

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOMAS PUGH, JR., CLAY CHATIN, and EDWARD HAMIL;

00-CV-7279 (GEL)

Plaintiffs,

-against-

SECOND
AMENDED
COMPLAINT

GLENN S. GOORD, Commissioner of the New York State Department of Correctional Services; ISMAIL ABDUR RAHIM, Ministerial Program Coordinator for Islamic Affairs; WARITH DEEN UMAR, former Ministerial Program Coordinator for Islamic Affairs; MUHAMMAD SALIH AHMED, former acting Ministerial Program Coordinator for Islamic Affairs; MARK LENARD, Director of Ministerial and Family Services; JOHN R. LoCONTE, former Director of Ministerial and Family Services; FRANK HEADLEY, former Deputy Commissioner for Program Services; JOHN NUTTAL, Deputy Commissioner for Program Services and former Assistant Commissioner for Program Services; WILLIAM MAZZUCA, Superintendent of Fishkill Correctional Facility; ADA PEREZ, former Deputy Superintendent for Program Services at Fishkill Correctional Facility; JIMMIE HARRIS, Deputy Superintendent for Program Services at Fishkill Correctional Facility and former Director of Ministerial and Family Services;

JURY TRIAL
DEMANDED

Defendants.

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SECOND AMENDED COMPLAINT

Plaintiffs Thomas Pugh, Edward Hamil and Clay Chatin, who are Shiite Muslims currently or formerly in the custody of the New York State Department of Correctional Services (DOCS), by their undersigned attorney allege the following based on personal knowledge, documents and sworn deposition testimony from DOCS employees, or on information and belief:

NATURE OF THE ACTION

1. Plaintiffs bring this action to vindicate their constitutional and statutory right to the free and equal exercise of the Shiite Muslim religion, and to be free from the establishment of the Sunni Muslim religion, in prisons operated by the New York State Department of Correctional

Services (DOCS). Defendants have established Sunni Islam as the official version of Islam within DOCS and have systematically discriminated against Shiite beliefs and practices. DOCS Muslim chaplains are predominantly followers of the intolerant Wahhabi version of Sunni Islam, and believe and teach that Shiites are heretics. The only religious services made available to Muslims within DOCS are conducted according to the doctrines of Sunni Islam and have no religious value for plaintiffs. Defendants have denied and continue to deny plaintiffs sufficient access to Shiite Muslim spiritual leaders and to religious education consistent with their Shiite beliefs. Defendants have and continue to deny plaintiffs equal access to other benefits accorded to other similarly situated religious groups within DOCS.

2. Plaintiffs seek declaratory and injunctive relief and damages.

JURISDICTION AND VENUE

3. The Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. § 1343, 28 U.S.C. § 1331, and 42 U.S.C. § 2000cc-2, and supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

4. Venue properly lies in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to plaintiffs' claims occurred therein.

THE PARTIES

5. Plaintiff Thomas Pugh, Jr. has been in the custody of DOCS from 1995 to the present. He is currently an inmate at the Mid-Orange Correctional Facility in Orange County, New York and has previously been an inmate at other DOCS facilities, including Fishkill Correctional Facility in Dutchess County, New York.

6. Plaintiff Clay Chatin has been in the custody of DOCS from on or about 1992 to the present. He is currently an inmate at the Mid-Orange Correctional Facility in Orange County, New York and has previously been an inmate at other DOCS facilities, including Fishkill Correctional Facility in Dutchess County, New York.

7. Plaintiff Edward Hamil was in the custody of DOCS from on or about 1997 to 2003. While incarcerated, he was housed at Otisville Correctional Facility in Orange County New York, and Fishkill Correctional Facility in Dutchess County, New York, among other locations.

8. Both Orange and Dutchess Counties are within the Southern District of New York.

9. Plaintiffs have filed administrative grievances and exhausted their administrative remedies as required by the Prison Litigation Reform Act of 1995.

10. DOCS is a New York state agency. DOCS and its programs and activities receive federal financial assistance.

11. Defendant Glenn S. Goord is the Commissioner of DOCS and is sued in his individual and official capacities. As Commissioner, Goord is responsible for, among things, the safety and security of DOCS facilities, the hiring and firing of DOCS employees, and DOCS policy about inmate religious groups.

12. Commissioner Goord controls the Central Office Review Committee (“CORC”), the panel which makes the final decisions about inmate grievances and policy issues raised in grievances. *See* 7 N.Y.C.R.R. § 701.6(b) (“The CORC functions on behalf of the commissioner and under his authority.”). CORC decisions have the same effect as department-wide policy directives. *See id.* For grievances related to Shiite Muslim issues, CORC and Goord are advised

by the DOCS Counsel, the Deputy Commissioner for Program Services, the Director of Ministerial & Family Services and the Ministerial Program Coordinator for Muslim affairs.

13. Defendant Ismail Abdur Rahim is the Ministerial Program Coordinator (“MPC”) for Islamic Affairs for DOCS. He is sued in his individual and official capacities. The MPC for Islamic Affairs is supervised by the Director of Ministerial and Family Services. The MPC for Islamic Affairs in turn hires, trains, supervises and directs the Muslim chaplains employed at the various correctional facilities. DOCS policy charges the MPC with ensuring that chaplains adhere to governing rules and laws.

14. Defendant Warith Deen Umar is the former MPC for Islamic Affairs for DOCS. He is sued in his individual capacity.

15. Defendant Muhammad S. Ahmed is the former acting MPC for Islamic Affairs for DOCS and current chaplain for DOCS. He is sued in his individual and official capacities. Like other DOCS chaplains, Ahmed is a full-time paid employee.

16. Defendant Mark Lenard is the Director of Ministerial and Family Services of DOCS. The Director is supervised by the Commissioner and the Deputy Commissioner for Program Services. The Director is the DOCS official primarily in charge of formulating and counseling about the implementation of policy regarding inmate religious groups, practices and personnel. DOCS policy gives the Director responsibility for protecting inmates’ constitutional rights to practice their religions. Mr. Lenard is sued in his individual and official capacities.

17. Defendant John LoConte is the former Director of Ministerial and Family Services. He held the position from in or about June 1999 through in or about 2002. He is sued in his individual capacity.

18. Defendant Frank Headley is the former Deputy Commissioner for Program Services. The Deputy Commissioner for Program Services reports directly to the Commissioner and oversees all policy and personnel decisions regarding religious programs and services. The Deputy Commissioner is a member of CORC. Defendant Headley is sued in his individual and official capacities.

