

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MOHAMED A. EL-TABECH, )  
 )  
 Plaintiff, )  
 )  
 v. )

Case No.: 4:04CV3231

HAROLD W. CLARKE, former Director of )  
 Nebraska Department of Correctional )  
 Services, ROBERT P. HOUSTON, , Director )  
 of Nebraska Department of Correctional )  
 Services, MIKE KENNEY, Warden of )  
 Nebraska State Penitentiary, FRANK )  
 HOPKINS, Assistant Director of Institutions )  
 for the Nebraska Department of Correctional )  
 Services, FRANCIS BRITTEN, Warden of )  
 Tecumseh State Correctional Institution, )  
 RANDY COLE, Medical Director of )  
 Nebraska Department of Correctional )  
 Services, DOUGLAS SELL, Director of the )  
 Mental Health program at Tecumseh State )  
 Correctional Institution, MARY )  
 CARMICHAEL, Contract Administrator for )  
 the Nebraska Department of Correctional )  
 Services, and STEVE VODICKA, )  
 Safety/Sanitation Coordinator for the )  
 Nebraska Department of Correctional )  
 Services, all in their individual capacities and )  
 official capacities. )  
 )  
 Defendants. )

AMENDED COMPLAINT

**PRELIMINARY STATEMENT**

1. The Complaint in this matter was filed *pro se* on June 28, 2004 by Mohamed A. El-Tabech, an inmate incarcerated at a Nebraska Department of Correctional Services (“NDCS”) facility, the Tecumseh State Correctional Institution (“TSCI”) and previously incarcerated at the Nebraska State Penitentiary (“NSP”). Plaintiff has been incarcerated at TSCI continuously since this matter began.

2. NSP is a facility housing maximum, medium, and minimum security prisoners.
3. TSCI is a facility housing maximum, medium, and minimum security prisoners. TSCI also houses inmates on Death Row.
4. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988, and 42 U.S.C. § 2000cc *et seq.*, for violations of Plaintiff's rights guaranteed under the Religious Land Use and Institutionalized Persons Act of 2000 (the "RLUIPA") and under the United States Constitution.
5. Plaintiff seeks injunctive and declaratory relief against Defendants acting in their official capacities and monetary damages against Defendants acting in their individual capacities.
6. Plaintiff seeks to end the substantial burdens placed on his religious exercise by Defendants, seeks to end the dangerous and inadequate conditions of confinement to which he is subjected on a daily basis, and seeks to vindicate his rights to meaningful classification decisions.

#### **PARTIES**

7. Plaintiff Mohamed A. El-Tabech, prisoner number 36752, is a prisoner in the custody of the NDCS, and is currently incarcerated at the Tecumseh State Correctional Institution ("TSCI"). Plaintiff is a strict adherent to the Orthodox Moslem faith.
8. Defendant Harold Clarke was the Director of the NDCS. As Director, Clarke was directly responsible for and involved in NDCS' daily functioning and administration. Clarke is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Clarke.
9. Defendant Robert P. Houston is the Director of the NDCS. As Director, Houston is

directly responsible for and involved in NDCS' daily functioning and administration.

Houston is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Houston.

10. Defendant Frank Hopkins is the Assistant Director, Institutions of the NDCS. As Assistant Director, Hopkins is directly responsible for and involved in the daily functioning and administration of both NSP and TSCI and acts in the place of the Director in many instances. Hopkins is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Hopkins.
11. Defendant Mike Kenney was, at all relevant times, Warden of the Nebraska State Penitentiary ("NSP"). As Warden, Kenney was directly responsible for and involved in the daily functioning and administration of the NSP. Kenney is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Kenney.
12. Defendant Francis Britten, was and is, at all relevant times, Warden of TSCI. As Warden, Britten is directly responsible for and involved in the daily functioning and administration of TSCI. Britten is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Britten.
13. Defendant Randy Cole was and is, at all relevant times, the Medical Director of NDCS. As Medical Director, Cole is directly responsible for and involved in the daily functioning and administration of medical services to prisoners incarcerated in the NDCS. Cole is a

person within the meaning 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Cole.

14. Defendant Douglas Sell was and is, at all relevant times, head of the Mental Health program at TSCI. As head of the Mental Health program at TSCI, Sell is directly responsible for and involved in the daily functioning and administration of all mental health services at TSCI, including making classification recommendations and mental health evaluations. Sell is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Sell.
15. Defendant Mary Carmichael is and was, at all relevant times, Contract Monitor at TSCI. As Contract Monitor, Carmichael is directly responsible for and involved in the daily functioning and administration of contracted services, including the contract with TSCI food service provider, Aramark. Carmichael is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Carmichael.
16. Defendant Steve Vodicka is and was, at all relevant times, Safety/Sanitations Coordinator at TSCI and NSP. As Safety/Sanitation Coordinator, Vodicka is directly responsible for and involved in the daily functioning and administration of all safety and sanitation needs at NSP and TSCI, including pest control, fire alarms, and other environmental matters. Vodicka is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law with respect to all acts or omissions attributed to Vodicka.
17. At all relevant times, Defendants were “persons” under 42 U.S.C. § 1983, and acting under color of state law and pursuant to the official and customary statutes, regulations,

duties, and/or policies and practices enacted or followed by the governmental entities for which the individual Defendants serve or served as agents, representatives, members, or employees.

