

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RUFUS WEST, a/k/a MANSA LUTALO IYAPO,

Plaintiff,

v.

OPINION and ORDER

GREGORY GRAMS, MIKE MEISNER,
MARDEL PETRAS, RICK RAEMISCH,
GARY HAMBLIN, CHAPLAIN CAMPBELL,
CHAPLAIN MARK TESLIK, JOHN DOE DAI
ADMINISTRATORS, JOHN DOE SECURITY
SUPERVISORS, JOHN DOE FOOD SERVICE
SUPERVISOR, WILLIAM GROSSHANS and
MELISSA SCHUELER,

11-cv-687-slc

Defendants.

Plaintiff Mansa Lutalo Iyapo (who was incarcerated under the name Rufus West but wishes to be referred to by his "spiritual name"), is a Muslim inmate proceeding on claims that prison officials are (1) violating his rights under the First Amendment Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act by prohibiting Jumuah, Talim and Eid al-Fitr services to be held without a volunteer leader from outside the prison; and (2) violating his rights under the First Amendment by retaliating against him for debating when to properly serve Ramadan meals. In the August 3, 2012 order screening the complaint, the court set briefing on plaintiff's motion for injunctive relief, and that motion has now been fully briefed. In addition, plaintiff has filed an amended complaint as well as two supplements to the complaint.

AMENDMENTS TO THE COMPLAINT

The current operative complaint in this action is plaintiff's amended complaint and supplement to that complaint. Dkt. 4, 5. Plaintiff has submitted several filings attempting to further amend or supplement his complaint. First, he has submitted a motion for leave to amend his complaint, dkt. 15 along with a second amended complaint, dkt. 17 and proposed amendment to his original supplement, dkt. 16. The only change in both of the documents is that plaintiff adds allegations stating that he suffered emotional distress due to the denial of his religious practices. Plaintiff has already amended his complaint, so any further amendment must be made with defendants' consent or leave of the court. Fed. R. Civ. P. 15(a)(2). Given that the court "should freely give leave when justice so requires," *id.*, I will grant plaintiff's motion.

Plaintiff has also filed a motion to file another supplement to his complaint, adding additional instances of him being denied Jumu'ah and Talim from July 2012 to January 2013. "The court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). Accordingly, I will allow plaintiff to supplement his complaint to include these occurrences. As a result of the court granting plaintiff's various motions, docket numbers 16, 17 and 36 will be considered the operative complaint in this action. Defendants may have until April 16, 2013 to provide a supplemental answer addressing the additions to plaintiff's complaint.

Finally, I note that in this court's October 12, 2012 preliminary pretrial conference order, I set up a plan for the parties to identify the John Doe defendants, including plaintiff amending his complaint to formally include the Does' identities in the caption. However, defendants have

already identified David Lipinski and Rick Bennett as the Does, have accepted service on behalf of the two newly-identified defendants and have submitted an answer to the complaint on their behalf. Plaintiff inquires whether he is still required to submit an amended complaint swapping out the references to the Does with the newly identified defendants. Given the nature of plaintiff's allegations against these defendants and seeing as it appears that both sides agree that the Does have been properly identified, there is no need for plaintiff to further amend his complaint.

PRELIMINARY INJUNCTION MOTION

Plaintiff seeks an injunction (1) allowing him (or any other qualified Muslim inmate at the Columbia Correctional Institution) to lead Jumu'ah, Talim and Eid al-Fitr services whenever an outside volunteer is unable to do so; (2) mandating that Eid al-Fitr festivities take place on the day after Ramadan; and (3) that Ramadan meals be delivered "in a timely manner consistent with the setting of the sun." The parties have completed briefing the motion in accordance with the court's procedures. For the purpose of deciding plaintiff's motion for a preliminary injunction, I find from the parties' proposed findings of fact and supporting materials that the following facts are material and undisputed, unless otherwise noted.