19. Defendant Jimmie Harris is the Deputy Superintendent for Program Services at Fishkill Correctional Facility and the former Director of Ministerial and Family Services. Defendant Harris was Director of Ministerial and Family Services from in or about the mid-1990s through in or about 1998. The Deputy Superintendent for Program Services is responsible for working with the Superintendent to implement and administer DOCS policy at the facility level. A facility's chaplains report to the Deputy Superintendent for Program Services. Defendant Harris is sued in his individual and official capacities.

20. John Nuttal is the current Deputy Commissioner for Program Services and former Assistant Commissioner for Program Services. Defendant Nuttal is sued in his individual and official capacities.

21. Defendant Ada Perez is the former Deputy Superintendent for Program Services at Fishkill Correctional Facility. Defendant Perez held this position during 1998 through in or about 2002. She is sued in her individual capacity.

22. Defendant Mazzuca is the former Superintendent for Fishkill Correctional Facility. DOCS regulations give the Superintendent the task of planning, implementing and administering DOCS policy for inmates at the facility, assisted by, among others, the MPCs and the Deputy Superintendent for Program Services. He is sued in his individual capacity.

23. Defendants and non-party co-conspirators at all times relevant to this action were and are acting under color of state law.

24. It is written New York State policy as well as DOCS policy to foster the fullest possible freedom of religious exercise among inmates. See N.Y. Correction Law § 610, DOCS Directive 4202. To that end, the state employs chaplains of many different faiths to minister to inmates. DOCS works closely and jointly with its chaplains to serve the religious needs of the inmate population.

NON-PARTY CO-CONSPIRATORS

25. Although not named as defendants in this lawsuit, the following individuals are Sunni Muslim chaplains hired by Warith Deen Umar and employed by DOCS who, along with defendants Umar, Rahim and Ahmed, have conspired to establish extremist Sunni Islam as the official version of Islam within DOCS and to deny Shiites free exercise of religion and equal protection of the laws: Salahuddin Muhammad, Abdulkadir Elmi, Cyril Rashid, Mamoun El-Hassan, Abdul Malik Hassan, Marshall Shamsideen, Sami Khalifah, Osameh Al-Wahaidy, Abdur Rahim Muhammad, Faheem Mahmood, Zakaria Gasmallah, Yasin Latif, Mohammad Shahani, Ibrahim Ezghair, Ibrahim Khalid El Mahdi, Imam At-Tayeb, Abdul Aleem Hassan, Abdelaziz Benadim and others unknown at this time.

26. Dr. Taha Jabir Alalwani, although not named as a defendant in this action, materially assisted the conspiracy described in paragraph 25. At the times relevant to this lawsuit, Alalwani was the president of, or otherwise controlled, the Fiqh Council of North America, the Graduate School of Islamic and Social Sciences and the International Institute of Islamic Thought, all located in Virginia.

FACTUAL ALLEGATIONS

Background of Sunni and Shiite Differences

27. Plaintiffs are and were at all times relevant to this action Shiite Muslims.

28. There are more than one billion Muslims in the world of which approximately 85 percent subscribe to Sunni Islam and 15 percent to Shii Islam (“Shii Muslims,” “Shia Muslims,” “Shiite Muslims,” or “Shiites”).

29. The origin of the differences between Sunni and Shiite stems from disagreement about the succession to the Prophet Mohammed upon his death. The Muslims who became known as Sunni viewed the successor as a temporal leader to be elected from among the community. A faction among the community selected a man named Abu Bakr as the successor or Caliph. In contrast, the Muslims who became known as Shiites believed that the Prophet had designated his cousin and son-in-law Ali to be his temporal *and religious* successor, or Imam. Thus the dispute concerned the nature of succession as well as the identity of the successor.

30. Imam Ali was the first male convert to Islam, a constant companion of the Prophet, a just and wise counselor, an accomplished theologian and ethicist, and a valiant warrior. His two sons Hassan and Hussein were the second and third Imams of the Shiites. Sunni Muslims do not recognize their role or status.

31. Together the beliefs that Ali and his descendents have a special connection to God and were the only true successors to the Prophet Mohammed are known as the *Imamate* – a concept which is fundamental to Shiism but is not accepted by Sunni Muslims.

32. Besides the succession dispute, the most significant event in Shiism – the event that has come to define Shiism – is the slaughter at Karbela in 680 A.D. Karbela, a desert area

roughly 60 miles south of modern-day Baghdad, is where Sunni Muslims, acting under orders of the Sunni leader, killed Hussein, the grandson of the Prophet Muhammad and, at the time, the leader of the Shiites. The commemoration of this slaughter on the tenth day of the month of Muharram (called “Ashura”), is the holiest holiday in Shiism. This day, however, is not recognized by many Sunni Muslims as a holy day and some even see it as a joyous day, a day when heretics were killed.

33. Over the centuries, Shiites have evolved a theology, jurisprudence, liturgy, ritual practice and eschatology which are, in many respects, significantly different from those of Sunnis.

34. For instance, plaintiffs and many other Shiite Muslims believe that there were twelve true Imams and that the twelfth Imam has been hidden for centuries by God to protect him from his Sunni Muslim enemies. This twelfth Imam will someday return and redeem the righteous.

35. In his absence, religious leadership for Shiites is temporarily assumed by Shiite men who are acclaimed by the community for their great learning, piety and wisdom – called ayatollahs. By definition, a Sunni Muslim can therefore not provide binding religious guidance for Shiite Muslims such as plaintiffs.

36. Many Sunni Muslims, including current and former DOCS employees Warith Deen Umar, Salahuddin Muhammad, Abdulkadir Elmi, Marshall Shamsideen, Cyril Rashid and others, preach that Shiites are heretics and view the Shiite belief in the Imamate and Shiite invocations of Ali and other Shiite martyrs during prayers as a kind of polytheism — the most serious sin for a Muslim.

37. Scholars have analogized the split between Sunni and Shiite to that between Protestants and Catholics.

Worship and Prayer

38. Plaintiffs believe, based on their own religious beliefs as informed by the Quran, by the teachings of widely-respected Shiite thinkers, as well as by the practices of other Shiite Muslims, that prayer is a fundamental tenet of their religion and that group or congregate prayer services on Fridays, called Jumuah, is fundamental and obligatory.

39. Shiites and Sunnis worship differently, particularly during the Jumuah. For instance, for Shiites the special Jumuah sermon, the khutba, involves commemoration and contemplation of the suffering of Ali, Hussein or some other Shiite martyr. In contrast, the Sunni khutba need not pertain to any specific subject.

40. Sunnis employed by DOCS, including Umar, Salahuddin Muhammad, Elmi, Rashid and others, have used the khutba sermon to denigrate Shiite beliefs and practices.

