



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

VIA CERTIFIED MAIL AND E-MAIL

March 24, 2020

Mr. Tommy Taylor  
Interim Commissioner  
Mississippi Department of Corrections  
301 North Lamar Street  
Jackson, MS 39201

Re: Compliance Review – Miss. Dep’t of Corr. (Docket No. 18-OCR-0358)  
Compliance Review Report

Dear Mr. Taylor:

I am writing to report the findings of the Compliance Review that the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) conducted of the Mississippi Department of Corrections (MDOC).

In January 2018, the OCR notified the MDOC that the OCR had received multiple complaints alleging religious discrimination involving Muslim inmates at the MDOC’s South Mississippi Correctional Institution (SMCI). Section 809(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), as amended, prohibits DOJ-funded organizations subject to the statute’s administrative provisions from discriminating on the basis of religion and other protected classes.<sup>1</sup> In accordance with 28 C.F.R. § 42.206, the OCR consolidated the individual complaints into a Compliance Review of the MDOC and the SMCI to evaluate the treatment of Muslim inmates. As part of this Review, the OCR sent the MDOC a Data Request,

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<sup>1</sup> Section 809(c) of Title I of the Safe Streets Act, as amended, codified at 34 U.S.C. § 10228(c) (2017), states as follows:

No person in any State shall on the ground of race, color, *religion*, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.

*Id.* § 10228(c)(1) (italics added); *see also* Victims of Crime Act of 1984 (VOCA), as amended, 34 U.S.C. § 20110(e) (2012) (prohibiting religious discrimination, along with other protections, in funded programs or activities); Partnerships with Faith-Based and Other Neighborhood Organizations (Part 38), 28 C.F.R. § 38.5(c) (2017) (prohibiting religious discrimination in the delivery of services or benefits in all DOJ-funded programs).

which included questions about the delivery of services to Muslim inmates, and the MDOC replied with a written Response.

On April 24-25, 2018, the OCR conducted an onsite visit to the SMCI in Leakesville, Mississippi, to tour the facility and interview officials, Chaplains, staff members, and inmates about the inmate complaints that the OCR had received. The OCR also consulted with MDOC officials to clarify the MDOC's Response to the Data Request.

The OCR sent the MDOC a draft version of the Compliance Review Report, to which the MDOC responded with proposed methods of implementing the Report's recommendations. The OCR appreciates the MDOC's commitment to implement the recommendations.

After carefully reviewing the record, the OCR has concluded that, although the MDOC has taken steps to address the concerns raised in the inmate complaints that the OCR has received, there are still some matters that the MDOC must address to come into full compliance with its obligations under the applicable federal laws. The Compliance Review Report, which appears below, identifies recommendations that the MDOC should implement to address violations of applicable law (in below sections II. B. 5. on pp.15-16, and II. H. 3. on pp.26-27), as well as recommendations that the MDOC should consider implementing to improve religious programming for Muslim inmates and ensure nondiscrimination.

## **Compliance Review Report**

### **I. Background**

#### **A. The MDOC**

The MDOC is a prison system consisting of three state facilities, three private facilities, fifteen regional facilities, sixteen community work centers, and four restitution centers.<sup>2</sup>

The SMCI, one of the MDOC's state facilities, is in Leakesville, Mississippi.<sup>3</sup> The SMCI has approximately 2,600 inmates.<sup>4</sup> The SMCI has two sections, Area I and Area II, and each section has multiple buildings. MDOC staff informed the OCR that SMCI formerly had an additional section, Area III, but it was unoccupied at the time of the onsite visit. Based on the OCR's observations, Area I appeared to have more resources such as a chapel available to inmates than Area II, and based on information that the OCR obtained from inmates, many inmates considered

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<sup>2</sup> Facility Locations, MISS. DEP'T OF CORR., <http://www.mdoc.ms.gov/Pages/Facility-Locations.aspx> (last visited January 2, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> According to the MDOC, on February 23, 2018, the SMCI had 2656 inmates. Resp., Attach. 6, at 9.

Area II a less desirable location than Area I because the population housed in Area II incurs more frequent lockdowns.

At the time of the onsite visit, the staffing plan for Chaplains at the SMCI included the following positions: a supervisory Chaplain overseeing all of the SMCI, a Chaplain primarily serving Area I, a Chaplain primarily serving Area II, a part-time contract Chaplain serving as an Islamic Chaplain in accordance with the terms of a consent decree,<sup>5</sup> a part-time contract Chaplain serving as a critical care Chaplain, and two volunteer Chaplains.<sup>6</sup> The MDOC Chaplains are responsible for attending to the spiritual and moral educational needs of inmates and employees, and for acting as liaison between the Chaplain's department and community resources related to mental health and social concerns.<sup>7</sup>

All the SMCI Chaplains at the time of the OCR's visit, except for the Muslim Chaplain were Christians from Protestant denominations, although according to the MDOC, their position descriptions do not require them to be of any particular religious tradition.<sup>8</sup> Because Chaplains are to serve the religious needs of all inmates, the SMCI does not recruit Chaplains to represent any particular religious tradition, except for the Muslim Chaplain, who must be Muslim in accordance with the applicable consent decree.<sup>9</sup> Anyone offering religious services aside from the full-time and contract Chaplains is a volunteer, including the Catholic priest who MDOC staff stated periodically conducts services at the SMCI.<sup>10</sup>

## **B. DOJ Financial Assistance to the MDOC**

The MDOC has received multiple DOJ awards and sub-awards, including three that are still in active status.<sup>11</sup> One of the active awards is a direct BJA grant under the Second Chance Act

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<sup>5</sup> Consent decree explained in detail below, in section II.(A.)(1.).

<sup>6</sup> Interview by Mona Mafi, Attorney Advisor, OCR, with SMCI Chaplains, in Leakesville, Miss. (Apr. 23-24, 2018) (notes on file with the OCR); *see also* Resp., Attach. 2, at 122; Resp., Attach. 5, at 303.

<sup>7</sup> Chaplain position descriptions at Resp., Attach. 4, at 3-20.

<sup>8</sup> Resp., Attach. 4, at 2-20; *see supra* note 18.

<sup>9</sup> Resp., Attach. 4, at 2-20; *see supra* note 18; *see also* Interview of Mona Mafi, Attorney Advisor, OCR with MDOC and SMCI officials, in Leakesville, Miss. (Apr. 24, 2018).

<sup>10</sup> Interview of Mona Mafi, Attorney Advisor, OCR with MDOC and SMCI officials, in Leakesville, Miss. (Apr. 24, 2018).

<sup>11</sup> The MDOC has received financial assistance from the DOJ's Bureau of Justice Assistance (BJA) and the DOJ's Office for Victims of Crime (OVC). BJA funding has included the following: a direct award under the program for Improving Reentry for Adults with Co-Occurring Substance Abuse and Mental Illness (Second Chance Act CSAMI) (Award No. 2018-RW-BX-0014) in the amount of \$715,230.00 for the period of September 29, 2018, to September 30, 2021; a subaward through the Mississippi Department of Mental Health (Award No. 2016-RW-BX-0005) in the amount of \$72,309.00 for the period of March 17, 2017, to September 30, 2019; a subaward through Community Resources for Justice, Inc. (Award No. 2014-ZB-BX-K001) in the amount of \$46,923.70 for the period of July 28, 2014, to July 31, 2018; and a subaward through the Mississippi Department of Public Safety, Division of Public Safety Planning (Award No. 2014-MU-BX-0984) in the amount of \$50,762.00 for the period of September 26, 2014, to September 30, 2017. OVC funding has included the following: a subaward through the Mississippi

CSAMI.<sup>12</sup> The purpose of this grant program is to improve access to and delivery of services to offenders with co-occurring substance abuse and mental illness when they reenter the community; the program reduces recidivism and promotes public safety by providing support to adult offenders who need treatment to reintegrate successfully into society.<sup>13</sup>

### **C. The OCR's Jurisdiction**

Because the MDOC is a recipient of DOJ financial assistance subject to the OCR's enforcement authority, the OCR has jurisdiction to initiate a Compliance Review of the MDOC to ensure that it is adhering to the requirements in applicable federal laws.<sup>14</sup>

### **D. The Applicable Laws and Grant Assurances**

In accepting financial assistance from the DOJ, the MDOC has provided to OJP certified assurances that it will comply with all applicable federal civil rights laws. For example, in exchange for receiving its Second Chance Act CSAMI Award, in addition to agreeing to comply with other federal civil rights requirements, the MDOC agreed to comply with the nondiscrimination provisions of the Save Streets Act,<sup>15</sup> the nondiscrimination provisions of VOCA,<sup>16</sup> and Part 38.<sup>17</sup> These laws prohibit the MDOC as a recipient of DOJ financial assistance from discriminating on the basis of religion in the delivery of services or benefits.

