No. 20-7382

IN THE

United States Court of Appeals
FOR THE FOURTH CIRCUIT

DEAULLANDY GORAN COLEMAN,

Plaintiff-Appellant,

v.

SERGEANT JONES; MAJOR JOHNSON,

Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT ALEXANDRIA

BRIEF OF APPELLEES

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 20-7382 Caption: Deaullandy Coleman v. Sergeant Jones

Pursuant to FRAP 26.1 and Local Rule 26.1,

Josie Jones
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Thomas N. Jamerson Date: 9/18/2020

Counsel for: Josie Jones

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 20-7382 Caption: Deaullandy Coleman v. Sergeant Jones

Pursuant to FRAP 26.1 and Local Rule 26.1,

Sandra Johnson
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
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If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Thomas N. Jamerson Date: 9/18/2020

Counsel for: Sandra Johnson

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Appellees retired Major Sandra Johnson ("Major Johnson") and Sgt. Josie Jones ("Sgt. Jones") (collectively "Appellees"), by counsel, file this Responsive Brief (the "Response") to Appellant's Opening Brief ("Opening Brief"), state as follows:

JURISDICTIONAL STATEMENT

Inmate Deaullandy Goran Coleman ("Appellant") initiated a Second Amended Complaint in the United States District Court for the Eastern District of Virginia, Alexandria Division alleging six counts against retired Appellees,[1] alleging violations of equal protection and religious freedoms under the federal and Virginia constitutions within the penumbra of 42 U.S.C. § 1983.

All Parties agreed that the District Court had jurisdiction under 28 U.S.C. § 1331. On August 26, 2020, in a well-reasoned Memorandum Opinion and Order, the District Court held that Appellees were entitled to Qualified Immunity and, therefore, granted summary judgment to Major Johnson and Sgt. Jones, finally resolving all issues in the litigation. JA 10–11. Appellant filed a timely notice of appeal on September 14, 2020. JA 11. This Court has jurisdiction under 28 U.S.C. § 1291.

[1] A third defendant was included in the Complaint but was dismissed by agreement of the Parties.

ISSUES PRESENTED FOR REVIEW

1) Whether a Muslim Inmate had a clearly established right to a Kosher diet with meat that satisfied a halal diet.

2) If there is no clearly established right to a Kosher diet with meat, do Appellees have the defense of qualified immunity by not providing an available Kosher diet.

Appellees do not believe that the other issues presented in Appellant's Opening Brief are at issue before this Court.

STATEMENT OF THE CASE

The facts and procedural history of the instant matter are very straightforward and, as such, Appellees do not object[2] to Appellant's characterization of the "Statement of the Facts" and "Procedural History," Appellant's Opening Brief pp. 5-15, and incorporate them herein by reference. Appellees do object to any characterization or suggest that Appellant "suffered significant health consequences and weight loss," Appellant's Opening Brief pp. 3, because of the "Common Fare" diet; there is nothing in the record that links either and Appellant proffered no evidence in the District Court case substantiating such cause and effect. Such effects could have easily been caused by the inherent stress

[2] Appellees incorporate the Appellant's "Statement of Facts" by reference, but do not admit to any liability in the matter and the incorporation of such facts are not to be taken as such admission.

of incarceration[3] or regret over Appellant's murder of his father. Because no causal link is shown, any assertions regarding this issue should be ignored.

In his Statement of the Case and the remainder of his Opening Brief, the Appellant attempts to characterize this issue as one of "choice" or a right to "choose" certain meals. Indeed, the theme of his Opening Brief can be summarized succinctly: whether the Appellees "should have" provided or "could have" provided a meat based Kosher meal to Appellant based on his choice. While the answer to those questions may be "yes," those questions are not at issue and the answer to them is not is not what the law demands. The issue before the Court is not a novel one. Courts in various jurisdictions have considered facts similar to those presented here and arrived at the same conclusion: there is no established right of a Muslim inmate to demand a meat-based diet, whether Kosher or otherwise. Appellees, under the authority of the Henrico Sheriff, do not run a short order diner. In fact, nowhere in the record does it show that Appellees had the authority to order any meals from an outside contractor or prepared any themselves, including those provided.

[3] See, *Laaman v. Helgemoe*, 437 F. Supp. 269, 320 (D.C.N.H 1977); *United States v. Parker*, 54 M.J. 700, 716 (Army Cr. App. 2001).