41. There are many more examples of differences and antagonisms between Sunnis and Shiites, including differences which holy days are observed; the manner in which holy days are observed; which prayers are considered necessary; the movements conducted during the prayer service; and the timing of the prayers. Plaintiffs believe, based on their religious beliefs as informed by the teachings of widely-respected Shiite thinkers, that the theology and religious practices of Sunni Muslims and Shiite Muslims are fundamentally different and, in important respects, antagonistic.

42. Plaintiffs cannot receive meaningful religious counseling or instruction from a teacher or prayer leader whose beliefs are different from and antagonistic to their own. Plaintiffs

cannot receive meaningful religious counseling or instruction from a teacher or prayer leader who believes that Shiites are heretics.

The Prayer Leader

43. Plaintiffs believe, based on their own religious beliefs as informed by the teachings of widely-respected Shiite thinkers and the practices of other Shiite Muslims, that the leader of their congregational prayer must be a fellow Shiite who leads the prayer correctly. For the same reasons, plaintiffs believe that their congregational prayers are invalid if the prayer leader is not Shiite and capable of correctly leading prayer.

44. Plaintiff believe , based on their own religious beliefs as informed by the teachings of widely-respected Shiite thinkers and the practices of other Shiite Muslims, that they must pray in the correct Shiite manner, or else their prayers are invalid.

45. Plaintiffs believe that their relationship with God is significantly harmed if they are not able to properly participate in Jum'ah prayers. Thus defendants have for years directly and significantly harmed plaintiffs' relationship with God.

Wahhabism within DOCS and its impact on Shiites

46. Wahhabism is an intolerant and fundamentalist version of Sunni Islam which is the official state religion of Saudi Arabia. The term Wahhabism refers to the founder of the movement, Muhammad ibn Abd al Wahhab. Wahhabism is the ideology of al-Qaeda, the Taliban, and other extremist Sunni Muslim groups.

47. Many current and former DOCS employees involved in prison ministry are Wahhabis, including Warith Deen Umar, Salahuddin Muhammad, Mamoun El-Hassan, Abdul Malik Hassan, Marshall Shamsideen, Sami Khalifah, Osameh Al-Wahaidy, Abdur Rahim

Muhammad, Yasin Latif, Imam At-Tayeb, Mohammad Shahani, Ibrahim Ezghair, Abdul Aleem Hassan and Abdelaziz Benadim. Over the years, many DOCS inmates have been indoctrinated into Wahhabism by these state employees. Wahhabis often prefer to call themselves “Salafis” or followers of “Salafia.”

48. All Muslims believe in a concept called tawhid (or tawheed) – the oneness or unity of god. But Wahhabis interpret tawhid in a specific way. They teach that any belief or action which appears to associate a human being with God violates tawhid and thus is not Islamic, but rather polytheistic. Accordingly, Wahhabis believe that the Shiite concept of the Imamate is polytheistic blasphemy. Similarly, Wahhabis believe that other Shiite practices are blasphemous, including invoking saints or martyrs during prayer, observing the birthday of the Prophet Muhammad, visiting the grave of a saint or martyr, or even depicting a human figure in art.

49. For Wahhabis, there is another element of tawhid. They believe that the complete oneness or unity of the entire Muslim community is a fundamental commandment of the religion. Thus they believe that any Muslim group which views itself as different and which wants to practice the religion differently and separately is violating fundamental Islamic law and harming the entire community as a result. This condemnation of any differences of opinion or practice has been likened to totalitarianism and fascism. See Stephen Schwartz, *The Two Faces of Islam* (Doubleday 2002). Shiites, in particular, are blamed by Wahhabis for allegedly dividing and undermining the community of Muslims.

50. Because of these Wahhabi religious views, DOCS employees including Umar and Salahuddin Muhammad have improperly rejected Shiite inmates’ requests for separate worship services and discriminated in other ways against Shiites.

51. Defendants have been on notice of the antagonism that Umar and other Wahhabis bear toward Shiite for years. For instance, in April 1999, in a case brought by a Shiite inmate named Frankie Cancel against defendant Commissioner Goord, an affidavit was presented by an official at a large and well-respected Shiite mosque in Queens called the Imam Al-Khoei Islamic Center describing Wahhabi attempts to portray Islam as “a monolithic faith in the mold of one school of belief;” how all Sunnis, including Wahhabis, reject the fundamental Shiite belief in the Imamate; and Wahhabi targeting of Shiites for “persecution, discrimination and violence.”

52. In 1996, DOCS chaplain and co-conspirator Cyril Rashid testified at a deposition in *Orafan v. Goord*, 95-CV-318 (Northern District of New York), that he would be forbidden by his religious beliefs from assisting or allowing Shiite inmates to have separate worship services “because Allah says in the Koran that we should be – we should hold together as a community, one solid community.”

53. In May 1998, a memo written by DOCS employee and co-conspirator Salahuddin Muhammad was sent to the Director of Ministerial & Family Services and Anthony Annucci, the Counsel to DOCS, which said that Shiism is a “deviant and disruptive school of thought.”

Sunni Dominance of Religious Programs within DOCS

54. For over twenty years, defendant Warith Deen Umar was allowed by DOCS officials including Goord, Headley, Harris, Annucci, Nuttal and LoConte to control the hiring and training of all Muslim chaplains within DOCS.

55. Until on or about the end of 2000, it was official DOCS policy that all Muslim chaplains must be endorsed by the National Association of Muslim Chaplains (“NAMC”). The NAMC was founded, run and totally controlled at all times by Umar. Defendants were aware of

this. The NAMC was at all times a Wahhabi-Sunni Muslim organization. Defendants were or should have been aware of this.

56. During Umar's tenure, he never hired a Shiite chaplain. Instead, Umar used his authority to hire only Sunni Muslims. In particular, Umar hired many extremist Sunni Muslims who share his Wahhabi beliefs, including his religiously-based antipathy toward Shiite Muslims.

57. Umar hired and trained many persons with Wahhabi/anti-Shiite views to be Muslim chaplains for DOCS, including Salahuddin Muhammad, Abdulkadir Elmi, Cyril Rashid, Mamoun El-Hassan, Abdul Malik Hassan, Marshall Shamsideen, Sami Khalifah, Osameh Al-Wahaidy, Abdur Rahim Muhammad, Faheem Mahmood, Zakaria Gasmallah, Yasin Latif, Mohammad Shahani, Ibrahim Ezghair, Muhammad S. Ahmed, Ibrahim Khalid El Mahdi, Imam At-Tayeb, Abdul Aleem Hassan, and Abdelaziz Benadim.

