

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 08-2100

ANTWAN CRAWFORD; DARRICK WILSON; ANTHONY TUCKER

Plaintiffs

MAC S. HUDSON; DERRICK TYLER,

Plaintiffs-Appellees,

v.

HAROLD W. CLARKE, Commissioner of the
Massachusetts Department of Correction

Defendant-Appellant,

KATHLEEN M. DENNEHY

Defendant.

ON APPEAL FROM A DECISION OF THE
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

BRIEF OF DEFENDANT-APPELLANT HAROLD W. CLARKE

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JURISDICTIONAL STATEMENT

The District Court has subject matter jurisdiction over the claims arising under the United States Constitution, 42 U.S.C. § 1983, and 42 U.S.C. § 2000cc pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. The jurisdiction of the Court of Appeals arises under 28 U.S.C. § 1291.

The Final Judgment was entered by the District Court on April 11, 2008. Defendant filed a Motion for Clarification of the Final Judgment, pursuant to Fed. R. Civ. P. 59(e), on April 16, 2008. The District Court entered its Order for Clarification of Final Judgment on April 28, 2008. On May 12, 2008, defendant filed a Motion for Reconsideration of Final Judgment, pursuant to Fed. R. Civ. P. 59(e). The District Court denied Defendant's Motion for Reconsideration on June 19, 2008. On July 17, 2008, defendant filed a Notice of Appeal.

Defendant's appeal is from a final order of the District Court that disposed of the claims of all the parties.

ISSUE PRESENTED FOR REVIEW

Whether the District Court erred in failing to limit prospective relief with respect to plaintiffs' access to

closed-circuit television broadcasts of Jum'ah services to the Special Management Unit of MCI-Cedar Junction.

STATEMENT OF THE CASE

Inmates Mac Hudson, Derrick Tyler, Antwan Crawford, Darrick Wilson, and Anthony Tucker filed their *pro se* complaint on December 5, 2001, alleging violations of their right to free exercise of religion under the United States Constitution and Department of Correction ("DOC") regulations. RA 4.^{1 2} The Complaint requested injunctive and declaratory relief and damages. Named as defendants were the Commissioner of Correction, Michael T. Maloney; Peter Allen, Superintendent of MCI-Cedar Junction; Peter Pepe, former Superintendent of MCI-Cedar Junction; Andrea Emodi, former Director of Program Services; and Sherry Elliot, MCI-Cedar Junction Director of Treatment. An Answer to the Complaint was filed on January 27, 2003. RA 6. On March 29, 2004, the District Court denied plaintiffs' request for injunctive relief. RA 7. On May 12, 2004, defendants filed a Motion for Summary Judgment. RA 7. On

¹ References to the Record Appendix are designated as "RA." References to the trial transcript are designated as "Tr." followed by the volume/page number.

² Plaintiffs Darrick Wilson and Anthony Tucker were dismissed from the lawsuit on October 18, 2002 for want of prosecution. Plaintiff Antwan Crawford was dismissed from the lawsuit on March 29, 2004.

July 23, 2004, the District Court issued a Memorandum and Order determining that the defendants were entitled to qualified immunity as to plaintiffs' claims for money damages. RA 7. The District Court also determined that defendants' policies of providing Muslim inmates with access to prayer towels in lieu of prayer rugs and assigning kitchen jobs to inmates without regard to religion did not violate plaintiffs' constitutional rights. RA 7. The District Court denied the Motion for Summary Judgment regarding the claim for access to Halal meals, finding that the claim raised an issue for trial. RA 7.

On November 9, 2004, the District Court appointed counsel to represent plaintiffs. RA 8. On May 5, 2005, the District Court allowed plaintiffs' Motion to Amend the Complaint. RA 9. Plaintiffs filed their Amended Complaint on May 26, 2006. RA 10. The Amended Complaint raised new claims under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc, as well as several state laws. Commissioner of Correction Kathleen M. Dennehy was named as the sole defendant. RA 10.³

³ Pursuant to Fed. R. Civ. P. 25(d), Harold W. Clarke, Commissioner of the Massachusetts Department of Correction, effective November 26, 2007, has been substituted for former Commissioner Kathleen M. Dennehy as defendant-appellant. RA 28.

Defendant filed an Answer to the Amended Complaint on June 13, 2005. RA 10. On April 14, 2006, plaintiffs filed a Motion for Reconsideration seeking to renew their claim for access to prayer rugs. On May 13, 2006, defendant filed an Opposition to Plaintiffs' Motion for Reconsideration and a renewed Motion for Summary Judgment. RA 11. Plaintiffs' Opposition to Defendant's Motion for Summary Judgment was filed on June 2, 2006. RA 12. On August 31, 2006, the District Court entered its orders granting plaintiffs' Motion for Reconsideration and denying defendant's Motion for Summary Judgment. RA 12. The District Court scheduled a non-jury trial to commence on January 8, 2007. RA 12. The six-day jury-waived trial commenced on January 8, 2007 and concluded on February 1, 2007. RA 14.

On March 5, 2008, the District Court entered its Findings of Fact, Rulings of Law and Order after a Non-Jury Trial, stating, in part:

For the foregoing reasons, the court will enter judgment in part for plaintiffs. The Commissioner's motion for partial findings is DENIED. The court will grant plaintiffs' prayers for declaratory judgment on the issues of Halal meals and closed-circuit television access to Jum'ah services while confined to Ten Block. Judgment will enter for defendant on prayer rug issue. No money damages are awarded. Plaintiffs will

within ten (10) days of entry this Order file a Proposed Form of Final Judgment. Defendant will have seven (7) days thereafter to comment. On entry of Final Judgment, the Clerk may close the case. The court will, however, retain jurisdiction to oversee the implementation of any remedial aspects of the judgment. RA 22-40.

On April 11, 2008, the District Court entered Final Judgment, setting out injunctive and declaratory relief with regard to plaintiffs' access to closed-circuit television broadcasts of Jum'ah services and access to Halal meals. RA 41. On April 16, 2008, defendant filed a Request for Clarification of Final Judgment with regard to whether the final judgment limited plaintiffs' access to closed-circuit broadcasts of Jum'ah services to MCI-Cedar Junction's Special Management Unit ("SMU"), also known as Ten Block. RA 46. On April 28, 2008, the District Court entered a Clarification of Final Judgment, indicating that the final order regarding plaintiffs' access to closed-circuit television broadcasts of Jum'ah services applied to any SMU in which plaintiffs may be confined in the future. RA 51. On May 12, 2008, defendant filed a Motion for Reconsideration of Final Judgment With Regard to Broadcast of Jum'ah Services in Special Management Units Other Than Ten Block. RA 53. Attached to defendant's Motion for Reconsideration was the affidavit of Jeffrey Quick, the

DOC's Director of Resource Management. RA 61. Director Quick's affidavit outlined the significant technical, operational, physical plant, and cost impediments to providing closed-circuit television broadcasts to the SMUs located at prisons other than MCI-Cedar Junction. RA 61. Defendant also filed a Motion to Stay Execution of Final Judgment with Regard to Broadcasts of Jum'ah Services in Special Management Units Other than Ten Block. RA 17. On May 13, 2008, the District Court entered an Order granting defendant's Motion to Stay Final Judgment on the limited issue of plaintiffs' access to closed-circuit television broadcasts of Jum'ah services. RA 17.

A hearing on defendant's Motion for Reconsideration was convened on June 19, 2008. RA 73-86. On June 19, 2008, the District Court denied defendant's Motion for Reconsideration of Final Judgment, stating:

After hearing, the motion is denied without prejudice. Plaintiff Hudson is currently confined in general population at the Old Colony Correctional Facility. Accordingly, there is no actual controversy appropriate for judicial resolution. The stay on the Final Judgment is hereby lifted. RA 87.

On July 17, 2008, defendant filed a Notice of Appeal and a Motion to Stay Final Judgment on Issue of Plaintiffs' Access to Closed-Circuit Television Broadcasts of Jum'ah

Services Pending Appeal. RA 18. On August 18, 2008, the District Court denied defendant's motion to stay. RA 19.

STATEMENT OF THE FACTS

Mac Hudson and Derrick Tyler are inmates within the custody of the Massachusetts Department of Correction. At all times relevant to the non-jury trial, Hudson and Tyler were incarcerated at MCI-Cedar Junction. RA 28. Subsequent to the conclusion of the trial, Hudson was transferred from MCI-Cedar Junction to the Old Colony Correctional Center ("OCCC") at Bridgewater, MA, a medium security prison. Hudson is housed in OCCC's general population. RA 61.

MCI-Cedar Junction is a maximum security prison located in Walpole, MA. In addition to numerous housing blocks for inmates, MCI-Cedar Junction maintains two specialized housing units: an SMU (Ten Block), and the Departmental Disciplinary Unit ("DDU"). Ten Block is a restrictive housing unit consisting of two (2) floors and four (4) tiers, with fifteen (15) inmates on each tier for a capacity of 60 inmates. [Tr. V/81]. Pursuant to DOC regulations, 103 Code Mass. Regs. 423.00 *et seq.*, *Special Management Units*, an SMU is a housing unit separate from the general population of the prison "in which inmates may be confined for reasons of administrative segregation,

protective custody, or disciplinary detention." 103 Code Mass. Regs 423.06. RA 91. Administrative segregation is defined as:

temporary separation from general population used when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution, e.g. inmates pending investigation for a disciplinary or criminal offense or pending transfer may be placed in administrative segregation." *Id.*

Typically, the average length of stay in Ten Block is from three (3) to nine (9) months. [Tr. V/84]. Pursuant to 103 Code Mass. Regs. 423.06, Ten Block houses inmates who are separated from other prison housing while awaiting action for disciplinary infractions. [Tr. V/82]. Confinement in Ten Block on awaiting action status for a disciplinary infraction may be lengthened based on the nature of the investigation into an alleged disciplinary infraction, or if the inmate requests legal representation or the production of evidence in his disciplinary proceeding. [Tr. V/85]. Due to the fact that confinement in any SMU is designed to be temporary, inmates housed in an SMU are not permitted to possess televisions, but may possess a radio. [Tr. V/94-97] Ten Block is wired for closed-circuit television and there are no operational,

technical or physical plant barriers to providing inmates confined to Ten Block with access to closed-circuit television broadcasts. [Tr. V/117].

The DDU is a separate housing unit within the grounds of MCI-Cedar Junction that houses up to 124 inmates. Inmates are confined to the DDU as a sanction for the most serious disciplinary offenses, e.g., murder of another inmate, an escape attempt, assaulting staff or another inmate, etc. A sanction to the DDU can range from four (4) months to ten (10) years. [Tr. V/102-106]. Due to the potential length of time in which inmates may be sentenced to the DDU, DDU inmates may earn certain privileges, including access to a radio after thirty (30) days of good behavior and access to a television after sixty (60) days of good behavior. [Tr. V/107]. The DDU is wired for closed-circuit television and DDU inmates with access to televisions can watch educational, vocational, and religious services. [Tr. V/109].

SUMMARY OF THE ARGUMENT

The District Court erred in failing to limit prospective relief providing plaintiffs with access to closed-circuit television broadcasts of Jum'ah services to MCI-Cedar Junction's SMU. The District Court's prospective

relief violates the Prison Litigation Reform Act ("PLRA") where it "is not narrowly drawn, is not the least intrusive means necessary to remedy the violation of a Federal right," and failed to give substantial weight to the potential adverse impact upon the DOC caused by the relief. 18 U.S.C. § 3626. In particular, the prospective relief improperly restricts defendant's ability to transfer plaintiffs to other prisons as circumstances warrant, raising operational and security concerns. (pp. 11-18)

The prospective relief violates RLUIPA where it constrains defendant's ability to provide institutional order and discipline by limiting his authority to transfer plaintiffs between prisons as circumstances require. Nor did the District Court consider the impact upon the DOC in terms of the significant costs of the relief. (pp. 18-22)

The issues pertaining to the prospective relief's violation of the PLRA and RLUIPA are ripe for judicial review. (pp. 22-28)

ARGUMENT

I. THE DISTRICT COURT ERRED IN FAILING TO LIMIT PROSPECTIVE RELIEF REGARDING PLAINTIFFS' ACCESS TO CLOSED-CIRCUIT TELEVISION BROADCASTS OF JUM'AH SERVICES TO THE SMU AT MCI-CEDAR JUNCTION. _____

The District Court's Final Judgment requiring the defendant to provide plaintiffs with access to closed-

circuit television broadcasts of weekly Jum'ah services should they be confined in any SMU failed to comply with the requirements of the PLRA, 18 U.S.C. § 3626, and RLUIPA.

A. The Order For Prospective Relief Failed To Meet The Requirements Of The PLRA.

As noted by this Court in the case of *Feliciano v. Rullan*, 378 F.3d 42, 50-51 (1st Cir. 2004), "Congress enacted the PLRA, partially in effort to curb the federal judiciary in day-to-day prison management." (citations omitted). "The PLRA establishes standards for the entry and termination of all prospective relief in civil actions challenging prison conditions." *Id.* (citing *Miller v. French*, 530 U.S. 327, 333 (2000)).

The PLRA, in pertinent part, provides that:

[t]he 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.

18 U.S.C. § 3626(a)(1).

The PLRA further requires that when entering an order for prospective relief, a court must give "substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.* See *Feliciano*, 378 F.3d at 50-51; *Oluwa v. Gomez*, 133 F.3d 1239

(9th Cir. 1998); *Gilmore v. California*, 220 F.3d 987, 999 (9th Cir. 2000).

When entering an order for prospective relief, a court must make the specific findings that the prospective 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." 18 U.S.C. § 3626(b)(2).

In the instant case, it is clear that, with the exception of MCI-Cedar Junction's Ten Block unit, the prospective relief requiring defendant to provide plaintiffs with access to closed-circuit television broadcasts of Jum'ah services at any SMU in which plaintiffs may be confined has failed to meet the requirements of 18 U.S.C. §§ 3626(a)(1) & (b)(2).

It appears that the District Court has made the findings required under 18 U.S.C. §§ 3626(a)(1) & (b)(2) with regard to the prospective relief providing plaintiffs with access to closed-circuit television broadcasts of Jum'ah services in MCI-Cedar Junction's Ten Block unit. In determining that the ban on participation in Jum'ah services in Ten Block via closed-circuit television was not the least restrictive alternative, the District Court

relied on the testimony of MCI-Cedar Junction Deputy Superintendent Lisa Mitchell, who stated that there were no technical or physical plant obstacles to providing closed-circuit television broadcasts of Jum'ah services in MCI-Cedar Junction's Ten Block unit and that closed-circuit television broadcasts of Jum'ah services were already available to DDU inmates. RA 39. [Tr. V/117].

