UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NIZAR TRABELSI,
Petitioner-Plaintiff,

v.

JEFFREY CRAWFORD, in his official capacity as Warden of the Farmville Detention Center;

LIANA CASTANO, in her official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office;

ALEJANDRO MAYORKAS, in his official capacity as Secretary of Homeland Security;

and

MERRICK B. GARLAND, in his official capacity as U.S. Attorney General,
Respondents-Defendants.

Case No. 1:24-cv-01509-RDA-LRV

FEDERAL RESPONDENTS-DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Apart from his habeas claims[1] challenging the very fact of his confinement, Plaintiff Nizar Trabelsi brings three claims challenging the nature of his confinement during his immigration detention at Farmville Detention Center ("FDC"). In particular, he asserts that his conditions of confinement at FDC are unconstitutional and unlawful, violating: the First and Fifth Amendments to the United States Constitution; the Free Exercise Clause of the First Amendment of the United States Constitution; and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (hereinafter "RFRA"). Plaintiff alleges that his administrative segregation at FDC is a "punitive" limitation, and he alleges that the very specific limitations that impact his ability to engage in group worship and see an imam, while in administrative segregation, are an unlawful infringement of his religious exercise. Plaintiff's claims fail on the record evidence of his confinement, however.

As the voluminous records of U.S. Immigration and Customs Enforcement ("ICE") and FDC highlight, Plaintiff's constitutional and statutory rights are not being infringed. While at FDC, Plaintiff has been afforded: access to recreation and leisure materials; thorough medical care; and access to religious worship, including possession of a Quran, a prayer rug, and access to two chaplains. Moreover, these records highlight that—contrary to Plaintiff's conclusory allegations that he is subject to "isolation" or unable to receive medical care—Plaintiff himself frequently refuses access to recreation at FDC, refuses to use the facility's digital law library, and has refused

[1] Federal Respondents-Defendants address the conditions of confinement counts (Counts IV-VI) in this Memorandum given that Plaintiff's habeas claims were fully addressed in briefing filed in response to this Court's Order to Show Cause. *See, e.g.*, ECF No. 33. However, because the habeas claims remain pending, Federal Respondents-Defendants move to dismiss those claims herein and incorporate their prior arguments for dismissal by reference. *See Wright v. Elton Corp.*, 2017 WL 1035830, at *3 n.4 (D. Md. Mar. 17, 2017) (incorporating by reference arguments in prior motions to dismiss in a pending motion to dismiss); *see also Butler v. Stephens*, 600 F. App'x 246, 248 n.4 (5th Cir. 2015) ("[C]ounsel may refer to or incorporate by reference any prior briefs filed in this court without further briefing.")

medication and medical treatment on numerous occasions. Furthermore, while Plaintiff disagrees with various restrictions imposed on him while in administrative segregation, record evidence shows that these restrictions are well-founded. Specifically, Plaintiff has been placed into administrative segregation and subject to certain limits regarding his phone access and contact with other detainees because of: his prior criminal history; his prior history of violence and infractions at other facilities; his prior history of using outside contact to intimidate detention facility staff and witnesses; and because of his *current* behavior at FDC where he has again sought to evade restrictions placed on him, threatened FDC staff, and attempted to manipulate other detainees.

Plaintiff cannot state a claim under the Due Process Clause, the Free Exercise Clause, or RFRA in light of this record. As to the Due Process Clause, Plaintiff's overall detention and his administrative segregation are reasonably related to the legitimate governmental objectives of ensuring Plaintiff's attendance at his removal proceedings and ensuring the overall safety of FDC and public safety at large. As to the Free Exercise Clause, Plaintiff's religious exercise is not burdened because Plaintiff is not being coerced into abandoning his religious beliefs. Indeed, while Plaintiff is not allowed to engage in group prayer and has had his request for an imam once denied, he can still practice his faith through other means. And even if Plaintiff's religious rights were burdened, the restrictions placed on him are neutral and generally applicable and related to security concerns. Any restrictions on Plaintiff have nothing to do with his religious beliefs, but rather are based on prior and ever-present security concerns specific to Plaintiff himself. Finally, as to RFRA, Plaintiff's religious exercise is not substantially burdened either as he still has access to religious worship. And even if the limited restrictions on Plaintiff's worship constituted a substantial burden, they are the least restrictive means of achieving ICE and FDC's compelling interest in facility safety and public safety. In particular, Plaintiff is limited from contact with other detainees and

limited to contact with only certain individuals at FDC given Plaintiff's repeated use of outside contacts to evade the restrictions placed on him. For these and the reasons discussed further herein, Federal Respondents-Defendants respectfully request that this Court grant their motion to dismiss and motion for summary judgment.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Plaintiff's Prior Criminal Proceedings and Detention.

1. Plaintiff Nizar Trabelsi is a native and citizen of Tunisia. Decl. ¶¶ 4-5.[2]

2. On September 30, 2003, Plaintiff was found guilty in the Kingdom of Belgium of, *inter alia*, conspiring to detonate explosives at the Kleine Brogel Air Force base, and of contributing to and being a part of al Qaeda. As part of his criminal conviction, Plaintiff was sentenced to 10 years in prison in Belgium. Decl. ¶¶ 6-8.

3. That prison sentence in Belgium was subsequently lengthened by six months after Plaintiff Trabelsi threatened to use explosives against the Belgian prison director where he was housed. Decl. ¶ 9.

4. Following the completion of Plaintiff's prison sentence in Belgium, he was extradited to the United States on October 3, 2013, for criminal proceedings that resulted in him being tried but acquitted of two charges relating to conspiracy to kill U.S. nationals outside of the United States and conspiracy and attempt to use weapons of mass destruction. Decl. ¶¶ 11-17.

5. While Plaintiff was in custody for his federal charges, he was held at the Northern

[2] Plaintiff's prior criminal and current immigration proceedings were discussed at length in the briefing on the Court's Order to Show Cause. Federal Respondents-Defendants thus avoid repeating much of that discussion given the Court's familiarity with those proceedings. Instead, any discussion of Plaintiff's past criminal and current immigration proceedings are only mentioned where relevant to the Plaintiff's particular conditions of confinement, including the bases for Plaintiff's current administrative segregation.

Neck Regional Jail in Warsaw, Virginia and at the Rappahannock Regional Jail in Stafford, Virginia. During this period in custody, Plaintiff was held in administrative segregation because of his disciplinary history as well as his threats to officers, witnesses, and even the President of the United States while in custody. Decl. ¶ 24.[3]

B. Plaintiff's Immigration Detention and Placement into Administrative Segregation.

6. Following Plaintiff's acquittal on his federal charges, Plaintiff was administratively arrested by ICE agents on July 17, 2023, and was placed into immigration removal proceedings and ICE custody. From July 17, 2023 onwards through the present day, Plaintiff has been in ICE custody at FDC in Farmville, Virginia. Decl. ¶¶ 17-20.