I. Undisputed Facts

Plaintiff Mansa Lutalo Iyapo is a prisoner who has been housed at the Columbia Correctional Institution (CCI) since July 3, 2007. CCI is an adult male maximum-security prison. Defendant Gregory Grams was employed at CCI as warden from December 25, 2004

through April 30, 2011. Defendant Mike Meisner has been employed at CCI as the warden since April 24, 2011. Defendant Mardel Petras was employed at CCI as a correctional program supervisor from November 5, 2000 through April 1, 2011. Defendant Rick Raemisch was employed as the DOC secretary from September 1, 2007 through December 31, 2010. Defendant Leo Campbell was employed at CCI as a chaplain from May 13, 2007 through April 30, 2012. Gary Hamblin has been the DOC secretary since January 3, 2011. Williams Grosshans was employed at the DOC Division of Adult Institutions from January 18, 2009 through January 3, 2011. Mark Teslik is a chaplain at CCI. Melissa Schueler is a corrections program supervisor at CCI.¹

As part of his Muslim faith, plaintiff believes that every Friday he must participate in Salat-ul-Jumuah (Friday Prayers). Salat-ul-Jumuah is a congregational prayer only and cannot be offered alone. An imam is necessary to lead Jumuah prayers. Plaintiff believes that the imam can be any Muslim in attendance.

Plaintiff also believes that although it is not obligatory that he attend Talim (Islamic Study Group), he believes that he is “required” to do so in order to learn more about Islam and raise questions about Islamic affairs. The conclusion of Ramadan is celebrated by the Eid ul-Fitr (Eid), which is held on the first day of the month of Shawal (the day after the month of Ramadan), and consists of the Eid ul-Fitr Prayer, Feast and other celebratory actions. Plaintiff

¹The parties dispute the time each defendant has spent at the Columbia Correctional Institution, although it does not seem material to this case. Defendants’ account is much more precise than plaintiff’s, so I will use their version. As the case proceeds, plaintiff is free to dispute defendants’ version of these facts, although he will have to explain why it is relevant.

does not explicitly state that an imam is necessary for Talim or Eid, but I can infer from both sides' proposed findings that this is the case.

When plaintiff was incarcerated in the Waupun, Columbia and Green Bay Correctional Institutions between 1995 and 2001, he was never deprived of the opportunity to attend Jumuah, Eid, or Talim due to the absence of an imam, mainly because there was a fellow prisoner who served as an imam.

On July 3, 2007, plaintiff was transferred from the Wisconsin Secure Program Facility to CCI, where he immediately signed up to participate in all Islamic activities. Plaintiff learned quickly after arriving at CCI that defendants Grams, Petras, Raemisch, Campbell and John Doe were enforcing a policy that no longer allowed prisoners to be imams and lead Jumuah and Talim. Instead, Jumuah and Talim would be held when an outside Islamic volunteer was available to come to CCI to lead those services. If the volunteer was unable to make it to CCI to lead those services, then the services would be canceled. After becoming employed by the DOC, defendants Grosshans, Teslik, Meisner and Scheuler also have enforced this policy. Because the prison relies on volunteer leaders, these services are sporadic. Muslims who have been imprisoned at CCI between July 2, 2007 to the present and the date of this lawsuit have missed weekly services over 100 times.

Plaintiff filed multiple grievances about the denial of services, all of which were denied. In one of the denied grievances, the investigator cited Division of Adult Institutions Policy, 309.61.01 stating:

Consultation with Ms. Petras reveals that the volunteer has been coming to CCI on a regular basis. When the volunteer does not come to the institution, the service or prayer cannot be held. This is not a matter of the institution not providing opportunities or soliciting volunteers, this is more a matter of the volunteer not able to make the service. CCI is working with the present volunteer to find a back up volunteer so regular weekly religious services and study groups can be held. There has been no negligence on the part of the institution. The inmate is urged to concentrate on other noted methods of religious practice in the absence of a volunteer.

On October 6, 2008, in response to plaintiff's multiple grievances, defendant Petras stated, "[T]he current Muslim spiritual leader is able to come to CCI every other week." On December 28, 2010, CCI staff were notified via e-mail that CCI's Muslim volunteer was going to be out of the country until the end of January of 2011 and that the backup volunteer would be out of state until February of 2011. A memo was posted on the CCI units stating that due to said unavailability of the spiritual leaders, there would be no Muslim services until the end of January of 2011.