In addition, Part 38 prohibits recipients of DOJ financial assistance from using federal funds for explicitly religious activities such as worship, religious instruction, or proselytization.<sup>18</sup> If a recipient of DOJ financial assistance engages in explicitly religious activities, the activities must be separate in time or location from the federally assisted program, and the participation of program beneficiaries in the explicitly religious activities must be voluntary.<sup>19</sup>

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Department of Health (MDH) (Award No. 2016-VA-GX-0024) in the amount of \$176,243.00 the period of July 1, 2017, to September 30, 2019; a subaward through the MDH (Award No. 2015-VA-GX-4038) in the amount of \$200,000.00 for the period of August 2, 2016, to September 30, 2018; and a subaward through the MDH (Award No. 2014-VA-GX-0054) in the amount of \$75,000.00 for the period of September 5, 2014, to September 30, 2017. In accepting the foregoing awards, the MDOC provided certified assurances that it would comply with all applicable federal civil rights laws.

<sup>12</sup> See OJP Memorandum, FY 2018 Funding Recommendations for Improving Reentry for Adults with Co-Occurring Substance Abuse and Mental Illness (September 5, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> 28 CFR § 42.206(c)(3).

<sup>15</sup> 34 U.S.C.A. §§ 10221, 10228(c) (West 2017); 28 C.F.R. pt. 42, subpt. D (2017).

<sup>16</sup> 34 U.S.C. § 20110(e) (2012).

<sup>17</sup> 28 C.F.R. pt. 38 (2017).

<sup>18</sup> *Id.* § 38.5(a).

<sup>19</sup> *Id.*

The grant condition for the MDOC's Second Chance Act CSAMI Award, which is a matter of contract, restates the prohibitions in Part 38:

Grantee agrees that assistance funds awarded under this grant will not be used to support any inherently religious activities, such as worship, religious instruction, or proselytization. If the grantee refers participants to, or provides, a non-Federally funded program or service that incorporates such religious activities, (1) any such activities must be voluntary for program participants, and (2) program participants may not be excluded from participation in a program or otherwise penalized or disadvantaged for any failure to accept a referral or services. If participation in a non-Federally funded program or service that incorporates inherently religious activities is deemed a critical treatment or support service for program participants, the grantee agrees to identify and refer participants who object to the inherently religious activities of such program or service to, or provide, a comparable secular alternative program or service.<sup>20</sup>

As a recipient of DOJ financial assistance, the MDOC must comply with the applicable federal statutes, regulations, and grant conditions, which include the prohibition against religious discrimination in the delivery of services or benefits and the prohibition against using DOJ funds for explicitly religious activities.

### **E. The Applicable Legal Standards**

Congress patterned the nondiscrimination provisions of the Safe Streets Act on Title VI of the Civil Rights Act of 1964 (Title VI),<sup>21</sup> expanding the protected classes to include religion.<sup>22</sup> An indication of the close affinity between the Safe Streets Act and Title VI is that the DOJ's regulation implementing the Safe Streets Act also implements Title VI.<sup>23</sup> The enforcement procedures for the nondiscrimination procedures of VOCA follow the Safe Streets Act,<sup>24</sup> and the enforcement procedures for Part 38 are at the discretion of the OCR, which is responsible not only for enforcing Part 38 but also the nondiscrimination provisions of both the State Streets Act and VOCA.<sup>25</sup>

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<sup>20</sup> See *supra* note 7 (Second Chance Act CSAMI Award, Special Condition No. 31).

<sup>21</sup> 42 U.S.C. § 2000d.

<sup>22</sup> 28 C.F.R. pt. 42, subpt. D, app. A (Sections 42.203(b) and 42.203 (e-i) (2018).

<sup>23</sup> *Id.* § 42.201(a).

<sup>24</sup> See 28 C.F.R. § 94.114.

<sup>25</sup> 28 C.F.R. §§ 38.8 & 94.114.

In assessing religious discrimination claims under the Safe Streets Act, VOCA, or Part 38, the OCR follows constitutional standards.<sup>26</sup> In accordance with Title VI, the protections against discrimination based on religion in the Safe Streets Act and VOCA, are coextensive with the Equal Protection Clause.<sup>27</sup> The OCR also analyzes religious discrimination claims in accordance with the Religion Clauses of the First Amendment.<sup>28</sup>

## **II. Complaint Allegations and Findings**

### **A. Failure to Provide Adequate Chaplaincy Services to Muslim SMCI Inmates**

#### **1. Failure to Employ a Muslim Chaplain**

The OCR received complaints from multiple inmates at the SMCI alleging that the SMCI did not have a regular Muslim Chaplain since 2016. According to the terms of a consent decree, the MDOC must retain a Chaplain to serve the particular needs of Muslim SMCI inmates. The U.S. District Court for the Northern District of Mississippi issued a consent decree in 2008 to address the concerns of a class of Muslim inmates in MDOC facilities, who alleged, among other matters, that they were not receiving appropriate pastoral care.<sup>29</sup> The consent decree stated that the SMCI must employ a Muslim Chaplain for at least ten hours per week.<sup>30</sup>

In the MDOC's Response to the OCR's Data Request, the MDOC explained that the Muslim Chaplain from 2011 until 2015 resigned because of a death in the family and health issues.<sup>31</sup> The OCR confirmed this information with the complainants. The MDOC stated that there was also an imam whom the MDOC hired as a Muslim Chaplain in 2015, but the MDOC terminated his employment in 2016 based on his being out of communication with his supervisor.<sup>32</sup> In 2017, the MDOC hired the Muslim Chaplain whom the OCR met during the site visit; he has been unable, however, to keep a regular schedule for personal reasons.<sup>33</sup> Through an onsite interview

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<sup>26</sup> See U.S. CONST. amends. I, V, & XIV; *see also, e.g.*, Ill. Dep't of Corr., No. 14-OCR-261, Office for Civ. Rts. Ltr. of Finding (U.S. Dep't of Justice July 30, 2014), <https://ojp.gov/about/ocr/pdfs/IL-14-OCR-261-ClosureLetter.pdf>.

<sup>27</sup> U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 600 (1986) ("Title VI is the congressional model for subsequently enacted statutes prohibiting discrimination in federally assisted programs or activities. We have relied on case law interpreting Title VI as generally applicable to later statutes."); Regents of University of California v. Bakke, 438 U.S. 265, 287 (1978) (recognizing that the protections under Title VI are coextensive with the Equal Protection Clause).

<sup>28</sup> 28 C.F.R. §§ 38.2(c) & 42.203(b)(8); Off. for Civ. Rts., Off. of Just. Programs, U.S. Dep't of Just., Frequently Asked Questions: Partnerships with Faith-Based and Other Neighborhood Partnerships 28 C.F.R. pt. 38, par. 8, [https://ojp.gov/about/ocr/pdfs/faqs\\_part38.pdf](https://ojp.gov/about/ocr/pdfs/faqs_part38.pdf).

<sup>29</sup> Resp., Attach 3, at 287-93 (Givhan v. Puckett, No. 4:82CV64-JAD (N.D. Miss. July 28, 2008) (consent decree)).

<sup>30</sup> *Id.* at 289. The term used to refer to the Muslim Chaplain in the consent decree is "Imam."

<sup>31</sup> Resp., Attach. 1, at 9.

<sup>32</sup> *Id.* at 9-10.

