IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ERIC S. MCGILL, JR.,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 19-1712
	:	
v.	:	(SAPORITO, M.J.)
	:	
TIMOTHY L. CLEMENTS, et al.	:	
	:	
Defendants.	:	
	:	

BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Respectfully submitted,

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Plaintiff Eric S. McGill, Jr. respectfully submits this brief in support of his Motion for Preliminary Injunction (ECF No. 27). Mr. McGill has been in solitary confinement for over 400 days solely because he refuses to cut off his dreadlocks, an act that would violate his Rastafarian religious beliefs. Mr. McGill seeks a preliminary injunction requiring Defendants transfer him from solitary confinement to general population, and afford him the same freedoms and privileges as other pretrial detainees at Lebanon County Correctional Facility ("LCCF").

I. PROCEDURAL HISTORY

Mr. McGill initiated this lawsuit *pro se* on October 3, 2019 against three LCCF officials: Robert J. Karnes, the Warden; Michael Ott, the Captain of Security; and Timothy L. Clements, the Deputy Warden of Operations. (ECF No. 1). On February 6, 2020, the undersigned counsel entered their appearance on behalf of Mr. McGill. (ECF Nos. 23, 24). On February 19, 2020, Mr. McGill, through counsel, filed an unopposed motion for leave to file an amended complaint and a motion for preliminary injunction. (ECF Nos. 26, 27). The next day, the Court granted Mr. McGill's unopposed motion, and the Amended Complaint, which added Lebanon County as a Defendant, was docketed. (ECF Nos. 29, 30).

II. STATEMENT OF FACTS

Eric McGill, a Black man and an adherent of the Rastafari religion, wears his hair in dreadlocks in accordance with his religious beliefs. (Am. Compl. ¶¶ 4, 10,

13, 19, ECF No. 30). The importance of dreadlocks for Rastafarians stems in part from the "nazirite vow" taken by Samson in the Bible, which requires adherents to refrain from cutting their hair. (*Id.* at ¶ 18). Mr. McGill believes that his spirit lives through his dreadlocks and that his hair keeps him spiritually pure, a requisite for entry into the afterlife. (*Id.* at ¶¶ 20, 21). For Mr. McGill, cutting off his dreadlocks would be akin to cutting off his strength and his spirit. (*Id.* at ¶ 22). Mr. McGill has been growing his hair, which naturally forms into dreadlocks, for about seven years. (*Id.* at ¶¶ 13, 15).

Since January 19, 2019, Mr. McGill has been incarcerated at LCCF as a pretrial detainee. (*Id.* at ¶ 37). He has spent his entire time at LCCF—over 400 days—in the Security Housing Unit ("SHU"), a form of solitary confinement. (*Id.* at ¶¶ 38, 49). There is one simple reason why Defendants have kept Mr. McGill in the SHU: he refuses to cut off his dreadlocks. (*Id.* at ¶ 39; *see also* Karnes Aff. ¶¶ 8, 12-14, ECF No. 18-1: Ex. 1). As Defendant Ott told Mr. McGill, if he cuts off his dreadlocks, he will be released from the SHU and, if he does not, he will remain. (Am. Compl. ¶ 45).

Defendant Karnes has stated that LCCF's prohibition against dreadlocks—as well as other natural Black hairstyles including braids and cornrows—is due to "inmates' ability to hide contraband and to ensure cleanliness in the correctional facility." (*Id.* at ¶ 30; *see also* Karnes Aff. ¶ 8). However, LCCF permits other forms

of long hair, as long as the hair is tied up or worn in a single ponytail. (Am. Compl. ¶ 24). Moreover, dozens of jail and prison systems across the United States, including the United States Bureau of Prisons and the Pennsylvania Department of Corrections ("PA DOC") permit people incarcerated in their facilities to have dreadlocks. (*Id.* at ¶ 35). Mr. McGill himself was previously incarcerated in a PA DOC prison and was permitted to have dreadlocks without any punishment or other adverse consequences. (*Id.* at ¶ 23).