On June 6, 2012, during Talim, the outside Islamic volunteer told plaintiff, in defendant Teslik's presence, that he would no longer be coming to CCI because he had to teach elsewhere. Plaintiff asked Teslik what he planned to do about having no Islamic volunteer, and Teslik responded that he had sent out applications for another volunteer. On June 10, 2012, plaintiff wrote Teslik and asked for his permission to allow a Muslim prisoner to lead Jumuah/Talim services until he is able to get an outside Islamic volunteer. On June 12, 2012, Teslik denied plaintiff's request.

Since his imprisonment at CCI, July 3, 2007, plaintiff has participated in every Ramadan. In 2007, Ramadan ended on October 12 at sunset, which set the Eid ul-Fitr celebration for October 13. However, defendants Petras, Campbell and Grams agreed to have the Eid ul-Fitr on

October 19, 2007, which Petras stated was because, “the Muslim volunteer chooses the date of the feast based on their availability. The date of 10/19/07 was the date they choose to have the feast.”

In 2008, plaintiff wrote Petras and Grams regarding his concern to them about the Eid ul-Fitr being held late and requested that they intervene. In response Petras, Campbell and Grams told plaintiff that it was not mandatory to have the Eid ul-Fitr within a specific time and that it will be “scheduled in accord with the Muslim volunteer and the institution schedules,” the volunteer’s recommendations and the “DAI Policy on Religious Activities.” Consequently, the Eid ul-Fitr was held on October 2, 2008 instead of October 1.

By September 22, 2009, the Eid ul-Fitr had not occurred at CCI, leading plaintiff to inquire why it had not yet taken place. On September 25, 2009, defendant Petras responded, “Although CCI was able to schedule the annual Islamic Feast on either Monday, 9/21/09 or Tuesday, 9/22/09, neither of the Muslim Imams could make it on either of those two days. The soonest they could come to CCI for the Feast was Wednesday, 9/23/09.”

In 2012, Ramadan ended on August 18 at sunset, which set the Eid ul-Fitr celebration for August 19, 2012. On June 12, 2012, defendant Teslik issued a memo stating, “Plans are being reviewed for Eid ul Fitr 2012 to be held between August 19-25.” On August 11, 2012, plaintiff wrote Teslik stating that the Eid ul-Fitr must be held the day after Ramadan or it will lose its religious significance. The 2012 Eid ul-Fitr observance was scheduled for August 21, 2012, but was subsequently cancelled after the institution went into lockdown status, because contraband was found in the chapel area. On August 28, 2012, Teslik issued a memo stating

that due to the CCI prison lockdown, the time for Eid prayers had passed, but a “celebratory meal” would be served on August 31, 2012.

Jumuah, Talim and the Eid ul-Fitr take place in a room occupied by 2-3 security staff, the chaplain and sometimes a security supervisor. The room has a security camera and several picture-frame sized windows that view adjacent rooms that are also occupied by CCI staff observing the services.

During Ramadan, Muslims fast from sunrise to sunset. At CCI, The Ramadan “sunset” meals have not been delivered to inmates precisely at sunset. On July 22, 2011, during Talim, plaintiff and other Muslims grieved to the outside Islamic volunteer, in defendant Teslik’s presence, about the historical delay in the delivery of Ramadan sunset meals, and further suggested that Teslik issue a memo informing all of the units that the sunset meals be issued at 7:30 p.m. for the duration of Ramadan, which would allow Muslims to already have their sunset meals in their possession to break their fast when the sun set without having to rely on the unit staff to timely serve them. After approximately half an hour of debating with Teslik about the meals, Teslik agreed to “talk to staff” and see if he was able to do it. On July 29, 2011, during Talim, Teslik announced that after consulting with “staff,” the sunset meals would be served permanently at approximately 8:30 p.m. for the duration of Ramadan. Teslik stated that time was final and not open for debate. The reason that Teslik gave for the 8:30 p.m. time slot was that this also was the time when prescribed medications were distributed on the units. This is generally about as late as prisoners are allowed to be out of their cells.