The numerous references to the lack of technical obstacles to providing access to closed-circuit television broadcasts in the Ten Block unit found in the March 5, 2008 decision underscore the significance of this factor in the District Court's determination that the prospective relief was the least intrusive means necessary to correct the RLUIPA violation. RA 22.⁴

⁴ Paragraph 18 of the Findings of Fact of the March 5, 2008 decision states that "[T]he DOC does not broadcast Jum'ah services over closed-circuit television to SMU inmates on Ten Block at MCI-Cedar Junction. There are no technical obstacles that prevent the DOC from doing so." Paragraph 21 of the Findings of Facts states that "[T]he DOC broadcasts Jum'ah services over closed-circuit television to inmates confined in the DDU [Departmental Disciplinary Unit] at MCI-CJ." In paragraph 11 of the Ultimate Conclusions of Fact and Law in the March 5, 2008 decision, the District Court states that "the DOC has not suggested any meaningful distinction between inmates confined in the DDU, who are permitted closed-circuit access to Jum'ah services and inmates in the SMU [Ten Block], who are not." RA . Finally, in a footnote to paragraph 11 of the Ultimate Conclusions of Fact and Law, the District Court stated, "[A]s previously indicated, the DOC does not

However, with regard to prospective relief requiring that plaintiffs be provided with access to closed-circuit television broadcasts of Jum'ah services in any other SMU in which they may be confined, it is clear that the District Court did not and could not make the findings that the prospective 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" as required under the PLRA. 18 U.S.C. §§ 3626(a)(1) & (b)(2).

Unlike the discussion of MCI-Cedar Junction's Ten Block, there is nothing in the March 5, 2008 decision that demonstrates that the District Court considered the existence of technical or other obstacles to providing plaintiffs with access to closed-circuit television broadcasts of Jum'ah services in any other SMU. As described above, the March 5, 2008 decision refers only to MCI-Cedar Junction when discussing plaintiffs' access to closed-circuit television broadcasts.⁵ The District Court

contend that there is any technical reason that prevents the broadcast of Jum'ah services by closed-circuit television to Muslim inmates in Ten Block." RA .

⁵ The testimony at trial regarding SMU confinement and access to closed-circuit television broadcasts focused entirely on MCI-Cedar Junction's Ten Block unit. See e.g., Tr. 2/12-13, 84-86; 5/81-88, 100-105, 117. Nor did

has failed to make the required findings because it had not taken any evidence regarding the other SMUs and the existence of any technical, operational, or physical plant obstacles that may impede the installation of closed-circuit television broadcast systems.

In response to the District Court's Order for Clarification of the Final Judgment indicating that the prospective relief regarding plaintiff's access to closed-circuit television broadcasts of Jum'ah services pertained to any SMU plaintiffs may be confined, defendant filed a Motion for Reconsideration advising the District Court of the significant impediments that exist with regard to compliance with the prospective relief. In support of the motion, defendant provided the affidavit of Jeffrey Quick, the DOC's Director of Resource Management. Director Quick's affidavit outlined the significant costs and operational, technical, and physical plant barriers confronting the DOC with regard to the prospective relief. In particular, Director Quick stated that of the DOC's nine (9) SMUs, only MCI-Cedar Junction's Ten Block unit had cable access to the prison building where religious services were held. RA 61. Director Quick stated that in

plaintiffs seek class action status on this issue.

one prison the distance between the SMU and the building where religious programs are held was several hundred yards. RA 64. Director Quick stated that because some of the SMUs were constructed many years ago and have no cables installed, "installing new cables into the SMU cells will be very difficult, time consuming, and disruptive to the operations of the SMUs and prisons in general." RA 62. For example, the walls of MCI-Norfolk's SMU are made of steel, making drilling costly and time consuming, and would require that the SMU be closed during the wiring process. RA 63. However, the District Court declined to consider the new information concerning the significant obstacles to the prospective relief, citing a lack of ripeness. RA 87.

Accordingly, because the District Court's order for prospective relief requiring the DOC to provide closed-circuit television broadcast systems in any SMU (except MCI-Cedar Junction) confining plaintiffs was made without consideration of its possible adverse impact upon the DOC, it is clear that the District Court has failed to make the required findings as to whether the 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." See 18 U.S.C. §§ 3626(a)(1)& (b)(2).

Furthermore, in ordering prospective relief requiring the DOC to provide plaintiffs with access to closed-circuit television broadcasts of Jum'ah services in any SMU, the District Court has failed to "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief," as required under the PLRA. *Id.* As described above, defendant's Motion for Reconsideration outlined the significant operational, technical, and physical plant barriers that obstruct the installation of closed-circuit television broadcasting systems in the DOC's SMUs.

Because of the significant obstacles to providing closed-circuit television broadcasts of Jum'ah services to the other SMUs, the prospective relief interferes with the Commissioner's discretionary authority to transfer plaintiffs to other correctional facilities, whether for disciplinary or administration sequestration or classification or protective custody purposes, when circumstances warrant. State statutes provide the Commissioner with the discretionary authority to transfer inmates between prisons within the state correctional system. See M.G.L. c. 127, § 97. However, by requiring

that plaintiffs have access to closed-circuit broadcasts of Jum'ah services when confined to an SMU, the prospective relief ties the Commissioner's hands by severely limiting the prisons to which plaintiffs can be transferred. The prospective relief requires the Commissioner to choose between placing plaintiffs in prisons that are the most appropriate for purposes of safety and security or placing them in a prison that meets the requirements of the prospective relief. The prospective relief amounts to an undue interference with the operation of the prison system.

Here, the District Court's failure to consider the adverse impact of the prospective relief upon the DOC and give substantial weight to the DOC's operational and security concerns constitutes a violation of the PLRA.

B. The Order For Prospective Relief Failed To Meet The Requirements of RLUIPA.

The District Court's order for prospective relief requiring the DOC to provide plaintiffs with access to closed-circuit television broadcasts of Jum'ah services in any SMU in which they may be confined also violates RLUIPA, 42 U.S.C. § 2000cc.

It is a violation of RLUIPA to grant prospective relief without considering the impact of the relief upon the DOC. In enacting RLUIPA, Congress "anticipated that

courts would apply the Act's standard with 'due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.'" *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005) (quoting S. Rep. No. 103-111, at 10 (1993), 1993 U.S. Code Cong. & Admin. News 1892, 1899). The Supreme Court stated:

We do not read RLUIPA to elevate accommodation of religious observances over an institution's need to maintain order and safety. Our decisions indicate that an accommodation must be measured so that it does not override other significant interests.

Cutter, 544 U.S. at 722.

The order for prospective relief places the accommodation of plaintiffs' religious observances over the compelling interests of the DOC to maintain safety and institutional order. The ability to transfer any inmate, including plaintiffs, to an appropriate security level prison for purposes of discipline or administration sequestration or classification or protective custody is an essential component in maintaining institutional order and safety. See M.G.L. c. 127, § 97; *Nelson v. Commissioner of Correction*, 390 Mass. 379, 397 (1983). However, the

significant obstacles to providing closed-circuit television broadcasts of Jum'ah services to the SMUs restrict the ability of the Commissioner to transfer plaintiffs to other correctional facilities as circumstances may warrant. Far from providing "due deference to the experience and expertise of prison administrators," the District Court's prospective relief actually diminishes the defendant's ability to maintain "good order, security and discipline." *See Cutter*, 544 U.S. at 723.

Further, relying on *Cutter*, *id.*, other Circuit Courts have determined that the compelling governmental interest standard includes a consideration of the cost of the religious accommodation and the government's limited resources. In *Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007) the Fifth Circuit determined that the prison met the compelling interest standard where the prison budget was not adequate to cover the significant expenses required to provide Kosher meals or a Kosher kitchen and to meet the increased demand for specialized religious diets for other inmates. The *Baranowski* Court stated, "[B]ased on the record before us, we hold that this policy is related to maintaining good order and controlling costs and, as such,

involves compelling government interests." *Baranowski*, 486 F.3d at 125. See also *Lovelace v. Lee*, 472 F.3d 174, 190 (4th Cir. 2006) (compelling interest standard under RLUIPA includes such considerations as safety, security, and cost); *Linehan v. Crosby*, 2008 WL 3889604 *11 (N.D. Fla.)(Aug. 20, 2008)(excessive cost for special religious diet was a factor in finding a compelling governmental interest under RLUIPA); *Ketzner v. Williams*, 2008 WL 4534020 **23, 25-27 (W.D. Mich.) (Sept. 30, 2008)(concern for prison costs constitutes compelling government interest under RLUIPA).

According to the affidavit of Jeffrey Quick, installing closed-circuit television systems to broadcast Jum'ah services to the SMUs would necessitate major capital improvement projects requiring the expenditure of substantial sums of money, cause significant disruptions to the prisons, including closing down the SMUs during the installation process, and would likely take many months to complete. RA 61-67.

The District Court's failure to consider the impact of the prospective relief upon the DOC's compelling interests in maintaining safety and security and institutional order, as well as the significant costs to the DOC associated with

compliance with the prospective relief constitutes a violation of RLUIPA. See *Cutter*, 544 U.S. at 722; *Baranowski*, 486 F.3d at 125.

II. THE DISTRICT COURT ERRED IN DENYING DEFENDANT'S MOTION FOR RECONSIDERATION BASED ON A LACK OF RIPENESS. _____

In denying the Motion for Reconsideration, the District Court found that there was no actual controversy appropriate for judicial resolution since plaintiff Hudson was not currently confined in OCCC's SMU. RA 87.

"[T]he doctrine of ripeness ... asks whether an injury that has not yet happened is sufficiently likely to happen to warrant judicial review." *Gun Owners' Action League v. Swift*, 284 F.3d 198, 205 (1st Cir. 2002), *cert. denied*, 537 U.S. 827 (2002). The ripeness doctrine looks at whether "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy to warrant the issuance of a declaratory judgment." *Lake Carriers' Association v. MacMullan*, 406 U.S. 498, 506 (1972). The ripeness doctrine also seeks "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Labs v. Gardner*, 387 U.S. 136, 148 (1967). "Determining ripeness involves a dual inquiry: evaluation of 'both the

fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *McInnis-Misenor v. Maine Medical Center*, 319 F.3d 63, 70 (1st Cir. 2003) (quoting *Abbott Labs*, 387 U.S. at 149). "Both prongs of the test ordinarily must be satisfied, although a very strong showing on one axis may compensate for a relatively weak showing on the other." *Stern v. U.S. Dist. Court*, 214 F.3d 4, 10 (1st Cir. 2000).

"In the fitness inquiry, both constitutional and prudential concerns operate, with prudential concerns focusing on the policy of judicial restraint from unnecessary decisions. The fitness inquiry 'typically involves subsidiary queries concerning finality, definiteness, and the extent to which resolution of the challenge depends on facts that may not yet be sufficiently developed.'" *Id.* (quoting *Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 535 (1st Cir. 1995)). The baseline question concerning fitness for review is whether allowing more time for development of events would "significantly advance [the court's] ability to deal with the legal issues presented [or] aid in their resolution." *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 82 (1978). "The fact that an event has not

occurred can be counterbalanced in this analysis by the fact that a case turns on legal issues not likely to be significantly affected by further factual development." *Ernst & Young*, 45 F.3d at 535. "[T]he question of fitness does not pivot solely on whether a court is capable of resolving a claim intelligently, but also involves an assessment of whether it is appropriate for the court to undertake the task." *Id.* at 537.

The hardship prong is entirely prudential and evaluates "the extent to which withholding judgment will impose hardship - an inquiry that typically turns upon whether the challenged action creates a 'direct and immediate' dilemma for the parties." *McInnis-Misenor*, 319 F.3d at 70 (quoting *Stern*, 214 F.3d at 10).

In the case at bar, it is apparent that the issue concerning the impact of the prospective relief upon the defendant is ripe for judicial determination. It is clear that the issue is not an abstract matter, but constitutes a substantial controversy between the parties. Despite the fact that neither plaintiff was confined in the SMU at or near the time of trial, the District Court determined that the issue of plaintiffs' access to Jum'ah services should

they be confined to the Ten Block unit in the future was ripe for judicial review. RA 28.

The issue of the adverse impact of the prospective relief upon the defendant is fit for judicial review where the resolution of the issue does not depend upon facts that are not sufficiently developed. As the affidavit of Director Quick demonstrates, the technical, physical plant, and operational obstacles to installing closed-circuit television systems in the SMUs are readily known and do not depend on the timing of plaintiffs' confinement in an SMU. RA 61-67. Further delay in addressing this issue will not significantly advance the court's ability to address the issue or aid in its eventual resolution. *See Duke Power Co.*, 438 U.S. at 82.

Judicial review is appropriate and necessary due to the adverse impact of the prospective relief upon the DOC's compelling interests in maintaining institutional order and security. The ability to transfer inmates within the state correctional system for purposes of discipline, protective custody, administrative sequestration, or classification is fundamental to the management of a correctional system. As a result of the substantial impediments to providing the prospective relief ordered by the District Court, the

Commissioner's ability to transfer plaintiffs to other prisons has been severely limited. It is sufficiently likely that one or both of the plaintiffs will be confined in an SMU other than Ten Block for administrative or disciplinary reasons in the near future. Presently, Hudson is incarcerated at OCCC. Transfers between prisons are done administratively and may take place at any time, for any reason. See M.G.L. c. 127, § 97; *Nelson*, 390 Mass. at 397. Plaintiffs are subject to being placed in an SMU for a variety of administrative reasons, including on awaiting action status for a disciplinary matter. See 103 Code Mass. Regs. 423.08. RA 92. Both plaintiffs have been previously confined in SMUs during their present terms of incarceration. RA 28.

It is also appropriate for the court to resolve the issue of the adverse impact of the prospective relief upon the defendant as soon as possible rather than waiting for one of the plaintiffs to be placed in an SMU other than Ten Block and addressing the adverse impact of the prospective relief prison by prison. It is in the interests of judicial economy to resolve the issue of whether the prospective relief violates the requirements of the PLRA

and RLUIPA as a whole rather than to take a piecemeal approach.

The hardship prong of the ripeness inquiry also favors a prompt resolution of the issue of the adverse impact of the prospective relief upon the defendant. Postponing the resolution of this issue until such time as one of the plaintiffs is confined to an SMU other than Ten Block presents a hardship for the defendant. As described above, the prospective relief raises safety and security concerns where it interferes with the Commissioner's discretionary authority to transfer plaintiffs between prisons. Certainly, circumstances, both foreseen and unforeseen, may develop at any time which will require that one or both of the plaintiffs be transferred to another prison. Where the prospective relief compromises the Commissioner's ability to manage plaintiffs' placement within the prison system, this issue must be resolved as soon as possible.

Further, in order to meet the requirements of the prospective relief, the DOC must begin the time-consuming and costly process of engaging outside contractors to develop designs for each SMU and prepare cost estimates. Next, the DOC will have to prepare and submit capital requests to the Massachusetts Division of Capital Asset

Management and Maintenance for the necessary funding. RA 67. Whether some or all of the requests for capital improvements to the SMUs will be approved and funding made available is difficult to predict. RA 67. Delaying the start of this very time consuming process until a plaintiff is confined in an SMU other than Ten Block and the District Court completes its review of the evidence concerning the particular SMU and the adverse impact upon defendant, will only serve to increase the costs of complying with the prospective relief should it be determined after review that the relief does not violate the PLRA or RLUIPA.

During the time it takes to complete the judicial review and the capital improvement process, the plaintiff confined in the SMU may be unable to participate in weekly Jum'ah services. Accordingly, delaying the resolution of this issue will impose hardships on both defendant and plaintiffs.

CONCLUSION

For the foregoing reasons, defendant-appellant Clarke requests that the District Court's Final Judgment be reversed with respect to prospective relief providing plaintiffs with access to closed-circuit television broadcasts of Jum'ah services in any Special Management

Unit other than the Ten Block unit of MCI-Cedar Junction. In the alternative, defendant-appellant Clarke requests that this issue be remanded to the District Court for further proceedings regarding the impact of the prospective relief requiring plaintiffs' access to closed-circuit television broadcasts of Jum'ah services in any Special Management Unit other than the Ten Block unit of MCI-Cedar Junction upon him.