In the SHU at LCCF, Mr. McGill remains in a locked cell a minimum of 23 hours per day. (*Id.* at ¶¶ 54-56, 58). He is permitted far less contact with the outside world than people in general population at LCCF: he is only permitted to use the phone between midnight and 2:00 A.M.; he is not permitted to receive books or photographs from outside the jail; and he is limited to one 30-minute visit each week. (*Id.* at ¶¶ 56-57, 64, 66-67, 68). Conditions such as these are widely understood to cause severe psychological harm and are considered a form of torture when imposed for any more than fifteen days. (*Id.* at ¶¶ 49-51).

As a result of his time in solitary confinement, Mr. McGill has been suffering from worsening depression, exacerbated Post-Traumatic Stress Disorder symptoms, and anxiety attacks, which he has experienced about two to three times per week for most of his time at LCCF. (*Id.* at ¶¶ 71-72, 78).

III. PRELIMINARY INJUNCTION STANDARD

To obtain preliminary injunctive relief, a party must show: (1) a reasonable probability of success on the merits and (2) that he will be irreparably injured if relief is not granted. *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017). The Court should then consider (3) the possibility of harm to the opposing party from the grant of the injunction and (4) the public interest. *Id.* The first two factors are "the most critical." *Id.* at 179 (citing *Nken v. Holder*, 556 U.S. 418, 434 (2008)). When they are established, the court should then consider all four factors together and determine whether they "balance in favor of granting the requested relief." *Id*. In lawsuits brought by incarcerated people challenging the conditions of their confinement, preliminary injunctive relief is permitted so long as it is "narrowly drawn, extend[s] no further than necessary to correct the harm . . . and [is] the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2).

IV. ARGUMENT

For Mr. McGill to be entitled to a preliminary injunction, he does not need to show a certainty of ultimate success nor even that ultimate success is more likely than not. *Reilly*, 858 F.3d at 179. Rather, he need only demonstrate that he "*can* win on the merits." *Id.* (emphasis added). To prevail on the merits of his RLUIPA claim, Mr. McGill must only show that the Defendants are placing a substantial burden on his sincerely held religious beliefs. *Washington v. Klem*, 497 F.3d 272, 277-278 (3rd

Cir. 2007); 42 U.S.C. § 2000cc-1(a). The burden then shifts to Defendants to establish that their actions are the least restrictive means of furthering a compelling governmental interest. *Washington*, 497 F.3d at 283; 42 U.S.C. § 2000cc-1(a); *see also Schlemm v. Wall*, 784 F.3d 362, 365 (7th Cir. 2015) (noting that the Supreme Court "stressed in *Holt* that the prison system has the burdens of production and persuasion on the compelling-interest and least-restrictive-means defenses") (discussing *Holt v. Hobbs*, 574 U.S. 352, 364-65 (2015)). Defendants' decision to keep Mr. McGill in the SHU solely because he refuses to cut his dreadlocks is a clear violation of RLUIPA.

Courts within the Third Circuit have repeatedly held that a finding of a reasonable probability of success on First Amendment and RLUIPA claims is by definition a showing of irreparable injury. Mr. McGill is suffering additional irreparable injury from the well-known psychological effects of long-term solitary confinement. In circumstances such as these, the last two factors of the preliminary injunction test are also easily met: Defendants will not be harmed by transferring Mr. McGill to general population, and the public interest strongly favors the protection of religious liberty. Therefore, the Court should issue an injunction ordering Defendants to transfer Mr. McGill to general population and afford him the same freedoms and privileges as other pretrial detainees at LCCF.

