

# ENFORCING RELIGIOUS FREEDOM IN PRISONS



BRIEFING  
REPORT



APRIL 2025

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# **Enforcing Religious Freedoms in Prison: 2017-2023**

United States Commission on Civil Rights  
2025 Briefing Report



## UNITED STATES COMMISSION ON CIVIL RIGHTS

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### Letter of Transmittal

April 16, 2025

President Donald Trump  
Vice President J.D. Vance  
Speaker of the House Mike Johnson  
President Pro Tempore of the Senate Chuck Grassley

Dear President Trump, Vice President Vance, Speaker Johnson, and President Pro Tempore Grassley,

On behalf of the United States Commission on Civil Rights, I am pleased to transmit our briefing report, *Enforcing Religious Freedoms in Prison: 2017–2023*. This report, approved by a majority of the Commission, is also available on our website at [www.usccr.gov](http://www.usccr.gov).

Religious liberty is a cornerstone of American democracy and must not be forfeited at the prison gate. While correctional institutions must ensure safety and order, they must also protect the dignity and rights of every person in their care—including the right to worship freely.

This report updates the Commission’s 2008 publication on the enforcement of religious freedom in prisons and jails. It investigates the current landscape of religious accommodations within carceral institutions and examines the extent to which incarcerated individuals—particularly those of minority faiths—are able to freely practice their religion.

The Commission’s investigation reveals persistent and systemic barriers to religious freedom in prison. Incarcerated individuals from minority faiths—such as Muslims, Sikhs, Jews, and Indigenous religions—continue to encounter disproportionate obstacles compared to Christian prisoners. These barriers include limited access to worship spaces, clergy, and religious services; inadequate provision of religious diets; restrictions on religious clothing and grooming; and difficulty obtaining sacred texts. The report highlights how institutional rules, lack of religious diversity among staff and volunteers, and misapplication of security concerns often serve as unjustified impediments to free religious expression.

Among the most serious concerns identified are challenges in obtaining religious accommodations. These include recurring issues such as mislabeled halal meals, denial of vegetarian diets for Sikh prisoners, bans on religious head coverings, and punitive hair-cutting policies that conflict with Native American spiritual practices. Some prisoners report that requests for accommodation are delayed, denied, or met with misunderstanding or outright bias.

Furthermore, when prisoners attempt to seek redress through the grievance process, they often face procedural roadblocks and retaliation. Many report that grievances are discarded or ignored, and that filing complaints can result in punitive measures such as cell searches or solitary confinement. These practices undermine not only the right to religious freedom but also the broader right to due process and fair treatment under the law.

Despite these challenges, the report also identifies paths forward. It emphasizes the importance of expanding religious diversity among prison chaplains and volunteers, improving transparency and accountability in the grievance process, and ensuring fair access to religious diets, services, and texts. This report reflects the Commission's ongoing commitment to protecting the civil rights of all people—including those behind bars.

We hope this report will assist Congress, the Executive Branch, and state and local policymakers in evaluating and improving efforts to protect religious liberty for incarcerated individuals.

For the Commission,

A handwritten signature in blue ink, appearing to read "Rochelle M. Garza". The signature is stylized with a large, sweeping flourish at the end.

Rochelle M. Garza

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## EXECUTIVE SUMMARY

Religious freedom is a foundational right in the United States.<sup>1</sup> Prisoners lose many rights during confinement, but they retain their religious exercise rights. These rights are protected under the Constitution and federal statutes including the Civil Rights of Institutionalized Persons Act (CRIPA), the Religious Freedom Restoration Act (RFRA), and the Religious Land Use and Institutionalized Persons Act (RLUIPA). Because of the importance of religious freedom, many states also protect these rights with similar provisions written into their state constitutions and state laws that are modeled after RFRA.

This report provides an update to the U.S. Commission on Civil Rights' 2008 statutory enforcement report: *Enforcing Religious Freedom in Prison*. That report examined the legal foundation of prisoners' religious exercise rights, and the rules and guidelines related to religion in federal and state prisons and local jails. It also researched the mechanisms prisons and jails use to facilitate religious requests (where feasible), and to record and process prisoner grievances related to religious exercise. Given the significance of this topic, the Commission voted in December 2023 to update its 2008 report.

The purpose of this update is to evaluate how incarcerated individuals can exercise their religious freedoms, as well as assess how the religious composition of prisoners and court interpretations of RLUIPA claims may have changed since 2007.<sup>2</sup> This report also examines the grievance process, as well as grievances from a sample of carceral facilities, to determine if prisoner complaints about barriers to practicing religion have substantially changed since 2007. Lastly, the unprecedented pandemic that began in 2020 warrants the Commission's attention to religious freedom in prison as restrictions enacted in response to COVID-19 may have introduced novel and lasting impediments to prisoners' free exercise of religion.

To provide the most thorough update possible, this report uses social science methodologies to synthesize the highest quality academic, governmental, and non-profit research about religious freedom in prisons. The Commission sent formal interrogatory and document requests to the Department of Justice and the same sample of 20 facilities selected for deeper investigation in the 2008 report. In addition, the Commission held a public briefing on May 17, 2024, and received written and oral testimony from academic and policy experts, religious leaders, direct service providers, impacted persons, and prisoners' religious rights advocates. Finally, the Commission collected and analyzed data from 843 RLUIPA cases decided from 2017-2023.

Every person in the United States has a right to some measure of religious freedom regardless of their incarceration status. At the Commission's briefing, Shaykh Rami Nsour, Founding Director

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<sup>1</sup> Michael McConnell, "Why Protect Religious Freedom?" *Yale Law Journal*, 2013, vol. 123, no. 3, [https://openyls.law.yale.edu/bitstream/handle/20.500.13051/10104/20\\_123YaleLJ770\\_2013\\_2014\\_.pdf?sequence=2](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/10104/20_123YaleLJ770_2013_2014_.pdf?sequence=2).

<sup>2</sup> 2007 was the last year studied by the Commission, although the report was issued in 2008.

of a non-profit that supports incarcerated Muslims, testified to the importance of protecting the free exercise of religion in prisons:

Supporting the free practice of religion is not about supporting a self-help program because of the impact it can have on the desistance of crime. This is reminding us about who we are as Americans, that every single person on this land, whether incarcerated or not, has the constitutional right to freely practice the religion of their choice when it poses no threat to the safety and security of others.<sup>3</sup>

While religious practice can be meaningful for anyone,<sup>4</sup> its benefits are particularly salient during confinement. For individuals, religion can provide a sense of self-worth while living with shame and social isolation.<sup>5</sup> Research demonstrates that religious programming<sup>6</sup> can play a critical role in helping some prisoners find meaning and transformation while incarcerated and after release.<sup>7</sup> These advantages extend beyond individuals, as religious programming also provides significant rehabilitative potential that can benefit society.<sup>8</sup>

Investigating alleged infringements of religious freedom in prisons is challenging because carceral facilities are functionally closed to outsiders,<sup>9</sup> including the Commission, despite being publicly funded institutions. Though the United States has one of the highest incarceration rates in the

<sup>3</sup> Shaykh Rami Nsour, testimony, *The Federal Role in Enforcing Religious Freedoms in Prison* Briefing Before the U.S. Comm'n on Civil Rights, Washington, DC, May 17, 2024, transcript, p. 105 (hereinafter cited at *Enforcing Religious Freedoms in Prison* Briefing testimony).

<sup>4</sup> Israela Silberman, "Religion as a Meaning System: Implications for the New Millennium," *Journal of Social Issues*, 2005, vol. 61, no. 4, <https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-4560.2005.00425.x>.

<sup>5</sup> Todd R. Clear, Patricia L. Hardyman, Bruce Stout, Karol Lucken, and Harry R. Dammer, "The Value of Religion in Prison: An Inmate Perspective," *Journal of Contemporary Criminal Justice*, 2000, vol. 16, no. 1, [https://www.researchgate.net/profile/Bruce-Stout/publication/249713505\\_The\\_Value\\_of\\_Religion\\_in\\_PrisonAn\\_Inmate\\_Perspective/links/5750890408aef67d0d89dedb/The-Value-of-Religion-in-PrisonAn-Inmate-Perspective.pdf](https://www.researchgate.net/profile/Bruce-Stout/publication/249713505_The_Value_of_Religion_in_PrisonAn_Inmate_Perspective/links/5750890408aef67d0d89dedb/The-Value-of-Religion-in-PrisonAn-Inmate-Perspective.pdf);

Tanya Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration* (Boston: Beacon Press, 2017).

<sup>6</sup> Religious programming is an umbrella term carceral facilities use to describe all religious programs, education, worship, and chaplaincy services. See e.g., Bureau of Prisons, "Religious Programs," [https://www.bop.gov/inmates/custody\\_and\\_care/religious\\_programs.jsp](https://www.bop.gov/inmates/custody_and_care/religious_programs.jsp).

<sup>7</sup> Clear, Hardyman, Stout, Lucken, and Dammer, "The Value of Religion in Prison: An Inmate Perspective"; Jim Thomas and Barbara H. Zaitzow, "Conning or Conversion? The Role of Religion in Prison Coping" *Prison Journal*, 2006, vol. 86, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/0032885506287952>; Irene Becci and Joshua Dubler, "Religion and Religions in Prisons: Observations from the United States and Europe," *Journal for the Scientific Study of Religion*, 2017, vol. 56, no. 2, <https://onlinelibrary.wiley.com/doi/abs/10.1111/jssr.12352>.

<sup>8</sup> Sung Joon Jang and Bryon R. Johnson, "Religion and Rehabilitation as Moral Reform: Conceptualization and Preliminary Evidence," *American Journal of Criminal Justice*, 2022, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9748388/>; Kent R. Kerley, Heith Copes, Richard Tewksbury, and Dean A. Dabney, "Examining the Relationship Between Religiosity and Self-Control as Predictors of Prison Deviance," *International Journal of Offender Therapy and Comparative Criminology*, 2011, vol. 55, no. 8, <https://journals.sagepub.com/doi/abs/10.1177/0306624X11387523>.

<sup>9</sup> Keramet Reiter, "Making Windows in Walls: Strategies for Prison Research," *Qualitative Inquiry*, 2014, vol. 20, no. 4, <https://journals.sagepub.com/doi/abs/10.1177/1077800413515831>; Michele Deitch, "But Who Oversees the Overseers?: The Status of Prison and Jail Oversight in the United States," *Am. J. Crim. L.*, 2020, vol. 47, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajcl47&div=13&id=&page=>.

world,<sup>10</sup> information about how prisoners spend their time is not well-known or documented.<sup>11</sup> Local jails, state prisons, and federal prisons do not capture standardized data about conditions of confinement, and the data that do exist are rarely publicly available.<sup>12</sup> For instance, there are no publicly available data regarding prisoners' religious demographics. Moreover, prison administrators and departments of correction (DOCs) are generally wary of outside research, which often exacerbates the lack of institutional transparency.<sup>13</sup> Additionally, while state and local DOCs may choose to follow federal guidelines and procedures, these departments have authority to independently manage and operate their own facilities.<sup>14</sup> However, the Department of Justice can open investigations and enter into settlement agreements with DOCs alleged to have violated prisoners' civil rights.<sup>15</sup>

Though scant, research about confinement demonstrates the central role that religion plays for some prisoners.<sup>16</sup> Practicing religion allows prisoners a way to cope with feelings of depression and social exclusion that accompany a prison sentence.<sup>17</sup> Religious teachings tend to promote compassion, peace and reconciliation, helping others, and forgiveness, regardless of a person's past behaviors,<sup>18</sup> so religion can provide prisoners a sense of meaning, purpose, and community.<sup>19</sup> In this way, personal religious faith can be a pathway to rehabilitation because it requires prisoners

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<sup>10</sup> Emily Widra, "States of Incarceration: The Global Context 2024," Prison Policy Initiative, June 2024, <https://www.prisonpolicy.org/global/2024.html>.