7. Upon entering FDC, Plaintiff was initially classified by FDC as having a "low" custody level for his housing assignment, but after authorities reviewed information received from the Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI"), on July 26, 2023, Plaintiff was reclassified as having a "high" custody level, meaning that he would be subject to more restrictions while in FDC custody. The information reviewed by authorities in determining Plaintiff's custody level included Plaintiff's records of incarceration in Belgium and the United States, his disciplinary history while awaiting federal charges, and documentation of his threats to officers, witnesses, and even the President of the United States while in custody. Decl. ¶¶ 22-24.

8. Accordingly, on July 26, 2023, Plaintiff was served with a letter explaining that he would be placed in administrative segregation and that the restriction on communications adopted

[3] Those Special Administrative Measures ("SAMs") that governed Plaintiff's detention during his time in federal custody were largely upheld by the district court presiding over Plaintiff's criminal proceedings, with that court noting that the SAMs were implemented "in part, on the evidence that Trabelsi was convicted for assaulting a prison guard, that he attempted to escape from prison and was considered a high security risk by Belgium, and that he continue[d] to show a commitment to al Qaeda's goals." *United States Trabelsi*, No. 06-cr-89, 2014 WL 12682266, at *1 (D.D.C. June 18, 2014).

by the FBI and U.S Marshals Service ("USMS") during his prior custody would be continued while Plaintiff was in immigration custody. Decl. ¶¶ 26, 33.

9. FDC reviewed the administrative segregation measures as to Plaintiff every seven days for the first 35 days of his administrative segregation and has since reviewed those measures every 10 days thereafter. Plaintiff has been provided forms summarizing those reviews. Decl. ¶ 27.

10. ICE and FDC have kept Plaintiff in administrative segregation based on their assessment of Plaintiff's past behavior and his behavior in ICE custody. Specifically, based on reports generated within FDC, while in ICE custody, Plaintiff has been subject to no less than six disciplinary boards in detention for threats, slurs, insults, and insubordination. Reports at FDC also note that Plaintiff has threatened to follow, kidnap, and kill officers in ICE detention. Reports at FDC further note that Plaintiff has attempted to evade restrictions placed on him as part of his administrative segregation by passing messages to other detainees, obtaining prohibited materials such as newspapers, and slipping restraints. In evading these restrictions, FDC's reports note that Plaintiff has managed to appropriate other detainees' identities to make phone calls that he is not authorized to make. And reports at FDC note that Plaintiff has attempted to convince other detainees to act out against FDC staff. Decl. ¶¶ 28, 35-38, 44.

C. Details of Plaintiff's Administrative Segregation at FDC.

11. Administrative segregation at FDC is a small unit—typically with three to six detainees—in which the detainees are not allowed to mix with the general population and are subject to heightened security procedures and additional limitations, including, *inter alia*, limitations on detainees' access to newspapers for security reasons. Decl. ¶¶ 29-30, 52.

12. FDC has determined that Plaintiff is to be subject to the same conditions as any other detainee in administrative segregation for security reasons, except for specific restrictions

that had been previously imposed on Plaintiff while he was in the custody of the USMS and that were imposed at FDC in response to Plaintiff's manipulation of his phone restrictions. Those restrictions include that: Plaintiff's phone contact is only with preapproved contacts; Plaintiff does not receive newspapers; Plaintiff cannot contact other detainees; Plaintiff is to be given segregated exercise; Plaintiff cannot spend time in common areas; and Plaintiff cannot participate in group chapel activities. Decl. ¶¶ 33-34, 45.

13. While Plaintiff in administrative segregation, ICE's records show that Plaintiff is given daily exercise time of two hours a day outside, weather permitting. Between July 30, 2023, and September 21, 2024, Plaintiff has refused his recreation time for all but 11 days. Decl. ¶ 50.

14. In administrative segregation, Plaintiff has access to air conditioning and a window, and he can order supplemental items from the facility commissary. ICE's records reveal that Plaintiff has regularly ordered items such as candy, food items, soda, writing materials, coffee, batteries, and headphones. Decl. ¶¶ 64-68.

C. Plaintiff's Access to Phone and Outside Materials at FDC.

15. As part of the specific measures to which Plaintiff is subject to while in ICE custody, Plaintiff is not allowed contact, via telephone, with the woman he claims is his religious wife or that woman's children. ICE instituted these measures based on a determination from DOJ that Plaintiff has previously used contact with his alleged family to communicate with known terrorists and to threaten witnesses. Decl. ¶¶ 40-42.

16. ICE's records show that Plaintiff has otherwise made over 2,900 allowed phone calls while in ICE custody. Decl. ¶ 43.

17. According to ICE's records, Plaintiff's phone privileges are limited to a four-hour window from 8 AM until 12 PM every day because of records showing that Plaintiff has misused

his phone privileges, including using other detainees' identities to make phone calls he is otherwise prohibited from making. Plaintiff, however, may request phone use outside of his designated window. Decl. ¶¶ 44-45, 48.

18. ICE keeps records of all detainees' requests but has no record that Plaintiff has ever attempted to contact his alleged family by writing while in ICE detention. Decl. ¶ 49.

19. While in administrative segregation, Plaintiff has access to a digital law library through a computer without internet access. Plaintiff has declined access to that computer. Decl. ¶¶ 54-55.

D. Plaintiff's Ability to Engage in Religious Worship at FDC.

20. ICE's records do not contain any evidence of a request from Plaintiff for leisure material outside of one complaint about not having access to newspapers that Plaintiff was denied based on limitations of newspapers in administrative segregation. And ICE's records do not indicate that any religious texts were confiscated from Plaintiff or that Plaintiff requested a copy of the Koran. Decl. ¶¶ 51, 56, 61.

21. While at FDC, Plaintiff has access to full time chaplains for his religious needs and he has been given a prayer rug. Decl. ¶¶ 57, 62.

22. ICE's records show that on July 3, 2024, Plaintiff requested that an imam visit him. This request was denied by FDC due to safety and security concerns, based on FDC's view that Plaintiff had made repeated attempts to manipulate detainees and FDC staff into facilitating illicit activity and thus Plaintiff was limited to only certain approved outside contacts. ICE has no other records that Plaintiff made any other request to see an imam Decl. ¶¶ 58, 60.

23. ICE's records show that on July 3, 2024, Plaintiff requested to attend Friday prayer with other detainees. This request was denied due to security concerns, based on FDC's view that

Plaintiff had made repeated attempts to manipulate detainees and FDC staff into facilitating illicit activity. Decl. ¶ 59.

E. Plaintiff's Access to Health Services and Medical History at FDC.

24. While in FDC, Plaintiff: has access to health services; may initiate a request for health service; has access to specified 24-hour emergency health services; and can be transferred to an appropriate facility if he requires healthcare beyond FDC's resources. Decl. ¶¶ 69-73.

25. FDC's records show that since July 20, 2023, Plaintiff has had had a Daily Confinement Assessment in which his physical, mental, and dental status are assessed and in which he has had the opportunity to request health services. Those records further show that Plaintiff has made 59 sick call requests for medical attention or a change in diet, and that Plaintiff has clinic visits and chronic care visits on a weekly or biweekly basis where has he sought to address various health ailments including his dry skin, knee and leg pain, eye issues, diet, chest pain, stomach ulcer, prediabetes, and blood pressure. Decl. ¶¶ 74-76.

