

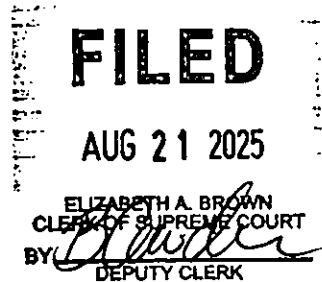
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY HOWARD JOHNSON,
Appellant,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS, JAMES DZURENDA,
RENEE BAKER, RICHARD SNYDER,
ANTHONY CARRASCO, J. CHANDLER,
K. THOMAS, TARA CARPENTER,
SCOTT DAVIS, AND YISROEL
ROSSKAMM,
Respondents.¹

No. 87023-COA



*ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING*

Timothy Howard Johnson appeals from the final judgment in a civil rights action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Johnson is an inmate at Lovelock Correctional Center (LCC). Johnson practices Messianic Judaism,² which is a religion recognized by respondent the Nevada Department of Corrections (NDOC). There are two documents that guide religious accommodation in NDOC facilities. The first document is the faith group overview chart, which includes information

¹We direct the clerk of this court to amend the caption on this court's docket to conform with the caption of this order.

²According to the Messianic Jewish Rabbinical Council, practitioners of Messianic Judaism identify as Jews that believe in Yeshua (Jesus). *Messianic Jewish Rabbinical Council, The MJRC Vision of Messianic Judaism*, <https://www.ourrabbis.org/main/resources/the-mjrc-vision-of-messianic-judaism> (last visited August 15, 2025).

25-36872

on each recognized faith group, such as NDOC-recognized holy days and worship practices. The second document is the religious practice manual, which was developed in line with NDOC Administrative Regulation (AR) 810.³ As relevant here, the manual provides that each NDOC facility may attempt to accommodate all recognized faith groups in celebrating their AR 810 recognized holy days on the actual dates on which they occur. No facility is required to allow the celebration on the actual date according to AR 810. The manual also notes that if an inmate wishes to request a special holy day service, the inmate must submit the request to the institution's chaplain "at least 30 but no more than 45 days in advance of the holy day."

In January 2018, respondent Tara Carpenter, an assistant warden at NDOC, sent a memorandum to all LCC inmates and staff, stating that beginning February 1, a new chapel schedule would be implemented to reduce conflicts between religious services and count and feeding times. The memorandum also explained that all special holy days were to be scheduled in conjunction with each faith group's regularly scheduled religious services time slots, which did not necessarily correspond to the actual holy days as celebrated by Messianic Jews.

Johnson later submitted a request for a recognized holy day service for Shavuot-Pentecost on the actual date of the holy day, which was denied because he was told he needed to request the celebration for the normal chapel day scheduled for Messianic Jewish service. Johnson challenged that decision through NDOC's inmate grievance procedure,

³AR 810 governs religious faith group activities and programs. It also provides that each NDOC facility is responsible for developing operational procedures to coordinate space and schedule religious activities as well as taking reasonable steps to meet the needs of approved faith groups. AR 810.02.

arguing that holy days needed to be celebrated on their actual dates so that he and the other Messianics⁴ could “be in compliance with [their] faith tenets.” However, Johnson was unsuccessful through each stage of the inmate grievance procedure.

In March 2019, Johnson filed a complaint in district court against NDOC and several of its officials and employees, including Carpenter (collectively referred to as respondents, when possible).⁵ The complaint asserted claims under 42 U.S.C. § 1983 for violations of Johnson’s First Amendment right to exercise his sincerely held religious beliefs and 42 U.S.C. § 2000cc-1—part of the Religious Land Use and Institutionalized Persons Act (RLUIPA)—requesting injunctive relief to prohibit violations of the same. Each claim included five counts, which were identical for both the § 1983 and RLUIPA claims.

The case proceeded to a bifurcated trial. Specifically, the district court determined that Johnson’s § 1983 First Amendment free exercise claim would be heard by the jury, and his RLUIPA claim would be decided by the court after hearing the evidence.

With respect to Johnson’s § 1983 claim, he testified at trial on his own behalf. Although Johnson addressed all five of the counts comprising the claim, he often vaguely referred to respondents as “they” in discussing the conduct that he believed violated his First Amendment rights—only referring to Carpenter by name. When Johnson finished testifying, he did not present any other witnesses, and the district court

⁴“Messianic” is the way in which Johnson refers to himself and therefore we adopt his nomenclature where appropriate.

