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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

**WILLIAM GARY**, *on behalf of  
himself and all others similarly  
situated,*

*Plaintiff,*

v.

**ALASKA DEPARTMENT OF  
CORRECTIONS; COMMISSIONER  
JEN WINKELMAN**, *in her official  
capacity, & SUPERINTENDENT  
ARNALDO HERNANDEZ*, *in his  
official capacity,*

*Defendants.*

No. \_\_\_\_\_

**COMPLAINT**

COMES NOW William Gary and complains as follows:

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## INTRODUCTION

1. Plaintiff William ‘Jamal’ Gary is a practicing Muslim who has been wearing a kufi on his head as an expression of his faith since he was a toddler. Throughout his life, he prayed daily on a prayer rug and maintained regular practices in accordance with the *Hadith* – an Islamic text with instructions on how to live one’s life.

2. But now, and for the last year and a half of his incarceration, Mr. Gary can no longer do these things so critical to his faith. Alaska Department of Corrections (“DOC”) and its staff at Anchorage Correctional Complex (“ACC”) have denied him simple religious accommodations, violating his statutory and constitutional rights along the way. ACC staff’s opposition to Mr. Gary’s faith practices has been so fervent that they have refused to provide him with necessary medical care because he does not agree to abandon his religious practices in the process.

3. Unfortunately, DOC and ACC staff’s denial of religious accommodations to detained Muslims is not unique to Mr. Gary. That is why Mr. Gary is bringing this class action on behalf of all current and future Muslims detained at ACC. Mr. Gary and proposed class members

have suffered violations of the Religious Land Use and Institutionalized Persons Act as well as unconstitutional infringement on their equal protection guarantees and free exercise rights, brought here pursuant to § 1983.

4. Incarcerated and detained people do not leave their religion at the jailhouse doors, nor do they leave their constitutional rights behind either. This Court should order declaratory and injunctive relief to restore Mr. Gary's and proposed class members' full exercise of their statutory and constitutional rights to practice their faith in DOC custody.

#### PARTIES

5. Plaintiff William Gary is an inmate of the Alaska Department of Corrections ("DOC"), who at all relevant times has been housed at the Anchorage Correctional Complex ("ACC"). He brings this action on behalf of himself and all others similarly situated.

6. The DOC is a state agency charged with the care of incarcerated individuals.

7. Jen Winkelman is the Commissioner of the DOC and is sued in her official capacity.

8. Arnaldo Hernandez is the Superintendent of the ACC and is sued in his official capacity.

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## JURISDICTION AND VENUE

9. This Court has jurisdiction over this action because it involves federal claims. 28 U.S.C. § 1331.

10. Venue is proper in this district because a substantial part of the events or omissions giving rise to this action occurred and continue to occur within this district. 28 U.S.C. § 1391(b)(2).

## BACKGROUND

11. Mr. Gary is in pretrial detention at the ACC.
12. Mr. Gary is a Muslim and has been at all relevant times.
13. As Mr. Gary understands his faith, his sincerely held religious beliefs include the following practices, among others:
  - a. Wearing a cap, called a *kufi*, when dressed;
  - b. Praying five times per day;
  - c. Not praying near open toilets because evil spirits called *dijinns* frequent filthy areas;
  - d. Using incense when using the toilet to help ward off *dijinns*;
  - e. Praying on a prayer rug so that the body does not touch the bare ground during prostrations (called *rakat*);
14. Since February 2022, following his arrest on criminal charges, Mr. Gary has been a pre-trial detainee at the ACC.

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15. While at the ACC, Mr. Gary's religious exercise has been substantially burdened in multiple ways, including the following:

a. *Refusal to permit him to wear his kufi:*

- i. Originally Mr. Gary and other Muslim detainees were permitted to wear a kufi in all parts of the ACC. But the ACC has, for more than a year, required them to have their heads uncovered when outside the housing unit, supposedly for security reasons.
- ii. On information and belief, other DOC facilities permit inmates to wear religious headwear throughout the facilities, making the ACC an outlier within the DOC.
- iii. Mr. Gary previously broke his hand while exercising and had to be transported to the hospital. Thereafter, he has follow-up medical appointments scheduled. ACC officers have, however, refused to permit him to attend his medical appointments unless he keeps his kufi off. Mr. Gary has refused to do so, and the pain in his hand has continued.
- iv. ACC staff have also advised him that he cannot walk to the attorney visitation area if he keeps his kufi on. Mr. Gary is afraid to put his kufi back on during the

attorney visits for fear that staff will come into the room and stop the visit.

- v. When ACC staff demand that Mr. Gary remove his kufi, he offers to let staff search his kufi for contraband or other security threats instead, but staff demand that he fully remove his kufi.
- vi. When ACC staff demand that Mr. Gary remove his kufi, they do not search his kufi for contraband but have him hold it in his hand or put it in his pocket.
- vii. Mr. Gary has been punished for not complying with ACC staff orders to remove his kufi quickly enough, including taking away his commissary privileges for 60 days.

b. *Refusal to accommodate his prayer needs*

- i. Although ACC allows prayer rugs up to size 2' x 4', Mr. Gary has been unable to find a rug that size from an approved vendor.
- ii. The smaller rugs that are available from vendors are too small for Mr. Gary to comfortably fit on when he is in prayer position.

- iii. Previously, Mr. Gary has ordered prayer rugs from approved vendors sized approximately 46” by 26.5”, but ACC staff has refused to permit him to have the slightly out-of-dimension prayer rug.
- iv. Right now, Mr. Gary has had no choice but to pray on a towel, the same towel he uses to bathe and cover the toilet, *see infra*. Mr. Gary believes a prayer rug is sacred and having a designated, official prayer rug is important for prayer.
- c. To avoid having to pray beside an open toilet, Mr. Gary has repeatedly requested an extra towel, so that he can cover the toilet with it during prayer. But ACC staff has refused to provide him with an extra towel, meaning that he must use the same towel to cover the toilet that he uses to bathe, which Mr. Gary understands to be *haram*.

16. ACC staff have repeatedly made anti-Muslim comments to Mr. Gary, including telling him, “You just got to calm down with all this Muslim stuff,” and, “Well, you know this is pretty much a Christian facility.”

### EXHAUSTION OF REMEDIES

17. Pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997(e), Mr. Gary has attempted to resolve these issues with ACC staff through the DOC grievance procedures.

18. Mr. Gary has grieved all of the substantive issues raised in this complaint and appealed those grievances to the highest level allowed under DOC's Policies and Procedures. The exception is when ACC staff have told him he is banned from filing any more grievances about these issues. Therefore, Mr. Gary has fully exhausted his administrative remedies.

#### CLASS ALLEGATIONS

19. The preceding paragraphs are incorporated by reference, as if stated here in full.

20. Mr. Gary seeks a proposed class defined as all present and future Muslim detainees at the ACC.

21. The ACC contains a transitory population of detainees who transfer in and out of the facility as their criminal cases progress and are eventually resolved. Joinder of all members is thus impracticable.

22. Common questions of law and fact exist, including the ACC's and the DOC's denial of religious accommodations and the propriety of those denials.



23. Mr. Gary's claims are typical of those of the proposed class.

24. Mr. Gary will fairly and adequately protect the interests of the class.

25. The ACC and the DOC have acted or refused to act on grounds that apply generally to the class, so that final injunctive and declaratory relief will be appropriate respecting the proposed class as a whole.

**COUNT ONE – DENIAL OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (“RLUIPA”), 42 U.S.C. §§ 2000CC-1 ET SEQ.**

26. The preceding paragraphs are incorporated by reference, as if stated here in full.

27. The RLUIPA applies to the DOC and its facilities, including the ACC.

28. The DOC, through its agents, has imposed a substantial burden on Mr. Gary's and the Class's religious exercise.

29. This Court should, therefore, enter a declaratory judgment that Mr. Gary's and the Class's religious exercise has been illegally burdened and issue an order prohibiting further illegal violations of religious exercise.

**COUNT TWO – 42 U.S.C. § 1983**

30. The preceding paragraphs are incorporated by reference, as if stated here in full.

31. While acting under color of law, Defendants Winkelman and Hernandez have violated and/or permitted the violation of Mr. Gary's and the Class's rights:

- a. Under the Free Exercise Clause, to practice religion; and
- b. Under the Equal Protection Clause, to receive equal treatment as other detainees regardless of religion and/or to receive the accommodations that other DOC facilities provide.

32. This Court should, therefore, issue a declaratory judgment that his constitutional rights have been violated and issue an order prohibiting future violations, as permitted under *Ex parte Young*, 209 U.S. 123 (1908).

**PRAYER FOR RELIEF**

Mr. Gary prays that this Court will award him and, after certification, the Class, the following relief:

- A. Declare that Defendants' conduct violates Mr. Gary's and the Class's statutory and constitutional rights;
- B. Temporary and permanent injunctive relief;

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- C. Costs;
- D. Attorney's fees; and
- E. Such further relief as justice may require.

Dated this 15th day of November, 2023.

Respectfully submitted,

WILLIAM GARY

s/Ruth Botstein

Alaska Bar No. 9906016

Melody Vidmar

Alaska Bar No. 2305044

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## VERIFICATION

I, William Gary, have read the foregoing Complaint consisting of 11 pages. As to the factual statements contained therein, I affirm under penalties of perjury that they are true and correct, except those stated to be upon information and belief.

Dated this 14 day of NOV., 2023



William Gary

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