

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge R. Brooke Jackson

Civil Action No. 1:15-cv-00992-RBJ-KLM

AHMAD AJAJ,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,
WARDEN BILL TRUE, in his official capacity,
WARDEN JOHN OLIVER, in his individual capacity,
WARDEN DAVID BERKEBILE, in his individual capacity,
ASSOCIATE WARDEN TARA HALL, in her individual capacity,
ASSOCIATE WARDEN CHRIS LAMB, in his official and individual capacity,
PHYSICIAN ASSISTANT RONALD CAMACHO, in his individual capacity,
MEDICAL STAFF SAMANTHA MCCOIC, in her individual capacity,
MEDICAL STAFF K. MORROW, in her official and individual capacity,
CHAPLAIN MICHAEL CASTLE, in his official and individual capacity,
CHAPLAIN JASON HENDERSON, in his official and individual capacity,
RELIGIOUS COUNSELOR GEORGE KNOX, in his official and individual capacity,
INMATE TRUST FUND SUPERVISOR KENNETH CRANK, in his official and individual
capacity,
NURSE ROGER HUDDLESTON, in his official and individual capacity, and
OFFICER D. PARRY, in his official and individual capacity,

Defendants.

ORDER ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This is an inmate case against the Bureau of Prisons and various individuals employed by the BOP. In the pending motion certain individual defendants seek summary judgment dismissing plaintiff's RFRA damages claims based on the doctrine of qualified immunity. The motion is denied.

BACKGROUND

Plaintiff Ahmad Ajaj seeks money damages under the Religious Freedom Restoration Act (RFRA) against prison officials whom he believes unlawfully interfered with his exercise of his Muslim faith while he was incarcerated in federal penitentiaries in Marion, Illinois and Florence, Colorado. The individual defendants previously moved to dismiss under the doctrine of qualified immunity. In an order issued on June 9, 2023, I largely agreed with the defendants. ECF No. 442. However, I denied qualified immunity as to three specific claims against specific individual defendants, namely:

1. Plaintiff's claim that defendant Knox unlawfully denied him the ability to pray during Imam visits.
2. Plaintiff's claim that defendant Berkebile unlawfully required him to speak through two cell doors during Imam visits.
3. Plaintiff's claim that defendants Berkebile, Oliver, Knox, Hall, and Parry unlawfully prohibited him from engaging in congregate prayer while outside of his cell on the open range.

ECF No. 442 at 39. These damages claims and plaintiff's claims for injunctive relief against the Bureau of Prisons are set for trial beginning May 6, 2024.

For purposes of defendants' motion to dismiss I assumed the truth of plaintiff's factual allegations. The remaining individual defendants now argue that plaintiff "cannot meet his heavy burden to overcome qualified immunity" as to two of the three claims that were not dismissed. ECF No. 487 at 1.

STANDARD OF REVIEW

Summary judgment is appropriate if the moving party demonstrates that there is “no genuine dispute as to any material fact,” and that he is “entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). In applying this standard, the Court views the evidence and all reasonable inferences therefrom in the light most favorable to plaintiff as the nonmoving party. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

FINDINGS AND CONCLUSIONS

A. Congregate Prayer.

1. Shouting on the Open Range is Not an Issue.

Defendants interpret my order on the motion to dismiss as denying qualified immunity as to Muslim inmates’ right to engage in congregative prayer on the range “by shouting to each other.” ECF No. 487 at 2. That was not my intent. On reviewing the order, I see that one sentence described one of plaintiff’s claims as “the right of Muslim inmates on the range to engage in ‘congregative prayer’ by shouting to one another, when inmates of other faiths could do so.” ECF No. 442 at 35. That was an inadvertent misstatement. There is nothing in the Amended Complaint about inmates’ shouting prayers to each other on the range. The mistaken sentence apparently led to defendants’ focus on shouting on the range, but that is not an issue.

Plaintiff alleged that he complained about defendants’ refusal to permit him to pray with other Muslim inmates by yelling from their cells. Turning to the law with respect to qualified immunity, I found that it was clearly established that inmates of a particular religious group, such

as Muslim inmates, have a constitutional right to be given reasonable opportunities to pursue their faith that are comparable to the opportunities provided to prisoners of other faiths. ECF No. 442 at 27–30. *See Cruz v. Beto*, 405 U.S. 319, 322 (1972); *Shrum v. City of Coweta*, 449 F.3d 1132, 1145 (10th Cir. 2006). *See also Wilson v. Gunter*, 21 F.3d 1123, 1994 WL 117480 at *1 (10th Cir. 1994) (unpublished). But plaintiff did not allege that inmates from other religious groups were permitted to pray together by yelling or shouting from their cells. Thus, I concluded that defendants were entitled to qualified immunity as to the yelling claim. ECF No. 442 at 37–38.

The issue that is relevant to the pending motion, which I believe was clearly identified in my order on defendants’ motion to dismiss, was whether plaintiff was afforded a reasonable opportunity to engage in congregate prayer while he was outside of his cell that was comparable to that provided to inmates of other faiths. I turn to that next.

2. Prayer while on the “Range.”

For present purposes the briefs raise three issues. First, what is the “open range”? Second, does it matter how non-Muslim inmates were treated on the range? Finally, has plaintiff come forward with sufficient evidence to create a genuine issue of material fact?