Respectfully submitted,

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January 20, 2009

ADDENDUM

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-CV-12145-RGS

MAC HUDSON AND
DERRICK TYLER

v.

KATHLEEN DENNEHY, in her official
capacity as Commissioner of the
Massachusetts Department of Correction

FINDINGS OF FACT, RULINGS OF LAW,
AND ORDER AFTER A NON-JURY TRIAL

March 5, 2008

STEARNS, D.J.

On May 4, 2001, state prison inmates Mac Hudson and Derick Tyler, who adhere to the religious teachings of Elijah Muhammed and the Nation of Islam, brought this civil rights suit against Kathleen Dennehy, the Commissioner of the Massachusetts Department of Correction (DOC), and other DOC defendants, seeking money damages and declaratory and injunctive relief. Hudson and Tyler are incarcerated at the Massachusetts Correctional Institution – Cedar Junction (MCI-CJ), a maximum security prison in Walpole, Massachusetts. The Complaint as originally filed alleged an abridgment of plaintiffs' rights under the Free Exercise Clause of the First and Fourteenth Amendments, as well as violations of 103 CMR 471.00 et seq. Plaintiffs claimed that the DOC had violated their religious rights by refusing to provide Muslim inmates with halal meals,¹ by requiring

¹Halal means that which is authorized by Islamic law (fiqh). The halal dietary restrictions at issue in this case principally involve the slaughtering of animals for consumption. An Islamic website, eat-halal.com, describes the Halal slaughter ritual as follows.

Muslim inmates to use a prayer "towel" rather than a traditional prayer rug while performing salat,² and by refusing to allow Muslim inmates confined in the Special Management Unit (SMU)³ to participate in Jum'ah⁴ services. Plaintiffs also argued that the DOC's policy of accommodating the dietary requirements of Jewish, Seventh Day Adventist, Buddhist, and other observant prisoners, while denying a similar accommodation to Muslim inmates, violated the Equal Protection Clause of the Fourteenth Amendment.⁵

Animals such as cows, sheep, goats, deer, moose, chickens, ducks, game birds, etc., are also Halal, but they must be Zabihah (slaughtered according to Islamic Rites) in order to be suitable for consumption. The procedure is as follows: the animal must be slaughtered by a Muslim (or a Jew or Christian). The animal should be put down on the ground (or held if it is small) and its throat should be slit with a very sharp knife to make sure that the 3 main blood vessels are cut. While cutting the throat of the animal (without severing it) the person must pronounce the name of Allah or recite a blessing which contains the name of Allah, such as "Bismillah Allah-u-Akbar."

While the method bears striking similarities to Kosher slaughter rituals, what is Kosher is not Halal, and vice-versa, in the Jewish and Muslim traditions.

²Salat (or namaz) is the ritual prayer performed five times daily by an observant Muslim.

³The Special Management Unit (SMU) is defined in 103 CMR 423.06 as "[a] separate housing area from general population within institutions in which inmates may be confined for reasons of administrative segregation, protective custody, or disciplinary detention." Inmates typically stay less than three months in the SMU, but detentions for as long as a year are not unheard of. The SMU at MCI-CJ is often referred to as "Ten Block."

⁴Jum'ah is a Friday group prayer that is obligatory for Muslims.

⁵The Complaint also alleged that plaintiffs' religious beliefs were affronted by having to eat food prepared and served by non-Muslim inmates. The Complaint sought an injunctive order requiring that only Muslim inmates be permitted to prepare meals for other Muslim inmates. The court denied the request for injunctive relief, noting that the DOC's policy of assigning kitchen jobs on a nondiscriminatory basis served the compelling State

BACKGROUND

This action began with a *pro se* complaint filed in 2001 by inmates Hudson, Tyler, Antwan Crawford, Darrick Wilson, and Anthony Tucker.⁶ Named as defendants were Michael Maloney, the Commission of the DOC; Peter Allen, Superintendent of MCI-CJ; Peter Pepe, former Superintendent of MCI-CJ; Andrea Emodi, former Director of Program

interest of maintaining institutional harmony and order.

[P]laintiffs' demand, that only Muslim inmates be permitted to prepare meals for other Muslim inmates, would not under any circumstances pass the test of Turner, 482 U.S. at 89, as affirmed in a First Amendment context by Estate of Shabazz, 482 U.S. at 350-353. Under the Turner test, a prison regulation, or practice that impinges on an inmate's constitutional rights, passes muster if it is reasonably related to a legitimate penological interest. As the court [has previously] observed . . . "any special selection of inmates for food service positions based on their religious affiliation would violate the Department of Correction's policy of assigning jobs on a nondiscriminatory basis and [would] expose it to potential litigation, as well as resentment on the part of other inmates at the special treatment accorded to plaintiffs." Moreover, the Department's food service employment policy does not impinge on any constitutional right of the plaintiffs. As the Rahim affidavit explains, the Qu'ran specifically permits Muslims to consume food prepared by non-Muslims. Plaintiffs do not maintain that their desire to be served by Muslim food service workers is based on any Islamic teaching, but appears to have as its basis an expression of solidarity with Muslim [inmate] coreligionists.

Hudson v. Maloney, 326 F. Supp. 2d 206, 212 n.5 (D. Mass. 2004). The court does not understand plaintiffs to press this issue further. Plaintiffs' expert on Muslim dietary laws, Mohammad Mazhar Hussaini, testified at trial that no Islamic teaching enjoins Muslims from eating Halal food prepared and served by non-Muslims so long as it is prepared in conformity with Islamic dietary laws. Hudson could not identify any religious basis for his beliefs about non-Muslim kitchen workers. Tyler, in his testimony at trial, did not appear to share Hudson's aversion to being served meals prepared by non-Muslims.

⁶On October 18, 2002, the court dismissed the claims of Tucker and Wilson for want of prosecution pursuant to Fed. R. Civ. P. 41(b). Antawn Crawford was released from DOC custody on January 16, 2003, and was terminated as a party on March 29, 2004.

Services; and Sherry Elliot, Director of Treatment at MCI-CJ. On March 29, 2004, the court entered an order denying plaintiffs' request for interim injunctive relief. On May 12, 2004, defendants filed a motion for summary judgment.⁷ On July 23, 2004, the court issued a Memorandum and Order finding defendants exempted by qualified and official immunity from any claims for monetary damages. Hudson, 326 F. Supp. 2d at 214. The court further determined that under the test of Turner v. Safley, 482 U.S. 78 (1987),⁸ plaintiffs were not entitled to relief as a matter of law with regard to the DOC's ban on prayer rugs or its policy of assigning prisoners to kitchen service jobs on a nondiscriminatory basis. However, the court found that a triable issue of fact existed as to whether the DOC's refusal to provide Halal meals to Muslim inmates constituted an undue burden on plaintiffs' exercise of their religious beliefs. The court did not address plaintiffs' claims regarding Jum'ah services. The court then appointed counsel to represent plaintiffs.⁹ Newly appointed counsel thereafter, on May 26, 2005, filed an Amended Complaint.¹⁰

⁷No opposition to the motion was filed by plaintiffs. They instead filed a motion on May 25, 2004, seeking to stay a decision on defendants' motion until the completion of discovery.

⁸Under Turner, a prison regulation or practice that impinges on an inmate's constitutional rights must be reasonably related to a legitimate penological interest.

⁹The court commends plaintiffs' counsel, the law firm of McDermott Will & Emery, for agreeing to take on this important case without any assurance of being compensated for its efforts.

¹⁰The Amended Complaint dismissed all individual defendants with the exception of Commissioner Dennehy, who is named in her official capacity only.

The Amended Complaint, in addition to First and Fourteenth Amendment free exercise and equal protection claims, pled new causes of action under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc-1(a) (RLUIPA), the State Civil Rights Act, Mass. Gen. Laws ch. 12, § 11, and the Inmate Right of Worship Statute, Mass. Gen. Laws ch. 127, § 88, and related regulations. Discovery then proceeded.

On April 14, 2006, plaintiffs filed a motion urging the court to revisit the prayer rug issue based on "newly discovered" evidence. After a hearing, on August 31, 2006, the court granted plaintiffs' motion for reconsideration, thereby framing the three issues to be decided at trial: whether the DOC's refusal to provide regular Halal meals, its ban on traditional prayer rugs, and its refusal to permit inmates in the SMU to participate in Jum'ah services, substantially and unjustifiably burdened plaintiffs' exercise of their religious rights. In January of 2007, a six-day non-jury trial was held. Final arguments were heard in February of 2007. The parties were then given leave to file further pleadings.

Defendant's Motion for Judgment on Partial Findings

At the close of plaintiffs' case, Commissioner Dennehy filed a "motion for judgment on partial findings," arguing that all but one (the Halal meal issue) of plaintiffs' three claims were barred by the Prison Litigation Reform Act, 42 U.S.C. § 1997(e) (PLRA). The Commissioner contended that plaintiffs had failed to exhaust their administrative remedies as required by the PLRA. More specifically, she claimed that plaintiffs had failed to make a direct presentment of their religious grievances to the DOC's Religious Services Review Committee (RSRC) (they filed their grievances instead with the Superintendent of MCI-CJ),

and had failed to use the proper Religious Service Request Form (RSRF) (they used the standard prisoner grievance form instead). The Commissioner argued that these procedures are mandated by the DOC's Religious Services Handbook (Handbook). The Handbook contemplates a process by which a request regarding the accommodation of a religious practice is first considered by the RSRC, which then forwards a recommendation to the Commissioner for a final determination. The court provisionally denied the motion, but deferred a final ruling until after the close of evidence and an opportunity for plaintiffs to reply to the newly asserted jurisdictional claim.

The Commissioner's exhaustion argument is unpersuasive. She does not dispute that Hudson and Tyler submitted repeated grievances regarding Halal meals, prayer rugs, and access to Jum'ah services. She also concedes that the DOC never distributed the Handbook to inmates, and moreover, that the Handbook was created to give guidance to prison administrators and not to inmates seeking to file grievances. Finally, the record shows that Dennehy's predecessor, Commissioner Michael Maloney, denied Hudson's and Tyler's three requests for accommodation, even though two of the requests were never formally reviewed by the RSRC. If the Commissioner failed to follow the procedures outlined in the Handbook, it is difficult to fault plaintiffs for failing to do better. See Shaheed-Muhammad v. DiPaolo, 393 F. Supp. 2d 80, 96-97 (D. Mass. 2005). Consequently, the Commissioner's motion for judgment on partial findings will be DENIED.

FINDINGS OF FACT

The following findings of fact are drawn from the evidence and testimony adduced at trial as well as from the stipulations entered prior to trial by the parties.

1. Plaintiff Mac S. Hudson is serving a lengthy custodial sentence at MCI-CJ. At various times, Hudson has been confined in the SMU.

2. Plaintiff Derick Tyler is serving a lengthy custodial sentence at MCI-CJ. At various times, Tyler has been confined in the SMU.

3. Defendant Kathleen Dennehy was at the time of the filing of the Amended Complaint the Commissioner of the DOC.¹¹

4. MCI-CJ is a maximum security prison owned and managed by the DOC, a department of the Commonwealth of Massachusetts. The prison is located in South Walpole, Massachusetts.

5. The DOC receives federal financial assistance.

6. Plaintiffs Hudson and Tyler belong to the Nation of Islam¹² and regard themselves as members of the worldwide Muslim community (umma). They subscribe to the teachings of the Qur'an as revealed by the Prophet Muhammad and by Elijah Muhammed. These teachings include dietary laws specifying the foods that a Muslim is

¹¹Dennehy has since been succeeded as Commissioner by Harold W. Clarke.

¹²The Nation of Islam was founded in 1930 in Detroit, Michigan, by Wallace Fard Muhammad. Elijah Muhammad was an early convert who came to preach that W. Fard Muhammad was God (Allah) incarnate. The Nation of Islam adheres to the Five Pillars of orthodox Muslim practice: Shahada (the profession of faith), salat, zakat (charitable tithing), the observance of Ramadan, and for those who are able, the duty to make Hajj (the pilgrimage to Mecca). The Nation of Islam also subscribes to Islamic dietary restrictions, including the ban on consumption of pork and alcohol. The Nation of Islam differs from orthodox Islam in, among other beliefs, its championing of the racial superiority of blacks, its belief that Allah manifested himself in the person of W. Fard Muhammad, and its belief that Elijah Muhammad succeeded the Prophet Muhammad as the messenger of Allah.

permitted to eat (Halal) and those that are forbidden (haram).¹³ Plaintiffs also believe that traditional prayer rugs should be used in performing salat and that they are obligated to participate in the weekly Jum'ah services. The court has previously found that plaintiffs' beliefs, while deviating from those of orthodox Islam, are sincerely held. The Commissioner does not challenge this finding.

7. The DOC permits Muslim inmates to fast during the month of Ramadan,¹⁴ to celebrate the two annual feasts of Eid,¹⁵ to pray five times daily (salat) using a "prayer towel,"¹⁶ to wear a kufi (skull cap), and to possess prayer beads, prayer oil, and a Qur'an. The DOC provides Halal meat for the Eid feasts.

8. The DOC houses over 10,000 inmates who are served three meals daily. The DOC offers four basic menus: the regular menu, which does not include pork or pork

¹³There are six basic categories of food that Islam defines as haram: alcohol, blood, carnivorous animals and birds of prey, carrion, animals sacrificed to a deity other than Allah, and swine. Plaintiffs to differing degrees subscribe to the additional dietary restrictions espoused by Elijah Muhammad. These include a ban on the consumption of wheat, corn, large beans, and any fish that weighs in excess of fifty pounds. While Hudson testified that he believes it "sinful" for a Muslim not to eat meat, he could articulate no religious basis for this conviction. Tyler is a vegetarian and does not eat meat of any kind.

¹⁴During Ramadan (the ninth month of the Islamic lunar calendar), Muslims are required to abstain from eating, drinking, or smoking from before sunrise until after sunset.

¹⁵Eid is an Arabic word meaning festival. The Feast of Eid al-Fitr marks the end of Ramadan. The Feast of Eid al-Adha celebrates the end of the Hajj pilgrimage and is the holiest of Muslim religious holidays.

¹⁶The "prayer towel" is a 22" by 43" white cotton bath towel issued by the DOC with the word "PRAYER" inscribed on its fringe in black marker ink.

by-products; an alternative vegetarian menu;¹⁷ a Kosher menu; and a medical menu (which requires a doctor's prescription). All of the menus, including the alternative vegetarian menu, are served in twenty-one day cycles. Pork products are not permitted in any of the DOC's institutional kitchens.

9. The meals comprising the four menus are prepared under the supervision of a registered dietician. They meet the Recommended Dietary Allowance (RDA) standards of the Food and Nutrition Board, the National Academy of Sciences, the National Resource Council, and the American Correctional Association. The alternative vegetarian menu contains meatless items made of wheat, soy, and other vegetable products that provide RDA nutritional values comparable to those of the meat-inclusive menus.¹⁸

10. The DOC offers daily Kosher meals, including meat, to Jewish inmates who request a Kosher diet. The DOC provides the alternative vegetarian diet to Muslim inmates who request it. The DOC does not offer Muslim inmates a strictly Halal diet. The DOC provides Muslim inmates with Halal meat during the Feasts of Eid.