<sup>33</sup> *Id.* at 10.

with the Muslim Chaplain, the OCR was able to confirm the Muslim Chaplain's employment status.<sup>34</sup>

During the onsite visit, the MDOC's Director of Religious Programs and the SMCI's Human Resources staff explained the challenges they faced in finding an applicant for the Muslim Chaplain position during the time that it was last vacant.<sup>35</sup> They stated that the principal obstacle that they encountered in recruiting a Muslim Chaplain was the remote location of the SMCI.<sup>36</sup> As part of the recruitment effort, the MDOC Director of Religious Programs stated that he contacted the two mosques closest to the SMCI; one is about a sixty-minute drive from the facility, and the other is about a ninety-minute drive from the facility.<sup>37</sup> The MDOC's outreach effort to the nearest mosques bore fruit. The Muslim Chaplain at the time of the OCR's onsite visit stated that he learned about the Muslim Chaplain vacancy through one of the mosques that the MDOC contacted.<sup>38</sup>

After the onsite visit, the OCR learned that the Muslim Chaplain at the SMCI did not renew his contract; consequently as of September 2018 the Muslim Chaplain position at the SMCI was vacant. In addition, the OCR learned that since the onsite visit, as of October 2018 there was a vacancy for one of the full-time Chaplain positions at the SMCI (and it was filled in January 2019). The OCR recommended that the MDOC advertise the positions to several relevant entities to increase the chances of Muslim Chaplains applying, and the MDOC stated that it did so for the part-time Muslim Chaplain and full-time Chaplain positions. A second full-time Chaplain position was vacant as of February 2019. When the OCR asked if the MDOC had advertised the second full-time Chaplain position to the same entities, the MDOC stated that it had not.

The SMCI's part-time Muslim Chaplain position was filled in July 2019, and the SMCI's full-time Chaplain position was filled in June 2019.<sup>39</sup> As of January 2020, the SMCI Chaplain staff was back to the same capacity as during the OCR's onsite visit, i.e. three full-time Chaplains, two contract Chaplains including the Muslim Chaplain, and two volunteer Chaplains.<sup>40</sup>

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<sup>34</sup> Interview by Mona Mafi, Attorney Advisor, OCR, with SMCI Chaplains, in Leakesville, Miss. (Apr. 24, 2018).

<sup>35</sup> Interview by Mona Mafi, Attorney Advisor, OCR with SMCI staff, in Leakesville, Miss. (Apr. 24, 2018).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *See supra* note 18.

<sup>39</sup> Letter from Leonard Vincent, General Counsel, MDOC, to Mona Mafi (September 6, 2019) (on file with the OCR).

<sup>40</sup> E-mail from Andrea Barnes, Attorney, MDOC, to Mona Mafi, Attorney Advisor, OCR (January 21, 2020) (on file with the OCR).

## 2. Failure to Provide Sufficient Time for Islamic Chaplaincy Services

As previously noted, in accordance with the consent decree, the MDOC must employ an imam for at least ten hours per week to serve the religious needs of Muslim SMCI inmates.<sup>41</sup> The ten hours includes the imam's travel time to and from the facility.<sup>42</sup> At the time of the site visit, the imam's commute took two hours; consequently, he regularly had only eight hours per week to serve Muslim inmates at SMCI.<sup>43</sup> The Muslim SMCI inmates and the Muslim Chaplain reported that eight hours per week was not sufficient time for the imam to serve the needs of the approximately 150 Muslim inmates at SMCI.<sup>44</sup> The Muslim inmates stated that their need for Islamic educational resources was particularly acute because all, or nearly all, converted to Islam after incarceration.<sup>45</sup>

The MDOC staff stated during the onsite visit that budget concerns prevented the SMCI from hiring more Chaplains and from increasing the hours of the Muslim Chaplain and other contract Chaplains.<sup>46</sup>

## 3. Discussion

The OCR did not find sufficient evidence that the MDOC failed in its requirement to hire a Muslim Chaplain in 2016. The inmates may have been concerned about the time it took for the MDOC to recruit, hire, and then keep a suitable Muslim Chaplain, but the record indicates that the MDOC did take its responsibility seriously in attempting to fill the position.

The MDOC's contention that it faced a significant challenge in recruiting a part-time Muslim Chaplain for a correctional facility in rural Mississippi was credible and persuasive. In the end, the MDOC's outreach effort to the closest mosques proved effective. Even though the Muslim Chaplain position is currently vacant, the vacancy in itself does not indicate that the MDOC failed to adhere to the terms of the consent decree or ignored its legal obligation to serve the religious needs of Muslim inmates at SMCI. Success in recruiting and maintaining a Muslim Chaplain relies on overcoming multiple systemic problems in addition to SMCI's remote location. Budgetary constraints, coupled with the challenge of attracting a qualified Chaplain to take what is in reality an eight-hour-per-week job, are formidable obstacles. These circumstances, which undermine the effort to recruit and keep a Muslim Chaplain, are regrettable, but they do not support a cognizable claim under any of the laws that the OCR enforces.

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<sup>41</sup> *Id.* at 289.

<sup>42</sup> *Id.* at 288.

<sup>43</sup> *See supra* note 18.

<sup>44</sup> *Id.*; Interview by Mona Mafi, Attorney Advisor, OCR with SMCI inmates, in Leakesville, Miss. (April 25, 2018).

<sup>45</sup> Interview by Mona Mafi, Attorney Advisor, OCR with SMCI inmates, in Leakesville, Miss. (April 25, 2018).

<sup>46</sup> Onsite notes by Mona Mafi, Attorney Advisor, OCR with SMCI staff, in Leakesville, Miss. (Apr. 24, 2018).



#### **4. Finding**

The OCR finds that there was insufficient evidence of a violation regarding the claim that the MDOC discriminated against Muslim inmates by failing to provide a Muslim Chaplain to serve the needs of Muslim inmates at SMCI.

#### **5. Recommendations**

Given the difficulty that the MDOC has had in recruiting and maintaining a Muslim Chaplain at SMCI, the OCR recommends that the MDOC consider the following measures:

- Assess whether additional funds may be available for expanding the hours of the Muslim Chaplain at SMCI;
- Hire an imam to fill one of the facility's vacant full-time Chaplain positions;
- Advertise future Muslim Chaplain vacancies with national professional organizations for Muslim Chaplains and with graduate Islamic studies programs;
- Recruit knowledgeable local Muslim lay volunteers to serve the needs of Muslim inmates;
- Inform the other Chaplains at SMCI that given the short time that Muslim inmates have with the Muslim Chaplain, and especially in the absence of a Muslim Chaplain, the Chaplains should pay particular attention to the needs of Muslim inmates; and
- Provide real-time video- or teleconference programming for Muslim inmates with imams or other teachers of Islam who are located in other parts of the country and who might be available to provide interactive or telephonic religious instruction in response to the inmates' questions.
  - Submit a report within thirty days from the issuance of the OCR's Final Compliance Review Report that states how the MDOC will implement the video- or teleconference recommendation within 180 days from the issuance of the OCR's Final Compliance Review Report.

## **B. Failure to Provide Equitable Access to Religious Services**

### **1. Failure to Provide Equitable Access to Religious Services During Lockdown**

The OCR received complaints from Muslim inmates, supported by notarized statements provided by Christian inmates, alleging that during various periods of lockdown, Christian inmates at the SMCI could attend their religious services while Muslim inmates in the same unit could not attend their religious services. The allegations cited multiple instances of this differential treatment. Consequently, the OCR requested that the SMCI produce security logs, which show the dates and times when inmates enter and leave particular housing units.

The OCR found multiple instances in the SMCI's activity logs corroborating the Muslim and Christian inmates' allegations; during the same lockdown timeframes, Christian inmates were able to leave and re-enter their units to attend religious services, while Muslim inmates were unable to attend their religious services.<sup>47</sup>

The cause of the irregularity with which different units were affected on different dates was clarified by several Muslim inmate complaints alleging that they were denied the ability to attend religious services outside of lockdown periods. They alleged that certain Officers/Captains/Commanders (Officers)<sup>48</sup> would not allow the Muslim inmates the ability to attend their religious services for no stated reason. It is unacceptable for MDOC staff at such levels to make decisions about the lockdown activity attendance of inmates, as only the MDOC Commissioner and her designees, the Deputy Commissioners of Institutions and Deputy Commissioner of Community Corrections, are authorized to make decisions about which inmate activities are allowed or prevented during lockdown periods.<sup>49</sup> These unauthorized actions by MDOC staff resulted in (a) violations of the MDOC's own policy and (b) the different treatment of inmates based on religion.