⁵We note that several defendants named below were dismissed before trial, and Johnson is not challenging their dismissal on appeal.

surmised he had rested his case. During a subsequent bench conference, respondents moved for a directed verdict pursuant to NRCP 50(a) with respect to Johnson's § 1983 claim except for Count II of the claim insofar as it was against Carpenter. For support, respondents argued that Johnson had failed to present evidence that each individual respondent, with the exception of Carpenter, personally participated in the alleged violation of his First Amendment rights. Johnson opposed respondents' motion, asserting that he planned to cross-examine each respondent concerning their roles in the alleged violation of his First Amendment rights when they were called during respondents' case-in-chief.

When deciding the motion, the district court concluded that Johnson had sufficient time to explain to the jury what had happened. It also observed that Johnson had testified that Carpenter issued the January 2018 memorandum requiring all holy day celebrations to be scheduled in conjunction with each religious group's regularly scheduled services, and based on his testimony, the court found Johnson had only shown that Carpenter personally participated in the denial of his request to celebrate the Messianic Jewish holy days on the days they occurred. Therefore, the district court determined that Count II of Johnson's § 1983 claim would only proceed against Carpenter and otherwise orally granted the motion for a directed verdict.

The jury heard respondents' evidence regarding Count II of Johnson's § 1983 claim against Carpenter, which focused on Johnson's theory that the mandatory scheduling of holy days in accordance with NDOC's policy implemented by Carpenter violated his First Amendment right to exercise his religious beliefs. During the settling of jury instructions, Johnson objected to respondents' proposed instruction

concerning the deference to be accorded to prison officials in the adoption and implementation of prison policies and practices, including the scheduling of holy days. Johnson argued that the instruction was only permitted in limited circumstances, which were not present in his case. Respondents, in turn, argued that prison officials are entitled to deference and therefore the instruction was proper. The court gave the instruction, which was styled as Instruction 32, over Johnson's objection.

The jury returned a verdict in Carpenter's favor on Count II of Johnson's § 1983 claim against her. In particular, the jury found that Carpenter, acting in her individual capacity, did not deprive Johnson of his First Amendment right to freely exercise his religion; that Carpenter's acts were "not the proximate cause in fact of a violation of Johnson's rights; that her decision was based upon penological concerns, or that her acts were excused due to qualified immunity."

Following the trial, the parties submitted additional briefing to assist the district court in resolving Johnson's RLUIPA claim. In his brief, Johnson indicated he was only pursuing one RLUIPA claim concerning the denial of his request to observe the Messianic Jewish holy days on the actual days they occur. Johnson argued that RLUIPA requires prison officials to establish that the restriction being challenged was the least restrictive alternative to achieve a compelling governmental interest. He also argued his exercise of religion was substantially burdened because he could not properly observe his holy days when they occurred which placed his "very salvation at risk." For support, Johnson relied on *Shaw v. Davis* wherein the United States District Court for the District of Nevada determined that certain changes to the LCC chapel schedule adopted in the 2018 memorandum, which were similar to the scheduling change at issue here,

substantially burdened the plaintiffs' exercise of their sincerely held religious beliefs. No. 3:18-cv-00551-MMD-CLB, 2022 WL 3339550, at *3 (D. Nev. Aug. 12, 2022).

Respondents argued in their brief that Johnson's RLUIPA claim should be dismissed because the factors set forth in *Turner v. Safley*, 482 U.S. 78, 89-93 (1987), favored the government. Specifically, respondents argued that the change to the LCC chapel schedule was related to a legitimate penological interest because it eliminated the possibility of "hard feelings and . . . violence" between inmates that could occur if religious groups had their regularly scheduled worship time supplanted by adjustments to the chapel schedule in order to accommodate another religious group's holy days. Respondents also asserted that alternatives to celebrating holy days in the LLC chapel were available to Johnson since he could celebrate on his own in his cell or with a small group of other Messianic Jews in an appropriate common area.

