

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6402

APPENDIX
A

WALTER D. BOOKER,

Plaintiff - Appellant,

v.

R. TIMMONS, Unit Manager; B. M. CLAUDE, Lieutenant; T. ROBINSON,
Sergeant; G. D. FAULCON, Sergeant; LIEUTENANT TAYLOR; M. L. ROOK,
Correctional Officer,

Defendants - Appellees,

and

A. DAVID ROBINSON, Chief of Corrections Operations; WENDY S. HOBBS,
Regional Administrator; EDDIE L. PEARSON, Lead Warden; C. PARKER,
Warden; J. HARRIS, Warden; C. BOONE, Regional Ombudsman; S. TAPP,
Human Rights Advocate; K. WHITEHEAD, Grievance Coordinator; L. GOODE,
Unit Manager; D. DUGGER, Institutional Hearings Officer,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. James C. Cacheris, Senior District Judge. (1:14-cv-00555-JCC-IDD)

Submitted: September 28, 2017

Decided: October 2, 2017

Before WILKINSON, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Walter D. Booker, Appellant Pro Se. Margaret Hoehl O'Shea, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, John Michael Parsons, Assistant Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Walter D. Booker appeals the district court's order denying relief on his complaint raising claims under 42 U.S.C. § 1983 (2012), the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc to 2000cc-5 (2012), and state law. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Booker v. Timmons*, No. 1:14-cv-00555-JCC-IDD (E.D. Va. Sept. 23, 2014; July 14, 2015; Feb. 14, 2017). We deny the motion for injunctive relief pending appeal and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 2, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6402
(1:14-cv-00555-JCC-IDD)

WALTER D. BOOKER

Plaintiff - Appellant

v.

R. TIMMONS, Unit Manager; B. M. CLAUDE, Lieutenant; T. ROBINSON,
Sergeant; G. D. FAULCON, Sergeant; LIEUTENANT TAYLOR; M. L. ROOK,
Correctional Officer

Defendants - Appellees

and

A. DAVID ROBINSON, Chief of Corrections Operations; WENDY S. HOBBS,
Regional Administrator; EDDIE L. PEARSON, Lead Warden; C. PARKER,
Warden; J. HARRIS, Warden; C. BOONE, Regional Ombudsman; S. TAPP,
Human Rights Advocate; K. WHITEHEAD, Grievance Coordinator; L. GOODE,
Unit Manager; D. DUGGER, Institutional Hearings Officer

Defendants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: October 24, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6402
(1:14-cv-00555-JCC-IDD)

WALTER D. BOOKER

Plaintiff - Appellant

v.

R. TIMMONS, Unit Manager; B. M. CLAUDE, Lieutenant; T. ROBINSON, Sergeant; G. D. FAULCON, Sergeant; LIEUTENANT TAYLOR; M. L. ROOK, Correctional Officer

Defendants - Appellees

and

A. DAVID ROBINSON, Chief of Corrections Operations; WENDY S. HOBBS, Regional Administrator; EDDIE L. PEARSON, Lead Warden; C. PARKER, Warden; J. HARRIS, Warden; C. BOONE, Regional Ombudsman; S. TAPP, Human Rights Advocate; K. WHITEHEAD, Grievance Coordinator; L. GOODE, Unit Manager; D. DUGGER, Institutional Hearings Officer

Defendants

M A N D A T E

The judgment of this court, entered 10/02/2017, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6402
(1:14-cv-00555-JCC-IDD)

WALTER D. BOOKER

Plaintiff - Appellant

v.

R. TIMMONS, Unit Manager; B. M. CLAUDE, Lieutenant; T. ROBINSON, Sergeant; G. D. FAULCON, Sergeant; LIEUTENANT TAYLOR; M. L. ROOK, Correctional Officer

Defendants - Appellees

and

A. DAVID ROBINSON, Chief of Corrections Operations; WENDY S. HOBBS, Regional Administrator; EDDIE L. PEARSON, Lead Warden; C. PARKER, Warden; J. HARRIS, Warden; C. BOONE, Regional Ombudsman; S. TAPP, Human Rights Advocate; K. WHITEHEAD, Grievance Coordinator; L. GOODE, Unit Manager; D. DUGGER, Institutional Hearings Officer

Defendants

ORDER

The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40(c). The petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

**APPENDIX
B**

**Walter Delaney Booker, Jr.,
Plaintiff,**

v.

1:14cv555 (JCC/IDD)

**A. David Robinson, et al.,
Defendants**

ORDER

Walter Delaney Booker, Jr., a Virginia inmate proceeding pro se, has filed a civil rights action pursuant to the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc. For the reasons that follow, plaintiff's complaint will be dismissed as moot.