26. FDC's records show that from August 3, 2023, to September 22, 2024, Plaintiff had consistent mental health appointments at FDC, approximately every two to seven days. Those records show that, at times, Plaintiff has declined to speak to the staff psychiatrist and declined medication. Decl. ¶¶ 94-97

27. While Plaintiff alleges that he suffers from asthma, Compl. ¶ 89, FDC's records show that Plaintiff was prescribed a Ventolin Inhaler to be kept on his person in 2023 and 2024. Decl. ¶ 83.

28. While Plaintiff alleges that he suffers from diabetes, Compl. ¶ 89, FDC's records show that: Plaintiff's laboratory tests have shown him as being in the prediabetic range; Plaintiff has declined diabetes medication; but that Plaintiff has nonetheless been on a special vegetarian

diet since entering FDC, as a means to control any potential diabetes. Decl. ¶¶ 81-82.

29. While Plaintiff alleges that he suffers from hypertension, Compl. ¶ 89, FDC's records show that Plaintiff was prescribed Losartan for this condition but has refused to take the medication on numerous instances in 2023 and 2024. Decl. ¶ 88.

30. While Plaintiff alleges that he suffers from gastritis, Compl. ¶ 89, FDC's records show that Plaintiff has been prescribed Omeprazole for this condition and received medical counseling for his non-compliance in taking this medication. Decl. ¶ 86.

31. While Plaintiff alleges that he suffers from high cholesterol, Compl. ¶ 89, FDC's records show that Plaintiff has been prescribed Atorvastatin for this condition but has refused to take this medication on numerous instances in 2023 and 2024. Decl. ¶ 87.

32. While Plaintiff alleges that he suffers from severe vitamin D deficiency, Compl. ¶ 89, FDC's records show that: Plaintiff's laboratory tests have shown him as being in the low to normal range of Vitamin D levels and that Plaintiff has been prescribed Vitamin D3 tablets but not taken this medication on numerous instances in 2024. Decl. ¶ 80.

33. While Plaintiff alleges that he suffers from migraines, Compl. ¶ 89, FDC's records show that Plaintiff has been referred to a medical doctor for this condition upon reporting it. Decl. ¶ 85.

34. While Plaintiff alleges that he suffers from blindness, Compl. ¶ 90, FDC's records show that Plaintiff has been assessed for vision issues in his left eye, received new eyeglasses, and received an eye patch in 2024. Decl. ¶¶ 91-93.

35. While Plaintiff alleges that he suffers from swelling and pain in his leg Compl. ¶ 90, FDC's records show that Plaintiff has been prescribed Diclofenac gel for his knee pain in 2023 and 2024 and received medical attention for his swelling. Decl. ¶ 84.

36. While Plaintiff alleges that he suffers from lipoma, Compl. ¶ 90, FDC's records show that Plaintiff has been assessed for this condition and was admitted to an outside hospital in 2023 and 2024 for an examination of this condition. Decl. ¶¶ 89-90.

STANDARD OF REVIEW

I. Motion to Dismiss

A complaint is subject to dismissal if it fails to allege facts that state a plausible claim for relief rising "above the speculative level." Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678. Legal conclusions, "naked assertions devoid of further factual enhancement," and "a formulaic recitation of the elements of a cause of action" are legally insufficient to state a plausible claim. *Id.*; *Twombly*, 550 U.S. at 555. "Without converting a motion to dismiss into a motion for summary judgment, a court may consider the attachments to the complaint, documents incorporated in the complaint by reference, and documents 'attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *Lokhova v. Halper*, 441 F. Supp. 3d 238, 252 (E.D. Va. 2020) (quoting *Sec'y of State for Defence v. Trimble Nav. Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007)).

II. Summary Judgment

Summary judgment must be granted when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Although the non-moving party is entitled to all reasonable, non-speculative inferences drawn in his favor, such inferences still must be justifiable from the evidence, and he must present "significantly probative"—not "merely colorable"—evidence in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

242, 249, 264 (1986). A plaintiff does not defeat summary judgment with speculation, "the mere existence of some alleged factual dispute," or "the building of one inference upon another." *See id.* at 247; *Othentec Ltd. v. Phelan*, 526 F.3d 135, 140 (4th Cir. 2008).

ARGUMENT

I. PLAINTIFF'S CONDITIONS OF CONFINEMENT ARE NOT PUNITIVE AND ARE NOT IN VIOLATION OF THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE (COUNT IV).

Plaintiff first asserts that he is being subject to "punitive conditions in violation of the Fifth Amendment," specifically referring to the so-called "substantive component" of the Due Process Clause of the Fifth Amendment. Compl. ¶ 123. At the outset, whether Plaintiff's Fifth Amendment due process rights are commensurate in scope with the rights of other civil detainees as a matter of substantive due process is far from clear. *See Demore v. Kim*, 538 U.S. 510, 521 (2003) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."). Regardless, the record evidence does not support a claim that Plaintiff's conditions are "punitive" under the Fifth Amendment.

To succeed on such a claim, Plaintiff must show that the particular conditions that he is subjected were either: "(1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective." *Williamson v. Stirling*, 912 F.3d 154, 174 (4th Cir. 2018) (quoting *Slade v. Hampton Roads Regional Jail*, 407 F.3d 243, 251 (4th Cir. 2005)). Plaintiff does not even allege that Federal Respondents-Defendants (or anyone) are intentionally punishing him. Thus, Plaintiff must instead show that the allegedly unconstitutional conditions of his detention are not "reasonably related to a legitimate governmental objective,"—i.e., the condition is "arbitrary or purposeless." *Bell v. Wolfish*, 441 U.S. 441 U.S. 520, 539 (1979).

But before venturing to this analysis, it is worth noting that the record evidence does not support Plaintiff's allegations that he is being subject "to an extreme form of solitary confinement

under punitive conditions." Compl. ¶ 123.[4] While Plaintiff alleges that he is subject to "isolation," in that he has not been allowed to place or receive calls from anyone other than his attorneys and that he cannot send or receive mail, FDC's phone logs show that Plaintiff has placed well over 2,900 calls and has never made any request or attempt to contact his family by mail. Decl. ¶¶ 43, 49. Indeed, while Plaintiff alleges that his phone privileges are "restricted," Compl. ¶ 69, Plaintiff's own phone logs show that he has been able to place thousands of calls at FDC, and FDC's records note that Plaintiff has phone privileges within a four-hour window and then the ability to then ask for further calls outside of that window. Decl. ¶¶ 45, 48. While Plaintiff alleges that he is isolated because he "is allotted one hour of outdoor recreation time each day," Compl. ¶ 74, FDC's records note that Plaintiff is given daily exercise time of two hours outside and that Plaintiff has refused this recreation time for all but 11 days. Decl. ¶ 50; *see also French v. Smith*, 2012 WL 831881, at *8 (D. Md. Mar. 9, 2012) (denying conditions of confinement claim where "Plaintiff's segregation records . . . demonstrate[d] he frequently ha[d] been offered recreation which he frequently refuse[d]"), *aff'd*, 475 F. App'x 879 (4th Cir. 2012).

