IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JUAN M. PÉREZ,

Plaintiff,

OPINION and ORDER

v.

06-C-248-C

MATTHEW J. FRANK, RICHARD RAEMISCH, CATHERINE FARREY, LIZZIE A. TEGELS, SUE NAULT, MELANIE FAUST, MARK TESLIK, GREG GRAMS and TIMOTHY LUNDQUIST, in their individual and official capacities,

Defendants.

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In this civil action for declaratory, injunctive and monetary relief, plaintiff Juan Pérez, a Muslim prisoner incarcerated at the New Lisbon Correctional Institution in New Lisbon, Wisconsin, contends that defendant prison officials violated his rights under the First Amendment's free exercise clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, by prohibiting him from engaging in various religious prayer ceremonies and rituals.

Now before the court is plaintiff's motion for summary judgment. Although I have deep reservations about the accuracy and completeness of the facts upon which this decision

rests, the court is bound by the parties' submissions. Therefore, because the undisputed facts reveal that defendants substantially burdened plaintiff's ability to engage in Jumu'ah and Ta'alim services and group prayer on the feasts of 'Eid ul Fitr and 'Eid ul Adha, and did not do so by the least restrictive means necessary to promote a compelling government interest, plaintiff's motion will be granted with respect to his claim that he was entitled to gather for prayer with other inmates on these occasions, even in the absence of an approved non-incarcerated volunteer prayer leader.

The parties do not dispute that (1) eating dates to break the Ramadan fast is a meaningful religious exercise to plaintiff, (2) there is no penological reason for denying him dates and (3) inmates of other religions are provided with comparable small amounts of food to use in their religious observances. As a result, plaintiff's motion for summary judgment will be granted with respect to his claim that defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under the free exercise clause, RLUIPA and the establishment clause by denying him dates with which to break his fast during Ramadan.

Because it is undisputed that plaintiff believes he is required to eat Halaal foods on the feasts of 'Eid ul Fitr and 'Eid ul Adha, and defendants have proposed no facts suggesting that they had any reason not to provide him with Halaal foods for those feasts, plaintiff's motion for summary judgment will be granted with respect to his claim that defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA

and the free exercise clause by preventing him from feasting on Halaal foods during 'Eid ul Adha and 'Eid ul Fitr. Nevertheless, because plaintiff has not adduced evidence from which I may conclude as a matter of law that defendants Teslik, Nault, Farrey, Faust, Tegels and Raemisch provided non-Muslim inmates with special food on a more privileged basis than they provided special food to Muslim inmates, plaintiff's motion for summary judgment will be denied with respect to his establishment clause claim regarding the provision of feast day foods. Therefore, this claim must proceed to trial.

Although plaintiff has adduced evidence in support of his assertion that the prison's policy limiting inmates to a single one-ounce bottle of prayer oil each month is insufficient to meet the requirements of his faith, that is not the claim on which plaintiff was given leave to proceed. Plaintiff was granted leave to proceed on a claim that the prison's policy requiring him to keep all his prayer oil in a single bottle and submit that bottle for refill resulted in his going without prayer oil for a protected period of time. Plaintiff has adduced no evidence that he is without prayer oil because of the policy he challenged. Therefore, his motion for summary judgment will be denied with respect to that claim; it will proceed to trial.

It is undisputed that performing ritual ablution (wudu) is a central practice of plaintiff's Muslim faith. However, the parties dispute whether plaintiff's ability to perform wudu has been substantially burdened. Consequently, plaintiff's motion for summary

judgment will be denied with respect to his claim that defendants Teslik, Farrey, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by prohibiting him from performing wudu during the hours the prison dayroom is closed. This claim will proceed to trial also.

It is undisputed that plaintiff believes he is required to learn to properly intone the words of the Qur'an and that no one at the prison can help him learn the proper method of reciting Qur'anic verses. Moreover, it is undisputed that other inmates are allowed to possess electronic devices that are similar to the digital Qur'an player plaintiff wishes to purchase. Because defendants have come forward with no penological reason for refusing to allow plaintiff to purchase a Qur'an player, plaintiff's motion will be granted with respect to his claim that defendants Teslik, Lundquist, Grams, Raemisch, Tegels and Faust violated his rights under the free exercise clause and RLUIPA by promulgating and enforcing policies that deprived him of the opportunity to possess a digital Qur'an player.

Finally, because the undisputed facts show that defendants Tegels and Raemisch did not violate plaintiff's free speech rights through the manner in which they addressed his inmate complaint regarding the confiscation of his mail on October 31, 2005, plaintiff will be denied summary judgment with respect to that claim. On that claim alone, I will grant summary judgment sua sponte in favor of defendants Tegels and Raemisch.

Before turning to the undisputed facts, I note that although defendants filed no

proposed findings of fact to supplement the facts proposed by plaintiff, their brief refers to facts not proposed as findings of fact. Among others, these include facts regarding the security concerns that prompted the prison rule forbidding inmates from leading group prayer and study groups and facts relating to alleged difficulties encountered by the prison chaplain in recruiting volunteer spiritual leaders. Because defendants did not present these facts to the court, plaintiff was given no opportunity to respond to them. Consequently, I have ignored them and all other factual assertions not properly presented to the court as proposed findings of fact.

From plaintiff's proposed findings of fact, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Juan Pérez is a prisoner incarcerated at the New Lisbon Correctional Institution in New Lisbon, Wisconsin.

Defendant Mark Teslik is Chaplain of the New Lisbon Correctional Institution.

From May 13 2002 to January 2006, defendant Catherine Farrey was Warden of the New Lisbon Correctional Institution.

Defendant Sue Nault is Education Director of the New Lisbon Correctional

Institution.

Defendant Melanie Faust is Program Director of the New Lisbon Correctional Institution.

Defendant Lizzie Tegels is Deputy Warden of the New Lisbon Correctional Institution.

Defendant Greg Grams is Warden of the Columbia Correctional Institution.