ARGUMENT

I. There is no right to a meat diet

As stated *supra*, this is not a case of “should have” or “could have,” but a case that asks whether the right to a meat diet is so established under the Constitution that its denial violates a substantial right. The answer is no. For a right to be clearly established, the “contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right,” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) and the law must provide “fair warning” that conduct complained of is unconstitutional. *Booker v. S.C. Dep’t of Corr*., 855 F. 3d 533, 538 (4th Cir. 2017) (citing *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). Appellant has provided nothing in the record or in his Opening Brief that would lead Appellees, subordinate employees of the Henrico Sheriff, to understand or to have fair warning that meat is required by Muslim practice. Their responsibility is to run a jail and provide reasonable accommodations for religious beliefs. No court that has considered the issue of halal meat has held that a Muslim, when provided with a nutritionally sufficient meal that does not violate Muslim law, has a constitutional right to a meal with meat. In fact, they hold the opposite, that when a prison provides an inmate with an alternative menu meeting the requirements of a halal diet, the prisoner's religious rights are not violated.

While the Fourth Circuit has not addressed this particular question, other Circuits have. The very claim Appellant presents that the constitution requires that he be provided with Halal meat meals was addressed and conclusively rejected by the Third Circuit Court of Appeals in *Williams v. Morton*, 343 F.3d 212 (3d Cir. 2003). In *Williams*, Muslim inmates filed a 42 U.S.C. § 1983 action alleging that prison officials violated the plaintiffs' federal and state constitutional rights (as well as the respective New Jersey Law Against Discrimination) by providing the plaintiffs with vegetarian meals rather than meals with Halal meat. The Third Circuit agreed with the District Court that the decision of the Department of Corrections to provide vegetarian meals to religious Muslim inmates (rather than Halal meals with meat) was rationally related to the legitimate penological interests in simplified food service, security, and staying within the prison’s budget. *Williams*, 343 F.3d at 218. The tenor of Appellant’s Opening Brief is singularly focused on the cost of serving him an extra kosher meal but does not take into consideration what the cost across numerous additional inmates, coming into and out of the jail at various times and with various sentences, would be for jail administration and its penological interests of simplified meal service.

The Second Circuit has held that “[a]ll that is required for a prison diet not to burden an inmate’s free exercise of religion is ‘the provision of a diet sufficient to sustain the prisoner in good health without violating [his religion's] dietary laws.’”

Kahane v. Carlson, 527 F.2d 492, 496 (2d Cir. 1975). The Southern District of New York put more contours on that succinct statement when it held that that "[n]ot providing Halal meat to Muslim inmates in the general population three to five times a week, as requested by the plaintiffs, does not substantially burden the exercise of their religion." *Abdul-Malik v. Goord*, 1997 U.S. Dist. LEXIS 2047, at 19 (S.D.N.Y 1997) citing *Kahane*.[4] The meal provided by Henrico Sherriff's Office violates no Islamic dietary laws.

The Sixth Circuit has held that "[Muslim] can comply with this prohibition [against *haram* meats] by eating vegetarian meals," *Abdullah v. Fard*, 1999 U.S. * App. LEXIS 1466, at 3 (6th Cir. 1999) which, because "a vegetarian diet is available affords [a Muslim inmate] an alternate means of practicing his religion." *Id*. at 4. Appellant cannot show that a meat meal is required under the Islamic faith, merely that he has a sincerely belief that he is required to eat meat. The Sixth Circuit addresses such an "eye of the needle" approach stating that a jail need not accommodate every narrow request of a faith and holds "a policy of recognizing general faith groups is rationally related to the efficient operation of the prison system as it avoids the impossibility of accommodating the diverse

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[4] Indeed, the *Malik* Court held that "[i]ndeed, the evidence is undisputed that a Muslim may eat an exclusively vegetarian diet without violating his religion. *Abdul-Malik v. Goord* at 20.

requests of every school of thought within those groups." *Id.* The vegetarian meal provided by the Henrico Sheriff falls within this point.

The Fifth Circuit, while not addressing a particular meat request, has held that prisons are not required to respond to particularized religious dietary requests of any inmate. *Kahey v. Jones*, 836 F.2d 948 (5th Cir. 1988). It recognized that jail meal facilities are not a short-order request services, and that prisons need not respond to particularized religious dietary requests. The principal basis for [determining prisons need not respond to particularized religious dietary requests] is "the court's recognition that if one such dietary request is granted, similar demands will proliferate, with two possible results: either accommodation of such demands will place an undue burden on the prison system, or the prisons would become entangled with religion while drawing fine and searching distinctions among various free exercise claimants." *Kahey*, 836 F.2d. at 950, citing *Udey v. Kastner*, 805 F.2d 1218 (5th Cir. 1986).