18. Defendants are sued in their official capacities insofar as Plaintiff seeks prospective and permanent injunctive relief. For all other claims seeking money damages, Defendants are sued in their individual capacities.

#### **JURISDICTION AND VENUE**

19. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights, privileges and immunities secured by the Constitution of the United States and other federal statutes. The rights sought to be redressed are guaranteed by the First, Eighth and Fourteenth Amendments to the United States Constitution. This Court has federal question jurisdiction over this controversy under 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 2000cc *et seq.* This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.
20. Venue is proper in the District of Nebraska under 28 U.S.C. § 1391. The Plaintiff is incarcerated in this District, the events giving rise to this action occurred in this District, and some of the Defendants work in this District.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21. Pursuant to the grievance procedure stated in Administrative Regulation 217.02, Plaintiff has exhausted all administrative remedies available to him on the matters alleged in this Amended Complaint.
22. Plaintiff has submitted all necessary grievances and appeals in the proper format,

specifically, Plaintiff has submitted an Informal Grievance, a Step One Grievance, and a Step Two Grievance for each and every grievable issue alleged in this Amended Complaint.

23. No relief has been granted to Plaintiff through the required NDCS grievance procedure regarding any of the matters alleged in this Amended Complaint.

#### **FACTUAL ALLEGATIONS**

24. Plaintiff has been incarcerated in NDCS continuously since 1985.
25. Plaintiff was incarcerated at NSP from 1985 until he was transferred to TSCI on July 18, 2002.
26. On April 25, 2001, Plaintiff attempted to escape from NSP. As a result, Plaintiff was transferred from the general population at NSP to the Control Unit (“CU”) at NSP.
27. On July 18, 2002, Plaintiff was transferred to TSCI, and was immediately placed in the Special Management Unit (“SMU”) at TSCI, and been placed on Intensive Management (“IM”) status.
28. Both the CU and the SMU are segregation units.
29. Plaintiff has never been in the general population at TSCI, and instead has been continuously incarcerated since July 18, 2002 in the SMU, on IM status.
30. Taking together the time spent in the CU and the SMU, Plaintiff has been in continuous segregation for over five years, since April 25, 2001.

#### **Plaintiff’s Religious Convictions–Kosher Diet**

31. Plaintiff was born and raised in Beirut, Lebanon and resided there until he was approximately 25 years old.

32. Plaintiff was born into, and has always been a sincere adherent to, the Orthodox Moslem faith. As part of the practice of his faith, Plaintiff sincerely adheres to and acknowledges all prior prophets, messages, and holy books.
33. Also as part of the practice of his faith, Plaintiff sincerely believes that he is required to eat and maintain only a kosher diet.
34. In accordance with established Orthodox Moslem tradition and practice, Plaintiff believes that maintaining a kosher diet is a fundamental tenet of the Orthodox Moslem faith and that the primary purpose of observing kosher principles and maintaining a kosher diet is to conform to the divine will of God as expressed in the Holy Qur'an.
35. Plaintiff subscribes to established Orthodox Moslem teaching that the Qur'an teaches that the slightest morsel of forbidden food taints not only the body, but the soul itself.
36. Maintaining a kosher diet includes adherence to specific rules. These rules set forth which food may be consumed and the manner of preparation and service of permitted foods.
37. Maintaining a kosher diet requires strict adherence to the rules regarding which foods may be consumed. Foods that may be eaten include all non-animal products such as fruits and vegetables, meat from animals that chew the cud and have cloven hooves (e.g. cows and sheep), certain types of poultry (e.g., chicken, turkey, and duck), and fish that have fins and scales. Dairy products are permitted, but meat and dairy must never be mixed together.
38. Maintaining a kosher diet also requires that the adherent prepare food for consumption in a particular manner. For example, kosher food is no longer considered kosher when the

food is prepared in containers that are non-kosher. To keep kosher food untainted, the containers, pots and pans, utensils, and all other implements used in the preparation must not come into contact or have had contact with non-kosher food. The food must also be served on plates and bowls and eaten with utensils that have not had contact with non-kosher food.

