**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **MATTHEW HALE,** | ) | |
| | ) | |
| **Plaintiff** | ) | |
| | ) | **Civil Action No. 21-1469 (JEB)** |
| **v.** | ) | |
| | ) | |
| **BUREAU OF PRISONS, *et al*.** | ) | |
| | ) | |
| **Defendants.** | ) | |
| | ) | |

**REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

The Bureau of Prisons, *et al*. ("Defendants" or "BOP"), by and through undersigned counsel, respectfully submit this Reply to the Opposition filed by Matthew Hale ("Plaintiff") to Defendants' Motion to Dismiss. In this suit, Plaintiff appears to be alleging three "freedom of speech" claims related to publications and mail, "free exercise" claims under the First Amendment, as well as under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 to -4 ("RFRA"). He appears to be seeking some relief related to BOP stopping the complained-of actions, along with money damages in the amount of $5 million against the sole individually-named Defendant, Collis. Plaintiff has not meaningfully rebutted Defendants' arguments for dismissal, however, as he seeks to relitigate claims that were adjudicated in the Tenth Circuit, and the Supreme Court subsequently denied *certiorari*. Moreover, Plaintiff's claims against Defendant Collis are also procedurally and legally flawed.

As will be shown below, Plaintiff is no stranger to litigation. Plaintiff was "sentenced [] to a total of 480 months' imprisonment" for, *inter alia*, "solicitation and obstruction in connection with his efforts to have Judge Lefkow killed." *See generally United States v. Hale*, 448 F.3d 971 (7th Cir. 2006) (affirming Plaintiff's conviction because the "district court did not

abuse its discretion when it allowed evidence of [Plaintiff's] other statements concerning [Plaintiff's] [church] member's killing spree to be entered into evidence" and Plaintiff "had not shown actual prejudice by the prosecutor's use of the statements as part of his closing argument. The court found no error in the sentence imposed."), *cert denied*, 549 U.S. 1158 (2007); *see also Hale v. United States*, 2010 U.S. Dist. Lexis 73604 (N.D. Ill., July 22, 2010) (writ of habeas corpus and certificate of appealability denied), *Hale v. Berkebile*, 2014 U.S. Dist. Lexis 102327 (D. Colo. 2014) (writ of habeas corpus denied).[1] Plaintiff "was the 'Pontifex Maximus' of a white supremacist organization formerly known as the World Church of the Creator" whose members have espoused and committed violence, including murder. *Id*. at 975.[2]

Plaintiff's same claims have been fully adjudicated in prior litigation. *Hale v. BOP*, 759 Fed. Appx. 741 (10th Cir. 2019), *cert denied*, 140 S. Ct. 196 (2019). While incarcerated at the Administrative Maximum penitentiary (ADX) in Florence, Colorado, Hale alleged that the BOP violated his First Amendment rights "by . . . taking away and interfering with his mail rights,

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[1] In an unrelated trademark infringement case involving Plaintiff's "church," Judge Lefkow "entered a detailed order requiring the World Church to stop using variations of the trademarked name 'Church of the Creator,' . . . and relinquish custody of the domain names of the World Church's websites to the Foundation." 448 F.3d at 975. In response, Plaintiff and a Government informant had the following exchange: "Informant: when we get [Judge Lefkow's address], we gonna exterminate the rat? Plaintiff: Well, whatever you wanna do. . . ." *Id*. at 979. In the past, Plaintiff had discussed harming disloyal members of the "church."

[2] Benjamin Nathaniel Smith (March 22, 1978 – July 4, 1999) was an American spree killer and member of the neo-Nazi World Church of the Creator. During the weekend of July 4, 1999, Smith targeted members of racial and ethnic minorities in random drive-by shootings in Illinois and Indiana, after which he committed suicide. Edward Walsh, *Racial Slayer Killed Himself in Struggle*, Wash. Post at A1 (July 6, 1999) ("Hale, a self-avowed racist and anti-Semite, recently had his application for a law license rejected by an Illinois state board, which ruled that his racial and religious views made him unfit to practice law. Hale said today that the board's rejection of his appeal may have triggered Smith's rampage. . . . In six separate incidents, the gunman [Smith] in the light blue Taurus shot six Orthodox Jewish men as they made their way through the neighborhood after Sabbath evening synagogue services"); https://en.wikipedia.org/wiki/Benjamin_Nathaniel_Smith (visited May 23, 2022). Plaintiff publicly praised the shooter and his conduct. *See id.*