58. These chaplains were members and/or officers of the NAMC. They met twice yearly for training, consultation and planning. The NAMC organization and these periodic meetings facilitated their conspiracy to violate the constitutional rights of Shiite inmates and establish their version of Sunni Islam as the only version of Islam within DOCS.

59. During his tenure with DOCS and even for some time afterwards, Umar constantly visited fellow Sunni chaplains at their correctional facilities and attended religious meetings and services. In addition, Sunni chaplains employed by DOCS frequently visited each other at each other's correctional facilities and attended religious meetings and services. These visits facilitated their conspiracy to violate the constitutional rights of Shiite inmates and establish their version of Sunni Islam as the only version of Islam within DOCS.

60. Umar hired and trained at least two chaplains — Aminah Akbar and Sufwan El-Hadi — who have openly professed support for Osama bin Laden and/or the September 11 hijackers.

61. Umar himself has more than once suggested his support for the actions of the September 11 hijackers. For instance, in or about November 2001 Umar gave a speech at Skidmore College in which he suggested his support for the actions of the September 11 hijackers. This was reported in the newspaper.

62. Umar's supervisors either knew, or were grossly negligent by failing to investigate and determine that Umar was an extremist Sunni Muslim and that, as a result, he could not make an accurate, neutral and fair decision about the needs of Shiite inmates. In addition to the facts alleged above in paragraphs 56, 57, 60 and 61, other facts known to Umar's supervisors sufficient to give rise to their awareness of Umar's unsuitability as a decision-maker regarding Shiite inmates include:

- a. Umar was investigated by the Inspector General of DOCS because of Umar's relationship with an inmate named El Sayyid Nosair, New York Department Identification Number 92-A-0931, an extremist Sunni Muslim in prison for charges related to the murder of a Jewish leader named Meir Kahane, and later, involved in the conspiracy to bomb the World Trade Center in 1993. Nosair and his co-conspirators have been linked to Osama bin Laden and al-Qaeda.
- b. On information and belief, Umar visited and ministered to another member of al-Qaeda who was incarcerated by the federal government for his role in bombing the United States embassies in Africa.
- c. Umar and certain Sunni Muslim chaplains whom he hired are currently under investigation by the DOCS Inspector General and/or the Federal Bureau of Investigation.
- d. Since at least 1994, Shiite inmates have complained to DOCS officials that Sunni chaplains preach hatred against Shiites, distribute derogatory and outrageous literature about Shiites and, in some cases, incite Sunni inmates against Shiites.
- e. Cyril Rashid and Salahuddin Muhammad have made available to inmates an article entitled "The Difference between the Shi'i and the Muslims" by Saeed Ismaeel. This work is published in Saudi Arabia and states, among other

things, that Shiite Islam is a Jewish conspiracy and that “[t]he cornerstone of the Shi’i faith is false and baseless.” Abdulkadir Elmi has made available another Wahhabi article which asserts that Shiism is a Jewish conspiracy to undermine Islam. Shiite inmates have filed grievances calling these incidents to the attention of DOCS policymakers.

- f. Umar and Sunni chaplains hired and trained by Umar have taught DOCS inmates that Shiites are, among other things, deviants, idolaters, rejectors, infidels, hypocrites, Satan worshippers, trouble-makers, polytheists, unbelievers and agents of a Jewish conspiracy.
- g. Umar stated that he relied upon a religious body in Saudi Arabia and his experiences as a Muslim in Saudi Arabia to determine the religious needs of Shiites, yet for years it has been common knowledge that Shiites are grossly discriminated against and denied civil and religious rights by the government and Sunni clerical establishment of Saudi Arabia. For example, the United States Department of State regularly reports that Sunni/Wahhabi Islam is the state religion of Saudi Arabia and Shiite beliefs are officially suppressed and discriminated against.

63. The incitement against Shiites by Sunni Muslim DOCS employees has resulted in threats of violence and actual violence directed against Shiite inmates by Sunni inmates.

64. Notwithstanding this, defendants have never fired or formally disciplined a Sunni chaplain on account of his bigotry or incitement against Shiites.

Events at Fishkill Correctional Facility

65. At all relevant times, co-conspirator Salahuddin Muhammad has been the Muslim chaplain at Fishkill Correctional Facility. Plaintiffs were incarcerated at Fishkill for several years during this time.

66. Like all other Muslim chaplains, Salahuddin Muhammad is in charge of, among other things, providing spiritual counseling and education to inmates, purchasing Islamic books for the prison library, selecting inmates to lead the Muslim community, scheduling and administering Islamic education and worship events, maintaining order and security within the

facility, officiating at holidays ceremonies and leading prayer services and delivering sermons at the Friday Jumuah prayer.

67. Salahuddin Muhammad is a Wahhabi Sunni Muslim and, at all relevant times, has conducted Muslim religious observance at Fishkill in a Sunni manner. Friday Jumuah prayers are performed in the Sunni fashion. The sermons (khutbas) are about Sunni topics, and have frequently denigrated Shiism or Shiite inmates. Muhammad used state money to buy only Sunni books and tapes for the prison library, including a tape teaching that it is lawful to spill the blood of Shiites. Muhammad allowed Wahhabi literature to be distributed which denigrated Shiite Islam in vicious terms.

68. Salahuddin Muhammad shaped the Sunni Muslim inmates at Fishkill into a group which hates Shiites and informs Shiite inmates that they are not welcome in the prison mosque. Since May 1998, DOCS employees Perez, Annucci and the Director of Ministerial and Family Services have been aware that the Sunni inmate leaders at Fishkill assert, in their words, that Shiites “evolved out of a group of Jews and uneducated Muslims who conspired and plotted to assassinate Prophet Muhammad;” that Shiite ideas are “diabolical” and “unacceptable;” that Shiites are prevented from worshipping at Jumuah at Fishkill; and that Sunni inmates believe it is their religious duty, when one sees a person engaging in Shiite practices, to “repudiate[]” the Shiite “in the strongest terms,” and also “flee[] from him, disown[] him and leave[] him – dead or alive.”

69. During the time plaintiffs were housed at Fishkill, the by-laws of the prison mosque provided that an inmate member of the mosque hierarchy would have the responsibility for “combating the false ideologies and practices by all those who claim to be Muslims and

practicing Islam.” At least since 1999, defendants have been aware that this was the policy of the mosque run by Salahuddin Muhammad at Fishkill.