<sup>11</sup> Bruce Western, "Inside the Box: Safety, Health, and Isolation in Prison," *Journal of Economic Perspectives*, 2021, vol. 35, no. 4, <https://www.aeaweb.org/articles?id=10.1257/jep.35.4.97>.

<sup>12</sup> Jeremy Travis, Bruce Western, and F. Stevens Redburn, "The Growth of Incarceration in The United States: Exploring Causes and Consequences," National Research Council of the National Academies, 2014, <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

<sup>13</sup> Janani Umamaheswar, "Gate Keeping and the Politics of Access to Prisons: Implications for Qualitative Prison Research," *Journal of Qualitative Criminal Justice & Criminology*, 2014, vol. 2, no. 2, <https://www.qualitativecriminology.com/pub/v2i2p3/release/1>; David C. Fathi, "The Challenge of Prison Oversight," *Am. Crim. L. Rev.*, 2010, vol. 47, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/amcrimlr47&div=50&id=&page=>.

<sup>14</sup> See *infra* notes (Chapter 2 discussing similarities of state religious accommodations and grievance policies to BOP policies).

<sup>15</sup> See e.g., U.S. Department of Justice, "Special Litigation Section Case Summaries," <https://www.justice.gov/crt/special-litigation-section-case-summaries#corrections-summ>.

<sup>16</sup> Western, "Inside the Box: Safety, Health, and Isolation in Prison."

<sup>17</sup> Todd R. Clear, Bruce D. Stout, Harry R. Dammer, Linda Kelly, Patricia L. Hardyman, and Carol Shapiro, "Does Involvement in Religion Help Prisoners Adjust to Prison?," *National Council on Crime and Delinquency Focus*, 1992, vol. 19, no. 7, <https://www.issueab.org/resources/3385/3385.pdf>, p. 7. See also Mark S. Hamm, "Terrorist Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups," National Institute of Justice, Dec. 2007, <https://www.ojp.gov/pdffiles1/nij/grants/220957.pdf>.

<sup>18</sup> Thomas and Zaitzow, "Conning or Conversion? The Role of Religion in Prison Coping"; Neal Krause and Elena Bastida, "Core Religious Beliefs and Providing Support to Others in Late Life," *Mental Health, Religion, and Culture*, 2009, vol. 12, no. 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2947450/pdf/nihms180612.pdf>.

<sup>19</sup> Rachel Ellis, "Redemption and Reproach: Religion and Carceral Control in Action Among Women in Prison," *Criminology*, 2020, vol. 58, no. 4, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9125.12258>; see also Reverend Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 128; Imam Abdul Hafiz, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 80.

to examine and fundamentally change their self-concept, motivations, and actions.<sup>20</sup> Catherine Sevchenko, Senior Legal Counsel for the National Council for Incarcerated and Formerly Incarcerated Women and Girls, testified at the briefing that:

Faith affirms the humanity and dignity of each person . . . and incarceration is the antithesis of that. It strips people of their identity, their individuality, reducing them to registration numbers or last names. The uniform rigid schedule and rote labor are meant to discourage individuality, enforcing the incarcerated person to submit to authority. In this repressive context, religion offers spiritual freedom.<sup>21</sup>

Additionally, being part of a religious group can be functional as it gives prisoners a sense of belonging and protection in the inherently violent prison environment.<sup>22</sup> Sometimes, participating in religious programming confers material privileges, such as access to outside food,<sup>23</sup> toiletries,<sup>24</sup> and even being able to live in special religious housing.<sup>25</sup>

Prisoner access to religious programming can also serve an important purpose for prisons. Worship and religious study can provide structure to daily life in prison and give prisoners a way to eliminate idle time that can undermine facility security.<sup>26</sup> Research suggests that participating in religious programming reduces prisoner misconduct during incarceration.<sup>27</sup> While other types of programming have similar effects,<sup>28</sup> budget pressures have reduced many of those, including educational programming that used to be most prominent.<sup>29</sup>

Religious programming is also financially beneficial for prisons because it is largely organized and conducted by volunteers, making it no or very low cost for prisons.<sup>30</sup> In this era when the ideal of

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<sup>20</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective,” p. 58; see also Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*.

<sup>21</sup> Catherine Sevchenko, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 179-80.

<sup>22</sup> Kenneth L. Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons,” *Race and Social Problems*, 2009, vol. 1, no. 1, <https://link.springer.com/article/10.1007/s12552-009-9003-5>, p. 4; see also Michael Hallett, Joshua Hays, Byron Johnson, Sung Jang, and Grant Duwe, *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (New York: Routledge, 2016).

<sup>23</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>24</sup> Rachel Ellis, “Prisons as Porous Institutions,” *Theory and Society*, 2021, vol. 50, no. 2, <https://link.springer.com/article/10.1007/s11186-020-09426-w>.

<sup>25</sup> Michael Hallett and Byron Johnson, “The Resurgence of Religion in America’s Prisons,” *Religions*, 2014, vol. 5, no. 3, <https://www.mdpi.com/2077-1444/5/3/663>.

<sup>26</sup> Western, “Inside the Box: Safety, Health, and Isolation in Prison.”

<sup>27</sup> Kent R. Kerley, Heith Copes, Richard Tewksbury, and Dean A. Dabney, “Examining the Relationship Between Religiosity and Self-Control as Predictors of Prison Deviance,” *International Journal of Offender Therapy and Comparative Criminology*, 2011, vol. 55, no. 8, <https://journals.sagepub.com/doi/abs/10.1177/0306624X11387523>.

<sup>28</sup> Grant Duwe, “The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes,” National Institute of Justice, June 2017, <https://www.ojp.gov/pdffiles1/nij/250476.pdf>.

<sup>29</sup> Meghan J. Ryan, “Science and the New Rehabilitation,” *Va. J. Crim. L.*, 2015, vol. 3, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/virjcr3&div=10&id=&page=>.

<sup>30</sup> Thomas P. O’Connor and Michael Perreyclear, “Prison Religion in Action and Its Influence on Offender Rehabilitation,” In *Religion, the Community, and the Rehabilitation of Criminal Offenders* (New York: Routledge, 2013), pp. 11-33; see also Hallett and Johnson, “The Resurgence of Religion in America’s Prisons.”

rehabilitation during confinement has shifted responsibility from the state to the individual,<sup>31</sup> religion is now the primary way that prisoners can access programming aimed at rehabilitation.<sup>32</sup>

Religious freedom in prison is constitutionally protected and beneficial for prisoners and prison facilities. Nevertheless, access to religious practice must be balanced against prison officials' legitimate concerns, such as cost, staffing, and prison safety and security. Reconciling rights with prison constraints has proven to be a significant challenge for carceral facilities and courts.<sup>33</sup> When prisoners encounter a perceived civil rights violation, the Prison Litigation Reform Act (PLRA) of 1996 mandates that they can only file suit in federal court to seek redress after exhausting all administrative remedies at their facility.<sup>34</sup> These administrative remedies center on an internal grievance process governed by strict procedural requirements<sup>35</sup> and an overall lack of transparency.<sup>36</sup> Perhaps most importantly, prisoner grievances are subject to the mercy of the very correctional officers and prison administrators who may be responsible for committing the alleged violations, which can lead to retaliation by staff against prisoners who submit complaints.<sup>37</sup> Judith Shklar, an influential political theorist, argued that “in all branches of government, rather than policing prison officials, the relevant institutional actors instead align themselves with the officials they are supposed to regulate, leaving people in custody unprotected and vulnerable to abuse by the very actors sworn to keep them safe.”<sup>38</sup>

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<sup>31</sup> Becci and Dubler, “Religion and Religions in Prisons: Observations from the United States and Europe.”

<sup>32</sup> Clear, Stout, Dammer, Kelly, Hardyman, and Shapiro, “Does Involvement in Religion Help Prisoners Adjust to Prison?”; Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping”; Hallett and Johnson, “The Resurgence of Religion in America’s Prisons.”

<sup>33</sup> Kitty Calavita and Valerie Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic* (University of California Press, 2015); Shaun M. Gann and John W. Palmer, *Constitutional Rights of Prisoners* (Routledge, 2021).

<sup>34</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant part at 42 U.S.C. § 1997e).

<sup>35</sup> All state and local carceral facilities have an internal grievance process that can include an informal and formal stage for addressing prisoners’ complaints. The requirements and protocols can vary widely depending on the facility. For a full discussion of the grievance process, see *infra* notes 472-554. See also Joshua McDaniel, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 35; Camille Varone, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 45; Barbara McGraw, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 150; Priyah Kaul, Greer Donley, Ben Cavaturo, Anelisa Benavides, Jessica Kincaid, and Joseph Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey,” Oct. 18, 2015, <https://www.law.umich.edu/special/policyclearinghouse/Site%20Documents/FOIAReport10.18.15.2.pdf>.

<sup>36</sup> See e.g., Prison Justice League, “A ‘Rigged System’: How the Texas Grievance System Fails Prisoners and the Public,” June 2017, [https://www.prisonpolicy.org/scans/prison\\_justice\\_league/a\\_rigged\\_system.pdf](https://www.prisonpolicy.org/scans/prison_justice_league/a_rigged_system.pdf); see also Barbara McGraw, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 151.

<sup>37</sup> See e.g., Van Swearingen, “Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Grievance Process,” *Calif. L. Rev.*, 2008, vol. 96, [https://heinonline.org/HOL/LandingPage?handle=hein.journals/calr96&div=39&id=&page=](https://heinonline.org/HOL/LandingPage?handle=hein.journals/calr96&div=39&id=&page=;); Kitty Calavita and Valerie Jenness, “Inside the Pyramid of Disputes: Naming Problems and Filing Grievances in California Prisons,” *Social Problems*, 2013, vol. 60, no. 1, <https://academic.oup.com/socpro/article-abstract/60/1/50/1689590>; see also Michael Willis, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 161; Colie Levar Long, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 169.

<sup>38</sup> Judith Shklar, “The Liberalism of Fear,” in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Harvard University Press, 1989).

