No. 15-1305

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD LEE MCDONALD,
Plaintiff-Appellant,

v.

GEORGE ADAMSON, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
For the Northern District of Illinois, Eastern Division
The Honorable Joan B. Gottschall
Case No. 13-C-2262

BRIEF OF APPELLANT

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Plaintiff-Appellant, Donald Lee McDonald, furnish the following list in compliance with FED. R. APP. P. 26.1 and CIR. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: Donald Lee McDonald.

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court: Sarah O'Rourke Schrup (attorney of record) and Richard Cipolla (senior law student) of the Bluhm Legal Clinic at the Northwestern Pritzker School of Law. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear: Donald Lee McDonald, pro se.

/s/ Sarah O'Rourke Schrup
Date: February 29, 2016

Pursuant to Circuit Rule 3(d), I am the Counsel of Record for the above-listed party.

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JURISDICTIONAL STATEMENT

Appellant Donald Lee McDonald filed this lawsuit pursuant to 28 U.S.C. § 1983, alleging that the defendants denied him his First Amendment right to practice his Muslim faith and his Fourteenth Amendment right to equal protection. The United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction over Mr. McDonald's civil action under 28 U.S.C. §§ 1331 and 1343(a)(3).

Mr. McDonald first filed his complaint in the district court on March 25, 2013. (A.2.)[1] The defendants moved to dismiss Mr. McDonald's complaint under Federal Rule of Civil Procedure 12(b)(6), asserting that his claims were barred by res judicata. (R.18.) The district court granted the defendants' motion and entered judgment against Mr. McDonald on August 22, 2014. (R.34; R.35.) Mr. McDonald moved for reconsideration on September 11, 2014, (R.37), which the district court denied on January 29, 2015 (A.40). Mr. McDonald timely filed his notice of appeal on February 11, 2015. (R.41.) At that time, he also applied for leave to appeal in forma pauperis. (R.42.) The district court denied these motions as frivolous. (R.48 at 1.) This Court determined that the district court erred in its bad-faith determination and granted Mr. McDonald leave to proceed on appeal in forma pauperis. (R.54.)

[1] Citations to the appendices required under Circuit Rules 30(a) and 30(b) are designated (A.__). Citations to the record from the district court that are not included in the appendix are designated (R.__).

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, which grants jurisdiction of "all final decisions of the district courts of the United States" to its courts of appeal.

STATEMENT OF THE ISSUES

1. Whether the district court erred in finding that res judicata barred Mr. McDonald's § 1983 claims in federal court by virtue of his prior Illinois Court of Claims proceeding.

2. Whether the district court erred in dismissing Mr. McDonald's complaint under Federal Rule of Civil Procedure 12(b)(6) when the basis of the court's ruling was that the claims were barred by res judicata, an affirmative defense.

STATEMENT OF THE CASE

Donald Lee McDonald has been a practicing Muslim since 1989. (A.9.) The religion of Islam's holy book, the Qur'an, calls on its faithful to congregate and pray each week on "the day of Jumu'ah"—each Friday. *Qur'an* 62:9. Members of Islam, much like Christians and Jews, are called on to celebrate different holy days, fasts, and feasts throughout the year as a fundamental part of the religion. (A.9.)

Mr. McDonald is also an inmate in the Stateville Correctional Center. (A.9.) Mr. McDonald alleges Stateville has stripped him of his ability to observe some of these most basic tenets of his faith—the right to attend weekly services and the right to celebrate holy periods, at least to the same degree afforded to his Christian counterparts—during his time in the facility. (A.9–10; A.29–30.)

Throughout his time in Stateville, Mr. McDonald has been a zealous advocate for himself and his religious community in pursuing these rights. In 2009 Mr. McDonald sought relief for himself and his fellow Muslims through the grievance process within the prison. (A.24; A.21.) Specifically, he filed a grievance on September 2, 2009, about the food, and the manner in which it was served during the month-long fast for Ramadan. (R.24.) He filed a second grievance on November 29, 2009, asking to attend religious services every Friday, rather than every other week. (A.21.)

The allegations contained in those two grievances served as the basis for a complaint before the Illinois Court of Claims ("ICC") that Mr. McDonald filed in September 2010. (A.28.) That claim named the state of Illinois and the Illinois

Department of Corrections as respondents. (A.28.) Generally, Mr. McDonald alleged that in 2009 Stateville only allowed Muslim inmates to attend religious services every other week—the result of a system in which different cellblocks were placed on an alternating schedule. (A.29.) His other primary grievance was that Christians generally received more favorable treatment as compared to Muslims in the jail, including that Christian holidays were celebrated with special meals, whereas the prison made no special changes to the menu for the Eid Feast (the celebration at the end of Ramadan). (A.29.) Mr. McDonald further claimed that Stateville had three Christian television channels and zero Muslim channels, that Muslim volunteers were not afforded the same access as Christian volunteers within the facility, and that Arabic prayer tapes and prayer rugs were wrongfully confiscated or lost and never returned. (A.29–30.) The ICC administrative proceeding took roughly three years (A.33), during which Mr. McDonald requested voluntary and compelled discovery (R.29 at 11). The ICC declined the discovery requests, but nonetheless held a hearing. (R.29 at 11.)

On July 24, 2013, almost three years after Mr. McDonald filed the claims and two years after the hearing (but only three months after he filed his § 1983 suit in the district court), the ICC denied his claim. (A.33.) The two-page Illinois Court of Claims Order ("ICC Order") summarized his claims as alleging that "Islamic services are offered only in alternating weeks." (A.33.) Mr. McDonald's complaint, however, indicated that the prison had a practice of permitting cell units to attend services on a rotating basis, which meant that prisoners were often not allowed to

attend services for "whole months." (A.29.) The ICC did not address this rotating-service practice in its Order. Rather, the ICC simply concluded that because the evidence showed that Stateville offered Muslim services "every Friday," Mr. McDonald did not meet his burden of proof. (A.34) (finding that "the institution provides at least weekly access to Muslim services"). Apparently drawing on the allegations within and administrative responses to Mr. McDonald's September 2, 2009, grievance relating to both food and preferential treatment of Christians (A.24), the ICC concluded that "claimant had not requested Vegan food services; therefore he was served non-vegan diet consistent with regular practice" (A.34). Mr. McDonald's ICC complaint, however, made no allegations relating to his being served vegan meals during Ramadan. Finally, the ICC Order made no findings with respect to his other claims, aside from the catch-all statement that Mr. McDonald "failed to present any credible evidence in support of his claim that his rights had been denied." (A.34.)[2]

On April 17, 2013, Mr. McDonald filed suit in the U.S. District Court for the Northern District of Illinois, alleging violations of his First and Fourteenth Amendment rights. (A.2.) Unlike the ICC proceeding, Mr. McDonald's federal §1983 suit named additional, different defendants in their individual capacities, and omitted the State of Illinois and the Illinois Department of Corrections. (A.3) (federal lawsuit naming George Adamson, Daryl Edwards, and Marcus Hardy as

[2] The Illinois Department of Corrections' response to McDonald's grievance underlying this claim was similarly terse, simply stating: "Services are held every Friday." (A.21–A.22.)

defendants); *cf.* (A.28) (ICC complaint naming the State of Illinois and the Illinois Department of Corrections as respondents). The federal suit alleged that the named individuals—all prison employees—deprived Mr. McDonald of basic religious rights and discriminated against him and other Muslims in Stateville in favor of Christian inmates. (A.2.) These actions, as Mr. McDonald wrote in his response to the motion to dismiss below, took place after and were separate from those that formed the basis for the administrative proceeding in the ICC. (R.29 at 4.) Whereas the ICC administrative proceeding stemmed from allegations that were initially made in September and November of 2009 (A.24; A.21), Mr. McDonald's § 1983 claims were based in part on conduct by three individual defendants, two of whom were not even at Stateville prison in 2009 (R.29 at 2–3). The federal suit also alleged acts by those officials beyond any of the claims raised in the ICC. For example, Mr. McDonald's § 1983 claim alleges that Muslims were forced to pray in "trash filled areas, with trash left over from Christian services," that prison officials left Muslim prayer rugs out to be walked over by other inmates, and that prison officials took food that had been donated for the Eid Feast and ate it themselves. (A.9–11.)

On September 13, 2013, Defendants filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. (R.18.) Defendants argued that Mr. McDonald's federal claim was precluded on res judicata grounds, an affirmative defense. (R.18 at 5.) Specifically, Defendants argued that Illinois claim preclusion rules applied, and that the ICC Order rejecting Mr. McDonald's claims barred Mr. McDonald from

bringing his Constitutional challenges to the conduct by the individual defendants that he had alleged in his complaint. (R.18 at 6.)

The district court treated the ICC as a state court of competent jurisdiction that had fully litigated the merits of Mr. McDonald's claims and dismissed his complaint as barred by res judicata. (A.36.) The district court relied heavily on its conclusion that because Mr. McDonald, who proceeded pro se below, stated in his complaint that he originally "filed these claims to the Illinois Court of Claims September 10, 2010," he had made a binding judicial admission that pled him out of court. (A.37 (quoting A.12).) The district court did not acknowledge, however, that in responding to the motion to dismiss, Mr. McDonald asserted that this statement in his original complaint was misunderstood because the § 1983 suit arose at least in part from distinct actions, committed by different individuals, from the claims pressed in the 2009 ICC action. (R.29 at 2–3; R.29 at 4.) Nothing in the record indicates that Mr. McDonald had the opportunity to amend his complaint in order to correct his allegations. Mr. McDonald filed a motion to reconsider, which was denied. (R.37; A.40.) Mr. McDonald then filed his notice of appeal on February 12, 2015. (R.41.) The district court certified that appeal as frivolous, stating that Mr. McDonald "conceded in his filings that he raised identical claims from this case in the Illinois Court of Claims, and lost in that Court. . . . Plaintiff lacks a good faith basis for his appeal as his own concessions demonstrate his case is barred by *res judicata*." (R.48 at 1.) This Court determined that the district court erred in this

determination and allowed Mr. McDonald to proceed on appeal in forma pauperis. (R.54.)

SUMMARY OF THE ARGUMENT

The district court too hastily disposed of Mr. McDonald's § 1983 complaint by erroneously concluding that it was barred by res judicata and by employing the incorrect procedural mechanism: a Rule 12(b)(6) dismissal. First, Mr. McDonald's prior complaint to the Illinois Court of Claims ("ICC")—an administrative body of limited jurisdiction—does not bar his federal constitutional claims under § 1983 brought in federal court. Because the ICC cannot resolve constitutional claims, and because its Order was unreviewed, reached only a few of Mr. McDonald's contentions, and did so only after misconstruing the factual bases for his claims, Mr. McDonald's constitutional claims were not adequately litigated or addressed below.

What is more, the fact that the ICC Order was unreviewed by Illinois state courts means that neither the federal full faith and credit statute, 28 U.S.C. § 1738, nor Illinois res judicata principles should have been applied in this case. The district court erred in invoking them. Rather, at most, the fact-finding of unreviewed administrative actions can at times be given collateral estoppel effect. The district court did not address this type of preclusion, but even if it had, it should have concluded that no preclusive effect should be accorded to the sparse findings made by the ICC. Mr. McDonald averred that he had been denied discovery before the ICC, and the defendants failed to meet their burden of showing otherwise. Even if res judicata were applicable here, the district court erred in applying Illinois

rather than federal common law, and further erred in concluding that Mr. McDonald's allegations were factually similar to his ICC claims and in finding that the named defendants here were in privity with the parties named before the ICC.