I. Background

The procedural history of this matter is somewhat complicated. Plaintiff initially filed a complaint against several defendants alleging claims under RLUIPA, the Fourteenth Amendment, and tort law. Dkt. No. 1. By Order dated June 10, 2014, plaintiff was directed to particularize and amend his complaint. Dkt. No. 3. Petitioner filed an amended complaint on July 7, 2014. Dkt. No. 7. By Order dated September 23, 2014, all but six defendants were dismissed from the matter. Dkt. No. 9. On December 19, 2014, the remaining defendants filed a Motion for Summary Judgment. Dkt. No. 19. Plaintiff filed a response to defendant's Motion for Summary Judgment as well as his own Motion for Summary Judgment. Dkt. Nos. 32, 33. By Memorandum Opinion and Order dated July 14, 2015, defendants' Motion for Summary Judgment was granted as to all claims except for plaintiff's RLUIPA claim and plaintiff's Motion for Summary Judgment was denied, without prejudice. Dkt. No. 55, 56.

Plaintiff was directed to file a second amended complaint addressing all the facts relevant to his RLUIPA claim. Dkt. No. 56.

On September 14, 2015, plaintiff filed a Motion for Preliminary Injunction, which was denied by Order dated October 19, 2015. Dkt. Nos. 65, 73. Plaintiff appealed the order denying his Motion for Preliminary Injunction, and the United States Court of Appeals for the Fourth Circuit vacated and remanded for further proceedings. Dkt. No. 89.

In the meantime, plaintiff filed a second amended complaint, which is now the operative complaint in this matter.¹ Dkt. No. 66. Plaintiff alleged that, pursuant to Virginia Department of Corrections Operating Procedure (“VDOC OP”) 864.1 effective August 20, 2012, which allowed inmates to grow 1/4-inch beards that “cover[ed] the entire facial hair area with no shapes or designs cut into the beard,” he began growing a beard “as a religious exercise of his belief and religious texts.” *Id.* at 2. Plaintiff is only able to grow facial hair “above his lip, below his lip, on [his] chin and on portions of his lower jaw Plaintiff does not physically grow sideburns, nor hair above the line of the nose, nor in his upper jaw area” *Id.* Plaintiff seeks monetary damages in the amount of \$120,000 and injunctive relief in the form of a declaration that “the policy (grooming) violates RLUIPA insofar as it substantially burdens plaintiff and prevents him from growing a 1/4-1/2-inch beard in accordance with his religious beliefs, and ensure that he will be able to exercise his religious exercise protections [sic].” *Id.* at 33. Plaintiff sued defendants in both their individual and official capacities. *Id.* at 22.

After remand from the Fourth Circuit, plaintiff’s preliminary injunction was granted by Order dated July 15, 2016, and defendants were directed to allow plaintiff to “grow a 1/4-inch to 1/2-inch beard without substantial burdens imposed and to prevent further losses and harms as a result of his religious exercise.” Dkt. No. 93. Plaintiff has now been allowed to grow a beard

¹ To the extent plaintiff re-alleged his § 1983 claims in the second amended complaint,

between 1/4-inch and 1/2-inch in length, his ESC level has been restored from level 2 to level 1, his security level has been reclassified from level 5 to level 2, and he has been transferred to a security level 2/3 facility. See Dkt. No. 95.

Defendants have now filed a Motion for Summary Judgment, as well as memoranda of law with supporting exhibits. Dkt. No. 103. Plaintiff was given the Notice required by Local Rule 7(K) and the opportunity to file responsive materials pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). Plaintiff has filed a Response to the Motion for Summary Judgment in which he seeks summary judgment to be granted in his favor. Dkt. No. 109.

Defendants' Motion for Summary Judgment and plaintiff's Opposition to the Motion for Summary Judgment focus, almost entirely, on why plaintiff should or should not be allowed to grow a 1/2-inch beard. As discussed in further detail below, plaintiff did not ask to be able to grow a 1/2-inch beard in his second amended complaint. Therefore, it is axiomatic that this issue is not properly before the Court.² Accordingly, prior to ruling on the motions for summary judgment, the Court must determine if there is still a live controversy presented in this matter. See Doe v. Kidd, 501 F.3d 348, 354 (4th Cir. 2007) (holding that "[a] case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'") (quoting Powell v. McCormack, 395 U.S. 486 (1969)) (internal quotation marks omitted).