The Commission's 2008 report showed that religious grievances made up a small proportion of all grievances filed in a sample of prisons and jails in the study period.<sup>39</sup> This finding suggests that prisoners may be more likely to file grievances for other more pressing rights violations (e.g., use of excessive force, physical and sexual assault, unwarranted solitary confinement, unsanitary living conditions) during confinement.<sup>40</sup> Of the grievances that were religious, the 2008 report showed that non-Christian prisoners filed more grievances than those of mainstream Christian denominations.<sup>41</sup> This updated report has the same finding despite being 16 years later. The consistency of this finding may be due to most religious programming in prisons being Christian in nature.<sup>42</sup> Additionally, research shows that most prison volunteers and chaplains are Christian, which may limit religious minorities' access to faith-specific services and programming.<sup>43</sup> For instance, some facilities forbid religious groups to meet without an outside volunteer, which makes the lack of non-Christian volunteers most burdensome for religious minorities.<sup>44</sup> The lack of diversity among leadership, volunteers, and prison staff may also encourage denials of religious accommodations due to either a lack of education or a bias against certain religions.<sup>45</sup>

Like grievances, most RLUIPA cases decided in federal court during the study period for this updated report were brought by non-Christian prisoners.<sup>46</sup> As in the 2008 report, Muslim prisoners brought the largest number of cases.<sup>47</sup> Compared to the 2008 report, however, there were many more overall cases brought by prisoners with a RLUIPA claim within the period of this update (1,741<sup>48</sup> vs. 250). Despite the substantially higher number of cases analyzed for this report, the overall results are similar to those from the 2008 report. Most prisoner cases were brought by non-Christian male prisoners, most of them were brought *pro se* (i.e., on one's own behalf), and it was rare for the plaintiff to prevail partially or entirely.<sup>49</sup> It is important to note that this update partly coincided with substantial prison programming changes that limited prisoners' access to religious services during the COVID-19 pandemic.<sup>50</sup> Taken together, this report demonstrates that prisoners

<sup>39</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, <https://www.usccr.gov/files/pubs/docs/STAT2008ERFIP.pdf>.

<sup>40</sup> Western, "Inside the Box: Safety, Health, and Isolation in Prison."

<sup>41</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>42</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*; see also Rachel Ellis, "Prisons as Porous Institutions."

<sup>43</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains," Mar. 22, 2012, <https://www.pewresearch.org/religion/2012/03/22/prison-chaplains-exec/>; Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program," July 2021, <https://oig.justice.gov/sites/default/files/reports/21-091.pdf>; Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*.

<sup>44</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*.

<sup>45</sup> See e.g., Marcus, "Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons."

<sup>46</sup> See Table 3.5 (RLUIPA case analysis).

<sup>47</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>48</sup> This is the total number of RLUIPA cases decided from 2017-2023. For the analysis we use the most recent iteration of the case where the RLUIPA claim was settled (N=843). See Chapter 3 for details.

<sup>49</sup> See Table 3.5 (discussing RLUIPA case analysis).

<sup>50</sup> E. Ann Carson, Melissa Nadel, and Gerry Gaes, "Impact of COVID-19 on State and Federal Prisons, March 2020-February 2021," Bureau of Justice Statistics, Aug. 2022, <https://bjs.ojp.gov/content/pub/pdf/icsfp2021.pdf>.



continue to encounter substantial barriers to redress limits imposed on their free exercise of religion.

This report is broken down into three chapters. Chapter 1 provides an overview of the legal foundation of prisoners' religious exercise rights, religion's role and practice in prison, and the changing religious landscape of the United States. The chapter ends with an introduction to the procedures prisons and jails use to address prisoners' grievances. Chapter 2 provides an analysis of the information the Commission collected through formal interrogatory and document requests from a sample of 20 carceral facilities around the country. The sample includes eight federal institutions, 10 state institutions, and two county jails. However, it is important to note that two state facilities did not respond to the Commission's interrogatories and neither of the local jails responded to the Commission's request. The lack of response from these institutions demonstrates one of the many barriers researchers encounter in obtaining information about the protection of prisoners' civil rights. Chapter 2 also provides a summary of the grievances related to religious discrimination in prisons filed with the Commission. The chapter closes with a discussion of the impact of COVID-19 and its continuing legacy on prisoners' ability to exercise their religious liberties. Chapter 3 concludes the report with an analysis of 843 reported RLUIPA cases decided from 2017-2023, examining trends by religion, judicial circuit, type of accommodation requests, and court dispositions.

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## CHAPTER 1: Introduction and Overview

This report provides an update to the Commission’s 2008 statutory enforcement report analyzing the federal government’s efforts to enforce civil rights laws prohibiting religious discrimination in federal and state prisons and local jails. Because it has been 16 years since the original report, this update examines if there have been changes in the law that impact incarcerated individuals’ religious rights. The last years of this update’s study period (2017-2023) coincide with the COVID-19 pandemic, so this report investigates whether restrictions implemented during that time impacted prisoners’ meaningful access to religious services and programs.

Like the 2008 report, this update reviews federal and state laws and regulations applicable to incarcerated individuals’ religious observances, examines prison administrators’ role in safeguarding prisoners’ religious rights, and evaluates the role of the U.S. Department of Justice (DOJ) and the judiciary in enforcing and interpreting laws protecting those rights. The evidence for both reports consists of quantitative and qualitative data from the Commission’s briefing, RLUIPA court cases in each period, and formal interrogatory and document requests sent to the Bureau of Prisons (BOP) and a sample of 20 facilities, including requests for grievance records. The 2008 report used data from a small sample of facilities to evaluate how prisoners access their religious rights. The original sample included nine federal prisons, nine state prisons, and two county jails.<sup>51</sup> To provide an appropriate update to the 2008 report, the Commission chose to reexamine the same 20 facilities selected in the original report in order to evaluate any changes over time (see Chapter 2).

### United States Criminal Legal Landscape

The United States’ carceral system is remarkable in both scale and complexity. In fact, it is not one unified system, but thousands of different federal, state, local, and tribal systems.<sup>52</sup> Within these distinct systems, there are also various facility types, such as reception centers, work-release facilities, and substance abuse treatment centers.<sup>53</sup> Together, almost two million people are incarcerated across these different facilities and jurisdictions, which makes the U.S.

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<sup>51</sup> The current report includes eight federal prisons and 10 state prisons because Northeast Ohio Correctional Center housed federal prisoners at the time of the 2008 report, but now houses state prisoners.

<sup>52</sup> Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2024,” Prison Policy Initiative, Mar. 14, 2024, <https://www.prisonpolicy.org/reports/pie2024.html>.

<sup>53</sup> Michelle S. Phelps, “Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in US Prison Programs,” *Law & Society Review*, 2011, vol. 45, no. 1, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3762476/?\\_escaped\\_fragment\\_=&po=96.1538](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3762476/?_escaped_fragment_=&po=96.1538).

incarceration rate one of the highest in the world.<sup>54</sup>

Most incarcerated people in the U.S. are in state prisons.<sup>55</sup> Approximately 11% of the total incarcerated population is housed in federal prisons,<sup>56</sup> making the Bureau of Prisons (BOP) the largest unified correctional system in the U.S.<sup>57</sup> The BOP is an agency within the Department of Justice (DOJ) that was established to house federal prisoners. Today it consists of more than 122 carceral institutions, six Regional Offices, a Central Headquarters Office in D.C., a Designation and Sentence Computation Center, two staff training centers, and 24 Residential Reentry Management Offices.<sup>58</sup> Public policy often focuses on the BOP,<sup>59</sup> in part because of its role in shaping policies that states follow,<sup>60</sup> but state and local departments of correction are not required to adhere to the BOP's policies or recommendations. Prior to 2021, the BOP had contracts with privately managed prisons to house some federal prisoners. The BOP ended all contracts with privately managed prisons as of January 26, 2021, to comply with President Biden's Executive Order (EO) 14006 on "Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities."<sup>61</sup> Executive Order 14006 also applied to the U.S. Marshals Service but did not affect privately operated facilities managed for U.S. Immigration and Customs Enforcement (ICE).

At the state level, most prisons are managed by the state's department of corrections (DOC). Some states have contracts with privately managed prisons, though only approximately 8% of all incarcerated people across the different systems are housed in private facilities.<sup>62</sup> Montana is an example of a state with a strong reliance on privately run facilities, incarcerating almost

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<sup>54</sup> Bureau of Justice Statistics data show that over 1.3 million individuals were incarcerated in local jails and state and federal prisons in 2022. However, this does not include the multiple other carceral facilities that house prisoners. The reported two million incarcerated number is more comprehensive as it includes local jails, state and federal prison facilities, tribal facilities, juvenile facilities, immigration detention facilities, and military facilities. See Sawyer and Wagner, "Mass Incarceration: The Whole Pie 2024."

<sup>55</sup> E. Ann Carson and Rich Kluckow, "Prisoners in 2022 – Statistical Tables," Bureau of Justice Statistics, Nov. 2023, <https://bjs.ojp.gov/document/p22st.pdf>.

<sup>56</sup> Sawyer and Wagner, "Mass Incarceration: The Whole Pie 2024."

<sup>57</sup> Federal Bureau of Prisons, "Legal Resource Guide to the Federal Bureau of Prisons: 2019," [https://www.bop.gov/resources/pdfs/legal\\_guide\\_march\\_2019.pdf](https://www.bop.gov/resources/pdfs/legal_guide_march_2019.pdf).

<sup>58</sup> Ibid.

<sup>59</sup> David S. Kirk and Sara Wakefield, "Collateral Consequences of Punishment: A Critical Review and Path Forward," *Annual Review of Criminology*, 2018, vol. 1, <https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-032317-092045>.

<sup>60</sup> Susan Van Baalen, "From "Black Muslim" to Global Islam: A Study of the Evolution of the Practice of Islam by Incarcerated Black Americans, 1957–2007," Unpublished Dissertation, 2011, Georgetown University, <https://www.proquest.com/openview/34649007910fcd6df46d665b30e61d68/1?pq-origsite=gscholar&cbl=18750>.

<sup>61</sup> Federal Bureau of Prisons, "BOP Ends Use of Privately Owned Prisons," Dec. 1, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>.

<sup>62</sup> Sawyer and Wagner, "Mass Incarceration: The Whole Pie 2024."

half of its prison population in these facilities.<sup>63</sup> Other states, such as Alaska, Arizona, Hawaii, New Mexico, and Tennessee, also relied on private corporations to house 20 to 40% of their prisoners from 2000 to 2021.<sup>64</sup> People convicted of felonies in D.C. serve their prison sentences in BOP facilities because there is no D.C. prison.<sup>65</sup> At the local level, jails are most often managed by local law enforcement entities such as a sheriff, police chief, or county or city administrator.<sup>66</sup> Jails are typically used to incarcerate people who are awaiting trial or have been sentenced to confinement for a misdemeanor crime, meaning they will spend less than a year incarcerated.<sup>67</sup>

A major impediment to investigating alleged religious freedom violations in carceral institutions is the lack of outsider access to information about any aspect of contemporary confinement, including prisoners' religions, programming participation, the number and resolution of grievances, and prisoner or officer misconduct and punishment. Since there is no standardization between federal, state, and local systems, the type of data collected about prisoners and issues of confinement often varies widely.<sup>68</sup> State-run DOCs, which tend to follow similar guidelines and procedures to the BOP, are independent so manage and operate their own facilities.<sup>69</sup> The DOJ, however, can open investigations and enter into settlement agreements with DOCs alleged to have violated prisoners' civil rights.<sup>70</sup> These investigations can be opened against an entire state DOC or specific prisons or jails.<sup>71</sup> The DOJ does not provide a publicly available comprehensive database of its investigations or consent decrees of carceral institutions over time.

