

Exhibit A

19-3575
Sabir v. Williams

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2021

(Argued: October 14, 2021 Decided: June 17, 2022)

Docket No. 19-3575

RAFIQ SABIR, JAMES J. CONYERS,
Plaintiffs-Appellees,

v.

D.K. WILLIAMS, IN HER INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS
WARDEN OF FCI DANBURY, HERMAN QUAY, IN HIS INDIVIDUAL CAPACITY,
Defendants-Appellants;

MARK S. INCH, DIRECTOR OF FEDERAL BUREAU OF PRISONS, THOMAS R. KANE,
DIRECTOR OF FEDERAL BUREAU OF PRISONS, HUGH J. HURWITZ, IN HIS
INDIVIDUAL CAPACITY AS DIRECTOR OF THE FEDERAL BUREAU OF PRISONS,
Defendants.

Before: WALKER, SACK, AND CARNEY, *Circuit Judges.*

Defendants-appellants D.K. Williams and Herman Quay appeal from an order denying their motion to dismiss in part and rejecting their qualified immunity defense against the Religious Freedom Restoration Act ("RFRA") claims of plaintiffs-appellees Rafiq Sabir and James Conyers. The plaintiffs-appellees are practicing Muslims whose religion requires them to perform daily congregational prayers with as many other Muslims as are available. According to the allegations in their complaint, while Sabir and Conyers were incarcerated at the Federal Correctional Institution in Danbury, Connecticut, the defendants-appellants enforced a policy that restricted group prayer to the prison's chapel, despite that facility's frequent unavailability. As a result, Sabir and Conyers were forced to forgo their religious exercise of group prayer to avoid disciplinary action. We conclude that the wardens are not entitled to qualified immunity at this stage of the proceedings because the

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pleadings do not establish that their enforcement of the policy against Sabir and Conyers was in service of a compelling interest, and it was clearly established at the time of the violation that substantially burdening an inmate's religious exercise without justification violates RFRA. We therefore

AFFIRM the order of the district court.

DANIEL WINIK, (Brian M. Boynton, Leonard C. Boyle, Michael S. Raab, *on the brief*), U.S. Department of Justice, Washington, D.C.,
for Defendant-Appellants;

MATTHEW W. CALLAHAN, Muslim Advocates, Washington, D.C., *for Plaintiffs-Appellees;*

Elizabeth A. Bixby, Daniel M. Greenfield, *on the brief*, Roderick & Solange MacArthur Justice Center, Washington, D.C. and Chicago, IL, *for Amicus Curiae, Roderick & Solange MacArthur Justice Center.*

SACK, *Circuit Judge:*

The plaintiffs, Rafiq Sabir and James Conyers, are practicing Muslims who believe that they are required under the precepts of their religion to perform five daily congregational prayers with as many other Muslims as are available and wish to participate. Sabir and Conyers allege that while they were incarcerated at the Federal Correctional Institution in Danbury, Connecticut ("FCI Danbury"), Warden D.K. Williams and Warden Herman Quay enforced a

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policy that restricted prayer in groups of more than two to the prison's chapel, despite that facility's frequently unavailability. As a result, the plaintiffs were forced to forgo their engagement in a required religious practice to avoid disciplinary action.

The plaintiffs filed this suit against defendant prison officials in the United States District Court for the District of Connecticut, seeking injunctive relief and damages on the grounds that FCI Danbury's communal prayer policy violated the Religious Freedom Restoration Act ("RFRA") and the Free Exercise Clause of the First Amendment to the United States Constitution. In August 2019, the district court (Bolden, J.) granted the defendants' motion to dismiss the plaintiffs' Second Amended Complaint in large part, but declined to dismiss the plaintiffs' RFRA claims for damages against the defendants in their individual capacities, holding that qualified immunity was not available to Williams and Quay at the motion-to-dismiss stage.

We agree with the district court that the defendants-appellants are not entitled to qualified immunity at this stage of the proceedings because the allegations in the complaint and the documents attached to it as exhibits do not establish that their enforcement of the policy against Sabir and Conyers was in

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service of a compelling interest, and it was clearly established at the time of the violation that substantially burdening an inmate's religious exercise without justification violates RFRA.

BACKGROUND

Factual Background

For the purposes of this appeal from the district court's denial of a motion to dismiss, we are required "to accept as true those factual assertions set forth in plaintiff[s]' complaint." *Charles W. v. Maul*, 214 F.3d 350, 356 (2d Cir. 2000). In reviewing a motion to dismiss, we "may consider [not only] the facts alleged in the complaint, [but also] documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010). According to the complaint as thus augmented:

Plaintiffs Rafiq Sabir and James Conyers were inmates at FCI Danbury, a low-security federal prison, beginning in July 2014 and September 2016, respectively. Defendant Herman Quay was the Warden of FCI Danbury from July 2014 to December 2015; Defendant D.K. Williams was the Warden of FCI Danbury at the time of the plaintiffs' Second Amended Complaint, dated

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June 1, 2018 (the "SAC"), which was the operative pleading at the time of the defendants' motion to dismiss.

Individuals incarcerated at FCI Danbury have a relatively high degree of autonomy: Many living quarters remain unlocked, and inmates regularly gather, with prison approval, in large groups for activities ranging from inmate-led fitness classes to sports and card games. FCI Danbury has several recreational facilities, including "a recreation yard, weight room, gymnasium, bathroom, wellness room, hobbycraft [sic] room, music room, video viewing area with game tables, the chapel facility, and several offices." SAC at 8, ¶ 29. The inmates also have access to "the medical area, food services, education and housing facilities, laundry, the barber shop, and the prison work program area." *Id.*

Sabir and Conyers are practicing Muslims. A central aspect of their religious exercise is a prayer known as a "salah," which, according to the religion's tenets, adult Muslims are required to perform five times each day. The plaintiffs possess the "sincerely-held religious belief that if two or more Muslims are together at a time of required prayer, they must pray together behind one prayer leader" and cannot "break up into smaller groups." *Id.* at 6, ¶ 23. They

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explain that performing group prayer with the largest possible number of other Muslims "multiplies the blessings and utility of prayer." *Id.* at 5-6, ¶ 19.

The Federal Bureau of Prisons ("FBOP") does not have a formal policy categorically banning congregational prayer within its facilities. Each facility's warden is, however, authorized to temporarily restrict a specific religious practice if he or she determines that the "practice jeopardizes the facility's safety and security." *Id.* at 6-7, ¶ 24. At many FBOP facilities—including those in which both Sabir and Conyers were previously housed—prison officials allowed congregational prayer without significant restrictions.

In March 2014, FCI Danbury's then-warden, Maureen Baird, nonetheless instituted a policy restricting prayer in groups of more than two people to the prison's chapel. The policy statement provided:

Congregate Prayer, outside of the Chapel, for all faith groups will follow the following guidelines:

- a) Must get the approval of the location to pray from work supervisor, program supervisor, etc.
- b) Prayer individually or in pairs is permitted, however, group prayer of 3 or more is restricted to the Chapel.
- c) Prayers can be made at work detail sites, school, or units during break times.
- d) Prayer rug or clean towel is permitted to cover the floor.
- e) In case of institutional emergency or instructed by

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staff prayers will be terminated.

Id. at 8-9, ¶ 30 (alterations omitted). Although FCI Danbury permitted congregational prayer in the chapel, groups seeking to use the space could only do so when chapel staff was present and the rooms were not otherwise occupied or reserved. The facility was "frequently unavailable" during the plaintiffs' prayer times. *Id.* at 9, ¶ 32.

In October 2014, Sabir was praying with two other inmates in the auditorium when corrections officers approached to inform them that group prayer was only permitted in the chapel and that violating the rule could result in discipline. Sabir and the others explained to the officers that their religion required them to perform congregational prayer five times per day and that the chapel was frequently unavailable during those times. The officers responded by reiterating the terms of the prison's group prayer policy. As a result of this incident, Sabir was "fearful" that he would be sanctioned or disciplined for engaging in group prayer. *Id.* at 11, ¶ 41. Prison officials also repeatedly informed Conyers that congregational prayer outside of the chapel was not allowed. He therefore felt compelled to refrain from engaging in group prayer to avoid disciplinary action. The plaintiffs allege that the wardens' "enforcement of

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the Policy prevent[ed] [them] from . . . engaging in daily congregational prayer as mandated by [their] sincerely-held religious beliefs." *Id.* at 11, ¶¶ 41-42. Sabir and Conyers have thus "been forced to choose between acting in accordance with their sincere religious beliefs and facing discipline at the prison, including possible solitary confinement and loss of other privileges." *Id.* at 11, ¶ 44. According to the SAC, "Defendants have offered no meaningful justification for the [p]olicy" restricting group prayer. *Id.* at 9, ¶ 33.

Each plaintiff submitted an administrative grievance asserting that the policy violated his right to freely exercise his religion. Warden Quay denied Sabir's grievance in January 2015 but offered no explanation beyond reiterating the content of the policy, stating that "congregate prayer is not restricted" because praying in pairs was allowed and "congregate prayer is permitted in the Chapel." Response of H. Quay to Sabir (Jan. 27, 2015), J.A. 48. Quay's determination was subsequently upheld by FBOP's Regional Director, who wrote that FCI Danbury's congregate prayer policy was "a reasonable, least restrictive alternative of accommodating prayer by groups of three or more inmates in the chapel when the schedule permits." Response of J.L. Norwood to Sabir (Mar. 11, 2015), J.A. 51. FBOP's Administrator of National Inmate Appeals later agreed,

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reiterating the terms of the policy, and stating that it provided "a reasonable and equitable opportunity to pursue your religious beliefs and practices." Response of Ian Connors to Sabir (Sept. 27, 2016), J.A. 53.

In May 2017, Warden Williams denied Conyers's grievance, restating the policy and explaining that that the prison's Religious Services Department had consulted with Muslim Imams and determined that Muslims were not required to perform their five daily prayers in groups of three or more. See Response of D.K. Williams to Conyers (May 19, 2017), J.A. 56. Williams's determination was upheld by FBOP's Regional Director, who found that "the institution's policy on prayer does not ban group prayer." Response of M.D. Carvajal to Conyers (July 5, 2017), J.A. 58. Instead, the Regional Director explained that "the policy provides the necessary structure to promote equity among all faith groups in regards to prayers in the chapel area" and that "[t]his allowance offers you a least restrictive alternative when congregational prayer cannot be accommodated." *Id.* The Administrator of National Inmate Appeals concurred, adding that the policy was "the least restrictive alternative in order to afford inmates with more opportunities to practice this religious observance consistent with security and budgetary constraints." Response of Ian Connors to

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Conyers (Oct. 24, 2017), J.A. 61.

After the initiation of this proceeding, Sabir and Conyers were each transferred to another institution.

Procedural History

In May 2017, Sabir, acting pro se, initiated this suit against Williams and the director of the FBOP, alleging violations of the Free Exercise Clause of the First Amendment, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, et seq. ("RFRA"), and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, et seq. ("RLUIPA"). The district court dismissed Sabir's suit for failure to pay a filing fee, then reopened the case and dismissed it under the screening provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915A.

In December 2017, the district court granted Sabir's motion to reopen the case and amend his complaint. The court dismissed Sabir's RLUIPA claim because that statute applies only to state and local governments, but it allowed his RFRA and Free Exercise claims to proceed.

Sabir then filed the SAC, through newly obtained counsel, in June 2018. The SAC added Conyers as an additional plaintiff and named Quay as an additional defendant. Sabir and Conyers asserted that FCI Danbury's communal

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prayer policy violated RFRA and the Free Exercise Clause. They sought a declaration that the policy was unlawful, injunctive relief preventing the enforcement of the policy, and damages from Williams and Quay in their individual capacities. The defendants moved to dismiss the claims for damages against Williams and Quay, and later moved to dismiss the equitable claims as moot in light of Sabir's and Conyers's respective transfers out of FCI Danbury.

The district court granted in part and denied in part the defendants' motion to dismiss. *See Sabir v. Williams*, No. 3:17-cv-749 (VAB), 2019 WL 4038331 (D. Conn. Aug. 27, 2019). It declined to dismiss the plaintiffs' RFRA claims for damages against the defendants acting in their individual capacities, concluding that the group prayer policy was "arguably a substantial burden on the exercise of religion." *Id.* at *9.¹ The plaintiffs stated a claim by "detail[ing] the religious importance of congregational prayer," showing "the burden the Policy has placed on [the plaintiffs'] exercise of religion," and "alleg[ing] that FCI Danbury only

¹ On appeal, we consider only the plaintiffs' claim for individual-capacity damages under RFRA, not under the First Amendment. Before the district court, the defendants argued that a *Bivens* claim "is the only avenue for damages under the First Amendment" and claimed that the "[p]laintiffs s[ought] to impermissibly expand *Bivens* to include a new context" *Sabir*, 2019 WL 4038331, at *7-8. In response, the plaintiffs conceded that "they only seek money damages against the wardens in their individual capacity based on the Religious Freedom Restoration Act[;] therefore Plaintiffs need not, and do not, look to *Bivens* to seek damages." *Id.* at *8 (internal quotation marks omitted).

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applies this sort of burden to religious activities, while other group activities continued unencumbered." *Id.*

The district court held that qualified immunity was not available to Williams or Quay at the motion-to-dismiss stage. The court explained that the policy "may violate clearly established First Amendment case law and the RFRA statute," and, therefore, decided that "it is plausible—at this stage—that qualified immunity would not shield Defendants from liability in their individual capacities." *Id.* at *10-11. The court found it "[s]ignificant[]" that in *Salahuddin v. Goord*, 467 F.3d 263 (2d Cir. 2006) ("*Salahuddin*"), the Second Circuit denied qualified immunity to prison officials for religious liberties claims, even at the later stage of summary judgment proceedings, "because it was clearly established . . . that prison officials may not substantially burden inmates' right to religious exercise without some justification" *Sabir*, 2019 WL 4038331, at *11 n.3 (quoting *Salahuddin*, 467 F.3d at 275-76).

The district court dismissed most of the plaintiffs' equitable claims as moot in light of Sabir's and Conyers's transfers. *See id.* at *5 ("[A]n inmate's transfer from a prison facility generally moots claims for declaratory and injunctive relief against officials of that facility." (quoting *Salahuddin*, 467 F.3d at

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272)). The only surviving claim for equitable relief was Sabir's claim against FBOP's Director, *see id.* at *6, but in May 2020, Sabir voluntarily dismissed it.²

DISCUSSION

On appeal, the wardens assert that the district court erred in denying their motion to dismiss the plaintiffs' individual-capacity damages claims because the wardens are entitled to qualified immunity, even at this early stage of the proceedings. We disagree. They cannot point to assertions in the SAC or evidence in its attachments that demonstrate that their enforcement of the policy against Sabir and Conyers was in service of a governmental interest. Because it was clearly established at the time that substantially burdening prisoners' religious exercise without justification violates RFRA, the wardens are not entitled to qualified immunity.

