AMERICAN CIVIL LIBERTIES UNION of LOUISIANA
FOUNDATION

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MARJORIE R. ESMAN
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June 7, 2011

by fax 337-236-3967
and by regular mail
Sheriff Michael W. Neustrom
Lafayette Parish Sheriff's Office
316 W. Main Street
Lafayette, LA 70501

OPEN LETTER REGARDING RELIGIOUS EXPRESSION

Dear Sheriff Neustrom,

I write regarding a constitutional violation that has occurred in Lafayette Parish Correctional Center. A Muslim woman was incarcerated there on July 8, 2010 for approximately 22 days. As a part of her religion, she is required to wear her head covered as a show of modesty. Unfortunately, she was not allowed to do so in Lafayette Parish Correctional Center (Jail). This head covering, called a hijab, is similar to a nun's habit. Forced to compromise her sincerely held beliefs, the former inmate was further humiliated by having to appear before men and in public uncovered. To a Muslim woman, this is akin to being paraded around naked.

The former inmate made her requests to wear her hijab, pursuant to her faith, known to guards and jail officials. She even requested that she at least be allowed to wear the hijab for public appearances and when men were present. She was refused even this consideration.

Declaring that the free exercise of religion is a fundamental right of the highest order, the Louisiana Legislature recently enacted a law called the Louisiana Preservation of Religious Freedom Act (LPRFA). La. R.S. 13:5231 et seq. LPRFA provides that "Government shall not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or rule of general applicability, unless it demonstrates that application of the burden to the person is both (1) in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest." This Act mirrors the Religious Land Use and Institutionalized Persons Act (RLUIPA) passed by Congress in 2000. 42 U.S.C.A. § 2000cc-1 (2000). The Act also codifies into state law what Congress attempted to accomplish through the Religious Freedom Restoration Act (RFRA) in 1993. 42 U.S.C.A. §2000bb-1 (1993). Thus, federal case law interpreting RFRA and RLUIPA is relevant to interpreting LPRFA. See *Merced* at 588, citing *Barr v. City of Sinton*, 295 S.W.3d 287, 295-96 (Tex. 2009).

At a minimum, the government's *ban* of conduct sincerely motivated by religious belief substantially burdens an adherent's free exercise of that religion. *Merced v. Kasson*, 577 F.3d 578, 590 (5th Cir. 2009) (emphasis in original). By not allowing an inmate of the Muslim faith to wear her religiously mandated hijab, the Jail has placed a substantial burden on her religious exercise. In order for this imposition to survive constitutional muster, the Jail will be required to

show that there exists a compelling governmental interest for banning the hijab and that the ban is the least restrictive means of doing furthering said interest.

Federal case law shows that the Jail will have great difficulty in satisfying the last two prongs of the standard established by LPRFA. The Supreme Court interpreted RFRA to require "the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"-the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 430-31, 126 S.Ct. 1211, 1220, 163 L.Ed.2d 1017 (2006) (emphasis in original). The government cannot rely upon general statements of its interests, but must tailor them to the specific issue at hand. *Merced* at 592. In the instant case, Lafayette Parish Jail would have to prove that this specific instance of prohibiting an inmate from wearing her hijab is warranted by a compelling interest.

Even if the Jail can satisfactorily point to a compelling governmental interest, it cannot show that a complete ban of the hijab is the least restrictive means of furthering this interest. The least restrictive means standard is a higher threshold of proof than the absence of ready alternatives. A least restrictive alternative test would require a prison official to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint. *Turner v. Safely*, 482 U.S. 78, 90-91, 107 S.Ct. 2254, 2262, 96 L.Ed.2d 64. The inmate, herself, even pointed to alternatives that would still allow her to adhere to the tenets of her faith with minimal imposition on the policies of the Jail. The Jail would then have to refute any possible alternative means that would allow the inmate to both wear her hijab and further any compelling interest proffered by the Jail.

Upon reviewing the policies of the Jail, I notice that there is no mention of head coverings and no exemptions to the permitted dress which is: one set of issued clothes, one set of boxers/briefs and a bra, one T-shirt, and one set of issued foot wear. In the interest of justice and to avoid further Constitutional violations, I request that you amend the policies of the Jail to allow for an exception to the dress requirement on religious grounds, specifically as it relates to an inmate wearing a hijab or other religiously mandated head coverings.

Please confirm that you have made these changes to the Jail's policies within 14 days from the date of this letter. I look forward to hearing from you.

Sincerely,

Marjorie R. Esman
Executive Director