Beyond the lack of standardized data collection, it is difficult to know exactly what data jails and prisons collect because their data are rarely publicly available.<sup>72</sup> For instance, there are limited data publicly available regarding facilities' policies and procedures, staffing and volunteer numbers, the types of programming available, the frequency with which these programs are offered, or the attendance for these programs. As the scale and nature of incarceration changed in

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<sup>63</sup> Kristen M. Budd, "Private Prisons in the United States," Sentencing Project, Feb. 21, 2024, <https://www.sentencingproject.org/reports/private-prisons-in-the-united-states/>.

<sup>64</sup> *Ibid.*

<sup>65</sup> Emilia Calma and Yesmin Sayin, "A Look at Who is Incarcerated in D.C.'s Criminal Justice System," D.C. Policy Center, Mar. 2023, <https://www.dcpolicycenter.org/publications/dc-code-offender-demographics/>.

<sup>66</sup> Bureau of Justice Statistics, "Correctional Institutions," <https://bjs.ojp.gov/topics/corrections/correctional-institutions>.

<sup>67</sup> *Ibid.*

<sup>68</sup> Jeremy Travis, Bruce Western, and F. Stevens Redburn, "The Growth of Incarceration in The United States: Exploring Causes and Consequences," National Research Council of the National Academies, 2014, <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

<sup>69</sup> *See infra* notes (Chapter 2 discussing similarities of state religious accommodations and grievance policies to BOP policies).

<sup>70</sup> *See e.g.*, U.S. Department of Justice, "Special Litigation Section Case Summaries," <https://www.justice.gov/crt/special-litigation-section-case-summaries#corrections-summ>.

<sup>71</sup> For a list of case summaries, *see* Department of Justice, Civil Rights Division, "Special Litigation Section Case Summaries," <https://www.justice.gov/crt/special-litigation-section-case-summaries#>.

<sup>72</sup> Pew Research Center, "America's Changing Religious Landscape," May 12, 2015, <https://www.pewresearch.org/wp-content/uploads/sites/20/2015/05/RLS-08-26-full-report.pdf>.

the late 20<sup>th</sup> century,<sup>73</sup> so too did prison transparency. Tighter restrictions on researcher access to facilities accompanied the increasing use of incarceration,<sup>74</sup> resulting in carceral facilities becoming functionally closed to outsiders.<sup>75</sup> While some of this opaqueness may be necessary for administrators to maintain security and to protect the privacy of prisoners, who are a vulnerable and hard-to-reach population,<sup>76</sup> some scholars posit that much of what happens in prisons and jails remains obscure because of a culture of secrecy.<sup>77</sup>

There are reasons to be wary of the validity and reliability of official prison data because facilities and DOCs may have an incentive to misrepresent unfavorable information to avoid litigation.<sup>78</sup> When researchers and outside agencies, like the Commission, rely entirely on information provided by the institutions themselves or their managing agencies (e.g., states' DOCs, BOP, private companies), it is difficult to provide a full picture of the issues prisoners face. Specifically for this report, the lack of transparency made it difficult to ascertain the extent to which prisoners' religious freedoms are being upheld or violated since facility data cannot be independently verified, including by prisoners who live in those facilities. Panelists at the Commission's briefing and public comment provided important information about their experiences of the promises and challenges of religious exercise in prison. Though these experiences cannot be generalized to all prisoners or facilities, they add much-needed insight into the reality of how religious freedom works in carceral institutions. Providing a fuller picture of religious freedom in jails and prisons is only possible if facilities make their data available to researchers. Therefore, this report, like other

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<sup>73</sup> Phelps, "Rehabilitation in the Punitive Era."

<sup>74</sup> Loïc Wacquant, "The Curious Eclipse of Prison Ethnography in the Age of Mass Incarceration," *Ethnography*, 2002, vol. 3, no. 4, <https://journals.sagepub.com/doi/abs/10.1177/1466138102003004012>; Travis, Western, and Redburn, "The Growth of Incarceration in The United States"; Kirk and Wakefield, "Collateral Consequences of Punishment: A Critical Review and Path Forward."

<sup>75</sup> Keramet Reiter, "Making Windows in Walls: Strategies for Prison Research," *Qualitative Inquiry*, 2014, vol. 20, no. 4, <https://journals.sagepub.com/doi/abs/10.1177/1077800413515831>.

<sup>76</sup> Janani Umamaheswar, "Studying Homeless and Incarcerated Persons: A Comparative Account of Doing Field Research with Hard-to-Reach Populations," *Forum: Qualitative Social Research*, 2018, vol. 19, no. 3, <https://doi.org/10.17169/fqs-19.3.3053>; Oskar Neyra, "Limited Access to Research Involving Incarcerated Persons as a Result of Protectionism," *Voices in Bioethics*, vol. 7, Mar. 11, 2021, <https://journals.library.columbia.edu/index.php/bioethics/article/view/8035>.

<sup>77</sup> See e.g., Andrea C. Armstrong, "Access Denied: Public Records and Incarcerated People," *U. St. Thomas L.J.*, 2023, vol. 19, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/usthomlj19&div=15&id=&page=>; Sharon Dolovich, "How Prisoners' Rights Lawyers Do Vital Work Despite the Courts," *U. St. Thomas L.J.*, 2023, vol. 19, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/usthomlj19&div=22&id=&page=>. See also *Pell v. Procunier*, 417 U.S. 817, 834-35 (1974) (finding that a prison regulation that limited prisoners' communication with the press did not unconstitutionally infringe on prisoners' First Amendment rights, and that "newsmen have no constitutional right of access to prisons or their [prisoners] beyond that afforded the general public"); *Houchins v. KQED, Inc.*, 438 U.S. 1, 16 (1978) (holding that news media has no constitutional right of access to a county jail different from or greater than the right of access enjoyed by the general public).

<sup>78</sup> See e.g., Stephen C. Light, "Measurement Error in Official Statistics: Prison Rule Infraction Data," *Fed. Probation*, 1990, vol. 54, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/fedpro54&div=64&id=&page=>; see also Tanya Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration* (Boston: Beacon Press, 2017).

studies of religion in prison, is limited by the participation of the sampled institutions as well as the quality and veracity of the raw data they provided.

Despite the lack of transparency about issues of confinement,<sup>79</sup> the federal government has a responsibility to ensure that incarcerated individuals' rights are upheld. As the Supreme Court stated in *Turner v. Safley* (1987), “[p]rison walls do not form a barrier separating inmates from the protections of the Constitution.”<sup>80</sup> Although prisoners lose some rights during incarceration, certain constitutionally protected rights are maintained, including the First Amendment rights to speech and the free exercise of religion,<sup>81</sup> as well as the Sixth Amendment rights to access the courts and legal counsel in criminal proceedings.<sup>82</sup> No right, however, is absolute. Prison administrators and correctional officials may implement policies which restrict religious rights if necessary to serve a compelling interest, such as safety concerns. However, as this report shows and caselaw reflects, prison officials have restricted access to religious materials, services, and/or denied accommodations for religious diets without those reasons.<sup>83</sup> The Religious Land Use and Institutionalized Persons Act (RLUIPA) aims to provide more accommodations to prisoners than are constitutionally required. This report—like its 2008 predecessor—investigates how prisoners' rights to religious practice are being upheld or violated during incarceration.

### Religious Expression During Incarceration

Religion is foundational to the American theory of incarceration.<sup>84</sup> In the late 18<sup>th</sup> century, U.S. penitentiaries were designed with the explicit belief that criminals could be reformed through isolation, physical labor, and religious study.<sup>85</sup> In fact, the term “penitentiary” comes from the religious concepts of “penitence” and “repentance.”<sup>86</sup> Christian religious practice was integral to the plan of individual rehabilitation: “the premise was that isolation would break the prisoner down mentally, whereafter work, Bible reading, worship services and visits from the prison chaplain would build him back up as a better human being.”<sup>87</sup> Into the 19<sup>th</sup> century, lawmakers treated religious instruction and practice as a mechanism to encourage Judeo-Christian morality among offenders.<sup>88</sup>

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<sup>79</sup> Travis, Western, and Redburn, “The Growth of Incarceration in The United States”; Kirk and Wakefield, “Collateral Consequences of Punishment: A Critical Review and Path Forward.”

<sup>80</sup> *Turner v. Safley*, 482 U.S. 78 (1987).

<sup>81</sup> U.S. Const. amend. I.

<sup>82</sup> U.S. Const. amend. VI.

<sup>83</sup> See Table 3.6 (discussing RLUIPA case patterns and trends).

<sup>84</sup> Winnifred Fallers Sullivan, *Prison Religion: Faith-Based Reform and the Constitution* (Princeton University Press, 2009).

<sup>85</sup> Peter Scharff Smith, “A Religious Technology of the Self: Rationality and Religion in the Rise of the Modern Penitentiary,” *Punishment & Society*, 2004, vol. 6, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/1462474504041265>.

<sup>86</sup> Harry E. Barnes and Negley K. Teeters, *New Horizons in Criminology* (Englewood Cliffs, NJ: Prentice-Hall, 1959), p. 329 [cited in Smith, “A Religious Technology of the Self”].

<sup>87</sup> Smith, “A Religious Technology of the Self,” p. 206.

<sup>88</sup> *Ibid.*

The role of religion in prisons transformed substantially as prisons changed over time. In the last decades of the 20<sup>th</sup> century, sharp increases in the incarceration rate<sup>89</sup> co-occurred with a shift in the cultural narrative about the purpose of incarceration from rehabilitation to deterrence and retribution.<sup>90</sup> Prison-overcrowding spurred lawsuits but little reform.<sup>91</sup> Critics claimed that prisons had been transformed into warehouses for people “without the pretense that it does anything other than store and recycle offenders.”<sup>92</sup> During this period, prison management also became increasingly bureaucratic.<sup>93</sup> The notion of religion serving as a form of prisoner control receded as judicial rulings holding that prisoners have a constitutional right to religious freedom increased.<sup>94</sup>

Little is known about how contemporary prisoners practice religion during incarceration<sup>95</sup> because of the dearth of information about confinement<sup>96</sup> and the tremendous heterogeneity of carceral experiences by type and location.<sup>97</sup> Still, research and litigation demonstrate that religious practice is challenging in the constrained prison environment. For instance, many religions require adherents to avoid some foods or only eat food prepared in specific ways, such as a kosher diet for Jewish people or a halal diet for Muslim people.<sup>98</sup> However, jails and prisons typically contract with external food vendors who provide the least expensive meals,<sup>99</sup> and specific religious foods typically cost more, creating tension between prison administrators’ strict budgetary constraints

<sup>89</sup> Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006); Travis, Western, and Redburn, “The Growth of Incarceration in The United States.”

<sup>90</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (University of Chicago Press, 2001); Phelps, “Rehabilitation in the Punitive Era”; Malcolm M. Feeley and Jonathan Simon, “The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications,” *Criminology*, 1992, vol. 30, no. 449, <https://www.studocu.com/en-gb/document/university-of-stirling/crime-and-criminal-justice/criminology-the-new-penology-notes/14452517>; Bruce Western, “Inside the Box: Safety, Health, and Isolation in Prison,” *Journal of Economic Perspectives*, 2021, vol. 35, no. 4, <https://www.aeaweb.org/articles?id=10.1257/jep.35.4.97>.