A. Mr. McGill has a reasonable probability of success on the merits of his RLUIPA claim.

Congress enacted RLUIPA "to provide very broad protection for religious liberty" and "to grant heightened protection to prisoners from burdens imposed by the government." *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014); *Washington*, 497 F.3d at 276; *see also Cutter v. Wilkinson*, 544 U.S. 709, 717 (2005) (stating that Congress enacted RLUIPA to allow incarcerated people to challenge the "'frivolous or arbitrary' barriers imped[ing] [their] religious exercise") (quoting 46 Cong. Rec. 16698, 16699 (2000) (joint statement of Sen. Hatch and Sen. Kennedy on RLUIPA)).[1] RLUIPA provides that "[n]o government shall impose a substantial burden on the religious exercise" of a person who is incarcerated "unless the government demonstrates that imposition of the burden on that person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000cc-1(a). "Religious exercise" is defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000cc-5(7)(A). Courts are barred from inquiring into "whether a particular belief or practice is central to a [person's] religion." *Cutter*, 544 U.S. at 725. Moreover, courts must

[1] *See also Cutter*, 544 U.S. at 717 ("Whether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways.") (quoting 46 Cong. Rec. 16698, 16699 (2000)).

construe RLUIPA "in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA's terms] and the Constitution." *Washington*, 497 F.3d at 278 (quoting 42 U.S.C. § 2000cc-3(g)).

1. Defendants' requirement that Mr. McGill either cut off his dreadlocks or remain in solitary confinement imposes a substantial burden on his sincerely held religious beliefs.

Lebanon County's requirement that Mr. McGill choose between cutting off his dreadlocks and remaining in solitary confinement substantially burdens his exercise of his sincerely held religious beliefs. "RLUIPA protects more than the right to practice one's faith; it protects the right to engage in specific, meaningful acts of religious expression. . . ." *Meyer v. Teslik*, 411 F. Supp 2d 983, 989-90 (W.D. Wis. 2006).

a. *Mr. McGill's religious beliefs are sincerely held.*

Mr. McGill's Rastafarian religious beliefs require that he keep his hair in dreadlocks and refrain from cutting his hair. "[F]or purposes of the RLUIPA, it matters not whether the [person's] religious belief is shared by ten or tens of millions. All that matters is whether the [person] is sincere in his or her own views." *Williams v. Bitner*, 359 F. Supp. 2d 370, 376 (M.D. Pa. 2005), *aff'd*, 455 F.3d 186 (3d. Cir. 2006). Mr. McGill has been growing his dreadlocks for approximately seven years. He believes that his spirit lives through his hair and that his dreadlocks keep him spiritually pure and help to ensure his entry into the afterlife. For Mr. McGill, to cut

off his dreadlocks would be like cutting off his strength and spirit. Mr. McGill also believes that the spirits of his ancestors exist through his dreadlocks and that his hair protects him from certain evils in the word.

Mr. McGill's beliefs and practices regarding his hair are rooted in his and other Rastafarians' interpretations of the Old Testament.[2] That their interpretations of these Bible verses might differ from the interpretations of adherents of other faiths is immaterial because "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981). Rather, when evaluating sincerity, courts look to factors such as the person's familiarity with the faith's teachings, his demonstrated observance of its rules, and the length of time he has practiced those religious beliefs. *See, e.g., Koger v. Bryan*, 525 F.3d 789, 799 (7th Cir. 2008). Mr. McGill's obvious familiarity with the teachings of his faith and the fact that he has been growing his hair for several years demonstrate the sincerity of his beliefs. Moreover, since Mr. McGill has been willing to endure more than 400 days in solitary confinement rather than cut his hair, the sincerity of his beliefs is beyond dispute.

[2] *See Leviticus* 21:5 (NRSV) ("They shall not make bald spots upon their heads, or shave off the edges of their beards, or make any gashes in their flesh."); *Numbers* 6:5 (NRSV) ("All the days of their nazirite vow no razor shall come upon the head; until the time is completed for which they separate themselves to the Lord, they shall be holy; they shall let the locks of the head grow long.").

b. *Defendants are imposing a substantial burden on Mr. McGill's religious exercise.*

Defendants' insistence that Mr. McGill remain in solitary confinement until he cuts his dreadlocks unquestionably meets the substantial burden test. A prison policy imposes a substantial burden on an individual's exercise of his religion when:

> (1) a follower is forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates versus abandoning one of the precepts of his religion in order to receive a benefit; OR
> (2) the government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs.