At times relevant to this complaint, defendant Timothy Lundquist was first Deputy Warden of the Kettle Moraine Correctional Institution and later Warden of the New Lisbon Correctional Institution.

Defendant Richard Raemisch is Deputy Secretary of the Wisconsin Department of Corrections.

Defendant Matthew Frank is Secretary of the Wisconsin Department of Corrections.

B. Religious Practices

Since August 1999, plaintiff has been a practicing Sunni Muslim. Plaintiff follows the teachings of the Shafi'ite school and uses teachings from that tradition to interpret Allah's commands. Specifically, plaintiff adheres to the teachings found in the texts Al-Maqasid: Nawawi's Manual of Islam and Reliance on the Traveler. Plaintiff believes that his adherence to the obligatory practices and teaching of Islam, as promulgated through the

Shafi'ite school, will earn him eternal reward in the afterlife, while his failure to do so will result in eternal punishment.

1. Group prayer and study

a. Ta'alim and Jumu'ah

Plaintiff believes that every Muslim is obliged to learn more about his faith. One required means of doing so is through attendance at Ta'alim, a communal gathering at which believers teach and are taught the tenets of their faith.

Plaintiff believes that he is required also to attend Friday prayer (Jumu'ah), a ceremony that purifies the sins plaintiff and his fellow believers may have committed during the previous week. During the prayer service, an orator delivers a message to the believers who are gathered for prayer. Normally, prayers are led by an imam, who is the person with the most age or experience amongst those present. Under Islamic law, there are no special training requirements for being an imam and the fact that someone has committed a crime is not in itself enough to disqualify a person as a prayer leader.

The New Lisbon Correctional Institution has a book in its library called Khutba of Jumu'ah. That book contains Jumu'ah prayers that would be appropriate for reading at weekly gatherings.

From August 1999 to August 2000, plaintiff was incarcerated at the Green Bay

Correctional Institution in Green Bay, Wisconsin. During that time, he participated in inmate-led religious ceremonies when outside spiritual leaders were unavailable. From August 2000 to April 21, 2001, plaintiff participated in inmate-led religious ceremonies at the Columbia Correctional Institution. While participating in inmate-led services, plaintiff never experienced any disruptions or encountered any problems from prison staff or other inmates. Plaintiff was not required to have his sermons or lesson plans scrutinized by prison officials before leading other inmates in prayer or study.

On April 21, 2001, the Wisconsin Department of Corrections instituted Wis. Admin Code § 309 Internal Management Procedure #6, which prohibits inmates from leading prayer services and study groups.

On June 2, 2004, plaintiff attended an orientation session at the New Lisbon Correctional Institution. At that session, defendant Teslik stated that no Muslim group prayer services or study sessions would be held at the institution until an outside spiritual advisor could be located to lead the gatherings. Later that day, plaintiff wrote to defendant Teslik, informing him that Islam did not require spiritual leaders to be from outside the prison. Plaintiff asked defendant Teslik to authorize inmates to conduct their own Jumu'ah and Ta'alim services. Defendant Teslik did not respond to plaintiff's requests.

On June 10, 2004, plaintiff wrote to defendant Farrey complaining about defendant Teslik's refusal to authorize Jumu'ah and Ta'alim services unless an outside leader could be

recruited. Defendant Farrey did not respond.

Plaintiff filed many inmate complaints and sent letters to prison officials relating to the matters raised in this lawsuit. Plaintiff's complaints were handled by defendants Farrey, Faust, Tegels, Nault and Raemisch, among others. Plaintiff sent copies of some of his letter to defendant Frank.

On September 16, 2005, defendant Teslik offered Muslim inmates the opportunity to attend a "service" at which a video was shown. The video was not in English and plaintiff could not understand it. Afterward, plaintiff asked defendant Teslik to allow him to meet with two other Sunni Muslim inmates, Sean Wilson and Tremayne Brown, to study privately while other inmates watched the video. Defendant Teslik denied plaintiff's request, even though previously, defendant Teslik had permitted the inmates to hold identical study sessions when volunteer spiritual leaders were present to facilitate the study group.

At some point, defendant Teslik located a volunteer spiritual leader to hold Islamic services inside the prison. However, on October 22, 2004, Jumu'ah services were cancelled because the outside prayer leader became ill and defendant Teslik hd no time to obtain a replacement or set up an alternative service.

Between June 2, 2004 and September 22, 2006, Jumu'ah services were held on 53 Fridays. There were 61 Fridays on which services were not held because the prison was unable to find a volunteer spiritual leader willing to lead the prayer services. On some of

those days, religious videos were shown to the inmates.

Defendant Farrey was aware of the difficulty the prison had recruiting Muslim volunteers to lead and supervise worship services within the prison.

b. Feast day prayers

On the feast of 'Eid ul Fitr, Muslims engage in four traditions: Salat ul 'Eid (group prayer), the distribution of alms, the distribution of grain to the poor and the consumption of special foods and drinks. Plaintiff asked prison officials to arrange for Muslim inmates to gather for prayer and feasting on this holy day. In 2005, defendant Teslik could not locate a volunteer to lead group prayer on 'Eid ul Fitr. Defendant Teslik prohibited the inmates from conducting their own prayer service.

In 2006, after consulting with the prison warden, defendant Teslik permitted inmate Anthony Leslie to conduct prayer and give a sermon on the feast of 'Eid ul Fitr. Plaintiff attended this prayer service, along with approximately 30 other inmates. There were no disturbances at the prayer service.

On the feast of 'Eid ul Adha, Muslims who are not making a pilgrimage celebrate by engaging in group prayer (salaat ul 'Eid), sacrificing an animal and partaking in special food, drink and entertainment. Plaintiff asked the prison to arrange for group prayer and feasting. However, in 2005, no group prayer was held because, according to defendant Faust, an

outside volunteer could not be located.