II. Mootness

they were already dismissed by Order dated July 14, 2015.

² For the same reason, to the extent plaintiff is raising a claim of retaliation in his Opposition to defendants' Motion for Summary Judgment, it is not properly before the Court.

A. Declaratory Judgment

In the operative complaint, plaintiff seeks declaratory relief in the form of a declaration that “the policy (grooming) violates RLUIPA insofar as it substantially burdens plaintiff and prevents him from growing a 1/4-1/2-inch beard in accordance with his religious beliefs, and ensure that he will be able to exercise his religious exercise protections [sic].” Dkt. No. 66. “Generally claims for injunctive relief become moot when a prisoner no longer is subject to the conditions of which he complains.” In re Williams, 40 F.3d 1245 (4th Cir. 1994) (citing Williams v. Griffin, 952 F.2d 820, 823 (4th Cir.1991)). However, “[i]t is well established that a defendant’s “voluntary cessation of a challenged practice” moots an action only if ‘subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” Wall v. Wade, 741 F.3d 492, 497 (4th Cir. 2014) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 189(2000)) (citations omitted).

Pursuant to Rule 201 of the Federal Rules of Evidence, the Court takes judicial notice that, effective August 1, 2016, VDOC OP 864.1 was amended to allow beards up to 1/4-inch in length and “[t]he beard must cover the offender’s natural facial hair area (those areas in which the offender is able to grow facial hair) with no shapes or designs cut into the beard.” VDOC OP 864.1(IV)(F)(1)(c)(i). In addition, defendant Robinson’s affidavit, which is attached to defendants’ Motion for Summary Judgment, states that “it is understood by VDOC that an offender’s beard is between 1/4 inch to 1/2 inch in length at almost any point in time.” Def. Mot. for Summ. Jud. at Ex. I.

Therefore, even when the preliminary injunction in this matter is superseded by final judgment, plaintiff will still be allowed to grow a 1/4-inch to 1/2-inch beard without substantial burdens based on the current language of VDOC OP 864.1 and VDOC’s understanding regarding the length of inmates’ beards. In addition, VDOC restored plaintiff’s ESC level (from level 2 to

level 1), reclassified plaintiff's security level (from level 5 to level 2), and transferred plaintiff to a security level 2/3 facility. See Dkt. No. 95. Thus, not only has VDOC changed its policy to one that is consistently applied to inmates based on their natural ability to grown a beard, it has taken affirmative steps to roll back the disciplinary actions imposed on plaintiff based on VDOC's former policy. Accordingly, VDOC has made it clear that it is reasonable to expect that they will not reinstate the previous version of VDOC OP 864.1.

B. Monetary Relief

In order to determine if plaintiff's action is entirely moot, the Court must determine if plaintiff is entitled to the monetary relief he seeks. See Rendelman v. Rouse, 569 F.3d 182, 184 (4th Cir. 2009) ("even if a plaintiff's injunctive relief claim has been mooted, the action is not moot if the plaintiff may be entitled to at least nominal damages") (citation and quotation marks omitted). Here, plaintiff seeks monetary relief against defendants in their individual and official capacities; however, plaintiff is not entitled to the monetary relief he seeks.

The Fourth Circuit has held that plaintiffs cannot recover damages under RLUIPA against defendants when sued in their official capacity. Madison v. Virginia, 474 F.3d 118 (4th Cir. 2006) (Madison II). The Fourth Circuit also recently held that "when invoked as a spending clause statute, RLUIPA does not authorize a claim for money damages against an official sued in her individual capacity." Rendelman, 569 F.3d at 184.

Congress passed RLUIPA "by relying on its Spending and Commerce Clause powers" Madison v. Riter, 355 F.3d 310, 315 (4th Cir. 2003). Plaintiff does not specify in his complaint whether he invokes RLUIPA under the Spending Clause or the Commerce Clause; however, it is clear that "[t]he Virginia Department of Corrections is a state agency that receives federal financial assistance." Madison II, 474 F.3d at 124. Accordingly, it can reasonably be inferred that plaintiff invoked RLUIPA pursuant to the Spending Clause. See Rendelman, 569 F.3d

182; see also Stewart v. Beach, 701 F.3d 1322 (10th Cir. 2012) (analyzing the constitutionality of RLUIPA as an exercise of the Spending Clause as related to a prisoner's claim); Nelson v. Miller, 570 F.3d 868 (7th Cir. 2009) (same); Van Wyhe v. Reisch, 581 F.3d 639 (8th Cir. 2009) (same); Benning v. Georgia, 391 F.3d 1299 (11th Cir. 2004) (same). Therefore, plaintiff is not entitled to recover monetary damages from defendants in either their individual or official capacity and this matter will be dismissed as moot.