¹⁷The alternative vegetarian menu was introduced by the DOC in 2000 to accommodate inmates who for religious or personal reasons eschew meat. It was not specifically designed to meet the dietary needs of Muslim inmates.

¹⁸Plaintiffs do not challenge the nutritional sufficiency of the four menu offerings. Plaintiffs' expert, Mohammad Mazhar Hussaini, testified that the menus, including the vegetarian alternative, are nutritionally adequate. He also agreed that nothing in Islam requires a Muslim to eat meat. He testified, however, that a vegetarian diet is not necessarily Halal, as certain non-meat products, such as peanut butter and yoghurt, are processed with non-Halal additives.

11. The number of Muslims in the Massachusetts prison population far exceeds the number of Jewish inmates. At present, there are no Jewish inmates at MCI-CJ who are served Kosher meals.

12. Jewish dietary laws require that Kosher food be prepared using dedicated pots, pans, plates, bowls, and utensils. Different sets of cookware must be used to prepare meat dishes and dairy products.

13. Muslim dietary laws have similar rules intended to prevent the "cross-contamination" of food.

14. Former Commissioner Michael Maloney denied Tyler's and Hudson's requests to be served Halal meals after receiving a negative recommendation from the RSRC.

15. Pre-prepared Halal meals are commercially available, although at three times the cost of Kosher meals and at five to ten times the cost of the regular prison menu or the vegetarian alternative. However, the DOC's decision not to offer Halal meals was not influenced by considerations of price. According to Deputy Superintendent Timothy Hall, the sole basis for the decision was a concern that non-Muslim inmates might resent any special treatment accorded to Muslim inmates.¹⁹

16. Other prison systems, including the Federal Bureau of Prisons, provide Halal meals to Muslim inmates. The DOC presented no evidence that these prison systems have experienced disruption or conflict among inmates as a result.

¹⁹Deputy Superintendent Hall testified that friction resulted from the DOC's decision to offer Kosher meals to Jewish prisoners, but he could recall only one actual incident during his many years at the DOC.

17. DOC regulations prohibit inmates confined in a SMU from participating personally in group religious services or other group activities.

18. The DOC does not broadcast Jum'ah services over closed-circuit television to SMU inmates on Ten Block at MCI-CJ. There are no technical obstacles that prevent the DOC from doing so.

19. The Departmental Disciplinary Unit (DDU) at MCI-CJ is defined in 103 CMR 430.06 as a segregated unit in a restricted area designated by the Commissioner in which an inmate who has received a sentence recommended by a Special Hearing Officer after a disciplinary hearing is confined.

20. The DOC broadcasts Jum'ah services over closed-circuit television to inmates confined in the DDU at MCI-CJ.

21. DOC property regulations, 103 CMR 403.00 et seq., place strict limits on the types of personal property that inmates may keep in their cells. The DOC does not permit inmates to possess prayer rugs because of a concern that their bulk and decorative fringes might facilitate the concealment of weapons and other contraband.

22. Neither the DOC's ban on traditional prayer rugs, nor its requirement that inmates use prayer towels as a substitute, has prevented Hudson and Tyler from performing salat.

RULINGS OF LAW

1. RLUIPA provides that

[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general

applicability, 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(a)

2. As the First Circuit explained in Spratt v. Rhode Island Dep't of Corrs., 482 F.3d 33 (1st. Cir. 2007), “[a] claim under RLUIPA includes four elements. On the first two elements, (1) that an institutionalized person’s religious exercise has been burdened and (2) that the burden is substantial, the plaintiff bears the burden of proof. . . . Once a plaintiff has established that his religious exercise has been substantially burdened, the onus shifts to the government to show (3) that the burden furthers a compelling governmental interest and (4) that the burden is the least restrictive means of achieving that compelling interest.” Id. at 38.

3. RLUIPA should be applied with particular sensitivity when security concerns are legitimately at issue. “It bears repetition . . . that prison security is a compelling state interest, and that deference is due to institutional officials’ expertise in this area.” Spratt, 482 F.3d at 39, quoting Cutter v. Wilkinson, 544 U.S. 709, 725 n.13 (2005). See also Longoria v. Dretke, 507 F.3d 898, 904 (5th Cir. 2007); Washington v. Klem, 497 F.3d 272, 283 (3d Cir. 2007). Cf. Johnson v. California, 543 U.S. 499 (2005) (“necessities of prison security and discipline” are a compelling government interest in justifying narrowly tailored racial classifications).

4. RLUIPA does not confer "privileged status on any particular sect, and singles out no bona fide faith for disadvantageous treatment." Cutter, 544 U.S. at 724. The statute does not permit a court to determine whether the belief or practice in question is "compelled by, or central to, a system of religious belief." A plaintiff, however, must establish that the exercise forms a legitimate part of his or her profession of faith. 42 U.S.C. § 2000cc-5(7)(a). The statute in this regard does not preclude a court from inquiring into the sincerity of an inmate's professed beliefs. Cutter, 544 U.S. at 725 n.13.

5. The statute does not define "substantial burden." However, Supreme Court precedent identifies the existence of such a burden when government puts "substantial pressure on an adherent to modify his behavior and to violate his beliefs" Thomas v. Review Bd. of Indiana Employment Sec. Div., 450 U.S. 707, 718 (1981); see Spratt, 482 F.3d at 38 (assuming, *arguendo*, that the Thomas standard is generally applicable).²⁰

²⁰The First Circuit has yet to offer a conclusive definition of a "substantial burden." Other circuits have adopted formulations of the Thomas standard or the slightly stricter standard suggested in Sherbert v. Verner, 374 U.S. 398, 404 (1963) (a substantial burden exists when an adherent is forced "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept [a benefit], on the other hand."). See Lovelace v. Lee, 472 F.3d 174, 187 (4th Cir. 2006) (a substantial burden "occurs when a state or local government, through act or omission, 'put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.'"), quoting Thomas, 450 U.S. at 718; Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004) ("[A] substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct."); Adkins v. Kaspar, 393 F.3d 559, 570 (5th Cir. 2004) ("[A] government action or regulation creates a 'substantial burden' on a religious exercise if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs. . . . [A] government action or regulation is significant when it either (1) influences the adherent to act in a way that violates his religious beliefs, or (2) forces the adherent to choose between, on the one hand, enjoying some generally available, non-trivial benefit, and, on the other hand, following his religious beliefs."). In practice, it is not clear that the decisional nuances in defining a substantial

"[I]ncidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs," are not affected by this standard. Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 450 (1988).

6. Once the prisoner demonstrates a substantial burden, the government must show that the disputed policy is the least restrictive means of furthering a compelling State interest.

7. A compelling State interest must be more than a colorable interest, or an interest serving the convenience of the State. "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation" Sherbert, 374 U.S. at 406, quoting Thomas v. Collins, 323 U.S. 516, 530 (1945). "Context matters' in the application of that standard." Cutter, 544 U.S. at 723, quoting Grutter v. Bollinger, 539 U.S. 306, 327 (2003). While it is beyond cavil that maintaining prison security is a compelling State interest deserving of scrupulous deference by the courts, "merely stating [that there is] a compelling interest does not fully satisfy [the government's] burden on this element of RLUIPA." Spratt, 482 F.3d at 39. Rather, prison authorities must provide some basis for their concern and the policy at issue must be narrowly tailored to further this interest by the least restrictive means possible. Klem, 497 F.3d at 283, citing Spratt, 482 F.3d at 39.

8. A "least restrictive means" is one that does not sweep "more broadly than necessary to promote the government's interest. That consideration . . . cannot be done without some evaluation of the alternative measures put in issue by the parties." Casey

burden have any practical significance.

v. City of Newport, 308 F.3d 106, 114 (1st Cir. 2002). Prison authorities, in other words, must consider and reject other plausible means before determining that the policy they implement is the least restrictive means of furthering a compelling State interest. Spratt, 482 F.3d at 41, citing Warsoldier v. Woodford, 418 F.3d 989, 999 (9th Cir. 2005). Although RLUIPA does not “require prison administrators to refute every conceivable option to satisfy the least restrictive means prong . . . their rejection [of competing alternatives] should generally be accompanied by some measure of explanation.” Spratt, 482 F.3d at 41 n.11 (internal quotations and citations omitted).

9. Evidence that the Federal Bureau of Prisons allows a religious practice that is not permitted by a state prison system is relevant to the inquiry of whether the State has chosen the least restrictive means of achieving a compelling State interest. Spratt, 482 F.3d at 42 (“[E]vidence of policies at one prison is not conclusive proof that the same policies would work at another institution. However, in the absence of any explanation by [defendant] of significant differences between [its policies] and a federal prison that would render the federal policy unworkable, the Federal Bureau of Prisons policy suggests that [the banned conduct] could be permissible without disturbing prison security.”).

ULTIMATE CONCLUSIONS OF FACT AND LAW

1. Plaintiffs’ desire to observe a Halal diet that conforms to the teachings of the Qur’an and the Nation of Islam is a “religious exercise” within the meaning of RLUIPA.
2. The DOC’s refusal to provide a daily Halal menu to Muslim inmates substantially burdens plaintiffs’ exercise of their religious beliefs by creating pressure on plaintiffs to

consume meals that do not conform with their understanding of the requirements of Islamic law.²¹

3. The DOC has failed to satisfy its burden of showing that its refusal to provide regular Halal meals furthers a compelling State interest. The DOC concedes that the added costs of providing Muslim inmates with Halal meals did not factor in its decision to refuse plaintiffs' requests. Defendant produced little if any evidence validating its assertion that serving Halal meals to Muslim inmates would ignite inmate conflict. (The Federal Bureau of Prisons has allowed inmate access to certified, pre-packaged Halal meals since 1996 without incident). If anything, the DOC's long standing practice of providing dietary accommodations to Jewish, Buddhist, and Seventh Day Adventist inmates, among others, with only one anecdotal instance of resulting friction, proves the opposite of the DOC's assertion.²²

²¹The court recognizes that other courts have reached a different conclusion. See, e.g., Allah v. Jordan-Luster, No. 04-1083, 2007 WL 2582199 (C.D. Ill. Aug. 3, 2007) (no accommodation required for a Halal diet including "ritualistically-slaughtered" meat where plaintiff acknowledged that a vegetarian diet was an adequate alternative and would not violate his faith); Spruel v. Clarke, No. C06-5021RJB, 2007 WL 1577729 (W.D. Wash. May 31, 2007) (denial of Halal meat did not burden plaintiff's religious exercise); Pratt v. Corrs. Corp. of Am., No. 03-3259, 2006 WL 2375656 (D. Minn. Aug. 16, 2006) ("Plaintiff has failed to present any evidence that he must receive all foods that are Halal in order to fulfill his religion or that receiving [H]alal meat is a central tenet of his religion."). RLUIPA, however, specifically bars inquiry into whether a particular religious exercise is "compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(a). While not perhaps a compelling distinction, these cases focused on plaintiffs' desire to be provided with Halal meat. Plaintiffs' Amended Complaint is focused more on obtaining a Halal menu consistent with their beliefs, than with demands for specific items of food, like meat.

²²It is worth noting that Congress has already identified a prison's refusal to provide a Halal diet as an "egregious and unnecessary" restriction on an inmate's religious liberty. Cutter, 544 U.S. at 716. "The hearings held by Congress revealed, for a typical example, that 'a state prison in Ohio refused to provide Moslems with Halal food, even though it

4. The "alternative vegetarian" diet is not a satisfactory substitute as it does not in many significant respects conform to plaintiffs' sincerely held religious beliefs.

5. As with Kosher foods, there are available vendors willing and able to provide pre-packaged Halal-certified meals in quantities sufficient to serve the 50 to 90 Muslim inmates at MCI-CJ that Acting Superintendent Marshall estimated might request such meals.

6. Although prayer rugs are often used in the Muslim prayer ritual, Hudson and Tyler have failed to establish that the use of a prayer towel substantially burdens their ability to perform salat. Moreover, this issue has been definitively and authoritatively addressed by the Massachusetts Supreme Judicial Court. See Rasheed v. Comm'r of Corr., 446 Mass. 463, 473-474 (2005) (the DOC's policy of providing inmates with a prayer towel rather than permitting the use of a prayer rug does not violate an inmate's rights under the Free Exercise Clause of art. 16 of the Massachusetts Declaration of Rights); Ahmad v. Dep't of Corr., 446 Mass. 479, 486 (2005) (same, First Amendment and RLUIPA).²³ "The purpose of the prayer rug is to ensure that [its user] is not in direct contact with the impurities of the floor when he prays. The record establishes that purpose is satisfied by the use of a prayer towel that is comparable in size, other than thickness (an

provided Kosher food." Id. at 716 n.5.

²³Other courts have reached the same conclusion. See, e.g., Mohammad v. Beard, No. 05-580, 2007 WL 1439051, at *10 (W.D. Pa. May 16, 2007) ("Here, the court finds that Plaintiff has not met his burden to demonstrate that denial of a prayer rug imposes a substantial burden on his religious belief. . . . [A] prayer rug is not essential to Plaintiff praying, rather, the essential requirement for Plaintiff to pray is that the area on which he prays be clean. Hence, a clean towel or linen can suffice or even a cleaned floor. Nor has Plaintiff shown that this is not the case.") (internal citations omitted).

irrelevant characteristic) to a prayer rug.” Rasheed, 446 Mass. at 473. This court is fully in agreement with the Supreme Judicial Court on this issue.

8. Participating in the Jum’ah service is a religious exercise within the meaning of RLUIPA.

9. The DOC’s ban on participation in Jum’ah services by inmates confined in the SMU (Ten Block) substantially burdens plaintiffs’ practice of a core tenet of their faith.

10. The DOC’s ban on personal participation in Jum’ah services by inmates confined in Ten Block serves the compelling State interest of rehabilitating prisoners and promoting good order. Inducing prisoners to comply with prison rules by limiting certain liberties is consistent with this interest. Cutter, 544 U.S. at 722-723 (“While [RLUIPA] adopts a compelling governmental interest standard, context matters in the application of that standard. Lawmakers supporting RLUIPA were mindful of the urgency of discipline, order, safety, and security in penal institutions.”) (internal quotations and citations omitted).

11. The ban on participation by Ten Block inmates in Jum’ah services by closed-circuit television is not the least restrictive means of vindicating the compelling State interest at issue. To the extent that the State seeks to promote order through discipline, denial of the privilege of personal participation in Jum’ah services adequately serves that interest. Moreover, the DOC has not suggested any meaningful distinction between inmates confined in the DDU, who are permitted closed-circuit access to Jum’ah services, and inmates in the SMU, who are not.²⁴

²⁴As previously indicated, the DOC does not contend that there is any technical reason that prevents the broadcast of Jum’ah services by closed-circuit television to Muslim inmates in Ten Block.

ORDER

For the foregoing reasons, the court will enter judgment in part for plaintiffs. The Commissioner's motion for judgment on partial findings is DENIED. The court will grant plaintiffs' prayers for declaratory judgment on the issues of Halal meals and closed-circuit television access to Jum'ah services while confined in Ten Block. Judgment will enter for defendant on the prayer rug issue.²⁵ No money damages are awarded. Plaintiffs will within ten (10) days of date of the entry of this Order file a Proposed Form of Final Judgment. Defendant will have seven (7) days thereafter to comment. On entry of Final Judgment, the Clerk may close the case. The court will, however, retain jurisdiction to oversee the implementation of any remedial aspects of the Judgment.²⁶

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

²⁵The Amended Complaint also seeks a declaration enjoining the DOC from requiring plaintiffs to register their Muslim religious faith prior to attending or witnessing Jum'ah services. No evidence that the DOC in fact imposes such a requirement was offered by plaintiffs at trial.