Washington, 497 F.3d at 280; *see also Holt*, 574 U.S. at 361 (noting that a substantial burden exists when prison policy requires someone to "engage in conduct that seriously violates [his] religious beliefs.") (quoting *Hobby Lobby*, 573 U.S. at 720).

Grooming policies that force incarcerated people to choose between abiding by prison rules and adhering to their religious beliefs undoubtedly substantially burden religious exercise. *See, e.g.*, *Holt*, 574 U.S. at 361 (holding that a Muslim man who faced "serious disciplinary action" if he grew his beard "easily satisfied" the substantial burden test); *Warsoldier v. Woodford*, 418 F.3d 989, 995-96 (9th Cir. 2005) (holding that punishments imposed on an incarcerated Native American man for refusing to cut his hair substantially burdened his religious exercise). This principle applies with equal force to policies that require Rastafarians and others

with similar religious beliefs, to cut their dreadlocks. *See Smith v. Ozmint*, 578 F.3d 246, 251 (4th Cir. 2009) (holding that a policy prohibiting long hair substantially burdened a Rastafarian man's religious exercise); *Glenn v. Ohio Dep't of Rehab. & Corr.*, No. 4:18 CV 436, 2018 U.S. Dist. LEXIS 80833, at *4, *9 (N.D. Ohio May 14, 2018) (holding that a policy that placed people with dreadlocks in solitary confinement substantially burdened a Rastafarian man's religious exercise); *Pipkin v. La. Dep't of Corr.*, No. 17-CV-1113, 2017 U.S. Dist. LEXIS 145982, at *4-5 (W.D. La. Sep. 7, 2017) (granting a temporary restraining order where a policy would require a Nazirite Christian man to cut his dreadlocks); *see also Ware v. La. Dep't of Corr.*, 866 F.3d 263, 269 (5th Cir. 2017) (noting that the parties agreed that a prohibition against dreadlocks substantially burdened the religious exercise of a Rastafarian man).

Mr. McGill is in exactly the sort of catch-22 the *Washington* Court described. He is forced to choose between adhering to his religious beliefs and remaining in solitary confinement versus abandoning his religious beliefs in order to be housed in general population. Moreover, the daily psychological torture to which Defendants are subjecting Mr. McGill places substantial pressure on him to relent and agree to have his dreadlocks cut off and, thus, to violate his religious beliefs. Mr. McGill easily satisfies his burden of demonstrating that the Defendants are substantially burdening his sincerely held religious beliefs.

2. Defendants' continued placement of Mr. McGill in solitary confinement is not the least restrictive means of furthering any compelling governmental interest.

Defendants cannot establish that continuing to house Mr. McGill in solitary confinement is the least restrictive means of achieving any compelling governmental interest.

a. *Defendants' treatment of Mr. McGill does not further a compelling governmental interest.*

Although prison security and cleanliness may be compelling interests, "the mere assertion of security or health reasons is not, by itself, enough for the governmental to satisfy the compelling governmental interest requirement." *Washington*, 497 F.3d at 283; *see also Davila v. Gladden*, 777 F.3d 1198, 1206 (11th Cir. 2015) ("Courts should look beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize the asserted harm of granting specific exemptions to particular religious claimants.") (quoting *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)).

Under RLUIPA, defendants must provide evidence that the challenged policy is "closely tailored" to the stated government interest. *See Ali v. Stephens*, 69 F. Supp. 3d 633, 643 (E.D. Tex. 2014) (citing *Mc Allen Grace Brethren Church v. Salazar*, 764 F.3d 465 (5th Cir. 2014)); *see also Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33, 39 (1st Cir. 2007) (observing that "merely stating a compelling interest does not fully satisfy [the prison's] burden on this element of RLUIPA [and that the

prison] must also establish that prison security is furthered" by the defendants' actions). Defendants cannot provide evidence of this nexus between any alleged interest and their requirement that Mr. McGill cut off his dreadlocks.