While incarcerated at the Green Bay Correctional Institution in 2000, plaintiff participated in inmate-led prayers for the feasts of 'Eid ul Fitr and 'Eid ul Adha. He observed no disturbances at these events.

2. Ritual purification

Plaintiff believes that he is required to engage in prayer (salaat) five times daily, at specified times, including sunrise and sunset. During the winter months, sunrise prayer is conducted between the hours of 3:26 a.m. and 7:35 a.m; sunset prayer is conducted between 4:23 p.m. and 6:10 p.m.

Before praying, plaintiff is required by his faith to perform a purification rite. There are two ways in which he may purify himself: he may cleanse himself with water (through a rite known as wudu) or dust (through a rite known as tayammum). Because plaintiff is housed in a cell that does not contain a sink or shower, he uses the restroom located in the prison dayroom for performing wudu. During the purification rite, plaintiff inhales water through his nostrils, into his mouth, then blows out the dirty water.

The prison dayroom is open approximately 11 hours a day, from 7:45-11:00 a.m., 12:45-4:30 p.m., 6:15-9:00 p.m. and 9:30-11:00 p.m. During the hours the dayroom is closed, prisoners are permitted to use the restroom located in the dayroom only for the

purpose of using the toilet and washing their hands. Because the dayroom is sometimes closed during the hours of sunrise and sunset, the prison policy regarding use of the bathroom prevents plaintiff from performing wudu and, consequently, from praying his morning and evening prayers during some parts of the year. When plaintiff was housed at the Red Granite Correctional Institution, he was permitted to perform wudu at any hour of the day without restriction in the communal restroom.

Plaintiff filed inmate complaints and asked defendants Teslik, Faust, Farrey, Tegels and Raemisch to permit him to perform wudu at the necessary times. They refused to accommodate his requests. Instead, an inmate complaint examiner suggested that plaintiff purchase a wash basin and water from the prison canteen, which he could use to perform wudu in his cell. However, from August 2005 to July 2006, the institution did not sell wash basins. When plaintiff renewed his inmate complaint, prison officials told him to perform dry ablution.

3. Food requests

a. Dates

Plaintiff believes that during the month of Ramadan, it pleases Allah if he breaks his fast by eating three dates. (If dates are not available, he may break his fast by drinking water or eating any other permissible food.) In 2004, 2005 and 2006, plaintiff asked defendants

Teslik, Nault, Farrey and Raemisch to provide him with dates during the Ramadan fast. They refused to do so.

b. Feast day meals

During the month of December in 2004-2006, prison officials provide inmates with the opportunity to purchase special "holiday food packages" containing meats and cheeses. The packages were delivered the week before Christmas and during the week between Christmas and New Year's Day. No special packages of kosher or halaal foods were available for purchase.

On Christmas Day 2004, inmates at the New Lisbon Correctional Institution were fed a chicken breast, smoked turkey ham, cranberry sauce, dinner roll, gelatin with fruit cocktail and sweet potato pie. On Christmas Day 2005, the menu included turkey ham, roast turkey and cranberry sauce. On Easter Sunday 2005, inmates were served chicken cacciatore, a dinner roll and frosted angel food cake. On Easter Sunday 2006, the menu included a chicken quarter and turkey ham. In 2005 and 2006, the Islamic, Wiccan and Native American religious groups were provided only one religious feast each. When a special meal is served, all inmates are served the same meal, regardless of their religious affiliation.

Throughout the year, the prison provides Wiccan and Christian inmates with small

portions of juice and bread for use in religious rituals. In addition, prison officials provide special meals on secular holidays (Labor Day, Memorial Day, Fourth of July, New Year's Day) and permit inmates in certain educational and vocational programs to have special meals celebrating accomplishments such as graduation.

Plaintiff follows a strict dietary code which requires him to eat the meat of animals that have been killed according to Islamic rituals only. (He may eat fish and locusts regardless of the manner in which they are killed.) In August 2005, plaintiff asked defendants Teslik, Farrey and Faust to arrange a feast for the holiday 'Eid al Fitr containing halaal meats, dates, olives, figs, honey and lamb. Plaintiff directed defendants to two companies that could provide halaal meat, one of which had provided the prison with meals in the past. On 'Eid al Fitr, the prison served a meal consisting of pizza topped with green peppers, onions, meat and cheese, potato chips, salad with dressing, pineapple "tidbits," bread, milk and butter.

In 2006, a group of Muslim inmates at the Chippewa Valley Correctional Treatment Facility requested and were given the following feast for 'Eid al Fitr: fish, chicken, french fries, bun, macaroni and cheese, lettuce, cucumbers and tomatoes, salad dressing, fruit salad, dates, cheesecake with raspberry topping, chocolate chip cookies, milk and Kool Aid.

In December 2005, plaintiff asked defendant Farrey to arrange for special foods for the celebration of 'Eid ul Adha. Specifically, plaintiff requested coffee, fruit juice, milk, bean

pies, coffee cake and cookies. Plaintiff suggested that the Muslim inmates be permitted to defray the cost of the meal. Defendant Faust rejected plaintiff's request, saying that it would not be fair to other religious groups to permit the Muslim inmates to have more than one religious feast each year. Defendant Tegels agreed with the dismissal.

Plaintiff filed a similar complaint in 2006, which was dismissed by defendants Faust and Tegels.

4. Prayer oil

Plaintiff is allowed to purchase a single ounce of prayer oil a month. Before he may purchase a new bottle, he is required to return the empty bottle for refill. Plaintiff is without prayer oil for approximately 10 days each month. At other institutions, inmates are provided unlimited amounts of prayer oil, one and a half ounces a month or are permitted to purchase prayer oil every week. Plaintiff asked defendant Teslik for more prayer oil, but his request was denied. Plaintiff filed inmates complaints regarding the limited quantities of prayer oil he was permitted to have; these were reviewed by defendants Nault, Faust, Farrey and Raemisch. Plaintiff sent defendant Frank a copy of a letter he wrote complaining about the prayer oil policy. Although prison officials acknowledged that the New Lisbon Correctional Institution has a more stringent policy regarding prayer oil than do other Wisconsin prisons, the policy has not been changed.