70. Prior to the complaints of plaintiffs Pugh, Chatin and Hamil, at least two other cases have been brought by Shiite inmates about the bigotry of Salahuddin Muhammad at Fishkill: a 1998 state court case by Frankie Cancel and a 1999 federal case by Abbas Kalonji. Through investigating and litigating these cases, DOCS officials including Perez, Annucci, William Mazzuca, Umar and LoConte learned that Salahuddin Muhammad openly preached bigotry against Shiites.

71. For instance, a May 1998 memo written by Salahuddin Muhammad and transmitted to the Deputy Superintendent for Programs at Fishkill, the Director of Ministerial & Family Services in the DOCS Central Office and Anthony Annucci, the Counsel to DOCS, states that Shiism is a “deviant and disruptive school of thought.” The memo also notes Muhammad’s position that he intentionally prevents Shiite beliefs from being espoused at Fishkill.

72. In July 1998, CORC issued a decision rejecting a grievance filed by Mr. Cancel complaining about the lack of Shiite worship services and the denigration of Shiites by Salahuddin Muhammad. CORC stated that it denied the grievance based on the opinion of Warith Deen Umar that “all Muslim religious groups fall under Islam,” except for the Nation of Islam, and that “[a]ll practice the same faith and should not be separated.” According to a state court document filed on behalf of defendant Commission Goord, this CORC decision was made in consultation with the Director of Ministerial and Family Services.

73. Mr. Cancel filed suit in state court and, in July 1999, the Supreme Court, Dutchess County issued a decision finding that the Sunni services provided by DOCS did not meet the religious needs of Shiite inmates like Mr. Cancel.

74. In September 1999, plaintiffs Pugh, Chatin and Hamil requested that they be able to pray together in the Shiite fashion, apart from the Sunni Muslims at Fishkill.

75. Despite her knowledge that defendant Salahuddin Muhammad considered Shiites to be deviants and did not allow Shiites to practice their religions, defendant Perez denied the grievance and informed plaintiffs that they must seek religious services and advice from Chaplain Muhammad at Fishkill.

76. In October 1999, Salahuddin Muhammad and/or defendant Perez denied plaintiffs the ability to receive a religious counseling visit from a representative of a Shiite mosque New York City.

77. In December 1999, plaintiffs filed grievances seeking worship services and accommodations separate from Salahuddin Muhammad and the Sunni Muslim inmates at Fishkill. The grievances were, in effect, denied on the ground that unless and until DOCS policy was changed, plaintiffs must receive spiritual services through Salahuddin Muhammad. These grievances were consolidated by DOCS and exhausted when CORC issued a decision in or about February 2000.

78. After plaintiffs filed grievances about this issue, Salahuddin Muhammad attempted to incite Sunni inmates against plaintiffs by preaching that plaintiffs were infiltrators and snitches - – dangerous insults in a prison. Pugh complained about this to defendant Mazzuca in January 2000.

79. Later in February 2000, Salahuddin Muhammad and Sunni inmates attempted to threaten and intimidate plaintiff Chatin because of the grievance Chatin had filed. Chatin complained about this to defendant Mazzuca and CORC in February 2000.

80. In January 2000, plaintiff Chatin wrote to defendant Umar, with copies to defendants Goord, Mazzuca and Salahuddin Muhammad, asking for Shiite inmates to be able to practice their religion.

Final decision in *Cancel v. Goord*

81. In December 2000, the New York Supreme Court, Appellate Division for the Second Department, issued a decision in *Cancel v. Goord*, ruling that “it is readily apparent that [Cancel’s] spiritual needs have not been met. In light of the overwhelming evidence in the record that significant dogmatic differences separate the two Muslim communities within [Fishkill Correctional] facility, we agree that the denial of the grievance was arbitrary and capricious and in violation of [New York law].”

82. The Court “remit[ted] the matter to the DOCS to conduct administrative proceedings, with Shi’a participation, to determine the manner in which to best afford Shi’a inmates separate religious services, under appropriate Shi’a religious leadership, in a time and place that comport with legitimate penological concerns.”

83. The decision became final on March 29, 2001 when the New York Court of Appeals denied Goord leave to appeal.

84. Defendants did not engage in a good faith administrative proceeding to implement *Cancel v. Goord*’s requirements of separate Shiites services under Shiite leadership. Although defendants knew that the court had ordered separate Shiite services under Shiite leadership,

defendants engaged in an effort to make it appear that they were taking steps to implement this mandate while in fact continuing current policy.

85. Defendants claim they relied on the advice of a Shiite mosque in New York City (the Imam Al-Khoei Islamic Center) received during 2001 to determine that separate Shiite services were not religiously required. But defendants manipulated the Al-Khoei Center's advice by, among other things, pronouncing DOCS's conclusions in advance of meeting with the Center.

86. Defendants' decision to continue current policy instead of implementing *Cancel v. Goord* was based primarily on the religious opinion of Sunni extremist Warith Deen Umar. Umar's religious decision about Shiite needs was based on Sunni/Wahhabi precepts. In an affidavit filed in early 2000 in *Orafan v. Goord*, 95-CV-319 (Northern District of New York), Umar stated that separate Shiite services were not religiously required and cited (i) his communication with "the Fiqh Committee based in Saudi Arabia," (ii) his own understanding of the tenets of Islam, (iii) an opinion issued by the Chairman of the Fiqh Council of North America ("FCNA"), and (iv) Umar's "own observations while visiting Mecca, Saudi Arabia on four occasions since 1978."

87. Umar submitted a written statement from Dr. Taha Jabir Alalwani, Chairman of the FCNA, dated April 18, 2000. This statement was a religious opinion that "[t]here are no fundamental differences" between Sunni and Shiite, "the main difference they had in history was in political affairs," and "[t]hey can pray together." This statement was knowingly false and/or misleading, and represents the sectarian religious views of Alalwani and Umar.

88. Before coming to the United States, Alalwani was a professor at a state-run Wahhabi university in Saudi Arabia. For years, Alawani and his organizations have been under

investigation by federal law enforcement on suspicion that they funded extremist Sunni terror groups like Hamas and Palestinian Islamic Jihad. In early 2002, Alalwani's home and the offices of the FCNA and related organizations were raided by federal law enforcement as part of the Operation Green Quest investigation to stem terror fundraising. Later, it was reported that Dr. Alalwani is an unindicted co-conspirator in two federal prosecutions related to Sunni terror funding.

89. Alalwani's FCNA is a Sunni organization and has no authority with Shiite Muslims. Umar knew this when he solicited the opinion of Alalwani and the FCNA in April 2000 regarding the rights of Shiite inmates, yet Umar falsely represented to the Court in this case that the FCNA had Shiites in leadership positions.