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<sup>47</sup> Supp. Resp. (Security Logs 2055\_001 to 2093\_001) (on file with the OCR).

<sup>48</sup> Complainants referred to the relevant staff as Captains, Commanders or Officers. The discussion here uses the term Officers, which may include correctional officers of various ranks.

<sup>49</sup> Supp. Resp. (MDOC Office of the General Counsel communications) April 11, 2019. The need for a facility lockdown is determined at the level of the Commissioner or her designees, the Deputy Commissioner of Institutions and Deputy Commissioner of Community Corrections. Although the MDOC's Emergency Procedure policy does not have language that specifically addresses who has authority to make decisions about which inmate activities are allowed or restricted during lockdown periods, the authority for such decisions does *not* rest with the lower levels of security staff.

## **2. Failure to Provide Equitable Access to Religious Services Generally**

The OCR also received allegations from Muslim inmates who claimed that, even when their housing units were not on lockdown, they were not permitted to leave the units to attend religious services. The inmates alleged that some Officers, without any legitimate reason, barred Muslim inmates under their watch from participating in religious services. Consequently, the alleged inability to attend religious services has been arbitrary and depends on which Officer happens to be on duty. This indicates that the MDOC Officers who deny Muslim inmates the ability to attend their religious services are not doing so in accordance with MDOC policy or the orders of a supervisor, but rather of their own accord, despite the fact that they lack the authority to make such decisions.

Allegations named the same several Officers as those who denied Muslim inmates, sometimes with the same Officer denying inmates in different units on different dates. For example, allegations include that one particular female Officer assigned to a unit on a Friday denied the Muslim inmates the ability to attend Juma services,<sup>50</sup> and the following week while on duty in another unit on a Saturday, she denied the Muslim inmates there the ability to attend Ta'leem services. Neither unit was on lockdown, yet she denied all of the Muslim inmates without any apparent or stated legitimate reason. As the units, dates, and inmates were all different, this supports the idea that the Officer was acting on her own to prevent Muslim inmates from attending their religious services.

At least four Officers allegedly prevented Muslim inmates from attending services or accessing food at appropriate times during the fasts of Ramadan without a legitimate reason. Other Officers are alleged to have made antagonizing statements to some of the Muslim inmates as they entered or exited the dining hall during Ramadan. During such a refusal of access to religious services, one female Officer allegedly stated that she did not care for the Muslim inmates because they were not her "kind" of inmates.

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<sup>50</sup> Regular year-round religious services for Muslim inmates at the SMCI include the weekly Juma service, a religious obligation that consists of a sermon and communal prayer that must be held in the early afternoon on Fridays; and Ta'leem service, a weekly class focusing on religious education that is held on Saturdays. Twice a year during the Eid-ul-Fitr and Eid-ul-Adha religious holidays, a sermon and communal prayer are held on the day of the holiday. Once a year for the Islamic month of Ramadan, the month of fasting during daylight, mealtimes for Muslim inmates are supposed to be shifted to align with the start and end of daylight to accommodate fasting (i.e. two mealtimes per day) and to provide for communal prayers around the mealtimes. All of these services were the subjects of complaints from the Muslim inmates at the SMCI.

### 3. Discussion

#### a. Equal Protection Clause

The Fifth Circuit recently restated the legal standard for a religious discrimination claim based on an Equal Protection Clause analysis.<sup>51</sup> The *Fluker* decision, a case with remarkably similar facts to the situation that the OCR found at the SMCI, provides a guide for analyzing the SMCI's differential treatment of Muslim inmates. The regulation—or in this case, the practice—in question here is the MDOC's restricting one group of inmates in the general population access to participation in their religious services outside their housing units.

Patrick Fluker, a Muslim inmate in segregated housing at the SMCI, alleged that the MDOC discriminated against him based on religion because the MDOC prohibited his participation in Muslim services while it allowed similarly situated inmates in segregated housing to participate in “Kairos” services.<sup>52,53</sup>

On appeal from summary judgment in favor of the MDOC, the Fifth Circuit stated that, to establish a religious discrimination claim based on the Equal Protection Clause, the evidence must show “‘purposeful discrimination resulting in a discriminatory effect among persons similarly situated.’”<sup>54</sup> A “‘Discriminatory purpose’” means “‘the decision maker selected a particular course of action at least in part because of, and not simply in spite of, the adverse impact it would have on an identifiable group.’”<sup>55</sup> The court also stated that “the Equal Protection Clause does not require ‘that every religious sect or group within a prison . . . must have identical facilities or personnel’; it requires only that prison officials afford inmates ‘reasonable opportunities . . . to exercise the[ir] religious freedom.’”<sup>56</sup>

Mr. Fluker was able to show that the MDOC did in fact treat him differently than similarly situated inmates who attended the “Kairos” service,<sup>57,58</sup> but the court rejected his discrimination claim for the following reasons: (1) he failed to produce evidence that the MDOC's motivation for treating him differently was “invidious religious discrimination;” (2) the MDOC claimed that it denied Mr. Fluker's request to participate in Muslim religious services because of his “poor record of institutional behavior;” (3) nothing in the record indicated that the MDOC's policy was to treat Muslim and non-Muslim inmates in segregated custody differently; (4) “[t]he record

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<sup>51</sup> *Fluker v. King*, 679 Fed.Appx 325, 329 (5th Cir. 2017).

<sup>52</sup> *Id.* at 326.

<sup>53</sup> Although not defined in the *Fluker* decision, Kairos services are Christian services. The stated mission of the Kairos Prison Ministry is “to share the transforming love and forgiveness of Jesus Christ to impact the hearts and lives of incarcerated men, women and youth...”

<sup>54</sup> *Id.* at 329 (5th Cir. 2017) (citing *Baranowski v. Hart*, 486 F.3d 112, 123 (5th Cir. 2007)).

<sup>55</sup> *Fluker*, 679 Fed.Appx at 329 (citing *Woods v. Edwards*, 51 F.3d 577, 580 (5th Cir. 1995)).

<sup>56</sup> *Fluker*, 679 Fed.Appx at 329 (citing *Baranowski*, 486 F.3d at 123)).

<sup>57</sup> *Fluker*, 679 Fed.Appx at 329.

<sup>58</sup> See footnote 51 for the definition of Kairos services.

[did] not establish that the Kairos service . . . was anything other than nondenominational;” (5) non-Muslim inmates in segregated custody submitted uncontested affidavits claiming that the MDOC treated Muslim and non-Muslim inmates the same, prohibiting all of them, regardless of religious affiliation, from practicing their religion outside the housing unit; and (6) the MDOC afforded Mr. Fluker “reasonable opportunities to exercise his religion.”<sup>59</sup>

The evidentiary record of the instant Compliance Review differs from the *Fluker* case in the following ways: (1) the MDOC’s differential treatment of inmates housed in the same unit was not limited to one inmate, rather the practice at issue involved treating a class of inmates (i.e., Muslims) differently than another class of inmates (i.e., Christians); (2) there is no evidence that the MDOC’s differential treatment of Muslims corresponded in any way to their disciplinary records or behavior; (3) Christian inmates submitted affidavits in support of the claimed differential treatment of Muslim inmates; and (4) the OCR’s onsite investigation clearly established that inmates who attended Kairos services were attending Christian services—characterizing them as “nondenominational” (as in the *Fluker* decision) does not transform them into religious services accessible to Muslims.