<sup>91</sup> See e.g., Kristin L. Burns, “Return to Hard Time: The Prison Litigation Reform Act of 1995,” *Ga. L. Rev.*, 1996, vol. 31, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/geolr31&div=24&id=&page=>; Heather Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law & Society Review*, 2010, vol. 44, no. 3/4, <https://www.cambridge.org/core/journals/law-and-society-review/article/abs/mass-incarceration-and-the-paradox-of-prison-conditions-litigation/52F838F69764C999D7D1ACBE5ADC9178>.

<sup>92</sup> James E. Robertson, “Houses of the Dead: Warehouse Prisons, Paradigm Change, and the Supreme Court,” *Houston Law Review*, 1997, vol. 34, no. 4, <https://heinonline.org/HOL/Page?handle=hein.journals/hulr34&div=38&id=&page=&collection=journals>, p. 1015; see also Western, “Inside the Box: Safety, Health, and Isolation in Prison.”

<sup>93</sup> Feeley and Simon, “The New Penology.”

<sup>94</sup> Todd R. Clear, Patricia L. Hardyman, Bruce Stout, Karol Lucken, and Harry R. Dammer, “The Value of Religion in Prison: An Inmate Perspective,” *Journal of Contemporary Criminal Justice*, 2000, vol. 16, no. 1, [https://www.researchgate.net/profile/Bruce-Stout/publication/249713505\\_The\\_Value\\_of\\_Religion\\_in\\_PrisonAn\\_Inmate\\_Perspective/links/5750890408aef67d0d89dedb/The-Value-of-Religion-in-PrisonAn-Inmate-Perspective.pdf](https://www.researchgate.net/profile/Bruce-Stout/publication/249713505_The_Value_of_Religion_in_PrisonAn_Inmate_Perspective/links/5750890408aef67d0d89dedb/The-Value-of-Religion-in-PrisonAn-Inmate-Perspective.pdf).

<sup>95</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains,” March 22, 2012, <https://www.pewresearch.org/religion/2012/03/22/prison-chaplains-exec/>.

<sup>96</sup> Western, “Inside the Box: Safety, Health, and Isolation in Prison.”

<sup>97</sup> Kirk and Wakefield, “Collateral Consequences of Punishment: A Critical Review and Path Forward.”

<sup>98</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains.”

<sup>99</sup> The lack of sufficient or nutritious food is a primary source of stress during confinement that can sometimes lead to major health issues. See Elizabeth Allen, “Cheap Jail and Prison Food Is Making People Sick. It Doesn’t Have To,” Vera Institute of Justice, Feb. 27, 2024, <https://www.vera.org/news/cheap-jail-and-prison-food-is-making-people-sick-it-doesnt-have-to>.



and prisoners' right to a religiously mandated diet.<sup>100</sup> It is also hard to verify that food distributors and/or the prison observe religious practices when preparing the food.<sup>101</sup> Some religions also require adherents to fast or restrict eating and drinking to certain times. For example, Muslims fast from dawn to sunset during the month of Ramadan, which can be difficult for prisons to accommodate because meals are served only at set times.<sup>102</sup> This can create an undue financial burden on prisoners when they must purchase food through the commissary to eat at the correct times.<sup>103</sup>

The difficulty for prisoners to maintain a religious diet was a common theme at the Commission's briefing. For instance, Navdeep Singh, Acting Policy Director at the Sikh American Legal Defense and Education Fund, testified that Sikh prisoners often "report barriers and resistance to accommodations to their dietary restrictions, such as accommodating a vegetarian diet and ensuring that observant Sikhs do not eat meat which is ritually sacrificed or ritually killed."<sup>104</sup> Similarly, Amin Eshaiker, Co-Founder and CEO of Link Outside, explained that many prisons do not offer halal meals for Muslim prisoners, and "even in instances where the halal meal is available, we have read numerous reports of . . . either mishandling of the food or mislabeling the ingredients."<sup>105</sup> Eric Treene, former Special Counsel for DOJ, noted that, "Ramadan meals in particular pose a challenge because Ramadan only lasts a month and, thus, requests are time sensitive. Muslim groups report a frequent problem with inmates, new to a particular prison, or new to the faith having trouble getting Ramadan meals approved in time."<sup>106</sup>

Many religions also entail specific clothing and grooming practices that conflict with required prison uniforms and rules about hair and facial hair length. For example, some Native American religions forbid hair to be cut unless a relative dies, which may violate a facility's rule requiring male prisoners to maintain short hair to protect against contraband concealment.<sup>107</sup> Similarly, head coverings necessitated for religious observation—such as hijabs for Muslim women and turbans for Sikh men—can raise safety concerns in prisons.<sup>108</sup>

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<sup>100</sup> Van Baalen, "From "Black Muslim" to Global Islam."

<sup>101</sup> Ibid.; see also U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, <https://www.usccr.gov/files/pubs/docs/STAT2008ERFIP.pdf>.

<sup>102</sup> Muslim Advocates, "Know Your Rights: A Guide to Seeking Religious Accommodations for Ramadan in Prisons," <https://muslimadvocates.org/wp-content/uploads/2023/03/Know-Your-Rights-Prison.pdf>.

<sup>103</sup> Stephen Raheer, "The Company Store: A Deeper Look at Prison Commissaries," Prison Policy Initiative, May 2018, <https://www.prisonpolicy.org/reports/commissary.html>.

<sup>104</sup> Navdeep Singh, *Enforcing Religious Freedoms in Prison Briefing* testimony, p.154.

<sup>105</sup> Amin Eshaiker, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 112.

<sup>106</sup> Eric Treene, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 32.

<sup>107</sup> Barrick Bollman, "Deference and Prisoner Accommodations Post-Holt: Moving RLUIPA toward Strict in Theory, Strict in Fact," *Nw. UL Rev.*, 2017, vol. 112,

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1325&context=nulr>.

<sup>108</sup> Gabriel Arkles, "Correcting Race and Gender: Prison Regulation of Social Hierarchy Through Dress," *NYUL Rev.*, 2012, vol. 87, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nylr87&div=26&id=&page=>.

Religions often also require meetings for services and congregative prayer. This can be a challenge for prisons because most prisoners have jobs,<sup>109</sup> so organizing work releases for services that occur during prison work hours can be logistically difficult, such as for Jumu'ah, the congregative prayer service for Muslims on Friday afternoons.<sup>110</sup> Staffing to supervise prisoner movement before, during, and after services and congregative prayer is also expensive, which can burden budgets.<sup>111</sup> Moreover, different sects under the same umbrella religion do not always feel comfortable praying or gathering with each other, such as Sunni and Shia Muslims, making it logistically challenging and expensive for prisons to accommodate and supervise different religious groups and various sects in each group.<sup>112</sup>

Practicing religion frequently requires access to religious texts and objects.<sup>113</sup> While members of the dominant faith, Christianity,<sup>114</sup> typically have free access to the Bible, prisons can create inequities when members of minority faiths are obligated to purchase their own sacred texts.<sup>115</sup> In a statement to the Commission, PEN America described how some prisons empower chaplains to “review all literature and decide which titles are banned,” a practice which “can favor Christian religious materials.”<sup>116</sup> Additionally, PEN America’s research on censorship in American prisons found that policies requiring prisoners to purchase books from approved vendors often only include Christian book distributors.<sup>117</sup> The difficulty religious minorities face in obtaining religious texts was echoed in testimony at the Commission’s briefing. For example, Shaykh Rami Nsour, Executive Director of the Tayba Foundation, stated that “obstacles like mailroom restrictions, limits on purchasing material, and arbitrary disposal of material pose significant challenges to accessing Islamic educational materials.”<sup>118</sup>

<sup>109</sup> ACLU and GHRC Research Report, “Captive Labor: Exploitation of Incarcerated Workers,” 2022, <https://assets.aclu.org/live/uploads/publications/2022-06-15-captivelaborresearchreport.pdf>.

<sup>110</sup> Van Baalen, “From “Black Muslim” to Global Islam.”

<sup>111</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains.”

<sup>112</sup> Jennifer K. Beaudry, “Islamic Sectarianism in United States Prisons: The Religious Right of Shi'a Inmates to Worship Separately from Their Fellow Sunni Inmates,” *Hofstra L. Rev.*, 2006, vol. 35, [https://heinonline.org/hol/cgi-bin/get\\_pdf.cgi?handle=hein.journals/hoflr35&section=66](https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/hoflr35&section=66); see also Kenneth L. Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons,” *Race and Social Problems*, 2009, vol. 1, no. 1, <https://link.springer.com/article/10.1007/s12552-009-9003-5>.

<sup>113</sup> Michael Hallett and Byron Johnson, “The Resurgence of Religion in America’s Prisons,” *Religions*, 2014, vol. 5, no. 3, <https://www.mdpi.com/2077-1444/5/3/663>.

<sup>114</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>115</sup> See e.g., Civil Action No. 2:10-02594-MBS, <https://www.justice.gov/sites/default/files/crt/legacy/2011/05/27/berkelymotion.pdf>.

<sup>116</sup> PEN America, “Challenges in Accessing Religious Texts in America’s Prisons,” June 2024, p. 5.

<sup>117</sup> Ibid.

<sup>118</sup> Rami Nsour, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 106.

Religious texts can be seen as a security risk if they contain material that can be interpreted as “radical,” which is a danger when the text is written in a language other than English, such as a copy of the Qur’an in Arabic.<sup>119</sup> As PEN America wrote in their statement:

Non-English content is also widely banned. In Virginia, the publication review committee denied a newsletter sent by Golden Key Prison Ministry because the publication was written in both Korean and English. Virginia DOC policy states that no publications written in languages other than English and Spanish are permitted.<sup>120</sup>

Another fear is that prisoners may use religious texts to smuggle contraband materials into the prison. For example, Eric Treene, former Special Counsel for the DOJ, testified that:

Elimination of paper in prisons is a response to fighting increasingly sophisticated contraband smuggling, including fentanyl-soaked paper and counterfeiting of approved book vendors’ packaging. Access to printed booklets, religious correspondence courses, even bound religious books has diminished. And tablet providers and publishers have been slow to provide e-versions compatible with the tablets.<sup>121</sup>

Prison officials also sometimes object to the use of religious objects in prisons, such as medallions, sculptures, and rosaries, asserting that they create a potential security threat since they can be used as weapons.<sup>122</sup> Still, Rabbi Lipskar, CEO of the Aleph Institute, a non-profit organization supporting incarcerated Jewish prisoners, testified that there are ways prisons can ensure safety and security without banning these items: “[T]hese things can be done under supervision. These things can be held in the chapel. These things can be held in an environment where it can be utilized in a controlled way.”<sup>123</sup>

While being allowed to fully express one’s religious beliefs is challenging for prisoners, religious freedom is one of the few interventions that the federal government consistently makes on behalf of prisoners.<sup>124</sup> Research demonstrates that degradation and violence are inherent to contemporary

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<sup>119</sup> Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Management and Oversight of its Chaplaincy Services Program,” July 2021, <https://oig.justice.gov/sites/default/files/reports/21-091.pdf>; see also Bert Useem and Obie Clayton, “Radicalization of US Prisoners,” *Criminology & Public Policy*, 2009, vol. 8, no. 3, <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1745-9133.2009.00574.x>.