By the end of the 2012 month of Ramadan, the sun set on the first day of Ramadan at 8:31p.m. and as every day passed got further away from said 8:30 p.m. time slot to where by the

end of Ramadan, plaintiff and all CCI Muslims were receiving their sunset meals at least 36 minutes late. (Defendants argue that plaintiff lacks foundation for this evidence, but I conclude that plaintiff's personal knowledge of when the sun set is adequate support.)²

It is the policy of the DOC that incarcerated inmates have opportunities to pursue lawful religious practices of the religion of their choice consistent with security practices and principles, rehabilitative goals of inmates, health and safety, allocation of limited resources, and responsibilities and needs of the correctional institution and facilities. DAI Policy # 309.61.01 sets forth a structure to accommodate the religious beliefs and practices of DOC inmates. Inmates may exercise their religious beliefs and practices in the following ways: (1) congregate services; (2) religious diet requests; (3) individual study; (4) personal meditation; (5) utilization of religious books and/or property; (6) celebration of a religious feast; (7) individual religious observance in their living quarters; (8) correspondence with fellow believers; (9) pastoral visits; and (10) requesting to abstain from work or program on religious days of observance.

DAI Policy 309.61.01 states in part that:

Under no circumstances are inmates authorized to lead or conduct a religious service or study group.

Janel Nickel, the CCI Security Director since June 2005, has not been aware of any instances where inmates at CCI were allowed to lead Islamic prayers. Prison security is threatened when individual inmates are able to differentiate themselves and be seen as leaders of a group. The most basic responsibility of a correctional institution is institution security for the protection of

² For what it's worth, the website <http://www.sunrisesunset.com> indicates that in Portage Wisconsin, the sun set at 8:34 p.m. on July 19, 2012 and at 7:57 p.m. on August 18, 2012.

staff, inmates, and members of the public. Allowing inmates to lead or be in charge of a group of inmates in any type of prison activity violates fundamental security practices. Allowing inmates to lead religious activities would give a perception of authority over other inmates and could allow an inmate to influence other inmates' actions. Allowing an inmate to lead other inmates disrupts the power dynamics in a prison setting by placing inmates in a position of power or authority over other inmates, which blurs the necessary distinction between staff and inmates. DOC historically and continually has had problems with gangs attempting to take over religious groups and having their religious group become a cover for gang activity. Allowing an inmate to lead a religious group empowers gang leaders, which increases the potential for strong-arming, violence, introduction of contraband, group resistance, and coordinated gang activities. Such gang activities become more difficult to monitor and control with inmate-led groups.

Currently, CCI has two Islamic volunteers. One volunteer is temporarily unable to come to the institution for personal reasons. The other Islamic volunteer rotates between CCI and the Oakhill Correctional Institution and comes to CCI every other Friday afternoon to lead Jumua prayers and conduct Taleem study groups.

All DOC correctional institutions have had a difficult time in identifying and maintaining Islamic volunteers to come to institutions on a weekly basis, because most Islamic leaders have their own mosques at which they have leadership responsibilities. Defendant Teslik has contacted Islamic leaders with whom he has had contact during his employment with DOC, and has asked them for names of Islamic leaders who might be willing to volunteer, but due to time, work and travel constraints, many of the Islamic leaders whom Teslik has contacted were not

able to commit to coming to the institution on a regular basis. Over the past eight years, Teslik estimates that he has contacted at least eight Islamic organizations and/or Islamic volunteers in an effort to request their assistance in providing Muslim services to New Lisbon Correctional Institution from 2004 to 2010 and at CCI since December 2010. DOC employs two Islamic chaplains and Teslik has at times asked one of them come to CCI to lead Jumuah or Eid prayers, but due to time and work restraints, they are not able to come to CCI on a regular weekly basis. Teslik is open to new suggestions or leads for Islamic volunteers in the community who can come to CCI and lead religious services, and if he became aware of a potential Islamic volunteer to lead services at CCI, Chaplain Teslik would certainly explore that possibility.

As a Protestant chaplain, Chaplain Teslik is not allowed to lead Jumuah or Eid at-Fitr prayers in the absence of an Islamic volunteer. He cannot lead these services because he is not Muslim. Teslik can supervise a study group using electronic media, which had been done at CCI through the institution television channel, but that stopped with the August 19, 2012 lockdown, and is currently being reviewed. Teslik cannot supervise a study group without electronic an medium because he would not be able to readily recognize if the discussions detoured from religious in nature to some other purpose that is not authorized and/or a security threat to CCI.

