

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING

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FRIDAY, MAY 17, 2024

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The Commission convened at
1331 Pennsylvania Avenue, NW, Suite 1150,
Washington, D.C., at 10:00 a.m., Rochelle Garza,
Chair, presiding.

PRESENT:

ROCHELLE GARZA, Chair*

VICTORIA NOURSE, Vice Chair*

JOHN C. ADAMS, Commissioner

STEPHEN GILCHRIST, Commissioner*

GAIL HERIOT, Commissioner

MONDAIRE JONES, Commissioner

PETER KIRSANOW, Commissioner

GLENN MAGPANTAY, Commissioner

DAVID GANZ, Parliamentarian & General Counsel

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STAFF PRESENT:

PIOTR CZAPLICKI, Webex Specialist*

PAMELA DUNSTON, Chief, ASCD

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DAVID GANZ, OGC

BRIDGET BREW, OCRE

JULIE GRIECO, OCRE

LATRICE FOSHEE, OCRE

CODY BOWLER, OGC

SHERYL COZART, OGC

PRINCE OLUBAKINDE, ASCD

COMMISSIONER ASSISTANTS PRESENT:

NATHALIE DEMIRDJAIN-RIVEST

ALEXIS FRAGOSA

JOHN K. MASHBURN

CARISSA MULDER

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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:03 a.m.)

3 INTRODUCTORY REMARKS

4 CHAIR GARZA: Good morning, everyone.

5 This briefing of the United States Commission on
6 Civil Rights comes to order at 9 -- 10:03 Eastern
7 Time, 9:03 Eastern -- Central Time on May 17th, 2024,
8 and takes place at the Commission headquarters at
9 1331 Pennsylvania Avenue, N.W., Suite 1150,
10 Washington, D.C. 20425.

11 I'm Chair of the Commission, Rochelle M.
12 Garza. I am appearing by phone. And participating
13 in person for this briefing are Commissioner Adams,
14 Commissioner Heriot, Commissioner Jones, and
15 Commissioner Magpantay.

16 On the phone, if you can confirm you are
17 present after I say your name, we have Vice Chair
18 Nourse.

19 VICE CHAIR NOURSE: Present.

20 CHAIR GARZA: Thank you.

21 Commissioner Gilchrist.

22 COMMISSIONER GILCHRIST: I'm present.

23 CHAIR GARZA: Commissioner Kirsanow.

24 COMMISSIONER KIRSANOW: Here.

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1 CHAIR GARZA: Will the court reporter
2 confirm for the record that you are present.

3 COURT REPORTER: I am present.

4 CHAIR GARZA: Mr. Staff Director, will
5 you confirm for the record that you are present?

6 MR. GANZ: Is the mike on? Great.

7 This is David Ganz, the General Counsel
8 Office of the Commission on Civil Rights. I will be
9 performing, if requested by the Commissioner, some of
10 the Staff Director Morales' duties today. It's not
11 acting for him, but just performing some functions.
12 So he, unfortunately, cannot be present.

13 CHAIR GARZA: Thank you, Mr. Ganz. I
14 appreciate that.

15 Okay. Well, I welcome everyone to our
16 public briefing titled The Federal Role in Enforcing
17 Religious Freedoms in Prison.

18 Prior to proceeding with today's briefing
19 I would like to take a moment of personal privilege.

20 It is with deep sorrow that I announce
21 the passing of former Commissioner Christopher Edley,
22 Jr., who served from 1999 to 2005. Our condolences
23 go out to the Edley family as they navigate this
24 difficult time.

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1 And let us now observe a moment of
2 silence in honor of Commissioner Christopher Edley,
3 Jr.

4 (Moment of silence.)

5 CHAIR GARZA: Without objection, I would
6 propose that we amend the agenda to consider a
7 statement honoring the life and service of
8 Commissioner Christopher Edley, Jr.

9 COMMISSIONER MAGPANTAY: So moved.
10 Commissioner Magpantay.

11 CHAIR GARZA: Okay. Thank you,
12 Commissioner Magpantay.

13 I did not hear any objection, so we are
14 going to go ahead and move forward. And I'd like to
15 present a statement mourning the passing of former
16 Commissioner Christopher Edley.

17 And I will go ahead and read it into the
18 record.

19 STATEMENT HONORING THE LIFE AND SERVICE OF
20 COMMISSIONER CHRISTOPHER EDLEY, JR.

21 The U.S. Commission on Civil Rights
22 mourns the passing of former Commissioner Christopher
23 Edley, Jr., the passing on May 10th, 2024.
24 Commissioner Edley served a six-year term as a

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1 congressionally appointed Commissioner of the U.S.
2 Commission on Civil Rights from 1999 to 2005.

3 Commissioner Edley leaves behind a legacy
4 of profound impact on civil rights, education, and
5 public policy. His career spanned decades, serving
6 in pivotal roles under three Presidents and
7 significantly influencing national policy.

8 Commissioner Edley had a remarkable
9 career in both academia and public service. After
10 23 years of teaching at Harvard Law School, he
11 accepted the deanship of the University of
12 California, Berkeley School of Law. After stepping
13 down as dean, he continued to teach at Berkeley until
14 his death.

15 He was at the forefront of debates on
16 civil rights in education and government. And during
17 his deanship, he established policy-oriented centers
18 and expanded opportunities for students pursuing
19 public-interest careers. His vision led to the
20 creation of the Civil Rights Project with Gary
21 Orfield, addressing critical gaps in civil rights
22 research and policy.

23 Commissioner Edley also co-chaired the
24 congressionally chartered U.S. Department of

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1 Education's national Equity and Excellence Commission
2 from 2011 to 2013. His expertise was instrumental
3 in addressing education equity issues and shaping
4 national policy.

5 In 2015, Commissioner Edley co-founded
6 The Opportunity Institute, focusing on education
7 equity issues, and served as its President Emeritus.
8 His efforts have left an enduring impact on education
9 and civil rights advocacy.

10 "Christopher Edley, Jr., was a
11 transformative figure in the fight for civil rights
12 and equality," said Rochelle M. Garza, Chair of the
13 U.S. Commission on Civil Rights. "His contributions
14 to public policy and academia have paved the way for
15 countless individuals, and will continue to inspire
16 future generations.

17 Commissioner Peter Kirsanow, who served
18 with Commissioner Edley, said, "Chris Edley left an
19 enduring mark on the U.S. Commission on Civil Rights,
20 both in terms of his scholarship and his
21 collegiality. His impact on civil rights will
22 resonate for decades, and his kindness and mentorship
23 to those who had the privilege of serving with him
24 will never be forgotten."

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1 Commissioner Edley is survived by his
2 wife, Maria Echaveste, a former advisor and deputy
3 chief of staff to President Clinton, and their
4 children Elias and Zara, his son Christopher Edley,
5 III, a grandson, and his sister, Judith Edley. His
6 legacy as a passionate advocate for civil rights, an
7 esteemed educator, and a dedicated public servant
8 will endure.

9 The U.S. Commission on Civil Rights
10 extends its deepest condolences to the Edley family
11 and honors his extraordinary life and career.

12 I would, at this time I would like to
13 call for a vote. Is there any discussion on, on this
14 matter?

15 COMMISSIONER MAGPANTAY: Chair Garza,
16 it's Commissioner Magpantay.

17 CHAIR GARZA: Go ahead.

18 COMMISSIONER MAGPANTAY: I knew Chris
19 Edley when he was at the Harvard Civil Rights
20 Institute.

21 Actually, there's a funny story with
22 Jocelyn Benson, a student at the time, who is now the
23 Michigan Secretary of State.

24 When we were trying to figure out how to

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1 continue the Federal Voting Rights Act, I think it
2 was 2004. Gosh, it's 20 years ago. I had a brief
3 interaction with him. And he said, you know what?
4 We don't play together. So, let's try to figure out
5 how to play.

6 And I said, Mr. Edley, that is a quite
7 enjoyable, insightful, and tremendous invitation to
8 have the opportunity to play together in the struggle
9 for civil rights in America.

10 And then he left to go to Berkeley Law.
11 And he was great.

12 So, he was a colleague and a friend. And
13 thank you, Chair Garza and Commissioner Kirsanow, for
14 putting this statement together. I'm in full
15 support.

16 CHAIR GARZA: Thank you, Commissioner.

17 COMMISSIONER KIRSANOW: Madam Chair,
18 Kirsanow here.

19 CHAIR GARZA: Yes, Commissioner
20 Kirsanow, please go ahead.

21 COMMISSIONER KIRSANOW: Thank you, Madam
22 Chair.

23 As the statement indicated, I did have
24 the privilege of serving with Chris Edley, a lovely

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1 individual. I considered him a friend. We didn't
2 agree on anything probably, but his collegiality, his
3 comity, his -- comity both I-T-Y and E-D-Y -- were
4 really appreciated. He made me feel welcome on the
5 Commission.

6 We've lost a really remarkable person.
7 I was stunned when I heard about it, saddened
8 obviously. But his legacy lives on. We'll all
9 remember him.

10 CHAIR GARZA: Thank you for those kind
11 words, Commissioner Kirsanow.

12 Are there any comments from other
13 individuals?

14 Okay. Seeing no further discussion, I'd
15 like for us to take this to a vote. All those in
16 favor of this statement honoring Christopher Edley,
17 Jr., please say aye.

18 (Chorus of ayes.)

19 CHAIR GARZA: Okay. Sounds unanimous.

20 The chair votes aye. And the motion
21 passes.

22 So, at this time, thank you all so much
23 for that. At this time we are going to go ahead and
24 return to our regular agenda.

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1 Today's briefing is titled The Federal
2 Role in Enforcing Religious Freedoms in Prison. In
3 2008, the Commission issued a report, *Enforcing*
4 *Religious Freedom in Prison*, addressing the
5 protection of prisoners' rights under constitutional
6 and statutory provisions.

7 Today we update that report to examine
8 current adherence to these rights, considering the
9 impact of COVID-19, the actions of the Bureau of
10 Prisons and Department of Justice, and any changes in
11 religious discrimination grievances since 2007.

12 Civil rights does not cease when a person
13 is incarcerated, and the right to practice religion
14 remains fundamental.

15 Our updated report will analyze cases
16 from 2017 to 2023 to identify trends and evaluate how
17 well these rights are protected.

18 And we are going to hear from three
19 panels that cover the following areas:

20 Panel 1 we are going to hear from
21 constitutional and legal experts;

22 Panel 2 we will hear from religious
23 leaders and direct service providers;

24 And Panel 3 we will hear from prisoners'

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1 religious rights advocates.

2 Following the conclusion of the hearing,
3 the Commission will accept written comments until
4 June 17th of 2024.

5 If you would like -- I would like to thank
6 all of the individuals who join us today to focus on
7 this critical topic; your testimony will help us
8 fulfill our mission to be the nation's eyes and ears
9 on civil rights.

10 And, finally, I would like to thank the
11 Commission staff, including our Special Assistants,
12 the Office of Civil Rights Evaluation, General
13 Counsel, and most of all, our technology team and all
14 of the individuals that made this briefing
15 substantively and logistically possible.

16 So, I am going to turn the floor over to
17 Commissioner Peter Kirsanow who is the lead
18 Commissioner on this report, for any remarks he has.

19 COMMISSIONER KIRSANOW: Thank you, Chair
20 Garza.

21 I think this is an important issue that
22 we've addressed in the past. And that was quite some
23 time ago. I think an update is appropriate.

24 This is something that I think it impacts

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1 so many -- I hate using that term "impact" -- it
2 affects so many people and has a resonance throughout
3 much of society. We've had information that we
4 adduced during previous hearings related to this
5 matter that indicated that those who had the ability
6 to exercise religious liberty in prison had better
7 outcomes after they emerged from prison.

8 And I think it's -- I thank the
9 Commission for conducting this briefing.

10 CHAIR GARZA: Of course. Thank you so
11 much, Commissioner Kirsanow.

12 I am going to now turn this over to begin
13 our briefing. But starting off with some
14 housekeeping items.

15 During the course of the testimony and
16 the question-and-answer period, I am going to caution
17 all speakers, including our Commissioners, to refrain
18 from speaking over each other for ease of
19 transcription and to allow for sign language
20 translation. I would ask that we allow for any
21 individuals who might need to view the sign language
22 translation to sit in the seats with a clear view.

23 For any member of the public who would
24 like to submit materials for our review, as I

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1 mentioned earlier, our public record will remain open
2 until June 17, 2024. Materials can be submitted by
3 mail to the U.S. Commission on Civil Rights, Office
4 of Civil Rights Evaluation, 1331 Pennsylvania Avenue,
5 N.W., Suite 1150, Washington, D.C. 20425, or you can
6 submit it by email. And the email address is
7 RFIP@usccr.gov.

8 During the briefing each panelist will
9 have seven minutes to speak. And after each panel
10 presentation, Commissioners will have the opportunity
11 to ask questions within the allotted time period.
12 And I will recognize Commissioners who wish to speak.

13 I will strictly enforce the time
14 allotments given to each panelist to present his or
15 her statement. And unless we did not receive your
16 testimony until today, you may assume we have read
17 it. So, you can summarize it, and we will appreciate
18 that so you can make the best use of the seven minutes
19 that you have allotted.

20 Please focus your remarks on the topic of
21 our briefing.

22 I ask my fellow Commissioners to be
23 cognizant of the interest of each Commissioner to ask
24 questions, so please be brief in asking your

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1 questions so we can move quickly and efficiently
2 through today's schedule. I will step in to move
3 things along, if necessary.

4 Panelists, I would like to turn your
5 attention to the system of warning lights that we
6 have set up in front of you.

7 When the light turns from green to
8 yellow, that means two minutes remain.

9 When the light turns red, panelists
10 should conclude your statements, so you do not risk
11 me cutting you off mid-sentence.

12 And my fellow Commissioners and I will do
13 our part and keep our questions and comments concise.

14 And now we are going to turn to our first
15 panel, Constitutional and Legal Experts.

16 So, let me introduce our speakers for
17 this panel in the order in which they will speak:

18 Nelson Tebbe, Jane M.G. Foster Professor
19 of Law at Cornell Law School.

20 Eric Treene, Senior Counsel, Strozer and
21 Associates and former Special Counsel, U.S.
22 Department of Justice.

23 Joshua McDaniel, Assistant Clinical
24 Professor of Law, Harvard Law School, and Director of

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1 Harvard's Religious Freedom Clinic.

2 Camille Varone, Associate Counsel, First
3 Liberty Institute.

4 And Nick Reaves, Counsel, The Becket Fund
5 for Religious.

6 I apologize if I've mispronounced
7 anyone's names. So, please correct it moving
8 forward, and I will address you correctly.

9 Before we get started I'm going to ask
10 for all of you to raise your right hand so that you
11 can be sworn in.

12 (Witnesses sworn.)

13 CHAIR GARZA: Will you swear and confirm
14 that the information that you are about to provide us
15 is true and accurate to the best of your knowledge
16 and belief.

17 Hearing an affirmative from all.

18 Will you please begin, Professor Tebbe.

19 PANEL 1:

20 CONSTITUTIONAL AND LEGAL PROTECTIONS

21 PROF. TEBBE: Sure. Good morning.

22 Thank you for the opportunity to testify
23 on this important topic. I am delighted to be here.
24 And I look forward to our conversation.

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1 Protecting the right of
2 institutionalized persons to freely pursue their
3 beliefs and practices while ensuring the Government's
4 ability to guarantee security is, of course,
5 exceedingly important. Consequently, the legal
6 system in the United States guarantees religious
7 freedom, not only through the Constitution itself,
8 but also with statutory protections on the federal
9 and state levels.

10 I teach and write about the religion
11 clauses of the Constitution as well as the statutory
12 protections for religious freedom. In my testimony
13 today I will outline the principle legal provisions
14 that operate in this area.

15 Though I'll also offer some reflections
16 on how these legal provisions might apply in the
17 specific context of prisoners' rights. I'll mostly
18 leave those matters to other witnesses.

19 I'll first describe the constitutional
20 rules that pertain to prisoners' religious freedom,
21 and then I'll lay out the statutory law that is most
22 important.

23 After describing a few recent Supreme
24 Court cases on the topic, I will then briefly, if I

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1 have time, which I doubt, summarize some empirical
2 academic work. Throughout, I will highlight
3 developments since 2008 when the Commission issued
4 its important report on Religious Freedom in Prisons.

5 The free exercise clause of the First
6 Amendment provides basic protection against
7 government interference with beliefs and practices,
8 including in the prison context. It applies against
9 federal, state, and local officials.

10 Under the main rule of Employment
11 Division v. Smith, however, practitioners
12 presumptively do not receive religious exemptions
13 from laws that are neutral and generally applicable.
14 In general, that means religious exemptions are not
15 available from laws that apply in the same way to
16 everyone and don't target religion.

17 People who are incarcerated, whether in
18 federal or state facilities, therefore, cannot
19 usually rely on the Constitution to win relief from
20 general rules, even ones that substantially burden
21 their practices.

22 One constitutional development since the
23 Commission's 2008 report is the Tandon decision which
24 concerned restrictions on religious gatherings during

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1 the pandemic. There the Supreme Court found that a
2 regulation can violate the general applicability
3 requirement if it treats any comparable secular
4 activity more favorably than religious exercise.

5 It's possible to imagine applications in
6 the prison context. For example, if a facility
7 denies a request for gatherings for religious
8 purposes but allows gatherings for secular reasons
9 even though they implicate security concerns in the
10 same way, the Tandon approach could theoretically
11 pertain.

12 However, the Tandon rule is likely to
13 matter much less in the prison context than
14 elsewhere. And that's because federal statutes
15 already apply strict scrutiny standards to any prison
16 regulation that substantially burdens sincere
17 religious observance. Therefore, the introduction
18 of the Tandon rule is not likely to make a significant
19 difference to prison regulation and practice, and it
20 shouldn't stand out as an important development since
21 the 2008 report from this Commission.

22 The Establishment Clause of the First
23 Amendment also applies to law enforcement
24 institutions, of course. So, corrections officers

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1 could run afoul of the Constitution by sponsoring
2 religious practices that coerce inmates into
3 observances, among other things. Potentially,
4 accommodations of religious prisoners that impose
5 burdens on other prisons could also violate the
6 Establishment Clause.

7 But as the Supreme Court weakens its non-
8 Establishment rules, the ability of prisoners to
9 invoke the Establishment Clause successfully becomes
10 more remote. This is a change from the USCCR's 2008
11 report where it correctly warned against prison
12 policies that endorse religion.

13 Today the endorsement test has been
14 jettisoned by the Supreme Court, along with the
15 Lennon test of which it formed a part.

16 Moving from constitutional provisions to
17 statutory protections, in 2000, as you all know, the
18 Religious Land Use and Institutionalized Persons Act
19 was enacted. That powerful statute provides
20 religious freedom protection in two specific domains:
21 land use and, pertinently for us, prisons.

22 Under RLUIPA, as it's known, an inmate
23 bears the initial burden of showing that three
24 threshold requirements have been met.

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1 First, the rule at issue must impose a
2 substantial burden on observance; second, the
3 objection from the prisoner must be sincere, not
4 pretextual; third, the complaint must stem from
5 beliefs that are religious in nature.

6 However, a claimant need not show that
7 their objection is compelled by or central to a system
8 of religious belief in order to meet that threshold's
9 burden.

10 Once the threshold requirements have been
11 made, the burden shifts to the government to
12 establish that its prison rule is narrowly tailored
13 to compelling state interests. To prevail, prison
14 officials under this part of the test must show that
15 it is necessary to apply the rule to the individual
16 inmate, and that they cannot vindicate the
17 government's interest while exempting this particular
18 prisoner.

19 If the government cannot carry this
20 burden, then the claimant prevails and must be
21 afforded relief from the relevant regulation.

22 RLUIPA applies an exceptionally powerful
23 standard to religious exemption claims in the prison
24 context, and it applies to all state and local

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1 governments. Therefore, it can and has dominated
2 religious freedom litigation in the prison context.
3 Though it does not apply to the Federal Government by
4 its terms, its standard is similar to that of the
5 Religious Freedom Restoration Act which does work
6 against federal prisons.

7 Therefore, in both the federal and state
8 institutional settings the government must avoid
9 imposing substantial burdens on substantial -- on
10 sincere religious practices unless they can show that
11 their rules are narrowly tailored to compelling
12 interests.

13 There have been a few important Supreme
14 Court decisions that have been handed down since the
15 Commission's 2008 report. I'll just mention two of
16 them in the last minute of my testimony.

17 In Holt v. Hobbs in 2015, a Muslim inmate
18 wished to grow a half-inch beard for religious
19 reasons, despite a facility rule that prohibited
20 beards. The Supreme Court ruled for him under
21 RLUIPA, finding that the prison could permit the
22 beard while still safeguarding security in the
23 institution. Still, the Court emphasized in dicta
24 the ways in which prison officials retained the power

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1 to assure safety.

2 More recently, the Court decided in
3 Ramirez v. Collier, a death row inmate wished to have
4 his pastor lay hands on him and pray over him during
5 his execution. He brought an RLUIPA claim against
6 the state of Texas which had resisted those requests.
7 The Supreme Court ruled for the inmate.

8 Consistent to its new history and
9 traditions approach to religious freedom, the Court
10 reasoned that there is a rich history of clerical
11 prayer at the time of a prisoner's execution. It
12 also held that banning the pastor's prayer was not
13 the least restrictive means of pursuing Texas'
14 interests in monitoring the execution using a
15 microphone in the death chamber, or preventing the
16 pastor from making statements to officials or
17 observers.

18 Texas had provided no support, the Court
19 found, for its assertion that it could not permit the
20 practice, which is allowed in many other
21 jurisdictions, and simply regulate it to address its
22 concerns.

23 Similarly, Texas' ban on laying hands was
24 not narrowly tailored to its interests in safety and

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1 security.

2 In conclusion, religious freedom is
3 essential for prisoners who are vulnerable to
4 extraordinary government control. It's commendable
5 that the USCCR is undertaking this important work to
6 update its impressive 2008 study.

7 Thank you for inviting me to participate.
8 And please let me know if I can help in any other
9 way. I look forward to your questions.

10 CHAIR GARZA: Thank you so much,
11 Professor Tebbe.

12 We are going to go ahead and now hear
13 from Mr. Treene. Please proceed.

14 MR. TREENE: Yes. Thank you very much
15 for inviting me here today. I had the privilege of
16 testifying at the hearing for the 2008 RLUIPA report
17 on behalf of the Department of Justice. And I
18 appreciate the opportunity to provide an update.

19 I currently teach at Catholic University
20 and am with a D.C. firm that litigates for religious
21 discrimination and religious liberty cases.

22 The most significant development since
23 the 2008 report is the Supreme Court's increased
24 attention to RLUIPA and to religious liberty

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1 generally. Holt and Ramirez resolved any doubt about
2 whether religious liberty in prisons is real
3 religious liberty.

4 Substantial burdens on an innate
5 religious exercise are to be given the same analysis
6 as substantial burdens in other contexts, deferring
7 to plaintiffs' sincere articulation of their
8 religious practices, and eliminating any requirement
9 that practices be mandated by or central to their
10 faith.

11 The key is sincere assertions. Some
12 prisoners will, of course, try to game the system.
13 And prisons need to separate the wheat from the chaff.

14 But prisons cannot second guess the
15 validity of beliefs, of the Jew who sincerely
16 believes he must keep kosher for Passover even though
17 he doesn't keep kosher the rest of the year; or the
18 Catholic prisoner who sincerely believes he needs to
19 follow the rule of St. Benedict and eat a vegetarian
20 diet even though he is not a monk and most Catholics
21 don't follow this practice.

22 The Court also held that strict scrutiny
23 is in fact strict. It means what it says, and the
24 burden of meeting it is on the prison, not the

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1 prisoner.

2 Now, the Court acknowledged that there
3 are compelling interests in security and safety in
4 prisons that permit restrictions that would be
5 untenable in the world outside. But the prisons must
6 nonetheless meet strict scrutiny and not some lesser
7 standard.