While Plaintiff conclusorily alleges that restrictions placed on him "are more severe than those to which Mr. Trabelsi was subjected during his pre-trial detention," Compl. ¶ 76, a review of Plaintiff's conditions of administrative segregation along with even Plaintiff's allegations show that they are largely the same as the SAMs imposed on Plaintiff during his pre-trial detention.

[4] Plaintiff's allegations cannot create a dispute of material fact here where they are contradicted by record evidence, specifically FDC's records that highlight that Plaintiff is given access to recreational materials, phone access, and medical treatment at FDC and frequently avails himself of this access. *See Harmon v. Harmon*, 2022 WL 610174, at *7 (E.D. Va. Mar. 1, 2022) (Alston, J.) ("[O]n summary judgment, [] a court must look beyond mere allegations in a complaint and determine whether there is competent record evidence to permit a claim to proceed to trial.").

Decl. ¶¶ 33, 39.[5] While Plaintiff claims that he "has no access to books, newspapers, or magazines," Compl. ¶ 77, FDC's records show that Plaintiff has access to a digital law library but has declined access to it and otherwise has never requested written material outside of newspapers—he also regularly orders from facility commissary. Decl. ¶¶ 51-55, 68. And while Plaintiff claims that his "mental health conditions impede his ability to get appropriate care for physical conditions," Compl. ¶ 91, a review of voluminous FDC's health records show the opposite. Plaintiff is repeatedly seen by health professionals within FDC and by outside facilities for a variety of mental and physical health conditions; Plaintiff has been treated for and prescribed ailments for a variety of these conditions on a periodic basis; and Plaintiff has, on a number of occasions, declined to take medical appointments and declined to take his medications, including those for a variety of chronic conditions and his mental health. Decl. ¶¶ 69-97.

Once Plaintiff's allegations are squared with the actual record evidence, Plaintiff cannot meet his burden to demonstrate punitive conditions in violation of the Fifth Amendment. As the Supreme Court has instructed, "if a particular condition or restriction of pretrial detention is

[5] While Plaintiff cites to the restrictions put forward in his criminal case for the assertion that his phone privileges were broader in pre-trial custody, *see* Compl. ¶ 76 (citing *United States v. Trabelsi*, 2014 WL 12682266 (D.D.C. June 18, 2014), the court that upheld Trabelsi's prior SAMs measures did not address any limitation on Plaintiff's ability to contact his wife or her children. *See Trabelsi*, 2014 WL 12682266, at *2 (noting Plaintiff's challenge to his ability to call the media while noting Plaintiff's ability to contact his family members by mail); *see also* Decl. ¶ 49 (noting Plaintiff had never attempted to contact his alleged family by mail while at FDC). In any event, Plaintiff's challenge to effectively the same SAMs measures upheld by a prior court are collaterally estopped and present a basis for dismissal under Rule 12(b)(6). *See, e.g.*, *Garrett v. Angelone*, 940 F. Supp. 933, 943 (W.D. Va. 1996), *aff'd*, 107 F.3d 865 (4th Cir. 1997) ("The doctrine of collateral estoppel also bars [Plaintiff] from relitigating his claim that he has been held in solitary confinement without due process."); *Briggs v. Newberry Cnty. Sch. Dist.*, 838 F. Supp. 232, 234 (D.S.C. 1992), *aff'd*, 989 F.2d 491 (4th Cir. 1993) ("When entertaining a motion to dismiss on the ground of *res judicata* or collateral estoppel, a court may judicially notice facts from a prior judicial proceeding.")

reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Bell*, 441 U.S. at 539. And "[o]nce the Government has exercised its conceded authority to detain a person . . . it obviously is entitled to employ devices that are calculated to effectuate this detention." *Id.* at 537 ("[T]hat such detention interferes with the detainee's understandable desire to live as comfortably as possible . . . does not convert the conditions or restrictions of detention into 'punishment.'"). Indeed, the Supreme Court cautioned lower courts that whether a condition amounts to punishment does not hinge on "a court's idea of how best to operate a detention facility." *Id.*

Plaintiff's overall detention is consistent with a legitimate government objective, which has been expressly recognized by the Supreme Court. The Supreme Court has recognized the Government's legitimate interest in protecting the public and preventing non-citizens from absconding through detention during the pendency of their immigration proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 836-837 (2018); *Demore*, 538 U.S. at 520-522; *Zadvydas v. Davis*, 533 U.S. 678, 690-691 (2001). Indeed, this Court has recognized that immigration detention "is reasonably related to the legitimate government interest of preventing [detained non-citizens] from absconding and ensuring [their] appearance for . . . removal proceedings." *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 696 (E.D. Va. 2020).

Plaintiff's administrative segregation is also reasonably related to a legitimate governmental objective: the safety of FDC and broader public safety at large. "The Fourth Circuit has held that the imposition of less favorable conditions on inmates in protective custody does not constitute denial of equal protection or due process." *Yuille v. Robinson*, 2002 WL 31953510, at *2 (E.D. Va. June 6, 2002) (citing *Taylor v. Rogers*, 781 F.2d 1047, 1050 (4th Cir. 1986)). And courts within the Fourth Circuit have repeatedly declined to find administrative segregation punitive where the

plaintiff's "housing placement was based on a legitimate government interest in protecting his and the other inmates' well-being, rather than for any expressly punitive reason." *Rhinehart v. Ray*, 2023 WL 4409001, at *12 (D.S.C. May 24, 2023), *report and recommendation adopted*, 2023 WL 4196937 (D.S.C. June 27, 2023); *see also Contreras v. Kinkaid*, 2023 WL 3165116, at *11 (E.D. Va. Apr. 28, 2023) (Trenga, J.) (finding no due process violation where "the security risk that Plaintiff presented was a legitimate concern that justified his placement in administrative segregation."); *Riddick v. Willett*, 2016 WL 3282213, at *5 (E.D. Va. June 10, 2016) (finding pretrial detainee's placement in administrative segregation was not a due process violation where detainee had a "documented dangerous history and score through the classification system" and "[t]he decision to place Riddick in administrative segregation was rationally related to the legitimate objective of maintaining security and order at MRRJ"). The same is true here.

Plaintiff's administrative segregation—and the specific measures limiting his phone access and contact with other detainees—was instituted[6] on the basis that Plaintiff posed a risk to FDC facility, to other detainees, and to individuals on the outside based on his prior SAMs, his history of threats against facility staff in Belgium and the United States, and his attempts to communicate with terrorists even while in custody. *See* Decl. ¶¶ 23-24, 28. Thus, Plaintiff's administrative segregation is reasonably related to the government's interest of protecting the well-being of the facility, other detainees, and the general public. Indeed, Plaintiff's behavior since coming to FDC reaffirms that Plaintiff's administrative segregation is reasonably related to that interest. Specifically,

[6] Federal Respondents-Defendants understand Plaintiff to only be pleading a substantive due process claim based on Plaintiff's conditions of confinement and not a procedural due process claim that Plaintiff has been placed into administrative segregation without sufficient process. To the extent, that Count IV of Plaintiff's Complaint could be read to assert such a claim, it would fail on the merits, given that Plaintiff is subject to periodic reviews of his status in administrative segregation. *See* Decl. ¶ 27; *see also Mims v. Shapp*, 744 F.2d 946, 954 (3d Cir. 1984) (monthly "subjective" reviews of administrative segregation satisfy procedural due process).

Plaintiff has: made continued threats to FDC staff; continuously evaded restrictions placed on him; and repeatedly attempted to contact individuals that Plaintiff is otherwise prohibited from contacting based on concerns that Plaintiff has used such prior contacts to communicate with known terrorists and threaten witnesses. *See* Decl. ¶¶ 36, 41, 44. To the extent that Plaintiff complains that these restrictions are displeasing that, without more, does not amount to a due process violation because "[r]estraints that are reasonably related to the institution's interest in maintaining . . . security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial." *Bell*, 441 U.S. at 540.

On even less egregious facts, courts have concluded that "[r]estricting phone use by segregation inmates certainly advances legitimate penological interests." *Mauney v. Burke-Catawba Dist. Confinement Facility*, 2021 WL 619501, at *6 (W.D.N.C. Feb. 17, 2021) (involving a carte blanche restriction on phone use in administrative segregation); *see also Thomas v. Drew*, 365 F. App'x 485, 488 (4th Cir. 2010) (no Eighth Amendment violation where inmate's telephone privileges were suspended for more than 50 years as a sanction for "misuse of telephone"); *Denkenberger v. Ballard*, 2012 WL 529894, at *4 (S.D.W. Va. Feb. 17, 2012) (restrictions of segregation, including limitations on "recreation, education, showers, and phone usage" were not atypical). And courts have likewise upheld restrictions on a detainee's contact with other detainees as a common feature of administrative segregation. *See Crisano v. Grimes*, 2020 WL 1919913, at *7 (E.D. Va. Apr. 20, 2020) ("Jails have legitimate interests in maintaining jail security and ensuring inmate safety, including segregating inmates from other inmates for safety reasons."); *Carter v. Clarke*, 2014 WL 7140269, at *5 (E.D. Va. Dec. 11, 2014) (Brinkema, J.) (upholding plaintiff's no-contact visits as part of placement in administrative segregation in light of "plaintiff's history of

disciplinary infractions"); *Alkebulanyahh v. Ozmint*, 2009 WL 2043912, *10 (D.S.C. July 13, 2009), *aff'd*, 358 F. App'x 431 (4th Cir. 2009) (no Eighth Amendment violation where an inmate's visitation privileges were suspended for more than two-years following eleven major disciplinary convictions).

In sum, Plaintiff's conditions, wherein he has access to phone calls, written materials, recreation, and thorough medical care—and where he often declines to take advantage of such access—can hardly be called "punitive." Indeed, courts have held conditions far worse than those at issue here to be consistent with constitutional strictures. *Cf. Alfred v. Bryant,* 378 F. App'x 977, 980 (11th Cir.2010) (living with a toilet that occasionally overflows "is unpleasant but not necessarily unconstitutional"); *Smith v. Copeland,* 87 F.3d 265, 268-269 (8th Cir. 1996) (overflowed toilet in cell for 4 days was not unconstitutional); *Brown v. Withrow,* 985 F.2d 559, 559 (6th Cir. 1993) (having rats, roaches and ants present in the cell is not below the constitutional standard). Accordingly, Plaintiff cannot state a claim that the conditions of his confinement are punitive in violation of the Due Process Clause.

II. PLAINTIFF IS ABLE TO ENGAGE IN RELIGIOUS WORSHIP AND THERE IS NO VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT (COUNT V).

The protections of the Free Exercise Clause, *see* U.S. Const. amend. I, "pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Bablu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). Here, Plaintiff's Free Exercise claim fails on the record evidence because: (1) Plaintiff cannot establish a burden on his religious belief; and (2) assuming *arguendo* that there is any such burden, it is done by constitutionally permissible neutral and generally applicable measures.

A. FDC's Administrative Segregation Measures Do Not Burden Plaintiff's

Religious Exercise.

"[R]egardless of the specific nature of the government action at issue, a plaintiff alleging a free exercise claim bears the burden of demonstrating an infringement of his rights under the Free Exercise Clause." *Mahmood v. McKnight*, 2024 WL 2164882 at *7 (4th Cir. May 15, 2024) (cleaned up) (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022)). If Plaintiff meets this threshold burden, "the focus *then* shifts to the defendant to show that its actions were nonetheless justified and tailored consistent with the demand of [Supreme Court] case law." *Kennedy*, 597 U.S. at 524 (emphasis added). A plaintiff does not establish a burden based upon the "incidental effects of government programs[] which may make it more difficult to practice certain religions, but which have no tendency to coerce individuals into acting contrary to their religious beliefs." *Lyng v. Nw. Indian Cemetery Prot. Ass'n*, 485 U.S. 439, 450-451 (1988). Instead, a plaintiff must show either: (1) that he must surrender his religious character or beliefs to participate in the government program; or (2) be compelled to an action, through direct or indirect government coercion, that is inconsistent with his beliefs. *See Mahmood*, 2024 WL 2164882, at *9; *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466 (2017).

The Supreme Court's seminal decision in *Lyng* underscores the significantly-high bar to show a threshold burden under this test. There, the Supreme Court addressed a Free Exercise challenge to the federal government's decision to engage in timber harvesting and road construction on a particular tract of federal land. *Lyng*, 485 U.S. at 450-451. Native American tribes challenged that decision because the federal land at issue has been used "for a very long time, to conduct a wide variety of specific rituals that aim to accomplish their religious goals," and the federal government's proposed development "could have devasting effects on traditional Indian religious practices." *Id.* at 451. But even under the assumption that the Native American tribes would be *unable* to practice their faiths if the government's proposed land development came into fruition,

Lyng held that the proposed development was constitutional because there was no showing that "the affected individuals [would] be coerced by the Government's action into violating their religious beliefs[,] nor would either governmental action penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens." *Id.* at 449; *see also Trinity Lutheran*, 582 U.S. at 460 (reiterating *Lyng*'s coercion analysis); *Mahmoud*, 2024 WL 2164882, at *11 ("Supreme Court precedent requires some sort of direct or indirect pressure to abandon religious beliefs or affirmatively act contrary to those beliefs.") (citing *Lyng*, 485 U.S. at 450). Appreciating the gravity of this conclusion because the proposed development "would interfere significantly with private persons' ability to pursue spiritual fulfillment according to their own religious beliefs," the Supreme Court nevertheless made clear that "government simply could not operate if it were required to satisfy every citizen's religious needs and desires" because government activities "will always be considered essential to the spiritual well-being of some citizens, often on the basis of sincerely held religious beliefs." *Lyng*, 485 U.S at 452; *id.* at 453 ("Whatever rights the [Native Americans] may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, *its* land.").

Lyng and a variety of other caselaw highlight that there is no coercion here of Plaintiff's religious beliefs. At the outset, as with the record evidence on Plaintiff's administrative segregation, the record only supports Plaintiff's allegations that FDC, in its judgment as the facility responsible for Plaintiff's detention,[7] *once* did not permit him to see an imam and *once* did not permit him to attend Friday prayers with other detainees. *Compare* Compl. ¶¶ 82-83 *with* Decl. ¶¶ 58-59.

[7] Plaintiff asserts Counts V and VI against all Defendants without limitation as to whether such claims are against the Warden of FDC or the Federal Respondents-Defendants. While Plaintiff is held in ICE custody, FDC has applied many of the conditions that Plaintiff is specifically challenging and FDC officials were the ones that *once* denied his request for access to an imam and to group worship.

Contrary to Plaintiff's conclusory allegations that he does not have access to religious texts other than the Quran, ICE has no records of Plaintiff ever requesting such texts, and Plaintiff has otherwise been given the Quran, his own prayer rug, and access to two full time chaplains. *See* Decl. ¶¶ 51, 57, 61-62. Regardless, these conditions do not amount to coercion of Plaintiff's religious beliefs. There is no record evidence showing that Plaintiff has been forced to abandon his religious beliefs or act contrary to those beliefs. To the contrary, although Plaintiff might not be able to engage in group prayer, he has access to religious texts and religious chaplains that allow him to exercise his beliefs. And while he may additionally want group prayer, the Supreme Court in *Lyng* noted that under the Free Exercise Clause, the government is not "required to satisfy every citizen's religious needs and desires." 485 U.S at 452. In short, Plaintiff's religious exercise is not burdened so as to support a claim under the Free Exercise Clause.

B. The Denial of Plaintiff's One Time Request for Group Prayer and an Imam Are Neutral and Generally Applicable Restrictions Related to Legitimate Government Interests.

Assuming *arguendo* that Plaintiff's religious exercise is burdened, the record evidence still does not support a Free Exercise claim because any restrictions on Plaintiff's religious worship are neutral and generally applicable and otherwise supported by legitimate governmental itnerests. As the Fourth Circuit has articulated, even if Plaintiff can demonstrate a burden on his free exercise rights, "[t]he Court's free exercise analysis does not end." *Mahmoud*, 2024 WL 2164882, at *8. This is because "[n]ot all burdens on religion are unconstitutional." *Id.* (alteration in original) (quoting *United States v. Lee*, 455 U.S. 252, 257 (1982)).

There are two general analytical frameworks by which courts make this determination. *First*, "[u]nder the currently applicable standard set out in *Employment Division v. Smith*, the Supreme Court held that 'laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Id.*

(quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)). To determine whether a law is neutral, this Court "must determine its object." *Alive Church of the Nazarene, Inc. v. Prince William County*, 59 F.4th 92, 108 (4th Cir. 2023) (citing *Lukumi*, 508 U.S. at 534). Per binding precedent, "[i]f a law has 'no object that infringe[s] upon or restrict[s] practices *because* of their religious motivation,' then the law is neutral." *Id.* (alterations in original) (quoting *Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 99 (4th Cir. 2013)). The neutrality analysis starts, but does not end, with the text of the regulation. *Lukumi*, 508 U.S. at 533-534. Yet even if the text is neutral, a court is then to look at whether the "effect of [the] law in its real operation" targets a plaintiff's religious beliefs or religious practices. *Id.* at 535.

Second, as to free exercise rights in detention, some courts have also followed the Supreme Court's decision in *Turner v. Safley*, 482 U.S. 78 (1987), which—in resolving whether conditions of confinement infringe upon a constitutional right—instructed courts to consider: (1) whether a rational connection exists between the detention condition and the legitimate governmental interest advanced to justify it; (2) whether alternative means of exercising the right are available; (3) what effect accommodating the exercise of the constitutional right would have on guards and other detainees; and (4) whether ready, easy-to-implement alternatives exist that would accommodate the right. *See, e.g.*, *Williams v. Miller*, 696 F. App'x 862, 864 (10th Cir. 2017) (following the *Turner* test). As this involves a conditions of confinement claim, presumably the analysis in *Turner* should apply, but the restrictions placed on Plaintiff's group worship do not offend the Free Exercise Clause under either framework.

There is nothing in the record or in Plaintiff's allegations that demonstrate that FDC's restrictions on Plaintiff's group worship were put in place because of Plaintiff's Muslim beliefs either as a textual or pretextual matter. To the contrary, the record shows that the limitations on Plaintiff's

group worship and access to certain individuals are part of the neutral and generally applicable overall set of restrictions on Plaintiff's contact with other detainees and certain individuals while in administrative segregation. Put more simply, the fact that Plaintiff is likewise precluded from contact with other detainees including shared recreation and time in common areas demonstrates that any impact on Plaintiff's religious exercise was an incidental effect of the safety-based limitations, and was not in any way directed to Plaintiff's religious beliefs. Likewise, Plaintiff is limited in who he can contact while in administrative segregation based on concerns of safety. *See, e.g.*, Decl. ¶¶ 34, 37-39.

The limitations on Plaintiff's worship also satisfy the Supreme Court's test in *Turner*. As previously noted, a rational connection exists between the one-time denial of Plaintiff's requests for group worship and access to an imam given concerns of safety, particularly concerns that Plaintiff will manipulate detainees and staff into helping him evade his restrictions on outside contact—a concern that is all too real given that it has happened repeatedly at FDC. Decl. ¶¶ 37-39, 44. Furthermore, Plaintiff has other alternative means of exercising his religious rights given that he has access to two full-time chaplains, a prayer rug for his religious worship, and the ability to request other religious materials. *See* Decl. ¶¶ 57, 61-62; *see also* Compl. ¶ 77 (noting that Plaintiff has access to the Quran).

Courts have rejected very similar Free Exercise challenges where detention facilities placed limits on group worship based on safety concerns that were neutral and generally applicable. Evaluating facts that did not involve plaintiffs with nearly the criminal background and safety concerns of Plaintiff, the Supreme Court in *O'Lone v. Est. of Shabazz*, 482 U.S. 342 (1987) upheld limits on Muslim prisoners attending the Jumu'ah (Islamic Friday group prayer). In fact, *O'Lone* involved a complete denial of access to the Jumu'ah for prisoners who did not appear to be heightened

security risks; there, the Court noted that Muslim prisoners could still "freely observe a number of their religious obligations" and that concerns of penological administration and safety otherwise justified placing limits on this prayer. *Id.* at 352. Accordingly, courts have since denied similar challenges under the *Turner* standard. *See Mumin v. Phelps,* 857 F.2d 1055, 1056 (5th Cir. 1988) (holding that prison regulation prohibiting Muslim inmates from attending Friday services was not unconstitutionally restrictive because it satisfied all four "reasonableness" considerations); *Cooper v. Tard,* 855 F.2d 125 (3rd Cir. 1988) (similar). And as to administrative segregation, courts have particularly upheld limitations on "communal religious services . . . due to security concerns," particularly where detainees "confined to segregation are permitted to practice their religious beliefs within the confines of their cells." *Rodgers v. Shearidin*, 2011 WL 4459092, at *8 (D. Md. Sept. 22, 2011); *see also Rideaux v. Holtgeerts*, 2007 WL 2288061, at *6 (W.D. Wash. Aug. 3, 2007) ("[T]he record reflects that the curtailment of group worship meetings in the administrative segregation unit is reasonably related to the RJC's goal of preserving internal order and security. The record further reflects that the RJC provided inmates with the alternative of requesting individual meetings with religious personnel, an alternative which plaintiff apparently never availed himself of."). The same principle applies to Plaintiff. In sum, the restrictions on Plaintiff's access to group worship and an imam are based on neutral and generally applicable concerns of administrative segregation. Furthermore, those restrictions are rationally related to a penological interest while granting Plaintiff alternative means of religious worship. Accordingly, Plaintiff's Free Exercise claim fails on the record evidence.