I. Standard of Review

"We review a district court's denial of qualified immunity on a motion to dismiss *de novo*, accepting as true the material facts alleged in the

² We have jurisdiction to consider this appeal of the court's partial denial of the defendants' motion to dismiss under 28 U.S.C. § 1291 through the collateral order doctrine. *See Locurto v. Safir*, 264 F.3d 154, 162 (2d Cir. 2001) ("A denial by a district court of a claim of qualified immunity—to the extent that it turns on an issue of law—is a collateral order subject to immediate appeal.").

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complaint and drawing all reasonable inferences in plaintiffs' favor." *Garcia v. Does*, 779 F.3d 84, 91 (2d Cir. 2015) (internal quotation marks omitted).

II. Qualified Immunity

A. Legal Analysis

We apply a two-step analysis to determine whether qualified immunity bars a plaintiff's claim against government officials for civil damages related to actions taken in the course of their official duties. *Francis v. Fiacco*, 942 F.3d 126, 139 (2d Cir. 2019). "Pursuant to that analysis, '[q]ualified immunity shields federal and state officials from money damages unless [the] plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct.'" *Id.* (alterations in original) (quoting *Ricciuti v. Gyzenis*, 834 F.3d 162, 167 (2d Cir. 2016)). When qualified immunity shields defendants from liability, courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223,

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236 (2009); *see also Francis*, 942 F.3d at 140.³ However, because we conclude that the district court properly denied qualified immunity to the defendants at the pleadings stage, we must engage in both prongs of the analysis. First, we decide that the plaintiffs have adequately pled a violation of RFRA, and second, we

³ Before *Pearson*, courts were required to complete both steps in every case, because "skip[ping] ahead" to the second step without first holding that an official violated a plaintiff's rights might preclude "the law's elaboration from case to case." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The Supreme Court has continued to recognize this well-founded concern, even after *Pearson* introduced discretion as to the order in which courts may address the prongs. *See Camreta v. Greene*, 563 U.S. 692, 704-06 (2011) (recognizing "that our regular policy of avoidance sometimes does not fit the qualified immunity situation because it threatens to leave standards of official conduct permanently in limbo" and explaining that merits rulings in immunity-barred cases are "self-consciously designed . . . with this Court's permission" to "establish[] controlling law and prevent[] invocations of immunity in later cases"). *Camreta* warned of a "repetitive cycle" in which a court repeatedly declines to address the merits because immunity exists, and the official continues to engage in the challenged practice because he will remain immune until the right is clearly established. *Id.* at 706 & n.5. This cycle could happen "again, and again, and again," *id.* at 706, thereby allowing "palpably unreasonable conduct [to] go unpunished," *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting).

Although this "repetitive cycle of qualified immunity defenses" could be broken if the same merits questions "arise in a case in which qualified immunity is unavailable," the Court has warned that "some kinds of constitutional questions do not often come up in these alternative settings." *Camreta*, 563 U.S. at 706 n.5 (citing *Pearson*, 555 U.S. at 236 and *County of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5 (1998)). Claims brought by incarcerated individuals against officials at a specific institution likely fall into that category. As evidenced by the case at bar, a prisoner's equitable claims could be mooted at any moment by his transfer to a new facility. *See Salahuddin*, 467 F.3d at 272. Thus, these circumstances present a higher likelihood that prisoners' rights do not become clearly established. Even if it were not clearly established that the wardens violated RFRA, we would therefore still address the merits question first to clearly establish the law and prevent a vicious cycle of shielded misconduct.

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conclude that their rights were clearly established at the time of the alleged violations.

B. Violation of RFRA

In the first step of the qualified immunity inquiry, we must determine whether the SAC plausibly alleges that the wardens' enforcement of the group-prayer policy against Sabir and Conyers violated RFRA. We conclude that it does.

RFRA prohibits the government from "substantially burden[ing] a person's exercise of religion" unless "application of the burden . . . (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. § 2000bb-1(a)-(b). To establish a prima facie RFRA violation, the plaintiffs must demonstrate that they sought to engage in the exercise of religion and that the defendant-officials substantially burdened that exercise. The government then faces an "exceptionally demanding" burden to show "that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties" *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014).

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First, Sabir and Conyers's performance of congregational prayer is undoubtedly religious exercise. The term "exercise of religion" extends beyond "belief and profession" and encompasses "the performance of . . . physical acts [such as] assembling with others for a worship service." *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005). "It is *well established* that prisoners have a constitutional right to participate in congregate religious services," *Salahuddin v. Coughlin*, 993 F.2d 306, 308 (2d Cir. 1993) (emphasis added), and that same religious exercise is also protected by RFRA, which Congress intended to cover an even broader range of activity than the First Amendment does, *see Hobby Lobby Stores, Inc.*, 573 U.S. at 696.⁴

Second, the wardens' application of the group-prayer policy against Sabir and Conyers substantially burdened that religious exercise. An incarcerated plaintiff "easily satisfie[s]" his burden of proving that a prison policy

⁴ Williams's purported reliance on the advice of imams to determine that Muslims do not need to perform the five daily prayers in groups does not change this analysis. RFRA's definition of the "exercise of religion" broadly includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Hobby Lobby Stores, Inc.*, 573 U.S. at 696 (quoting 42 U.S.C. § 2000cc-5(7)(A)). The "proper inquiry" is whether Sabir's and Conyers' beliefs were "sincerely held and in [their] own scheme of things, religious," which the SAC adequately alleges. *Ford v. McGinnis*, 352 F.3d 582, 598 (2d Cir. 2003) (emphasis and internal quotation marks omitted); *see id.* ("[R]eligious authorities' opinions that a particular practice is not religiously mandated under Muslim law, without more, cannot render defendants' conduct reasonable.").

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substantially burdens his religious exercise when the policy "puts [him] to th[e] choice" between "engag[ing] in conduct that seriously violates [his] religious beliefs" or risking "serious disciplinary action" for adhering to those beliefs. *Holt v. Hobbs*, 574 U.S. 352, 361 (2015) (internal quotation marks omitted).⁵ Sabir stopped engaging in congregate prayer because he was "fearful" of being disciplined after officers chastised his prayer group and threatened "that violation of th[e] rule may result in disciplinary action." SAC at 10-11, ¶¶ 37-38; 41. Officials repeatedly warned Conyers that congregational prayer outside of the chapel was not allowed, and "[r]ather than risk discipline for engaging in congregational prayer . . . [he] refrained from engaging in congregational prayer on many occasions." *Id.* at 11, ¶ 43. Both plaintiffs "have been forced to choose between acting in accordance with their sincere religious beliefs and facing discipline at the prison, including possible solitary confinement and loss of other privileges." *Id.*, ¶ 44. "Because the [group prayer] policy puts [the plaintiffs] to this choice, it substantially burdens [their] religious exercise." *Holt*, 574 U.S. at

⁵ *Holt* involved a challenge under RLUIPA to restrictions on religious exercise and is relevant here because the statutory provision in that case "mirrors RFRA and . . . thus allows prisoners to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Holt*, 574 U.S. at 357-58 (internal quotation marks omitted).

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361. Moreover, "the availability of alternative means of practicing religion"—such as praying in pairs—is insufficient to eliminate that substantial burden. *Id.*

Third, once plaintiffs have demonstrated that defendants substantially burdened their religious exercise, the defendants must establish that the "application of the burden to the [plaintiffs]" is the "least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000bb-1(b). RFRA thus places an "exceptionally demanding" burden on the wardens to show that they "lack[ed] other means of achieving [their] desired goal without imposing a substantial burden on the exercise of religion by the objecting parties." *Hobby Lobby Stores, Inc.*, 573 U.S. at 728. And because RFRA expressly requires government officials to demonstrate a compelling interest, it follows that prison officials *necessarily* violate RFRA when they substantially burden a plaintiff's exercise of religion without demonstrating that they had *any* interest, compelling or otherwise, in doing so. *See Salahuddin*, 467 F.3d at 275-76 ("[P]rison officials may not substantially burden inmates' right to religious exercise without some justification . . ."). The wardens chose to press this appeal at the motion-to-dismiss stage; therefore, our consideration is limited to any interests and evidence of narrow tailoring contained in the allegations of the complaint or, as

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relevant here, any facts reflected in the attachments to it. *See Chamberlain v. City of White Plains*, 960 F.3d 100, 110 (2d Cir. 2020). From these documents, we can discern no asserted governmental interest—much less a compelling one—for the requirement that Sabir and Conyers engage in group prayer only in the prison chapel.

Quay's and Williams's denials of the plaintiffs' administrative grievances were attached to the complaint and may therefore be considered in reviewing their motion to dismiss, but they are ultimately unhelpful to their position. In denying Sabir's grievance, Quay declared that "congregate prayer is not restricted" despite recognizing that "group prayer of 3 or more is restricted to the Chapel." Response of H. Quay to Sabir (Jan. 27, 2015), J.A. 48. His confusing paraphrase of the policy does nothing to demonstrate that a compelling interest is at stake, or that the policy is the least restrictive means of furthering any such interest. In denying Conyers's grievance, Williams also restated the policy and suggested that the prison had determined through consultations with religious leaders that performing congregate prayer five times per day was not necessary. At most, Williams's defense of the policy could suggest that Conyers's religious beliefs were not widely held, but the administrative denial again fails to offer any

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governmental interest for the policy's enforcement against Conyers or explain how this enforcement was narrowly tailored to serve any such interest.

The wardens contend that other attachments to the complaint adequately reflect the governmental interests served by their enforcement of the policy against Sabir and Conyers. Specifically, they point to subsequent statements by high-ranking FBOP officials upholding the wardens' denials. One response from FBOP's Regional Director offers the conclusory statement that FCI Danbury's policy was "a reasonable, least restrictive alternative of accommodating prayer" consistent with "the orderly running of the institution" and with "staff supervision" and "space" constraints. Response of J.L. Norwood to Sabir (Mar. 11, 2015), J.A. 51. Another response by FBOP's Administrator of National Inmate Appeals similarly declares that the policy was "the least restrictive alternative" that would allow for group prayer "consistent with security and budgetary constraints." Response of Ian Connors to Conyers (Oct. 24, 2017), J.A. 61.

Even taking into account these subsequent attempts by non-defendant FBOP officials to justify the policy's existence more broadly, we cannot identify any governmental interests on which Quay and Williams relied when

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they enforced the policy against Sabir and Conyers. "[P]rison officials must have been pursuing the interest . . . when limiting [the plaintiffs'] religious exercise," and we have explained that this requirement "ensures that *prison officials actually had*, not just could have had, a legitimate reason for burdening protected activity." *Salahuddin*, 467 F.3d at 277 (emphasis added). Subsequent statements from regional and national supervisory officials shed no light on the *wardens'* actual reasons for enforcing the policy against Sabir and Conyers. For the same reason, a panel of this Court similarly refused to "impute[] the penological interest articulated by [one official] onto [another]." *Barnes v. Fedele*, 813 F. App'x 696, 701 (2d Cir.) (summary order), *cert. denied*, 141 S. Ct. 884 (2020). Here, "nothing in the record sets forth [the wardens'] motivation or thinking," and "[i]t is possible, after all, that [the FBOP officials]' 'understanding' of the policy . . . was not aligned with" that of the wardens. *Id.* The wardens cannot "point[] to anything in the [complaint or the evidence in the attachments] to show that *they* relied on" compelling interests, and we cannot "manufacture facts out of thin air." *Salahuddin*, 467 F.3d at 275 (emphasis added); *see Barnes v. Furman*, 629 F. App'x 52, 57 (2015) (summary order) ("[B]ecause defendants have not identified any penological interests supporting the policy, we cannot assess the reasonableness

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of their actions.").

Even if we could impute the FBOP officials' reasoning to the wardens, it would not suffice. Under RFRA, it is not enough to offer "very broad terms"; rather, RFRA demands "a more focused inquiry" that "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened." *Hobby Lobby Stores, Inc.*, 573 U.S. at 726 (internal quotation marks omitted). "This requires us to 'loo[k] beyond broadly formulated interests' and to 'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants . . .'" *Id.* at 726-27 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)). The FBOP officials' statements do not explain how the wardens' enforcement of this policy *against Sabir and Conyers* served an interest in "the orderly running of the institution," or "security and budgetary constraints." Responses of J.L. Norwood and Ian Connors, *supra* at J.A. 51, 61. They offer only "broadly formulated interests," which are insufficient to satisfy RFRA.⁶ *Hobby*

⁶ This not to say that the plaintiffs would necessarily fail to state a claim under RFRA if the wardens, in their responses to the plaintiffs' grievances, had identified a sufficiently specific interest furthered by the policy. So long as the plaintiffs plausibly allege that

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Lobby Stores, Inc., 573 U.S. at 726.

Further, FBOP officials offered only conclusory assertions that the policy was the "least restrictive alternative," Responses of J.L. Norwood and Ian Connors, *supra* at J.A. 51, 61, and even if these claims were attributable to the wardens, we could not credit them in our review since the plaintiffs plausibly allege that the policy is more restrictive than necessary. *See Williams v. Annucci*, 895 F.3d 180, 192 (2d Cir. 2018) ("Taking the [government] at its word under such circumstances would involve 'a degree of deference that is tantamount to unquestioning acceptance.'" (quoting *Holt*, 574 U.S. at 364)). Indeed, it seems highly unlikely that the policy is narrowly tailored considering the fact that, according to the SAC, comparable secular activities—including inmate-led fitness classes and card games—do not face similar restrictions. *See Williams*, 895 F.3d at 193 ("[U]nexplained disparate treatment of 'analogous nonreligious conduct' leads us to suspect that a narrower policy that burdens [the plaintiffs] to a lesser degree is in fact possible."); *Hobby Lobby Stores, Inc.*, 573 U.S. at 730 (noting that the government "itself has demonstrated that it has at its disposal an

any purported interests are pretextual—as they have done here by asserting that there is no meaningful justification for the policy and pointing to comparable secular activities that are not restricted—the legitimacy of the officials' justification for the policy would be an issue of fact incapable of resolution at the motion-to-dismiss stage.

