

1 POOLER, *Circuit Judge*, concurring in part, dissenting in part, and dissenting
2 from the judgment:

3 I concur with the majority's holding that Allah's constitutional rights were
4 violated when prison officials failed to consider whether he posed a risk to the
5 institution before placing him in extended solitary confinement. I would
6 additionally hold, however, that the restraints imposed in this case were
7 unconstitutional as a response to the minimal infraction Allah committed. And I
8 would not afford the defendants qualified immunity for having imposed the
9 restraints.

10 * * *

11 We must remember that Allah's misdeed in this case was the asking of a
12 single question. As the district court found, and as defendants do not dispute,
13 "Allah was standing with approximately fifty other inmates in his dormitory" on
14 December 22 . . . , as they were "awaiting their turn to visit the commissary to
15 purchase items that are sold only during the holiday season." *Almighty Supreme*
16 *Born Allah v. Milling*, No. 3:11cv668, 2016 WL 1311997, at *4 (D. Conn. Apr. 4,
17 2016) (hereinafter "Dist. Ct. Op."). When "[p]rison officials decided to permit
18 inmates in [another dormitory] to go to the commissary before the inmates in

1 [Allah's dormitory]," "Allah asked the correctional officer . . . if he could speak to
2 a lieutenant about this." *Id.* "Because of a history of riots at [the facility]," "[o]ne
3 of the correctional officers perceived the request to talk to a lieutenant as an
4 attempt to incite other inmates to unite and protest the delay in visiting the
5 commissary." *Id.* Allah's question was therefore deemed a security risk. *Id.*

6 The defendant officials do not explain how Allah's seemingly minor
7 request led to disorder or a breakdown of security. The officials state, vaguely,
8 that Allah "created a significant disturbance," and "incited" a "protest."

9 Appellant's Opening Br. at 3. But defendants do not say any protest took place.
10 Nor do they explain how Allah's question might have caused one. Nor do they
11 state that anyone was harmed, or explain specifically why or how harm might
12 have resulted from Allah's question.

13 For this conduct, defendants placed Allah in solitary confinement for more
14 than a year, spread across two terms of incarceration. During part of that time, he
15 was a pretrial detainee, which means that any restraints imposed upon him must
16 be evaluated in light of *Bell v. Wolfish*, 441 U.S. 520 (1979), the leading case
17 explaining what conditions may lawfully be imposed upon pretrial detainees.

1 In *Wolfish*, the Supreme Court explained that “the proper inquiry” for
2 whether conditions may be imposed upon a pretrial detainee “is whether those
3 conditions amount to punishment of the detainee.” *Id.* at 535. “[U]nder the Due
4 Process Clause, a detainee may not be punished prior to an adjudication of guilt
5 in accordance with due process of law.” *Id.* Because “[a] person lawfully
6 committed to pretrial detention has not been adjudged guilty of any crime,” a
7 condition that amounts to punishment of the detainee is unlawful. *Id.* at 536.

8 The Supreme Court provided the following guidance for determining
9 whether a condition imposed upon pretrial detainees amounted to
10 unconstitutional punishment:

11 A court must decide whether the [condition] is imposed for the
12 purpose of punishment or whether it is but an incident of some
13 other legitimate governmental purpose. Absent a showing of an
14 expressed intent to punish on the part of detention facility officials,
15 that determination generally will turn on [1] whether an alternative
16 purpose to which the restriction may rationally be connected is
17 assignable for it, and [2] whether it appears excessive in relation to
18 the alternative purpose assigned to it. Thus, if a particular condition
19 or restriction of pretrial detention is reasonably related to a
20 legitimate governmental objective, it does not, without more,
21 amount to punishment. Conversely, if a restriction or condition is
22 not reasonably related to a legitimate goal—if it is arbitrary or
23 purposeless—a court permissibly may infer that the purpose of the
24 governmental action is punishment that may not constitutionally be
25 inflicted upon detainees *qua* detainees.

1 *Id.* at 538–39 (internal quotation marks, citations, footnotes, and brackets
2 omitted). The Supreme Court thus set forth a two-part test for evaluating
3 whether a condition of confinement amounts to an unconstitutional punishment
4 of a pretrial detainee. We must ask, first, whether there is a non-punitive purpose
5 rationally connected to a given condition, and, second, whether the condition is
6 proportional to that purpose: whether it is an excessive means for accomplishing
7 the purpose.