39. In short, the three essential qualities of a kosher diet are:
- A. The food to be consumed must be derived from a religiously-acceptable source;
  - B. The food to be consumed must be prepared and served in a religiously-acceptable way; and
  - C. Meat and dairy must not be mixed together.
47. Kosher food can be made available to Plaintiff through several possible means, including, but not limited to, the following: (1) preparing food on site with proper kitchen facilities under the direction of a qualified kosher food supervisor; (2) obtaining pre-packaged meals from kosher food vendors around the country (e.g., sealed airline dinners or shelf stable packaging ); or (3) obtaining acceptable kosher products through retail outlets and kosher food purveyors. In addition, the use of disposable plastic or paper good and utensils is an easy, cost-effective and religiously-acceptable means of providing kosher food in an institutional environment.

**Defendant Clarke, Houston, Hopkins, Britten, and Carmichael's Refusal to Provide Kosher Meals to Plaintiff**

48. The NDCS does not allow for a kosher meal option to prisoners incarcerated in its facilities.



49. Instead, the NDCS policy and practice is set forth in Administrative Regulation 108.01(II)(H) and provides only that “written policy, procedure and practice of each facility provides adequate support for inmates whose religious beliefs require adherence to special dietary laws. . . . Any inmate may abstain from religiously prohibited foods without jeopardizing that nutritional adequacy.”
50. The policy set forth in Administrative Regulation 108.01(II)(H) does not qualify as kosher for purposes of Plaintiff’s sincerely-held religious beliefs.
51. Plaintiff has repeatedly informed Defendants, through the filing of grievances and through correspondence both to Defendants and to Religious Coordinators, that his sincerely held religious beliefs require that he maintain a kosher diet.
52. Defendants have responded repeatedly that they will not provide Plaintiff with a kosher diet.
53. Although the NDCS does accommodate the religious needs of some prisoners in its facilities by refraining from the use of pork or pork by-products in food, the NDCS refuses to provide kosher meals for Plaintiff.
54. Furthermore, the NDCS, including TSCI, refuses to provide kosher meals for Plaintiff even where Administrative Regulation 108.01(II)(A) provides that “[d]ietary allowances, as adjusted for . . . religious foods of conscience and activity, should meet or exceed the recommended dietary allowances published by the National Academy of Sciences.”
55. Upon information and belief, Plaintiff does not receive the recommended dietary allowances and is forced to repeatedly skip meals as a result of Defendant Clarke, Houston, Hopkins, Britten, and Carmichael’s failure to provide Plaintiff with a kosher

diet.

56. Upon information and belief, federal prisons in Nebraska's region (North Central) operated by the Bureau of Prisons provide kosher meals to prisoners who seek such meals as a result of their sincerely-held religious beliefs.
57. Plaintiff has exhausted all administrative remedies by filing all required grievances pursuant to Administrative Regulation 217.02.
58. Defendants Clarke, Houston, Hopkins, Britten, and Carmichael have never identified any compelling government interest for denying Plaintiff kosher meals or explained how the failure to provide kosher meals is the least restrictive means of advancing any such compelling government interest.
59. On information and belief, the NDCS receives federal financial assistance.

**Plaintiff's Religious Convictions—Cleanliness**

60. As part of the practice of his faith, Plaintiff sincerely believes that he is required to maintain the highest level of cleanliness.
61. In accordance with established Orthodox Moslem tradition and practice, Plaintiff believes that he is required to bathe on a daily basis, to keep his hair clean and cut short, to wash his hands and arms up to the elbows before praying, among other things as expressed in the Holy Qur'an.
62. Failure to maintain the highest level of cleanliness means that Plaintiff is unclean both physically and spiritually and interferes with Plaintiff's ability to maintain purity within the tenets of his faith.
63. Defendants Clarke, Houston, Hopkins, and Britten do not permit Plaintiff to shower more

than three times per week, violating his sincerely-held religious beliefs to bathe daily and maintain the highest level of cleanliness.

64. Plaintiff has exhausted all administrative remedies by filing all required grievances pursuant to Administrative Regulation 217.02.
65. Defendants Clarke, Houston, Hopkins, and Britten have never identified any compelling government interest for denying Plaintiff the opportunity to bathe on a daily basis before prayers, and have never explained how the failure to provide the opportunity to bathe on a daily basis is the least restrictive means of advancing any such compelling government interest.
66. On information and belief, the NDCS receives federal financial assistance.

**Defendants' Religious Intolerance and Prevention of Plaintiff's Religious Practices**

67. Plaintiff has been the target of religious discrimination and intolerance since nearly the beginning of his incarceration in SMU.
68. Plaintiff was verbally assaulted by a guard utilizing the SMU's intercom system, with the guard specifically taking aim at Plaintiff's religious beliefs, practices, and family members.
69. Defendants Clarke and Britten refused to take any action regarding this incident until compelled to do by then-Governor Mike Johanns, and only after Plaintiff had exhausted his administrative remedies and contacted a national Moslem organization.
70. Plaintiff has been denied the ability to pray in accordance with the prayer schedule, and in accordance with his sincerely held religious beliefs.
71. Defendants Clarke and Britten have never identified any compelling government interest

for denying Plaintiff any redress for the verbal assault on his religious beliefs or the refusal to permit Plaintiff the ability to adhere to a prayer schedule, and have never explained how the failure to provide such things is the least restrictive means of advancing any such compelling government interest.