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approach that is less restrictive" because it "has already established an accommodation" for others).⁷

Based on the pleadings and other material available to us on review, we thus conclude that Sabir and Conyers have plausibly alleged that the wardens' enforcement of the group-prayer policy against them violated RFRA.

C. Whether the Right was "Clearly Established"

Having determined that the plaintiffs pled a RFRA violation, we must address the second prong of the qualified immunity analysis: whether "the right [at issue] was clearly established at the time of the challenged conduct." *Francis*, 942 F.3d at 139 (internal quotation marks omitted). We conclude that the plaintiffs' rights under RFRA were clearly established at the time of the alleged violations.

1. *Legal Standard*

Although the scope of qualified immunity is considered broad enough to protect "all but the plainly incompetent or those who knowingly violate the law," it is not available when an officer's actions are not objectively

⁷ This "underinclusiveness" also counsels against a finding that the policy serves a compelling governmental interest. *Williams*, 895 F.3d at 189; *see also id.* at 191 ("Such unexplained disparate treatment of 'analogous nonreligious conduct' leads us to question whether the [government's] interest . . . is as compelling as it suggests . . .").

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reasonable in light of clearly established law. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017) (internal quotation marks omitted). "To determine whether the relevant law was clearly established, we consider the specificity with which a right is defined, the existence of Supreme Court or Court of Appeals case law on the subject, and the understanding of a reasonable officer in light of preexisting law." *Terebesi v. Torres*, 764 F.3d 217, 231 (2d Cir. 2014). Precedent "directly on point" is not required for law to be clearly established, *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018), and "[i]t is not necessary, of course, that the very action in question has previously been held unlawful," *Abbasi*, 137 S. Ct. at 1866 (internal quotation marks omitted). Thus, "the absence of a decision by this Court or the Supreme Court directly addressing the right at issue will not preclude a finding that the law was clearly established so long as preexisting law clearly foreshadows a particular ruling on the issue." *Garcia v. Does*, 779 F.3d 84, 92 (2d Cir. 2015) (internal quotation marks and brackets omitted).

2. *Qualified Immunity at the Pleadings Stage*

The Supreme Court has "repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). "But there is an obvious, if rarely expressed,

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corollary to that principle: The immunity question cannot be resolved *before* the earliest possible stage, i.e., prior to ascertainment of the truth of the plausible factual allegations on which a finding of qualified immunity is premised."

Chamberlain, 960 F.3d at 110 (internal quotation marks and citation omitted).

The wardens chose to press their qualified immunity defense at the pleadings stage, and they therefore must face the "more stringent standard applicable to this procedural route." *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004). "Not only must the facts supporting the defense appear on the face of the complaint [or the evidence in its attachments], but . . . the motion may be granted only where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Id.* (internal quotation marks and citation omitted). On a motion to dismiss, the plaintiffs are "entitled to all reasonable inferences from the facts alleged, not only those that support [their] claim, but also those that defeat the immunity defense." *Id.*

For this reason, we have explained that "advancing qualified immunity as grounds for a motion to dismiss is almost always a procedural mismatch." *Chamberlain*, 960 F.3d at 111. Although it is possible for a qualified immunity defense to succeed on a motion to dismiss, *see Liberian Cmty. Ass'n of*

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Connecticut v. Lamont, 970 F.3d 174, 186 (2d Cir. 2020), such a defense "faces a formidable hurdle . . . and is usually not successful," *Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 191-92 (2d Cir. 2006) (internal quotation marks omitted); *see also Chamberlain*, 960 F.3d at 110 ("[A]s a general rule, the defense of qualified immunity cannot support the grant of a [Rule] 12(b)(6) motion." (internal quotation marks omitted)).

3. *Application*

A reasonable officer should have known, based on clearly established law, that denying a Muslim inmate the ability to engage in group prayer without any justification or compelling interest, as alleged in the SAC, violates RFRA.

In 2006, we held in *Salahuddin* that it was clearly established that prison officials cannot substantially burden inmates' religious exercise without offering any justification. 467 F.3d at 275-76. There, we concluded that prison officials violated inmates' religious freedom under both RLUIPA and the First Amendment by requiring Sunni Muslims and Shi'ite Muslims to pray and fast jointly for Ramadan. *See id.* at 270, 275. Defendants had "not pointed to anything in the record to show that they relied on legitimate penological justifications" and

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"our review of the record [did not] reveal any such evidence." *Id.* at 275.

"Without some support in the record, we [could not] find that [prison] officials were worried that separate services would endanger inmates, or were short on space for separate services, or had some other reason for mandating the joint services." *Id.* "Although the facts at trial might [have] show[n] otherwise," even at the summary judgment stage in *Salahuddin*, the lack of evidence of the policy's justification "establish[ed] that [the plaintiff's] free-exercise rights were substantially burdened by a joint-worship policy not justified by . . . [a] compelling governmental interest" *Id.*

In addition to showing that violations of the plaintiff's constitutional and statutory rights had occurred, the lack of justification for the policy's enforcement in the record made clear that "[q]ualified immunity [was] not appropriate" even at the summary judgment stage "because it was clearly established at the time of the alleged violations that prison officials may not substantially burden inmates' right to religious exercise without some justification." *Id.* at 275-76. "[W]e [could not] say as a matter of law that it was objectively reasonable for any defendant to believe that the facts as they [stood] on summary judgment showed no violation of a clearly established right." *Id.* at

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276.

In the case at bar, we are at an even earlier stage of litigation than we were in *Salahuddin*. We are limited here to the allegations in the complaint and the evidence in the attachments to it. The wardens cannot point to any justification in that material for their imposition of a substantial burden on Sabir's and Conyers's religious exercise.⁸ To repeat yet again, as in *Salahuddin*, "although the facts at trial" or summary judgment "might show otherwise," we cannot "manufacture [such] facts out of thin air." *Id.* at 275. Because it was clearly established at the time of the alleged violations of Sabir and Conyers's RFRA rights that the wardens could "not substantially burden inmates' right to religious exercise without some justification," "[q]ualified immunity is not appropriate at this stage" of the proceedings. *Id.* at 275-76.⁹

⁸ Nor can the officials seriously dispute that it was clearly established that preventing a prisoner from engaging in congregational prayer constitutes a substantial burden on the prisoner's religious exercise. As we explained above, we have consistently recognized that policies restricting access to group prayer impose a burden on prisoners' free exercise rights. See *Salahuddin v. Coughlin*, 993 F.2d at 308; *Young v. Coughlin*, 866 F.2d 567, 570 (2d Cir. 1989).

⁹ Our decision should not, of course, be read to suggest that the district court should automatically grant summary judgment to defendants on qualified immunity grounds upon the introduction of any evidence that their enforcement of the policy served a compelling interest. On a motion for summary judgment, any "unchallenged and unresolved factual allegations" will be "viewed in the light most favorable to" Sabir and Conyers. *Salahuddin*, 467 F.3d at 275. It may be that the qualified immunity issue can

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We reject the wardens' argument that *Salahuddin's* holding is an "abstract legal principle" that "cannot establish law for purposes of qualified immunity." Appellants' Br. at 17. There are, of course, some contexts in which a higher degree of specificity is required to establish the law for purposes of qualified immunity than in others. For example, the Fourth Amendment's prohibition of "unreasonable searches and seizures" is an "abstract right[]" because "it may be difficult for an officer to know whether a search or seizure will be deemed reasonable given the precise situation encountered." *Abbasi*, 137 S. Ct. at 1866; *see also Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) ("Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." (internal quotation marks and alteration omitted)). No such concerns are present here. Based on RFRA's requirements, it is not "difficult for an

only be resolved at trial if, for instance, it appears that a justification offered by the defendants may be pretextual. *Id.* at 277 (holding that officials must prove they were "pursuing the interest . . . when limiting [the plaintiff's] religious exercise," so as to "ensure[] that prison officials actually had, not just could have had, a legitimate reason for burdening protected activity"). For example, a purported interest in security may be pretextual if comparable secular activities posing identical security concerns are not restricted. *See Williams*, 895 F.3d at 191-92.

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[official] to know whether" an unjustified substantial burden on religious exercise "will be deemed reasonable." *Abbasi*, 137 S. Ct. at 1866. As the text of the statute itself explains: "Government may substantially burden a person's exercise of religion *only if it demonstrates* that application of the burden to the person . . . is *in furtherance* of a compelling governmental interest" 42 U.S.C. § 2000bb-1 (emphasis added); *see also Okin v. Vill. of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 433-34 (2d Cir. 2009) (noting that courts "may examine statutory or administrative provisions in conjunction with prevailing circuit or Supreme Court law to determine whether an individual had fair warning that his or her behavior would violate the victim's constitutional rights."). Put another way, if an official substantially burdens a sincere religious exercise but cannot point to evidence that the application of the burden was in service of any interest—let alone a compelling one—the official has violated RFRA.

Thus, the wardens are not entitled to dismissal of the SAC on the basis of qualified immunity because our case law, in conjunction with the text of RFRA, clearly established at the time of the events at issue that substantially burdening Sabir's and Conyers's religious exercise with no justification, as was alleged by the plaintiffs, violated RFRA.

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CONCLUSION

We have considered the parties' remaining arguments on appeal and conclude that they are without merit. For the reasons set forth above, we affirm the district court's order.

Exhibit B

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2021

(Argued: October 14, 2021 Decided: June 17, 2022)

Amended: October 28, 2022)

Docket No. 19-3575

RAFIQ SABIR, JAMES J. CONYERS,
Plaintiffs-Appellees,

v.

D.K. WILLIAMS, IN HER INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS
WARDEN OF FCI DANBURY, HERMAN QUAY, IN HIS INDIVIDUAL CAPACITY,
Defendants-Appellants;

MARK S. INCH, DIRECTOR OF FEDERAL BUREAU OF PRISONS, THOMAS R. KANE,
DIRECTOR OF FEDERAL BUREAU OF PRISONS, HUGH J. HURWITZ, IN HIS
INDIVIDUAL CAPACITY AS DIRECTOR OF THE FEDERAL BUREAU OF PRISONS,
Defendants.

Before: WALKER, SACK, AND CARNEY, *Circuit Judges.*

Defendants-appellants D.K. Williams and Herman Quay appeal from an order denying their motion to dismiss in part and rejecting their qualified immunity defense against the Religious Freedom Restoration Act ("RFRA") claims of plaintiffs-appellees Rafiq Sabir and James Conyers. The plaintiffs-appellees are practicing Muslims whose religion requires them to perform daily congregational prayers with as many other Muslims as are available. According to the allegations in their complaint, while Sabir and Conyers were incarcerated at the Federal Correctional Institution in Danbury, Connecticut, the defendants-appellants enforced a policy that restricted group prayer to the prison's chapel, despite that facility's frequent unavailability. As a result, Sabir and Conyers were forced to forgo their religious exercise of group prayer to avoid disciplinary action. We conclude that the wardens are not

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entitled to qualified immunity at this stage of the proceedings because the pleadings do not establish that their enforcement of the policy against Sabir and Conyers was in service of a compelling interest, and it was clearly established at the time of the violation that substantially burdening an inmate's religious exercise without justification violates RFRA. We therefore

AFFIRM the order of the district court.

DANIEL WINIK, (Brian M. Boynton, Leonard C. Boyle, Michael S. Raab, *on the brief*), U.S. Department of Justice, Washington, D.C., *for Defendant-Appellants*;

MATTHEW W. CALLAHAN, Muslim Advocates, Washington, D.C., *for Plaintiffs-Appellees*;

Elizabeth A. Bixby, Daniel M. Greenfield, *on the brief*, Roderick & Solange MacArthur Justice Center, Washington, D.C. and Chicago, IL, *for Amicus Curiae, Roderick & Solange MacArthur Justice Center*.

SACK, *Circuit Judge*:

The plaintiffs, Rafiq Sabir and James Conyers, are practicing Muslims who believe that they are required under the precepts of their religion to perform five daily congregational prayers with as many other Muslims as are available and wish to participate. Sabir and Conyers allege that while they were incarcerated at the Federal Correctional Institution in Danbury, Connecticut

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("FCI Danbury"), Warden D.K. Williams and Warden Herman Quay enforced a policy that restricted prayer in groups of more than two to the prison's chapel, despite that facility's frequently unavailability. As a result, the plaintiffs were forced to forgo their engagement in a required religious practice to avoid disciplinary action.

The plaintiffs filed this suit against defendant prison officials in the United States District Court for the District of Connecticut, seeking injunctive relief and damages on the grounds that FCI Danbury's communal prayer policy violated the Religious Freedom Restoration Act ("RFRA") and the Free Exercise Clause of the First Amendment to the United States Constitution. In August 2019, the district court (Bolden, *J.*) granted the defendants' motion to dismiss the plaintiffs' Second Amended Complaint in large part, but declined to dismiss the plaintiffs' RFRA claims for damages against the defendants in their individual capacities, holding that qualified immunity was not available to Williams and Quay at the motion-to-dismiss stage.

We agree with the district court that the defendants-appellants are not entitled to qualified immunity at this stage of the proceedings because the allegations in the complaint and the documents attached to it as exhibits do not

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establish that their enforcement of the policy against Sabir and Conyers was in service of a compelling interest, and it was clearly established at the time of the violation that substantially burdening an inmate's religious exercise without justification violates RFRA.

BACKGROUND

Factual Background

For the purposes of this appeal from the district court's denial of a motion to dismiss, we are required "to accept as true those factual assertions set forth in plaintiff[s]' complaint." *Charles W. v. Maul*, 214 F.3d 350, 356 (2d Cir. 2000). In reviewing a motion to dismiss, we "may consider [not only] the facts alleged in the complaint, [but also] documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010). According to the complaint as thus augmented:

Plaintiffs Rafiq Sabir and James Conyers were inmates at FCI Danbury, a low-security federal prison, beginning in July 2014 and September 2016, respectively. Defendant Herman Quay was the Warden of FCI Danbury from July 2014 to December 2015; Defendant D.K. Williams was the Warden of

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FCI Danbury at the time of the plaintiffs' Second Amended Complaint, dated June 1, 2018 (the "SAC"), which was the operative pleading at the time of the defendants' motion to dismiss.