<sup>120</sup> PEN America, “Challenges in Accessing Religious Texts in America’s Prisons,” June 2024, p. 6.

<sup>121</sup> Eric Treene, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 32.

<sup>122</sup> ACLU Delaware, “Freedom of Religion in Prison,” <https://www.aclu-de.org/en/know-your-rights/freedom-religion-prison>.

<sup>123</sup> Aaron Lipskar, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 95.

<sup>124</sup> Irene Becci and Joshua Dubler, “Religion and Religions in Prisons: Observations from the United States and Europe,” *Journal for the Scientific Study of Religion*, 2017, vol. 56, no. 2, <https://onlinelibrary.wiley.com/doi/abs/10.1111/jssr.12352>; Judith Coleman, “Chaplains: God’s Partners in Prison,” Office of Justice Programs, Dec. 2003, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/chaplains-gods-partners-prison>; see *infra* notes 371-471 (legal right to exercise religion in prison).

confinement,<sup>125</sup> so alleged civil rights violations are not rare. Data from the Commission's 2008 report show that a small share of grievances are religion-related;<sup>126</sup> the bulk of prisoner grievances are for claims of overcrowding, health, and safety.<sup>127</sup> Still, the free exercise of religion is an important facet of incarceration for many prisoners, and access to religious practice is embedded in the prison programming structure.

Chaplains are key to ensuring prisoners' religious freedom through service and advocacy. Most state and federal prisons employ one or more chaplains who are responsible for meeting prisoners' religious needs.<sup>128</sup> Chaplains attend to these needs in many ways, such as leading religious services, providing one-on-one religious counseling, organizing and conducting religious programming, training and supervising religious volunteers, and advising prison staff about prisoners' religious rights.<sup>129</sup> Like other prison staff, chaplains must always consider the safety risks inherent to prison work, yet are distinct in their role as prisoner advocates and allies.<sup>130</sup> Chaplains often perform caretaking tasks for prisoners that are not strictly religious, such as being the person who communicates between prisoners and families.<sup>131</sup> Like other prison staff, however, chaplains are frequently assigned too many tasks without sufficient funding or personnel,<sup>132</sup> and thus, spend time performing responsibilities outside the scope of their official role.<sup>133</sup>

Correctional officers are typically not responsible for providing religious services and programs but are still part of the religious landscape in prisons because of their gatekeeping role. Officers must coordinate and supervise prisoner movement to and from religious gatherings,<sup>134</sup> so staff shortages can impact prisoners' opportunities for religious participation. Though prison staff receive instruction about prisoners' free exercise rights,<sup>135</sup> there is evidence that some correctional officers use the threat of cutting off access to religious practice as a way to control prisoners.<sup>136</sup> Likewise, correctional officers may retaliate against prisoners who file grievances over religious discrimination.<sup>137</sup> For example, Father Dustin Feddon, Founder and Director of a non-profit re-

<sup>125</sup> Western, "Inside the Box: Safety, Health, and Isolation in Prison"; Winnifred Fallers Sullivan, *Prison Religion: Faith-Based Reform and the Constitution* (Princeton University Press, 2009).

<sup>126</sup> See e.g., U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>127</sup> Western, "Inside the Box: Safety, Health, and Isolation in Prison"; see also Kitty Calavita and Valerie Jenness, "Inside the Pyramid of Disputes: Naming Problems and Filing Grievances in California Prisons," *Social Problems*, 2013, vol. 60, no. 1, <https://academic.oup.com/socpro/article-abstract/60/1/50/1689590>.

<sup>128</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>129</sup> Ibid.

<sup>130</sup> Allison M. Hicks, "Learning to Watch Out: Prison Chaplains as Risk Managers," *Journal of Contemporary Ethnography*, 2012, vol. 41, no. 6, <https://journals.sagepub.com/doi/abs/10.1177/0891241612452139>.

<sup>131</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>132</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>133</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008; see also Rachel Ellis, "Redemption and Reproach: Religion and Carceral Control in Action Among Women in Prison," *Criminology*, 2020, vol. 58, no. 4, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9125.12258>.

<sup>137</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

entry support organization, testified that prisoners report “very inconsistent” calls from the front desk to announce religious services, and at:

most locations we have one or more dormitories—whose guards simply will not release their residents, even though the inmates are pleading to attend their religious services, in this case Mass. It sometimes takes two or more callouts to even begin to possibly get them to comply. I personally heard from inmates that officers will use deterrents to attending religious services as punishment for their behavior in the dorm.<sup>138</sup>

Research also suggests that blocking access to religious gatherings and symbols is most burdensome for religious minorities, particularly Muslim prisoners.<sup>139</sup> Imam Abdul Hafiz, a retired BOP chaplain and Director of the Prison Outreach Program in Southern California, testified that while policies may be in place to uphold the constitutionally protected right to religious exercise, “we continue to find obstacles put into place for [Muslim prisoners] being able to pray” due to inconsistent policy implementation and substantial staff discretion. He argues that the deference given to correctional officers allows for “the prejudice and the bias to come in, because individuals who . . . because of lack of training and understanding hinder the pursuit or the operation of a person being able to practice their faith.”<sup>140</sup>

Catherine Sevckenko, Senior Legal Counsel at the National Council for Incarcerated and Formerly Incarcerated Women and Girls, also testified that:

Religious beliefs should not be turned into a weapon, and yet individual BOP staff will do exactly that. One woman at FCI Dublin asked for clothing that complied with Muslim modesty requirements and she was forced to wear maternity clothes. In another prison, the lieutenant routinely threatens the Native American women with taking away their sweat lodge in order to silence them, particularly when they complain about the conditions in the prison.<sup>141</sup>

In part because chaplains are overextended,<sup>142</sup> religious volunteers can also play a critical role in facilitating prisoners’ free exercise of their faith.<sup>143</sup> These volunteers lead religious education, services, and prayer groups in prisons.<sup>144</sup> There is evidence that most religious programming in

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<sup>138</sup> Father Dustin Feddon, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 99-100.

<sup>139</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons.”

<sup>140</sup> Imam Abdul Hafiz, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 80.

<sup>141</sup> Catherine Sevckenko, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 178-79.

<sup>142</sup> Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Management and Oversight of its Chaplaincy Services Program.”

<sup>143</sup> Rachel Ellis, “Prisons as Porous Institutions,” *Theory and Society*, 2021, vol. 50, no. 2, <https://link.springer.com/article/10.1007/s11186-020-09426-w>; see also Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>144</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains.”

prisons is conducted by volunteers instead of chaplains.<sup>145</sup> Whereas chaplains typically need credentials to be hired for their position,<sup>146</sup> religious volunteers only need to be screened by the relevant facility or department.<sup>147</sup> In addition to the religious services they provide, religious volunteers provide prisoners with an additional source of connection with the outside world.<sup>148</sup>

Prisoners themselves may also serve an important role in facilitating the free exercise of religion in carceral facilities. In some instances, religious groups are allowed to meet without a chaplain or an outside volunteer, so prisoners can lead religious services.<sup>149</sup> In other facilities, prisoners are able to serve a central role in facilitating religious practice and assume many of the same responsibilities as chaplains. For instance, at the Louisiana State Penitentiary at Angola, prisoners can become credentialed religious practitioners through the Inmate Minister Program.<sup>150</sup> After graduating from seminary, these prisoners assume religious duties typically reserved for paid chaplains, such as one-on-one counseling, running religious programming, and ministering to dying prisoners.<sup>151</sup> There is mixed evidence about the benefits and drawbacks for the facility of using prisoners to provide religious services. While Angola's prisoner-led program is essential to the prison because participants are entrusted with duties that paid employees would normally perform,<sup>152</sup> an audit of the BOP chaplaincy services by the Office of the Inspector General argues that there is insufficient screening and monitoring of prisoners who play religious leadership roles, creating a potential security risk.<sup>153</sup> Regardless of the pros and cons, there is evidence that prisoners met the religious needs of other prisoners more acutely during the COVID-19 pandemic when volunteers were not allowed to enter most facilities.<sup>154</sup>

### Religious Landscape of the United States

Both religious affiliation and religiosity have changed over time in the United States. A 2015 Religious Landscape Study by Pew Research Center demonstrates that Americans' religious

<sup>145</sup> See e.g., Thomas P. O'Connor and Michael Perreyclear, "Prison Religion in Action and Its Influence on Offender Rehabilitation," In *Religion, the Community, and the Rehabilitation of Criminal Offenders* (New York: Routledge, 2013), pp. 11-33.

<sup>146</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program"; see also Michael Hallett, Joshua Hays, Byron Johnson, Sung Jang, and Grant Duwe, *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (New York: Routledge, 2016).

<sup>147</sup> Ellis, "Redemption and Reproach: Religion and Carceral Control in Action Among Women in Prison."

<sup>148</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*.

<sup>149</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>150</sup> Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>154</sup> Nicole Lewis, "How We Survived Covid-19 in Prison," Marshall Project, Apr. 2021, <https://www.themarshallproject.org/2021/04/23/how-we-survived-covid-19-in-prison>.

affiliations have become more diverse over time.<sup>155</sup> While the promise of religious freedom was integral to the founding of the United States, religious diversity primarily meant various Christian denominations.<sup>156</sup> There are now an increasing number of non-Christian religions practiced in the United States, largely because of immigration.<sup>157</sup> Though Christianity remains the dominant religion in the U.S.—approximately 7 in 10 Americans identify with a Christian faith—the share of Christians in the general population is shrinking.<sup>158</sup> Most people with a non-Christian faith in the U.S. are Jewish (1.9%), Muslim (0.9%), Buddhist (0.7%), or Hindu (0.7%).<sup>159</sup> Religiosity refers to the strength or salience of religion, religious practice, and religious identity.<sup>160</sup> While the United States has a greater share of religious people than its peer nations,<sup>161</sup> religiosity has declined over time in the United States as it has in other Western nations.<sup>162</sup> Approximately one quarter of Americans have no religious affiliation, including people who identify as atheist or agnostic.<sup>163</sup>

Religion and race are linked in the United States. Many American Christian denominations are primarily White, though they are becoming more racially diverse over time.<sup>164</sup> There continue to be some Christian denominations that are majority Black (e.g., National Baptist Convention) and others that are disproportionately Black (e.g., Jehovah’s Witnesses).<sup>165</sup> Hispanic Americans<sup>166</sup> are overrepresented as Catholics; approximately one third of all Catholics in the U.S. are Hispanic.<sup>167</sup>

The importance of race for Muslims in the United States is both critical and complex. A slight majority of Muslim adults living in the U.S. are foreign-born (58%).<sup>168</sup> Of that group, 35%

<sup>155</sup> Pew Research Center, “America’s Changing Religious Landscape,” May 12, 2015,

<https://www.pewresearch.org/wp-content/uploads/sites/20/2015/05/RLS-08-26-full-report.pdf>.

<sup>156</sup> Franz Höllinger and Lorenz Makula, “Religiosity in the Major Religious Cultures of the World,” *International Journal of Sociology*, 2021, vol. 51, no. 5, <https://www.tandfonline.com/doi/full/10.1080/00207659.2021.1958181>.

<sup>157</sup> Stephen M. Merino, “Religious Diversity in a “Christian Nation”: The Effects of Theological Exclusivity and Interreligious Contact on the Acceptance of Religious Diversity,” *Journal for the Scientific Study of Religion*, 2010, vol. 49, no. 2, <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-5906.2010.01506.x>.

<sup>158</sup> Pew Research Center, “America’s Changing Religious Landscape.”

<sup>159</sup> Ibid.

<sup>160</sup> Stefan Huber and Odilo W. Huber, “The Centrality of Religiosity Scale (CRS),” *Religions*, 2012, vol. 3, no. 3, <https://www.mdpi.com/2077-1444/3/3/710?ref=driverlayer.com>.

<sup>161</sup> Pew Research Center, “The Age Gap in Religion Around the World,” June 13, 2018,

<https://www.pewresearch.org/wp-content/uploads/sites/20/2018/06/ReligiousCommitment-FULL-WEB.pdf>.

<sup>162</sup> David Voas and Mark Chaves, “Is the United States a Counterexample to the Secularization Thesis?,” *American Journal of Sociology*, 2016, vol. 121, no. 5, <https://www.journals.uchicago.edu/doi/abs/10.1086/684202>; see also David Voas and Mark Chaves, “Even Intense Religiosity is Declining in the United States,” *Sociological Science*, 2018, vol. 5, [https://www.sociologicalscience.com/download/vol-5/november/SocSci\\_v5\\_694to710.pdf](https://www.sociologicalscience.com/download/vol-5/november/SocSci_v5_694to710.pdf).

<sup>163</sup> Pew Research Center, “America’s Changing Religious Landscape.”

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Being Hispanic is technically counted as an ethnicity, not a race, by the Census Bureau. However, many Hispanic Americans think of being Hispanic as being part of a racial group. See Ana Gonzalez-Barrera and Mark Hugo Lopez, “Is Being Hispanic a Matter of Race, Ethnicity or Both?” Pew Research Center, June 15, 2015, <https://www.pewresearch.org/short-reads/2015/06/15/is-being-hispanic-a-matter-of-race-ethnicity-or-both/>.

<sup>167</sup> Pew Research Center, “America’s Changing Religious Landscape.”

<sup>168</sup> Pew Research Center, “U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream,” July 26, 2017, <https://www.pewresearch.org/wp-content/uploads/sites/20/2017/07/U.S.-MUSLIMS-FULL-REPORT-with-population-update-v2.pdf>.

emigrated from South Asian countries—such as Pakistan, India, and Afghanistan—and 25% emigrated from countries in the Middle East or North Africa—such as Iraq, Kuwait, and Syria.<sup>169</sup> U.S. Muslims’ religious identity is often conflated with their ethnoracial identity, which results in them being treated as a distinct, racialized group,<sup>170</sup> despite not belonging to one racial group in national data such as on the decennial census. In alignment with the Office of Management and Budget’s (OMB) directive to use standardized ethnicity and race categories,<sup>171</sup> the Census Bureau provided the following answer categories to their race question in 2020: American Indian or Alaska Native, Asian,<sup>172</sup> Black or African American, Native Hawaiian, White, or Some Other Race.<sup>173</sup> The race category of White included “peoples of Europe, the Middle East, or North Africa.”<sup>174</sup> A plurality of U.S. Muslims were counted as White (41%).<sup>175</sup> People of Middle East/North Africa (MENA) descent, however, advocated for a distinct “Arab” or “Middle Eastern” race category on the census<sup>176</sup> based on their racialized treatment in the U.S.<sup>177</sup> In response, in March 2024, OMB issued updated standards for collecting race/ethnicity data, which includes a new MENA category that is separate from the White category.<sup>178</sup>

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<sup>169</sup> Ibid.

<sup>170</sup> Amanda Sahar d’Urso and Tabitha Bonilla, “Religion or Race? Using Intersectionality to Examine the Role of Muslim Identity and Evaluations on Belonging in the United States,” *Journal of Race, Ethnicity, and Politics*, 2023, vol. 8, no. 2, <https://www.cambridge.org/core/journals/journal-of-race-ethnicity-and-politics/article/religion-or-race-using-intersectionality-to-examine-the-role-of-muslim-identity-and-evaluations-on-belonging-in-the-united-states/087E48BB3368FC9B48144B0CA82BD8C4>. For an international comparison, see Nancy Foner, “Is Islam in Western Europe Like Race in the United States?,” *Sociological Forum*, 2015, vol. 30, no. 4, <https://onlinelibrary.wiley.com/doi/abs/10.1111/socf.12199>.

<sup>171</sup> Office of Management and Budget, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,” Oct. 30, 1997, <https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf>; see also United States Census Bureau, “Measuring Race and Ethnicity Across the Decades: 1790-2010,” [https://www.census.gov/data-tools/demo/race/MREAD\\_1790\\_2010.html](https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html).

<sup>172</sup> For the 2020 Census respondents could select these racial categories: Asian Indian, Chamorro, Chinese, Filipino, Japanese, Korean, Samoan, Vietnamese, Other Asian, Other Pacific Islander. See United States Census Bureau, “Sample Copy of the 2020 Census Questionnaire,” [https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires.2020\\_Census.html](https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires.2020_Census.html).

<sup>173</sup> All but “Some Other Race” are required by Statistical Policy Directive No. 15. See Office of Management and Budget, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,” Oct. 30, 1997, <https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf>.

<sup>174</sup> United States Census Bureau, “About the Topic of Race,” March 1, 2020, <https://www.census.gov/topics/population/race/about.html>.

<sup>175</sup> Pew Research Center, “U.S. Muslims Concerned About Their Place in Society.”

<sup>176</sup> Randa Kayyali, “US Census Classifications and Arab Americans: Contestations and Definitions of Identity Markers,” *Journal of Ethnic and Migration Studies*, 2013, vol. 39, no. 8, <https://www.tandfonline.com/doi/abs/10.1080/1369183X.2013.778150>; Loubna Qutami, “Censusless: Arab/Muslim Interpolation into Whiteness and the War on Terror,” *Journal of Asian American Studies*, 2020, vol. 23, no. 2, <https://muse.jhu.edu/pub/1/article/760713/summary>.

<sup>177</sup> Qutami, “Censusless: Arab/Muslim Interpolation into Whiteness and the War on Terror.”

<sup>178</sup> Rachel Marks, Nicholas Jones, and Karen Battle, “What Updates to OMB’s Race/Ethnicity Standards Mean for the Census Bureau,” Apr. 8, 2024, <https://www.census.gov/newsroom/blogs/random-samplings/2024/04/updates-race-ethnicity-standards.html>.



The September 11, 2001 terrorist attacks (9/11) and subsequent “War on Terror” solidified MENA individuals and Muslims into one racialized religious outgroup for many in the United States.<sup>179</sup> After the attack, anti-MENA/Muslim sentiment grew among some members of the U.S. populace due to being stereotyped as fundamentally anti-American<sup>180</sup> and potentially violent because of their supposed links to terrorism and radicalism.<sup>181</sup> Muslim advocates argue that legislation passed after 9/11 allowed for the “hypersurveillance”<sup>182</sup> of MENA/Muslims, which functionally treated members of this group as “terrorists and potential terrorists.”<sup>183</sup> A surge in hate crimes reflects this cultural narrative: there was a 1,600 percent increase in anti-Muslim hate crimes post-9/11.<sup>184</sup> U.S. Muslims continue to be viewed far less positively than members of other major religions.<sup>185</sup> President Trump’s Executive Order 13769, which banned people from seven predominantly Muslim countries from U.S. entry for 90 days, was referred to by critics in the media as the “Muslim Ban” because it was believed to be anti-Muslim.<sup>186</sup>

An additional layer of complexity to the landscape of U.S. Muslims is that there are American sects of Islam that began in African American communities, such as the Moorish Science Temple.<sup>187</sup> The most well-known of these “Black Muslim”<sup>188</sup> religions is the Nation of Islam

<sup>179</sup> Sahar d’Urso and Bonilla, “Religion or Race? Using Intersectionality to Examine the Role of Muslim Identity and Evaluations on Belonging in the United States”; see also Sheryll Cashin, “To Be Muslim or Muslim-Looking in America: A Comparative Exploration of Racial and Religious Prejudice in the 21st Century,” *Duke FL & Soc. Change*, 2010, vol. 2, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/dukef2&div=8&id=&page=>.

<sup>180</sup> Pew Research Center, “Republicans Prefer Blunt Talk About Islamic Extremism, Democrats Favor Caution” Feb. 3, 2016, [www.pewresearch.org/wp-content/uploads/sites/20/2016/02/PF\\_2016-02-03\\_islam-politics\\_FINAL.pdf](http://www.pewresearch.org/wp-content/uploads/sites/20/2016/02/PF_2016-02-03_islam-politics_FINAL.pdf).

<sup>181</sup> John Sides and Kimberly Gross, “Stereotypes of Muslims and Support for the War on Terror,” *Journal of Politics*, 2013, vol. 75, no. 3, <https://www.journals.uchicago.edu/doi/abs/10.1017/S0022381613000388>; see also U.S. Commission on Civil Rights, *Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11*, Sept. 2014, [https://www.usccr.gov/files/pubs/docs/ARAB\\_MUSLIM\\_9-30-14.pdf](https://www.usccr.gov/files/pubs/docs/ARAB_MUSLIM_9-30-14.pdf).

<sup>182</sup> Saher Selod, *Forever Suspect: Racialized Surveillance of Muslim Americans in the War on Terror* (Rutgers University Press, 2018), p. 12.

<sup>183</sup> Louise Cainkar and Saher Selod, “Review of Race Scholarship and the War on Terror,” *Sociology of Race and Ethnicity*, 2018, vol. 4, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/2332649218762808>.

<sup>184</sup> Ilir Disha, James C. Cavendish, and Ryan D. King, “Historical Events and Spaces of Hate: Hate Crimes against Arabs and Muslims in Post-9/11 America,” *Social Problems*, 2011, vol. 58, no. 1, <https://academic.oup.com/socpro/article-abstract/58/1/21/1690187>; see also U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government’s Role in Responding to Hate Crimes*, Nov. 2018, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>185</sup> Pew Research Center, “U.S. Muslims Concerned About Their Place in Society”; see also Stephen M. Merino, “Religious Diversity in a “Christian Nation”: The Effects of Theological Exclusivity and Interreligious Contact on the Acceptance of Religious Diversity,” *Journal for the Scientific Study of Religion*, 2010, vol. 49, no. 2, <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-5906.2010.01506.x>.

<sup>186</sup> Loren Collingwood, Nazita Lajevardi, and Kassra AR Oskooii, “A Change of Heart? Why Individual-Level Public Opinion Shifted Against Trump’s “Muslim Ban,”” *Political Behavior*, 2018, vol. 40, <https://link.springer.com/article/10.1007/s11109-017-9439-z>.

<sup>187</sup> Mark S. Hamm, “Terrorist Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups,” National Institute of Justice, Dec. 2007, <https://www.ojp.gov/pdffiles1/nij/grants/220957.pdf>.

