No. 472 – 2015

IN THE

Supreme Court of the United States

SIHEEM KELLY,

Petitioner,

v.

KANE ECHOLS, in his capacity as Warden of Tourovia Correctional Center, and SAUL ABREU, in his capacity as Director of the Tourovia Correctional Center Chaplaincy Department,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Twelfth Circuit

BRIEF FOR RESPONDENTS

TEAM 20

Counsel for Respondents

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QUESTIONS PRESENTED

I. Whether Tourovia Correctional Center's policy limiting excessive night-prayer services, which was implemented to further institutional safety and fiscal prudence, violates RLUIPA.

II. Whether Tourovia Correctional Center's prison policy reserving the right to remove an inmate from a religious diet or fast, due to evidence of backsliding, violates RLUIPA.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES

Respondents, Kane Echols, in his capacity as Warden of Tourovia Correctional Center, and Saul Abreu, in his capacity as Director of the Tourovia Correctional Center Chaplaincy Department, respectfully submit this brief in support of their request that this Court affirm the United States Court of Appeals for the Twelfth Circuit.

JUSRISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Twelfth Circuit was entered on June 1, 2015. This Court granted the petition for the writ of certiorari in July 2015, and has jurisdiction pursuant to 28 U.S.C. § 1254 (2014).

OPINIONS BELOW

The opinion of the United States District Court of Appeals for the Eastern District of Tourovia in *Siheem Kelly v. Kane Echols and Saul Abreu*, 985 F. Supp. 2d 123 (N.D.T.O. 2015), is available in the Record (Record ("R.") at 2.). The opinion of the United States Court of Appeals for the Twelfth Circuit in *Siheem Kelly v. Kane Echols and Saul Abreu*, 983 F.3d 1125 (12th Cir. 2015), is available in the Record (R. at 16.).

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

This case involves the First Amendment to the United States Constitution, reproduced in full in Appendix A, and the Religious Land Use and Institutionalized Persons Act, codified as 42 U.S.C. § 2000cc, et seq., reproduced in full in Appendix B.

STATEMENT OF THE CASE

Factual Background

Siheem Kelly ("Petitioner") became incarcerated at maximum-security Tourovia Correctional Center ("TCC") in 2000, after being convicted of several drug-trafficking and aggravated robbery charges.[1] Two years after Petitioner arrived at TCC, he converted to the Nation of Islam ("NOI").[2]

NOI, a Sunni Muslim subgroup, requires that their adherents pray five times a day — dawn, early afternoon, late afternoon, sunset, and late evening.[3] Prior to prayer, NOI adherents wash themselves and their clothes and secure a clean surface on which to kneel and face Mecca.[4] NOI members sometimes pray in the company of each other, although this practice is not religiously mandated outside of Ramadan or Friday evenings.[5] Additionally, members of NOI maintain a Halal diet.[6]

A. TCC prisoner prayer policies.

Prior to 1998, TCC allowed prisoners to petition for prayer services at night with a prison service volunteer.[7] TCC discontinued the option because the service volunteers relayed gang orders outside prison walls.[8] Additionally, several inmates attending the night prayer services refused to return to their cells prior to the final daily in-cell headcount.[9] Due to these security and logistical concerns, TCC discontinued the use of nightly prayer service volunteers.[10]

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[1] R. at 3.
[2] R. at 3.
[3] R. at 3.
[4] R. at 4.
[5] R. at 4.
[6] R. at 3.
[7] R. at 4.
[8] R. at 4.
[9] R. at 4.
[10] R. at 4.

Current TCC policy allows prayer three times a day outside of the cell, and two times a day inside the cell.[11] Nightly prayer service requires a TCC chaplain.[12] Chaplains are available, upon request, to oversee and lead prayer service.[13] TCC's determinations for granting additional services are made according to demand, need, staff availability, and prison resources.[14] TCC policy specifies inmates may lose privileges if the inmates fail to report for nightly headcount before head count.[15] Finally, TCC does not assign cellmates based on religion but will grant inmate transfers if there are specific incidents of violence between cellmates.[16]

B. TCC religious alternative diet policies.

TCC provides inmates with food choices that adhere to religious dietary laws, including vegetarian or Halal diets, upon request.[17] TCC's policy reserves the right to discontinue an inmate from the dietary program if the prison has reason to believe the inmate has violated rules or is no longer adhering to the diet.[18]

C. Petitioner's requests for additional prayer services violated TCC prayer policy.

In February, 2013, Petitioner filed a written prayer service request for an additional congregational nightly prayer service after the last meal.[19] A week later, Saul Abreu, Director of TCC's Chaplaincy Department, denied the request because it violated TCC policy.[20] Abreu informed Petitioner the five available prayer times would fulfill NOI's prayer requirements.[21]

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[11] R. at 4.
[12] R. at 4; *see also* Touorovia Directive #98, Religious Corporate Services, R. at 25.
[13] R. at 4.
[14] R. at 4.
[15] R. at 4.
[16] R. at 4.
[17] *See* Tourovia Directive #99, Religious Alternative Diets, R. at 26.
[18] R. at 6, R. at 26.
[19] R. at 5.
[20] R. at 5.
[21] R. at 5.

After the prayer service denial from Abreu, Petitioner filed two grievances.[22] Petitioner first asserted he was unable to pray in his cell in the presence of his non-NOI cellmate because the cellmate's behavior was allegedly "distracting and disrespectful to [Petitioner's] religion."[23] Petitioner failed to produce evidence to substantiate the grievance.[24] The first grievance was denied.[25]

Petitioner then alleged any prayer in the proximity of his in-cell lavatory was incompatible with his religious views.[26] The second grievance was also denied.[27]

Finally, Petitioner decided to file a formal grievance in which he recycled the claims from his prior two grievances.[28] Petitioner also reiterated his calls for additional, communal prayer time outside the parameters of TCC policy.[29] Warden Kane Echols informed Petitioner the requests violated TCC policy and denied the formal grievance.[30]

D. Petitioner violated TCC's religious alternative diet policy.

Two weeks after the formal grievance was denied, Petitioner's new cellmate reported Petitioner was threatening him with violence if he did not provide Petitioner with his meatloaf.[31] The incident was immediately investigated and documented.[32] During a search of Petitioner's cell, prison officials discovered meatloaf wrapped in a napkin under Petitioner's mattress, in violation of TCC's religious alternative diet policy.[33] As a result, the prison removed Petitioner