After considering the parties' supplemental briefs, the district court entered a written order dismissing Johnson's RLUIPA claim. The district court acknowledged that Johnson desired to celebrate holy days in the LCC chapel on the days they actually occurred—although the court did not use this precise language. The court found that Johnson's desire to celebrate his recognized holy days on the days they occurred was motivated by sincerely held religious beliefs. The court also found that the change to NDOC's procedures for scheduling the LCC chapel to celebrate recognized holy days burdened those beliefs because Johnson was accustomed to celebrating his recognized holy days on the days they occurred before the change in LCC chapel policy "curtail[ed] that activity." However, the court determined that the burden on Johnson's religious exercise was not

substantial because, for example, the Messianic Jewish Rabbinical Counsel Standards of Observance indicate that Rosh Chodesh—a holy day for Messianic Jews—may be celebrated on the Sabbath before the actual holy day.⁶

Further, the district court found that Johnson could not prevail under RLUIPA if respondents demonstrated that the change to the LCC chapel schedule was the least restrictive means of furthering a compelling governmental interest. Interestingly, the district court *sua sponte* suggested less restrictive alternatives to the LCC chapel scheduling policy, such as permitting inmates to file requests on the first day of each calendar year to celebrate their holy days on the days they occur during the year, or by simply allowing inmates to celebrate their holy days as requested if there were no conflicts. Despite these suggestions, the district court summarily concluded that NDOC's policy was the least restrictive means of orderly establishing inmates' rights to use NDOC's religious facilities.

The district court also found that the LCC chapel scheduling policy served a legitimate governmental purpose, as opposed to a compelling governmental interest, for three reasons: (1) it facilitated scheduling prison

⁶Within its analysis of the portion of Johnson's RLUIPA claim concerning the scheduling of holy days, the district court also determined that his religious exercise was not substantially burdened because Rosh Hashana did not need to be added to the faith group overview chart since Yom Teruah was already listed on the chart and the Messianic Jewish Rabbinical Counsel Standards indicated that the two holy day names were used interchangeably for the same holy day. This finding related to a separate count of Johnson's RLUIPA claim concerning Johnson's request to add various holy days to the faith group holy day chart for his faith group, and we do not address that count of Johnson's RLUIPA claim in this appeal for the reason discussed *infra* at note 10. Consequently, the district court's finding concerning Rosh Hashana is not discussed further in this order.

resources to accommodate a variety of inmate beliefs; (2) it ensured a uniform procedure across NDOC's various facilities; and (3) it obviated difficulties associated with scheduling celebrations for holy days that are based on the lunar calendar, which governs the Messianic Jewish holy days, within the framework of the standard Georgian calendar used at the facilities, which is based on Earth's orbit around the Sun. Thus, the court concluded that Johnson's religious rights were not violated for purposes of RLUIPA. This appeal followed.

On appeal, Johnson challenges the directed verdict on all counts of his § 1983 claim against respondents except for Count II against Carpenter, the jury verdict in favor of Carpenter on Count II of his § 1983 claim, and the order dismissing his RLUIPA claim. We address each challenge in turn.

The district court did not err in granting the directed verdict in favor of the individual respondents on Johnson's § 1983 claim

In challenging the directed verdict in favor of the individual respondents on various counts under § 1983 except for Count II against Carpenter, Johnson contends that he should have been given an opportunity to cure the deficiencies in his case-in-chief to demonstrate each respondent's role in violating his rights. Respondents counter that the directed verdict was proper because Johnson failed to establish that the dismissed respondents personally violated his First Amendment rights. Moreover, respondents contend that under Nevada law, the district court was not required to allow Johnson to cure this deficiency.⁷

⁷We recognize that respondents may be entitled to qualified immunity but need not reach that issue with respect to Johnson's § 1983 claim given our disposition of the claim. Nevertheless, to the extent that respondents

This court reviews motions for a directed verdict under NRCP 50(a) de novo. *Nelson v. Heer*, 123 Nev. 217, 223, 163 P.3d 420, 425 (2007). In reviewing a directed verdict, this court applies the same standard as the district court, viewing the evidence in the light most favorable to the non-moving party. *Land Baron Inv. v. Bonnie Springs Fam. Ltd. P'ship*, 131 Nev. 686, 693, 356 P.3d 511, 517 (2015). NRCP 50(a)(1) provides that “[i]f a party has fully been heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may resolve the issue against the party” by entering a directed verdict as a matter of law against the party.

§ 1983 provides a cause of action against “[e]very person” that deprives an individual of their rights, privileges, and immunities under the color of law. *N. Nev. Ass’n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 114, 807 P.2d 728, 732 (1991). To prevail on a § 1983 claim, the plaintiff must establish that the defendant *personally* participated in a deprivation of the plaintiff’s constitutional rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); see *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978) (providing that a plaintiff may not rely on respondeat superior to establish a supervisor’s liability for the acts of a subordinate). A denial of a grievance, by itself without any connection to the violation of a

contend Johnson’s entire case should have been dismissed based on their qualified immunity defense, the doctrine does not provide a basis for dismissing Johnson’s RLUIPA claim because Johnson only sought injunctive relief in connection with that claim. See *Hydrick v. Hunter*, 669 F.3d 937, 939-40 (9th Cir. 2012) (“Qualified immunity is only an immunity from a suit for money damages, and does not provide immunity from a suit seeking declaratory or injunctive relief.”).

constitutional right alleged by prisoners, does not establish personal participation for purposes of § 1983. *Gallagher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009); *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999).

Here, Johnson could not maintain his § 1983 claim against NDOC because it is not a person for purposes of § 1983. *See Craig v. Donnelly*, 135 Nev. 37, 40, 439 P.3d 413, 416 (Nev. Ct. App. 2019) (explaining that the State of Nevada and its agencies are not persons for purposes of § 1983). And with respect to the remaining respondents, Johnson failed to establish that any of them, with the exception of Carpenter under Count II, personally participated in any alleged violation of his First Amendment rights. Indeed, although Johnson testified that Carpenter personally participated in, or was responsible for, the denial of his request to add certain holy days to the faith overview chart and creation or enforcement of the policy regarding holy day scheduling in violation of Johnson's rights, he did not establish any connection between that violation and the personal participation required by the remaining respondents, even if they were involved in denying his inmate grievances. *See Gallagher*, 587 F.3d at 1069; *Shehee*, 199 F.3d at 300.

Insofar as Johnson contends that reversal is nevertheless warranted because the district court did not give him an opportunity to cure the deficiencies in his case before granting the directed verdict, his reliance on precedent from the United States Court of Appeals for the Ninth Circuit to support that proposition is misplaced. We recognize that the Ninth Circuit has interpreted FRCP 50(a) to require the trial court to inform the non-moving party of any deficiencies in its case and allow the party to remedy them. *See Summers v. Delta Air Lines, Inc.*, 508 F.3d 923, 927-28 (9th Cir. 2007); *see also Waters v. Young*, 100 F.3d 1437, 1441 (9th Cir. 1996)

“It is especially important that trial courts fulfill their duties under [FRCP] 50 when confronted with pro se litigants, who may be capable of producing the evidence necessary to sustain their claims but may not understand the time and manner in which they must do so.”). However, in *Milam v. Stealth Holdings, LLC*, the Nevada Supreme Court specifically declined to adopt that approach, reasoning that requiring the district court to allow a non-moving party to remedy any deficiencies in its case “would allow parties who fail to protect their interests at trial to avoid a directed verdict by claiming they were not fully heard.” No. 56268, 2012 WL 5984658, at *2 (Nev. Nov. 28, 2012) (Order of Affirmance) (internal quotation marks omitted); see also *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 259 (2018) (“While district courts should assist pro se litigants as much as reasonably possible, a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements.”).

Under these circumstances, the district court did not err in granting a directed verdict in favor of the remaining respondents on Johnson’s § 1983 claim and only permitting Count II of his § 1983 claim against Carpenter to proceed. Therefore, we affirm the district court’s directed verdict.

The district court did not abuse its discretion in giving Instruction 32, the deference instruction, for Count II of Johnson’s § 1983 claim against Carpenter

In challenging the jury verdict in favor of Carpenter on Count II of his § 1983 claim, Johnson argues that the district court improperly instructed the jury to defer to Carpenter’s decisions regarding security, order, and discipline in the prison. Relying on *Fierro v. Smith*, 39 F.4th 640 (9th Cir. 2022), he asserts that such an instruction should only be given

when security-based practices are implicated, which Johnson contends was not the case here.⁸ Respondents argue that *Fierro* addressed when deference instructions should be given in the Eighth Amendment context and does not apply to Johnson's § 1983 claim, which concerns his rights under the First Amendment. Moreover, respondents contend that any error was harmless because the jury was not misled by the instruction.

We review a district court's decision to give or refuse a jury instruction for an abuse of discretion or judicial error. *Wyeth v. Rowatt*, 126 Nev. 446, 464, 244 P.3d 765, 778 (2010).