²⁶Plaintiffs' counsel may submit a petition for an award of attorneys' fees in due course properly segregating compensable from noncompensable claims and supported by appropriately documented billing records. See Grendel's Den, Inc. v. Larkin, 749 F.2d 945, 952 (1st Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-12145-RGS

MAC S. HUDSON and
DERICK TYLER

v.

KATHLEEN DENNEHY, in her
official capacity as Commissioner of
the Massachusetts Department of
Corrections

April 11, 2008

FINAL JUDGMENT

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

JURISDICTION

1. The Court has jurisdiction over the subject matter and the parties in this action.

APPLICABILITY

2. This Final Judgment applies to the named Defendant in her official capacity as Commissioner of the Massachusetts Department of Corrections (the "DOC") and shall be equally binding on her successors, agents, officials, employees, representatives, and assigns, including, Harold W. Clarke, in his official capacity as the current Commissioner of the DOC.

DEFINITIONS

3. "DOC" shall mean the Massachusetts Department of Corrections.
4. "Halal meals" shall mean meals and food products, whether meat or vegetarian, whose ingredients, processing, preparation, and packaging meet the dietary requirements

of Islam and have been certified by a reputable Halal-certifying organization such as the Islamic Food and Nutrition Council of America or the Islamic Society of North America.

5. "Pre-packaged Halal meals" shall mean self-contained Halal meals that have been packaged and sealed by the meal's manufacturer and which require only opening and heating before serving.

6. "Jum'ah Services" shall mean the Friday Islamic prayer service conducted by an Imam on behalf of a community of Muslims.

7. "Closed Circuit Television" shall mean a television that is connected to a closed circuit or internal broadcast system and that is capable of displaying live television feeds, including sound and images, from another location within the system.

8. "Special Management Units" shall mean separate housing areas apart from the general population within DOC institutions in which inmates are confined for reasons of administrative segregation, protective custody, or disciplinary detention.

9. "Ten Block" is the name commonly used to describe the Special Management Unit at the DOC's MCI-Cedar Junction facility.

10. "Prayer Towel" shall mean a towel designated by the DOC solely for use by Muslim inmates in performing ritual daily prayers.

DECLARATORY AND PROSPECTIVE PROVISIONS

11. The Court declares that Defendant's failure to provide Plaintiffs with daily Halal meals: (i) creates a substantial burden on Plaintiffs' sincere religious beliefs; (ii) is not justified by a compelling governmental interest; and (iii) is in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc-1(a).

12. The Court declares that Defendant's refusal to provide Plaintiffs with Halal meals that are prepared and served exclusively by Muslim food workers does not violate RLUIPA, 42 U.S.C. § 2000cc-1(a), as: (i) Plaintiffs have failed to satisfy their burden of showing that the preparation and service of Halal meals by non-Muslims burdens any legitimate Islamic religious exercise; and (ii) Defendant has demonstrated that the policy of assigning kitchen jobs on a nondiscriminatory basis serves a compelling governmental interest in maintaining institutional harmony and order.

13. The Court declares that Plaintiffs have not met their burden of showing that Islamic dietary rules require the consumption of Halal meat and that any failure by DOC to offer a choice of Halal meat with every meal would not violate RLUIPA, 42 U.S.C. § 2000cc-1(a).

14. The Court declares that Defendant's refusal to permit Plaintiffs to participate personally in weekly Jum'ah Services while confined in the Special Management Unit serves a compelling governmental interest in rehabilitating inmates and promoting order and does not therefore violate RLUIPA, 42 U.S.C. § 2000cc-1(a).

15. The Court declares that Defendant's refusal to provide Plaintiffs with access to weekly Jum'ah services via closed circuit television while confined in Ten Block is not the least restrictive means of serving any compelling governmental interest, and therefore violates RLUIPA, 42 U.S.C. § 2000cc-1(a).

16. The Court declares that DOC's practice of providing Plaintiffs with prayer towels in lieu of prayer rugs does not create a substantial burden on Plaintiffs' religious beliefs, and therefore does not violate RLUIPA, 42 U.S.C. § 2000cc-1(a).

17. Within ninety (90) days of the date of entry of this Judgment, Defendant shall (i) procure pre-packaged Halal meals that have been certified by a reputable Halal-certifying organization, such as the Islamic Food and Nutrition Council of America or the Islamic Society of North America; and (ii) thereafter provide such pre-packaged Halal meals to Plaintiffs at each regularly-scheduled meal for the duration of their incarceration; or (iii) shall implement an alternative method of providing daily Halal meals to Plaintiffs, including the preparation of such meals in DOC kitchens using Halal products and procedures certified by a reputable Halal-certifying organization such as the Islamic Food and Nutrition Council of America or the Islamic Society of North America.

18. Whenever Plaintiffs are housed in the Special Management Unit, Defendant shall provide access to a closed circuit television set that displays, through sound and images, a live broadcast of such communal Jum'ah services as are regularly held on each and every Friday for the duration of their incarceration (absent a legitimate emergency or the unavailability of an authorized Imam, in which case Defendant may broadcast pre-recorded Jum'ah services). Defendant will have thirty (30) days from the date of entry of this Judgment to comply with this provision.

18. Within ninety (90) days of the date of entry of this Judgment, Defendant shall establish policies, practices, and procedures to bring the DOC into full compliance with this Judgment.

19. Within ninety (90) days of the entry of this Judgment, Defendant shall certify to this Court that the DOC has complied with all provisions of this Judgment and shall describe each remedial action taken.

RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Judgment to apply to the Court for: (i) such further orders or directions as may be necessary or appropriate for the interpretation or implementation of this Judgment; (ii) for the modification of the injunctive provisions of this Judgment; and (iii) for Plaintiffs to apply to the Court for the enforcement of any provision or the punishment of any violation of this Judgment.

21. This Judgment shall take effect immediately upon its entry.

22. The Clerk is ordered to enter this Judgment forthwith.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAC HUDSON and DERRICK TYLER,

Plaintiffs,

v.

C.A. No. 01-12145-RGS

KATHLEEN M. DENNEHY,

Defendant.

DEFENDANT'S REQUEST FOR CLARIFICATION OF FINAL JUDGMENT

Defendant, through counsel, hereby submits this request for clarification from the Court regarding the Final Judgment issued on April 11, 2008. Defendant seeks clarification from the Court with regard to paragraph 18 of the Final Judgment. Paragraph 18 of the Final Judgment provides:

Whenever Plaintiffs are housed in the Special Management Unit, Defendant shall provide access to a closed circuit television set that displays, through sound and images, a live broadcast of such communal Jum'ah services as are regularly held on each and every Friday for the duration of their incarceration (absent a legitimate emergency or the unavailability of an authorized Imam, in which case Defendant may broadcast prerecorded Jum'ah services). Defendant will have thirty (30) days from the date of entry of this Judgment to comply with this provision.

Specifically, Defendant requests that the Court provide clarification as to whether the phrase "the Special Management Unit" found in the first line of paragraph 18 of the Final Judgment refers solely to Ten Block, MCI-Cedar Junction's Special Management Unit, or whether the phrase is intended to include any and all Special Management Units maintained by the Department of Correction in any of its institutions.

Defendant seeks clarification with regard to paragraph 18 in light of the determination in

paragraph 15 of the Final Judgment finding that Defendant's refusal to provide Plaintiffs with access to weekly Jum'ah services via closed circuit television while confined in Ten Block violated RLUIPA. Also, where plaintiffs' request for access to Jum'ah services was limited to their confinement to Ten Block, and the evidence presented at trial did not address the technological and other obstacles regarding closed circuit television broadcasts in other Special Management Units, but was limited to the availability of closed circuit television broadcasts in MCI Cedar Junction's Ten Block and Departmental Disciplinary units. See Defendant's Memorandum of Law in Support of Defendant's Proposed Final Judgment and in Opposition to Plaintiffs' Proposed Final Judgment at 4.

Accordingly, Defendant respectfully requests that the Court clarify paragraph 18 of the Final Judgment by adding the words "in Ten Block" after the phrase "the Special Management Unit" to limit the applicability of that paragraph to the Special Management Unit at MCI-Cedar Junction.

Dated: April 16, 2008

Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Richard C. McFarland
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on 04/16/08.

/s/ Richard C. McFarland
Richard C. McFarland

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAC. S. HUDSON and
DERICK TYLER,

Plaintiffs,

v.

KATHLEEN DENNEHY, in her
official capacity as Commissioner of
the Massachusetts Department of
Corrections,

Defendant.

CIVIL ACTION
NO. 01-12145-RGS

**RESPONSE TO DEFENDANT'S REQUEST FOR
CLARIFICATION OF FINAL JUDGMENT**

Plaintiffs Mac S. Hudson and Derick Tyler submit this response to Defendant's request for clarification of the Court's April 11, 2008 entry of Final Judgment.¹ Defendant seeks clarification as to whether "the Special Management Unit" refers only to "Ten Block," the Special Management Unit ("SMU") at MCI/Cedar Junction, or whether it refers to any SMU where Plaintiffs reside within the Department of Corrections (the "DOC"). Plaintiffs assume the Court meant "Special Management Unit" to mean units "within DOC institutions," as it is defined in paragraph 8 of the Final Judgment, and not simply "Ten Block," which is separately and narrowly defined. *See* Final Judgment ¶¶ 8, 9.

¹ The request revolves around Paragraph 18 of the Final Judgment, which reads:

"Whenever Plaintiffs are housed in the Special Management Unit, Defendant shall provide Plaintiffs with closed circuit television sets that displays, through sound and images, a live broadcast of such communal Jum'ah services as are regularly held on each and every Friday for the duration of their incarceration (absent a legitimate emergency or the unavailability of an authorized Imam, in which case Defendant may broadcast prerecorded Jum'ah services). Defendants will have thirty (30) days from the date of entry of this Judgment to comply with this provision." Final Judgment, ¶ 18.

To limit Paragraph 18 to “Ten Block” would be an ineffectual gesture as far as Plaintiff Hudson is concerned. While Plaintiffs were housed at MCI-Cedar Junction through most of this litigation, the DOC has transferred Mr. Hudson to OCCC, a medium security facility within the DOC located in Bridgewater, MA. As with MCI-Cedar Junction, OCCC has an SMU that is “separate from the general population” and confines inmates “for reasons of administrative segregation, protective custody, or disciplinary detention.” See Final Judgment ¶ 8. Unless the injunction in Paragraph 18 is read to include the SMU at OCCC, the DOC would never have to broadcast Jum’ah services to Mr. Hudson if he were ever placed within the SMU. In fact, Mr. Hudson would have no recourse other than filing the appropriate grievances with the DOC and instituting a new civil action. As with Mr. Hudson, the DOC could transfer Mr. Tyler from MCI-Cedar Junction at any time, thus allowing the DOC to sidestep the Court’s injunction altogether. Thus, the narrow reading that Defendant Proposes could leave Plaintiffs with no meaningful injunctive relief despite their successful litigation.

This Court has declared that a failure to provide live broadcasts of Jum’ah services constitutes a substantial burden on Plaintiffs’ sincere religious beliefs.² See Final Judgment ¶ 15. The same burden exists whether Plaintiffs are in Ten Block or in another SMU within the DOC. An injunction that encompasses an SMU in any DOC facility where Plaintiffs are housed is well within the Court’s discretion. See Final Judgment ¶ 8. Indeed, a district court has broad discretion to fashion an injunction to suit the circumstances in the particular case. See *Copy Cop v. Task Printing*, 908 F. Supp. 37,

² The Defendant suggests that the existence or lack of wiring in other facilities could possibly create a compelling interest if presented at trial. At most, including the proper wiring would be a minimal cost to the DOC and would not rise to a compelling interest under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). 42 U.S.C. §§ 2000cc, et seq..

48 (D. Mass. 1995)(citing *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S. Ct. 587, 591, 88 L. Ed. 754 (1944) ("The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.")). Thus, for the Court's injunction to be effective – especially as it relates to Mr. Hudson – Paragraph 18 should be read to include SMUs in any facility within the DOC where Plaintiffs are incarcerated.

Respectfully Submitted,

MAC S. HUDSON and DERICK TYLER

By their attorneys,

/s/ Neal E. Minahan

Michael Kendall (BBO #544866)

Neal E. Minahan (BBO#661371)

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Dated: April 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all the registered participants identified on the Notice of Electronic Filing.

/s/ Neal E. Minahan

Neal E. Minahan

BST99 1569704-1.009962.0179

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-12145-RGS

MAC S. HUDSON and
DERICK TYLER

v.

KATHLEEN DENNEHY, in her
official capacity as Commissioner of
the Massachusetts Department of Corrections

CLARIFICATION OF FINAL JUDGMENT

April 28, 2008

STEARNS, D.J.

Defendant seeks clarification of the Final Judgment issued by the court on April 11, 2008. In particular, defendant is uncertain whether the Department of Correction (DOC) must, under the terms of the court's Final Judgment, provide Muslim inmates access to closed circuit television broadcasts of Jum'ah services in all Special Management Units (SMU), or provide such access only to plaintiffs when they are housed in the SMU at MCI-Cedar Junction (Ten Block).

As this case was not filed as a class action (although it might behoove the DOC to treat it as such to avoid unnecessary future litigation), the court's Final Judgment encompasses only plaintiffs and their access to live broadcasts of Jum'ah services while confined in Ten Block or any other similarly situated SMU at other DOC facilities where plaintiffs might in the future be confined.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAC HUDSON,
DERRICK TYLER,

Plaintiffs,

v.

C.A. No. 01-12145-RGS

KATHLEEN M. DENNEHY,

Defendant.

**DEFENDANT'S MOTION FOR RECONSIDERATION
OF FINAL JUDGMENT WITH REGARD TO
BROADCAST OF JUM'AH SERVICES IN SPECIAL
MANAGEMENT UNITS OTHER THAN TEN BLOCK**

Defendant, through counsel, hereby moves this Court to reconsider its Order for Final Judgment requiring the Massachusetts Department of Correction ("DOC") to provide plaintiffs with access to live closed-circuit television broadcasts of Jum'ah services when confined to any Special Management Unit ("SMU") maintained in any DOC facility. Defendant asserts that reconsideration of the final judgment concerning plaintiffs' access to live closed-circuit television broadcasts of Jum'ah services while confined in any SMU is necessary where the evidence at trial regarding the DOC's ability to provide plaintiffs with access to live closed-circuit television broadcasts of Jum'ah while confined to a SMU was strictly limited to the availability of live broadcasts in MCI-Cedar Junction's SMU, also known as Ten Block. Accordingly, defendant requests the Final Judgment be modified to restrict its application to Ten Block. Defendant notes that additional evidence with regard to the availability of broadcasts from other SMU's would show significant impediments to such broadcasts. In the alternative, defendant requests the opportunity to present evidence with regard to the specific obstacles confronting the DOC with regard to providing live closed-circuit

television broadcasts of Jum'ah services in any SMU where plaintiffs may be confined, other than Ten Block at MCI-Cedar Junction.