DAI Policy #309.61.01 provides for one opportunity per year for a celebratory meal or observance, if required by the designated religious preference. Islamic inmates at CCI are permitted to participate in an Eid al-Fitr feast meal. In accordance with Islamic tradition, this meal celebrates the end of the Ramadan fasting. Inmates from various general population units gather together in the chapel to pray and share in the meal.

In 2012, Ramadan began at sunset on Thursday, July 19 and ended August 18. Pursuant to the instructions provided to DOC chaplains by the DOC Religious Practices Advisory Committee, who establishes uniform religious practices in all DOC correctional institutions, the time frame established for institutions to hold 2012 Eid celebrations was to occur between August 19 and 25, 2012. Plaintiff's desire to have the Eid observance the day after the end of Ramadan does not take into account that the CCI Islamic volunteers would be observing Eid with their own families and mosques and there would not be sufficient time for the volunteers to travel from their community to CCI in order to lead the Eid observance the day after Ramadan. Although chapel staff tries to schedule the Eid observance for the day after Ramadan, this usually is not possible.

Defendant Teslik scheduled the 2012 Eid observance for August 21, 2012 in accordance with the instruction that was given to him by the DOC Religious Practices Advisory Committee, and he proceeded with the plans necessary for an Islamic volunteer to lead Eid prayers and for the CCI food services to provide a celebratory meal after the prayers for all inmates who had signed up for the Eid observance. CCI went on lockdown status on August 19, 2012. Lockdown in prison means that the inmates are confined to their cells and security is tightened following a disturbance. Therefore, it was necessary for Teslik to cancel the Eid prayers and celebratory meal on August 21, 2012. This is the first time that Teslik can recall where the Eid observation had to be postponed or rescheduled due to lockdown status.

Given these unusual and unanticipated circumstances, Teslik obtained the warden's permission to reschedule the Eid prayers and celebratory meal for August 31, 2012, even though it was not within the time frame provided by DOC's Religious Practices Advisory Committee.

In lieu of the missed Eid prayers of August 21, 2012, Jumuah prayers were held and led by Zacariah Nurdeen, a chaplain with Racine Correctional Institution, on August 31, 2012, followed by the celebratory meal.

During the Ramadan fast, inmates residing at CCI who choose to participate only receive breakfast and dinner meals. The breakfast meals are delivered to the inmates before dawn and the dinner meal is delivered after sunset. It is the practice at CCI to ensure that inmates who choose to participate in the Ramadan fast throughout the institution have their evening meals at a consistent time, which is currently at approximately 8:30 p.m. In the process of determining an appropriate time to serve the evening meals, defendant Teslik consulted with a recognized web site (www.islamicfinder.org), which shows prayer time schedules during Ramadan to determine if the 8:30 p.m. time would be appropriate, and according to this source, 8:30 p.m. was a suitable time to serve the meals.

Defendant Teslik has spoke to plaintiff and other Islamic inmates at CCI who have requested that they have their evening meals delivered to them immediately after sunset. It is not practical or feasible for unit staff to adjust their duties in order to accommodate an eating schedule that changes daily, and by only a matter of minutes, based on the time of sunset during Ramadan. The uniform and consistent timing of the meal delivery is important for food service staff so they can ensure that meals are prepared and ready for delivery at the same time every evening during Ramadan. The evening meal delivery time of 8:30 p.m. was chosen because that is also the time that inmates are receiving evening medications, and the time was consistent with the prayer schedule shown on www.islamicfinder.org. Correctional institutions must operate under tight time frames to ensure all required inmate needs are met. Throughout a typical day

in the institution, unit staff is required to perform numerous activities at standard and uniform times throughout the day, such as daily counts, supervising inmates' dayroom and recreation activities, and ensuring that inmates are supervised and receive health services, education, employment training and other programming needs. Staff cannot displace these necessary services because offsetting a few, or even one of staff's required functions or schedule could displace other inmates and their various needs, and/or lead to staff confusion. It takes notice, planning, and a coordinated effort with CCI staff to accommodate the evening Ramadan meal schedule, and the 8:30 p.m. time allows staff to maintain the typical daily scheduling of activities as much as possible while providing Islamic inmates with their evening meal after sunset.