forbidding his participation in his church, and denying . . . his religious diet." 759 Fed. Appx. at 744 ("(1) the mail restrictions violated First Amendment guarantees of free speech, free religious exercise, and free association; (2) the mail restrictions were imposed to retaliate against Mr. Hale for invoking his speech and religious rights; (3) the mail restrictions violated the [RFRA], 42 U.S.C. § 2000bb-1 to -4; (4) the mail restrictions violated procedural due process; (5) the restriction on 'Nature's Eternal Religion' violated the 'First Amendment,' (6) the differential treatment of inmates from different faiths violated equal protection; (7) the restriction on 'Nature's Eternal Religion' violated RFRA; (8) the denial of a religious diet violated the 'First Amendment,' (9) the denial of a religious diet violated RFRA; and (10) the denial of a news interview violated the 'First Amendment[.]'").

The Tenth Circuit found that the BOP had "designated Creativity a security threat group ('STG'),[3] because inmates following its tenets have engaged in acts of violence, including murdering other inmates and instigating race riots. Accordingly, the BOP has placed restrictions on Mr. Hale impacting his participation in Creativity."[4] 759 Fed. Appx. 743-44.

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[3] "An STG may have a wide presence, with a complex web of members and associates in the federal and state prison systems and on the streets. Keeping track of those many components of the group is not an exact science. It is extremely difficult to track and have complete awareness of the activities of numerous persons in widely varying locations. Intelligence about the group's activities can change on a day-to-day basis, and Bureau intelligence personnel do not have access to that information in real time. Inevitably, intelligence is delayed. Dangers may not be fully apparent until a dangerous plan or risk comes to fruition, such as an executed hit on a targeted individual or a deadly fight on a prison yard between two rival STGs. It is not always possible for staff who monitor inmate communications to be aware of the most current activities of the group, nor can the Bureau be certain that it has a full understanding of the implications of communications among a complex web of associates or how those associates will react to communications from an inmate…To reduce these dangers, the Bureau must be as proactive as possible. That is why communications about STGs are not allowed. That rule applies to all STGs, not just the Creativity Movement." 759 Fed. Appx. 749.

[4] The BOP had imposed mail restrictions because Plaintiff sought to reestablish himself as Creativity's leader, had encouraged a neo-Nazi leader to pursue mass activism tactics,

The Tenth Circuit ruled that "Creativity" is not a religion that is due protection under the First Amendment or RFRA because it did not meet the *Meyers* factors, *i.e.*, it "presents only a singular concern of racial dominance, framed in terms of social, political, and ideological struggles"; Plaintiff "concede[d] that "Creativity is not 'metaphysical'"; Creativity failed *Meyers*' "Moral and Ethical System" test because its "unidimensional focus on racial hegemony, designed to benefit the individual adherents of Creativity, as well as the overall group of adherents, is inconsistent with a binary system of morals and ethics"; and "Creativity thus lacks a comprehensive belief system" because its Fourth Commandment, for example, provides that "[t]he guiding principle of all your actions shall be: What is best for the White Race."). 759 Fed. Appx. 746-49 (citing *United States v. Meyers*, 95 F.3d 1475, 1482 (10th Cir. 1996)).

Regarding Plaintiff's purported freedom of speech/association claims, in evaluating the *Turner* factors, the Tenth Circuit held, *inter alia*, that "[t]here is overwhelming evidence in the record that Creativity poses an institutional security risk and that [Plaintiff] has sought to advance the white-supremacist goals of Creativity in ways that pose a danger both inside and outside of ADX. By limiting [Plaintiff's] ability to send and receive mail communicating Creativity's message, the BOP mitigates internal and external safety risks." 759 Fed. Appx. 750-51 (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). The Supreme Court denied Plaintiff's petition for a writ of certiorari.

Defendants moved to dismiss Plaintiff's complaint in this action on the grounds that Plaintiff's claims and issues raised here are precluded because they share the same "nucleus of facts" as the Tenth Circuit action, *see Stanton v. D.C. Court of Appeals*, 127 F.3d 72, 78 (D.C.

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and had targeted a federal magistrate judge. The BOP also denied Plaintiff's requests for access to a book that Creativity adherents regard as their bible, "Nature's Eternal Religion." 751 Fed. Appx. 743-44.