[22] R. at 5.
[23] R. at 5.
[24] R. at 5.
[25] R. at 5.
[26] R. at 5.
[27] R. at 5.
[28] R. at 5.
[29] R. at 5.
[30] R. at 5.
[31] R. at 6.
[32] R. at 6.
[33] R. at 6.

from TCC's vegetarian diet program.[34] Additionally, pursuant to TCC policy, the prison barred Petitioner from attending any worship services for one month as punishment for the threats against the new inmate and for deviating from his religious diet program.[35]

Petitioner responded with a hunger strike.[36] After two days of this strike, and out of concern for Petitioner's health, prison employees tube-fed Petitioner.[37] Petitioner subsequently ended his strike.[38]

Procedural History

Petitioner ultimately filed a complaint in the United States District Court for the Eastern District of Tourovia challenging the validity of the prison's prayer and diet programs under Religious Land Use and Institutionalized Persons Act ("RLUIPA").[39] The district court granted judgment as a matter of law for Petitioner.[40] The United States Court of Appeals for the Twelfth Circuit reversed, holding neither TCC's prayer nor diet programs substantially burdened Petitioner's religious practice, and, even if the policies were a burden, that TCC's policies are compelling government interests enacted using the least restrictive means.[41]

SUMMARY OF THE ARGUMENT

Petitioner's prayer requests contravened TCC policy and were, therefore, legitimately denied. Such a denial does not substantially burden Petitioner's religious practices. Indeed, TCC denied Petitioner's request for excessive benefits and preferential treatment simply because the requests violated the policies TCC crafted to further institutional safety and fiscal prudence, both

[34] R. at 6.
[35] R. at 6.
[36] R. at 6.
[37] R. at 6.
[38] R. at 6.
[39] R. at 6.
[40] R. at 6.
[41] R. at 6.

of which are compelling government interests. Finally, TCC instituted these changes only after alternative programs were found to promote gang activity within the prison, demonstrating that TCC used the least restrictive means to establish the prayer-service policy. Accordingly, Petitioner's RLUIPA claims regarding prayer service fail.

Turning to Petitioner's RLUIPA claim regarding his removal from a vegetarian diet, Petitioner fails to meet the burden of proving, (1) that his request to be placed on the religious diet program was based on a sincerely held belief, and (2) that removing Petitioner from the religious alternative diet program substantially burdened his ability to exercise his religion.

Further, TCC has sufficiently met its burden of showing this Court that maintaining good order, security, discipline, and cost efficiency is a compelling government interest. Finally, TCC's backsliding policy was the least restrictive means at furthering its government interest because it allows inmates the opportunity to participate in a meal plan that complies with their religious beliefs—at the expense of the prison—but yet holds inmates accountable to utilizing the accommodation.

Accordingly, TCC did not violate Petitioner's religious exercise rights under RLUIPA and this Court should affirm the Twelfth Circuit's decision to vacate summary judgment.

ARGUMENT

A prisoner's right to freely exercise his religion is "limited by institutional objectives and by the loss of freedom concomitant with incarceration."[42] Though RLUIPA was enacted to help protect inmate religious observance, RLUIPA does not "elevate accommodation of religious observances over an institutional need to maintain good order, safety, and discipline or to control

[42] *Hartmann v. California Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1122 (9th Cir. 2013).

costs."[43] Accordingly, this Court grants "due deference" to prison administrators in "establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources."[44]

Given this explicit deference to prison official's policies under RLUIPA, the initial onus falls on the inmate to prove a "sincerely held religious belief" was "substantially burdened"[45] by prison policy. If the inmate is able meet this high threshold, then the prison need only show the prison used the "least restrictive means"[46] to further a "compelling government interest."[47]

As the Twelfth Circuit correctly concluded, neither the prayer scheduling policy nor the diet policy substantially burdened Petitioner. Further, as a prison, TCC has a compelling government interests in maintaining good order, safety, and security, consistent with considerations of cost and TCC's limited resources, and it used the least restrictive means available to further those interests. Accordingly, Petitioner cannot seek relief under RLUIPA, and the Twelfth Circuit's decision should be affirmed.

A. TCC'S PRAYER POLICIES DID NOT SUBSTANTIALLY BURDEN PETITIONER'S FAITH BECAUSE THE POLICIES DID NOT PRESSURE PETITIONER TO MODIFY HIS RELGIOUS BEHAVIORS AND INSTEAD SIMPLY DENIED PETITIONER'S REQUEST FOR EXCESSIVE BENEFITS.

Prison regulation only creates a "substantial burden" on a prisoner's religious exercise[48] if the regulation "truly pressures an adherent to significantly modify his religious behavior and

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[43] *Lovelace v. Lee*, 472 F.3d 174, 190 (4th Cir. 2006).
[44] *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005)(quoting 146 Cong. Rec. S7774, S7775 (July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy)).
[45] Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a) (2000).
[46] *Id.*, § 2000cc-1(a)(2).
[47] *Id.*, § 2000cc-1(a)(1).
[48] RLUIPA claims only apply to "sincerely held religious beliefs." *See Holt v. Hobbs*, — U.S. — (2015). The insincerity of Petitioner's religious beliefs is discussed *infra* Part II but is unnecessary for the analysis of TCC's prayer policy. Petitioner's substantial burden claim regarding the prayer policy fails irrespective of that prong of the RLUIPA analysis.

significantly violate his religious beliefs."[49] Prison regulation does not, however, rise to the level of a substantial burden if it merely prevents the adherent from enjoying some "excessive benefit" that is not otherwise generally available to the inmate population.[50]

A. TCC's policies did not pressure Petitioner to modify his religious behavior.

Denial of an inmate's requested religious accommodations, commensurate with the prison's needs, does not pressure an inmate to substantially modify his religious behavior.[51] Further, RLUIPA does not require prisons to provide ideal in-cell conditions for inmate prayer.[52] Finally, policies requiring an inmate to schedule prayer sessions around the availability of volunteers or chaplains does not substantially burden an inmate's free exercise of religion.[53]

A prison's legitimate denial of a religious accommodation request does not burden an inmate's Free Exercise rights. For example, in *Van Wyhe v. Reisch*, the Eighth Circuit held that multiple denials of a Jewish inmate's requests for additional prayer time did not apply "substantial pressure" on the inmate's religious beliefs.[54] Indeed, the Eighth Circuit reasoned the availability of in-cell prayer time rendered meritless the inmate's claims of a burden upon religious practice.[55] Further, in *Garraway v. Lappin*, the Third Circuit found a Muslim inmate's right to free exercise was not "impermissibly impinged" by the prison's policy "limiting group prayer" to one weekly service.[56] The *Garraway* Court concluded, because the policy allowed for

