[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12649
Non-Argument Calendar

D.C. Docket No. 7:16-cv-00120-WLS-TQL

MICHAEL FREEMAN,

Plaintiff-Appellant,

versus

DEPUTY WARDEN SAMPLE,
Irwin County Detention Center,
WARDEN BENNETTE,
Irwin County Detention Center,
CAPTAIN AKERS,
Irwin County Detention Center,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(May 12, 2020)

Before GRANT, HULL, and MARCUS, Circuit Judges.

PER CURIAM:

Michael Freeman, a federal prisoner proceeding pro se, appeals the district court's entry of summary judgment in favor of the defendants in his civil rights lawsuit, in which he alleged that the defendants refused to accommodate his Islamic dietary needs and refused to permit him to observe Ramadan. Freeman also challenges the district court's denial of his motions for the appointment of counsel and to compel discovery, and the court's order striking his second response to the defendants' motion for summary judgment. After a careful review of the record and the parties' briefs, we affirm.

I.

While incarcerated at Irwin County Detention Center (ICDC) in Ocilla, Georgia, Freeman submitted several request and grievance forms declaring that he was Muslim and requesting kosher meals and permission to observe Ramadan. Assistant Jail Administrator Renee Sample denied his requests, explaining that Freeman had not stated a religion that observed Ramadan or required a special diet when he arrived at the jail. Captain Akers answered one of Freeman's grievances, referring Freeman to Sample's earlier response.

Angela Foster, an ICDC grievance officer, also responded to one of Freeman's grievances, stating that Freeman had identified his religion as "Yaweh"

on his first admission to ICDC and had stated at the time of his current admission that he was Christian. She advised Freeman that he could change his religious designation if he wished.

According to Sample, Foster told her that Freeman had stopped claiming to be a member of Church Yaweh after Foster informed him that followers of that religion did not require a special diet. Foster also said that she had spoken to Freeman about changing his religious designation and he had laughed about it and treated the forms to change his religion as a joke. Sample added a note to Foster's response, telling Freeman that she had contacted a Claiborne County facility where Freeman had been incarcerated on three previous occasions, and administrators there had verified that, on each occasion, Freeman was "only on a pork free diet no religion." Sample advised Freeman that ICDC's normal meals were pork free and should accommodate his dietary needs. Freeman alleged that he wrote to Warden Bennette to appeal Sample's decision but did not get a response.

Freeman filed suit in federal district court pursuant to 42 U.S.C. § 1983, claiming that the defendants' refusal to provide kosher meals and permit him to observe Ramadan violated his rights under the First Amendment's Free Exercise and Establishment Clauses, the Fourteenth Amendment's Equal Protection Clause, the Religious Freedom Restoration Act (RFRA), and the Religious Land Use and Institutionalized Persons Act (RLUIPA). He alleged that he suffered loss of sleep,

weight loss, hunger pains, dizziness, increased agitation, anxiety, and depression, and he sought monetary damages and declaratory and injunctive relief. While his action was pending, Freeman was transferred from ICDC to federal prison.

The parties filed cross-motions for summary judgment. The district court denied Freeman's motion and granted summary judgment in favor of the defendants, finding that (1) the defendants, as state employees, are not subject to RFRA, (2) Freeman's RLUIPA claims failed because monetary damages are not available against the defendants under RLUIPA, and Freeman's request for injunctive relief was moot because of his transfer to another facility; (3) Freeman had presented no evidence that the defendants intentionally discriminated against him on the basis of his race or nationality in violation of the Fourteenth Amendment; (4) to the extent that Freeman raised an Eighth Amendment claim in his summary judgment motion, his claim that the defendants failed to accommodate his religious dietary needs arose under the First Amendment, not the Eighth; and (5) the defendants were entitled to qualified immunity on Freeman's First Amendment claim, because they reasonably believed that his professed religious beliefs were not sincerely held and the refusal to accommodate an insincere religious belief did not violate any clearly established right.

On appeal, Freeman challenges the district court's rulings on several procedural motions, and he argues that the district court erred in rejecting his

Eighth Amendment claim and determining that the defendants were entitled to qualified immunity on his First Amendment free exercise claim. We consider each ruling in turn. But we note that, in his opening brief on appeal, Freeman does not make any argument challenging the district court's conclusions regarding his claims under the Fourteenth Amendment, RFRA, or RLUIPA. "[P]assing references" to an issue in an appellant's opening brief are not enough to bring the issue before this Court on appeal, and while we read pro se submissions liberally, we will not consider arguments raised by a pro se appellant for the first time in his reply brief. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–81, 683 (11th Cir. 2014); *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We therefore affirm without discussion the district court's judgment on those claims. *See Sapuppo*, 739 F.3d at 683.

