CHAPTER 27

RELIGIOUS FREEDOM IN PRISON*

A. Introduction

While you are in prison, you have the right to observe and practice the religion of your choice.[1] The Constitution, as well as federal and state laws, protect this right. This Chapter describes these protections and explains how courts determine whether an incarcerated person's right to religious freedom has been violated.

This Chapter is divided into five parts. **Part A**—the Introduction you are reading now—provides a brief overview of the laws that protect your religious freedom. **Part B** of this Chapter discusses the First Amendment Establishment Clause, which prevents the government (including prison officials) from favoring one religion over another. **Part C** discusses the First Amendment Free Exercise Clause and RLUIPA or RFRA protections, which protect your right to freely practice your religion of choice. **Part D** discusses New York State laws that protect your religious freedom. Finally, **Part E** provides an overview of the legality of faith-based rehabilitation programs, which have become more popular in recent years. The **Appendix** to this Chapter provides the contact information for different religious organizations that may be able to provide you with additional support.

1. Constitutional Protections

The First Amendment to the Constitution provides the most basic protection for your right to religious freedom. The First Amendment begins by saying that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[2]

The first part of the First Amendment ("Congress shall make no law respecting an establishment of religion") is known as the Establishment Clause. It prohibits government officials from establishing a national religion. Generally, this means that the government is not allowed to set up a religion, to aid one religion, to aid all religions, or to favor one religion over another.[3]

The second part of the First Amendment ("or prohibiting the free exercise thereof") is known as the Free Exercise Clause. It means that government officials cannot prevent you from practicing your religion. However, under the Free Exercise Clause, prison officials *can* impose restrictions on your exercise of religion that are "reasonably related" to legitimate prison goals.[4] In other words, you might be prevented from performing a religious practice if the prison's justification for doing so "reasonably

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[1] *See* Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 688, 134 S. Ct. 2751, 2759, 189 L.Ed.2d 675, 689 (2014) (holding that, for the purposes of the Free Exercise Clause, the exercise of religion involves not only belief and profession but the ability to perform or refuse to perform physical actions for religious reasons); *see also* Cruz v. Beto, 405 U.S. 319, 321–322, 92 S. Ct. 1079, 1081–1082, 31 L. Ed. 2d 263, 268 (1972) (finding that incarcerated people retain First Amendment protections, including those guarded by the Free Exercise Clause).

[2] U.S. CONST. amend. I.

[3] *See* Everson v. Bd. of Educ., 330 U.S. 1, 15, 67 S. Ct. 504, 511, 91 L. Ed. 711, 723 (1947) ("The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.").

[4] Turner v. Safley, 482 U.S. 78, 89–90, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 79 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.").

relates" to the prison's legitimate aims. These justifications may include preventing crime, rehabilitating incarcerated people, or ensuring the internal security of the facility.[5]

Even though the Establishment Clause and the Free Exercise Clause are both part of the First Amendment, courts address these clauses separately. This Chapter will also address them separately.

2. Statutory Protections

The U.S. Congress and state legislatures pass laws that provide additional protections to your religious freedom. Depending on whether you are in a state or federal prison, different laws apply. If you are in a state prison, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) protects your religious freedom.[6] If you are in a federal prison, the Religious Freedom Restoration Act of 1993 (RFRA) protects your religious freedom.[7]

Although RLUIPA and RFRA are two different laws, they both use the same language to describe the religious free exercise protections given to incarcerated people.[8] Therefore, if you are a federally incarcerated person protected by RFRA, this Chapter's discussion of RLUIPA can still help you figure out how strong your RFRA claims are. You can also cite cases decided under either RLUIPA or RFRA to support your claim, regardless of whether you are in federal or state prison.[9]

Some states have also enacted additional laws that further protect the religious freedom of incarcerated people in their correctional facilities. These laws are discussed in more detail in Part D of this Chapter.

3. Bringing a Religious Freedom Lawsuit

If you believe prison officials have violated your constitutional or statutory rights to religious freedom and you want to sue them, you will first need to follow your institution's administrative grievance procedure.[10] See *JLM*, Chapter 15, "Incarcerated Grievance Procedures," for further information on inmate grievance procedures.

If you do not receive a favorable result through the grievance procedure, you can file suit in federal court. The type of claim you will need to bring depends on the type of prison you are in. If you are

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[5] *See* Pell v. Procunier, 417 U.S. 817, 822–823, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 501–502 (1974) (noting that deterrence of crime, rehabilitation of incarcerated people, and maintenance of security are all legitimate prison goals); *see also* McKune v. Lile, 536 U.S. 24, 47–48, 122 S. Ct. 2017, 2032, 153 L.Ed.2d 47 (2002) (noting that sexual abuse treatment programs serve legitimate prison goals); Procunier v. Martinez, 416 U.S. 396, 412–413, 94 S. Ct. 1800, 1811, 40 L. Ed. 2d 224, 239 (1974) (explaining that justifiable government interests include preservation of internal order and discipline, maintenance of institutional security against escape or unauthorized entry, and rehabilitation of incarcerated people), *overruled on other grounds by* Thornburgh v. Abbott, 490 U.S. 401, 413–414, 109 S. Ct. 1874, 1881–1882, 104 L. Ed. 2d 459, 473 (1989).

[6] Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. §§ 2000cc-cc-5 (prohibiting the government from imposing a substantial burden on incarcerated peoples' religious exercise in jail unless it demonstrates that the burden serves a compelling governmental interest and does so by the least restrictive means).

[7] Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. §§ 2000bb–bb-4.

[8] Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a); Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb-(1)(a)–(b). *See* Lovelace v. Lee, 472 F.3d 174, 182 (4th Cir. 2006) (finding that Congress enacted RLUIPA in response to restrictions on religious liberties in prisons that were "egregious and unnecessary," and holding that under RLUIPA, a prison substantially burdening an inmate's exercise of religion must demonstrate that imposing the burden serves a compelling government interest by the least restrictive means).

[9] *See, e.g.*, Fowler v. Crawford, 534 F.3d 931, 938 (8th Cir. 2008) (holding that a RFRA case "dictate[d] the outcome" in the RLUIPA case before the court).

[10] *See* Prison Litigation Reform Act (PLRA) of 1995, 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."); Cutter v. Wilkinson, 544 U.S. 709, 723 n.12, 125 S. Ct. 2113, 2123 n.12, 161 L. Ed. 2d 1020, 1035 n.12 (2005) ("[A] prisoner may not sue under RLUIPA without first exhausting all available administrative remedies."); Jackson v. District of Columbia, 254 F.3d 262, 266–67 (D.C. Cir. 2001) (holding that PLRA's requirement that incarcerated people exhaust all available administrative remedies applies in actions brought under RFRA).

incarcerated in a state facility, you should bring a RLUIPA claim under 42 U.S.C. § 2000cc and a First Amendment claim under 42 U.S.C. § 1983. If you are incarcerated in a federal facility, you should bring a RFRA claim under 42 U.S.C. § 2000bb and a First Amendment claim in a *Bivens* action.[11]

Regardless of which types of claims you bring, when you draft your complaint, you should begin by asserting a RLUIPA claim (if you are incarcerated by the state government) or a RFRA claim (if you are incarcerated by the federal government), followed by a First Amendment claim. This is because it is easier to meet the RLUIPA or RFRA standards than the First Amendment standards. You are therefore more likely to receive relief under RLUIPA or RFRA than under the First Amendment.[12]

If you are incarcerated in a state facility, you can also file an action in a state court. If you are in a New York state prison, you can either file an action in the Court of Claims or you can file an Article 78 petition, depending on what kind of relief you want. More information on all of these types of cases can be found in *JLM,* Chapter 5, "Choosing a Court and a Lawsuit: An Overview of the Options," Chapter 14, "The Prison Litigation Reform Act," Chapter 16, "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law," Chapter 17, "The State's Duty to Protect You and Your Property: Tort Actions," and Chapter 22, "How to Challenge Administrative Decisions Using Article 78 of the New York Civil Practice Law and Rules."

If you end up pursuing any claim in federal court, you should make sure to read *JLM*, Chapter 14, "The Prison Litigation Reform Act,") before you file your claim. If you do not follow PLRA requirements, you can, among other things, lose your good time credit and your right to bring future claims in federal court without paying the full filing fee.

B. The First Amendment Establishment Clause

The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion."[13] This means that neither the federal government nor the states may set up a religion, aid one religion, aid all religions, or favor one religion over another.[14] Thus, prison officials violate the Establishment Clause if they give special treatment to certain religious groups. For example, if prison officials were to set up a church within the prison and force

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[11] A *Bivens* action allows incarcerated people to sue federal officials for constitutional violations. See *JLM,* Chapter 16, "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law," for a detailed discussion; *see also* Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 72, 122 S. Ct. 515, 522, 151 L. Ed. 2d 456, 467 (2001) (finding that a federal incarcerated person alleging a constitutional violation can bring a *Bivens* claim against the offending federal officer).

[12] *See* Shakur v. Schriro, 514 F.3d 878, 888 (9th Cir. 2008) ("RLUIPA . . . mandates a stricter standard of review for prison regulations that burden the free exercise of religion than the reasonableness standard [used to review regulations under the 1st Amendment]."); *see also* Smith v. Allen, 502 F.3d 1255, 1265–1266 (11th Cir. 2007) (noting that RLUIPA affords more "protection from government-imposed burdens" than the First Amendment), *abrogated on other grounds by* Sossamon v. Texas, 563 U.S. 277, 293, 131 S. Ct. 1651, 1663, 179 L. Ed. 2d 700, 714 (2011); DeSimone v. Bartow, No. 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *11 (E.D. Wis. Aug. 12, 2008) (*unpublished*) (noting that RLUIPA provides more expansive protections than the First Amendment for state incarcerated people because it prohibits "institutions that receive federal funding from substantially burdening an inmate's exercise of religion, even by a rule of general applicability, unless that burden is the least restrictive means of furthering a compelling governmental interest").

[13] U.S. CONST. amend. I.

[14] Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 216, 8 S. Ct. 1560, 1568, 10 L. Ed. 2d 844, 855 (1963) ("'[N]either a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.'" (quoting Everson v. Bd. of Educ., 330 U.S. 1, 15, 67 S. Ct. 504, 511, 91 L. Ed. 711, 723 (1947))); Wallace v. Jaffree, 472 U.S. 38, 60–61, 105 S. Ct. 2479, 2492, 86 L. Ed. 2d 29 (1985) (finding state laws violated the Establishment Clause because they "conveyed a message of endorsement" of a particular religion); Buckley v. Valeo, 424 U.S. 1, 92, 96 S. Ct. 612, 669, 46 L. Ed. 2d 659, 729 (1976) (stating the government may not aid one religion at the harm of another, place a burden on one religion that is not placed on others, or even help all religions), *overruled on other grounds by* Citizens United v. Fed. Election Com'n, 558 U.S. 301, 130 S. Ct. 876 (2010); Cantwell v. Conn., 310 U.S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213, 1218 (1940) (applying the Establishment Clause to the states).

incarcerated people to attend religious services, their actions would violate the Establishment Clause.[15]

In order for your Establishment Clause claim to succeed, you will first need to prove that there was "government action." This is often referred to as the "state action requirement." The Supreme Court has held that "state action may be found . . . only if . . . there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'"[16] In other words, the connection between the State and the behavior of the private individual or organization must be so close that it seems as though the State caused the individual or organization to perform the action.

Generally, courts will consider actions by prison officials and private groups acting under the authority of prison officials to meet the state action requirement.[17] For example, in 2007, the Court of Appeals for the Seventh Circuit held that when a department of corrections gave private religious organizations the power to incarcerate, treat, and discipline incarcerated people, along with giving them access to facilities and providing substantial aid to support a faith-based program, those religious organizations were considered to be state actors.[18]

On the other hand, unauthorized actions by individuals may be less likely to constitute state action. For example, in 1998 the Court of Appeals for the Ninth Circuit held that there was no state action when a prison officer, who was also a Christian minister, brought his Bible to work and placed it in the view of incarcerated people, sang Christian songs, debated and discussed religion with incarcerated people, and tried to convert incarcerated people to Christianity.[19] The court found that there was no Establishment Clause violation because the officer did not have the authority to make religious policies for the jail.[20] Additionally, the jail had not endorsed the officer's actions, had trained its staff to avoid such conduct, and had transferred the officer soon after the plaintiff complained.[21]

After you show that the practice or regulation you are challenging meets the state action requirement, you will then need to prove that it violates the Establishment Clause. Courts use different tests to determine whether a prison regulation or practice violates the Establishment Clause.[22] One of these tests is called the *Lee* coercion test.[23] There used to be a second test, called the

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[15] *See* Campbell v. Cauthron, 623 F.2d 503, 509 (8th Cir. 1980) (holding that allowing religious volunteers into a cell block did not violate the Establishment Clause but requiring prison officials to make sure that incarcerated people were not subjected to forced religious indoctrination).

[16] Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295, 121 S. Ct. 924, 930, 148 L. Ed. 2d 807, 817 (2001) (finding that a not-for-profit athletic association's enforcement of penalties against a private school's violation of athletic recruiting rules constituted state action because of the association's significant connections to public institutions and public officials); *see also* Jackson v. Metro. Edison Co., 419 U.S. 345, 351, 95 S. Ct. 449, 453, 42 L. Ed. 2d 477 (1974).

[17] *See* Monroe v. Pape, 365 U.S. 167, 184, 81 S. Ct. 473, 482, 5 L. Ed. 2d 492, 503 (1961) (finding that constitutional violations committed by state officers in performance of their duties were committed "under color of" state law, and rejecting the argument "that under color of' state law included only action taken by officials pursuant to state law"), *overruled on other grounds by* Monell v. Dep't of Soc. Serv. of N.Y., 436 U.S. 658, 663, 98 S. Ct. 2018, 2022, 56 L. Ed. 2d 611, 619 (1978); *see also* Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 703 (11th Cir. 1985) ("Although [the defendant] and its employees are not strictly speaking public employees, state action is clearly present. Where a function which is traditionally the exclusive prerogative of the state . . . is performed by a private entity, state action is present.").

[18] *See* Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc., 509 F.3d 406, 421–423 (8th Cir. 2007).

[19] Canell v. Lightner, 143 F.3d 1210, 1214 (9th Cir. 1998).

[20] Canell v. Lightner, 143 F.3d 1210, 1213–1214 (9th Cir. 1998).

[21] Canell v. Lightner, 143 F.3d 1210, 1213–1214 (9th Cir. 1998).

[22] *See* Ross v. Keelings, 2 F. Supp. 2d 810, 816–818 (E.D. Va. 1998) (noting that courts have sometimes used the *Lemon* test and other times decided to use the *Lee* test instead).

[23] *See* Lee v. Weisman, 505 U.S. 577, 578, 112 S. Ct. 2649, 2655, 120 L. Ed. 2d 467, 480 (1992); Warner v. Orange

Lemon test, but this recently changed. In the 2022 case *Kennedy v. Bremerton School District*, the Supreme Court rejected the *Lemon* test and instead decided to analyze the Establishment Clause claim by looking at the historical understanding of what restrictions were permissible at the time the First Amendment was ratified.[24] Because the *Bremerton* decision is new and courts are still deciding how to apply it, you should research recent cases in your jurisdiction to see if your court is using the *Lee* coercion test or the new historical analysis in *Bremerton*.[25]

1. The *Lee* Coercion Test

To determine whether a prison regulation or practice violates the First Amendment's Establishment Clause, a court may ask whether it amounts to "coercion." In *Lee v. Weisman*, the Supreme Court announced that "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise[]."[26] Applying this rule, the Court held that it was unconstitutional for public schools to force students to participate in prayer at their graduation ceremonies.[27] Specifically, the court ruled that a policy that allowed public schools to invite clergy members to recite prayer at graduation failed the coercion test because it constituted forced participation in religion.[28]

Although *Lee* dealt with religious freedom in schools, other lower courts have held that a showing of coercion alone may be sufficient to prove an Establishment Clause violation in prisons or in the probation context.[29]

For instance, in *Kerr v. Farrey*, an incarcerated person brought a federal civil rights claim against state corrections officials.[30] The incarcerated person alleged that the officials required him to attend religious-based Narcotics Anonymous meetings as part of his rehabilitation.[31] The Seventh Circuit Court of Appeals applied the *Lee* coercion test by asking three questions: (1) whether there was state action, (2) whether the action was coercive or forceful, and (3) whether the object of the coercion was religious or secular (meaning non-religious).[32]

In answering these three questions, the court found that the prison program violated the Establishment Clause by favoring religion over non-religion. First, there was state action, because the state had acted through the prison officials when it forced the incarcerated person to participate in the Narcotics Anonymous meetings. Second, the state action was coercive, because the penalty for not attending the meetings was a higher security risk classification and negative consequences for parole eligibility. Third, the object of the coercion was religious, because the Narcotics Anonymous meetings contained a religious element.[33] Similarly, in *Warner v. Orange County Department of Probation*, the

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Cty. Dep't of Probation, 115 F.3d 1068, 1074–1075 (2d Cir. 1997) (applying the *Lee* coercion test to determine whether a probation practice violates the Establishment Clause); Warburton v. Underwood, 2 F. Supp. 2d 306, 318 (W.D.N.Y. 1998) (holding that while proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient).

[24] Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022).

[25] See *JLM*, Chapter 2, "Introduction to Legal Research," for information on how to conduct legal research in prison.

[26] Lee v. Weisman, 505 U.S. 577, 587, 112 S. Ct. 2649, 2655, 120 L. Ed. 2d 467, 480 (1992).

[27] Lee v. Weisman, 505 U.S. 577, 599, 112 S. Ct. 2649, 2661, 120 L. Ed. 2d 467, 488 (1992).

[28] Lee v. Weisman, 505 U.S. 577, 599, 112 S. Ct. 2649, 2661, 120 L. Ed. 2d 467, 488 (1992).

[29] *See, e.g.*, Warburton v. Underwood, 2 F. Supp. 2d 306, 318 (W.D.N.Y. 1998) (holding proof of government coercion is sufficient but not necessary to prove an Establishment Clause violation).

[30] Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996).

[31] Kerr v. Farrey, 95 F.3d 472, 473–474 (7th Cir. 1996). For a more detailed discussion of faith-based addiction treatment options, see Part E of this Chapter.

[32] Kerr v. Farrey, 95 F.3d 472, 479 (7th Cir. 1996).

[33] Kerr v. Farrey, 95 F.3d 472, 479–480 (7th Cir. 1996). *See also* Warner v. Orange Cty. Dept. of Probation, 115

Second Circuit Court of Appeals found there was an Establishment Clause violation when the department of probation had required an incarcerated person to attend a religious Alcoholics Anonymous program as a condition of probation.[34]

2. Establishment Clause Claims After *Bremerton*

If you are unable to show that the prison regulation or practice amounted to coercion, you might still have a valid First Amendment claim under the framework set forth by the Supreme Court in *Kennedy v. Bremerton School District*,[35] which recently replaced the *Lemon* test that federal courts previously used to evaluate these claims.[36] In *Bremerton*, the Court held that the Establishment Clause "must be interpreted by 'reference to historical practices and understandings.'"[37]

As applied to the context of prisons, this means that, to show a violation of the Establishment Clause, you must demonstrate that the prison's regulations and practices restricted religion in a way that is inconsistent with the Clause's "original meaning and understanding."[38] "Original meaning and understanding" refers to what people understood the Clause to mean at the time the First Amendment was ratified in the late 1800s. *Bremerton* is a very new ruling, and the Court did not clearly establish a new test in place of the previous *Lemon* test. What this means is that the success of your claim will greatly depend on how your jurisdiction interprets the decision in *Bremerton*.

Right now, there is no easy way to determine whether your claim will be successful. However, you can evaluate the strength of your case by comparing your situation to those in other recent cases decided after *Bremerton*. The Court of Appeals for the Fourth Circuit handed down one of the first post–*Bremerton* decisions in *Firewalker-Fields v. Lee*.[39] In *Firewalker-Fields*, the plaintiff argued that prison policy substantially burdened his Islamic faith by preventing him from engaging in Friday Prayer, while at the same time broadcasting "non-denominational but distinctly Christian services every Sunday on televisions throughout the facility."[40] The plaintiff presented various historical sources to support his argument that there was an Establishment Clause violation; the court decided that the lower court did not properly consider these arguments and sent the case back down to the lower court.[41]

Currently (at the time this Chapter was written), no court has ruled on an Establishment Clause claim in the prison context under the *Bremerton* analysis yet. A recent opinion that came close to analyzing such a claim was the Southern District of West Virginia's decision in *Miller v Marshall*.[42] In

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F.3d 1068, 1074–1075 (2d Cir. 1996), *vacated on other grounds by* 115 F.3d 1068 (2d Cir. 1997) (holding that the county probation department could be held liable for violating the Establishment Clause by requiring a probationer to attend Alcoholics Anonymous meetings that contained religious content); *see also* Ross v. Keelings, 2 F. Supp. 2d 810, 818 (E.D. Va. 1998) (holding that prison officials violated the Establishment Clause by forcing an incarcerated person attend a drug rehabilitation program that included a religious study component). *But see* Quigg v. Armstrong, 106 F. App'x 555, 556 (9th Cir. 2004) (holding that a privately-run pre-release program that served as an alternative to prison was free to offer religion-based treatment without providing nonreligious alternatives because the program employees were not state actors).

[34] Warner v. Orange Cty. Dept. of Probation, 115 F.3d 1068, 1076 n.8 (2d Cir. 1996), *vacated on other grounds by* 115 F.3d 1068 (2d Cir. 1997).

[35] Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022).

[36] *See* Lemon v. Kurtzmann, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971) (holding that states cannot provide direct aid to parochial schools), *overruled by* Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022).

[37] Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 535, 142 S. Ct. 2407, 2428, 213 L. Ed. 2d 755 (2022) (quoting Town of Greece, N.Y. v. Galloway, 572 U.S. 565, 577, 134 S. Ct. 1811, 1819, 188 L. Ed. 2d 835 (2014)).

[38] Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 536, 142 S. Ct. 2407, 2428, 213 L. Ed. 2d 755 (2022).

[39] Firewalker-Fields v. Lee, 58 F.4th 104 (4th Cir. 2023).

[40] Firewalker-Fields v. Lee, 58 F.4th 104, 111 (4th Cir. 2023).

[41] Firewalker-Fields v. Lee, 58 F.4th 104, 122–123 (4th Cir. 2023).

[42] Miller v. Marshall, No. 2:23-CV-00304, 2023 WL 4606962 (S.D. W. Va. July 18, 2023).

Miller, the plaintiff challenged the "'pervasively religious' nature of the Residential Substance Abuse Treatment program" administered by the prison and said that his refusal to complete the program reduced his opportunity to receive parole.[43] Unfortunately, the decision did not provide much insight into how courts will analyze these claims moving forward. While the court did acknowledge *Bremerton*, it ultimately decided to rely on the *Lee* coercion test to find that the plaintiff raised a plausible Establishment Clause violation.[44]

Because the situation after *Bremerton* is unclear at the time this Chapter is being published, you should research recent court decisions in your state and jurisdiction. When doing your research, you should look for any cases that directly cite *Bremerton*. It may also be helpful to look for cases that cite *Firewalker-Fields*, *Miller*, or other recent attempts by the federal courts to apply the historical analysis set forth in *Bremerton*.[45]

C. The First Amendment Free Exercise Clause, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and the Religious Freedom Restoration Act (RFRA)

This Part discusses your religious freedom rights under the First Amendment Free Exercise Clause and RLUIPA or RFRA.[46] Although this Part begins with a description of the First Amendment Free Exercise Clause, it is absolutely critical that, when drafting a complaint, you state a claim for relief under RLUIPA or RFRA first. The RLUIPA or RFRA standards are easier to meet than the First Amendment standards, so you are more likely to receive relief under RLUIPA or RFRA than under the First Amendment.[47] After you make your RLUIPA or RFRA claim, you can then make an additional First Amendment claim.

1. First Amendment Free Exercise Clause

Before the enactment of the Religious Freedom Restoration Act, under the Free Exercise Clause of the First Amendment,[48] prison officials had to provide you with a "reasonable opportunity" for you to exercise your religious freedom without fear of penalty.[49]

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[43] *See* Miller v. Marshall, No. 2:23-CV-00304, 2023 WL 4606962, at *1 (S.D. W. Va. July 18, 2023).

[44] *See* Miller v. Marshall, No. 2:23-CV-00304, 2023 WL 4606962, at *7 (S.D.W. Va. July 18, 2023) (citing Kerr v. Farrey, 95 F.3d 472, 479 (7th Cir. 1996)).

[45] *See*, *e.g.*, Pendleton v. Jividen, No. 2:22-CV-00178, 2023 WL 2591474, at *10 (S.D.W. Va. Mar. 21, 2023) ("[S]uch historical analysis is going to be context-specific, *i.e.*, dependent upon the setting in which the establishment clause issue arises. Here, the specific context is accommodation of religious dietary practices in prison."), *vacated and remanded*, No. 23-6334, 2024 U.S. App. LEXIS 6624 (4th Cir. Mar. 20, 2024); Haidari v. Mayorkas, No. 22-CV-2939 (ECT/ECW), 2023 WL 5487351, at *5 (D. Minn. Aug. 24, 2023) (discussing defendants' argument that "historical practices support the Government's border-control authority and because maintaining border security is a compelling government interest").

[46] RLUIPA and RFRA provide essentially the same protections; the main difference is that RLUIPA applies to state and municipal incarcerated people, while RFRA applies to federal incarcerated people. *See* Cutter v. Wilkinson, 544 U.S. 709, 715–716, 125 S. Ct. 2113, 2118–2119, 161 L. Ed. 2d 1020, 1030–1031 (2005) (noting that courts of appeals have held that RFRA remains operative on the federal government and explaining that RLUIPA applies to state and local governments).

[47] *See* Shakur v. Schriro, 514 F.3d 878, 888 (9th Cir. 2008) ("RLUIPA . . . mandates a stricter standard of review for prison regulations that burden the free exercise of religion than the reasonableness standard [used to review regulations under the 1st Amendment.]").

[48] U.S. CONST. amend. I ("Congress shall make no law . . . prohibiting the free exercise [of religion].").

[49] *See* Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263, 268 (1972), *superseded by statute,* Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb *et seq.* In the *Cruz* case, a Buddhist incarcerated person was not allowed to use the prison chapel and was placed in solitary confinement for sharing his Buddhist religious materials with other inmates. The court found he was "denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts."

However, in certain circumstances, prison officials may restrict this right to exercise or practice your religious beliefs.[50] Specifically, a prison may lawfully impose rules or regulations that interfere with your sincerely held religious beliefs, provided that these rules or regulations are "reasonably related" to a "legitimate penological purpose or goal" of the prison.[51] These legitimate goals might include maintaining prison order, discipline, safety, and security, among others.[52]

So, in order to successfully challenge a prison regulation or practice under the Free Exercise Clause, you must be able to show that:

(1) Your belief is religious in nature,[53]
(2) Your belief is sincerely held, and
(3) The prison regulation is not reasonably related to a legitimate penological (prison) purpose or goal.[54]

The answer to the first two questions must be "yes" before a court will consider whether the regulation is reasonably related to a legitimate purpose or goal.[55] The following Subsections look at each of these requirements in more detail.

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50 *See* O'Lone v. Estate of Shabazz, 482 U.S. 342, 353, 107 S. Ct. 2400, 2406, 96 L. Ed. 2d 282, 292 (1987) (restricting incarcerated people who were on work detail from participating in Jumu'ah did not violate the Constitution because it was reasonably related to legitimate penological objectives of security and rehabilitation), *superseded by statute,* Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb *et seq*. While RFRA only applies to federal incarcerated people, RLUIPA still applies to state and municipal incarcerated people with practically the same protections.

51 *See* O'Lone v. Estate of Shabazz, 482 U.S. 342, 349–350, 107 S. Ct. 2400, 2404–2405, 96 L. Ed. 2d 282, 290 (1987), *superseded by statute,* Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb *et seq.*; Washington v. Harper, 494 U.S. 210, 223, 110 S. Ct. 1028, 1037, 108 L. Ed. 2d 178, 199 (1990).

52 *See* Pell v. Procunier, 417 U.S. 817, 822–823, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 501–502 (1974) ("[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as an incarcerated person or with the legitimate penological objectives of the corrections system," including deterrence of crime, protection of society, rehabilitation of the inmate, and internal security within corrections facilities); Procunier v. Martinez, 416 U.S. 396, 412, 94 S. Ct. 1800, 1811, 40 L. Ed. 2d 224, 239 (1974) ("The identifiable governmental interests at stake in [the maintenance of prison institutions] are the preservation of internal order and discipline, the maintenance of institutional security against escape or unauthorized entry, and the rehabilitation of the prisoners."), *overruled on other grounds by* Thornburgh v. Abbott, 490 U.S. 401, 413–414, 109 S. Ct. 1874, 1881–1882, 104 L. Ed. 2d 459, 473 (1989).

53 *See* Wisconsin v. Yoder, 406 U.S. 205, 209, 92 S. Ct. 1526, 1530, 32 L. Ed. 2d 15, 21 (1972) (noting that the beliefs of Amish parents were (1) religious and (2) sincere enough to support their challenge of a state law that required school attendance for their children). *Yoder* was overruled by the Supreme Court in *Employment Division v. Smith,* 494 US 872, 874, 110 S. Ct. 1595, 1597, 108 L. Ed. 2d 876, 882 (1990). However, when Congress passed the RFRA, it intended to restore the principles of *Yoder* and prevent such burdens on religious exercise in the future, thereby superseding *Smith*. RFRA's stated purpose is to "restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) and Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b)(1).

54 *See* O'Lone v. Estate of Shabazz, 482 U.S. 342, 350, 107 S. Ct. 2400, 2405, 96 L. Ed. 2d 282, 291 (1987) (finding the prison's restriction on incarcerated people who were on work detail from weekly Muslim religious services was reasonably related to legitimate penological goals. In addition, incarcerated people were able to participate in other religious ceremonies.).

55 *See* Murphy v. Mo. Dept. of Corr., 372 F.3d 979, 983 (8th Cir. 2004) ("In analyzing [a First Amendment Free Exercise Claim], we consider first the threshold issue of whether the challenged governmental action 'infringes upon a sincerely held religious belief,' and then apply the *Turner* factors to determine if the regulation restricting the religious practice is 'reasonably related to legitimate penological objectives.'" (citations omitted)).

(a) Religious Nature of Your Beliefs

The court will first decide whether your beliefs are religious.[56] The First Amendment only protects religious beliefs; therefore, if the court determines that your beliefs are simply moral or philosophical, it will not find any violation of the Free Exercise Clause.[57]

While this rule is fairly clear, courts have had difficulty defining exactly what constitutes a religious belief.[58] The Supreme Court has cautioned that "[t]he determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task,"[59] and the court has not yet authoritatively or comprehensively defined "religion."[60]

Without a fixed definition, lower courts have adopted various approaches. For example, the Third Circuit has adopted an objective test to determine whether a belief is religious. In *Africa v. Pennsylvania*, the court identified three factors that help distinguish a religion:

(1) A religion addresses fundamental and ultimate questions having to do with deep and imponderable (difficult or impossible to estimate or assess) matters;
(2) A religion is comprehensive in nature: it consists of a belief system as opposed to an isolated teaching; and
(3) A religion can often be recognized by the presence of certain formal and external signs.[61]

By contrast, the Second Circuit has adopted a more subjective test, that looks towards the "individual's inward attitudes towards a particular belief system" instead of the external features of the belief system.[62] In *Patrick v. LeFevre*, the court described religion as "the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in

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[56] *See* Wisconsin v. Yoder, 406 U.S. 205, 215, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15, 25 (1972) (considering first whether beliefs of Amish parents were religious and sincere enough to support their challenge of a state law that required children to attend school before considering whether state law was reasonably related to a legitimate purpose or goal).

[57] *See* Wisconsin v. Yoder, 406 U.S. 205, 215, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15, 25 (1972) ("A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.").

[58] *See, e.g.*, Cloutier v. Costco Wholesale, 311 F. Supp. 2d 190, 196 (D. Mass. 2004) ("[C]ourts are poor arbiters of questions regarding what is religious and what is not.").

[59] Thomas v. Review Bd., 450 U.S. 707, 714, 101 S. Ct. 1425, 1430, 67 L. Ed. 2d 624, 631 (1981).

[60] *See* Scott C. Idleman, *The Underlying Causes of Divergent First Amendment Interpretations*, 27 Miss. C. L. Rev. 67, 73–79 (2008). The most the Supreme Court has been willing to describe religion is as in the following cases: Davis v. Beason, 133 U.S. 333, 342, 10 S. Ct. 299, 300, 33 L. Ed. 637, 640 (1890) ("The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will"), *overruled on other grounds* by Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996); Minersville Sch. Dist. v. Gobitis, 310 U.S. 586, 593, 60 S. Ct. 1010, 1012, 84 L. Ed. 1375, 1378 (1940) (describing religion as "the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it."), *overruled on other grounds* by W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943); Wisconsin v. Yoder, 406 U.S. 205, 216, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15, 25 (1972) (stating that "philosophical and personal rather than religious" beliefs are not protected by the Constitution).

[61] Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. 1981) (holding that although members of the MOVE organization, a "'revolutionary' organization 'absolutely opposed to all that is wrong'," held sincere beliefs, these beliefs did not amount to a religion (citing Malnak v. Yogi, 592 F.2d 197, 207–210 (3d Cir. 1979))).

[62] Patrick v. LeFevre, 745 F.2d 153, 157 (2d Cir. 1984) (holding that subjective issues of sincerity of belief and the perceived religious nature of that belief are questions of fact, rather than law, and reversing and remanding the lower court's grant of summary judgment for further consideration of the incarcerated person's request for religious recognition).

relation to whatever they may consider the divine."[63] Thus, courts in the Second Circuit will probably look to whether your beliefs are religious in your "own scheme of things."[64]

These tests are not the only ones used in state or federal courts, so be sure to research the law in your state or federal circuit. Although predicting whether a particular court will recognize a particular belief system as a religion is hard, you should be aware of some guideposts.

First, the U.S. Supreme Court has stated that the main consideration in deciding whether beliefs are religious is the role they play in the life of the person making the claim.[65] Second, the Supreme Court has emphasized that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."[66] Likewise, your religion does not need to be organized like a traditional church,[67] conform to an established doctrine,[68] or otherwise meet any organizational or doctrinal test.[69]

For example, a federal district court held that an incarcerated person who had invented his own religion had a potentially valid claim under the First Amendment and RLUIPA.[70] In *DeSimone v. Bartow*, the incarcerated person argued that prison officials had violated his right to free exercise of religion when they prohibited him from keeping journals written in a language that he invented.[71] The incarcerated person asserted that he believed that biblical scripture commanded him to write in this language and that the act of writing was itself a religious act.[72] The court accepted his argument and allowed the suit to proceed, finding that the incarcerated person had set forth cognizable claims under both the First Amendment and RLUIPA.[73]

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[63] Patrick v. LeFevre, 745 F.2d 153, 158 (2d Cir. 1984) (first quoting United States v. Sun Myung Moon, 718 F.2d 1201, 1227 (2d Cir. 1983); and then quoting W. James, *The Varieties of Religious Experience* 31 (1910)). This definition is similar to the Supreme Court's description of religious belief as one "based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent." United States v. Seeger, 380 U.S. 163, 176, 85 S. Ct. 850, 859, 13 L. Ed. 2d 733, 743 (1965); *accord* Welsh v. United States, 398 U.S. 333, 339–341, 90 S. Ct. 1792, 1796–1797, 26 L. Ed. 2d 308, 318–320 (1970).

[64] Jackson v. Mann, 196 F.3d 316, 320 (2d Cir. 1999) (quoting Patrick v. LeFevre, 745 F.2d 153, 157 (2d Cir. 1984); United States v. Seeger, 380 U.S. 163, 185, 85 S. Ct. 850, 863, 13 L. Ed. 2d 733, 747 (1965).

[65] *See* United States v. Seeger, 380 U.S. 163, 185, 85 S. Ct. 850, 863, 13 L. Ed. 2d 733, 747 (1965) ("[C]ourts . . . are not free to reject beliefs because they consider them 'incomprehensible.' Their task is to decide whether the beliefs professed by a[n incarcerated person] are sincerely held and whether they are, in his own scheme of things, religious.").

[66] Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 714, 101 S. Ct. 1425, 1430, 67 L. Ed. 2d 624, 631 (1981).

[67] *See, e.g.*, Marria v. Broaddus, No. 97 Civ.8297, 2003 U.S. Dist. LEXIS 13329, at *26–29 (S.D.N.Y. July 31, 2003) (*unpublished*) (finding the incarcerated person's beliefs as a member of the Nation of Gods and Earths to be sincere and religious, despite it being a non-traditional religious organization).

[68] *See* Sequoyah v. Tenn. Valley Auth., 620 F.2d 1159, 1163 (6th Cir. 1980) (finding that "there is no requirement that a religion meet any organizational or doctrinal test," that "[o]rthodoxy is not an issue" and that "[t]he Cherokees have a religion within the meaning of the Constitution . . . .").

[69] *See* Sequoyah v. Tenn. Valley Auth., 620 F.2d 1159, 1163 (6th Cir. 1980) (finding that despite having "no written creeds and no man-made houses of worship . . . [t]he Cherokees have a religion within the meaning of the Constitution . . . ").

[70] DeSimone v. Bartow, No. 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *13 (E.D. Wis. Aug. 12, 2008) (*unpublished*) (finding that an incarcerated person who had created his own religion, which he referred to as the "Religious Society of Atlantis and the Sanctuary of the Yahweh," had a potentially valid claim under the First Amendment and RLUIPA).

[71] DeSimone v. Bartow, No. 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *10 (E.D. Wis. Aug. 12, 2008) (*unpublished*).

[72] DeSimone v. Bartow, No. 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *12 (E.D. Wis. Aug. 12, 2008) (*unpublished*).

[73] DeSimone v. Bartow, No. 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *13 (E.D. Wis. Aug. 12, 2008) (*unpublished*) ("DeSimone's allegations can be understood to allege that he considers writing in Atlantean as central to his faith, and that the Defendants have targeted his writing, as opposed to the writings of other inmates

Note, however, that although courts have held that non-major religions are entitled to First Amendment protection, you may encounter greater difficulty if your religion is not well-known.[74]

(b) Sincerity of Your Beliefs

If the court determines your belief is religious, it will next consider whether your belief is sincerely held.[75] Prison officials and courts may require that you demonstrate "sincerity," meaning a true and deep commitment to your religion.[76]

In making this decision, courts are not supposed to judge whether your beliefs are "accurate or logical,"[77] or rule on the correctness of your beliefs.[78] Thus, a court may still find your belief sincerely held, even if the clergy says you are not a member of the religion.[79] Indeed, "clergy opinion has generally been deemed insufficient to override an incarcerated person's sincerely held religious belief."[80]

Instead, courts will look to factors including your familiarity with your faith's teachings,[81] your demonstrated observance of its rules,[82] and the length of time that you have practiced these religious

in foreign languages, because of his uncommon religious beliefs. Thus, Desimone will be permitted to proceed with his claims that by forbidding him from writing in Atlantean, the Defendants violated the First Amendment and RLUIPA."), *dismissed on other grounds*, No. 08-C-638, 2009 U.S. Dist. LEXIS 48689 (E.D. Wis. June 10, 2009).

74 *See* Africa v. Pennsylvania, 662 F.2d 1025, 1031 (3d Cir. 1981) ("[W]e must avoid any predisposition toward conventional religions so that unfamiliar faiths are not branded mere secular beliefs.").

75 *See generally* Wisconsin v. Yoder, 406 U.S. 205, 207, 92 S. Ct. 1526, 1529, 32 L. Ed. 2d 15, 20 (1972) (holding that Amish children could be exempted from required high school attendance because formal education beyond eighth grade violated sincerely held Amish religious beliefs).

76 *Cf.* United States v. Seeger, 380 U.S. 163, 185, 85 S. Ct. 850, 863, 13 L. Ed. 2d 733, 747 (1965) (holding that a belief must be "sincerely held" to qualify a believer for exemption from service in the armed forces).

77 *See* Jackson v. Mann, 196 F.3d 316, 320 (2d Cir. 1999) ("In determining whether a prisoner's particular religious beliefs are entitled to free exercise protection, the relevant inquiry is not whether, as an objective matter, the belief is 'accurate or logical.'" (quoting Jolly v. Coughlin, 76 F.3d 468, 476 (2d Cir. 1996))).

78 *Cf.* Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 451–452, 89 S. Ct. 601, 607, 21 L. Ed. 2d 658, 666–667 (1969) (holding that the Constitution prohibits a court from interpreting church doctrine to settle a property dispute that depends upon whether a group is adhering to the doctrine); Bear v. Nix, 977 F.2d 1291, 1294 (8th Cir. 1992) (holding that a court would unconstitutionally intrude upon a good faith "application of religious doctrine by a recognized spiritual leader of the relevant faith" if it overruled a refusal to admit plaintiff into a Native American religion).

79 *See* Jackson v. Mann, 196 F.3d 316, 320 (2d Cir. 1999) (remanding case in which a lower court incorrectly evaluated the incarcerated person's claim that he was Jewish by relying on a chaplain's report that the incarcerated person was not Jewish, rather than determining whether the incarcerated person's belief was "sincerely held").

80 Koger v. Bryan, 523 F.3d 789, 799–800 (7th Cir. 2008) (holding that an incarcerated person's belief regarding the importance of the Eid-ul-Fitr feast to his practice of Islam, and not the testimony of Muslim clerics as to the proper celebration of the feast, was determinative of whether the prison's decision to deprive incarcerated people of a post-Eid meal constituted a substantial burden on his freedom of religion (citing Ford v. McGinnis, 352 F.3d 582, 593–594 (2d Cir. 2003))); Jackson v. Mann, 196 F.3d 316, 320–321 (2d Cir. 1999) (holding that it was the sincerity of an incarcerated person's beliefs, and not the decision of Jewish religious authorities, that determined whether the incarcerated person was an adherent of Judaism entitled to a kosher meal); *cf.* Frazee v. Ill. Dept. of Employment Sec., 489 U.S. 829, 834, 109 S. Ct. 1514, 1517, 103 L. Ed. 2d 914, 920 (1989) (holding that in the context of a denial of unemployment benefits, the plaintiff's refusal to work on Sundays based on his professed religious belief was entitled to protection even though "there are assorted Christian denominations that do not profess to be compelled by their religion to refuse Sunday work").

81 *See, e.g.*, Robinson v. Foti, 527 F. Supp. 1111, 1113 (E.D. La. 1981) (ruling against an incarcerated person who sought an exemption from prison rules against dreadlocks in part because the incarcerated person failed to demonstrate familiarity with Rastafarian practice, history, or teachings, which suggested that the incarcerated person's Rastafarian beliefs were not sincere).

82 *See, e.g.*, Reed v. Faulkner, 842 F.2d 960, 963 (7th Cir. 1988) ("Evidence of nonobservance is relevant on the question of sincerity, and is especially important in the prison setting, for an inmate may adopt a religion merely to harass the prison staff with demands to accommodate his new faith . . . . But the fact that a person does not adhere steadfastly to every tenet of his faith does not mark him as insincere.").

beliefs.[83] Thus, evidence that you are familiar with your religion, have practiced it for a long time, have participated in religious ceremonies when possible, or have otherwise acted on the basis of your religion can help to establish the sincerity of your religious beliefs.

(c) The Validity of Prison Rules and Regulations

If the court decides your belief is religious and sincerely held, it will then apply the *Turner* test to the prison regulation or practice that you are challenging by asking whether a prison regulation "is reasonably related to legitimate penological interests," and therefore does not violate your constitutional rights.[84] Specifically, under *Turner*, a court will consider the following four factors:

(1) Whether there is a valid, rational connection between the prison regulation and the legitimate governmental interest used to justify it;
(2) Whether there are other ways of exercising the right despite the regulation;
(3) If, by allowing you to exercise your right, there will be a "ripple effect" on others such as prison personnel, other incarcerated people, and on the allocation of prison resources; and
(4) Whether there is a different way for the prison to meet the regulation's goal without limiting your religious rights in this way.[85]

When evaluating the first factor, courts have deferred to the judgment of prison officials and found that prison security is a legitimate governmental interest.[86] This means courts are not likely to second-guess the reasons prison officials give for prison regulations. For example, one federal court of appeals used the *Turner* test to decide that prison officials could prohibit religious items like a bear tooth necklace and a medicine bag in cells to protect the safety of other incarcerated people, prison guards, and the incarcerated person himself.[87]

For the fourth factor, you will want to show that a different policy could meet the prison's needs without affecting your religious exercise as severely, and therefore that the current regulation is

[83] *See, e.g.*, Iron Eyes v. Henry, 907 F.2d 810, 813 (8th Cir. 1990) (upholding lower court's conclusion that an incarcerated person's belief was sincerely held when the lower court "noted that [the incarcerated person] had maintained Sioux religious beliefs throughout his life, and that he had participated in religious ceremonies whenever possible").

[84] Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."), *partially superseded by statute*, Religious Freedom Restoration Act (RFRA) of 1993.

[85] Turner v. Safley, 482 U.S. 78, 89–90, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 79–80 (1987) ("First, there must be a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it. . . . A second factor . . . is whether there are alternative means of exercising the right that remain open to prison inmates. . . . A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally. . . . Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation. . . . By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." (citations omitted)).

[86] *See* Thornburgh v. Abbott, 490 U.S. 401, 407–408, 109 S. Ct. 1874, 1878–1879, 104 L. Ed. 2d 459, 469 (1989) ("Acknowledging the expertise of these officials and that the judiciary is 'ill equipped' to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world."); Harbin-Bey v. Rutter, 420 F.3d 571, 578 (6th Cir. 2005) ("Courts generally afford great deference to prison policies, regulations, and practices relating to the preservation of these interests."); *see also* Pell v. Procunier, 417 U.S. 817, 823, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 502 (1974) ("[C]entral to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves.").

[87] *See* Hall v. Bellmon, 935 F.2d 1106, 1113 (10th Cir. 1991) (upholding a prison policy that prohibited a Native American from wearing a bear tooth necklace and medicine bag on the grounds of prison security); *see also* Spies v. Voinovich, 173 F.3d 398, 405 (6th Cir. 1999) (upholding a prison's prohibition of certain Buddhist religious materials from an incarcerated person's cell and the chapel on the grounds of prison security).

unnecessary. However, the U.S. Constitution does not require that the prison prove that the current regulation is necessary.[88]

2. RLUIPA and RFRA

In addition to the First Amendment protections described above, your right to religious freedom is also protected by federal laws. If you are in state prison, your right is protected by a law called the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).[89] If you are in federal prison, your right is protected by a law called the Religious Freedom Restoration Act (RFRA).[90]

These laws prohibit the government from placing a substantial burden on the religious practices of incarcerated people, unless the government can demonstrate that the burden both (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest.[91]

Both federal laws provide a higher level of protection for incarcerated people to exercise their religion than the protection provided by the First Amendment Free Exercise Clause.[92] Therefore, you should begin your complaint with an argument that the restriction violates RLUIPA, or, if you are in federal prison, RFRA. You may then make an argument that the restriction also violates the Free Exercise Clause of the First Amendment. In practice, if a court finds that a regulation does not violate RLUIPA or RFRA, it will also almost certainly find that it does not violate the First Amendment Free Exercise Clause.[93]

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[88] *See, e.g.*, O'Lone v. Est. of Shabazz, 482 U.S. 342, 350, 107 S. Ct. 2400, 2405, 96 L. Ed. 2d 282, 291 (1987) ("Though the availability of accommodations is relevant to the reasonableness inquiry, we have rejected the notion that 'prison officials . . . have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint.'" (quoting Turner v. Safley, 482 U.S. 78, 90–91, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 80 (1987))), *partially superseded by statute*, Religious Freedom Restoration Act (RFRA) of 1993. This case was decided before Congress passed RLUIPA and RFRA. These statutes, discussed in Section C(2) of this Chapter, provide additional statutory protections for incarcerated people.

[89] Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1.

[90] Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb-1. In 1997, the Supreme Court held that RFRA does not apply to claims against states. City of Boerne v. Flores, 521 U.S. 507, 534, 117 S. Ct. 2157, 2171, 138 L. Ed. 2d 624, 648 (1997) (holding that RFRA "is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens" and overturning it as unconstitutional in that regard). However, RFRA still applies to incarcerated people's claims against federal prisons. *See, e.g.*, Hankins v. Lyght, 441 F.3d 96, 105–106 (2d Cir. 2006) ("Since *Boerne*, 'every appellate court that has squarely addressed the question has held that the RFRA governs the activities of federal officers and agencies.'" (citations omitted)).

[91] Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a) ("No government shall impose a substantial burden upon the religious exercise of a person residing in or confined to an institution . . . unless the government demonstrates that the imposition of the burden on that person—(1) is in the furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."); Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb-1(a)–(b) ("Government shall not substantially burden a person's exercise of religion" unless "it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.").

[92] *See* Shakur v. Schriro, 514 F.3d 878, 888 (9th Cir. 2008) ("RLUIPA . . . mandates a stricter standard of review for prison regulations that burden the free exercise of religion than the reasonableness standard under *Turner*."); *see also* Cutter v. Wilkinson, 544 U.S. 709, 714, 125 S. Ct. 2113, 2117, 161 L. Ed. 2d 1020, 1029 (2005) (noting that RLUIPA provides "heightened protection from government-imposed burdens" compared with 1st Amendment standards); DeSimone v. Bartow, No. 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *11 (E.D. Wis. Aug. 12, 2008) (*unpublished*) ("RLUIPA provides more expansive protection [than the 1st Amendment], prohibiting institutions that receive federal funding from substantially burdening an inmate's exercise of religion, even by a rule of general applicability, unless that burden is the least restrictive means of furthering a compelling governmental interest.").

[93] *See, e.g.*, Fegans v. Norris, 537 F.3d 897, 906–908 (8th Cir. 2008) (finding a prison's grooming policy did not violate either RLUIPA or the 1st Amendment); Borzych v. Frank, 439 F.3d 388, 390 (7th Cir. 2006) (noting that the incarcerated person's best argument was based on RLUIPA since it provides greater protections of religious practices, and therefore finding it unnecessary to address the 1st Amendment claim); Nelis v. Kingston, No. 06-C-1220, 2007 U.S. Dist. LEXIS 86036, at *13 (E.D. Wis. Nov. 19, 2007) (*unpublished*) (finding a prison's eligibility

Although RLUIPA and RFRA are separate laws, a court deciding a case under one law may also look at how a court decided a case under the other law. In other words, RLUIPA cases will be looked at by courts deciding RFRA cases and vice versa.[94] This is because both laws prohibit laws and policies that substantially burden the exercise of your religion, unless the restrictions further a compelling governmental interest using the least restrictive means available.[95] Additionally, both statutes protect the same type of "religious exercise."[96] So, although this Chapter primarily refers to RLUIPA, if you are incarcerated in a federal prison, this discussion of RLUIPA should help you to determine if you have a viable claim under RFRA.

The sections below will explain what you need to show to establish a RLUIPA or RFRA violation. In general, you first need to show that you meet the jurisdictional requirements of the law (the governing statute states that certain procedural elements must be met by the party bringing the RLUIPA claim before a court can even evaluate the substantive elements of your RULIPA claim).[97] Second, you will need to show (1) you are seeking to engage in an exercise of religion, (2) the prison regulation or practice you are challenging "substantially burdens" that exercise of religion, and (3) prison officials cannot show that the regulation is the "least restrictive means" of achieving a "compelling government interest."[98]

(a) Jurisdictional Requirements

(i) *RLUIPA*

If you are incarcerated in a state facility and bringing a claim under RLUIPA, you must first show that the law applies to the prison regulation or practice you are challenging. RLUIPA provides that its protections apply only when "(1) the substantial burden is imposed in a program or activity that receives federal financial assistance; or (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes."[99]

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rule for religious activities did not violate either RLUIPA or the 1st Amendment); Daker v. Wetherington, No. 1:01-CV-3257-RWS, 2005 U.S. Dist. LEXIS 44485, at *45 (N.D. Ga. Aug. 1, 2005) (*unpublished*) (finding that because a prison's shaving policy did not violate RLUIPA, it could not have violated the 1st Amendment under the "more deferential" *Turner* test).

94 *See* Hoevenaar v. Lazaroff, 422 F.3d 366, 370 (6th Cir. 2005) ("RFRA cases according deference to prison decisions [are] applicable to cases brought pursuant to the RLUIPA."); *see also* Murphy v. Mo. Dept. of Corr., 372 F.3d 979, 988 (8th Cir. 2004) (concluding that RLUIPA and RFRA apply the same standard).

95 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a); Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb-1(a)–(b).

96 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-5(7); Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb-2(4).

97 See, e.g., Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp., 259 Mich. App. 315, 327 (2003) ("In order to establish a claim under RLUIPA, a party must establish that at least one of these three jurisdictional elements exists: (a) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from general applicability; (b) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.") (quoting 42 U.S.C. §2000cc(a)(2)).

98 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a)–(b); Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. §§ 2000bb-1(a)–(b), -3(a).

99 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(b).

This means that you will need to show that the prison regulation you are challenging either (a) is imposed in a program or activity that receives federal funds (called "Spending Clause jurisdiction") or (b) affects interstate commerce (called "Commerce Clause jurisdiction").[100]

In order to meet the Spending Clause jurisdictional requirement, the regulation that you are challenging must be imposed in the context of a program or activity that receives federal financial assistance.[101] "Program or activity" means "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or local government."[102] Basically, this means that whenever a state or local prison or department of corrections accepts federal funding, RLUIPA will apply to all of its programs.[103] Virtually every prison and jail system accepts some federal money, so you can, and should, plead in your complaint that the court has Spending Clause jurisdiction. After you have filed your complaint, you can then request proof of that fact from the defendants during the discovery phase.

A court also has RLUIPA jurisdiction under the Commerce Clause if the substantial burden placed on your religious exercise "substantially affects interstate commerce."[104] However, because, as explained above, nearly all prison and jail systems accept some federal funds, it is very unlikely that you will need to rely upon Commerce Clause jurisdiction.

(ii) *RFRA*

If you are a person incarcerated in a federal prison and bringing a lawsuit under RFRA, these jurisdictional requirements do not apply. Instead, you must say that your free exercise of religion rights were violated at a federal prison or by a federal agent.[105]

(b) <u>Religious Exercise</u>

Assuming you have met the jurisdictional requirements, a court will next assess whether the activity you want to do is a religious practice. To be a religious practice, the activity you want to do must be (1) rooted in a sincerely held belief that is (2) religious in nature.[106]

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100 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(b). If you are a federal incarcerated person bringing a claim under RFRA, these jurisdictional requirements do not apply to you. Instead, you must allege that your Free Exercise rights were violated at a federal prison or by an agent of the federal fovernment.

101 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(b)(1).

102 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-5(6) ("[T]he term 'program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.."); *see* Civil Rights Act of 1964, 42 U.S.C. § 2000d-4a(1)(A) ("For the purposes of this title, the term 'program or activity' and the term 'program' mean all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance.").

103 *See* Orafan v. Goord, No. 00-CV-2022 (LEK/RFT), 2003 U.S. Dist. LEXIS 14277, at *24 (N.D.N.Y. Aug. 11, 2003) (*unpublished*) ("No[]where in this definition [of program and activity] does it state that a receiver of federal funds is at liberty to decide which programs are under the auspice of RLUIPA. Quite the contrary, as the statute clearly applies to *all of the operations*.").

104 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(b)(2); *see also* United States v. Lopez, 514 U.S. 549, 558–559, 115 S. Ct. 1624, 1629–1630, 131 L. Ed. 2d 626, 637 (1995) (describing the types of commerce authority enjoyed by Congress, including "the power to regulate those activities having a substantial relation to interstate commerce, [i.e.], those activities that substantially affect interstate commerce."). This means that if other people in the same situation as you experienced the same burden, the total effect of all of those situations combined would affect interstate commerce. *See* Wickard v. Filburn, 317 U.S. 111, 128, 63 S. Ct. 82, 90, 87 L. Ed. 122, 136 (1942) (holding that interstate effect is measured by evaluating the activity in question "together with that of many others similarly situated").

105 Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. §§ 2000bb-1 to -3.

106 *See* Koger v. Bryan, 523 F.3d 789, 797 (7th Cir. 2008) ("RLUIPA is a guarantor of sincerely held religious beliefs."); *see also* Porter v. Burnett, No. 1:05-cv-562, 2008 WL 3050011, at *5 (W.D. Mich. Aug. 4, 2008) (*unpublished*) ("While [RLUIPA's] definition of religious exercise is broad, it does require that [p]laintiff's religious

Congress has defined "religious exercise" broadly, to mean "any exercise of religion, whether or not compelled by, or central to, a system of religious belief."[107] This broad definition, which applies to both RLUIPA and RFRA,[108] increases the likelihood your lawsuit will succeed, or at least make it through a summary judgment motion.[109]

Under this definition, RLUIPA also protects religious practices that are not necessarily central to your religion, such as practices that are a small part of your religion or not of great importance to your religion.[110] This means that, as a general rule, courts will not try to determine whether your religious belief is accurate or supported by your religious teachings, but will simply decide if it is a sincerely held belief and religious in nature.[111]

The current definition of religious exercise prevents courts and government officials from deciding what types or levels of religious exercise are necessary or appropriate for membership in a certain religion. This definition also incorporates the idea that the judicial system is not able (or competent) to decide whether a particular act is central to a person's faith.[112]

(c) Substantial Burden

If the court finds that you have engaged in religious exercise, it will then evaluate whether the prison regulation that you are challenging substantially burdens this religious exercise.[113]

Although Congress did not define what "substantial burden" means, the Supreme Court has interpreted "substantial burden" to mean that the government action or regulation at issue either (1) puts great pressure on you to change your behavior and violate your beliefs, or (2) prevents you from

beliefs be 'sincerely held.'"); Lovelace v. Lee, 472 F.3d 174, 187 n.2 (4th Cir. 2006) ("RLUIPA does not . . . preclude inquiry into 'the sincerity of a prisoner's professed religiosity.'" (citation omitted)); Starr v. Cox, No. 05-cv-368-JD, 2008 U.S. Dist. LEXIS 34708, at *21 (D.N.H. Apr. 28, 2008) (*unpublished*) ("[C]ourts have construed RLUIPA to require a plaintiff to show that the exercise of religion is part of a (1) system of religious belief and (2) that the plaintiff holds a sincerely held belief in the religious exercise." (citing Guzzi v. Thompson, 470 F. Supp. 2d 17, 26 (D. Mass. 2007))).

107 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-5(7)(A).

108 RFRA defines "exercise of religion" as "religious exercise, as defined in § 2000cc-5 [RLUIPA]." Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 , 42 U.S.C. § 2000bb-2(4).

109 Because the determination of whether your belief is sincere and religious in nature is a fact-specific inquiry, some courts have expressed reluctance to grant summary judgment motions. *See, e.g.*, Porter v. Caruso, 479 F. Supp. 2d 687, 691–692 (W.D. Mich. 2007) (holding that even when there is evidence in the record to suggest that defendant's practices are better characterized as cultural rather than religious, summary judgment is inappropriate because the religious nature of the practices is a factual dispute that must be resolved at trial).

110 *See* Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-5(7)(A) ("'[R]eligious exercise' includes any exercise of religion, whether or not . . . [it is] central to[] a system of religious belief.").

111 *See* Thomas v. Review Bd., 450 U.S. 707, 716, 101 S. Ct. 1425, 1431, 67 L. Ed. 2d 624, 632 (1981) ("[I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation."); *see also* Hernandez v. Comm'r of Internal Revenue, 490 U.S. 680, 699, 109 S. Ct. 2136, 2148, 104 L. Ed. 2d 766, 786 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.").

112 *See* Thomas v. Review Bd., 450 U.S. 707, 716, 101 S. Ct. 1425, 1431, 67 L. Ed. 2d 624, 632 (1981) ("[I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.").

113 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a).

engaging in religious actions in a way that more than just inconveniences you.[114] The legislative history of RLUIPA indicates that Congress wanted courts to follow this interpretation.[115]

Although courts have emphasized that the question of whether a regulation imposes a substantial burden is a fact-specific inquiry requiring a case-by-case determination,[116] the examples discussed below in Section C(3) can help you assess whether a court would find a regulation to be a substantial burden.

(d) Compelling Government Interest and Least Restrictive Means

Once you have established that a prison rule or regulation places a substantial burden on your religious exercise, RLUIPA shifts the burden to produce evidence and the burden of persuasion to the government.[117] This means that to defeat your claim, the government has to show that:

(1) the substantial burden it has placed on your religious exercise is necessary because of a "compelling government interest;" and
(2) the burden it placed on your religious exercise is the "least restrictive means" of achieving its goal.[118]

In order to meet the first requirement, the government must show that it has a compelling interest in restricting your religious exercise. The Supreme Court has defined "compelling interest" as "only those interests of the highest order."[119] The government's interest in maintaining prison safety and security is a compelling interest.[120] However, other examples of state interests, such as reducing costs, are less likely to be considered "compelling."[121]

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114 *See* Thomas v. Review Bd., 450 U.S. 707, 718, 101 S. Ct. 1425, 1432, 67 L. Ed. 2d 624, 634 (1981) ("Where 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. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial."); *see also* Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004) (summarizing the Supreme Court's interpretation of "substantial burden" and noting that "a 'substantial burden' must place more than an inconvenience on religious exercise; a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct."); Coronel v. Paul, 316 F. Supp. 2d 868, 880 (D. Ariz. 2004) (holding that "state action substantially burdens the exercise of religion within the meaning of the RLUIPA when it prevents a religious adherent from engaging in conduct both important to the adherent and motivated by sincere religious belief.").

115 *See* 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (Joint Statement of Sen. Hatch and Sen. Kennedy) (stating that the term "substantial burden" is to "be interpreted by reference to [existing] Supreme Court jurisprudence").

116 *See*, *e.g.*, Adkins v. Kaspar, 393 F.3d 559, 571 (5th Cir. 2004) ("We recognize that our test requires a case-by-case, fact-specific inquiry to determine whether the government action or regulation in question imposes a substantial burden on an adherent's religious exercise; however, we perceive this kind of inquiry to be unavoidable under the RLUIPA and the circumstances that it addresses. This is why we make no effort to craft a bright-line rule."); Jova v. Smith, 582 F.3d 410, 415 (2d Cir. 2009) ("Where a plaintiff adduces evidence sufficient to show that the government practice substantially burdens her religious exercise, the onus shifts to the government to demonstrate that the practice furthers a compelling governmental interest, and that the burden imposed on religion is the least restrictive means of achieving that interest.")

117 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-2(b); *see also* Koger v. Bryan, 523 F.3d 789, 796 (7th Cir. 2008).

118 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a).

119 Wisconsin v. Yoder, 406 U.S. 205, 215, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15, 25 (1972).

120 *See*, *e.g.*, Cutter v. Wilkinson, 544 U.S. 709, 725 n.13, 125 S. Ct. 2113, 2124 n.13, 161 L. Ed. 2d 1020, 1036 n.13 (2005) ("[P]rison security is a compelling state interest, and . . . deference is due to institutional officials' expertise in this area."); Pell v. Procunier, 417 U.S. 817, 823, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 502 (1974) ("[C]entral to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves.").

121 Some courts, however, have held that expense is a compelling governmental interest. *See, e.g.*, Baranowski v. Hart, 486 F.3d 112, 125–126 (5th Cir. 2007) (holding "controlling costs" to be a compelling governmental interest).

In order to show that the challenged rule or restriction is the least restrictive means, the government must do more than just say that there is no less restrictive means available.[122] The government must also do more than simply speculate as to the possible negative effects that could occur if it were to accommodate your religious practice.[123] Moreover, in at least some courts, the government must demonstrate that "it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."[124] Like the compelling interest test, the least restrictive means test is very strict and well-established in constitutional law.[125]

Although you do not have the burden of proof, you can, and should, challenge the government's argument that the regulation is the least restrictive means. For example, if the government allows other types of practices in the prison that could harm its stated compelling interest, or if other prisons allow the religious exercise you are practicing, you can use this evidence to try to beat the government's argument.[126] Several courts have recognized that evidence of what other prisons have done to accommodate incarcerated people's religious practices is relevant to RLUIPA claims.[127] But "[c]ourts have repeatedly recognized that 'evidence of policies at one prison is not *conclusive* proof that the same policies would work at another institution.'"[128]

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122 *See* Warsoldier v. Woodford, 418 F.3d 989, 1001 (9th Cir. 2005) (finding the government's unsupported statements insufficient to meet its burden that it had adopted the least restrictive means to achieve its interest in maintaining prison security).

123 *See* O'Bryan v. Bureau of Prisons, 349 F.3d 399, 401 (7th Cir. 2003) (holding that a governmental body that imposes a "substantial" burden on a religious practice cannot simply assert that the rule is least restrictive means of achieving a compelling governmental interest, but must show the rule is the least restrictive means of achieving that interest); *see also* Ali v. Stephens, 822 F.3d 776, 793 (5th Cir. 2016) (noting that a trial court was not required to believe the predications made by a prison to create a rule that would prevent Muslim men from growing 4-inch beards, in accordance with their religion, because of "speculative nature of the testimony" of the prison's witness); Scott v. Pierce, No. H-09-3991, 2012 U.S. Dist. LEXIS 190126, at *18 n.11 (S.D. Tex. May 7, 2012) (*unpublished*) ("Under RLUIPA, prison officials must do more than speculate that the accommodation of a religious practice will lead to safety and security problems.").

124 Warsoldier v. Woodford, 418 F.3d 989, 999 (9th Cir. 2005) (rejecting government's argument that prison had a compelling interest in keeping male incarcerated people' hair short when it could not demonstrate that it considered possible alternatives); *see also* Spratt v. R.I. Dept. of Corr., 482 F.3d 33, 41 n.11 (1st Cir. 2007) ("[T]o meet the least restrictive means test, prison administrators generally ought to explore at least some alternatives, and their rejection should generally be accompanied by some measure of explanation. A blanket statement that all alternatives have been considered and rejected, such as the one here, will ordinarily be insufficient."); *c.f.* City of Richmond v. J.A. Croson Co., 488 U.S. 469, 507, 109 S. Ct. 706, 729–730, 102 L. Ed. 2d 854, 890–891 (1989) (holding that city's minority set-aside program was not narrowly tailored in part because the city had not considered whether race-neutral measures would have achieved the government's interest); Hunter *ex rel.* Brandt v. Regents of Univ. of Cal., 190 F.3d 1061, 1078 (9th Cir. 1999) (concluding that government "neglected to undertake any consideration—let alone serious, good faith consideration" of race-neutral alternatives (citation omitted)).

125 The "least restrictive means" test is a form of a common test used in constitutional cases known as the "narrowly tailored" test, which tells courts to evaluate whether a proposed regulation or law is carefully designed to achieve its goals. *See* Burk v. Augusta-Richmond County, 365 F.3d 1247, 1255 (11th Cir. 2004) (noting that law could be written to meet the least restrictive means test where the "government . . . tailor[s] its regulation more closely to fit . . . conduct likely to threaten the harms it fears.").

126 For example, the Court of Appeals for the Ninth Circuit found that a grooming restriction that required all male incarcerated persons to maintain their hair no longer than three inches was not the least restrictive means of ensuring prison security when other prisons did not impose such restrictions. The court noted that "other prison systems, including the Federal Bureau of Prisons, do not have such hair length policies, or, if they do, provide religious exemptions." Warsoldier v. Woodford, 418 F.3d 989, 999 (9th Cir. 2005). The court also noted that the Department of Corrections had failed to explain why it did not impose the same grooming restriction on female incarcerated persons at its women's prisons. Warsoldier v. Woodford, 418 F.3d 989, 1000 (9th Cir. 2005).

127 *See, e.g.*, Washington v. Klem, 497 F.3d 272, 285 (3d Cir. 2007) (finding that prison's limitation on the number of books allowed in a cell was not the least restrictive means to ensure safety because, in part, other prisons permitted a greater number of books); *see also* Fowler v. Crawford, 534 F.3d 931, 942 (8th Cir. 2008) (noting that policies of other prisons are "relevant" but do not determine the outcome of the "least restrictive means" inquiry).

128 Fowler v. Crawford, 534 F.3d 931, 940–942 (8th Cir. 2008) (holding that officials met their burden under RLUIPA by showing adequately considered alternatives and did not have to install a sweat lodge because

3. Examples of Common Challenges to Prison Restrictions

This Section provides examples of common challenges to prison restrictions, including restrictions on attending religious services or worship areas, receiving visits from religious advisors, sending and receiving religious mail, changing one's name or diet for religious reasons, refusing to receive medical treatment for religious reasons, and wearing special religious attire. It describes how courts have applied the *Turner* test to examine First Amendment Free Exercise claims as well as how courts have applied, or might in the future apply, the RLUIPA standards outlined above.

Because RLUIPA generally provides more protection to your religious freedom rights than the First Amendment Free Exercise Clause,[129] you should think of the discussion of the Free Exercise Clause as protecting your basic rights to freely exercise your religion in prison. Also, because the law in this area is constantly changing, be sure to check for new RLUIPA cases that support your particular claim.

(a) Restrictions on Attending Religious Services, Group Worship, and Receiving Visits from Religious Advisors

(i) *First Amendment Free Exercise Clause*

Under the Free Exercise Clause, prisons must provide you with a reasonable opportunity to worship according to what you think is required by your religion.[130] This right to worship applies even if only a minority of incarcerated people practice the religion.[131] However, courts have long held that this right may be restricted in certain cases.

For example, courts have said that prison officials may limit or prohibit religious group services when these services would be a threat to prison security.[132] For example, in *Thomas v. Gunter*, a federal court of appeals said prison officials could deny a Native American incarcerated person daily access to the prison sweat lodge for prayer.[133] Applying *Turner*, the court held the denial was

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"prohibiting a sweat lodge at JCCC is the least restrictive means by which to further the institution's compelling interest in safety and security").

[129] *See* Shakur v. Schriro, 514 F.3d 878, 888 (9th Cir. 2008) ("RLUIPA . . . mandates a stricter standard of review for prison regulations that burden the free exercise of religion than the reasonableness standard [used to review regulations under the 1st Amendment]"); *see also* Smith v. Allen, 502 F.3d 1255, 1266 (11th Cir. 2007) (noting that RLUIPA gives more "protection from government-imposed burdens" than the 1st Amendment standards) (citation omitted); DeSimone v. Bartow, 08-C-638, 2008 U.S. Dist. LEXIS 64419, at *11 (E.D. Wis. Aug. 12, 2008) (*unpublished*) ("RLUIPA provides more expansive protection [than the 1st Amendment], prohibiting institutions that receive federal funding from substantially burdening an inmate's exercise of religion, even by a rule of general applicability, unless that burden is the least restrictive means of furthering a compelling governmental interest.").

[130] *See* Cruz v. Beto, 405 U.S. 319, 322 n.2, 92 S. Ct. 1079, 1081 n.2, 31 L. Ed. 2d 263, 368 n.2 (1972) (finding that where an incarcerated person was denied the reasonable opportunity of pursuing his faith comparable to the opportunity of prisoners who adhered to conventional religions, then there was palpable discrimination); *compare* Johnson v. Moore, 948 F.2d 517, 520 (9th Cir. 1991) (holding that the failure to provide a Unitarian Universalist chaplain for a incarcerated person did not violate the 1st Amendment, reasoning that "the Constitution does not necessarily require prisons 'to provide each inmate with the spiritual counselor of his choice,'" but that "[p]risons need only provide inmates with a 'reasonable opportunity' to worship in accord with their conscience") (citations omitted).

[131] *See* Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263, 268 (1972) (noting that an incarcerated person must be given "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts").

[132] *See* Brown v. Johnson, 743 F.2d 408, 412 (6th Cir. 1984) (holding that a blanket ban against group religious services by a church that ministered to homosexual persons did not violate the 1st Amendment because the ban was reasonably related to the prison's interest in maintaining internal security and reducing prison violence); *see also* Johnson v. Collins, 2009 U.S. Dist. LEXIS 47844, at *14–15 (N.D. Ohio May 2, 2009) (*unpublished*) (granting summary judgment for prison officials where an incarcerated person claimed a violation of his right to freely exercise his religious beliefs when he was denied permission to maintain his dreadlocks in accordance with Rastafarianism principles, noting that "substantial deference is given to prison officials in terms of their discretion to impose regulations" and that "prison officials need only demonstrate potential danger, not *actual* danger.") (citations omitted).

[133] Thomas v. Gunter, 103 F.3d 700 (8th Cir. 1997).

reasonably related to a legitimate prison interest in security. The sweat lodge was near a truck delivery entrance that was used during weekday afternoons, and the court accepted the prison's argument that frequent use of the sweat lodge created a security risk. The court noted that daily access to the sweat lodge would also have interfered with scheduled educational and employment activities.[134]

Courts have also said that prison officials may attend the religious group services of incarcerated people, provided their presence is reasonable and consistent with prison security measures and does not unreasonably restrict the way in which the services are conducted.[135] Prison officials may also regulate the time, place, and sometimes the manner in which religious services are conducted, as long as the restrictions are rationally related to legitimate prison goals.[136] Similarly, courts have said that prison officials may limit or prohibit visits by religious advisors and counselors when such visits would undermine prison security, prison administration, or both.[137] The time, length, and manner of these visits are also subject to reasonable regulation by prison officials.

For example, in *Ha'min v. Montgomery County Sheriff's*, an incarcerated person sued law enforcement officials alleging violations of his First Amendment right to freely exercise his religion.[138] Friday Muslim prayer services were not regularly conducted during the period of the person's incarceration, despite being authorized by prison regulations. Further, he was not allowed to conduct the Muslim service for himself because of a rule that only volunteer religious leaders from outside the prison could perform such services, regardless of the religion. Since the incarcerated person could keep his Holy Quran in his cell and pray alone, he had alternative means to exercise his religion. In light of these facts, the court held that the incarcerated person's First Amendment rights were not violated.[139]

Note that although your right to attend services or receive visits from ministers may be restricted, you do not have to be an actively affiliated or professed member of a religion to attend such services and receive visits from ministers of that faith. You may also receive visits from the clergy of your choice even if you were not a member of that faith before being incarcerated.[140] You can simply be thinking about joining the religion and want to attend services or talk to a minister in order to learn about the religion. However, a prison facility religious advisor may examine the sincerity of your belief and restrict your access to religious services of that particular faith.[141]

Finally, although prisons must provide a reasonable opportunity to incarcerated people whose religious practices are observed by a minority of those incarcerated,[142] many courts have held that the

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[134] Thomas v. Gunter, 103 F.3d 700, 703 (8th Cir. 1997).

[135] *See* Butler-Bey v. Frey, 811 F.2d 449, 452 (8th Cir. 1987) (holding, in part, that a prison regulation requiring a guard to be present at religious meetings did not violate the 1st Amendment where the regulation applied to all prison group meetings, both secular and non-secular).

[136] *See* O'Lone v. Estate of Shabazz, 482 U.S. 342, 358, 107 S. Ct. 2400, 2409, 96 L. Ed. 2d 282, 296 (1987) ("[I]f a regulation merely restricts the time, place, or manner in which prisoners may exercise a right, a prison regulation will be invalidated only if there is no reasonable justification for official action.").

[137] *See* Brown v. Johnson, 743 F.2d 408, 412 (6th Cir. 1984) (affirming that prison authorities can restrict visits by officials of a church that ministers to the spiritual and religious needs of homosexuals because "a strong correlation existed between inmate homosexuality and prison violence").

[138] Ha'min v. Montgomery Cnty. Sheriff's, 440 F. Supp. 2d 715 (M.D. Tenn. 2006).

[139] Ha'min v. Montgomery Cnty. Sheriff's, 440 F. Supp. 2d 715, 718–720 (M.D. Tenn. 2006) (finding that the government showed a "valid, rational connection between the jail's action in not providing a regular Friday Muslim service and the legitimate governmental interest" and that plaintiff had an "alternative means of exercising his right to the free exercise of religion").

[140] *See* Pell v. Procunier, 417 U.S. 817, 824–825, 94 S. Ct. 2800, 2805, 41 L. Ed. 2d 495, 503 (1974) (allowing restricted visits from "members of their families, the clergy, their attorneys, and friends of prior acquaintance" as long as "such visits will aid in the rehabilitation of the inmate").

[141] *See* Montano v. Hedgepeth, 120 F.3d 844, 850–851 (8th Cir. 1997) (allowing a prison chaplain to deny participation in Protestant services to a Messianic Jew for spreading false doctrine).

[142] *See, e.g.*, Koger v. Bryan, 523 F.3d 789, 799 (7th Cir. 2008) ("We have long held that '[t]he rights of inmates belonging to minority or non-traditional religions must be respected to the same degree as the rights of those belonging to larger and more traditional denominations.'" (quoting Al-Alamin v. Gramley, 926 F.2d 680, 686 (7th Cir. 1991))).

accommodation a prison must make for a particular religion is proportional to the number of believers of that particular faith.[143] For example, in *Cruz v. Beto*,[144] a Buddhist incarcerated person alleged that prison officials violated his constitutional rights when they prohibited him from conducting Buddhist services in the prison chapel, offering religious materials to other incarcerated people, and corresponding with his religious advisor. The U.S. Supreme Court reversed the decision of the federal court of appeals, which had dismissed the incarcerated person's claims. The Supreme Court held that the prison must give Cruz the same reasonable opportunity to pursue his faith as the prison gives to followers of other religions.[145] However, the Court also stated that prisons were not required to provide every religion with identical facilities and accommodate each equally.[146]

(ii) *RLUIPA*

A federal law known as RLUIPA prohibits prisons from imposing a "substantial burden" on your access to religious services and/or worship areas, except under certain circumstances.[147] The prison *can* substantially limit your access to religious services and/or worship areas if (1) the limitation furthers a "compelling" interest of the prison, and (2) the prison limits your access to religious services and/or worship areas in the least restrictive way possible.[148] However, if a court determines that a regulation does not impose a substantial burden or that the activity you are pursuing is not a religious exercise, it will dismiss your challenge.[149]

Keep in mind that a court's determination of whether a rule imposes a substantial burden on your right to religious worship will depend on the specific facts of your case. In at least two instances, the Court of Appeals for the Fifth Circuit has found that a policy requiring volunteer religious leaders to attend incarcerated people's religious group meetings did not impose a substantial burden, when the incarcerated people were able to engage in other means of worship.[150] For example, in *Baranowski v. Hart*,[151] the court found that a volunteer requirement did not impose a substantial burden on Jewish incarcerated people who wanted more meetings on Sabbaths and other Jewish holy days than their volunteer could attend. In another case, however, the same court of appeals concluded that a volunteer requirement could impose a substantial burden. In that case, there was evidence that no new volunteers would be available to provide group religious worship, that the prison applied the volunteer

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[143] *See* Cruz v. Beto, 405 U.S. 319, 322 n.2, 92 S. Ct. 1079, 1081 n.2, 31 L. Ed. 2d 263, 268 n.2 (1972) ("[The Court does not suggest] that every religious sect or group within a prison—however few in number—must have identical facilities or personnel . . . [N]or must a chaplain, priest, or minister be provided without regard to the extent of the demand.").

[144] Cruz v. Beto, 405 U.S. 319, 92 S. Ct. 1079, 31 L. Ed. 2d 263 (1972).

[145] Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081–1082, 31 L. Ed. 2d 263, 268 (1972).

[146] Cruz v. Beto, 405 U.S. 319, 322 n.2, 92 S. Ct. 1079, 1081 n.2, 31 L. Ed. 2d 263, 268 n.2 (1972) ("We do not suggest, of course, that every religious sect or group within a prison—however few in number—must have identical facilities or personnel. A special chapel or place of worship need not be provided for every faith regardless of size . . . .").

[147] Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) § 2(a), 42 U.S.C. § 2000cc-1(a).

[148] 42 U.S.C. § 2000cc-1(a).

[149] See Part C(2)(c) ("Substantial Burden") above. For example, the Court of Appeals for the Fifth Circuit has dismissed at least two RLUIPA challenges because it determined that a prison policy that required an outside volunteer to attend group religious meetings of incarcerated people did not impose a substantial burden on the incarcerated people's religious exercise. *See* Adkins v. Kaspar, 393 F.3d 559, 571 (5th Cir. 2004) ("The requirement of an outside volunteer—which is a uniform requirement for all religious assemblies at Coffield with the exception of Muslims—does not place a substantial burden on Adkins's religious exercise."); Baranowski v. Hart, 486 F.3d 112, 124–125 (5th Cir. 2007) (finding that there was not a substantial burden on the prisoner's free exercise of his faith within the meaning of RLUIPA because, on the days that services were not provided, no rabbi or approved religious volunteer was available to lead the services).

[150] Adkins v. Kaspar, 393 F.3d 559, 564, 571 (5th Cir. 2004); Baranowski v. Hart, 486 F.3d 112, 121, 124 (5th Cir. 2007).

[151] Baranowski v. Hart, 486 F.3d 112, 125 (5th Cir. 2007).

requirement differently for different religious groups, and that the incarcerated person did not have access to other options for worship.[152]

If you are able to show that the prison is imposing a substantial burden on your religious exercise, the government will need to demonstrate that the restriction on group worship or religious services is the least restrictive way to promote the compelling government interest.[153] Although the court will require the prison to provide some evidence showing that the policy meets this standard, the Supreme Court has told courts to give "due deference to the experience and expertise of prison and jail administrators" while interpreting RLUIPA.[154] In other words, courts have to respect what prison officials think is the least restrictive way to promote prison interests.

For example, in *Murphy v. Missouri Department of Corrections*,[155] the Eighth Circuit Court of Appeals found that the prison had not met its burden when the only reason it gave for denying an incarcerated person the right to practice group worship was that the incarcerated person was a racist whose religion limited participation to Anglo-Saxons. In contrast, the same court found a prison had met its burden in a case involving a Native American incarcerated person who had been denied access to a sweat lodge because of security risks.[156] There, the prison provided the court with evidence that it had suggested alternative ways for the incarcerated person to practice his religion. More specifically, officials had offered the incarcerated person an outdoor area where he could smoke a ceremonial pipe, suggested a medicine wheel, and sought to locate an outside volunteer to oversee a Native American group.[157] Based in part on this evidence, which showed that prison administrators tried to find alternatives, the court decided that the ban on accessing the sweat lodge was the least restrictive means to furthering the prison's interest in security.

These cases suggest that if you can show that the prison denied your request for group worship or attendance of religious services, and prison officials did not offer you any other options to your preferred method of worship, you may have a better chance of defeating the government's arguments that the restriction is the least restrictive means of furthering a compelling interest.

(b) Mail Censorship

(i) *First Amendment Free Exercise Clause*

Under the First Amendment Free Exercise Clause, a prison may censor the religious mail that you receive or send, depending on the purpose of the censorship. For a summary of the Supreme Court's decisions on incarcerated people's use of the postal system, like receiving religious materials and correspondence about religious materials, see *JLM*, Chapter 19, "Your Right to Communicate with the Outside World."

In general, prison officials may censor *incoming* religious mail in any manner that is reasonably related to the legitimate needs of prison administration.[158] To determine whether the censorship is

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[152] Mayfield v. Tex. Dept. of Corr., 529 F.3d 599, 614–615 (5th Cir. 2008) (finding that summary judgment was inappropriate when there was evidence that no new volunteers would be available, the incarcerated person did not have alternative means of worship, and prison officials were unevenly applying the requirement).

[153] 42 U.S.C. § 2000cc-2(b); *see also* Koger v. Bryan, 523 F.3d 789, 796 (7th Cir. 2008) ("Once the plaintiff establishes this prima facie case, the defendants 'bear the burden of persuasion on any [other] element of the claim,' namely whether their practice 'is the least restrictive means of furthering a compelling governmental interest.'" (alteration in original) (citations omitted)).

[154] Cutter v. Wilkinson, 544 U.S. 709, 723, 125 S. Ct. 2113, 2123, 161 L. Ed. 2d 1020, 1035 (2005).

[155] Murphy v. Mo. Dept. of Corr., 372 F.3d 979, 989 (8th Cir. 2004).

[156] Fowler v. Crawford, 534 F.3d 931, 942 (8th Cir. 2008).

[157] Fowler v. Crawford, 534 F.3d 931, 939–940 (8th Cir. 2008).

[158] *See* Thornburgh v. Abbott, 490 U.S. 401, 404–405, 109 S. Ct. 1874, 1876–1877, 104 L. Ed. 2d 459, 467 (1989) (applying the *Turner* standard to determine whether regulations censoring incoming mail violate incarcerated people's 1st Amendment rights).

appropriate, courts apply the *Turner* test.[159] Under this test, courts have allowed prison officials to withhold mail that encourages racial violence and hatred, even if the mail contains religious content or is from a religious organization. For example, in *Chriceol v. Phillips*, the Fifth Circuit Court of Appeals allowed a Louisiana prison to withhold mail that the Aryan Nations and its affiliate church, the Church of Jesus Christ Christian, had sent to incarcerated people, based on a prison policy that prohibited mail that supported racial hatred and created a danger of violence.[160] The court explained that the mail encouraged racial violence and hatred, and that the "purpose of the rule [was] to eliminate potential threats to the security or order of the facility," which "[c]learly . . . is a legitimate interest."[161]

Similarly, in *Shabazz v. Parsons*, the Tenth Circuit Court of Appeals applied the *Turner* test and held that Oklahoma prison officials had a rational basis for denying an incarcerated person access to an entire issue of a religious magazine, which officials determined would create a danger of violence based on racial, religious, and national hatred.[162] Furthermore, the court denied the incarcerated person's claim that merely deleting the offending portions of the magazine was a good alternative. The court reached this decision because prison officials provided evidence that such deletions would be very expensive and would "prevent the prisoner from obtaining meaningful administrative review" of the decision to delete certain sections.[163]

Prison officials may also regulate *outgoing* mail if the regulation is "generally necessary" to protect one or more legitimate governmental interests.[164] Note that it may be easier for you to successfully challenge a restriction on outgoing mail. The Supreme Court has recognized that outgoing correspondence that includes "grievances or contains inflammatory racial views cannot reasonably be expected to present a danger to the community *inside* the prison," because that mail is going outside of the prison.[165]

It is also worth noting that, while prisons can censor mail if there are legitimate prison interests at stake, it is unconstitutional to indiscriminately (random or without reason) censor or outright ban correspondence with a religious advisor.[166]

(ii) *RLUIPA*

Under RLUIPA, a prison may censor the religious mail you send or receive, provided that, if the censorship substantially burdens your religious exercise, it (1) furthers a compelling government interest (2) by the least restrictive means available.[167] The Supreme Court has noted that "[l]awmakers supporting RLUIPA were mindful of the urgency of discipline, order, safety, and security in penal institutions" and "anticipated that courts would apply the Act's standard with due deference

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159 Turner v. Safley, 482 U.S. 78, 91, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 80 (1987) (holding that the rule banning correspondence between incarcerated people was reasonably related to legitimate security concerns of prison officials and was not invalid).

160 Chriceol v. Phillips, 169 F.3d 313, 317 (5th Cir. 1999).

161 Chriceol v. Phillips, 169 F.3d 313, 316 (5th Cir. 1999).

162 Shabazz v. Parsons, 127 F.3d 1246, 1247, 1249 (10th Cir. 1997).

163 Shabazz v. Parsons, 127 F.3d 1246, 1249 (10th Cir. 1997).

164 *See* Thornburgh v. Abbott, 490 U.S. 401, 411–412, 109 S. Ct. 1874, 1880–1881, 104 L. Ed. 2d 459, 471–472 (1989) (noting that a regulation that restricts outgoing mail must "close[ly] fit" the interest it is supposed to serve (citing Procunier v. Martinez, 416 U.S. 396, 414, 416, 94 S. Ct. 1800, 1812–1813, 40 L. Ed. 2d 224, 240–241 (1974))).

165 Thornburgh v. Abbott, 490 U.S. 401, 411–412, 109 S. Ct. 1874, 1881, 104 L. Ed. 2d 459, 472 (1989) (emphasis in original).

166 *See JLM*, Chapter 19, "Your Right to Communicate with the Outside World."

167 42 U.S.C. § 2000cc-1(a).

to the experience and expertise of prison and jail administrators."[168] Thus, it is unclear whether courts are likely to reach different outcomes under a RLUIPA standard than they would under the Free Exercise standard discussed above.

(c) Shaving, Haircuts, and Grooming Restrictions

(i) *First Amendment Free Exercise Clause*

The First Amendment does not generally prevent a prison from restricting how you choose to wear your hair or beard, even if this choice is part of your religious practice. To determine whether a prison grooming restriction is acceptable under the Free Exercise Clause, a court will look at various factors to ask whether the prison's restriction is "reasonably related" to a legitimate interest of the prison.[169] For example, one court upheld a rule that banned incarcerated people from having a beard longer than ¼-inch because the rule was "reasonably related" to promoting prison security. Specifically, the ban was allowed under the First Amendment because the rule made it harder for incarcerated people to hide contraband, because incarcerated people could participate in their religion in other ways, because guards would need to conduct more searches if incarcerated people could have long beards, and other reasons.[170] If the prison grooming requirement does not reasonably relate to a legitimate penological (prison-related) interest, then the prison cannot keep the rule.[171]

Although all courts apply the same test, the results of cases vary. Some courts have recognized the rights of incarcerated people to grow beards or wear their hair in accordance with their religious beliefs.[172] For example, the Court of Appeals for the Second Circuit upheld a Rastafarian incarcerated person's right to avoid getting an initial haircut when he was first received as an incarcerated person in a New York prison.[173]

In another case, however, the same court was less willing to recognize these types of religious practices. For example, in *Fromer v. Scully*, the Court of Appeals for the Second Circuit upheld a New York Department of Correctional Services (now the Department of Corrections and Community Supervision, or DOCCS,) directive forbidding incarcerated people from wearing beards longer than one inch.[174] The *Fromer* court also noted that other courts had "recognized a 'valid, rational connection' between beard restrictions and a legitimate penological interest in inmate identification," emphasizing that the plaintiff had the burden of proving that the prison's concerns were irrational.[175] Explaining its decision to defer to the judgment of the prison administrators, the court noted that it was rational for administrators to believe that a full beard would make it harder to identify someone than a one-inch beard would.[176]

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[168] Cutter v. Wilkinson, 544 U.S. 709, 723, 125 S. Ct. 2113, 2123, 161 L. Ed. 2d 1020, 1035 (2005) (internal quotation marks omitted).

[169] Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987).

[170] Kuperman v. Wrenn, 645 F.3d 69, 75–77 (1st Cir. 2011); *see also* Hines v. S.C. Dept of Corr. 148 F.3d 353, 358 (4th Cir. 1998) (upholding a grooming policy that all male incarcerated people keep their hair short and faces shaven in order to "suppress contraband, limit gang activity, maintain discipline and security, and prevent prisoners from quickly changing their appearance."); Zargary v. City of New York, 607 F. Supp. 2d 609, 613 (S.D.N.Y. 2009) (holding that an orthodox Jewish woman could be required to briefly remove her headscarf to further the government's legitimate interest in accurate identification of incarcerated people).

[171] Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 90 (1987).

[172] *See, e.g.*, Teterud v. Burns, 522 F.2d 357, 359 (8th Cir. 1975) (regarding the braided hair of a Native American); Moskowitz v. Wilkinson, 432 F. Supp. 947, 950–952 (D. Conn. 1977) (regarding the beard of an Orthodox Jew).

[173] Benjamin v. Coughlin, 905 F.2d 571, 576–577 (2d Cir. 1990) (finding the legitimate prison goal of obtaining an initial identification photograph could be accomplished by pulling back an incarcerated person's hair rather than cutting it off).

[174] Fromer v. Scully, 874 F.2d 69, 73–74, 76 (2d Cir. 1989).

[175] Fromer v. Scully, 874 F.2d 69, 74 (2d Cir. 1989).

[176] Fromer v. Scully, 874 F.2d 69, 74 (2d Cir. 1989).

(ii) *RLUIPA*

Under RLUIPA, even if a grooming requirement substantially burdens your religious exercise, a prison may restrict how you choose to style your hair or beard if it (1) furthers a compelling governmental interest (2) by the least restrictive means.[177] These dual requirements may make it easier for you to challenge prison regulations regarding shaving, haircuts, and grooming under RLUIPA than under the First Amendment.

For example, in *Fluellen v. Goord*, an incarcerated person brought a successful RLUIPA challenge against a New York Department of Corrections (now the Department of Corrections and Community Supervision (DOCCS)) policy prohibiting all non-Rastafarian incarcerated people from wearing dreadlocks.[178] The incarcerated person, a member of the Nation of Islam, argued that his refusal to cut his dreadlocks was based upon a specific verse of the Quran. In response, DOCCS asserted that the Nation of Islam does not mandate dreadlocks, that the incarcerated person's interpretation of the Quran was incorrect, and that allowing the incarcerated person to wear dreadlocks potentially threatened security.[179]

In considering these arguments, the magistrate judge in *Fluellen* rejected DOCCS's assertion, explaining that it is not the court's job to question the importance of particular religious beliefs or practices, nor to determine the accuracy of an individual's interpretation of his religion's teachings.[180] While the magistrate judge acknowledged that prison safety and security constituted a compelling government interest under RLUIPA, it found that the fact that DOCCS permitted Rastafarians to wear dreadlocks meant that dreadlocks do "not impose an insurmountable threat to DOC[C]S' security, safety or sanitation."[181] The magistrate judge further noted that DOCCS did not seem concerned that allowing "this particular plaintiff to wear dreadlocks would threaten DOC[C]S' security, safety or sanitation,"[182] and therefore held that the incarcerated person could not be forced to cut his dreadlocks, nor could he be punished if he refused to change his religious affiliation.[183]

Similarly, in *Smith v. Ozmint*, the Fourth Circuit Court of Appeals reviewed a RLUIPA claim brought by a Rastafarian incarcerated person challenging a prison policy that forced him to shave his head.[184] The court reversed a grant of summary judgment for the prison on the grounds that the prison had not met its burden of proving that its policy furthered a compelling interest by the least restrictive means.[185]

However, other courts have reached different conclusions, finding that prison grooming requirements do not violate RLUIPA. For example, in *Fegans v. Norris*, the Eighth Circuit Court of Appeals found that a prison policy prohibiting male incarcerated people from wearing hair below the

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177 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a).

178 Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *1 (W.D.N.Y. Mar. 12, 2007) (*unpublished*).

179 Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *6, *9–10, *15 (W.D.N.Y. Mar. 12, 2007) (*unpublished*).

180 Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *16 (W.D.N.Y. Mar. 12, 2007) (*unpublished*) (citing McEachin v. McGuinnis, 357 F.3d 197, 201 (2d Cir. 2004)).

181 Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *19 (W.D.N.Y. Mar. 12, 2007) (*unpublished*).

182 Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *19–20 (W.D.N.Y. Mar. 12, 2007) (*unpublished*).

183 Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *24 (W.D.N.Y. Mar. 12, 2007) (*unpublished*); *see also* Warsoldier v. Woodford, 418 F.3d 989, 991–992, 1002 (9th Cir. 2005) (finding that a Native American incarcerated person at a minimum-security prison, whose faith taught that hair should only be cut upon the death of a close relative, could not be punished for violating a rule prohibiting incarcerated people from having hair longer than three inches without the prison proving that the policy was the least restrictive way of promoting safety).

184 Smith v. Ozmint, 578 F.3d 246, 248–249 (4th Cir. 2009).

185 Smith v. Ozmint, 578 F.3d 246, 254 (4th Cir. 2009).

collar and from wearing beards did not violate RLUIPA, even though the department of corrections did not impose the same requirement on women.[186] The court found that the grooming requirements were the least restrictive means of furthering prison safety and security. Specifically, the court noted that incarcerated people had used their hair to conceal contraband (banned items), and to change their appearance after escaping.[187] The court further concluded that there were no less restrictive means to prevent these risks, because "longer hair created a greater opportunity for inmates to conceal contraband, and because correctional officers are placed at risk of assault if required to search through the long hair of individual inmates."[188] Applying a similar analysis to the beard restriction, the court also concluded that the prison had a compelling interest in restricting incarcerated people from wearing an uncut beard, as a beard could create a better disguise for an escapee and allow for contraband.[189] Although the court recognized that the prison did not impose the same requirement in the women's barracks, the court noted that the women were housed in a single unit and thus had less opportunity to hide contraband.[190]

(d) Name Restrictions

(i) *First Amendment Free Exercise Clause*

Under the First Amendment Free Exercise Clause, a prison may refuse to recognize your choice of a religious name, provided that the refusal is "reasonably and substantially justified by considerations of prison discipline and order."[191] If you have legally changed your name, courts are more likely to recognize your right to be called by your new name.[192]

For example, in *Malik v. Brown*, a federal court of appeals recognized that an incarcerated person has a clear constitutional interest in using his religious name, at least in addition to his committed name.[193] While the court did not require the prison to change its filing system after the incarcerated person changed his name, the court at least recognized the incarcerated person's right to include his religious name on outgoing mail.[194]

Note that although courts may be willing to recognize a religious name, courts are unlikely to question the way in which prison officials choose to organize their prison records.[195]

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[186] Fegans v. Norris, 537 F.3d 897, 900–901 (8th Cir. 2008).

[187] Fegans v. Norris, 537 F.3d 897, 903 (8th Cir. 2008).

[188] Fegans v. Norris, 537 F.3d 897, 903 (8th Cir. 2008).

[189] Fegans v. Norris, 537 F.3d 897, 906 (8th Cir. 2008).

[190] Fegans v. Norris, 537 F.3d 897, 904 (8th Cir. 2008).

[191] Barrett v. Virginia, 689 F.2d 498, 503 (4th Cir. 1982) (finding that a Virginia statute that placed a flat ban on the recognition of religious name changes was unreasonable given that incarcerated people were already known by several names, and the addition of newly adopted religious names into existing records would not threaten the reliability and efficiency of correctional records (quoting Sweet v. S.C. Dept. of Corr. 529 F. 2d 854, 863 (4th Cir. 1975))).

[192] *See* Salahuddin v. Coughlin, 591 F.Supp. 353, 359 (S.D.N.Y. 1984) (upholding prison policy that recognizes statutory court-ordered name changes but not common law name changes, in light of speedy and easily proven statutory name changes and "legitimate [state] interest in avoiding confusion and simplifying record-keeping.") (citation omitted). *But see* Barrett v. Virginia, 689 F.2d 498, 503 (4th Cir. 1982) (finding that adding a newly adopted religious name to prison records would not be overly burdensome or disruptive to record-keeping procedures).

[193] Malik v. Brown, 16 F.3d 330, 334 (9th Cir. 1994).

[194] Malik v. Brown, 16 F.3d 330, 334 (9th Cir. 1994) (finding minimal burden on the prison and "no legitimate penological interest in preventing Malik from using *both* his religious and his committed names" on correspondence).

[195] *See, e.g.*, Barrett v. Virginia, 689 F.2d 498, 503 (4th Cir. 1982) (holding that while the prison must recognize a legally adopted religious name and add it to the incarcerated person's file, it does not have to reorder the files according to the new name).

(ii) *RLUIPA*

Under RLUIPA, a prison may refuse to recognize your choice of a religious name, provided that if the refusal substantially burdens your religious exercise, it (1) furthers a compelling governmental interest and (2) uses the least restrictive means for achieving that interest.[196]

Some courts hesitate to find that the refusal to recognize a name is a substantial burden on your religious exercise.[197] As a result, it may be difficult for you to show that the refusal to recognize your religious name violates RLUIPA. Remember that under RLUIPA, the government can impose rules that burden your religious exercise; it is only prohibited from adopting rules that *substantially* burden your religious exercise.

To show that the refusal to recognize your name constitutes a substantial burden, you should try to provide the court with concrete examples of the obstacles you face because you cannot change your name. For example, if an unchanged name will exclude you from participating in religious ceremonies, subject you to harsh treatment or exclusion by your co-believers, or make it so that you cannot "rise through the ranks" of your religion, the court may be more willing to find that the restriction constitutes a substantial burden.[198]

If the court determines that not allowing your name change does significantly burden your religious exercise, the government will then be required to show that not allowing you to change your name served a "compelling governmental interest" and that it did so by the "least restrictive means."[199] As noted above, prison safety and security are compelling governmental interests.[200] So, if the prison claims that not allowing your name change is the least restrictive way of maintaining safety and security, the court may uphold the prison's refusal to grant your name change request.[201]

If you can show that other incarcerated people in your prison or similar prisons were permitted to change their names, you may be able to demonstrate that not permitting you to change your name for religious reasons is not the least restrictive means by which the prison can maintain order.[202]

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196 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-1(a).

197 *See* Amun v. Culliver, No. 04-0131-BH-M, 2006 U.S. Dist. LEXIS 75949, at *1-2 (S.D. Ala. Oct. 18, 2006) (*unpublished*) (holding that prison's refusal to add incarcerated person's religious name to visitor list, incarcerated persons' location list, and prison correspondence was not a "substantial burden" on the incarcerated person's exercise of religious beliefs).

198 Two federal district court cases suggest that these factors may have supported a conclusion that a refusal to recognize a changed name constitutes a substantial burden. *Compare* Scott v. Cal. Supreme Court, No. CIV S-04-2586 LKK GGH P, 2008 U.S. Dist. LEXIS 117662, at *26–27 (E.D. Cal. July 17, 2008) (*unpublished*), *with* Ashanti v. Cal. Dept of Corr., No. CIV S-03-0474 LKK GGH P, 2007 U.S. Dist. LEXIS 10612, at *53–54 (E.D. Cal. Feb. 15, 2007) (*unpublished*) (determining that prison's refusal to change certain prison records to reflect incarcerated person's religious name does not amount to a substantial burden, after noting that incarcerated person failed to "show that any use of his original unchanged name subjects him to ostracism from his co-believers, or that he is thereby hampered in any way in navigating the tenets of his religion.").

199 Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. §§ 2000cc-1(a)(1)–(2).

200 Fawaad v. Jones, 81 F.3d 1084, 1087 (11th Cir. 1996) ("[M]aintaining security in a prison constitutes a compelling governmental interest. The control of contraband into and out of the prison is a fundamental part of maintaining prison security, and the requirement of dual names on incoming and outgoing mail is the least restrictive means of satisfying that compelling interest."). *See also* Fegans v. Norris, 537 F.3d 897, 902 (8th Cir. 2008) (holding that institutional security and deterrence of crime are valid penological interests, and noting that the Supreme Court has noted that "'context matters' in the application of this 'compelling governmental interest' standard, and that RLUIPA does not 'elevate accommodation of religious observances over an institution's need to maintain order and safety.'") (citation omitted).

201 *See, e.g.*, Thacker v. Dixon, 784 F.Supp. 286, 297 (E.D.N.C. 1991) (holding that prison official's use of plaintiff's religious name followed by "A/K/A" and the plaintiff's former name did not violate plaintiff's constitutional rights); *see, e.g.*, Fawaad v. Jones, 81 F.3d 1084, 1087 (11th Cir. 1996) (holding that a prison may require an incarcerated person to use both his chosen name and the name under which he was committed on incoming and outgoing mail). Although this case was decided under RFRA, the holding would similarly apply to cases brought under RLUIPA.

202 *Cf.* Fluellen v. Goord, No. 06-CV-602E(Sr), 2007 U.S. Dist. LEXIS 95374, at *19–20 (W.D.N.Y. Mar. 12, 2007) (*unpublished*) (noting that the prison allowed some incarcerated people to wear dreadlocks, which suggests that

(e) Special Diet Restrictions

(i) *First Amendment Free Exercise Clause*

Under the Free Exercise Clause, a prison can refuse to accommodate your request for a special diet if the restriction is rationally connected to legitimate penological (prison-related) goals. To determine whether a prison may refuse to accommodate your request for a special diet, a court will apply the *Turner* test.[203] Under this test, the court will first determine whether your special diet request is based on sincerely held religious beliefs. The court may also consider whether or not your special diet is absolutely required by your religion.[204] It will then look to whether the prison's denial of that request is rationally connected to any legitimate prison concerns. If so, the court will balance the reasonableness of the refusal with the prison's legitimate interests, looking to the effects on the prison community, the use of resources to accommodate the special diet, and other means of satisfying the meal request.[205]

(ii) *RLUIPA*

Under RLUIPA, a prison can refuse to accommodate your request for a special diet when the refusal substantially burdens your religious exercise if the refusal (1) furthers a compelling interest and (2) uses the least restrictive means.[206]

For your special diet to be protected, you will first need to show that your special diet is a religious exercise—meaning, one that is based on sincerely held religious beliefs and practices, and not simply a concern for your bodily health.[207] Remember that your beliefs do not need to be affiliated with any organized religion to count as religious beliefs, and you do not need to show that the religion absolutely requires you to follow a special diet.[208]

One way you can try to prove that a diet is a religious exercise is to submit paperwork from your religious organization, stating that followers of the religion often choose to follow special dietary restrictions. For example, in *Koger v. Bryan*, an incarcerated person submitted paperwork from his religious organization, stating that individual members of the faith "may, from time to time, include

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refusing to allow others to wear dreadlocks was not the least restrictive means to achieving compelling government interests).

[203] *See generally* DeHart v. Horn, 227 F.3d 47, 54–55 (3d Cir. 2000) (holding that where a prison regulation limits an incarcerated person's ability to engage in a particular religious practice, the second prong of *Turner* requires an examination of whether there are other means available to the incarcerated person for expressing his religious beliefs. If the prison affords the incarcerated person alternative means of expressing his religious beliefs, that fact tends to support the conclusion that the regulation at issue is reasonable).

[204] *See* Spies v. Voinovich, 173 F.3d 398, 407 (6th Cir. 1999) (holding that plaintiff was not entitled to a strict vegan diet because it was not required by Zen Buddhism and because a vegetarian diet, which the prison already provided, sufficed); *see also* Dawson v. Burnett, 631 F.Supp.2d 878, 895 (W.D. Mich. 2009) (noting that "there is a legitimate fact question as to whether Plaintiff's religious beliefs require that he participate in a strict vegetarian diet.").

[205] *See* DeHart v. Horn, 227 F.3d 47, 49–54, 61 (3d Cir. 2000) (balancing the *Turner* factors and holding that although there is a legitimate penological interest in having an efficient food system and avoiding jealousy among incarcerated people, accommodating the Buddhist incarcerated person's request for a cup of soy milk with each meal was not administratively prohibitive and not unreasonable in light of these penological interests, but that on remand the district court was required to examine whether there were other means available to the incarcerated person for expressing his religious beliefs); *see also* Williams v. Morton, 343 F.3d 212, 217–218 (3d Cir. 2003) (holding that the denial of a Muslim incarcerated person's request for Halal meals with meat, rather than prison-provided vegetarian meals, was valid in light of legitimate prison interests in "simplified food service, prison security, and budgetary constraints,"). *But see* McEachern v. McGuinnis, 357 F.3d 197, 198–199, 203–204 (2d Cir. 2004) (holding that incarcerated person who claimed that he was subjected to a disciplinary diet of "loaf", which happened during Ramadan, when Muslims are required to break their fast each day with Halal food, stated a claim for violation of his religious beliefs).

[206] Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. §§ 2000cc-1(a)(1)–(2).

[207] *See* Koger v. Bryan, 523 F.3d 789, 797 (7th Cir. 2008) (hypothesizing that if an incarcerated person's desire for a non-meat diet "was rooted solely in concerns for his bodily health, it would not be protected by RLUIPA.").

[208] Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. § 2000cc-5(7)(A).

dietary restrictions as part of his or her personal regimen of spiritual discipline."[209] The Seventh Circuit Court of Appeals found that the incarcerated person, by submitting this evidence, had established that his dietary request was "squarely within the definition of religious exercise set forth by RLUIPA."[210]

When determining whether you are "being sincere about your religious beliefs," courts have also looked at how long ago you asked to have your request for a special diet accommodated. For example, in *Koger*, the court pointed out that the incarcerated person had been requesting a non-meat diet for a long time; the incarcerated person had first filed a request nearly eight years before the case reached the court of appeals.[211] The court also noted that the fact that the incarcerated person had remained committed to his original religious affiliation throughout this time—rather than changing to another religion that *required* non-meat diets—indicated that his religious belief was sincerely held.[212]

Once you show you are seeking accommodation for a religious exercise based on sincerely held beliefs, you must then show that the refusal to provide the diet substantially burdens this religious exercise.[213] At least one court has found that repeated refusal to accommodate a request for a special diet adhered to by some members of a religious group counts as a substantial burden, even if the religion does not actually require the diet.[214]

If you are able to prove that the prison substantially burdens your religious exercise by not providing your requested diet, the prison must then show that its reason for not fulfilling your request is based on a compelling government interest and that not permitting the diet is the "least restrictive means" of accomplishing these goals.

To date, courts have recognized the organized administration of a prison meal system as a valid concern of prison officials.[215] In *Jova v. Smith*, the Second Circuit Court of Appeals seemed to assume that such administrative interests could be compelling.[216] The plaintiffs had requested a vegan diet, specific foods on individual days of the week, and food preparation by Tulukeesh adherents.[217] The ability of a prison to meet your dietary needs may affect whether a court will find that the government's interest is compelling—in *Jova*, the appeals court reversed the district court's grant of summary judgment because the prison had not demonstrated that providing a vegan diet was too burdensome.[218] However, recognizing something as a valid *concern* of prison officials is different from recognizing it as a compelling interest. Generally, the organized administration of a prison meal system is *not* a compelling interest.[219] Also, if the prison already serves meals that could satisfy your request for a special diet, the court may be more likely to find that the prison did not meet its burden of showing the refusal is based on a compelling government interest.[220]

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[209] Koger v. Bryan, 523 F.3d 789, 797 (7th Cir. 2008).

[210] Koger v. Bryan, 523 F.3d 789, 797 (7th Cir. 2008).

[211] Koger v. Bryan, 523 F.3d 789, 793—797 (7th Cir. 2008).

[212] Koger v. Bryan, 523 F.3d 789, 797 (7th Cir. 2008).

[213] *See* Muhammad v. Warithu-Deen Umar, 98 F. Supp. 2d 337, 345 (W.D.N.Y. 2000) (finding that prison's refusal to provide Muslim incarcerated person with a kosher cold alternative meal rather than the religious alternative meal was not a substantial burden on the incarcerated person's religious exercise).

[214] Koger v. Bryan, 523 F.3d 789, 798 (7th Cir. 2008).

[215] *See, e.g.*, Resnick v. Adams, 348 F.3d 763, 769 (9th Cir. 2003) ("The legitimate governmental interest at stake here is the orderly administration of a program that allows federal prisons to accommodate the religious dietary needs of thousands of prisoners.") (citations omitted); DeHart v. Horn, 227 F.3d 47, 52 (3d Cir. 2000) (agreeing with prison officials that "a simplified and efficient food service" is a legitimate penological interest).

[216] Jova v. Smith, 582 F.3d 410, 416–417 (2d Cir. 2009).

[217] Jova v. Smith, 582 F.3d 410, 416–417 (2d Cir. 2009).

[218] Jova v. Smith, 582 F.3d 410, 417 (2d Cir. 2009).

[219] Koger v. Bryan, 523 F.3d 789, 800 (7th Cir. 2008) ("[N]o appellate court has ever found these [legitimate concerns for orderly administration of a prison dietary system] to be compelling interests.").

[220] Koger v. Bryan, 523 F.3d 789, 800 (7th Cir. 2008).

(f) Special Attire

(i) *First Amendment Free Exercise Clause*

Under the Free Exercise Clause, a prison may prevent you from wearing certain attire required by your religion, like prayer hats or head coverings, or from keeping your facial hair in a certain way as required by your religion. This can be done if there is a "reasonable" relationship between the regulation and a "legitimate" prison interest.[221] Many courts have held the right to wear head coverings must be weighed against the state's security concern that weapons and drugs can be concealed under a hat.[222]

For example, a New York court held that a prison could prohibit incarcerated people from wearing Rastafarian "crowns" (loose-fitting headgear worn over dreadlocks) in some or all areas of the prison because of the legitimate security interests of the prison, even though Jewish and Muslim incarcerated people could wear their respective religious headgear (that are smaller and more closely fitted) throughout the prison.[223] The court determined that the prison had a legitimate security interest in the different treatment because Rastafarian crowns are large and shapeless enough to conceal weapons and contraband, as compared to the smaller, closely fitting head coverings worn by members of other religions.[224]

(ii) *RLUIPA*

Under RLUIPA, you will first need to show that the prison has substantially burdened your religious exercise by not allowing you to wear your religious attire.[225] If you make such a showing, the court will then decide whether the restriction furthers compelling governmental interests by the least restrictive means available. Because prison safety and security are considered compelling governmental interests, the court will need to determine whether the challenged regulations are the least restrictive means of accomplishing the safety and security goals. Ultimately, the outcome may be similar to raising a First Amendment challenge, where objects that threaten security are banned while those that do not are allowed.

In *Haley v. R.J. Donovan Correctional Facility*, the Ninth Circuit Court of Appeals held that while the facility's grooming regulation for male incarcerated people did not violate incarcerated people's First Amendment free expression rights, the regulation violated RLUIPA: "[A]lthough prison security constitutes a compelling government interest, the [California Department of Corrections] has failed to meet its burden of showing that this regulation is the least restrictive means of furthering that

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221 *See* Davis v. Clinton, 74 F. App'x 452, 455 (6th Cir. 2003) (upholding prison policy prohibiting Muslim incarcerated person from wearing religious garb every day due to the policy's reasonable relationship to valid security concerns).

222 *See, e.g.*, Boles v. Neet, 486 F.3d 1177, 1178–1179 (10th Cir. 2007) (holding that the incarcerated person established a violation of his First Amendment rights when the prison prohibited him from wearing a yarmulke while in transport between the prison and hospital). *But see* Young v. Lane, 922 F.2d 370, 374–377 (7th Cir. 1991) (holding that the policy of allowing Jewish incarcerated people to wear their yarmulkes only inside cells and during religious services did not violate incarcerated people's 1st Amendment rights because the policy "reasonably relates to legitimate penological interests" and incarcerated people have other means for expression); Standing Deer v. Carlson, 831 F.2d 1525, 1526–1528 (9th Cir. 1987) (holding that the ban of Native American headgear, including religious headbands, in dining hall did not violate First Amendment rights because the headgear ban is "logically connected to legitimate penological interests" because of sanitation, security and safety concerns).

223 Benjamin v. Coughlin, 905 F.2d 571, 578–579 (2d Cir. 1990) (holding that restricting wearing of Rastafarian crowns did not violate the 1st Amendment or Equal Protection); Bunny v. Coughlin, 187 A.D.2d 119, 121, 593 N.Y.S.2d 354, 356 (3d Dept. 1993) (holding that wearing of Rastafarian crown was properly denied).

224 Benjamin v. Coughlin, 905 F.2d 571, 579 (2d Cir. 1990); Bunny v. Coughlin, 187 A.D.2d 119, 122, 593 N.Y.S.2d 354, 356–357 (3d Dept. 1993).

225 Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a).

interest."[226] In *Warsoldier v. Woodford*, the Ninth Circuit held that the prison's grooming policy requiring male incarcerated people to maintain hair no longer than three inches imposed a substantial burden on Native American incarcerated people's religious practice within RLUIPA and that the California Department of Corrections had failed to explain "why prisons in other jurisdictions and its own women's prisons are able to meet the same compelling interests of prison safety and security without requiring short hair or permitting a religious exemption."[227]

As shown in the above cases, if you can show that prison officials allow other incarcerated people to wear the religious attire you wish to wear, you may be able to convince the court that the prison's regulation is not the least restrictive means of achieving its desired goals.

(g) Medical Tests

(i) *First Amendment Free Exercise Clause*

Under the Free Exercise Clause, a prison may refuse to accommodate your request not to receive medical procedures, such as the tuberculosis skin test, based on religious objections. To determine whether an injunction is appropriate, a court will apply the *Turner* standard.[228] In most cases, courts have upheld mandatory tuberculosis testing policies as reasonably related to legitimate objectives of prison administration.[229]

Because medical testing and vaccination requirements affect the well-being of the entire prison population and not just the rights of an individual incarcerated person, courts apply an analysis that is somewhat different from the one applied to other limitations of incarcerated people's rights. Some courts consider it important that vaccination and medical testing requirements are general, do not burden or support one religion over any others, and are related to maintaining the health and safety of the prison population and officials.[230]

Many courts have also upheld a state statute that required an incarcerated person to provide a DNA sample against a religious challenge. For example, in *Shaffer v. Saffle*, an Oklahoma statute required individuals convicted of certain offenses (sex-related crimes, violent crimes, and other crimes where biological evidence was recovered) to provide a DNA sample for the state's DNA Offender Database.[231] The purpose of this sample was so that the state could more easily identify and prosecute criminals. An incarcerated person challenged the statute, contending that it would force him "to submit to a practice that will require him to deny his faith and condemn him to eternal damnation."[232] The court held that the incarcerated person's First Amendment Free Exercise right had not been violated because the statute was a neutral, generally applicable law that did not discriminate against him based on his particular religious beliefs.

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226 Haley v. R.J. Donovan Corr. Facility, 152 F. App'x 637, 638–639 (9th Cir. 2005) (applying Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.")). For more information on the *Turner* standard, see Part C(1)(c) of this Chapter.

227 Warsoldier v. Woodford, 418 F.3d 989, 998–1001 (9th Cir. 2005).

228 For more information on the *Turner* standard, see Part C(1)(c) ("Validity of Prison Rules and Regulations") of this Chapter. Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.").

229 *See, e.g.*, Ballard v. Woodard, 641 F. Supp. 432, 437 (W.D.N.C. 1986) (holding that the free religious exercise rights of a Muslim incarcerated person were not violated when he was subjected to tuberculosis testing during the holy month of Ramadan since the state had a "paramount interest in maintaining the health of its prison population.").

230 *See generally* Ballard v. Woodard, 641 F. Supp. 432, 437 (W.D.N.C. 1986); *see also* McCormick v. Stalder, 105 F.3d 1059, 1061–1062 (5th Cir. 1997) (holding that prison officials could constitutionally quarantine an incarcerated person who tested positive for tuberculosis and force him to undergo treatment).

231 Shaffer v. Saffle, 148 F.3d 1180, 1181 (10th Cir. 1998).

232 Shaffer v. Saffle, 148 F.3d 1180, 1181 (10th Cir. 1998).

(ii) *RLUIPA*

Under RLUIPA, a prison may refuse to accommodate your request not to receive medical procedures even if refusing constitutes a substantial burden on your religious exercise, as long as the refusal (1) furthers a compelling government interest (2) by the least restrictive means.[233]

As in other RLUIPA cases, you must prove that the medical testing or vaccination requirement substantially burdens your religious exercise.[234] The prison must then prove that the regulation furthers a compelling government interest by the least restrictive means.[235] Because most medical procedures could potentially affect the entire prison population's health, and not just the individual incarcerated person's rights, the court will likely conclude that many procedures protect the health of the prison population and thus further a compelling government interest. Your best chance of successfully challenging a medical testing or vaccination requirement may be that the specific medical procedure is not the least restrictive means of testing you. For example, in *Jolly v. Coughlin*, a Rastafarian incarcerated person was placed in medical keeplock for refusing to take a tuberculosis test.[236] The court held that, although the government's interest in preventing the spread of tuberculosis was compelling, keeping the incarcerated person in medical keeplock violated RFRA. This was because even if the incarcerated person had tested positive for latent tuberculosis and refused to take the medication, he would have been placed back in the general population.[237] Results like *Jolly*, however, are fact-specific, and your chance of successfully challenging a medical testing or inoculation requirement under RLUIPA, just like under the First Amendment Free Exercise Clause, is probably minimal.[238]

D. Your Rights Under New York State Statutes

In addition to federal law, many states have laws protecting incarcerated people's rights to practice their religion. This Part specifically reviews relevant New York statutes that are different from what is explained in the rest of this Chapter. State statutes are not exclusive and provide some, but not all,

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233 Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc-1(a)(1)–(2).

234 Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a). *See also* Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 717–718, 101 S. Ct. 1425, 1432, 67 L.Ed.2d 624, 634 (1981) (stating that when the state "[put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists."); Jolly v. Coughlin, 76 F.3d 468, 477 (2d Cir. 1996) (stating that a substantial burden exists when the state puts substantial pressure on a incarcerated person to modify his behavior and to violate his beliefs).

235 Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc-1(a)(1)–(2).

236 *See* Jolly v. Coughlin, 76 F.3d 468, 477 (2nd Cir. 1996) (granting an injunction, pending plaintiff's claim under RFRA, to release plaintiff from a "medical keeplock" where he had been held for three-and-a-half years after he refused a tuberculosis test on religious grounds. The court found that despite his confinement, he was breathing the same air as other incarcerated people, and incarcerated people who tested positive were not kept in a "medical keeplock"). *But see* Redd v. Wright, 597 F.3d 532, 537 (2d Cir. 2010) (holding that the plaintiff's TB hold in 2001 was not in violation of his First Amendment right or RLUIPA. The court distinguished its case from *Jolly*, saying that while "*Jolly* rejected the state's contention that the mandatory [purified protein derivative] test is a reasonable way of preventing the spread of TB in prisons, that court nevertheless recognized that administering an effective TB screening program might be a compelling state interest and that this interest might justify a TB hold policy.").

237 Jolly v. Coughlin, 76 F.3d 468, 471 (2d Cir. 1996).

238 Soder v. Williamson, No. 4:07-CV-1851, 2008 U.S. Dist. LEXIS 68513, at *14–17 (M.D. Pa. Aug. 7, 2008) (*unpublished*) (finding no grounds for an RLUIPA violation where prison officials had tested an incarcerated person for tuberculosis using a chest X-ray—the method that the incarcerated person requested—and observing that the state has a particularly "clear and compelling interest in detecting" highly contagious and potentially dangerous diseases); *see also* Johnson v. Sherman, No. CIV S-04-2255 LKK EFB P, 2007 U.S. Dist. LEXIS 24098, at *12–*13 (E.D. Cal. Mar. 30, 2007) (*unpublished*) (denying injunction to Rastafarian incarcerated person challenging prison's requirement that he undergo a tuberculin skin test to test for latent tuberculosis because "[t]he tuberculosis skin test is the only medically accepted test available to discover latent tuberculosis in California's prisons.").

of the remedies available. In other words, you may sue under a state statute, a federal statute, and/or the U.S. Constitution. Make sure that you check for the most recent version of the law in your state before you file a claim.

Section 610(1) of the New York Corrections Law declares that you are "entitled to the free exercise and enjoyment of religious profession and worship, without discrimination or preference."[239] Subdivision (3) of this law provides that the rules and regulations of correctional institutions must allow religious services, spiritual advice, and private support from recognized clergy members."[240] However, the law also authorizes correctional institutions to reasonably restrict this right if necessary for proper institutional management.[241]

A New York court applying this law has required the Commissioner of Correction to redraft rules and regulations to allow clergy members to be admitted into a prison to conduct religious services, and to remove rules and regulations that prevented potential members of a faith group from attending services.[242] However, these rights can be limited by the Commissioner of the Department of Corrections and Community Supervision ("DOCCS") and by prison wardens to protect prison security, discipline, or other legitimate prison interests.[243] Note that courts have also interpreted Section 610(1) to require the presence of a "non-inmate spiritual leader" at all religious congregations in prison, and the non-inmate spiritual leader must be registered and approved pursuant to prison directives.[244] You should read Section 610 carefully, along with the cases cited in the corresponding Notes of Decisions. These Notes can be found in the same volume of McKinney's Consolidated Laws as the law, just after the law's text.

In addition to Section 610, you may also bring claims under the New York State Constitution. To determine if a restriction limiting your right to free exercise of religion is legal under the New York State Constitution, courts will balance the "importance of the right asserted and the extent of the infringement . . . against the institutional needs and objectives being promoted."[245] In general, New York courts follow the same analysis as claims brought under the U.S. Constitution. Therefore, if you believe a New York law or DOCCS directive interferes with your right to free exercise of religion, you

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[239] N.Y. CORRECT. LAW § 610(1) (McKinney 2014).

[240] N.Y. CORRECT. LAW § 610(3) (McKinney 2014).

[241] *See also* Brown v. McGinnis, 10 N.Y.2d 531, 535–536, 180 N.E.2d 791, 793, 225 N.Y.S.2d 497, 500–501 (1962) (finding that the freedom to exercise religion is not absolute because the law allows for the reasonable curtailment of this freedom if necessary for the "proper discipline and management" of the prison). *See also* N.Y. CORRECT. LAW § 610(3) (McKinney 2014).

[242] *See* Samarion v. McGinnis, 55 Misc. 2d 59, 61–62, 284 N.Y.S.2d 504, 507–508 (Sup. Ct. Erie County 1967) (requiring the Commissioner to remove or revise certain rules and regulations, required under New York Correct. Law § 610, after Black Muslims alleged they were denied their right to practice their religion).

[243] *See* Samarion v. McGinnis, 55 Misc. 2d 59, 61–62, 284 N.Y.S.2d 504, 508 (Sup. Ct. Erie County 1967) (allowing the Commissioner and Warden to limit the diet of inmates in some ways and to supervise religious practice if reasonable and consistent with prison security and not an undue restriction on the manner in which Muslim services could be conducted).

[244] State of New York, Department of Corrections and Community Supervision, Directive No. 4750, Volunteer Services Program § V-B-4 (2019) (dealing with "Volunteer Services Programs," and including guidelines for "Religious Volunteer and Spiritual Advisor"); State of New York, Department of Corrections and Community Supervision, Directive 4202, Religious Programs and Practices § VII-C-1-a (2023) (providing that, with specific authorization of the facility Superintendent, incarcerated people may "observe their congregational worship services when led by employee Chaplains or outside religious volunteers" and "attend religious classes facilitated by a Chaplain, an approved volunteer, or an approved facilitator"). *See also* Benjamin v. Coughlin, 905 F.2d 571, 577, (2d. Cir. 1990) ("DOCS has interpreted section 610 to mean that inmate religious groups are permitted to congregate for religious observance only under the supervision of a non-inmate spiritual leader known as a 'free-world sponsor'").

[245] Lucas v. Scully, 71 N.Y.2d 399, 406, 521 N.E.2d 1070, 1073, 526 N.Y.S.2d 927, 930 (1988) (stating the balancing test mentioned above but noting that the judgment of prison officials receives "a measure of judicial deference," and finding that, even though a prison policy that allowed the inspection of incarcerated people's mail sent to businesses implicated 1st Amendment rights, the policy did not violate the New York State Constitution).

should be prepared to make an argument using the constitutional analysis provided earlier in this Chapter.

Although New York state courts follow the same general constitutional analysis as federal courts, there are some differences that you should be aware of when evaluating whether you have a legitimate claim.

For example, New York courts and DOCCS have adopted a specific rule dealing with initial haircuts and shaves for purposes of obtaining identification photographs.[246] Under this rule, a prison may not require all incarcerated people to cut their hair upon admission because there are less intrusive methods that do not increase any administrative burden (for example, tying one's hair back).[247] An initial haircut requirement is, therefore, an unconstitutional violation of religious rights under New York law. However, a prison can still require incarcerated people to undergo an initial facial hair shave, since there are "no less intrusive alternatives for photographing the underlying facial features."[248] Note, however, that DOCCS seems to recognize computer imaging as a viable alternative to the initial shave requirement.[249]

DOCCS has also adopted specific rules for shaving your facial hair after being processed. Under this rule, although incarcerated people cannot grow facial hair longer than one inch from the face, there is a religious exemption for the one-inch requirement for those whose religious rules prohibit the cutting of facial hair.[250]

Likewise, DOCCS has adopted specific dietary rules. For example, in many instances, New York incarcerated people may avoid eating foods forbidden by their religious beliefs.[251] DOCCS policy also provides Muslim, Buddhist, and Orthodox Jewish incarcerated people special meals during certain holidays.[252] Despite these provisions, there are limitations to the religious meals and ceremonies an incarcerated person can get. For example, a court held a Jewish incarcerated person could not insist on preparing his meals himself, nor could he require that only a Jewish or Muslim cook prepare

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[246] State of New York, Department of Corrections and Community Supervision, Directive 4914, Incarcerated Individual Grooming Standards (2021).

[247] *See* People v. Lewis, 115 A.D.2d 597, 598, 496 N.Y.S.2d 258, 260 (2d Dept. 1985), *aff'd*, 68 N.Y.2d 923, 502 N.E.2d 988, 510 N.Y.S.2d 73 (1986) ("[T]he identification objective would be fully achieved by pulling respondent's locks back tightly behind the head for a photograph so they could not be seen . . . the asserted objectives of a haircut can be achieved through alternatives that impinge less drastically on respondent's First Amendment rights than directing him to cut his hair.").

[248] *See* People v. Lewis, 115 A.D.2d 597, 598, 496 N.Y.S.2d 258, 260 (2d Dept. 1985), *aff'd*, 68 N.Y.2d 923, 502 N.E.2d 988, 510 N.Y.S.2d 73 (1986); *see also* Phillips v. Coughlin, 586 F. Supp. 1281, 1285 (S.D.N.Y. 1984) (denying Rastafarian's claim for damages after an initial shave pursuant to Directive 4914, since a single shave is the "simplest, quickest and most comfortable method" of satisfying the security need for a clean-shaven identification photograph).

[249] *See* Helbrans v. Coombe, 890 F. Supp. 227, 230 (S.D.N.Y. 1995) (noting that DOCCS and incarcerated person reached an agreement in which DOCCS allowed a Jewish incarcerated person to pay for a computer-generated photograph that displayed his image without his beard as an alternative to the initial shave requirement).

[250] *See* State of New York, Department of Corrections and Community Supervision, Directive No. 4914, Incarcerated Individual Grooming Standards § III-D-1-b (2024), *available at* https://doccs.ny.gov/system/files/documents/2024/02/4914public.pdf (last visited Apr. 1, 2024).

[251] *See* State of New York, Department of Corrections and Community Supervision, Directive No.4202, Religious Programs and Practices § XVI (2023), *available at* https://doccs.ny.gov/system/files/documents/2023/05/4202_0.pdf (last visited Apr. 1, 2024). *But see* Bunny v. Coughlin, 187 A.D.2d 119, 123, 593 N.Y.S.2d 354, 357 (3d Dept. 1993) (holding that a Rastafarian incarcerated person was not entitled to dietary restrictions because the prison did not have the resources to accommodate him).

[252] *See* Benjamin v. Coughlin, 905 F.2d 571, 574, 579–580 (2d Cir. 1990) (noting that under DOCCS policy, alternative portions are offered to all incarcerated people whenever pork is served, and special kosher meals are provided for incarcerated people at some facilities. Muslim and Buddhist incarcerated people are provided special meals during certain holidays.).

them.[253] Because the prison provided the incarcerated person with pork-free meals, it did not have to meet his other preparation demands given the prison's valid budgetary reasons.[254]

E. Faith-Based Rehabilitation Programs

In recent decades, there has been an increase in the number of faith-based rehabilitation programs within state prison facilities, many initiated by volunteer evangelical Christian organizations (the Prison Fellowship Ministries, in particular).[255] What makes these faith-based programs different from other religious-based organizations within the prison is their implementation by the state and the "special treatment" participating incarcerated people seem to receive.

These faith-based programs raise serious constitutional questions. While the Supreme Court has not yet decided on the constitutionality of faith-based rehabilitation programs, several state and federal courts have.[256] In *Americans United for Separation of Church and State v. Prison Fellowship Ministries,* an Iowa federal district court held that the challenged faith-based program violated the Establishment Clause.[257]

Much of the court's decision in that case, however, turned on the fact that the program was state-funded, conducted in a state prison by a private religious organization, and all instruction (with the exception of one subject) was presented from the viewpoint of Evangelical Christianity.[258] It is unclear how a similar case would be decided if the program was privately funded, or if the program was less religiously focused.

Courts generally treat faith-based prison addiction treatment programs differently (primarily Alcoholics Anonymous and Narcotics Anonymous, which "are rooted . . . in a regard for a 'higher power'").[259] Rather than holding that these programs violate the Establishment Clause, courts tend to simply say that incarcerated people cannot be required to participate in faith-based programs.[260] However, some courts have required that secular alternatives to faith-based treatment programs be available to incarcerated people.[261]

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[253] Malik v. Coughlin, 158 A.D.2d 833, 834–835, 551 N.Y.S.2d 418, 419 (3d Dept. 1990).

[254] Malik v. Coughlin, 158 A.D.2d 833, 834, 551 N.Y.S.2d 418, 419 (3d Dept. 1990).

[255] *See* Daniel Brook, *When God Goes to Prison*, LEGAL AFF. (May–June, 2003); Samantha M. Shapiro, *Jails for Jesus*, MOTHER JONES (Nov.–Dec. 2003).

[256] *See, e.g.*, Ams. United for Separation of Church & State v. Prison Fellowship Ministries, 432 F. Supp. 2d 862, 934 (S.D. IA. 2006) (holding that a faith-based prison program violated incarcerated people's Establishment Clause rights under the 1st Amendment and the Iowa Constitution), *aff'd in part, rev'd on other grounds*, 509 F.3d 406 (8th Cir. 2007); Williams v. Huff, 52 S.W.3d 171, 192 (Tex. 2001) (holding that a faith-based prison program violated incarcerated people's Establishment Clause rights under the 1st Amendment).

[257] Ams. United for Separation of Church & State v. Prison Fellowship Ministries, 432 F. Supp. 2d 862 (S.D. IA. 2006), *aff'd in part, rev'd on other grounds*, 509 F.3d 406 (8th Cir. 2007). For more information on the Establishment Clause, see Part B of this chapter.

[258] Ams. United for Separation of Church & State v. Prison Fellowship Ministries, 432 F. Supp. 2d 862, 918–921 (S.D. Iowa 2006), *aff'd in part, rev'd on other grounds*, 509 F.3d 406 (8th Cir. 2007).

[259] Inouye v. Kemna, 504 F.3d 705, 712–714 (9th Cir. 2007) (holding that a parolee cannot be ordered into a treatment program that has pronounced religious overtones, including references to God, a higher power, and prayer).

[260] *See, e.g.*, Kerr v. Farrey, 95 F.3d 472, 478–480 (7th Cir. 1996) (holding that incarcerated person could not be required to participate in Narcotics Anonymous, nor could he have his security classification raised for refusing to do so); Turner v. Hickman, 342 F. Supp. 2d 887, 895–898 (E.D. Cal. 2004) (holding that requiring incarcerated person to participate in Narcotics Anonymous in order to be eligible for parole violated the Establishment Clause).

[261] *See, e.g.*, Warner v. Orange Cnty. Dept. of Prob., 115 F.3d 1068, 1081 (2d Cir. 1997) (holding that forced attendance at Alcoholics Anonymous as a probation condition violated the Establishment Clause and requiring the county to make a non-religious treatment alternative available).

F. Conclusion

The Constitution and different statutes protect your right to religious freedom. Your right to religious freedom includes both the freedom to practice the religion of your choice and the freedom to not be forced to practice a different religion. If you believe your right to religious freedom is being violated while you are incarcerated, you should first try to address the problem through your facility's grievance procedure. If you are still unsuccessful after going through grievance procedures, you can file a lawsuit. The type of lawsuit you should bring depends on if you are incarcerated in a federal or state prison. Be aware, however, that these lawsuits can sometimes be difficult to win because a court might decide that the restriction on your religious freedom is justified as a legitimate prison interest (like the security of the facility).

This Chapter has provided you with information on several different types of claims you might want to bring. Remember that it is always important to do additional research to see if there have been any legal developments since this edition of the *JLM* was published. It is also important to research the laws in your specific state, as they might provide additional protections for your right to religious freedom. For an introduction to doing your own legal research, see *JLM,* Chapter 2, "Introduction to Legal Research."

APPENDIX A

LIST OF RELIGIOUS ORGANIZATIONS

Below is a list of organizations that might be able to assist you in exercising your freedom to practice your religion while in prison. Most of these organizations do not provide legal assistance, and unless otherwise stated, probably do not have an outreach program specifically for incarcerated people. The JLM does not endorse any of the following organizations or religions and cannot guarantee that they will be able to help you.

Antiochian Orthodox Christian
Orthodox Christian Prison Ministry
276 5th Avenue
Suite 704 – 3036
New York, NY 10001
Phone: (347) 868-6957
The OPCM is dedicated to incarcerated people. It responds to every letter received from a currently incarcerated person (please use the mailing address above). They can also send Bibles, spiritual books, and other materials.

Armenian Apostolic
Armenian Church of America, Eastern Diocese
630 Second Avenue
New York, NY 10016
Phone: (212) 686-0710

Bahá'í
National Spiritual Assembly of the Bahá'ís of the United States
1233 Central Street
Evanston, IL 60201
Phone : (847) 733-3400

Buddhist
Buddhist Prison Ministry
PO Box 426
Orcas, WA, 98280
The Buddhist Prison Ministry is dedicated to incarcerated people. They provide a free course book upon request.

National Buddhist Prison Sangha
871 Plank Rd
PO Box 197
Mount Tremper, NY 12457
NBPS's mission is to sustain a correspondence program with incarcerated people across the country. In New York prisons, they lead meditation practice groups.

Chinese Catholic
Ascension Chinese Catholic Church
4605 Jetty Lane
Houston, TX 77072
Phone: (281) 575-8855

Croatian Catholic
Croatian Church of St. Cyril & Methodius
502 W. 41st St.
New York, NY 10036
Phone: (212) 563-3395

Roman Catholic
Catholic League for Religious and Civil Rights
450 Seventh Ave.
New York, NY 10123
Phone: (212) 371-3191
This group does not provide legal assistance. However, it will advocate informally on your behalf by contacting your prison warden if you are Roman Catholic and prevented in some way from practicing your religion.

Asociación Nacional de Sacerdotes Hispanos en USA
(The National Association of Hispanic Priests of the USA)
2472 Bolsover, Suite 442
Houston, TX 77005
Phone: (713) 528-6517

Coptic Christian
St. Mark's Coptic Orthodox Church
1600 S. Robertson Blvd.
Los Angeles, CA 90035
(310) 275-3050; FAX: (310) 276-6333

Greek Orthodox
Greek Orthodox Church
Archdiocese of America
8 East 79th Street
New York, NY 10075
Phone: (212) 570-3500

Hindu
Hinduism Today
Kauai's Hindu Monastery
107 Kaholalele Rd.
Kapaa, HI 96746-9304
Phone: (808) 822-3012
Subscriptions are available to Hinduism Today.

Hindu Temple Society of Southern California
1600 Las Virgenes Canyon Rd.
Calabasas, CA 91302
Phone: (818) 880-5552

Islam
Council on American Islamic Relations
453 New Jersey Avenue SE
Washington, DC 20003
Legal Help Phone: (202) 379-3317
Legal Help Email: civilrights@cair.com
CAIR can provide pro bono legal assistance if you are facing trouble relating to your Islamic faith.

Link Outside
1220 N State College Boulevard
Anaheim, CA 92806
Phone: (916) 546-5547
Link Outside is a Muslim prison outreach program. They can correspond with currently incarcerated people, send materials, and provide programming.

ICNA Muslim Prisoner Support Project
P.O. Box 8411
Reston, VA 20195
A project of the Islamic Circle of North America's Council for Social Justice. The Prisoner Support Project sends books, head coverings, and prayer rugs to incarcerated people nationwide.

Shi'a Ithna Asheri Jamaat of New York
48-67 58th St.
Woodside, NY 11377
Phone: (718) 507-7680

Jain
Federation of Jain Associations in North America
148 Tradewinds Circle
South Daytona, FL 32119
Phone: (862) 955-5783

Jewish
Aleph Institute
Prison and Military Services
9540 Collins Avenue
Surfside, Florida 33154
Phone: (305) 864-5553
This organization serves the needs of Jews of all backgrounds who are in institutional environments, including prisons. Volunteers conduct prison visits, particularly in conjunction with religious holidays. It provides religious education, legal advocacy on behalf of religious rights, and assistance to incarcerated people's families.

Native American/Indigenous
Native American Rights Fund
250 Arapahoe Avenue
Boulder, CO 80302
Phone: (303) 447-8760
The Native American Rights Fund ("NARF") provides legal representation and assistance to tribes. They probably will not take your individual case, but they can provide referrals.

Ik8ldimek Legal Clinic
840 Suncook Valley Road
PO Box 52
Alton, NH 03809
Phone: (603) 776-1090
This Legal Clinic provides legal services and referrals for incarcerated Native Americans for religious freedom issues and other limited civil rights issues, like visitation issues, the right to send and receive mail, and the use of segregation as punishment.

Miscellaneous/ Interdenominational
Prison Ashram Project
Human Kindness Foundation
P.O. Box 61619
Durham, NC 27715
(919) 383-5160