Individuals incarcerated at FCI Danbury have a relatively high degree of autonomy: Many living quarters remain unlocked, and inmates regularly gather, with prison approval, in large groups for activities ranging from inmate-led fitness classes to sports and card games. FCI Danbury has several recreational facilities, including "a recreation yard, weight room, gymnasium, bathroom, wellness room, hobbycraft [sic] room, music room, video viewing area with game tables, the chapel facility, and several offices." SAC at 8, ¶ 29. The inmates also have access to "the medical area, food services, education and housing facilities, laundry, the barber shop, and the prison work program area." *Id.*

Sabir and Conyers are practicing Muslims. A central aspect of their religious exercise is a prayer known as a "salah," which, according to the religion's tenets, adult Muslims are required to perform five times each day. The plaintiffs possess the "sincerely-held religious belief that if two or more Muslims are together at a time of required prayer, they must pray together behind one

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prayer leader" and cannot "break up into smaller groups." *Id.* at 6, ¶ 23. They explain that performing group prayer with the largest possible number of other Muslims "multiplies the blessings and utility of prayer." *Id.* at 5-6, ¶ 19.

The Federal Bureau of Prisons ("FBOP") does not have a formal policy categorically banning congregational prayer within its facilities. Each facility's warden is, however, authorized to temporarily restrict a specific religious practice if he or she determines that the "practice jeopardizes the facility's safety and security." *Id.* at 6-7, ¶ 24. At many FBOP facilities— including those in which both Sabir and Conyers were previously housed— prison officials allowed congregational prayer without significant restrictions.

In March 2014, FCI Danbury's then-warden, Maureen Baird, nonetheless instituted a policy restricting prayer in groups of more than two people to the prison's chapel. The policy statement provided:

Congregate Prayer, outside of the Chapel, for all faith groups will follow the following guidelines:

- a) Must get the approval of the location to pray from work supervisor, program supervisor, etc.
- b) Prayer individually or in pairs is permitted, however, group prayer of 3 or more is restricted to the Chapel.
- c) Prayers can be made at work detail sites, school, or units during break times.

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d) Prayer rug or clean towel is permitted to cover the floor.

e) In case of institutional emergency or instructed by staff prayers will be terminated.

Id. at 8-9, ¶ 30 (alterations omitted). Although FCI Danbury permitted congregational prayer in the chapel, groups seeking to use the space could only do so when chapel staff was present and the rooms were not otherwise occupied or reserved. The facility was "frequently unavailable" during the plaintiffs' prayer times. *Id.* at 9, ¶ 32.

In October 2014, Sabir was praying with two other inmates in the auditorium when corrections officers approached to inform them that group prayer was only permitted in the chapel and that violating the rule could result in discipline. Sabir and the others explained to the officers that their religion required them to perform congregational prayer five times per day and that the chapel was frequently unavailable during those times. The officers responded by reiterating the terms of the prison's group prayer policy. As a result of this incident, Sabir was "fearful" that he would be sanctioned or disciplined for engaging in group prayer. *Id.* at 11, ¶ 41. Prison officials also repeatedly informed Conyers that congregational prayer outside of the chapel was not allowed. He therefore felt compelled to refrain from engaging in group prayer to

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avoid disciplinary action. The plaintiffs allege that the wardens' "enforcement of the Policy prevent[ed] [them] from . . . engaging in daily congregational prayer as mandated by [their] sincerely-held religious beliefs." *Id.* at 11, ¶¶ 41-42. Sabir and Conyers have thus "been forced to choose between acting in accordance with their sincere religious beliefs and facing discipline at the prison, including possible solitary confinement and loss of other privileges." *Id.* at 11, ¶ 44. According to the SAC, "Defendants have offered no meaningful justification for the [p]olicy" restricting group prayer. *Id.* at 9, ¶ 33.

Each plaintiff submitted an administrative grievance asserting that the policy violated his right to freely exercise his religion. Warden Quay denied Sabir's grievance in January 2015 but offered no explanation beyond reiterating the content of the policy, stating that "congregate prayer is not restricted" because praying in pairs was allowed and "congregate prayer is permitted in the Chapel." Response of H. Quay to Sabir (Jan. 27, 2015), J.A. 48. Quay's determination was subsequently upheld by FBOP's Regional Director, who wrote that FCI Danbury's congregate prayer policy was "a reasonable, least restrictive alternative of accommodating prayer by groups of three or more inmates in the chapel when the schedule permits." Response of J.L. Norwood to Sabir (Mar. 11,

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2015), J.A. 51. FBOP's Administrator of National Inmate Appeals later agreed, reiterating the terms of the policy, and stating that it provided "a reasonable and equitable opportunity to pursue your religious beliefs and practices." Response of Ian Connors to Sabir (Sept. 27, 2016), J.A. 53.

In May 2017, Warden Williams denied Conyers's grievance, restating the policy and explaining that that the prison's Religious Services Department had consulted with Muslim Imams and determined that Muslims were not required to perform their five daily prayers in groups of three or more. See Response of D.K. Williams to Conyers (May 19, 2017), J.A. 56. Williams's determination was upheld by FBOP's Regional Director, who found that "the institution's policy on prayer does not ban group prayer." Response of M.D. Carvajal to Conyers (July 5, 2017), J.A. 58. Instead, the Regional Director explained that "the policy provides the necessary structure to promote equity among all faith groups in regards to prayers in the chapel area" and that "[t]his allowance offers you a least restrictive alternative when congregational prayer cannot be accommodated." *Id.* The Administrator of National Inmate Appeals concurred, adding that the policy was "the least restrictive alternative in order to afford inmates with more opportunities to practice this religious observance

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consistent with security and budgetary constraints." Response of Ian Connors to Conyers (Oct. 24, 2017), J.A. 61.

After the initiation of this proceeding, Sabir and Conyers were each transferred to another institution.

Procedural History

In May 2017, Sabir, acting pro se, initiated this suit against Williams and the director of the FBOP, alleging violations of the Free Exercise Clause of the First Amendment, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, et seq. ("RFRA"), and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, et seq. ("RLUIPA"). The district court dismissed Sabir's suit for failure to pay a filing fee, then reopened the case and dismissed it under the screening provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915A.

In December 2017, the district court granted Sabir's motion to reopen the case and amend his complaint. The court dismissed Sabir's RLUIPA claim because that statute applies only to state and local governments, but it allowed his RFRA and Free Exercise claims to proceed.

Sabir then filed the SAC, through newly obtained counsel, in June 2018. The SAC added Conyers as an additional plaintiff and named Quay as an

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additional defendant. Sabir and Conyers asserted that FCI Danbury's communal prayer policy violated RFRA and the Free Exercise Clause. They sought a declaration that the policy was unlawful, injunctive relief preventing the enforcement of the policy, and damages from Williams and Quay in their individual capacities. The defendants moved to dismiss the claims for damages against Williams and Quay, and later moved to dismiss the equitable claims as moot in light of Sabir's and Conyers's respective transfers out of FCI Danbury.

The district court granted in part and denied in part the defendants' motion to dismiss. *See Sabir v. Williams*, No. 3:17-cv-749 (VAB), 2019 WL 4038331 (D. Conn. Aug. 27, 2019). It declined to dismiss the plaintiffs' RFRA claims for damages against the defendants acting in their individual capacities, concluding that the group prayer policy was "arguably a substantial burden on the exercise of religion." *Id.* at *9.¹ The plaintiffs stated a claim by "detail[ing] the religious importance of congregational prayer," showing "the burden the Policy has placed

¹ On appeal, we consider only the plaintiffs' claim for individual-capacity damages under RFRA, not under the First Amendment. Before the district court, the defendants argued that a *Bivens* claim "is the only avenue for damages under the First Amendment" and claimed that the "[p]laintiffs s[ought] to impermissibly expand *Bivens* to include a new context" *Sabir*, 2019 WL 4038331, at *7-8. In response, the plaintiffs conceded that "they only seek money damages against the wardens in their individual capacity based on the Religious Freedom Restoration Act[;] therefore Plaintiffs need not, and do not, look to *Bivens* to seek damages." *Id.* at *8 (internal quotation marks omitted).

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on [the plaintiffs'] exercise of religion," and "alleg[ing] that FCI Danbury only applies this sort of burden to religious activities, while other group activities continued unencumbered." *Id.*

The district court held that qualified immunity was not available to Williams or Quay at the motion-to-dismiss stage. The court explained that the policy "may violate clearly established First Amendment case law and the RFRA statute," and, therefore, decided that "it is plausible—at this stage—that qualified immunity would not shield Defendants from liability in their individual capacities." *Id.* at *10-11. The court found it "[s]ignificant[]" that in *Salahuddin v. Goord*, 467 F.3d 263 (2d Cir. 2006) ("*Salahuddin*"), the Second Circuit denied qualified immunity to prison officials for religious liberties claims, even at the later stage of summary judgment proceedings, "because it was clearly established . . . that prison officials may not substantially burden inmates' right to religious exercise without some justification" *Sabir*, 2019 WL 4038331, at *11 n.3 (quoting *Salahuddin*, 467 F.3d at 275-76).

The district court dismissed most of the plaintiffs' equitable claims as moot in light of Sabir's and Conyers's transfers. *See id.* at *5 ("[A]n inmate's transfer from a prison facility generally moots claims for declaratory and

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injunctive relief against officials of that facility." (quoting *Salahuddin*, 467 F.3d at 272)). The only surviving claim for equitable relief was Sabir's claim against FBOP's Director, *see id.* at *6, but in May 2020, Sabir voluntarily dismissed it.²

DISCUSSION

On appeal, the wardens assert that the district court erred in denying their motion to dismiss the plaintiffs' individual-capacity damages claims because the wardens are entitled to qualified immunity, even at this early stage of the proceedings. We disagree. They cannot point to assertions in the SAC or evidence in its attachments that demonstrate that their enforcement of the policy against Sabir and Conyers was in service of a governmental interest. Because it was clearly established at the time that substantially burdening prisoners' religious exercise without justification violates RFRA, the wardens are not entitled to qualified immunity.

I. Standard of Review

"We review a district court's denial of qualified immunity on a

² We have jurisdiction to consider this appeal of the court's partial denial of the defendants' motion to dismiss under 28 U.S.C. § 1291 through the collateral order doctrine. *See Locurto v. Safir*, 264 F.3d 154, 162 (2d Cir. 2001) ("A denial by a district court of a claim of qualified immunity—to the extent that it turns on an issue of law—is a collateral order subject to immediate appeal.").

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motion to dismiss de novo, accepting as true the material facts alleged in the complaint and drawing all reasonable inferences in plaintiffs' favor." *Garcia v. Does*, 779 F.3d 84, 91 (2d Cir. 2015) (internal quotation marks omitted).

II. Qualified Immunity

A. Legal Analysis

We apply a two-step analysis to determine whether qualified immunity bars a plaintiff's claim against government officials for civil damages related to actions taken in the course of their official duties. *Francis v. Fiacco*, 942 F.3d 126, 139 (2d Cir. 2019). "Pursuant to that analysis, '[q]ualified immunity shields federal and state officials from money damages unless [the] plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct.'" *Id.* (alterations in original) (quoting *Ricciuti v. Gyzenis*, 834 F.3d 162, 167 (2d Cir. 2016)). When qualified immunity shields defendants from liability, courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223,

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236 (2009); *see also Francis*, 942 F.3d at 140.³ However, because we conclude that the district court properly denied qualified immunity to the defendants at the pleadings stage, we must engage in both prongs of the analysis. First, we decide that the plaintiffs have adequately pled a violation of RFRA, and second, we

³ Before *Pearson*, courts were required to complete both steps in every case, because "skip[ping] ahead" to the second step without first holding that an official violated a plaintiff's rights might preclude "the law's elaboration from case to case." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The Supreme Court has continued to recognize this well-founded concern, even after *Pearson* introduced discretion as to the order in which courts may address the prongs. *See Camreta v. Greene*, 563 U.S. 692, 704-06 (2011) (recognizing "that our regular policy of avoidance sometimes does not fit the qualified immunity situation because it threatens to leave standards of official conduct permanently in limbo" and explaining that merits rulings in immunity-barred cases are "self-consciously designed . . . with this Court's permission" to "establish[] controlling law and prevent[] invocations of immunity in later cases"). *Camreta* warned of a "repetitive cycle" in which a court repeatedly declines to address the merits because immunity exists, and the official continues to engage in the challenged practice because he will remain immune until the right is clearly established. *Id.* at 706 & n.5. This cycle could happen "again, and again, and again," *id.* at 706, thereby allowing "palpably unreasonable conduct [to] go unpunished," *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting).

Although this "repetitive cycle of qualified immunity defenses" could be broken if the same merits questions "arise in a case in which qualified immunity is unavailable," the Court has warned that "some kinds of constitutional questions do not often come up in these alternative settings." *Camreta*, 563 U.S. at 706 n.5 (citing *Pearson*, 555 U.S. at 236 and *County of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5 (1998)). Claims brought by incarcerated individuals against officials at a specific institution likely fall into that category. As evidenced by the case at bar, a prisoner's equitable claims could be mooted at any moment by his transfer to a new facility. *See Salahuddin*, 467 F.3d at 272. Thus, these circumstances present a higher likelihood that prisoners' rights do not become clearly established. Even if it were not clearly established that the wardens violated RFRA, we would therefore still address the merits question first to clearly establish the law and prevent a vicious cycle of shielded misconduct.

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conclude that their rights were clearly established at the time of the alleged violations.

B. Violation of RFRA

In the first step of the qualified immunity inquiry, we must determine whether the SAC plausibly alleges that the wardens' enforcement of the group-prayer policy against Sabir and Conyers violated RFRA. We conclude that it does.

RFRA prohibits the government from "substantially burden[ing] a person's exercise of religion" unless "application of the burden . . . (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. § 2000bb-1(a)-(b). To establish a prima facie RFRA violation, the plaintiffs must demonstrate that they sought to engage in the exercise of religion and that the defendant-officials substantially burdened that exercise. The government then faces an "exceptionally demanding" burden to show "that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties" *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014).

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First, Sabir and Conyers's performance of congregational prayer is undoubtedly religious exercise. The term "exercise of religion" extends beyond "belief and profession" and encompasses "the performance of . . . physical acts [such as] assembling with others for a worship service." *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005). "It is *well established* that prisoners have a constitutional right to participate in congregate religious services," *Salahuddin v. Coughlin*, 993 F.2d 306, 308 (2d Cir. 1993) (emphasis added), and that same religious exercise is also protected by RFRA, which Congress intended to cover an even broader range of activity than the First Amendment does, *see Hobby Lobby Stores, Inc.*, 573 U.S. at 696.⁴

Second, the wardens' application of the group-prayer policy against Sabir and Conyers substantially burdened that religious exercise. An incarcerated plaintiff "easily satisfie[s]" his burden of proving that a prison policy

⁴ Williams's purported reliance on the advice of imams to determine that Muslims do not need to perform the five daily prayers in groups does not change this analysis. RFRA's definition of the "exercise of religion" broadly includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Hobby Lobby Stores, Inc.*, 573 U.S. at 696 (quoting 42 U.S.C. § 2000cc-5(7)(A)). The "proper inquiry" is whether Sabir's and Conyers' beliefs were "sincerely held and in [their] own scheme of things, religious," which the SAC adequately alleges. *Ford v. McGinnis*, 352 F.3d 582, 598 (2d Cir. 2003) (emphasis and internal quotation marks omitted); *see id.* ("[R]eligious authorities' opinions that a particular practice is not religiously mandated under Muslim law, without more, cannot render defendants' conduct reasonable.").