Finally, and relatedly, the district court erred in utilizing Rule 12(b)(6) to dispose of Mr. McDonald's complaint. Because res judicata is an affirmative defense, the plaintiffs had the burden of proof on the factual inquiries that demonstrate preclusion. The defendants, however, did not conduct any such analysis. Further, because the burden to overcome affirmative defenses at the pleading stage is so low—the case continues if there is a conceivable set of facts that defeats the defense—Mr. McDonald's unrebutted statements regarding the deficiencies during his ICC proceeding should have prevented dismissal. The district court's decision to apply the plausibility standard, rather than the plaintiff's lower burden for affirmative defenses, simply compounded this erroneous dismissal. This Court should reverse.

ARGUMENT

I. Mr. McDonald's prior Illinois Court of Claims proceeding carries no preclusive effect on his § 1983 action in federal court, so the district court erred in dismissing his complaint.

A. Because the ICC Order is an unreviewed state administrative determination, the traditional res judicata principles relied upon by the defendants and the district court are inapplicable.

The district court erroneously held that res judicata barred Mr. McDonald's federal § 1983 action by virtue of an earlier ICC Order. This Court reviews dismissals under Rule 12(b)(6) *de novo*. *Foster v. Principal Life Ins. Co.*, 806 F.3d 967, 971 (7th Cir. 2015). As threshold matter, the district court clearly erred in

concluding, without any analysis, that the parties did not "contest that the Court of Claims judgment is a final judgment for purposes of res judicata." (A.36.) In his response to the defendants' motion to dismiss, Mr. McDonald explicitly contested this fact, stating that the "Court of Claims is not a court of competent jurisdiction" given its limited jurisdictional grant. (R.29 at 11.) He further stated that the ICC's decision was an "unreviewed state administrative proceeding with no preclusive effect." (R.29 at 3.)

Mr. McDonald was correct. The ICC is an administrative body of limited jurisdiction. 705 Ill. Comp. Stat. Ann. 505/8; *People v. Philip Morris, Inc.*, 759 N.E.2d 906, 912 (Ill. 2001) ("The Court of Claims is not a court within the meaning of the judicial article of our state constitution[.]"). It cannot consider federal statutory or constitutional claims of any sort. *See Michaelis v. Illinois Dep't of Mental Health & Developmental Disabilities*, 61 Ill. Ct. Cl. 270, 272 (2008) ("The Court of Claims, being a court of limited jurisdiction pursuant to statute, does not have subject matter jurisdiction to entertain claims based on federal statute[s] . . . . Furthermore, federal and state constitutional issues are outside the jurisdiction of the Court of Claims."); *see also Alleghany Corp. v. Haase*, 896 F.2d 1046, 1051–52 (7th Cir. 1990), *vacated on other grounds by Dillon v. Alleghany Corp.,* 499 U.S. 933 (1991) (finding that where the defendants conceded that the administrative body lacked the power to determine the constitutionality of the statutes they enforce, res judicata did not bar the suit). Because Mr. McDonald's constitutional claims were beyond the reach of that administrative body, they could not have been—and indeed

were not—decided in that prior action. (A.33–A.34.) The ICC Order did not refer to the Illinois or federal constitutions or Mr. McDonald's constitutional claims, but rather referred only to the administrative code. (A.34) ("The administrative code provides that committed persons be allowed reasonable access to pursue their faith with consideration of security . . . .").

Significantly, Mr. McDonald's § 1983 action in the district court followed an unreviewed administrative determination. *See Button v. Harden*, 814 F.2d 382, 384 (7th Cir. 1987), *abrogated on other grounds by Spiegla v. Hull*, 371 F.3d 928 (7th Cir. 2004); *cf. Durgins v. City of E. St. Louis*, 272 F.3d 841, 843 (7th Cir. 2001) (noting that because plaintiffs can join § 1983 claims with administrative-review actions, reviewed administrative actions would bar subsequent cases). Therefore, no state court passed on the claims that Mr. McDonald raised in his § 1983 complaint in district court. To that end, Mr. McDonald's case is unlike each of the cases relied on below in favor of applying res judicata. In those cases, either the case originated in state court or the plaintiff sought administrative review in the state courts following an adverse administrative ruling. *See* (A.36) (district court Order dismissing complaint, citing *Brown v. City of Chicago*, 599 F.3d 772, 774 (7th Cir. 2010) (barring plaintiff's federal suit and applying Illinois res judicata principles based on prior state court conviction); *Harmon v. Gordon*, 712 F.3d 1044, 1055 (7th Cir. 2013) (barring plaintiff's federal suit and applying res judicata after a California federal district court dismissal); *Walczak v. Chi. Bd. of Educ.*, 739 F.3d 1013, 1017 (7th Cir. 2014) (barring plaintiff's federal suit following a court review of

an administrative decision which was further affirmed by an Illinois appellate court)); *see also* (R.18 at 5–6) (defendants' motion to dismiss, citing *Hayes v. City of Chicago.*, 670 F.3d 810, 816 (7th Cir. 2012) (barring plaintiff's federal suit following a court review of an administrative decision which was further affirmed by an Illinois appellate court); *Hicks v. Midwest Transit, Inc.*, 479 F.3d 468, 472 (7th Cir. 2007) (barring plaintiff's federal suit due to an earlier Illinois circuit court bench trial)).

The implications of the distinction between reviewed and unreviewed state administrative proceedings are significant: the federal full faith and credit statute, 28 U.S.C. § 1738, does not apply to unreviewed proceedings, nor do traditional res judicata principles, *Univ. of Tennessee v. Elliott*, 478 U.S. 788, 796–97 (1986); *see also Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 470 (1982) (noting that unreviewed state agency decisions stand on different full-faith-and-credit footing from final state court judgments). Additionally, this Court does not resort to Illinois claim preclusion law, but rather federal common law. *Elliott*, 478 U.S. at 796–97. The district court did not acknowledge this critical distinction; it referenced the "state court" six times, but did not mention the preclusion principles pertaining to administrative bodies even once.

B. Unreviewed state administrative determinations are subject to issue preclusion (or collateral estoppel) only when certain elements—not present in this case—are met and thus the defendants failed to meet their burden of establishing their affirmative defense.

The ICC Order lacked the necessary protections that justify the preclusive effect in federal court of unreviewed state administrative determinations. Issue

preclusion (or collateral estoppel) in § 1983 claims can sometimes arise as a result of the administrative body's fact-finding, *Elliott*, 478 U.S. at 797–98, but it should not in this case. This Court only applies a preclusive effect to factfinding when: "(1) the State agency has acted in a judicial capacity; (2) has resolved disputed issues of fact properly before it; and (3) the parties have had an adequate opportunity to litigate the issues." *Buckhalter v. Pepsi-Cola Gen. Bottlers, Inc.*, 820 F.2d 892, 895 (7th Cir. 1987); *see also Elliott*, 478 U.S. at 799 (holding that "when a state agency acting in a judicial capacity . . . resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate" federal courts will give the agency's factfinding preclusive effect) (internal quotation marks omitted); *Hamdan v. Gonzales*, 425 F.3d 1051, 1059 (7th Cir. 2005) (applying the same framework to determine the preclusiveness of federal agency rulings). Because these elements are part of Defendants' affirmative defense, it was their burden to show these criteria were met. *See Adair v. Sherman*, 230 F.3d 890, 894 (7th Cir. 2000).

First, many of the features that *Buckhalter* identified as important procedural safeguards that justify preclusion were apparently not present during the ICC proceedings. *See* 820 F.2d at 896. Specifically, Mr. McDonald was not represented by counsel, the parties did not engage in any pretrial discovery, the parties did not file memorandums of law, and it is unclear if the parties introduced exhibits beyond the grievances Mr. McDonald filed. (R.29 at 11.)

More critically, the ICC Order did not actually resolve the disputed issues of fact, because the findings did not resolve the factual allegations Mr. McDonald

made either in that proceeding or in the § 1983 complaint. Specifically, Mr. McDonald's ICC complaint alleged that he was not allowed to attend Muslim services every Friday, as required by his faith. His complaint and attachments demonstrated that Stateville alternated cell blocks for the Friday Muslim services such that he would have, at most, the opportunity to attend Muslim services only every other Friday. (A.18) (attachment Mr. McDonald appended to ICC Complaint, stating "Islamic services are held on the first and third week of the month for units B and C, and the second and fourth week of the month for E and D. No inmate go's [sic] to Islamic services every Friday"); *see also* (A.29) (ICC complaint stating that Stateville "only allows Islamic services every other week" and referencing the alternating cell block rotation). The ICC Order mischaracterized this complaint as saying "services are offered only in alternating weeks" which focuses on what Stateville offers versus what practicing Muslims can attend. (A.33.) Similarly, the ICC Order states that "Muslim services are offered every Friday" (A.34), which does not answer Mr. McDonald's specific complaint that every Muslim is not permitted to attend every Friday service, and the ICC Order's further conclusion that "the evidence establishes that the institution provides at least weekly access to Muslim services," (A.34), is unsubstantiated.

The paucity of accurate findings likely correlates to the lack of an opportunity to adequately litigate the facts. Mr. McDonald's response to the defendants' motion to dismiss explicitly averred that he was denied discovery in the ICC action. (R.29 at 11.) This discovery could have provided the necessary context to the extant

rotating-prayer-services system and might have allowed the ICC Order to actually address its deficiencies. Instead, it appears as though the ICC Order was based strictly off the grievances, which the ICC then misconstrued in its ruling.

Even if the ICC conclusions regarding the prayer services and dietary options were preclusive, the ICC Order does not make specific findings on all of the factual issues contained in the federal lawsuit (or even the ICC complaint), thus many of Mr. McDonald's claims should have proceeded in any event. There are numerous specific allegations in the federal lawsuit that remained unaddressed by the ICC Order. As an example, the ICC Order did not answer Mr. McDonald's claims of inadequate prayer accommodations, (A.10–11) (describing stolen rugs; trash-filled prayer rooms the practicing Muslims were not allowed to clean themselves, the refusal to hire a Muslim clerk), the preferential treatment for those celebrating Christian holidays, (A.11), or the theft of the food donated for certain holidays. (A.12). The § 1983 suit should have proceeded on all of these claims, notwithstanding the technical availability of collateral estoppel, because these are distinctly different, factual claims unaddressed in the ICC Order.

C. In the alternative, the ICC Order also independently lacks the elements required to bar the federal suit under res judicata.

In the alternative, even if this Court were to apply the test for res judicata to the unreviewed ICC determination, it should nonetheless find that test not satisfied here. "[R]es judicata blocks a second lawsuit if there is (1) an identity of the parties in the two suits; (2) a final judgment on the merits in the first; and (3) an identity of the causes of action." *Barr v. Bd. of Trustees of W. Ill. Univ.*, 796 F.3d 837, 840 (7th

Cir. 2015) (citation omitted). As noted above, federal res judicata law applies. *See supra* p. 13. Therefore, the district court erred as a threshold matter in applying Illinois res judiciata law. Federal law differs significantly from Illinois law, particularly with respect to the party-identity/party-privity prong of the test, and so the district court's threshold error was outcome determinative in Mr. McDonald's case.