72. On information and belief, the NDCS receives federal financial assistance.

**The Control Unit at NSP**

73. Beginning on April 25, 2001, Plaintiff was placed in the CU at the NSP. Plaintiff remained in the CU, cell number B4, continuously until his transfer to TSCI on July 18, 2002.

74. The CU houses prisoners in total isolation, with no exterior windows and therefore no sunlight.

75. Plaintiff's cell in the CU consisted of a sink, toilet, and a bed made from a concrete slab.

76. Plaintiff's cell number B4 did not have a chair, table, mirror, trash receptacle, drinking cup, or exercise equipment of any kind.

77. Cell number B4 was infested with rodents, including both mice and rats, spiders, ants, and other insects on a regular basis.

78. Throughout Plaintiff's time in the CU, he repeatedly suffered bites and was awakened many nights with the sound of mice and rats in his cell and spiders crawling on his face.

79. The CU was, at all relevant times, under the direct control and supervision of Defendants Kenney and Clarke. Defendants Kenney and Clarke supervised and controlled all policies, customs, patterns and practices of the CU at all relevant times.

**The Special Management Unit at TSCI**

80. Plaintiff is currently confined in the SMU at TSCI. The SMU houses prisoners who are on administrative segregation and death row and consists of two adjacent buildings. One building contains galleries A, B, and C, and the other building contains galleries D, E, and F. Plaintiff has been confined in gallery C, cell four since arriving at TSCI.
81. Galleries C and D consist of a single level on the ground floor and contain 16 cells in each gallery, or 32 cells total. Galleries C and D house prisoners on IM status.
82. Galleries A, B, E and F consist of upper and lower tiers, each containing 20 cells. Death row is housed on the upper level of Gallery A.
83. Unlike prisoners housed in Gallery C, prisoners housed in Galleries A, B, E and F are permitted to walk freely to shower, to the yard area for recreation, and to perform any job assignments.
84. Unlike prisoners housed in Gallery C, death row prisoners are permitted a “day room” for socializing, are permitted to eat meals together, and are permitted to purchase soft drinks from a machine.
85. All SMU cells contain a fire alarm and a pressurized water sprinkler which can be triggered by fire or by tampering, often resulting in flooding of the SMU.
86. The fire alarm system in SMU is a centralized system whereby if a fire alarm is triggered for any reason, it is heard by every prisoner housed in SMU.
87. The SMU was and is, at all relevant times, under the direct control and supervision of Defendants Clarke, Houston, Hopkins, and Britten. Defendants Clarke, Houston, Hopkins, and Britten supervise and control all policies, customs, patterns and practices of

the SMU at all relevant times.

**Description of Plaintiff's SMU Cell, Number C4**

88. Plaintiff has been incarcerated in the same cell since arriving at TSCI on July 18, 2002, cell C4.
89. Cell number C4 is approximately eight feet wide by fifteen feet long unencumbered, and approximately five feet wide by fifteen feet long encumbered.
90. Cell number C4 contains a sink, a toilet, a mirror, a steel bed which measures approximately three feet wide by seven feet long, one small shelf which is bolted to the wall near the bed, and two additional shelves for storage.
91. Cell number C4 contains two rectangular-shaped windows which allow light to pass into the cell.
92. Plaintiff's cell is constantly illuminated because Plaintiff is able only to dim the light within the cell, but cannot completely turn the light off.
93. Cell number C4 has three doors: (1) a "slider door" between the hallway and the "shower door" which has a rectangular-shaped window permitting anyone in the hallway a view of portions of the interior of the cell; (2) a "shower door" which is located approximately five feet from the "slider door" and is opened so that Plaintiff can take a shower or leave his cell; (3) a "yard door" is located at the other end of the cell away from the hallway and is opened to permit Plaintiff to step into the adjacent caged yard area.
94. All three doors as described above are electronically controlled by a guard or other prison employee who is located in a secured control room.
95. The "slider door" also contains two approximately six inch by eighteen inch hatches,

which are opened in order to place Plaintiff in restraints before removing him from cell number C4. One hatch is located approximately “below the hips” and is used to place handcuffs and belly restraints on Plaintiff. The other hatch is “above the ankle” and is used to place leg irons on Plaintiff.