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substantially burdens his religious exercise when the policy "puts [him] to th[e] choice" between "engag[ing] in conduct that seriously violates [his] religious beliefs" or risking "serious disciplinary action" for adhering to those beliefs. *Holt v. Hobbs*, 574 U.S. 352, 361 (2015) (internal quotation marks omitted).⁵ Sabir stopped engaging in congregate prayer because he was "fearful" of being disciplined after officers chastised his prayer group and threatened "that violation of th[e] rule may result in disciplinary action." SAC at 10-11, ¶¶ 37-38; 41. Officials repeatedly warned Conyers that congregational prayer outside of the chapel was not allowed, and "[r]ather than risk discipline for engaging in congregational prayer . . . [he] refrained from engaging in congregational prayer on many occasions." *Id.* at 11, ¶ 43. Both plaintiffs "have been forced to choose between acting in accordance with their sincere religious beliefs and facing discipline at the prison, including possible solitary confinement and loss of other privileges." *Id.*, ¶ 44. "Because the [group prayer] policy puts [the plaintiffs] to this choice, it substantially burdens [their] religious exercise." *Holt*, 574 U.S. at

⁵ *Holt* involved a challenge under RLUIPA to restrictions on religious exercise and is relevant here because the statutory provision in that case "mirrors RFRA and . . . thus allows prisoners to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Holt*, 574 U.S. at 357-58 (internal quotation marks omitted).

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361. Moreover, "the availability of alternative means of practicing religion"—such as praying in pairs—is insufficient to eliminate that substantial burden. *Id.*

Third, once plaintiffs have demonstrated that defendants substantially burdened their religious exercise, the defendants must establish that the "application of the burden to the [plaintiffs]" is the "least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000bb-1(b). RFRA thus places an "exceptionally demanding" burden on the wardens to show that they "lack[ed] other means of achieving [their] desired goal without imposing a substantial burden on the exercise of religion by the objecting parties." *Hobby Lobby Stores, Inc.*, 573 U.S. at 728. And because RFRA expressly requires government officials to demonstrate a compelling interest, it follows that prison officials *necessarily* violate RFRA when they substantially burden a plaintiff's exercise of religion without demonstrating that they had *any* interest, compelling or otherwise, in doing so. *See Salahuddin*, 467 F.3d at 275-76 ("[P]rison officials may not substantially burden inmates' right to religious exercise without some justification . . ."). The wardens chose to press this appeal at the motion-to-dismiss stage; therefore, our consideration is limited to any interests and evidence of narrow tailoring contained in the allegations of the complaint or, as

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relevant here, any facts reflected in the attachments to it. *See Chamberlain v. City of White Plains*, 960 F.3d 100, 110 (2d Cir. 2020). From these documents, we can discern no asserted governmental interest—much less a compelling one—for the requirement that Sabir and Conyers engage in group prayer only in the prison chapel.

Quay's and Williams's denials of the plaintiffs' administrative grievances were attached to the complaint and may therefore be considered in reviewing their motion to dismiss, but they are ultimately unhelpful to their position. In denying Sabir's grievance, Quay declared that "congregate prayer is not restricted" despite recognizing that "group prayer of 3 or more is restricted to the Chapel." Response of H. Quay to Sabir (Jan. 27, 2015), J.A. 48. His confusing paraphrase of the policy does nothing to demonstrate that a compelling interest is at stake, or that the policy is the least restrictive means of furthering any such interest. In denying Conyers's grievance, Williams also restated the policy and suggested that the prison had determined through consultations with religious leaders that performing congregate prayer five times per day was not necessary. At most, Williams's defense of the policy could suggest that Conyers's religious beliefs were not widely held, but the administrative denial again fails to offer any

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governmental interest for the policy's enforcement against Conyers or explain how this enforcement was narrowly tailored to serve any such interest.

The wardens contend that other attachments to the complaint adequately reflect the governmental interests served by their enforcement of the policy against Sabir and Conyers. Specifically, they point to subsequent statements by high-ranking FBOP officials upholding the wardens' denials. One response from FBOP's Regional Director offers the conclusory statement that FCI Danbury's policy was "a reasonable, least restrictive alternative of accommodating prayer" consistent with "the orderly running of the institution" and with "staff supervision" and "space" constraints. Response of J.L. Norwood to Sabir (Mar. 11, 2015), J.A. 51. Another response by FBOP's Administrator of National Inmate Appeals similarly declares that the policy was "the least restrictive alternative" that would allow for group prayer "consistent with security and budgetary constraints." Response of Ian Connors to Conyers (Oct. 24, 2017), J.A. 61.

Even taking into account these subsequent attempts by non-defendant FBOP officials to justify the policy's existence more broadly, we cannot identify any governmental interests on which Quay and Williams relied when

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they enforced the policy against Sabir and Conyers. "[P]rison officials must have been pursuing the interest . . . when limiting [the plaintiffs'] religious exercise," and we have explained that this requirement "ensures that *prison officials actually had*, not just could have had, a legitimate reason for burdening protected activity." *Salahuddin*, 467 F.3d at 277 (emphasis added). Subsequent statements from regional and national supervisory officials shed no light on the *wardens'* actual reasons for enforcing the policy against Sabir and Conyers. For the same reason, a panel of this Court similarly refused to "impute[] the penological interest articulated by [one official] onto [another]." *Barnes v. Fedele*, 813 F. App'x 696, 701 (2d Cir.) (summary order), *cert. denied*, 141 S. Ct. 884 (2020). Here, "nothing in the record sets forth [the wardens'] motivation or thinking," and "[i]t is possible, after all, that [the FBOP officials'] 'understanding' of the policy . . . was not aligned with" that of the wardens. *Id.* The wardens cannot "point[] to anything in the [complaint or the evidence in the attachments] to show that *they* relied on" compelling interests, and we cannot "manufacture facts out of thin air." *Salahuddin*, 467 F.3d at 275 (emphasis added); *see Barnes v. Furman*, 629 F. App'x 52, 57 (2015) (summary order) ("[B]ecause defendants have not identified any penological interests supporting the policy, we cannot assess the reasonableness

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of their actions.").

Even if we could impute the FBOP officials' reasoning to the wardens, it would not suffice. Under RFRA, it is not enough to offer "very broad terms"; rather, RFRA demands "a more focused inquiry" that "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened." *Hobby Lobby Stores, Inc.*, 573 U.S. at 726 (internal quotation marks omitted). "This requires us to 'loo[k] beyond broadly formulated interests' and to 'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants . . .'" *Id.* at 726-27 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)). The FBOP officials' statements do not explain how the wardens' enforcement of this policy *against Sabir and Conyers* served an interest in "the orderly running of the institution," or "security and budgetary constraints." Responses of J.L. Norwood and Ian Connors, *supra* at J.A. 51, 61. They offer only "broadly formulated interests," which are insufficient to satisfy RFRA.⁶ *Hobby*

⁶ This not to say that the plaintiffs would necessarily fail to state a claim under RFRA if the wardens, in their responses to the plaintiffs' grievances, had identified a sufficiently specific interest furthered by the policy. So long as the plaintiffs plausibly allege that

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Lobby Stores, Inc., 573 U.S. at 726.

Further, FBOP officials offered only conclusory assertions that the policy was the "least restrictive alternative," Responses of J.L. Norwood and Ian Connors, *supra* at J.A. 51, 61, and even if these claims were attributable to the wardens, we could not credit them in our review since the plaintiffs plausibly allege that the policy is more restrictive than necessary. *See Williams v. Annucci*, 895 F.3d 180, 192 (2d Cir. 2018) ("Taking the [government] at its word under such circumstances would involve 'a degree of deference that is tantamount to unquestioning acceptance.'" (quoting *Holt*, 574 U.S. at 364)). Indeed, it seems highly unlikely that the policy is narrowly tailored considering the fact that, according to the SAC, comparable secular activities—including inmate-led fitness classes and card games—do not face similar restrictions. *See Williams*, 895 F.3d at 193 ("[U]nexplained disparate treatment of 'analogous nonreligious conduct' leads us to suspect that a narrower policy that burdens [the plaintiffs] to a lesser degree is in fact possible."); *Hobby Lobby Stores, Inc.*, 573 U.S. at 730 (noting that the government "itself has demonstrated that it has at its disposal an

any purported interests are pretextual—as they have done here by asserting that there is no meaningful justification for the policy and pointing to comparable secular activities that are not restricted—the legitimacy of the officials' justification for the policy would be an issue of fact incapable of resolution at the motion-to-dismiss stage.

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approach that is less restrictive" because it "has already established an accommodation" for others).⁷

Based on the pleadings and other material available to us on review, we thus conclude that Sabir and Conyers have plausibly alleged that the wardens' enforcement of the group-prayer policy against them violated RFRA.

C. Whether the Right was "Clearly Established"

Having determined that the plaintiffs pled a RFRA violation, we must address the second prong of the qualified immunity analysis: whether "the right [at issue] was clearly established at the time of the challenged conduct." *Francis*, 942 F.3d at 139 (internal quotation marks omitted). We conclude that the plaintiffs' rights under RFRA were clearly established at the time of the alleged violations.

1. *Legal Standard*

Although the scope of qualified immunity is considered broad enough to protect "all but the plainly incompetent or those who knowingly violate the law," it is not available when an officer's actions are not objectively

⁷ This "underinclusiveness" also counsels against a finding that the policy serves a compelling governmental interest. *Williams*, 895 F.3d at 189; *see also id.* at 191 ("Such unexplained disparate treatment of 'analogous nonreligious conduct' leads us to question whether the [government's] interest . . . is as compelling as it suggests . . .").

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reasonable in light of clearly established law. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017) (internal quotation marks omitted). "To determine whether the relevant law was clearly established, we consider the specificity with which a right is defined, the existence of Supreme Court or Court of Appeals case law on the subject, and the understanding of a reasonable officer in light of preexisting law." *Terebesi v. Torres*, 764 F.3d 217, 231 (2d Cir. 2014). Precedent "directly on point" is not required for law to be clearly established, *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018), and "[i]t is not necessary, of course, that the very action in question has previously been held unlawful," *Abbasi*, 137 S. Ct. at 1866 (internal quotation marks omitted). Thus, "the absence of a decision by this Court or the Supreme Court directly addressing the right at issue will not preclude a finding that the law was clearly established so long as preexisting law clearly foreshadows a particular ruling on the issue." *Garcia v. Does*, 779 F.3d 84, 92 (2d Cir. 2015) (internal quotation marks and brackets omitted).

2. *Qualified Immunity at the Pleadings Stage*

The Supreme Court has "repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). "But there is an obvious, if rarely expressed,

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corollary to that principle: The immunity question cannot be resolved *before* the earliest possible stage, i.e., prior to ascertainment of the truth of the plausible factual allegations on which a finding of qualified immunity is premised."

Chamberlain, 960 F.3d at 110 (internal quotation marks and citation omitted).

The wardens chose to press their qualified immunity defense at the pleadings stage, and they therefore must face the "more stringent standard applicable to this procedural route." *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004). Specifically, "the facts supporting the defense [must] appear on the face of the complaint," *id.*, or in its attachments and documents incorporated by reference, *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010).⁸ On a motion to dismiss, the plaintiffs are "entitled to all reasonable inferences from the facts alleged, not only those that support [their] claim, but also those that defeat the immunity defense." *McKenna*, 386 F.3d at 436.

For this reason, we have explained that "advancing qualified immunity as grounds for a motion to dismiss is almost always a procedural mismatch." *Chamberlain*, 960 F.3d at 111. Although it is possible for a qualified

⁸ A previous version of this opinion referred to a since-overruled pleading standard. The reference has been deleted. We conclude that nothing further is required to correct the error.

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immunity defense to succeed on a motion to dismiss, *see Liberian Cmty. Ass'n of Connecticut v. Lamont*, 970 F.3d 174, 186 (2d Cir. 2020), such a defense "faces a formidable hurdle . . . and is usually not successful," *Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 191-92 (2d Cir. 2006) (internal quotation marks omitted); *see also Chamberlain*, 960 F.3d at 110 ("[A]s a general rule, the defense of qualified immunity cannot support the grant of a [Rule] 12(b)(6) motion." (internal quotation marks omitted)).

3. *Application*

A reasonable officer should have known, based on clearly established law, that denying a Muslim inmate the ability to engage in group prayer without any justification or compelling interest, as alleged in the SAC, violates RFRA.

In 2006, we held in *Salahuddin* that it was clearly established that prison officials cannot substantially burden inmates' religious exercise without offering any justification. 467 F.3d at 275-76. There, we concluded that prison officials violated inmates' religious freedom under both RLUIPA and the First Amendment by requiring Sunni Muslims and Shi'ite Muslims to pray and fast jointly for Ramadan. *See id.* at 270, 275. Defendants had "not pointed to anything

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in the record to show that they relied on legitimate penological justifications" and "our review of the record [did not] reveal any such evidence." *Id.* at 275.

"Without some support in the record, we [could not] find that [prison] officials were worried that separate services would endanger inmates, or were short on space for separate services, or had some other reason for mandating the joint services." *Id.* "Although the facts at trial might [have] show[n] otherwise," even at the summary judgment stage in *Salahuddin*, the lack of evidence of the policy's justification "establish[ed] that [the plaintiff's] free-exercise rights were substantially burdened by a joint-worship policy not justified by . . . [a] compelling governmental interest" *Id.*

In addition to showing that violations of the plaintiff's constitutional and statutory rights had occurred, the lack of justification for the policy's enforcement in the record made clear that "[q]ualified immunity [was] not appropriate" even at the summary judgment stage "because it was clearly established at the time of the alleged violations that prison officials may not substantially burden inmates' right to religious exercise without some justification." *Id.* at 275-76. "[W]e [could not] say as a matter of law that it was objectively reasonable for any defendant to believe that the facts as they [stood]

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on summary judgment showed no violation of a clearly established right." *Id.* at 276.