[49] *Holt v. Hobbs*, — U.S. —, — (2015).
[50] *Adkins v. Kaspar*, 393 F.3d 559 (5th Cir. 2004).
[51] *Van Wyhe v. Reisch*, 581 F.3d 639, 646 (8th Cir. 2009).
[52] *AlAmiin v. Morton*, 528 F. App'x 838, 844 (10th Cir. 2013).
[53] *Adkins*, 393 F.3d at 571.
[54] 581 F.3d 639, 646 (8th Cir. 2009).
[55] *Id.*
[56] 490 F. App'x 440, 445 (3d Cir. 2012).

some group prayer and the policy was carefully crafted "commensurate with [the prison's] mission and needs," that no substantial burden existed.[57]

Additionally, less-than-optimal in-cell conditions do not substantially burden inmate prayer. For example, in *Shakur v. Schriro*, the Ninth Circuit held that, although the after-effects of in-cell gastrointestinal distress left an inmate unable to "meaningfully engage in personal study and prayer [at all times] in his cell," the "other accommodations" provided by the prison, including group prayer, relieve any substantial burden upon the inmate's in-cell religious practice.[58] Further, in *AlAmiin v. Morton*, the Tenth Circuit held a prison was not required to provide prayer oils used to "purify" a cell prior to daily prayer.[59] The *AlAmiin* Court concluded the Muslim inmate's religious practice was not impermissibly forced to modify his religious practices, despite the deviation from Islamic prayer norms, and thus the inmate's claim failed under RLUIPA.[60]

Finally, prisons are free to institute policies requiring a prison representative to oversee inmate prayer services. For example, in *Adkins v. Kaspar*, the Fifth Circuit found a prison's policy uniformly requiring "qualified volunteers" to attend any congregational religious assemblies did not place a substantial burden on an inmate's religious exercise.[61] Likewise, in *Smith v. Kyler*, the Third Circuit held a Rastafarian inmate was not substantially burdened by a prison's policy limiting group prayer because there were "personal religious advisors" available to lead prayer sessions.[62] The *Smith* Court noted the inmate's refusal to abide by the alternative

[57] *Id.*
[58] 514 F.3d 878, 886 (9th Cir. 2008).
[59] 528 F. App'x 838, 844 (10th Cir. 2013).
[60] *Id.*
[61] 393 F.3d 559, 571 (5th Cir. 2004).
[62] 295 F. App'x 479, 481–82 (3d Cir. 2008).

means of practicing his religion, despite the availability and relative ease with which the inmate could access the alternatives, precluded his claims for substantial burden under RLUIPA.[63]

Here, TCC denied Petitioner's claims because the requests contravened policies that were crafted commensurate with TCC's mission and needs. TCC's carefully crafted policies allow for five (5) daily prayers, and were tailored to meet inmate and institutional needs. Just as in *Van Wyhe*, where a denial of an additional congregational prayer request did not burden an inmate because the prison's policy allowed for sufficient in-cell prayer time, TCC's denial of Petitioner's additional out-of-cell prayer simply applied TCC's existing. Further, TCC's policies extend beyond the policies in *Garraway*, where a once-a-week out-of-cell prayer did not "impermissibly impinge[]" a Muslim inmate's religious practice. TCC allows for a combination of daily prayer, both in- and out-out-cell, that satisfies Petitioner's religious claims. TCC encouraged the use of the five (5) available prayer sessions and, accordingly, applied no pressure to Petitioner to change his religious beliefs or practices. Petitioner's claim fails.

Petitioner's complaints about his cell's cleanliness also lack merit. This argument fails now, and has failed in the prior courts that have considered it. Both the *Shakur* and *AlAmiin* Courts, when considering the cleanliness requirements for in-cell Islamic prayer, reached the same conclusion—that requiring incarcerated persons to pray in their cell in no way substantially burdens Islamic religious practice or belief. Further, and perhaps more importantly, the sincerity of these claims should be questioned. Petitioner only manufactured the argument regarding cell cleanliness after his initial impermissible request was denied—the claim's sincerity, just like the claim's merit, fails to convince. Petitioner's in-cell prayer conditions did not substantially burden his religious exercise.

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[63] *Id.*

Finally, TCC's chaplain requirement passes constitutional muster because prisons are afforded the opportunity to require staff members to be present at congregational prayer events. Just as the "qualified volunteers" in *Adkins* and the "personal religious advisors" in *Smith* allowed inmates to continue to practice their religion, so, too, do the TCC chaplains. The chaplains merely facilitate the inmates' spiritual services and, accordingly, do not impose any burden upon the practices or beliefs of Petitioner. TCC afforded Petitioner every opportunity to practice his fail, and in no way pressured Petitioner into non-adherence. Petitioner's claims therefore fail.

B. TCC simply denied Petitioner's requests for an excessive benefit and preferential treatment.

Prisons need not fulfill religious accommodations that simply provide "excessive benefits" to inmates.[64] Additionally, prisons are not required to "give any single inmate or any group of inmates preferential treatment."[65] Instead, prisons must administer policies uniformly, taking safety and prison resources into account.[66]

Prisons can rightfully decline superfluous inmate requests. For example, in *Hartmann v. California Department of Corrections & Rehabilitation*, the Ninth Circuit held the denial of prisoner's request for additional individual and congregational prayer services was not a substantial burden — rather, the court reasoned, it was simply an inmate's attempt to gain excessive religious accommodations.[67] Likewise, in *Blanks v. Cate*, the United States District Court for the District of Northern California held an inmate's request for the prison to hire "a

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[64] *Cutter*, 544 U.S. at 711.
[65] *Baranowski v. Hart*, 486 F.3d 112, 117 (5th Cir. 2007).
[66] *Id.*
[67] 707 F.3d 1114, 1125 (9th Cir. 2013).