III. Summary Judgment

As plaintiff's remaining claim will be dismissed as moot, the pending Motions for Summary Judgment will also be dismissed as moot.

Accordingly, it is hereby

ORDERED that this civil action be and is DISMISSED as moot.

To appeal this decision, plaintiff must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the Court. Failure to timely file a notice of appeal waives the right to appeal this decision.

The Clerk is directed to send a copy of this Order to plaintiff and to counsel of record for defendants, and to close this civil action.

Entered this 14th day of February 2017.

Alexandria, Virginia

 /s/
James C. Cacheris
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

APPENDIX
D

Walter Delaney Booker, Jr.,
Plaintiff,

v.

A. David Robinson, et al.,
Defendants

1:14cv555 (JCC/IDD)

ORDER

Walter Delaney Booker, Jr., a Virginia inmate proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc. By Order dated July 15, 2016, this Court granted plaintiff's Motion for Preliminary Injunction and directed defendants to allow plaintiff "to grow a ¼-inch to ½-inch beard without substantial burdens imposed and to prevent further losses and harms as a result of his religious exercise and as a result of the 133 offense charge." Dkt. No. 93. Plaintiff subsequently filed a "Motion for Contempt of Judgment Order" on July 25, 2016. Dkt. No. 96. However, plaintiff has now filed a "Motion to Withdraw Motion for Contempt of Judgment Order," which will be granted. Additionally, plaintiff's Motion for Contempt of Judgment Order will be denied.

Accordingly, it is hereby

ORDERED that plaintiff's Motion for Contempt of Judgment Order (Dkt. No. 96) be and is DENIED; and it is further

ORDERED that plaintiff's Motion to Withdraw Motion for Contempt of Judgment Order (Dkt. No. 101) be and is GRANTED.

The Clerk is directed to send a copy of this Order to plaintiff and to counsel of record for defendants.

Entered this 10th day of August 2016.

Alexandria, Virginia

 _____
/s/
James C. Cacheris
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Walter Delaney Booker, Jr.,
Plaintiff,

v.

A. David Robinson, et al.,
Defendants

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APPENDIX
E

1:14cv555 (JCC/IDD)

ORDER

Walter Delaney Booker, Jr., a Virginia inmate proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc. By Memorandum Opinion and Order dated July 14, 2015, defendants’ Motion for Summary Judgment was granted in part and denied in part, and defendants were directed to provide additional information regarding plaintiff’s claim under RLUIPA. Dkt. Nos. 55, 56. To date, defendants have failed to do so. Plaintiff then filed a Motion for Preliminary Injunction on September 14, 2015, which this Court denied. Dkt. No. 65. Plaintiff appealed, and the United States Court of Appeals for the Fourth Circuit vacated the denial of the Motion for Preliminary Injunction, and the matter was remanded for further proceedings. Dkt. No. 89.

I.

Plaintiff seeks a preliminary injunction allowing him “to grow a 1/4-inch to 1/2-inch beard [to the best of his ability] without substantial burdens imposed and to prevent further losses and harms as a result of his religious exercise and as a result of the 133 offense charge.” Dkt. No. 65 at 15. The United States Supreme Court has stated that, for a plaintiff to obtain a preliminary injunction, he must demonstrate: (1) that he is likely to succeed on the merits; (2) that he is likely to

suffer irreparable harm without such injunctive relief; (3) that the balance of equities weighs in his favor; and (4) that granting a preliminary injunction is in the public interest. Winter v. Natural Res. Defense Council, Inc., 555 U.S. 7, 20 (2008). In order to obtain injunctive relief, a plaintiff must satisfy all four of the Winter factors. See Real Truth About Obama, Inc. v. Fed. Election Comm'n, 575 F.3d 342, 347 (4th Cir. 2009), vacated by Real Truth About Obama, Inc. v. Fed. Election Comm'n, 559 U.S. 1089 (2010), reissued, 607 F.3d 355 (4th Cir. 2010). As noted above, despite instructions to do so, defendants have not filed a renewed motion for summary judgment and have not provided any justification for the implementation of Virginia Department of Corrections Operating Procedure 864.1, so at this juncture, plaintiff appears to be likely to succeed on the merits of his RLUIPA claim. See Dkt. No. 55 at 12-13; Dkt. No. 65 at 4 (arguing that “there is no likelihood that [defendants] will be able to” justify the implementation of the grooming policy). Additionally, the United States Court of Appeals for the Fourth Circuit has been clear that “maintaining a beard is a qualifying religious exercise under RLUIPA” and plaintiff should be able to grow a beard in accordance with his religious beliefs. Couch v. Jabe, 679 F.3d 197, 200 (4th Cir. 2012)