5. Audio device

Plaintiff believes that he is required to learn how to read Arabic and pronounce the words of the Qur'an properly. He also believes that a good Muslim must learn to chant the words of the Qur'an with the proper tone and cadence. The New Lisbon Correctional Institution does not have a "Qur'anic recitator" from whom plaintiff could learn Arabic and tonal chants.

In December 2005, plaintiff asked defendant Teslik to allow plaintiff to purchase a digital Qur'an player and books and audio tapes on Arabic recitation. Although the digital Qur'an player plaintiff requested did not require batteries (it used an AC/DC adapter), plaintiff's requests was denied on the ground that the player required batteries in violation of prison policy. Plaintiff wrote to defendants Nault and Farrey informing them of defendant Teslik's failure to authorize him to obtain these "accommodations." Defendants Tegels, Faust, Lundquist, Grams and Raemisch dismissed the inmate complaints plaintiff filed regarding the denial of his requests.

Other inmates are permitted to own electronic items, such as keyboards.

C. Denial of Mail

On October 31, 2005, plaintiff received a Notice of Nondelivery of Mail, which stated, "Publication titled The Real Essence of Things photocopied not allowed." When

plaintiff asked the mailroom supervisor why his mail was being withheld, the supervisor said, "Photocopies of copyrighted material are not allowed as this may be a violation of copyright laws."

Plaintiff filed an inmate complaint regarding the withholding of his mail, explaining that federal copyright laws permit single use photocopies of many items under the "fair use" doctrine. When reviewing plaintiff's complaint, the inmate complaint examiner noted that the article in question had been destroyed before it could be reviewed. Although the complaint examiner recommended that plaintiff be reimbursed for the cost of each page of the destroyed document, plaintiff did not receive a new copy of the article.

DISCUSSION

In this lawsuit, plaintiff is proceeding on claims that defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by depriving him of the ability to (1) possess adequate quantities of prayer oil; (2) engage in Jumu'ah, Ta'alim and group prayer during 'Eid al-Fitr and 'Eid ul-Adha; (3) eat dates during Ramadan; and (4) feast on Halaal foods during 'Eid ul-Adha and 'Eid al-Fitr. Plaintiff contends also that (5) defendants Teslik, Farrey, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by denying him access to the restroom to perform wudu during hours when the prison dayroom is closed and (6)

defendants Teslik, Lundquist, Grams, Raemisch, Tegels and Faust violated his rights under RLUIPA and the free exercise clause by prohibiting him from possessing a digital Qur'an player from which he could learn to properly intone the Qur'an. In addition, plaintiff contends that (7) defendants Teslik, Nault, Farrey, Faust, Tegels and Raemisch violated his rights under the establishment clause by depriving him of Halaal food on 'Eid al-Fitr and 'Eid ul-Adha, while providing special foods to non-Muslim inmates for their religious feast days and (8) by depriving him of dates during Ramadan while providing special foods to inmates of other religions for their special observances; and (9) defendants Tegels and Raemisch violated his free speech rights by refusing to deliver a photocopied article he received on October 31, 2005.

Before turning to the law governing this case, I make several observations regarding the facts now before the court. First, I note that defendants tried to place many of plaintiff's proposed facts into dispute by asserting that nearly every fact plaintiff proposed regarding his religious beliefs is inadmissible because it was based on plaintiff's affidavit, which is "self-serving." It is true that on at least one occasion, the court of appeals has hinted that a plaintiff's mere averment may be insufficient to show the legitimacy of the religious practices in which he wishes to engage. See Borzych v. Frank, 439 F.3d 388, 390 (7th Cir. 2006) ("We doubt that keeping [religious texts] out of the prison substantially burdens anyone's religious exercise. [The plaintiff's] only evidence on this point is his unreasoned

say-so, plus equivalent declarations by other inmates. This is insufficient to create a material dispute that would require a trial.").

Offhand comments, however, cannot overrule established law. On many occasions, the court of appeals has admonished litigants and trial courts not to discount admissible testimony merely because it serves the interests of the party who proffers it. See, e.g., Kaba v. Stepp, 458 F.3d 678, 681 (7th Cir. 2006); Wilson v. McRae's, Inc., 413 F.3d 692, 694 (7th Cir. 2005) ("Most affidavits are self-serving, as is most testimony, and this does not permit a district judge to denigrate a plaintiff's evidence when deciding whether a material dispute requires trial."); Dalton v. Battaglia, 402 F.3d 729, 735 (7th Cir. 2005) ("We have repeatedly stated that the record may include a so-called 'self-serving' affidavit provided that it is based on personal knowledge."); Dale v. Lappin, 376 F.3d 652, 655 (7th Cir. 2004) ("Sworn affidavits, particularly those that are detailed, specific, and based on personal knowledge are competent evidence to rebut a motion for summary judgment.").

It is difficult to imagine any situation in which a plaintiff would have a stronger foundation for his averments than when those averments are ones in which the issue is his sincerely held religious beliefs. As courts continue to expand the scope of the free exercise clause, see Kaufman v. McCaughtry, 422 F. Supp. 2d 1016 (W.D. Wis. 2006), and its even more permissive cousin, the Religious Land Use and Institutionalized Persons Act, the need for expert testimony regarding the practices of various religions becomes increasingly

unnecessary. After all, what matters is not the formal doctrine of any religious sect, but the sincerely held religious beliefs of the person who seeks to exercise his faith. Therefore, although the testimony of experts regarding common practices of various sects may be probative of the sincerity of any given believer, it is not dispositive. In this case, where plaintiff's proposed facts are supported by his affidavit and are grounded in matters within his knowledge and experience, I have treated them as undisputed.