Regarding the first question, defendants claim that “the only housing unit Plaintiff occupied during the relevant time where multiple inmates were permitted to be on the open range at the same time was K-B unit.” ECF No. 487 at 4. Mr. Ajaj was in that unit from August 3, 2015 until the date when the Amended Complaint was filed. *Id.* at 6. Therefore, defendants argue, his claims about what was allowed on the range are limited to that period and to the individual defendants who were working in the prison during that period.

Plaintiff responds that what he meant by the “range” also includes indoor and outdoor recreation areas. Inmates could interact with each other in those areas. ECF No. 300.¹ Under his definition, he was permitted to be in the “range” while he was assigned to units other than the K-B unit.

In their reply brief defendants assert that “the evidence in discovery confirmed that the ‘range’ does not include outdoor recreation areas;” that “[p]laintiff admits the meaning of the term ‘range’ as used by the BOP does not include outdoor recreation;” and that “[p]laintiff’s own corrections expert confirmed that he has ‘no doubt’ that the outdoor recreation enclosures in general population at ADX are *not* on the ‘range.’” ECF No. 500 at 5 (emphasis in original). Plaintiff has not had an opportunity to respond to the statements made in the reply brief.

I cannot resolve that dispute on the present record, but in any event, it appears to be a question of semantics. The issue for qualified immunity purposes is whether Mr. Ajaj and other Muslim inmates were denied an opportunity to engage in congregational prayer that was comparable to the opportunity provided to inmates of other faiths while inmates were not in their cells.

That leads to the second question. Plaintiff argues that “whether Defendants permitted prisoners of other faiths to pray together (shouting or otherwise) is irrelevant under RFRA.” ECF No. 494 at 2. That argument (and much of the evidence cited in the response brief) misses the point. Comparison to the rights afforded to inmates of other faiths might be irrelevant to

¹ In the order on the motion to dismiss I speculated that there might have been a typo in 300 of the Amended Complaint, and it perhaps should have said that “prisoners are *not* allowed to interact with one another during recreation time.” ECF No. 42 at 34. Having read the briefs on the pending motion, I am convinced that there was no typo; the allegation as set forth was precisely what plaintiff intended.

whether plaintiff has a meritorious claim under RFRA, but it is not irrelevant to defendants' claim of qualified immunity.

Finally, I find that plaintiff has come forward with enough evidence to warrant denial of the pending motion with respect to congregate prayer. Mr. Ajaj testified in his deposition that he saw several Christian inmates sitting together in the K-B unit and opening their Bible, and he assumed they were reading from the Bible and praying together. ECF No. 487-2 at 13, 14. I draw inferences in plaintiff's favor at this stage. He also testified that he saw inmates bringing Bibles into the cages in the recreation area, but Muslim inmates were not permitted to carry a Quran or prayer rug to the cages. *Id.* at 13, 14–15. I do not make credibility judgments on motions for summary judgment. Therefore, I conclude that there is a genuine issue about whether Muslim inmates were provided the right to engage in congregate prayer while outside their cells that was comparable the opportunities provided to inmates of other faiths.

3. Personal Participation.

It is undisputed that defendants Berkebile and Hall retired before Mr. Ajaj arrived at the K-B unit. ECF No. 487 at 7. They obviously did not personally participate in, and are not liable for, conduct that occurred after their retirement.

B. Speaking with Imams Through Two Doors.

Plaintiff alleged that when Imams visited his cell, he was only permitted to speak with them through two cell doors, one of which was a solid steel door, but this was not required of inmate of other faiths. *See* ECF No. 29 at 36–38. He alleged that this was mandated by defendants Berkebile and Hall. *Id.* at 57. He alleged that he asked Warden Berkebile to have visitations with Imams that were more private than speaking through the two cell doors, but that

although Warden Berkebile said he would consider alternatives, it did not happen; and he did not explain why private visits were granted to other inmates but not to him. *Id.* at 38. Accepting his allegations of fact for purposes of the motion to dismiss, the Court denied Warden Berkebile's qualified immunity claim on that issue. ECF No. 442 at 39.

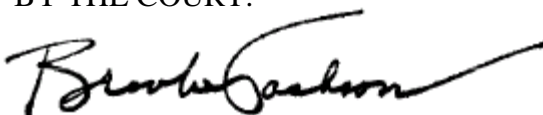
Defendants now argue that the plaintiff has no evidence to support his allegation. I disagree. Mr. Ajaj testified in his deposition that he complained multiple times to Warden Berkebile and others about meeting with an Imam only through two doors. ECF No. 487-2 at 8. Mr. Berkebile testified that he probably would have permitted religious faith leaders or representatives to speak to inmates through the bars if they were comfortable doing that. ECF No. 494-5 at 4–5. However, Mr. Ajaj testified that from 2012 through 2015 he was only permitted to speak to an Imam through the bars two or three times. ECF No. 487-2 at 9–10. According to two other inmates, religious leaders of other faiths visited inmates in the sallyports of their cells. *See* ECF No. 494-16 at 3–4 (Zulu); ECF No. 494-12 at 5–6 (Birman). Again, the Court does not make credibility judgments at this stage. The evidence, although minimal, is sufficient to avoid summary dismissal on qualified immunity grounds.

ORDER

For the reasons discussed herein, defendants' motion for partial summary judgment, ECF No. 487, is DENIED.

DATED this 5th day of April, 2024.

BY THE COURT:



R. Brooke Jackson
Senior United States District Judge