The alleged relationship between Defendants' hair policy and the interests they have asserted is belied by the underinclusiveness—and arbitrary enforcement—of the policy. "If a policy is underinclusive, this fact 'can raise with it the inference that the government's claimed interest isn't actually so compelling after all.'" *Ware*, 866 F.3d at 269 (quoting *Yellowbear v. Lampert*, 741 F.3d 48, 60 (10th Cir. 2014) (Gorsuch, J.)); *Washington*, 497 F.3d at 283-84 (explaining how arbitrary exceptions to a prison's limitation on the number of books allowed "undermine[d] the *compelling* nature of the [policy]") (emphasis in original). Indeed, in *Ware*, the Fifth Circuit held that the Defendants failed to meet their burden because they failed to adequately explain why some people in their custody were permitted to have dreadlocks but others were not. *See Ware*, 866 F.3d at 270-72.

Here, Defendants' policy is underinclusive in at least two ways. First, they permit some people with dreadlocks to remain in general population and, secondly, their policies allow people who do not have dreadlocks or braids to have long hair so long as it is tied back. Whatever legitimate security or cleanliness concerns they might have would unquestionably apply with equal force to dreadlocks as they do to

other long hair. Consequently, Defendants cannot proffer any compelling interest furthered by their policy.

b. *Defendants cannot prove that their policy is the least restrictive means of furthering any interest.*

Defendants must also show that their treatment of Mr. McGill is the least restrictive means available to meet their interests. This standard is "exceptionally demanding," *see Holt*, 574 U.S. at 364, and Defendants simply cannot meet it. The government must "show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party." *Id.* at 364-65 (bracketing and citation omitted). RLUIPA does not permit "unquestioning deference" to defendants' asserted institutional concerns. *Id.* at 364. Rather, RLUIPA requires defendants "not merely to explain [their policy] but *to prove* that [it] is the least restrictive means of furthering a compelling government interest." *Id.* (emphasis added); *see also Yellowbear*, 741 F.3d at 63 ("[T]he government's burden here isn't to *mull* the claimant's proposed alternatives, it is to *demonstrate* the claimant's alternatives are ineffective to achieve the government's stated goals.") (emphasis in original).

Under this standard, the Defendants cannot merely speculate about the possible negative effects of accommodating a religious request. *See Dehart v. Horn*, 227 F.3d 47, 59 (3d Cir. 2000) ("A decision or practice that represents an exaggerated response to even a legitimate penological concern will not justify an

infringement of First Amendment rights."); *Lawson v. Singletary*, 85 F.3d 502, 509 (11th Cir. 1996) ("[P]olicies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet the act's requirements."). Instead, the Defendants must "consider and reject other means before [they] can conclude that the policy chosen is the least restrictive means." *Washington*, 497 F.3d at 284. Where there exist viable alternatives to accommodate an incarcerated person's religious exercise, the government has not met its burden. *See e.g., Williams v. Sec'y Pa. Dep't of Corr.*, 450 F. App'x 191, 195-96 (3d Cir. 2011) (reversing lower court's grant of summary judgment where reasonable factfinder could find designated prayer room in kitchen for Muslim worker was a less restrictive alternative than requiring that he pray in a manner inconsistent with his beliefs).

Likewise, when defendants' policies differ from those of other, similar institutions, it is likely they are not employing the least restrictive means of furthering their stated goal. "[W]hen so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course." *Holt*, 574 U.S. at 369; *see also Washington*, 497 F.3d at 285 ("[T]he failure of a defendant to explain why another institution with the same compelling interests was able to accommodate the same religious practices may constitute a failure to establish that the defendant was using the least restrictive means.") (quoting *Warsoldier*, 418 F.3d at 1000).

