

**Mind Your Own Burdens:  
Salahuddin v. Goord  
467 F.3d 263 (2nd Cir. 2006)**

**By Brian Pickard\***

In *Salahuddin v. Goord*,<sup>1</sup> the Second Circuit considered Sunni Muslim prisoner Abdullah Salahuddin's claims that New York State Department of Correctional Services ("DOCS") officials violated his right to free exercise of religion under both the Free Exercise clause<sup>2</sup> and the Religious Land Use and Institutionalized Persons Act<sup>3</sup> ("RLUIPA") during his incarceration.<sup>4</sup> At trial, the United States District Court for the Southern District of New York granted summary judgment to the defendants on all of Salahuddin's claims.<sup>5</sup> In a 3-0 decision the *Salahuddin* court affirmed the lower court's ruling on one of Salahuddin's free exercise claims, but vacated the lower court's grant of summary judgment on the other four claims.<sup>6</sup>

Before addressing each of Salahuddin's claims individually, Judge Walker's opinion reviewed the rules of law governing free exercise claims under the First Amendment and RLUIPA.<sup>7</sup> Under § 3 of RLUIPA, government officials may not substantially burden the religious exercise of prisoners unless their actions further a compelling state interest by the least

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<sup>1</sup> 467 F.3d 263 (2nd Cir. 2006).

<sup>2</sup> U.S. CONST. amend. I.

<sup>3</sup> 42 U.S.C. § 2000cc.

<sup>4</sup> *Salahuddin*, 467 F.3d at 269. Also at issue before the court, and outside the scope of this article, was Salahuddin's claim that prison officials violated his Eighth Amendment right to freedom from cruel and unusual punishment by failing to properly treat his Hepatitis C infection in a timely manner. *Id.* at 270-71. The Second Circuit upheld the district court's grant of summary judgment to the defendants on the Eighth Amendment claim. *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 282-83.

<sup>7</sup> *Id.* at 273-75.

restrictive means available.<sup>8</sup> On the other hand, under the more relaxed First Amendment standard, action by a prison official that burdens a prisoner's religious exercise does not violate their right to free exercise as long as the actions are "reasonably related to legitimate penological interests."<sup>9</sup> The Second Circuit has translated this First Amendment requirement into a series of burdens that plaintiffs and defendants must satisfy in free exercise cases.<sup>10</sup> Under the Second Circuit's analysis, an initial burden lies with the plaintiff to demonstrate that the official action substantially burdens his sincerely held beliefs.<sup>11</sup> If this is satisfied, the burden shifts to the defendant to establish penological interests are furthered by the official action.<sup>12</sup> Should the defendant satisfy this relatively manageable burden, the plaintiff then has the opportunity to show that the penological interests were not reasonably related to the official action.<sup>13</sup>

Salahuddin claimed that prison officials violated his free exercise rights by (1) forcing him to pray and fast together with Shi'ite Muslims, (2) denying him the ability to eat religious holiday meals or attend religious holiday services while in disciplinary keeplock, (3) failing to keep a copy of the Qur'an in the prison library and provide a Muslim chaplain, (4) refusing to allow him to attend a religious service while carrying legal mail, and (5) denying him religious meals on days that he used the law library.<sup>14</sup> The Second Circuit addressed each of the five claims in turn applying its burden-shifting analysis under the First Amendment to each.<sup>15</sup>

#### I. Joint-Worship Claim

For his first claim, Salahuddin, a Sunni Muslim, asserted that prison officials substantially burdened his religious beliefs by not providing separate worship services for Sunni

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<sup>8</sup> 42 U.S.C. § 2000cc-1. Section 3 of RLUIPA applies "to a program or activity that receives Federal financial assistance," 42 U.S.C. § 2000cc-1(b)(1), and, therefore, to all action at the state level in the prison context because "[e]very state accepts federal funding for its prisons." *Cutter v. Wilkinson*, 544 U.S. 709, 716 n.4 (2005).

<sup>9</sup> *Salahuddin*, 467 F.3d at 274. The court also outlined the four factors of *Tuner v. Safley*, 482 U.S. 78, 84, 107 (1987), used to determine the reasonableness of state action in the First Amendment free exercise context. *Salahuddin*, 467 F.3d at 274. However, the court did not have occasion to make use of these factors in its analysis. *Id.* at 275-79.

<sup>10</sup> *Id.* at 274-75 (applying the analytic framework enunciated in *Ford v. McGinnis*, 352 F.3d 582, 591, 595 (2d Cir. 2003)).

<sup>11</sup> *Id.* at 274.

<sup>12</sup> *Id.* at 275.

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

<sup>14</sup> *Salahuddin*, 467 F.3d at 269-70.

