Statement of the Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, is a civil rights law that protects the religious freedom of persons confined to prisons, jails, and certain other institutions in which the government exerts a degree of control far greater than that which is found in civilian society.[1] After hearings in which Congress found that persons residing in institutions are sometimes subject to discriminatory or arbitrary denial of the ability to practice their faiths beyond what is needed for the security and proper functioning of the institution, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress heard testimony that individuals confined to institutions are often subject to the authority and discretion of a small number of local officials, and that the religious exercise of individuals in those institutions is often limited, sometimes in arbitrary and unnecessary ways.[2] In introducing the bill that would become RLUIPA, Senator Kennedy noted that institutionalized persons were often denied opportunities to practice their religions even when such practice would not have harmed the discipline, order, or safety of the institutions in which they were located.[3] He also noted that restrictions on the practice of religion in the prison context could even be counter-productive because "[s]incere faith and worship can be an indispensable part of rehabilitation."[4]

Section 3(a) of RLUIPA prohibits regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an institution. This provision also makes clear that its prohibition applies even if the regulation imposing the burden is a rule of general applicability. Regulations amounting to a substantial burden will only be permitted if the government can show that the regulation serves a "compelling government interest" and is the least restrictive way for the government to further the identified compelling interest. 42 U.S.C. § 2000cc-1. And Congress stated that RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." 42 U.S.C. § 2000cc–3(c).

In *Holt v. Hobbs*, the first Supreme Court case directly interpreting RLUIPA's substantive provisions, the Court affirmed that the strict scrutiny analysis required by the statute is "exceptionally demanding" and that the protection it affords is "expansive." 135 S. Ct. 853, 860, 864 (2015). The petitioner in *Holt* was a Muslim prisoner who challenged the Arkansas Department of Corrections' (ADOC) grooming policy, which prohibited even half-inch beards and provided no exceptions for requests based on

[1] This Statement deals with RLUIPA's institutionalized persons provisions. Another section of RLUIPA protects individuals and religious institutions from discriminatory and unduly burdensome land use regulations.
[2] *See* 146 CONG. REC. S7774-01 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy) (describing purpose of and need for RLUIPA).
[3] 146 CONG. REC. S6678-02, at S6688 (daily ed. July 13, 2000).
[4] *Id.* at S6689.

religion. *Id.* at 860-61. The Supreme Court found that the grooming policy violated RLUIPA because the ADOC failed to prove that prohibiting beards was the least restrictive means to further its interests in (1) preventing prisoners from hiding contraband, and (2) quickly and reliably identifying prisoners. *Id.* at 863-65. The Court found that there were less restrictive means to further these interests. For example, the ADOC could search beards to limit contraband and take pictures of prisoners with and without beards to enable speedy identification. *Id.* Furthermore, the ADOC did not show why it must take a different course from the many other correctional facilities around the country that permit the plaintiff's requested beard exception. *Id.* at 865-67. *Holt* makes clear that courts should not accept prison administrators' broad statements about governmental interests as a basis for denying religious accommodations. *Id.* at 863-64.

RLUIPA's protections can be enforced by the Department of Justice or by private lawsuits. In the fifteen years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. The Department of Justice has enforced RLUIPA in a variety of ways, including conducting investigations, making findings, entering into voluntary agreements and consent decrees, intervening in existing lawsuits, filing statements of interest in existing cases, and filing litigation on behalf of the United States. For example, the Department has filed statements of interest in cases related to restrictions on beards and hair length, Ramadan accommodations, religious diets, and access to tobacco for religious use. The Department has also intervened in litigation to protect prisoners' rights to access religious texts and to protect Sikh prisoners' right to keep hair unshorn. Recently, the Department obtained an injunction requiring the Florida Department of Corrections to provide kosher food to prisoners whose sincere beliefs require that diet.