Specifically, because Mr. McDonald sued these officials in their individual capacity, there is no privity between the three individuals Mr. McDonald sued in the federal complaint and the Stateville Correctional Center respondent in the ICC Order. (A.9–11); *cf.* (A.37–38) (district court order applying Illinois res judiciata law to find privity). Two of the individuals—Mr. Hardy and Mr. Edwards—were not even at the facility when Mr. McDonald filed the grievance that led to the prior ICC Order. (R.29 at 10.) Mr. McDonald expressly stated that he was suing them in their individual capacity. (A.9–11); *see also Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001) (questioning whether officers were sued in individual or official capacity when the phrase "individual capacity" is omitted). And, unlike in the Illinois state courts, this Court presumes an *absence* of privity between the state and an official sued in his individual capacity. *Conner v. Reinhard*, 847 F.2d 384, 395 (7th Cir. 1988) ("Therefore, courts do not generally consider an official sued in his personal capacity as being in privity with the government."); *Gray v. Lacke*, 885 F.2d 399, 406 (7th Cir. 1989). The defendants wholly failed to argue any points regarding

identity of the parties, (R.18 at 8), and the district court followed suit in failing to address this distinction.

Turning to the second prong of the federal res judicata test, there was no final judgment on the merits for the reasons discussed above and, specifically, because it was an unappealed, unreviewed state administrative proceeding. *See supra* pp. 12–13; *Button*, 814 F.2d at 384.

Lastly, there was not an identity of the cause of action. This Court asks whether there was a "single core of operative facts which give rise to a remedy," *Andersen v. Chrysler*, 99 F.3d 846, 852 (7th Cir. 1996) (internal quotation marks omitted), and that was absent here. The ICC Order was based on conduct that occurred in 2009. (R.29 at 10.) Mr. McDonald's § 1983 complaint, however, included as defendants two prison employees who were not even at Stateville in 2009, and the unconstitutional acts he alleged they committed had not yet occurred. (A.26) (IDOC grievance response referencing Mr. McDonald's April 2010 grievance that underlied his ICC complaint for conduct occurring in 2009); (R.29 at 9) (noting this difference). Further, a number of the claims allege different violations of his freedom of religion, such as unsuitable accommodations (A.10), the refusal to hire Muslim clerks (A.10), and the canceling of Muslim services for Christian services (A.11). These "involve[] different acts between different parties at different times" that this Court has recognized makes res judicata inappropriate. *Andersen,* 99 F.3d at 852. In short, the purpose of res judicata is to bar claims that were brought or could have been brought in a prior proceeding; here, in a case that names

individuals not present for the prior transgressions, res judicata simply cannot apply. *Barr*, 796 F.3d at 839. Mr. McDonald could not have brought these specific claims before; thus, the ICC Order cannot act as a bar.

The district court did not analyze whether there was an identity of the cause of action. Instead it ruled that Mr. McDonald conceded that the ICC claims were identical to the federal claims, taking as a judicial admission a statement at the end of the complaint that he had "originally filed these claims to the Illinois court of claims September 10, 2010." (A.37.) Judicial admissions, however, require a degree of intentionality that Mr. McDonald lacked. Nowhere does Mr. McDonald state that the claims are identical or that they go to the same issue; the district court simply presumed that they did. Mr. McDonald's shorthand use of "these claims" is not a "formal" or "deliberate, clear and unequivocal" statement. *McCaskill v. SCI Mgmt. Corp.*, 298 F.3d 677, 680 (7th Cir. 2002) (taking as a judicial admission counsel's concession that arbitration agreement clause would not override Title VII fee-shifting provisions) (citation omitted). The district court should have been especially wary to take "these claims" as a judicial admission in light of: (1) the fact that the pro se § 1983 form requires plaintiffs to list all prior cases under threat of dismissal, leading one to err on the side of caution by disclosing, once again, the ICC proceedings; (2) his explanation at the motion to dismiss stage that provided context to this unanticipated defense, (R.29 at 3); and (3) a court's duty to construe

pleadings of pro se litigants like Mr. McDonald liberally, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).[3]

Finally, even if the defendants' unconstitutional acts are covered by the ICC Order, the allegations in the present case can be classified as new wrongs, which is an independent exception to res judicata. *Heard v. Tilden*, No. 15-1732, 2016 WL 107155, at *3 (7th Cir. Jan. 11, 2016) (citing *Ellis v. CCA of Tenn. LLC*, 650 F.3d 640, 652 (7th Cir. 2011) (permitting a prisoner's § 1983 suit regarding the deliberate indifference to his serious medical need of a hernia surgery, despite a prior suit also alleging a delay in providing hernia surgery because every day of delay is a new claim)); *Supporters to Oppose Pollution, Inc. v. Heritage Grp.,* 973 F.2d 1320, 1326 (7th Cir. 1992) ("Traditional principles of preclusion allow additional litigation if some new wrong occurs."). Although the unfair and discriminatory treatment by the defendants might sound similar to conditions Mr. McDonald has faced in the prison for a long time, the specific manifestations of the treatment are different. Thus, none of the acts by Mr. Hardy and Mr. Edwards are encompassed in the complaints underlying the ICC Order. And other acts, such as the food theft, are brand new as well. (R.29 at 10.) The district court should have considered every instance in which

[3] If this judicial admission was so critical to prevent a dismissal with prejudice, the district court should have considered granting dismissal with leave to amend, consistent with this Court's liberal amendment policies. *See, e.g.*, *Childress v. Walker*, 787 F.3d 433, 441 (7th Cir. 2015); *see also 188 LLC v. Trinity Indus., Inc.*, 300 F.3d 730, 736 (7th Cir. 2002) (rejecting argument that an initial allegation was conclusive because "[w]hen a party has amended a pleading, allegations and statements in earlier pleadings are not considered judicial admissions"); *Tate v. SCR Med. Transp.*, No. 15-1447, 2015 WL 9463188, at *3 (7th Cir. Dec. 28, 2015) (noting that the importance of allowing amendments for pro se litigants in the context of 28 U.S.C. § 1915).

these officers prevented Mr. McDonald from pursuing his religious rights—including each Friday in which he was denied the right to worship—to be a new wrong that can be independently pursued in the § 1983 claim.

II. Relying on the incorrect standard, the district court improperly dismissed the case at the pleading stage under Rule 12(b)(6).

All of these factual inquiries that the district court did not—but should have—addressed before entertaining any suggestion of dismissal shows that this case is truly not one that was appropriate to resolve under Rule 12(b)(6). Thus, not only did the district court err in applying res judicata principles, it also improperly utilized the wrong procedural vehicle: Rule 12(b)(6). Res judicata is an affirmative defense, *Muhammad v. Oliver*, 547 F.3d 874, 878 (7th Cir. 2008), of which the defendant bears the burden of proof, *Rooding v. Peters*, 92 F.3d 578, 580 (7th Cir. 1996) (placing the burden of proof of the affirmative defense on the defendant). A Rule 12(b)(6) motion generally is not proper to adjudicate an affirmative defense because such motions turn on facts not before the court; therefore, the defendant is unable to meet his burden of proof. *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012). That is precisely what happened here.

As a threshold matter, the district court erred in invoking the "from the face of the complaint" exception to the rule against permitting affirmative defenses to serve as the basis for a Rule 12(b)(6) motion to dismiss. *Walker v. Thompson*, 288 F.3d 1005, 1009–10 (7th Cir. 2002). In this case, the "from the face" statements the court used to allow this avenue of dismissal must refer to Mr. McDonald's mention of prior litigation in the complaint. (A.12.) The mere mention of prior litigation,

however, does not make the res judicata defense "so plain from the face of the complaint that the suit can be regarded as frivolous . . . ." *Walker,* 288 F.3d at 1009. Rather, courts set the bar high before allowing a plaintiff to plead himself out of court, invoking it only with "appropriate caution" when the defense is both "apparent" and "unmistakable." *Id.* at 1010.

The cases the district court cited in this determination, when examined, actually show how rarely this exception is applied when there are any factual issues to resolve. (A.35–A.36.) In *Oliver*, the court considered the res judicata defense only after multiple failings by the plaintiff. First, the plaintiff's complaint alleged a prior state court dismissal and the existence of a related proposed standstill agreement, but did not allege that it was signed or executed. 547 F.3d at 877. Then, as the case continued, the plaintiff failed to produce the agreement, and instead claimed it was in some unopened box. *Id.* This Court said the plaintiff's affirmative act merited dismissal under Rule 12(b)(6): his silence in not producing this document was "deafening." *Id.* In *Walker*, the court actually opted not to decide an affirmative defense of administrative exhaustion for a prisoner in a § 1983 suit under Rule 12(b)(6). 288 F.3d at 1010. The defense had relied on the failure of the prisoner to submit a timely grievance, but this Court said it was open to debate "whether any administrative remedy nevertheless remained opened to him" and because it "did not have enough information" *without an answer* from the defendants, it was improper to decide it. *Id.* at 1009-10. Another case the district court cited, *Turley v. Gaetz*, was not even about an affirmative-defense dismissal under Rule 12(b)(6), but

rather a plaintiff's compliance with 28 U.S.C. § 1915(g). 625 F.3d 1005, 1013 (7th Cir. 2010). Finally, one other case where the exception was appropriately invoked was the copyright issue in *Brownmark Films, LLC*. There, the plaintiffs brought a copyright infringement action, claiming an episode of the defendant's television show infringed on one of their music videos. 682 F.3d at 688. For that claim, the only evidence necessary to judge the claim and a fair-use defense was the two episodes, so this Court ruled on it as a summary judgment motion. *Id.* at 690. Critically, the defendants never opposed the fair-use arguments so the Court considered it waived. *Id.* Taken together, these cases stand for the proposition that an affirmative-defense based Rule 12(b)(6) dismissal will only be appropriate when the plaintiff fails to produce any factual basis to contradict the defense after multiple opportunities to do so.

Contrary to these cases, here the affirmative defense does not appear on the face of Mr. McDonald's complaint because there are unresolved factual issues. First, as noted above, elements of the test—adequate factfinding—were absent from the complaint. *See supra* at 16–17. Second, Mr. McDonald's complaint explicitly stated that the ICC action was still pending. (A.12.) Putting aside the problems with according the unreviewed ICC decision res judicata effect discussed above, the lack of a final decision when he filed his complaint shows that the district court should not have used Rule 12(b)(6) to dispose of it. In the absence of a ruling to which preclusion could attach, it was impossible for McDonald to plead himself out of court. *Cf. Oliver*, 547 F.3d at 878 (holding that prior state court dismissal

acknowledged in the pleading barred the suit under res judicata). Third, unlike the plaintiff in *Oliver*, who raised the preclusive dismissal and standstill agreement in the complaint on his own volition, the form Mr. McDonald used required him, under penalty, to disclose his litigation history.[4] Lastly, unlike the plaintiffs in both *Oliver* and *Brownmark Films*, Mr. McDonald actually responded and objected to the affirmative defense, noting the many unresolved factual inquiries.