There is no MDOC or SMCI policy expressly distinguishing between the access Muslim and non-Muslim inmates have to religious services. Muslim inmates have opportunities to practice their religion (e.g., observe Ramadan, obtain pork-free meals, attend religious education classes). Even though prisons are not required to provide equitable accommodations to all religious groups, assessing the reasonableness of the opportunities that the MDOC affords to Muslim inmates to practice their religion might take into account the MDOC’s treatment of non-Muslim inmates.<sup>60</sup>

The crucial issue here, however, is whether there is evidence of purposeful discrimination. One Muslim inmate reported that an officer who prohibited Muslims from participating in religious services said that they were not her “kind” of inmate. This statement by itself does not support an inference of intentional religious discrimination. The remark is not expressly about religion, and even if the officer intended it to be, a correctional officer’s single ambiguous comment cannot be the basis for attributing purposeful religious discrimination to the MDOC.

The most troubling part of the record is the MDOC’s systemic practice of barring all Muslim inmates in certain housing units from attending religious services when it allowed similarly situated Christians to attend their religious services. In the absence of an explanation from the MDOC that might justify the differential treatment of Muslim and Christian inmates, the record supports a reasonable inference that the action, based on religion, was purposeful.

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<sup>59</sup> *Id.*

<sup>60</sup> *See Cruz v. Beto*, 405 U.S. 319, 322 (1972).

**b. Free Exercise Clause**

The Fifth Circuit also analyzed Mr. Fluker’s discrimination claim under the Free Exercise Clause of the First Amendment.<sup>61</sup> Citing Supreme Court precedent, the court summarized the multi-factor standard for analyzing an inmate’s religious discrimination claim against a prison based on the Free Exercise Clause:

[A] prison regulation may “impinge[] on inmates’ constitutional rights’ as long as ‘it is reasonably related to legitimate penological interests.’ To determine whether a regulation is “reasonable,” courts must consider four factors: (1) whether there is a “valid, rational connection between the prison regulation and the legitimate[, neutral] governmental interest put forward to justify it”; (2) “whether there are alternative means of exercising the right that remain open to prison inmates”; (3) the impact accommodation of the asserted . . . right will have on guards and other inmates, and on the allocation of prison resources generally”; and (4) whether there is a “ready alternative[.]” Courts are not, however, required to “weigh evenly, or even consider, each of these factors.” “Factor one is ‘controlling’; “the other factors merely help a court determine if the connection is logical.”<sup>62</sup>

The first factor in evaluating permissible “impingement” on a prisoner’s constitutional rights requires additional analysis in which “[a] court must (1) identify the regulation in question and the governmental objective justifying it; and (2) ‘determine whether the governmental objective’ is: (A) ‘legitimate’; (B) ‘neutral’; and (C) ‘rationally related to’ the regulation.”<sup>63</sup>

In *Fluker*, the Fifth Circuit stated that the district court properly identified the regulation in question as “prohibiting inmates in restrictive custody from attending activities outside their unit’ and the governmental interest justifying the regulation as ensuring ‘the safety and security of the prison.’”<sup>64</sup> The court concurred with the district court in finding that internal prison security was a “legitimate governmental interest.”<sup>65</sup> The court also agreed with the district court’s finding that the MDOC applied its policy in a neutral way, claiming that based on the record, there was no substantiated evidence that Muslim and non-Muslim inmates were treated differently.<sup>66</sup> Finally, the court found that the district court correctly held that the policy under review was “rationally related” to the prison’s “safety and security” because among the inmate

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<sup>61</sup> *Id.* at 330.

<sup>62</sup> *Id.* (citations omitted).

<sup>63</sup> *Id.* at 331 (citing *McFaul v. Valenzuela*, 684 F.3d 564, 572 (5th Cir. 2012)).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

population, inmates in segregated custody pose the “highest risk.”<sup>67</sup> In weighing the applicable factors, the Fifth Circuit upheld summary judgment in favor of the MDOC.<sup>68</sup>

There are significant differences in the *Fluker* record and the one developed in the course of the Compliance Review. First, the MDOC has not provided a justification for its practice. Second, many of the inmates involved in the current matter are in the general population, unlike Mr. Fluker who was among the inmates who posed the highest security risk. Third, the record plainly shows that the SMCI did not neutrally apply its policy; it allowed Christians to leave the housing unit to participate in religious services while prohibiting Muslims in the same housing unit from attending theirs.

Under the circumstances presented here, and in light of the *Fluker* decision, one would presume that the MDOC would assert that the justification for its policy is the safety and security of the facility. Without details supporting the justification, however, the OCR has no basis for concluding that the policy is rationally related to the goal of safety and security.

Even if the MDOC could provide a legitimate justification for its practice, the Compliance Review found—unlike in *Fluker*—that the MDOC did not enforce its policy in a neutral manner.<sup>69</sup> “Requiring neutrality ensures that the prison’s application of its policy is actually based on the justifications it purports, and not something more nefarious.”<sup>70</sup> Even though Muslim inmates may have had opportunities to practice their religion outside of attending religious services, the lack of neutrality in permitting Muslim inmates to attend religious services, based on the record in this case, raises a serious concern.

In the absence of an explanation for the disparate treatment of Muslim and non-Muslim inmates in attending religious services, the OCR finds that the MDOC discriminated against Muslim inmates based on a Free Exercise Clause analysis.

#### **4. Finding**

Based on the foregoing analysis, the OCR finds that the MDOC is in violation of the applicable federal laws based on constitutional analyses.

#### **5. Recommendations**

In light of the MDOC’s practice of allowing Christian inmates in the same housing units of Muslims to attend religious services while prohibiting Muslim inmates from attending their

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See *Mayfield v. Tex. Dep’t of Crim. Just.*, 529 F.3d 599, 609 (5th Cir. 2008).

<sup>70</sup> *Id.*

religious services, the OCR offers the following recommendations for the MDOC to come into compliance with the applicable federal laws:

- Make worship services available to Muslim inmates in an equitable way in accordance with applicable prison policies;
- Instruct correctional officers, regardless of rank, that they do not have the authority to make decisions about whether Muslim inmates may attend religious services outside of their housing units, and the MDOC is obligated to respect the constitutional rights of Muslim inmates to practice their religion;
- Monitor staff compliance with the MDOC's policy that allows Muslim and non-Muslim inmates to practice their religions in accordance with legitimate safety and security concerns; and
- Submit a report to the OCR within thirty days from the issuance of the OCR's Final Compliance Review Report that states how the MDOC will implement the above recommendations within 180 days from the issuance of the OCR's Final Compliance Review Report.

### **C. Failure to Provide Adequate Space for Muslim Services**

During the OCR's onsite visit to the SMCI, the OCR learned that for purported logistical reasons, Muslim inmates in Area II must often hold their religious programming outdoors on a concrete slab while the SMCI allows other religious groups to hold their religious programming indoors. Muslims who gather for worship must at times endure inclement weather. In addition, as sitting, kneeling, and prostrating are part of Muslim ritual prayers, the hard, rough concrete surface makes participating in worship very difficult.

The MDOC's General Counsel assured the OCR that this practice would change, informing the Superintendent<sup>71</sup> of the SMCI during the onsite visit that the SMCI should find an alternative place for Muslim worship. After the onsite visit, however, Muslim inmates in Area II reported that they still had to hold some Juma services and Ramadan congregational prayers outdoors. Inmate reports concerning outdoor services include the allegation that in such situations the men have been unable to access bathrooms until the end of the service and if unable to wait, they had no option but to relieve themselves outdoors "like dogs."<sup>72</sup>

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<sup>71</sup> The Superintendent of the SMCI at the time of the onsite visit, Ms. Banks, is no longer employed in that capacity (<https://www.mdoc.ms.gov/News>).

<sup>72</sup> Inmate complaint on file with the OCR, included in Docket number 18-OCR-0358.



The MDOC asserts, and the Muslim inmates confirm, that there is one meeting space in Area II that is large enough to accommodate the number of Muslim inmates who regularly attend Juma services, typically about thirty men<sup>73</sup>. As that space is also used for any Area II programs that include a large number of people, such as Kairos graduations, weekday programs sometimes pose scheduling conflicts with Juma service, which is in the middle of the day on Fridays, for approximately sixty to ninety minutes.<sup>74</sup> It is unclear to what extent there are other indoor spaces in Area II that are not traditional meeting spaces that may be sufficient for Juma service.

