

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

SAID ELMAJZOUB,

Plaintiff,

v.

SCOTT DAVIS, *et al.*,

Defendants.

Case No. 3:19-cv-00196-MMD-CSD
PERMANENT INJUNCTION ORDER**I. SUMMARY**

The sole issue before the Court is the scope of the injunctive relief for Plaintiff Said Elmajzoub's Religious Land Use and Institutionalized Persons Act ("RLUIPA") claim. The Court has already granted Plaintiff summary judgment on his RLUIPA claim.¹ (ECF No. 73.) The Court found that additional briefing was necessary to determine the scope of injunctive relief because Defendants represented in their summary judgment motion that Jumu'ah services had been reinstated at Lovelock Correctional Center ("LCC") in August 2020. (ECF No. 60 at 5.) However, Defendants' counsel later admitted that this representation was incorrect.² (ECF No. 89.) Defendants' misrepresentation³ went to the

¹The Court's ruling was based on Judge Denney's Original R&R (ECF No. 72), which Defendants did not object to.

²Defendants' counsel made this admission during a hearing on November 8, 2022. (ECF No. 89.)

³Notably, Defendants have made other inaccurate or misleading representations in their briefs. For instance, Defendants repeatedly claimed that Muslim inmates had access to the chapel "anytime" on Fridays. (ECF Nos. 74 at 2, 84 at 4.) However, Defendants' counsel later admitted that access was restricted by the rotating, staggered schedule. (ECF No. 89.) In fact, under the current schedule, Plaintiff claims he only has access to the chapel for Friday afternoon Jumu'ah *once* a month. (ECF Nos. 75 at 2, 89.) Defendants also argued in their motion for summary judgment that reinstating Jumu'ah posed safety issues because staff members needed to be present to supervise inmates

very issue of injunctive relief and had Defendants not made this statement,⁴ the Court would have directed the immediate reinstatement of Jumu'ah services in its previous order. (ECF No. 73.) For the reasons stated herein, the Court will adopt Judge Denney's Report and Recommendation (ECF No. 83 ("Second R&R")) and overrule Defendants' objection (ECF No. 84).⁵

II. DISCUSSION

Rather than focusing on the scope of injunctive relief, Defendants spend their entire objection trying to relitigate summary judgment on Plaintiff's RLUIPA claim and arguing that Judge Denney clearly erred. (ECF No. 84.) Defendants assert new compelling-governmental-interest/least-restrictive-means⁶ arguments, which should have been raised at summary judgment or in an objection to the Original R&R. Nonetheless, the Court will address these new merits arguments below.

in the chapel. (ECF No. 60 at 4, 66 at 5.) Plaintiff countered that additional staffing was unnecessary because the chapel is only staffed by the chaplain, not guards. (ECF No. 82 at 2.) Defendants then try to backtrack, claiming that "staffing shortages are not with the chapel itself, and the Defendants never made any such argument, but rather, the lack of correctional officers in the entire facility." (ECF No. 84 at 5.)

⁴The Court referred the scope of injunctive relief to Judge Denney. (ECF No. 76.) After the parties failed to reach an agreement, Judge Denney issued the Second R&R addressing the injunctive relief scope. (ECF No. 83.) Judge Denney recommended that the Court issue a permanent injunction, ordering Defendants to schedule weekly Jumu'ah services on Fridays from 12:30 p.m. to 1:45 p.m., and permitting all Muslim inmates to attend unless individual circumstances make attendance impossible. (*Id.* at 3.)

⁵Defendants filed an objection (ECF No. 84) to the Second R&R, and Plaintiff filed a response (ECF No. 85).

⁶Defendants also attempt to recycle vague arguments about safety and security from their summary judgment motion, which the Court has already considered. (ECF No. 84.) However, even if the Court entertained these arguments again, they would still fail because the Ninth Circuit has repeatedly emphasized that conclusory statements are insufficient to show least restrictive means. *See Warsoldier v. Woodford*, 418 F.3d 989, 998 (9th Cir. 2005); *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 989-90 (9th Cir. 2008) (explaining that "in light of RLUIPA, no longer can prison officials justify restrictions on religious exercise by simply citing to the need to maintain order and security in a prison. RLUIPA requires more.").

1 To start, Defendants argue that reinstating Friday afternoon Jumu'ah would affect
2 LCC's staff placement and response time, which could cause a "huge disruption" that is
3 detrimental to prison security.⁷ (*Id.* at 4.) As their only evidence, Defendants cite to a one-
4 page declaration by LCC's Warden, Tim R. Garrett. (ECF Nos. 84 at 4, 84-1.) However,
5 the declaration does not even address or elaborate on this "staff placement" issue and
6 how Jumu'ah would cause a "huge disruption" to staff placement. (ECF No. 84-1 at 2.)
7 See *Warsoldier v. Woodford*, 418 F.3d 989, 1000 (9th Cir. 2005) ("[w]here a prisoner
8 challenges the [prison's] justifications, prison officials *must* set forth detailed evidence,
9 tailored to the situation before the court") (citation omitted). Defendants' speculation about
10 future disruptions or safety risks, without evidentiary support, is insufficient to meet the
11 "exceptionally demanding" least-restrictive-means standard. See *Holt v. Hobbs*, 574 U.S.
12 352, 364 (2015) (citation omitted); *Ramirez v. Collier*, 142 S. Ct. 1264, 1280 (2022)
13 (finding the government failed to meet its burden because "there is no indication in the
14 record" that the requested accommodation would cause the feared disruptions and the
15 government's argument "comes down to conjecture regarding what a hypothetical
16 spiritual advisor might do in some future case") (citations omitted).