Additionally, the district court's decision to judicially notice the ICC Order did not and could not justify its dismissal under Rule 12(b)(6), and it erred in concluding that the content of the order satisfied each of the elements of the affirmative defense. (A.35) ("[T]hese documents set forth the elements of the res judicata affirmative defense."). At a minimum, the district court needed to consider whether the parties had a fair opportunity to fully litigate the issues—facts that are simply not contained in the ICC Order. In fact, at this stage, the district court should have credited Mr. McDonald's unopposed statements regarding the lack of discovery or jurisdiction at the ICC. (R.29 at 3, 11) (stating "[p]laintiff was denied discovery request by Defendants and the court of claims refused to answer Plaintiff's motion to compel discovery" and that "the court of claims is not a court of competent jurisdiction"); *see also Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 826 (7th Cir. 2014) ("To analyze the sufficiency of a complaint we must construe it in the light most favorable to the plaintiff, accept well-pleaded facts as true, and draw all

[4] In fact, given the limited resources of the litigants who use these forms, it would be unfair if these disclosures always qualified as permitting "on the face" affirmative defenses.

inferences in the plaintiff's favor."). Had it done so, it could not have accorded preclusive effect to the ICC Order and would have denied the defendants' motion to dismiss.

Instead, the district court applied the wrong pleading standard—*Twombly*'s plausibility standard—in deciding whether this affirmative defense had been refuted, effectively shifting the burden of proof from the defense to Mr. McDonald. (A.36); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Unlike general pleading standards, however, the burden on the plaintiff for overcoming an affirmative defense brought forth at this stage is very low—even for straightforward issues such as timeliness. *Sidney Hillman Health Ctr. of Rochester v. Abbott Labs., Inc.*, 782 F.3d 922, 928 (7th Cir. 2015) (discussing the affirmative defense of statute of limitations and holding that "[a]s long as there is a *conceivable set of facts*, consistent with the complaint, that would defeat a statute-of-limitations defense, questions of timeliness are left for summary judgment (or ultimately trial), at which point the district court may determine compliance with the statute of limitations based on a more complete factual record") (emphasis added). Ultimately, while taking proper judicial notice of these records might be a necessary first step to avoid turning the Rule 12(b)(6) motion into a summary judgment motion, it is not by itself sufficient when considering the affirmative defenses at issue in this case.

This Court should reverse due to the combined effect of the district court's erroneous finding that the affirmative defense was apparent "from the face of the complaint," its shifting the burden to Mr. McDonald, its strict construction of

judicial notice while simultaneously ignoring Mr. McDonald's statements that undercut that notice, and its failing to construe pro se pleadings liberally. *See Pardus*, 551 U.S. at 94.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's dismissal of Mr. McDonald's complaint.

Respectfully submitted,

Donald McDonald
Plaintiff-Appellant

/S/ SARAH O'ROURKE SCHRUP
Counsel of Record

RICHARD CIPOLLA
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Counsel for Plaintiff-Appellant
DONALD MCDONALD

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(b) because this brief contains 6,530 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(b)(iii).

2. This brief complies with the typeface requirements of Circuit Rule 32 and 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 Office Word 2011 with a 12-point Century Schoolbook font.

/S/ SARAH O'ROURKE SCHRUP
Counsel of Record

RICHARD CIPOLLA
Senior Law Student

BLUHM LEGAL CLINIC
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375 East Chicago Avenue
Chicago, IL 60611
(312) 503-0063

Dated: February 29, 2016

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Plaintiff-Appellant, Donald Lee McDonald, hereby certify that I electronically filed this brief and attached required appendix with the clerk of the Seventh Circuit Court of Appeals on February 29, 2016, which will send the filing to counsel of record in the case.

/S/ SARAH O'ROURKE SCHRUP
Counsel of Record

RICHARD CIPOLLA
Senior Law Student

BLUHM LEGAL CLINIC
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(312) 503-0063

Dated: February 29, 2016

CIRCUIT RULE 30(d) STATEMENT

I, the undersigned, counsel for the Plaintiff-Appellant, Donald Lee McDonald, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the appendix to this brief.

/S/ SARAH O'ROURKE SCHRUP
Counsel of Record

RICHARD CIPOLLA
Senior Law Student

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375 East Chicago Avenue
Chicago, IL 60611
(312) 503-0063

Dated: February 29, 2016

RULE 30(a) SHORT APPENDIX TABLE OF CONTENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Donald Lee McDonald,

Plaintiff(s),

v.

George Adamson, et al ,

Defendant(s).

Case No. 13 CV 2262
Judge Joan B. Gottschall

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

.

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Judgment is entered in favor of the defendants and against the plaintiff.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Joan B. Gottschall on a motion to dismiss [18].

Date: 8/22/2014

Thomas G. Bruton, Clerk of Court

Enjoli Fletcher , Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donald Lee McDonald,

(Enter above the full name of the plaintiff or plaintiffs in this action)

13 C 2262
Judge Joan B. Gottschall
Magistrate Judge Michael T. Mason

vs.

Chaplain George Adamson
Asst. Warden D. Edwards
Warden Marcus Hardy

(Enter above the full name of ALL defendants in this action. Do not use "et al.")

CHECK ONE ONLY:

_V_ **COMPLAINT UNDER THE CIVIL RIGHTS ACT, TITLE 42 SECTION 1983 U.S. Code** (state, county, or municipal defendants)

_____ **COMPLAINT UNDER THE CONSTITUTION ("BIVENS" ACTION), TITLE 28 SECTION 1331 U.S. Code** (federal defendants)

_____ **OTHER** (cite statute, if known)

BEFORE FILLING OUT THIS COMPLAINT, PLEASE REFER TO "INSTRUCTIONS FOR FILING." FOLLOW THESE INSTRUCTIONS CAREFULLY.

I. Plaintiff(s):

A. Name: Donald Lee McDonald

B. List all aliases: None

C. Prisoner identification number: N23082

D. Place of present confinement: Stateville Correctional Ctr.

E. Address: P.O. Box 112, Joliet, Illinois

(If there is more than one plaintiff, then each plaintiff must list his or her name, aliases, I.D. number, place of confinement, and current address according to the above format on a separate sheet of paper.)

II. Defendant(s):

(In **A** below, place the full name of the first defendant in the first blank, his or her official position in the second blank, and his or her place of employment in the third blank. Space for two additional defendants is provided in **B** and **C**.)

A. Defendant: George Adamson

Title: Chaplin

Place of Employment: Stateville Correctional Center

B. Defendant: Daryl Edwards

Title: Assistant Warden

Place of Employment: Stateville Correctional Center

C. Defendant: Marcus Hardy

Title: Warden

Place of Employment: Stateville Correctional Center

(If you have more than three defendants, then all additional defendants must be listed according to the above format on a separate sheet of paper.)

III. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court in the United States:

A. Name of case and docket number: Donald Lee McDonald v. Michael P. Toomin, case number lost 98 C 5147

B. Approximate date of filing lawsuit: 1998

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: I was the only plaintiff, Donald Lee McDonald

D. List all defendants: only Mich P. Toomin

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): Northern District of Illinois

F. Name of judge to whom case was assigned: not Available Wayne R. Andersen

G. Basic claim made: Discrimination

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): Dismissed

I. Approximate date of disposition: 1997

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

A. Case and Docket No: Donald Lee McDonald v. George Detella Case number 97 C1812

B. Date: 1996

C. Plaointiff: Donald Lee McDonald (only)

D. Defendants: George Detella (only)

E. Court: Northern District of Illinois

F. Judge: Joan B. Gottschall

G. Claim: Cruel and unusual punishment

H. Disposition: dismissed without prejudice.

I. Date of Disposition: 1996

A. Case and Docket No: Donald Lee McDonald v. Donald Snyder case No. 1:02 CV 08581

B. Date: 2002

C. Plaintiff: Donald Lee McDonald (only)

D. Defendants: Donald Snyder (only)

E. Courtt Northern District of Illinois

F. Judge: Joan B. Gottschall

G. Claim: Retaliation

H. Disposition: Settled

I. Date of Disposition: 2005

A. Case and docket: Donald Lee McDonald v. James H. Page, No. 00 MR 268

B. Date: 2001

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendants: James H. Page, Warden Montegomery, Warden Springborn Georga Schonauer, Susian Carter, Sgt. Garcia, Officer Sandrege.

E. Court: Twelfth Judicial Circuit for Will County

F. Judge: Kathleen G. Kallan

G. Claims: Religious discrimination and retaliation

H. Disposition: Dismissed

I. Date: September 26, 2002

A. Case and Docket No: Donald Lee McDonald v. Sgt. Margie Holly, Case No. 01 MR 721

B. Date: October 25, 2001

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendants: Margie Holly, Adrian Johnson, Kenneth Briley, Carmen Ruffin, Terris Anderson, Donald N. Snyder

E. Court: Twelfth Judicial Circuit for Will County.

F. Judge: Kathleen G. Kallan

G. Claims: Religious discrimination, retaliation, fabricated charges.

H. Disposition: Cases 00 MR 268 and 01 MR 721 were combined and dismissed, and filed in the northern District Court of Illinois under case number 1: 02 CV 08581, settled.

I. Date: 2005.

A. Case and docket No: Donald Lee McDonald v. Stateville Correctional Center, case No. 08 CV 0909

B. Date: 2008

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendant Lt. Ross

E. Court: Northern District of Illinois

F. Judge: Joan B. Gottschall

G. Claims: Assault

H. Disposition: settled

I. Date: 2-20-09

A. Case and Docket No: Donald Lee McDonald v. Parthasarathi Ghosh, No. 09 C 5302.

B. Date: August 27, 2009

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendants: Dr. P. Ghosh, Wexford Health Sources Inc., and Dr. Sanders.

E. Court: Northern District of Illinois

F. Judge: Joan B. Gottschall

G. Disposition: pending

H. Claim: Deliberate Indifference to medical needs

I. Date: pending

A. Case and Docket No: Donald Lee McDonald v. Wexford Health Sources Inc. Case No. 09 C 4196

B. Date: December 18, 2009

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendants: Wexford Health Sources Inc, Dr. Parthasarathi ghosh, Dr. Liping Zhang, Dr. Andr Tilden.

E. Court: Northern District of Illinois

F. Judge: Joan B. Gottschall

G. Claims: deliberate indifference to serious medical needs.

H. Disposition: pending

I. Date: pending

A. Case and Docket No: Donald Lee McDonald v. State of Illinois and the Illinois Department of Corrections, No. 11 CC 0370

B. Date: August 31, 2010.

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendants: Chaplain Adamson, Illinois Department of Correction

E. Court: Court of Claims of the State of Illinois

F. Judge: Commissioner Elizabeth M. Rochford

G. Claim: Failure to provide a reasonable opportunity to practice the Islamic Faith

H. Disposition: awaiting decision

I. Date: pending

A. Case and Docket No: Donald Lee McDonald v. State of Illinois and Illinois Department of Corrections, 10 CC 0289

B. Date: August 31, 2009

C. Plaintiffs: Donald Lee McDonald (only)

D. Defendants: Illinois Derartment of Corrections.

E. Court: Court of Claims of the State of Illinois.

F. Judge: Commissioner George Argionis

G. Claim: Retaliation

H. Disposition: pending decision

I. Date: pending

A. Donald Lee McDonald v. Gwendoltet Brown, etAl

B. 13C-1224

C. I Am the only Plaintiff

D. Gwendollet Brown, Scott F. Main, Cook County, State of Illinois

E. Northern District of Illionis

F. John Z. Lee

G. Conspiricy to deny 14th Amendment Rights

H. Pending

I. 2013

IV. Statement of Claim:

State here as briefly as possible the facts of your case. Describe how each defendant is involved, including names, dates, and places. **Do not give any legal arguments or cite any cases or statutes.** If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

1) George Adamson is sued in his Individual capacity while acting under color of, AS IAW Stateville Correctional Center's head Chaplin in charge of operating, coordinating and conducting Islamic services At Stateville with volunteer muslims from area communities; did violate Plaintiff's 1st and 14th United States Constitutional Rights to Free exercise of religion, establishment of religion, and equal Protection of the law.