In the case at bar, we are at an even earlier stage of litigation than we were in *Salahuddin*. We are limited here to the allegations in the complaint and the evidence in the attachments to it. The wardens cannot point to any justification in that material for their imposition of a substantial burden on Sabir's and Conyers's religious exercise.⁹ To repeat yet again, as in *Salahuddin*, "although the facts at trial" or summary judgment "might show otherwise," we cannot "manufacture [such] facts out of thin air." *Id.* at 275. Because it was clearly established at the time of the alleged violations of Sabir and Conyers's RFRA rights that the wardens could "not substantially burden inmates' right to religious exercise without some justification," "[q]ualified immunity is not appropriate at this stage" of the proceedings. *Id.* at 275-76.¹⁰

⁹ Nor can the officials seriously dispute that it was clearly established that preventing a prisoner from engaging in congregational prayer constitutes a substantial burden on the prisoner's religious exercise. As we explained above, we have consistently recognized that policies restricting access to group prayer impose a burden on prisoners' free exercise rights. See *Salahuddin v. Coughlin*, 993 F.2d at 308; *Young v. Coughlin*, 866 F.2d 567, 570 (2d Cir. 1989).

¹⁰ Our decision should not, of course, be read to suggest that the district court should automatically grant summary judgment to defendants on qualified immunity grounds upon the introduction of any evidence that their enforcement of the policy served a

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We reject the wardens' argument that *Salahuddin's* holding is an "abstract legal principle" that "cannot establish law for purposes of qualified immunity." Appellants' Br. at 17. There are, of course, some contexts in which a higher degree of specificity is required to establish the law for purposes of qualified immunity than in others. For example, the Fourth Amendment's prohibition of "unreasonable searches and seizures" is an "abstract right[]" because "it may be difficult for an officer to know whether a search or seizure will be deemed reasonable given the precise situation encountered." *Abbasi*, 137 S. Ct. at 1866; *see also Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) ("Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." (internal quotation marks and alteration omitted)). No such concerns

compelling interest. On a motion for summary judgment, any "unchallenged and unresolved factual allegations" will be "viewed in the light most favorable to" Sabir and Conyers. *Salahuddin*, 467 F.3d at 275. It may be that the qualified immunity issue can only be resolved at trial if, for instance, it appears that a justification offered by the defendants may be pretextual. *Id.* at 277 (holding that officials must prove they were "pursuing the interest . . . when limiting [the plaintiff's] religious exercise," so as to "ensure[] that prison officials actually had, not just could have had, a legitimate reason for burdening protected activity"). For example, a purported interest in security may be pretextual if comparable secular activities posing identical security concerns are not restricted. *See Williams*, 895 F.3d at 191-92.

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are present here. Based on RFRA's requirements, it is not "difficult for an [official] to know whether" an unjustified substantial burden on religious exercise "will be deemed reasonable." *Abbasi*, 137 S. Ct. at 1866. As the text of the statute itself explains: "Government may substantially burden a person's exercise of religion *only if it demonstrates* that application of the burden to the person . . . is *in furtherance* of a compelling governmental interest" 42 U.S.C. § 2000bb-1 (emphasis added); *see also Okin v. Vill. of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 433-34 (2d Cir. 2009) (noting that courts "may examine statutory or administrative provisions in conjunction with prevailing circuit or Supreme Court law to determine whether an individual had fair warning that his or her behavior would violate the victim's constitutional rights."). Put another way, if an official substantially burdens a sincere religious exercise but cannot point to evidence that the application of the burden was in service of any interest—let alone a compelling one—the official has violated RFRA.

Thus, the wardens are not entitled to dismissal of the SAC on the basis of qualified immunity because our case law, in conjunction with the text of RFRA, clearly established at the time of the events at issue that substantially burdening Sabir's and Conyers's religious exercise with no justification, as was

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alleged by the plaintiffs, violated RFRA.

CONCLUSION

We have considered the parties' remaining arguments on appeal and conclude that they are without merit. For the reasons set forth above, we affirm the district court's order.

Exhibit C

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of December, two thousand twenty-two.

Rafiq Sabir, James J. Conyers,

Plaintiffs - Appellees,

v.

D.K. Williams, in her individual and official capacity as
Warden of FCI Danbury, Herman Quay, in his individual
capacity,

Defendants - Appellants,

Mark S. Inch, Director of Federal Bureau of Prisons,
Thomas R. Kane, Director of Federal Bureau of Prisons,
Hugh J. Hurwitz, in his individual capacity as Director of
the Federal Bureau of Prisons,

Defendants..

Appellants Herman Quay and D.K. Williams, filed a petition for rehearing *en banc*. The active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk






Exhibit D

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REFCNF,SDV

**U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:17-cv-00749-VAB**

Sabir v. Williams et al
Assigned to: Judge Victor A. Bolden
Cause: 28:1343 Violation of Civil Rights

Date Filed: 05/08/2017
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: U.S. Government Defendant

Plaintiff

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Director Federal Bureau of Prisons
TERMINATED: 06/01/2018

represented by **Alan M. Soloway**
 (See above for address)
TERMINATED: 07/05/2018
ATTORNEY TO BE NOTICED

John B. Hughes
 (See above for address)
ATTORNEY TO BE NOTICED

Vanessa Roberts Avery
 (See above for address)
TERMINATED: 02/07/2019
ATTORNEY TO BE NOTICED

Defendant

Herman Quay
In his individual capacity

represented by **John B. Hughes**
 (See above for address)
ATTORNEY TO BE NOTICED

Natalie Nicole Elicker
 (See above for address)
ATTORNEY TO BE NOTICED

Reginald Maurice Skinner
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Michael Carvajal
*In his Official Capacity as the Director of
 the Bureau of Prisons*
TERMINATED: 05/11/2020

represented by **Reginald Maurice Skinner**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John B. Hughes
 (See above for address)
ATTORNEY TO BE NOTICED

Natalie Nicole Elicker
 (See above for address)
ATTORNEY TO BE NOTICED

Vanessa Roberts Avery
 (See above for address)
TERMINATED: 02/07/2019
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/08/2017	<u>1</u>	PRISCS - COMPLAINT against Thomas Kane, D. K. Williams, filed by Rafiq Sabir. (Fazekas, J.) (Entered: 05/12/2017)
05/08/2017	<u>2</u>	PRISCS - MOTION for Leave to Proceed in forma pauperis by Rafiq Sabir. (Attachments: # <u>1</u> Addendum, # <u>2</u> Declaration)(Fazekas, J.) (Entered: 05/12/2017)
05/08/2017	<u>3</u>	PRISCS - MOTION to Appoint Counsel by Rafiq Sabir. (Fazekas, J.) (Entered: 05/12/2017)

05/08/2017	4	PRISCS - STANDING PROTECTIVE ORDER Signed by Judge Victor A. Bolden on 5/8/2017.(Fazekas, J.) (Entered: 05/12/2017)
05/25/2017	5	ORDER denying 3 Motion to Appoint Counsel ; denying 2 Motion for Leave to Proceed in forma pauperis. Plaintiff must tender the filing fee by 6/26/2017. Failure to do so will result in the dismissal of this action. Signed by Judge Victor A. Bolden on 5/25/2017. (Chen, C.) (Entered: 05/25/2017)
05/30/2017		Set Deadlines/Hearings: Dismissal due by 6/26/2017 (Perez, J.) (Entered: 05/30/2017)
06/05/2017	6	MOTION for Class Action Status by Rafiq Sabir.Responses due by 6/26/2017 (Payton, R.) (Entered: 06/06/2017)
06/20/2017		Filing fee received from Rafiq Sabir: \$ 400.00, receipt number CTXB00008226 (Payton, R.) (Entered: 07/26/2017)
06/29/2017	7	ORDER DISMISSING CASE due to Plaintiff's failure to pay the filing fee. Signed by Judge Victor A. Bolden on 6/29/2017. (Chen, C.) (Entered: 06/29/2017)
06/30/2017	8	JUDGMENT entered in favor of D. K. Williams, Thomas Kane against Rafiq Sabir. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms/all-forms/appeals_forms Signed by Clerk on 6/30/2017.(Perez, J.) (Entered: 06/30/2017)
07/21/2017	9	MOTION to Reopen Case by Rafiq Sabir.Responses due by 8/11/2017 (Attachments: # 1 Memorandum in Support, # 2 Envelope)(Perez, J.) (Entered: 07/24/2017)
10/13/2017	10	MOTION to Reinstate Summons and 1 Complaint by Rafiq Sabir.Responses due by 11/3/2017 (Payton, R.) (Entered: 10/17/2017)
10/19/2017	11	ORDER granting 9 Motion to Reopen Case and INITIAL REVIEW ORDER dismissing Mr. Sabir's Complaint. Signed by Judge Victor A. Bolden on 10/19/2017. (Riegel, J.) (Entered: 10/19/2017)
10/19/2017	12	ORDER finding as moot 10 Motion to Reopen Case in light of 11 ORDER to Reopen and INITIAL REVIEW ORDER. Signed by Judge Victor A. Bolden on 10/19/2017. (Riegel, J.) (Entered: 10/19/2017)
11/08/2017	14	JUDGMENT entered in favor of D. K. Williams, Thomas Kane against Rafiq Sabir. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms/all-forms/appeals_forms Signed by Clerk on 11/8/2017.(Perez, J.) (Entered: 11/08/2017)
11/30/2017	15	MOTION to Amend/Correct 1 Complaint by Rafiq Sabir.Responses due by 12/21/2017 (Attachments: # 1 Proposed Amended Complaint, # 2 Summons)(Fazekas, J.) (Entered: 12/01/2017)
12/19/2017	16	ORDER granting 15 Motion to Reopen the case and Amend Complaint. Mr. Sabir's First Amendment Free Exercise claim and RFRA claim as alleged in the Amended Complaint may proceed against Defendants in their official capacities for injunctive and declaratory relief. The RLUIPA claim is DISMISSED. Signed by Judge Victor A. Bolden on 12/19/2017. (Riegel, J.) (Entered: 12/19/2017)
12/19/2017	17	AMENDED COMPLAINT against Thomas Kane, D. K. Williams, filed by Rafiq Sabir. (Fazekas, J.) (Entered: 01/09/2018)

12/29/2017		Set Deadlines/Hearings: Discovery due by 6/18/2018; Dispositive Motions due by 7/17/2018 (Perez, J.) (Entered: 12/29/2017)
01/09/2018	18	ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Thomas Kane, D. K. Williams* with answer to complaint due within *60* days. Self-Represented *Rafiq Sabir #55312-066* *DANBURY FEDERAL CORRECTIONAL INSTITUTION* *Inmate Mail/Parcels ROUTE 37* *DANBURY, CT 06811*. (Fazekas, J.) (Entered: 01/09/2018)
03/06/2018	19	NOTICE of Appearance by Alan M. Soloway on behalf of Thomas Kane, D. K. Williams (Soloway, Alan) (Entered: 03/06/2018)
03/06/2018	20	MOTION for Extension of Time until April 11, 2018 Answer of File Dispositive Motion by Thomas Kane, D. K. Williams. (Soloway, Alan) (Entered: 03/06/2018)
03/12/2018	21	ORDER granting 20 Motion for Extension of Time. Defendants' Response due by 4/11/2018. Future motions for extensions of time must be filed according to Local Rule 7(b), as amended. <i>See</i> D. Conn. L. Civ. R. 7(b) (requiring movant to inquire as to position of non-moving parties and making no distinction regarding individuals in custody). Signed by Judge Victor A. Bolden on 3/12/2018. (Giammatteo, J.) (Entered: 03/12/2018)
03/14/2018		Answer deadline updated for Thomas Kane to 4/11/2018; D. K. Williams to 4/11/2018. (Perez, J.) (Entered: 03/14/2018)
04/05/2018	22	MOTION for Extension of Time until 7/4/18 To File Answer or Dispositive Motion by Mark S. Inch, Thomas Kane, D. K. Williams. (Soloway, Alan) (Entered: 04/05/2018)
04/06/2018	23	ORDER granting 22 Motion for Extension of Time. Signed by Judge Victor A. Bolden on 4/6/2018. (Riegel, J.) (Entered: 04/06/2018)
05/05/2018	24	NOTICE of Appearance by Renee Colette Redman on behalf of Rafiq Sabir (Redman, Renee) (Entered: 05/05/2018)
05/05/2018	25	MOTION for Attorney(s) Matthew Callahan to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4819980) by Rafiq Sabir. (Attachments: # 1 Affidavit) (Redman, Renee) (Entered: 05/05/2018)
05/05/2018	26	MOTION for Attorney(s) Johnathan Smith to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4819986) by Rafiq Sabir. (Attachments: # 1 Affidavit) (Redman, Renee) (Entered: 05/05/2018)
05/07/2018	27	ORDER granting 25 Motion to Appear Pro Hac Vice as to Matthew Callahan. Certificate of Good Standing due by 7/6/2018. Signed by Clerk on 5/7/2018. (Fazekas, J.) (Entered: 05/07/2018)
05/07/2018	28	ORDER granting 26 Motion to Appear Pro Hac Vice as to Johnathan Smith. Certificate of Good Standing due by 7/6/2018. Signed by Clerk on 5/7/2018. (Fazekas, J.) (Entered: 05/07/2018)
05/11/2018	29	NOTICE of Appearance by Johnathan Smith on behalf of Rafiq Sabir (Smith, Johnathan) (Entered: 05/11/2018)
05/11/2018	30	CERTIFICATE OF GOOD STANDING re 26 MOTION for Attorney(s) Johnathan Smith to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4819986) by Rafiq Sabir. (Smith, Johnathan) (Entered: 05/11/2018)
05/11/2018	31	NOTICE of Appearance by Matthew Callahan on behalf of Rafiq Sabir (Callahan, Matthew) (Entered: 05/11/2018)