The inmates reported after the onsite visit that they found the MDOC staff at the Deputy Warden level to be helpful when they were involved, facilitating, for example, use of the indoor space of the barber shop so that the inmates would not have to hold services outdoors.<sup>75</sup> Reportedly, inmates stated that at least on one occasion they were given the choice between the indoor cafeteria space or the outdoor space in nice weather, and they chose the outdoor space because the cafeteria's permanently fixed tables made congregational ritual prayer impossible.<sup>76</sup> The inmates also reported that Chaplain Larry Garrett<sup>77</sup> was always very helpful when involved, facilitating access to classroom space for programs and fulfilling requests for religious books.

## 1. Discussion

The OCR is concerned with the SMCI's practice of requiring only the Muslim inmates in Area II to hold some of their religious services outdoors. Although there are some logistical constraints, including that the Muslim inmates' Juma services occur during the weekday timeframe, the MDOC has not made enough of an effort to accommodate the Area II Muslim inmates religious service needs in an indoor space.

Whether this would constitute a violation under the equal protection clause or free exercise clause analysis depends on the unique circumstances of each instance in which the Muslim inmates of Area II held a religious service outdoors, so the OCR is not making such a finding at this time. The MDOC could be liable for a potential violation of the applicable federal laws in the future, but could mitigate such liability by instituting the following recommendations below. The OCR is concerned that the MDOC may violate the applicable federal laws depending on the circumstances in which Area II Muslim inmates' religious services are held outdoors. Due to the fact that each instance must be assessed in light of the circumstances, however, the OCR does not make a general finding here.

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<sup>73</sup> Interview by Mona Mafi, Attorney Advisor, OCR with SMCI inmates, in Leakesville, Miss. (April 25, 2018).

<sup>74</sup> *Id.*

<sup>75</sup> Telephonic interview by Mona Mafi, Attorney Advisor, OCR with SMCI inmate in Leakesville, Miss. (October 3, 2018).

<sup>76</sup> *Id.*

<sup>77</sup> At the time of the OCR onsite visit, Mr. Garrett was the Chaplain of SMCI's Area II. Mr. Garrett is no longer employed as a Chaplain.

## 2. Recommendations

- Prioritize the one-hour Juma service when scheduling programs on Fridays for Area II's largest indoor space (i.e. the Area II visitation room). For example, if Kairos graduation is 3 hours, instead of a 12pm-3pm timeframe it could be allotted a 2pm-5pm or 9am-12pm timeframe, ensuring accommodation of both the Kairos graduation and the Juma service on the same day.
- Consider designating the barbershop space in front of Tower 5 as the space for Juma service for anytime there is a scheduling conflict with Area II's largest indoor space.
- When possible, continue to work with the inmates, as MDOC staff have in the past, to determine which space may be most appropriate in any circumstances where the choice between an irregular indoor space and the outdoors may arise. For example, as the cafeteria does not allow for congregational prayer due to the fixture of the tables in the space, inmates may prefer the outdoors weather permitting.
- To the extent that the MDOC appropriately (i.e., not in inclement weather) uses the outdoor space for Muslim inmates' religious services, procure mats for use on the concrete space outdoors and/or obtain a plastic tarp for use on the non-concrete space (i.e. grass, dirt) outdoors to enable inmates to use outdoor space for prayer.
- On days that there is an unavoidable scheduling conflict with the Area II's largest indoor space, consider having the Area II Muslim inmates access the Area 1 chapel space for Juma service at a different time than the Area 1 Muslim inmates access it for Juma service. This would allay the general facility security concerns regarding interactions of inmates from different areas. For example, on those limited number of Fridays, the Area 1 Muslim inmates could use the Area 1 Chapel for Juma service at 1pm, and the Area II Muslim inmates could use the Area 1 Chapel for Juma service at 2:30pm.<sup>78</sup>
- Submit a report to the OCR within thirty days from the issuance of the OCR's Final Compliance Review Report that states how the MDOC will implement the above recommendations within 180 days from the issuance of the OCR's Final Compliance Review Report.

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<sup>78</sup> These start times are consistent with prayer times during daylight savings time. During standard time, the start times could be 12pm and 1:30pm. The significant aspect of the timings is only that: (1) both services fall within the required timeframe allotted for Juma service for the given date, and (2) both services are held for a sufficient length of time to address the needs of the inmates (approximately sixty to ninety minutes as referenced in footnote 69).

#### **D. Access to Religious Books and Literature**

The OCR received several complaints regarding inmates' lack of access to Qurans, for both Muslim and non-Muslim inmates. The allegations stated that free Bibles were always available, to any inmate of any faith, but that access to free Qurans was limited only to inmates who were both registered with the MDOC as Muslim and who submitted official paperwork requesting a Quran. Even in those cases, it was alleged that there were often very long waits for receipt of a Quran or that a Quran was ultimately never provided. Inmates also alleged that they were sometimes unable to access basic Islamic educational materials because their religious material library requests to the Chaplain department were not fulfilled. Access to books and other written materials is particularly critical because the inmates at the SMCI facility do not have internet access.<sup>79</sup>

In the MDOC's response to the data request, the MDOC stated that soft-backed Bibles are usually donated to the MDOC Religious Programs facilities in large quantities and are available for inmates to access directly.<sup>80</sup> They stated that soft-backed Qurans are "hard to obtain," and limited in quantity when donated.<sup>81</sup> The MDOC stated that when soft-backed Qurans are available, they are distributed by Chaplains, only to Muslim inmates, and only when requested.<sup>82</sup>

During the onsite visit, the MDOC stated that when a facility receives a donation of religious books, the books remain at that facility. Chaplains at different facilities do not compare resources to see if one facility may have a surplus that may address the needs of another. This presumably poses a challenge for the SMCI in particular, as its remote location makes it less likely to be a destination for donations than the well-known facilities.

During the onsite visit, the MDOC staff confirmed that Qurans are only distributed to inmates who are registered with the MDOC as Muslim, and only if they fill a Chaplain request form. When asked why Qurans must be distributed by Chaplains rather than made available to inmates directly like Bibles, the MDOC staff stated that because Bibles are always in oversupply, they cannot be considered a desirable commodity for inmates, but any item in short supply in an institution, including Qurans here, could potentially be used by inmates as a form of institutional currency that would allow them to have a degree of power over other inmates. The Chaplain department acknowledged that there are frequent backlogs with Quran requests at the SMCI.

While onsite, the OCR observed the religious materials available to Area I and Area II inmates. In Area I, there was a Christian Chapel and a library in the Chaplain building. The Chapel was well stocked with Bibles, with the large Chapel bookcase filled to capacity and more Bibles

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<sup>79</sup> OCR Notes from main meeting conducted with large staff attendance during onsite visit on April 24, 2018.

<sup>80</sup> Resp., Attach. 1, at 10.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

stacked on top, and the MDOC staff confirmed that any inmate may take a Bible at any time. The majority of the materials in the library of the Chaplain building consisted of a random assortment of Christian-themed books. There was also a small random assortment of Qurans and Islamic books and materials that were stored in but did not fill a single stacked filing cabinet, and they did not appear to be in any order or classification that would allow them to be readily viewed or accessed. In Area II, the MDOC Chaplain staff stated that a closet in the visitation room contained religious reading materials for the Area II inmates, and the OCR observed that it contained only a few Bibles and a few Kairos (i.e. Christian) booklets. There were no printed materials pertaining to Islamic studies, Qurans, or other books that may provide religious information for Muslim inmates or any other non-Christian inmates. The closet contained a television and a VHS-VCR and the MDOC staff stated that Muslim inmates sometimes used it for educational videos. There were no videos present in the closet, and videos are not among the list of items that inmates are allowed to possess in their cells.<sup>83</sup>

The OCR also observed the Area II general library and reviewed the booklist for the Area I general library. Each appeared to have a limited, outdated selection of books. The religious sections of each general library were small and contained outdated, Christian-themed books. The MDOC stated during the onsite visit that its overabundant supply of Bibles in Area I, like the existence of its Christian Chapel in Area I, are reportedly due to a constant stream of donations from Christian organizations. Inmates were able to purchase Qurans through the MDOC canteen/commissary, as discussed in the section below about the MDOC's canteen/commissary.