INTRODUCTION

In its March 5, 2008 decision, this Court determined that the DOC's failure to provide plaintiffs with access to live closed-circuit television broadcasts of Jum'ah services while confined in MCI-Cedar Junction's Ten Block unit substantially burdened their exercise of religious beliefs in violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *Hudson, et al., v. Dennehy*, __ F.Supp.2d __, 2008 WL 587967 (D. Mass. March 5, 2008). On April 11, 2008, this Court entered Final Judgment on the issue of plaintiffs' access to access to closed-circuit television broadcasts of Jum'ah services in MCI-Cedar Junction's Ten Block unit, stating

Whenever Plaintiffs are housed in the Special Management Unit, Defendant shall provide access to a closed-circuit television set that displays, through sound and images, a live broadcast of such communal Jum'ah services as are regularly held on each and every Friday for the duration of their incarceration (absent a legitimate emergency or the unavailability of an authorized Imam, in which case Defendant may broadcast pre-recorded Jum'ah services). Defendant shall have thirty (30) days from the entry of this Judgment to comply with this provision.

Final Judgment, ¶ 18.

On April 16, 2008, defendant filed a Motion for Clarification regarding whether this Court intended its Final Judgment on the issue of plaintiffs' access to closed-circuit television broadcasts of Jum'ah services while confined in an SMU to be limited to MCI-Cedar Junction's Ten Block unit. On April 28, 2008, this Court issued its Clarification of Final Judgment, indicating that the Final Judgment regarding plaintiffs' access to closed circuit television broadcasts of Jum'ah services while confined in an SMU "encompasses only plaintiffs and their access to live broadcasts of Jum'ah services while confined in Ten Block or any other similarly situated SMU at other DOC facilities

where plaintiffs might in the future be confined.” *See* Clarification of Final Judgment.

SMU’s in other institutions are not similarly situated to Ten Block insofar as the ability to broadcast Jum’ah services is concerned, and defendant’s Motion for Reconsideration should be granted. Alternatively, additional evidence should be permitted as to the specific obstacles faced by the defendant in complying with the Court’s clarified Final Judgment.

ARGUMENT

I. UPON RECONSIDERATION, THIS COURT SHOULD LIMIT FINAL JUDGMENT WITH REGARD TO CLOSED-CIRCUIT BROADCASTS OF JUM’AH SERVICES TO THE TEN BLOCK UNIT OF MCI-CEDAR JUNCTION WHERE THE EVIDENCE AT TRIAL FOCUSED ENTIRELY ON THAT UNIT. ALTERNATIVELY, DEFENDANT SHOULD BE PERMITTED TO INTRODUCE EVIDENCE REGARDING THE OBSTACLES TO PROVIDING CLOSED-CIRCUIT BROADCASTS OF JUM’AH SERVICES TO PLAINTIFFS IF THEY ARE HOUSED IN OTHER SMU’S.

This Court should reconsider its April 11, 2008 Order for Final Judgment providing plaintiffs with access to live closed-circuit television broadcasts of Jum’ah services in any SMU to which they may be confined in the future, with the exception of Ten Block.

First, it was not made clear to the defendant prior to and during trial that plaintiffs were seeking relief in the form of an order requiring the DOC to provide plaintiffs with access to live closed-circuit television broadcasts of Jum’ah services at any SMU other than Ten Block. Plaintiffs’ First Amended Complaint specifically referred to plaintiffs’ inability to obtain access to Jum’ah services while confined to the Ten Block unit of MCI-Cedar Junction. *See* Plaintiffs’ First Amended Complaint, ¶¶ 67-71. Nor did plaintiffs present any evidence at trial asserting that they were seeking access to live closed-circuit television broadcasts of Jum’ah services in any SMU other than Ten Block, or that they anticipated a denial of access to live closed-circuit television broadcasts of Jum’ah services in any other SMU to which they may be confined to in the future.

Second, as made clear from the attached affidavit of Jeffrey Quick, the DOC's Director of Resource Management, unlike MCI-Cedar Junction's Ten Block and Departmental Disciplinary Unit ("DDU"), no other SMU is presently set up to provide for the closed-circuit broadcasts of Jum'ah services. Moreover, several prisons would be required to undertake substantial capital projects in order to provide plaintiffs with access to live closed-circuit television broadcasts of Jum'ah services should plaintiffs be confined to a SMU in the future. *See* Affidavit of Jeffrey Quick, attached hereto as Exhibit 1.

A review of this Court's March 5, 2008 Findings of Fact, Rulings of Law and Order After a Non-Jury Trial makes clear the fact that the evidence at trial with regard to plaintiffs' access to Jum'ah services while confined to an SMU was strictly limited to MCI-Cedar Junction's Ten Block unit. Paragraphs 1 and 2 of the Findings of Fact state that plaintiffs Hudson and Tyler are serving lengthy custodial sentences at MCI-CJ and have, at various times, been confined in MCI-CJ's SMU. Paragraph 18 of the Findings of Fact states that "[T]he DOC does not broadcast Jum'ah services over closed-circuit television to SMU inmates on Ten Block at MCI-Cedar Junction. *There are no technical obstacles that prevent the DOC from doing so.*" (emphasis added). Paragraph 21 of the Findings of Facts states, "[T]he DOC broadcasts Jum'ah services over closed-circuit television to inmates confined in the DDU [Departmental Disciplinary Unit] at MCI-CJ." Further, in its Ultimate Conclusions of Fact and Law at paragraph 9, this Court stated, "[T]he DOC's ban on participation in Jum'ah services by inmates confined in the SMU (Ten Block) substantially burdens plaintiffs' practice of a core tenet of their faith." Paragraph 10 of the Ultimate Conclusions of Fact and Law states, in pertinent part: "[T]he DOC's ban on participation of Jum'ah services by inmates in Ten Block serves the compelling State interest of rehabilitating prisoners and promoting good order." In determining that "the ban on participation by Ten Block inmates in Jum'ah services is not the least

restrictive means of vindicating the compelling State interest at issue” the Court stated that “the DOC has not suggested any meaningful distinction between inmates confined in the DDU, who are permitted closed-circuit access to Jum’ah services and inmates in the SMU [Ten Block], who are not.” *See* Ultimate Conclusions of Fact and Law at paragraph 11. Importantly, in a footnote to paragraph 11 of the Ultimate Conclusions of Fact and Law, this Court stated, “[A]s previously indicated, the DOC does not contend that there is any technical reason that prevents the broadcast of Jum’ah services by closed-circuit television to Muslim inmates in Ten Block.” *See* Ultimate Conclusions of Fact and Law, n. 24. It cannot be disputed that the findings of fact and rulings of law in the March 5, 2008 opinion were limited to the availability of live closed-circuit television broadcasts of Jum’ah services in MCI-Cedar Junction’s Ten Block and DDU.

Since plaintiffs limited the evidence regarding their claim for access to closed-circuit broadcasts of Jum’ah services to MCI-Cedar Junction, and never sought class action status, there was no need for defendant to present evidence at trial as to the availability or unavailability of closed circuit broadcasts of Jum’ah services at any other prison or any other SMU. Nor was there a need for defendant to present any evidence regarding the existence of technological and other obstacles in other prisons and SMUs with regard to providing closed-circuit television broadcasts of Jum’ah services to inmates confined in SMUs. Where plaintiffs failed to raise the issue of access to closed circuit broadcasts of Jum’ah services in any SMU other than Ten Block and there was no evidence provided at trial regarding the feasibility of providing closed-circuit broadcasts of Jum’ah services at each SMU, defendant has been prejudiced by this Court’s Final Judgment requiring the DOC to provide closed-circuit television broadcasts of Jum’ah services at each SMU where plaintiffs may be confined during their incarceration.

It is equally clear that where the decision of this Court considered the lack of evidence of any

obstacles to the provision of live closed-circuit television broadcasts of Jum'ah services to Ten Block to be a significant factor in its least restrictive means analysis under RLUIPA, to the extent this Court interpreted plaintiffs' Amended Complaint to include a request for relief in the form of access to closed-circuit television broadcasts of Jum'ah services to each and every SMU maintained by the DOC in which plaintiffs may be confined in the future, defendant should have been provided with the opportunity to present evidence as to the specific and significant obstacles confronting the DOC's ability to provide live closed-circuit television broadcasts of Jum'ah services in the SMUs located in prisons other than MCI-Cedar Junction.

The attached affidavit of Jeffrey Quick sets forth many of the obstacles that presently confront the DOC with regard to providing plaintiffs with access to live closed-circuit television broadcasts of Jum'ah services in the SMUs located in prisons other than MCI-Cedar Junction. Director Quick states that, with the exception of MCI-Cedar Junction's Ten Block, the DOC will need to make significant improvements in order to provide for live closed-circuit television broadcasts of weekly Jum'ah services in its SMUs. Quick Aff. at ¶ 5. In particular, while some of the SMUs are wired for cable, none have cable access to the buildings where the religious services are held and none of the prisons have the equipment necessary to broadcast live closed-circuit television to the SMU. Director Quick states that the necessary improvements would be very costly, time consuming, and would be extremely disruptive to the prisons and the SMU's. *Id.*

Furthermore, the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, holds that "[t]he 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." 18 U.S.C. § 3626(a)(1). The court must give "substantial weight to any adverse impact on public safety or the

operation of a criminal justice system caused by the relief.” *Id.* See *Feliciano v. Rullan*, 378 F.3d 42, 50-51 (1st Cir. 2004); *Oluwa v. Gomez*, 133 F.3d 1239 (9th Cir. 1998) (“before granting prospective injunctive relief, the trial court must make the findings mandated by the PLRA”).

Certainly, where this Court has indicated that evidence of obstacles regarding the availability of closed-circuit television broadcasts of Jum’ah services in a SMU is a factor relevant to the consideration of the least restrictive alternatives under RLUIPA, defendant has been prejudiced with regard to the Final Judgment issued by this Court due to the absence of evidence of the actual obstacles facing the DOC regarding plaintiffs’ access to closed-circuit television broadcasts of Jum’ah services in its SMUs. Upon reconsideration, defendant requests that this Court to modify its order to provide that plaintiffs must have access to live closed-circuit television broadcasts of Jum’ah services while confined in MCI-Cedar Junction’s Ten Block. In the alternative, defendant should be permitted to present evidence to the Court with regard to the existing obstacles to providing plaintiffs with access to closed-circuit television broadcasts of Jum’ah services in SMU’s other than Ten Block. See *Feliciano v. Rullan*, 378 F.3d at 50-51.

CONCLUSION

Based on the foregoing reasons, defendant requests that this Court reconsider its Final Judgment regarding plaintiffs’ access to live closed-circuit television broadcasts of Jum’ah services in any SMU they may be confined. Defendant requests that upon reconsideration, this Court limit its relief to MCI-Cedar Junction’s Ten Block. In the alternative, defendant requests leave to present evidence concerning the obstacles confronting the DOC with regard to providing plaintiffs with access to live closed-circuit television broadcasts of Jum’ah services in SMUs other than Ten Block.

Respectfully submitted,

NANCY ANKERS WHITE

Special Assistant Attorney General

Dated: May 12, 2008

/s/ Richard C. McFarland
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CERTIFICATION

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on 05/12/08.

/s/ Richard C. McFarland
Richard C. McFarland

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAC HUDSON,
DERRICK TYLER,

Plaintiffs,

v.

C.A. No. 01-12145-RGS

KATHLEEN M. DENNEHY,

Defendant.

AFFIDAVIT OF JEFFREY QUICK

I, Jeffrey J. Quick, do hereby depose and say the following:

1. I am the Director of the Division of Resource Management for the Massachusetts Department of Correction ("DOC"). I have held this position since 1999. My responsibilities include oversight of all capital construction, improvements, and infrastructure repairs to DOC facilities. Prior to becoming the Director, I was a Project Manager with the Division for sixteen years. The information provided herein is based on my personal knowledge.
2. I received a Bachelor of Architecture degree from the University of Miami in 1983. I have been a registered Architect with the American Institute of Architecture since 1995.
3. The DOC maintains eighteen (18) institutions. Of the eighteen (18) institutions, maintained by the DOC, nine (9) institutions maintain an SMU, including MCI-Cedar Junction, Souza-Baranowski Correctional Center ("SBCC"), MCI-Norfolk, MCI-Shirley, MCI-Concord, North Central Correctional Institution ("NCCI"), Old Colony Correctional Center ("OCCC"), MCI-Framingham, and the Massachusetts Treatment Center.
4. The plaintiffs in this action are inmates Mac Hudson and Derrick Tyler. Inmate Tyler is presently incarcerated in the general population of MCI-Cedar Junction. Inmate Hudson is presently incarcerated at OCCC and is housed in the general population.

5. I have been asked to look into the feasibility of providing live closed-circuit broadcasts of Jum'ah services to the SMUs located in the eight other institutions maintained by the DOC, in response to the recent Final Judgment and Clarification of Final Judgment rendered by this Court. Presently, only MCI-Cedar Junction, through its master antenna system, is able to provide live closed-circuit television broadcasts of Jum'ah religious services held in its program area to its Special Management Unit ("SMU"), commonly known as "Ten Block." MCI-Cedar Junction is also able to provide live closed-circuit television broadcasts of Jum'ah services to its Departmental Disciplinary Unit ("DDU"). Based on my knowledge of the DOC institutions, it is my opinion that the DOC would need to make significant changes in order to provide live closed-circuit television broadcasts of weekly Jum'ah services to the other eight institutions that maintain SMUs. As described in more detail below, while some of the SMUs are wired for cable, none have cable access to the buildings where the religious services are held and none of the prisons have the equipment necessary to broadcast live closed-circuit television to the SMU. Depending on the facility, connecting a television camera in the prison's programs building to the SMU can present significant problems where there are no conduits below the ground in which to run the cable or the distances between the program building and the SMU are great. In addition, because some of the SMU are of older construction and presently have no cables installed, installing new cables into the SMU cells will be very difficult, time consuming and disruptive to the operations of the SMU's and prisons, in general. Another factor to be considered is whether a facility with existing cables in the SMU will have sufficient "head-end" capacity to accommodate the additional cables and use of a closed-circuit broadcast system. Finally, since those facilities with existing master antenna systems are limited to a set number of channels, usually twelve, which are dedicated to local broadcast channels, such as ABC, NBC, CBS, etc., providing live closed-circuit television broadcasts of Jum'ah services will require that

one of the current channels available to inmates will be eliminated. From a correctional perspective, I would be concerned that the loss of one of the twelve broadcast channels would upset many of the inmates and could create a climate issue within a prison. The movie channel could be utilized during the services and movie times could be rescheduled if a conflict exists.

6. MCI-Norfolk, a medium security prison located in Norfolk, Massachusetts. The DOC would face substantial obstacles if required to provide live broadcasts of weekly Jum'ah services in its SMU. First, due to the age of the building which houses MCI-Norfolk's SMU, the building is not wired for cable. Wiring the SMU for cable would be a major task because the cells walls are made of steel. Drilling through the steel walls would be costly and time consuming and would require the relocation of the inmates from the SMU during the period of time required to install the cables. Second, MCI-Norfolk does not presently have a closed circuit television system that provides for the broadcast of live images throughout the institution due to the lack of a central cable system. The building in which the Jum'ah services take place is not wired for cable and cannot be used to facilitate a live broadcast of the services. However, the gym is wired and could serve as the location for a close-circuit broadcast, but there is no cable hook-up between the gym and the SMU. The installation of a cable and associated equipment between the gym and the SMU would also be costly and time consuming. Further, the Jum'ah services would have to be relocated from its current site in the programs building to the gym. To undertake the project of wiring MCI-Norfolk for live broadcasts of Jum'ah services to the SMU would most likely require the use of outside vendors and contractors and the submission of requests for proposals, and require many months to complete.