II.

We review the district court's rulings on Freeman's motions for the appointment of counsel and to compel discovery and on the defendants' motion to strike for abuse of discretion. *See Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1306 (11th Cir. 2011); *Van Poyck v. Singletary*, 11 F.3d 146, 148 (11th Cir. 1994).

A.

"A plaintiff in a civil case has no constitutional right to counsel." *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). The appointment of counsel is "a privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner." *Poole v. Lambert*, 819 F.2d 1025, 1028 (11th Cir. 1987).

Here, Freeman failed to show the existence of exceptional circumstances warranting the appointment of counsel. His legal claims and the facts that he alleged to support them were relatively straightforward, and Freeman—with the benefit of the district court's broad reading of his pro se pleadings—was able to adequately describe his claims and the relief that he sought. Freeman's chief argument is that he needed an attorney to help him conduct discovery and gather evidence, but the record shows that Freeman was able to serve and pursue discovery on his own, including filing two motions to compel discovery—one of which was granted. Accordingly, the district court did not abuse its discretion in denying Freeman's motion for the appointment of counsel.

B.

Freeman argues that the district court abused its discretion in denying his second motion to compel discovery. In that motion, Freeman asserted that the defendants had not produced all documents relating to rules and policies governing

inmate participation in Ramadan and the jail's kosher diet, and had failed to produce copies of his written request forms and communications to Deputy Warden Sample and Warden Bennette. The defendants responded that they had produced all responsive documents in their possession. They represented that they did not have copies of Freeman's communications because the custom at the time of his detention was for the administrator to write a response on the inmate's request form and return the original document to the inmate. And they stated that they had produced a demographic breakdown of the participants in Ramadan rather than a list of the inmates' names because many of the participants were immigration detainees and ICDC did not have permission from the Department of Homeland Security to disclose their names.

District courts have broad discretion under Federal Rule of Civil Procedure 26 to compel or deny discovery. *Josendis*, 662 F.3d at 1306. Under "the abuse of discretion standard, we will leave undisturbed a district court's ruling unless we find that the district court has made a clear error of judgment, or has applied the wrong legal standard." *Id.* at 1307 (citation omitted). Freeman has not met that standard here. The defendants represented that they had fully complied with Freeman's discovery requests and Freeman did not provide any basis for the district court to conclude that additional responsive documents had been destroyed or withheld. Under the circumstances, the court's decision was within the "broad

'range of choice' open to the district court" in ruling on a motion to compel. *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 844 (11th Cir. 2006).

C.

Freeman also takes issue with the magistrate judge's order striking his supplemental response to the defendants' motion for summary judgment. Freeman initially filed a separate nine-page response to the defendants' argument that he had not exhausted available administrative remedies, along with a motion for leave to exceed the 20-page limit for responsive pleadings set by local rules. The magistrate judge granted his motion in part, stating that Freeman could file an additional 20-page brief. Freeman then filed a 26-page response, which the defendants moved to strike. The magistrate judge granted the defendants' motion and struck the 26-page brief on the ground that it violated the court's order to limit his supplemental response to 20 pages, but granted Freeman additional time to file a response in compliance with the order. Freeman complied within the time provided.

Freeman argues that the magistrate judge should have shown him additional leniency as a pro se litigant and considered his 26-page brief, rather than making him file a shorter one. He contends that because the defendants' exhaustion arguments could have been made in a motion to dismiss, the court should not have

counted his initial nine-page brief as part of his summary judgment response. We are not persuaded.

Although courts "are to give liberal construction to the pleadings of *pro se* litigants, 'we nevertheless have required them to conform to procedural rules.'" *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). The magistrate judge allowed Freeman a total of 29 pages for his response brief, nine pages over the limit set by the local rules. *See* M.D. Ga. L.R. 7.4. And when Freeman filed a response brief that exceeded even this allowance, the magistrate judge gave him additional time to file a substitute brief. Requiring Freeman to comply with the court's order setting a generously expanded page limit was well within the court's broad discretion in such matters.

III.

Turning to Freeman's substantive claims, Freeman argues that the district court erred in determining that (1) his allegation that he was denied a kosher diet did not state a claim for deliberate indifference to a serious medical need in violation of the Eighth Amendment; and (2) the defendants were entitled to qualified immunity on his First Amendment free exercise claim.

A.