96. The “shower door” has a hatch which measures approximately six by eighteen inches through which Plaintiff receives his mail, meal trays, exchanges his laundry, and other necessities such as shower supplies and medications.
97. In addition, the “shower door” has an approximately 18 x 34 inch glass pane which permits a guard or other prison employee to view the inside of cell number C4 from outside of the “shower door.”
98. The “shower door” also has a thick, wire-mesh pane at the bottom of the door which permits air to flow into cell number C4.
99. The area between the “slider door” and the “shower door” is a shower area measuring approximately five feet by five feet and contains a stainless steel shower which is secured to the wall.
100. Plaintiff is confined to cell number C4, and its adjacent yard area, twenty-four hours a day, seven days a week, except when he is permitted to access the law library or is escorted to a medical appointment, court hearing, or meeting with an attorney.

**Conditions of Confinement–Sleep Deprivation**

101. Plaintiff is chronically sleep deprived as a result of both the design of the SMU cell and the activities of both prison employees and other inmates housed in SMU.
102. Plaintiff’s bed is installed and located in an area inside the cell against the wall.

103. The rectangular-shaped window in the “slider door” does not permit an individual standing in the hallway to see Plaintiff if Plaintiff is sleeping on his side in the cell’s bed.
104. The SMU guards generally work in three shifts—6:00 a.m until 2:00 p.m. (first shift), 2:00 p.m. until 10:00 p.m. (second shift), and 10:00 p.m. until 6:00 a.m. (third shift).
105. During the third shift, the guards begin checking on prisoners, in order to ascertain that each prisoner is in his cell, at 10:00 p.m.
106. The third shift guards continue checking on prisoners every half-hour.
107. If a guard is unable to view Plaintiff from the hallway, through the “slider door,” it is likely that Plaintiff is obscured from view only because Plaintiff is sleeping on his side in the bed.
108. In order to view Plaintiff, prison regulations, policies, and practices require that the guard or other prison employee must open the “slider door” in order to view Plaintiff in his cell.
109. The opening of the “slider door” makes a loud noise akin to the constant ringing of a bell.
110. Even if Plaintiff is visible to the guard upon a 30-minute check, Plaintiff is awakened nightly by guards opening and closing the “slider door” to other prisoners’ cells.
111. In some instances, certain guards go even further to prevent Plaintiff from sleeping.
112. In particular, one third-shift guard who Defendants refuse to identify to Plaintiff, engages in the jangling of keys, slamming of doors throughout Gallery C, talking very loudly, yelling the names of prisoners very loudly, engaging in checks every 15 minutes rather than every 30 minutes, beating on the “slider door” repeatedly until Plaintiff responds, shining a high-beam flashlight into Plaintiff’s cell, and interrupting Plaintiff while he uses the toilet.



113. Numerous other loud noises wake Plaintiff on a regular and continuous basis.
114. Specifically, Plaintiff is awakened by the jet-engine like sounds of the wet vac and buffer machines, used to clean SMU after a prisoner floods the SMU with human waste, as described below.
115. Plaintiff is further sleep deprived on a daily basis due to the pandemonium of seriously mentally ill prisoners expressing their suffering and hallucinations in raving, screaming, moaning, cursing, and beating on the walls of the SMU.
116. Plaintiff is further chronically sleep deprived due to the constant illumination inside of his cell.
117. Sleep is a basic human need, the failure to provide which is a dangerous and inhumane deprivation.
118. Sleep deprivation is an atypical and significant hardship in relation to the ordinary incidents of prison life.
119. Sleep deprivation has been shown to result in cognitive problems, memory deficits, confusion and anxiety, and intensifies psychiatric symptoms.
120. Defendants Clarke, Houston, Hopkins, Britten, and Vodicka have shown deliberate indifference towards these conditions, which pose a substantial risk of serious physical and psychological harm to Plaintiff.

**Conditions of Confinement—Exposure to Human Waste**

121. Plaintiff is routinely exposed to human waste, both in his cell and through the centralized ventilation systems in TSCI.
122. On a regular basis, other prisoners plug the toilets and continuously flush them until the

toilets overflow. This results in the hallways in Gallery A and B being flooded with human waste.

123. Only Galleries C and D are equipped with drains in the shower area of each cell and the remainder of SMU is not equipped with drains, resulting in more extensive flooding.
124. If Plaintiff is taken from his cell to a medical appointment, the law library, or to meet with counsel during a flooding episode, he is forced to wade through human waste and other debris from the flooded toilets in the hallways.
125. In addition, Plaintiff has repeatedly been the “victim” of flooded toilets within his cell, resulting from the prisoner in the neighboring cell plugging his toilet.
126. When Plaintiff’s toilet floods, he and all of his belongings are exposed to raw human waste.
127. This has happened repeatedly in the past and there is no system in place to prevent it from happening again.
128. The SMU houses the severely mentally ill, who often defecate on the floor of their cells, and spread feces on the walls and throughout the SMU.
129. As a result of these actions by the mentally ill housed in SMU, there is often the smell of human feces in the air, which is circulated through the SMU’s centralized ventilation system.
130. Plaintiff’s cell is often permeated with stale air that is saturated with the fumes of feces, as well as the fumes of other bodily odors, which undermines the health and sanitation of SMU.
131. The ability to live in a safe and sanitary environment, free from exposure to human waste,

is a basic human need, the failure to provide which is a dangerous and inhumane deprivation.