Rastafarian Minister" and to provide "a separate outside area as space of worship [outside the parameters of existing prison policy]" failed under RLUIPA.[68]

Further, prisons must administer policies uniformly, avoiding any preferential treatment to an inmate or group of inmates. Courts are nearly unanimous in this analysis — perhaps most illustratively, in *Baranowski v. Hart*, the Fifth Circuit held an additional prayer request for only one sect would be impermissible preferential treatment.[69] The *Baranowski* Court held the denial of an inmate's request for additional congregational prayer time that applied to only his religious sect was valid, citing the prison's need to "take into account the orderly administration of the prison and its resources while not giving any single inmate or group of inmates preferential treatment."[70] Likewise, in *Smith v. Kyler*, the Third Circuit held that, if a Rastafarian inmate's group prayer requests were granted despite the prison's "personal religious advisors" already being provided to all inmates, the prison would have granted the Rastafarian inmates preferential treatment.[71] The *Smith* Court opined that, even if the inmate's claims of substantial burden had merit, which they did not, then this preferential treatment, and the strain it would place upon prison resources, would preclude success under RLUIPA.[72]

Here, Petitioner requested both an excessive benefit and preferential treatment for NOI, rendering his claim totally impermissible. As the Twelfth Circuit correctly noted, Petitioner's request for an additional prayer service was simply a request for an excessive benefit.[73] Petitioner, at the same time, requests special treatment for the seven (7) NOI members—that special treatment, if provided, could incite violence or other inmate discontentment.

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[68] No. 2:11-CV-0171 WBS CKD, 2013 WL 1129280, at *1 (E.D. Cal. Mar. 18, 2013).
[69] 486 F.3d 112, 117 (5th Cir. 2007).
[70] *Id.*
[71] 295 F. App'x 479, 481–82 (3d Cir. 2008).
[72] *Id.*
[73] R. at 19.

Further, TCC must be allowed to continue administering these programs uniformly. Indeed, TCC offers the religious corporate services to every inmate of every religious sect, including minority faiths, and does so within the confines of RLUIPA. Petitioner's requests were rightfully denied, and should not be provided another lifeline by this Court. TCC's prayer policy passes constitutional muster, and, accordingly, the Twelfth Circuit's decision should be affirmed.

B. REMOVING PETITIONER FROM THE VEGETARIAN DIET DID NOT VIOLATE HIS RIGHTS UNDER RLUIPA.

Under RLUIPA, Petitioner bears the initial burden of proving that the TCC's diet policy violates his religious exercise.[74] RLUIPA protects "any exercise of religion, whether or not compelled by a system of religious belief,"[75] however, a prisoner's request for an accommodation must be sincerely based on a religious belief and not some other motivation.[76] Here, the religious exercise at issue is a strict vegetarian diet, which Petitioner claims is a sincerely held belief as a member of NOI.

In addition to showing that the relevant exercise of religion is based on a sincerely held religious belief, Petitioner also bears the burden of proving that TCC's diet policy substantially burdened his exercise of religion.[77] Petitioner fails to meet the burden of both standards. Petitioner has failed to prove: (1) that his request to be placed on the religious diet program was based on a sincerely held belief, and (2) that removing Petitioner from the religious diet program substantially burdened his ability to exercise his religion. Accordingly, TCC did not violate Petitioner's religious exercise rights under RLUIPA and this Court should affirm the Twelfth Circuit's decision to vacate summary judgment.

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[74] *Holt*, — U.S. at —.
[75] § 2000cc–5(7)(A).
[76] *See Holt*, — U.S. at — (2015) (citing *Burwell v. Hobby Lobby Stores*, 573 U.S., at —, n. 28.).
[77] *Id.*

a. Whether Petitioner's belief and adherence to a vegetarian diet as NOI member was sincere is a genuine issue of material fact that precludes summary judgment.

Although RLUIPA prohibits courts from inquiring into whether a prisoner's "particular belief or practice is 'central' to [his] religion, it does not bar inquiry into the sincerity of a prisoner's professed religiosity.[78] In *Gardner v. Riska*, an inmate brought suit against the Florida Department of Corrections, alleging that prison officials violated his free exercise rights under RLUIPA for denying him a Kosher diet.[79] The Eighth Circuit held that the inmate failed to prove he held a sincere belief that a Kosher diet is important to the free exercise of his religion.[80] The court relied on the Prison's affidavits from two canteen operators who stated they had sold the inmate numerous non-Kosher items, heated many of these non-Kosher items for him, and witnessed him consume many of these items, despite the fact that the canteen menu included items designated as Kosher.[81] The Prison also submitted records demonstrating that the inmate purchased numerous non-Kosher items from the prison canteen.[82] Alternatively, the inmate only submitted his own affidavit that did nothing to refute the Prison's evidence.[83] The Eighth Circuit found that the inmate did not have a sincerely belief that a Kosher diet was important to the free exercise of his religion. Accordingly, the mere assertion of a religious belief does not automatically trigger First Amendment protections under RLUIPA.[84]

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[78] *Cutter*, 544 U.S. at 725.
[79] 444 F. App'x 353, 355 (11th Cir. 2011).
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Dehart v. Horn*, 227 F.3d 47, 51 (3rd Cir. 2000).

i. The Qur'an does not require, mandate, insist, suggest, or request that Islamic followers adhere to a vegetarian diet.

Petitioner fails to prove that his adherence to a vegetarian diet is a sincerely held belief. First, the Qur'an does not mandate nor instruct Islamic followers to abide by a vegetarian diet. In fact, such a position is contrary to Muslim principals. The Qur'an specifically states, "[God] only prohibits for you the eating of animals that die of themselves (without human interference), blood, the meat of pigs, and animals dedicated to other than God. If one is forced (to eat these), without being malicious or deliberate, he incurs no sin."[85] In reading 2:173, the Qur'an makes it clear that consumption of all animals is not forbidden.

The Qur'an further articulates this position in 22:36, which reads:

> . . .[t]he animal offerings are among the rites decreed by God for your own good. You shall mention God's name on them . . . Then once they are offered for sacrifice, you shall eat there from and feed the poor and the needy. This is why we subdued them for you, that you may show your appreciation.[86]

The Qur'an makes multiple references to what is halal (lawful) and what is haram (prohibited) to consume.[87] Of these references to halal and haram food, the Qur'an never once mentions or implies that Islamic followers must follow a vegetarian diet lifestyle. If the Qur'an is the Nation of Islam's holy scripture, and the Qur'an does not prohibit or suggest Islamic followers abided by a vegetarian lifestyle, how could Petitioner hold a sincerely held belief in a vegetarian diet that is neither mandated, inferred, or suggested by the Qur'an or the NOI?