The Eighth Circuit, as well, has held that there is no right to non-vegetarian meals, see, e.g., *Patel v. United States Bureau of Prisons*, 515 F.3d 807 (8th Cir. 2008). In *Pratt v. Corr. Corp. of Am.*, 267 Fed. Appx. 482 (8th Cir. 2008), the Eighth Circuit, considered a matter very similar to the instant case wherein a Muslim inmate alleged § 1983 violations under Religious Freedom Restoration Act, Religious Land Use and Institutionalized Persons Act (RLUIPA), and First,

Fifth, and Fourteenth Amendments violations against a jail that provided vegetarian, but not meat-inclusive, "Halal" meals. The Eighth Circuit affirmed the District Court dismissal of his lawsuit, stating that:

> … we find that Pratt's claims brought under the First Amendment, RFRA, and RLUIPA all fail, because he did not show that defendants placed a "substantial burden" on his ability to practice his religion by failing to provide him with Halal meat. See *Patel v. United States Bureau of Prisons*, 515 F.3d 807 (8th Cir. 2008) (prison's meal plan regulations did not substantially burden Muslim inmate's free exercise rights where inmate had access to only vegetarian entrees, and some of those entrees he had to pay for himself). Third, the vegetarian diet did not violate Pratt's Eighth Amendment rights, as he did not rebut defendants' evidence that the meals were nutritionally adequate. See *Berry v. Brady*, 192 F.3d 504, 507 (5th Cir. 1999) (Eighth Amendment requires that inmates receive well-balanced meals containing sufficient nutritional value to preserve health). Finally, defendants did not breach any contractual duty by failing to provide a diet including Halal meat.

Pratt, 267 Fed. Appx. at 482. Appellant presents nothing to show the provided meal was not nutritionally sound. In short, in his Brief, Appellant simply restates that he did not get the particular meal that he wanted, not that Appellees were on notice that they were violating his clearly established rights. The sound reasoning of this Eighth Circuit opinion is cited positively by District Courts throughout the United States, including in this Circuit as shown below.

Although, as stated, the Fourth Circuit has not addressed the issue about a Constitutional right to a meat diet, its District Courts have considered the issue and

reached the conclusion of no substantial right. The District of Maryland found no violations of Constitutional rights, holding that an inmate "is not asked to choose between violating a religious precept or depriving himself of adequate nutrition [when] an alternative meat-free diet is available that is acceptable under Islamic law." *Turner-Bey v. Maynard*, 2012 U.S. Dist. LEXIS 133862, at 36 (D.Md. 2011).

The District of South Carolina, in *Watts v. Byars*, 2013 U.S. Dist. LEXIS 125997, (D. S.C. 2013), came to a similar conclusion that "DOC's failure to provide a Halal diet containing meat did not substantially burden the plaintiff's exercise of religion because the plaintiff did not maintain that he is religiously obligated to eat Halal meat. Rather, Islam prohibits eating meat that is not Halal. Accordingly, the court reasoned that Muslim inmates are 'not asked to choose between violating a religious precept or depriving [themselves] of adequate nutrition; an alternative meat-free diet is available that is acceptable under Islamic law.'" *Watts*, 2013 U.S. Dist. LEXIS 125997, at 11, quoting *Pratt*, 267 F. App'x 482-83. That is clearly the case here.

In *King v. Hooks*, the Eastern District of North Carolina summed up the jurisprudence regarding the requirement of a meat diet within our Circuit succinctly. It stated that

> [a]lthough the Fourth Circuit has not addressed the issue in a published opinion, courts generally have found that

> the provision of a lacto-ovo vegetarian entrée, along with standard grains, fruits, and vegetables, complies with Islamic dietary requirements and does not substantially burden a Muslim inmate's religious exercise. See, e.g., *Muhammad v. Mathena*, No. 7:14-CV-00134, 2015 U.S. Dist. LEXIS 7330, 2015 WL 300363, at 3 (W.D. Va. Jan. 22, 2015), aff'd 610 F. App'x 264 (4th Cir. 2015); *Watts v. Byars*, [internal citation omitted], aff'd, 551 Fed. Appx. 77 (4th Cir. 2014); *Turner-Bey v. Maynard*, [internal citation omitted]. These courts explain that a prison policy permitting vegetarian options is halal, and thus the policy does not force Muslim inmates to violate their religious beliefs. See, e.g., *Turner-Bey*, [internal citation omitted].