A. Free Exercise and RLUIPA

As I explained in the May 25 screening order, although the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act both protect religious freedoms, they do so in different ways. "The free exercise inquiry asks whether government has placed a substantial burden on the observation of a *central* religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." Hernandez v. Commissioner of Internal Revenue, 490 U.S. 680, 699 (1989). By contrast, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1(a)(1)-(2), prohibits the government from imposing a substantial burden on *any* religious exercise of a person residing in or confined to an institution unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means." Cutter v. Wilkinson, 125 S. Ct. 2113, 2114 (2005). Consequently, any state action that

substantially burdens religious exercise in a manner that is not tailored to address a compelling state interest will violate both RLUIPA and the free exercise clause.

Plaintiff contends that, for no compelling reason, defendants have substantially burdened his ability to engage in Jumu'ah, Ta'alim and group prayer during 'Eid al-Fitr and 'Eid ul-Adha; possess adequate quantities of prayer oil during the time his bottle of prayer oil is being refilled; eat dates during Ramadan; feast on Halaal foods during 'Eid ul-Adha and 'Eid al-Fitr; perform wudu during hours when the prison dayroom is closed; and possess a digital Qur'an player from which he may learn to properly intone the Qur'an. It is undisputed that plaintiff's beliefs are sincerely held; therefore, the questions that remain are whether defendants have placed a substantial burden on plaintiff's exercise of his religious beliefs, and if so, whether defendants' actions were taken in response to a compelling government interest.

1. Substantial burden

To show that his rights under either RLUIPA or the free exercise clause have been violated, plaintiff must first establish that defendants' refusal to accommodate his religious practices places a substantial burden on the exercise of his religious beliefs. 42 U.S.C. § 2000cc-2(b); Hernandez v. Commissioner, 490 U.S. 680, 699 (1989). The Court of Appeals for the Seventh Circuit has held that a substantial burden is "one that necessarily

bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003).

Although both the free exercise clause and RLUIPA protect religious "exercise," each defines religious exercise in a slightly different way. Under RLUIPA, a "religious exercise" is "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). In other words, RLUIPA protects individual acts of piety, regardless of their centrality. By contrast, the free exercise clause is concerned with the macrocosm of belief: so long as a believer's ability to freely practice his faith (rather than engage in all possible expressions of his faith) is not substantially burdened, the free exercise clause is not violated (hence the requirement that a belief be "central" before it can fall within the ambit of the free exercise clause, Wisconsin v. Yoder, 406 U.S. 205, 220-221(1972)). See, e.g., Hernandez v. Commissioner, 490 U.S. 680, 699 (1989) (defining religious exercise as "the observation of a central religious belief or practice"); Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707, 718 (1981) (defining religious exercise as behavior and beliefs compelled by particular religion); Sherbert v. Verner, 374 U.S. 398, 404 (1963) (defining religious exercise as adherence to central precepts of religion).

Despite the technical differences between the types of religious exercise protected by

each law, courts frequently fail to differentiate between the central practices protected by the free exercise clause and the wider variety of practices protected by statutes such as RLUIPA. The reason for this is fairly apparent. Courts are poorly positioned to decide which religious practices are "central" to any given faith tradition or any given believer; therefore, increasingly free exercise jurisprudence has emphasized deference to individuals' professed beliefs, so long as there is no reason to doubt their sincerity. Hernandez, 490 U.S. at 699 ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."); Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 887 (1990) ("What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is 'central' to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable "business of evaluating the relative merits of differing religious claims.") (quoting United States v. Lee, 455 U.S. 252, 263 n. 2 (1982) (Stevens, J., concurring)).

So what, then, is the practical difference between a free exercise claim and a claim arising under RLUIPA? It appears that the answer is "not much," at least insofar as the "substantial burden" requirement is concerned. Consequently, I will not distinguish between the free exercise clause and RLUIPA in determining whether plaintiff has met his burden of proving that his ability to freely exercise his religion was substantially burdened by

defendants' actions.

a. Group prayer

Plaintiff's main complaint in this lawsuit is that defendants' enforcement of Internal Management Procedure #6 , which forbids inmates from leading group prayer services, has resulted in his inability to engage in weekly study (Ta'alim), weekly prayer (Jumu'ah) and holy day prayer services on the feasts of 'Eid ul Fitr and 'Eid ul Adha. Defendants take the position that they are not responsible for placing any burden on plaintiff's ability to freely exercise his religious beliefs because it is the alleged lack of available outside volunteers, not Internal Management Procedure #6 itself, that has prevented plaintiff from sharing in communal prayer. Although it may be true that volunteer prayer leaders are difficult to find, the lack of volunteers would not be an impediment to plaintiff's ability to engage in group study and prayer but for the prison policy that mandates outside volunteer leaders. The policy itself *is* attributable to the state and therefore, insofar as it prevents plaintiff from gathering with his fellow believers to pray or study, the policy places a substantial burden on his right to freely exercise his religious beliefs.

b. Prayer oil

In his complaint, plaintiff alleged that defendants permitted him to possess one ounce

of prayer oil at a time and that when he finished using his bottle of prayer oil, he was required to turn in his empty bottle for refilling. Plaintiff alleged that this policy left him without prayer oil for "protracted period[s] of time while seeking to purchase a new bottle." Cpt., dkt. #2, ¶ 57. I granted him leave to proceed on this claim.