Understandably, courts may feel uncomfortable attempting to delve into an inmates innermost personal thoughts and feelings and come to a conclusion regarding the authenticity of the inmates alleged belief system. Rightly so. In fact, an inmate could decide to be Islamic, and

[85] THE HOLY QUR'AN, 2:173.
[86] *Id.* at 22:36.
[87] *See id.* at 2:173, 5:3, 6:145, and 16:115.

simply interpret the Qur'an to mandate a vegetarian lifestyle—albeit this would be a very imaginative interpretation. Nonetheless RLUIPA does not permit restriction on religious beliefs simply because they hold a minority view. That being said, this Court has found it lawful to "appropriately question whether a prisoner's religiosity, asserted as a basis for a requested accommodation . . . is authentic."[88] In *Lovelace*, the Seventh Circuit held that, "[s]uch an inmate's right to religious exercise is substantially burdened by a policy, like the one here, that automatically assumes that lack of sincerity (or religiosity) with respect to one practice means lack of sincerity with respect to others."[89]

TCC would agree with the Seventh Circuit's rationale in *Lovelace*. A blanket policy that automatically assumes a lack of sincerity in one element of religious practices means a lack of sincerity in the entire religion as a whole seems misguided and not in spirit with the purpose of RLUIPA. However, that is not the type of policy that TCC created in its prison. Tourovia Directive #99 – Religious Alternative Diets ("TD #99) provision provides that, "[i]n the event that an inmate gives prison administration adequate reason to believe that the religious alternative diet is not being adhered to, [TCC] reserves the right to ***revoke religious alternative diet privileges*** for any designated period of time or revoke the privilege permanently." TD #99 does not assume a lack of sincerity in one area of religious practice automatically warrants removal from all related religious practice, and likewise does not warrant so. TD #99 simply removes inmates from a religious alternative diet if there is evidence that the inmate voluntarily violated his religious alternative diet. Contrary to the District Court's written decision,[90] TD #99 does not allow prison officials to prohibit the inmate from attending or engaging in other

[88] *Cutter*, 544 U.S. at 725, n. 13.
[89] 472 F.3d at 188.
[90] R. at 6 (district court stating TD #99 permits the prison to "suspend the inmate's freedom to attend religious services for any amount of time TCC sees fit." TD #99 makes no such reference to any arbitrary provision.).

religious practices for failing to abide by a religious alternative diet.

Petitioner voluntarily violated his own requested accommodation for a vegetarian diet. TCC officials identified meatloaf hidden under Petitioner's bed after receiving reports from Petitioner's cellmate that Petitioner was threatening and bullying the cellmate to give him food. Petitioner's possession and consumption of non-vegetarian food would be a violation of Petitioner's (alleged) beliefs. The only plausible rationale for Petitioner to use force, or the threat of force, to obtain non-vegetarian food against his alleged religious beliefs, is if Petitioner had some other motivation. The Twelfth Circuit accurately identified this alarming behavior, and acknowledged that there was sufficient evidence to suggest Petitioner had significant motivation to feigning sincere religious beliefs in order to obtain prayer serve benefits and rest days on special holidays that non-acknowledged religious members may not receive.[91]

TCC's removal of Petitioner from the vegetarian diet did not substantially burden his religious beliefs because Plaintiff failed to make the threshold showing that his request for a vegetarian diet was either "rooted in religion" or an important religious belief. Ultimately, TCC presented sufficient evidence to the District Court, which the Twelfth Circuit acknowledged and identified, that calls into question Petitioner's sincerity that a vegetarian diet is essential to his free exercise of religion. Petitioner's sincerity is a genuine issue of material fact, and as a matter of law the District Court erred in granting Petitioner's motion for summary judgment.

[91] R. at 20.

b. If Petitioner's religion was substantially burdened in any way, Petitioner did it to himself when he voluntarily removed himself from TCC's religious alternative diet program.

Even if this Court is persuaded that Petitioner maintained a sincerely held belief that his vegetarian diet was an important exercise of his Islamic religion, Petitioner's religious exercise was not substantially burdened. As stated above, prison regulation only creates a "substantial burden" on a prisoner's religious exercise if the regulation "truly pressures an adherent to significantly modify his religious behavior and significantly violate his religious beliefs."[92] However, prison regulation does not rise to the level of a substantial burden if it merely prevents the adherent from enjoying some "excessive benefit" that is not otherwise generally available to the general inmate population.[93] This Court has also described "substantial burden" as one that forces a person to "choose between following the precepts of her religion and forfeiting [governmental] benefits, on the one hand, and abandoning one of the precepts of her religion ... on the other hand."[94]

Several circuits have constructed similar definitions of "substantial burden" under RLUIPA. For example, the Eleventh Circuit in *Midrash Sephardi, Inc. v. Town of Surfside* defined it as any burden "result[ing] from pressure that tends to force adherents to forego religious precepts or ... [tends to] mandate [ ] religious conduct."[95] In *San Jose Christian Coll. v. City of Morgan Hill*, the Ninth Circuit described it as "a significantly great restriction or onus upon [religious] exercise."[96] Finally, the Seventh Circuit in *Civil Liberties for Urban Believers v. City of Chicago* defined substantial burden as "[a burden] that necessarily bears direct,

[92] *Holt*, — U.S. at — (2015).
[93] *Adkins*, 393 F.3d at 559.
[94] *Sherbert v. Verner*, 374 U.S. 398, 404 (1963).
[95] 366 F.3d 1214, 1227 (11th Cir.2004).
[96] 360 F.3d 1024, 1034 (9th Cir.2004).

primary, and fundamental responsibility for rendering religious exercise ... effectively impracticable."[97] The common theme is that a government actor, such as a prison, must have acted in some way as to prevent an inmate from practicing some religious behavior in a manner that is contrary to his or her beliefs.