8 The Supreme Court provided an illustration of this test, describing a
9 scenario in which certain conditions are related to non-punitive purposes, but
10 would nevertheless be disproportionate means of achieving those purposes:

11 [L]oading a detainee with chains and shackles and throwing him in
12 a dungeon may ensure his presence at trial and preserve the security
13 of the institution. But it would be difficult to conceive of a situation
14 where conditions so harsh, employed to achieve objectives that
15 could be accomplished in so many alternative and less harsh
16 methods, would not support a conclusion that the purpose for
17 which they were imposed was to punish.

18 *Id.* at 539 n.20.

19 Several of the conditions in this case do not pass the test articulated in
20 *Wolfish*, particularly in light of the Supreme Court’s example. First, as the
21 majority suggests, some conditions imposed on Allah related only to punishing
22 him. Neither here, nor in the district court, did the officials explain how limiting

1 Allah to five pieces of mail at a time related to any goal but punishment. *See* Dist.
2 Ct. Op. at *9 (concluding that “the defendants could not explain (nor can the
3 Court) how limiting . . . a pretrial detainee[] to having only five pieces of mail in
4 his cell was reasonably related to a security concern”). The same is true of the
5 rules limiting him to one phone call and one family visit per week. *Id.* These
6 conditions should be held unconstitutional as imposed on Allah, particularly in
7 that they have no relationship at all to his infraction.

8 Similarly, there is no good argument that Allah’s asking of a single
9 question justifies more than a year of solitary confinement, much of it under
10 oppressive conditions. Dist. Ct. Op. at *3, *4-7. For many months during his time
11 as a pretrial detainee, Allah spent twenty-three hours per day alone in his cell. *Id.*
12 at *6. He was required to wear leg irons, and shackles behind his back, when he
13 exited. *Id.* at *6. The leg irons stayed on even when he showered. *Id.* at *6. He had
14 few visits with family, few phone calls, and few other privileges. *Id.* at *3.

15 I do not see how these conditions were materially different from “loading
16 [him] with chains and shackles and throwing him in a dungeon.” *Wolfish*, 441
17 U.S. at 539 n.20. Allah was isolated from others and could not walk anywhere
18 without total restraint and supervision. He endured these conditions for a long

1 period of time. The Supreme Court's purpose in employing the above-quoted
2 example was to show that near-total physical restrictions could only be justified
3 by a significant government interest. Allah endured such restrictions without any
4 apparent interest justifying them.

5 The majority's analysis of this case is that Allah's treatment was
6 unconstitutional, but not because it was excessive in light of his minor infraction.
7 The majority believes that Allah was put into Administrative Segregation only
8 due to the policy of automatically placing detainees in Administrative
9 Segregation as a result of their previous placement there. *See* Slip Op. at 19-20
10 n.6. It appears, however, that the district court addressed this policy only
11 because the court viewed the defendants' principal justification for the
12 restraints—i.e., their security concerns—as obviously wanting. *See* Dist. Ct. Op.
13 at *9. Moreover, on appeal, defendants have primarily argued that they correctly
14 placed Allah within Administrative Segregation because “he was a threat to
15 safety and security,” Appellants’ Opening Br. at 13, 15, 20, 27. Nevertheless, the
16 majority holds that the treatment was unlawful because it was based on the
17 policy of automatically placing detainees in Administrative Segregation as a
18 result of their previous placement in that program.

1 Even if the majority is correct that Allah was punished based on that
2 policy, I would still deny the officials qualified immunity. As the majority notes,
3 and as I agree, the policy “was not reasonably related to any legitimate
4 government interest” at all. Slip Op. at 19-20 n.6. *Wolfish* squarely stated that
5 officials must have a very significant justification for “loading a [pretrial]
6 detainee with chains and shackles and throwing him in a dungeon.” 441 U.S. at
7 539 n.20. Imposing such restraints upon a detainee without *any* justification
8 clearly does not comport with *Wolfish*.

9 In light of the similarity of Allah’s conditions to the Supreme Court’s
10 example in *Wolfish*, and in light of the lack of legitimate government interest in
11 instituting those conditions, I would not afford the defendants qualified
12 immunity. Accordingly, I dissent from the portion of the majority’s opinion
13 granting immunity to the officials and from its disposition reversing the
14 judgment below.