Cir. 1997), the issues were "actually litigated" in the Tenth Circuit action, which was a court of "competent jurisdiction," and precluding this suit does "not work an unfairness." *Otherson v. DOJ*, 711 F.2d 267, 273 (D.C. Cir. 1983); *see also Wilson v. Fullwood*, 772 F.Supp.2d 246 (D.D.C. 2011) (precluding later claims that mirrored claims that had been adjudicated earlier involving the same parties).

Plaintiff's Opposition asserts that a judicial doctrine like preclusion cannot defeat an "inalienable right" because "a person has a constitutional *right* to profess a religious faith of his choosing . . . regardless of whether he has lost a case or not." ECF No. 20 at 9 ("Pl's Opp'n") (emphasis in original). Plaintiff's arguments fail for multiple reasons. First, Plaintiff is wrong to give short shrift to judicial preclusion doctrines. The Supreme Court has noted that the principle of res judicata, for example, is "compelled by Article III to safeguard the structural independence of the courts." *Plaut v. Spendthrift Farm*, 514 U.S. 21, 232 (1995); *see also* David L. Shapiro, *Civil Procedure: Preclusion in Civil Actions 14* (2001) (discussing the relationship between res judicata and "the need to recognize the finality of judgments," which is "fundamental to the status of the federal courts under Article III of the Constitution")).

A prison regulation that impinges on an inmate's constitutional rights is valid if it is "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. at 89. The Supreme Court did not leave any carveouts for constitutional rights that trump prison regulations. Therefore, Plaintiff is also wrong that preclusion principles do not apply when prisoners raise constitutional claims. *See Smith v. District of Columbia*, 629 F. Supp. 2d 53, 58 (D.D.C. 2009) (Smith's constitutional cause of action would be "precluded by the prior Superior Court judgment"); *Arakawa v. Reagan*, 666 F. Supp. 254, 261 (D.D.C. 1987) (preclusion applies to claims that were raised and constitutional claims that could have been raised); *Drake v. Cappelle*,

Civ. A. No. 02-1049, 2005 U.S. Dist. Lexis 5037 at *26 (D.D.C. 2005) (plaintiff's due process claim precluded); *Richardson v. Sauls*, 319 F. Supp. 3d 52 (D.D.C. 2018).

Plaintiff attempts to muddy the waters by citing irrelevant and inapposite caselaw. For example, Plaintiff was not prosecuted for his religious beliefs, *United States v. Ballard*, 322 U.S. 78, 86 (1944) (holding that "the truth or verity of [criminal defendants'] religious doctrines or beliefs should have been submitted to the jury"), but for soliciting the murder of a federal judge. The Tenth Circuit's rulings that preclude this Court from hearing the identical claims in this action are not a prosecution of Plaintiff for his religious beliefs. Therefore, *Ballard* is not controlling on any principle relevant to this Court's decision. Another decision Plaintiff invokes, *United States v. Seeger*, 380 U.S. 163, 185 (1965) (holding that Seeger should not have been prosecuted for failing to be inducted into the armed forces because "it clear that the beliefs which prompted his objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers"), likewise is inapposite. There is no basis to compare *Ballard* or *Seeger* to this case, and in fact the Supreme Court denied Plaintiff certiorari.

Even if the Tenth Circuit had ruled improperly in Plaintiff's case, this Court still would lack jurisdiction to review that court's rulings. Just as one district court may not review the decisions of another district court, one Court of Appeals may not review the decisions of another Court of Appeals; such review is properly reserved for the United States Supreme Court. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) ("[I]t is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected."); *Smalls v. United States*, 471 F.3d 186, 192 (D.C. Cir. 2006) ("A federal district court lacks jurisdiction to review decisions of other federal courts."); *Klayman v. Kollar-Kotelly*,

No. 12-5340, 2013 U.S. App. Lexis 10148, *2 (D.C. Cir. 2013) ("[T]his court has concluded that one district court does not have jurisdiction to review the decisions of another district court or federal appellate court."). Additionally, Plaintiff had an adequate remedy at law for review via a direct appeal, which he pursued. *See United States v. Beggerly*, 524 U.S. 38, 47 (1998); *Neisloss v. Bush*, 293 F.2d 873, 880 n.16 (D.C. Cir. 1961).