A prison does not impose a substantial burden upon an inmate who voluntarily violates accommodation benefits, or fails to take advantage of appropriate alternative diet programs. In *Best v. Kelly*,[98] an inmate brought RFRA claims against prison officials after he was removed from the prison's alternative diet and not permitted to attend services of the prison's Jewish congregation.[99] Keep in mind that RFRA claims are analyzed under the same standard as RLUIPA. The District Court found that while the inmate was denied a kosher diet for a short period of time, his religious freedom was not substantially burdened because he voluntarily removed himself from the diet after it was reinstated. Similarly, in *Watkins v. Shabazz*, an inmate claimed prison officials violated his rights under RLUIPA by refusing to provide him with Halal meat as part of his Islamic diet.[100] The Ninth Circuit held that the prison did not substantially burden the inmate's right to freely exercise his Islamic faith because the prison gave the inmate alternatives to eating non-halal meat—such as a nutritionally equivalent meat substitute or finding an outside religious organization to contract with the prison to provide halal meat.[101]

There is no substantial burden to Petitioner's religious beliefs under RLUPIA, because TCC provided him with a vegetarian alternative meal plan that Petition voluntarily chose not follow. Similar to *Best*, where the court found that the prison did not substantially burden the

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[97] 342 F.3d 752 (7th Cir. 2003).
[98] 879 F. Supp. 305, 308-09 (W.D.N.Y. 1995)
[99] *Id.*
[100] 180 Fed.App'x. 773, 775 (9th Cir. 2006).
[101] *Id.*

inmate's religious exercise, TCC did not pressure Petitioner to significantly modify his religious behavior or violate his religious beliefs. Petitioner did that on his own accord when he threatened his cellmate with physical force to obtain non-vegetarian food. In *Best*, the prison went one step further and prohibited him from attending Jewish congregation services. TCC did not do this. TCC, in accordance with TD #99, only removed Petitioner from the alternative meal plan because there was sufficient evidence to show that Petitioner was not adhering to it. TCC did not restrict or prohibit Petitioner from engaging in any other religious exercise. The punishment of violating his meal plan was proportionate with the offense.

Furthermore, TCC had provided Petitioner with alternatives to eating meat. Like *Watkins*, where the Ninth Circuit found that the prison's policy of providing a Muslim inmate with alternatives to eating non-halal meat, TCC also provided Petitioner with alternatives to eating meat-based meals. Petitioner had the opportunity to obtain a vegetarian meal plan, and he exercised his right to request for the accommodation. TCC, in good faith granted that accommodation and provided Petitioner with his requested vegetarian meal. It was Petitioner's actions, not TCC's, that forced the prison to revoke Petitioner's alternative diet and remove him from the program. TCC cannot be held responsible for burdening Petitioner's ability to exercise his religious practice when Petitioner burdened it himself by threatening his cellmate to give him non-vegetarian food. Accordingly, TCC did not substantially burden Petitioner's right to freely exercise his religion because Petitioner voluntarily chose to abandon his religious dietary restrictions.

Although Petitioner disputes the allegation that he was in possession of a non-vegetarian dish (meatloaf), TCC presented sufficient evidence to prove otherwise. The District Court's grant of summary judgment was inappropriate because the District Court was faced with factual

disputes material to Petitioner's RLUIPA claim against TCC. Accordingly, this Court should affirm Twelfth Circuits decision to vacate summary judgment.

C. PRISON SAFETY, FISCAL PRUDENCE, AND THE ORDERLY ADMINISTRATION OF FOOD PROGRAMS ARE COMPELLING GOVERNMENT INTERESTS.

In the unlikely event that Petitioner establishes a prima facie case that his sincerely held belief was substantially burdened, the onus shifts to TCC to show whether its practice "is the least restrictive means of furthering a compelling governmental interest."[102] TCC easily meets this burden. RLUIPA permits "safety and security — which are undisputedly compelling government interests — to outweigh an inmate's claim to a religious accommodation."[103] Indeed, a prison's interest in order and security is "always compelling."[104] So, too, are the "institutional needs . . . to control costs"[105] and to promote "orderly administration of food policies."[106]

A. Prison safety is always a compelling government interest.

When assessing "whether prison security is a compelling governmental interest," courts reach a nearly unanimous conclusion: "It clearly is."[107] This is especially true when prison policies are implemented to curtail inmate gang activity, even when under the guise of group religious services.[108]

Prisons have an overwhelmingly compelling interest to adopt policies to stop gang violence and make prisons safer. For example, in *Jova v. Smith*, the Second Circuit upheld a prison policy banning congregational prayer services after the prison discovered the services

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[102] *Lovelace*, 472 F.3d at 186.
[103] *Cutter*, 544 U.S. at 711.
[104] *Fowler v. Crawford*, 534 F.3d 931, 939 (8th Cir. 2008).
[105] *Id.* (citing *Lovelace*, 472 F.3d at 190).
[106] *Resnick v. Adams*, 348 F.3d 763, 769 (9th Cir. 2003).
[107] *Warsoldier v. Woodford*, 418 F.3d 989, 998 (9th Cir. 2005).
[108] *Pugh v. Caruso*, No. 1:06-CV-138, 2010 WL 3810081, at *6 (W.D. Mich. Aug. 25, 2010).

were being used for gang recruitment.[109] The *Jova* Court noted that the prison's interest in "ensuring that those meetings do not serve as proxies for gang recruitment or organization" was the paramount consideration in upholding the policy.[110] The United States District Court for the District of Arizona reached a similar conclusion in *Coronel v. Paul*, where the Court upheld a prison policy banning congregational prayer "because an investigation revealed that Hawaiian prison gangs were using these services as a forum to organize disruption" at the prison.[111]

Here, safety concerns prompted TCC to change its prayer policy. TCC changed the prayer policy because volunteers smuggled gang orders outside TCC prison walls to gang members on Tourovia's streets. In response, TCC adopted sensible reforms aimed at limiting gang activity inside the prison. Just as in *Jova*, where the prison's interest in stopping gang recruitment was sufficiently compelling, or in *Coronel*, where the prison's interest in stopping gang members from "organizing disruption," TCC changed a policy after an actual incident of gang activity affected TCC. The limitations on prayer activity at TCC are a direct result of gang activity and were enacted to further the "always compelling" interest of safety in prisons.

B. Fiscal prudence is a compelling government interest.

The potential cost of every request, for every accommodation, from every inmate, is astronomical.[112] Accordingly, considering the "costs and limited resources" of accommodating every inmate request while maintaining safety, security, and good order, is a compelling interest.[113]

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[109] 582 F.3d 410, 413 (2d Cir. 2009).
[110] *Id.* at 416.
[111] 316 F. Supp. 2d 868 (D. Ariz. 2004).
[112] *See* Taylor G. Stout, *The Costs of Religious Accommodation in Prisons*, 96 VA. L. REV. 1201, 1209–14 (2010)(quantifying burden religious accommodations place prison's limited finances which "hinders the ability of prison staff to perform their most fundamental function" of institutional security, a "clear government interest.")
[113] *Cutter*, 544 U.S. at 726.