7. OCCC is a medium security prison located in Bridgewater, Massachusetts. OCCC has a SMU that is presently cable ready. However, there is no cable hook-up between the area where the Jum'ah services take place and the SMU. Accordingly, a cable and associated

equipment would have to be installed connecting the SMU with the room where the Jum'ah services are held. Running the cable between the SMU and the Jum'ah services presents several problems, including long cable runs and additional equipment at the head-end. In addition, the facility presently lacks the equipment necessary to broadcast live closed-circuit television, including a camera.

8. Providing live closed-circuit television broadcasts of Jum'ah services to MCI-Concord's SMU will also be very difficult. First, MCI-Concord, a medium security prison located in Concord, Massachusetts is designated as a reception center and inmates are not permitted to possess televisions. While some of the housing units have a television set in the central living area that utilizes an individual antenna, the facility lacks a master antenna system. Second, none of the buildings at MCI-Concord, including the SMU and the programs building where the religious services are held, are wired for cable. Therefore, in order to provide live closed-circuit broadcasts of Jum'ah services, a master antenna system and a network of cables would have to be installed for the SMU and programs building. The walls in the SMU are made of pre-cast concrete which increases the difficulty of installing cables in the unit. Overall, this would be a major capital project for MCI-Concord, requiring a significant expenditure of money, soliciting bids from outside vendors, and will likely take many, many months to accomplish. Such a project would be also extremely disruptive to operation of the facility, requiring the relocation of the inmates housed in the SMU during the process.

9. NCCI is a medium security prison located in Gardner, Massachusetts. NCCI has two SMUs, but only one is wired for cable. Presently, there is no cable access between the programs area where the Jum'ah services take place and the SMU. The distance between the SMU and the programs area is significant, a couple of hundred yards across the prison campus, which would also increase the expense and time necessary to complete such a project. While it

may be possible to run the cable through existing tunnels under the prison, this will still present some difficulties, including working in confined spaces (tunnels) which currently have structural stability issues. Nor does NCCI presently have the equipment necessary to provide live closed-circuit television broadcasts of Jum'ah services.

10. MCI-Shirley, a medium security prison located in Shirley, Massachusetts, has a SMU that is cable ready. However, the programs building where the Jum'ah services take place is not wired for cable, nor is there a cable that runs from the programs building to the SMU. The existing conduit for running cables is very full and may not have the capacity to add additional cable. Accordingly, we may need to install additional conduits (underground) between the programs building and the SMU. To install a cable between the programs building and the SMU would be costly and disruptive of the prison where the distance between the SMU and the programs building is considerable and the cable would have to cut across the main prison yard. Nor does MCI-Shirley have the equipment necessary to facilitate live broadcasts of Jum'ah services to the SMU via closed-circuit television.

11. SBCC, a maximum security prison located in Shirley, Massachusetts, and has a SMU that is cable ready. However, presently, there is no cable connection between the prison's SMU and the room where the Jum'ah service is held. While SBCC is enclosed within a single building, the distance between the programs area and the SMU is significant. It would be possible to run the cable through the ceilings, which is easier than digging a trench several hundred yards across a prison, however, using the ceilings still presents many difficulties and can be a dangerous task. Also, since SBCC's broadcast system has a limited number of available broadcast channels, to accommodate live closed-circuit broadcasts of Jum'ah services to the SMU, one of the channels normally used to broadcast local television stations to the inmates, e.g. CBS, NBC, ABC, etc., would likely have to be dedicated for the Jum'ah services, eliminating

one of the local broadcast stations received by the inmates. The movie channel could be utilized during the services and movie times could be rescheduled if a conflict exists.


12. The Massachusetts Treatment Center, a facility for the treatment of sexually dangerous men located in Bridgewater, Massachusetts, has a SMU that has a number of cells that are cable ready. However, presently, there is no hook-up between the prison's SMU and the programs area where the religious services are held. Since the Treatment Center consists of a single building, the cable could be run through the ceiling. However, the Treatment Center ceiling is made of plaster and metal lath which may make it very difficult and time consuming to run the cable between the programs area and the SMU. Nor does the Treatment Center have the equipment necessary to provide live closed-circuit broadcasts of Jum'ah services.

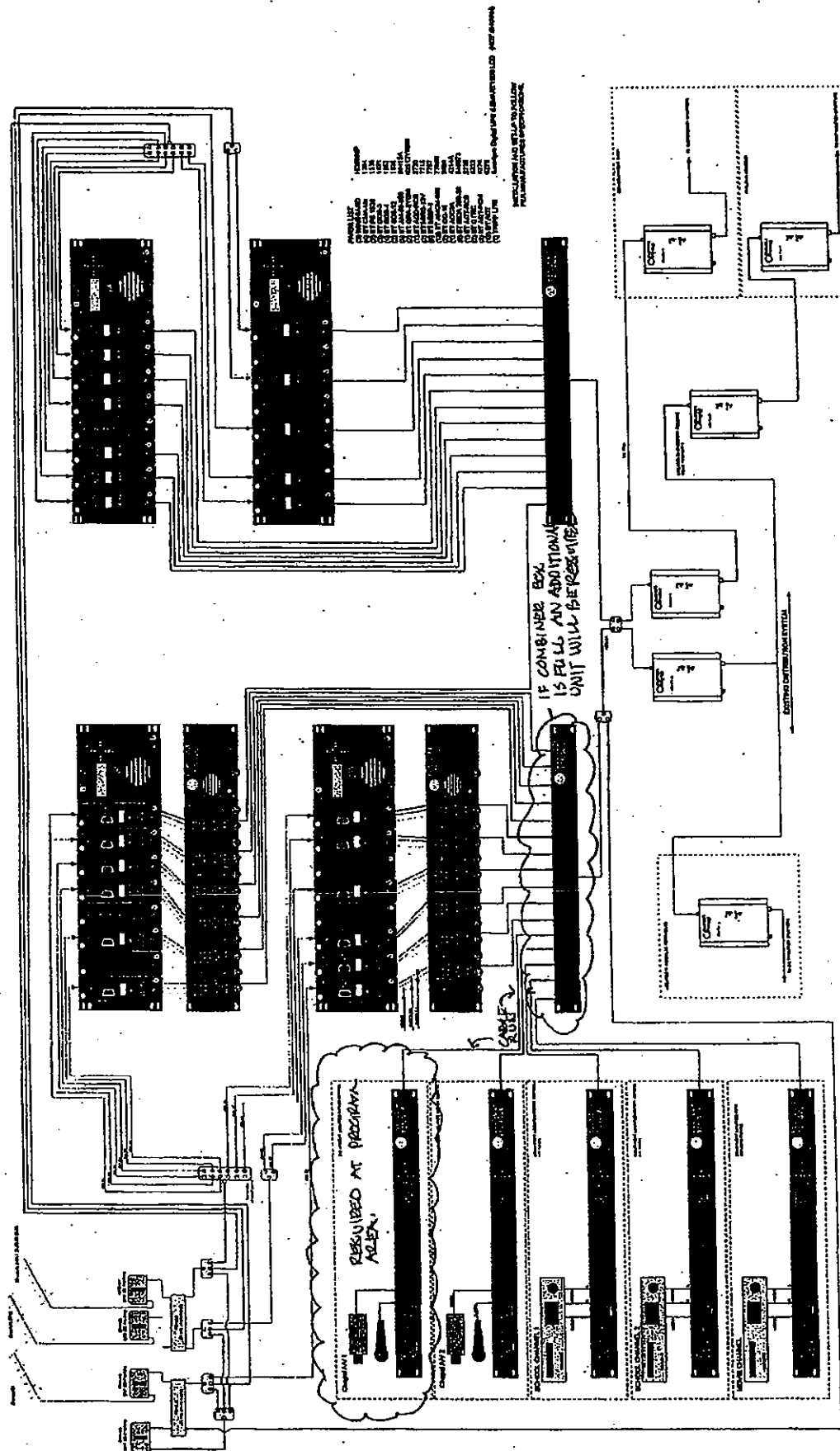
13. MCI-Framingham, a facility for female offenders located in Framingham, Massachusetts, would also need to undertake significant improvements in its existing cable wiring in order to provide for live closed-circuit broadcasts of Jum'ah services to its SMU, known as the Closed Custody Unit ("CCU"). MCI-Framingham would need to wire the SMU with coaxial cable in order to provide closed-circuit broadcasts. We would also have to install a cable to connect the CCU with the programs area where the religious services are held. Since the conduits presently carrying cables through the facility are full, we may need to install new conduits in order to facilitate the live closed-circuit broadcasts of Jum'ah services. In addition, since none of the SMU cells have wired TV outlets (only pull strings), the cells would have to be fitted with cables and outlet plates as well as re-fitted for electrical outlets. Accordingly, in order to provide for live broadcasts of Jum'ah services over closed-circuit television, MCI-Framingham would have to undertake a major capital improvement to rewire the SMU as well as provide cable access from the programs building to the SMU. The work would constitute a

major expense and cause a disruption within the facility, including the temporary relocation of the offenders housed in the SMU.

14. In order to undertake these capital improvement projects described above, the DOC would be required to develop a design from outside vendors with cost estimates (experienced with MATV systems) and then submit a capital request to the Division of Capital Asset Management and Maintenance for funding. This process can be very time consuming and it is not guaranteed that the DOC will be given all of the funds requested for the capital improvements request.

Signed under the pains and penalties of perjury this 12th day of May, 2008.


Jeffrey Quick, A.I.A., CIPS
Director
Division of Resource Management



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAC. S. HUDSON and
DERICK TYLER,

Plaintiffs,

v.

KATHLEEN DENNEHY, in her
official capacity as Commissioner of
the Massachusetts Department of
Corrections,

Defendant.

CIVIL ACTION
NO. 01-12145-RGS

**OPPOSITION TO DEFENDANT'S MOTION FOR
RECONSIDERATION OF FINAL JUDGMENT**

For the third time since the Court's March 5, 2008 Decision, Defendant asks this Court to limit its Final Judgment Order on the issue of Jum'ah services so that it covers only one Special Management Unit ("SMU") within the Department of Corrections ("DOC"), no matter where Plaintiffs are actually incarcerated.¹ In its Final Judgment, the Court issued an injunction against the Defendant demanding that it provide live broadcasts of Jum'ah services via closed-circuit television in any SMU that the Plaintiffs may be incarcerated. At present, the Court's injunction potentially implicates two facilities – the Old Colony Correctional Center ("OCCC"), where Plaintiff Hudson is now incarcerated, and MCI-Cedar Junction, where Plaintiff Tyler is now incarcerated. While the injunction does not necessarily cover all DOC facilities, this Court has correctly pointed out that the DOC would be wise to extend these broadcasts across its

¹ Defendant raised this issue in its Proposed Final Judgment (Docket #109), its Request for Clarification (Docket #111) and now again in its Motion for Reconsideration of Final Judgment (Docket #118). The Court has properly rejected Defendant's proposal each time it was raised and Plaintiffs now request that this Court similarly reject the pending Motion for Reconsideration.

facilities to avoid unnecessary future litigation. *See* Court's April 28, 2008 Clarification of Final Judgment, p. 1. Although such future litigation may be unavoidable considering the Defendant's current position, this Court should not – simply because the Defendant may choose to transfer them – leave the instant Plaintiffs with no recourse to enforce the very rights that the Court's Final Judgment was meant to remedy. This Court has declared that a failure to provide live Jum'ah broadcasts to Plaintiffs constitutes a substantial burden on their sincere religious beliefs. *See* Final Judgment ¶ 15. The same burden exists whether Plaintiffs are in "Ten Block" at MCI-Cedar Junction or in another SMU within the DOC. The DOC cannot now avoid the Courts ruling simply by claiming that there may be costs involved in installing the necessary technology.

DISCUSSION

This court has broad discretion to fashion an injunction to suit the circumstances in the particular case. *See Copy Cop v. Task Printing*, 908 F. Supp. 37, 48 (D. Mass. 1995)(citing *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S. Ct. 587, 591, 88 L. Ed. 754 (1944) ("The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.")). The circumstances of this case support the Court's injunction. While Plaintiffs were housed at MCI-Cedar Junction through most of this litigation, the DOC has recently transferred Mr. Hudson to OCCC, a medium security facility in Bridgewater, MA. Unless the Court's injunction includes the SMU at OCCC, the DOC would never have to broadcast Jum'ah services to Mr. Hudson if he were ever placed within the SMU. In fact, Mr. Hudson would have no recourse other than filing the appropriate grievances with the DOC and instituting a new civil action. As with Mr. Hudson, the DOC could transfer Mr. Tyler from MCI-Cedar Junction at any

time, thus allowing the DOC to sidestep the Court's injunction altogether. The narrow reading that Defendant's motion seeks could leave Plaintiffs with no meaningful injunctive relief despite their successful litigation.

Moreover, the Defendant's motion complains about all DOC facilities, when only two facilities are implicated at present. The Defendant really seems to be complaining that, in light of the Court's precedent, it will likely have to make these accommodations throughout the DOC to all inmates. While that may be true, the injunction is properly and sufficiently tailored to cover only the instant Plaintiffs. Thus, it is not necessary for this Court to decide whether the DOC is capable of bringing every facility into compliance. If the DOC decides not to change its policy state-wide, future litigation may decide this issue for future plaintiffs. The concern before the Court is whether the Court's injunction properly redresses the ongoing injury to Mr. Hudson and Mr. Tyler. Only an injunction that protects these Plaintiffs by enjoining the facilities where they are housed will redress the DOC's violation of their rights.

Finally, the Defendant once again suggests that the DOC's cost in installing closed-circuit wires in DOC facilities somehow trumps Plaintiffs' established religious rights. At most, installing the proper wiring would be a minimal cost to the DOC and could never rise to a compelling interest under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). 42 U.S.C. §§ 2000cc, et seq.. In fact, Defendant, through the Affidavit of Jeffery Quick, admits that OCCC, where Mr. Hudson is currently housed, is already wired for cable. *See Quick Aff.* ¶ 7. The only issue he can identify is the cost associated with (i) running an additional wire to the location where Jum'ah services are held, and (ii) obtaining a closed-circuit camera and equipment. *See Quick Aff.* ¶ 7. Under no circumstances can these minor costs be compelling enough to justify the continual burden on Plaintiffs' sincere religious beliefs. It is

important to note that, whether at trial or through the Quick Affidavit, Defendant has not presented any evidence of security concerns related to live Jum'ah broadcasts in any SMU.²

CONCLUSION

In light of the circumstances of this case and the court's broad discretion to fashion an effective injunction and redress the ongoing wrongs against Plaintiffs, this Court should reject Defendant's Motion for Reconsideration.

Respectfully Submitted,

MAC S. HUDSON and DERICK TYLER

By their attorneys,

/s/ Neal E. Minahan

Michael Kendall (BBO #544866)

Neal E. Minahan (BBO#661371)

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Dated: May 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all the registered participants identified on the Notice of Electronic Filing.