However, on summary judgment, plaintiff has made no mention of how the prison's refill policy affected his ability to possess adequate prayer oil at any given time. He has made broad allegations that he is forced to go without prayer oil for approximately 10 days each month, but he does not provide any facts that would permit the court to conclude that defendants are responsible for his lack of prayer oil. Because plaintiff has not come forward with evidence showing that, as a matter of law, defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank have substantially burdened his ability to obtain adequate quantities of prayer oil, his motion for summary judgment will be denied with respect to this claim. It will proceed to trial.

c. Dates and Halaal foods

Plaintiff believes that it "pleases Allah" when he breaks his Ramadan fast by eating three dates and when he consumes Halaal foods on the feasts of 'Eid ul Fitr and 'Eid ul Adha. Although plaintiff concedes that he is not *required* to break the fast using dates or consume Halaal foods on feast days, it is nonetheless undisputed that these are meaningful

practices, which he believes will earn him more blessings from heaven. Also, it is undisputed that despite his repeated requests, defendants have not provided him with dates or Halaal foods or permitted him to purchase these items with his own funds. Consequently, plaintiff has shown that his right to free exercise was substantially burdened by the decision of defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank to refuse to permit him dates with which to break his Ramadan fast and Halaal foods for the feasts of 'Eid ul Fitr and 'Eid ul Adha.

d. Wudu

Although defendants concede that performing ritual ablution is a central practice of plaintiff's Muslim faith, they contend that they have not substantially burdened his ability to perform it at all required hours of the day. According to defendants, although plaintiff is banned from performing wudu in the restroom during the hours the prison dayroom is closed, he remains able to perform dry ablutions or to perform wudu using water in a basin in his prison cell. Plaintiff denies that either or these options is practical, asserting that he has no dirt with which to perform dry ablution and that the process of performing wudu is a messy one that would be unhygienic to perform in a shared prison cell.

If plaintiff has other means open to him for performing ritual ablution, his right to exercise this aspect of his faith has not been "rendered . . . effectively impracticable." Civil

Liberties for Urban Believers, 342 F.3d at 761. Because material facts remain in dispute, plaintiff's motion for summary judgment will be denied with respect to his claim that defendants Teslik, Farrey, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by preventing him from performing wudu during the hours the prison dayroom is closed. This claim will proceed to trial.

e. Digital Qur'an player

There is no doubt that plaintiff's demand for a digital Qur'an player is the most tenuous of his religious exercise claims. Nevertheless, it is undisputed that plaintiff believes he is required to learn to intone the Qur'an properly, that no volunteer is available to teach him to do so and that the electronic "Qur'an player" he wishes to purchase is powered by an AC/DC adapter similar to the adapter used to power the electronic keyboard another inmate is allowed to possess. Although defendants point out that plaintiff has asked to be excused from watching foreign videos defendant Teslik plays occasionally in lieu of group prayer, defendants have not proposed any facts from which I could conclude that the videos plaintiff avoids show persons intoning the Qur'an. If they did so, plaintiff would be hard pressed to show that his right to free exercise has been substantially burdened; however, in the absence of any facts to the contrary, plaintiff has met his burden of showing that the refusal of defendants Teslik, Lundquist, Grams, Raemisch, Tegels and Faust to permit him to purchase

an electronic Qur'an player substantially burdened his right to freely exercise his religious beliefs.

2. Compelling state interest

Plaintiff has shown that defendants substantially burdened his ability to engage in group prayer, eat dates during Ramadan and Halaal foods on holy days and possess a Qur'an player from which he may learn to intone the Qur'an. The next question is whether defendants had a compelling interest for doing so.

42 U.S.C.A. § 2000cc provides that when

> a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of [RLUIPA], the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

In other words, under both RLUIPA and the free exercise clause, once a prisoner has shown that the actions of government officials have significantly burdened the exercise of his religious beliefs, the burden shifts to the defendant prison officials to demonstrate that their decision was undertaken in response to a compelling government interest. See also Lovelace v. Lee, 472 F.3d 174, 189 (4th Cir. 2006); see also Kikumura v. Hurley, 242 F.3d 950, 961 (10th Cir. 2001) (shifting burden to defendants in case involving RLUIPA's predecessor

statute, the Religious Freedom Restoration Act).

With respect to each of plaintiff's claims regarding the impingement of his religious exercise, defendants suggest in their brief that there may be compelling penological reasons for denying plaintiff the accommodations he seeks. However, having failed to file proposed findings of fact, as required by this court's summary judgment procedures, defendants are left without a single fact to support their alleged justifications.

Defendants try to circumvent their failure to propose facts by citing a decision from the United States District Court for the Eastern District of Wisconsin in which the court found compelling penological reasons for prison policies similar to those at issue in this case. Skenandore v. Endicott, 2006 WL 2587545, *16 (E.D. Wis. Sept. 6, 2006). By merely citing case law, however, defendants overlook a fundamental point: in the case they cited, prison officials presented case-specific facts that led the court to conclude that the prison officials had acted reasonably. See, e.g., id. ("*[D]efendants have submitted evidence* that they have limited resources to permit Native American inmates to participate in smudging on a weekly basis, that allowing an inmate to lead a drum ceremony during which smudging occurs would jeopardize their interests in maintaining security and order, and that smudging indoors presents health and safety issues.") (emphasis added).

The court is not free to "manufacture facts out of thin air." Salahuddin v. Goord, 467 F.3d 263, 275 (2d Cir. 2006). "[W]here a prisoner challenges the prison's justifications,

prison officials must set forth detailed evidence, tailored to the situation before the court, that identifies the failings in the alternatives advanced by the prisoner." Warsoldier v. Woodford, 418 F.3d 989, 1000 (9th Cir. 2005). In doing so, "it is the defendants' duty on summary judgment to cite record evidence" in support of their factual contentions. Salahuddin, 467 F.3d at 275. Defendants did not do that here; therefore, I am bound to conclude that plaintiff is entitled to summary judgment in his favor on his claims that (1) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by promulgating and enforcing policies that deprived him of the ability to engage in Jumu'ah, Ta'alim and group prayer during 'Eid ul Fitr and 'Eid ul Adha; (2) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under the free exercise clause, RLUIPA and the establishment clause by preventing him from eating dates during Ramadan; (3) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by preventing him from feasting on Halaal foods during 'Eid ul Adha and 'Eid ul Fitr; and (4) defendants Teslik, Lundquist, Grams, Raemisch, Tegels and Faust violated his rights under the free exercise clause and RLUIPA by promulgating and enforcing policies that deprived him of the ability to possess a digital Qur'an player.