8 Moreover, as Professor Tebbe mentioned,
9 prisons, prison officials cannot just point to
10 interests that are compelling in a high level of
11 generality. They must show why particular
12 restrictions applied to the particular prisoner's
13 situation is compelling. And the prison must show
14 that there is no less restrictive alternative
15 available.

16 Now, one would expect that with the Holt
17 decision that more prisoner RLUIPA claims would
18 succeed. And the empirical evidence bears that out,
19 with some caveats.

20 A Northwestern Law Review study in 2018
21 showed that after Holt, 28 percent of accommodations
22 were granted. Well, unfortunately, there is no
23 similar empirical data from the passage of RLUIPA in
24 2000 to Holt in 2015 to have a baseline to compare it

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1 with. There are some useful comparatives out there.

2 RFRA prisoner cases from 1993 to 1998
3 when RFRA applied to the states had a 10 percent
4 success rate. This suggests a 2.5 times increase in
5 the success rate for prisoner challenges.

6 And this matches the findings of another
7 study of Tenth Circuit cases from 2012 to 2017, which
8 I cite in my written testimony.

9 The Northwestern study also did a deep
10 dive looking at whether the post-Holt courts applied
11 a hard look that dealt in detail to the reasons
12 offered by the prison, or a review that was
13 deferential to prison authorities. It found that
14 after Holt, 26 percent engaged in a hard look, and 7
15 percent a deferential look review.

16 Now, 6 percent were mixed.

17 So, 26, 7, and 6. The remainder doesn't
18 reach 100 because some cases were dismissed because
19 of mootness and other, other reasons. But it shows
20 a strong increase in hard looks at prison officials'
21 reasons.

22 There are no similar studies prior to
23 Holt, but several academic reviews of case law show
24 that multiple circuit courts before Holt applied the

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1 deferential approach to officials asserting risks.
2 And few circuits engaged in hard looks.

3 Thus, it appears that prisoners are
4 winning more cases after Holt, and that courts are
5 looking harder at the interests asserted by
6 prisoners.

7 And Ramirez should only strengthen these
8 trends.

9 This is a big thing for religious liberty
10 and a good thing for corrections. Religion has a
11 number of positive effects in the corrections
12 context: reducing criminal behavior generally,
13 correlating with successful substance treatment, and
14 reduced recidivism, and increasing positive
15 socialization and reducing negative behaviors in
16 prison.

17 Yet, significant challenges remain in
18 seeing the Supreme Court's standard applied on the
19 ground. My discussions with state-based groups and
20 prison rights advocates reveal a mixed view of the
21 landscape.

22 In January, I participated in a Town
23 Hall-style discussion with Catholic prison ministry
24 groups from around the country. They described

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1 difficulty with volunteers being admitted to prisons,
2 something shut down entirely during COVID, and which
3 prisons were often slow to reinstitute.

4 They also described priests having
5 difficulty with access, particularly with regard to
6 face-to-face ministry, including confession, and
7 saying last rites.

8 Another problem is finding appropriately
9 quiet and dignified places to say Mass other than,
10 say, a corner of the yard while a basketball game is
11 going on.

12 And the difficulty of restarting
13 volunteer programs post-COVID is an issue I've heard
14 from a range of religious groups, including
15 Christian, Muslim, and Jewish groups. One cause is
16 the shortage of staff for screening, since staffing
17 reduced during COVID has not returned to previous
18 levels.

19 Access to physical religious rituals is
20 another significant problem. This can involve
21 religious objects such as Muslim prayer rugs, Jewish
22 tefillin, rosary beads, or sacred Native American
23 objects. But this is also increasingly a problem for
24 written materials as many prisons migrate from

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1 physical mail to email on tablets.

2 Elimination of paper in prisons is a
3 response to fighting increasingly sophisticated
4 contraband smuggling, including fentanyl-soaked
5 paper and counterfeiting off approved book vendors'
6 packaging. Access to printed booklets, religious
7 correspondence courses, even bound religious books
8 has diminished. And tablet providers and publishers
9 have been slow to provide e-versions compatible with
10 the tablets.

11 I also hear reports of continued
12 difficulties with kosher, halal, and vegetarian food.
13 Ramadan meals in particular pose a challenge because
14 Ramadan only lasts a month and, thus, requests are
15 time sensitive. Muslim groups report a frequent
16 problem with inmates, new to a particular prison, or
17 new to the faith having trouble getting Ramadan meals
18 approved in time.

19 So, in sum, the Supreme Court's Holt and
20 Ramirez decisions have enhanced protections for
21 prisoners. And this should increasingly translate
22 to more success on the ground.

23 But as I have heard, and I'm sure you
24 will hear in subsequent panels, there is still a very

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1 long way to go.

2 Thank you.

3 CHAIR GARZA: Thank you. Thank you so
4 much, Mr. Treene.

5 MR. TREENE: I hope you were able to
6 hear. I just realized I did have this red light on.

7 CHAIR GARZA: It's okay. Well, thank
8 you so much for your testimony.

9 We're going to go ahead and proceed with
10 Professor McDaniel.

11 PROF. McDANIEL: Thank you very much.

12 I'd like to thank the Commission for
13 inviting me to testify today. It's good to be with
14 you.

15 Since the Commission issued its first
16 report on this issue in 2008, much has changed. Yet,
17 as my colleagues have testified, many troubling
18 trends continue. My colleagues both discussed the
19 Holt and Ramirez landmark decisions. Those are very
20 important decisions.

21 I'd like to jump off from those decisions
22 and discuss where some of the troubling fault lines
23 in terms of the legal landscape remain.

24 Despite those protective rulings, I have

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1 found in my work that many prison facilities are not
2 getting the message. Religious minorities in
3 particular continue to suffer egregious violations of
4 religious freedom rights. At the Harvard Religious
5 Freedom Clinic, I have encountered very troubling
6 cases at all levels of the penal system, ranging from
7 local, to state, to federal institutions.

8 Congress enacted RLUIPA and its sister
9 statute RFRA to vindicate and protect prisoners'
10 religious freedom rights. But those statutes' ability
11 to do so is all too often frustrated by procedural
12 hurdles.

13 I'd like to highlight three of those
14 hurdles today.

15 First, before an inmate can get into
16 court, all "available" administrative remedies must
17 be exhausted. Now, as a general matter, that type
18 of requirement is very sensible. But while pursuing
19 grievances can help avoid the necessity of filing
20 suit, in my experience this is a time-consuming
21 process that can last months. And for some denials
22 of religious exercise, like Ramadan accommodation,
23 time can be of the essence.

24 If a prison, for example, denied Ramadan

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1 accommodations for a Muslim inmate, and it takes that
2 inmate two or three months to complete the grievance
3 process, Ramadan will be over before the inmate can
4 sue.

5 Or, if a prison serves non-kosher meals
6 to a Jewish inmate for every meal, the inmate may
7 have to starve or violate his faith for a period of
8 months before obtaining judicial review.

9 Or, as in one of the matters the
10 Religious Freedom Clinic handled, if a prison shuts
11 down all worship services for inmates, they may need
12 to go months without those services before they can
13 get a temporary restraining order or preliminary
14 injunction.

15 One response might be to say that those
16 prisoners can seek damages. But, as I will get to,
17 several circuits have interpreted RLUIPA as providing
18 no damages remedy. More to the point, as the Supreme
19 Court has repeatedly recognized, the loss of First
20 Amendment freedoms for even minimal periods of time
21 unquestionably constitutes irreparable injury.

22 Second, yet another obstacle prisoners
23 face with their free exercise claims is the PLRA's
24 provision barring them from recovering damages unless

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1 they have experienced physical injury.

2 As with the exhaustion requirement, which
3 also arises under the PLRA, the Commission's 2008
4 report concluded that there is no reason to provide
5 religious liberty claims with a special exemption
6 from this provision. Again, the requirement makes
7 sense as a way to reduce the number of prisoner claims
8 flowing into federal court, but on the other hand, I
9 think there is some reason on the other side of the
10 ledger to consider when thinking about this
11 requirement.

12 By their very nature, many, and perhaps
13 most, religious freedom violations, even some of the
14 most egregious ones, do not involve physical harm.
15 Or, alternatively, might only arguably involve
16 physical harm, leading to protracted litigation over
17 the issue of physical harm.

18 If prison official desecrate a Sikh man's
19 turban or refuse to allow Jewish prisoners to
20 celebrate Passover, or refuse to allow prisoners to
21 have access to religious texts, they cannot recover
22 damages unless they can show a physical injury. To
23 many religious individuals they would sooner
24 experience physical harm than violate their religious

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1 commitments.

2 And both our Constitution and federal
3 statutory law recognize the high regard given to
4 religious freedom, even for the incarcerated.

5 In my view, all this counsels in favor of
6 considering allowing for the recovery of damages in
7 religious freedom cases, given the high regard that
8 we hold religious freedom rights.

9 Third and finally, there is a troubling
10 trend of court decisions interpreting RLUIPA as
11 providing no damages remedy at all. The Supreme
12 Court has made clear that damages may be recovered
13 against individual officers under RLUIPA's
14 identically-worded sister statute, RFRA. Yet, a
15 string of federal circuits have held that RLUIPA's
16 provisions allowing prisoners to recover "all
17 appropriate relief," does not encompass damages.

18 As a result, prisoners in federal custody
19 whose free exercise rights have been violated may
20 recover damages under RFRA, but prisoners in state
21 and local facilities may not.

22 Categorically depriving prisoners of a
23 damages remedy for RLUIPA violations seriously
24 undermines the statute's protection. As the Court

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1 explained in its recent Tanzin v. Tanvir case in 2020,
2 a damages remedy is not just appropriate relief, it
3 is often the only form of relief that can remedy a
4 religious kind of harm.

5 This issue is illustrated by the recent
6 case out of the Fifth Circuit in Landor. Damon
7 Landor is a Rastafarian, and his faith requires him
8 to grow his hair long. Realizing that prison
9 officials might disagree, might misunderstand his
10 faith, he carried a copy with him of a 2017 Fifth
11 Circuit decision recognizing his right under RLUIPA
12 to be able to grow his dreadlocks.

13 When he was transferred to a new
14 correctional center a month before his release, he
15 presented a copy of the decision to a guard, and the
16 guard proceeded to throw the decision in the trash,
17 after which two guards handcuffed him to a chair and
18 shaved his head to the scalp.

19 Now under Fifth Circuit precedent and the
20 precedent of many other circuits that have
21 interpreted RLUIPA similarly, prison officials may
22 effectively do what the guards literally did in Mr.
23 Landon's case and throw circuit precedents or Supreme
24 Court precedents in the trash.

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1 To sum up, in passing RLUIPA, Congress
2 made clear its intent to robustly protect prisoners'
3 religious freedom rights. But those rights mean
4 little without a proper remedy.

5 The Commission's findings and
6 recommendations in its 2008 report address some of
7 these issues. And I would just suggest that it
8 should bring further attention to whether nuanced
9 statutory amendments, regulations, enforcement
10 measures can be brought to bear to ensure that inmates
11 in local, state, and federal custody receive equal
12 treatment, have equal remedies under the identically-
13 worded statutes under RFRA and RLUIPA, and can obtain
14 all appropriate relief to remedy violations of their
15 religious freedom rights.

16 Thank you.

17 CHAIR GARZA: Thank you so much,
18 Professor McDaniel.

19 Once folks are done speaking just turn
20 off your mike, just as a reminder.

21 We are going to now hear from Ms. Varone.

22 Please proceed.

23 MS. VARONE: Members of the Commission,
24 good morning. My name is Camille Varone, and I am

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1 an attorney at First Liberty Institute, nationwide
2 legal organization dedicated to defending religious
3 liberty for all Americans.

4 Thank you for the invitation to testify.

5 Sincere faith and the ability to let it
6 flourish, benefits quality of life and interactions
7 with those around us. This is equally true, if not
8 especially so, in a prison context. Americans have
9 decided through their elected officials that
10 prisoners must retain meaningful religious liberty
11 rights. The Religious Freedom Restoration Act and the
12 Religious Land Use and Institutionalized Persons Act
13 were good first steps. However, in practice, inmates
14 often face hurdles to vindicate these essential
15 rights.

16 I'd like to focus today on an egregious
17 case where the inmate's experience provides a helpful
18 case study of some of the issues we've heard about
19 already today.

20 In 2022, First Liberty and the Harvard
21 Clinic represented a prison chaplain and inmates from
22 many faith backgrounds at a facility in Minnesota.
23 The issues there began three years earlier when a new
24 supervisory chaplain, the SC, arrived and made clear

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1 that he intended to cut religious programs across the
2 board.

3 The COVID-19 pandemic provided the SC an
4 opportunity to do just that. With the virus as an
5 excuse, he shut down nearly all religious
6 programming, cut off access to outside faith
7 volunteers, and prohibited inmates from gathering
8 with others who share their faith across cohorts or
9 units.

10 Ironically, inmates were still required
11 to cross cohorts while working, picking up meals, and
12 waiting for medical services.

13 But the problems went much deeper than
14 how the SC implemented Bureau of Prisons policies.

15 We heard from an inmate who was
16 continually denied the ability to practice his reform
17 Jewish faith. The SC denied the inmate's rabbi access
18 to the facility and told Jewish inmates that they
19 would never see their rabbi again.

20 The SC destroyed numerous books, DVDs,
21 tapes, and CDs that the inmate used for religious
22 study. The SC would berate the inmate even in his
23 own cell. In fact, the SC intimidated him so much
24 that the inmate was afraid to come out of his unit.

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1 His physical and emotional health suffered from the
2 stress of seeking to practice his faith.

3 We spoke with another inmate who is
4 paraplegic. He asked to be designated as a Hebrew
5 Israelite. He passed his religious diet interview,
6 but the SC still denied his request. The SC refused
7 him access to the chapel and any Hebrew Israelite
8 literature.

9 The SC went out of his way to prevent
10 this inmate from accessing kosher meals. He even
11 forbade the other chaplains from effecting the diet
12 change. As a result, the inmate regularly skipped
13 meals until he needed food, and then only ate to live.
14 This went on for a year until he finally received
15 access to kosher meals.

16 Inmates at this facility from other
17 backgrounds, including Buddhist, Muslim, Protestant,
18 Catholic, Native American, Rastafarian, and Pagan
19 faced similar issues.

20 Under the Prison Litigation Reform Act an
21 inmate must exhaust administrative remedies before
22 seeking relief in court. But the grievance system
23 did not work as it should there. The SC often
24 discarded inmates' religious accommodation requests

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1 and pretended never to receive them.

2 The SC stopped using the electronic
3 request system and, instead, required inmates to
4 submit paper forms, which he alone handled. Leading
5 up to Palm Sunday, Catholic inmates handed in a paper
6 form requesting to purchase palm leaves for the
7 chapel. The SC said he never saw the request. Our
8 client found the form and showed it to him. The SC
9 ripped it up, threw it in the trash, and said, "I
10 don't see any request."

11 Even after the warden required the SC to
12 switch back to electronic forms, he would still
13 delete files from the system. One Muslim inmate
14 requested to observe Ramadan, but the SC deleted the
15 request from his inbox. When the inmate showed him
16 the request in his sent folder, the SC threw the
17 inmate in solitary.

18 Despite these challenges, though, some
19 inmates were persistent and, eventually, some of
20 their grievances prevailed. However, even after
21 being instructed to grant accommodation, the SC slow-
22 walked the changes.

23 For example, after the SC denied an
24 inmate's request to purchase a yarmulke, the inmate

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1 appealed his petition all the way to the central
2 office. They instructed the SC to allow the inmate
3 to purchase it immediately, but the SC sat on the
4 directive for months. It took the inmate over a year
5 to receive his yarmulke.

6 This reality was not lost on inmates
7 there. Some never bothered to make initial requests
8 at all, much less pursue an appeal.

9 The Supreme Court has explained the
10 strict exhaustion remedies can be waived where the
11 grievance process functions as a dead end. That rule
12 would have applied here, but many inmates are unaware
13 of these procedural rights. The inmates here endured
14 great hardship in their attempts to vindicate these
15 essential rights until attorneys became involved.

16 Thankfully, a chaplain at the facility
17 reached out. First Liberty and the Harvard Clinic
18 sent a demand letter, and the Bureau responded
19 quickly.

20 It was a great victory. After the SC
21 left, religious services and accommodations were
22 quickly restored.

23 Unfortunately, this SC did not face any
24 real consequences. Instead, the Bureau simply

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1 transferred him to another facility to continue the
2 same patterns somewhere else.

3 The egregious situation at this facility
4 is hard to reconcile with congressional directives.
5 The fact that such unfortunate situations persist
6 years after the statutes' enactment suggest that more
7 must be done to protect these inmates' free exercise.

8 The Commission should consider calling
9 for statutory amendments, new regulations, or
10 enforcement changes to ensure inmates have access to
11 a meaningful grievance process. It should also
12 encourage the DOJ to vigorously defend inmates'
13 religious rights when the opportunity arises.

14 Thank you. I'm happy to answer your
15 questions.

16 CHAIR GARZA: Thank you so much, Ms.
17 Varone.

18 We're going to now hear from our last
19 presenter on Panel 1, Mr. Reaves.

20 If you could please proceed.

21 MR. REAVES: Chair Garza, Vice Chair
22 Nourse, and other esteemed members of the Commission,
23 thank you for your consideration of this important
24 issue and for inviting me to speak today.

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1 My testimony will focus on how existing
2 laws are not being applied to adequately protect the
3 religious exercise of incarcerated individuals. In
4 particular, I will address two ways in which the
5 Religious Land Use and Institutionalized Persons Act
6 continues to be misapplied and misunderstood.

7 First, I will briefly address a common
8 misunderstanding regarding the scope of RLUIPA's
9 protections for religious exercise.

10 To trigger RLUIPA's protections an
11 incarcerated individual must show that their
12 religious exercise has been substantially burdened by
13 the government. Some courts and prison officials
14 misunderstand this threshold requirement. Some
15 suggest there is only a substantial burden when a
16 prison regulation mandates something contrary to
17 one's religious beliefs, or forbids something
18 required by those beliefs.

19 Some also suggest that the ability to
20 engage in alternative religious practices means
21 there's no substantial burden.

22 As I explained in my written testimony,
23 and as my colleagues up here have already explained,
24 these attempts to narrow RLUIPA's protections are

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1 inconsistent with the statute's context and with
2 Supreme Court precedent, like Holt vs. Hobbs.

3 What is more, these errors fundamentally
4 misunderstand the proper role of courts in assessing
5 religious accommodations. No secular authority is
6 competent to determine whether, for example, using
7 unscented prayer oils has the same religious effect
8 as using scented prayer oils, or whether reading the
9 texts of the Prophet Mohammed is a sufficient
10 alternative to growing an untrimmed beard.

11 Instead, having determined that the
12 practice in question is both sincere and religious,
13 courts and prison officials must take the religious
14 practice as given, and determine solely whether the
15 burden on it is substantial. To do otherwise would
16 entangle courts in -- courts and prison officials in
17 potentially disputed religious questions in violation
18 of the Establishment Clause.

19 The bottom line is this: RLUIPA demands
20 that all sincere religious exercise, mainstream or
21 idiosyncratic, mandatory or permissive, must be
22 treated the same under law.

23 For my second point I'd like to address
24 the legal deference that some courts continue to give

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1 to prison officials when applying strict scrutiny.

2 Under RLUIPA, once a substantial burden
3 on an incarcerated individual's religious exercise is
4 shown, the burden flips to the prison officials.
5 They must prove that the prison system has both a
6 compelling interest in denying the requested
7 religious accommodation, and that they have advanced
8 that interest in the least restrictive way possible.

9 Normally, the strict scrutiny analysis is
10 very demanding. Some courts however, continue to
11 cite discredited dicta from the Supreme Court's
12 decision in Cutter vs. Wilkinson to inject deference
13 to prison officials into the strict scrutiny
14 analysis. This is error. Instead of deferring to
15 courts, courts must in the first instance determine
16 whether prison officials' assertions are supported by
17 persuasive arguments and actual evidence.

18 The Supreme Court has modeled the correct
19 way to engage in this analysis. In Holt vs. Hobbs,
20 Arkansas' prison system claimed it could not
21 accommodate a half-inch religious beard because a
22 beard could be used to hide contraband.

23 Rather than defer to an Arkansas prison
24 official's assertion that a half-inch beard created

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1 contraband concerns, however, the Supreme Court
2 required proof. And Arkansas came up empty-handed.

3 The Supreme Court, therefore, rejected
4 Arkansas' implausible contraband concerns.

5 This is how all courts must apply RLUIPA.
6 They must demand that prison officials satisfy their
7 burden of proof with persuasive arguments and actual
8 evidence.

9 Law courts can, of course, consider the
10 unique nature of a prison environment and recognize
11 the expertise of prison officials in running prisons.
12 Courts must, nonetheless, apply an undiluted form of
13 strict scrutiny to religious accommodation claims
14 under RLUIPA.

15 A prison official's mere assertion that
16 an accommodation could be costly or might interfere
17 with prison safety or security doesn't cut it.

18 Correcting these lingering errors will go
19 a long way to realizing RLUIPA's promise that the
20 freedom to practice one's religion should not
21 needlessly be curtailed even for those serving time
22 in our nation's prisons.

23 I look forward to answering your
24 questions.

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1 CHAIR GARZA: Thank you so much, Mr.
2 Reaves.

3 At this point we're going to go ahead and
4 accept questions from the Commissioners. Please let
5 me know if you'd like to be recognized.

6 MS. DUNSTON: Chair Garza, Vice Chair
7 Nourse has questions.

8 CHAIR GARZA: Go ahead, Vice Chair
9 Nourse.

10 VICE CHAIR NOURSE: Hello, everyone.
11 I'm sorry I can't be there. I'm up in New York
12 because my son's graduating from college. Yay.

13 I'm delighted to see you all. You can't
14 see me, but I can see you all there.

15 And I want to ask some legal questions of
16 you. Mr. Reaves, thank you so much for coming. You
17 know, Georgetown just hired Stephanie Barclay. And
18 I know she works with you. So, thanks for being
19 here.

20 I want to ask you -- and I'm going to go
21 through all my questions and then you can answer. My
22 question to you is what is the limiting principle on
23 idiosyncratic religions?

24 This is a question from the taxpayer.

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1 Rightful costs. And prisoners do make
2 claims that are increasingly perhaps unusual for the
3 average person. So, I want you to ask -- I want you
4 to address that, and assuming that it's sincere.

5 Professor Tebbe, I want to ask you
6 something about the relationships of the statute to
7 the development of constitutional law. So, as you
8 know, in other areas of rights the Second Amendment,
9 women's rights, the Court has rejected scrutinies.
10 It is on a mission, since I study how they decide
11 cases, it's on a mission to replace lots of the
12 language of this statute with a historical approach.

13 So, instead of using scrutiny, instead of
14 using the language in the statute, it looks to
15 history.

16 And so, what effect would that have on
17 minority religions, well-established minority
18 religions like Muslims, those particular sects of
19 Judaism, what effect would it have on that?

20 So, thank you for those questions. And
21 if anyone else would like to weigh in on those, I'm
22 happy to hear from you.

23 MR. REAVES: Thank you, Vice Chair
24 Nourse. And I appreciate the opportunity to address

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1 this issue.

2 I definitely take the concern that
3 various religious accommodations could be costly.
4 And I think the way to address that is not to limit
5 the scope of religious exercise that is protected.
6 I think it is, instead, it considers it as part of
7 the compelling interest analysis.

8 So, just to take a quick step back, once
9 the prisoner has shown that their religious exercise
10 is both sincere and religious, as I was saying in my
11 testimony, the burden flips to the government. And
12 as part of the compelling interest analysis, the
13 government is well-positioned to come forward with
14 evidence and arguments explaining why a particular
15 accommodation might be too costly or might be
16 problematic for other reasons.