05/11/2018	32	CERTIFICATE OF GOOD STANDING re 25 MOTION for Attorney(s) Matthew Callahan to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4819980) by Rafiq Sabir. (Callahan, Matthew) (Entered: 05/11/2018)
05/11/2018	33	Consent MOTION for Extension of Time until June 1, 2018 to file Second Amended Complaint by Rafiq Sabir. (Callahan, Matthew) (Entered: 05/11/2018)
05/14/2018	34	ORDER granting 33 Motion for Extension of Time. Signed by Judge Victor A. Bolden on 5/14/2018. (Riegel, J.) (Entered: 05/14/2018)
05/23/2018	35	NOTICE of Appearance by Vanessa Roberts Avery on behalf of Thomas Kane, D. K. Williams (Avery, Vanessa) (Entered: 05/23/2018)
06/01/2018	36	AMENDED COMPLAINT against D. K. Williams, Herman Quay, Hugh J. Hurwitz, filed by Rafiq Sabir, James J. Conyers. (Attachments: # 1 Attachment A, # 2 Attachment B, # 3 Attachment C)(Callahan, Matthew) (Entered: 06/01/2018)
06/14/2018		Request for Clerk to issue summons as to D. K. Williams. (Callahan, Matthew) (Entered: 06/14/2018)
06/14/2018		Request for Clerk to issue summons as to Herman Quay. (Callahan, Matthew) (Entered: 06/14/2018)
06/15/2018	37	ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *D. K. Williams* with answer to complaint due within *21* days. Attorney *Matthew Callahan* *Muslim Advocates* *P.O. Box 66408* *Washington, DC 20035*. (Fazekas, J.) (Entered: 06/15/2018)
06/15/2018	38	ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Herman Quay* with answer to complaint due within *21* days. Attorney *Matthew Callahan* *Muslim Advocates* *P.O. Box 66408* *Washington, DC 20035*. (Fazekas, J.) (Entered: 06/15/2018)
06/19/2018	39	WAIVER OF SERVICE Returned Executed as to Herman Quay waiver sent on 6/1/2018, answer due 7/31/2018 filed by Rafiq Sabir. (Callahan, Matthew) (Entered: 06/19/2018)
06/21/2018	40	NOTICE of Appearance by Vanessa Roberts Avery on behalf of Hugh J. Hurwitz (Avery, Vanessa) (Entered: 06/21/2018)
06/21/2018	41	Consent MOTION for Extension of Time until August 31, 2018 to Answer Second Amended Complaint and for Modification of all Subsequent Scheduling Deadlines 23 Order on Motion for Extension of Time by Hugh J. Hurwitz, D. K. Williams. (Avery, Vanessa) (Entered: 06/21/2018)
06/21/2018	42	WAIVER OF SERVICE Returned Executed as to D. K. Williams waiver sent on 6/1/2018, answer due 7/31/2018 filed by Rafiq Sabir. (Callahan, Matthew) (Entered: 06/21/2018)
06/25/2018	43	ORDER granting 41 Motion for Extension of Time until August 31, 2018, to Answer Second Amended Complaint. Signed by Judge Victor A. Bolden on 6/25/2018. (Riegel, J.) (Entered: 06/25/2018)
06/25/2018	44	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Status Conference set for 7/5/2018 at 10:00 AM before Judge Victor A. Bolden. Once all counsel are on the line, please call Chambers at (203) 579-5562. (Riegel, J.) (Entered: 06/25/2018)
07/03/2018	45	NOTICE of Appearance by John B. Hughes on behalf of Hugh J. Hurwitz, Mark S. Inch, Thomas Kane, Herman Quay, D. K. Williams (Hughes, John) (Entered: 07/03/2018)

07/03/2018	46	MOTION to Withdraw Appearance by Hugh J. Hurwitz, Herman Quay, D. K. Williams re 19 Notice of Appearance (Hughes, John) Modified on 7/5/2018 to correct event(Fazekas, J.). (Entered: 07/03/2018)
07/05/2018	47	ORDER granting 46 Motion to Withdraw as Attorney. Attorney Alan M. Soloway terminated. Signed by Judge Victor A. Bolden on 7/5/2018. (Riegel, J.) (Entered: 07/05/2018)
07/05/2018	48	Minute Entry for proceedings held before Judge Victor A. Bolden: Status Conference held on 7/5/2018. Total Time: 0 hours and 17 minutes (Court Reporter S. Montini.) (Riegel, J.) (Entered: 07/05/2018)
07/05/2018	49	SCHEDULING ORDER: See attached Order. Signed by Judge Victor A. Bolden on 7/5/2018. (Riegel, J.) (Entered: 07/05/2018)
07/05/2018	50	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephonic Post-Discovery Status Conference set for 4/18/2019 at 10:00 AM in Courtroom Two, 915 Lafayette Blvd., Bridgeport, CT before Judge Victor A. Bolden. Once all counsel are on the line, please call Chambers at (203) 579-5562. (Riegel, J.) (Entered: 07/05/2018)
08/02/2018	51	NOTICE of Appearance by Reginald Maurice Skinner on behalf of Herman Quay, D. K. Williams (Skinner, Reginald) (Entered: 08/02/2018)
08/10/2018	52	Consent MOTION for Extension of Time until September 14, 2018 to Respond to Plaintiffs' Second Amended Complaint by Hugh J. Hurwitz, Herman Quay, D. K. Williams. (Skinner, Reginald) (Entered: 08/10/2018)
08/11/2018	53	ORDER granting 52 Motion for Extension of Time. Response due 9/14/2018. Signed by Judge Victor A. Bolden on 8/11/2018. (Riegel, J.) (Entered: 08/11/2018)
08/13/2018		Answer deadline updated for Hugh J. Hurwitz to 9/14/2018; Herman Quay to 9/14/2018; D. K. Williams to 9/14/2018. (Perez, J.) (Entered: 08/13/2018)
09/14/2018	54	MOTION to Dismiss <i>Second Amended Complaint</i> by Hugh J. Hurwitz, Herman Quay, D. K. Williams.Responses due by 10/5/2018 (Skinner, Reginald) (Entered: 09/14/2018)
09/14/2018	55	Memorandum in Support re 54 MOTION to Dismiss <i>Second Amended Complaint</i> filed by Hugh J. Hurwitz, Herman Quay, D. K. Williams. (Skinner, Reginald) (Entered: 09/14/2018)
09/21/2018	56	Consent MOTION for Extension of Time to File Response/Reply as to 54 MOTION to Dismiss <i>Second Amended Complaint</i> until Nov. 2, 2018 by James J. Conyers, Rafiq Sabir. (Callahan, Matthew) (Entered: 09/21/2018)
09/24/2018	57	ORDER granting 56 Motion for Extension of Time to File Response/Reply re 54 MOTION to Dismiss <i>Second Amended Complaint</i> , 56 Consent MOTION for Extension of Time to File Response/Reply as to 54 MOTION to Dismiss <i>Second Amended Complaint</i> until Nov. 2, 2018 Responses due by 11/2/2018. Signed by Judge Victor A. Bolden on 9/24/2018. (Washington, Gregory) (Entered: 09/24/2018)
10/11/2018	58	Consent MOTION to Stay re 49 Scheduling Order by Hugh J. Hurwitz, Herman Quay, D. K. Williams.Responses due by 11/1/2018 (Avery, Vanessa) (Entered: 10/11/2018)
10/16/2018	59	ORDER granting 58 Motion to Stay. The Court will defer discovery and the filing of a Rule 26(f) Report until thirty days after the Court rules on the pending motion to dismiss. Signed by Judge Victor A. Bolden on 10/16/2018. (Washington, Gregory) (Entered: 10/16/2018)

11/02/2018	60	Memorandum in Opposition re 54 MOTION to Dismiss <i>Second Amended Complaint</i> filed by James J. Conyers, Rafiq Sabir. (Callahan, Matthew) (Entered: 11/02/2018)
11/16/2018	61	REPLY to Response to 54 MOTION to Dismiss <i>Second Amended Complaint</i> filed by Hugh J. Hurwitz, Herman Quay, D. K. Williams. (Skinner, Reginald) (Entered: 11/16/2018)
02/01/2019	62	MOTION for Attorney(s) Sirine Shebaya to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-5142569) by James J. Conyers, Rafiq Sabir. (Attachments: # 1 Affidavit Affidavit of Sirine Shebaya)(Redman, Renee) Modified on 2/20/2019 to correct attorney name (Reis, Julia). (Entered: 02/01/2019)
02/01/2019	63	NOTICE of Appearance by Natalie Nicole Elicker on behalf of Hugh J. Hurwitz, Herman Quay, D. K. Williams (Elicker, Natalie) (Entered: 02/01/2019)
02/01/2019	64	MOTION for Johnathan James Smith to Withdraw as Attorney by James J. Conyers, Rafiq Sabir. (Smith, Johnathan) (Entered: 02/01/2019)
02/04/2019	65	ORDER granting 62 Motion to Appear Pro Hac Vice as to Sirine Shebaya. Certificate of Good Standing due by 4/5/2019. Signed by Clerk on 2/4/2019. (Fazekas, J.) Modified on 2/20/2019 to correct attorney name (Reis, Julia). (Entered: 02/04/2019)
02/04/2019	66	ORDER granting 64 Motion to Withdraw as Attorney. Attorney Johnathan Smith terminated. Signed by Judge Victor A. Bolden on 2/4/2019. (Washington, Gregory) (Entered: 02/04/2019)
02/05/2019	67	MOTION for Vanessa Avery to Withdraw as Attorney by Hugh J. Hurwitz, Herman Quay, D. K. Williams. (Elicker, Natalie) (Entered: 02/05/2019)
02/07/2019	68	ORDER granting 67 Motion to Withdraw as Attorney. Attorney Vanessa Roberts Avery terminated. Signed by Judge Victor A. Bolden on 2/7/2019. (Washington, Gregory) (Entered: 02/07/2019)
02/20/2019	69	NOTICE of Appearance by Sirine Shebaya on behalf of James J. Conyers, Rafiq Sabir (Shebaya, Sirine) (Entered: 02/20/2019)
02/20/2019	70	CERTIFICATE OF GOOD STANDING re 62 MOTION for Attorney(s) Sirin Shebaya to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-5142569) by Rafiq Sabir. (Shebaya, Sirine) (Entered: 02/20/2019)
05/07/2019	71	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE.ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Motion to Dismiss Hearing set for 6/25/2019 02:00 PM in Courtroom Two, 915 Lafayette Blvd., Bridgeport, CT before Judge Victor A. Bolden. (Washington, Gregory) (Entered: 05/07/2019)
06/21/2019	72	MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> by Hugh J. Hurwitz, Herman Quay, D. K. Williams.Responses due by 7/12/2019 (Attachments: # 1 Exhibit 1 - C. Magnusson Decl. (June 21, 2019))(Elicker, Natalie) (Entered: 06/21/2019)
06/26/2019	73	Minute Entry for proceedings held before Judge Victor A. Bolden: Motion Hearing held on 6/25/2019 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> filed by Hugh J. Hurwitz, Herman Quay, D. K. Williams. Total Time: 1 hours and 5 minutes(Court Reporter S. Montini.) (Washington, Gregory) (Entered: 06/26/2019)
07/03/2019	74	Consent MOTION for Extension of Time to File Response/Reply as to 72 MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss

		<i>Second Amended Complaint</i> until 7/26/19 by James J. Conyers, Rafiq Sabir. (Callahan, Matthew) (Entered: 07/03/2019)
07/08/2019	75	ORDER granting 74 Motion for Extension of Time to File Response/Reply. Responses due by 7/26/2019. Signed by Judge Victor A. Bolden on 7/8/2019. (Washington, Gregory) (Entered: 07/08/2019)
07/12/2019	76	Second MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> by Hugh J. Hurwitz, Herman Quay, D. K. Williams. Responses due by 8/2/2019 (Attachments: # 1 Exhibit 1 - C. Magnusson Decl. (July 12, 2019))(Elicker, Natalie) (Entered: 07/12/2019)
07/23/2019	77	Consent MOTION for Extension of Time to File Response/Reply as to 72 MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> until 8/2/19 by James J. Conyers, Rafiq Sabir. (Callahan, Matthew) (Entered: 07/23/2019)
07/24/2019	78	ORDER granting 77 Motion for Extension of Time to File Response/Reply. Responses due by 8/2/2019. Signed by Judge Victor A. Bolden on 7/24/2019. (Washington, Gregory) (Entered: 07/24/2019)
08/02/2019	79	Memorandum in Opposition re 72 MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> , 76 Second MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> filed by James J. Conyers, Rafiq Sabir. (Attachments: # 1 Exhibit Supporting Declaration of Rafiq Sabir)(Callahan, Matthew) (Entered: 08/02/2019)
08/15/2019	80	REPLY to Response to 72 MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> , 76 Second MOTION to Supplement Pending Motion pursuant to Fed. R. Civ. P. 15 re 54 MOTION to Dismiss <i>Second Amended Complaint</i> filed by Hugh J. Hurwitz, Herman Quay, D. K. Williams. (Elicker, Natalie) (Entered: 08/15/2019)
08/17/2019	81	MOTION for Sirine Shebaya to Withdraw as Attorney by James J. Conyers, Rafiq Sabir. (Shebaya, Sirine) (Entered: 08/17/2019)
08/27/2019	82	ORDER denying 54 Motion to Dismiss; granting 72 Motion dismiss declaratory and injunctive relief claims as to James Conyers; denying 76 Motion dismiss declaratory and injunctive relief claims as to Rafiq Sabir. Signed by Judge Victor A. Bolden on 8/27/2019. (Washington, Gregory) (Entered: 08/27/2019)
08/28/2019	83	ORDER granting 81 Motion to Withdraw as Attorney. Attorney Sirine Shebaya terminated. Signed by Judge Victor A. Bolden on 8/28/2019. (Washington, Gregory) (Entered: 08/28/2019)
09/05/2019	84	Consent MOTION for Extension of Time until October 28, 2019 to Answer Plaintiffs' Second Amended Complaint by Hugh J. Hurwitz, Herman Quay, D. K. Williams. (Skinner, Reginald) (Entered: 09/05/2019)
09/06/2019	85	ORDER granting 84 Motion for Extension of Time until 10/28/2019 for Defendants to Answer Plaintiffs's Second Amended Complaint. Signed by Judge Victor A. Bolden on 9/6/2019. (Conde, Djenab) (Entered: 09/06/2019)
09/13/2019	86	NOTICE by Rafiq Sabir of <i>Dismissal of First Cause of Action Against Individual-Capacity Defendants</i> (Callahan, Matthew) (Entered: 09/13/2019)
09/16/2019	87	ORDER re 86 Notice (Other) filed by Rafiq Sabir of voluntary dismissal with prejudice of Plaintiffs' first cause of action against the individual-capacity Defendants.

		Plaintiff Sabir maintains the first cause of action against Defendant Williams in her official capacity, and both Plaintiffs maintain the second cause of action against the individual-capacity Defendants. Signed by Judge Victor A. Bolden on 9/16/2019.(Conde, Djenab) (Entered: 09/16/2019)
09/16/2019	88	ORDER vacating 87 Order re 86 Notice (Other) filed by Rafiq Sabir of voluntary dismissal with prejudice of Plaintiffs's first cause of action re the First Amendment against the individual-capacity defendants. The Court's prior Order mistakenly stated that Plaintiff Sabir maintains the first cause of action against Defendant Williams in her official capacity. The Court issues this order to clarify that Plaintiff Sabir maintains his First Amendment claim only against the Director of the Federal Bureau of Prisons in her official capacity, Director Kathleen Hawk Sawyer. Both Plaintiffs maintain the second cause of action against the individual-capacity Defendants. Signed by Judge Victor A. Bolden on 9/16/2019.(Conde, Djenab) (Entered: 09/16/2019)
09/27/2019	89	Joint MOTION to Amend/Correct 49 Scheduling Order by All Parties.Responses due by 10/18/2019 (Attachments: # 1 Exhibit A - Proposed Amended Scheduling Order)(Skinner, Reginald) (Entered: 09/27/2019)
09/30/2019	90	ORDER granting 89 Motion to Amend scheduling order. The Court adopts the parties's schedule and deadlines as proposed in the motion: Defendants's answer to Second Amended Complaint by 10/28/2019; Parties meet and confer on discovery plan as required by Fed. R. Civ. P. 26(f) by 11/4/2019; Parties file 26(f) conference report and discovery plan by 11/18/2019; Defendants's joinder of any additional parties by 12/18/2019; Damages analysis due 12/27/2019; Plaintiff's disclosure of expert witnesses and reports by 12/27/2019; Depositions of Plaintiff's expert witnesses by 1/27/2020; Defendants's disclosure of expert witnesses and reports by 2/25/2020; Depositions of Defendants's expert witnesses by 3/26/2020; Completion of depositions by 4/27/2020; Discovery closes on 4/27/2020; On 5/4/2020 at 10:00 AM, the Court will convene a post-discovery telephonic status conference. Once all counsel are on the line, and only then, please call Chambers at (203) 579-5562. Dispositive motions due 5/26/2020; Joint trial memorandum due 6/16/2020, or, 30 days after the Court rules on dispositive motions, whichever is later; and This case shall be trial ready by 7/16/2020. Signed by Judge Victor A. Bolden on 9/30/2019. (Conde, Djenab) (Entered: 09/30/2019)
09/30/2019	91	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Post-discovery Telephonic Status Conference set for 5/4/2020 10:00 AM before Judge Victor A. Bolden. Once all parties are on the line, please call Chambers at (203) 579-5562. (Conde, Djenab) (Entered: 09/30/2019)
10/01/2019		Set Deadlines/Hearings: Discovery due by 4/27/2020; Dispositive Motions due by 5/26/2020; Rule 26 Meeting Report due by 11/18/2019; Trial Brief due by 6/16/2020; Trial Ready Date 7/16/2020. (Perez, J.) (Entered: 10/01/2019)
10/28/2019	92	NOTICE OF APPEAL as to 82 Order on Motion to Dismiss,, Order on Motion for Miscellaneous Relief,, by Herman Quay, D. K. Williams. (Skinner, Reginald) (Entered: 10/28/2019)

		10/28/2019)
10/28/2019	93	MOTION to Dismiss for Lack of Jurisdiction <i>by BOP Director Kathleen Hawk Sawyer</i> , by Hugh J. Hurwitz. Responses due by 11/18/2019 (Attachments: # 1 Exhibit 1 - Declaration of Greg Wirfel, Case Manager, # 2 Exhibit 2 - Declaration of Supervisory Chaplain Martin Statler)(Elicker, Natalie) (Entered: 10/28/2019)
10/28/2019	94	MOTION to Stay <i>pending appeal by BOP Director Kathleen Hawk Sawyer</i> by Hugh J. Hurwitz. Responses due by 11/18/2019 (Elicker, Natalie) (Entered: 10/28/2019)
10/28/2019	95	NOTICE OF INTERLOCUTORY APPEAL as to 82 Order on Motion to Dismiss,, Order on Motion for Miscellaneous Relief,, by Herman Quay, D. K. Williams. (Fazekas, J.) (Entered: 10/29/2019)
10/29/2019	96	CLERK'S CERTIFICATE RE: INDEX AND RECORD ON APPEAL re: 95 Notice of Interlocutory Appeal. The attached docket sheet is hereby certified as the entire Index/Record on Appeal in this matter and electronically sent to the Court of Appeals, with the exception of any manually filed documents as noted below. Robin D. Tabora, Clerk. Documents manually filed not included in this transmission: NONE (Fazekas, J.) (Entered: 10/29/2019)
11/18/2019	97	Memorandum in Opposition re 93 MOTION to Dismiss for Lack of Jurisdiction <i>by BOP Director Kathleen Hawk Sawyer</i> , filed by Rafiq Sabir. (Callahan, Matthew) (Entered: 11/18/2019)
11/18/2019	98	Memorandum in Opposition re 94 MOTION to Stay <i>pending appeal by BOP Director Kathleen Hawk Sawyer</i> filed by Rafiq Sabir. (Callahan, Matthew) (Entered: 11/18/2019)
11/22/2019	99	Consent MOTION for Extension of Time to File Response/Reply <i>by BOP Director Kathleen Hawk Sawyer</i> as to 93 MOTION to Dismiss for Lack of Jurisdiction <i>by BOP Director Kathleen Hawk Sawyer</i> ,, 94 MOTION to Stay <i>pending appeal by BOP Director Kathleen Hawk Sawyer</i> until Dec. 9, 2019 by Hugh J. Hurwitz. (Elicker, Natalie) (Entered: 11/22/2019)
11/25/2019	100	ORDER granting 99 Motion for Extension of Time until December 9, 2019 to File Reply as to 93 Motion to Dismiss and 94 Motion to Stay. Signed by Judge Victor A. Bolden on 11/25/2019. (Conde, Djenab) (Entered: 11/25/2019)
12/02/2019	101	TRANSCRIPT of Proceedings: Type of Hearing: Motion Hearing. Held on 6/25/19 before Judge Victor Bolden. Court Reporter: Sharon Montini. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov. Redaction Request due 12/23/2019. Redacted Transcript Deadline set for 1/2/2020. Release of Transcript Restriction set for 3/1/2020. (Montini, S.) (Entered: 12/02/2019)
12/09/2019	102	REPLY to Response to 93 MOTION to Dismiss for Lack of Jurisdiction <i>by BOP Director Kathleen Hawk Sawyer</i> , filed by Hugh J. Hurwitz, Kathleen Hawk Sawyer. (Elicker, Natalie) (Entered: 12/09/2019)
12/09/2019	103	REPLY to Response to 94 MOTION to Stay <i>pending appeal by BOP Director Kathleen Hawk Sawyer</i> filed by Kathleen Hawk Sawyer, Hugh J. Hurwitz. (Elicker, Natalie)

		(Entered: 12/09/2019)
04/30/2020		CANCELLATION NOTICE: The Post-discovery Telephonic Status Conference set for 5/4/2020 10:00 AM before Judge Victor A. Bolden is CANCELLED and will be rescheduled, if necessary, after the Court rules on the pending motions. Signed by Judge Victor A. Bolden on 4/30/2020.(Conde, Djenab) (Entered: 04/30/2020)
05/08/2020	104	NOTICE by Rafiq Sabir <i>of Dismissal of Claims against Defendant Carvajal</i> (Callahan, Matthew) (Entered: 05/08/2020)
05/11/2020	105	ORDER The Clerk of Court is directed to terminate as a defendant Michael Carvajal. As also stated in Plaintiff's 104 Notice of Voluntary Dismissal, the only remaining claims are the claims for damages and declaratory relief under the Religious Freedom Restoration Act, which is currently on appeal in the Second Circuit. Signed by Judge Victor A. Bolden on 5/11/2020.(Conde, Djenab) (Entered: 05/11/2020)
09/21/2021	106	MOTION for Matthew Callahan to Withdraw as Attorney by James J. Conyers, Rafiq Sabir. (Callahan, Matthew) (Entered: 09/21/2021)
09/22/2021	107	ORDER granting 106 Motion to Withdraw as Attorney. Attorney Matthew Callahan terminated. Signed by Judge Victor A. Bolden on 9/22/2021. (Lee, Diana) (Entered: 09/22/2021)
09/24/2021	108	MOTION for Attorney(s) Stephanie R. Correa to be Admitted Pro Hac Vice (paid \$200 PHV fee; receipt number ACTDC-6661002) by James J. Conyers, Rafiq Sabir. (Attachments: # 1 Affidavit Affidavit by Stephanie R. Correa)(Redman, Renee) (Entered: 09/24/2021)
09/27/2021	109	ORDER granting 108 Motion for Attorney Stephanie R. Correa to Appear Pro Hac Vice. Certificate of Good Standing due by 11/26/2021. Signed by Clerk on 9/27/2021. (Oliver, T.) (Entered: 09/27/2021)
11/23/2021	110	NOTICE of Appearance by Stephanie Rose Correa on behalf of James J. Conyers, Rafiq Sabir (Attachments: # 1 Certificate of Good Standing)(Correa, Stephanie) (Entered: 11/23/2021)
01/05/2023	111	MANDATE of USCA dated 1/5/2023 Affirming 82 Order on Motion to Dismiss (Imbriani, Susan) (Entered: 01/05/2023)
01/09/2023	112	<p>ORDER finding as moot 93 Motion to Dismiss for Lack of Jurisdiction and 94 Motion to Stay.</p> <p>On October 28, 2022, the Second Circuit filed an amended opinion affirming this Court's 82 order denying Defendants' motion to dismiss. On December 29, 2022, the Second Circuit denied Defendants' petition for panel rehearing and rehearing en banc, and the Second Circuit's mandate issued on January 5, 2023. ECF No. 111 .</p> <p>While Defendants' interlocutory appeal was pending, Mr. Sabir voluntarily dismissed his claims for injunctive relief against Mr. Carvajal in his official capacity. Notice of Voluntary Dismissal, ECF No. 104 (May 5, 2020); Order, ECF No. 105 (May 11, 2020) (terminating Mr. Carvajal as a Defendant). Thus, the only remaining claims in this case are the claims for damages and declaratory relief under the Religious Freedom Restoration Act against Ms. Williams and Mr. Quay in their individual capacities. <i>See</i> ECF No. 105.</p> <p>In light of the Second Circuit's decision, the parties are directed to confer and jointly submit a proposed schedule by January 20, 2023.</p>

		<p>Furthermore, because Defendants' appeal is resolved and because Mr. Sabir's claims for injunctive relief have been voluntarily dismissed, the 93 motion to dismiss for lack of jurisdiction and 94 motion to stay pending appeal filed by the BOP Director are DENIED as moot.</p> <p>Signed by Judge Victor A. Bolden on 1/9/2023. (Sullivan, John) (Entered: 01/09/2023)</p>
01/20/2023	113	Joint STATUS REPORT by Herman Quay, D. K. Williams. (Skinner, Reginald) (Entered: 01/20/2023)
01/23/2023	114	<p>ORDER REFERRING CASE to Magistrate Judge S. Dave Vatti for Settlement Conference. The parties are further ordered to file a proposed scheduling order within thirty (30) days of the conclusion of the settlement conference.</p> <p>Signed by Judge Victor A. Bolden on 1/23/2023.(Nuzzi, Tiffany) (Entered: 01/23/2023)</p>
01/25/2023	115	<p>NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. A pre-settlement telephonic status conference has been set for 2/1/2023 at 2:00 p.m. before Judge S. Dave Vatti. The purpose of the call is to discuss scheduling and any information exchange/discovery necessary to make the conference most meaningful. A date for the settlement conference will be set during the telephone call. As the Court will require parties or their representatives with settlement authority to attend the settlement conference, counsel should obtain dates of unavailability from their clients over the next sixty days and have their own calendars available to aid in scheduling. If either counsel develops a firm, unavoidable conflict on 2/1/2023 at 2:00 p.m., s/he should not file a motion for continuance but rather should call Chambers (203) 579-5593 as soon as possible with opposing counsel on the line to work out an alternate day and time for the pre-settlement telephonic status conference. Counsel should dial 866-434-5269, to connect to the conference and enter access code 2006808. (Ellis, Bernadette) (Entered: 01/25/2023)</p>
02/01/2023	116	Minute Entry for proceedings held before Judge S. Dave Vatti: Pre-Settlement Telephonic Status Conference held on 2/1/2023. Total Time: 11 minutes. (Ellis, Bernadette) (Entered: 02/01/2023)
02/01/2023	117	ORDER. A Settlement Conference is set for 3/7/2023 at 10:00 AM before Judge S. Dave Vatti. Please see the attached Settlement Conference Order for detailed instructions and deadlines. Signed by Judge S. Dave Vatti on 2/1/2023. (Ellis, Bernadette) (Entered: 02/01/2023)
02/01/2023	118	<p>NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. An in-person/Zoom Settlement Conference is set for 3/7/2023 at 10:00 a.m., before Judge S. Dave Vatti, 915 Lafayette Blvd., Courtroom 435, 4th Floor, Bridgeport, CT. (Ellis, Bernadette) (Entered: 02/01/2023)</p>
02/01/2023		<p>NOTICE regarding hearing via Zoom: An in-person/Zoom Settlement Conference is scheduled for 3/7/2023 at 10:00 a.m. will be conducted via Zoom. The video link is https://www.zoomgov.com/j/1617164599?pwd=cIFnblNTUTNtMFpIYTVWREhSZHpYZz09 and call in number is 161 716 4599.</p> <p>Meeting ID: +1 551 285 1373</p> <p>Meeting Password: 137707</p> <p>Please note: Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, screenshots, streaming, and rebroadcasting in any form, of court proceedings. The Judicial Conference of the United States, which</p>

		governs the practices of the federal courts, has prohibited it. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court. (Ellis, Bernadette) (Entered: 02/01/2023)
03/07/2023	119	Minute Entry for proceedings held before Judge S. Dave Vatti: Settlement Conference held on 3/7/2023. Total Time: 5 hours and 15 minutes. Case settled. (Court Reporter: ZOOM. On record portion 3 minutes.) (Ellis, Bernadette) (Entered: 03/07/2023)
03/08/2023	120	ORDER. Based on the report of this case being settled, the Clerk of Court is respectfully requested to administratively close this case. The parties shall have until June 9, 2023 , to file a stipulation of dismissal or move to reopen the case. Signed by Judge Victor A. Bolden on 3/8/2023. (Sullivan, John) (Entered: 03/08/2023)
03/13/2023	121	MOTION for Stephanie R. Correa to Withdraw as Attorney by James J. Conyers, Rafiq Sabir. (Correa, Stephanie) (Entered: 03/13/2023)
03/15/2023	122	ORDER granting 121 Motion to Withdraw as Attorney. Attorney Stephanie Rose Correa terminated. Signed by Judge Victor A. Bolden on 3/15/2023. (Sullivan, John) (Entered: 03/15/2023)

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