. Toepfer has suffered physical, spiritual, emotional, and mental distress.
149. Accordingly, Mr. Toepfer seeks all appropriate and available relief, as well as attorney’s fees and costs.

THIRD CLAIM FOR RELIEF

**Violation of the Religious Land Use and Institutionalized Persons Act
(42 U.S.C. § 2000cc-1)
Against Defendants in Their Official and Personal Capacities**

150. Mr. Toepfer re-alleges and incorporates by reference all preceding paragraphs herein.

151. RLUIPA forbids officials in a prison system that receives federal financial assistance from imposing a substantial burden on an inmate's sincere religious exercise, unless the government "demonstrates that imposition of the burden on that person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1.
152. RLUIPA provides an express cause of action for appropriate relief against "a government," 42 U.S.C. § 2000cc-2(a), which is defined at 42 U.S.C. § 2000cc-5(4) to include any state, county, or local "official" as well as "any other person acting under color of State law."
153. Woodruff County, the Woodruff County Sheriff's Department, and Woodruff County Jail receive federal financial assistance.
154. Defendants are subject to RLUIPA because they are county officials or persons acting under color of state law and are acting "in a program or activity that receives Federal financial assistance." 42 U.S.C. § 2000cc-1(b).
155. Mr. Toepfer has a sincerely held religious belief protected under RLUIPA that keeping a non-pork diet is mandated by his Islamic faith.
156. Mr. Toepfer has a sincerely held religious belief protected under RLUIPA that observing the holy month of Ramadan by strict adherence to specific meal times is mandated by his Islamic faith.
157. Mr. Toepfer has a sincerely held religious belief protected under RLUIPA that studying the Qur'an daily is mandated by his Islamic faith.
158. Mr. Toepfer has a sincerely held religious belief protected under RLUIPA that prostrating on the floor in prayer five times a day using a clean dedicated prayer rug is mandated by his Islamic faith.
159. Defendants have unlawfully imposed a substantial burden on Mr. Toepfer's sincere religious exercise by (a) refusing reasonable requests for religious materials, (b)

refusing reasonable religious accommodations for meal times, and (c) refusing reasonable religious dietary requests, which have all prevented him from practicing core tenets of his faith.

160. Defendants' refusal to provide religious materials is inconsistent with their provision of Christian literature and Bibles to other inmates and left Mr. Toepfer unable to properly pray, study, and fast—a substantial burden on his religious exercise. Defendants' failure to accommodate Mr. Toepfer's requests does not accord with any facility policies or interests and forced Mr. Toepfer to choose between violating his religious beliefs and his physical wellbeing—a further substantial burden on his religious exercise. *See Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1314–16 (10th Cir. 2010) (noting that the denial of a proper diet for religious holidays imposes a substantial burden under RLUIPA).
161. For their part, Defendants have not asserted, and cannot prove, that their refusal to accommodate Mr. Toepfer's requests was justified by a compelling government interest. *See* 42 U.S.C. § 2000cc-1(a).
162. The standard for this showing is high. Courts have even deemed security concerns and the cost of religious diets insufficiently compelling. *See Moussazadeh v. Texas Dep't of Crim. Just.*, 703 F.3d 781, 794–95 (5th Cir. 2012); *Abdulhaseeb*, 600 F.3d at 1318 (noting that prison must present credible evidence that a compelling interest required refusing to provide strictly halal meals).
163. Defendants also cannot prove that their refusal to accommodate Mr. Toepfer's religious exercise is the least restrictive means of satisfying any purported compelling interest.
164. Indeed, Defendants' description of the Jail's written policies suggests that those policies expected and obligated them to accommodate Mr. Toepfer's religious requests.

165. Contrary to the Jail's own policies, Sherriff Reynolds, Mr. Dunham, and other Jail officials repeatedly denied and ignored Mr. Toepfer's requests.
166. These actions, by officials with final policymaking authority, constituted a pattern, practice, and custom of violating inmates' religious liberty rights under RLUIPA.
167. As a proximate result of Defendants' unlawful actions under RLUIPA, Mr. Toepfer has suffered physical harm and spiritual, emotional, and mental distress.
168. Accordingly, Mr. Toepfer seeks all appropriate and available relief, as well as attorney's fees and costs.