The Eighth Amendment's prohibition of "cruel and unusual punishments" imposes an affirmative obligation to provide prison inmates with medical

treatment. *Estelle v. Gamble*, 429 U.S 97, 103–04 (1976). A prison official's "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." *Id.* at 104 (internal citation omitted). To prevail on a § 1983 claim for such a violation, a prisoner "must show: (1) a serious medical need; (2) a defendant's deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury." *Melton v. Abston*, 841 F.3d 1207, 1220 (11th Cir. 2016).

Reading his complaint broadly, Freeman claimed that he lost weight and suffered hunger pains and anxiety because he was not served a kosher diet and was not able to eat all of the food provided to him. These allegations do not state a claim under the Eighth Amendment because even if accepted as true, they do not establish that Freeman had a serious medical need that the defendants deliberately failed to address. *See Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1307 (11th Cir. 2009) ("A serious medical need is 'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" (citation omitted)). Freeman does not allege that the defendants failed to provide edible meals, or that he had any medical condition that required a kosher diet. Instead, he alleged that he refused to eat some of the food provided because it was not prepared in accordance

with his religious beliefs. The district court correctly interpreted this claim as arising under the First Amendment, not the Eighth.

B.

We review the district court's ruling on a motion for summary judgment on qualified immunity grounds de novo, "applying the same legal standards that governed the district court." *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Qualified immunity shields government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To receive qualified immunity, a defendant must first prove that he was acting within the scope of his discretionary authority when the relevant conduct took place. *Marbury v. Warden*, 936 F.3d 1227, 1232 (11th Cir. 2019). Here, the parties do not dispute that the defendants were acting within the scope of their discretionary authority when they denied Freeman's dietary requests.

"Once it has been determined that the official was acting within his discretionary duties, the burden shifts to the plaintiff to show (1) that the official

violated a constitutional right and (2) that the right was clearly established at the time of the alleged violation." *Id.* "Somewhat more concretely, whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (internal citations omitted). In other words, government officials will be shielded by qualified immunity "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Id.* at 638.

The Free Exercise Clause of the First Amendment "requires government respect for, and noninterference with, the religious beliefs and practices of our Nation's people." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). To plead a valid free exercise claim, a plaintiff "must allege that the government has impermissibly burdened one of his 'sincerely held religious beliefs.'" *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1294 (11th Cir. 2007) (citation omitted). In the RLUIPA context, the Supreme Court has noted that "prison officials may appropriately question whether a prisoner's religiosity, asserted as the basis for a requested accommodation, is authentic." *Cutter*, 544 U.S. at 725 n.13.

Here, it was objectively reasonable for the defendants to conclude that Freeman's claim to the Muslim faith was not authentic, and that denying his request for kosher meals therefore did not burden one of his "sincerely held religious beliefs." When they denied his requests, the defendants were aware that ICDC's computerized intake forms indicated that Freeman's religion was recorded as Christian on each of his seven admissions to ICDC, including the admission at issue. They had also received information from an ICDC grievance officer that Freeman had falsely claimed to be a member of another religion (Church Yaweh) in an effort to get a special religious diet, and that when Freeman was asked about changing his religious designation at ICDC, he had laughed and treated the forms to change his religion as a joke.[1] Finally, they had received information from another jail facility where Freeman had been housed on several occasions, indicating that he had never informed anyone at that facility that he was Muslim or that he required a special religious diet.

Because it was reasonable for the defendants to believe that Freeman's claim to religious beliefs requiring a kosher diet was insincere, it was also reasonable for

[1] Freeman denies that he ever claimed to be a member of Church Yaweh or that he laughed about changing his religious designation or treated the forms as a joke. But he does not contest Sample's testimony that Foster *told* her that Freeman did those things—and indeed, one of the request forms that Freeman submitted as evidence contains a statement by Foster referencing his earlier short-lived affiliation with Church Yaweh. Even if Foster's statements to Sample were not true, Sample could reasonably have believed the information she received from her subordinate, and the protection of qualified immunity extends to "mistakes in judgment, whether the mistake is one of fact or one of law." *Butz v. Economou*, 438 U.S. 478, 507 (1978).

them to conclude that denying his requests for kosher meals did not violate his First Amendment free exercise rights. The district court did not err in granting summary judgment for the defendants on qualified immunity grounds. *See Anderson*, 483 U.S. at 640–41.

IV.

For the reasons discussed above, the district court did not abuse its discretion in denying Freeman's motions for the appointment of counsel and to compel discovery, or in granting the defendants' motion to strike Freeman's second response to their motion for summary judgment. The district court also correctly construed Freeman's claim that the defendants failed to accommodate his religious dietary needs as arising under the First Amendment, rather than the Eighth Amendment, and correctly determined that the defendants were entitled to qualified immunity on that claim. We therefore affirm.

AFFIRMED.