Fierro involved an inmate's Eighth Amendment challenge to his treatment in prison and, in that context, the Ninth Circuit considered whether and when a trial court should instruct the jury to "give deference to prison officials in the adoption and execution of policies and practices that in their judgment are needed to preserve discipline and to maintain internal security." 39 F.4th at 648. The Ninth Circuit explained that before such an instruction is given, the trial court must determine that "the treatment the prisoner challenges (1) was provided pursuant to a security-based policy or practice, and . . . (2) was a necessary, justified, and non-exaggerated response to security needs." *Id.*

⁸Johnson also argues that the district court gave inaccurate instructions regarding the elements of a First Amendment free exercise claim. However, Johnson did not object to the relevant instructions during the settling or giving of jury instructions as required under NRCP 51(c)(2). Because Johnson did not properly preserve this issue by arguing it below, he has waived it. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are generally "deemed to have been waived and will not be considered on appeal"); see also *Mason v. Cuisenaire*, 122 Nev. 43, 48 n.7, 128 P.3d 446, 449 n.7 (2006) (recognizing that Nevada's appellate courts may, but are not required to, address constitutional arguments raised for the first time on appeal).

Here, Johnson is essentially asserting that the district court was required to determine that *Fierro*'s two requirements were satisfied before giving *any* deference instruction, notwithstanding that his § 1983 claim was premised on an alleged violation of his First Amendment rights.⁹ But *Fierro* specifically adopted the two-part test for Eighth Amendment claims brought by inmates challenging their treatment in prison, or when pretrial detainees bring similar challenges under the Fourteenth Amendment. *Id.* at 648 & n.6 (stating that Ninth Circuit caselaw does "not distinguish among pretrial and post-conviction detainees for purposes of the excessive force, conditions of confinement, and medical care deference instruction"). And Johnson has not directed this court's attention to any legal authority extending *Fierro*'s two-part test to First Amendment claims, nor does he offer any argument or explanation as to why this court should adopt the test in the First Amendment context. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Consequently, Johnson has not shown that the district court abused its discretion by giving Instruction 32, particularly since deference instructions may be given in the context of a First Amendment claim. *See Bell v. Wolfish*, 441 U.S. 520, 547-48 (1979).

⁹Notably, Instruction 32 was substantively identical to the United States Supreme Court's explanation in *Bell v. Wolfish* of the deference to be accorded to prison officials when inmates bring constitutional claims against them, including claims arising under the First Amendment. *See* 441 U.S. 520, 547-48 (1979). While Johnson contends that *Fierro* precluded the district court from giving any deference instruction, he does not argue in the alternative that Instruction 32 misstated the law.

The district court erred in dismissing Johnson's RLUIPA claim

In challenging the dismissal of his RLUIPA claim, Johnson argues that the LCC chapel scheduling policy substantially burdened his ability to practice his sincerely held religious beliefs by preventing him from celebrating holy days on the actual days they occur.¹⁰ He also argues that the court erroneously applied the *Turner* factors to his RLUIPA claim because that case only applies to First Amendment free exercise claims. Respondents¹¹ contend that Johnson's RLUIPA claim fails because he admitted that holy days could be observed in places other than the chapel and, therefore, cannot establish that his religious exercise was substantially burdened by the policy. In addition, they assert that the policy was the least restrictive means of furthering a compelling governmental interest such as safety and security.

After a bench trial, this court reviews the district court's legal conclusions de novo. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621,

¹⁰While Johnson's RLUIPA claim was premised on multiple NDOC policies that purportedly burdened his sincerely held religious beliefs, the brief he submitted concerning his RLUIPA claim following the trial on his § 1983 claim focused exclusively on the denial of his request for his faith group's holy days to be observed on the actual days that they occur, which was based on the LCC chapel scheduling policy. As a result, Johnson effectively abandoned the other portions of his RLUIPA claim, such that they were not properly before the district court, although the court elected to address them when it dismissed his RLUIPA claim. Consequently, we focus on whether the district court properly dismissed the portion of Johnson's RLUIPA claim relating to the LCC chapel scheduling policy. See *Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983.

¹¹We note that NDOC is a proper party for purposes of Johnson's RLUIPA claim because the relevant statute authorizes a person to assert a claim for a violation of their religious rights against the government. 42 U.S.C. § 2000cc-2.