Plaintiff, A practicing Muslim of the Islamic Faith since 1989, has been denied reasonable oportunity to practice Islam through arbitrary restrictions on Friday (Juma'ah) prayer by only being allowed to attend services every other Friday when the religion Requires "adult men to attend every Friday." Chapter 62:9-11. After the yearly Fast, Allowing nonmuslim Correctional Staff and inmates to steal the donated food

Before fasting Muslims; Refusing to Allow Muslim diets (HALAL meals) to the muslim community; theft of donated prayer rugs, refusing to hire A Muslim clerk, only allowing Christian inmates to work in the Chapel department; Refusing to provide a clean AREA for Friday Prayer, forcing muslims to pray in trash filled AREAS, with trash left over from Christian services, leaving prayer matts out to be walked on by other services, and Constantly CANCELING Muslim services for Special Christian events.

2) Daryl Edwards is Sued in his individual CAPACITY while acting under Color of LAW, As Assistant WARDEN of Programs at Stateville Correctional Center did violate Plaintiff's 1st And 14th Amendment Right to the United States Constitution when defendant denied Plaintiff, A practicing Muslim from a reasonable opportunity to practice Islam when warden Edwards took donated food for Muslims to celebrate the end of

Ramadahn (Called Eid Feast) gave it to Staff And inmates working in the Kitchen, taking half of the donated food, in other years, taking most of the donated food and giving All to officers, Refusing to Allow Plaintiff and other muslim inmates to clean filthy floor before Friday Prayer, allowing Prayer Casset tapes to come into the institution, then ordering Staff to confiscate tapes when shaking down (search cells) for the month, and ignoring complaints from plaintiff about constant canceling muslim services to hold Christian services. Defendant has given Christian faith priority over the muslim inmates and Islamic Faith.

3.) Marcus Hardy is sued in his individual capacity while acting under color of law as Warden of Stateville Correctional did violate Plaintiff's 1st and 14th Amendments rights to the United States constitution to the Free exercise of religion, establishment of religion and equal protection of the laws, when Plaintiff approached defendant on the walkway and informed Hardy that defendant Edwards was taking the Muslim Eid Feast food and giving it officers and his favorite inmates in the Kitchin causing

A11

the meals to be short, preventing other fasting Muslim from participating in the Eid feast, and Plaintiff from recieving all the food donated. Defendant was asked if Plaintiff and other volunteer offendes could be appointed to clean the area appointed for Juma'ah (Friday Prayer) before services, again Hardy turned a blind ege refusing to acknowlege that a problem exist.

Plaintiff originally filed these claims to the Illinois Court of Claims. September 10, 2010 Plaintiff recieved a hearing but has been denied any response to date, Plaintiff sought help from the Department of Justice, was reviewed by Federal Beaurel of Investigation on or around June 15, 2012, but no action was taken.

V. **Relief:**

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

An order requiring Stateville to conduct Friday Prayer every Friday for all muslim, hire Muslim inmate to work in Chapel as Clerk for Islamic Affairs, Stop staff and none muslims from taking food donated for Muslim events, Serve Halal meals served by Muslim in dietary, Court Cost And Any other remedy this court deems Just And proper

VI. The plaintiff demands that the case be tried by a jury. ☑ YES ☐ NO

CERTIFICATION

By signing this Complaint, I certify that the facts stated in this Complaint are true to the best of my knowledge, information and belief. I understand that if this certification is not correct, I may be subject to sanctions by the Court.

Signed this 14 day of March, 2013

Donald Lee McDonald
(Signature of plaintiff or plaintiffs)

Donald Lee McDonald
(Print name)

N23082
(I.D. Number)

P.O. Box 112
Joliet, Illinois 60434
(Address)

U.S. Department of Justice
Civil Rights Division

168-23-0/352256

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

June 16, 2011

Donald Lee McDonald
Inmate# N23082
Statesville Correctional Ctr.
P.O. Box 112
Joliet, IL 60434

Dear Mr. McDonald:

Thank you for your correspondence. The Special Litigation Section of the United States Department of Justice has the authority to investigate allegations concerning the violation of institutionalized persons' free exercise of religion under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc.

We will consider your letter carefully along with other information to determine whether an investigation under RLUIPA is warranted.

Thank you for bringing this matter to our attention. We hope this information is useful. For additional information, you may want to review our website:

http://www.usdoj.gov/crt/split/index.html

Sincerely,

Phillip Johnson
Paralegal
Special Litigation Section

CAIR CHICAGO

Council on American-Islamic Relations
Chicago Office
28 East Jackson Blvd., Suite 1700, Chicago, IL 60604
Tel 312.212.1520 Fax 312.212.1530 cairchicago.org

VIA U.S. FIRST CLASS MAIL

Mr. Donald McDonald # N23082
Stateville Correctional Center
P.O Box 112
Joliet, IL 60434

September 12, 2012

Re: August 19, 2012 Eid-ul-Fitr Celebration at Stateville Correctional Center

Dear Mr. McDonald,

I am in receipt of your letter dated September 1, 2012. We are very happy to know that you enjoyed the Eid-ul-Fitr celebration at Stateville CC. In addition, we appreciate you showing your gratitude towards us. It took a lot of work and effort but we could not have done it without the generous help of our donors. We are working on donations for the upcoming Eid-al-Adha on Friday October 26, 2012. We are also currently working with the chief chaplain of IDOC in ensuring the availability of Qurans, Islamic literature and Eid celebrations.

CAIR-Chicago advocates on behalf of Muslim inmates denied religious accommodation while incarcerated. We seek to resolve incidents of discrimination amicably before resorting to litigation. Only when the opposing party has proven to be hostile or uncooperative should a more adversarial approach be taken. This requires a strict adherence and cooperation with the administrative policies and procedures enacted by the Illinois State Legislature, and in accordance with applicable state and federal law.

The information contained within each correspondence including this letter and all prior communication, is for general informational purposes regarding matters such as statutory regulations and the administrative grievances procedure, and is **not intended to provide legal advice to any individual**. Legal advice must be tailored to the specific facts and circumstances of each case, and the tools and information provided to you are intended to appropriately address the situation in accordance with the remedial measures enacted by the Illinois Department of Corrections.

Transmission of the information is not intended to create, and receipt does not constitute, an attorney-client relationship between CAIR-Chicago and the recipient. However, we will do our best to provide aid and work towards a mutually beneficial solution that appropriately addresses any incidents of discrimination that you may have suffered. By contacting CAIR-Chicago, you have helped in documenting the status of discrimination among Muslim men and women in the Illinois Department of Corrections.

Sincerely,

Claudia Valeria Bertacchi
Civil Rights Department – Law Clerk
Council on American Islamic Relations (CAIR) – Chicago

Rabya Khan
Staff Attorney
Council on American Islamic Relations (CAIR) – Chicago

IN THE COURT OF CLAIMS

OF THE

STATE OF ILLINOIS

DONALD LEE McDONALD,

Claimant,

v.

STATE OF ILLINOIS,

Respondent.

No. 11-CC-0370

ORDER

THIS CAUSE is before the Court on Claimant's motion for leave to file this action in forma pauperis.

IT IS HEREBY ORDERED that Claimant's motion for leave to file in forma pauperis is granted.

ENTER:

CHIEF JUSTICE, COURT OF CLAIMS

The date stamped hereon is the filing date of this Order.

Donald Lee McDonald, N23082
P.O. Box 112
Joliet, IL. 60434

Administrative Review Board
P.O. Box 19277
Springfield, IL. 62794-9277

March 26, 2010

RE: Appeal

Dear Sir/Madam,

After reviewing the response to my grievance by Mr. Shaun Bass it is reasonable to determine that the subject of my concerns have not been addressed, and the response by both Chaplain Adamson is both false and misleading.

Islamic services are held on the first and third week of the month for units B and C, and the second and fourth week of the month for E and D. No inmate go's to Islamic services every Friday.

However, the fact still remains that Muslim services are consistantly cancled for christian services and holidays, special meals are served and allowed into the institution for christian services, while muslims are forced to eat what ever is on the minue that day, for our Eid Feast. This system of discrimination has existed in this facility since I arrived in 1995.

The establishment clause of the U.S. Constitution prohibits government institutions from favoring religions one over another. But if this facility is going to be allowed to continue discriminating against muslim in this fashon, I will have no other choice but to seek Federal protection.

Grievant only seeks proper services, Special meals for our

Holidays as christian inmates have always enjoyed. We have volunteers that can bring the meals, but was rejected by this facilities staff. On days when a visitor doesn't come, the same available officer cans merely sit closer to moniter the service and stop interruptions, instead of sitting at the door.

This facility will have to do nothing special to accomadate the Islamic community. On the days of our Eid Feast, either allow the volunteers to bring complete meals like the christians receive, or sereve turkey and dressing and been pie.

This type of cooperation will help ease the tension between Muslims and the chaplan department, and help us prevent false Islamic doctrines from being taught, which creat terrorist. Evil inspires evil, and justice, a just result. I only ask this facility practice equality under the law.

Donald L. McDonald

C441

ILLINOIS DEPARTMENT OF CORRECTIONS
RESPONSE TO OFFENDER'S GRIEVANCE

Grievance Officer's Report

Date Received: December 22, 2009 **Date of Review:** March 5, 2010 **Grievance # 0278**

Offender: Donald McDonald **N23082**

Nature of Grievance: Staff Conduct - Jumu'ah Service

*** FILED TIMELY ***

Facts Reviewed: Grievant would like Jum'ah service to be held every Friday, regardless or not, if there is a volunteer to conduct them.

Counselor Response: Chaplain Adamson says, i/m McDonald is on the list, and has been for a long time. Services are held every Friday.

Grievance officer has reviewed grievant grievance and finds counselor correctly answered grievant grievance. No further action necessary.

Recommendation: Based upon a total review of all available information, it is the recommendation of this Grievance Officer that the offender's grievance is DENIED.

Shaun Bass CC II
Print Grievance Officer's Name

Grievance Officer's Signature

(Attach a copy of Offender's Grievance, including counselor's response if applicable)

Chief Administrative Officer's Response

Date Received: 3/15/10

☒ I concur ☐ I do not concur ☐ Remand

Comments:

ILLINOIS DEPARTMENT OF CORRECTIONS

OFFENDER'S GRIEVANCE

C-441

Date:	Offender: (Please Print)	ID#:
11-29-09	DONALD LEE MCDONALD	N23082

Present Facility:	Facility where grievance issue occurred:
Stateville	Stateville

Grieva
DEC 22 2009
STA # 02-16

NATURE OF GRIEVANCE:

- [X] Personal Property
- [X] Staff Conduct
- [ ] Transfer Denial by Facility
- [ ] Mail Handling
- [ ] Dietary
- [ ] Transfer Denial by Transfer Coordinator
- [ ] Restoration of Good Time
- [ ] Medical Treatment
- [ ] Disability
- [ ] HIPAA
- [ ] Other (specify):
- [ ] Disciplinary Report: ___/___/___ (Date of Report) _____ (Facility where issued)

Note: Protective Custody Denials may be grieved immediately via the local administration on the protective custody status notification.