## **1. Discussion**

The SMCI is located in Mississippi, very close to the Mississippi-Alabama border. The realities of the surrounding area are such that there are a large number of (non-Catholic) churches in proportion to the number of people that live in the area. To the extent that the MDOC regularly receives unsolicited Bibles and resources from Christian organizations, or when the MDOC solicits such materials in proportion to requests from inmates, there is no indication of discriminatory intent.

Problems arise, however, from not addressing the needs of the most populous religious minority at MDOC, Muslim inmates. As there are many organizations that provide free Qurans and Islamic educational materials to prisons and other institutions, soliciting a sufficient number of Qurans to fulfill the requests of inmates would entail a simple online search and email request or submission of an online form for a donation. The responsibility for such action rests with the Chaplain Department of the MDOC, with each institution's own Chaplains bearing the responsibility of meeting the religious needs of that institution's inmate population.

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<sup>83</sup> Resp., Attach. 8, at 75.

Given the penological concern regarding institutional currency, the fact that Qurans are only available upon request is acceptable only if the requests, and any resulting backlogs, are addressed in a timely manner. The OCR is concerned, however, that only Muslim inmates may receive Qurans upon request. Any inmate should be able to request and obtain a Quran, just as any inmate currently has the ability to access a Bible. The SMCI may not continue to deny inmates access to Qurans just because the inmate requesters are not registered as Muslims, and there was no explanation or rationale provided in support of this policy. If there is a temporary shortage of Qurans, the SMCI may prioritize registered Muslims for receipt of Qurans first when there are pending requests from both Muslim and non-Muslim inmates, due to the need to facilitate the Muslim inmates' religious exercise. Inmates who are not Muslim, however, should be able to access a free copy of the Quran via a Chaplain request. There is no reason for a shortage of Qurans or Islamic educational materials to be anything other than temporary, as the process of obtaining free Qurans for the institution is neither lengthy nor time consuming, and falls within the scope of a Chaplain's duties.

The unique set of circumstances faced by the SMCI's Muslim inmates makes the dearth of Qurans and Islamic educational materials a more significant problem than it would otherwise be. All or nearly all of the Muslim inmates at the SMCI only became Muslim after they were incarcerated, so their understating of their religion is limited to what they can access at the SMCI. Additionally, none of the inmates at the SMCI have access to the internet, so they are unable to read books or articles online, watch educational videos or streaming content, or take online courses. Thus it is imperative for the SMCI Chaplain Department to ensure the availability of Islamic educational materials in addition to Qurans, for both Area I and Area II inmates. Either the Area I resources should be made available to the Area II inmates, or the Chaplain Department should solicit identical religious reading materials for both areas in order to provide the Area II inmates with the same religious educational resources as the Area I inmates.

## **2. Finding**

The OCR finds that the SMCI's Chaplain Department has not adequately maintained a supply of Qurans and Islamic educational materials sufficient to satisfy inmates' requests. Additionally, any inmate, regardless of religious registration, should have access to Qurans and Islamic educational materials, but Muslim inmates may be given priority during any periods of low stock, which should be remedied promptly.

## **3. Recommendations**

- The MDOC Chaplain Department should conduct oversight of individual facility Chaplain departments to ensure that each facility has a supply of religious books and educational materials sufficient to meet inmate needs. For the SMCI, this includes the maintenance of a sufficient supply of Qurans and Islamic educational materials to exceed

the number of inmate Chaplain requests. Any surpluses at other MDOC facilities should be shared with the SMCI to help address the SMCI's needs.

- The SMCI Chaplain Department should solicit donations of Qurans promptly whenever there is a low supply. This includes reaching out to past donors for new donations and contacting other organizations that supply free Qurans.
  - The inmates have expressed a strong preference for the Quran translation and commentary by Abdullah Yusuf Ali, which is recognized as a superior English translation and commentary. Given the Muslim Chaplain vacancy, the SMCI Chaplain department should solicit donations of this specific Quran translation and commentary.
- The SMCI Chaplain department should solicit donations of introductory and other Islamic educational materials for inmates, especially given the fact that the Muslim Chaplain position is vacant, the Muslim inmates are new to the faith, and they do not have access to the internet.
- Inmates of any faith should be able to obtain Qurans, Islamic educational materials, and any other religious text or material of any faith via a Chaplain request.
- Chaplain requests for Qurans or any other religious educational/reading materials, from inmates of any faith, must be addressed timely.
- The limited number of Qurans and Islamic educational materials in Area I should be organized and catalogued, and an index should be made available to all inmates, including those in Area I and Area II. The SMCI Chaplain department should timely address all Chaplain requests for Qurans and Islamic materials, and may prioritize those requests that come from Muslim inmates before other inmates if there are shortages. Alternatively, a separate but identical library of Qurans and Islamic educational materials may be assembled for Area II inmates that would preclude the need to make Area I materials available to Area II inmates.
- Submit a report to the OCR within thirty days from the issuance of the OCR's Final Compliance Review Report that states how the MDOC will implement the above recommendations within 180 days from the issuance of the OCR's Final Compliance Review Report.

### **E. Religious Items Available for Purchase From the MDOC Canteen/Commissary**

In the MDOC's response to the OCR's data request, the MDOC provided the list of items available for inmates to purchase from the MDOC canteen, also known as the MDOC commissary. The list of items contained twenty-five categories, including a "Religious" category, which contained four items, including a single paperback Quran for \$58.95.<sup>84</sup>

During the onsite visit, the OCR asked inmates whether they or others they knew purchased the Quran from the canteen, and they stated that they and several inmates did.<sup>85</sup> Asked why an inmate would purchase a Quran at the canteen price rather than wait to receive a free copy through the Chaplain department, they stated that the canteen copy was a superior English translation of the Quran compared with the free translations sometimes available through the Chaplain department.<sup>86</sup>

During the onsite visit, the OCR informed the MDOC staff that a typical paperback Quran costs less than \$5, and asked why the canteen Quran was set at \$58.95. The MDOC staff stated that they were unaware that the current price was so expensive, and stated that the independent company contracted for canteen purposes, Premier Supply Link (PSL), controlled the pricing.<sup>87</sup> The OCR informed the MDOC that its research had not produced any paperback Qurans sold in an amount near a \$58.95 price. When the OCR asked the PSL representative onsite about the pricing, he did not know the reason for the high price, which he stated was set by a prior company, and expressed a willingness to take action to remedy the issue.

During the onsite visit, the MDOC provided the OCR with the name and contact information of the representative of the MDOC Commissary Committee, who then provided a contact for management at PSL. PSL cooperated with the OCR and the expensive items under the religion category have now been replaced with comparable items with prices in line with market values.<sup>88</sup>

Replacing the old canteen list's \$58.95 paperback Quran, there are now two Qurans available for purchase, a \$3.95 paperback translation and a \$24.95 paperback translation with commentary. The translation and commentary version offered is an exact replacement for the previous \$58.95 version sought by the inmates. Replacing the old canteen list's regular prayer rug for \$29.00,<sup>89</sup> there is now a comparable regular prayer rug for \$18.95.<sup>90</sup> There is also an additional new item, a padded prayer rug ideal for use on the concrete floors of the institution, available for \$29.00.<sup>91</sup>

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<sup>84</sup> Resp., Attach. 8, at 76.

<sup>85</sup> OCR Notes from Inmate interviews conducted during onsite visit on April 25, 2018.

<sup>86</sup> *Id.*

<sup>87</sup> OCR Notes from main meeting conducted with large staff attendance during onsite visit on April 24, 2018.

<sup>88</sup> MDOC Order Guide, provided December 11, 2018, effective January 1, 2019.

<sup>89</sup> Resp., Attach. 8, at 76.

<sup>90</sup> MDOC Order Guide, provided December 11, 2018, effective January 1, 2019.

<sup>91</sup> *Id.*

Replacing the old canteen list's koofie cap for \$11.25,<sup>92</sup> there is now a comparable koofie cap for \$5.95.<sup>93</sup> While the OCR's review focused on the male inmate population, in discussions with the OCR, the vendor suggested the addition of a hijab/headscarf item for female Muslim inmates to the canteen list, and offers a \$15.95 hijab on the new canteen list.<sup>94</sup> The prayer oil available on the old list was reasonably priced at \$6.95,<sup>95</sup> and it continues to be available on the new list at the same price.<sup>96</sup>

## 1. Finding

The OCR commends the MDOC and the PSL for replacing the highly-priced religious canteen items with comparable items at average prices, and for the addition of new religious canteen items.