90. The religious determination by Umar and the FCNA about the beliefs and rights of was adopted by DOCS and maintained unchanged even after the decision of the Appellate Division in *Cancel v. Goord* in December 2000. For instance, DOCS submitted a similar affidavit from Umar and the identical statement from the FCNA in October 2001 in the instant case and heavily relied upon these sources to argue in their October 2001 memorandum of law that plaintiffs were seeking accommodations which had no basis in Islamic law. DOCS's memorandum stated:

- “[Umar] sought the guidance of the Fiqh Council of North America, a ‘nationally recognized board of Muslim scholars and educators whose sole purpose is to provide comprehension and clarity regarding Islamic law and practices.’ According to Imam Umar, the Council is recognized as authoritative by all of the major Muslim organizations in America, including those to which Shi’ites belong and play leadership roles. In response to his specific inquiry to the Fiqh Council regarding the necessity or appropriateness of separate worship by Shi’ite and Sunni Muslim inmates, Imam Umar received the following response: ‘The Shi’a and Sunna, both of them are Muslims. . . . There are no fundamental differences between them. They can pray together . . . and the main difference they had in history was in political affairs. . . .’”

- “Pugh does not purport to be an Islamic spiritual leader, nor does he claim to be able to speak with authority on matters of Islamic doctrine. There are within the Islamic community authoritative bodies, however, including the Fiqh Council, a deliberative body composed of Islamic scholars . . . that are so qualified and to whom DOCS . . . addressed questions regarding the necessity of separate worship for Shi’ites and Sunnis. [These authorities] stated emphatically that there is no requirement for the separation sought by plaintiffs herein. Nevertheless . . . plaintiffs seek to have [the district court] substitute its judgment for that of these canonical authorities.”
- “As a result of the advice obtained from, among others, . . . the Fiqh Council, DOCS has concluded that religious practices unique to Shi’ite Muslims can be accommodated within the existing Islamic program at DOCS, as recently modified, without the need for separate services, prayer areas or chaplains.”

91. Defendants also relied on Sunni extremist Salahuddin Muhammad to support their decision to ignore the *Cancel v. Goord* court order. As discussed above, DOCS officials were aware since 1998 that Salahuddin Muhammad considers Shiism to be a “deviant and disruptive school of thought” and prevents Shiite freedom of expression. Yet in or about 2001, defendants relied on the religious opinion of Salahuddin Muhammad to confirm that separate Shiites services were not religiously required.

The “Protocol for Shiite Muslim Programs and Practices”

92. As part of their effort to sidestep the mandate of *Cancel v. Goord*, defendants developed and promulgated the so-called “Protocol for Shiite Muslim Programs and Practices” in August 2001. The “Protocol,” which is still in effect, is both facially insufficient to remedy the systematic discrimination against Shiites within DOCS, and is also not applied fairly to Shiites.

93. The Protocol provides that Shiite inmates “shall have the same rights as all other inmate faith groups to attend Shi’ite Muslim religious education and study classes.” But the Protocol does **not** provide that Shiite inmates be treated equally to Sunni inmates (or other similarly situated inmates) with regard to study and education. And in fact Shiite inmates, including plaintiffs, have been arbitrarily denied study classes; have been harassed and bothered

by DOCS employees with regard to the administrative details of study classes; have been allowed far fewer study classes per week than Sunni inmates and other religious groups; and have not been given funding equal to Sunni inmates for books and other materials. Mazzuca, Salahuddin Muhammad and Jimmie Harris were personally involved in these actions and inactions.

94. The “Protocol” provides that there will be a single Jumuah service for both Sunnis and Shiites, but that Shiites “shall be afforded the full and equal opportunity to participate in, without discrimination, the weekly Friday Juma service.” Instead, Sunni chaplains and Sunni inmates at many correctional facilities have continued their policy of making Shiites unwelcome at Jumuah by, among other things, directly preaching against Shiites, using code words and veiled language to ostracize and belittle Shiites, distributing anti-Shiite literature, making direct verbal threats and engaging in other inappropriate and/or threatening behavior. Sunni chaplains and Sunni inmates also continue to make Shiites unwelcome at Jumuah services by performing the services in the Sunni manner.

95. For these reasons, and because the Sunni Jumuah service has no religious value for them, plaintiffs Pugh and Chatin to this day are not able to participate in Jumuah services.

96. The written Protocol provides that Shiite inmates shall be allowed to observe the Shiite holy days of Ashura and Id Ul Ghadeer Khum (a day near the end of the Prophet’s life on which he designated Imam Ali his successor). Notwithstanding this, Shiite inmates including plaintiffs have been prevented by DOCS officials from observing these holy days at all, and/or have not been allowed to observe them in a manner equivalent to other religious groups on their designated holy days.

97. In or about March 2002, Pugh filed a grievance requesting that *Cancel v. Goord* be followed and that Shiite education classes and a separate Shiite worship service be implemented. In March 2002, Superintendent Mazzuca responded that “as soon as an Imam volunteer of the Shi’a denomination of the Islamic faith has been identified, religious services will be instituted.” This was never done.

98. In August 2002, CORC denied a grievance filed by plaintiff Pugh regarding interference with Shiite study classes.

99. Defendants continue to make decisions about the rights of Shiite inmates based on their own interpretations of Shiite beliefs. For instance, in January 2002, CORC denied a grievance requesting separate Shiite services on the ground that the Shiite faith does not require separate services.

100. In December 2003, CORC denied plaintiff Pugh the right to worship separately from Sunni Muslims on the ground that Shiite beliefs do not require separate services.

101. In the years since the Shiite Protocol, Shiite inmates other than plaintiffs have filed grievances about the same discriminatory treatment faced by plaintiffs. CORC has denied all of these grievances and upheld the Protocol. DOCS has been given and has rejected numerous opportunities to resolve this dispute through the grievance process.

The Long Relationship with Dr. Alalwani

102. Since at least 1997, defendant Warith Deen Umar had a close relationship with Alalwani and his organizations. In 1997, Umar hosted an official from Alalwani’s Graduate School of Islamic and Social Sciences (GSISS) at a NAMC event in New York.

103. In November 1997, Umar on behalf of the NAMC, and Dr. Alalwani on behalf of the GSISS, signed a “Memorandum of Understanding.” The Memorandum provided, among other things, that the GSISS would fund five scholarships for Muslim chaplains chosen by the NAMC.

104. In 1998, Umar and his NAMC organization worked with Dr. Alalwani and the GSISS to hold a training conference to DOCS Muslims chaplains at the GSISS. A focus of the conference was “The Prison Plan: 2000 and Beyond” which concerned Sunni Muslim proselytizing in United States prisons.