III. PLAINTIFF'S RFRA CLAIM FAILS ON THE RECORD EVIDENCE (COUNT VI).

RFRA prohibits the Federal Government from substantially burdening a person's exercise of religion unless the government demonstrates that the application of the burden furthers a

compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694-695 (2014).

To establish a *prima facie* claim under RFRA, a plaintiff must show that the defendant's action (1) substantially burdens (2) plaintiff's sincere religious exercise. *Lovelace v. Lee*, 472 F.3d 174, 185 (4th Cir. 2006). If he does so, the burden shifts to defendant to show that the application of the burden to plaintiff (1) furthers a "compelling governmental interest" and (2) is the "least restrictive means" of furthering that interest. 42 U.S.C. § 2000bb–1(b); *Lovelace*, 472 F.3d at 185-86. But if Plaintiff cannot show that his exercise of religion is substantially burdened by the government's policy, the government is not required to come forth with proof of its interest. *Goodall by Goodall v. Stafford Cnty. Sch. Bd.*, 60 F.3d 168, 171 (4th Cir. 1995).

Plaintiff's RFRA claim fails to establish a key showing for all RFRA claims: that the challenged government action places a substantial burden on his free exercise of religion. And even if Plaintiff established a substantial burden to his exercise of religion, the very narrow limitations placed on Plaintiff's worship are narrowly tailored to advance the government's compelling interests in protecting the safety of FDC detainees and staff as well as protecting public safety. Plaintiff's RFRA claim thus fails on the record evidence.

A. FDC's Administrative Segregation Measures Do Not Substantially Burden Plaintiff's Religious Exercise.

A "substantial burden"[8] on religious exercise under RFRA is one that "puts substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Lovelace*, 472 F.3d at

[8] RFRA does not define "substantial burden," so courts "follow the Supreme Court's guidance in the Free Exercise Clause context." *Lovelace*, 472 F.3d at 187; *see also Goodall*, 60 F.3d at 171 (explaining in RFRA, Congress reinstated the compelling interest test set out in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), to "all cases where free exercise of religion is substantially burdened.").

187 (internal quotation omitted); *see also Holt v. Hobbs*, 574 U.S. 352, 361 (2015) (a prisoner is "substantially burdened" if a policy requires he "engage in conduct that seriously violates [his] religious beliefs") (citation omitted).[9] "On the opposite end of the spectrum . . . a government action or regulation does not rise to the level of a substantial burden on religious exercise if it merely prevents the adherent from either enjoying some benefit that is not otherwise generally available or acting in a way that is not otherwise generally allowed." *Godbey v. Wilson*, 2014 WL 794274, at *8 (E.D. Va.) (quoting *Adkins,* 393 F.3d at 570).

Thus, as part of any RFRA claim, a plaintiff must establish that the government exercised the coercive power of the state against the plaintiff to deter or punish the conduct constituting the plaintiff's religious exercise. But RFRA does not inquire how seriously the government's action offends or conflicts with the plaintiff's religious exercise. *See Liberty Univ.*, 733 F.3d at 100 (examining whether plaintiff met showing that healthcare mandate required by the Affordable Care Act caused "substantial pressure on an adherent to modify his behavior and to violate his beliefs" and holding they could not because they could comply with statute by paying the tax).

As *Liberty University* and Supreme Court precedent confirm, the assessment of a "substantial burden" is not based on whether the *conflict* with one's religious exercise was severe, significant or substantial, but whether the *consequences* resulting from the ensuing violation issued by the government are. *Burwell*, 573 U.S. at 726 ("Because the contraceptive mandate forces them to

[9] The Fourth Circuit likewise elaborated on the "generally consistent definitions" for what a substantial burden is in other circuits. *Lovelace*, 472 F.3d at 187 (citing *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004) (defining it as a burden that "*truly pressures* the adherent to *significantly modify* his religious behavior and *significantly violate* his religious beliefs" (emphasis added)); *San Jose Christian Coll. v. City of Morgan Hill,* 360 F.3d 1024, 1034 (9th Cir. 2004) ("a significantly great restriction or onus upon [religious] exercise"); *Civil Liberties for Urban Believers v. City of Chicago,* 342 F.3d 752, 761 (7th Cir. 2003) ("[a burden] that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable").

pay an enormous sum of money . . . if they insist on providing insurance coverage in accordance with their religious beliefs, the mandate clearly imposes a substantial burden on those beliefs."); *Holt*, 574 U.S. at 361 ("If petitioner contravenes the policy and grows his beard, he will face serious disciplinary action."). Considering this jurisprudence, and Congress's general intent to restore the jurisprudence to before *Smith*, the coercion/burden principles that pre-date *Smith* are also still captured by RFRA's enactment. *See Apache Stronghold v. United States*, 2024 WL 2161639, at *18-20 (9th Cir. May 14, 2024) (en banc) ("Accordingly, RFRA's understanding of what counts as substantially burdening a person's exercise of religion must be understood as subsuming, rather than abrogating, the holding of *Lyng*. That holding therefore governs [plaintiff's] RFRA claim as well . . . .").

As previously highlighted, Plaintiff's religious exercise is not burdened at all, but it certainly is not *substantially* burdened either under this framework. While Plaintiff raises his inability to see an imam or engage in group worship, *see* Compl. ¶¶ 82-83, these restrictions—imposed only once and in response to Plaintiff's one-time request, *see* Decl. ¶¶ 58-59—merely prevent him from enjoying a benefit that is not generally available because of the terms of his administrative segregation. Moreover, Plaintiff has other forms and means of religious worship available to him at FDC such as his access to a Quran, a prayer rug, and two chaplains. *See* Decl. ¶¶ 57-62. Plaintiff is therefore not coerced into abandoning his religious beliefs, and he is not placed under substantial pressure to not practice his Islamic faith. As with Plaintiff's Free Exercise claim, courts have declined to find similar circumstances to be a substantial burden on a detainee's religious exercise under RFRA and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *See Garza v. Davis*, 2023 WL 6151724, at *7 (E.D. Tex. Aug. 18, 2023), *report and recommendation adopted sub nom.* 2023 WL 6147167 (E.D. Tex. Sept. 20, 2023) ("Because [plaintiff] admittedly

benefits from the services provided by unit chaplains, the Regional Muslim chaplains, and volunteer Muslim chaplains, when available, he fails to allege a substantial burden under RLUIPA."); *Greenhill v. Clarke*, 2017 WL 9517164, at *4 (W.D. Va. Mar. 20, 2017), *report and recommendation adopted*, 2017 WL 1929669 (W.D. Va. May 10, 2017), *aff'd*, 699 F. App'x 280 (4th Cir. 2017) (denying RLUIPA claim based on plaintiff's inability to participate in the Jum'ah where "defendants have produced evidence that [plaintiff] may freely practice his religion in his segregation cell in other ways, including requesting a visit from a chaplain to participate in private worship"); *see also Bermea-Cepeda v. Chartier*, 2012 WL 2366437, at *4 (D.S.C. May 8, 2012) ("Plaintiff concedes he has been told he has access to personal religious and devotional materials and has been able to individually practice his religion in his cell."). In short, Plaintiff's religious exercise is not burdened or *substantially* burdened by the minor limitations on his religious worship that he raises.