132. This exposure to human waste, in the hallways, in Plaintiff's cell, and in the centralized ventilation system is an atypical and significant hardship in relation to the ordinary incidents of prison life.
133. Defendants Clarke, Houston, Hopkins, Britten, and Vodicka have shown deliberate indifference towards these conditions, which pose a substantial risk of serious physical and psychological harm to Plaintiff.

**Conditions of Confinement—Exposure to Rodents, Insects, and Other Vermin**

134. Both while Plaintiff was confined in the CU at the NSP and currently in SMU at TSCI, he has been repeatedly and regularly exposed to rodents, insects, and other vermin.
135. On many occasions, Plaintiff has awakened to mice and rats running around his cell and spiders crawling on his face.
136. Plaintiff has been repeatedly bitten by spiders, and has sustained physical injury requiring medical treatment in such instances.
137. The ability to live in a safe and sanitary environment, free from exposure to rodents, insects, and other vermin, is a basic human need, the failure to provide which is a dangerous and inhumane deprivation.
138. This exposure to rodents, insects, and other vermin, is an atypical and significant hardship in relation to the ordinary incidents of prison life.
139. Defendants Clarke, Houston, Hopkins, Britten, and Vodicka have shown deliberate indifference towards these conditions, which pose a substantial risk of serious physical

and psychological harm to Plaintiff.

**Conditions of Confinement–Constant Illumination of Cell**

140. Plaintiff's cell is illuminated 24 hours per day as a result of a night light which he cannot control, and a light in the shower area which illuminates his cell 24 hours per day.
141. This constant illumination has caused Plaintiff grave sleeping problems, aggravation to a medical condition of his eyes known as photophobia, and other mental and physiological problems.
142. The ability to live free from constant illumination is a basic human need, the failure to provide which is a dangerous and inhumane deprivation.
143. This exposure to constant illumination is an atypical and significant hardship in relation to the ordinary incidents of prison life.
144. Defendants Clarke, Houston, Hopkins, Britten, and Vodicka have shown deliberate indifference towards these conditions, which have caused Plaintiff physical harm, and pose a substantial risk of serious physical and psychological harm to Plaintiff.

**Conditions of Confinement–Denial of Access to Law Library**

145. As a prisoner on IM status in the SMU, Plaintiff is entitled to only one hour of law library access per week.
146. During that one hour, Plaintiff is often not permitted the assistance of a trained Legal Aide and is in full restraints, making it very difficult to write, type, or hold books.
147. TSCI Operational Memorandum 116.01.02 states that an inmate housed in the SMU shall have restraints on during law library time, "with the exception of one hand free for writing purposes."

148. Defendant is often denied his right to have one hand free and therefore is not permitted meaningful law library access.
149. In addition, Plaintiff is often denied access to the law library completely or is permitted to simply be present in the law library without the ability to make meaningful use of the time.
150. Plaintiff had a particular need for more access than was allowed him, in order to timely file his petition for writ of certiorari with the U.S. Supreme Court, challenging his first-degree murder conviction and resulting life sentence.
151. Defendants Clarke, Houston, Hopkins, and Britten denied Plaintiff's particular need for additional law library access and such denial caused Plaintiff actual harm, namely Plaintiff's inability to challenge his conviction and sentence.
152. Defendants Clarke, Houston, Hopkins, and Britten have shown deliberate indifference towards these conditions, which have caused Plaintiff actual harm and denial of access to the courts.

**Conditions of Confinement—Denial of Access to Medical Treatment**

153. Plaintiff has had ongoing physical medical needs relating to his shoulders, eyes, and treatment for hernias.
154. Since his confinement at TSCI began, Plaintiff has been denied treatment for his shoulders, specifically, Plaintiff has been denied required follow up care despite a decreased range of motion in his right shoulder, numbness, loss of strength, and hand spasms.
155. Plaintiff has also been denied treatment for hernias, specifically, Plaintiff has been denied

follow up care with Dr. Keith Shuey of Johnson County Medical Center who requested to see Plaintiff in six months during a February 20, 2003 visit. Plaintiff has never had a follow up visit with Dr. Shuey despite continuing physical pain and discomfort.