426 P.3d 593, 596 (2018). However, this court will not disturb the district court's factual findings unless they are clearly erroneous or not supported by substantial evidence. *Id.*

To prevail on a RLUIPA claim, a prisoner must show that (1) he wishes to take part in a religious exercise; (2) he is motivated by a sincerely held religious belief; and (3) the State's actions have substantially burdened that exercise. *Paliotta v. Nev. Dep't of Corr.*, 133 Nev. 406, 412, 401 P.3d 1071, 1078 (2017). If the prisoner makes a prima facie showing that government action has substantially burdened his religious exercise, the burden shifts to the government to show that its actions were the least restrictive means of furthering a compelling governmental interest. *Id.* at 409, 401 P.3d at 1075-76. Here, the parties' arguments focus on whether the district court properly determined that respondents' actions did not substantially burden Johnson's religious exercise. The parties' dispute also focuses on whether the court performed the proper analysis in addressing whether the LCC chapel scheduling policy was the least restrictive means of furthering a compelling governmental interest.¹² We address each of these issues in turn.

Although the district court determined the LCC chapel scheduling policy did not substantially burden Johnson's religious exercise because he could celebrate Rosh Chodesh on the sabbath before the holy day, Johnson's RLUIPA claim was not limited to the burden that the policy placed on his celebration of Rosh Chodesh. Instead, his claim concerned the

¹²Somewhat perplexingly, respondents dedicate a relatively large portion of their briefing to discussing Johnson's references to scripture even though they are not challenging the district court's determination that Johnson's desire to celebrate the Messianic Jewish holy days on the dates they actually occur was based on his sincerely held religious beliefs.

restriction the policy imposed on his celebration of all the Messianic Jewish holy days. “To constitute a substantial burden, a limitation of religious practice ‘must impose a significantly great restriction or onus upon such exercise.’” *Walker v. Beard*, 789 F.3d 1125, 1135 (9th Cir. 2015) (quoting *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)).

In *Shaw v. Davis*, the court addressed various changes made to the LCC chapel schedule in accordance with Carpenter’s January 2018 memorandum. No. 3:18-cv-00551-MMD-CLB, 2022 WL 3339550, at *3-4 (D. Nev. Aug. 12, 2022) (partially adopting the report and recommendation prepared by a magistrate judge in *Shaw v. Davis*, No. 3:18-CV-0551-MMD-CLB, 2022 WL 4125475, at *2 (D. Nev. Jul. 14, 2022), which provides a detailed factual history of the case, including the LCC chapel schedule changes that were at issue). The *Shaw* court concluded that the changes substantially burdened three inmates’ religious exercise by preventing them from attending regularly scheduled religious services they were accustomed to attending.

Here, similar to *Shaw*, substantial evidence in the record demonstrates that Johnson was accustomed to celebrating the Messianic Jewish holy days on the days they actually occurred. The LCC chapel scheduling policy curtailed that activity, requiring him to instead observe the holy days during the regularly scheduled religious service time slots for Messianic Jews, which may not correspond to the actual holy days. The fact that Johnson could request alternative time slots to observe the Messianic Jewish holy days or observe them through alternative means is irrelevant. *See Johnson v. Baker*, 23 F.4th 1209, 1216 (9th Cir. 2022) (“The availability of alternative means of practicing religion has no bearing on the substantial

burden inquiry.” (internal quotation marks omitted)); *Shaw*, 2022 WL 3339550, at *3-4 (citing *Johnson* and rejecting arguments similar to those presented by respondents here). Thus, we conclude that the LCC chapel scheduling policy substantially burdened Johnson’s religious exercise and to the extent the district court dismissed his RLUIPA claim based on a contrary conclusion, it erred.

Thus, the burden shifted to respondents to demonstrate that the LCC chapel scheduling policy was the least restrictive means of furthering a compelling governmental interest. The least-restrictive-means component is “exceptionally demanding,” and “requires the government to 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.” *Holt v. Hobbs*, 574 U.S. 352, 364-65 (2015) (internal quotation marks and brackets omitted). The government must demonstrate that it “actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.” *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005). “[I]f a less restrictive means is available for the [g]overnment to achieve its goals, the [g]overnment must use it.” *Holt*, 574 U.S. at 365 (first alternation in original) (internal quotation marks omitted).