II. Opinion

Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to [it].” Winter v. National Resources Defense Council, 555 U.S. 7, 22 (2008). The standard applied to determine whether a plaintiff is entitled to preliminary injunctive relief is well established:

A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, plaintiff must show some likelihood of success on the merits and the probability that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then

moves on to balance the relative harms and public interest, considering all four factors under a “sliding scale” approach. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

A. Religious Claims

Plaintiff brings claims that his rights under the Free Exercise Clause and RLUIPA are being violated because he cannot participate in weekly Jumu’ah and Talim, as well as the annual Eid al-Fitr feast, unless an outside volunteer is available to lead them. Over the past several years he has been denied Jumu’ah and Talim over 100 times, and the Eid al-Fitr feast has often been held later than the day after Ramadan ends.

The Free Exercise Clause guarantees inmates a “reasonable opportunity” to practice their religion. *Cruz v. Beto*, 405 U.S. 319, 322 (1972); *see also Tarpley v. Allen County, Ind.*, 312 F.3d 895, 898 (7th Cir. 2002). “However, prison restrictions that infringe on an inmate's exercise of his religion are permissible if they are reasonably related to a legitimate penological objective, such as security and economic concerns.” *Maddox v. Love*, 655 F.3d 709, 719 (7th Cir. 2011) (citing *Turner v. Safley*, 482 U.S. 78, 89–91 (1987)). In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: (1) whether there is a “valid, rational connection” between the restriction and a legitimate governmental interest; (2) whether alternatives for exercising the right remain to the prisoner; (3) what effect accommodation of the right will have on prison administration; and (4) whether there are

other ways that prison officials can achieve the same goals without encroaching on the right. *Turner*, 482 U.S. at 89.

Under RLUIPA, plaintiff has the initial burden to show that he has a sincere religious belief and that his religious exercise was substantially burdened. *Koger v. Bryan*, 523 F.3d 789, 797-98 (7th Cir. 2008); *Vision Church v. Village of Long Grove*, 468 F.3d 975, 996-97 (7th Cir. 2006). Once a plaintiff shows a substantial burden on a religious exercise, defendants must show that the restriction furthers "a compelling governmental interest," and does so by "the least restrictive means." *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005). Courts apply RLUIPA "with particular sensitivity to security concerns," and must afford "due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." *Id.* at 723.

Under either of these standards, the problem for plaintiff is that it is well established that prison officials are justified in requiring an approved nonprisoner to lead prisoners in group worship. *Johnson-Bey v. Lane*, 863 F.2d 1308, 1310-11 (7th Cir. 1988) (prison officials "need not . . . allow inmates to conduct their own religious services, a practice that might not only foment conspiracies but also create (though more likely merely recognize) a leadership hierarchy among the prisoners"); *Hadi v. Horn*, 830 F.2d 779, 784-85 (7th Cir. 1987) (rejecting claim that Muslim prisoners were entitled to lead their own services when chaplain or volunteer was not available). *See also Adkins v. Kaspar*, 393 F.3d 559, 565 (5th Cir. 2004) (upholding prison requirement that volunteer must supervise religious services); *Tisdale v. Dobbs*, 807 F.2d 734, 738-39 (8th Cir. 1986) (same).

Likewise, in the present case, defendants have presented testimony indicating that security concerns would be implicated by allowing group services to be held with inmate leaders when an outside volunteer is not available. They state that “[a]llowing inmates to lead religious activities would give a perception of authority over other inmates and could allow an inmate to influence other inmates' actions,” “allowing an inmate to lead other inmates disrupts the power dynamics in a prison,” “DOC historically and continually has had problems with gangs attempting to take over religious groups,” and [a]llowing an inmate to lead a religious group empowers gang leaders, which increases the potential for strong-arming, violence, introduction of contraband, group resistance, and coordinated gang activities.”

Plaintiff argues also that defendants’ refusal to allow services to be held without an outside volunteer is unreasonable because the meeting room “is under high scrutiny by several CCI security staff who are in the room during these times” and “there’s a security camera in the room.” If defendants’ concerns were solely about violence at the services themselves, plaintiff might have a point. However, it is clear that the security concerns about empowering gang leaders carries an impact far beyond the walls of the meeting room, so plaintiff’s argument fails.

