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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD LEE JONES, JR., Plaintiff-Appellant, v. DAVID SHINN, Director, et al., Defendants-Appellees.	No. 20-16518 D.C. No. 2:18-cv-01972-MTL-JZB MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Michael T. Liburdi, District Judge, Presiding

Submitted December 14, 2022[**]
San Francisco, California

Before: BADE, LEE, and KOH, Circuit Judges.

Edward Lee Jones, Jr., an Arizona state prisoner, appeals *pro se* the district court's order granting summary judgment for the government defendants under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1 *et seq.* Jones alleged that the government

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violated his First and Fourteenth Amendment rights and RLUIPA by denying him access to five Nation of Islam texts. The court has jurisdiction under 28 U.S.C. § 1291 and reviews this matter de novo. The court may affirm on any basis supported by the record. *Jones v. Slade*, 23 F.4th 1124, 1133 (9th Cir. 2022). We affirm in part, reverse in part, and remand.

1. RLUIPA claim: The district court properly granted summary judgment on Jones's RLUIPA claim based on the exclusion of one text by Akil. Jones did not provide any evidence, or even assert, that the exclusion of that text constitutes a substantial burden on his exercise of religion. *See id.* at 1140 ("Under RLUIPA, the plaintiff bears the initial burden of demonstrating that an institution's policy constitutes a substantial burden on his exercise of religion.").

But the district court erred in granting summary judgment on Jones's RLUIPA claim based on the exclusion of four texts by Elijah Muhammad. To start, the district court erred in characterizing the religious exercise at issue as whether Jones was denied all Nation of Islam texts rather than whether the exclusion of the specific texts constitutes a substantial burden on his exercise of religion. *See id.* at 1141–42 (holding that the district court erred in "re-characteriz[ing] Jones's religious obligations at a higher level of generality," that is, as "observing Ramadan" rather than as "the reading of essential Nation of Islam texts during Ramadan"); *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 987 (9th Cir. 2008) (rejecting an "expansive

interpretation of 'religious exercise'" that would have included "the general practice of one's religion, rather than any particular practice within one's religion").

And because Jones provided evidence that all texts by Elijah Muhammad are "essential religious texts needed to practice the Islamic faith in accordance with the Nation of Islam," he raised a triable dispute as to whether the exclusion of the texts constitutes a substantial burden on his exercise of religion. *See Jones*, 23 F.4th at 1144 (citing the Third Circuit's holding in *Sutton v. Rasheed*, 323 F.3d 236, 256 (3d Cir. 2003) (per curiam), that the reading of texts by Elijah Muhammad "is 'a necessary element' of the exercise of the Nation of Islam faith").

We thus reverse summary judgment on the RLUIPA claim based on the exclusion of four texts by Elijah Muhammad, and remand for the district court "to assess whether [defendants] can demonstrate that applying the challenged regulation to Jones serves a compelling interest and meets the 'exceptionally demanding' least-restrictive-means standard." *Jones*, 23 F.4th at 1144 (citation omitted).

2. First Amendment claims: Summary judgment was proper on Jones's First Amendment free exercise claim because defendants met their burden of showing that the exclusion of the texts was reasonably related to legitimate penological interests. *See id.* ("Once a claimant demonstrates that the challenged regulation impinges on his sincerely held religious exercise, the burden shifts to the government to show that the regulation is 'reasonably related to legitimate penological

interests.'" (citation omitted)). The district court also properly granted summary judgment on Jones's First Amendment free speech claim for the same reason. *See id.* at 1134 (for purposes of a prisoner's free speech claim, "a regulation is valid if it is reasonably related to legitimate penological interests" (citation omitted)).

3. Fourteenth Amendment due process claim: The district court properly granted summary judgment on Jones's Fourteenth Amendment due process claim because he failed to raise a triable dispute as to whether he was denied any constitutionally required process. *See Krug v. Lutz*, 329 F.3d 692, 696–97 (9th Cir. 2003) (prisoners have "a liberty interest in the receipt of [their] mailings sufficient to trigger procedural due process guarantees," which generally should include notice when mail is withheld and the right to two levels of review).

4. Denial of extension of time: The district court did not abuse its discretion in denying Jones's request for an extension of time to file an opposition to summary judgment because he did not demonstrate good cause or show that he was prejudiced by the ruling. After the denial of that request, Jones submitted his opposition, albeit a day late. Jones has not shown any prejudice, given that he does not "assert that the district court refused to consider any evidence or arguments [he] submitted in [his] opposition to summary judgment." *Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1167, 1180–81 (9th Cir. 2022) (standard of review; finding no abuse of discretion in denial of request for an extension where plaintiffs did not show prejudice); *see also*

Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1258–59 (9th Cir. 2010) (explaining good cause standard). Indeed, the district court's order references the materials Jones submitted.

The parties shall bear their own costs on appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.