Plaintiff has also presented compelling arguments suggesting that he is likely to suffer from serious and irreparable harm if his preliminary injunction is denied. Defendants’ grooming policy clearly implicates plaintiff’s religious beliefs, and plaintiff has suffered significant consequences based upon his failure to comply with OP 864.1 Dkt. No. 65 at 5-6 (noting that as a result of his failure to comply he has been “escorted” around the prison, forced to stay in a “5x10 or 10x10 cage,” isolated, humiliated, embarrassed, “handcuffed,” and plaintiff further alleges that his personal property has been taken from him).

At this point, the balance of equities weighs in plaintiff's favor. Although "[p]rison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise . . . RLUIPA . . . does not permit such unquestioning deference." Holt v. Hobbs, 135 S. Ct. 853, 864, (2015); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 522 (1993) (suggesting that government "interests could be achieved by narrower ordinances that burden[] religion to a far lesser degree"). With regard to plaintiff's request for a preliminary injunction, this Court must apply "RLUIPA's rigorous standard," and until defendants file a renewed motion for summary judgment addressing plaintiff's RLUIPA claim, plaintiff should not be punished for growing a beard in compliance with OP 864.1 to the best of his physical ability. This preliminary injunction is clearly within the public's interest because defendants have failed to offer any significant evidence or reasoning related to their implementation of the particular beard policy at issue that is presently substantially burdening plaintiff's religious beliefs. For these reasons, plaintiff's Motion for Preliminary Injunction will be granted.

II.

Also before the Court is plaintiff's Request for Authenticity of Facial Hair Photographs. Because defendants have not contested plaintiff's inability to grow a full beard, plaintiff's Request for Authenticity of Facial Hair Photographs will be denied, as the issue is not in dispute.

III.

In regard to plaintiff's request for appointed counsel, a court may request an attorney to represent an indigent plaintiff proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). The Fourth Circuit, however, has limited the appointment of counsel to cases where "exceptional circumstances" exist, such as cases with particularly complex factual and legal issues or with a

litigant who is unable to represent himself adequately. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984). It is unnecessary at this time to appoint counsel for plaintiff, as plaintiff's statements that he is indigent and unable to investigate evidence do not constitute "exceptional circumstances" that would warrant appointment of counsel. To date, plaintiff has ably filed his complaint and amended complaint, has timely submitted all required documents, has filed detailed briefs and requests for discovery, and has shown himself to be adequately able to represent himself. Thus, plaintiff's request for the appointment of counsel will be denied, without prejudice to renewal at a later stage of the proceedings, if appropriate.

IV.

Defendants have failed to file a renewed motion for summary judgment addressing plaintiff's RLUIPA claims, and they are directed to do so in accordance with the directions set out in the Memorandum Opinion dated July 14, 2015. Dkt. No. 55 at 10-13. Defendants will have thirty (30) days in which to file their renewed and properly-supported motion for summary judgment.

Accordingly, it is hereby

ORDERED that plaintiff's Request for Authenticity of Facial Hair Photographs (Dkt. No. 64) be and is DENIED; and it is further

ORDERED that plaintiff's Motion to Request Appointment of Counsel (Dkt. No. 75) be and is DENIED, WITHOUT PREJUDICE; and it is further

ORDERED that plaintiff's Motion for Preliminary Injunction (Dkt. No. 65) be and is GRANTED. Defendants are directed to allow plaintiff "to grow a 1/4-inch to 1/2-inch beard without substantial burdens imposed and to prevent further losses and harms as a result of his religious exercise and as a result of the 133 offense charge." Dkt. No. 65 at 15; and it is further

ORDERED that, within twenty-one (21) days of any defendant filing a dispositive motion, the plaintiff file any reply, including counter-affidavits (sworn statements subject to the penalty of perjury), or other responsive material contesting the affidavits or records filed by defendant. See E.D. Va. Local Civ. R. 7(K); Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). Failure to file a response to any dispositive motion may result in this complaint being dismissed. The motions will be considered ripe for disposition twenty-one (21) days after defendant files a responsive pleading.

The Clerk is directed to send a copy of this Order to plaintiff and to counsel of record for defendants.

Entered this 15th day of July 2016.

Alexandria, Virginia



/s/
James C. Cacheris
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**