Defendants cannot show that their indefinite detention of Mr. McGill in solitary confinement is the least restrictive means of furthering any compelling interest. There is no evidence that they have considered other alternative means of furthering their interests in security and cleanliness. For example, the grooming policy of the PA DOC, which permits dreadlocks, delineates several steps prison staff can take to address risks purportedly associated with long hair and other less common hairstyles. *See* Pa. Dep't of Corr. Policy DC-ADM 807, § 1(A)(1)-(3)[3] (allowing for searches of hair and noting that hair coverings may be required during work assignments and programming). These alternatives—and others—are plainly less restrictive than indefinite solitary confinement.

Even if Defendants have considered these or other options, they will not be able to prove that keeping Mr. McGill in solitary confinement is their only viable course. Any assertion to the contrary is belied by the fact that dozens of other jurisdictions—including the PA DOC and the United States Bureau of Prisons ("BOP"), the largest prison system in the country—either permit dreadlocks outright or allow incarcerated people to apply for religious exemptions. *See Ware*, 866 F.3d at 273 (noting that 39 other jurisdictions either allow dreadlocks or permit religious exemptions); Pa. Dep't of Corr. Policy DC-ADM 807, §1(A)(1) ("Hairstyles of

[3] A copy of DC-ADM 807 is attached as Exhibit 1 and also available at https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/807%20Inmate%20Hygiene%20and%20Grooming.pdf.

different types will be permitted…"); *id.* at §1(A)(2)(a) and (b) (stating that there are no restrictions on prisoners' hair lengths and, notably, not prohibiting dreadlocks, braids, or cornrows); *see also Glenn*, 2018 U.S. Dist. LEXIS 80833, at *16 (noting that "[t]he vast majority of policies . . . do not expressly address dreadlocks at all [but] [r]ather . . . permit freedom in hairstyle provided hygiene and/or security concerns are met" and explaining that "[n]othing on the face of those policies . . . indicates that these prisons would ban all dreadlocks").

It is difficult to imagine how Defendants' treatment of Mr. McGill could be the least restrictive means when so many other jail and prison systems would permit him to have dreadlocks and allow him to be housed in general population. Indeed, when Mr. McGill was in a PA DOC facility, he was permitted to have dreadlocks without any adverse consequences. It strains credulity to think that what works for the PA DOC, the BOP, and dozens of other jail and prison systems around the country will not work for Lebanon County. *See Glenn*, 2018 U.S. Dist. LEXIS 80833, at *19 ("[B]ecause the vast majority of jurisdictions are able to manage the risk associated with dreadlocks short of a complete ban, defendants' policies as applied to plaintiff are not the least restrictive means as a matter of law.").

B. Mr. McGill will suffer irreparable injury if preliminary injunctive relief is not granted.

Mr. McGill will continue to be irreparably injured if the Court does not grant a preliminary injunction, as Defendants are violating his religious rights under

RLUIPA and subjecting him to daily psychological torture. "The irreparable harm requirement is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages." *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484-85 (3d Cir. 2000). Likewise, when "monetary damages are difficult to ascertain or are inadequate," the irreparable injury requirement is satisfied. *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977).

Violation of RLUIPA rights is irreparable injury as a matter of law. It is well established that when a plaintiff is likely to prevail on the merits on a claimed violation of constitutional rights, "it clearly follows that denying [him] preliminary injunctive relief will cause [him] to be irreparably injured." *Council of Alt. Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997); *see also Beattie v. Line Mountain Sch. Dist.*, 992 F. Supp. 2d 384, 396 (M.D. Pa. 2014) ("Deprivation of a constitutional right alone constitutes irreparable harm as a matter of law, and no further showing of irreparable harm is necessary."). This is especially true for First Amendment violations. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *see also B.H. v. Easton Area Sch. Dist.*, 725 F.3d 293, 323 (3d Cir. 2013); *K.A. v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013).

"This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms, and the statute requires courts to construe it broadly to protect religious exercise." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012); *see also Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (holding that district court committed legal error in finding Plaintiff had not met irreparable injury prong in RFRA claim); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("Although the plaintiff's free exercise claim is statutory rather than constitutional, the denial of the plaintiff's right to the free exercise of his religious beliefs is a harm that cannot be adequately compensated monetarily."); *cf. Atchinson, Topeka & Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 259 (10th Cir. 1981) ("When the evidence shows that the defendants are engaged in, or about to be engaged in, the act or practices prohibited by a statute which provides for injunctive relief to prevent such violations, irreparable harm to the plaintiffs need not be shown.").