Courts grant deference to prisons in making cost-sensitive decisions when denying religious accommodations. In *Smith v. Kyler*, the Third Circuit upheld a prison's denial a Rastafarian inmate's group prayer requests because of, inter alia,[114] the inevitable strain on prison resources the request would cause.[115] More generally, in *AlAmiin v. Morton*, the Tenth Circuit upheld the denial of a Muslim inmate's request for in-cell prayer oil and accepted the prison's rationale that the policy would add substantial cost for drug-sniffing dogs and other security measures.[116] These totally "infeasible" costs were properly denied because of the prison's interest in limiting costs and maximizing efficiency.[117]

Here, RLUIPA does not require TCC to bear the unnecessary fiscal burden of Petitioner's requests for a minimal added benefit of providing one additional prayer service to seven inmates. Just as in *Smith*, where the inmate's request for a minimally useful excessive benefit because of the strain the accommodations would cause on limited prison resources, here, TCC cannot be expected to blindly allow wasteful resource allocation to meet Petitioner's requests for redundant religious services. Indeed, TCC already provides sufficient prayer times to meet Petitioner's needs. Similarly, as in *AlAmiin*, where the prison was not required to finance the inmate's need for prayer oils, here, TCC should not be required to finance Petitioner's request for unnecessary prayer services. TCC denied the request out of concern for the compelling government interest of preserving limited prison resources; accordingly, Petitioner's request for superfluous religious accommodation was rightfully denied.

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[114] The *Smith* Court also held the denial of the prayer request did not substantially burden the inmate, and thus the inmate failed both the substantial burden and compelling interest prongs of RLUIPA. 295 F. App'x 479, 481–82 (3d Cir. 2008).
[115] *Id.*
[116] 528 F. App'x 838, 843–44 (10th Cir. 2008).
[117] *Id.*

a. Removing Petitioner from the vegetarian diet furthered a compelling governmental interest.

TCC's interest in maintaining order includes an interest in maintaining a simplified food service. In *Cutter,* the Supreme Court acknowledged that "maintain[ing] good order, security and discipline, consistent with consideration of costs and limited resources," is a compelling government interest.[118] In *Resnick v. Adams,* the Ninth Circuit held that prisons' interest in the orderly administration of a program that allows federal prisons to accommodate the religious dietary needs of thousands of prisoners is a legitimate government interest.[119] In *DeHart v. Horn,* the Ninth Circuit further held that a prison's interest in efficient food service is a legitimate penological concern.[120] Furthermore, in *Ward v. Walsh,* the Ninth Circuit found that "[t]he prison has a legitimate interest in running a simplified food service, rather than one that gives rise to many administrative difficulties."[121] Accordingly, maintaining a simplified, efficient food service program avoids excessive administrative difficulties and costs and is a compelling government interest.

TCC has sufficiently met its burden of showing this Court that maintaining good order, security, discipline, and cost efficiency is a compelling government interest. As a prison, TCC is responsible for running a fiscally prudent and safe facility. Like any business, budgets must be met, rules must be made, and lines must be drawn to ensure the efficient running of the institution. A prison must appropriately balance the demands of ensuring safety and order for both inmates and personnel, with the demands of meeting fiscal budgets. TD #99 explicitly makes these interests clear, noting "[t]he requests shall be accommodated to the extent

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[118] 544 U.S. at 722.
[119] 348 F.3d 763, 769 (9th Cir. 2003).
[120] 227 F.3d 47, 53 (3d Cir. 2000).
[121] 1 F.3d 873, 877 (9th Cir. 1993).

practicable within the constraints of the Tourovia Correctional Center's (a) security considerations; (b) budgetary or administrative considerations; and (3) the orderly operation of the institution."[122]

As this Court has held in *Cutter*, "maintain[ing] good order, security and discipline, consistent with consideration of costs and limited resources," is a compelling government interest. These interests have been acknowledged by multiple circuits, and this Court has acknowledged that due deference should be given to the experience and expertise of prison administrators in establishing necessary regulations and procedures to further these compelling interests. TCC's backsliding policy specifically identifies these interests in its policy. As such, TCC has sufficiently established that is his a compelling interest in maintaining proper security and order with consideration of costs and limited resources.

D. TCC'S PRAYER AND DIET POLICIES WERE INSTITUTED USING LEAST RESTRICTIVE MEANS.

Under the final prong of RLUIPA, TCC must only show that it "actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."[123] While RLUIPA requires courts to "scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants,"[124] this analysis must still provide "deference . . . to the expert judgment of prison officials who are infinitely more familiar with their *own* institutions than outside observers."[125]

Though "context matters" in the RLUIPA analysis, this Court was clear that "[s]hould inmate requests for religious accommodations become excessive, impose unjustified burdens on

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[122] *See* TD #99, R. at 26.
[123] *Greene v. Solano Cty. Jail*, 513 F.3d 982, 989 (9th Cir. 2008)(citations omitted).
[124] *Holt*, — U.S. at — (quoting *Hobby Lobby* 573 U.S. — at — (2014)).
[125] *Fowler*, 534 F.3d at 942 (8th Cir. 2008)(emphasis in original).

other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition."[126]

TCC considered and rejected the previously-existing prayer policy prior to implementing the prayer-service policy at issue here. The current policy is thus the least restrictive means to further the compelling government interests of safety and fiscal prudence. Additionally, TCC's backsliding policy is the least restrictive means to address inmates' non-compliance with their religious alternative diet program and further TCC's compelling government interest in cost efficiency.

A. Existing prayer policy is the least restrictive means of furthering prison safety, a clearly compelling government interest.

Prisons are free to enact more stringent policies to promote safety, so long as the prison either considered a less-restrictive policy or uses a policy favored by most other prisons. Given nearly identical facts, in *Jihadi v. Fabian*, the United States District Court for the District of Minnesota held the denial of a Muslim inmate's proposed additional out-of-cell prayer time, despite the in-cell prayer concerns, was the least restrictive means of furthering the prison's interest in the "safety of prison inmates and staff."[127] The *Jihadi* Court provided unequivocally that the prison's "policy of allowing prayer during scheduled worship services or, alternatively, within the confines of an inmate's cell, is the least restrictive means of achieving the defendants' compelling interest in safety and security."[128] Conversely, in *Holt v. Hobbs*, this Court held a prison's grooming policy was not the "least restrictive means" of furthering the prison's safety and prisoner identification programs, both compelling government interests.[129] This Court was

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[126] *Cutter*, 544 U.S. at 726.
[127] 680 F. Supp. 2d 1021, 1027 (D. Minn. 2010).
[128] *Id.*
[129] — U.S. —, — (2015).