156. Plaintiff has also been denied treatment for a condition of the eyes known as photophobia, or sensitivity to light, and is denied the ability to have sunglasses despite a physician's order to permit Plaintiff to obtain sunglasses.
157. Defendants Clarke, Houston, Hopkins, Britten, Cole, and Carmichael have shown deliberate indifference towards these medical conditions, which have caused Plaintiff physical harm, and pose a substantial risk of serious physical and psychological harm to Plaintiff.

**Conditions of Confinement—Denial of Access to Meaningful Physical Exercise**

158. While confined in SMU, Plaintiff is permitted one hour of "yard time" five times per week. Plaintiff does not choose the time during which he is allowed to be in the yard.
159. The "yard" is adjacent to Plaintiff's cell and is accessed through the "yard door" in Plaintiff's cell.
160. The "yard" measures approximately eight feet by fifteen feet. The floor of the "yard" is concrete, and two of the walls are also concrete. The remaining two walls consist of the "yard door" and steel gate/cage wall. There are no restroom or other facilities in the "yard."
161. Once outside in the yard, Plaintiff is not permitted to reenter the cell until the entire yard time (one hour) expires.
162. If Plaintiff asks to use the restroom prior to going to the "yard," Plaintiff is often denied

yard time and is deemed to have “refused” yard time simply by seeking to use the restroom prior to accessing the yard.

163. In addition, once in the “yard,” Plaintiff has not been permitted to reenter the cell until the entire yard time expires on occasions where Plaintiff has suffered illnesses including dizziness, diarrhea, and nausea.
164. Plaintiff has further been required to remain in the yard until expiration of the one-hour yard time in instances where the weather has changed dramatically and has become unsafe, such as stormy conditions.
165. Where a prisoner is confined to continuous and long-term segregation, outdoor exercise is a basic human need, the failure to provide which is a dangerous and inhumane deprivation.
166. The deprivation of meaningful outdoor exercise, which is often denied at the whim of Defendants, is an atypical and significant hardship in relation to the ordinary incidents of prison life.
167. Defendants Clarke, Houston, Hopkins, and Britten have shown deliberate indifference towards these conditions, which have caused Plaintiff physical harm, and pose a substantial risk of serious physical and psychological harm to Plaintiff. have shown deliberate indifference towards these conditions, which pose a substantial risk of serious physical and psychological harm to Plaintiff.

**Classification Decisions**

168. Classification into the CU and SMU are arbitrary, and no guidance is ever given as to what conduct is necessary to be transferred out of CU or SMU.

169. Plaintiff classification in SMU is based on a single misconduct report, filed on April 25, 2001 relating to an escape attempt from NSP.
170. Plaintiff's classification status is reviewed approximately every six months, and no additional evidence is ever presented that warrants keeping Plaintiff in SMU, on IM status.
171. Plaintiff is not permitted to present documentary evidence at classification review hearings, is not permitted to call witnesses, and is not permitted any meaningful opportunity to challenge or otherwise rebut his IM status.
172. During his incarceration in the CU, Plaintiff was, on at least one occasion, not provided with notice of a classification review hearing and was not permitted to attend the hearing.
173. Further, Defendant Sell and his subordinates routinely "certify" Plaintiff's mental health but have never examined him, have never met with him, and merely ask a cursory question such as "have you had any suicidal thoughts" on a regular basis.
174. IM status is a punitive status as Plaintiff is prohibited from having a job, prohibited from exercising his sincerely held religious beliefs such as daily showers, is limited to one hour of law library access per week, is in constant restraints, and is not permitted contact visits with family and friends.
175. The punitive IM status is far more restrictive than that of prisoners confined on Death Row. Death row inmates are permitted all of the above privileges, in addition to other privileges such as soft drink machine and additional "yard" time.
176. IM status is an atypical and significant hardship on Plaintiff because classification as an IM prisoner extends the duration of his incarceration.



177. For example, when Plaintiff attended his last parole hearing, he was berated by the parole board for his failure to have a job, engage in educational opportunities, and otherwise “progress” towards rehabilitation.
178. The parole board denied his request to commute his sentence to something less than a life sentence (and therefore denied Plaintiff’s ability to take advantage of good time credits) because of Plaintiff’s failure to work towards rehabilitation, even though Plaintiff is *prohibited from engaging in rehabilitative activities*.
179. Because Plaintiff has been denied the commutation of his sentence as a result of his IM status, the duration of Plaintiff’s incarceration is extended as a function of his classification.
180. Plaintiff has been incarcerated in a highly-prohibitive segregated unit for over five years. There is no question that his IM status is indefinite. Indeed, Plaintiff has been told by many prison employees that Defendants plan to keep him on IM status for at least 10 years.
181. Defendants’ arbitrary classification system is impenetrable to Plaintiff, and gives unlimited discretion to Defendants in determining classification status.
182. While Plaintiff is confined to the SMU, he is subjected to the numerous unlawful conditions of confinement and thus exposed to harm and dangerous conditions.
183. Defendants Clarke, Houston, Hopkins, Britten, Kenney, and Sell have shown deliberate indifference towards Plaintiff’s classification status, which have caused Plaintiff physical harm, and pose a substantial risk of serious physical and psychological harm to Plaintiff.