17 Next, Defendants argue that requiring staff to go to inmate cells in different housing
18 units and escorting them to the chapel at a specific time on a specific day would
19 compromise safety and security. (ECF No. 84 at 5.) Defendants, again, fail to provide any
20 record citations or specific, tailored evidence to support their argument. See *Warsoldier*,
21 418 F.3d at 1000 (citation omitted). As noted above, speculations about future
22 hypotheticals, without evidentiary support, are insufficient to show that a regulation is the
23 least restrictive means. See *Ramirez*, 142 S. Ct. at 1280 (citations omitted). Defendants
24 also fail to explain why prisoners from different housing groups can congregate in non-
25 religious contexts, such as in prison yards or in prison industries, but not for Jumu'ah—
26 which further supports that LCC's policy is not the least restrictive means. (ECF Nos. 85
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28 ⁷Prison security is a compelling governmental interest. See *Nance v. Miser*, 700 F.
App'x. 629, 632 (9th Cir. 2017) (citation omitted).

1 at 6, 85-1 at 2.) See *Johnson v. Baker*, 23 F.4th 1209, 1217-18 (9th Cir. 2022) (“when a
 2 prison's proffered objectives are not pursued with respect to analogous nonreligious
 3 conduct, it suggests that those interests could be achieved by narrower ordinances that
 4 burdened religion to a far lesser degree”) (citation and quotation marks omitted).⁸

5 Finally, Defendants fail to address the alternatives offered by Plaintiff.⁹ (ECF Nos.
 6 84, 89.) For instance, Plaintiff proposed excluding inmates in disciplinary segregation or
 7 solitary confinement from Friday afternoon Jumu'ah because those inmates needed
 8 escorts to the chapel but regular inmates did not. (ECF Nos. 79 at 3, 85 at 7.) Judge
 9 Denney made this recommendation in his Second R&R. (ECF No. 83 at 3.) Plaintiff also
 10 proposed restricting Friday afternoon Jumu'ah to 100 people because of limited chapel
 11 capacity and LCC's staffing issues. (ECF No. 79 at 3-4.) Defendants do not explain why
 12 these less restrictive alternatives would fail or if they even considered these alternatives,
 13 as required by the Ninth Circuit. (ECF Nos. 81, 84.) See *Warsoldier*, 418 F.3d at 999-
 14 1000 (citations omitted). Given RLUIPA's broad protection of religious exercise and the
 15 “exceptionally demanding” standard for least restrictive means, Defendants failed to
 16 demonstrate that (1) transferring Plaintiff to another prison or (2) restricting Plaintiff's
 17 access to Friday afternoon Jumu'ah to once a month is the least restrictive means for
 18 ensuring prison security. (ECF Nos. 81 at 3, 82 at 2.) See *Holt*, 574 U.S. at 364 (citation
 19 omitted); *Warsoldier*, 418 F.3d at 995 (citation omitted). The Court therefore overrules
 20 Defendants' objection (ECF No. 84) and adopts Judge Denney's Second R&R in full (ECF
 21 No. 83).

22 ⁸Defendants also argue that LCC is unable to reinstate Friday afternoon Jumu'ah
 23 because the prison is unable to accommodate all religious groups. (ECF No. 84 at 5.)
 24 However, this argument is irrelevant to the RLUIPA issue, which specifically addresses
 25 the right to congregate for *Muslim* prayer services during early Friday afternoons.
 Moreover, in the permanent injunction below, LCC only has to accommodate Muslim
 inmates and Muslim prayer services.

26 ⁹When asked during the November 8, 2022, hearing whether he wanted to
 27 supplement or address any additional points regarding the RLUIPA injunctive relief,
 28 Defendants' counsel responded that he addressed everything in the objection. (ECF No.
 89.)

III. CONCLUSION & PERMANENT INJUNCTION

In light of the Prison Litigation Reform Act ("PLRA"), the Court has fashioned a permanent injunction that is narrowly drawn and the least intrusive means of correcting the RLUIPA violation. See 18 U.S.C. § 3626(a)(1)(A).¹⁰ Given LCC's current staffing shortages, the Court will impose a limit on the number of inmates that can attend Friday afternoon Jumu'ah¹¹ every week and provide exceptions for emergency situations (*i.e.*, facility and unit lockdowns) and inmates whose circumstances make attendance impossible (*i.e.*, inmates precluded from moving due to medical conditions, inmates in disciplinary segregation).

It is therefore ordered that Judge Denney's Report and Recommendation (ECF No. 83) is adopted in its entirety.

It is further ordered that Defendants' objection (ECF No. 84) to Judge Denney's Report and Recommendation (ECF No. 83) is overruled.

It is further ordered that Defendants must schedule weekly Jumu'ah services at LCC on Fridays from 12:30 p.m. to 1:45 p.m., and all LCC Muslim inmates are allowed to attend in congregation unless there is an emergency or the circumstances of an individual inmate preclude them from attending (*i.e.*, prison lockdowns, medical issues, or the inmate is in disciplinary segregation).

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¹⁰18 U.S.C. § 3626(a)(1)(A) provides that "[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief."

¹¹Although Plaintiff represents that the number of Muslim inmates at LCC is around 50, the Court will cap the number at 100 due to anticipated fluctuations in the prison population. (ECF Nos. 85-1, 89.)

1 It is further ordered that the number of inmates who may attend weekly Friday
2 afternoon Jumu'ah is limited to 100 individuals.

3 DATED THIS 9th Day of November 2022.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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