Complete: Attach a copy of any pertinent document (such as a Disciplinary Report, Shakedown Record, etc.) and send to:

Counselor, unless the issue involves discipline, is deemed an emergency, or is subject to direct review by the Administrative Review Board.
Grievance Officer, only if the issue involves discipline at the present facility or issue not resolved by Counselor.
Chief Administrative Officer, only if **EMERGENCY** grievance.
Administrative Review Board, only if the issue involves transfer denial by the Transfer Coordinator, protective custody, involuntary administration of psychotropic drugs, issues from another facility except personal property issues, or issues not resolved by the Chief Administrative Officer.

Brief Summary of Grievance: Grivant contends he is being denied his First Amendment and Fourteenth Amendment rights to free exercise of religion and Equal protection of the laws pursuant to the Religious Land Use and Institutionalized Persons Act, where Stateville Correctional Center's staff gives special benefits to members of the Christian faith. See Benjamin v. Coughlin, 905 F.2d 571 (2d Cir. 1990).

Grievant is a sincere practitioner of the Islamic faith since 1989. Grievant follows the teachings of the prophet Muhammad and considers following these teachings a religious obligation and integral part of the Islamic faith. See La Fevers (Cont)

Relief Requested: Jumu'ah service conducted every Friday regardless of wether a volunteer conducts the service, and offeder allowed, all missed services made up on the next available day, this meand Ids (feast) (cont)

- [ ] Check only if this is an **EMERGENCY** grievance due to a substantial risk of imminent personal injury or other serious or irreparable harm to self.

Donald Lee McDonald (Offender's Signature) | N23082 (ID#) | 11.29.09 (Date)

(Continue on reverse side if necessary)

Counselor's Response (if applicable)

Date Received: 12.3.09

- [ ] Send directly to Grievance Officer
- [ ] Outside jurisdiction of this facility: Send to Administrative Review Board, P.O. Box 19277, Springfield, IL 62794-9277

Response: Chaplain Adamson says Mr McDonald is on the list, and has been for a long time. Services are held every Friday.

ILLINOIS DEPARTMENT OF CORRECTIONS

OFFENDER'S GRIEVANCE

C-441

Date:	Offender: (Please Print)	ID#:
11-29-09	DONALD LEE MCDONALD	N23082
Present Facility: Stateville	**Facility where grievance issue occurred:** Stateville	

NATURE OF GRIEVANCE:

- [ ] Personal Property
- [x] Staff Conduct
- [ ] Transfer Denial by Facility
- [ ] Mail Handling
- [ ] Dietary
- [ ] Transfer Denial by Transfer Coordinator
- [ ] Restoration of Good Time
- [ ] Medical Treatment
- [ ] Disability
- [ ] HIPAA
- [ ] Other (specify): _____
- [ ] Disciplinary Report: ___/___/___ (Date of Report) _____ (Facility where issued)

Note: Protective Custody Denials may be grieved immediately via the local administration on the protective custody status notification.

Complete: Attach a copy of any pertinent document (such as a Disciplinary Report, Shakedown Record, etc.) and send to:

Counselor, unless the issue involves discipline, is deemed an emergency, or is subject to direct review by the Administrative Review Board.
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Administrative Review Board, only if the issue involves transfer denial by the Transfer Coordinator, protective custody, involuntary administration of psychotropic drugs, issues from another facility except personal property issues, or issues not resolved by the Chief Administrative Officer.

Brief Summary of Grievance: Grivant contends he is being denied his First Amendment and Fourteenth Amendment rights to free exercise of religion and Equal protection of the laws pursuant to the Religious Land Use and Institutionalized Persons Act, where Stateville Correctional Center's staff gives special benefits to members of the Christian faith. See Benjamin v. Coughlin, 905 F.2d 571 (2d Cir. 1990).

Grievant is a sincere practitioner of the Islamic faith since 1989. Grievant follows the teachings of the prophet Muhammad and considers following these teachings a religious obligation and integral part of the Islamic faith. See La Fevers (Cont)

Relief Requested: Jumu'ah service conducted every Friday regardless of wether a volunteer conducts the service, and offeder allowed, all missed services made up on the next available day, this meand Ids (feast) (cont)

- [ ] Check only if this is an **EMERGENCY** grievance due to a substantial risk of imminent personal injury or other serious or irreparable harm to self.

Donald Lee McDonald (Offender's Signature) N23082 (ID#) 11,29,09 (Date)

(Continue on reverse side if necessary)

Counselor's Response (if applicable)

Date Received: 12,3,09

- [ ] Send directly to Grievance Officer
- [ ] Outside jurisdiction of this facility: Send to Administrative Review Board, P.O. Box 19277, Springfield, IL 62794-9277

Response: Chaplain Adamson says Mr McDonald is on the list, and has been for a long time. Services are held every Friday.

A22

ILLINOIS DEPARTMENT OF CORRECTIONS

RESPONSE TO OFFENDER'S GRIEVANCE

Grievance Officer's Report

Date Received: September 23, 2009

Date of Review: November 4, 2009

Grievance # 2097

N23082

Offender: Donald McDonald

Nature of Grievance: Ramadan Trays

Facts Reviewed: Grievant is grieving that during fast of the Ramadan, he was forced to eat Vegan trays.

Counselor Response: According to the dietary manager, the grievant is not on the approved list for a vegan diet and should have received a regular meal.

Grievance Officer reviewed officer reviewed the grievance and finds the counselor correctly addressed the grievant issues. Food supervisor Tanner was contacted and stated that the living units are the ones who distribute food trays. There is no special diet for the Ramadan fast. Trays are sent to the living unit for those on the fast. No further action necessary.

Recommendation: Based upon a total review of all available information, it is the recommendation of this Grievance Officer that the offender's grievance is DENIED.

Shaun Bass
Print Grievance Officer's Name

Grievance Officer's Signature

(Attach a copy of Offender's Grievance, including counselor's response if applicable)

Chief Administrative Officer's Response

Date Received: 11 17 09

☒ I concur ☐ I do not concur ☐ Remand

Comments:

C1038 DM

ILLINOIS DEPARTMENT OF CORRECTIONS
OFFENDER'S GRIEVANCE

Date:	Offender: (Please Print)	ID#:
9-2-09	Donald L. McDonald	N23082

Present Facility:	Facility where grievance issue occurred:
Stateville	Stateville

Received Grievance Office SEP 23 2009 STA # 2077

NATURE OF GRIEVANCE:

- ☐ Personal Property
- ☒ Staff Conduct
- ☐ Transfer Denial by Facility
- ☐ Mail Handling
- ☐ Dietary
- ☐ Transfer Denial by Transfer Coordinator
- ☐ Restoration of Good Time
- ☐ Medical Treatment
- ☐ Disability
- ☐ HIPAA
- ☐ Other (specify)
- ☐ Disciplinary Report: ___/___/___ (Date of Report) ____ (Facility where issued)

Note: Protective Custody Denials may be grieved immediately via the local administration on the protective custody status notification.

Complete: Attach a copy of any pertinent document (such as a Disciplinary Report, Shakedown Record, etc.) and send to:

Counselor, unless the issue involves discipline, is deemed an emergency, or is subject to direct review by the Administrative Review Board.
Grievance Officer, only if the issue involves discipline at the present facility or issue not resolved by Counselor.
Chief Administrative Officer, only if **EMERGENCY** grievance.
Administrative Review Board, only if the issue involves transfer denial by the Transfer Coordinator, protective custody, involuntary administration of psychotropic drugs, issues from another facility except personal property issues, or issues not resolved by the Chief Administrative Officer.

Brief Summary of Grievance: This Grievance concerns a violation of my First and Fourteenth Amedment rights to the United States Constitution Where: this facilities' staff has discriminated against my practice of my Islamic faith by denying me the ability to eat the same meals as other inmates during the month of Ramadan. During this fast, I was forced to eat vegan meals (and I am no vegan), trays arived after the time for breaking the fast, and other trays were missing either the desert or part of the main course. In short, the meal provided Muslims fasting was less than none fasting inmates received..

Relief Requested: A Muslim chaplan hired to conduct Islamic affairs, I be allowed to practice my religion as proscribed bi it's dictates, $5.000.00 in punitive damages.

☒ Check only if this is an **EMERGENCY** grievance due to a substantial risk of imminent personal injury or other serious or irreparable harm to self.

Donald L. McDonald — Offender's Signature
N23082 — ID#
9,2,09 — Date

(Continue on reverse side if necessary)

Counselor's Response (if applicable)

Date Received: 9,09,09

☐ Send directly to Grievance Officer
☐ Outside jurisdiction of this facility. Send to Administrative Review Board, P.O. Box 19277, Springfield, IL 62794-9277

Response: According to the Dietary Manager the grievant is not on the approved list for a vegan diet and should have received a regular meal.

Illinois
Department of
Corrections

PAT QUINN
Governor

MICHAEL P. RANDLE
Director

1301 Concordia Court / P.O. Box 19277 / Springfield IL 62794-9277 / Telephone: (217) 558-2200 / TDD: (800) 526-0844

April 30, 2010

Donald McDonald
Register No. N23082
Stateville Correctional Center

Dear Mr. McDonald:

This is in response to your grievance received on December 4, 2009, regarding dietary (Ramadan vegan tray 2097), which was alleged to have occurred at Stateville Correctional Center. This office has determined the issue will be addressed without a formal hearing.

Grievant claims his religious diet needs are not being met.

The Grievance Officer's Report and subsequent recommendation dated November 4, 2009 and approval by the Chief Administrative Officer on November 12, 2009 have been reviewed.

Based on a total review of all available information, it is the opinion of this office that the issue was appropriately addressed by the institutional administration. It is, therefore, recommended the grievance be denied.

FOR THE BOARD: _____
Brian Fairchild
Administrative Review Board
Office of Inmate Issues

CONCURRED: _____
Michael P. Randle
Director
5/7/10

cc: Warden Marcus Hardy, Stateville Correctional Center
Donald McDonald, Register No. N23082

Illinois
Department of
Corrections

PAT QUINN
Governor

MICHAEL P. RANDLE
Director

1301 Concordia Court / P.O. Box 19277 / Springfield IL 62794-9277 / Telephone: (217) 558-2200 / TDD: (800) 526-0844

August 11, 2010

Donald McDonald
Register No. N23082
Stateville Correctional Center

Dear Mr. McDonald:

This is in response to your grievance received on April 1, 2010, regarding religion (Alleges discrimination against Islamic inmates 0278), which was alleged to have occurred at Stateville Correctional Center. This office has determined the issue will be addressed without a formal hearing.

In your grievance you list a variety of issues you allege are evidence Islamic inmates are being discriminated against when compared to the treatment of other faith groups. You further state the response by the Stateville CC Grievance Officer and Warden did not address all the issues you alleged in your complaint. Reference is invited to Inmate McDonald's written grievance narrative.

The Grievance Officer's Report and subsequent recommendation dated March 5, 2010 and approval by the Chief Administrative Officer on March 15, 2010 have been reviewed.