### F. Change of Religion Form

During the onsite visit, the Muslim Chaplain<sup>97</sup> informed the OCR that the MDOC Change of Religion form is cumbersome and unnecessarily delays the processing of inmates' changes.<sup>98</sup> Per the OCR's request, the MDOC staff provided the OCR with the form during the onsite visit. The form's title is "Mississippi Department of Corrections Inmate Change of Religion Record." The form requires inmates to list a "former leader" of a religious organization for notification of termination of religious membership, and a "leader's name" for the new religious preference, as well as the organization's names and addresses for both contacts.

This is problematic because inmates who wish to change their religion often do not have an affiliation outside of the prison for their former religious preference, and they never have an affiliation outside of the prison for their new religious preference as they have made the decision to change their religion while incarcerated. As the inmates lack at least one of these two contacts, the processing of their change is unnecessarily delayed. To the extent that the MDOC may have an interest in verifying inmates' religion changes, this is already addressed by the requirement that Chaplains verify inmates' conversions.<sup>99</sup>

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<sup>92</sup> Resp., Attach. 8, at 76.

<sup>93</sup> MDOC Order Guide, provided December 11, 2018, effective January 1, 2019.

<sup>94</sup> *Id.*

<sup>95</sup> Resp., Attach. 8, at 76.

<sup>96</sup> MDOC Order Guide, provided December 11, 2018, effective January 1, 2019.

<sup>97</sup> The Muslim Chaplain position is currently vacant as explained in Section A.

<sup>98</sup> Interview by Mona Mafi, Attorney Advisor, OCR, with SMCI Chaplains, in Leakesville, Miss. (Apr. 23-24, 2018) (notes on file with the OCR).

<sup>99</sup> *Id.*



## **1. Recommendation**

- Modify the “Mississippi Department of Corrections Inmate Change of Religion Record” form to make the listing of both a former religious leader and a new religious leader optional. A simple statement added to the form that clarifies that these sections are optional rather than required will put inmates on notice and allow for the efficient processing of these forms.

Provide the OCR with a new version of the “Mississippi Department of Corrections Inmate Change of Religion Record” form within thirty days from the issuance of the OCR’s Final Compliance Review Report.

### **G. Required Registration for Participation in Minority Religious Groups’ Activities**

The OCR received several inmate complaints alleging that in order for Muslim inmates to be allowed to attend their religious activities, they were required to register as Muslims and sign up ahead of time to be on the attendance list for Islamic religious services. The inmates stated that the Christian inmates did not need to register as Christian or sign up on any attendance lists to attend Christian functions.

During the OCR’s onsite visit, the MDOC staff confirmed the veracity of these allegations. They explained that the reasons for these requirements were in part due to the realities of the majority/minority numbers attending religious activities, and in part due to the security measures required as related to the logistics of inmates moving between buildings. They stated that as non-Catholic Christian inmates were the majority of the population, the numbers of inmates interested in attending these functions was such that each building held its own non-Catholic Christian functions. They stated that because the minority groups such as Muslims and Catholics did not have as many inmates, if their events were to be held in individual buildings there would be very few inmates and therefore would not feel like congregational services. They said that for this reason, Muslims, Catholics, and other minority groups were allowed to congregate in one location per area, i.e. all Area I inmates in one location within Area I, and all Area II inmates in one location within Area II.

Congregating within Area I or Area II necessitates that inmates must move between buildings, and security measures necessitate that such movement between buildings be pre-approved as well as documented.

The OCR's Findings and Recommendations:

The logistical and penological reasons given for requiring Muslims, Catholics, and other inmates who are part of minority faith groups to register for participation in their religious group activities is found to not be discriminatory.

## **H. Proselytization**

During the onsite visit, the OCR staff interviewed all of the SMCI Chaplains<sup>100</sup> about their work and also interviewed a number of volunteer Chaplains. When the OCR asked what the Chaplains say when making rounds in the inmate residential areas, the SMCI's supervisory Chaplain stated that he would ask an inmate how he was doing that day to allow for the inmate to raise any issues that may be on his mind. When one of the volunteer Chaplains was asked what he said when making rounds in the inmate residential areas, however, he stated that he would ask all inmates if they wanted to talk about Jesus.

### **1. Discussion**

The grant condition referenced above that binds the MDOC<sup>101</sup> explains that if the grantee provides a non-Federally funded program or service that incorporates religious activities such as proselytization, participation must be voluntary. Here, this activity was not federally funded but rather provided via volunteering; the volunteer Chaplain who visits inmates to discuss Jesus is not compensated financially.

Unfortunately, this form of proselytization was not conducted according to the requirement of voluntary participation. The volunteer Chaplain proselytized to all inmates that he encountered, without waiting for them to request such services. The MDOC should ensure that both the acquisition of any exposure to, and participation in, any religious discussion is voluntary.

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<sup>100</sup> Three of the Chaplains present at the onsite visit (two full-time Chaplains and the Muslim Chaplain) are no longer employed by the SMCI's Chaplain Department.

<sup>101</sup> In report section above "Applicable Law," referenced from the Second Chance Act CSAMI award, note 7, Special Condition No. 31: Grantee agrees that assistance funds awarded under this grant will not be used to support any inherently religious activities, such as worship, religious instruction, or proselytization. If the grantee refers participants to, or provides, a non-Federally funded program or service that incorporates such religious activities, (1) any such activities must be voluntary for program participants, and (2) program participants may not be excluded from participation in a program or otherwise penalized or disadvantaged for any failure to accept a referral or services. If participation in a non-Federally funded program or service that incorporates inherently religious activities is deemed a critical treatment or support service for program participants, the grantee agrees to identify and refer participants who object to the inherently religious activities of such program or service to, or provide, a comparable secular alternative program or service.

## 2. Finding

The OCR finds that the MDOC is in violation of the requirement that, as a Federal grantee, its non-Federally funded programs and services incorporating religious activities may only entail *voluntary* participation.

## 3. Recommendations

- In order to ensure that exposure to religious discussions is voluntary, Chaplains, whether paid employees or volunteers, should identify themselves according to their title and ask inmates if there is anything they would like to discuss. If an inmate states that he would like to discuss something that is religious in nature, then the Chaplain may proceed to do so.
- The MDOC must ensure that volunteer Chaplains are trained both initially and with regular reminder/refresher trainings. Volunteer Chaplains, like employed Chaplains, must understand that they may not proselytize to inmates unless an inmate first voluntarily requests it.

Regular reminder trainings are particularly important because the volunteer Chaplains that the OCR interviewed during the onsite visit each had been in their volunteer positions at the SMCI between sixteen and twenty-six years.

## III. Conclusion

This letter serves as notice that the OCR concludes that the MDOC must undertake additional steps to ensure compliance with the nondiscrimination provision of the Omnibus Crime Control and Safe Streets Act of 1968, as amended,<sup>102</sup> and all of the grant's conditions. **Within 30 days of receipt of this letter, please have a representative from the MDOC contact Attorney Mona Mafi [REDACTED] to discuss further its implementation of the Compliance Review Report's recommendations.** Thank you for the cooperation and assistance that your staff provided to OCR Attorneys Mona Mafi and George Mazza throughout this Compliance Review.

The MDOC should be mindful that federal law protects persons who participated in the OCR's Compliance Review from retaliation for having provided information to the OCR. The OCR intends to notify all complainants about the prohibition against retaliation. The OCR will initiate an investigation if it should receive credible evidence of reprisal.

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<sup>102</sup> 34 U.S.C.A. §§ 10221, 10228(c) (West 2017).

Mr. Tommy Taylor, Interim Commissioner  
Mississippi Department of Corrections  
Docket No. 18-OCR-0358  
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This Compliance Review Report is a public document that the OCR will post on its website.

Sincerely,

**X**

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Michael L. Alston  
Director