Next, Plaintiff argues that "[t]his Court has personal jurisdiction over Defendant Collis [presumably in his individual capacity] because he has established 'minimum contacts' with Washington, D.C. being that he is an 'intelligence analyst' for the [BOP]." Pl's Opp'n at 1. This argument is unavailing because "the mere fact that [a non-resident defendant] is an employee of the BOP, the headquarters office of which is in the District, does not render [the defendant] subject to suit in [his or her] individual capacity in the District of Columbia." *Walton v. BOP*, 533 F. Supp. 2d 107, 112 (D.D.C. 2008) (citing *Stafford v. Briggs*, 444 U.S. 527, 543-45 (1980)) (absent minimum contacts other than those arising from federal employment, court may not exercise personal jurisdiction over federal official in his individual capacity); *Pollack v. Meese*, 737 F.Supp. 663, 666 (D.D.C. 1990) (concluding that the court had no basis to assert personal jurisdiction over the warden of a BOP facility in Springfield, Missouri because he "surely does not transact any business in the District of Columbia"); *see also Scinto v. BOP*, 608 F. Supp. 2d 4, 8 (D.D.C. 2009) (rejecting argument that "the nexus and paramount commonality between each of these individuals are their employment with the Federal Government's Bureau of Prisons which is located in Washington DC. . . . All directives, regulations, rules, statutes, codes or other factor which govern their business operations and delegate their authority to act as Law Enforcement Officers are issued from Washington DC.") *aff'd*, 352 Fed. Appx. 448 (D.C. Cir. 2009) (per curiam), *cert. denied*, 130 S. Ct. 2417 (2010). Nor does Plaintiff allege facts that

establish that he suffered an injury in the District of Columbia. The injuries of which Plaintiff complains occurred while he was incarcerated in Illinois. *See id*.

Likewise, Plaintiff's argument that venue is proper in this District because the BOP's Communications Management Unit or CMU is located here is equally unavailing. *See* Pl.'s Opp'n at 7-8. The "D.C. Circuit[] [has] warn[ed] that courts must carefully examine venue 'to guard against the danger that a plaintiff might manufacture venue in the District of Columbia[.]'" *Montgomery v. Barr*, 502 F. Supp. 3d 165, 168 (D.D.C. 2020) (quoting *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993)). By bringing suit against a federal agency or by "recasting local determinations as 'broad national policy directives,'" a plaintiff could attempt to bring a suit in the District of Columbia that should be pursued elsewhere. *PSV Enters. LLC v. USCIS*, Civ. A. No. 20-2287, 2021 WL 2115251, at *3 (D.D.C. May 25, 2021) (quoting *EfficientIP, Inc. v. Cuccinelli*, Civ. A. No. 20-01455, 2020 WL 6683068, at *3 (D.D.C. Nov. 12, 2020)). "Many, if indeed not most," civil cases "filed by prisoners not confined in the District of Columbia and not sentenced here originally, will tend to involve factors that make transfer to the place of incarceration appropriate." *Starnes v. McGuire*, 512 F.2d 918, 926 (D.C. Cir. 1974).

"[T]he mere presence of an agency's headquarters in this District is not automatically enough, standing alone, to necessitate venue here[.]" *Jordan v. BOP*, Civ. A. No. 21-0614 (CKK), 2022 U.S. Dist. Lexis 33742, *17 (D.D.C. 2022) ("[T]here commonly must be more of a connection to this District than the axiomatic denial of the third stage of an administrative appeal by the BOP Central Office."); *see also Montgomery*, 502 F. Supp. 3d at 175 (concluding that not all APA cases, and not even all "national policy" cases may automatically be heard in this District, and instead require a case-by-case determination); *Sanchez-Mercedes v. BOP*, 453 F. Supp. 3d 404, 417-18 (D.D.C. 2020) (venue is improper in this District because "[i]t is

'abundantly clear' that the relevant acts and omissions took place at FCI Petersburg, FCI Danbury, and FCI Loretto."); *Ballard v. Holinka*, 601 F. Supp. 2d 110, 120 (D.D.C. 2009) ("Venue is not proper in this District [because] defendants do not all reside in [this District], no substantial part of the events giving rise to plaintiff's claim took place here, and this is not a case in which no other district is available. Rather, a substantial part of the events giving rise both to plaintiff's First Amendment claim and his Administrative Procedure Act claim occurred in Minnesota while plaintiff was incarcerated at FCI Waseca.").

Where, as here, venue is improper, the Court, in the interest of justice, may transfer the action to any other district where it could have been brought. *See* 28 U.S.C. § 1406(a); *Novak-Canzeri v. Turki Bin Abdul Alziz Al Saud*, 864 F.Supp. 203, 207 (D.D.C. 1993). However, any transfer in this case would be futile because of the fatal flaws in this action outlined in Defendants' dispositive motion and herein. *Ananiev v. Wells Fargo Bank, NA*, 968 F. Supp. 2d 123, 131-32 (D.D.C. 2013) (concluding that the complaint had to be dismissed under 28 U.S.C. § 1406(a), because transfer would be futile, as plaintiff's claims were barred by res judicata; sovereign immunity precluded plaintiff's claims against the Superior Court; and Plaintiff's claim against a law firm for impermissibly filing an unlawful detainer complaint lacked merit.).

Finally, Plaintiff argues that Defendant Collis is not entitled to qualified immunity because he "knowingly" violated a clearly established right. *See* Pl's Opp'n at 28-32 (citing *Procunier v Martinez*, 416 U.S. 396 (1974) (holding that restrictions on inmate correspondence that furthers an important or substantial government interest is nevertheless invalid under the First Amendment if its sweep is unnecessarily broad), *overruled by Thornburgh v. Abbott*, 490 U.S. 401 (1989) (with regard to incoming mail). Plaintiffs bear the burden of defeating a defendant prison official's claim to qualified immunity. *Al-Ra'id. v. Ingle*, 69 F.3d 28, 33 (5th

Cir. 1995). Here, Plaintiff has not carried his burden of proving that Defendant Collis violated his First Amendment rights or that Plaintiff had a clearly established rights to send out material that constitute white supremacists' propaganda.

First, Plaintiff's fails to carry his burden, because prison regulations that impinge on an inmate's First Amendment rights are valid if they reasonably relate to legitimate penological interests. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) (quoting *Turner*, 482 U.S. at 89); *see, e.g., Walker v. Beard*, 789 F.3d 1125, 1135-37 (9th Cir. 2015) (prison's classification of a white racist inmate as eligible to be housed with a person of a different race and its refusal to grant him an exemption did not violate Aryan Christian Odinist inmate's religious rights under the Free Exercise Clause because prison's policy was reasonably related to the penological interest in avoiding the legal liability of equal protection suits brought by other inmates). Under the *Turner* rubric, it is clear that Defendant Collis did not violate Plaintiff's First Amendment rights because the restrictions on Plaintiff's mail are reasonable, given Plaintiff's conviction and his support for racial violence. *Winburn v. Bologna*, 979 F. Supp. 531, 534 (W.D. Mich. 1997) (prison mail policy application was reasonable and facially valid under *Turner*: "The mail regulation is logically related to legitimate security concerns of prison officials, who are worried that such material promotes violence and racial supremacy. The mail policy does not deprive prisoners of all means of expression of religion, but simply bars material that promotes racial supremacy and violence."). Because Defendant Collis' actions are reasonable under *Turner*, Plaintiff cannot carry his burden of demonstrating that Defendant Collis is not entitled to qualified immunity, especially keeping in mind the Tenth Circuit conclusions that Plaintiff's claims do not even raise a "religion" claim in the first place.

Furthermore, the rule of "qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Defendants can have a reasonable, but mistaken, belief about the facts or about what the law requires in any given situation. *Id*. at 205. A court considering a claim of qualified immunity must determine whether the plaintiff has alleged the deprivation of an actual constitutional right and whether such right was clearly established such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Plaintiff has not clearly established a right to send or receive mail that promotes racial violence. *See Duamutef v. Hollins*, 297 F.3d 108, 113 (2d Cir. 2002) (inmate had not clearly establish right to send or receive materials that promote violence like "Blood in the Streets," given the inmate's propensity to spew violent propaganda); *Medina v. City of Philadelphia*, Civ. A. No. 03-1071, 2004 U.S. Dist. Lexis 9137, *15-16 (E.D. Pa. 2004) ("[T]he Court is unable to conclude that Defendants' confiscation of the manuscripts was in violation of clearly established law" because "the Latin Kings are a well-known street gang that has been involved in violent activity both inside and outside prison walls."). Plaintiff failed to cite even one case that would have put Defendant Collis on notice that he was violating a clearly established. He did not because he cannot.

For the reasons stated about and the entire record of this case, Defendants respectfully request that the Court dismiss Plaintiff's complaint with prejudice.

May 27, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the foregoing Defendants' Reply to be served upon Plaintiff as follows:

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