<sup>15</sup> *Id.* at 275-79.

and Shi'ite Muslims—forcing him to worship jointly with the Shi'ite Muslims in the prison.<sup>16</sup> To challenge this claim, the defendants argued that Salahuddin failed to make an initial showing that this action substantially burdened his religious exercise.<sup>17</sup> However, the court refused to consider this argument because the defendants failed to raise it in the district court.<sup>18</sup> Furthermore, because the record did not allege any penological interest for the action, the court determined that the defendants failed to meet their burden under the free exercise analysis.<sup>19</sup> This conclusion led the court to hold that the defendants were not entitled to summary judgment on the joint worship claim.<sup>20</sup>

## II. Keeplock Claim

Next, Salahuddin claimed that while in disciplinary keeplock for conspiring to assault another Muslim prisoner he was not allowed to attend religious holiday services or to eat religious holiday meals.<sup>21</sup> After deciding that Salahuddin had adequately alleged the burden placed on his religious exercise by his keeplock containment, the court considered whether the defendants had satisfied their burden of showing a penological interest for the action.<sup>22</sup> The defendants argued that the penological interest of maintaining inmate safety as the motivating factor for placing Salahuddin in keeplock.<sup>23</sup> Though they admitted the legitimacy of inmate safety as a penological interest rationally related to keeping certain prisoners in keeplock, the court rejected the defendants' argument because they failed to point to any evidence in the record that established inmate safety as an actual motive for the placement of Salahuddin in keeplock.<sup>24</sup> As a result, the court vacated the lower court's summary judgment for the defendants on the keeplock claim.

## III. Qur'an/Chaplain Claim

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<sup>16</sup> *Id.* at 270.

<sup>17</sup> *Id.* at 275.

<sup>18</sup> *Id.*

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

<sup>20</sup> *Salahuddin*, 467 F.3d at 276.

<sup>21</sup> *Id.* at 270.

<sup>22</sup> *Id.* at 276.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 277. (“The defendants’ burden on summary judgment is to ‘point[] to [something] in the record suggesting that the [denial of religious exercise] *was viewed as* preventing [threats to inmate safety].” (quoting *Turner*, 482 U.S. at 98) (emphasis in original)).

Thirdly, Salahuddin claimed that prison officials burdened his religious exercise by failing to have a copy of the Qur'an in the prison library and by failing to make a Muslim chaplain available to him.<sup>25</sup> Observing that the defendants failed to address this claim in their motion for summary judgment, the *Salahuddin* court vacated the summary judgment for the defendants on this claim, assuming that the lower court must have granted the motion on this claim inadvertently.<sup>26</sup>

#### IV. Legal Mail Claim

Salahuddin's legal mail claim alleged that he was not allowed to enter a religious service while carrying legal mail and that prison officials did not offer him the opportunity to store the mail nearby so that he could attend the service.<sup>27</sup> On the record the defendants produced a declaration by a prison official involved in the incident who maintained that Salahuddin was given the opportunity to store his mail in the nearby service hall, or to take the letter to his cell and return to the service.<sup>28</sup> Because Salahuddin failed to properly dispute the official's version of the events after adequate notice, the court was left with no choice but to accept the defendants' version of the events and affirm the district court's grant of summary judgment on the legal mail claim.<sup>29</sup>

#### V. Law Library Claim

Salahuddin's final free exercise claim alleged that he was denied the opportunity to attend religious services on days that he chose to visit the prison's law library.<sup>30</sup> Because the defendants contested neither this allegation nor that the action placed a substantial burden on his religious exercise, the court held that Salahuddin satisfied his initial burden.<sup>31</sup> Furthermore, because the defendants failed to develop any evidence in the record indicating a penological interest for the official action, the court held that summary judgment for the defendants on the law library claim was also improper.<sup>32</sup>

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<sup>25</sup> *Id.* at 270.

<sup>26</sup> *Salahuddin*, 467 F.3d at 278.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 270.

<sup>31</sup> *Id.* at 278.

<sup>32</sup> *Salahuddin*, 467 F.3d at 278.

Arguing that the summary judgment on the law library claim should've been affirmed, the defendants asserted that Salahuddin never expressed a valid reason for requiring the services of the law library.<sup>33</sup> Although this argument appears to have been directed at establishing that Salahuddin failed to satisfy his initial showing of a substantial burden on his religious exercise, the court characterized this as an argument towards the defendants satisfying their own burden of showing a penological interest for the action.<sup>34</sup> As such, the court reasoned that because it failed to address any penological interest, the argument failed to defeat Salahuddin's law library claim as a matter of law.<sup>35</sup>

## VI. Concluding Remarks

In summary, the *Salahuddin* court managed to decide each of the five free exercise claims on what might be considered technicalities—defendants' failure to raise an argument in the lower court (Qur'an/chaplain claim), plaintiff's failure to present evidence in opposition to that of the defendant (legal mail claim), and defendants' failure to develop the record to show any motivating penological interest behind the actions of the prison officials (joint worship, keeplock, and law library claims). These holdings left little opportunity for the court to develop its Free Exercise clause and RLUIPA jurisprudence. None of the claims went beyond the Second Circuit's somewhat routine burden on the defendants to develop the record to show a legitimate penological interest. As a result, the court's analysis did nothing to further clarify the less straightforward areas of its free exercise rules such as: when is a government interest rationally related to the action taken, or, under the more scrutinizing RLUIPA standard, when does the government interest become compelling and when is the government action narrowly tailored to serve that interest? While these holdings properly sent the defendants back to the district court to attempt to further develop the record, they also leave the strong possibility that this case could return to the appellate level in the future with the opportunity to address these additional questions.

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<sup>33</sup> *Id.* at 279.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*