No. 985-2015

In the

Supreme Court of the United States

SIHEEM KELLY,

PETITIONER,

-against-

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

RESPONDENTS,

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

BRIEF FOR THE RESPONDENT

TEAM 21

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QUESTION PRESENTED

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2. 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, violate RLUIPA?

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review this case under 28 USCS § 1254 (2012), which provides that "cases in the courts of appeals may be reviewed by the Supreme Court by … writ of certiorari granted upon the petition of judgment or decree…." This Court granted the petition for writ of certiorari in *Kelly v. Echols*, Docket No. 472-2015 on July 1, 2014.

STATEMENT OF THE CASE

Statement of Facts

The Tourovia Correctional Center ("the TCC") is a maximum-security prison designed to maintain a safe, secure, and financially efficient environment. Record ("R") at 4. Mr. Kane Echols ("Echols" or "Warden Echols") currently serves as the Warden of the TCC. *Id.* at 2. In 1998 the TCC reformed its religious service policies to deter gang related activity and requiring inmates of all religious affiliations to return to their cells before the final head count. *Id.* at 2. The TCC initiated the policy change after discovering that the prayer service volunteers were relaying gang orders from incarcerated members of the Christian community to gang-affiliated individuals outside the prison's walls. *Id.* Moreover, several members of the Christian and Sunni Muslim groups who were attending the night prayer services attempted to disregard security policy. *Id.* The aforementioned members remained in their prayer rooms longer than authorized, disregarding the last in-cell daily evening headcount. *Id.* As a result, the TCC banned the use of all prison volunteers and of all nightly services primarily to ensure that inmates of all religious groups were back in their cells promptly at 8:30 p.m. for the final head count. *Id.*

The 1998 policy changes are reflected in Tourovia Directive 98 ("Directive 98"). *Id.* The purpose behind Directive 98 is

> [t]o establish policy for the practice of faith groups and ensure that inmates have the opportunity to participate in practices of their faith group, individually or corporately as authorized, that are deemed essential by the governing body of that religion, limited only by a showing of threat to the safety of staff, inmates, or other persons involved in such activity, or that the activity itself disrupts the security or good order in the facility. Religious based programs/observance shall be accommodated, within available space and time, unless an override compelling governmental interest exists.
> 1. Inmates who wish to participate in prayer service shall conduct any congressional service at the Designated Prayer Times.
> a. Requirement for a Chaplin. […].
> b. Requirement on services. Due to security and administrative efficiency, no inmate is to leave their cells for any reason after the last head count. […].

Id. at 25.

Saul Abreu ("Abreu") serves as the Director of the TCC Chaplaincy Department. *Id.* at 2. The TCC staffs and maintains three prayer services daily for Catholic, Protestant, Muslim, and Jewish inmates. *Id.* at 4.The three Designated Prayer Times are:

a. Before the morning meal at 8:00 a.m.
b. Before the afternoon meal at 1:00 p.m.
c. Before the evening meal at 7:30 p.m.

Id. at 24. In addition, counter-majoritarian groups are permitted to meet once a day for prayer. *Id.* Any additional prayer accommodations will impose a heightened staffing burden on the TCC. *Id.* at 6. The TCC, however, is fully receptive to allowing all inmates the freedom to pursue their religious practice as a long as that practice is consistent with agency security, safety, order, and rehabilitation concerns. *Id.* Thus, the TCC allows all offenders to worship according to their faith preference in their cells using the allowed items such as sacred texts, devotional items, and materials. *Id.* Furthermore, the approval of all religious services is based on demand, need, and prison resources. *Id.*

In 2000, Petitioner Siheem Kelly ("Petitioner" or "Kelly"), became an inmate at the TCC after being convicted of several drug-trafficking charges and one count of aggravated robbery. *Id.* Two years after his arrival, Petitioner converted to Nation of Islam ("the Nation" or "NOI"). *Id.* NOI is a subgroup of the traditional Sunni Muslim religion. *Id.* at 3. NOI is among the minority religious groups in the TCC and constitutes less than one percent of the prison population. *Id.* Presently, NOI has a total of seven acknowledged members at the TCC who are eligible to take advantage of the prayer services and the special diet programs although they do not meet the threshold to be considered a faith group. *Id* at 24; *Id.* at 4. None of the current NOI members have had any record or history of violence **within** the prison. *Id.* at 3. (Emphasis

added). However, this could be because NOI members never move through the facility alone. *Id.* Moreover, the TCC, in coherence with its goals, ensures non-violence by monitoring NOI members to make sure they are not engaging in illicit or gang related activity. *Id.*

By way of background, NOI members participate in a strict vegetarian diet (or Halal) and fast for the month of Ramadan, as well as two other special holidays. *Id.* NOI requires that their adherents pray five times a day as outlined in the Salat, which means prayer guide in Arabic. *Id.* at 3. Prayer times, which are referred to as "Obligatory and Traditional Prayers," are as follows: 1) dawn, 2) early afternoon, 3) late afternoon, 4) sunset and 5) late evening. *Id.* at 4. Ideally, once prayer has begun, NOI members should not be interrupted. *Id.* During each of their prayers, most adherents **claim** to require a very clean and solemn environment. *Id.* (Emphasis added). NOI members must wash themselves and their clothes, **as best they can**, and secure a clean surface on which to kneel and face Mecca. *Id.* (Emphasis added). In accordance with the five NOI five "Obligatory and Traditional Prayers," the TCC permits all NOI member's to meet for prayer three times daily outside of their cells and with the remaining two daily prayer-times occurring inside of their cells. *Id.*

In 2013, Petitioner filed a written prayer service request for an **additional** congregational nightly prayer service after the last meal at 7:00 p.m. *Id.* (Emphasis added). The prayer service request is for a service to be held at 8:00 p.m., after the last meal but before the final head count at 8:30 p.m. *Id.* at 5. Moreover, the request specifically petitioned for the sole attendance of the acknowledged NOI members. *Id.* A week later, Abreu notified Petitioner that the request was denied due to TCC policy prohibiting all inmates from going anywhere but their cells before the final head count. *Id.* Further, Abreu verbally indicated that three services were already provided to NOI members and, in any event, they could pray in their cells. *Id.*

Notwithstanding the denial, and although Petitioner attended all three allotted serviced, Petitioner maintained that he was entitled to additional worship accommodation, namely, five rather than three separate services, outside of his cell, with fellow NOI members. *Id.* However, contrary to Petitioners contention, although members of NOI **prefer** to pray in the company of each other, the religion does not mandate such accommodations outside of the holy month of Ramadan and on Friday evenings. *Id.* at 4. (emphasis added).

Subsequently, Petitioner verbally expressed to Abreu that he would compromise for at least one additional service in which to conduct his last two prayers of the day with his brothers. *Id.* Petitioner additionally verbally requested that the prayer service be conducted away from non-NOI inmates and with a Chaplain of NOI religions affiliation. However, following the denial of Petitioner's written request, both of the foregoing verbal requests were not addressed. *Id.*

In response, Petitioner filed two grievances. *Id.* In the first grievance Petitioner asserted that the reason he wanted an additional prayer service was because he was no longer able to pray in his cell due to the intentional ridicule and lewd behavior by his cellmate. *Id.* Petitioner further stated that his fellow NOI members were experiencing the same ridicule and distraction, which was disrespectful to his religion. *Id.* The grievance was denied on the grounds that Petitioner had not proven that his cellmate was actually engaging in the negative conduct described in the grievance. *Id.* In the second grievance Petitioner decided to take a different approach. *Id.* Petitioner sent a letter to Abreu, which stated that praying in a cell where a toilet is only a few feet away was a disgrace to Allah's preference that he pray in a clean and solemn environment with other members of his faith. *Id.* The grievance was again denied. *Id.*

Petitioner ultimately filed a formal grievance with the TCC setting forth claims contained in his two previous grievances. *Id.* The formal grievance included verses from *The Holy Qu'ran* explaining why a daily evening prayer service was obligatory:

> Keep up prayer from the declining of the sin till the darkness of the night, and the recital of the Quran. Surely the recital of the Quran at dawn is witness"; and, "[C]elebrate the praise of the Lord before the rising of the sun and before its setting, and glorify [Him] during the hours of the night and parts of the day, that thou mayest be well pleased.

Id. Yet again, the TCC denied Petitioner's request. *Id.* In his denial letter, Echols argued that Petitioner's requested violated TCC policy and, in any event, asserted that Petitioner could not verify the allegations about his cellmate. *Id.* Echols suggested that Petitioner simply request to be transferred to another cell with a cellmate that would be more respectful of his personal prayer time. *Id.* at 6. Notably, the TCC does not assign members cellmates based on religion. *Id*. at 4. However, as a general policy, if there are specific incidents of violence towards other individuals, outside of the inmate's faith, the cellmate can request to be transferred. *Id.*

Two weeks after the denial of Petitioner's formal grievance, Petitioner was accused of threatening his new cellmate. *Id.* at 6. Petitioner's new cellmate reported that Petitioner had threatened him with violence unless he provided Petitioner with his dinner, which was meatloaf. *Id.* Pursuant to Tourovia Directive 99 ("Directive 99"), if any inmate is found to bully another inmate for food or is caught breaking their respective religious diets, the TCC reserves the right to revoke the inmate's dietary program. *Id.* Moreover, if the threat of violence is connected to the inmate's religious practices, TCC may suspend his freedom to attend religious services for any duration of time deemed appropriate by the TCC. *Id.*

The TCC failed to uncover evidence of Petitioner perpetrating actual violence against his new cellmate. *Id.* However, during a subsequent search of Petitioner's cell, the TCC officials discovered meatloaf wrapped in a napkin under Petitioner's mattress. *Id.* As a result,

TCC removed Petitioner from the vegetarian diet program. *Id.* Additionally, the TCC barred Petitioner from attending worship services for one month as punishment for the alleged threats against his new cellmate and for deviating from his religious diet. *Id.* In response, Petitioner refused to eat anything from the standard menu options and began a hunger strike. *Id.* After two days of his strike, TCC employees began to tube-feed Petitioner. *Id.* Ultimately, Petitioner ended his hunger strike and began consuming the non-vegetarian food provided to the general prison population. *Id.*

Procedural History

Petitioner filed the instant action against the TCC challenging the validity of its prayer services and diet program policies under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *Id.* at 6. Petitioner alleges that the TCC substantially burdened his ability to exercise his religious belief. *Id.* Petitioner claimed to be substantially burdened pursuant to the denial of his request for an additional congressional nightly prayer service and the TCC's actions of removing Petitioner from his religious diet plan. *Id.* Subsequently, the TCC motioned for summary judgment, claiming Petitioner failed to meet this burden of proof. *Id.*

In its answer, the TCC stated that the approval of all religious serves is based on demand, need, and prison resources. *Id.* The TCC further asserted that, since increasing the number of prayer services would impose heightened staffing burdens on the prison, the denial was proper under RLIUPA and prison policy. *Id.* Moreover, the TCC provided a lengthy affidavit attested to by Abreu, attesting the validity of the TCC's reasons for the prayer and diet policies. *Id.* at 6-7. The affidavit also included an addendum with the prison's documented cost containment stratagems. *Id.* at 7. Additionally, the TCC argued that Petitioner failed to establish that his religious practices were substantially burdened by the denial of the congressional evening

service. Furthermore, the TCC stated that their prayer service policies were the least restrictive means of furthering the compelling interest of security and financial concerns for the prison, its inmates and employees. *Id.* In response to Petitioner's challenge to removal from his diet program, the TCC asserted that Petitioner's conversion to NOI after two years of practicing no religion placed him on a so called "watch-list" of inmates who may have potentially assumed a religious identity to hide illicit conduct and gang activity. *Id.* The TCC further provided the Court with a written statement from Petitioner's former cellmate concerning his allegation that Petitioner threatened him for his meatloaf dinner. *Id.* The TCC further asserted that the alleged threat raised serious questions about Petitioner's religious sincerity. *Id.*

On March 07, 2015 the United Stated District Court for the Eastern District of Tourovia denied the TCC's motion for summary judgment pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, and found in favor of the Petitioner as a matter of law. *Id.* at 26. The TCC appealed the district court's decision to the United States Courts of Appeals for the Twelfth Circuit. *Id.* at 16. On June 1, 2015 the Twelfth Circuit reversed the district court's holding that the TCC policies did not violate RLUIPA. *Id.* at 22. Petitioner appealed to the Supreme Court of the United States of America.

OPINIONS BELOW

The opinion of the Twelfth Circuit is reported at 983 F.3d 1125 (12th Cir. 2015) (indicated in the record at R. at 16-26). The opinion of the District Court for the Eastern District of Tourovia is reported at 985 F. Supp. 2d 123 (N.D.T.O. 2015) (indicated at R. at 2-15).

SUMMARY OF THE ARGUMENT

This court should affirm the Twelfth Circuit's opinion that neither Directive 98 nor Directive 99 violated RLUIPA. RLUIPA provides a statutory cause of action for institutionalized persons alleging the substantial burdening of religious exercise. 42 U.S.C. § 2000cc-1(a). Petitioner has failed to show that he has been substantially burdened by either directive. RLUIPA's legislative history expressly states that Petitioner must prove that he was substantially pressured to alter his religious beliefs in order to have been substantially burdened. As a governmental institution, the TCC must equally provide for the needs of all inmates. Thus, they may not place the religious requirement of one inmate over the needs of other inmates. In the alternative, even if Petitioner could prove that Directives 98 and/or 99 substantially burdened him, the TCC demonstrated that both directives were the least restrictive means to further the its compelling governmental interest.

First, Directive 98 does not substantially burden Petitioner because it does not pressure Petitioner to alter his beliefs. For financial and security reasons, inmates cannot reasonably expect excessively individualized worshipping conditions. Moreover, Directive 98 was enacted to protect the safety of all inmates by deterring gang-related activity and ensuring that inmates of all religious affiliations return to their cells before the final head count. Petitioner is fully capable of adhering to all the laws of his religion while complying with Directive 98. The TCC policy permits all inmates to pursue their religious practices individually and provides ample opportunities to worship in groups. For example, Petitioner is free to pray in the morning and in the evening inside of his cell. Although NOI members prefer to pray in the company of other adherents, group worshipping is not a religious requirement of NOI. Rather, the TCC has done everything it can to allow Petitioner to completely comply with his religion, while refraining

from applying any pressure on Petitioner to alter or modify his beliefs. Therefore Directive 98 does not substantially burden Petitioner.

Second, Directive 99 does not modify or alter Petitioner's belief because the backsliding provision is only triggered subsequent to an inmate's infringement on their own religious requested accommodations. Backsliding is the term used to describe inmates who fail to follow the laws of their affiliated religion. Directive 99 was designed in order to cater to inmates with authentic beliefs. The TCC's goal, *inter alia*, is to ensure that all prisoners are treated equally, to preserve financial efficiency, and to maintain prison security. Moreover, the TCC has done everything in its power to accommodate Petitioner's Halal diet. Petitioner, however, voluntarily violated his beliefs when he allegedly acquired the meatloaf. Accordingly, Petitioner has failed to show Directive 99 has substantially burdened him.

As to the least restrictive means prong of RLUIPA, Directive 98 was created in the wake of prayer service volunteers relaying gang orders from incarcerated members to gang-affiliated individuals outside of the prison's walls. It is common knowledge that gang activity poses an incredible security risk to the prison and the TCC was forced to act swiftly. Additionally, the TCC enacted Directive 98 primarily to ensure that inmates of all religious groups were back in their cells promptly at 8:30 p.m. for the final head count. Directive 98 clearly states that for security reasons, no inmate may leave his cell for any reason after the last head count. To grant Petitioner's request would impose a heightened staffing burden on the TCC, which would impact the TCC's ability to ensure the prison is safe and secure. Thus, the TCC had no alternative means other than to reduce the prayer services to a number that they would effectively maintain safety. Accordingly, the TCC properly demonstrated that the implementation of Directive 98 was the least restrictive means to further its compelling government interest.

Finally, Directive 99 was designed to maintain security, budgetary considerations and the orderly operation of the institution. Petitioner incorrectly claims to be entitled to his religious diet at the expense of all other inmates. Forcing the TCC to remove the backsliding provision could encourage inmates to break their religious diets when they saw fit, and the TCC would have no recourse. Religious dietary programs are expensive and can cause a financial strain. Prisons must have the financial freedom to effectively budget and to accommodate the needs of all prisoners, not just those of a minority. Furthermore, should the TCC comply with Petitioner's request, then it may be forced to provide special accommodations not available to other inmates and/or members of other religious groups. These special accommodations could potentially breed resentment among inmates, which poses a security concern. Thus, the TCC has no less restrictive alternative means available that would effectively promote its government interests in maintaining security, orderly operation and financial efficiency.

Accordingly, this Court should affirm the Twelfth Circuit and find that Directives 98 and 99 do not violate RLUIPA. Neither Directives substantially burdens Petitioner because he was not pressured to modify or alter his religious beliefs. Furthermore, both Directives use the least restrictive means available to the TCC in order to maintain the security and financial efficiency the prison.

ARGUMENT

This court should affirm the Twelfth Circuit's holding that the TCC Directives do not violate RLUIPA. Petitioner has failed to show that either Directive has substantially burdened him. In the alternative, even if Petitioner could prove that he was substantially burdened, the TCC has successfully met its burden by demonstrating that both directives were the least restrictive means to further its compelling governmental interest.

Section 3 of RLUIPA provides that "[n]o government shall impose a substantial burden on the religious exercise" of an institutionalized person unless the government demonstrates that the burden "is the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000cc–1(a); *see also Holt v. Hobbs*, 135 S. Ct. 853, 856 (2015). As a threshold matter, the court must first determine whether the conduct at issue is a protected religious exercise pursuant to RLUIPA. RLUIPA defines "religious exercise" to include 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). In *Cutter*, this Court made clear that the "exercise of religion" often involves not only belief and profession, but also the performance of physical acts such as assembling with others for a worship service or participating in sacramental use of bread and wine. *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (internal citations omitted). Here, consistent with the board definition of religious exercise, it is undisputed that an additional prayer session and a religious dietary plan would fall under RLUIPA protection. Thus, the issue now becomes whether both Directives substantially burden Petitioners religious exercise. *Garner v. Kennedy*, 713 F.3d 237, 241 (5th Cir. 2013); *see also* 42 U.S.C. § 2000cc-2(b). If Petitioner successfully shows an imposition a substantial burden, the burden then shifts to the TCC to show that Directive 98 and 99 were the

least restrictive means to furthering its compelling interest of security, safety, and administrative efficiency.

I. THE TCC HAS NOT SUBSTANTIALLY BURDENED PETITIONERS RELIGIOUS EXERCISE TO THE POINT PETITIONER WAS PRESSURED TO SIGNIFICANTLY MODIFY HIS RELIGIOUS BELIEF.

The TCC policies are fully receptive to allowing all inmates the freedom to pursue their religious practices and thus do not impose a substantial burden on any religious exercise. R at 6. The threshold inquiry under RLUIPA is whether the challenged governmental action substantially burdens the exercise of religion. *Baranowski v. Hart*, 486 F.3d 112, 124 (5th Cir. 2007). RLUIPA, however, fails to define "substantial burden," and the courts that have analyzed it are not in agreement. *Adkins v. Kaspar*, 393 F.3d 559, 568 (5th Cir. 2004).

The Eleventh Circuit, for example, held instead that a "substantial burden" is one that results "from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct." *Adkins*, 393 F.3d at 568-69 (*citing Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004)). Taking a drastically different approach, turning to *Black's Law Dictionary* and *Merriam–Webster's Collegiate Dictionary,* the Ninth Circuit defined a "substantial burden" as one that imposes "a significantly great restriction or onus upon such exercise." *Adkins*, 393 F.3d at 568 (*citing San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)). On the other hand, the Fifth Circuit held that, for purposes of applying the RLUIPA, a government action or regulation creates a "substantial burden" on a religious exercise if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs. *Adkins*, 393 F.3d at 569-70 (*see also Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006)). The Fifth Circuit further unequivocally maintains that the substantial burden analysis must be performed on a case-by-case, fact specific

basis. *Baranowski,*486 F.3d at 125. Moreover, the Eighth Circuit requires the burdensome practice to affect a "central tenet" or fundamental aspect of the religious belief. *Id.* at 568 (*citing Murphy v. Missouri Dep't of Corrections*., 372 F.3d 979 (8th Cir. 2004)).

Conversely, the Seventh Circuit asserts that, "in the context of the RLUIPA's broad definition of religious exercise, a regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise *effectively impracticable*." *Adkins*, 393 F.3d at 568 (*citing Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003)). More specifically, the Seventh Circuit in *Daly* ruled that revoking a prisoner's ability to partake in a religious diet does not substantially burden the inmate unless it "prevents or inhibits religiously motivated conduct or compels conduct contrary to religious belief." *Daly v. Davis*, 2009 U.S. App. LEXIS 6222 (7th Cir. 2009); *see also Koger v. Bryan*, 523 F.3d 616 (7th Cir. 2008); *Navajo Nation v. United States Forest Serv.*, 523 F.3d 1058 (9th Cir. 2008); *Brown-El v. Harris*, 26 F.3d 68 (8th Cir. 1994).

Nevertheless, RLUIPA's legislative history reveals that "substantial burden" is to be interpreted by reference to the Religious Freedom Restoration Act of 1993 (RFRA). *Grace United Methodist Church v. City Of Cheyenne*, 451 F.3d 643, 661 (10th Cir. 2006) (*citing* 146 CONG. REC. 7774-01, 7776). Likewise, this Court's pronouncement on the meaning of "substantial burden" explains that

> [w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby **putting substantial pressure on an adherent to modify his behavior and to violate his beliefs**, a burden upon religion exists.

Thomas v. Review Bd. of Indiana Employment Sec. Div., 450 U.S. 707 (1981) (Emphasis added). Moreover, "**should 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**." *Cutter v. Wilkinson*, 544 U.S. 709, 726 (2005) (Emphasis added). Additionally, in Cutter this Court pronounced that when applying RUILPA there would be a "standard with due deference to the experience and expertise of prison and jail administrators." *Id.* at 723. The deference given to the prison and jail officials is important because they are the experts and they are the ones that must establish regulations that are necessary in order to maintain order, security, discipline, and they must do so under the financial constraints placed on them. *Id.* at 722-23. Lastly, this court proclaimed such deference is imperative because prison administration are the experts on how to best go about applying RLUIPA without "unduly burdening" the prison. *Id.* at 726.

In 1988, this Court revisited the *Thomas* decision *Lying. Adkins*, 393 F.3d at 570 (*citing Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988). In *Lyng*, the Government sought to build a road through an area of public land that was used by several Native American tribes. *Id.* at 569. The plaintiff, a Native American organization, sought to block construction of the road on the grounds that construction of the road would substantially burden the practice of their faith. *Id.* The *Lyng* court, ultimately denied the plaintiffs claims and rejected any reading of *Thomas* that implied that "incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require government to bring forward a compelling justification for its otherwise lawful actions." *Adkins*, 393 F.3d at 570 (*citing Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)).

Similarly, in *Adkins*, the plaintiff insisted that his inability to assemble on every Sabbath and every Yahweh Evangelical assembly ("YEA") holy day imposed a "substantial burden" on

his religious exercise in violation of RLUIPA. *Adkins*, 393 F.3d at 566. Although the *Adkins* court found evidence of the aforementioned burden, the court held that it resulted from "a dearth of qualified outside volunteers available to go to [the prison] on every one of those days, not from some rule or regulation that directly prohibits such gatherings." *Id.* at 571. Thus, the *Adkins* court held the requirement of an outside volunteer did not place a substantial burden on the plaintiff's religious exercise under RLUIPA, as presently, the plaintiff and other YEA members were permitted to gather any time that the chaplain was available. *Id.*

A. Directive 98's Prohibition Of Nightly Services For Members Of The Islamic Faith Does Not Substantially Burden Petitioners Religious Exercise In Violation Of RLUIPA.

Under this Court's jurisprudence Directive 98's prohibition of nightly services has not substantially burdened Petitioners religious exercise by forcing Petitioner to significantly modify his religious practices. Here, Petitioner asserts three different theories in support of his argument that the Directive substantially burdens his religious exercise in violation of RLUIPA. First, Petitioner asserts that he is entitled to additional worship accommodation because, as per the *Qu'ran*, a congressional prayer service must be held every night. R. at 5. Second, Petitioner claims that he wanted additional prayer services because he was prevented from properly praying in his cell due to the ridicule and lewd behavior of his cellmate. *Id.* at 4. Third, Petitioner asserts that praying in a cell, where a toilet is only a few feet away, is a disgrace to Allah's preference that prayers be said in a clean and solemn environment with other members of his faith. *Id.* at 4.

Contrary to Petitioner's first assertion, although members of NOI **prefer** to pray in the company of each other, **the religion does not mandate such accommodations** outside of the holy month of Ramadan and on Friday evenings. *Id.* (Emphasis added). *Id.* Moreover, the excerpt of the *Qu'ran* that Petitioner included in his formal grievance does not suggest

otherwise. *Id.* at 5. The aforementioned excerpt merely highlights the importance of the late evening "Obligatory and Traditional" prayer. Nowhere does the aforementioned excerpt attest to Petitioners claim that a congressional service for him and his NOI brothers is in fact obligatory. Thus, Petitioner's assertion that he is entitled to additional worship accommodations outside of his cell and with fellow NOI members is unsupported. *Id.* at 5. In fact, as noted by the Twelfth Circuit, Petitioner's prayer ritual, at a minimum, requires the inmate to stand, bend, and kneel in a stationary location. *Id.* at 18.

Moreover, the TCC is fully receptive to allowing all inmates the freedom to pursue their religious practice. *Id.* at 4; *see also Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007) (finding that defendants actions preventing plaintiff from congregating with other Jewish inmates on many Sabbath and Jewish holy days did no create a substantial burden because the prison allowed all offender to worship according to their faith preference in their cells using allowed items such as sacred texts, devotional items, and materials). In fact, analogous to *Adkins*, Petitioner is free to attend any/all of the designated prayer services that are supplied daily by the TCC. R. at 4-6. Additionally, Petitioner is also free to worship in cells while using the allowed items such as sacred texts, devotional items, and materials. *Id.* at 6.

Second, Petitioner has presented no evidence to prove that his cellmate was actually engaging in the negative conduct described in the grievance. *Id.* at 4. Even if, *arguendo*, Petitioner had produced such evidence, the TCC policy did not place a substantial burden on Petitioner. In fact, Warden Echols proposed to Petitioner that a better strategy would simply be to request a transfer out of his current cell to see if a new cellmate would be more respectful of his personal prayer time. *Id.* at 6. Consequently, providing Petitioner with alternative methods to

his unsubstantiated claim in no way significantly modifies his religious behavior and beliefs. Therefore, Petitioner failed to put forth evidence of the alleged negative conduct. *Id.* at 4.

Third, Petitioner's contention that he is required to pray in a clean and solemn environment with other members of his faith is equally unfounded for similar reasons as his previous assertions. *Id.* at 4. NOI requires adherents to wash themselves and their clothes, **as best they can**, and secure a clean surface on which to kneel and face Mecca. *Id.* at 4 (Emphasis added). As a general matter, Petitioner's overall contentions exemplify the actions the *Cutter* court aimed to deter. *Cutter v. Wilkinson*, 544 U.S. 709 (2005). In *Cutter*, the court made clear that "**should 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**." *Id.* at 726 (Emphasis added). Accordingly, not only have Petitioners requests for religious accommodations become excessive, but also, Petitioner has failed to meet his burden in showing that the TCC policy substantially burdened his religious exercise. More specifically, Petitioner failed to demonstrate how the denial of an **additional, non-religiously mandatory,** nightly service pressured Petitioner to significantly modify his religious behavior and beliefs. (Emphasis added).

B. Directive 99's Reservation Of The TCC's Right To Remove An Inmate From A Religious Diet Does Not Substantially Burden Petitioner's Religious Exercise In Violation Of RLUIPA.

Pursuant to this Court's pronouncement in *Thomas*, this court should affirm the Twelfth Circuit decision and hold that Directive 99 does not violate RLUIPA. Directive 99 is a prison policy that **allows inmates to partake in a religious diet** while reserving the right to **remove an inmate from that diet only if the inmate is backsliding**. (Emphasis added). The court should use the same standards as aforementioned to determine that removing Petitioner from the

religious dietary program did not substantially burden his religious exercise. Thus, the decision of the Twelfth Circuit as to this issue must be upheld.

Petitioner has failed to demonstrate that Directive 99 and the Backsliding clause caused him a substantial burden in practicing his religion. Petitioner claimed that being removed from a dietary program **forced him to disobey** the laws of the NOI. R. at 2. (Emphasis added). Contrary to Petitioner's unfounded claim that backsliding provisions violate RLUIPA, no Circuit Court has in fact reached this conclusion in the absolute. Additionally, **Petitioner willingly** violated his own religious diet. (Emphasis added).

1. Regarding Religious Diet Cases, The Correct Application of the *Thomas* Substantial Burden Definition is found in *Daly*.

No circuit court has held that Backsliding provisions per se violates RLUIPA. However, the Circuits are split on when they should allow Backsliding provisions. The *Daly* court holds that revoking a prisoner's ability to partake in a religious diet does not substantially burden the inmate if it is the inmate who first breaks the diet. *Daly v. Davis*, 2009 U.S. App. LEXIS 6222 (7th Cir. 2009). In *Daly*, the prison removed James Daly off the dietary program three times in congruence with 28 C.F.R. (s) 548.20(c). *Id.* at 2. The court ruled that removing Daly from the program in no way created a substantial burden because it was Daly's own actions, by eating non-kosher meals that removed him from the program. *Id.* at 6-7. The program only penalizes the consumption of non-kosher foods, which is not religiously motivated. *Id.*

The *Daly* standard is proper because the definition of "substantial burden" mirrors that set forth by this Court's in *Thomas*. *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707 (1981) (defining substantial burden to mean a substantial pressure on an adherent to **modify his behavior and to violate his beliefs**). (Emphasis added). Under *Daly,* **the prison does not try to alter the inmate's beliefs**; rather, the prison only removes the inmate **when he**

has already broken his diet. (Emphasis added). Accordingly, directives like that in *Daly* have no effect on religious activity, and do not substantially burden religious activity, as they only punish the consumption of non-religious foods. *Daly*, 2009 U.S. App. LEXIS at 6.

Daly is most analogous to Petitioner's claim. Here, similar to *Daly*, the Backsliding provision only takes effect after an inmate voluntarily violates his religious belief. Furthermore, just as in *Daly*, the only recourse to backsliding is the inmate's removal to the religious diet program. Lastly, as in *Daly* and in the current case, the policy of the prisons were approved by the Chaplain of said prisons. Petitioner relies on the Fourth, Sixth and Seventh Circuits that have all expressed concerns with certain applications of Backsliding provisions. *Lovelace v. Lee*, 472 F.3d at 187; *Colvin v. Caruso,* 605 F.3d 282 (6th Cir. 2010); *Reed v. Faulkner*, 842 F.2d 960 (7th Cir. 1988). However, the *Baranowski* Court unequivocally maintains that the substantial burdens analysis must be performed on a case-by-case, fact specific basis. *Baranowski,* 486 F.3d at 124 (quoting *Adkins*, 393 F.3d at 571). The Twelfth Circuit correctly navigated the facts of this case and found that the concerns of the aforementioned circuits are not found. The concerns of the aforementioned circuits are not relevant for the following reasons. Notably, the Sixth Circuit discusses this issue in dicta. *Colvin,* 605 F.3d at 295; R. at 10. Second, the *Loveless* Court held that a backsliding provision was improper because it forced the inmate to not participate in Ramadan, which is one of the holiest holidays for members of NOI. *Loveless*, 472 F.3d at 187; R at 9,10. Third, the Seventh Circuit's most recent opinion on the issue is *Daly.* Therefore, these cases do not touch on the issues of this case and *Daly* is the leading persuasive case on the matter of backsliding provisions.

2. There Is No Substantial Burden Because Petitioner Has Not Met the *Daly* Standard.

Contrary to Petitioner's claim that the backsliding provision imposes a substantial burden, Petitioner is never forced to do anything that would violate his religion nor is he compelled to modify his beliefs. As a federal prison with goals to maintain order, safety, and security, it was well within TCC's ability to remove Petitioner from the religious diet program. As in *Daly*, Directive 99 permits Petitioner to actively practice his religion, while also protecting government interests by removing backsliding inmates who willingly broke their own beliefs. R. at 20; *Daly,* 2009 U.S. App. LEXIS 62220. As in *Daly*, it is not a substantial burden to have a backsliding provision because it only takes effect when the inmate has unilaterally broken the diet. *Daly,* 2009 U.S. App. LEXIS 62220; R. at 26. Moreover, a backsliding provision such as this one does not create a substantial burden because it does not prevent religious activity and it does not compel Petitioner to alter any of his religious beliefs. As the record reflects, Petitioner took it upon himself to break his religious diet, as he was found with meatloaf under his bed. R. at 20. Moreover, it is common knowledge that consuming meatloaf is a violation of a halal diet, which is a similar violation as found in *Daly*. *Daly,* 2009 U.S. App. LEXIS 62220. Thus, by acquiring meatloaf, Petitioner altered his religious beliefs and essentially removed himself from his religious diet. Therefore, just as in *Daly*, Directive 99 places no burden on Petitioner to violate his religious belief. . *Daly,* 2009 U.S. App. LEXIS 62220.

Unlike *Daly,* there is no prison official who directly saw Petitioner consume meatloaf. R. at 20. This alone, however, does not discredit the actions of the TCC. The TCC in response to claims that Petitioner was threatening his cellmate and taking his cellmates meatloaf searched Petitioner's cell. *Id.* at 6. During this search, prison officials found meatloaf concealed in a napkin, hidden under Petitioners bed. *Id*. The aforementioned information was sufficient for the TCC officials to use their expert judgment and determine the best course of action. Thus,

penalizing Petitioner for making threats and for taking advantage of prison programs was appropriate.

In this case the words of justice Ginsburg and of the Supreme Court could not be more relevant, "should an inmate request for a religious accommodation become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective function of an institution, the facility would be free to resist the imposition." *Cutter*, 544 U.S. at 726. Petitioner's actions of threatening his cellmate and steeling his cellmate's meatloaf, jeopardized the safety of his cellmate. R. at 20. Petitioner also financially burdened the prison by using prison funds to follow a dietary restriction that he had no intent on following. *Id*. The TCC had no other option than the one presented to it. The TCC administration, as this Court proclaims, is in the best position to determine how to create a safe, orderly, functional, financially stable correctional facility. This Court made clear in *Cutter*, the prison administrators have the utmost expertise on how to best create regulations that will protect the institution, the faculty and the inmates. Accordingly, this Court should affirm the Twelfth Circuit's decision because the TCC and Directive 99 do not violate RLUIPA because Petitioner has not been substantially burdened.

II. THE TCC'S POLICIES WERE THE LEAST RESTRICTIVE MEANS TO FURTHER THE COMPELLING GOVERNMENTAL INTEREST OF SECURITY, SAFETY, AND ADMINISTRATIVE EFFICIENCY.

In the alternative, even if this Court determines that a substantial burden was imposed onto Petitioners religious exercise, the TCC would still prevail because Directive 98 and 99 were the least restrictive means to furthering TCC's compelling interest of security, safety, and administrative efficiency. Pursuant to RLUIPA, once a plaintiff shows that the government action imposes a substantial burden on his religious exercise, the burden then shifts to the

government to show that the action was supported by a compelling interest and is the least restrictive means of furthering that compelling interest. *Garner v. Kennedy*, 713 F.3d 237, 241 (5th Cir. 2013).

In *Cutter*, this Court emphasized that although RLUIPA requires a compelling interest, "context matters." *Garner v. Kennedy*, 713 F.3d 237, 241 (5th Cir. 2013) (citing *Cutter*, 544 U.S. at 723). As a public policy matter, lawmakers supporting RLUIPA were mindful of the urgency of discipline, order, safety, and security in penal institutions. *Cutter*, 544 U.S. at 723. Thus, courts should apply the "compelling governmental interest" 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. *Baranowski*, 486 F.3d at 125 (citing *Cutter*, 544 U.S. at 723). RLUIPA is "not meant to elevate accommodation of religious observances over the institutional need to maintain good order, security, and discipline or to control costs." *Id.* Moreover, as noted by the *Hoevenaar* Court, deference is mandated by the legislative history of RLUIPA. *Hoevenaar v. Lazaroff*,422 F.3d 366, 371(6th Cir. 2005).

In *Hoevenaar*, the plaintiff, a Native American of Cherokee ancestry serving a life sentence in the Ohio prison system, asserted, *inter alia*, that prison rules regulating hair length created a substantial burden on his religious exercise in violation of RLUIPA. *Hoevenaar,* 422 F.3d at 366. The Sixth circuit reversed, holding that the district court "failed to give proper deference to prison officials with respect to the issue of whether a 'kouplock' presented security, identity, or other concerns similar or in addition to those presented by the grooming regulation in general." *Id.* at 367. The *Hoevenaar* court highlighted the problematic nature of individualized exemptions noting that they cause resentment among the other inmates, a copycat effect, and

problems with enforcement of the regulations due to staff members' difficulties in determining who is exempted and who is not. *Id.* at 371. The court further opined that in conducting an analysis of whether the regulation in issue was the least restrictive means of furthering the government's compelling security interest **a court should not substitute its judgment in place of the experience and expertise of prison officials**. *Id.* at 370. (Emphasis added); see also *Espinosa v. Wilson*, 814 F.2d 1093 (6th Cir. 1987) (holding that once prison officials have provided expert testimony sufficient to justify the security regulation and resultant impingement of prisons rights, the courts must defer to the expert judgment of the prison officials unless the prisoner proves by substantive evidence that the officials have exaggerated their response to security conditions); see also *Spratt v. R.I. Department of Corrections*, 482 F.3d 33 (1st Cir. 2007) (highlighting that the Congressional sponsors of RLUIPA stated inadequately formulated prison regulations and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet the act's requirements).

In *Spratt*, a prisoner in a maximum-security unit serving a life sentence for murder brought action against the prison asserting that the prisons policy prohibiting him from preaching to his fellow inmates was in violation of RLUIPA. *Spratt*, 482 F.3d at 34-38. The *Spratt* court reversed summary judgment in favor of the prison concluding that the prison merely offered conclusory statements that a limitation on religious freedom was required for security, health or safety. *Id.* at 42. The court deemed such conclusory statements insufficient to prevail on a summary judgment motion. *Id.* at 43. Moreover, the court emphasized that the prison must demonstrate, and not just assert, that the rule at issue is the least restrictive means of achieving the compelling governmental interest. *Id.* at 42.

In *Baranowski*, a Jewish inmate incarcerated in Texas prison contended that the prison imposed a substantial burden on his religious practice. *Baranowski, 486* F.3d at 116. There, distinguishable from this case, the prison failed to provide weekly Sabbath and other holy day services, prohibited Jewish inmates from using the chapel for religious services, and denied providing inmates with a kosher diet. *Id.* Subsequently, the *Baranowski* court held that not providing any religious diet programs does not violate RLUIPA because the prison's budget "is not adequate to cover the increased expense of either providing a separate kosher kitchen or bringing kosher from the outside; that TDCJ's (the prison) ability to provide nutritionally appropriate meal to other offenders would be jeopardized." *Baranowski*, 486 F.3d at 125. Furthermore, the *Baranowski* court said if the prison did implement a kosher program it would breed resentment in all other inmates, which is a security concern. *Id.* 125, 126. The court also stated that the demand for religious diets would increase and further cripple the prison budget. *Id.* at 125. The district court granted summary judgment for the defendant and the Fifth circuit affirmed. *Id.* at 126.

Moreover, the *Brown-El* court explains what relationship must exist between government interest and prison policy in order for it to be valid. *Brown-El v. Harris*, 26 F.3d 68 (8th Cir. 1994). The *Brown-El* court emphasizes that if there is a rational relationship between a prison policy and security than there is a compelling government interest. *Id.* In *Brown-El,* an inmate was denied access to the fasting list for Ramadan. *Id.* at 69. There, the prison implemented a strict policy that provided inmates would be removed from the Ramadan fasting list if an inmate was found to have willingly broken his or her fast. *Brown-El*, 26 F.3d at 68. The Eighth Circuit found that the prison policy was appropriate because due to the reduced numbers of night prison staff, the prison faces a greater risk of inmate escape. *Id*. at 68. The court held that because there

was a reasonable relation between the prison policy and security that the policy did support a compelling government interest. *Id*. at 69.

Finally, in order to demonstrate that the policy at issue is the least restrictive means of furthering a governmental interest a showing is required that no other means exists to achieve the desired goal without imposing a substantial burden on the exercise of religion by the objecting party. *Holt v. Hobbs*, 135 S. Ct. 853, 858 (2015).

A. Directive 98 Was The Least Restrictive Means To Further The Compelling Government Interest.

Even if this Court determines that a substantial burden was imposed onto Petitioner's religious exercise, the TCC would still prevail because Directive 98 was the least restrictive means to furthering TCC's compelling interest of security, safety, and administrative efficiency. Firstly, as aforementioned, "context matters" in the application of reaching the conclusion of whether a compelling government interest is present. Secondly, Directive 98 is reasonably related to the compelling government interest of security, safely and/or financial efficiency. Thirdly, to further the forgoing compelling government interests the TCC used the least restrictive means possible.

1. TCC Goals Of Maintaining Security, Safety, And Administrative Efficiency Constitute A Compelling Governmental Interest.

Here, the TCC has a compelling governmental interest in maintaining prison security, as well as in personnel and financial concerns for the prison, its inmates and employees. R. at 7. As seen in *Hoevenaar,* allowing additional prayer accommodations imposes significant heightened staffing burdens. *Id.* at 25. In *Cutter*, this Court held that prison security is a compelling governmental interest. *Cutter,* 544 U.S. at 725. Additionally, as established by *Baranowski,* maintaining good order and controlling costs are a compelling governmental interest.

Baranowski, 486 F.3d at 126. Thus, TCC easily satisfies the requirement of a having a compelling governmental interest.

2. Directive 98 Was The Least Restrictive Means Because the TCC Lacked An Alternative Means To Reach The Desired Goal.

Turning to the least restrictive means test, unlike in *Spratt*, where the prison merely submitted one piece of evidence to support their assertion, the TCC provided a lengthy affidavit attesting the validity of the prison's reasons for Directive 98. *Spratt*, 482 F.3d at 39; R. at 6-7. Moreover, distinguishable from *Spratt*, the Director of the Chaplaincy, Abreu, attested to the aforementioned affidavit validity. *Id.* Furthermore, the affidavit also included an addendum, which reflected the TCC's documented cost containment plan. *Id.*

In the present matter, unlike in *Spratt*, the sole reasoning behind the creation of Directive 98 was the August 1998 incident. R. at 4. In August 1998 the TCC initiated Directive 98 pursuant to discovering that, during the prayer services, the service volunteer was relaying gang orders from incarcerated members of the Christian community to gang-affiliated individuals outside of the prison's walls. *Id.* Moreover, several members of the Christian and Sunni Muslim groups who were attending the night prayer services attempted to disregard security policy. *Id.* The aforementioned members remained in their prayer rooms longer than authorized, disregarding the last in-cell daily evening headcount. *Id.* As a result, due to security and administrative efficiency, no inmate was permitted to leave their cells for any reason after the last head count. R at 25.

Additionally, the TCC successfully demonstrated that it lacked other means of achieving its' stated goals. Similar to *Hoevenaar*, allowing NOI members to request an additional prayer service before the last head court would cause resentment among the other inmates, may produce a copycat effect, and induce problems with enforcement of the regulations due to staff members'

difficulties in determining who is exempted and who is not. *Hoevenaar,*422 F.3d at 371. There is no alternative way for the TCC to accomplish the both goals of eliminating gang communication and ensuring safety/security other than the implementation of Directive 98. For example, if the August 1998 incident only dealt with the issue of gang communication it could be argued that imposing an overall ban of nightly services would not be considered the least restrictive mean. Nevertheless, the August 1998 brought forth two distinct issues that could only be handled in one way. Accordingly, the TCC has successfully met their burden by establishing that Directive 98 was the least restrictive means in furthering their compelling governmental interest of maintaining prison security, personnel concerns such as heightened staffing burdens, and financial concerns.

B. Directive 99 Maintains Compelling Government Interests and Uses The Least Restrictive Means Possible.

Even if, *arguendo*, this court finds a substantial burden, then Petitioner will still fail to demonstrate that his religious exercise has been substantially burdened because the TCC has demonstrated that the least restrictive means possible were used to advance compelling interests. Firstly, as aforementioned, this Court has stated that due deference must be given to prison administrators because they are the experts in maintaining order, security, discipline etc. *Cutter,* 544 U.S. at 725. Second, Directive 99 is reasonably related to a security and/or financial risk than it is enforcing a compelling government interest. Finally, to further these compelling government interests the TCC has used the least restrictive means possible.

1. The TCC's Financial and Security Concerns are Compelling Government Interests.

Firstly, as stated in *Cutter*, due deference must be given to prison officials. *Id*. In this case the TCC is in the best position to make policies. TCC official's judgment on security and

financial concerns should be trusted as they are the experts on the matter. This court should not replace the reasoning of the TCC with their own.

Secondly, as in both *Baranowski* and *Brown-El,* our case is a matter of prison security. *Baranowski v. Hart*, 486 F.3d 112; *Brown-El v. Harris*, 26 F.3d 68.Petitioner, a convicted drug dealer, has **threatened his cellmate** and in doing so **extorted him** into giving up his meatloaf. R at 20. (Emphasis added) Petitioner was in possession of the meatloaf, he violently and willingly broke his own religious rules. *Id.* at 20. Directive 99, as in *Brown-EL*, reserves the right to remove petitioner under such circumstances **to protect the security and financial well being** of the prison. *Id* at 26; *Brown-El v. Harris*, 26 F.3d 68. (Emphasis added). If the TCC could not remove backsliding inmates from the religious dietary program the result could financially cripple the TCC as noted in *Baranowski*. *Baranowski v. Hart*, 486 F.3d 112. The security fears of *Baranowski* exist in this case as well*;* if the TCC were to create special regulations for the NOI's or religious inmates it would breed jealousy and contention creating a security concern. *Baranowski v. Hart*, 486 F.3d 112. These concerns of the TCC are reasonably related to Directive 99 and thus the Directive is enforcing a government interest.

2. The Test for Least Restrictive Means.

Finally, the test for least restrictive means is that the government must show that it lacks other means of achieving its desired goal without imposing a substantial burden on the inmate. *Holt,* 135 S. Ct. 853, 858 (2015).

The TCC has filed a lengthy affidavit, with an addendum that lays out the stratagem and financial status of Directive 99. Although the particulars of the affidavit and addendum are not in the record, this court is privy to the other options available to the TCC. The court knows that if the TCC allowed Petitioner to stay on the dietary program the financial burden could be

extraordinary. This is because the demand to be on dietary programs would increase when inmates know that the TCC does not enforce a penalty on breaking the religious diet. This is the exact problem in *Baranowski*. 486 F.3d at 125-26. There is also the same security issue as in *Baranowski*, where giving special treatment to one group could cause animosity between prisoners jeopardizing the entire facility. *Id.* The TCC in their strategy avoided any policy that would create the aforementioned burdens and enacted Directive 99, which was the least restrictive policy they could enact to further the compelling government interests of security and financial well being.

Directive 99 forwards a compelling government interest. Directive 99 was written to further the security and financial stability of the TCC as well as provide religious freedom to inmates. Furthermore, Directive 99 uses the least restrictive means possible to achieve that government interest. The backsliding provision only punishes those who choose to break their own religious diet, thus putting no pressure on the inmates to stray from their religious beliefs. For these reasons the TCC has not violated RLUIPA.

CONCLUSION

This Court should affirm the holding of the Twelfth Circuit and find that neither Directive 98 nor Directive 99 violates RLUIPA. The Petitioner has not been substantially burdened by the TCC because neither directive alters his religious exercise. Directive 98 still allows Petitioner to pray five times a day and does not interfere with NOI practices. Directive 99 does not substantially burden Petitioner because it does not interfere with his religious exercise its application is only triggered after an inmate violates his own religious diet. Alternatively, both directives are the least restrictive means to promote a compelling government interest. The security and the financial wellbeing of the TCC are compelling government issues and any

method less restrictive than the two used would sabotage those government interests. Therefore, the Twelfth Circuit's decision must be affirmed.

Respectfully Submitted,

Team 21