King v. Hooks, 2021 U.S. Dist. LEXIS 75107, at 23-24 (E.D.N.C. 2021).

There is nothing in the record nor any case law in this or any other Circuit that supports the proposition that a Muslim must have meat to satisfy his or her religious dietary requirements and that a jail must provide such a diet instead of an alternative that satisfies the religious and nutritional requirements. In fact the law, as stated succinctly by the Second Circuit is "[a]ll that is required for a prison diet not to burden an inmate's free exercise of religion is 'the provision of a diet sufficient to sustain the prisoner in good health without violating [his religion's] dietary laws.'" *Kahane v. Carlson*, 527 F.2d 492, 496 (2d Cir. 1975).

II. Qualified Immunity was appropriate

Furthermore, the question presented cannot be considered without also considering the qualified immunity defense. Qualified immunity involves a two-step inquiry: (a) whether the plaintiff's allegations state a claim that defendants'

conduct violated a constitutional or statutory right; and if so, (b) whether that right was clearly established. *Saucier v. Katz*, 533 U.S. 194, 206 (2001), overruled in part by *Pearson v. Callahan*, 555 U.S. 223 (2009). For a right to be clearly established, the "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Defendants "'can still be on notice that their conduct violates established law even in novel factual circumstances,' so long as the law provided 'fair warning' that their conduct was unconstitutional." *Booker v. S.C. Dep 't of Corr.*, 855 F.3d 533, 538 (4th Cir. 2017) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Whether qualified immunity applies is not a question of the official's subjective state of mind; the test is whether a reasonable person in the official's position would have known their actions violate clearly established statutory or constitutional rights. See *Id*. at 818-19.

A reasonable person would not have known[5] that they were violating a "clearly established constitutional right" to a meat meal because, indeed, the case law explains fully that there exists no such right. It found that Appellees provided "Halal" meals to Appellant, Id. at 18, albeit one that Appellant would not have ordered if not incarcerated. "Inmates are not average citizens, but convicted criminals and, therefore, cannot expect the amenities, conveniences and services of a good hotel." *Couch v. Jabe*, 479 F. Supp. 2d 569, 586 (W.D. Va. 2006).

The District Court was correct in its Opinion and Order that it could not "find that Defendants would understand that their behavior violated Plaintiff's constitutional rights." *Memorandum Opinion and Order* at p. 17. Thus, qualified immunity was properly applicable to Appellees because the existing case law would lead Appellees to believe not only were their decisions not proscribed, but in factually similar situations they were prescribed.

III. Substantial Burden and Equal Protection Claims

Briefly, regarding Appellant's substantial burden and equal protection claims, they flatly fail. Because there is no right, there can be no substantial

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[5] In fact, a plaintiff in a separate case a Plaintiff "allege[d] that Kosher meat and Halal meat are not the same thing." *Coleman v. Jabe*, 2012 U.S. Dist. LEXIS 187385, at 71 (W.D. Va. 2012) [the Coleman is not the same person as Appellant] and the Magistrate was unwilling to dismiss such a claim at summary judgment. Regarding religious rights where accommodations are provided, reasonable persons cannot be compelled to "know" that a failure to accommodate every request "clearly" violates an established right.

burden on it. Also, in order to establish an equal protection claim, a plaintiff "must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination. If a plaintiff makes this showing, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." *Veney v. Wyche*, 293 F.3d 726, 730-31 (4th Cir. 2002). No intentional discrimination has been shown, merely different treatment. Both Jewish and Islamic inmates are afforded meals that comply with their faith, that it is not the same meal does not rise to "intentional" discrimination.

CONCLUSION

For the foregoing reasons, Appellees ask that Appellant's Appeal be dismissed.

Respectfully submitted,
SERGEANT JONES
MAJOR JOHNSON

By Counsel

/s/ Thomas N. Jamerson .

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,003 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

3. I understand that a material misrepresentation can result in the court's striking the brief and imposing sanctions. If the Court so directs, I will provide an electronic copy of the word printout.

Date: November 2, 2021

/s/ Thomas N. Jamerson .

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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