**FIRST CLAIM FOR RELIEF**

Against Defendants Clarke, Houston, Hopkins, Britten, and Carmichael

Violation of the Religious Land Use and Institutionalized Persons Act of 2000 (the "RLUIPA")  
(42 U.S.C. § 2000cc et seq.)

184. Paragraphs 1 through 72 are incorporated by reference as if set forth fully herein.
185. Defendants Clarke, Houston, Hopkins, Britten, and Carmichael have deprived and continue to deprive Plaintiff of his right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act of 2002, by unlawfully imposing a substantial burden on Plaintiff's religious exercise.
186. On information and belief, the substantial burden Defendants Clarke, Houston, Hopkins, Britten, and Carmichael have imposed on Plaintiff's religious exercise is imposed in a program or activity that receives federal financial assistance.
187. The substantial burden has caused Plaintiff numerous physical and psychological injuries, including but not limited to substantial weight loss and the worsening of medical conditions involving his shoulders.

**SECOND CLAIM FOR RELIEF**

Against Defendants Clarke, Houston, Hopkins, Britten, and Carmichael

Violation of the United States Constitution  
Free Exercise of Religion: First and Fourteenth Amendments  
(42 U.S.C. § 1983)

188. Paragraphs 1 through 72 are incorporated by reference as if set forth fully herein.
189. Defendants have deprived and continue to deprive Plaintiff of his free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiff because of his religious and by substantially burdening his religious exercise.

190. The substantial burden has caused Plaintiff numerous physical and psychological injuries, including but not limited to substantial weight loss and the worsening of medical conditions involving his shoulders.

**THIRD CLAIM FOR RELIEF**

**Against All Defendants**

Violation of the United States Constitution

Freedom from Cruel and Unusual Punishment: Eighth and Fourteenth Amendments  
(42 U.S.C. § 1983)

191. Paragraphs 1 through 183 are incorporated by reference as if set forth fully herein.
192. Defendants have deprived and continue to deprive Plaintiff of his rights to be free from cruel and unusual punishment, as secured by the Eighth Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment.
193. Specifically, Defendants have deprived Plaintiff of his rights to be free from inhumane and dangerous conditions of confinement, and to the extreme deprivations of basic needs as described herein, Defendants have acted, and continue to act, with deliberate indifference towards Plaintiff's serious health and safety needs.

**FOURTH CLAIM FOR RELIEF**

**Against Defendants Clarke, Houston, Kenney, Hopkins, Britten, and Sell**

Violation of the United States Constitution

Procedural Due Process Violations: Fourteenth Amendment  
(42 U.S.C. § 1983)

194. Paragraphs 1 through 183 are incorporated by reference as if set forth fully herein.
195. Defendants have deprived and continue to deprive Plaintiff of his rights to be free from an atypical and significant hardship in relation to the ordinary incidents of prison life and have failed to afford Plaintiff with the opportunity to be heard and other basic procedural safeguards.

196. Defendants have therefore denied, and continue to deny, Plaintiff due process, in violation of his rights under the Fourteenth Amendment to the United States Constitution.

**WHEREFORE**, Plaintiff respectfully requests that this Court:

1. Issue a judgment declaring that the actions of Defendants described herein are unlawful and violate Plaintiff's rights under the Constitution of the United States;
2. Issue a preliminary and permanent injunction requiring Defendants to provide Plaintiff with a nutritionally-sufficient kosher diet;
3. Declare that Defendants' failure to provide Plaintiff with a nutritionally-sufficient kosher diet, as required by his sincere religious beliefs, is in violation of the RLUIPA;
4. Declare that the Defendants' failure to provide Plaintiff with the opportunity to shower on a daily basis, as required by his sincere religious beliefs, is in violation of the RLUIPA;
5. Preliminarily and permanently enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them, from subjecting Plaintiff to the conditions of confinement set forth in this Amended Complaint;
6. Award compensatory and general damages against all Defendants and each of them in favor of Plaintiff, in an amount to be determined according to the proof;
7. Grant Plaintiff his reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws; and
8. Grant all such other relief as this Court deems just and proper.

Dated this 9<sup>th</sup> day of June, 2006.

MOHAMED A. EL-TABECH, Plaintiff

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BY:           /s/ Marnie A. Jensen            
Marnie A. Jensen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9<sup>th</sup> day of June, 2006, the foregoing document was electronically filed using the CM/ECF system which sent notification of the filing to the following:

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          /s/ Marnie A. Jensen            
Marnie A. Jensen