Plaintiff argues also that a recent case in this court, *Perez v. Frank*, 2007 WL 1101285 (Apr. 11, 2007), the court granted summary judgment to a CCI plaintiff on similar claims. Although plaintiff is correct that the inmate prevailed on summary judgment, *Perez* is distinguishable from the present case because the prison defendants in that case failed to submit

their own proposed findings of fact supporting their contention that there were legitimate penological reasons for denying group worship. *Id.*, *13. Judge Crabb noted:

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.

Id. at *14. Because defendants support their security rationale with testimony from prison officials, they meet their burden with respect to plaintiff's Jumu'ah, Talim and Eid al-Fitr claims. Because plaintiff does not have a reasonable likelihood of success on the merits of either his Free Exercise Clause or RLUIPA claims based on the record at this point in the proceedings, I will deny plaintiff's motion for preliminary injunctive relief regarding these claims.

B. Retaliation claim

Plaintiff's final claim is not one under the Free Exercise Clause or RLUIPA, although it does have to do with his religious beliefs: he alleges that defendants Teslik, John Doe security supervisors and John Doe food service manager (now identified as defendants Lipinski and Rick Bennett) violated plaintiff's First Amendment rights by serving Ramadan meals as late as possible in retaliation for plaintiff debating with Teslik about when to properly serve those meals.

To state a claim for retaliation, a plaintiff must identify (1) the constitutionally protected activity in which he was engaged; (2) one or more retaliatory actions taken by each defendant that would deter a person of "ordinary firmness" from engaging in the protected activity; and (3) sufficient facts to make it plausible to infer that the plaintiff's protected activity was one of the

reasons defendants took the action they did against him. *Bridges v. Gilbert*, 557 F.3d 541, 556 (7th Cir. 2009).

Defendants do not provide much argument regarding plaintiff's likelihood of prevailing on the retaliation claim and the facts adduced thus far show that plaintiff's claim remains theoretically plausible. Rather, defendants argue the other factors of the preliminary injunctive relief standard. They argue first that plaintiff will not suffer imminent irreparable harm. However, trial is scheduled for December 2013, which means that another month of Ramadan will transpire between now and then.

Turning to the third and fourth factors of the test, it is dubious whether the threatened injury to plaintiff outweighs the threatened harm an injunction may inflict on the prison. Plaintiff does explicitly articulate what harm he faces in having the Ramadan meals 30 minutes to an hour after sunset beyond the vague assertion that the meals are required "at" sunset for religious purposes. Meanwhile, defendants explain that plaintiff has other ways to practice his religion and they more clearly define the burden facing the prison system if an injunction changing the Ramadan meal time is granted: prison staff will have to operate under the court's schedule rather than their own schedule that has been developed to best allocate staff resources for the benefit of all CCI prisoners.

Generally, the court should "afford appropriate deference and flexibility to state officials trying to manage a volatile environment[.]" *Sandin v. Conner*, 515 U.S. 472, 483 (1995). When dealing with prisoner cases, federal courts must accord wide-ranging deference to correctional professionals in the adoption and execution of policies for the operation of penal institutions.

Whitley v. Albers, 475 U.S. 312, 321–22 (1986) (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)). Accordingly, prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices that are needed to preserve internal order and to maintain institutional security. *Beard v. Banks*, 548 U.S. 521, 528 (2006).

Given the facts proposed by the parties at this stage of the litigation, the issuance of an injunction ordering CCI to change its Ramadan meal time would be inappropriate because plaintiff has not met his burden to persuade the court “by a clear showing” that he is entitled to the “extraordinary and drastic remedy” of a preliminary injunction. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). *See also Girl Scouts of Manitou Council, Inc. v. Girl Scouts of USA, Inc.*, 549 F.3d 1079, 1085 (7th Cir.2008) (“[A] preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it”) (internal quotation marks omitted). Therefore, I will deny his motion for preliminary injunctive relief.

ORDER

It is ORDERED that:

- (1) Plaintiff Mansa Lutalo Iyapo's motion for leave to amend his complaint, dkt. #15, is GRANTED.
- (2) Plaintiff's motion to further supplement his complaint, dkt. #35, is GRANTED.
- (3) Defendants may have until April 16, 2013 to provide a supplemental answer addressing the additions to plaintiff's complaint.
- (4) Plaintiff's motion for preliminary injunctive relief, dkt #1, is DENIED.

Entered this 25th day of March, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge