**No. 472-2015**

In the

# Supreme Court of the United States

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SIHEEM KELLY,
PETITIONER,

v.

KANE ECHOLS, Warden of Tourovia Correctional Center and SAUL ABREU, Director of the Tourovia Correctional Center Chaplaincy Department,
RESPONDENTS.

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***ON WRIT OF CERTIORARI***
***TO THE UNITED STATES COURT OF APPEALS***
***FOR THE TWELFTH CIRCUIT***

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BRIEF FOR RESPONDENTS

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**TEAM 13**

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## QUESTIONS PRESENTED

1. Whether Tourovia Correctional Center Directive 98 is permissible under RLUIPA when it ensures that prisoners have access to religious prayer services when a chaplain can be present?

2. Whether Tourovia Correctional Center Directive 99 is permissible under RLUIPA when it allows prison administrators to accommodate and regulate religious diets?

## JURISDICTIONAL STATEMENT

This case arises under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The United States District Court for the Eastern District of Tourovia ("Tourovia District Court") had subject matter jurisdiction according to 28 U.S.C. § 1331 (2012) and 42 U.S.C. § 2000cc-2(a) (2012), and issued its judgement on March 7, 2015. The United States Court of Appeals for the Twelfth Circuit ("Twelfth Circuit") had jurisdiction over the appeal from the Tourovia District Court decision according to 28 U.S.C. § 1291 (2012), and issued its judgement on June 1, 2015. A petition for writ of certiorari was filed, and was granted by this Court on July 1, 2015. Accordingly, this Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1) (2012).

## STATEMENT OF THE CASE

### Statement Of The Facts

Tourovia Correctional Center ("the Prison" or "TCC") is a maximum security prison located in the state of Tourovia. R. at 3. TCC's policies accommodate prisoners' religious beliefs by allowing them to exercise their religion within the parameters set by the need to maintain prison security. R. at 24-26. To that end, prisoners at TCC may file a "Declaration of Religious Preference Form" in order to be allowed to participate in prayer services and related dietary programs. R. at 3. TCC policies permit the punishment of prisoners who engage in misconduct related to prayer services or their requested religious diet. R. at 4.

Prior to August 1998, TCC discovered that during a prayer service, a service volunteer was relaying gang orders from incarcerated members of the Christian community to gang-affiliated individuals outside the prison. R. at 4. Shortly after the gang incident, several members of Christian and Muslim prayer groups violated security policy by staying in prayer rooms longer than authorized. R. at 4. In August 1998, as a result of these incidents, TCC banned the use of prison volunteers and all nightly services to ensure that inmates were back in their cells in time for the final headcount at 8:30 P.M. R. at 4. Additionally, TCC changed its religious service policy to require the presence of a prison chaplain at any prayer services. R. at 4. Chaplains are available during the three Designated Prayer Times and in emergency situations where a prisoner is either near death or unable to attend prayer services due to illness or physical incapacity. R. at 4.

In determining whether a faith group will have requests for prayer services granted, TCC considers: demand, need, staff availability, and prison resources. R. at 4. Because of the limited resources it has available for religious activities, TCC defines a "faith group" as "10 or more acknowledged members of any faith." R. at 24. TCC currently staffs and maintains three services

per day for Catholic, Protestant, Muslim, and Jewish inmates. R. at 4. The "Designated Prayer Times" are: "a. Before the morning meal at 8:00 A.M.[,] b. Before the afternoon meal at 1:00 P.M.[, and] c. Before the evening meal at 7:00 P.M." R. at 24.

The Nation of Islam ("NOI") is a subgroup of the Sunni Muslim religion. R. at 3. NOI is a minority religious group at TCC, with less than one percent of inmates participating. R. at 3. NOI members generally move throughout the prison as a group and never move throughout the facility alone. R. at 3. NOI membership at TCC has never exceeded ten (10) members, and currently there are seven (7) acknowledged members who participate in prayer services and a strict vegetarian diet to satisfy Halal. R. at 3. NOI members celebrate the month of Ramadan and other special religious holidays. R. at 3.

NOI members believe that they must pray five times a day, as specified in the Salat (an Arabic prayer guide). R. at 3. These prayer times are described as: dawn, early afternoon, late afternoon, sunset, and late evening. R. at 3-4. Many NOI adherents prefer a very clean and solemn environment during their prayers. R. at 4. Once prayer begins, members believe that they should not to be interrupted in any way. R. at 4. Furthermore, members of NOI prefer to pray with other NOI members, however, the religion does not mandate group prayer outside of the month of Ramadan and on Friday evenings. R. at 4.

TCC permits NOI members to pray three times a day outside of their cells and at any time inside their cells. R. at 4. TCC does not assign cellmates based on religion; however, if instances of violence toward other individuals of another faith occur, the prisoner can request a cell transfer. R. at 4. This kind of transfer requires the Warden's approval. R. at 4.

In 2000, Siheem Kelly ("Petitioner" or "Kelly") became an inmate at TCC after being convicted of aggravated robbery and several drug trafficking charges. R. at 3. After two years at

TCC without any professed religious affiliation, Kelly announced that he had converted to NOI by filing a Declaration of Religious Preference Form. R. at 3. Kelly requested that his last name be changed to "Mohammad" and that prison officials address him by that name. R. at 3.[1]

Petitioner's Request For Additional Nightly Prayer Services

In February 2013, Kelly, on behalf of himself and the other six members of NOI, filed a written prayer service request for an additional congregational nightly prayer service after the last meal. R. at 4-5. Kelly specifically requested that the service be held at 8:00 P.M. after the last meal, but before the final head count at 8:30 P.M. (R. at 5.) One week later, Saul Abreu ("Abreu"), the Director of the TCC Chaplaincy Department, informed Kelly that his request was denied due to the policy prohibiting all inmates from going anywhere other than their cells before the final head count. R. at 5. Abreu also told Kelly that the three services already provided, and the availability of in-cell prayers, satisfied NOI prayer requirements. R. at 5. Kelly verbally indicated to Abreu that he would compromise for at least one additional service in order to conduct the last two prayers of the day with his fellow NOI members. R. at 5. Furthermore, Kelly requested that prayer services be held apart from non-NOI inmates and with a chaplain of NOI affiliation. R. at 5. Kelly did not receive a response to this verbal request. R. at 5.

Subsequently, Kelly objected to the denial of his requests by filing a grievance. R. at 5. He stated that he requested an additional prayer service because he was unable to pray in his cell; he alleged that praying there was distracting and disrespectful to his religion. R. at 5. To support this claim, Kelly described incidents where his non-NOI cellmate engaged in inappropriate behavior while he was trying to pray. R. at 5. In this grievance he also alleged that his fellow NOI members

1 Despite Kelly's request to be called Mohammed, he has been referred to as "Kelly" throughout the proceedings and will be referred to in that same way here for consistency. R. at 3.

were experiencing similar incidents. R. at 5. The first grievance was denied on the grounds that Kelly did not prove that his cellmate was actually engaging in the described behavior. R. at 5. In response, Kelly filed a second grievance, by letter to Abreu, which stated that praying in his cell in close proximity to a toilet was against his religious preference that he pray in a clean and solemn environment with fellow NOI members. R. at 5. This second grievance was also denied. R. at 5.

Finally, Kelly filed a formal grievance with TCC which restated the claims contained in the two previous grievances. R. at 5. This formal grievance cited verses from *The Holy Qu'ran*, which purported to explain why congregational prayer service at night was obligatory for NOI members. R. at 5. Kane Echols ("Echols"), Warden of TCC, responded in a letter and explained that Kelly's request violated TCC Directive 98 and that the allegations against his cellmate could not be substantiated. R. at 5-6. Echols suggested that requesting a cell transfer would be the best option for Kelly. R. at 6. Within two weeks of the formal grievance being denied, Kelly was assigned a new inmate as his cellmate. R. at 6.

Petitioner's Misconduct Resulting In Removal From His Diet

If any violence or threat of violence is connected to a member of a religious group, TCC may prohibit the inmate from attending religious services for as long as TCC determines appropriate. R. at 6. According to TCC's Directive 99, TCC reserves the right to remove a prisoner from his diet program if the prisoner gives prison officials "adequate reason" to believe the diet is not being adhered to. R. at 26.

Two weeks after Kelly's third grievance was denied, the new cellmate reported that Kelly threatened him with violence if he refused to give Kelly his non-Halal meatloaf dinner. R. at 6. Echols and Abreu were immediately informed and the incident was investigated and documented. R. at 6. Despite the violent threats, no evidence of the perpetration of violence was discovered;

however, during a later search TCC officials discovered meatloaf wrapped in a napkin under Kelly's mattress. R. at 6. As a result, Kelly was removed from the vegetarian diet program pursuant to Directive 99. R. at 6. He was also barred from attending worship services for one month as punishment for threats of violence against his new cellmate and for violating his requested diet program. R. at 6. Kelly did not deny threatening his cellmate with violence, but he did deny that the meatloaf was his. R. at 6. In response to his removal from the vegetarian diet, Petitioner began a hunger strike and refused to eat anything from TCC's standard menu. R. at 6. After two days, in order to ensure adequate nourishment, prison employees tube-fed Petitioner. R. at 6. After the tube-feeding, Kelly ended his hunger strike and agreed to eat the standard food provided. R. at 6.

**Statement Of Procedural History**

Kelly filed a complaint in the Tourovia District Court against Echols and Abreu ("Respondents"), alleging that Respondents violated his First Amendment Rights and specifically violated RLUIPA on two grounds. R. at 2. Kelly alleged that Respondents (1) denied his request for a nightly congregational service after the evening meal, and (2) revoked his placement in the vegetarian diet program, forcing him to disobey the dietary laws of his faith. R. at 2. Included with the Respondents' answer, Abreu submitted an affidavit explaining the need for the Prison's directives. R. at 6-7. In this affidavit, Abreu emphasized the validity of the prayer and diet policies. R. at 6-7. Additionally, Abreu attached an addendum setting out a detailed breakdown of how these policies furthered TCC's cost containment stratagems. R. at 7.

Respondents moved for summary judgement, asserting that Kelly failed to prove that his religious rights were substantially burdened, on both counts, as a matter of law. R. at 2. Respondents argued that (1) TCC provided all religions with appropriate and sufficient Designated Prayer Times, and (2) removing Kelly from the vegetarian diet program was warranted as he

himself broke his religious diet. R. at 2. In an opinion written by Judge Montelle, dated March 7, 2015, the Tourovia District Court denied Respondents' motion for summary judgement, and ruled in favor of the Petitioner. R. at 2, 15.

Respondents filed an appeal to the Twelfth Circuit. R. at 16. On June 1, 2015, Circuit Judges Grady, Vaughn, and Montisanti, issued a collective opinion, holding that the Tourovia District Court erroneously found that Respondents violated RLUIPA, and vacated summary judgement for Kelly. R. at 16, 22.

Kelly filed a petition for writ of certiorari with the Supreme Court of the United States of America. R. at 23. Certiorari was granted on July 1, 2015. This Court limited certiorari to the following questions: (1) whether TCC's prison policy prohibiting night services to members of the Islamic faith violates RLUIPA, and (2) whether TCC's prison policy reserving the right to remove an inmate from a religious diet or fast, due to evidence of backsliding, violates RLUIPA? R. at 23.

## SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the Twelfth Circuit, which held that TCC Directives 98 and 99 are permissible under RLUIPA. Directive #98 "Religious Corporate Services" ("Directive 98") allows prisoners to participate in group religious prayer services within the times that a chaplain is available. Directive #99 "Religious Alternative Diets" ("Directive 99") allows prison administrators to accommodate and regulate religious diets. Since Directives 98 and 99 do not substantially burden the Petitioner's religious exercise and are the least restrictive means of furthering compelling governmental interests, Petitioner's claim must fail.

Directive 98 comports with the requirements imposed by RLUPIA. Directive 98 cannot impose a substantial burden on the religious exercise of TCC inmates because it does not put substantial pressure on a prisoner to modify his behavior or to violate his beliefs. Moreover,

Directive 98 is the least restrictive means available for achieving TCC's compelling governmental interests, because TCC cannot further its interests in maintaining institutional order and safety in a less restrictive way. Therefore, Directive 98 does not place a substantial burden on the Petitioner's exercise of religion, is the least restrictive means of achieving a compelling governmental interest, and is permissible under RLUIPA.

TCC Directive 99 is consistent with the protections granted to prisoners under RLUIPA. In order for Directive 99 to violate RLUIPA it must impose a substantial burden on Petitioner's religious exercise. Respondents did not substantially burden Petitioner's religious exercise by revoking his participation in the Diet. The elimination of special accommodations, after a prisoner fails to utilize them, does not pressure the prisoner to violate his religious beliefs. Alternatively, the Respondents can demonstrate that revoking Petitioner's Diet was in furtherance of a compelling governmental interest and was the least restrictive means of achieving that interest. Respondents have a compelling governmental interest in regulating the costs associated with providing special diets, in preserving safety in their prison, and in preventing violence between inmates. Therefore, Petitioner's claims under RLUIPA must fail because Directive 99 does not place a substantial burden on his religious exercise, and it is the least restrictive means of furthering the Prison's compelling interests.