In addition, the nature of Defendants' treatment of Mr. McGill—prolonged, arbitrary solitary confinement, with violation of his religious beliefs as the only mean of release—further supports his claim of irreparable injury. Although compensatory damages are certainly appropriate here, money alone cannot adequately address the ongoing psychological harm Mr. McGill is enduring. *See Adams*, 204 F.3d at 84-85; *Glasco*, 558 F.2d at 181.

C. Balancing the factors under the preliminary injunction standard requires that the Court grant Mr. McGill's motion.

Given the plain violations of RLUIPA, the remaining preliminary injunction factors similarly favor Mr. McGill. *See e.g.*, *B.H.*, 725 F.3d at 323-24 (3d Cir. 2013) (after determining that plaintiffs had shown reasonable success on the merits to the First Amendment claim, concluding, in near summary fashion, that plaintiffs also had satisfied the remaining three preliminary injunction factors); *K.A.*, 710 F.3d at 113-14 (same); *see also Connection Distrib. Co. v. Reno,* 154 F.3d 281, 288 (6th Cir. 1998) ("When a party seeks a preliminary injunction on the basis of the potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor.").

In contrast to the ongoing deprivations Mr. McGill is experiencing, Defendants will not suffer any meaningful, cognizable harm as a result of a preliminary injunction being issued. Any costs or burdens associated with any additional measures Defendants might need to take if Mr. McGill were housed in general population would be minimal. As a result, an injunction requiring Defendants to transfer Mr. McGill to general population would not only cause little hardship to the Defendants but also would meet the PLRA prerequisites for injunctive relief, as it would be "narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [would be] the least intrusive means

necessary to correct the violation of the Federal right." *See Victory v. Berks Cty.*, 789 F. App'x 328, 332-33 (3d Cir. 2019) (quoting 18 U.S.C. § 3626(a)(2)).

And lest there still be any question that a preliminary injunction is proper, the public interest strongly favors granting Mr. McGill's motion. "Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles." *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002). Moreover, RLUIPA was enacted as Congress's second effort to establish a protective standard for prisoner religious rights, in part due to the perceived rehabilitative effect of religious practice on prisoners. *See Cutter*, 544 U.S. at 716, n.5; 139 Cong. Rec. S14, 465 (daily ed. Oct. 27, 1993) (statement of Sen. Hatch) ("Exposure to religion is the best hope we have for rehabilitation of a prisoner. Most prisoners…will eventually be returning to our communities. I want to see a prisoner exposed to religion while in prison. We should accommodate efforts to bring religion to prisoners."); *id.*, at S14, 466 (statement of Sen. Dole) ("If religion can help just a handful of prison inmates get back on track, then the inconvenience of accommodating their religious beliefs is a very small price to pay."). Therefore, all factors mandate that a preliminary injunction issue.

V. CONCLUSION

As Mr. McGill has a strong likelihood of success on his RLUIPA claim and is suffering daily irreparable harm that far outweighs any harm that would be experienced by Defendants if an injunction is granted, and the public interest favors the protection of incarcerated people's religious liberty, the Court should grant Mr. McGill's motion and enter a preliminary injunction ordering Defendants to transfer him to general population.

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	:	(SAPORITO, M.J.)
Defendants.	:	
	:	

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.8(b), I hereby certify that the word count of this brief is 4,946 words, less than the 5,000-word maximum set by Local Rule 7.8(b).

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	:	
Plaintiff,	:	
	:	
v.	:	
	:	CIVIL ACTION NO. 19-1712
TIMOTHY L. CLEMENTS, et al.	:	
	:	(SAPORITO, M.J.)
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Support of Plaintiff's Motion for Preliminary Injunction was served upon the following via ECF on February 26, 2020:

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