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 Correctional Center Chaplaincy Department,

RESPONDENTS.

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

BRIEF FOR PETITIONER

TEAM 6

TABLE OF CONTENTS

TABLE OF AUTHORITIES…………………………………………………………...……iii

QUESTIONS PRESENTED……………………………….………………………….viii

JURISDICTIONAL STATEMENT………………………………………………………ix

STATEMENT OF THE CASE……………………………………………………………1

Statement of Facts……………………………………………………………………1

Procedural History…………………………………………………………………...3

SUMMARY OF THE ARGUMENT…………………………………………………...4

ARGUMENT……………………………………………………………………………..6

I. THE DEFENDANTS' ENFORCEMENT OF TOUROVIA DIRECTIVE #98 VIOLATES RLUIPA BY MAKING MOHAMMED'S NIGHTLY PRAYER IMPOSSIBLE UNDER HIS RELIGION………………………………………..6

A. Mohammed's Right to Religious Exercise Was Substantially Burdened by Tourovia Prison's Denial of Evening Prayer Services because Mohammed Is Forced to Choose Between Facing Disciplinary Action or Violating His Religious Beliefs…………………………………………………………………6

1. *The History and Purpose of RLUIPA Show that It Requires Accommodations*…………………………………………………………………7
2. *Rules of General Applicability Are Not Exempt from RLUIPA*……………..……8
3. *RLUIPA Protects Religious Exercise Whether Central to or Compelled by the Religion*…………………………………………………………………………**10**

B. The Chaplain Requirement Is Not Supported by a Compelling Governmental Interest, and All Other Governmental Interests Can Be Achieved Through Less Restrictive Means……………………………………………………………12

1. *The TCC Has No Legitimate Interest in Protecting the Integrity and Authenticity of Religious Services*……………………………………………13
2. *All Other Governmental Interests Can Be Achieved Through Less Restrictive Means*………………………………………………………….………………..14

II. DEFENDANTS VIOLATED RLUIPA BY REMOVING MOHAMMED FROM HIS RELIGIOUS DIET AND FORCING HIM TO VIOLATE HIS RELIGION……………………………………………………………………………17

A. Tourovia Directive #99 Violates RLUIPA by Substantially Burdening the Religious Exercise of Imperfect Religious Observers…………….………...18

B. Tourovia Directive #99 Violates RLUIPA by Denying Prisoners Due Process Before Concluding Insincerity and Burdening Religious Exercise...22

1. *The TCC failed to provide Mohammed any opportunity to demonstrate his sincerity*..22
2. *Tourovia Directive #99 fails to consider any relevant factors before deciding that a worshipper is insincere*……………………………………………23

C. Enforcing Religious Vegetarian Diets Is Not a Compelling Governmental Interest, and There Are Less Restrictive Means of Furthering Any Legitimate Interests……………………………………………………….26

1. *There is no compelling governmental interest in removing Mohammed from the diet plan*……………………………………………………………..27
2. *There are less restrictive means to accomplish any legitimate interests that may exist*……………………………………………………………...29

CONCLUSION………………………………………………………………………30

TABLE OF AUTHORITIES

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Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014)……………………………….11, 29

Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993)………………………...10

City of Boerne v. Flores, 521 U.S. 507 (1997)…………………………………………………7

City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985)…………………………………27

Cruz v. Beto, 405 U.S. 319 (1972)……………………………………………………………13

Employment Division v. Smith, 494 U.S. 872 (1990)……………………………………..7, 8, 9

Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006)…………...17

Holt v. Hobbs, 135 S. Ct. 853 (2015)………………………………………………….…*passim*

Lyng v. Northwest Indian Cemetery Protective Ass'n., 485 U.S. 439 (1988)……………………9

Sherbert v. Verner, 374 U.S. 398 (1963)……………………………………………………...17

Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707 (1981)……………..13, 14, 25

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United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000)……………………..29

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COURT OF APPEALS CASES

A.A. ex rel. Betenbaugh, 611 F.3d 237 (5th Cir. 2010)……………………………………….23

Abdulhaseeb v. Calbone, 600 F.3d 1301 (10th Cir. 2010)……………………………………18

Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004)…………………………………….…...…9, 10

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Brown-El v. Harris, 26 F.3d 68 (8th Cir. 1994)……………………………………………………21

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Conyers v. Abitz, 416 F.3d 580 (7th Cir. 2005)…………………………………………….18

Daly v. Davis, 2009 U.S. App. LEXIS 6222 (7th Cir. 2009)………………………………..24, 27

Echols v. Kelly, 983 F.3d 1125 (12th Cir. 2015)………………………………………………3

Ford v. McGinnis, 352 F.3d 582 (2d Cir. 2003)………………….…………………………...10

Grayson v. Schuler, 666 F.3d 450 (7th Cir. 2012)……………………………………….…20

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Incumaa v. Stirling, 791 F.3d 517 (4th Cir. 2015)……………………………………………30

Karen B. v. Treen, 653 F.2d 897 (5th Cir. 1981)………………………………………………4

Lebaron v. Spencer, 527 Fed. Appx. 25 (1st Cir. 2013)…………………………………....18

Lovelace v. Lee, 472 F.3d 174 (4th Cir. 2006)…………………………………………………..18

McEachin v. McGuinnis, 357 F.3d 197 (2d Cir. 2004)………………………………..…..18, 28

Mestre v. Wagner, 502 Fed. Appx. 129 (3d. Cir. 2012)…………………………………………18

Moussazadeh v. Tex. Dep't of Crim. Justice, 703 F.3d 781 (5th Cir. 2012)…………20, 23, 25, 27

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Tagore v. United States, 735 F.3d 324 (5th Cir. 2013)……………………………………..23

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Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005)…………………………………………15

DISTRICT COURT CASES

Johnson v. Nev. ex rel. Bd. of Prison Comm'rs, 2013 U.S. Dist. LEXIS 139422 (D. Nev. 2013)……………………………………………………………………………………..18

Kelly v. Echols, 985 F. Supp. 2d 123 (N.D.T.O. 2015)……………………………………...3

Kuperman v. Warden, 2009 U.S. Dist. LEXIS 108576 (D.N.H. 2009)………………..…….20, 27

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United States v. Quaintance, 471 F. Supp. 2d 1153 (D.N.M. 2006)…………………………….24

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CONSTITUTIONAL AMENDMENTS

U.S. CONST. AMEND. I……………………………………………………………………..14, 27

U.S. CONST. AMEND. XIV…………………………………………………………………..…14

STATUTES

42 U.S.C. § 2000bb-1 (1993)………………………………………………………………...7

42 U.S.C. § 2000cc-1 (2000)…………………………………………………………………...…7

42 U.S.C.S. § 2000cc-1 (2015)…………………………………………………………..3, 6, 8, 10

42 U.S.C.S. § 2000cc-3 (2015)………………………………………………...…………15, 16

42 USCS § 2000cc-1 (a)(1)(A, B) (2015)…………………………….………………….13

42 USCS § 2000cc-5 (2000)…………………………………………….…………………8, 10

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QUESTIONS PRESENTED

1. Whether Tourovia Correctional Center's prison policy prohibiting night services to members of the Islamic faith violates RLUIPA.
2. Whether Tourovia Correctional Center's prison policy reserving the right to remove and inmate from a religious diet or fast, due to evidence of backsliding, violates RLUIPA.

JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Tourovia entered judgment on March, 7, 2015. The District Court exercised federal question jurisdiction over the present case based on 28 U.S.C. § 1331 (2015) and 18 U.S.C. § 1964(a), as the plaintiff brought a claim under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), a federal statute for injunctive relief against Defendants. This appeal was timely filed on March 7, 2016. The Supreme Court has appellate jurisdiction over this case based on 28 U.S.C. 1254 (2015).

STATEMENT OF THE CASE

Statement of the Facts

Siheem Mohammed (formerly Siheem Kelly) [1] is an inmate at the Tourovia Correctional Center ("TCC") who, after two years in prison, found his new faith in the Nation of Islam ("NOI") religion. *Id.* He filed the appropriate forms to change his religious affiliation to NOI, and requested to be called by his Islamic name "Mohammed." *Id*. There are six other acknowledged members of NOI along with Mohammed, all of whom have abstained from violence and "generally maintained satisfactory behavioral standing." *Id*. The *Salat* ("prayer guide" in Arabic) requires that NOI members pray five times daily: (1) Dawn, (2) Early Afternoon, (3) Late Afternoon, (4) Sunset and (5) Late Evening. R. at 3-4. Currently, TCC offers Nation members the opportunity to pray three times a day outside the cell. R. at 4. Any other prayers must be completed within the cell. *Id.* TCC does not assign cellmates based on religion, and Mohammed shares a cell with a non-NOI inmate. R. at 4, 5.

TCC Directive #98 mandates that in order to have a prayer service, a chaplain must be present to lead and supervise it. R. at 4, 25. Additionally, no nightly prayer services have been permitted since 1998, when a prison service volunteer was caught relaying gang orders during Christian prayer. R. at 4. Since this incident, the Tourovia Chaplain Requirement has been in place, no volunteers may lead prayer service, and no faith with fewer than ten members are entitled to a chaplain. *Id*. The TCC's stated purpose is twofold: to punish the prisoners for misusing the prayer services and to ensure all prisoners are in their cells at headcount. *Id*. Currently, the latest prayer time available is before the evening meal at 7:00 P.M. R. at 24.

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[1] Out of respect for the petitioner's wishes, this brief will refer to him as "Mohammed" throughout.

In February 2013, Mohammed, acting on behalf of the other six NOI members, filed a written request for two additional congregational nightly prayer services, one after the last meal at 7:00 P.M and another at 8:00 P.M. R. at 5. Mohammed later expressed a willingness to compromise on only one additional prayer service, during which he could conduct both the sunset and late evening prayers. *Id.* Mohammed has filed multiple grievances with the TCC, complaining that praying in a room with a toilet, with antagonistic non-NOI inmates, and outside of the company of fellow NOI members offends his deity, Allah. *Id.*

As a member of the NOI faith, Mohammed is barred from eating any meat not killed in accordance with the rules of Islam. ELIJAH MUHAMMAD, THE RIGHT WAY TO EAT 7 (Reprint Ed. 2008). Instead of requesting such meat, Mohammed has observed a strict vegetarian diet for over a decade. R. at 3. According to Tourovia Directive #99, the TCC may remove any inmate who is caught breaking their religious diet. R. at 6, 26. The policy does not provide for any hearing or procedures to determine truth or sincerity. R. at 26. After over a decade free of violence or dietary backsliding, the TCC received its first complaint about Mohammed from his new cellmate, who accused Mohammed of intimidating him in order to obtain meatloaf from the cellmate's regular meal. R. at 6. TCC guards searched Mohammed's cell, found meatloaf hidden under his pillow, and immediately removed him from the religious diet plan. *Id.* Mohammed denied the new cellmate's accusations, and refused to eat the regular meals at TCC. *Id.* He led a two-day hunger strike which only ended when the TCC force-fed him through tubes. *Id.* Having exhausted all administrative remedies, Mohammed brought his complaint to the Federal District Court of Tourovia, alleging that the prison's prayer and religious diet services policies violate the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). R. at 6.

Procedural History

Siheem Mohammed brings this cause of action against the Tourovia Correctional Center ("TCC") for declaratory and injunctive relief against Warden of TCC Kane Echols and Director of TCC Chaplaincy Department Saul Abreu (collectively "the Defendants"), alleging that TCC violated the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") by failing to provide exceptions or otherwise repeal Tourovia Directives #98 and #99 (collectively "the directives") which substantially burden Mohammed's religious exercise by preventing him from engaging in a nightly group prayer in a clean room and eating the diet required by his faith. R. at 2; 42 U.S.C.S. § 2000cc-1 (2015). The District Court for the Eastern District of Tourovia granted summary judgment to Mohammed, holding that the directives substantially burdened Mohammed's religious exercise. *Kelly v. Echols*, 985 F. Supp. 2d 123 (N.D.T.O. 2015); R. at 15. Furthermore, the directives did not further a compelling governmental interest that could not be furthered by less restrictive means. R. at 15.

The Twelfth Circuit Court of Appeals reversed this holding, vacating summary judgment for Mohammed and granting summary judgment for the Defendants. *Echols v. Kelly*, 983 F.3d 1125 (12th Cir. 2015); R. at 22. The Twelfth Circuit held that Mohammed's religious exercise was not substantially burdened, and the directives furthered a compelling governmental interest that could not be furthered by less restrictive means. R. at 20, 22. Mohammed brings this appeal to the Supreme Court of the United States of America.

SUMMARY OF THE ARGUMENT

RLUIPA is violated when a prisoner's religious exercise is substantially burdened by a governmental policy, and the government cannot demonstrate that the policy furthers a compelling governmental interest which cannot be furthered by less restrictive means. Initially, Mohammed bears the burden of demonstrating that (1) the activity at issue is a "religious exercise," and (2) it is substantially burdened by a governmental policy. As it is undisputed that Mohammed's requested prayer and religious diet are "religious exercises" under the meaning of RLUIPA, that will not be argued. (R. at 4, 16-17) *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981). The TCC's strict policies of requiring chaplains to run religious services, requiring a minimum offender interest to justify a service, and banning religious services after nightly headcount create an impossible ultimatum for Mohammed: either break prison rules to pray in a group outside of his cell each evening, or pray within his cell and violate his deeply held religious beliefs. This constitutes a substantial burden under RLUIPA, despite the policies' general applicability and the allegedly non-central nature of these religious requirements.

Furthermore, any legitimate interests promoted by the chaplain policy can be accomplished by less restrictive means, by providing Mohammed with a chaplain or exempting him from the chaplain requirement and using a guard or cameras to maintain security. The stated purpose of the chaplain requirement is "[t]o protect the integrity and authenticity of the beliefs and practices of religious services…." (R. at 25). To the extent this purpose exists to promote any "authentic" interpretation of religion, it is an impermissible purpose and likely violates the Establishment Clause. Further, any interest that is accomplished by these policies can be accomplished by placing a security guard or video camera in the room where Nation of Islam

members lead their own prayers. Finally, any costs acquired would be minimal, and RLUIPA requires the TCC to absorb such costs to avoid creating a substantial burden.

Additionally, Mohammed's religious exercise was burdened by the TCC's enforcement of Tourovia Directive #99 when he was removed from his vegetarian meal plan after allegedly violating his religious diet. Mohammed denies the allegations against him, but even assuming that they are true, complete removal from a religious diet plan after one infraction places a substantial burden on Mohammed's religious exercise. Failure and redemption are ubiquitous themes across all religions, and failure to adhere perfectly to one's religion does not show insincerity. Moreover, the Defendants' enforcement of Tourovia Directive #99 failed to consider all relevant factors and denied Mohammed any opportunity to demonstrate his innocence before mechanically concluding that he was insincere. A cursory look at several factors based in court precedent would show that Mohammed is, in fact, sincere in his beliefs. This policy violated RLUIPA by forcing him to choose between starvation and violation of his sincerely held beliefs.

Finally, there are no compelling interests in removing the insincere from vegetarian religious diets, because evidence shows that vegetarian meals are cheaper than regular meals. Even if cost control did constitute a compelling prison interest, a moderate additional cost cannot overcome Mohammed's valid RLUIPA claim and the prison could cut those costs by buying cheaper food. Mohammed is entitled under RLUIPA to an injunction requiring the TCC to remove these burdens to his religion by either providing exceptions to the applicable policies or ending them altogether.

ARGUMENT

I. THE DEFENDANTS' ENFORCEMENT OF TOUROVIA DIRECTIVE #98 VIOLATES RLUIPA BY MAKING MOHAMMED'S NIGHTLY PRAYER IMPOSSIBLE UNDER HIS RELIGION

Tourovia Correctional Center ("TCC") Warden Kane Echols and Director of the TCC Chaplaincy Department Saul Abreu substantially burdened inmate Mohammed's religious exercise by denying him nightly group prayer services that are important to his faith. R. at 4. The Twelfth Circuit incorrectly applied the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") and found that no substantial burden exists. R. at 17; 42 U.S.C.S. § 2000cc-1 (2015). Contrary to this holding, substantial burdens can occur even where non-mandatory religious practices are burdened and where the rule is generally applicable.

Furthermore, there are many less restrictive means by which to control cost and ensure security, without prohibiting evening prayer, requiring a chaplain, or having a minimum inmate interest requirement. RLUIPA's strict narrow tailoring requires the prison to use these less restrictive means to remove these burdens from Mohammed's religious exercise.

A. Mohammed's Right to Religious Exercise Was Substantially Burdened by Tourovia Prison's Denial of Evening Prayer Services because Mohammed Is Forced to Choose Between Facing Disciplinary Action or Violating His Religious Beliefs

Mohammed's ability to comply with his faith by praying in a group five times per day in a clean area is barred by Tourovia Directive #98's strict requirements. Worshippers are required to have a chaplain to run the prayer services, inmate religious services are only available to larger religions with ten or more adherents, and no evening prayer services are permitted. R. at 25. As a result of these rules, Mohammed is forced to conduct evening prayer in an unclean cell with a toilet, with a cellmate who mocked his prayer, and apart from fellow NOI members. R. at

5. This policy forces Mohammed to choose between violating the TCC's rules and facing disciplinary action, or violating the tenets of his religion.

1. *The History and Purpose of RLUIPA Show that It Requires Accommodations*

RLUIPA was created as a response to the Supreme Court's rulings in *Employment Division v. Smith* and *City of Boerne v. Flores*.[2] In *Smith* the plaintiffs were fired from their jobs for ingesting the hallucinogenic drug peyote during worship services. *Smith*, 514 F.3d at 874. When they sued for unemployment benefits, the Supreme Court held "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263, n. 3 (1982) (Stevens, J. concurring in judgment). After *Smith*, the Supreme Court subjected any neutral law of general applicability to a mere rational basis review. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1190 (10th Cir. 2013).

Congress quickly reacted to nearly unanimously pass the Religious Freedom Restoration Act (RFRA), which sought to "restore" the "religious freedom" taken by the Supreme Court in *Smith*.[3] *City of Boerne* subsequently struck down RFRA as it applied to the states for exceeding their power to pass protective laws through the Fourteenth Amendment. *City of Boerne*, 521 U.S. at 536. After *City of Boerne* limited *Smith*, Congress again acted decisively by passing RLUIPA

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[2] *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008) (citing 42 U.S.C. § 2000bb-1 (1993)); *Employment Division v. Smith*, 494 U.S. 872 (1990) *superseded by statute* 42 U.S.C. § 2000bb-1 (1993) *City of Boerne v. Flores*, 521 U.S. 507 (1997) *superseded by statute* 42 U.S.C. § 2000cc-1(b) (2000).

[3] *City of Boerne*, 521 U.S. at 512; Religious Freedom Restoration Act of 1993, H.R. 1308, 1993 Session (1993), http://thomas.loc.gov/cgi-bin/bdquery/z?d103:HR01308:@@@R.

unanimously through both houses.[4] This act required, in part, state prisons which accepted federal funding to avoid substantially burdening the religious exercise of their prisoners, unless it furthers a compelling interest which cannot be achieved by any less restrictive means. *Holt v. Hobbs*, 135 S. Ct. 853, 857 (2015); 42 U.S.C.S. § 2000cc-1 (2015).

In RLUIPA, Congress rejected two holdings from the Supreme Court's decision in *Smith*. First, Congress included *Smith*'s language in RLUIPA to reject the rule of general applicability, requiring the compelling interest test "even if the burden results from a rule of general applicability." § 2000cc-1; *Smith*, 494 U.S. at 879. Second, Congress did not affect the *Smith* Court's holding that it would be "unacceptable" to "[judge] the centrality of different religious practices…,"[5] but instead Congress defined "religious exercise" broadly to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 USCS § 2000cc-5 (2000). This shows that Congress sought to strictly scrutinize even incidental governmental burdens on religious exercise, without consideration of whether the exercise is mandated or simply preferred by the religion. As such, the Supreme Court has recognized that RLUIPA and RFRA "provide very broad protection for religious liberty." *Holt*, 135 S. Ct. at 859.

2. *Rules of General Applicability Are Not Exempt from RLUIPA*

The Twelfth Circuit adopted the Fifth Circuit's error when it failed to adopt the compelling interest test when faced with a rule of general applicability. The Twelfth Circuit held that "[a] governmental action or regulation does not rise to the level of a substantial burden on religious freedom if it merely prevents the adherent from either enjoying some benefit that is not

[4] Religious Land Use and Institutionalized Persons Act of 2000, S.2869, 2000 Session (2000), http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN02869:@@@R.

[5] Id. at 887, quoting United States v. Lee, 455 U.S., at 263 n. 2 (Stevens, J., concurring).

otherwise generally available or prevents the adherent from acting in a way that is not otherwise generally allowed." (R. at 17) (quoting *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004)). The Fifth Circuit in *Adkins* and the Twelfth Circuit in the present case rely on *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988). The language of RLUIPA and the holdings of other circuits and the Supreme Court show that *Adkins* was incorrectly decided.

In *Adkins*, the plaintiff was an inmate and member of the Yahweh Evangelical Assembly ("YEA"), and was prohibited from meeting with other YEA members on their specific holy days, due to the absence of a volunteer required by prison policy. *Adkins*, 393 F.3d at 562. The *Adkins* court cited RLUIPA's legislative history and correctly held that the term "substantial burden… should be interpreted by reference to Supreme Court jurisprudence." *Id.* at 569 (quoting 146 Cong. Rec. S7776 (July 27, 2000)).

Erroneously, the *Adkins* court then cites the 1988 *Lyng* decision to show that "a government action or regulation does not rise to the level of a substantial burden on religious exercise if it merely prevents the adherent from either enjoying some benefit that is not otherwise generally available or acting in a way that is not otherwise generally allowed." *Id.* at 570. The Fifth Circuit held that because the volunteer requirement was a "*uniform requirement* for all religious assemblies" it did not place a substantial burden on religious exercise. In a circular fashion, the *Adkins* court cited the *Lyng* case, also cited by the Supreme Court in support of the *Smith* decision, to return to Smith's general applicability rule. *Id.*; *Smith*, 494 U.S. at 883.

Similarly, the Twelfth Circuit used *Lyng* to define "substantial burden" in a way that eclipsed RLUIPA itself, holding that there was no substantial burden on Mohammed's religious exercise, because "[a]n additional prayer service… would be 'some benefit' that is not 'generally available' to the general population." R. at 18. Often, this individualized benefit is exactly what

RLUIPA requires, when a "burden results from a rule of general applicability…." 42 USCS § 2000cc-1. Prior to the passage of RLUIPA, any law that targeted religious practice was already unconstitutional under the Free Exercise Clause.[6]

3. *RLUIPA Protects Religious Exercise Whether Central to or Compelled by the Religion*

The Twelfth Circuit also erred when it held that no substantial burden exists because "[c]ongregational prayer is not a compulsory aspect of prayer within the nation; it is only preferred." R. at 19. The Tourovia District Court similarly erred, though ultimately reaching the correct conclusion, holding that "in order for a person's religious beliefs to be substantially burdened, the court must determine whether the belief is central or important to the individual's religious practice."[7] In contrast to the Twelfth Circuit's "compulsory" and the District Court's "central" requirements, RLUIPA protects religious exercise, "whether or not *compelled by*, *or central to*, a system of religious belief." 42 USCS § 2000cc-5 (emphasis added).

The Supreme Court in *Holt v. Hobbs* provides an example of RLUIPA as it applies to a governmental rule which burdens a non-central part of the Islamic faith and "merely prevents the adherent from either enjoying some benefit that is not otherwise generally available or acting in a way that is not otherwise generally allowed." R. at 17, quoting *Adkins*, 393 F.3d at 570; *Holt*, 135 S. Ct. 853. In *Holt*, the Arkansas Department of Corrections had a grooming policy which required inmates to shave their beards unless they had a dermatological problem. 135 S. Ct. at

[6] *See Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993) (Holding that "A law that targets religious conduct for distinctive treatment… will survive strict scrutiny only in rare cases." *Id.* at 546).
[7] R. at 11 (quoting Ford v. McGinnis, 352 F.3d 582, 593-94 (2d Cir. 2003) (The Second Circuit decided this case under the First Amendment, not RLUIPA. Id. at 592 n. 10).

860. The plaintiff challenged this policy on the basis that it violated his religion to trim his beard at all, although he offered to maintain a one-half inch beard. *Id.* at 861.

Despite the rule's generally applicable prohibition, the Supreme Court held that the plaintiff "easily satisfied [the substantial burden] obligation," because "[t]he Department's policy forces him to choose between "engag[ing] in conduct that seriously violates [his] religious belie[f]," or "fac[ing] serious disciplinary action." *Id.* at 862 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2776 (2014). Quoting RLUIPA's broad definition of "religious exercise," the Court refused to consider the importance or centrality and further held that "RLUIPA… applies to religious exercise regardless of whether it is 'compelled.'" *Holt*, 135 S. Ct. at 857, 862. Contrary to the Twelfth Circuit's holding in the present case, the Supreme Court held that RLUIPA was violated, despite the fact that growing a beard was "'some benefit' that is not 'generally available….'" *Id.* at 867; R. at 18.

Turning to the present case, Mohammed's faith has several important tenets that must be observed in order to please Allah. First, Islam commands Salah ("Muslim prayer") to be performed uninterrupted in a clean area. R. at 4. Urine and excrement are considered "gross impurities" that may invalidate a Muslim prayer.[8] Accordingly, a Hadith states that a bathroom is one of seven places in which a Muslim may not pray.[9] Additionally, any non-praying individual who crosses in front of the worshipper during Salah nullifies the prayer.[10] Finally,

[8] THE WAY TO TRUTH, *Tahara*, http://www.thewaytotruth.org/pillars/tahara.html (last visited March 3, 2016).
[9] Ibn Umar, *Book of The Chapters on the Mosques and the Congregation no. 746*, Chapter no: 6, http://ahadith.co.uk/chapter.php?cid=152&page=2&rows=10 (last visited March 5, 2016).
[10] FOR THE SEEKER OF TRUTH, *Praying without 'Sutrah'*, http://www.4theseekeroftruth.com/index.php/2011/05/praying-without-sutrah (last visited March 5, 2016).

Islam prefers congregational prayer to solitary prayer,[11] and many believe congregational prayer is "obligatory."[12] These tenets of Mohammed's faith are clearly central and compulsory, though they need not be; They merely need to be sincerely held. *Holt*, 135 S. Ct. at 862. Mohammed cannot comply with these requirements in a room with a toilet and an antagonistic non-observer.

In the present case, Tourovia Directive #98 Chaplain, Sufficient Offender Interest, and Services restrictions are generally applicable, but they force Mohammed to choose between violating his faith and facing disciplinary action. R. at 25; *Holt*, 135 S. Ct. at 857. Mohammed's religion compels him to pray at sunset, in a clean area, with other Muslims. R. at 4. Tourovia Directive #98 violates RLUIPA, unless the government can show that they further a compelling interest which cannot be achieved through less restrictive means. Since Mohammed faces an impossible ultimatum between compliance with faith and compliance with prison rules, the Twelfth Circuit should have held that Mohammed "easily satisfied [the] obligation" of demonstrating a substantial burden. *Holt*, 135 S. Ct. at 862.

B. The Chaplain Requirement Is Not Supported by a Compelling Governmental Interest, and All Other Governmental Interests Can Be Achieved Through Less Restrictive Means

As a correctional institution, the TCC has a several valid interests, but "protect[ing] the integrity and authenticity of the beliefs and practices of religious services and programs" is not a valid interest for a prison. R. at 25. This paternalistic interest is distinct from TCC's valid security interest in preventing religious services from being used for illicit purposes. When Tourovia Directive #98 is reduced to its legitimate penological or administrative interests, it

[11] INTER-ISLAM, *The Importance of Congregational Prayer*, http://www.inter-islam.org/Actions/Congregation.html (last visited March 5, 2016).

[12] Explanation of Al-Baqarah Surah Verses: 40-43 (available at http://www.alqayim.net/en/artical/31/d-1097).

becomes clear that less restrictive means are available to the TCC. Once a plaintiff demonstrates that a governmental action substantially burdens his religious exercise, the burden shifts to the government to show that the "imposition of the burden… is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest." 42 USCS § 2000cc-1 (a)(1)(A, B).

1. *The TCC Has No Legitimate Interest in Protecting the Integrity and Authenticity of Religious Services*

Mohammed is entitled to the NOI chaplain he requests so that he may fulfill the chaplain requirement. However, if providing a chaplain is impossible due to cost or availability, Mohammed should be exempted from this requirement, as it is unsupported by any compelling governmental interest. The TCC has no interest in determining which chaplains preach the religion accurately or ensuring that its inmates practice their religion in an "authentic" fashion. *Id.* The Establishment Clause prohibits such governmental entanglement with religion, and RLUIPA was also created for the protection of minority religions.

Courts and the government are "not arbiters of scriptural interpretation," but are prohibited by the Establishment Clause from delving into determining the "correctness" of any scripture or belief system. *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 716 (1981). In *Cruz v. Beto*, a Buddhist prisoner sought injunctive relief against a Texas prison that allegedly encouraged inmates to participate in Catholic, Jewish, and Protestant religious programs, including providing "points for good merit" to prisoners "as a reward for attending orthodox religious services." 405 U.S. 319, 320 (1972). The Supreme Court held that, if the allegations were true, "Texas [had] violated the First and Fourteenth Amendments." *Id.* at 322.

The TCC suggests that their chaplain requirement policy is necessary "[t]o protect the integrity and authenticity…" of prayer services, but this is an impermissible government purpose. R. at 10. This practice, along with the "sufficient offender interest" requirement, prefers larger, mainstream religions with available chaplains in violation of the Establishment and Equal Protection Clauses. U.S. CONST. AMEND. I; U.S. CONST. AMEND. XIV. By limiting services to only those religions for which a chaplain is available and there is sufficient participation, the TCC impermissibly singles out established, mainstream religions for benefits, to the exclusion of less popular sects. R. at 25. According to a 2012 Pew Survey, Muslim inmates are the most in need of volunteers, with fifty-five percent of all chaplains surveyed responding that Muslim inmates need more volunteers.[13] According to Pew, "[t]he picture that clearly emerges is that non-Christian faiths have the greatest need for a larger pool of volunteers to work with inmates." *Id.*

At a minimum, ensuring the accuracy of worshippers' religious practices and beliefs does not further any valid goal of the prison. Though the prison has no legitimate interest in ensuring the authenticity of religious practices, the prison clearly has a compelling governmental in ensuring that prayer services are not used for illicit purposes. However, there are less restrictive means by which to accomplish this goal.

2. *All Other Governmental Interests Can Be Achieved Through Less Restrictive Means*

RLUIPA was enacted to ensure that "only those [governmental] interests of the highest order can overbalance legitimate claims to the free exercise of religion." *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215

[13] PEW RESEARCH CENTER, *Religion in Prisons – A 50-State Survey of Prison Chaplains* http://www.pewforum.org/2012/03/22/prison-chaplains-exec (last visited March 5, 2016).

(1972). Additionally, RLUIPA has an "exceptionally demanding" narrow tailoring requirement which requires the government to adopt the least restrictive means to further that interest. *Holt*, 135 S.Ct. at 864. The government may bring a policy into compliance with RLUIPA "by changing the policy…, by retaining the policy… and exempting the substantially burdened religious exercise, by providing exemptions from the policy for applications, or by any other means that eliminates the substantial burden." 42 U.S.C.S. § 2000cc-3 (2015). Further, the TCC "cannot meet its burden to prove least restrictive means under [RLUIPA], unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice." *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005) (internal citation omitted).

In *Spratt v. Dep't of Corrections*, a Rhode Island correctional center had a policy which only permitted chaplains to administer religious services. 482 F.3d 33, 35 (1st Cir. 2007). Spratt was a prisoner who had been preaching for years, although he was not a chaplain. *Id.* After a change in wardens, Spratt was no longer permitted to preach, so he sought to enjoin the policy which substantially burdened his religion. *Id*. at 35-36. The First Circuit recognized the prison's compelling interest in keeping the prison secure, but indicated doubt that permitting Spratt to preach would endanger that security. *Id.* at 40. Regardless, the court held that "the blanket ban on all inmate preaching" was not shown to be the "'least restrictive means available' to achieve its interest." *Id.* at 40-41. The First Circuit also pointed out that these inmate-led prayers are permitted in the Federal Bureau of Prisons, and the court questioned why such a policy could not work in Rhode Island. *Id.* at 42. This reasoning is echoed in *Holt*, where the Supreme Court pointed out that "so many other prisons allow inmates to grow beards while ensuring prison

security…at a minimum, [the prison must] offer persuasive reasons why it believes that it must take a different course." 135 S. Ct. at 866.

While the TCC has previously faced security problems during nighttime prayer services, there were several less restrictive solutions that have not been attempted. R. at 4. For example, the prison should consider more thorough background checks on prayer volunteers or guard supervision before adopting a "chaplains only" policy. Also, limited prison staff is the only difference between daytime and evening prayer, so the TCC could allow inmate led prayer as in *Spratt*, in which case hiring a guard for an extra couple of hours or setting up a video camera would resolve any security risks. 482 F.3d 33; R. at 3.

Although cost control is a compelling interest for the TCC, RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." 42 USCS § 2000cc-3 (2015). In fact, Justice Sotomayor stated in concurrence that "cost alone is [not] an absolute defense to an otherwise meritorious RLUIPA claim." *Holt*, 135 S. Ct. at 867 (J. Sotomayor concurring). To permit Nation of Islam members to pray in a group one additional time at 7:00 PM should cost no more than the hourly rate of one or two prison guards or a video camera. Even if an additional guard must be staffed for that hour, the mean wage of a prison guard is less than twenty-two dollars per hour.[14]. Closed circuit cameras with audio recording could provide an even cheaper solution to ensure that the evening prayer services are used for proper purposes.

Additionally, since the 2013 decision of *Lindh v. Warden*, the Federal Bureau of Prisons has been subject to a permanent injunction granted under RFRA, which requires federal prisons

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[14] BUREAU OF LABOR STATISTICS, *Occupational Employment and Wages May 2014*, http://www.bls.gov/oes/current/oes333012.htm (last visited March 5, 2016).

to permit group prayer five times per day as required by Islam. 2013 U.S. Dist. LEXIS 4932, 45 (S.D. Ind. 2013). Accordingly, the TCC "must offer persuasive reasons" why federal prisons have been able to comply with this injunction, but the TCC cannot. 135 S. Ct. at 866.

Finally, the Twelfth Circuit supported the TCC's "blanket ban" on nightly prayer by reasoning that "[i]f the Warden were to change the prison policy for just seven members of the Nation, he would have to change the policy for larger, more prevalent groups like Sunni Muslims, Christians, and Jews at TCC." R. at 21. The Twelfth Circuit speculates that any less restrictive means would snowball into uncontrollable cost and security problems. A similar argument was presented to the Supreme Court in *Holt*. 135 S. Ct. at 866. The Court stated "this argument is but another formulation of the 'classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions.' We have rejected a similar argument in analogous contexts, and we reject it again today."[15] The chaplain requirement, sufficient offender interest requirement, and restrictions on services are supported by some compelling governmental interests, but they further those interests in a broad, oppressive manner toward minority religions. Accordingly, RLUIPA requires the TCC to adopt less restrictive means.

II. DEFENDANTS VIOLATED RLUIPA BY REMOVING MOHAMMED FROM HIS RELIGIOUS DIET AND FORCING HIM TO VIOLATE HIS RELIGION

The next question before this Court is twofold: First, does a single sin prove insincerity, and if not, how should sincerity be determined? Second, are there any compelling interests that support the zero tolerance policy of Tourovia Directive #99? Courts have consistently held that

[15] *Holt*, 135 S. Ct. at 866; quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006); (citing *Sherbert v. Verner*, 374 U.S. 398, 407 (1963)).

RLUIPA requires prisons to accommodate prisoners' needs for religious diets. *Nelson v. Miller*, 570 F.3d 868, 878 (7th Cir. 2009). Additionally, RLUIPA protects religious exercise, whether or not it is practiced accurately and with sufficient knowledge. *Colvin v. Caruso*, 605 F.3d 282, 297-98 (6th Cir. 2010). In light of the far-reaching protection that RLUIPA provides, it is clear that Congress intended to protect even imperfect religious observers.

A. Tourovia Directive #99 Violates RLUIPA by Substantially Burdening the Religious Exercise of Imperfect Religious Observers

Forcing a prisoner to choose between his religion and his nutrition constitutes a substantial burden under RLUIPA.[16] This is true whether the denial is a general policy or for punitive reasons.[17] Therefore, if Mohammed's belief is sincere, then removing him from the religious diet substantially burdened his religious exercise, and the first prong of RLUIPA is established. The question before this Court is one of sincerity: Is one dietary infraction enough to conclude that a prisoner is insincere in his or her beliefs? Although Mohammed denies voluntarily receiving the meatloaf through coercion or otherwise, he does not dispute the contention that eating the meatloaf would violate his deeply held religious beliefs.

In Islam, orthodox Muslims are permitted to consume only food which is "halal," which is Arabic for "lawful."[18] Any meat that is eaten must be slaughtered in accordance with Islamic

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[16] *Lebaron v. Spencer*, 527 Fed. Appx. 25, 30 (1st Cir. 2013); *Nelson v. Miller*, 570 F.3d 868 (7th Cir. 2009); *Mestre v. Wagner*, 2012 U.S. Dist. LEXIS 12093, at 10 (E.D. Pa. 2012), *aff'd* 502 Fed. Appx. 129 (3d. Cir. 2012); *Johnson v. Nev. ex rel. Bd. of Prison Comm'rs*, 2013 U.S. Dist. LEXIS 139422, at 55 (D. Nev. 2013); *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1316-17 (10th Cir. 2010).

[17] *Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006); *McEachin v. McGuinnis*, 357 F.3d 197 (2d Cir. 2004); *Akeem Abdul Makin v. Colorado Dep't of Corrections*, 183 F.3d 1205 (10th Cir. 1999); *Conyers v. Abitz*, 416 F.3d 580 (7th Cir. 2005).

[18] EAT-HALAL.COM, *What Is Halal?*, http://www.eat-halal.com/infosheets/whatishalal.pdf (last accessed March 5, 2016).

law, or else it is "haram," which is Arabic for "forbidden."[19] Animals that are slaughtered for food may not be frightened or unconscious, and the killing must be done in Allah's name. ELIJAH MUHAMMAD, THE RIGHT WAY TO EAT 7 (Reprint Ed. 2008).

Even if Mohammed did receive the meatloaf, Allah in Islam is similar to gods in many other religions, in that he forgives even intentionally committed sins.[20] In a popular Muslim Hadith, the prophet Muhammad said "O son of Adam, were you to come to Me with sins nearly as great as the earth and were you then to face Me… I would bring you forgiveness nearly as great as its."[21] In Islam, eating halal is a sin similar to lying, but Allah offers "general amnesty, which for millions of sinners provided a ray of hope and prompted them to reform themselves."[22]

Mohammed faces an exceptional test, as he did not spend the majority of his life as a Muslim, but presumably grew up able to eat whatever he wished. R. at 3. Switching from unrestricted to a holy diet is incredibly challenging. According to New Muslims, a site created to guide new converts, "adjusting diet is perhaps one of the major lifestyle changes a new Muslim has to go through after entering the fold of Islam… [I]t's an adjustment you will be able to make as well with some self-discipline and help from Allah."[23] Avoiding haram meat is a unique personal test that Tourovia prison policy unfairly discounts.

[19] EAT-HALAL.COM, *What Is Haram?* http://www.eat-halal.com/infosheets/whatisharam.pdf (last accessed March 5, 2016); The Holy Qur'an 6:119 (available at http://quranx.com/6.119).
[20] The Holy Qur'an 39:53 (available at http://quranx.com/39.53)
[21] Hadith Qudsi 33 (available at http://www.khilafatworld.com/2010/12/very-beautiful-hadith-and-forgiveness.html)
[22] SOUNDVISION, *Doing Haram, Seeking Forgiveness*, http://www.soundvision.com/article/doing-haram-seeking-forgiveness. (last visited March 5, 2016).
[23] NEW MUSLIMS ELEARNING SITE, *Introduction to Dietary Laws in Islam* http://www.newmuslims.com/lessons/25 (last visited March 5, 2016).

The core of the substantial burden arises once the prisoner has sinned, but is then absolved. In Islam, Allah pardons the imperfect, but expects Muslims to continue life without sinning again. Tourovia Prison Policy Directive #99 is not so forgiving. After the initial mistake, Muslims are removed from their religiously mandated diet and forced into the very ultimatum RLUIPA was created to prevent: choose between starvation or violating your beliefs once more.

The Fifth Circuit Court of Appeals reached this conclusion in regard to otherwise sincere prisoners who momentarily fail in their practice. *Moussazadeh v. Tex. Dep't of Crim. Justice*, 703 F.3d 781 (5th Cir. 2012). In *Moussazadeh*, a Jewish prisoner was accused of purchasing food multiple times at the commissary that was not kosher, and he was removed from the kosher meal plan. *Id.* at 791 The court held that "[a] finding of sincerity does not require perfect adherence to beliefs expressed by the inmate, and even the most sincere practitioner may stray from time to time." *Id.* at 791. The *Moussazadeh* court quoted the Seventh Circuit in *Grayson v. Schuler*, to ask "where would religion be without its backsliders, penitents, and prodigal sons?" *Id.* at 792, (quoting *Grayson*, 666 F.3d 450, 454 (7th Cir. 2012)). The Fifth Circuit held that a "sincere religious believer doesn't forfeit his religious rights merely because he is not scrupulous in his observance," therefore RLUIPA was violated by removing the prisoner from the kosher diet based solely on apparent dietary infractions. *Id.* at 796 (quoting *Grayson*, 666 F.3d at 454).

A New Hampshire District Court held similarly in regards to a Jewish inmate removed from a kosher diet after breaking it. *Kuperman v. Warden,* 2009 U.S. Dist. LEXIS 108576 (D.N.H. 2009). The court stated "[w]hile it is true that the policy imposes no burden on the hypothetical prisoner who adheres perfectly to his religious diet, few religious believers -- especially *imprisoned* believers -- would lay claim to perfection." (emphasis in original) *Id.* at 15. In the court's view, removing "imperfect but nonetheless sincere believers" from a religious

diet after four failures "impose[s] a heavy burden indeed,… forcing the inmate to choose between his religious scruples and his nutritional needs." *Id.* at 16.

Although most, if not all, modern deities understand the inevitability of temptation and sin, the Tourovia prison has required perfection in any prisoner who claims a religious dietary exception. Failing to adhere strictly to a Ramadan fast, eat exclusively kosher food, or avoid meat entirely permits the Tourovia prison to step between the prisoner and his faith. Such religious missteps are inevitable, and they create the ultimatum that RLUIPA was intended to remove: a choice between one's faith and one's health.

On the other hand, the Twelfth Circuit's reliance on *Brown-El v. Harris* permits a policy which is misguided and unjust. R. at 21; *Brown-El v. Harris*, 26 F.3d 68 (8th Cir. 1994). In *Brown-El*, the prison had a policy which provided a meal after dark for Muslims observing Ramadan. If a prisoner violated his fast, he was removed from the list of those able to receive a meal after dark for the entire month of Ramadan. The petitioner prisoner Brown-El was observed eating a daylight meal, and he was removed from the Ramadan fasting list. The Eighth Circuit upheld this program, holding that the prisoner's religious freedom was not substantially burdened. *Id.* at 69. The *Brown-El* court held that "[r]ather than burdening Ramadan worshippers, the PCC policy allows full participation in the fast and removes from the procedures only those worshippers who choose to break the fast." *Id.* at 70. Further, the court held that "[t]he policy did not coerce" prisoners to violate their fast, but rather the prisoner "simply placed himself outside the group of worshippers accommodated by the PCC procedures." *Id.* at 70.

In this way, the Eighth Circuit adopted the prison's fiction that Brown-El's failure during the fast was a knowing and voluntary waiver of any future religious exercise. The court makes

the error of equating a momentary failure to adhere to one's faith as a complete abandonment of that faith. However, it is completely possible for a religious observer to fall to temptation, ask God for forgiveness, and subsequently be coerced by the prison into violating his religious belief that he had previously willingly violated himself. The propensity to sin, by itself, is not an accurate gauge of a worshipper's sincerity. Tourovia Directive #99's unforgiving nature makes it a statute that will inevitably burden religion.

B. Tourovia Directive #99 Violates RLUIPA by Denying Prisoners Due Process Before Concluding Insincerity and Burdening Religious Exercise

The next question before this Court is whether the protections of RLUIPA permit prison officials to unilaterally conclude that a prisoner's professed beliefs are insincere without considering all relevant factors or providing an opportunity to show sincerity. The TCC denied Mohammed his right to due process in two respects. First, the TCC did not provide Mohammed an opportunity to explain his position or argue his innocence. Second, the TCC did not consider all, or even most, relevant factors before concluding that Mohammed was insincere in his beliefs.

1. *The TCC failed to provide Mohammed any opportunity to prove his sincerity.*

The prison afforded Mohammed no opportunity to show his innocence or ask probative questions of his accuser. In *United States v. Secretary,* the Department of Justice sought to permanently enjoin the Department of Corrections from enforcing a similar zero tolerance policy, on the grounds that either a blanket denial of kosher foods substantially burdens prisoner's ability to exercise their religion while they waited on the grievance process. *United States v. Sec'y, Fla. Dep't of Corr.*, 2015 U.S. Dist. LEXIS 56911, 10 (S.D. Fla. 2015). The court held that this created a substantial burden, finding that "[t]his policy forces a prisoner, during the grievance process, to choose between violating his religious beliefs or not eating." *Id.*

at 37. The court held that RLUIPA was violated and permanently enjoined the zero tolerance policy. *Id.* at 36, 40.

In the present case, Tourovia Directive #99 does not even provide a grievance policy to be reinstated, so the substantial burden lasts into the foreseeable future. R. at 26. As the policy now stands, prison guards may unilaterally decide to end a RLUIPA required religious diet offering based on a mere "adequate reason to believe that a religious diet is not being adhered to." *Id.* With this flawed zero-tolerance rule, Tourovia Directive #99 is arbitrary and inaccurate.

2. *Tourovia Directive #99 fails to consider any relevant factors before deciding that a worshipper is insincere*.

Precedent shows that the TCC's inquiry into sincerity should be both cautious and fact intensive. Courts have traditionally "hesitate[d] to make judgments about whether a religious belief is sincere or not." *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 988 (8th Cir. 2004). However, when a judgment about sincerity is necessary, "it must be handled with a light touch, or 'judicial shyness.'" *Tagore v. United States*, 735 F.3d 324, 328 (5th Cir. 2013) (quoting *A.A. ex rel. Betenbaugh*, 611 F.3d 237, 241 (5th Cir. 2010)). Courts engage in a "fact-specific… case-by-case analysis" when determining whether a substantial burden exists, and "[t]his is doubly true regarding sincerity." *Moussazadeh*, 703 F.3d at 791. Prisons may not be able to regularly engage in the same analysis as courts, but a much more comprehensive approach is necessary to avoid violating RLUIPA.

Several factors should be weighed to weed out insincere prisoners who seek accommodations. Though there may be more, four recurring factors in judicial sincerity analyses

are (1) a pattern of failure, (2) a "smoking gun" admission of insincerity, (3) secular benefit and opportune religious adoption, and (4) evidence of hardships endured for one's faith.

First, the Twelfth Circuit's reliance on the Seventh Circuit decision in *Daly v. Davis* is misguided, because the plaintiff in that case had established a pattern of transgressions that is absent in the present case. 2009 U.S. App. LEXIS 6222, at 2 (7th Cir. 2009). The court pointed out that the Jewish prisoner "was suspended three times from the program because he was observed purchasing and eating non-kosher food and trading his kosher tray for a regular non-kosher tray. He was reinstated each time." *Id.* Although even three failures to adhere to his diet should not lead the prison to conclude insincerity, this is far more condemning than Mohammed's one alleged failure.

Second, sometimes, the veil will drop on insincere religious practice by inadvertent admission. In *United States v. Quaintance*, the plaintiff sought to enjoin the United States from prosecuting him under the Controlled Substances Act, by arguing that cultivating and consuming marijuana was a required tenet of the Church of Cognizance. 471 F. Supp. 2d 1153, 1154-55 (D.N.M. 2006). However, the plaintiff had previously admitted that there were non-religious reasons for his use of marijuana, arguing "I was an adult" and consuming the drug "was within my right." *Id.* at 1172. Additionally, a church member testified that he never believed marijuana was sacred, but joined the church only to transport the marijuana legally. *United States v. Quaintance*, 2010 U.S. App. LEXIS 10218, 15 (10th Cir. 2010). The Tenth Circuit Court of Appeals dismissed the RLUIPA claim based on this admission along with other evidence of insincerity. *Id.* at 19-20.

Quaintance also provides the third factor which is nearly always present in cases of insincerity: secular benefit. The defendant in *Quaintance* profited from his marijuana cultivation,

he consumed marijuana and cocaine, and the co-defendant was opportunely "inducted" to the church shortly after the arrest. *Id.* at 13, 15. This provides an example of Chief Justice Burger's dicta in *Thomas v. Review Board*, "[o]ne can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause…" 450 U.S. 707, 716 (1981).

Fourth, true adherents to their faith will often show signs of sincerity in difficult times that courts have used to make the determination. The Supreme Court in *United States v. Seeger* and *Welsh v. United States*, considered this when it found that the conscientious objectors' professed beliefs were sincere. *Welsh v. United States*, 398 U.S. 333 (1970) citing *United States v. Seeger*, 380 U.S. 163 (1965). The Court pointed out that their conviction "was so loud and insistent that both men preferred to go to jail rather than serve in the Armed Forces." *Welsh*, 398 U.S. at 337. Similarly, the Fifth Circuit in *Moussazadeh*, found the prisoner plaintiff to be sincere based on his individual suffering for his faith. 703 F.3d at 792. The *Moussazadeh* court noted that

> he ate the kosher meals provided to him from the dining hall, even though he found them to be 'distasteful' compared to the standard prison fare…, he was harassed for his adherence to his religious beliefs and for his demands for kosher food… the guards there delayed his mail and searched his cell more often than they did so for other prisoners, [and] sometimes seizing non-contraband items… He has shown through his initial claims, his actions while at Stringfellow, and his continued prosecution of this suit that he sincerely believes in the importance of eating kosher food.

Id. at 792. Based in part on the pain the prisoner and the conscientious objectors endured in keeping their faiths, the court found them to be sincere.

Applying these factors to Mohammed decisively shows his sincerity. First, it is undisputed that Mohammed only allegedly violated his fast once. Second, Mohammed has never denied his religion or acted as though it was anything but central to his life. Third, Mohammed has no

compelling reason to lie, as there is no secular benefit to receiving a vegetarian diet. There is no evidence that Mohammed prefers the vegetarian diet, and if his cellmate's accusations are to be believed, he struggles intensely with vegetarianism. Finally, Mohammed has suffered extensively for his faith. He has endured ridicule while praying, abstained from meat for fourteen years, prayed five times per day, and changed his name. R. at 3, 4, 5. After he was denied vegetarian meals, he engaged in a two day hunger strike that only ended when the TCC force fed Mohammed through a tube. R. at 6. This ongoing battle with the TCC, along with the present litigation, proves that Mohammed is sincere and that Tourovia Directive #99 is inherently inaccurate in determining the sincerity of worshippers.

Tourovia Directive #99 stands in sharp contrast to the careful and nuanced way in which the Supreme Court has historically considered sincerity. The absence of all of these well-established factors shows that Tourovia Directive #99 does not, and was not created to remain compliant with RLUIPA. Instead, it is an unconstitutional and unnecessary effort to assert authority over private religious practice.

C. Enforcing Religious Vegetarian Diets Is Not a Compelling Governmental Interest, and There Are Less Restrictive Means of Furthering Any Legitimate Interests

This case does not present the Court or the prison systems with an unsolvable problem, as there are many solutions that are less restrictive to accomplish any legitimate administrative or penological interests that may exist. After establishing that the TCC has placed a substantial burden on Mohammed's religious practice, RLUIPA holds the TCC to the "rigorous standard" of showing that the policy is the least restrictive means to accomplish a compelling governmental interest. *Holt v. Hobbs*, 135 S.Ct. 853, 864 (2015).

1. *There is no compelling governmental interest in removing Mohammed from the diet plan*

Before prison policymakers determine whether their policy violates RLUIPA, they must first ensure that the policy satisfies the much more lenient standard of the Free Exercise Clause of the First Amendment. Under RLUIPA, courts look to find a compelling governmental interest. *Id*. at 860. In contrast, it is unlikely that Tourovia Directive #99 has even a legitimate governmental that is rationally related to a legitimate governmental purpose. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); U.S. CONST. AMEND. I. Only after the prison has established that there is some valid interest to be enforced should they create a system to determine the sincerity of prisoners.

If the vegetarian meals cost roughly the same as regular meals, the prison likely has no interest in ensuring that prisoners eating vegetarian meals are sincere in their faith. *Moussazadeh*, *Kuperman*, *Sec'y*, and *Daly* can all be distinguished from the present case, as all concerned inmates who wished to remain on a kosher diet. [24] In *United States v. Sec'y*, for example, the Religious Diet Plan created by the Florida Department of Corrections was projected to cost the prison system up to 12.3 million, in addition to the $3.9 million implementation costs. In *Moussazadeh*, the "cost per day, per inmate is $3.87, while the cost of food from the Stringfellow Kosher Kitchen is $6.82." 703 F.3d at 787. Despite this seventy-six percent increase, the Fifth Circuit held the kosher meal cost to be "minimal," especially when individually applied to the plaintiff. *Id.* at 795.

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[24] *Moussazadeh*, 703 F.3d at 785; *Kuperman*, 2009 U.S. Dist. LEXIS 108576, at 4; *Sec'y*, 2015 U.S. Dist. LEXIS 56911, at 15; *Daly*, 2009 U.S. App. LEXIS 6222 at 1.

On the contrary, the TCC may actually save a substantial amount of money by providing these vegetarian diets. As discussed previously, Islam permits its adherents to consume meat that was killed in accordance with the laws of the Qur'an. ELIJAH MUHAMMAD, THE RIGHT WAY TO EAT, 7 (Reprint Ed. 2008). Instead of providing this permitted meat, which Mohammed would likely prefer, the TCC provides a meal that merely lacks all meat.

This vegetarian diet happens to be the regular course in jails in Maricopa County, Arizona, but not due to religious reasons. Sheriff Joe Arpaio, self-proclaimed "America's Toughest Sheriff," switched eight jails to a completely meat-free diet purely as a cost cutting measure.[25] Arpaio expected the switch to "save $100,000 a year, but it's turned out to be more than $700,000 annually." *Id.* These vegetarian meals cost seventy-four cents each and provide 2,400 calories per day. *Id.*

On the other hand, it would be unethical and cruel to create a policy which uses a prisoner's faith as a weapon against them, punishing prisoners by forcing them to violate their sincerely held beliefs. *See McEachin v. McGuinnis*, 357 F.3d 197, 204 (2d Cir. 2004). The Tenth Circuit held in *Akeem Abdul Makin v. Colorado Dep't of Corrections*, that the prison does not even have a legitimate interest under the lower standard of the First Amendment in denying night meals for the Ramadan fast as punishment. 183 F.3d 1205, 1213 (10th Cir. 1999).

Although this case is analyzed under the greater protection of the "compelling interest" standard of RLUIPA, Tourovia Directive #99 fails to be rationally related to a legitimate governmental interest as required by the Free Exercise Clause. Even if some additional cost

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[25] Wolf, Kalli Ricka, *Maricopa inmates learn to live vegetarian*, ARIZONA SONORA NEWS SERVICE, http://arizonasonoranewsservice.com/maricopa-inmates-learn-live-vegetarian (last accessed March 5, 2016).

exists for vegetarian meals, or some disciplinary purpose could be served by using Mohammed's faith against him, is not enough to constitute a compelling interest under RLUIPA.

2. *There are less restrictive means to accomplish any legitimate interests that may exist*

The Supreme Court has held that under RLUIPA, "'[t]he least-restrictive-means standard is exceptionally demanding,'" *Holt*, 135 S.Ct. at 864 (quoting *Burwell v. Hobby Lobby*, 134 S.Ct. 2751, 2780 (2014). This standard requires the law to be narrowly tailored such that "[i]f a less restrictive means is available for the Government to achieve its goals, the Government must use it." *Holt*, 135 S.Ct. at 864 (quoting *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000)).

Of course, the TCC has a legitimate goal in punishing offenders who threaten violence against their cellmates. However, if such behavior actually occurred, there are ways to punish offenders without burdening their religious practice. The prison has not attempted other punishments, such as removing yard or canteen privileges. More serious cases could call for solitary confinement or additional days of imprisonment. Instead, Defendants "barred Kelly from attending any worship services for one month as punishment." R. at 6. This type of punishment is unacceptable in any society that respects religious liberty, and it would not likely be administered by any prison official who shared the prisoner's faith.

If there are legitimate budget concerns with providing a vegetarian diet, then the prison is simply purchasing food that is too expensive, as evidence shows that vegetarian food is cheaper than meat. No compelling governmental interests are achieved by removing prisoners from their vegetarian diets after one infraction, as this does not benefit the prison's security or finances in any real way.

CONCLUSION

Through enforcement of Tourovia Directives #98 and #99, the Defendants have substantially burdened Mohammed's ability to exercise his religion. These directives place Mohammed "between a rock and a hard place" by forcing a decision between obedience to prison authorities and obedience to Allah. *Incumaa v. Stirling*, 791 F.3d 517, 525 (4th Cir. 2015). RLUIPA was created to prevent such ultimatums whenever possible. The Defendants cannot demonstrate that any compelling governmental interests are furthered by these policies that cannot be furthered by less restrictive policies. In Mohammed's situation, RLUIPA requires accommodation. Therefore, Mohammed respectfully requests that this Court reverse the Twelfth Circuit's holding, and reinstate the declaratory and injunctive relief provided by the district court.

APPENDIX I

CERTIFICATION FORM

We hereby certify that the Petitioners brief of Team 6 is the work product solely of the undersigned and that the undersigned has not received any faculty or other assistance, except as provided for by the Competition Rules, in connection with the preparation of this brief.

____ Print, Sign, and Date

____ Print, Sign, and Date