FOURTH CLAIM FOR RELIEF

**Violation of the Arkansas Civil Rights Act
(Ark. Code Ann. § 16-123-101 et seq.)**

Against Defendants in Their Official and Personal Capacities

169. Mr. Toepfer re-alleges and incorporates by reference all preceding paragraphs herein.
170. The Arkansas Civil Rights Act provides "legal and equitable relief" for any person deprived of "rights, privileges, or immunities secured by the Arkansas Constitution." Ark. Code Ann. § 16-123-105.
171. The Arkansas Constitution provides that "[a]ll men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences." Ark. Const. Art. 2, § 24.
172. Furthermore, "[n]o human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship, above any other." *Id.*
173. These provisions of the Arkansas Constitution mirror the freedom of religion clauses in the United States Constitution. *Muntaqim v. Payne*, 628 S.W.3d 629, 635 (Ark. 2021).

174. When construing the Arkansas Civil Rights Act, the statute instructs courts to “look for guidance to state and federal decisions interpreting the Civil Rights Act of 1871, as amended and codified in 42 U.S.C. § 1983.” Ark. Code Ann. § 16-123-105(c). Thus, an “analysis of claims brought pursuant to ACRA is guided by the same analysis in determining the merits of a civil rights action brought under federal law.” *Muntaqim*, 628 S.W.3d at 636.
175. As a result, the Defendants’ actions in violation of the First Amendment and federal law also violated Arkansas state law.
176. Repeatedly refusing Mr. Toepfer’s reasonable religious requests, ignoring other requests, and the demonstrated discriminatory treatment and religious animus indicate malicious acts and omissions that violated clearly established law.
177. These actions, by officials with final policymaking authority, constituted a pattern, practice, and custom of violating religious liberty rights.
178. As a proximate result of the Defendants’ unlawful actions under the Religious Liberty Clause of the Arkansas State Constitution, and thus the Arkansas Civil Rights Act, Mr. Toepfer has suffered physical, spiritual, emotional, and mental distress.
179. Accordingly, Mr. Toepfer seeks all appropriate and available relief, as well as attorney’s fees and costs.

PRAYER FOR RELIEF

180. WHEREFORE, Mr. Toepfer prays the Court grant the following relief:
- a. Award Mr. Toepfer monetary damages including nominal damages, *see Uzuegbunam v. Preczewski*, 141 S.Ct. 792, 801–02 (2021), for Defendants’ deprivation of his constitutional and statutory rights;
 - b. Award Mr. Toepfer a reasonable amount of attorney’s fees for the work of his attorneys in pursuit of this action and the protection of his rights, as permitted by the laws under which he brings this complaint;

- c. Award Mr. Toepfer all costs, disbursements, and expenses he has paid or will pay, or that were or will be incurred on his behalf in the course of this action;
- d. Award such additional relief that the Court deems just and proper; and
- e. Any other relief as allowed by law.

DEMAND FOR JURY TRIAL

181. Under Rule 38(b) of the Federal Rules of Civil Procedure, Mr. Toepfer demands a trial by jury on all issues so triable.

Dated: November 18, 2022

Respectfully submitted,⁴

/s/ Stephanie N. Taub

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⁴ Mr. Toepfer thanks John Heo, Michael Nanchanatt, and Mazzen Shalaby for their work in preparing this Third Amended Complaint as student attorneys for the Harvard Law School Religious Freedom Clinic.

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022 I filed a true and accurate copy of Plaintiff's Third Amended Complaint the via CM/ECF, and the electronic system will serve a copy of the same on counsel of record who have entered an appearance in this matter.

/s/ Stephanie N. Taub
Stephanie N. Taub

Counsel for Plaintiff