105. In February 1999, the GSISS donated many thousands of Qurans to DOCS chaplains for distribution to inmates.

106. In spring 2000, Umar and the NAMC held another training conference for DOCS Muslim chaplains at the GSISS. Umar informed defendants LoConte, Headley and Nuttall of this by email.

107. In 2000, Dr. Alalwani used his connections with the Saudi government to arrange for Umar and other DOCS chaplains to make the hajj (pilgrimage) to Saudi Arabia, paid for by official Saudi sources. On information and belief, defendant LoConte was aware the official Saudi funding was being used for Umar’s trip.

108. Since Umar retired from DOCS in late 2000, defendants Muhammad S. Ahmed and Ismail Abdur Rahim maintained the relationship between DOCS Muslim chaplains and the GSISS.

109. In May 2002 – months after the Operation Green Quest raids were publicly reported – Ismail Abdur Rahim and the GSISS held another training conference for DOCS Muslim chaplains at the GSISS.

Umar's Retirement and the Majlis Ashura

110. After Umar retired in 2000, first defendants Muhammad Ahmed and then defendant Ismail Abdur Rahim assumed control of Muslim programs and personnel within DOCS. Defendants then decided that an organization closely affiliated with Ismail Abdur Rahim would replace the NAMC as the endorsing body for DOCS chaplains. This new organization is called the Majlis Ashura of New York City and the Metropolitan Area.

111. The Majlis Ashura is a Sunni organization and does not speak for Shiite Muslims.

112. Muhammad Ahmed and Ismail Abdur Rahim are a Sunni Muslims and do not speak for Shiite Muslims. Rahim has distributed within DOCS writings by Sheikh Abdul Aziz bin Baaz, who, until his recent death, was the head of the Saudi Arabian Wahhabi clerical establishment. He has maintained Umar's policy of establishing Sunni Islam within DOCS.

113. The Majlis Ashura has at least two officers, Amin Awad and Siraj Wahhaj, who are extremist Sunni Muslims linked to the first World Trade Center bombing conspiracy in a court document filed by the United States Attorney's Office for the Southern District of New York.

114. Al-Amin Abdul Latif, a Sunni Muslim with close personal and religious ties to Ismail Abdur Rahim and Siraj Wahhaj, is the official at the Majlis Ashura who controls the endorsing of Muslim chaplains for DOCS. Latif himself was formerly a DOCS Muslim chaplain. He is a Sunni Muslim and does not speak for Shiite Muslims.

115. In or about 2000, defendants Ahmed and Ismail Abdur Rahim created an organization called the New York Muslim Chaplains League to play the same role as the NAMC. The Muslim Chaplains League continued to work with Alalwani and the GSISS at least until 2002.

116. In 2001, the Majlis Ashura simply rubber-stamped all of the chaplain hiring decisions which had previously been made by Umar. To this day, DOCS has never had a credible, independent body to vet and hire Muslim chaplains.

117. On February 5, 2003, the *Wall Street Journal* reported that:

- Umar is a Wahhabi;
- Umar believed the September 11 hijackers should be honored as martyrs;
- Umar used his position with DOCS to spread Sunni radicalism to inmates;
- Umar had allegedly preached that Shiite Islam was a Jewish conspiracy;
- Umar is affiliated with the Graduate School of Islamic and Social Sciences in Virginia, a school under investigation by federal law enforcement for funding of Sunni terrorism;
- Umar and other New York prison chaplains had traveled to Saudi Arabia at the expense of the Saudi government;
- Umar has consulted with Saudi Arabian religious leaders and agrees with their views; and
- Umar claimed he had attempted to hire a Shiite chaplain in 1993, but was prevented by the opposition of the other Sunni chaplains.

118. Umar's supervisors were or should have been previously aware of much of this information. Notwithstanding their knowledge of Umar's extremism and religiously-motivated bias against Shiites, defendants have kept in place Umar's longstanding policy concerning Shiites.

119. Very recently, DOCS hired one person who calls himself Shiite to work in an administrative capacity out of a New York City office. But this person does not minister to plaintiffs or, on information and belief, other Shiite inmates; does not lead Shiite prayer services; and apparently holds certain religious beliefs which are different than plaintiffs and the Shiite thinkers they follow. As such, plaintiffs cannot credit or receive religious counseling from this new employee.

Accommodations for other groups and sub-groups

120. Defendants allow separate group religious observances and/or provides paid chaplains to officiate at group religious services for many small and large inmate religious groups, many of which are similarly situated to Shiites, including Protestants, Spanish-speaking Protestants, Catholics, Spanish-speaking Catholics, Jehovah's Witnesses, 7th-day Adventists, Quakers, Eastern Orthodox Christians, Buddhists, Native Americans, Hindus, Jews, Rastafarians, adherents of Santeria, and adherents of two indigenous American forms of Islam known as Moorish Science Temple and the Nation of Islam.

121. Defendants also provide what is, in effect, a Sunni Muslim religious program.

122. Although defendants have asserted that they do not provide separate services for subgroups within a religion, they in fact provide separate services for at least eight subgroups of Christians and three variants of Islam.

123. According to DOCS records and estimates, many of the religious groups listed in paragraph 120 have fewer adherents within DOCS than Shiites.

124. Defendants have never offered and do not have a fair and legitimate rationale for allowing separate group religious activity by all of these groups but denying the same to Shiites.

125. There is no administrative or staffing problem which justifies allowing all of these other groups to have separate worship accommodations while denying the same to Shiites. In particular, there is no administrative or staffing problem which justifies allowing Sunni Muslims, Nation of Islam and Moorish Science Temple to have separate worship accommodations while denying the same to Shiites.

126. There is no security concern which justifies allowing all of these other groups to have separate worship accommodations while denying the same to Shiites. In particular, there is no security concern which justifies allowing Sunni Muslims, Nation of Islam and Moorish Science Temple to have separate worship accommodations while denying the same to Shiites.

127. Plaintiffs and other Shiite inmates have been given far fewer religious education classes than Sunni Muslims, Nation of Islam Muslims, various Christian groups, and other similarly situated religious groups. When Shiite study classes have been allowed to occur, defendants have limited plaintiffs and other Shiite inmates to one class per week. In contrast, other religious groups are allowed as many as four or more classes per week.

FIRST CAUSE OF ACTION

FREE EXERCISE OF RELIGION AS PROVIDED BY THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000, AS AGAINST ALL DEFENDANTS

128. Plaintiffs repeat and reallege paragraphs 1 to 127.

129. Through the actions, policies, customs and practices alleged above, defendants, under color of State law, have imposed and continue to impose a substantial burden on plaintiffs' religious exercise in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000-cc without any compelling justification.