/s/ Neal E. Minahan

Neal E. Minahan

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² At trial, the Defendant made no argument and presented no evidence that any security concern existed as to the SMU at MCI-Cedar Junction, which is the DOC's maximum security facility. It follows that if no security concerns exist as to MCI-Cedar Junction, no security concerns could exist in lower level facilities such as OCCC.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *

*MAC HUDSON and DERICK TYLER

Plaintiffs

vs.

CIVIL ACTION

No. 01-12145-RGS

*KATHLEEN DENNEHY, In her
official capacity as Commisioner
of the Massachusetts Department
of Correction

Defendant

* * * * *

BEFORE THE HONORABLE RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE
MOTION FOR RECONSIDERATION
June 19, 2008

APPEARANCES:

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COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF
CORRECTION, (By Richard C. McFarland, Esq., and Charles
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JAMES P. GIBBONS, RPR/RMR
Official Court Reporter
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(617) 428-0402

P R O C E E D I N G S

THE CLERK: This is Mac Hudson, et al. versus Michael Maloney, et al, Civil Action No. 01-12145.

Would counsel please identify themselves for the record?

MR. MINAHAN: Neil Minahan for the plaintiffs.

MR. McFARLAND: Richard McFarland for the defendant, your Honor.

MR. KENDALL: Mike Kendall for the plaintiffs, your Honor.

THE COURT: All right. This is a motion to reconsider an aspect of the Court's previous judgment after trial with respect to the broadcast of the Jum'ah services.

It seems to me the only party who's properly before the Court, as I understand the facts as they existed at least at the time the pleadings were filed, is Mr. Hudson, in the sense, that as I understand the RLUIPA, the power of the Court to issue prospective relief is very, very limited.

And since Mr. Tyler, as I understand it, is still at Cedar Junction, he does not seem to me to be affected by this motion, at least at the moment.

MR. MINAHAN: Not yet.

THE COURT: There may be a point at which he is, but at the moment, any relief I would grant with respect to Mr. Tyler would be prospective, and I do not think I have

1 the authority to do that under the Act.

2 Why don't we go ahead. Why don't you tell me --
3 well, actually, more appropriately why doesn't the defendant
4 tell me what you're seeking to reconsider and the reasons
5 for it.

6 MR. MCFARLAND: Yes, your Honor.

7 The testimony at trial on this issue involving the
8 Jum'ah services in the SMUs focused on a comparison of what
9 was available in the DDU, which was the Departmental
10 Disciplinary Unit at Cedar Junction versus what was
11 available to the plaintiffs at Ten Block, which is also
12 known as the SMU.

13 And it was pretty much conceded at trial that the
14 inmates in Ten Block -- could have access to closed-circuit
15 television broadcasts in that unit. It was because the --
16 when the DDU had been closed at one point and they moved
17 those inmates over to Ten Block, and that unit was wired so
18 they could get access to the closed-circuit television.

19 So the issue of the plaintiffs' access to the
20 Jum'ah services in Ten Block focused on the fact that there
21 was no obstacle to that service being provided to them.
22 There was no discussion of any other prison, no discussion
23 of any other obstacles to other prisons. So with regard to
24 whether or not the plaintiffs in Ten Block could have access
25 to the closed circuit, the issue at trial was could they

1 have TVs or not?

2 The policy at that point said they could not have
3 TVs if they were in the SMU because they were all short
4 term. That was consistent throughout the SMUs of the DOC.

5 That was the focus of the trial testimony, not on
6 obstacles in other prisons.

7 So our concern is that where there -- where the
8 Court order now encompasses Old Colony's, and perhaps some
9 of the other prisons in the future's SMUs, we have some
10 significant obstacles that are present in trying to create a
11 system where they can see a closed-circuit television
12 broadcast of a Jum'ah service in Old Colony or in Norfolk,
13 or Concord or Shirley at Souza-Baranowski.

14 THE COURT: Although -- not to interrupt,
15 Mr. McFarland, but for the same reason I can't really
16 anticipate relief for Mr. Tyler, it seems to me that at the
17 moment, although I know in the opinion I thought it might be
18 wise for the Department to try to look for department-wide
19 or state-wide solutions to the issues that the trial raised,
20 but isn't my only concern at the moment Old Colony, because
21 the only person I can give relief to is Hudson, and that's
22 where he is? The fact that he might some day be transferred
23 to Shirley or to any other institution isn't really one I
24 think I can appropriately consider.

25 MR. MCFARLAND: I think you're right, your

1 Honor. Mr. Hudson would have to come back every so often if
2 he was transferred to other prisons and present that
3 evidence as to the concerns or obstacles that were raised in
4 this other prison. But certainly as to Old Colony, we
5 believe there are obstacles that we're not brought out at
6 trial that I think are significant and do raise difficulties
7 in --

8 THE COURT: Are they structural or simply
9 issues of cost?

10 MR. McFARLAND: They are structural, your
11 Honor, basically.

12 I brought Mr. Jeffrey Quick with me in case the
13 Court had any questions. He did the affidavit attached --

14 THE COURT: I read the affidavit.

15 MR. McFARLAND: Basically it's the wiring and
16 developing the equipment that they need to -- what they call
17 "head-end" equipment. So the wiring, he said, could take
18 several months. It depends on how some of the walls and
19 ceilings are prepared. So it could be quite complex, but
20 certainly not impossible. Just could be months and months
21 at somewhat of an expense, but also very technologically
22 determined, because they have to really spend the time to
23 create this system to where -- they don't have a system like
24 they do at Cedar Junction. There are no closed-circuit
25 televisions broadcasting right now in the prison in Old

1 Colony.

2 So --

3 THE COURT: I probably should know this from
4 the pleadings, but I don't recall it.

5 Is Mr. Hudson in a disciplinary unit in Old Colony
6 or in the general population?

7 MR. McFARLAND: General population as far as I
8 know, your Honor.

9 THE COURT: Does the general population at Old
10 Colony have access to TV?

11 MR. McFARLAND: They have access to TVs, yes.

12 THE COURT: What would be the obstacle, if
13 wiring is an issue, to simply recording the service and
14 proving Mr. Hudson with a tape?

15 MR. McFARLAND: Well, that's a possibility,
16 your Honor. We are working on providing -- as was part of
17 your order -- providing tapes of services to make available
18 when the chaplain is not available to do the service so it's
19 not live. That would be an option. It certainly would be
20 easier than having to wire. You could just bring a TV set
21 with a VCR or a DVD and play that. That would certainly be
22 less complicated to my knowledge, your Honor.

23 THE COURT: Mr. Minahan, what would be wrong
24 with that as a solution?

25 MR. MINAHAN: Well, your Honor, the plaintiffs

1 have testified that their sincere belief is to participate
2 with the community of Muslims during a Jum'ah prayer
3 service.

4 THE COURT: I have already ruled that security
5 considerations do not permit that.

6 MR. MINAHAN: Yes, but -- so the least
7 restrictive means to accomplish that is through this
8 closed-circuit live broadcast. It's the live broadcast that
9 allows him to participate with a community of Muslims while
10 still being segregated. A tape of the event is disconnected
11 in time, and there might be an issue there.

12 I would also like to say that the affidavit for Old
13 Colony, what it says is, specifically, that the only issue
14 is that running cable presents several problems, including
15 long cable runs and additional equipment. The facility
16 lacks the equipment necessary, including a camera, and
17 that's it.

18 THE COURT: Let me ask this --

19 MR. MINAHAN: He says that the SMUs are
20 already wired for cable. The only thing that's not wired is
21 the location where the Jum'ah services are being held, and
22 you just have to connect the two.

23 THE COURT: Can I ask this?

24 If Mr. Hudson is not in a disciplinary unit but is
25 in general population, why can't he simply attend the Jum'ah

1 service?

2 MR. MINAHAN: He certainly can.

3 THE COURT: Then why do we have to give him a
4 TV?

5 MR. MINAHAN: We don't right now. The purpose
6 of this Court's ruling on the issue of SMUs --

7 (Pause for cellphone ringing.)

8 MR. MINAHAN: The SMUs are limited. They're
9 in there for six months; they're in there for a year;
10 they're in there for three months. And so it's impossible
11 to go through a full litigation while they are in there. So
12 it wouldn't survive mootness on that point.

13 The injunctive relief is for the eventuality or
14 possibility that -- and this isn't about disciplinary units.
15 Disciplinary units are different than SMUs. SMUs, the
16 Department of Correction can put them in an SMU for any
17 number of reasons. So if that happens -- this is about a
18 possible eventuality. It's not about where he is right now.

19 THE COURT: But it has not happened.

20 Right now --

21 MR. MINAHAN: Right now it hasn't happened.
22 In the course of this litigation it has.

23 THE COURT: It's not plaintiffs' motion, and
24 I'm not attributing any fault, but it sounds to me as if I
25 am being asked to solve a problem that has not materialized.

1 MR. MINAHAN: It hasn't materialized in the
2 sense that -- the injunctive relief is in the eventuality of
3 Mr. Hudson going into an SMU. Right now he is not in an
4 SMU. So the --

5 THE COURT: It seems to me there is nothing
6 for me to decide at this point.

7 Is there an SMU at Old Colony?

8 MR. MINAHAN: Yes, your Honor, there is.

9 MR. McFARLAND: There is, your Honor.

10 THE COURT: I suppose you could advise him to
11 cause some kind of disciplinary problem --

12 (Laughter.)

13 MR. MINAHAN: I will not advise him.

14 THE COURT: -- and then we will have a case in
15 controversy.

16 Mr. McFarland, I do not see that I have a case in
17 controversy at the moment.

18 MR. McFARLAND: Correct, your Honor. Unless
19 he is placed in an SMU in a week or two or whatever that we
20 have to scramble and try and to -- either we start now and
21 try to spend the next six months doing the wiring or
22 whatever, or we wait until that happens and then go back to
23 the Court, when he comes into SMU -- and it may never
24 happen. He may never go into the SMU. It may be that he is
25 only there for a couple of days. But if that happens, we

1 would have to come back to the Court and ask for more time
2 to -- to ask if we can present him with a tape-recorded
3 Jum'ah service for the next couples of weeks until he is
4 released.

5 THE COURT: I do not mean to be difficult. I
6 am a great fan a judicial activism, but I do not see what I
7 can do at the moment, because I do not really have a
8 controversy. I understand the point that you are making,
9 that it may happen, or perhaps even not with Mr. Hudson but
10 with another inmate who finds himself in a disciplinary unit
11 at Old Colony, and then we have more litigation. I can
12 understand the Department's concerns. But I just do not see
13 that I have the authority to -- I mean, what you are really
14 asking me to do is reconsider the original judgment insofar
15 as it affected Cedar Junction because that is as far as I
16 ruled. Everything else was hortatory, in the sense that I
17 thought a good policy might be this, but I recognized that I
18 did not have the power, the way the case was before the
19 Court, to go any further than relief for the two plaintiffs
20 that were involved..

21 MR. McFARLAND: I would agree, your Honor, and
22 that's why we agreed that we thought it only pertained to
23 Ten Block, but then we sought clarification because we
24 weren't sure whether or not it was restricted to just Ten
25 Block in the future. And that's when you came back with

1 clarification saying it would apply to any SMU that the
2 plaintiff was housed in.

3 So at that point we were concerned that we had not
4 been able to present to the Court all the obstacles and
5 logistics that really weren't present in Cedar Junction, or
6 Ten Block there, but are present in Old Colony, Concord, and
7 any other prison in which the plaintiffs may end up in an
8 SMU.

9 THE COURT: I think the concern is a
10 legitimate one, but I do not think I have the power to act
11 on it. I could always revise the judgment, but I am not
12 inclined to do that insofar as it affects Mr. Hudson because
13 it dealt with a very specific set of circumstances. You are
14 correct that I did say it would pertain, at least as the
15 judgment was framed, if he were to find himself in an SMU in
16 another institution, but that has not happened yet. So I
17 think you are asking me to do something that, while I
18 recognize that you are asking me in good faith and for good
19 reason, I just do not think I have the power under this act
20 or, even more generally under Article III, to give this kind
21 of relief now. I think we will just have to wait for that
22 eventuality, and at that point, obviously, I will have to
23 decide.

24 You see it differently, Mr. Minahan?

25 MR. MINAHAN: There are a couple of points I

1 would like to make.

2 One is that while the original -- and there is an
3 injunction that issued from this Court. It's now been
4 stayed pending the resolution of this. That injunction says
5 that wherever a plaintiff is -- whenever a plaintiff is
6 housed in an SMU, no matter what the facility is, they have
7 to be provided access to the closed-circuit TV.

8 The plaintiffs will be in and out -- could possibly
9 be in and out of SMUs both at MCI, Cedar Junction, with
10 Mr. Tyler, and at OCC with Mr. Hudson.

11 In the eventuality that Mr. Hudson does go into an
12 SMU and we have to restart this kind of a process, by the
13 time he -- there would be no relief. He would be in the SMU
14 for three months, for six months, and the amount of time
15 that it takes to wire it, to bring in a television, to do
16 all of that, it would never happen, and the same thing could
17 be said for Mr. Tyler even in Ten Block.

18 THE COURT: I do not think that is exactly
19 correct, because the case in controversy is measured from
20 the point at which the harm is incurred; is it not? So if
21 that did happen, it is not as if I would not have the power
22 to consider the case simply because in the meantime
23 Mr. Hudson was released from confinement.

24 MR. MINAHAN: But your Honor is talking about
25 mootness, and this is exactly an exception to that. This is

1 capable of repetition, and --

2 THE COURT: I agree, except it has not
3 happened yet. Therefore, by definition, there is no
4 repetition there.

5 MR. MINAHAN: Well, it's happened in other
6 facilities. He's been in the SMU. He has been in an SMU
7 and not received these live broadcasts.

8 THE COURT: The thing is you do not want to
9 talk yourself out of victory, because what I am going to do
10 is deny this motion without prejudice, obviously. That
11 reinstates the injunction, and so at the point, if it does
12 happen while he is at Old Coloney, he is in the SMU, the
13 injunction attaches.

14 I assume the Department might come back, but, then
15 again, the Department may decide this is too aggravating,
16 and we would just as soon address the problem now.

17 All right. I think that is as far as I can go
18 today.

19 MR. McFARLAND: Thank you, your Honor.

20 MR. MINAHAN: Thank you, your Honor.

21 MR. KENDALL: Thank you, your Honor.

22 THE CLERK: All rise.

23 Court is in recess.

24 (Proceedings adjourned.)

25

C E R T I F I C A T E

I, James P. Gibbons, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

JAMES P. GIBBONS, CSR, RPR, RMR
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Richard McFarland - Activity in Case 1:01-cv-12145-RGS Hudson, et al v. Maloney Motion Hearing

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Electronic Clerk's Notes for proceedings held before Judge Richard G. Stearns: Motion Hearing held on 6/19/2008 re [118] MOTION for Reconsideration re [110] Memorandum & ORDER. " After hearing, the motion is denied without prejudice. Plaintiff Hudson is currently confined in general population at the Old Colony Correctional Facility. Accordingly, there is no actual controversy appropriate for judicial resolution. The stay on the Final Judgment is hereby lifted." Richard G. Stearns, USDJ. (Court Reporter: James Gibbons.)(Attorneys present: Attys. Minahan and Kendall for pltf's; Atty. McFarland for defts.) (Johnson, Mary)

1:01-cv-12145 Notice has been electronically mailed to:

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