B. FDC's Measures Regarding Plaintiff's Worship Further a Compelling Government Interest that is Narrowly Tailored.

Even assuming *arguendo* that Plaintiff has made out a substantial burden, his RFRA claim still fails because any burdens on his religious exercise are justified by a compelling interest that is the least restrictive means of furthering that interest.[10] *E.g., Karolis v. N.J. Dep't of Corr.*, 935 F. Supp. 523 (D.N.J. 1996). Specifically, here the (one-time) limitation on Plaintiff's access to group worship and the imam are justified by a compelling interest in ensuring the safety of FDC, its staff, and the broader public, given Plaintiff's past history of threats and his current history of using detainees and other individuals to evade restrictions placed on him in administrative segregation.

Courts have recognized that while detainees "clearly retain" "the free exercise of religion," "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and

[10] Whether "something qualifies as a compelling interest is a question of law." *McRae v. Johnson*, 261 F. App'x 554, 557 (4th Cir. 2008); *accord Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 93 (1st Cir. 2013); *Sabir v. Williams*, 52 F.4th 51, 62 (2d Cir. 2022).

rights," that "arise both from the fact of incarceration and from valid penological objectives." *O'Lone*, 482 U.S. at 348 (citations and quotations omitted) (cleaned up). RFRA was designed to "strik[e] sensible balances between religious liberty and competing prior governmental interests." 42 U.S.C. § 2000bb(a)(5). However, RFRA does not "elevate accommodation of religious observances over an institution's need to maintain order and safety." *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005); *Lovelace*, 472 F.3d at 190 (same as to RLUIPA). Accordingly, in RFRA claims, courts give "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." *Lovelace*, 472 F.3d at 189-190 (quoting *Cutter*, 544 U.S. at 723).[11]

The government can therefore advance compelling interests in the context of RFRA and RLUIPA claims based on the needs for a prison to protect staff and inmate security, safety, and sanitation. *See McRae*, 261 F. App'x at 558 (collecting cases and stating "in the prison setting, suppression of contraband, maintaining discipline and security among the inmate population, maintaining the health and safety of inmates and staff, and preventing prisoners from quickly changing their appearance constitute compelling governmental interests"); *Brock v. Carroll*, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J. concurrence) (same); *see* also Garraway *v. Lappin*, 490 F. App'x 440, 446 (3d Cir. 2012) (accepting that the Bureau of Prisons had a compelling interest in limiting an inmate's number of books given interests of "security, fire safety, and sanitation, as it allowed proper cell searches and limited the places inmates could store contraband"). Those same compelling interests

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[11] While the Fourth Circuit in *Lovelace* held the state did not establish a compelling interest in safety and security, that holding was specific to the state's failure to place any statement or explanation about such interests in the record. 472 F.3d at 190-191. The Fourth Circuit distinguished its holding from the Supreme Court's deference in *Beard v. Banks*, 548 U.S. 521 (2006), where, as here, the penological interests were articulated in an affidavit in the record. *Id.*

are present here.

The limits on Plaintiff's access to group worship and an imam are part of the overall restrictions on Plaintiff's contact with other individuals given Plaintiff's: prior history of threats to facility staff; prior criminal history involving dangerous acts of terrorism; and attempts to use contact with the outside world to threaten facility staff and intimidate witnesses. *See* Decl. ¶¶ 24, 39. Thus, FDC's one-time denial of Plaintiff's access to join group worship and see an Imam serve a compelling interest. And this interest has remained compelling given Plaintiff's willingness at FDC to use other detainees to skirt restrictions placed on him, Plaintiff's willingness to aggravate disturbances within administrative segregation, and his own threats against FDC staff. *See* Decl. ¶¶ 35-38. Moreover, limits on Plaintiff's ability to congregate with other detainees and limits on his interactions with only certain outside individuals—while still providing Plaintiff with access to two chaplains—are the least restrictive means of furthering that interest as evidenced by Plaintiff continuing to use other detainees to evade the restrictions placed on him. *See* Decl. ¶¶ 37, 41. Unsurprisingly, courts have concluded that detention and prison facilities do not violate RFRA or RLUIPA in imposing similar measures where there is a broader concern for facility and public safety. *See, e.g.*, *Selby v. Caruso*, 2010 WL 3892209, at *4 (W.D. Mich. Aug. 20, 2010), *report and recommendation adopted*, 2010 WL 3852350 (W.D. Mich. Sept. 29, 2010) (holding that limits on plaintiff's ability to participate in group worship while in administrative segregation served a compelling interest given plaintiff's criminal history and his violation of restrictions placed on him while at the facility); *see also Rodgers*, 2011 WL 4459092, at *8 (upholding under RLUIPA the general denial of communal religious services in segregation units due to security concerns).[12] In

[12] Plaintiff may raise the Fourth Circuit's decision in *Greenhill v. Clarke*, 944 F.3d 243 (4th Cir. 2019) as dispositive of his RFRA claim. There, the Fourth Circuit held that a prison's denial of an inmate's request to view Jum'ah services through a television—when such services were otherwise

sum, the limited, one-time restrictions on Plaintiff's worship during his administrative segregation do not substantially burden his religious beliefs. Yet, even if they do, those restrictions are the least restrictive means of furthering FDC's compelling interest in facility safety and public safety at large, given Plaintiff's record both prior to coming to FDC and his extensive disciplinary record at the facility.

CONCLUSION

For the foregoing reasons, Federal Respondents-Defendants' Motion to Dismiss and Motion for Summary Judgment should be granted.

DATED: November 8, 2024

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broadcast closed-circuit throughout the prison—was not the least restrictive means of furthering a compelling interest. Specifically, the Fourth Circuit observed other ways in which Plaintiff could have been given access to see the Jum'ah broadcast and noted that the Virginia Department of Corrections had offered no explanation as to why access through these ways "would undermine its institutional needs." *Id.* at 251. By contrast, Plaintiff here does not complain of not being able to remotely observe the Jum'ah but rather complains that he requires *contact* group prayer with other detainees and an imam. Here, there is no less restrictive means of accommodating Plaintiff's wishes but also maintaining security at the facility given Plaintiff's prior and repeated use of other detainees and detention facility staff into evading restrictions placed on him in administrative segregation. Decl. ¶¶ 37, 59.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 8th day of November, 2024, I have electronically filed the foregoing using the CM/ECF system.

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