TCC Directives 98 and 99 do not violate RLUIPA. Directives 98 and 99 place a minimal burden the Petitioner's religious exercise. Likewise, Directives 98 and 99 are the least restrictive means of furthering compelling governmental interests. Therefore, Petitioner's privileges under RLUIPA have not been violated, and the judgment of the Twelfth Circuit in favor of Respondents should be affirmed.

## ARGUMENT

### I. TCC DIRECTIVE 98, ENSURING THAT PRISONERS HAVE ACCESS TO RELIGIOUS PRAYER SERVICES WHEN A CHAPLAIN CAN BE PRESENT, IS PERMISSIBLE UNDER RLUIPA.

TCC operated within the bounds of RLUIPA when it adopted Directive 98 for the stated purpose of ensuring that inmates have the opportunity to participate in religious worship. R. at 25. Directive 98 achieves this purpose by encouraging group prayer services during Designated Prayer Times, except when they would disrupt the security or good order of the Prison. R. at 25. In order for a prison regulation to violate RLUIPA, a prisoner-plaintiff must show that it imposes a substantial burden on his religious exercise. 42 U.S.C. § 2000cc-2(b) (2012). TCC Directive 98 does not impose a substantial burden on the religious exercise of TCC inmates because it does not put substantial pressure on them to either modify their behavior or to violate their beliefs.

If a prisoner-plaintiff is able to carry his burden by proving that a prison regulation substantially burdens his religious exercise, the prison then must show that the regulation is the least restrictive means of achieving a compelling governmental interest. § 2000cc-2(b). Directive 98 constitutes the least restrictive means of achieving TCC's compelling governmental interests because it allows prisoners to utilize the group prayer rooms, while ensuring an official prison chaplain is present to guarantee safety and order. TCC cannot further its interests in maintaining order and safety within the prison in a less restrictive way. Because Directive 98 does not substantially burden the Petitioner's exercise of religion, and in any case is the least restrictive means of achieving a compelling governmental interest, it is permissible under RLUIPA.

#### A. Directive 98 Does Not Substantially Burden The Religious Exercise Of Inmates.

Petitioner's religious exercise was not substantially burdened by TCC's application of Directive 98. To succeed in a claim under RLUIPA, a prisoner must demonstrate that a regulation

"substantially burdens the [prisoner's] exercise of religion." § 2000cc-2(b). RLUIPA defines religious exercise as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A) (2012). While the statute does not define what amounts to a substantial burden, it does place the burden on a prisoner-plaintiff to prove that a prison has placed a substantial burden on his religious exercise. § 2000cc-2(b). This Court has defined a substantial burden as one that would put "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981).

Most circuit courts conducting a substantial burden analysis under RLUIPA have utilized some variation of the "pressure" test articulated in *Thomas*. *See Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (quoting the *Thomas* court in finding that a substantial burden "'put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs'"); *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004) (holding that a burden is substantial when it "truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs"); *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (ruling that a substantial burden "necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable"). The Petitioner could only prove that Directive 98 placed a substantial burden on his religious exercise if he could show that it put "substantial pressure" on him "to modify his behavior and to violate his beliefs[.]" *Thomas*, 450 U.S. at 718. Therefore, in order to fulfill the requirements of RLUIPA, the Petitioner must show that Directive 98 substantially pressured him to violate his beliefs or to modify his existing behavior.

In this case, Petitioner cannot show that Directive 98 put substantial pressure on him to modify his behavior or to violate his beliefs. The Tourovia District Court and the Twelfth Circuit agreed that the Petitioner's requests for additional prayer services dealt with religious exercise, but the Twelfth Circuit pointed out that the sincerity of an inmate's beliefs should be considered. R. at 8, 17. Directive 98 was put into effect before Petitioner's incarceration at TCC, and therefore could not have forced him to modify his behavior. R. at 4. Additionally, Directive 98 does not prohibit Petitioner from praying at any time during the day or night, but merely re-enforces the requirement that all prisoners be in their cells by 8:30 P.M. for the final head count. R. at 25. Directive 98, as applied, appropriately declines to give preferential treatment to a particular religious group by allowing any one group to obtain extra prayer services. *See Walker v. Beard*, 789 F.3d 1125, 1134-35 (9th Cir. 2015) (citing to *Lindell v. McCallum*, 352 F.3d 1107, 1108-10 (7th Cir. 2003)).

Respondent does not challenge the sincerity of Petitioner's religious preference for prayers in a clean and solemn environment, but notes that even Petitioner refers to it as a "preference" and not a requirement of his religion. R. at 5. A system of religious belief may include a great many preferences which simply cannot be granted within the literal confines of a correctional institution without causing a substantial disruption to order and discipline in the prison. While the Petitioner's religious beliefs require him to pray a certain number of times a day, *The Holy Qu'ran* itself acknowledges that certain preferences for prayer may be circumvented in extraordinary circumstances. *See The Holy Qu'ran* 2:239, 73:20, 4:101 (indicating that the length, frequency, and circumstances of prayers may be altered when a believer is placed in abnormal situations). Petitioner's incarceration came as a result of committing several crimes, and a necessary symptom of his status as a prisoner includes having to practice his new found religious beliefs in, admittedly, less than ideal circumstances. Even though Petitioner may not be able to have two of his five daily

prayers in a group setting, TCC's actions in requiring that he be in his cell by the final head count do not place pressure on him to violate his beliefs. While it is true that Directive 98 violates Petitioner's expressed ***preference*** in praying with a group outside of his cell, such a preference does not constitute sincerely held religious beliefs under RLUIPA. Therefore, Directive 98 does not substantially burden Petitioner's religious exercise.

Petitioner has not met his burden of proof because he cannot show that Directive 98 placed a substantial burden on his religious exercise. Hence, his claim must necessarily fail as it does not meet even the first requirement of a successful claim under RLUIPA. Since Petitioner's claim fails to meet this requirement, the Respondents should not be required to meet the burden set forth in § 2000cc-1(a), and this Court should affirm the Twelfth Circuit's opinion, which vacated the Tourovia District Court's grant of summary judgment in favor of the Petitioner.

### B. Directive 98 Constitutes The Least Restrictive Means Of Serving TCC's Compelling Governmental Interests.

If this Court determines that Directive 98 imposes a "substantial burden" on the Petitioner's religious exercise, Directive 98 still does not violate RLUIPA because it provides the least restrictive means available to TCC in achieving its compelling governmental interests. Under RLUIPA, if a prisoner-plaintiff carries his burden in establishing a substantial burden, the prison then has the burden of showing that its conduct was the least restrictive means of achieving its compelling governmental interests. § 2000cc-1(a). When considering the government's burden, courts "do not read RLUIPA to elevate accommodation of religious observances over an institution's need to maintain order and safety." *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005).

TCC has met its burden by establishing that it has compelling governmental interests in the disputed issue, and that the set policy is the least restrictive means of furthering those interests. In this case, Directive 98 furthers TCC's compelling interests in preventing gang activity, and in

maintaining the safety and security of the prison. Additionally, as attested to in Abreu's affidavit, Directive 98 achieves the Prison's compelling interest in managing its costs and in ensuring safety and security within the facility. R. at 7. Directive 98 is the least restrictive means of achieving the compelling interests because, simply stated, TCC has no less restrictive means available to it. Consequently, Directive 98 is a permissible regulation of a prisoner's religious exercise under RLUIPA.

1. Directive 98 Serves The Compelling Governmental Interests Of Preventing Gang Activity And Maintaining Safety And Security Within The Prison.

Directive 98 advances the compelling governmental interest that TCC has in preventing the influence of gang activity within the prison. A prison regulation is a permissible restriction of religious exercise under RLUIPA if it advances a goal "in furtherance of a compelling governmental interest[.]" § 2000cc-1(a)(1). In determining whether or not a regulation furthers a compelling governmental interest, a court "should respect [the] expertise" of prison officials "in running prisons and evaluating the likely effects of altering prison rules[.]" *Holt v. Hobbs*, 135 S. Ct. 853, 864 (2015). While courts are not required to give complete deference to determinations by prison officials, the compelling interest standard is typically deferential to prison authorities. *Id.*; *see also Banks v. Sec'y Pa. Dep't of Corr.*, 601 F. App'x 101, 105 (3rd Cir. 2015) (citing *Washington v. Klem*, 497 F.3d 272, 283 (3rd Cir. 2007)).

TCC has a prison population of differing backgrounds, races, and creeds. Some TCC prisoners are not only members of a particular religion, but also are known gang affiliates. R. at 4. TCC previously permitted prisoners to make use of the chapel area without a prison-employed chaplain present. R. at 4. When outside volunteers supplemented the hours where a chaplain was present it allowed high ranking gang members within the prison to communicate orders to their outside associates. R. at 4. Therefore, TCC's concern in allowing prisoners to conduct prayer

services outside the hours that a chaplain is present was not speculative, rather it was based on the previous policy's tendency to foster gang activity. R. at 4. Given the difficulty in preventing gang activity that TCC actually experienced under the policies in place before August 1998, it is readily apparent that Directive 98 furthers TCC's compelling governmental interests in maintaining safety and order in the prison environment. *See Banks*, 601 F. App'x at 105 (citing *Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007)).

Additionally, TCC has compelling interests in maintaining security, ensuring safety, and in controlling costs. *Id.*; *see also Borzych v. Frank*, 439 F.3d 388, 391 (7th Cir. 2006) (holding that security within a prison is a compelling state interest); *Dobrowolskyj v. Jefferson County, Ky.*, 823 F.2d 955, 959 (6th Cir. 1987) (ruling that a jail had strong interests in security). To that end, the Prison conducts end of the day head counts to ensure that all of the prisoners are safely in their cells and accounted for before lights out. R. at 4. TCC Directive 98 furthers the interest that the prison has in safety and security by ensuring that no prisoners linger behind at group religious services after the hours where a chaplain is available. This guarantees that prisoners will be in their own cells by the time that the end of day headcount occurs. Because Directive 98 allows for prisoners to participate in group religious exercise while maintaining the discipline and security necessary for a prison, it furthers TCC's compelling governmental interests.

In the recent case of *Holt v. Hobbs*, this Court was called on to evaluate a prison's facial hair grooming policy under RLUIPA. 135 S. Ct. at 859. The inmate in that case wished to grow a half-inch long beard in accordance with his religious beliefs. *Id.* The correctional policy forbade any prisoner from growing facial hair, except for a medical exception for prisoners with certain skin conditions. *Id*. at 860. In that case, the prison claimed a broadly formulated interest in prison

safety and security, but failed to provide any reasoning as to why enforcing its regulation against the prisoner actually achieved that interest. *Id.* at 863.

The interests articulated by TCC in its adopted Directive 98 are sufficiently specific, and are therefore distinguishable from the more broadly formulated interest articulated in *Holt*. *Id*. TCC invokes its broad interests in safety and security like the prison in *Holt*, however, it is able to explain why it cannot allow the Petitioner to circumvent Directive 98 because of those interests. Additionally, Directive 98 furthers more specific security interests: preventing gang communication with members outside of the prison and ensuring that all prisoners are accounted for at the end of day headcount. Because of the specifically formulated compelling governmental interests that TCC had in adopting Directive 98, the directive is a permissible restriction on religious exercise under RLUIPA.

2. Directive 98 Is The Least Restrictive Means Of Serving TCC's Compelling Interests Because It Allows A Significant Amount Of Religious Exercise And Prevents Previously Experienced Breakdowns In Prison Security.

Directive 98 not only furthers a compelling governmental interest, but also constitutes the least restrictive means of furthering that interest. Under RLUIPA, an appropriate prison directive that restricts religious exercise must be the "least restrictive means of furthering" a compelling governmental interest. § 2000cc-1(a)(2). To meet this burden, a prison must show that the policy was narrowly tailored to achieve its compelling interest by making a showing that the government "'lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" *Holt*, 135 S. Ct. at 864 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2780 (2014)); *see also Knight v. Thompson*, 797 F.3d 934, 946-47 (11th Cir. 2015) (rejecting the "actually considered" test and instead inquiring into whether there were any less restrictive means).

Directive 98 provides a wide range of opportunities for inmates to pray in a group setting, and enforces strict cut-off times that cannot be circumvented by any group, in order to further the Prison's compelling governmental interest in order and safety. R. at 4, 25. TCC policies provide for emergency situations by allowing chaplains to serve prisoners who are sick or dying, without allowing prisoners to leave their cell or the infirmary. R. at 4. In contrast with the regulation in *Holt*, there is no exemption from Directive 98, medical or otherwise, that allows any prisoner to use the group prayer rooms after the chaplain's normal work hours. 135 S. Ct. at 865 (referencing the regulation's medical exception as evidence that it was not the least restrictive means available).

Directive 98, in general and as applied to the Petitioner, does not impermissibly discriminate or pick favorites between religious beliefs. *Walker*, 789 F.3d at 1134-35 (citing to *Lindell*, 352 F.3d at 1108-10) (holding that RLUIPA could not constitutionally allow prisons to pick favorites between religions). Indeed, if the Prison were forced to allow the Petitioner and his relatively small group to utilize the group prayer rooms after the evening meal, it would have to make such an option available to all of the religious groups in the facility. Making such an accommodation would put an incredible strain on prison resources and security. Likewise, the regulation is not an overbroad restriction of religious exercise since it does not restrict the ability of individual prisoners to engage in prayer while in their respective cells. TCC lacks the means to achieve its compelling interest in maintaining order and safety within the prison without imposing permissible minor burdens on the religious exercise of its inmates.

If this Court were to deviate from its precedent in *Holt* and adopt the "actually considered" standard for least restrictive means, the directive here would still meet that standard. To meet the "actually considered" burden, a prison must show less restrictive measures were considered, but ultimately rejected because they were not effective in serving the relevant compelling interest. *See*

*Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 280 n.6 (1986); *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005). In this case, not only was there a less restrictive means contemplated, but also there was a less restrictive regulation that was in place. Before August 1998, TCC had a religious service policy that allowed religious groups to petition for night prayer services after the Prison's chaplain had left, under the supervision of a service volunteer. R. at 4. This policy proved to be ineffective because it allowed gang members, masquerading as service volunteers, to relay gang orders between the Prison and the outside world. R. at 4. Furthermore, both Christian and Muslim groups used their participation in night services in an attempt to disregard the requirement of being in their cells for the end of day headcount. R. at 4. Following these abuses, TCC revoked the use of volunteers for religious services, and declined to allow prayer services outside the times where a prison-employed chaplain could be present to supervise. R. at 4, 25.

Directive 98 furthers compelling governmental interests that the Prison has in safety, security, order, discipline, and cost containment. In addition to these broadly stated interests, TCC also has more specific interests in (1) preventing gang activity and (2) ensuring that every prisoner is in his cell at the end of the day. The Prison's current policies achieve those goals while providing inmates the ability to participate in several group prayer services throughout the day. TCC has no less restrictive measures available which could allow such wide religious exercise without jeopardizing its compelling governmental interests. Because Directive 98 is the least restrictive means of achieving the compelling governmental interests TCC has in preventing gang activity and ensuring prison security, it constitutes a permissible restriction of religious exercise. To hold otherwise would disregard this Court's own direction that courts should not elevate the accommodation of religious exercise over a prison's need to maintain good order and safety. *Cutter*, 544 U.S. at 722.

## II. TCC DIRECTIVE 99, ALLOWING THE PRISON ADMINISTRATION TO ACCOMODATE AND REGULATE RELIGIOUS DIETS, IS PERMISSIBLE UNDER RLUIPA.

Directive 99 does not violate the protections afforded to prisoners by RLUIPA. Directive 99 mandates: when "an inmate gives prison administration adequate reason to believe that the religious alternative diet [("Diet")] is not being adhered to, [TCC] reserves the right to revoke [Diet] programs for any designated period of time or revoke the privilege permanently." R. at 26.

In order for Directive 99 to violate RLUIPA, the Respondents must have imposed a substantial burden on the Petitioner's religious exercise. § 2000cc-1(a). RLUIPA requires the prisoner-plaintiff to establish that his participation in the diet qualifies as a religious exercise as defined by RLUIPA. § 2000cc-2(b). Determining whether an inmate is sincere in his religious beliefs is encompassed within the substantial burden inquiry. *Moussazadeh v. Tex. Dep't of Criminal Justice,* 703 F.3d 781, 790 (5th Cir. 2012). Petitioner then must demonstrate that Respondents substantially burdened his religious exercise by removing him from the Diet after he threatened his cellmate with physical violence for the cellmate's non-Halal meatloaf dinner. Respondents did not substantially burden Petitioner's religious exercise by preventing his participation in the Diet since the elimination of special accommodations, after a prisoner fails to take advantage of them, does not pressure the prisoner to violate his religious beliefs. *See generally Daly v. Davis*, No. 08-2046, 2009 WL 773880, at *1 (7th Cir. Mar. 25, 2009); *Brown-El v. Harris*, 26 F.3d 68, 69-70 (8th Cir. 1994).

Alternatively, Petitioner's claim fails under RLUIPA because the Respondents can demonstrate that revoking Petitioner's Diet was in furtherance of a compelling governmental interest and was the least restrictive means of achieving that interest. § 2000cc-1(a). The drafters of RLUIPA intended to preserve prisons' abilities to maintain discipline, safety, and security,

noting that they expected courts to apply RLUIPA with "due deference to the experience and expertise of prison and jail administrators[.]" S. Rep. No. 103-111, at 10 (1993). Respondents have a compelling governmental interest in preserving safety in their prison by thwarting Diet related violence between inmates and in controlling the costs associated with providing special diets.

### A. Directive 99 Does Not Substantially Burden An Inmate's Sincerely Held Religious Beliefs.

RLUIPA is not violated by Directive 99. For Respondents to have violated RLUIPA, Petitioner must establish that Respondents placed a substantial burden on his religious exercise. When a court is faced with a RLUIPA claim and is asked to determine whether a prison has placed a substantial burden on the prisoner's religious exercise, it is proper for the court to inquire into whether the prisoner's religious beliefs are sincerely held. Only if a court is satisfied with the sincerity of a prisoner's religious beliefs, may it find that the prisoner's religious beliefs were substantially burdened. Because Petitioner's religious beliefs are insincere they cannot be substantially burdened.

Nevertheless, if this Court would find Petitioner's religious beliefs are sincere his claim must still fail. Under RLUIPA Petitioner has the burden of proving that Respondents substantially burdened his religious exercise. Petitioner cannot establish his religious exercise was substantially burdened when he was removed from the Diet after he threatened his cellmate with violence for his meatloaf dinner. Therefore, he cannot recover under RLUIPA.

#### 1. Petitioner's Actions In Backsliding On His Religious Beliefs Evidences The Insincerity Of Those Beliefs.

To raise a claim under RLUIPA, the Petitioner must establish that his participation in the Diet qualifies as a "religious exercise." *Koger v. Bryan*, 523 F.3d 789, 796 (7th Cir. 2008) (deciding whether plaintiff met his burden of establishing that his non-meat diet constituted a

religious exercise according to RLUIPA). If Petitioner can establish that his participation in the Diet qualified as religious exercise, he must then show that Respondents substantially burdened this religious exercise. § 2000cc-2.

The statute defines religious exercise as including "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." § 2000cc-5(7)(A). This Court has said: "the 'exercise of religion' often involves not only belief and profession but the performance of (or abstention from) physical acts[.]" *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (opining that assembling as a group for worship, engaging in spiritual use of bread and wine, and abstaining from certain foods could be considered religious exercise).

Petitioner's RLUIPA claim regarding removal from the diet must fail as only sincere religious beliefs can be substantially burdened. It is well established under this Court's jurisprudence that courts may not question the truth of a belief; rather the proper inquiry is whether the objector's beliefs are ***truly or sincerely held***. *U.S. v. Seeger*, 380 U.S. 163, 185 (1965) (emphasis added); *see also Cutter*, 125 S. Ct. at 2129 n.13; *see generally U.S. v. Ballard*, 64 S. Ct. 882, 886 (1944).

Determining whether a plaintiff is sincere in his religious beliefs is an essential part of the substantial burden analysis. *See Moussazadeh*, 703 F.3d at 790 (explaining that "[s]ubsumed within the substantial-burden inquiry is the question whether the inmate sincerely believes in the requested religious exercises"). Therefore, "[a] belief not sincerely held cannot be substantially burdened." *Id*. In determining whether a belief is sincerely held, courts should look to "the words and actions of the inmate." *Id*. at 791. An inquiry into a prisoner's sincerity is "fact-specific and requires a case-by-case analysis." *Id.* (quoting *McAlister v. Livingston*, 348 F. App'x 923, 936 (5th Cir. 2009)). In *Lovelace*, the court explained that "prison officials may appropriately question

whether a prisoner's religiosity, asserted as a basis for a requested accommodation[], is authentic." 472 F.3d at 188 (quoting *Cutter*, 544 U.S. at 725 n.13).

Respondents do not challenge or dispute that maintaining a Halal diet is central to the NOI faith and qualifies as a religious exercise for purposes of RLUIPA. *See generally Smith*, 494 U.S. at 877 (stating that abstaining from certain foods may qualify as religious exercise); *Koger*, 523 F.3d at 798 (finding plaintiff's request for a non-meat diet to be a religious exercise). Respondents do, however, challenge the sincerity of Petitioner's asserted religious beliefs. *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988) (finding evidence of backsliding is especially important in the prison context, "for an inmate may adopt a religion merely to harass the prison staff with demands to accommodate his ***new faith***") (emphasis added).

The Tourovia District Court inappropriately disregarded TCC prison officials' suspicions regarding the sincerity of Petitioner's religious beliefs. *See, e.g., Haight v. Thompson*, 763 F.3d 554, 565 (6th Cir. 2014) (remarking that nothing in RLUIPA prevents prisons from questioning whether a prisoner's religious belief is authentic and that prison officials should feel free to challenge the sincerity of an inmate's religious beliefs). In ruling on the sincerity of Petitioner's religious belief, the Tourovia District Court properly looked to the "words and actions" of the Petitioner, examined his requests for additional prayer services, and noted the grievances he filed when those requests were denied. *Moussazadeh*, 703 F.3d at 791. However, the Tourovia District Court failed to consider all of the Petitioner's actions and words when ruling on the sincerity of his beliefs. The court improperly relied on its own interpretation rather than providing prison officials with the due deference required by RLUIPA. *See Cutter*, 544 U.S. at 717; *Jones v. N.C. Prisoners' Union*, 433 U.S. 119, 125 (1977) (finding the trial court in *Jones* had, "got[ten] off on

the wrong foot in this case by not giving appropriate deference to the decision of prison administrators").

Unlike the prison officials in *Moussazadeh,* the record is abundantly clear that Respondents were suspicious of the sincerity of Petitioner's beliefs from the date of his announced conversion to NOI. *Compare Moussazadeh*, 703 F.3d at 792 (finding a prisoner's religious beliefs were sincere when officials never questioned the prisoner's sincerity during seven years of litigation) *with* R. at 7 (detailing the Prison's immediate concern regarding Petitioner's conversion to NOI). Respondents explained that Petitioner's conversion to NOI, after two full years of religious abstinence, placed him on a watch-list of inmates who may be assuming religious identities to integrate into gang activity and cloak illicit conduct. R. at 7. Petitioner himself, without any pressure or coercion from Respondents, threatened his cellmate with violence unless that cellmate surrendered his meatloaf dinner. R. at 6. This incident, documented by the cellmate's written statement, constituted two instances of backsliding: (1) violating NOI dietary requirements derived from *The Holy Qu'ran* and (2) utilizing violence as a means of obtaining food in violation of NOI teachings. *See generally The Holy Qu'ran* 16:91, 3:133-34 (indicating Allah's preference for believers to do good for others and to pardon transgressions, rather than lashing out in anger).

Although it is true that "a sincere religious believer doesn't forfeit his religious rights merely because he is not scrupulous in his observance," the Respondents were faced with abundant evidence of the Petitioner's insincerity regarding his religious beliefs and through their expertise, as prison officials, concluded Petitioner's beliefs were insincere. *Grayson v. Schuler*, 666 F.3d 450, 454 (7th Cir. 2012). Respondent's actions comport with the requirements of RLUIPA and they properly removed Petitioner from the Diet.

2. Directive 99 Does Not Substantially Burden Petitioner's Religious Exercise.

Should this Court, nevertheless, find Petitioner's religious beliefs to be sincere, Respondents have not substantially burdened Petitioners religious exercise. This Court has consistently noted that just because inmates retain certain constitutional rights, it does not follow that those rights are not subject to reasonable restrictions and limitations. *Bell v. Wolfish*, 441 U.S. 520, 521 (1979).

RLUIPA protects inmates' "religious exercise" from suffering a substantial burden, but does not define "substantial burden." § 2000cc-5. Prior to the enactment of RLUIPA, this Court defined substantial burden as a burden that would "put[] substantial pressure on an adherent to modify his behavior and to violate his beliefs[.]" *Thomas*, 450 U.S. at 718. As discussed above, many circuit courts apply the "pressure" test articulated in *Thomas* when analyzing a RLUIPA claim. *See supra* Part I.A.

In statutory analysis, a court's interpretation begins with the language of the statute. *Blum v. Stenson*, 465 U.S. 886, 896 (1984). If the meaning of the statutory language remains unclear, courts should look to the legislative history of the statute for guidance. *Id*. Based on this Court's definition, and Congress's intended meaning, of substantial burden when enacting RLUIPA, Respondents have not placed such a burden on Petitioner's religious exercise.

Petitioner's religious exercise was not substantially burdened when Respondents removed him from the Diet after Petitioner threatened a fellow prisoner with violence unless that prisoner provided Petitioner with his non-Halal dinner. The Tourovia District Court erroneously analogized the present case to *Lovelace* in order to find that Respondents placed a substantial burden on Petitioner. The prisoner in *Lovelace* was a member of NOI and the prison adopted a policy to accommodate its inmates' observance of Ramadan. 472 F.3d at 181. The plaintiff in *Lovelace* was

removed from the Ramadan meal schedule after an officer filed an incident report stating that he saw the plaintiff take a lunch tray, evidencing the plaintiff broke his Ramadan fast. *Id.* at 183-84. As a result of his removal from the Ramadan meal schedule, the prisoner was also ineligible for the morning Ramadan prayer sessions because the prayer services were held in the dining hall. *Id.* at 183. The plaintiff in *Lovelace* was incidentally unable to participate in NOI group prayer services due to his removal from the Ramadan meal schedule and not as a separate punishment, since the services took place during the special meals. *Id.* at 187-89. Finally, the prison provided an affidavit of the reporting officer acknowledging that he misidentified another inmate as the plaintiff, meaning there was no evidence that the plaintiff actually broke his fast. *Id*. at 184.

In stark contrast to the *Lovelace* case, Petitioner violently threatened his cellmate for his non-Halal meatloaf dinner. R. at 7. The cellmate, unlike the officer in *Lovelace*, remained consistent in recalling the events and submitted a written statement averring that Petitioner threatened him for his meatloaf dinner. R. at 7. Unlike the false accusation in *Lovelace*, which led to the plaintiff's removal from the Ramadan meal schedule, the accusations of Petitioner's cellmate in this case were corroborated by the discovery of meatloaf wrapped in a napkin under Petitioner's mattress. R. at 6. Finally, Petitioner's inability to attend worship services for one month was not directly related to his removal from the Diet. R. at 6. Instead, his one-month suspension from prayer services was punishment for his threats of violence. R. at 6.

TCC's policy under Directive 99, removing prisoners from the Diet if there is adequate reason to believe the Diet is not being adhered to, is indistinguishable from the policies of the prisons in *Daly*, 2009 WL 773880 at *1 and *Brown-El*, 26 F.3d at 69. The policies in these cases reserved the right of prison officials to remove inmates from special religious diets if they were found eating foods in violation of their claimed religious beliefs. *Daly*, 2009 WL 773880 at *1

(requiring participants in the prison's religious diet program to agree to only purchase and consume religiously certified foods); *Brown-El*, 26 F.3d at 69 (mandating that removal from participation in special Ramadan meals is appropriate if a participant is observed breaking fast and eating during daylight hours). Both the Seventh and Eighth Circuits found that these policies did not place a substantial burden on the prisoners' religious exercises. *Daly*, 2009 WL 773880 at *1 (opining that prisoner's religious exercise was not substantially burdened when prisoner was forced to eat non-kosher meals after he voluntarily turned down available kosher meals); *Brown-El*, 26 F.3d at 70 (finding no burden on prisoner's religious exercise as the policy did not coerce prisoners into violating their religious beliefs).

Finally, the fact that Petitioner was not seen ingesting non-Halal foods is irrelevant. *See Berryman v. Granholm*, 343 F. App'x 1, 6 (6th Cir. 2009) (holding that prison officials did not substantially burden prisoner's religious exercise when they removed him from a kosher diet after he was seen purchasing non-kosher foods at the prison store); *Russell v. Wilkinson*, 79 F. App'x 175, 177 (6th Cir. 2003) (opining that a prisoner's removal from a kosher meal program, after he was found stealing non-kosher food items, was not a substantial burden of prisoner's religious exercise). Therefore, Respondents did not substantially burden the Petitioner's religious exercise when they removed him from the Diet, and Petitioner's claim fails the threshold requirement of RLUIPA.

### B. Directive 99 Is The Least Restrictive Means Of Serving TCC's Compelling Governmental Interests.

If this Court determines that Directive 99 imposes a substantial burden on the Petitioner's religious exercise, the directive is still permissible under RLUIPA because it is the least restrictive means of achieving a compelling governmental interest. *See generally Kuperman v. Wrenn*, 645 F.3d 69, 80 (1st Cir. 2011) (upholding summary judgment when a prison successfully

demonstrated that its policy of regulating the growth of facial hair was the least restrictive means of furthering a compelling governmental interest); *AlAmiin v. Morton*, 528 F. App'x 838, 843-45 (10th Cir. 2013) (finding a prison's policy forbidding on-person or in-cell storage of prayer oil was the least restrictive means of furthering a compelling governmental interest). If a plaintiff suing under RLUIPA can establish that the government has substantially burdened his religious exercise, the burden then shifts to the prison to prove the burden was "in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." § 2000cc-1. In this case, Directive 99 furthers the compelling interest that TCC has in maintaining discipline and safety in the prison and regulating costs. *Banks*, 601 F. App'x at 105-06 (opining that financial, security, and safety concerns raised by prisons serve compelling governmental interests). Directive 99 is narrowly tailored to further these interests by allowing TCC to address security and budgetary concerns whenever an inmate is not adhering to the special Diet. *Id*. at 106 (stating "it does not appear that the security and budgetary interests that the defendants describe could be achieved by a different or lesser means"). Therefore, Directive 99 is the least restrictive means of achieving TCC's compelling governmental interests.

1. Directive 99 Serves The Compelling Governmental Interests Of Maintaining Discipline And Safety In The Prison And Effectively Controlling Costs.

Directive 99 advances the compelling governmental interest that TCC has in maintaining discipline and safety in the prison and effectively managing costs. In meeting its burden under RLUIPA, a prison must show that it is burdening the prisoner's religious exercise to further its compelling governmental interest. § 2000cc-1(a)(1). When a court is faced with determining whether a burden on a prisoner's religious exercise furthers a compelling governmental interest, courts must give due deference to the experience and expertise of penological administrators. *See*

*Holt*, 135 S. Ct. at 864; *Cutter*, 544 U.S. at 710; *Incumaa v. Stirling*, 791 F.3d 517, 526 (4th Cir. 2015); *see also* S. Rep. No. 103-111, at 10 (1993). Directive 99 plainly states that requests for special religious diets will be "accommodated to the extent practicable within the constraints of [TCC]'s a) security considerations[,] b) budgetary or administrative considerations, and c) the orderly operation of the institution." R. at 26.