I emphasize once again that the holding of this case is confined to its unique facts and posture. Should a similar case arise in the future, defendants would be free to submit factual

evidence in support of their now-unsubstantiated claims that compelling reasons underlie the policies plaintiff has challenged successfully in this case.

B. Establishment

The First Amendment prohibits Congress from making any "law respecting an establishment of religion." The evils against which the establishment clause protects have been described in many ways. Eg., County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter, 492 U.S. 573, 627 (1989) (O'Connor, J., concurring) ("[T]he essential command of the establishment clause [is] that government must not make a person's religious beliefs relevant to his or her standing in the political community by conveying a message that religion or a particular religious belief is favored or preferred."); Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 772 (1973) ("Primary among those evils [against which the Establishment Clause protects] have been sponsorship, financial support, and active involvement of the sovereign in religious activity."); Kaufman v. McCaughtry, 419 F.3d 678, 683 (7th Cir. 2005) ("The Establishment Clause [] prohibits the government from favoring one religion over another without a legitimate secular reason."). Regardless how the protection afforded by the establishment clause is framed, at its core the First Amendment guarantees citizens the right to be free from any purposeful form of government favoritism, sponsorship or promotion of

one belief system over another. Berger v. Rensselaer Central School Corp., 982 F.2d 1160, 1168-69 (7th Cir. 1993) ("Under the Establishment Clause, the government may not aid one religion, aid all religions or favor one religion over another.").

To determine whether government action violates the establishment clause, courts employ the test set forth in Lemon v. Kurtzman, 403 U.S. 602 (1971). Under that test, a government policy or practice violates the establishment clause if (1) it has no secular purpose; (2) its primary effect advances or inhibits religion; or (3) it fosters an excessive entanglement with religion. Id. at 612-13; Kaufman, 419 F.3d at 683.

Plaintiff contends that defendants Teslik, Nault, Farrey, Faust, Tegels and Raemisch violated his rights under the establishment clause by depriving him of Halaal food on 'Eid al-Fitr and 'Eid ul-Adha, while providing special foods to non-Muslim inmates for their religious feast days and by depriving him of dates during Ramadan while providing special foods to inmates of other religions for their special observances. Plaintiff acknowledges that prison policy limits each religious group to one feast day per year. Although his arguments are far from clear, he appears to make two challenges to the prison's food policy. First, he suggests that the meals provided to Christians on Christmas are more special or representative of their religion than is the meal provided to Muslim inmates on the feast of 'Eid ul Fitr. Second, he contends that Christian inmates are provided with two feasts each year: one on Christmas and the other on Easter, while inmates of other faiths are permitted

only on feast each year.

Defendants admit that a special meal is served to all inmates on Christmas, just as one special meal is served to all inmates on one feast day for each religion represented in the prison. However, defendants deny that the meals they serve on Christmas are qualitatively better than the feast served on 'Eid ul Fitr. Moreover, defendants deny serving any special meal on Easter.

On summary judgment, plaintiff has produced evidence to show that on 'Eid al Fitr, the prison served a meal consisting of pizza topped with green peppers, onions, meat and cheese, potato chips, salad with dressing, pineapple tidbits, bread, milk and butter. (Plaintiff had requested a feast containing halaal meats, dates, olives, figs, honey and lamb.) On Christmas Day 2004, inmates at the New Lisbon Correctional Institution were fed a chicken breast, smoked turkey ham, cranberry sauce, dinner roll, gelatin with fruit cocktail and sweet potato pie, while in 2005, the Christmas menu included turkey ham, roast turkey and cranberry sauce. Although the meal served on Christmas was more traditional than the meal served on 'Eid al Fitr, I cannot say, as a matter of law, that the difference was so significant that it constituted an establishment of religion by showing preference to Christianity over Islam.

Similarly, plaintiff's argument that the Easter Sunday meal of chicken cacciatore, a dinner roll and frosted angel food cake amounted to a second feast for Christian inmates

is a matter I cannot decide on summary judgment, especially without knowing what meal was served on 'Eid ul Adha, the second Muslim holiday for which plaintiff requested special foods. Whether defendants' food policies and practices showed preference for Christian inmates and their religious traditions over those of Muslim inmates is a fact-intensive inquiry best left for the jury to resolve at trial. Therefore, I will deny plaintiff's motion for summary judgment with respect to his claim that defendants Teslik, Nault, Farrey, Faust, Tegels and Raemisch violated his rights under the establishment clause by refusing to provide him with Halaal food for 'Eid al Fitr and 'Eid ul Adha, while providing special foods to non-Muslim inmates for their religious feast days.

That leaves the question whether defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated plaintiff's rights under the establishment clause by preventing him from eating dates during Ramadan. It is undisputed that plaintiff asked defendants for three dates daily with which to break his fast during the month of Ramadan. Defendants neither provided the dates nor offered plaintiff an alternate means of obtaining them. At the same time, defendants provided Wiccan and Christian inmates with small amounts of bread and juice to use in religious ceremonies.

Defendants have failed to offer evidence providing a secular reason why providing plaintiff with dates would be more burdensome than providing Wiccan and Christain inmates with juice and bread. Without such a justification, defendant's rejection of

plaintiff's request cannot survive the first part of the Lemon test. Kaufman, 419 F.3d at 684. Therefore, the differential treatment violated the establishment clause and plaintiff's motion for summary judgment must be granted with respect to his claim that defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under the establishment clause by preventing him from eating dates during Ramadan.

C. Free Speech

Plaintiff contends that defendants Tegels and Raemisch violated his right to free speech when they refused to deliver a photocopied article he received on October 31, 2005. A prison inmate retains "those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974). Actions or policies that infringe on the First Amendment rights of inmates are justified only so long as they are "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). However, in the absence of any legitimate reason to the contrary, prisoners have a constitutional right to receive any written material. Griswold v. Connecticut, 381 U.S. 479, 482 (1965) ("[T]he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or print, but the right to distribute, the right to receive, the right to read and

freedom of inquiry, freedom of thought . . . .").