17 So, I think the right way to think about
18 those perhaps idiosyncratic requests is not to say
19 they shouldn't be protected or they shouldn't be
20 considered as religious exercise under RLUIPA, but it
21 is to say that the government can come forward,
22 because they're best positioned to know, they can
23 come forward and say this is too costly, this would
24 cause a real security concern, and here's the

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1 evidence supporting that.

2 And I certainly think courts can consider
3 the expertise of prison officials and the prison
4 context when making those considerations.

5 VICE CHAIR NOURSE: Thank you.

6 PROF. TEBBE: Thank you, Vice Chair
7 Nourse, for your question.

8 I do think there's reason to be concerned
9 that courts might overlook or disregard the practices
10 of minority religions. I'm not sure that specific
11 to the Supreme Court's recent turn to history and
12 traditions, although that does raise the kind of
13 concerns that you're articulating.

14 But even in the earlier regime we ran
15 into problems like this. So, I represented a
16 Rastafarian who was from Guam and was caught
17 transporting marijuana from Hawaii to Guam and was
18 arrested under Guam's criminal laws. Because Guam
19 was a federal territory at the time, he was protected
20 by the Religious Freedom and Restoration Act. And
21 we argued strenuously that RFRA should protect him.

22 I argued the case before the Ninth
23 Circuit Court of Appeals. In its decision ruling
24 against us Judge O'Scannlain wrote an opinion where

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1 he said I just don't believe that transporting
2 marijuana is part of or required by the Rastafarian
3 religion. Which is definitely not a move that
4 federal courts are allowed to make, but just, you
5 know, that's just, that's just ruled out by the
6 Supreme Court's jurisprudence on religious freedom,
7 including RFRA.

8 So, and that case was decided, you know,
9 before this turn to history and tradition.

10 So, I think this is a, it's a tradition
11 and historically problematic area of the law. And
12 I'm heartened by some Supreme Court decisions where
13 the justices really have taken seriously the claims
14 of minority religious people, including Holt v.
15 Hobbs, which is a unanimous decision handed down, as
16 I mentioned, under RLUIPA where the Court said, no,
17 we believe that this Muslim prisoner is -- has an
18 interest, a religiously-grounded interest in growing
19 a half-inch beard, and that his claims that he doesn't
20 really need to grow a longer beard for religious
21 purposes, even though that may be sort of unique to
22 him, are sincere, and that the prison's regulations
23 are substantially burdening those beliefs.

24 So, there's some, there's some reason to

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1 hope that the Supreme Court rule can apply its
2 religious freedom rules in an even-handed way in
3 this, in this particular context.

4 VICE CHAIR NOURSE: Thank you very much,
5 Professor Tebbe.

6 Anyone else want to talk about those?

7 All right, back to you all.

8 CHAIR GARZA: Thank you. I understand
9 that Commissioner Adams has a question.

10 COMMISSIONER ADAMS: I do.

11 CHAIR GARZA: So, we'll go ahead.

12 COMMISSIONER ADAMS: A couple, first to
13 Professor Tebbe. You talked about the laying on
14 hands case. To what extent does -- and I don't know
15 this area of law as well. I know a little bit. To
16 what extent does the law have the power to force
17 changes?

18 For example, what if -- I think that was
19 Texas, right? Okay. -- what if Texas had the
20 electric chair, or firing squad. Obviously, you
21 can't have somebody laying on hands. But as the law
22 is, could it force Texas to change the method of
23 execution?

24 PROF. TEBBE: Thank you for the question.

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1 I think there's a lot we don't know about
2 the limits of the law in this area, so I'm not
3 entirely sure what the Supreme Court would do with
4 that kind of case.

5 But the way the formal analysis runs, you
6 know, the state has to, is able to pursue compelling
7 interests. Right? And a lot of the interests that
8 the state has in this area will, will be compelling.
9 They're interests of the highest order, right,
10 running a criminal justice system in a way that the
11 state believes to be fairest, most just, most
12 consistent with security concerns.

13 But if, in theory, you know, a prisoner
14 had an objection to a particular method of execution
15 and the state could pursue its interests in, you know,
16 criminal justice in that context with some other
17 method of execution, like under the way that the
18 analysis is supposed to run, the state would have an
19 obligation to, you know, it would bear the burden of
20 showing that it couldn't use this alternative form.

21 So, in theory, I think that kind of claim
22 ought to be possible.

23 In practice, whether the courts will, you
24 know, go that far, I just don't, I just don't really

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1 know.

2 COMMISSIONER ADAMS: Quick question,
3 Eric -- if I can call you that.

4 MR. TREENE: Former DOJ colleagues, yes.

5 COMMISSIONER ADAMS: Correct.

6 So, you talked about the vegetarian diet,
7 the Order of St. Benedict.

8 MR. TREENE: Yes.

9 COMMISSIONER ADAMS: You agree that's
10 not in the Catechism; right?

11 MR. TREENE: Sure.

12 COMMISSIONER ADAMS: So, how does the
13 law, once again like the last question, address
14 things that actually aren't part of the religion --

15 MR. TREENE: Yes.

16 COMMISSIONER ADAMS: -- but some order
17 apparently has adopted it, but it's not part of the
18 religion, we can agree; right?

19 MR. TREENE: Right. What it comes down
20 to is, you know, sincere religious practices. And
21 this is something familiar to the law in other
22 contexts.

23 For example, one of the key Supreme Court
24 cases involved a Jehovah's Witness who said she

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1 couldn't work on tank turrets in the factory. And
2 they said, well, that's ridiculous, we have other
3 Jehovah's Witnesses here, they work on the tank
4 turrets.

5 And the court said, no, if we look is
6 this a sincere belief?

7 And so, in the context of prisoners,
8 right, you can have prisoners putting forth things
9 because they think they're convenient, or they game
10 the system and so forth. But, actually, that came
11 from a real case I worked on when I was at DOJ about
12 the Rule of St. Benedict. And he had testimony from
13 his priest saying, no, this is important to his, to
14 his faithfulness. And he's been doing this for
15 several years. And it's not common in Catholicism
16 generally, but he's following the Rule of St.
17 Benedict; it's very important to him. And that that
18 should be enough.

19 COMMISSIONER ADAMS: Could the state
20 introduce the compelling interest or some other
21 evidentiary defense that this is not part of the
22 Catechism? Like, do they have that available to them
23 to rebut?

24 MR. TREENE: Not -- They can't say that

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1 it's -- well, they could say it's not part of the
2 Catechism and, therefore, you have a higher bar to
3 show, you know. If something's in the Catechism then
4 it's pretty clear, you know, it's sincere.

5 COMMISSIONER ADAMS: Right.

6 MR. TREEENE: If it's not, it might raise
7 the bar and you have to get that priest to come in
8 and testify on their behalf. But this is something
9 courts, courts address all the time.

10 COMMISSIONER ADAMS: Last question.

11 Professor McDaniel, what is the role of,
12 let's suppose you have all these accommodations,
13 everything is going swimmingly like you would prefer,
14 and then there's a prisoner riot like in New Mexico.
15 Right? Obviously, you would agree that all these
16 accommodations in the aftermath of a prison riot for
17 some period of time might not be such a good idea.

18 I assume you would agree with that?

19 PROF. MCDANIEL: Yes. Prisons ran into
20 similar questions with COVID. In the very early
21 stages of COVID, the calculus was different in terms
22 of what do you do with worship services, what do you
23 do with bringing in visitors? But it's a question
24 of the government's compelling interests.

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1 And when the immediacy of that moment is
2 happening, the government's interests are probably
3 compelling. The government can probably make a case
4 that it has a compelling governmental interest in
5 maintaining order and regulation.

6 But as the time passes and the government
7 and the prison system are able to get things under
8 control, that calculus shifts and the burden is going
9 to be on the government to show that it still has
10 some compelling governmental interests that can't be
11 achieved in any other way.

12 COMMISSIONER ADAMS: Lastly, should the
13 government be able to introduce evidence that the
14 accommodation contributed to the prison riot in
15 deciding what's a compelling interest?

16 PROF. McDANIEL: Sure.

17 COMMISSIONER ADAMS: Okay.

18 CHAIR GARZA: Great. Well, thank you,
19 Commissioner Adams for your questions.

20 I understand that Commissioner Magpantay
21 has a question.

22 COMMISSIONER MAGPANTAY: Thanks. And
23 thank you for being here. This is great.

24 I have two questions and then Mr.

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1 McDaniel, Varone, and Reaves, this right side of the
2 panel first.

3 So, I was reading the testimony from this
4 afternoon's panel. And I was talking with a person
5 who worked at PEN America. And they were telling me
6 that they were having trouble getting manuscripts and
7 reading materials to the prisons. And they mentioned
8 Bibles.

9 So, I was surprised when I heard that
10 they couldn't get a Bible into a prison. And then
11 when I saw the testimony that they couldn't get Qurans
12 from this afternoon's panel, can I ask, and you
13 mentioned this about the access to reading materials,
14 is it that the prisons are saying all written
15 materials are bad? We can't even get *People* magazine
16 or anything and the Bible? And then what's happening
17 is that, because I just want to be clear on this,
18 that, so, religious materials is akin to *People*
19 magazine, and the *Enquirer*, and therefore they cannot
20 get access?

21 I just want to get that clarity and be
22 really clear.

23 And the second part on this side of the
24 panel, thank you for the work that you all do.

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1 I'd like to hear a little bit of trends.
2 Are you seeing these challenges happening at federal,
3 state, and local level?

4 Is there a particular state that we
5 should pay attention, or a particular religion where
6 these things are of concern?

7 And I don't mean to, like, you know,
8 target anyone in particular, but I do want to focus
9 resources. I have heard very disturbing examples
10 that you all put out. But I really do want to, as
11 the Commission on Civil Rights where can we focus our
12 investigations to try to resolve some of these
13 issues?

14 MR. TREENE: Yes. On the access to
15 material, that is something I really encourage you to
16 take up with the panelists who are going to come
17 subsequently who are working on the ground. Because
18 what I'm hearing is there is this move to going
19 paperless, to having these companies that provide
20 tablets to each prisoner for free. And then they get
21 charged, like, for each email they get -- it's not
22 email like we know it, it's proprietary email that
23 they get charged, you know, a dime for each email,
24 and for downloads and so forth.

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1 Which, you know, keeps out the fentanyl
2 but it keeps out -- you know, basically anybody who
3 hasn't a formatted their, their writing, right, for
4 this particular software, which is not like Microsoft
5 and open source and all that, it's a proprietary
6 software, so it's really limiting what can go in.

7 And I've talked to prison ministries who
8 say, hey, look, we'll give them a stack of books.
9 You know, keep them in the commissary, give them away
10 for free. And it's, like, no, we can't do that, we
11 don't have the space.

12 You know, so, I was talking to another
13 course where they have this sort of journaling.
14 They, the prisoner writes about his safe journey.
15 And then the advisor or the pastor writes back to
16 him, gives him margin notes, sends back and forth.
17 And that's a very important ministry.

18 And they can't do it. You know, they
19 could email through this, through this system. But
20 that, but that's sort of a very different experience.
21 And you can't get in your published materials, your
22 pamphlets, even, as they say, books. Bibles can be
23 hard to get in.

24 So, Quran, Bible there will be, there

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1 will be approved vendors. But even, as I mentioned,
2 approved vendors are getting restricted because of
3 copying of the packaging. Right? So, you take a
4 certain publisher, you copy the packaging, and you
5 smuggle in something.

6 So, that's a real problem, but we need to
7 find workable solutions to that.

8 COMMISSIONER MAGPANTAY: Thank you.

9 CHAIR GARZA: Okay, thank you so much.

10 Would any other Commissioners like to be
11 recognized at this time?

12 COMMISSIONER MAGPANTAY: Thank you,
13 Madam Chairwoman. I'd like to have a second
14 question.

15 The other panel was talking about trends
16 that they're observing.

17 Thank you, Chairwoman.

18 COMMISSIONER KIRSANOW: Commissioner
19 Kirsanow here.

20 PROF. McDANIEL: Yeah, I can start with
21 this.

22 It's difficult to identify any particular
23 areas to focus. In our clinic we have, like I
24 mentioned in my testimony, we have seen cases at the

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1 federal level, the state level, the local level.

2 I will say that at the federal level
3 there seems to be much more structure in place and
4 many more structural guarantees that are there. But
5 you still have a lot of issues with particular
6 chaplains, particular prison officials, prison guards
7 at particular institutions.

8 So, there was a pretty egregious example
9 that Ms. Varone and I worked on out in Minnesota at
10 the federal institution there. But we've had other
11 pretty egregious cases in state and local
12 institutions.

13 I think the lower you go the smaller --
14 so, especially with local institutions, with jails,
15 they tend to be even much more, much smaller
16 organizations, many fewer inmates, many fewer jail
17 guards. And so, it just becomes a little bit more
18 Wild West in those types of situations, but also hard
19 to focus on and get systemic change by focusing and
20 addressing any of those local institutions.

21 So, I'm not sure if that, that helps, but
22 that's what I'm seeing.

23 MS. VARONE: So, I would, I would agree
24 that it's hard to narrow down particular trends

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1 geographically or by type of facility from what we've
2 seen in First Liberty cases. We've had cases across
3 the country, so New York, Arkansas, Oklahoma,
4 Minnesota. And similar issues that pop up across
5 the federal, state, and local types of facilities,
6 unfortunately.

7 In terms of trends with religion, you
8 know, what we're able to see is often based on talking
9 to chaplains at the facilities. One trend that, at
10 least we've heard from the chaplains, is that there's
11 been an increase in some Jewish inmates requiring
12 more accommodation requests, or at least that that's
13 a large number of requests that they see that are
14 actually succeeding through the grievance process.

15 It seems like that could be an area of
16 interest to the Commission to keep a close eye on,
17 given, you know, troubling trends in anti-Semitism
18 that we're seeing around the country. That could be
19 something that the Commission could play a very
20 valuable role in monitoring.

21 Just one point to point out is that when
22 you look at the types of requests that are actually
23 being submitted, you know, you didn't specifically
24 ask about the trends in what types of requests, the

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1 categories, the types of accommodations needed. But
2 that will often be contingent on one inmate.

3 So, if you have, say, one Jewish inmate
4 alone in the prison, they might have religious diet
5 requests, they might have holiday observances, they
6 might have needs to meet with outside faith advisors.
7 And so, breaking things down by categories would be
8 helpful. But it will be important to remember that
9 each individual inmate will have a variety of faith-
10 based needs that might cut across categories as you
11 do your analysis.

12 And then my final thing is I think that
13 the Commission could be very helpful in doing
14 empirical types of studies, or pulling together data
15 from, you know, people who are not in the advocacy
16 space but, rather, some of the scholars who would
17 actually be able to pull together data from the
18 facilities themselves.

19 Thank you.

20 MR. REAVES: Thank you for your question.

21 There are two trends I wanted to briefly
22 highlight. One was concerns with pro se prisoners
23 and, you know, litigants who aren't represented by an
24 attorney.

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1 You know, one thing that we look for is
2 the opportunity to file friend of the court or *amicus*
3 briefs. And our experience has been that courts are
4 looking for guidance. When a pro se litigant who,
5 you know, may not have any legal training him or
6 herself is seeking an accommodation, coming in and
7 telling the court here's how to think about it,
8 here's, you know, here is some research we've done on
9 the accommodations being made in other prison systems
10 is very helpful.

11 The problem is it's like drinking from a
12 fire hose. There are hundreds and hundreds of these
13 cases a year, probably thousands of these pro se
14 cases. And so, I think one way the Commission could
15 be helpful is providing some guidance for prisoners
16 to be able to read, and look at, and understand here's
17 how I can bring these claims myself, because there
18 isn't, there aren't enough lawyers to do this work
19 for every prisoner needing an accommodation.

20 And then the second point, which I think
21 was also just touched on, is how this is a particular
22 issue for religious minorities. I think that's true
23 for a couple reasons. One is, you know, obviously,
24 those minorities are more likely to need an

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1 accommodation.

2 If you're a Christian at a prison in
3 Texas, you are likely to have access to a Sunday
4 service. But if you're the only Buddhist prisoner
5 in a small prison in Montana, you might need an
6 accommodation to be able to access prayer materials
7 or whatever else you need for your faith.

8 Second, accommodations are inherently
9 going to require some cost. And RLUIPA requires the
10 prisons to expend reasonable funds to accommodate.
11 But, obviously, prisoners have -- prisons have
12 limited budgets, so they're hesitant to spend the
13 money for accommodations.

14 And then, third, there, unfortunately, is
15 a trend of, you know, identifying some religious
16 minorities as non-specific security threats.

17 So, there was a case I cited in my written
18 report about how a prison banned all keffiyehs
19 because they were concerned that Muslim religious
20 exercise, without anything specific in this prison,
21 or generally, you know, might create security risks.

22 So, I think, you know, pro se prisoners
23 and religious minorities are two trends that we're
24 seeing requiring the most help and most often being

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1 denied the ability to exercise their faith.

2 COMMISSIONER MAGPANTAY: That's great.

3 Thank you.

4 COMMISSIONER JONES: Madam Chair, this

5 is Mondaire.

6 CHAIR GARZA: Go ahead, Commissioner

7 Jones.

8 And then after your question we're going

9 to close it out with Commissioner Kirsanow.

10 COMMISSIONER JONES: Thank you, Madam

11 Chair.

12 My question is for Professor McDaniel.

13 You mentioned the PLRA and the disadvantage that

14 inmates often experience when they wait to exhaust

15 their administrative remedies over the course

16 oftentimes of several months, not always several

17 months. And that by then there is irreparable harm

18 because they have been unable to vindicate their

19 constitutional rights to worship.

20 What is your proposal for fixing that,

21 from your perspective anyway? Is it a presumption

22 of validity for the claim as asserted by the inmate?

23 I'm just curious about this. I've

24 litigated some of these cases when I worked at the

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1 Westchester County Attorney's Office. We have a, we
2 have a jail in Westchester County. So, just curious
3 to know your thoughts on that.

4 PROF. McDANIEL: So, on the federal court
5 and in the PLRA, I guess one, one possibility would
6 be in cases where there is an imminent need for a
7 religious accommodation, would be to have a provision
8 built into the PLRA like a safety valve that allows
9 a prisoner to go to court and get a temporary
10 restraining order or a preliminary injunction pending
11 the outcome of the grievance process.

12 So, allow the grievance process to play
13 out but allow a federal court to come in and say, no,
14 you need to provide the Ramadan accommodations, or
15 something like that. Something like that would be
16 tremendously helpful.

17 Barring that, some way to fast track the
18 administrative process. I know in the Title VII
19 context you can go to the EEOC and you can get a right
20 to sue letter. And if the EEOC doesn't really have
21 an interest in pursuing protracted administrative
22 proceedings it can just send you the letter and you're
23 off to court and there's no issue there. So, that's
24 another possibility.

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1 CHAIR GARZA: Okay. Well, thank you.
2 Thank you so much for that.

3 We're going to go ahead, and our last
4 question is going to be with Commissioner Kirsanow.
5 I heard he wanted to be recognized.

6 COMMISSIONER KIRSANOW: Thank you, Madam
7 Chair. And thanks to the panelists.

8 This question is probably directed to
9 Professor McDaniel, although anyone is invited to
10 answer if they know.

11 What was the rationale for not providing
12 for a damages remedy for religious discrimination or
13 religious freedom violations? It's probably in the
14 written materials. I have not had an opportunity to
15 get to it.

16 PROF. MCDANIEL: This is a complicated
17 question. It is discussed to some extent in my
18 written materials.

19 The basic rationale of it is to say that
20 whereas RFRA applies to the Federal Government,
21 RLUIPA applies to states and localities. And RLUIPA
22 was passed under Congress' spending clause powers,
23 whereas RFRA was not passed under Congress' spending
24 clause powers.

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1 So, the objection that courts have raised
2 to applying RFRA and RLUIPA equally, even though they
3 have identically worded language in their statute, is
4 it's a spending clause statute and, therefore, there
5 needs to be clear notice. The statute needs to be
6 clear what are you taking on when you accept the
7 funding under the, under the spending clause.

8 I think one issue with that, there are
9 many issues with that. And we have filed *amicus*
10 briefs going into a lot of depth on this issue,
11 including in the Landor case. So, I would reference
12 that if you wanted to get a deep dive on that.

13 But one basic response to that is that
14 all of the courts are -- so, I will also just add
15 they're referencing the spending clause, but most of
16 these circuit decisions are actually not applying the
17 spending clause. They're invoking the canon of
18 constitutional avoidance. So, they're saying
19 because of spending clause concerns we're going to
20 interpret the statute narrowly to not allow for
21 damages.

22 One big problem with that is that RLUIPA
23 has a provision in it that says that all of the terms
24 of RLUIPA need to be interpreted to the maximum extent

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1 allowable under the Constitution, which in my view is
2 basically an anti-constitutional avoidance provision
3 in the statutes.

4 So, I think that basically takes that
5 type of argument off the table right at the outset.

6 But even looking at the spending clause,
7 the Supreme Court in Tanzin vs. Tanvir looking at
8 RFRA said that identical language in RFRA is "clear"
9 that the statute provides a damages remedy. There
10 are a lot of provisions in the statute that would be
11 superfluous and would make no sense, including
12 defining the government to include individual
13 officers, it would make no sense if the statute did
14 not afford individual officer liability.

15 So, hopefully, the Supreme Court
16 clarifies this. But in the meantime, it's pretty
17 troubling.

18 CHAIR GARZA: Thank you for your answer.

19 Hearing no further questions, I do want
20 to thank our panelists for their testimony and
21 talking about all the nuances of this really
22 important issue. We appreciate your time here.

23 We're going to go ahead and take a brief
24 break before we begin with our second panel until

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1 11:35 a.m. Eastern, and get started on the second
2 panel.

3 So, thank you so much.

4 (Whereupon, the above-entitled matter
5 went off the record at 11:22 a.m. and resumed at 11:42
6 a.m.)

7 CHAIR GARZA: Great. Thank you so much,
8 everyone. We're going to now come back to order. It
9 is 11:42 a.m. Eastern Time.

10 We're going to proceed with our second
11 panel where we will hear from religious leaders and
12 direct service providers. Each panelist will have
13 seven minutes to speak. And following the conclusion
14 of the panel presentation, Commissioners will have
15 the opportunity to ask questions within the allotted
16 period of time, and I will recognize Commissioners
17 who wish to speak.

18 I will strictly enforce the time
19 allotments given to each panelist to present his or
20 her statement. And unless we did not receive your
21 testimony until today, you may assume that we have
22 read it. So you can summarize it, and we will
23 appreciate that, so you can make the best use of your
24 -- of your seven minutes that have been allotted. So

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1 please focus your remarks on the topic of our
2 briefing.

3 Panelists, please notice the system of
4 warning lights that we have set up. When the light
5 turns from green to yellow, that means that you have
6 two minutes remaining. When the light turns from red
7 -- turns red, panelists should conclude their
8 statements, so you do not risk me cutting you off
9 mid-sentence.

10 My fellow Commissioners and I will do our
11 part and keep our questions and comments concise.

12 And in the order in which everyone will
13 speak, the panelists are Jason Lim, Identity
14 Management Capability Manager; Imam Abu Ishaq Hafiz,
15 Director of Prison Outreach, Islamic Shura Council
16 and retired Chaplain, Federal Bureau of Prisons;
17 Rabbi Aaron Lipskar, Chief Executive Officer, Aleph
18 Institute; Father Dustin Feddon, Founder and
19 Executive Director, Joseph House; Shaykh Rami Nsour,
20 Founding Director, Tayba Foundation; Amin Eshaiker,
21 Program Manager and Chief Executive Officer, Link
22 Outside.

23 So I'm going to ask the panelists at this
24 time to raise your right hand to be sworn in. Will

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1 you swear and confirm that the information that you
2 are about to provide us is true and accurate to the
3 best of your knowledge and belief?

4 (Witnesses sworn.)

5 CHAIR GARZA: Hearing the affirmative
6 from all, we're going to go ahead and begin. So
7 thank you so much. Let's go ahead and start with
8 Imam Ishaq.

9 IMAM ABDULHAFIZ: Good morning. I would
10 first like to thank the Commission for providing me
11 the opportunity to make a statement at this hearing
12 examining the religious freedom of incarcerated
13 persons in accordance with the Religious Land Use and
14 Institutionalized Persons Act, the Religious Freedom
15 Restoration Act, and the Civil Rights of
16 Institutionalized Persons Act.

17 I am Imam Abu Ishaq Abdul Hafiz, a
18 retired chaplain from the Federal Bureau of Prisons,
19 of which 15 of those years I served as supervisory
20 chaplain. I presently serve as Director of the
21 Prison Outreach Program in Southern California,
22 working with administrators and inmates of the
23 Islamic faith at federal, state prisons, as well as
24 county jails from Los Angeles County to San Diego

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1 County.

2 The lack of enforcement of RLUIPA, RFRA,
3 and CRIPA continues to be problematic for Muslim
4 persons incarcerated in unacceptable numbers in our
5 jails and prisons across the United States. For the
6 Muslim men and women incarcerated, the same basic
7 requests continue to be denied or addressed
8 inadequately. Examples of the right to pray in
9 congregation outside of the specified areas of the
10 chapel, weekly congregate prayers, accommodation of
11 religious diets, and I feel that a contributing
12 factor of these violations are Islamophobia,
13 religious prejudice and bias.

14 Being a descendent of slaves myself, an
15 African American, and the majority of the inmates who
16 self-identify as Muslims in the prison systems are
17 African American, there has been a misinterpretation
18 or assessment of them.

19 When you look at the report that was in
20 you all's assessment in 2008 where you quoted some of
21 the things from the Office of Inspector General's
22 report about the prisons, and they used language that
23 the ISNA organization, Islamic Society of North
24 America, which was the majority endorser of Muslim

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1 chaplains back in the early 2000s, as well as the
2 American University of Islam, they stated that the
3 Muslim chaplains were Wahhabis or teaching Wahhabism,
4 which was incorrect.

5 No Muslim chaplain that worked in the
6 Bureau of Prisons where I was working at that time
7 taught Wahhabism. Even though I studied in Saudi
8 Arabia, I was not taught Wahhabism. I was taught
9 Islam, and we taught from a broad perspective and not
10 from one any perspective.

11 Also, in that document there is a mention
12 of Jose Padilla, a convicted person who possibly
13 accepted Islam in the jails of Florida, but there is
14 an insinuation that he was radicalized in the jail in
15 Florida, and there was never any indication of where
16 he was radicalized after he got out of jail.

17 Also, Richard Reid, a person from London,
18 the shoe bomber that was convicted, became a Muslim
19 in Europe, in London, and maybe was radicalized in
20 London. But there is a total difference of those who
21 embrace Islam in American prisons and those who
22 embrace Islam in Europe and other places.

23 But there has been this tendency by
24 politicians, as well as by sometimes the Justice

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1 Department, to feel that there is this danger of
2 radicalization of Islam in the prisons. You can look
3 back at the history of Islam in American prisons going
4 back to the '40s, and particularly from the '60s until
5 now, and you're not going to find any conclusive
6 evidence whatsoever that radicalization is one of the
7 impetuses of why a person embraces Islam.

8 Many of the men and women, again, coming
9 from the African American background are looking for
10 transformation in their lives, looking for something
11 to give them guidance and direction and purpose, and
12 this is what the religion of Islam is.

13 Islam is a religion where it is essential
14 to pray five times a day, and yet we continue to find
15 obstacles put into place from them being able to be
16 able to pray, even though RFRA and RLUIPA makes it
17 clear, and most of the policies in the jails and the
18 prisons accommodate and facilitate for the prayers to
19 be made, but yet its implementation and allowance by
20 individual staff members -- and this is where I think
21 the prejudice and the bias comes in, because
22 individuals who either because of lack of training
23 and understanding hinder the pursuit or the operation
24 of a person being able to practice their faith.

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1 And I just got a call two days ago from
2 Muslims at a federal prison who continually are
3 crying and are hurt because of not having the ability
4 to have their congregate prayers given to them, and
5 it's always an excuse. And it's not about finances.
6 It is about management. You know, if the chaplain
7 or the person responsible cannot be present, then
8 certainly other staff can be put in there to
9 accommodate and to facilitate for the service to be
10 held, because this is not happening with other faith
11 traditions.

12 And this is one of the things that the
13 Muslim inmates -- that they witness and that they see
14 is how they are treated. And this is why they feel
15 that it's done from a prejudicial and a bias when
16 they see that the -- there is never a situation where
17 the Christian services are not held, the Protestant,
18 or the Catholic services.

19 No matter what is going on in the
20 institution, there is always a way that there is going
21 to be an accommodation. And when they see the
22 accommodation for other faith groups when it comes to
23 their religious holidays, and yet in particular when
24 it's theirs, it is always an excuse.

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1 And they don't always go through the
2 litigating process because sometimes it's so
3 frustrating when they do use the mechanism for -- of
4 recourse when the final outcome is where it's
5 supported, that what they were denied it's said,
6 "Well, it won't happen again," and it continues to
7 happen.

8 And it just breaks my heart that 14 years
9 after I have retired when I visit the jails and I
10 visit the prisons that I am still hearing these same
11 results of men and women feeling so left out, so
12 alone, when all they want to do is pray. All they
13 want to do is have their weekly service, following
14 the tenets of their faith, to become the citizens
15 that they are -- no one becomes a Muslim because they
16 are angry with America or because they are disgusted
17 with the society.

18 Persons who become Muslims in this
19 country, they love this country, and they love
20 wanting to change, and they understand and they
21 believe that a second chance is something that is --
22 should be made available to them, and they have chosen
23 this path for that to be the course.

24 And we would just like the strength from

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1 this Board's work, just as it was in the civil rights
2 case when it comes racially. And we know we have to
3 keep working on people and get people to change their
4 attitudes, and that takes time. We understand that.
5 We know it's pervasive.

6 But we must continually push the envelope
7 and continually let it be known that there is
8 consequences, because I think one of the reasons that
9 persons do what they do and are not allowing these
10 things to occur against policy and against the law is
11 because they don't feel there is no consequence.

12 And we can make sure that there will be
13 consequences, and this takes the administration. I
14 remember in 1993 when RFRA was passed and how we were
15 led by chaplain leaders in Washington, as well as the
16 director of the prisons, as well as the wardens.
17 They really got behind that we were going to make a
18 change and we were going to accommodate more of the
19 faiths than we had accommodated prior to that.

20 And I remember in 2000, again, when
21 RLUIPA passed, and I remember it made a major factor
22 in how we made a way for the Odinists to be able to
23 worship and the Wiccans to be able to worship when
24 prior to that we were resistant -- the chaplains --

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1 in letting them actually practice. And we used all
2 kind of excuses, it's going to be riots if they
3 worship, if they -- if we give them accommodation,
4 and nothing ever happened that was bad. It worked.

5 But it took leadership, you know,
6 emphasizing to the -- to the line staff how important
7 the religious rights of these men and women
8 incarcerated are. And so I think that if your
9 message in this report can emphasize -- you know,
10 follow up and emphasize the leaders adding their
11 voice behind these laws and these rules, so that we
12 can see effective change in the lives of these men
13 and women who only want to make a difference to
14 themselves and their families.

15 Thank you very much.

16 CHAIR GARZA: Thank you so much, Imam
17 Ishaq.

18 We are going to now hear from Reverend
19 Kugler, the Chaplaincy Administrator at the Federal
20 Bureau of Prisons.

21 My apologies for the mix-up earlier. I
22 could not see all of you. So go ahead and please
23 proceed.

24 REVEREND KUGLER: Good morning, members

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1 of the U.S. Commission on Civil Rights, esteemed
2 correctional professionals, governmental panelists,
3 and members of the public. My name is Chaplain Heidi
4 Kugler, and I am the National Chaplaincy
5 Administrator for the Federal Bureau of Prisons.

6 I provide national oversight to the
7 chaplaincy departments in 121 federal prisons agency-
8 wide. It is my honor to be here today and share how
9 the Bureau of Prisons seeks to protect religious
10 freedoms to those in our custody and care.

11 The Federal Bureau of Prisons protects
12 the religious rights of those in our custody in
13 accordance with their constitutional religious rights
14 in the Religious Freedom Restoration Act. The agency
15 further reinforces the Code of Federal Regulations in
16 our agency policies as well as internal and external
17 audit compliance procedures.

18 Religious freedoms for adults in federal
19 custody includes, but is not limited to, access to
20 worship across faith lines, sacred scripture study
21 opportunities, faith-based reentry programming,
22 personal and congregant religious property, religious
23 attire, religious dietary accommodations, and access
24 to religious services providers.

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1 The Bureau has several policies that
2 govern our religious accommodations to adults in
3 federal custody. Program Statement 5360.10,
4 Religious Beliefs and Practices, and Program
5 Statement 3939.08, change notice 1, Chaplain's
6 Employment Responsibilities and Endorsements,
7 directs religious accommodations and our chaplaincy
8 public service ministry work.

9 Additionally, Program Statement --
10 5300.022, Volunteer Services, guides our community
11 religious and faith-based volunteers who contribute
12 to chapel programming.

13 And, lastly, the First Step Act and its
14 corresponding policies address criminogenic risks and
15 needs in the process of evidence-based programming,
16 including faith-based reentry programming.

17 The agency also has internal audit agent,
18 -- auditing procedures for those in institutional
19 chaplaincy departments, as well as our Central Office
20 headquarters Chaplaincy Services Branch, that
21 reinforce our legal policy, correctional, religious,
22 and chaplaincy standards.

23 The Bureau has strengthened religious
24 rights and training to our staff to further uphold

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1 the religious rights of the incarcerated. Agency
2 employees receive annual training by our chaplains to
3 strengthen their religious understanding,
4 sensitivity, and accommodations to adults in custody.
5 Our office presents religious training and consults
6 on religious practices with other disciplines.

7 Additionally, all agency chaplains have
8 faced specific mandatory training, so they can
9 effectively accommodate across faith lines and advise
10 other agency staff on authorized religious practices
11 per policy. And our office has developed faith
12 specific manual chapters as basic religious primers
13 to help staff determine how best to accommodate
14 different religious traditions within safety and
15 security and orderly running of our correctional
16 institutions.

17 When asked to modify existing chapel
18 practices, the Bureau considers individually
19 sincerely held religious beliefs, the compelling
20 governmental interest, and the least restrictive
21 alternative accommodations. The Religious Issues
22 Committee interdisciplinary review process outlined
23 in our policy determines how best to religiously
24 accommodate incarcerated individuals.

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1 Our office has assisted in resolving
2 grievances, primarily on religious diet, group
3 prayer, access to chapel worship, as well as
4 religious services providers. And our office has
5 seen more RFRA claims from Islamic adults in custody
6 than other faith groups but work consistently to try
7 to resolve them at every turn.

8 Due to lessons learned from past RFRA
9 litigation, strengthened policy guidance, agency
10 religious training, and enhanced Religious Issues
11 Committee review processes, more religious requests
12 are now being accommodated than denied. The agency
13 has found new and creative ways to accommodate
14 religious needs and requests for those in federal
15 custody over the last 10 years.

16 Inside the agency, strong collaborative
17 relationships within and across our departments have
18 helped us expand religious accommodations for those
19 in our custody and care. Outside the agency, ongoing
20 cooperative partnerships with the Department of
21 Justice, other federal agencies, state department of
22 corrections, community religious stakeholders,
23 professional chaplaincy organizations, religious
24 endorsers, theological schools, and community

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1 religious services providers contribute to the
2 Bureau's correctional best practices as well as
3 incorporating community religious standards and
4 innovations.

5 When COVID challenged our ability to
6 conduct group congregant, chapel congregant worship,
7 and group religious programming, as it did in the
8 wider community for parishes, mosques, synagogues,
9 and other places of worship, the Bureau provided
10 religious accommodations in different, modified, and
11 safe, least restrictive means.

12 For instance, rather than adults in
13 custody gathering in the chapels, the chaplains went
14 to the housing units to ensure that those in our
15 custody received what was necessary to practice and
16 grow in their faith. Worship and religious practice
17 in the housing units were modified to include
18 increased self-study, religious observances.

19 The Bureau also utilized closed-circuit
20 television systems to broadcast worship experiences
21 across faith lines. And, additionally, the agency
22 worked to fully maximize the assistance of chapel and
23 faith-based reentry volunteers and contractors within
24 agency COVID safety guidelines.

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1 The pandemic also increased the need for
2 chaplains to be more pastorally present and more
3 individuals experience -- as they experienced more
4 deep loss and grief. Chaplains conducted daily and
5 pastoral rounds in the housing units and offered
6 regular memorials and grief care.

7 Our office worked with the field
8 chaplains and community religious partners to develop
9 new religious devotionals and relevant materials for
10 those in our custody. In time, faith -- specific
11 worship and faith-based reentry programs moved
12 outside and into smaller groups in the housing units
13 and chapel areas until it was safe enough to gather
14 in larger group settings. As operational and safety
15 modifications eased, in-person chapel and worship
16 resumed.

17 Thank you.

18 CHAIR GARZA: Thank you so much, Reverend
19 Kugler.

20 We are going to now hear from Rabbi
21 Lipskar.

22 RABBI LIPSKAR: Hi. Good morning.
23 Thank you for the opportunity to be here. Thank you
24 to the Commission and to all of those that are here

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1 to discuss and hear some comments on these very
2 important issues, and to my colleagues that are here
3 to address it from their perspectives as well.

4 Earlier in some of the testimony we heard
5 the idea of, are there greater amounts of complaints
6 or cases filed by certain religious? And I want to
7 begin by saying the Aleph Institute, which is a
8 national organization founded back in 1981, has been
9 working within the federal system, the state systems,
10 and county jails across the country.

11 We don't only administer or care for
12 those of the Jewish faith. We help advocate for
13 those of any faith. But primarily our tenets are
14 based on the Torah, and, therefore, primarily based
15 on the Jewish teachings.

16 Within Jewish life, an Orthodox or
17 traditional Jew, the observances that we have are not
18 merely certain practices that we do at different
19 times. The Torah guides us and teaches us that every
20 aspect of our lives is governed by the Torah. The
21 way we dress, the way we pray, what we eat, how it's
22 prepared, the blessings that we say, the teachings
23 that we have, even within some of our philosophies,
24 our thought processes, every aspect of our lives is

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1 governed by the Torah.

2 And, therefore, for a person to fully
3 adhere to the tenets of Jewish faith, should they
4 choose to, therefore, it is going to affect every
5 aspect of their life and, therefore, their religious
6 accommodations and needs are great.

7 Obviously, within Judaism there are many
8 denominations, but the objective here today is to
9 share that we feel that the highest standards should
10 be adhered to, because ultimately that would
11 accommodate any Jewish person wanting to observe at
12 any level of the faith.

13 And, unfortunately, we find sometimes
14 that it's not the highest levels that are adhered to.
15 It is usually some of the lowest levels, and
16 oftentimes individuals that are not educated to make
17 those decisions, choosing to make those
18 determinations.

19 Obviously, we recognize the importance of
20 safety and security in institutions. And, therefore,
21 a lot of practices, holiday practices, and others,
22 have their challenges. But as we have proven and we
23 have done throughout the federal system, and I want
24 to once again thank Chaplain Kugler who is here, as

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1 we have seen that generally the accommodations for
2 the Jewish faith are adhered to across all of the
3 institutions.

4 And whenever there is a problem, we work
5 closely with leadership to get those things resolved.
6 But, unfortunately, it is within many of the state
7 systems -- and this is where we come to RLUIPA and
8 even smaller than that in many of the county jails -
9 - where we find that these accommodations are not
10 being met.

11 And even when it is well very well-
12 meaning people who would like to help achieve
13 accommodating these things, the answer usually is
14 that there is nothing within policy or other types of
15 issues that preclude them from providing that.

16 And sometimes, you know, even when the
17 idea of least restrictive means is employed,
18 sometimes they are saying that instead of actually
19 fulfilling the responsibility with the necessary
20 items that, you know, they will show them a picture
21 of it, which certainly does not accommodate them
22 fulfilling that religious need or practice in an
23 effective way.

24 We have shown that we have effective

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1 solutions to any of the challenges that are
2 presented, but in most instances or many instances
3 where it's denied, sometimes without reason, but when
4 it is they rely on the no-donation policies,
5 although, you know, we make it clear that we would be
6 very happy to help provide those things, oftentimes
7 it's the excuse of the contracts, which are
8 important.

9 But for an example of a Jewish man who
10 was in a facility where there was no kosher food, and
11 we reached out to help accommodate that, the answer
12 was, "Well, it's the weekend and our dietician who
13 manages our food services is not going to be in, so
14 there is nothing to talk about until, you know,
15 Monday."

16 And this happens often when there are
17 holidays or oftentimes with inmates that are being
18 transferred by the marshal services, that although it
19 is in the federal system, many of the things that are
20 needed are provided, once they find themselves in a
21 local county jail, critical, fundamental, religious
22 accommodations are not -- are not provided.

23 And, you know, we have the studies from
24 the Religious Liberty Clinic of Stanford Law School,

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1 which wrote extensively about phylacteries, the
2 tefillin, which are an obligation for all Jewish men
3 above the age of 13 to don every single day except
4 for the sabbath, and in many, many county jails and
5 in certain states they still will absolutely not
6 provide that.

7 And when the reasons are for safety and
8 security or when we provide responses that, number
9 one, there are many other items which are found in
10 facilities which pose a much greater threat, but
11 these things can be done under supervision. These
12 things can be held in the chapel. These things can
13 be held in an environment where it can be utilized in
14 a controlled way.

15 But, unfortunately, when there is no
16 chaplains -- no chaplain on staff, or others are not
17 there, it becomes very, very challenging to provide
18 these services.

19 And I said at the beginning, these things
20 are critical. They are not just voluntary. This is
21 something which is the -- for every Jewish person who
22 follows the tenets of their faith, these things are
23 critical. And I'm here today just to express the
24 challenges that we have in many of these states.

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1 There are many examples.

2 Unfortunately, due to some changes in
3 schedules, I was not able to provide my comments to
4 you in writing prior to today, but we are here to
5 work and answer any of the questions that the
6 Commission has, to talk about some of the specifics
7 should that be required, and to talk about some of
8 the solutions that we feel can be easily implemented
9 to ensure that people's religious observances can be
10 fully adhered to.

11 Thank you so much.

12 CHAIR GARZA: Thank you so much, Rabbi
13 Lipskar.

14 We are going to now hear from Father
15 Feddon.

16 FATHER FEDDON: Good morning. Members
17 of the Commission, I am Father Dustin Feddon. I am
18 the Vice Chair for Catholic Prison Ministry
19 Coalition, which is a national Catholic organization
20 that oftentimes provides training and support,
21 networking services, for Catholic prison ministers
22 throughout the country.

23 I also am the Founder and Executive
24 Director of Joseph House, which is a reentry

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1 residential facility in Tallahassee, Florida, for men
2 coming out of prison. I also spend most of my visits
3 in these facilities in solitary confinement
4 facilities and on Death Row.

5 And just to kind of state maybe from the
6 beginning, it was raised in the last panel, the
7 proliferation of relying on technologies, on tablets,
8 electronical and virtual services, it is increasing
9 issue that we have witnessed, not only I believe among
10 Catholic prison ministers but from many of those from
11 all sorts of different traditions.

12 It is troubling to say the least,
13 especially the profiteering off of tablets, email
14 correspondences. Trying to provide pastoral support
15 electronically ends up costing the individual. We
16 oftentimes end up having to pay for their emails to
17 even respond to us.

18 And this -- and we -- and Catholic Prison
19 Ministry Coalition, in advance to me coming here, we
20 provided a survey for over 3,000 of our members,
21 again, the vast majority being prison ministers
22 throughout the country, and what I am sharing with
23 you is coming not only from my own personal experience
24 but from the responses given to us in the survey,

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1 that what we are seeing in this trend is that,
2 unfortunately, and we agree and most all of our
3 members of the organization agree, the need to have
4 had relaxed services during COVID and during the
5 pandemic, and given the considerable threat that that
6 posed.

7 But what we have seen since then is kind
8 of using that pandemic as an opportunity to rely more
9 and more on these technologies and limiting access
10 for pastoral care support, face-to-face support, in-
11 person support, and basic crises that have developed
12 since the pandemic.

13 As a Catholic priest, being able to
14 provide last rites to inmates on their deathbed has
15 been an increasing issue. I have personally had a
16 mother in sobbing that her son who was beaten
17 essentially to death at a facility in North Florida
18 did not have time to access a priest for last rites.
19 In fact, over 24 hours went by before she even was
20 notified of his pending death. And, again, this is
21 just one instance of multiple concerns of this.
22 Also, certainly, the sacrament of reconciliation
23 requires us to be in person, and pastoral support to
24 those that are incarcerated and our oftentimes

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1 limited access.

2 And I think, too, to just be very frank
3 about this, I think some of this is also staff
4 shortage. It takes a lot of staff sometimes to
5 transport volunteers into these facilities or to
6 transport inmates from their dorms into the chapels.
7 And, frankly, staff oftentimes are simply exhausted
8 and see this as -- religious services as a privilege
9 and not a fundamental right. And we see this as an
10 increasing issue over the past couple of years.

11 Just kind of case in point, one of our
12 participants in the survey noted that calls out for
13 religious services are very inconsistent. And I'm
14 sure that those of different traditions can speak to
15 this as well, that the front desk will call control,
16 control announces our services. One participant
17 respondent was reported saying -- and on most
18 locations we have one or more dormitories whose
19 guards simply will not release their residents, even
20 though the inmates are pleading to attend their
21 religious services, in this case Mass.

22 It sometimes takes two or more callouts
23 to even begin to possibly get them to comply. I
24 personally have heard from inmates that officers will

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1 use deterrents to attending religious services as
2 punishment for their behavior in the dorm.

3 I also just want to say with -- Imam Abdul
4 mentioned -- I have witnessed in solitary confinement
5 camps throughout Florida and on Death Row --
6 oftentimes a pretty slow response to requests for
7 basic Muslim materials like the Quran, prayer rugs,
8 and there I attribute that to -- sometimes to a
9 culture within chaplain services of a particular
10 tradition that are -- kind of dominate the chaplaincy
11 programs in the state of -- in my case in the state
12 of Florida and their blatant religious bias of those
13 of different traditions. That I think is a critical
14 issue.

15 I also want to say, and this is a note of
16 praise to Chaplain Kugler and to those at the federal
17 facilities, by and large, most of our religious
18 volunteers have been very relieved and satisfied,
19 and, frankly, oftentimes thrilled with the type of
20 programming that the federal prisons provide to our
21 volunteers going into those facilities.

22 I think if we are going to concentrate
23 and kind of hone in on particular areas, let's think
24 about state facilities, oftentimes where perhaps

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1 maybe within that -- those regions where certain
2 religious biases may feed and kind of flow into the
3 type of services that are being provided to people of
4 different traditions, and then certainly at the local
5 detention facilities.

6 And I just want to say one quick thing
7 regarding, within our Catholic tradition, I have
8 witnessed this -- I have experienced this personally,
9 even my bishop has experienced this, and numerous
10 other Catholic prison ministers have experienced this
11 nationally, this is an increasing issue -- is wine
12 not being permitted into the facility for the
13 celebration of Mass.

14 Wine is an essential element for the
15 sacrament of Mass, and oftentimes priests, even
16 bishops, are turned away at the gate because of the
17 necessity of bringing wine in to celebrate Mass. And
18 that was -- that happened in Alaska just recently,
19 and it has happened in my state of Florida, and I
20 know throughout the states.

21 So, again, thank you all for allowing us
22 this opportunity to speak on behalf of so many of our
23 brothers and sisters who are incarcerated.

24 CHAIR GARZA: Thank you, Father Feddon.

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1 We are going to now hear from Shaykh
2 Nsour.