The language of Directive 99 establishes three compelling governmental interests that TCC has in providing special diets to inmates who wish to observe religious dietary laws. The first compelling governmental interest cited in Directive 99 relates to security concerns. Inmates have been shown to profess insincere interest in a religion in order to facilitate gang activity within the Prison, validating the compelling governmental interest regarding security. *Thunderhorse v. Pierce*, 364 F. App'x 141, 148 (5th Cir. 2010) (holding that "[m]aintaining prison security is a compelling interest"); *see also Azeez v. Fairman*, 795 F.2d 1296, 1298 (7th Cir. 1986) (opining that the potential for prisoners to harass prison officials by relying on falsified religious beliefs, when insisting upon rapid and frequent name changes, posed a security risk). A desire to sustain this façade of religious sincerity may entice inmates with ulterior motives to apply for participation in the Diet. R. at 20. As previously established, TCC has a compelling governmental interest in preventing gang activity within its walls and maintaining security at all times. *See supra* Part I.B.

The second compelling governmental interest cited in Directive 99 relates to budgetary or administrative considerations. This Court has recognized the compelling governmental interest that prisons have in effective cost containment. *See Banks*, 601 F. App'x at 105 (citing *Baranowski*, 486 F.3d at 125). Abreu's affidavit, attesting to the validity of TCC's reasons for its dietary policies, included cost containment stratagems, evidencing the limited budget that TCC had to feed its prisoners. R. at 6; *see also Muhammad v. Sapp*, 388 F. App'x. 892, 897 (11th Cir. 2010)

(upholding summary judgment in favor of a prison when it submitted affidavits relating to the costs of its religious diet program). TCC has a compelling governmental interest in ensuring that all participants in the Diet comply with the religious eating restrictions. Because the Petitioner himself voluntarily deviated from the Diet, TCC should not be required to expend its limited funds to accommodate Petitioner's demands.

TCC's last compelling governmental interest cited in Directive 99 is the orderly operation of the institution. Courts recognize the necessity of orderly operation within a prison institution and explain that prisons may refuse to grant accommodations which threaten such order. *See Cutter*, 544 U.S. at 726 (holding that "[when] inmate requests for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition").

The Petitioner's cellmate described how Petitioner threatened him with violence unless he provided Petitioner with his non-Halal meatloaf dinner. R. at 6. Petitioner was unable to obtain meatloaf himself because of his participation in the Diet. TCC has a compelling governmental interest in preventing violent behavior related to an inmate's participation in the Diet. *See Charles v. Frank*, 101 F. App'x 634, 635-36 (7th Cir. 2004) (opining that the prison's asserted interest in preventing violence related to religious emblems is a compelling governmental interest). Thus, TCC's interests in maintaining security, containing costs, and ensuring the orderly operation of the institution are compelling governmental interests which satisfy the requirements of RLUIPA.

2. <u>Directive 99 Is The Least Restrictive Means Of Serving TCC's Compelling Governmental Interests Because It Allows Continuous Participation In The Diet For Inmates Who Adhere To Their Religious Dietary Laws.</u>

Directive 99 sets forth the least restrictive means available to further TCC's compelling governmental interests. If the prisoner-plaintiff suing under RLUIPA can establish that the

government has substantially burdened his religious exercise, the burden then shifts to the government to prove the burden was "the least restrictive means" of furthering a compelling governmental interest. § 2000cc-1(a)(2). In order for a prison to meet its burden, it must merely show that no "efficacious less restrictive measures actually exist[.]" *Knight*, 797 F.3d at 946. This Court has declined to require that a prison demonstrate actual consideration of less restrictive measures, which were ultimately rejected as being inadequate, to meet its burden. *See Holt*, 135 S. Ct. at 864 (quoting *Burwell*, 134 S. Ct. at 2780)*; but see U.S. v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 803-04 (2000) (analyzing less restrictive means in the context of speech restriction and television programs); *City of Richmond v. J.A. Croson*, 488 U.S. 469, 470-71 (1989) (finding a city's plan requiring 30% of a city's construction contracts be awarded to minority businesses was not narrowly tailored to remedy effects of prior discrimination).

In the current case, Directive 99 is the least restrictive means available in furthering compelling governmental interests. Directive 99 only permits TCC prison officials to act once a prisoner infringes on a substantial governmental interest detailed in the directive. Petitioner himself, without pressure or coercion by prison officials, threatened his cellmate for his non-Halal meatloaf dinner. The policy in *Brown-El*, stated: "the inmate would be removed from the [Ramadan participation] list and returned to the regular meal schedule" if the inmate violated fast. 26 F.3d at 69. The court in *Brown-El*, found the complete removal policy to be the least restrictive means of furthering the prison's compelling governmental interests. *Id.* Similar to this case, the prisoner-plaintiff in *Brown-El* voluntarily ate a meal during daylight hours, breaking his Ramadan fast, which resulted in his removal from special Ramadan meals. *Id*. TCC properly removed Petitioner from the Diet when he failed to take advantage of it. TCC's policy, just like the policy in *Brown-El*, is the least restrictive means of furthering compelling governmental interests.

Although complete removal from the Diet may seem to be a severe course of action, as the court in *O'Lone v. Estate of Shabazz,* found "there are not obvious, easy alternatives to the polic[y]" and any alternatives would "have adverse effects on the prison institution." 482 U.S. 342, 343 (1987). As Abreu's affidavit regarding TCC's reasons for adopting the policy evidences, there are no conspicuous or simple alternatives to Directive 99. Any possible alternative policy would not afford TCC the necessary discretion to further its compelling governmental interests in security, budgetary concerns, and orderly operation of the prison in a less restrictive way.

As this Court has taught, RLUIPA was not intended to "elevate accommodation of religious observances over an institution's need to maintain good order and safety." *Lovelace,* 472 F.3d at 190 (quoting *Cutter,* 544 U.S. at 722). The Respondents reasonably questioned the sincerity of Petitioner's religious beliefs, and they did not substantially burden his religious exercise relating to his diet. As Directive 99 is the least restrictive means of achieving TCC's compelling governmental interests, Respondents did not violate RLUIPA when they removed Petitioner from the Diet pursuant to the policy. Therefore, Petitioner's claim must fail.

## CONCLUSION

For the above-stated reasons, this Court should affirm the decision of the Twelfth Circuit, hold that TCC Directives 98 and 99 do not substantially burden the Petitioner's religious exercise and are the least restrictive means of furthering compelling governmental interests, and find that Directives 98 and 99 do not violate RLUIPA.