Here, in its order dismissing Johnson’s RLUIPA claim, the district court suggested alternatives to the LCC chapel scheduling policy that were less restrictive than the policy, including permitting inmates to file requests to celebrate their holy days on the date they actually occur on

the first day of each calendar year¹³ or simply allowing inmates to celebrate their holy days as requested if there are no conflicts.

Nevertheless, the district court summarily concluded that the LCC chapel scheduling policy was the least restrictive means of orderly establishing inmates' rights to NDOC's religious facilities. In doing so, the district court failed to address whether these less restrictive alternatives were in fact feasible, and whether respondents actually considered them or any other less restrictive alternatives before implementing the LCC chapel scheduling policy. Without findings on these issues, the basis for the district court's decision is incomplete, and deference is not owed to findings that are "so conclusory that they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). Because we therefore cannot fully evaluate the propriety of the district court's determination that respondents satisfied the least-restrictive-means component of their burden under the RLUIPA analysis, we reverse and remand for the district court to make further findings on that issue. *See Paliotta*, 133 Nev. at 416, 401 P.3d at 1080 (recognizing that the question of whether a government action constituted the least restrictive means of furthering a compelling governmental interest is a question of fact for the district court to resolve

¹³The district court incorrectly stated that nothing in NDOC's policies prevented inmates from making such requests. Although the 2018 memorandum states that "[i]f there is a need for special consideration [as to holy day scheduling] Institutional Staff will be made aware," the religious practice manual indicates that prisoners are required to file a completed request for recognized holy day service/food form to the chaplain "at least 30 but no more than 45 days in advance of the holy day" to request a special service in the chapel for that holy day. But despite the religious practice manual's restriction, the district court's suggested alternative is in fact a less restrictive means that the court may desire to consider on remand.

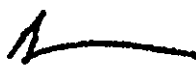
and explaining that Nevada's appellate courts do not resolve factual issues in the first instance).


Although the deficiencies in the district court's findings concerning the least-restrictive-means component of respondents' burden warrant reversal standing alone, for the sake of judicial efficiency, we further conclude that Johnson is correct that the district court failed to properly evaluate whether the LCC chapel scheduling policy furthered a compelling governmental interest. In particular, the district court analyzed whether the LCC chapel scheduling policy served a legitimate governmental interest, citing to *Turner*, which held that a prison regulation that infringes on an inmate's constitutional rights, including under the Free Exercise Clause of the First Amendment, is valid if it is "reasonably related to legitimate penological interests." 482 U.S. at 89.


Importantly, the *Turner* standard is a deferential rational basis test, see *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 986 (9th Cir. 2008), which the United States Congress specifically rejected in the RLUIPA context by imposing a burden on the government to demonstrate that its actions are the least restrictive means of furthering a compelling governmental interest—essentially a strict scrutiny standard. See *Walker*, 789 F.3d at 1136 (observing that the analysis under RLUIPA is analogous to strict scrutiny); see also *Warsoldier*, 418 F.3d at 994 (explaining that in adopting RLUIPA, "Congress sought to provide inmates a mechanism to seek redress against the frivolous or arbitrary barriers that impeded institutionalized persons religious exercise . . . by replacing the legitimate penological interest standard articulated in *Turner* with [RLUIPA's] compelling governmental interest and least restrictive means tests" (internal quotation marks and citations omitted)). Thus, on remand, the district court must

evaluate whether the LCC chapel scheduling policy was the least restrictive means of furthering a compelling, as opposed to a legitimate, governmental interest, as required by the plain language of 42 U.S.C. § 2000cc-1 (mandating that, if the government places a substantial burden on religious exercise, it must demonstrate that the burden “is the least restrictive means of further [a] compelling governmental interest”).¹⁴ Accordingly we,

REVERSE the district court’s dismissal of the RLUIPA claim, AFFIRM the remainder of the district court’s judgment, and REMAND for further proceedings consistent with this order.¹⁵


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹⁴If the court determines that the respondents cannot meet their burden of establishing that the LCC chapel scheduling policy is the least restrictive means of furthering a compelling governmental interest, the court must also determine the appropriate injunctive relief to grant Johnson, *see State Farm Mut. Auto. Ins. Co. v. Jafbro Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993) (explaining the requirements to issue a permanent injunction), which was the only type of relief he sought in connection with his RLUIPA claim.

¹⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for further relief.

cc: Hon. Jim C. Shirley, District Judge
Special Public Defender
Attorney General/Las Vegas
Attorney General/Carson City
Clerk of the Court/Court Administrator