3 SHAYKH NSOUR: Good morning. It is an
4 honor to take part in this hearing. My name is Rami
5 Nsour, and I have been working with prisoners and
6 their families for over 23 years. I am the Executive
7 Director and Co-Founder of Tayba Foundation. Our
8 correspondence programs have served over 12,000
9 prisoners in over 1,000 state and federal facilities
10 in all 50 states, delivering over 32,000 courses in
11 Islamic studies and self-help.

12 Our reentry services have reached 1,500
13 unique clients with over 14,000 service deliveries.
14 I am very familiar with the challenges for Muslim
15 prisoners in the United States as it relates to the
16 free practice of religion. These include, but are
17 not limited to, discrimination, restrictions on
18 congregational prayer, hurdles in observing the fast
19 of Ramadan, grooming regulations, clothing
20 restrictions, lack of diet accommodation, and more.

21 They also include access to Islamic
22 educational material, access to people who can teach
23 the material, and access to places in the prison where
24 they can study the material.

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1 Just this past Monday we received an
2 email from a potential student who said the chaplain
3 could not approve his participation in our Islamic
4 correspondence program. When we spoke to the
5 chaplain, he said it was a state policy. This might
6 explain why we have only had two students from that
7 state take part in our program in 15 years.

8 Another letter we read this week was from
9 a student, a grievance for not being allowed to pray
10 in an area where prisoners of other religions are
11 allowed to pray. Two years ago, in Missouri, seven
12 Muslims, including two Tayba students, were heavily
13 pepper sprayed for praying in an area that they had
14 prayed in for months. That story was recently
15 covered by author and journalist Jen Marlowe.

16 Protecting prisoners' freedoms of
17 religion should not be seen as coddling the inmates
18 or hug-a-thug culture, two terms I deplore.
19 Protecting that right is upholding the Constitution.
20 Concerns regarding safety and security are real and
21 of the utmost importance, and the religious practice
22 cannot override that.

23 Prison and jail administrations have a
24 very difficult job balancing between maintaining

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1 safety and security while also accommodating the free
2 practice of religion. Navigating this process has
3 been done in a way that has led to a lack of
4 consistent policies across the nation.

5 There must be an objective definition and
6 application regarding which religious practices pose
7 a threat to safety and security and which do not. It
8 should not be subjective and inconsistent.

9 The free practice of religion can work to
10 enhance safety and security. Religiosity may reduce
11 recidivism, and it has been shown to reduce
12 misconduct while in custody. This makes it safer for
13 staff and other prisoners.

14 One of our students in Tayba shared with
15 me this story of a Palestinian American Muslim
16 prisoner who worked to protect a Jewish American
17 prisoner who feared an attack by white supremacist
18 prisoners. The Palestinian prisoner introduced the
19 Jewish prisoner to the Muslims. The Jewish prisoner
20 said he would pay for protection. The Muslims, who
21 were majority African American, said there was no
22 need for a payment, that he could just exercise with
23 the Muslims on the yard and the supremacists would
24 not harm him. These are Muslims who understood their

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1 religion and whose practice led to increased safety
2 and security.

3 With that said, we must remember that
4 supporting the free practice of religion is not about
5 supporting a self-help program because of the impact
6 it can have on the desistance of crime. This is
7 reminding us about who we are as Americans, that every
8 single person on this land, whether incarcerated or
9 not, has the constitutional right to freely practice
10 the religion of their choice when it poses no threat
11 to the safety and security of others. This is why I
12 stand behind any and all efforts to ensure the free
13 practice of religion by prisoners.

14 I would like to briefly speak about three
15 issues affecting Muslim prisoners that relate most
16 closely to the scope of our work in Tayba Foundation
17 as educators. Those three core issues are access to
18 Islamic educational material, access to teachers, and
19 access to spaces for learning. I strongly believe
20 that the free practice of religion is built upon these
21 three.

22 Knowing how -- what and how to practice
23 is a prerequisite to actually practicing or
24 believing. The first revelation of the Quran is

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1 read. For the most part, prisons are very
2 accommodating of these rights. There are still many
3 cases where prisons impede or impair the ability of
4 Muslim prisoners to access Islamic education.

5 In addition to regular complaints, we
6 sent out questionnaires in 2009, 2019, and 2024, and
7 these three were the top three struggles. Obstacles
8 like mailroom restrictions, limits on purchasing
9 material, and arbitrary disposal of material pose
10 significant challenges to accessing Islamic
11 educational materials.

12 Remedies may include creating national
13 guidelines for mailroom procedures and recognized
14 vendor lists, as well as addressing discrimination of
15 Islamic material. Muslim prisoners for the most part
16 lack access to those who can teach the religious
17 material, and the need far exceeds the ability of
18 chaplains or volunteers to keep up. I strongly
19 believe that training and certification programs for
20 prisoner imams would be a great remedy to fill this
21 need.

22 Issues related to facilitating spaces for
23 Islamic learning, known as taaleem, include
24 disparities in access to chapel spaces and

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1 inconsistent enforcement of rules across religious
2 groups. Solutions may include sharing best practices
3 between administrations and utilizing certified
4 prisoner imams to facilitate religious learning.

5 I outline in my statement that I
6 submitted details of these three issues and proposed
7 remedies. My voice is just one voice in this
8 dialogue. We need to bring together all of the
9 relevant voices -- prison administration, staff,
10 chaplains, faith-based organizations, prisoners, and
11 the formerly incarcerated. For that we need dialogue
12 as a practice to explore how to ensure religious
13 freedoms in prison, maintain safety and security, and
14 create a healing environment.

15 I and other Tayba staff were trained in
16 the practice of dialogue by Dr. Tom O'Connor, a former
17 Administrator of Religious Services for the Oregon
18 Department of Corrections, a professor of criminal
19 justice, and a researcher, with articles showing the
20 impact of religiosity on desistence.

21 We may look at the model of Harold Clark,
22 the former Director of the Virginia Department of
23 Corrections, VADOC, who wanted to move the prison
24 towards becoming a more healing environment, and to

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1 that end he brought in dialogue as a practice,
2 training over 13,000 staff and administration of the
3 VADOC.

4 We may look at what was done in the
5 Louisiana State Penitentiary, also known as Angola,
6 in expanding the free practice of religion that led
7 to more safety and security in the prison that used
8 to be the deadliest prison in America. I believe
9 that their field minister program has the potential
10 to solve many issues, including the three issues I
11 spoke about today.

12 The program is also available in Texas
13 and Mississippi state prisons. I appreciate this
14 opportunity to participate, and I look forward to
15 further opportunities to help in working towards
16 ensuring the free practice of religion by prisoners.

17 Thank you.

18 CHAIR GARZA: Thank you so much, Shaykh
19 Nsour.

20 We are going to go ahead and hear from
21 Mr. Eshaiker.

22 MR. ESHAIKER: Thank you. Greetings,
23 Commission Chair Garza, Vice Chair Nourse, esteemed
24 Commissioners, and guests. Thank you for the

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1 opportunity to be able to speak with you today. My
2 name is Amin Eshaiker, and I am the co-founder and
3 CEO of Link Outside, a nonprofit organization that
4 provides Islamic religious services to thousands of
5 individuals in nearly 50 states since 2011. This
6 puts our organization in a unique situation to be
7 able to learn about the complexities of practicing
8 religious life in correctional spaces.

9 For this study, we collected a wide range
10 of statements from our personal experiences as well
11 as those as incarcerated Muslims, corrections staff,
12 and religious volunteers across the country. The
13 conclusion is simple: that despite laws and statutes,
14 that incarcerated Muslims are still regularly having
15 to file grievances to practice some of their most
16 basic religious rights in prisons.

17 Oftentimes institutions do not have
18 either a Muslim chaplain or an outside partner to be
19 able to deal with grievances. So oftentimes the
20 corrections staff will take these grievances and use
21 their own discretion to determine whether -- if any
22 accommodation could be provided in light of
23 institution policies.

24 And we have outlined four different areas

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1 of grievances. The first one is access to sacred
2 texts and religious literature. Most correctional
3 facilities do not have a budget set aside for
4 purchasing these materials, and so they are relying
5 on outside donations. However, if staff is not
6 actively engaging outside organizations, then the
7 result is few to little materials that are available.
8 And we have seen both from Tayba and our -- and our
9 own organization thousands of letters, sometimes just
10 requesting a simple copy of sacred texts like the
11 Quran.

12 Number two, Islamic prayer services.
13 The Islamic prayer is an obligatory and incumbent act
14 upon nearly all able-bodied Muslims. However,
15 accommodations for congregational religious services
16 or the weekly Friday prayer, known as Jumu'ah, are
17 not consistently being offered.

18 Oftentimes institutions cite when there
19 is no chaplain or volunteer available that the
20 incarcerated individual is not allowed to lead these
21 services, even though in some instances they are when
22 corrections staff are supervising them. So this,
23 again, relates and results in few to any spaces to
24 provide these types of services.

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1 And it should be noted that many times
2 the volunteers are happy to have volunteered
3 themselves, happy to lead these services, and you
4 will see in the written report many instances where
5 staff from correctional facilities have just
6 dismissed inquiries to actually volunteer. And, of
7 course, the COVID-19 pandemic has also disrupted
8 religious services.

9 The third area is religious headgear.
10 This is specifically referring to the scarf that
11 observant Muslim women use to cover their hair out of
12 modesty, known as a hijab. And, again, oftentimes
13 facilities don't have budgets set aside to be able to
14 purchase these things.

15 And in cases where this individual does
16 have it, let's say they use their own commissary money
17 to purchase these things, we have seen issues with
18 corrections staff allowing these accommodations.
19 And it continues to be a problem, so much so that
20 there are individual grievances and successful
21 lawsuits due to correctional staff's unnecessarily
22 forcing individuals to remove their hijab.

23 And the last item of grievance is the
24 Muslim religious dietary meals, also known as the

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1 halal meal diet. Again, oftentimes correctional
2 facilities claim there is no vendor available or they
3 are not outreaching, and/or financial limitations.
4 Even in instances where the halal meal is available,
5 we have read numerous reports of -- ranging from
6 either mishandling of the food or mislabeling the
7 ingredients.

8 The overall sentiment of all of these
9 grievances, from both incarcerated Muslims and Muslim
10 staff, such as chaplains and officers, is that the
11 institutions either are indifferent or are
12 uncooperative to providing these religious
13 accommodation needs.

14 Now, it should be made note for the
15 record that Link Outside has had many countless
16 amazing experiences with chaplains of all
17 denominations who go above and beyond their way to
18 help accommodate the needs of their Muslim
19 population, stories of people working on overtime
20 just to find some materials or to come and let
21 volunteers into the facility.

22 Unfortunately, though, these are more
23 exceptions to the rule, whereas the nationwide trend
24 is in favor of actually limited incarceration --

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1 services for the incarceration. Also, an underlying
2 theme in many of these grievances are allegations of
3 bias against Muslims from staff.

4 Now, it is difficult to prove, but
5 whether you look at decades of Muslims who are
6 receiving harsher punishments and restrictions for
7 claiming their faith in prison, or in a post-9/11
8 climate where Muslim religious practices were
9 disproportionately scrutinized and were considered to
10 be either a danger or a threat, history shows that
11 oftentimes Muslims are treated differently.

12 The following are recommendations that
13 are best practices that we believe could help improve
14 incarcerated individuals' access to religious
15 liberties.

16 Number one, institutions partnering with
17 local religious organizations to be able to discuss
18 ways to meet the religious needs at their facilities.

19 Number two, utilizing religiously
20 trained, incarcerated individuals themselves to
21 provide the ministering within their own institution.
22 This is a thing that Shaykh Rami mentioned as peer
23 ministers or peer field ministers that is being used
24 in several states in the South and a perhaps best

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1 option when you don't have a Muslim chaplain or
2 volunteer available.

3 Number three, utilizing technology to
4 facilitate religious service classes.

5 Number four, funding Muslim chaplain
6 positions with places that have a high concentration
7 of Muslim populations. Oftentimes the funding set
8 aside for these positions is actually cheaper than
9 the costly lawsuits that could arise out of
10 grievances.

11 Number five, outreach within the Muslim
12 community to increase volunteerism in incarcerated
13 spaces. The 2008 Commission report showed that when
14 you have volunteers or Muslim chaplains that it
15 actually prevents radicalization and extremism.

16 And, number six, to help staff provide
17 sensitivity training on Islamic beliefs and
18 practices.

19 In conclusion, incarcerated Muslims are
20 an exceptional group of individuals that I believe it
21 is imperative for us to understand and advocate for
22 their religious rights. Despite approximately one
23 to two percent of Muslims in the general American
24 population, they make up 10 to 20 percent of

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1 incarcerated populations in many states, making them
2 perhaps one of the most disproportionately
3 represented groups.

4 So despite the great advances that have
5 happened, there is still a lot more work to be done.
6 Plus, in closing, religious freedoms within
7 incarcerated spaces should go beyond just the prison
8 themselves. Studies show Islam's positive impact on
9 rehabilitation and recidivism.

10 So these contributions to society
11 oftentimes are actually credited to Islam. This is
12 why supporting religious liberties in incarcerated
13 spaces is in the best interest to supporting healthy
14 individuals and healthy communities in this country.

15 Thank you.

16 CHAIR GARZA: Thank you so much for --
17 Mr. Eshaiker, for your testimony.

18 At this time, we are going to -- we are
19 going to turn to -- we're going to turn to questions
20 from Commissioners. But I'm going to take the first
21 question here.

22 You know, I think what we heard earlier,
23 and kind of echoed in this panel as well, is that
24 there are additional challenges for religious

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1 minorities in more rural areas of our country in
2 accessing, you know, chaplains or any kind of -- any
3 kind of religious services.

4 And so I just wanted to ask as a general
5 matter if there were any specific recommendations or
6 thoughts around how we would address that from the
7 panel.

8 MR. ESHAHER: If you don't mind, I can
9 start off. I believe, as one of the panelists
10 mentioned, the idea of accountability oftentimes
11 changes how religious liberties are addressed. So
12 one of the recommendations we would offer is having
13 a faith-based partner that is working with an
14 institution to create that sense of accountability,
15 that they can meet and communicate regularly, to make
16 sure that the individual liberties are being met for
17 different faith groups.

18 SHAYKH NSOUR: If I could add, those
19 issues are present not only in rural areas, but coming
20 from California, even in the California Department of
21 Corrections, there is about 33 prisons and 44 fire
22 camps all up and down the state.

23 And we have seen inconsistent application
24 of religious accommodation, so much so that about 10

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1 years ago the chaplaincy was at risk of being lost -
2 - of being removed because of lawsuits that were
3 brought because of disparities in accommodating for
4 one group over another.

5 And the state implemented a system
6 whereby if a religious practice was accommodated in
7 one prison that it would not be up to another
8 institution to go through that process again, that a
9 file -- that a form could be filed and then it would
10 be applicable in all CDCR facilities. So that
11 covered all CDCR facilities.

12 The federal prisons, of course, as others
13 have mentioned, we have also seen that consistent
14 application regardless, because it is maintained by
15 the federal system. The areas that remained were in
16 the county jail system, and this past year Tayba was
17 a co-sponsor of S.B. 309, Senate Bill S.B. 309, that
18 accommodated religious grooming, headgear, and
19 clothing, which we partnered with Sikh organizations,
20 Jewish organizations, to make sure that bill went
21 through and it did. And so now it is applicable all
22 across the state, and it doesn't allow for individual
23 county jails to make that decision.

24 So I am a strong proponent of seeing a

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1 more national policy, so that individual
2 institutions, whether in large prisons like in CDCR
3 or small institutions, make those decisions
4 themselves.

5 CHAIR GARZA: Thank you so much for
6 coloring that. That was -- that was very, very
7 helpful.

8 Do any of the other panelists want to
9 contribute to answering that question?

10 REVEREND KUGLER: I will say that having
11 served as a chaplain in a county, state, and the
12 federal system now for 21 years, I think there are
13 some distinct hiring and vetting clearance procedures
14 that would be helped by community-building. We can do
15 more work across faith lines to try to foster more
16 interfaith representation in terms of volunteers and
17 contractors and chaplains.

18 One of the tactics and strategies that
19 the Bureau utilizes, and I know some of the states do
20 as well, is looking for what are the faith-specific
21 needs of a particular institution. And then being a
22 little thoughtful, prayerful I would even add, as to
23 how we might best meet them. So, it's not a
24 disproportionate chaplaincy leadership for those in

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1 custody at any particular institution.

2 Looking a little broader at how we
3 partner with the wider faith community -- similar to
4 how my colleagues here, have said.

5 CHAIR GARZA: Thank you so much. I
6 understand -- if there is no -- no other panelists
7 that would like to chime in on that, we can move on
8 to Commissioner Jones. I understand you have a
9 question.

10 COMMISSIONER JONES: Thank you, Madam
11 Chair. We have a lot of direct service providers on
12 today's panel, and I'm so interested in hearing,
13 especially given what we just went through as a
14 country over the past several years, how the COVID-
15 19 virus impacted your ability to provide direct
16 services to inmates and for those inmates to obtain
17 reasonable accommodations for their religions, what
18 have you noticed about the state of affairs before
19 COVID and "after" COVID? For the transcriber, I'm
20 using air quotes.

21 And what are -- and are there lessons to
22 be learned about how these institutions, these
23 incarcerated settings, have or have not been
24 providing adequately for their inmates?

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1 And that is for anyone who wants to
2 opine.

3 IMAM ABDULHAFIZ: I'd like to say it was
4 very difficult being a provider going into the
5 institutions prior to COVID and then, you know,
6 having that taken away, but understanding, you know,
7 the danger for everybody. And later when things
8 began to, you know, get better, it still was, you
9 know, a slow process for the inmates to be able to
10 put in into circumstances or situations where outside
11 persons could be in their space.

12 Some of the things that -- I know
13 everybody had to think out of the box, and I know in
14 California there were opportunities where some of the
15 chaplains were able to put things on video, record
16 things, and make that available to the inmates, you
17 know, in their isolated areas.

18 But, yeah, that was challenging, and I
19 think we just all learned ways to be patient, you
20 know, because it was so unprecedented, something we
21 never had experienced before, and it took us working
22 with each other and, you know, not, you know,
23 overreading or, you know, placing blame anywhere, but
24 just understanding we were in a very difficult

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1 situation. And I think, you know, all of those
2 administrators, they had to make those tough
3 decisions on when to open and how to open, but, you
4 know, it just -- some, you know, drug there defeated,
5 you know, opening all the way back up.

6 But I know that as Chaplain Kugler
7 mentioned, I know a lot of the chaplains that were
8 working at those facilities did have access to walk
9 into the units and to make themselves available. And
10 so that was really good to know, that the men were
11 seeing -- and the women were seeing some pastoral
12 presence, because they were afraid and they were
13 going through difficulties and not knowing what to
14 expect themselves.

15 So it was very -- a critical time, but I
16 think all sides did as best they could to operate
17 under those circumstances.

18 FATHER FEDDON: I would just add that,
19 first, from my own personal experience, I can tell
20 you that there were individuals who I needed to
21 provide pastoral support who had ended up
22 recidivating and were in a county facility, and well
23 into 2023 I was still unable to visit with them face
24 to face, oftentimes having to find other ways of

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1 communicating with them, whether through phone
2 conversations, which obviously as we know was not
3 confidential, nor are letter-writing anymore now that
4 it is being scanned and sent electronically.

5 So there was -- there still are
6 extraordinary I think concerns about the absence of
7 pastoral presence in these facilities face to face.
8 And that raises to me, again, what I already mentioned
9 earlier, a grave concern that we have that perhaps
10 some -- this is I think worth investigating, if there
11 are certain technologies that we are becoming overly
12 reliant upon and that there is -- frankly, not to be
13 terribly cynical, but there is profit involved when
14 you rely on certain technologies and rely less and
15 less on pastoral support, in-person visitation. And
16 I know this is still going on in county and state
17 facilities throughout the country.

18 COMMISSIONER JONES: I'd like to follow
19 up on that. Is it my understanding, then, that
20 you're saying that, you know, sort of the advent of
21 Zoom in these incarcerated settings, or some similar
22 technology, has sort of taken hold, and now it is
23 viewed by these institutions as a replacement for in
24 person dialogue and services? Is that -- is that

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1 what you're suggesting?

2 FATHER FEDDON: Yeah. Frankly,
3 personally, again, from my own personal experience,
4 I was scandalized when I was told by a county jail
5 facility in North Florida that, because I couldn't do
6 the pastoral support for this particular inmate,
7 that, you know, we could simply set up video
8 conversations, and then I realized the exorbitant fee
9 that was involved in those -- in using -- relying on
10 their video technology. So that's one concern.

11 And then, two, and what we've had in this
12 survey, kind of the responses, that oftentimes
13 chaplains will tell them those that are required --
14 requesting Mass, that they can simply watch it on
15 video. And anyone that is a practicing Catholic
16 knows that you simply don't watch Mass on television,
17 that it is communal and social and physical and
18 material.

19 And then we have even had certain
20 chaplains tell us, well, everything is now on the --
21 or things are increasingly on the tablets, you all
22 need to produce some type of media, so that these
23 things -- these programs, Mass, and catechesis, can
24 be available through the tablets, again, which is a

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1 cost to not only us and to these different
2 organizations but also to the -- to the inmates.

3 SHAYKH NSOUR: Thank you for that
4 question, and I would like to build on the answer
5 about Zoom. So I think we all experienced during the
6 pandemic, if you didn't think schooling was possible
7 or at least some semblance of schooling was possible
8 through Zoom or meetings, we've all -- we have all
9 learned the ropes of how to use Zoom. And, in
10 prisons, they have -- they have made some headway in
11 allowing education to be done through Zoom, and so
12 that's a step forward.

13 But at the same time, the pastoral care
14 that requires a lot of the time, or prayer services
15 in person, it cannot be a replacement. So there is
16 some benefits.

17 Another hurdle is that too much reliance
18 on Zoom, such as parole meetings where people did not
19 have tech literacy, and they didn't know how to sign
20 onto a Zoom meeting and they miss a parole meeting
21 and then they get a violation, that was an issue.

22 And so it's one of the reasons why Tayba
23 Foundation had a literacy program in our San
24 Bernardino office and we found that people didn't

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1 even know how -- basic things like how to turn on a
2 computer sometimes or deposit a check by phone, a lot
3 of the things that we take for granted, which is also
4 to speak towards the importance of bringing in tech
5 literacy into the prisons and accommodating, while
6 recognizing the need for that in-person pastoral
7 care, because there are a lot of advancements in what
8 is available through e-learning, through
9 communications, but the prisons, either because of
10 citing safety and security, are hesitant to make that
11 or because of the monopoly that is held by the prison
12 telecommunication industry in preventing the
13 advancement and allowing even for-profit companies to
14 come in and level the playing field.

15 We have seen two companies -- Edovo and
16 also TextBehind -- that are working towards providing
17 efficient systems at the lowest cost possible to the
18 prisoners.

19 COMMISSIONER JONES: Thank you.

20 RABBI LIPSKAR: I will just speak to that
21 for a moment, and obviously echo everything that has
22 been said and the importance of, you know, having
23 these in-person services and the direction that has
24 been able to be given.

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1 Of course, there is tremendous,
2 tremendous benefit on the tablets and this technology
3 because it's making so much important material and
4 information available, and throughout COVID we saw
5 that -- that, you know, within many places that video
6 visitation was possible through that technology, and,
7 unfortunately, you know, in the federal system, you
8 know, there was people that were completely, you
9 know, confined, you know, for 23 hours a day just in
10 their unit, and there was that level of interaction.

11 But, unfortunately, this problem is
12 continuing because there are county jails that still
13 follow quarantine procedures when a new inmate comes
14 in, and that seriously hampers their ability to have
15 access to their religious services, to the things
16 that they need, or they are being told, well, we can't
17 really, you know, do our sincerity testing with you
18 until you are done with your quarantine, and,
19 therefore, it affects their ability to be on the
20 proper religious diets that they need to have.

21 And as we heard earlier, this --
22 sometimes for a religious diet it's not just a
23 preference but that's just -- you know, they cannot
24 eat otherwise. And also having that instruction and

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1 guidance from even the environments where they do
2 allow volunteers to come in and participate, these
3 individuals are being excluded. And those
4 quarantines are still happening in certain county
5 jails.

6 REVEREND KUGLER: I think it's a balance
7 honestly. Those of us that do any ministry in prison
8 settings, in correctional settings, recognize that
9 that you can't do it across all the different faith
10 lines without partnerships. Without the ability to go
11 across faith lines and have people there, and for
12 those services providers need to be present in
13 person, and also to bridge the gap when you cannot.
14 Also, at times when it's appropriate, that can be
15 done even through technological means.

16 Video conferencing was one thing that the
17 Bureau is pretty excited about that was an offshoot
18 of COVID, a positive one. In addition to looking for
19 ways that we can honor in-person service providers,
20 through volunteers and contractors and the chaplains,
21 we are looking at ways that we can utilize
22 videoconferencing equipment to expand religious
23 offerings. In a rural location where they might not
24 have a service provider from that faith tradition,

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1 and they have it in another location, it can be
2 provided via video conferencing in the chapel.

3 So that there is a way to -- not to
4 discount mandatory services that require in person,
5 by any means, but so that there can be continual faith
6 development for those in custody in our care. Right?
7 That there can be a way to continue to look to foster
8 a sense of purpose and hope and help those in custody,
9 whether they be in county, state, or federal custody.
10 We can look at ways that they can become the person
11 that they are called to be, have the resources they
12 need to be faithful to their faith, and meet their
13 potential.

14 Also, I think that continued events like
15 this and the work that you all are doing allows us to
16 think a little broader, to go across faith lines, to
17 look a little deeper, and to look a little more
18 creatively about what could be done, and I think
19 that's where I hope and pray that we will head.

20 CHAIR GARZA: Well, thank you. Thank
21 you for those -- that question and those really
22 thoughtful answers. I know we have a queue of folks
23 that want to ask questions. I just want to make sure
24 that there isn't anyone else on the line that needs

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1 to ask a question or wants to be recognized.

2 COMMISSIONER MAGPANTAY: Chair Garza?

3 CHAIR GARZA: Yes. I have you in my
4 queue, you and Vice Chair Nourse, so whichever --
5 whoever would like to go first.

6 COMMISSIONER MAGPANTAY: Well, I will
7 defer to the Vice Chair.

8 CHAIR GARZA: We'll have Vice Chair
9 Nourse ask her question first.

10 COMMISSIONER MAGPANTAY: Well, while
11 Vice Chair is getting her question ready, I will go
12 actually.

13 COMMISSIONER NOURSE: Sorry. I was --

14 COMMISSIONER MAGPANTAY: Oh, go ahead --

15 COMMISSIONER NOURSE: -- muted.

16 COMMISSIONER MAGPANTAY: -- Victoria.
17 Sorry.

18 COMMISSIONER NOURSE: I just wanted to
19 say that I -- I understand. I'm sorry that I have
20 to be on Webex, not Zoom, because as a professor at
21 Georgetown Jesuit institution, this is not a way to
22 bring people together. But so with a mea culpa, I'd
23 like to ask this, with thanks to all of you. I have
24 taught in prisons, and I believe that you are doing

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1 God's work.

2 But let's try to think about creative
3 solutions, as indicated earlier. So what can the
4 federal government do to spread knowledge that is
5 clearly in some places in union and not in others?
6 We have 1.2 million state prisoners and 150,000
7 federal prisoners. So prison is a state issue.

8 And so the question is, how can the
9 federal government be helpful in disseminating
10 knowledge about risks to security, facts about
11 minority religions, and anything else you might want
12 to share?

13 IMAM ABDULHAFIZ: I think the federal
14 government can do a wonderful job by bringing
15 together the correctional administrators from the
16 different states and letting them see the model that
17 has been successful that the federal government has
18 implemented and it has used for decades, proven, you
19 know, that it works, and all of the tools and how the
20 Bureau of Prisons chaplaincy operates I think is
21 definitely a model that could be duplicated in the
22 states, and it would give them the tools by which
23 they could be successful.

24 By looking at what the federal government

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1 has been able to do with the diverse inmate population
2 the federal government deals with definitely would
3 lend itself to leading the states to do a better job.

4 COMMISSIONER NOURSE: Thank you.

5 Anyone else?

6 SHAYKH NSOUR: If I may, I love the idea
7 of thinking creatively and thinking outside of the
8 box. And there are a number of things that I can
9 suggest. I will just highlight a few. One of them
10 is to -- is building upon what was also said before
11 is standardizing -- having a federal standard.

12 So, for example, if there is a -- for
13 example, the field minister program, and Amin
14 Eshaiker mentioned that as well, about utilizing the
15 prisoners. So we have -- it's either chaplains or
16 outside volunteers, but I believe it's an untapped
17 resource to utilize the prisoners themselves as peer
18 field ministers, because in one capacity you want
19 somebody that can relate to another prisoner more
20 than they -- than they could relate to somebody from
21 outside.

22 The people who are in there, they are
23 also there all the time, especially during COVID. So
24 when that pastoral care from the outside was not able

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1 to go in, who is offering that pastoral care? Who
2 is offering -- who is leading the services? We know
3 from the Muslims, the majority of Jumu'ahs, Friday
4 prayers, that are done in this country at state and
5 federal facilities are conducted by prisoner imams,
6 and the majority of pastoral care that happens is
7 happening from prisoner imams.

8 We also realize that prison officials are
9 reluctant to give an official position to a prisoner
10 because of safety and security and putting authority
11 or a hierarchy within the hands of a prisoner, but
12 some of that can be mitigated if there is dialogue,
13 if we bring all of the relevant voices into the room,
14 the concerns of staff and administration, the desires
15 of what chaplains want to see in terms of
16 standardization of that chaplaincy of care, so that
17 the prisoners also don't abuse that position of care.

18 Another thing that we can look at is in
19 Texas they have faith-based dorm units, and this is
20 a disparity because we've heard from our Muslim
21 students in Texas that they allow -- they have a
22 Jewish faith-based dorm unit, a Christian faith-based
23 dorm unit, but they have not allowed the Muslims to
24 do that. And so prisoners, if they want to get out

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1 of the prison politics and all of the nonsense that
2 is done by other prisoners in maintaining the gang
3 culture, the drug culture, the fentanyl epidemic, all
4 of that, a faith-based dorm unit is a viable option.

5 But we have to make sure that it can be
6 replicated and that there is equal opportunity for
7 anyone who wants to participate in that, because then
8 they make the choice to get out of that prison
9 nonsense and to program, to use a term -- to program
10 within the prison based on their -- on their faith,
11 and it reduces disciplinary actions, and it makes it
12 a healthier environment for everybody.

13 COMMISSIONER NOURSE: Thank you.

14 Anyone else?

15 RABBI LIPSKAR: Well, just a couple of
16 quick comments, and thank you, that I -- once again,
17 I think this is about standardizing and having
18 uniform policies as it relates to many of the
19 observances that become challenging in a lot of these
20 other environments. For example, having a handbook
21 like the Bureau of Prisons has, which clearly
22 outlines what the requirements are, it does not leave
23 it open to interpretation whether it's by a local
24 chaplain or by a local prison official, or sometimes

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1 even by an inmate.

2 As we just said, there is abuse to the
3 system sometimes, and sometimes it's just an
4 ignorance, a person wishing to keep kosher and
5 wanting to participate, sometimes they themselves
6 don't even know all of the rules and the laws as it
7 relates to that, and, therefore, they might be served
8 something which they don't know exactly what it is
9 that they need to be looking for.

10 But if there is a standardized sort of
11 education and policy as it relates to these things,
12 like phylacteries, like the tefillin, and
13 understanding the ways that those -- even in
14 environments where it poses a greater security
15 threat, but having a policy that there is a set of
16 tefillin that is available in the chapel or in one of
17 the offices that are there, so that any person that
18 might end up there on a weekend or any other time
19 doesn't have to wait and extend the period of time to
20 have access to these things.

21 So, once again, it's about education and
22 enforcing that through standardized policy and
23 looking at the environments that are just not
24 adhering to that, and obviously the federal

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1 government knows the way to create consequences if
2 they wish for the environments that are not
3 participating at that level.

4 MR. ESHAIKER: And I will just add one
5 more thing, too. The Bureau of Prisons sometimes
6 offers grants or contracts to help provide certain
7 faith-based groups with access to institutions that
8 maybe have been historically not there. And so
9 perhaps partnering with state and county
10 organizations where maybe some of these grants or
11 funding could be made can perhaps help offset some of
12 the areas that are suffering from maybe higher than
13 normal religious grievances.

14 CHAIR GARZA: Well, thank you,
15 panelists, for answering this -- Vice Chair Nourse's
16 question.

17 Before I recognize Commissioner
18 Magpantay, I do want us to be mindful of time. So
19 if folks -- if there are any other Commissioners that
20 do want to be added to the queue, now is your time.
21 Otherwise, we will have Commissioner Magpantay ask
22 the final question for this panel.

23 COMMISSIONER MAGPANTAY: Great. Thanks
24 so much. And, again, you know, I also want to thank

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1 Commissioner Kirsanow for putting this proposal in.
2 It is so critical. You know, in God we trust.

3 Reverend Kugler, so we heard a lot of
4 questions -- thank you for your service, and we heard
5 a lot of questions or concerns about access to
6 religious texts, the Bible, the Quran, the Torah, the
7 Hindu Vedas. Your advice on how we are going to fix
8 this issue of people who -- they just want to read
9 their sacred text? How do they get it?

10 And then, for everybody else on the
11 panel, may I just ask, could you just comment on the
12 larger benefits of this? I understand that it's a
13 right, but we heard from earlier -- the earlier panel
14 how practicing one's faith and tradition contribute
15 to the reduction of recidivism, socialization,
16 rehabilitation. You are doing great work.

17 But I want especially for the
18 introduction of our -- of this report why. What is
19 the bigger -- what is the solution? How does
20 practicing one's faith help the reintegration and the
21 rehabilitation for people?

22 And your statement, Mr. Nsour, was
23 outstanding. Thank you very much. I read it very
24 carefully.

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1 But, please.

2 REVEREND KUGLER: For the Bureau, the way
3 that we have access for sacred texts across faith
4 lines for those in our custody and care is in two
5 capacities. They can be as congregant religious
6 items, where they can access them through the chapel
7 because the chaplaincy departments have a budget to
8 purchase them, and they have vendors that they work
9 with, so they don't have to go quite through what we
10 heard earlier of concerns about not being able to
11 have access to those -- the sacred texts.

12 And then those in federal custody also
13 have access through the Incoming Publications policy
14 to have personal religious texts as well. So, there
15 is a provision within that policy too.

16 I would suggest, though, that there be
17 ongoing opportunities as we have talked here to about
18 sharing of best practices and resources, as to how
19 that may be replicated in other places.

20 COMMISSIONER MAGPANTAY: Thank you.

21 REVEREND KUGLER: Sure.

22 COMMISSIONER MAGPANTAY: Please.

23 FATHER FEDDON: I would add,
24 Commissioner, in terms of the benefits what I have

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1 seen, and with pastoral visits in particular in
2 solitary confinement camps, oftentimes -- they might
3 be scandalized to hear it, but sometimes I am acting
4 as an imam, sometimes I'm acting as a rabbi, sometimes
5 a Baptist minister, because of the plurality of
6 different religious identities. And I want to
7 emphasize that word: identity.

8 What I see is -- the enormous benefit is
9 that we're talking about human persons that
10 oftentimes exist in an incredibly dehumanizing space.
11 Religion, religious practice, religious community,
12 provides an opportunity for so many of these women
13 and men to construct their identity, to express their
14 deepest needs, and their identity as a participant
15 within a larger society.

16 And so religious practice, religious
17 materials, access to religious communities, I believe
18 carves out a space for these women and men to create,
19 construct their identity within a space that
20 oftentimes is eliminating any opportunity for
21 expression of their identity.

22 And so I say this because it is not
23 uncommon for me to see men, and especially in these
24 confinement camps, go from being Orthodox Jewish to

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1 being Muslim to being Pentecostal, within a two-year
2 span. What I'm seeing is kind of the manifestation
3 of that, is this cultivation of identity, of
4 religious identity, but more in particular of their
5 human needs for expression.

6 MR. ESHAHER: To talk about the positive
7 benefits, sometimes when we think about the good that
8 happens out of these services for incarcerated
9 individuals returning to society, it is very easy to
10 think of it like a very abstract thing, like, okay,
11 they are generally going to be good, and -- but when
12 you look at it in more human -- human level, many of
13 the people that we have seen in our program have gone
14 on to become very successful chaplains, actually.
15 They have been hired by the same facility that they
16 were once incarcerated at.

17 Religious leaders, entrepreneurs,
18 community organizers, gang interventionists, at-risk
19 youth, and even, funny enough, some of the popular -
20 - pop culture icons that maybe many of your kids are
21 actually listening to were formerly incarcerated and
22 formerly and actually found their faith in prison.

23 And when you look at these individuals
24 and you ask them, okay, well, what was so special

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1 that made you who you are in becoming this person,
2 more times than not they are going to reflect back to
3 the impact faith had while they were incarcerated.

4 So, again, it's just another way to
5 emphasize why this is so important for our country as
6 a whole.

7 COMMISSIONER MAGPANTAY: Thank you.

8 SHAYKH NSOUR: Thank you for that
9 question, and I've thought about this a lot, like
10 what is the greater benefit to the individual, and
11 also to society, of religion in prison. And one of
12 the main areas -- you know, we have spoken a lot about
13 administrations and their lack of accommodation of
14 religious rights.

15 Well, there is another power at force
16 within the U.S. prison system at the federal, the
17 state, and the county jails. And that's the prison
18 politics and the prison code and what we term -- in
19 Arabic it's called Jahiliya.

20 It's just the nonsense of the -- of the
21 prison codes and the prison laws. And so the
22 prisoner who is trying to do what's right has to
23 navigate this difficult terrain between the
24 administration's policies that can sometimes and many

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1 times lead on being authoritarian, and also the
2 prison code.

3 And what happens when people embrace
4 religion is they give up a lot of that, whether it's
5 Islam or Catholicism, Christianity, Judaism, whatever
6 it might be, or even Rastafarianism, Hinduism.
7 Whenever they hold a faith proper, all of those faiths
8 will teach them those prison codes, and that prison
9 nonsense is not from your faith. And so that can be
10 a huge healing that the prison guards and the prison
11 administrations are really struggling with, how do we
12 solve that?

13 The other thing that is really pervasive
14 throughout our society, we pride ourselves of having
15 removed segregation from society, but segregation
16 still exists in America. When you go into a prison
17 in CDC -- in California, you are separated by race,
18 the black card, the white card, the Asian card, the
19 other card. You are separated by race.

20 And so it is -- segregation does exist in
21 the United States. And if people cross those lines,
22 it could come at the cost of their life.

23 There was a white convert to Islam who
24 could not associate with the Muslims because the

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1 majority were African American. And if he had, he
2 would have been seen by the supremacists as crossing
3 the racial lines and he would have been killed. And
4 so he didn't -- he didn't pray. He didn't even give
5 the Salam, the greeting, to other Muslims. He would
6 just at the water fountain kind of say, "Hey, I'm
7 Muslim, just to let you know." But he couldn't
8 practice.

9 And so there is other situations where
10 there is not exactly the difficulty, but it -- but
11 it's still there. And so I've seen people who were
12 deeply racist, and when they embrace their faith,
13 they start to heal from that. I've seen people who
14 were deeply embedded in the gang culture. I know
15 people who were on the streets, were Bloods and Crips,
16 and when they both became Muslim, they shared the
17 same cell unit. So it can also heal the gang problem
18 as well.

19 And, finally, it brings meaning to
20 people's lives, and meaning-making is so important
21 that Viktor Frankl, who survived the death camps --
22 and one of the things that he noticed, he looked
23 around to see who was actually making it through,
24 aside from the direct killings, who actually was able

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1 to survive, and he found that the people who were
2 able to survive found meaning in their lives.

3 And that's where he has the book Man's
4 Search for Meaning. He has a whole logo therapy,
5 which they have tried to bring it into prisons, and
6 I would like to see that -- more of that done and
7 meaning-making in prison and it being -- the key to
8 rehabilitation is to find meaning in what you are
9 experiencing in life, and religion can be a major
10 factor in being able to do that.

11 COMMISSIONER MAGPANTAY: That's great.
12 And I really appreciate all the comments. One of the
13 reasons why is that our other report this year is
14 also on crime. And if we're looking at not only
15 racial disparities in crime, but as my colleague
16 talks about, reports going hand in hand with this
17 Commission, addressing crime and the solutions to
18 crime in America. This panel dovetails nicely with
19 that report in the works that we are doing.

20 Thank you for the work that you all do,
21 and thank you for being on this panel.

22 CHAIR GARZA: Thank you. Thank you,
23 panelists, so much, and thank you for that -- the
24 uplifting of Viktor Frankl's book. It had a deep

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1 impact on me personally when I read it for the first
2 time.

3 We're going to -- we're a bit over time,
4 but we're going to go ahead and break now for lunch.
5 We'll reconvene and start at 1:50 p.m. Eastern Time.
6 So let's be timely, and so we can get started and get
7 to our next panelists.

8 Thank you so much.

9 (Whereupon, the above-entitled matter
10 went off the record at 1:06 p.m. and resumed at 1:55
11 p.m.)

12 CHAIR GARZA: Hello. Good afternoon,
13 everyone. We're going to go ahead and get started.
14 Welcome back and thank you all for your continued
15 attention to this important topic. We are coming
16 back from our lunch break at 1:56 p.m. Eastern Time.
17 As I've indicated -- and we're coming back for our
18 final panel.

19 As I've indicated to our previous panels,
20 each panelist will have seven minutes to speak.
21 Following the conclusion of their presentation,
22 commissioners will have the opportunity to ask
23 questions within the allotted period of time, and I
24 will go ahead and recognize commissioners who wish to

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1 speak.

2 I will strictly enforce the time
3 allotments given to each panelist to present his or
4 her statement, and unless we did not receive your
5 testimony until today, you may assume that we have
6 read it. So, you can summarize it and we will
7 appreciate that. That way you can make the best use
8 of the seven minutes that have been allotted to you.
9 Please focus your remarks on the topic of our
10 briefing.

11 And panelists, please notice the system
12 of warning lights that are in front of you. When the
13 light turns from green to yellow, that means two
14 minutes remain. When the light turns red, panelists
15 should conclude your statements so that you do not
16 risk me cutting you off mid-sentence. I do not want
17 to interrupt you, but we have a schedule to keep.
18 So, my fellow commissioners and I will do our part
19 also and keep our comments and questions concise.

20 PANEL 3: PRISONERS' RELIGIOUS RIGHTS ADVOCATES

21 Now, turning to our panel in the order in
22 which they will speak, we have Barbara A. McGraw,
23 Founding Director, Prison Religion Project and Center
24 for Engaged Religious Pluralism, Professor of Social

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1 Ethics, Law, and Public Life, and of Politics, Saint
2 Mary's College; Navdeep Singh, Acting Policy
3 Director, Sikh American Legal Defense Education Fund;
4 Michael Willis, I'm sorry, Colie "Shaka" long,
5 Program Associate, Prisons and Justice Initiative,
6 Georgetown University; Heather Rice-Minus, President
7 and Chief Executive Office, Prison Fellowship,
8 Catherine Sevchenko, Senior Legal Counsel, The
9 National Council for Incarcerated and Formerly
10 Incarcerated Women and Girls.

11 And with that, I'm going to ask you all,
12 each of our speakers, to raise their right hand to be
13 sworn in. Will you swear and confirm that the
14 information that you are about to provide us is true
15 and accurate to the best of your knowledge and belief?
16 Hearing affirmative, thank you very much. We're
17 going to go ahead and begin with Dr. McGraw, if you
18 would please begin.

19 DR. MCGRAW: I'm happy to begin. I am
20 at the end though, so it's up to -- so, all right.

21 CHAIR GARZA: Go ahead and start. It's
22 fine. We're trying to -- I can't see all of you at
23 once, but go ahead and start.

24 DR. MCGRAW: Can you restart the clock

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1 for me? Thank you. I want to thank the Commission
2 for the opportunity to appear for this important
3 briefing on religious freedoms of incarcerated
4 persons, a matter that is close to my heart.

5 I'm Barbara McGraw, Founding Director of
6 the Center for Engaged Religious Pluralism and its
7 Prison Religion Project at Saint Mary's College of
8 California. My work on prison religion extends more
9 than two and a half decades, beginning as a volunteer
10 chaplain and advocate for the minority of the
11 minority religions, Pagans, Hindus, Native Americans,
12 and others, then as a legal advocate, and then as the
13 organizer of an annual conference and workshop series
14 for statewide prison directors in charge of religion
15 in partnership with the American Academy of Religion.

16 And I did that because it had become
17 clear to me that legal cases are all about when things
18 go wrong, sometimes horribly wrong. Reforming
19 institutions is the way to go because it's all about
20 getting it right in the first place.

21 A case on point is one you've heard
22 about, Landor v. Louisiana Department of Corrections
23 and Public Safety, which is about the prison staff's
24 horrific actions when they pinned down a devout

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1 Rastafari and cut off to the scalp his dreadlocks,
2 which he had been growing for 20 years. Dreadlocks
3 are a centrally important spiritual practice of
4 devout Rastas. Cutting them is a deep, deep
5 spiritual wound.

6 Perhaps the Supreme Court will grant cert
7 in that case and hold that monetary damages can be
8 awarded under the Religious Land Use and
9 Institutionalized Persons Act, but for Landor's
10 religious commitment, that will come too late.

11 The real issue in that case was not the
12 law. It was the failure of the prison authorities
13 to institutionalize RLUIPA's requirements before
14 there was a horrible violation like that. What is
15 needed across the country is training on how RLUIPA's
16 analysis works, and on the vast diversity of
17 religions we have in this country well beyond the
18 Abrahamic faiths. When prison authorities take RLUIPA
19 to heart, which some do, the positive impact has been
20 profound for inmates and the institutions themselves
21 for many reasons I included in my written statement.

22 Such institutions have clear and easy to
23 use religious accommodation request procedures that
24 permit a decision before a problem develops. Such

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1 institutions include their religion directors at the
2 top of leadership. There is onboarding of new hires
3 with training on religion issues, and continuous
4 retraining throughout the institution.

5 There are mechanisms for interfacing
6 between religion directors, security personnel, and
7 other prison staff so that inmates' religious rights
8 are properly respected, and the practice of denying
9 religious accommodations without appropriate
10 rationale, according to RLUIPA's strict scrutiny
11 standard, is just not permitted.

12 And where RLUIPA has been embraced, there
13 is no longer resistance to unfamiliar religions. One
14 of the prison religion directors I have worked with
15 said this about his institution, "The idea of
16 established traditions versus new faiths became
17 outdated. There used to be a tug-of-war approach to
18 religion, but then we came to realize it was
19 pointless, so we let go of the rope."

20 He told me that when confronted with a
21 new accommodation, the old goal was to find a reason
22 to say "no." He said, "The new goal became: how can
23 we get to yes?" That director also said, "There was
24 quite a lot of concern when we changed our approach,

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1 but the negative result some people anticipated just
2 didn't happen."

3 Where such practices have become the norm
4 because of RLUIPA, the old mindset that religion
5 compromises correctional institutions has given way
6 to a recognition of the ways religious accommodations
7 benefit institutions. Prison religion directors have
8 told me that when inmates are treated humanely, with
9 respect, including about their religion, there is
10 less tension in the institution overall, and safety
11 and security are increased.

12 A major impediment to inmates' religious
13 rights is when an institution that doesn't embrace
14 RLUIPA requires the inmate to go through a grievance
15 process to receive an accommodation rather than
16 having a proactive religious request procedure. And
17 such institutions' grievance processes are often
18 overly cumbersome, not transparent, or undermined by
19 institutional staff who delay a decision or fail to
20 inform inmates of next steps.

21 Certainly, the reason for grievance
22 procedures ought not be thwarting inmates' religious
23 rights. The purpose ought to be to give the
24 institution and the inmate the opportunity to resolve

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1 the matter without litigation, and hopefully that is
2 accomplished before the damage is done.

3 The Prison Litigation Reform Act should
4 be modified to require that such procedures are
5 transparently available, easy to understand, easy to
6 do, and expeditious, as I've suggested in more detail
7 in my written statement. And the Supreme Court or
8 Congress could give RLUIPA more teeth by providing a
9 remedy for violations that would serve as a forceful
10 deterrent so that such violations, like the one in
11 Louisiana, would be a lot less likely to happen.

12 Of course, there are always a few inmates
13 in every correctional agency who bring numerous,
14 sometimes frivolous, grievances and lawsuits, even in
15 institutions that are proactively accommodating
16 religion. But one prison religion director I have
17 worked with told me, "It is necessary for them to
18 have that ability because the whole system benefits
19 from the ability to challenge the status quo. The
20 annoyance of two or three inmates is necessary for
21 the accommodation of the thousands."

22 In my written statement, I offered
23 observations on the benefits of religious
24 accommodation to prisons, best practices, and several

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1 recommendations for the Commission itself on these
2 issues. I respectfully commend them to you and thank
3 you again.

4 CHAIR GARZA: Thank you, Dr. McGraw.
5 We're going to now hear from Dr. Singh. You may
6 please proceed.

7 MR. SINGH: Thank you, Chair Garza, Vice
8 Chair Nourse, and members of the Commission for
9 providing me with this opportunity to speak to you
10 today. My name is Navdeep Singh. I am the Acting
11 Policy Director at the Sikh American Legal Defense
12 and Education Fund, the nation's oldest Sikh-American
13 civil rights and leadership organization.

14 As I outlined in my testimony and as
15 other panelists have discussed, the law creates a
16 presumption in favor of religious accommodation.
17 However, the reality for Sikhs and others of minority
18 faiths is a practical presumption against
19 accommodation.

20 By way of background, observant Sikhs are
21 often identified by their religiously mandated
22 articles of faith, which are central to a Sikh's
23 religious practice and holding deep spiritual and
24 personal significance. Of these, there are two which

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1 I would like to specifically draw your attention to,
2 the kesh, which is the uncut hair, including uncut
3 beards, and the dastar, the religious head covering
4 often known as the turban. It's a piece of cloth
5 that is typically a few meters in length that is
6 wrapped around the head.

7 I think it's also important to note that
8 Sikhism is an individual meditative practice, but
9 also a highly congregational practice. But
10 interestingly, Sikhism does not have an ordained
11 clergy as defined by many chaplaincy protocols, so in
12 practical terms, that means that individuals who are
13 incarcerated are supported by members of their
14 community, including family members, to bring
15 materials to them. And it's important to note that
16 many of these practices have analogs for individuals
17 of other diverse communities such as the long hair
18 with many Native American practices.

19 While DOJ and the Bureau of Prisons have
20 had major successes in religious accommodation, there
21 are a few primary categories that we continue to
22 observe over the 25 years of our existence, and
23 frankly, they have not abated, first, maintaining the
24 kesh, allowing the uncut hair to be worn in prison;

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1 second, treatment of the dastar, allowing it to be
2 worn, allowing individuals to bring in dastars for
3 individuals to be worn, or having it simply treated
4 with respect.

5 Third, access to religious materials and
6 their respectful handling. Often because these
7 materials are in Punjabi, they are brought in by
8 members of the congregation from local houses of
9 worship, or shipped in from congregations around the
10 country.

11 Fourth, dietary restrictions, numerous
12 individuals report barriers and resistance to
13 accommodations to their dietary restrictions such as
14 accommodating a vegetarian diet and ensuring that
15 observant Sikhs do not eat meat which is ritually
16 sacrificed or ritually killed; finally, harassment
17 due to perceptions about their beliefs and articles
18 of faith as many Sikhs experience throughout their
19 daily lives.

20 There are a few scenarios that
21 demonstrate these. First, at a federal correctional
22 institute, one individual was going to voluntarily
23 surrender. However, it was unclear whether or not
24 he could do so while maintaining his turban and keep

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1 it in the facility. We were able to negotiate that
2 to be the case.

3 There was the case of Surjit Singh v. The
4 Arizona Department of Corrections, in which Mr.
5 Surjit Singh had his hair forcibly cut when he was
6 brought into detention, his turban was confiscated,
7 and he was threatened with having his hair cut a
8 second time, as well as taking months after the
9 assistance of counsel to bring his turban in for him
10 to wear.

11 There was another complaint at a federal
12 facility in which we have a dietary problem that is
13 not being accommodated. And finally, there was a
14 lawsuit that was filed just these past weeks at the
15 Fort Dix Federal Correction Facility in which dietary
16 restrictions have not been accommodated, they
17 ridicule the individual's practices, and treat him
18 with profound disrespect, including destroying his
19 dastar.

20 There are additional issues around
21 language access and access by visitors, including
22 attorneys, religious leaders, and family.
23 Essentially, because the federal prisons don't have
24 Sikh-American chaplains or volunteers, these

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1 incarcerated individuals rely on ad hoc support by
2 community members and their family, but security
3 restrictions mean that you may have to remove your
4 turban in order to enter the facility to provide this
5 care or spend time with your family member.

6 I would also further like to highlight
7 the Department of Justice's Inspector General's
8 report detailing problems within the chaplaincy
9 service and the impact of the lack of diversity within
10 that on providing care to individuals.

11 Finally, at the end of our testimony, we
12 provide a number of recommendations to uphold
13 religious freedom, and as we often say within the
14 Sikh community, we are at the tip of the spear. We
15 are a visible, yet invisible minority faith.
16 However, that means that when we make progress, it
17 uplifts all tides.

18 First, we recommend that there be
19 standardized guidelines for treatment across federal
20 and state facilities, there be additional training
21 and education, there be increased oversight and
22 accountability, there is increased outreach to
23 recruit volunteers or staff from minority faiths.

24 There needs to be an increase in

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1 education for prisoners about their religious rights.
2 There needs to be an incorporation of truly robust
3 and meaningful language access. There needs to be
4 increased oversight and accountability of privately
5 run or contracted facilities. There needs to be
6 increased engagement with Sikh organizations, and
7 there needs to be established accessibility
8 guidelines that are respectful for visitors from the
9 Sikh community.

10 In conclusion, I thank the Commission for
11 taking on this important topic and provided us from
12 SALDEF, the Sikh American Legal Defense and Education
13 Fund, with the opportunity to speak to you today.

14 CHAIR GARZA: Thank you so much, Dr.
15 Singh, for that. We're going to now turn to Mr.
16 Michael Willis, Partner at Hobbs, Straus, Dean, &
17 Walker, LLP. I apologize for the mix-up earlier in
18 not recognizing you initially, but if you're ready to
19 proceed, please go ahead.

20 MR. WILLIS: Thank you very much, Chair.
21 Good afternoon, members of the Commission, member
22 panelists. Great to be here this afternoon, and
23 thank you for taking on this important topic and
24 working on updating your report.

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1 As noted, I'm Michael Willis. I'm an
2 attorney with the law firm of Hobbs, Straus, Dean,
3 and Walker. We exclusively represent Indian tribes,
4 tribal governments, tribal organizations, and
5 Indigenous peoples' organizations. I'm here on
6 behalf of Huy, which is a U.S.-based nonprofit that
7 works with incarcerated Indigenous peoples. They're
8 based out of Washington state. So, it's quite an
9 honor to be here with you all today.

10 And Huy's mission has been to work to
11 half human rights' violations taking place in prisons
12 affecting Indigenous Americans. The issues that
13 we've heard from my colleagues about limited access
14 to culturally appropriate sacred materials are huge
15 concerns, and Huy has operated to make awareness,
16 raise awareness and advocacy on the need for
17 protecting religious rights of Indigenous peoples who
18 are incarcerated.

19 The focus of our advocacy, especially due
20 to like the inaction that's taken place in terms of
21 what's going on in the United States' prisons, your
22 report in 2008 was very helpful to document some of
23 the issues with over-representation of American
24 Indians in federal prisons, but due to the inaction

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1 on some of those issues, Huy has put a lot of its
2 advocacy and intention into the international arena.

3 The most recent report was filed with the
4 United Nations' Human Rights Committee in response to
5 the fifth periodic report of the United States, so
6 we've tried to elevate these issues in that context
7 to turn attention to these matters.

8 I think in terms of looking at, you know,
9 what you all documented in terms of over-
10 representation of Indigenous peoples in U.S. prisons,
11 not a lot has changed since 2008, unfortunately. In
12 2020, the Justice Department reported that Indigenous
13 persons were five times as likely to be incarcerated
14 than a white person.

15 Indigenous persons were more likely to
16 receive life sentences and have more extended
17 sentences for the same crimes as other individuals,
18 and indeed, at this point, in terms of length of crime
19 sentences for similar crimes, there's a huge
20 discrepancy that disadvantages incarcerated
21 Indigenous inmates.

22 Importantly, while in prison -- and we've
23 heard great comments about the role of religious and
24 ceremonial objects, and working towards improving

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1 opportunities for rehabilitation and ending
2 recidivism, and certainly in the Native American
3 community, that's a huge part of the need and
4 attention to this concern of access in prisons.
5 Essentially, rehabilitation, even cultural survival
6 and identity through religious practices are
7 essential while incarcerated.

8 And I think in terms of just to give some
9 examples, I think Pawnee lawyer, Walter Echo-Hawk,
10 has kind of put the issue most directly, that this is
11 not just an individual need, but it's a huge
12 individual need, but it is a community need.

13 His statement was that incarcerated
14 Indigenous persons, quote, represent important human
15 and cultural resources irreplaceable to their tribes
16 and families. When they are released, it is
17 important to the cultural survival of tribes and
18 Native communities that returning offenders be
19 contributing, culturally viable members of the
20 community.

21 Similarly, the United Nations Special
22 Rapporteur on religious freedom or belief stated,
23 quote, banning Indigenous spiritual practice in
24 prison can hinder traditional healing,

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1 intergenerational transfer of knowledge,
2 rehabilitation, and cultural survival upon release.

3 The United States has especially failed
4 to address the religious rights of Indigenous persons
5 incarcerated in the state and local prison system.
6 Recently litigation involving the rights of
7 Indigenous persons detained in those facilities has
8 documented state interference with a whole range of
9 religious freedoms.

10 These include denial of access to tobacco
11 for use in prayer and ceremony, refusal to honor
12 dietary restrictions, even though those restrictions
13 may be honored of other groups, denial of the ability
14 to wear religious head coverings, denial of smudging,
15 prayer pipes, sweat lodge, and other ceremonies, and
16 restrictions on access to certain sacred medicines
17 and medicine bags.

18 Additionally, denial of individual
19 access to existing Indigenous facilities has been a
20 concern, and these are even -- you know, facing
21 retaliation for raising grievances about not giving
22 the opportunity to participate in such religious
23 ceremonies has been documented as well.

24 Additionally, there's been a refusal to

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1 honor the rights of individual Indians and as groups
2 to use larger gathering spaces which are made
3 available to other religious groups. That's another
4 issue that's being litigated to this day.

5 So, I think, you know, the problems that
6 were identified in 2008 in your report are still
7 common, huge concerns today. We also want to point
8 out, as you look to the next phase of the report and
9 recommendations, that while, you know, the facts and
10 the problem may remain the same, we encourage
11 analysis and recommendation to really look closely at
12 some of the issues and concerns that were raised
13 before.

14 Particularly, we're noticing that some of
15 the restrictions on Indigenous people in prison were
16 indeed framed as justified in circumstances in the
17 last report. One concern was noted that, you know,
18 quote, granting one group's request may require equal
19 treatment of others down the line, and this was used
20 as a justification for a prison not offering a sweat
21 lodge.

22 And the Commission essentially seemed to
23 endorse that, yes, there are certain justifications
24 and reasons that should be upheld, and we just caution

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1 against these justifications that could be based on
2 hypotheticals and indeed operate to serve to
3 perpetuate disparate treatment in facilities.

4 So, we encourage recommendations that are
5 unequivocal and clear as to the prison officials'
6 duties to ensure that inmates of non-Christian faith
7 are not having their free exercise of their rights
8 unduly burdened.

9 The U.S. system doesn't accommodate
10 religious needs of Indigenous peoples, and that's
11 really got to change. We also urge as you prepare
12 your report to consult with Indigenous tribal
13 leaders. Huy is very happy to engage with you all in
14 facilitating conversations, but we think that would
15 be an important dimension to build awareness and
16 understanding of the significance of these cultural
17 practices that are undertaken by tribal incarcerated
18 individuals. So, thank you very much for the
19 opportunity.

20 CHAIR GARZA: Thank you so much, Mr.
21 Willis. I appreciate it. We're going to now hear
22 from Mr. Long, if you would please proceed?

23 MR. LONG: Thank you, Commissioner. My
24 name is Colie Levar Long and I'm an employee at

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1 Georgetown University's Prisons and Justice
2 Initiative. When I was 18 years old, I was sentenced
3 to life without parole. Because of the Second Look
4 Act, I was paroled after serving more than 26 years
5 in prison as a D.C. code offender.

6 However, in 2001, due to the closure of
7 the Lorton Reformatory, which was the designated
8 state prison for District residents, I was
9 transferred into the custody of the Federal of Bureau
10 of Prisons along with thousands of other incarcerated
11 men from the D.C. area. I remained in several maximum
12 security federal institutions for over 23 years until
13 I was released in 2022.

14 I converted to Islam inside prison in
15 1998. Like many other prisoners, religion is the way
16 to seek forgiveness and to help restore the humanity
17 I lost when I was in society. Islam provided the way
18 to transcend the restrictions of incarceration that
19 debase humans and erase their identity.

20 Despite these circumstances, Islam gave
21 me a purpose to be a reflection of my creator, to
22 give me a reason to live and a reason to live my best
23 life. Religion also creates a community inside a
24 carceral space.

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1 People are no longer viewed as convicts,
2 but as brothers in faith. Being able to participate
3 in communal activities, pray five times together in
4 community, and be around like-minded people gave me
5 the positive reinforcements in my journey.

6 Being an African American Muslim from
7 D.C. meant that there was a trilateral dimension to
8 the discrimination I was exposed to in the BOP,
9 including being called the N-word by COs. Today, I
10 am going to talk about encountering religious
11 discrimination in being Muslim.

12 From Terra Haute, Indiana to Atwater,
13 California, many correctional staff treated Muslim
14 prisoners like terrorists. This is especially true
15 after September 11, when many former military members
16 returned to the U.S. and obtained employment as
17 federal correctional officers. One CO said it was
18 his patriotic duty to punish Muslims who were in the
19 custody of Bureau of Prisons.

20 One incident in particular that I
21 encountered at USP Atwater where the lead chaplain
22 was a former gunnery sergeant in the Iraq War, inside
23 the chaplain's office was a picture of him standing
24 in front of a Black Hawk helicopter with an assault

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1 rifle in his hand and his foot on top of a man laying
2 on the ground with a turban around his head.

3 This picture was indicative as to what
4 this chaplain's demeanor was towards incarcerated
5 Muslims. He would go out of his way to leave his
6 office in the chapel area and patrol the compound to
7 ensure that Muslims were not praying in congregation
8 on the rec yard. He stated he considered us Muslims
9 as gang members, and per BOP policy, it was prohibited
10 for three or more known gang members to congregate in
11 any open space.

12 In addition to not being able to pray
13 together when they treat us like gangs, we could only
14 wear religious clothing inside the chapel. Staff
15 played games with Muslims fasting, which forced us to
16 pay for food at the end of fast by purchasing food
17 from the commissary out of our own money.

18 One reason there is a discriminatory
19 practice against incarcerated Muslims is the
20 chaplaincy shortages and the lack of faith diversity.
21 In a 2021 report from the Department of Justice Office
22 of Inspector General finds that, quote, BOP
23 chaplaincy was staffed at around 30 percent below its
24 staffing guidelines, with only 236 BOP chaplains to

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1 serve the needs of approximately 160,000 inmates, end
2 quote.

3 Coupled with this very discovery is the
4 fact that the same report also showed that, quote, 84
5 percent of BOP's chaplaincy represents a protestant
6 Christian faith, end quote, which views Islamic
7 prisoners as inmates advocating violence and, Muslim
8 inmates advocating violence and religious extremism.

9 Most chaplains are Christian and white.
10 In my time in many, multiple facilities, I had one
11 great chaplain in USP Lewisburg who went out of his
12 way to create a service for all faiths to come
13 together, but he was an anomaly.

14 The BOP does have an inmate grievance
15 procedure and there is notification of some program
16 statements inside most inmates' handbooks that are
17 issued to inmates who are incarcerated. However, the
18 problem is that most of the program statements are
19 outdated or have been amended by other policies a
20 person may not know about. Yet the most frustrating
21 of the inmate grievance procedure is the fact that
22 there's a huge gap between the policy as it's written
23 and the policy as it's practiced.

24 For example, the policy is to give all

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1 faith groups access to their religion, but on
2 numerous occasions, I was deprived of the opportunity
3 to have a Qur'an because it was in Arabic, I was not
4 allowed to break my fast with my brothers during the
5 month of Ramadan, and experienced unwarranted body
6 searches and pat-downs when I attended Friday Jumu'ah
7 prayer, all in the name of maintaining an orderly
8 running of the institution.

9 Furthermore, when an incarcerated person
10 is confronted with these types of religious
11 discriminations, there is a sense of helplessness
12 when attempting to file a grievance. I have
13 personally had officers tear my complaint in my face
14 or allow it to get lost in the institutional mail
15 system.

16 If a person does get lucky enough to
17 successfully file a complaint, nine times out of ten,
18 the staff member assigned to investigate the
19 complaint is often good buddies with the offending
20 officer. If your grievance makes it to the regional
21 director, they may have started, the regional
22 director may have started as a CO himself and still
23 has ties to that correctional staff. This ultimately
24 makes it highly unlikely that an inmate is taken

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1 seriously or his or her issue is resolved.

2 Yet the most ominous aspect of the inmate
3 grievance procedure is the pervasive fear of
4 retaliation from correctional staff. I have
5 witnessed many men who dared to file a grievance
6 suddenly find themselves the subject of surprise cell
7 inspections where miraculously a shank or some other
8 form of illegal contraband is found in their cell.

9 The threat of spending years in solitary
10 confinement often weighs heavily on their mind,
11 hoping they don't get a dose of diesel therapy, where
12 prison administrators will have grievance filers
13 shipped from prison to prison in a perpetual state of
14 transit, never allowing them to settle down in any
15 general population.

16 When prisoners who are seen as grievance
17 filers are put on diesel therapy, you are always
18 considered in transit, so you're moved from one
19 facility to the next with no personal property, no
20 stamps, no ability to contact your loved ones, and no
21 food supplies. This can amount to years in the hole.

22 There is a critical need for oversight in
23 order to monitor the inmate grievance procedure. No
24 matter what the official policy says, no one monitors

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1 how prisons carry out their policies about religious
2 freedoms or grievances. There is no accountability
3 at all, so there is very little chance of resolving
4 an issue of real discrimination.

5 Prisoners are at the mercy of the
6 officers who seem to think prisoners have no rights.
7 Religions help prisoners and they should be able to
8 practice their religion without discrimination.
9 Prisons need accountability to make sure that all
10 staff members really follow their policies. Thank
11 you.

12 CHAIR GARZA: Thank you, Mr. Long.
13 We're going to now hear from Ms. Rice-Minus. Please
14 proceed.

15 MS. RICE-MINUS: Thank you. Good
16 afternoon, Commission. Thank you for the opportunity
17 to speak. It's a privilege to lead Prison
18 Fellowship, the nation's largest Christian nonprofit
19 that serves prisoners, former prisoners, and their
20 families, and we're also a leading advocate for
21 criminal justice reform.

22 Our prison classes, events, and programs
23 reach more than 580,000 prisoners each year. We have
24 over 8,000 volunteers who make that possible, not

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1 only serving those inside, but over 250,000 children
2 who have an incarcerated parent through our Prison
3 Fellowship Angel Tree program.

4 The Prison Fellowship Academy, our most
5 intensive program offered in prison, as well as our
6 other faith-based classes, are currently funded
7 entirely through the generosity of private donors and
8 foundations. We accept no federal or state funds.
9 The Prison Fellowship Academy operates in 208 prisons
10 in 43 states.

11 Prison Fellowship has a long history
12 after being in operation for nearly 50 years of being
13 animated in our support of religious liberty for the
14 all too often marginalized and forgotten population
15 of American prisoners of all faiths. Charles Colson,
16 our late founder, who had been at times both a
17 government lawyer as well as a prisoner in federal
18 prison, personally and passionately support the
19 passage of RLUIPA.

20 We also put forward an amicus brief in
21 the case of Holt v. Hobbs for a Muslim prisoner, and
22 I was grateful to not only watch the oral argument of
23 that before the U.S. Supreme Court, but also that the
24 court upheld the high standard put forward in RLUIPA

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1 and did not water it down.

2 We believe that every incarcerated
3 individual has a right to religious expression, which
4 should be ardently protected from intrusion. While
5 reasonable steps to preserve the safety of
6 correctional facilities are practical, we must be
7 vigilant and uncompromising in our defense of the
8 constitutional rights of men and women in custody.

9 Research has shown that religious
10 participation within prisons can have a positive
11 effect, not only on mental health and behavior, but
12 also the likelihood of successful reintegration into
13 society.

14 When I think about this issue of the
15 impact of COVID-19 on prisons and religious liberty,
16 I have to speak to the staffing shortage we're
17 currently facing in corrections. Prison Fellowship
18 for about over eight years has operated a program
19 called the Prison Fellowship Warden Exchange.

20 We've had hundreds of graduates of
21 corrections leaders who want to see a more
22 transformative prison environment. They want to make
23 a positive impact on corrections and this is a topic
24 that comes up often, how difficult it is to staff our

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1 facilities.

2 The U.S. Census Bureau, in 2022, put out
3 a report showing that corrections staff are at the
4 lowest point in two decades. In fact, the number of
5 corrections dropped by ten percent in 2019 alone.

6 And so, amidst this staffing crisis,
7 prisons have to grapple with the COVID-19 pandemic.
8 Many prisons as a result saw restrictions or
9 suspensions of programming due to COVID-19.

10 A survey by the NIC found that during the
11 pandemic, programming declined by 86 percent in
12 responding DOCs. We certainly experienced a shutting
13 of doors and had to get very creative about how to
14 run our programs, leveraging technology more so, and
15 luckily, we've been able to come back in person in
16 almost all facilities.

17 The use of tablets and digital materials,
18 however, has had a notable impact on access to
19 religious materials within prisons. Most DOCs
20 partner with private tablet providers to provide this
21 technology, and currently 30 states provide tablets
22 to prisoners. However, not all of the content and
23 the functions of the tablets are free. This is
24 typically relied on those who are incarcerated to pay

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1 extra costs for certain features.

2 I want to point out that while tablets
3 can be a useful tool that makes education and
4 rehabilitation programs more widely available, there
5 can be repercussions on certain providers, especially
6 those who are smaller in nature, not being able to
7 get their content onto tablets. And I also want to
8 say that there's no substitute for in-person
9 programming, including faith-based programming and
10 services. Emerging technology should supplement,
11 not supplant, its availability.

12 And while I know the focus of the
13 Commission has been on COVID-19 and its impact to
14 religious liberty, I don't want to miss the
15 opportunity to also just speak to a trend we are
16 seeing at Prison Fellowship of concern to us in
17 general is religious liberty.

18 We have enjoyed strong relationships with
19 chaplaincies in states and in the Bureau of Prisons
20 in terms of religious services, our Angel Tree
21 program, and in some places, our most intensive
22 intervention, the Prison Fellowship Academy, has
23 become part of the reentry division or the evidence-
24 based program division of the Departments of

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1 Corrections.

2 Our Prison Fellowship Academy program
3 values help transform people into good citizens.
4 Studies from the Texas Department of Criminal
5 Justice, Baylor University, and the Minnesota DOC
6 document that the more intensive versions of the PF
7 Academy have led to substantial improvements in post-
8 release outcomes. In fact, those completing our in-
9 prison program show more than 60 percent reduction in
10 re-incarceration.

11 And while many Departments of Corrections
12 have embraced this program and embraced allowing
13 faith-based providers of any kind to be an evidence-
14 based program, the Bureau of Prisons has had an arm's
15 length approach to accepting external providers.

16 Recognizing this, the First Step Act
17 provided provisions that allow for third-party
18 partners to provide faith-based, evidence-based
19 recidivism reduction programs and productive
20 activities. And while the First Step Act was
21 intended to increase program offerings in federal
22 prisons, including partnerships with faith-based
23 organizations, the evidence of that expansion is
24 limited.

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1 The Bureau of Prisons own programs, which
2 are operated by the Bureau of Prisons or contracted,
3 were automatically approved pretty quickly after the
4 First Step Act, whereas external programs have to go
5 through a pretty robust and stringent approval
6 process where they are evaluated for evidence.

7 Prison Fellowship's Academy, although we
8 were able to show the studies that I mentioned
9 earlier, was determined not to be an evidence-based
10 program, and furthermore, not even a productive
11 activity. We were cited for the denial because of
12 BOP's high resource burden to implement the program.

13 And I just want to note that instead of
14 seeing faith-based programs who can supplement what's
15 going on in the Bureau of Prisons as an opportunity,
16 I think it's really unfortunate to see them as a
17 resource burden by the Bureau of Prisons.

18 And while the BOP provides programs that
19 may be open to all faiths and taught from not a
20 specific religious tradition, there are probably many
21 in the BOP who would prefer to be part of a program
22 that is taught from a particular religious tradition.
23 We would welcome the opportunity to allow the Academy
24 to exist in the Bureau of Prisons in the future.

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1 And in conclusion, we know that the
2 transformative impact of treating people with respect
3 and fostering robust religious expression of all
4 faiths is important, and we commend the steps here
5 today on understanding and protecting the religious
6 freedoms of our brothers and sisters in prison.
7 Thank you.

8 CHAIR GARZA: Thank you so much, Ms.
9 Rice-Minus. We're going to now hear from our final
10 speaker, Ms. Sevchenko.

11 MS. SEVCENKO: Thank you very much for
12 the opportunity to testify on this important topic.
13 I know you are at the end of a very long day, so I
14 will keep my remarks brief.

15 The National Council for Incarcerated and
16 Formerly Incarcerated Women and Girls was founded in
17 the prison yard at FCI Danbury by a group of women
18 who were tired of being overlooked in discussions
19 about criminal justice reform. When they were
20 released, they set up the National Council, and we
21 are now a national organization.

22 Our in-reach coordinator, Phyllis Hardy,
23 also known as Grandma, spent 23 years in federal
24 prison, and building on those relationships, she has

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1 created a network in federal and state prison which
2 is second to none, and that is what allows us to give
3 voice to the people, mainly women, but also men, on
4 the inside.

5 Just to be clear, I am not formerly
6 incarcerated. I defer to Mr. Long, whose lived
7 experience, I think, is probably the most important
8 testimony that you have heard here today. I will
9 simply say that the experiences that I've heard from
10 the women and men with whom I've been in communication
11 echo what he has to say.

12 In my written testimony, I describe their
13 experiences and supported that with research and
14 data, and I talk about how the deprivation of
15 religious freedom makes incarceration even more
16 difficult to endure.

17 Religious beliefs should not be turned
18 into a weapon, and yet individual BOP staff will do
19 exactly that. One woman at FCI Dublin asked for
20 clothing that complied with Muslim modesty
21 requirements and she was forced to wear maternity
22 clothes.

23 In another prison, the lieutenant
24 routinely threatens the Native American women with

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1 taking away their sweat lodge in order to silence
2 them, particularly when they complain about the
3 conditions in the prison.

4 Guards at FCI Carswell will harass women
5 who are trying to get together simply to exchange
6 their views from an evangelical Christian
7 perspective. And last year, the Passover meals that
8 were served were rotten and inedible. Those are the
9 stories I was able to verify in about a week. They
10 are not anomalies. They are standard.

11 So, and just to echo, incarcerated people
12 have virtually no way to fight back. The PLRA is a
13 huge roadblock to filing grievances. BOP staff
14 routinely lose the paperwork. They refuse to give
15 out forms. When people then just write it on regular
16 paper, they are told oh, well, this is not a form, so
17 we're not going to accept it. So, basically, there
18 is virtually no way to seek support and to correct
19 any abrogation of religious rights.

20 Faith affirms the humanity and dignity of
21 each person in their capacity as a child of God, and
22 incarceration is the antithesis of that. It strips
23 people of their identity, their individuality,
24 reducing them to registration numbers or last names.

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1 The uniform rigid schedule and rote labor
2 are meant to discourage individuality, enforcing the
3 incarcerated person to submit to authority. In this
4 repressive context, religion offers spiritual
5 freedom, and I would like to offer one example.

6 Trevor Watson stabbed a friend of his
7 over an unpaid debt. He did this in broad daylight.
8 There is no doubt that this happened. What Mr.
9 Watson didn't know was that his friend was a
10 government informant, so instead of doing ten to 15
11 years for aggravated assault, Mr. Watson is in
12 federal prison for 30 years because he was convicted
13 of witness tampering. He is now in the second half
14 of his sentence, the part of the sentence that he
15 should not be serving.

16 And this is how Mr. Watson describes his
17 life. I live in a small caged bathroom with a
18 roommate. Some people would say that no human being
19 could ever find joy, peace, or happiness under these
20 harsh conditions. Well, I beg to differ. Strong,
21 God-loving, positive minds, hearts, souls and spirits
22 turn darkness into eternal sunshine.

23 Conditions don't matter if your peace of
24 mind is in one accord with the Lord. The power in

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1 serving God allows our beautiful future possibilities
2 where we are set free to be limitless. When you have
3 lived in the bathroom for 15 years, God is the key to
4 keep your mind on an even scale of sanity.

5 People who find purpose in religion
6 should be allowed to follow their spiritual path.
7 BOP staff should not be able to vet or undermine their
8 beliefs. For people who have lost everything,
9 government interference with spiritual practice
10 attacks their very essence.

11 Protecting religious freedom is not a
12 question of staffing. Training is important, but
13 what we really need to demand is respect and empathy
14 for incarcerated people, and that should not be too
15 much to ask. Again, I thank you for the opportunity
16 to speak and I'm happy to answer any questions you
17 might have.

18 CHAIR GARZA: Thank you so much, Ms.
19 Sevchenko. At this point, we're going to start
20 accepting questions from commissioners. Please
21 indicate that you would like to be recognized and I
22 will recognize you.

23 COMMISSIONER ADAMS: Madam Chair,
24 Christian Adams.

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1 CHAIR GARZA: Commissioner Adams, please
2 go ahead.

3 COMMISSIONER ADAMS: Mr. Singh, curious
4 question, but kirpan?

5 MR. SINGH: The kirpan.

6 COMMISSIONER ADAMS: Okay.

7 MR. SINGH: Yes.

8 COMMISSIONER ADAMS: How does, how do
9 these federal laws interact with that practice?

10 MR. SINGH: The kirpan has actually been
11 successfully accommodated in numerous arenas outside
12 of prisons, and in fact, we have individuals who have
13 found other ways to accommodate wearing of the kirpan
14 while in detention.

15 That may not be the traditional kirpan
16 one would wear, say, for example, if one was at a
17 gurdwara, a Sikh house of worship, but there have
18 been other, there have been accommodations such as
19 wearing ones that are smaller in size, dull, sealed,
20 or in the form of a necklace.

21 COMMISSIONER ADAMS: Do they have to be
22 metal?

23 MR. SINGH: Kirpans are supposed to be
24 metal, yes.

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1 COMMISSIONER ADAMS: So, you'll admit
2 this is one the harder questions under the federal
3 statutes?

4 MR. SINGH: I will -- I believe that
5 there is plenty of evidence and experience that shows
6 that a solution can be found, and while it may not be
7 exactly what someone would practice, for example, as
8 I said, at a gurdwara, there is a solution that can
9 be found in which to honor the meaning of the, the
10 deeply personal meaning of the article of faith with
11 the individual.

12 COMMISSIONER ADAMS: Right, I understand
13 that you're trying to find -- we don't know a lot
14 about this statute, or at least I don't. You'll
15 agree that this, taking a knife into a prison, is
16 kind of the toughest question under this statute?

17 MR. SINGH: It is a complicated question.

18 COMMISSIONER ADAMS: Okay.

19 MR. SINGH: Absolutely, and that is where
20 I think our experience as an organization and as a
21 community has shown, as one of our other panelist's
22 describe, when people become solution oriented, we
23 find a way to accommodate the practice that allows
24 the individual to maintain that dignity and that

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1 connection to the values that those articles of faith
2 are supposed to inspire.

3 COMMISSIONER ADAMS: Mr. Willis, keeping
4 the point that I don't know a lot about this, what is
5 a sweat lodge?

6 MR. WILLIS: A sweat lodge is a
7 ceremonial location. It's an opportunity to
8 essentially close an individual from the outside
9 world and enter inside of themselves and experience
10 a direct connection to the Creator.

11 COMMISSIONER ADAMS: I mean, is it a
12 building? Is it --

13 MR. WILLIS: It is, it can --

14 COMMISSIONER ADAMS: -- a sleeping bag?
15 Is it a tent?

16 MR. WILLIS: It is an enclosed building,
17 and depending on cultural practices, it can be --
18 it's constructed out of wood. It can be constructed
19 out of other materials, fairly simple materials, so,
20 and it's --

21 COMMISSIONER ADAMS: So, it's like a
22 stand-alone --

23 MR. WILLIS: A stand-alone --

24 COMMISSIONER ADAMS: -- wooden building?

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1 MR. WILLIS: Not necessarily, but yes,
2 there are going to be wooden supports most likely.

3 COMMISSIONER ADAMS: And not to -- I'm
4 just trying to get a sense of the size.

5 MR. WILLIS: Yeah, size, like --

6 COMMISSIONER ADAMS: I mean, not to be
7 demeaning, but shed, is that close?

8 MR. WILLIS: And smaller.

9 (Simultaneous speaking.)

10 MR. WILLIS: Yeah, even smaller.

11 COMMISSIONER ADAMS: Smaller.

12 MR. WILLIS: A lodge can be a spot where
13 folks are, you know, in a prayer position or seated,
14 you know, so it doesn't necessarily have to be a large
15 enclosure.

16 COMMISSIONER ADAMS: Could you convert a
17 room to a sweat lodge, like you don't have to put
18 another structure in a --

19 MR. WILLIS: That would be a question
20 that's -- I would say that would not be accommodating
21 because the enclosure is usually quite ceremonial and
22 culturally required, so unfortunately, I think that's
23 not quite the solution, but there are, you know,
24 mechanisms that would -- and again, these are

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1 temporary. They are temporarily created for the
2 ceremony, so it's not a permanent structure.

3 COMMISSIONER ADAMS: All right, thanks.

4 MR. WILLIS: Yeah, thank you.

5 DR. MCGRAW: Could I add something to
6 that question, those questions? So, those sorts of
7 accommodations are happening all over the country
8 without problems, and so it's not unusual that they
9 are happening. It's just that in certain places,
10 they haven't come to understand that it can be an
11 accommodation, both of those accommodations.

12 So, I just want to emphasize there's a
13 lot of practice across the country within
14 institutions allowing all kinds of accommodations of
15 things that might sound odd to folks that aren't
16 familiar, and so I just want to emphasize this is not
17 unusual, neither one of these, and they're done all
18 the time without problems.

19 MS. SEVCENKO: If I could just add
20 something really quickly, I was at Hazelton last week
21 in West Virginia. Hazelton is a secure facility for
22 women and they have a sweat lodge, so this is not --
23 you know, if they can do it, anyone can do it.

24 CHAIR GARZA: Thank you for your answers,

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1 panelists. I believe Commissioner Jones has a
2 question.

3 COMMISSIONER JONES: Thank you to all of
4 the panelists for being here and for your important
5 testimony. I want to ask you a question, Mr. Long.
6 As a follow-up, I was rather distraught and I remain
7 distraught by your testimony, and, you know, as an
8 initial matter, when was the first time that you have
9 made those allegations against BOP? Was it in the
10 form of a complaint through the PLRA process? Have
11 you filed a lawsuit containing these allegations? I
12 mean, these are really important claims that you are
13 making here today.

14 MR. LONG: I entered at BOP in 2001,
15 directly from 2005 in USP Lee County. We had -- no,
16 I'll make a correction, in 2013 at USP Atwater. The
17 whole, like one of the panelists mentioned, like just
18 getting the IGP, you got to start with, complete --
19 you exhaust your administrative remedy. You've got
20 to get an eight, a nine, and a ten. That's the names
21 of the forms, and like a lot of those things aren't
22 available, so sometimes you do have to write it on
23 paper.

24 I went all the way until I actually got

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1 another white inmate, you know, to file it, my issue,
2 but use his name, and it kind of got through the
3 regional directors, to their office, and like I said,
4 the regional director actually was a staff member at
5 Atwater at that time.

6 So, it was like a lot of the allegations,
7 like, that I claimed for the religious
8 discrimination, like pat-downs and all of those
9 things, these were allegations that I made while I
10 was still in the custody of BOP.

11 COMMISSIONER JONES: So, there was a
12 complaint filed by a white inmate that contained
13 allegations similar to what you shared today --

14 MR. LONG: Yes.

15 COMMISSIONER JONES: -- but you,
16 yourself, have also filed, when you were incarcerated
17 --

18 MR. LONG: Yes.

19 COMMISSIONER JONES: -- you also filed a
20 separate complaint in your own name?

21 MR. LONG: Several complaints, yes, yes.

22 COMMISSIONER JONES: Okay, and how --
23 what happened with that, with those complaints that
24 you filed?

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1 MR. LONG: No, like, it -- what is it, a
2 non -- like they conducted an interview of the officer
3 and it came back nonconclusive or whatever, you know,
4 or it would just get lost, and then a lot of times
5 they'll hold your response to your grievance and then
6 they'll say you didn't reach the -- because once you
7 get a response back from your original complaint, you
8 have 30 days to file.

9 COMMISSIONER JONES: To file a lawsuit?

10 MR. LONG: Yes, and then, and after that,
11 they tell you this is the process of filing your tort
12 claim. You can file a tort claim for whatever
13 injuries that you are alleging in your grievance, but
14 I've never seen anyone actually successfully complete
15 the IGP process.

16 COMMISSIONER JONES: Okay, did you file
17 a lawsuit after the allegation?

18 MR. LONG: Yes, I did file a tort claim,
19 you know, for like destruction, because like one of
20 the issues was they tore my Qur'an up, you know, and
21 confiscated my prayer rug because they said it had
22 gang colors in it and things of that nature, and like
23 I said, the problem was I didn't exhaust fully my
24 administrative remedy was something that came up.

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1 COMMISSIONER JONES: Okay, so it was a
2 technicality that got the lawsuit kicked out of
3 federal court?

4 MR. LONG: Yeah, that was their claim,
5 but yeah.

6 COMMISSIONER JONES: Yeah, okay, thank
7 you.

8 CHAIR GARZA: Are there others on the
9 phone line that would like to be recognized?

10 COMMISSIONER GILCHRIST: Madam Chair,
11 this is Gilchrist.

12 CHAIR GARZA: Go ahead, Commissioner
13 Gilchrist.

14 COMMISSIONER GILCHRIST: Yeah, I just
15 wanted to make a comment and thank all of the
16 panelists for today. This has been extraordinarily
17 informative and I appreciate the testimony today.
18 You know, one of the things that this highlights
19 remarkably is that religion does play a significant
20 role in the lives, of transforming people's lives.
21 And I want to thank Commissioner Kirsanow and our
22 Commission for taking this subject up, and I
23 certainly look forward to our further investigation,
24 but again, thanks to all of the panelists that

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1 presented today. Thank you, Madam Chair.

2 CHAIR GARZA: Thank you. Is there
3 anyone else on the --

4 COMMISSIONER JONES: Yes, Madam Chair,
5 this is Commissioner Jones.

6 CHAIR GARZA: Go ahead, Commissioner
7 Jones.

8 COMMISSIONER JONES: I didn't ask this
9 question of earlier panels, but since we have some
10 time, I wanted to just really raise this issue of
11 inmates having to pay in the course of exercising
12 their religious freedom.

13 You know, we heard the example of someone
14 who would have to pay, I don't know, ten cents I think
15 was the specific example, to send an email, and it
16 seems to me that that is particularly burdensome for
17 an individual who has little to no income in an
18 incarcerated setting.

19 Can one or more of you speak to how you've
20 seen this issue of payment playing out in the ability
21 of inmates to vindicate their religious liberties and
22 perhaps anything that your organizations have been
23 doing to work to address this from the outside, and
24 any proposed solutions for this? Thank you.

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1 MS. RICE-MINUS: Commissioner Jones,
2 thank you for the question. I think I mentioned
3 briefly just, you know, there are some advantages, of
4 course, that come with digital technology being more
5 readily available in terms of access to religious
6 content.

7 I think, however, you know, there's two
8 main providers for religious tablets, and they're
9 competitive with one another and they're for profit,
10 and so navigating those along with navigating access
11 to each Departments of Correction as well as the
12 Bureau of Prisons is a pretty complex process.

13 I mean, we have several people on staff
14 that our nonprofit just to work on this project alone.
15 So, smaller institutions or faith-based organizations
16 getting access onto that, those platforms, or only
17 getting access in certain states or one prison is
18 something, you know, we actually have a working group
19 of other ministries who have, are trying to navigate
20 this and figure it out.

21 So, I would just raise that it's not only
22 an issue, I think, for the incarcerated individuals
23 themselves, but also for the faith-based
24 organizations or institutions that might be trying to

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1 get access onto the tablet platform itself, and
2 sometimes there is a cost to that as well.

3 And then, you know, I think about your
4 question of the impact on incarcerated individuals.
5 I can remember my nephew who was just recently
6 released from a state prison, but was incarcerated
7 for a long time, and at one point, you know, his mom
8 had to say I can't keep getting your calls. I'm
9 sorry. We're going to have to have less frequent
10 calls because I just simply -- I've got other kids
11 and I just, I can't afford it at this point, and so
12 that's a common -- that's not an uncommon situation,
13 right? The burden is not only on the incarcerated
14 individuals, but also their families, and there's a
15 26 percent loss of income to families on average when
16 a loved one is incarcerated, and so that burden is
17 not just the family connection, but it could also be,
18 you know, a religious mentor or provider that they're
19 trying to get in touch with, right?

20 And so, as a next step, I think, you know,
21 continuing to investigate these issues and hearing,
22 perhaps a listening tour from the incarcerated
23 individuals themselves, would be really helpful, and
24 also perhaps looking at the pros and cons and access

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1 across tablet providers in state and BOP corrections.
2 A report on that would also be useful.

3 MS. SEVCENKO: I just want to add briefly
4 one of the problems is that if you try to support
5 someone who is incarcerated by sending them money,
6 the prison will then take the money, and not only
7 will they take the money, they will then decide that
8 the person has another source of income, and so if
9 they have restitution payments, for instance, they
10 will increase those restitution payments.

11 So, I agree wholeheartedly that it would
12 be very helpful to speak to incarcerated people
13 themselves, but if there were some way to use the
14 First Amendment to isolate payments from faith-based
15 organizations to people on the inside so that they
16 would get the benefits and not have it end up
17 boomeranging against them, so that not only do they
18 not get, you know, the faith-based materials that
19 they need, but they end up then being in a worse
20 situation than they were before.

21 COMMISSIONER JONES: I want to be very
22 clear about this for the record. What you're
23 proposing is sort of a First Amendment rule, so to
24 speak, a freedom of religious exception to a

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1 procedure where income would otherwise be applied
2 towards restitution or any other category of debt
3 that would attach to an inmate.

4 MS. SEVCENKO: Yeah, exactly, because
5 it's interfering with the free exercise of religion.
6 If you can't get a Qur'an, if you can't get the Bible,
7 then, you know, and someone tries to send you money
8 to be able to get one and that money gets taken away,
9 then, you know, you don't have access to that
10 spiritual support that you need.

11 MS. RICE-MINUS: Just one more note,
12 Commissioner Jones, to that point. We actually offer
13 what we call the chaplain storehouse, where we make
14 Christian content Bibles available free of charge and
15 they can be ordered by chaplains. Most states'
16 chaplains, like where they have demand from
17 particular incarcerated individuals who want to
18 practice their Christian faith, are making use of it.

19 The Bureau of Prisons in particular has
20 very strict requirements related to anything that's
21 a donation, and so the restrictions for the use of
22 the storehouse seem to be, well, there's just much
23 less use of the storehouse in the Bureau of Prisons
24 than otherwise, and so that is content that would be

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1 readily available free of charge to government
2 institutions.

3 COMMISSIONER JONES: What's the theory
4 on restricting, I guess, the donation of a Bible under
5 the BOP rule that you just mentioned?

6 MS. RICE-MINUS: I would love to hear
7 that answer from the Bureau of Prisons. I think
8 maybe it's just an effort to keep things as equalized
9 as possible.

10 COMMISSIONER JONES: Yeah.

11 MS. RICE-MINUS: If there's not the
12 availability of other -- I think they don't want to
13 show favorability to particular institutions, but if
14 it's available for free and it's at the demand of the
15 incarcerated individuals, most states have allowed
16 for this, so.

17 COMMISSIONER JONES: Are you aware of
18 inmates selling Bibles to each other for profit?

19 MS. RICE-MINUS: I'm not aware of that,
20 no.

21 COMMISSIONER JONES: Okay.

22 CHAIR GARZA: I'm going to do one last
23 check for any remaining questions if there is anybody
24 that would like to be recognized? Hearing none, I

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1 do want to thank our panelists. I feel like you've
2 given us a lot to think about, especially, and it was
3 mentioned earlier, our investigation on crime
4 victimization and, you know, access to religion, and
5 religious services and support is really critical
6 against recidivism.

7 I think it's critical to the spiritual
8 health of individuals, especially when they're going
9 through a very challenging time in their life and are
10 incarcerated. So, I appreciate all of the information
11 and the expertise that you all have brought to us
12 today.

13 So, this does bring us to the end of our
14 briefing, and again, I want to express my sincerest
15 thanks to all of you who attended in person and all
16 of the folks that attended online. Again, this has
17 been tremendously informative.

18 I do want to say a special thanks to
19 Commissioner Kirsanow for spearheading this project,
20 and I'm very excited about what we're going to put
21 together as a result. So, on behalf of the entire
22 Commission, thank you again.

23 And just as a reminder for the record for
24 this briefing, you know, if anybody would like to

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1 submit anything in written testimony, in written
2 form, you can submit it by June 17, 2024. Panelists
3 or members of the public, please submit any materials
4 that you would like for consideration regarding this
5 topic by mail to the U.S. Commission on Civil Rights
6 Office of Civil Rights Evaluation. You can address
7 it to 1331 Pennsylvania Avenue, NW, Suite 1150,
8 Washington, D.C. 20425, or you can email them, email
9 your materials to rfip@usccr.gov.

10 I'd ask that our attendees move any
11 continuing conversations outside of the hearing room
12 so our staff can complete any logistics necessary to
13 close out. And having concluded this public briefing
14 on the federal role in enforcing religious freedoms
15 in prison, I hereby adjourn this briefing at 3:02
16 p.m. Eastern Time. Thank you all so much.

17 (Whereupon, the above-entitled matter
18 went off the record at 3:02 p.m.)

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