Even when prison officials wrongfully deny a prison written materials to which he is otherwise entitled under the First Amendment, their actions do not rise to the level of a constitutional violation unless they are ongoing and intentional. Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 2007).

> [M]erely alleging an isolated delay or some other relatively short-term, non content-based disruption in the delivery of inmate reading materials will not support, even as against a motion to dismiss, a cause of action grounded upon the First Amendment. . . . Allegations of a continuing pattern of disregard for a prisoner's First Amendment right to read and to receive all but the most inflammatory and provocative publications . . . are substantially, and we think constitutionally, different from lawsuits alleging First Amendment violations on the basis of isolated instances of loss or theft of an inmate's reading materials. . . . [D]istrict courts possess in their procedural arsenals both the ability to dismiss lawsuits and to grant summary judgment against those whose allegations do not, upon inspection, rise to the level of constitutional magnitude articulated here as well as the authority to direct plaintiffs with constitutionally insignificant suits to proceed instead under the Federal Tort Claims Act, 28 U.S.C. § 1346.

Sizemore v. Williford, 829 F.2d 608, 610-611 (7th Cir. 1987).

The undisputed facts are these: Someone outside the prison sent plaintiff a photocopied article on October 31, 2005. Prison officials did not deliver the article because they asserted that it would violate federal copyright laws if they were to do so. By the time plaintiff filed an inmate complaint noting, correctly, that federal law does not prohibit photocopies such as the one mailed to him, see 17 U.S.C. § 107 ("[T]he fair use of a

copyrighted work, including such use by reproduction in copies . . . for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright."), prison officials had destroyed his mail, making it impossible for the inmate complaint examiner to review the document and determine whether it was deliverable under prison rules. Although plaintiff was not provided with a new copy of his confiscated article, he was compensated for the loss.

It may well be that defendants erred by refusing to deliver plaintiff's article, which almost certainly was photocopied in accordance with copyright laws. Nevertheless, defendants' act was a one-time error: plaintiff does not contend that the problem is an ongoing one. Under these circumstances, plaintiff has no claim under the First Amendment and his motion for summary judgment will be denied. Because the law is clear that isolated instances of mail nondelivery are not constitutional violations, I will grant summary judgment sua sponte to defendants on plaintiff's claim that defendants Tegels and Raemisch violated his right to free speech under the First Amendment by refusing to deliver a photocopied article he received on October 31, 2005.

D. Damages

In his complaint, plaintiff requested declaratory, injunctive and monetary relief. With respect to the claims on which plaintiff has been granted summary judgment, plaintiff's

requests for injunctive and declaratory relief have been fulfilled. That leaves the question of money damages.

Although plaintiff has demanded compensatory relief in the amount of $200,000, his request is barred by 42 U.S.C. § 1997e(e), which states:

> No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

If plaintiff's constitutional rights were violated, he may be entitled to nominal damages; however, he will not be entitled to compensation for any emotional or spiritual distress he may have suffered. Kyle v. Patterson, 196 F.3d 695, 697 (7th Cir. 1999) ("[N]ominal damages, of which $1 is the norm, are an appropriate means of vindicating rights whose deprivation has not caused actual, provable injury."). However, in addition to compensatory relief, plaintiff has requested punitive damages, which are unaffected by § 1997e(e). Calhoun v. DeTella, 319 F.3d 936, 941 (7th Cir. 2003).

Plaintiff's success on summary judgment is more a windfall than an indication of the underlying merits of his claims, which have gone largely untested by defendants. From the evidence adduced thus far, it seems unlikely that plaintiff will be able to show that defendants acted in bad faith when they denied him the accommodations he requested. Nevertheless, if at trial plaintiff can show that defendants willfully ignored his right to freely exercise his religious beliefs out of animus to him or to persons of his faith, the jury will be

free to award punitive damages. It is a question best left for trial.

ORDER

IT IS ORDERED that plaintiff Juan Pérez's motion for summary judgment is

1. GRANTED with respect to plaintiff's claims that

a) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by promulgating and enforcing policies that deprived him of the ability to engage in Jumu'ah, Ta'alim and group prayer during 'Eid ul Fitr and 'Eid ul Adha;

b) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under the free exercise clause, RLUIPA and the establishment clause by preventing him from eating dates during Ramadan;

c) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by preventing him from feasting on Halaal foods during 'Eid ul Adha and 'Eid ul Fitr; and

d) defendants Teslik, Lundquist, Grams, Raemisch, Tegels and Faust violated his rights under the free exercise clause and RLUIPA by promulgating and enforcing policies that deprived him of the ability to possess a digital Qur'an player.

2. DENIED with respect to plaintiff's claim that

a) defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by promulgating and enforcing policies that deprived him of the ability to posses adequate quantities of prayer oil;

b) defendants Teslik, Farrey, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause by preventing him from performing wudu during the hours the prison dayroom is closed;

c) defendants Teslik, Nault, Farrey, Faust, Tegels and Raemisch violated his rights under the establishment clause by refusing to provide him with Halaal food for 'Eid al Fitr and 'Eid ul Adha, while providing special foods to non-Muslim inmates for their religious feast days; and

d) defendants Tegels and Raemisch violated his free speech rights under the First Amendment by refusing to deliver a photocopied article he received on October 31, 2005.

FURTHER, IT IS ORDERED that

3. On the court's motion, defendants are granted summary judgment with respect to plaintiff's claim that defendants Tegels and Raemisch violated his free speech rights under the First Amendment by refusing to deliver a photocopied article he received on October 31, 2005.

4. Plaintiff is entitled to nominal damages in the amount of $9. The question

whether plaintiff is entitled to additional nominal or punitive damages will be addressed at trial.

Entered this 11th day of April, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge