

***United States Court of Appeals***  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

August 12, 2013

Mr. David Maland  
Eastern District of Texas, Lufkin  
United States District Court  
104 N. 3rd Street  
Lufkin, TX 75901-0000

No. 13-40732, In re: David Ali  
USDC No. 9:09-CV-52

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By:   
Christina A. Gardner, Deputy Clerk  
504-310-7684

cc w/encl:  
Mr. David Rasheed Ali

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Texas Department of Criminal Justice  
Litigation Support Program  
P.O. Box 13084  
Capitol Station  
Austin, TX 78711

Texas Department of Criminal Justice  
Inmate Trust Fund Department  
P.O. Box 629  
Huntsville, TX 77342

No. 13-40732,           In re: David Ali  
                                  USDC No. 9:09-CV-52

The enclosed order directs the petitioner to pay an initial partial filing fee, and consistent with 28 U.S.C. § 1915 (b) (2) thereafter to make periodic payments, until a total fee of \$ \$450 is paid.

Within 45 days of the date of this letter, the petitioner must pay the initial partial filing fee directly to this court by check or money order and make arrangements for further direct periodic payments, or take necessary actions and execute any required forms to permit the collection of fees from his prison trust fund account. Failure to comply may result in denial of permission to proceed in forma pauperis before this court in any future action.

If the petitioner elects to have funds withdrawn from his account, the agency having custody will collect the initial partial filing fee, if funds are immediately available, and forward the payment within 30 days of the date of this letter. Thereafter, the agency will follow its standard procedures and periodically forward payments each time the petitioner's account balance exceeds \$10.

All payments should be made payable to "Clerk of Court", include the petitioner's name, prisoner number and case number, and be sent to:

Clerk of Court  
United States Court of Appeals  
for the Fifth Circuit  
ATTN: Fiscal Department  
600 S. Maestri Place  
New Orleans, LA 70130

In the event the petitioner is transferred to another facility, or is released from confinement, the agency having custody at the time of transfer or release must notify this office of a forwarding address.

Sincerely,

LYLE W. CAYCE, Clerk

By:   
Christina A. Gardner, Deputy Clerk  
504-310-7684

cc: Mr. David Maland  
Mr. David Rasheed Ali

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 13-40732  
USDC No. 9:09-CV-52

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In re: DAVID RASHEED ALI,

Petitioner

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Petition for a Writ of Mandamus  
to the United States District Court  
for the Eastern District of Texas

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Before SMITH, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:

David Rasheed Ali, Texas prisoner # 1077767, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP) under the Prison Litigation Reform Act (PLRA).<sup>1</sup> The application for leave to proceed IFP is GRANTED. Ali is not assessed an initial partial filing fee because he lacks the requisite funds; however, he must pay the balance of the filing fee in installments. The agency having custody of Ali is ORDERED to forward funds from his prison trust fund account to the clerk of this court on a regular basis as provided in 28 U.S.C. § 1915(b)(2) until the full filing fee of \$450 is paid.

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<sup>1</sup> The nature of the underlying action determines whether the fee requirements of the PLRA are to apply in mandamus cases. *In re Stone*, 118 F.3d 1032, 1034 (5th Cir. 1997). Because the underlying action in the present matter is a civil case, we must apply the PLRA fee requirements. *See* 28 U.S.C. § 1915(b).

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The history of Ali's district court suit can be gleaned from the three appeals and one prior mandamus petition in this court. *See Ali v. Quarterman*, 607 F.3d 1046 (5th Cir. 2010) (*Ali I*); *Ali v. Quarterman*, 434 F. App'x 322 (5th Cir. 2011) (*Ali II*); *In re Ali*, No. 11-41114 (5th Cir. Dec. 7, 2011) (unpublished); *Ali v. Quarterman*, 505 F. App'x 369 (5th Cir. 2013) (*Ali III*). In a suit filed in 2009, Ali sought to challenge, in part under the Religious Land Use and Institutionalized Persons Act (RLUIPA), certain policies of the Texas Department of Criminal Justice-Institutional Division. The district court originally closed the suit administratively pending the outcome of another case, which ultimately was decided on appeal as *Garner v. Kennedy*, 713 F.3d 237 (5th Cir. 2013). In 2010, we vacated and remanded for further proceedings. *Ali I*, 607 F.3d at 1049. The district court then dismissed the case as frivolous and for failure to state a claim. In 2011, we vacated and remanded as to the RLUIPA claims, including Ali's motion for a preliminary injunction, as they pertained to grooming policies. *Ali II*, 434 F. App'x at 327. The grooming-policy issue has been complicated by the issuance of differing opinions from our court. *See Garner v. Kennedy*, 713 F.3d at 244-45 (holding that *DeMoss v. Crain*, 636 F.3d 145 (5th Cir. 2011), and *Gooden v. Crain*, 353 F. App'x 885 (5th Cir. 2009), were not controlling based on the better-developed record and fact findings in the *Garner* case).

In our most recent opinion dismissing Ali's third appeal for lack of jurisdiction, issued on January 4, 2013, we reminded the district court that it should rule on Ali's motion for a preliminary injunction. *See Ali III*, 505 F. App'x at 370. In his mandamus petition, Ali asserts that the district court still has not ruled.

The mandamus remedy is an extraordinary one, granted only in the clearest and most compelling cases in which a party seeking mandamus shows that no other adequate means exist to attain the requested relief and that the right to the issuance of the writ is "clear and indisputable." *In re Willy*, 831 F.2d

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545, 549 (5th Cir. 1987). Mandamus is a possible remedy when the district court has unduly delayed in deciding a case.

In November 2011, the magistrate judge recommended denying injunctive relief, based in part on *DeMoss*. It was that recommendation that Ali appealed, not to the district court, but to this court, resulting in our dismissal for lack of jurisdiction and our reminder to the district court. Nor has that court been idle since our opinion in *Ali III*. On March 27, 2013, the magistrate judge again recommended denying Ali's motion for a preliminary injunction, again relying in part on *DeMoss*. On May 15, 2013, she withdrew that recommendation based on our opinion in *Garner*, which suggested that *DeMoss* would not be controlling. The magistrate judge then directed the respondent to show cause why injunctive relief should not be granted or to "otherwise plead as appropriate." That response was filed on June 10, 2013; in it, the respondent argued that *Garner* was not controlling in Ali's case. We also note that, in March 2013, the Department of Justice filed a "Statement of Interest of the United States" on Ali's behalf. Given the activity on Ali's case, we cannot say that there has been undue delay.

The petition for a writ of mandamus is DENIED without prejudice to Ali's reinstating it if the district court has not ruled within 180 days of the date of this order.