This chairperson contacted Chaplain Adamson regarding your allegations. Adamson advises feast days or other religious events may be delayed or cancelled when the facility is on lockdown. He also states there is no discrimination between, or among, faith groups regarding scheduling of religious services. Adamson states some limitations may be subjected to all faith groups based on security needs. Limitations are placed based on the number of inmates who may attend services under gatherings of any faith groups who attend religious services in the gym. It is also noted allegations in regard to discrimination over religious meals is not documented regard times, dates or types of food, or other actions, which may be reviewed for compliance with department rules.

Based on a total review of all available information, and in accordance with DR504.850, it is the opinion of this office that the grievance has been ruled no merit; therefore no action will be taken.

FOR THE BOARD: Brian Fairchild

Brian Fairchild
Administrative Review Board
Office of Inmate Issues

CONCURRED: Michael P. Randle TA 8/17/10

Michael P. Randle
Director

cc: Warden Marcus Hardy, Stateville Correctional Center
Donald McDonald, Register No. N23082

IN THE COURT OF CLAIMS
OF THE STATE OF ILLINOIS

DONALD LEE MCDONALD,
Claimant,
-Vs-
STATE OF ILLINOIS AND THE
ILLINOIS DEPARTMENT OF CORRECTIONS,
Respondent.

No. _____

$ 5000.00
Amount Claimed

11CC0370

NOTICE OF FILING

TO: Mrs Lisa Madigan
Illinois Attorney General
Court of Claims Division
100 West Randolph Street
Chicago, Illinois 60601

Please take notice that on the 31 day of August, 2010 I filed a copy of the attached complaint and documents to the Clerm of the Illinois Court of Claims for filing.

s/s Donald L. McDonald

CERTIFICATE OF SERVICE

I, Donald Lee McDonald, hereby certify that I mailed a copy of the attached complaint to be served on the above named party by mailing a copy of the same to the attorney for the Respondents at the above address on the 31 day of August, 2010.

s/s Donald L. McDonald
Donald Lee McDonald, N23082
Stateville Correctional Center
P.O. Box 112
Joliet, Illinois 60434

Subscribed and sworn to befor me
This 1st day of September 2010

NOTARY PUBLIC

"OFFICIAL SEAL"
Cynthia Harris
#14919099N
Notary Public, State of Illinois
My Commission Expires November 15, 2010

IN THE COURT OF CLAIMS
OF THE STATE OF ILLINOIS

DONALD LEE MCDONALD,

Claimant,

-Vs-

STATE OF ILLINOIS AND THE ILLINOIS DEPARTMENT OF CORRECTION;

Respondent.

No. _____

$ 5000.00
Amount Claimed

COMPLAINT

This claim, sounding in tort, is for the denial of claimant's First and Fourteenth Amdnements rights to free exercise of religion, Establishment Clause and the Equal Protection of thelaw, where Claimant is being prevented from following the practices of his Muslim faith, encouraged to follow the christian faith, through poor treatment because I am a Muslim, practicing Al-Islam.

1. Claimant is and was at all times pertinent, an inmate held in custody by respondent.

2. Chaplan Adamson is the chaplain at Stateville Correctional Center and is sued in his individual and official capacity, acting under color of law did violate Claimant's First and Fourteenth Amendments to the United States Constitutional rights to the Free exercise of religion, Establishment Clause, and the Equal Protection of the law.

3. The Holy Qur'an, states, "O ye who believe! When the call is proclaimed to prayer on Friday (The Day of Assembly). Hasten earnestly to the Remembrance of Allah, and leave off Business

(and traffic); That is best for you if ye but knew! And when the prayer is finished, then may ye disperse through the land, And seek of the bounty Of Allah: and celebrate The Praise of Allah Often (and without stint) That ye may prosper." Sura (Chapter) 62: Al Jummu'ah, sections 9-10.

4. Stateville Correctional Center's Chaplancy department only allows Islamic services every other week, and when the institution causes units B and C to miss their service for that week, the units are not allowed to attend service the following week and this practice prevents Muslims from attending service for whole months.

5. Stateville Correctional Center has cable channels, three of which are christian channels, none Mulim.

6. Stateville Correctional Center serves Christmas dinner every year for all inmates, but on the Muslim Eid (Feast Celebrations for completion of Ramadahn) meal are restricted to what ever is on the menue, and not the traditional celebratory Muslim meals.

7. Christians are allowed numerious study classes and special programs, Muslims are allowed one study class restricted to fifty or under inmates.

8. Stateville Christians are allowed numerious volunteer visitors inside the facility, where Muslims are restricted to two and on rare occasions three. Christian volunteers constantly walk the gallaries, no Muslims.

9. Arabic tapes are secretly taken out of inmate's property, My tape recordings of the Qur'an, designed to help Muslim pronounce their prayers in Arabic as required by the faith.

10. Prayer rugs that are allowed to be ordered, when they arrive at the institution, they are lost. My prayer rug was taken from personal property and never found.

11. Muslim inmates are prevented from calling the call to prayer (adahn) on Fridays in their units by officers that are christian, who shout out on the p.a. system, "who ever is singing that shit stop it." Along with, "we're having chicken-Allah-king for dinner." (C/o Gray unit C).

12. 20 Illinois Administrative Code Ch. I, §425.30 (a) states. "Committed persons shall be provided reasonable opportunities to pursue their religious beliefs and practices subject to concerns regarding security, safety, rehabilitation, institutional order, space and resources."

13. 20 Illinois Administrative Code Ch. I, §425.60 (b) states, "The Chief Administrative Officer, after consultation with the facility chaplain, shall regulate the time, place and manner in which religious activities are conducted."

14. The United States Constitution states, "'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." (Amend. 1 and 14)

15. The Illinois Constitution states, "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed ... No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship." (Art. I, §3)

16. Claimant filed two institutional grievance. One dated September 2, 2009, and the other dated November 29, 2009. Counselor

Mansfield responded to the first grievance on September 9, 2009 and the grievance office denied the grievance on September 23, 2009. The second grievance was denied by the grievance office on March 15, 2010 and Claimant appealed on March 26, 2010. The Administrative Review Board, Brian Fairchild stated that the issue was appropiately addressed by the institutional administration and denied the grievance exhausting all of Claimant's administrative remedies.

17. Claimant has not presented this claim to any other department of the State of Illinois or Officer.

18. Claimant has made no assignment or transfer of this claim or any part or interest thereof.

19. Claimant is justly entitled to the amount of the claim and has filed within the statutory time limit.

20. Claimant believes the facts stated in this complaint are correct and true.

21. This claim has not been filed in any other court of the United States.

WHEREFORE, Claimant asks this Court to enter a judgment against the respondents in the sum of $5000.00, and Order Respondent to: (1) Allow all Muslim inmates attend Friday service every Friday, B and Cunits attend the chapel building and C and D attend the Gym service, (2) allow more volunteers to conduct services and classes, allow the wearing of prayer caps to and from service, and during the month of Ramadan, (3) during the fast, serve lunch and dinner meals together, and (4) allow Muslims to choose the meal to be served during all feast.

Date 7-23-10 s/s Donald L. McDonald

STATE OF ILLINOIS)
)SS: AFFIDAVIT
COUNTY OF WILL)

I, Donald Lee McDonald, being duly sworn on oath depose and state that I am the claimant in the attached cause. I have sought relief through the Illinois Department of Correction grievance procedure but was denied all relief requested pursuant to 750 ILCS 505.25. I am poor and have no income or assets with which to pay the costs of these procedures. Respondents actions have prevented me from practicing my Islamic faith according to my belliefs. I am the author of the foregoing complaint and state the contents thereof are true and correct to the best of my knowledge and belief.

s/s Donald L McDonald
Donald Lee McDonald, N23082
Stateville Correctional Center
P.O. Box 112
Joliet, Illinois 60434

Subscribed and sworn to before me
This 2nd day of September 2010

NOTARY PUBLIC Cynthia Harris

"OFFICIAL SEAL"
Cynthia Harris
#14919099N
Notary Public, State of Illinois
My Commission Expires November 15, 2010

STATE OF ILLINOIS
COURT OF CLAIMS

DONALD LEE McDONALD,

Claimant,

vs.

No. 11 CC 0370

STATE OF ILLINOIS,
DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER

This matter comes before this court on the complaint of DONALD LEE McDONALD, Claimant and against THE STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent, alleging denials of Claimant's freedom to exercise religion, and seeks damages in the amount of $5,000.00

Claimant, an inmate at Stateville Corrections Center, alleges that Islamic services are offered only in alternating weeks and that the traditional Muslim celebratory meals are not available for Muslim holidays. He suggests Christians are given preferred treatment in that Christian cable stations are available to inmates, but no Muslim stations are offered, and Christian volunteers are provided liberal access to inmates, but no access to Muslim volunteers is provided. He further alleges that generally Arabic tapes are secretly removed from inmates' property, and that prayer rugs are allowed to be ordered and then mysteriously lost. Claimant offered no evidence in support of these allegations.

Claimant offered the following in support of his claim:

> Committed persons shall be provided reasonable opportunities to pursue their religious beliefs and practices subject to concerns regarding security, safety, rehabilitation, institutional order, space and resources.
> 20 Illinois Administrative Code Ch. I, Sub. Ch. D, [Part 425], Section 425.30 (a).

He further offers as follow:

> The Chief Administrative Officer, after consultation with the facility chaplain, shall regulate the time, place and manner in

which religious activities are conducted.
20 Illinois Administrative Code Ch. I, Sub Ch. D, [Part 425], Section 425.60 (b)

The evidence presented by Respondent in the Departmental Report indicated that Muslim services are offered every Friday and only subject to cancellation when the facility is on lockdown. Further, that Claimant had not requested Vegan food services; therefore he was served non-vegan diet consistent with regular practice.

The administrative code provides that committed persons be allowed reasonable access to pursue their faith with consideration of security and under the regulated authority of the facility's chief Administrative officer. In this case the evidence establishes that the institution provides at least weekly access to Muslim services, and allows for dietary options consistent with the Muslim faith. Claimant failed to present any credible evidence in support of his claim that his rights had been denied, or that his property had been wrongfully withheld.

Based on the foregoing, Claimant has failed to establish his burden of proof, and his claim is therefore denied.

ENTER:

JUDGE, COURT OF CLAIMS

CONCUR:

J.

J.

J.

The date stamped hereon is the filing date of this Order.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHEN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALD LEE MCDONALD, (N23082),	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13 C 2262
	)	
CHAPLAIN GEORGE ADAMSON, ET AL.,	)	
	)	
Defendants.	)	

ORDER

Defendants' motion to dismiss (Dkt. No. 18), is granted. The Clerk is instructed to enter a Rule 58 Judgment in favor of defendants against plaintiff. Any other pending motions are moot. Civil Case Terminated.

STATEMENT

Pro se plaintiff Donald Lee McDonald, a Stateville Correctional Center inmate, has brought a civil rights suit pursuant to 42 U.S.C. § 1983. Pending before the Court is defendants' Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted. (Dkt. No. 18).

As an initial matter, the Court's notes that defendants are moving to dismiss on the grounds of res judicata. Res judiciata is an affirmative defense, it is traditionally raised in the answer, and defendant normally moves for judgment on the defense in a motion for judgment on the pleadings, or summary judgment. *Carr v. Tillery*, 591 F.3d 909, 913 (7th Cir. 2010). However, a Rule 12(c)(6) motion is appropriate to raise the res judicata defense when it is present on the face of the complaint, *Muhammad v. Oliver*, 547 F.3d 874, 878 (7th Cir. 2008), and the Court may consider both the complaint and information that is subject to judicial notice in ruling on a Rule 12(b)(6) motion. *Cohen v. Am. Sec. Ins. Co.*, 735 F.3d 601, 604 (7th Cir. 2013).