In order to assist persons and institutions in understanding their rights under RLUIPA, and to assist municipalities and other government entities in understanding the requirements that RLUIPA imposes, the Department of Justice has created this summary and accompanying questions and answers. This document rescinds and replaces a prior version, originally released in 2010 and revised in 2017, which was not fully consistent with the Attorney General's Memorandum on Guidance Documents of November 16, 2017.[5] This non-binding guidance document is just that: non-binding guidance to individuals, religious institutions, and local officials about existing law. It is not intended to create any new obligations or requirements, nor establish binding standards by which the Department of Justice will determine compliance with RLUIPA. This document is not intended to compel anyone into taking any action or refraining from taking any action—indeed, the Department will not bring any enforcement actions based on noncompliance with this document.[6] Rather, this document is intended to describe the various provisions of the statute in a simple and straightforward manner and to provide examples of how some courts have interpreted and applied the law in various contexts. Such examples are purely illustrative and do not necessarily reflect binding law.

[5] Available at www.justice.gov/opa/press-release/file/1012271/download.

[6] See Memorandum from the Associate Attorney General on Limiting Use of Agency Guidance Documents in Affirmative Civil Rights Cases, available at www.justice.gov/file/1028756/download.

Please note that this guidance document is not a final agency action, has no force or effect of law, and may be rescinded or modified in the Department's complete discretion.

Questions and Answers on the Institutionalized Persons Provisions of RLUIPA

1. Who is protected by RLUIPA?

RLUIPA protects all persons "residing in or confined to an institution" as defined by the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997.[7] While most claims address prisons and jails, the definition of "institution" in CRIPA includes state or local government-operated intermediate and long-term care facilities, mental health facilities, correctional facilities, pretrial detention facilities, and juvenile detention facilities, so these facilities are also covered by RLUIPA.[8] Private prisons and jails are generally covered by RLUIPA, because they are operated on behalf of states or municipalities.[9] Other private facilities may be covered by RLUIPA if they are acting on behalf of a state or local government agency. RLUIPA does not apply to institutions owned or operated by the federal government, though another, similar law, the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, does apply to those institutions.

2. What does "religious exercise" include?

RLUIPA defines religious exercise to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief."[10] As with all provisions of RLUIPA, according to Section 5(g), "religious exercise" must be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."[11] Although the definition of "religious exercise" in RLUIPA is broad, an individual must nevertheless show that the exercise burdened is a

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[7] 42 U.S.C. § 2000cc-1(a).

[8] *See Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982) (finding that "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish"); *see also DeSimone v. Bartow*, 355 F. App'x 44, 46 (7th Cir. 2009) (recognizing that a RLUIPA claim could be brought against a mental health facility stemming from an individual's civil commitment); *Strutton v. Meade*, No. 4:05CV02022, 2010 WL 1253715, slip op. at *1 (E.D. Mo. Mar. 31, 2010) (stating that a RLUIPA claim could be brought by a civilly-committed inmate in a facility housing "sexually violent predators").

[9] *See, e.g., John Knows His Gun v. Montana*, 866 F. Supp. 2d 1235, 1244 (D. Mt. 2012) (explaining that RLUIPA covers privately run prison because state delegated responsibility to private company, and thus company "may fairly be said to be state or 'government' actors under RLUIPA"); *Dean v. Corr. Corp. of Am.*, 540 F. Supp. 2d 691, 693–94 (N.D. Miss. 2008) (applying RLUIPA to privately run correctional facility because state entered into contract with private corporation, and thus, for RLUIPA purposes, private corporation became "instrumentality" of the state).

[10] 42 U.S.C. § 2000cc-5(7)(A).

[11] 42 U.S.C. § 2000cc-3(g).

part of the individual's religious beliefs, and not merely a secular or philosophical position.[12]

Additionally, the religious belief must be sincerely held and institutions are permitted to inquire into the sincerity of the person's belief before accommodating the person's religious exercise.[13] However, such an inquiry must be handled with a "light touch" and limited largely to assessing the prisoner's credibility.[14] Prison officials may not base their determinations on whether or not a particular observance is orthodox.[15]

Accordingly, courts have found that a variety of practices constitute religious exercise under RLUIPA, including: attending religious services,[16] joining prayer groups,[17] leaving hair uncut,[18] wearing head coverings,[19] adhering to certain dietary restrictions,[20] participating in religious fasts and thus receiving meals at irregular times,[21] and receiving certain religious reading materials.[22]

3. What kinds of burdens on religious exercise are "substantial burdens" under RLUIPA?

The Supreme Court has had occasion to consider how to determine whether a particular departmental policy imposed a substantial burden under RLUIPA. In *Holt v. Hobbs*, a policy of the Arkansas Department of Corrections prohibited the keeping of facial hair and required all inmates, including petitioner, to shave his beard. For petitioner, this would have been a serious violation of his religious beliefs. However, if petitioner refused to comply with the policy and chose to grow his beard, he would face disciplinary

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[12] *See Coronel v. Paul*, 316 F. Supp. 2d 868, 876 (D. Ariz. 2004) (stating that plaintiffs could satisfy the religious motivation element of RLUIPA by showing their "conduct [was] both important to them and motivated by sincere religious belief"). *Cf. Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972) (finding that the lifestyle choices of the Amish were religious beliefs because they were "not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living").

[13] *See Coronel v. Paul*, 316 F. Supp. 2d 868, 876 (D. Ariz. 2004) (stating that plaintiffs could satisfy the religious motivation element of RLUIPA by showing their "conduct [was] both important to them and motivated by sincere religious belief"); *Cutter v. Wilkinson*, 544 U.S. 709, 725 n. 13 (2005) ("[RLUIPA] does not preclude inquiry into the sincerity of a prisoner's professed religiosity.").

[14] *See Moussazadeh v. Tex. Dep't of Crim. Justice*, 703 F.3d 781, 791-92 (5th Cir. 2012).

[15] *See Grayson v. Schuler*¸ 666 F.3d 450, 453-55 (7th Cir. 2012).

[16] *Meyer v. Teslik*, 411 F. Supp. 2d 983, 989 (W.D. Wis. 2006) (Native American religious ceremonies).

[17] *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 412 (D. Mass. 2008) (Jum'ah services).

[18] *See, e.g.*, *Smith v. Ozmint*, 578 F.3d 246, 251 (4th Cir. 2009) (mandatory close-cropped haircut); *Longoria v. Dretke*, 507 F.3d 898, 903 (5th Cir. 2007) (same); *Warsoldier v. Woodford*, 418 F.3d 989, 996 (9th Cir. 2005) (punishment for failure to cut hair).

[19] *Singh v. Goord*, 520 F. Supp. 2d 487, 503 (S.D.N.Y. 2007) (Sikh turban).

[20] *See, e.g.*, *Nelson v. Miller*, 570 F.3d 868, 879 (7th Cir. 2009) (meatless diet); *Hudson*, 538 F. Supp. 2d at 411 (Halal diet).

[21] *See Lovelace v. Bassett*, 2008 U.S. Dist. LEXIS 74190, No. 7:07CV00506, at *5-8 (W.D. Va. Sept. 27, 2008).

[22] *Jesus Christ Prison Ministry v. Cal. Dep't of Corr.*, 456 F. Supp. 2d 1188, 1203 (E.D. Cal. 2006) (withdrawn due to settlement) (requested Christian literature).

action. "Because the grooming policy puts petitioner to this choice" between violating his religious beliefs and risking serious discipline, the Court found the policy "substantially burden[ed] his religious exercise."[23] The Court's analysis in determining whether there was a substantial burden adopted a framework that lower courts had developed in adjudicating RLUIPA cases prior to the Court's *Holt* decision.

To determine whether the burden imposed is "substantial," courts have focused on the degree to which a given regulation would require an adherent to alter or abandon the adherent's religious practice. The interference with one's religious practice must be significant; a marginal interference will not suffice.[24] The substantial burden inquiry is fact-intensive, and the burden is on the person asserting a substantial burden to prove that the institution's policy or practice constitutes a substantial burden.[25] Courts will also consider whether accommodations for religious practice burden the rest of the institutionalized population and whether they are administered neutrally among various faiths.[26]

Applying these standards, courts have found that a substantial burden exists where institutional rules limit access to religious books,[27] use coercion to require shearing of hair,[28] or fail to provide necessary dietary accommodations.[29] Conversely, courts have been reluctant to find a substantial burden where a religious practice was made merely inconvenient or more difficult. For example, courts have found that the use of a soft-cover instead of a hard-cover Bible and the use of prison-distributed prayer towels instead of traditional prayer rugs to not constitute a substantial burden.[30] Similarly,

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[23] *Holt v. Hobbs*, 135 S. Ct. 853, 857, 862 (2015).

[24] *See, e.g.*, *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007) (identifying two situations that would show a substantial burden: "1) a follower is forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates versus abandoning one of the precepts of his religion in order to receive a benefit" OR "2) the government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs"); *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (holding that a substantial burden on religious exercise "occurs when a state or local government, through act or omission, 'put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" (quoting *Thomas v. Review Bd. Of the Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981))); *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 988 (8th Cir. 2004) (defining substantial burden as a restriction that significantly limits conduct or expression that manifests religious beliefs; hinders the ability to show adherence to a faith; or precludes participation in fundamental religious activities).

[25] *See Adkins v. Kaspar*, 393 F.3d 559, 571 (5th Cir. 2004) (rejecting a bright-line standard for substantial burden inquiries); *Charles v. Verhagen*, 220 F. Supp. 2d 937, 944 (W.D. Wis. 2002) (recognizing that RLUIPA and RFRA both require a plaintiff to show a substantial burden before a defendant must satisfy the compelling interest element).

[26] *Cutter v. Wilkinson*, 544 U.S. 709, 719-20 (2005).

[27] *Washington*, 497 F.3d at 282.

[28] *Warsoldier v. Woodford*, 418 F.3d 989, 995-96 (9th Cir. 2005) (describing punishment plaintiff suffered for refusing to cut his hair).

[29] *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 411-12 (D. Mass. 2008).

[30] *See Dunlap v. Losey*, 40 F. App'x 41, 43 (6th Cir. 2002) (finding that a prisoner was not substantially burdened when he could not use a hardcover Bible because softcover Bibles were available); *Hudson*, 538 F. Supp. 2d at 411 (accepting prison practice of distributing prayer towels instead of traditional prayer rugs). *See also Starr v. Cox*, No. 05-cv-368-JD, 2008 U.S. Dist. LEXIS 34708, *40 (D.N.H. Apr. 28, 2008) (accepting restrictions on the location of religious practices).

where inmates were offered alternative diets which would comply with their religious requirements, but not the specific diet requested, no substantial burden was found.[31]

4. What if the substantial burden is the result of a rule of general applicability?

RLUIPA makes clear that, even if the substantial burden on an institutionalized person's religious exercise is the result of a rule that applies to everyone in the institution, the institution will still be in violation of RLUIPA unless it can demonstrate that application of the rule is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest.[32] For example, an institution may have a rule prohibiting headwear of any kind, but RLUIPA may require that a Jewish individual be permitted to wear a yarmulke in observance of his religious practices, or may require that a Muslim individual be permitted to wear her hijab.

5. What are examples of a compelling interest that would permit an institution to impose a substantial burden on religious exercise?

Courts have interpreted a "compelling governmental interest" to mean an interest "of the highest order."[33] In the context of RLUIPA's institutionalized persons provisions, a compelling governmental interest is one that furthers "good order, security and discipline, consistent with consideration of costs and limited resources."[34] When officials assert that such concerns are compelling, the courts should be respectful of their expertise. However, such respect does not mean "unquestioning deference," and courts must still apply "RLUIPA's rigorous standard" when independently assessing whether an asserted interest is truly compelling.[35]

> RLUIPA, like RFRA, contemplates a "'more focused'" inquiry and "'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" *Hobby Lobby*, 573 U.S., at ——, 134 S. Ct., at 2779 (quoting *Gonzales v. O Centro Espirita*

[31] *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1317 (10th Cir. 2010). In *Patel v. United States Bureau of Prisons*, although the Eighth Circuit held that the inmate had not set forth enough evidence to show a substantial burden, there was uncontested evidence that he could consume Common Fare kosher non-meat meals and could purchase his own halal commissary meals, and he had not shown that the financial burden would be significant. 515 F.3d at 814–15; *see also Pratt v. Corr. Corp. of Am.*, 267 F. App'x. 482, 482–83 (8th Cir. 2008) (citing *Patel* in finding no substantial burden); *Watkins v. Shabazz*, 180 F. App'x 773, 775 (9th Cir. 2006) (court held that there was no substantial burden because defendants gave the inmate two alternatives—eating the nutritionally adequate meat-substitute meals or finding an outside organization to provide halal meat).

[32] *Holt v. Hobbs*, 135 S. Ct. 853, 860, 863-65 (2015).

[33] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

[34] *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005) (quoting S. Rep. No. 103-111, at 10 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1892, 1899-90).

[35] *Holt*, 135 S. Ct. at 864.

Beneficente Uniao do Vegetal, 546 U.S. 418, 430-431 (2006) (quoting § 2000bb–1(b))).[36]

When determining whether a compelling governmental interest exists, courts will give some deference to the administrators of institutions in determining appropriate regulations for those institutions, but will nevertheless require that administrators support their assertions of appropriateness with specific evidence.[37] "[M]ere speculation, exaggerated fears, or post-hoc rationalizations will not suffice…."[38] Thus, bare assertions that a religious accommodation will compromise the security or integrity of an institution will not suffice.[39] Similarly, inconsistent or arbitrary regulations will not qualify as serving compelling interests.[40]

When institutions have provided concrete evidence, courts have recognized that a variety of regulations that substantially burden religious exercise also serve a compelling interest. For example, requiring grooming in segregated holding has been found by some courts to further the compelling interest of health and security,[41] and placing certain restrictions on the formation of organized groups has been found to serve the limited interest of preventing the growth of gangs.[42] On the other hand, some courts have rejected assertions of compelling governmental interest in the orderly administration of a prison's dietary system when the prison already serves meals that would satisfy the prisoner's dietary needs,[43] and have found that an arbitrary limit on the number of books an inmate could keep in his cell did not further any compelling interest.[44]

6. What actions must an institution take to demonstrate that imposition of the substantial burden is the least restrictive means to achieve the compelling governmental interest?

Where a correctional institution's regulation imposes a substantial burden on a prisoner's religious exercise, the regulation violates RLUIPA unless the institution demonstrates

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[36] *Id.* at 863.
[37] *See Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33, 39 (1st Cir. 2007) ("[M]erely stating a compelling interest does not fully satisfy RIDOC's burden on this element of RLUIPA . . . .").
[38] *Id.* (internal citations omitted).
[39] *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 989 (8th Cir. 2004) (requiring prison officials to show the possibility that violence would occur if they made the requested accommodation instead of simply asserting such a conclusion).
[40] *See Washington v. Klem*, 497 F.3d 272, 284 (3d Cir. 2007) (stating that prison administrators failed to show a compelling interest because the fact that inmates were able to keep printed material beyond the ten-book limit in their cells indicated concerns about fire hazards and the hiding of contraband were not legitimate); *Koger v. Bryan*, 523 F.3d 789, 800 (7th Cir. 2008) (finding clergy verification requirement did not further stated compelling interest of serving dietary needs).
[41] *McRae v. Johnson*, 261 F. App'x 554, 558 (4th Cir. 2008).
[42] *See Jova v. Smith*, 582 F.3d 410, 415–16 (2d Cir. 2009) (per curiam).
[43] *Koger*, 523 F.3d at 800.
[44] *See Washington*, 497 F.3d at 281–82 (stating that prison administrators failed to show a compelling interest because the fact that inmates were able to keep printed material beyond the ten-book limit in their cells indicated concerns about fire hazards and the hiding of contraband were not legitimate).

both: (1) that a compelling governmental interest necessitates the imposition of the burden; and (2) that the regulation is the least restrictive means to further that interest. Thus, even regulations that serve a compelling interest violate RLUIPA if they are not the least restrictive means to further a compelling interest.[45]

To satisfy the "least restrictive means" requirement of RLUIPA, some courts have required institutions to show that alternative means of satisfying the compelling government interest were considered and found insufficient.[46] The ability of other correctional institutions to further comparable interests without using the challenged regulations may be evidence that a less restrictive alternative is available. Indeed, where a significant number of other institutions allow an accommodation, an institution cannot deny that accommodation consistent with RLUIPA's strict scrutiny requirement unless the institution offers persuasive reasons why it cannot adopt the less restrictive methods used elsewhere.[47] Less restrictive alternatives used by the Federal Bureau of Prisons (BOP) are particularly relevant to the least restrictive means analysis because BOP manages the country's largest correctional system while adhering to the comparably strict protections for religious exercise that are guaranteed by RFRA.[48] Consequently, where BOP accommodates a particular religious exercise, an institution that forbids that exercise is unlikely to satisfy RLUIPA's strict scrutiny inquiry unless it can demonstrate that the BOP approach is unworkable.[49]

Regulations burdening religious exercise likewise may fail strict scrutiny if they are under-inclusive. That is, a restriction on a prisoner's religious exercise is unlikely to satisfy strict scrutiny where the correctional institution permits similar accommodations for other prisoners.[50]

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[45] *Holt v. Hobbs*, 135 S. Ct. 853, 864 (2015) (RLUIPA requires a defendant "not merely to explain why it denied the exemption but to prove that denying the exemption is the least restrictive means of *furthering* a compelling governmental interest."). In *Holt*, the Supreme Court found that a prison restriction on beard length was not the least restrictive means of advancing security interests.

[46] *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005).

[47] *Holt*, 135 S. Ct. at 866 (Where significant number of other correctional institutions allow a challenged accommodation, RLUIPA requires a defendant to "at a minimum, offer persuasive reasons why it believes that it must take a difference course."); *Warsoldier*, 418 F.3d at 999 ("[P]roblematic for [defendant] is that other prison systems, including the Federal Bureau of Prisons, do not have such hair length policies or, if they do, provide religious exemptions."). *See also Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 534 (11th Cir. 2013) (practices of other institutions "are relevant to an inquiry about whether a particular restriction is the least restrictive means by which to further a shared interest"); *Shakur v. Schriro*, 514 F.3d 878, 890–91 (9th Cir. 2008) (noting contrary dietary policies of other institutions).

[48] *Cutter v. Wilkinson*, 544 U.S. 709, 725 (2005) (BOP "has managed the largest correctional system in the Nation under the same heightened scrutiny standard as RLUIPA without compromising prison security, public safety, or the constitutional rights of other prisoners.").

[49] *Spratt v. Rhode Island Dep't of Corr.*, 482 F.3d 33, 42 (1st Cir. 2007); *see also Warsoldier*, 418 F.3d at 999.

[50] *Davila v. Gladden*, 777 F.3d 1198, 1207 (11th Cir. 2015) (exceptions to prison's ban on religious items not sent from a catalog "undercuts the Defendants' argument that a categorical prohibition . . . is the least restrictive means of achieving their objectives"); *Moussazadeh v. Texas Dep't of Crim. Justice*, 703 F.3d 781, 794 (5th Cir. 2012) ("TDCJ's argument that it has a compelling interest in minimizing costs by denying Moussazadeh kosher food, however, is dampened by the fact that it has been offering kosher meals

7. Must a religion be "recognized" in order to be protected by RLUIPA?

RLUIPA's protections extend to restrictions that burden the exercise of a prisoner's sincerely-held religious beliefs. This analysis centers on the religious beliefs of an individual prisoner, not their interpretation by prison officials or religious authorities.[51] Guided by this principle, Courts have applied RLUIPA to protect the religious practices of a wide variety of religious traditions, including Buddhism, Christianity, Hinduism, Islam, Judaism, Native American religions, and Sikhism. RLUIPA's protections also extend to subgroups within more widely-known religious traditions.

Some institutions, however, provide accommodations only for certain "recognized" religious traditions. If a policy of this type causes a substantial burden on a prisoner's religious exercise, it would violate RLUIPA unless the institution can establish that the policy is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest.[52]

8. When must someone file suit under RLUIPA?

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation.[53] Before they may file suit under RLUIPA, prisoners are required to exhaust available administrative remedies.[54] The United States, however, is not required to show that prisoners have exhausted administrative remedies in order to bring suit under RLUIPA.[55]

9. What can a government do to comply with RLUIPA?

When a prisoner seeks a religious accommodation, jurisdictions should assess whether their existing policies are the least restrictive means of furthering a compelling

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to prisoners for more than two years."); *Koger v. Bryan*, 523 F.3d 789, 799, 801 (7th Cir. 2008) (denying request for a no-meat diet violated RLUIPA where prison offered such a diet to other prisoners); *Spratt*, 482 F.3d at 40 (no compelling reason to ban inmate preaching because the prison had previously allowed such preaching); *Washington v. Klem*, 497 F.3d 272, 285 (3d Cir. 2007) (restriction on the number of religious books a prisoner may possess invalid where other facilities in the state system did not have such a restriction); *Warsoldier*, 418 F.3d at 1001.

[51] *Yellowbear v. Lampert*, 741 F.3d 48, 54-55 (10th Cir. 2014) (RLUIPA does not permit judges to be "arbiters of scriptural interpretation"); *Grayson v. Schuler*, 666 F.3d 450, 453-55 (7th Cir. 2012) ("Prison officials may not determine which religious observances are permissible because orthodox."); *Davila*, 777 F.3d at 1204 (RLUIPA and RFRA's sincerity inquiry must be limited to whether a prisoner's religious belief "reflects an honest conviction"); *Jackson v. Mann*, 196 F.3d 316, 320 (2d Cir. 1999) (sincerity of a prisoner's beliefs – not the decision of Jewish religious authorities – determines whether prisoner was entitled to kosher meals).

[52] *Holt*, 135 S.Ct. at 863-65.

[53] *Al-Amin v. Shear*, 325 F. App'x 190, 193 (4th Cir. 2009) (citing 28 U.S.C. § 1658; *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004)).

[54] *See* 42 U.S.C. § 2000cc-2(e).

[55] *See* 42 U.S.C. § 2000cc-2(f).

governmental interest. Where existing policy is not the least restrictive means to further the governmental interest, the jurisdiction should consider: (1) changing the policy or practice that results in a substantial burden on religious exercise; (2) retaining the policy or practice and exempting the substantially burdened religious exercise; (3) providing exemptions from the policy or practice for applications that substantially burden religious exercise; or (4) any other means that eliminates the substantial burden.[56] For example, if a Muslim prisoner seeks to wear a kufi, the jurisdiction could accommodate that request by changing the policy to permit all prisoners to wear headgear, changing the policy to allow prisoners to wear any religious headgear, or permitting exemptions to individuals whose religious practice is substantially burdened by the policy.

10. What is the Department of Justice's role in enforcing RLUIPA?

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages.[57] In other words, the Department may bring suit seeking an order from a court requiring an institution that has violated RLUIPA, for example, to amend the policy or practice that results in a substantial burden on the religious exercise of an individual confined to that institution. The Department also files Statements of Interest in cases that raise important issues connected to RLUIPA's application.

Responsibility for coordinating enforcement of RLUIPA's institutionalized persons provisions has been delegated to the Special Litigation Section of the Civil Rights Division. The Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you wish to bring a potential case to the attention of the Department of Justice, you should do so as soon as possible to allow adequate time for review.

The Department's RLUIPA enforcement efforts cover protection for a broad range of religious exercise, including prisoners seeking: religious diets; access to religious texts, other religious literature, and items used in worship; the ability to grow and maintain beards or long hair; and access to religious services and ceremonies.

The Department exercises its prosecutorial discretion in deciding whether to bring a RLUIPA suit on behalf of the United States or file a Statement of Interest in litigation brought by private parties. The Department receives many complaints from individuals and groups whose rights under RLUIPA may have been violated, and cannot address all cases that may involve valid claims. Rather, the Department endeavors to select cases for prosecution that involve important or recurring issues, that will set precedents for future cases, that involve particularly serious violations, or that will otherwise advance the Department of Justice's goals of advancing civil rights for all. Aggrieved individuals and institutions are encouraged to seek private counsel to protect their rights, in addition to contacting the Department of Justice.

[56] 42 U.S.C. § 2000cc-3(e).
[57] 42 U.S.C. § 2000cc-2(f).

11. How can someone contact the Department of Justice about a RLUIPA matter?

The Civil Rights Division's Special Litigation Section may be reached at:

Special.Litigation@usdoj.gov
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Special Litigation Section
Washington, D.C. 20530