not persuaded that the prison's grooming policy was the least restrictive means of burdening a Muslim inmates' ability to grow a beard because "many prisons around the country" enacted less-stringent policies.[130]

Here, TCC's current policies reflect the prison's experience with a different, less-restrictive policy that resulted in escalated gang activity at TCC. Even with the concerns for institutional safety, inmates are still allowed five (5) daily prayer services, enough to satisfy Petitioner's religious needs. Like in *Jihadi*, where a prison's policy "allowing prayer during [both] scheduled worship services or, alternatively, within the confines of an inmate's cell" was "the least restrictive means of achieving" the prison's interest in security, TCC affords ample opportunity for inmate prayer while still maintaining the necessarily high standards for institutional safety. Further, unlike *Hobbs*, where the prison enacted a policy far more stringent than most prisons around the country, TCC enacted policies consistent with the majority approach to prayer-service administration. Accordingly, TCC's policies, which furthered compelling government interests of safety and fiscal prudence, were enacted using the least restrictive means, precluding Petitioner's recovery under RLUIPA.

B. TCC's backsliding policy is the least restrictive means to address inmates' non-compliance with their religious alternative diet program and further TCC's compelling government interest in cost efficiency.

Policies revoking backsliding inmates can serve legitimate compelling interests such as discouraging phony prisoner diet requests made only to inconvenience prison officials.[131] Congress was mindful of the urgency of discipline, order, safety, and security in penal

[130] *Id.*
[131] *Williams v. Snyder*, 150 F. App'x 549, 552 (7th Cir. 2005).

institutions when drafting RLUIPA.[132] Lawmakers predicted that courts would interpret the standard with "due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources."[133]

A prison is free to resist unreasonable, excessive or unjustified accommodations by institutionalized persons. In *Cutter*, this Court specifically held 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."[134] In *Shakur v. Schriro*, the Ninth Circuit considered whether a prison exercised the least restrictive means when it denied an inmate access to a Kosher diet.[135] The court held "that a prison 'cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.'"[136] The court found that while the prison had a compelling government interesting in cost containment, conclusory allegations asserting that denying the inmate a Kosher diet was the least restrictive means was insufficient.

Furthermore, in *Lovelace*, the Fourth Circuit found that the prison's policy of removing an inmate from a religious alternative diet program and banning him from group prayer for noncompliance with the alternative diet, was not the least restrictive means of furthering its governmental interest.[137] The court held that the "removal provision is far reaching in that it excludes inmates not only from the special Ramadan meals but also from the Ramadan prayer

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[132] *See, e.g., Cutter*, 544 U.S. at 722 (2005)(quoting 146 Cong. Rec. S7774, S7775 (July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy)).
[133] *Id.*
[134] *Id.* at 726.
[135] 514 F.3d 878, 890 (9th Cir. 2008).
[136] *Id.*
[137] 472 F.3d at 191.

services held in the dining hall immediately before or after the morning meal."[138] Accordingly, a prison may deny an inmates unreasonable or unjustified accommodation request so long as it is at can present evidence supporting its policy was the least effective means of furthering a compelling interest and if it doesn't burden any other form of religious exercise.

TD #99 is reasonable in scope and practice. It is TCC's policy to grant reasonable requests for religious alternative diets by inmates. However, in the event an inmate no longer adheres to the diet accommodation, TCC reserves the right to remove the inmate from the program. Rightly so. Dietary accommodations come with increased costs to institutions and should only be provided to inmates who express a real commitment to their faith and diet. Whether Petitioner is truly committed to Islamic faith has already been discussed above, however, it is equally relevant here. TCC granted Petitioner a vegetarian diet per his request for a religious alternative meal plan, which Petitioner voluntarily removed himself from. TCC continued to provide Petitioner with a vegetarian meal up until the point where Petitioner voluntarily withdrew from the program.

TCC's backsliding policy is the least restrictive means to ensuring an efficient food service program in the prison because it allows inmates the opportunity to participate in a meal plan that complies with their religion, at the expense of the prison, but yet holds inmates accountable to adhering to their religious beliefs. If Petitioner, or any inmate, chose not to adhere to their requested diet program, TCC should not have to bear the burden of the additional costs of purchasing and preparing alternative meals for them.

Unlike *Lovelace*, the backsliding policy is not far reaching because it does not exclude Petitioner, or any inmate, from additional religious practices such as prayer services. TD #99

[138] *Id.*

simply removes inmates from their meal plan once there is evidence that they are no longer adhering to it. Petitioner was still free to participate in prayer services and other religious activities sanctioned by TCC. The facts of this case can also be distinguished from *Shakur*, where the Ninth Circuit held that the prison failed to meet its burden of showing its policy of removing an inmate was the least restrictive means. Here, TCC provided the District Court with a written statement from Petitioner's cellmate, and attested to the fact that Petitioner was not only in possession of non-vegetarian food, but also threatened his cellmate to obtain the non-vegetarian food. Accordingly, TCC has provided more than conclusory statements that removal from the religious diet program was the least restrictive means to further its compelling government interest in running an efficient food service program and maintain order.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request this Court affirm the United States Court of Appeals for the Twelfth Circuit's decision to reverse and vacate judgment.

Respectfully Submitted,

Team 20
/s/ Team 20
Attorneys for Respondent

APPENDIX A

U.S. Const. Amend. I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

APPENDIX B

Religious Land Use and Institutionalized Persons Act, 42 § U.S.C. 2000cc, et seq.

42 U.S.C. § 2000cc – Protection of land use as religious exercise.

(a) Substantial burdens

(1) General rule: No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application: This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms: No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination: No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits: No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C. § 2000cc–1 - Protection of religious exercise of institutionalized persons.

(a) General rule: No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application: This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

42 U.S.C. § 2000cc–2 – Judicial relief.

(a) Cause of action: A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of persuasion: If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit: Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners: Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter: The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States,

acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation: If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

42 U.S.C. § 2000cc–3 – Rules of construction.

(a) Religious belief unaffected: Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated: Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected: Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected: Nothing in this chapter shall—

> **(1)** authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other

assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise: A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law: With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction: This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(h) No preemption or repeal: Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability: If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the

provision to any other person or circumstance shall not be affected.

42 U.S.C. § 2000cc–4 – Establishment Clause unaffected.

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

42 U.S.C. § 2000cc–5 – Definitions.

(1) Claimant: The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates: The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause: The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government: The term "government"—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc–2(b) and 2000cc–3 of this title, includes the

United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation: The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d–4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.