Defendants properly proceed in this manner. They ask the Court to take judicial notice of plaintiff's prior case before the Illinois Court of Claims. The Court may take judicial notice of relevant state court proceedings. *Wirnich v. Vorwald*, 664 F.3d 206, 209 (7th Cir. 2011). With the judicial notice, a Rule 12(b)(6) motion is appropriate because the record before the Court is limited to complaint and prior state court proceedings, and these documents set forth the elements of the res judicata affirmative defense. Thus, the Court may proceed under Rule 12(b)(6).

The following facts are drawn from the complaint and relevant state court opinion recognized through judicial notice with all well-pleaded facts and reasonable inferences made in plaintiff's favor. *Yeftich v. Navistar, Inc.*, 722 F.3d 911, 915 (7th Cir. 2013). The complaint must allege a claim that is "'plausible on its face,'" to survive a motion to dismiss. *Yeftich*, 722 F.3d at 915 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). It is appropriate to recognize an affirmative defense during a Rule 12(b)(6) motion when the elements of the defense are present on the face of the complaint (along with the state court opinion considered via judicial notice) so that the suit can be regarded as frivolous. *Turley v. Gaetz*, 625 F.3d 1005, 1013 (7th Cir. 2010); *Walker v. Thompson*, 288 F.3d 1005, 1009 (7th Cir. 2002).

Plaintiff alleges that he is unable to observe his Islamic faith while incarcerated at Statesville due to a denial of religious services and proper food. He seeks both injunctive and monetary relief. Plaintiff alleges that all defendants (Stateville Correctional staff) were personally involved in the allegedly violations. Plaintiff is proceeding with claims under the First Amendment and the Religious Land Use and Institutionalized Person Act (RLUIPA), 42 U.S.C. § 2000cc *et seq*.

Defendants' motion to dismiss provides plaintiff's prior lawsuit before the Illinois Court of Claims in *McDonald v. Illinois*, No. 11 CC 370 (Ill. Ct. Cl.). Plaintiff raised the identical claims before the Illinois Court of Claims of violation of his federal constitutional rights at Stateville due to his inability to practice his Islamic faith. (Dkt. No. 18-1). The Court of Claims rejected plaintiff's claims in a written order entered on July 24, 2013. (Dkt. No. 18-2). Although the record is not clear as to whether there was an appeal from the Court of Claims, the parties do not contest that the Court of Claims judgment is a final judgment for purposes of res judicata. Thus, the Court shall consider the judgment to be a final judgment.

The Court must apply Illinois's res judicata law. *Brown v. City of Chicago*, 599 F.3d 772, 774 (7th Cir. 2010) (citations omitted). "For the application of res judicata, Illinois law requires: (1) 'a final judgment on the merits rendered by a court of competent jurisdiction,' (2) 'an identity of cause of action,' and (3) the same parties or their 'privies' in both cases. *Harmon v. Gordon*, 712 F.3d 1044, 1054 (7th Cir. 2013) (quoting *Hudson v. City of Chicago*, 889 N.E.2d 210, 213 (Ill. 2008)).

As mentioned above, there is no dispute that there is a final judgment from the Illinois Court of Claims. As to the second element of identity of cause of action, Illinois applies the "'transactional test.'" *Walczak v. Chicago Bd. of Educ.*, 739 F.3d 1013, 1016 (7th Cir. 2014) (quoting *Cooney v. Rossiter*, 986 N.E.2d 618, 621 (Ill. 2012)). The transaction test requires the application of res judicata to not only those claims that were actually decided by the state court, but also those matters that arise out of the same group of facts that could have been decided by the state court. *Walczak*, 739 F.3d at 1017.

Plaintiff argues in his response to the present motion to dismiss that the present claims that he is raising in this case are unrelated to those adjudicated in the Court of Claims. He asserts that the allegations before the Court of Claims involved incidents occurring in 2009, while the present complaint is for events in 2012. (Dkt. No. 29 at 9). To this point, plaintiff claims that defendants Hardy and Edwards were not even employed at Stateville in 2009. He could not make claims against Hardy and Edwards in the Court of Claims because they were not yet at the prison.

However, plaintiff's own assertions in his complaint in this case defeat this argument. The March 25, 2013 complaint states, "[p]laintiff originally filed these claims to the Illinois Court of Claims September 10, 2010. Plaintiff received a hearing but has been denied any response to date." (Dkt. No. 1 at 11). The Court of Claims decision was issued several months later on July 24, 2013. (Dkt. No. 18-2 at 2). Contrary to his present position, plaintiff admits in his complaint that the claims he raises in this case are identical to the claims he raised before the Court of Claims. Under Illinois law, a statement agreeing to a fact in a pleading is a judicial admission and is binding on that party. *Kanuerhaze v. Nelson*, 836 N.E.2d 640, 658 (Ill. App. Ct. 2005); *see also McCaskill v. SCI Management Corp.*, 298 F.3d 677, 680 (7th Cir. 2002) (quoting *Keller v. United States*, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995) ("'Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them. They may not be controverted at trial or on appeal.'") (applying federal law)). Plaintiff's admission binds him. The claims he raises in this case are identical to the claims raised in the Court of Claims.

Plaintiff also argues that the Court of Claims did not reach his constitutional issue because it addressed only the Illinois Administrative Code. However, the Court of Claims decision did reach the factual issue of whether the was any violation and determined there was not. The Court of Claims addressed the issues at stake in this case of alleged lack of celebratory meals on Muslim holidays, and a lack of Muslim related materials and meals while Christians received their materials. The Court of Claims was clear in its holding rejecting plaintiff's claims and holding that his rights were not violated. The Illinois Court adjudicated that Plaintiff did not suffer a violation of his religious rights.

As to the final ground of identity or "privity," the Court finds this element to be satisfied as well. Plaintiff sued the Illinois Department of Corrections and individuals in their official capacity in the Illinois Court of Claims. In contrast, he sues the individuals in their individual capacity.

Privity "'exists between parties who adequately represent the same legal interests.'" *Chicago Title Land Tr. Co. v. Potash Corp. of Saskatchewan Sales Ltd.*, 664 F.3d 1075, 1080 (7th Cir. 2011) (quoting *People ex rel Burris v. Progressive*

Land Developers, 602 N.E.2d 820, 825 (Ill. 1992)). It is the "'identity of interests that controls in determining privity, not the nominal identity of the parties.'" *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 594 (7th Cir. 1993) (quoting *Progressive Land Developers*, 602 N.E.2d at 825).

Employees have privity with their employers. "When a prior judgment is a bar to a claim against an employer, a claim against an employee predicated upon the same acts, is also barred." *Ross Advertising, Inc. v. Heartland Bank and Tr. Co.*, 969 N.E.2d 966, 976 (Ill. App. Ct. 2012) (citations omitted).

The present defendants in this case have privity with their employer, the State of Illinois. The difference in named defendants between the Court of Claims, and the instant case, is insignificant for purposes of the res judicata analysis. Plaintiff had to sue to the State of Illinois in the Court of Claims under Illinois law.

By statute, 705 ILCS 505/1, *et seq.*, the State of Illinois waives its sovereign immunity for claims brought against it in the Illinois Court of Claims. *Fritz v. Johnston*, 807 N.E.2d 461, 466 (Ill. 2004). When an individual state employee committed a violation during the course of his employment, the plaintiff can proceed with a claim against the State of Illinois in the Court of Claims. *Id.* However, a suit in federal court will be against the individual defendant in his individual capacity. Both the State of Illinois and the individual defendants had an identical interest in defending against plaintiff's allegations. The "nominal" difference in the named parties between the two courts is due to the application of state sovereign immunity principles.

Finally, plaintiff argues that equity should bar the application of res judicata to this case.

> The Illinois Supreme Court outlined six scenarios where the application of res judicata would be inequitable: (1) the parties have agreed in terms or in effect that plaintiff may split his claim or the defendant has acquiesced therein; (2) the court in the first action expressly reserved the plaintiff's right to maintain the second action; (3) the plaintiff was unable to obtain relief on his claim because of a restriction on the subject-matter jurisdiction of the court in the first action; (4) the judgment in the first action was plainly inconsistent with the equitable implementation of a statutory scheme; (5) the case involves a continuing or recurrent wrong; or (6) it is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason.

Hayes v. City of Chicago, 670 F.3d 810, 815 (7th Cir. 2012) (quoting *Rein v. David A. Noyes & Co.*, 665 N.E.2d 1199, 1207 (Ill. 1996)). None of these grounds apply to this

case. Plaintiff's claims were rejected by the Court of Claims. The Court sees no reason why he should get a second bite at the apple in this Court.

ENTERED:

Dated: August 22, 2014

/s/
Joan B. Gottschall
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONALD LEE MCDONALD, (N23082),	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13 C 2262
	)	
CHAPLAIN GEORGE ADAMSON, ET AL.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's motion to amend the judgment (Dkt. No. 37), is denied. The Clerk shall send plaintiff a blank IFP application. Plaintiff is advised that he must file a separate IFP application if he wishes to proceed IFP on appeal.

STATEMENT

Pro se plaintiff Donald Lee McDonald, a Stateville Correctional Center inmate, brought a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that he was unable to observe his Islamic Faith while incarcerated at Stateville due to a denial of religious services and proper food. The Court dismissed the case concluding that this case was barred by *res judicata*. (Dkt. No. 34). Plaintiff lost a prior suit raising the identical claims in the Illinois Court of Claims. *McDonald v. Illinois*, No. 11 CC 370 (Ill. Ct. Cl.).

Plaintiff now brings a motion to amend the judgment. (Dkt. No. 37). Plaintiff has the burden of showing that the Court committed a manifest error of law or fact in dismissing his case. *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 826 (7th Cir. 2014).

Plaintiff argues that res judicata cannot be applied because the Illinois Court of Claims cannot hear constitutional claims under Illinois Law. This argument was raised by plaintiff, and explicitly rejected by the Court in the original dismissal order. Plaintiff is improperly rehashing a prior argument that was previously rejected by the Court. *Vesely v. Armsling LLC*, 762 F.3d 661, 666 (7th Cir. 2014).

Furthermore, as the Court's dismissal order explains, the Court of Claims opinion addressed the issues that are also at stake in this case, and concluded (within the context of the Illinois Administrative Code) that plaintiff's rights were not violated. That Court, within the context of a claim arising under the Illinois

Administrative Code (which is a proper claim in the Illinois Court of Claims), held that plaintiff's religious rights were not violated. Additionally, as the Court's opinion noted, Plaintiff conceded in his original filings that the claims raised in this case were identical to those raised before the Court of Claims. Plaintiff cannot backtrack from that concession. Plaintiff's present motion is denied.

The Court also notes that Plaintiff captions the present motion as a request for leave to proceed *in forma pauperis*. However, plaintiff fails to bring any financial information with this motion. The Clerk shall provide plaintiff a blank IFP application. Plaintiff is advised that he must file a separate IFP application if he wishes to proceed IFP on appeal.

ENTERED:

Dated: January 29, 2015

/s/
Joan B. Gottschall
United States District Judge Judge