130. As a result of this continuing violation, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury. Unless this Court orders defendants to provide plaintiffs with the opportunity to freely exercise their religion of Shiite Islam, defendants will continue to engage in the conduct and practices set forth above and plaintiffs will continue to suffer irreparable harm.

SECOND CAUSE OF ACTION

FREE EXERCISE OF RELIGION AS PROVIDED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS AGAINST ALL DEFENDANTS

131. Plaintiffs repeat and reallege paragraphs 1 to 130.

132. Through the actions, policies, customs and practices alleged above, defendants, under color of State law, have imposed and continue to impose a substantial burden on plaintiffs' free exercise of religion in violation of the First and Fourteenth Amendments to the United States Constitution.

133. As a result of this continuing violation, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury. Unless this Court orders defendants to provide plaintiffs with the opportunity to freely exercise their religion of Shiite Islam, defendants will continue to engage in the conduct and practices set forth above and plaintiffs will continue to suffer irreparable harm.

THIRD CAUSE OF ACTION

CONSPIRACY TO DENY CIVIL RIGHTS AS PROHIBITED BY 42 U.S.C. § 1985(3) AND THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS AGAINST DEFENDANTS UMAR AND RAHIM

134. Plaintiffs repeat and reallege paragraphs 1 to 133.

135. Through the actions, policies, customs and practices alleged above, defendant Umar conspired with the individuals described in paragraphs 25 and 26, under color of State law, to deprive plaintiffs and other Shiite inmates of their rights under the First and Fourteenth Amendments to the United States Constitution.

136. Through the actions, policies, customs and practices alleged above, defendant Rahim conspired with the individuals described in paragraphs 25 and 26, under color of State law, to deprive plaintiffs and other Shiite inmates of their rights under the First and Fourteenth Amendments to the United States Constitution.

137. As a result of these violations, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury. Unless this Court orders defendants to provide plaintiffs with the opportunity to freely exercise their religion of Shiite Islam, defendant Rahim will continue to engage in the conduct and practices set forth above and plaintiffs will continue to suffer irreparable harm.

FOURTH CAUSE OF ACTION

FAILURE TO PREVENT CONSPIRACY TO DENY CIVIL RIGHTS AS PROHIBITED BY 42 U.S.C. § 1986, AS AGAINST DEFENDANTS GOORD, LOCONTE, LENARD, HEADLEY, NUTTAL, PEREZ, HARRIS.

138. Plaintiffs repeat and reallege paragraphs 1 to 137.

139. Through the actions and practices alleged above, defendants knew that Umar and Rahim were conspiring with the individuals described in paragraphs 25 and 26, under color of State law, to deprive plaintiffs and other Shiite inmates of their rights under the First and Fourteenth Amendments to the United States Constitution.

140. Having the power to stop this conspiring, defendants allowed it to continue.

141. As a result of these violations, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury. Unless this Court restrains defendants from engaging in the conduct and practices set forth above and plaintiffs will continue to suffer irreparable harm.

FIFTH CAUSE OF ACTION

ESTABLISHMENT OF RELIGION AS PROHIBITED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AS AGAINST ALL DEFENDANTS

142. Plaintiffs repeat and reallege paragraphs 1 to 141.

143. Through the actions, policies, customs and practices alleged above, defendants, under color of State law, have effectively established Sunni Islam as the official version of Islam within DOCS, in violation of the First and Fourteenth Amendments to the United States Constitution.

144. As a result of this continuing violation, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury. Unless this Court orders defendants to refrain from establishing Sunni Islam, and to take steps to dismantle this establishment, defendants will continue to engage in the conduct and practices set forth above and plaintiffs will continue to suffer irreparable harm.

SIXTH CAUSE OF ACTION

EQUAL PROTECTION OF THE LAWS AS PROVIDED BY THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, AS AGAINST ALL DEFENDANTS

145. Plaintiffs repeat and reallege paragraphs 1 to 144.

146. Through the actions, policies, customs and practices alleged above, defendants, under color of State law, have knowingly and intentionally provided plaintiffs and other Shiite

Muslims substantially worse accommodations than many other similarly-situated inmate religious groups, in violation of the Fourteenth Amendment to the United States Constitution.

147. As a result of this continuing violation, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury. Unless this Court orders defendants to refrain from this unequal treatment, and to take steps to accommodate plaintiffs in a manner similar to other similarly-situated inmate religious groups, defendants will continue to engage in their damaging conduct and practices and plaintiffs will continue to suffer irreparable harm.

SEVENTH CAUSE OF ACTION

FREE EXERCISE OF RELIGION AS PROVIDED BY NEW YORK CONSTITUTION ART. I,
§ 3, AS AGAINST ALL DEFENDANTS

148. Plaintiffs repeat and reallege paragraphs 1 to 147.

149. Through the actions, policies, customs and practices alleged above, defendants have imposed and continue to impose a substantial burden on plaintiffs' free exercise of religion in violation of Article I, § 3 of the New York Constitution.

150. As a result of this continuing violation, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury.

EIGHTH CAUSE OF ACTION

FREE EXERCISE OF RELIGION AS PROVIDED BY N.Y. CORRECTION LAW § 610, AND
DOCS DIRECTIVES 4200, 4202 AND 4750, AS AGAINST ALL DEFENDANTS

151. Plaintiffs repeat and reallege paragraphs 1 to 150.

152. Through the actions, policies, customs and practices alleged above, defendants have imposed and continue to impose a substantial burden on plaintiffs' free exercise of religion in

violation of New York Correction Law § 610; DOCS Directives 4200, 4202 and 4750; and other applicable New York State rules and regulations.

153. As a result of this continuing violation, plaintiffs have endured and continue to endure great and irreparable loss, damage and injury.

PRAYER FOR RELIEF

154. Plaintiffs seek judgment:

- a. declaring that defendants' actions and omissions have violated and continue to violate plaintiffs' rights;
- b. enjoining defendants, preliminarily and permanently, from further harming plaintiffs, as described above in paragraphs 130, 133, 137, 141, 144 and 147;
- c. awarding plaintiffs compensatory damages jointly and severally from each defendant;
- d. awarding plaintiffs nominal damages from each defendant;
- e. awarding plaintiffs punitive damages from each defendant;
- f. awarding plaintiffs' attorney's fees as well as costs and disbursements incurred in this action; and
- g. granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 18, 2004

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