<sup>188</sup> The meaning of this term has evolved over time but continues to be used as a generic term for people who are both Black and Muslim. See Van Baalen, “From “Black Muslim” to Global Islam.” Not all scholars believe in the legitimacy of this term. See e.g., Garrett Felber, ““Shades of Mississippi”: The Nation of Islam’s Prison Organizing,

(NOI).<sup>189</sup> While there are important differences between the largest Muslim sects of Sunnis and Shias (alternatively called Shiites),<sup>190</sup> the NOI is distinct in its origin and ideology.<sup>191</sup> While MENA Muslims are racialized in the U.S.,<sup>192</sup> the NOI has an explicit connection with race and politics.<sup>193</sup> In the 1930s, Wallace D. Fard founded the NOI by spreading his message to African Americans that Christianity was a tool of White oppression and “that he was a prophet sent by Allah to teach African Americans their true heritage.”<sup>194</sup> Fard and other early NOI leaders preached the explicit goal of total separation of its Black adherents from White people, whom they called “blue-eyed devils.”<sup>195</sup> Though the NOI is currently a small group—3% of U.S.-born Black Muslims<sup>196</sup> identify as NOI<sup>197</sup>—they are an important group to highlight because of their connection to prisons. Prisons were a critical site of the NOI because Black prisoners saw a clear link between their concentration in the lowest societal position and punitive White institutions.<sup>198</sup> Malcolm X famously converted to the NOI while incarcerated.<sup>199</sup> The strength of the NOI inside prisons helped fuel movements for Black Power and civil rights beyond prison walls.<sup>200</sup> Though some NOI teachings are seen as antisemitic and anti-White,<sup>201</sup> early litigation brought by NOI prisoners secured constitutionally protected religious rights for all prisoners.<sup>202</sup>

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the Carceral State, and the Black Freedom Struggle,” *Journal of American History*, 2018, vol. 105, no. 1, <https://academic.oup.com/jah/article-abstract/105/1/71/5000190>.

<sup>189</sup> Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>190</sup> See Pew Forum on Religion & Public Life, “Mapping the Global Muslim Population,” Pew Research Center, Oct. 2009, <https://www.pewresearch.org/religion/wp-content/uploads/sites/7/2009/10/Muslimpopulation-1.pdf>.

<sup>191</sup> Antwi A. Akom, “Reexamining Resistance as Oppositional Behavior: The Nation of Islam and the Creation of a Black Achievement Ideology,” *Sociology of Education*, 2003, vol. 76, <https://www.jstor.org/stable/1519868>; see also Van Baalen, “From “Black Muslim” to Global Islam.”

<sup>192</sup> Sahar d’Urso and Bonilla, “Religion or Race? Using Intersectionality to Examine the Role of Muslim Identity and Evaluations on Belonging in the United States.”

<sup>193</sup> Olivia Heffernan, “The Nation of Islam’s Role in US Prisons,” *American Prison Newspapers*, Mar. 22, 2022, <https://daily.jstor.org/the-nation-of-islams-role-in-us-prisons/>.

<sup>194</sup> Colley, ““All America is a Prison”: The Nation of Islam,” p. 397.

<sup>195</sup> Jason Eric Fishman and Ana Belen Soage, “The Nation of Islam and the Muslim World: Theologically Divorced and Politically United,” *Religion Compass*, 2013, vol. 7, no. 2, <https://compass.onlinelibrary.wiley.com/doi/abs/10.1111/rec3.12032>, p. 59.

<sup>196</sup> Contemporary Black Muslim identities in the U.S. result from historical trajectories of various NOI leaders (for a short history, see Fishman and Soage, “The Nation of Islam and the Muslim World”). American-born Black Muslims remain distinct from other U.S. Muslims in that most—two thirds—are converts to Islam. A plurality of Black Muslims identify as Sunni (45%) compared to 3% who identify as NOI. A large share (43%) do not claim one Islamic denomination. Pew Research Center, “U.S. Muslims Concerned About Their Place in Society.”

<sup>196</sup> Pew Research Center, “U.S. Muslims Concerned About Their Place in Society.”

<sup>197</sup> Ibid.

<sup>198</sup> Colley, ““All America is a Prison”: The Nation of Islam.”

<sup>199</sup> Ibid.

<sup>200</sup> Garrett Felber, *Those Who Know Don't Say: The Nation of Islam, the Black Freedom Movement, and the Carceral State* (UNC Press Books, 2019).

<sup>201</sup> Anti-Defamation League, “Nation of Islam,” Sept. 1, 2021, <https://www.adl.org/resources/profile/nation-islam>.

<sup>202</sup> Jim Thomas and Barbara H. Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping” *Prison Journal*, 2006, vol. 86, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/0032885506287952>; Becci and Dubler, “Religion and Religions in Prisons: Observations from the United States and Europe”; see also Muslim Advocates, “Fulfilling the Promise of Free Exercise for All: Muslim Prisoner Accommodation in State Prisons,” July 2019,

Understanding how race and religion overlap in prisons is important for the question of religious freedom as consistent hurdles to practice for one religious group could stem not just from *religious* out-group bias or in-group preference, but also *racial* out-group bias or in-group preference. While researchers' access to jails and prisons has been seriously curtailed in the era of over-incarceration,<sup>203</sup> there continues to be evidence that racial boundaries are salient in carceral institutions. Research shows that racial boundaries in some institutions and departments shape not only how prisoners interact with each other,<sup>204</sup> but also how they are housed,<sup>205</sup> punished,<sup>206</sup> and given access to programming.<sup>207</sup> Therefore, religious groups and activities might be racially segregated in prisons.<sup>208</sup> Racial segregation is inherent for religions created for one racial group, like African Americans and the Nation of Islam or Black Hebrew Israelites.<sup>209</sup> Other religious segregation by race occurs when the ideology of a prison gang blends with that of a recognized religion, such as White supremacy undergirding some prison gangs (e.g., Aryan Brotherhood) and religions (e.g., Odinism, Christian Identity).<sup>210</sup> Religious practice can serve as a legitimized way to meet with racial in-group members,<sup>211</sup> sometimes for the purpose of fostering beliefs about racial supremacy.<sup>212</sup>

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[https://muslimadvocates.org/wp-content/uploads/2019/07/FULFILLING-THE-PROMISE-OF-FREE-EXERCISE-FOR-ALL-Muslim-Prisoner-Accommodation-In-State-Prisons-for-distribution-7\\_23.pdf](https://muslimadvocates.org/wp-content/uploads/2019/07/FULFILLING-THE-PROMISE-OF-FREE-EXERCISE-FOR-ALL-Muslim-Prisoner-Accommodation-In-State-Prisons-for-distribution-7_23.pdf).

<sup>203</sup> Reiter, "Making Windows in Walls: Strategies for Prison Research."

<sup>204</sup> See e.g., Aryn A. Infante, Stephanie J. Morse, Chantal Fahmy, and Kevin A. Wright, "Racial Politics in the Contemporary Prison Society: The Importance of Race and Ethnicity to Prison Social Organization," *Criminal Justice and Behavior*, 2023, vol. 50, no. 4, <https://journals.sagepub.com/doi/abs/10.1177/00938548221143528>.

<sup>205</sup> See e.g., Philip Goodman, "'It's Just Black, White, or Hispanic': An Observational Study of Racializing Moves in California's Segregated Prison Reception Centers," *Law & Society Review*, 2008, vol. 42, no. 4, <https://www.cambridge.org/core/journals/law-and-society-review/article/abs/its-just-black-white-or-hispanic-an-observational-study-of-racializing-moves-in-californias-segregated-prison-reception-centers/09C955B7C152D80115329D57513D2B60>; Michael L. Walker, "Race Making in a Penal Institution," *American Journal of Sociology*, 2016, vol. 121, no. 4, <https://www.journals.uchicago.edu/doi/abs/10.1086/684033>.

<sup>206</sup> See e.g., Katie Michaela Becker, "Race and Prison Discipline: A Study of North Carolina State Prisons," *NC Cent. L. Rev.*, 2020, vol. 43, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ncclj43&div=13&id=&page=>; Michael Schwirtz, Michael Winerip, and Robert Gebeloff, "The Scourge of Racial Bias in New York State's Prisons," *New York Times*, Dec. 3, 2016, <https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html>; State of New York Offices of the Inspector General, "Racial Disparities in the Administration of Discipline in New York State Prisons," Nov. 2022, <https://ig.ny.gov/system/files?file=documents/2022/12/oig-doccs-racial-disparities-report-12.1.22.pdf>.

<sup>207</sup> See e.g., Claudia N. Anderson, John Wooldredge, and Joshua C. Cochran, "Can 'Race-Neutral' Program Eligibility Requirements in Criminal Justice Have Disparate Effects? An Examination of Race, Ethnicity, and Prison Industry Employment," *Criminology & Public Policy*, 2022, vol. 21, no. 2, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12576>.

<sup>208</sup> See e.g., Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>209</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>210</sup> Anti-Defamation League, "New Hate and Old: The Changing Face of American White Supremacy," Center on Extremism, Apr. 2019, <https://docs.house.gov/meetings/JU/JU00/20190409/109266/HHRG-116-JU00-20190409-SD011.pdf>.

<sup>211</sup> Van Baalen, "From 'Black Muslim' to Global Islam."

<sup>212</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

At the Commission's briefing, Executive Director of the Tayba Foundation, Shaykh Rami Nsour, spoke of the racial divisions between Muslims in prison:

There was a White convert to Islam who could not associate with the Muslims because the majority were African American. And if he had, he would have been seen by the supremacists as crossing the racial lines and he would have been killed. And so, he didn't . . . pray. He didn't even give the Salam, the greeting, to other Muslims. He would just at the water fountain kind of say, "Hey, I'm Muslim, just to let you know." But he couldn't practice.<sup>213</sup>

However, religious participation also has the potential to break down racial boundaries in carceral facilities. Shaykh Nsour also testified that religious practice can bridge racial divisions in prisons, saying:

I've seen people who were deeply racist, and when they embrace their faith, they start to heal from that. I've seen people who were deeply embedded in the gang culture. I know people who were on the streets, were Bloods and Crips, and when they both became Muslim, they shared the same cell unit. So, it can also heal the gang problem as well.<sup>214</sup>

While this is promising, due to the many distinct systems<sup>215</sup> and a lack of access to data from penal institutions,<sup>216</sup> there are no national statistics about prisoners' combined religious affiliations and races. Studies of single facilities or departments, however, illuminate how race and religion overlap in jails and prisons.

The connection between race and religion in prisons is particularly critical for Muslim prisoners because of Islam's diverse sects,<sup>217</sup> stigmatized association with terrorism,<sup>218</sup> and overrepresentation in prisons.<sup>219</sup> Pew's Religious Landscape Study shows that 13% of Muslims in the U.S. are Black Americans.<sup>220</sup> While there are no data that would allow for an estimate of the racial demographics of Muslim prisoners in the U.S. at the aggregate, it is likely that a much higher share of Muslims in prison are Black. For instance, a 2004 study shows that 87% of Muslim prisoners in Ohio were African American, and most had converted to Islam during their

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<sup>213</sup> Rami Nsour, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 141-142.

<sup>214</sup> *Ibid.*, p. 142.

<sup>215</sup> Sawyer and Wagner, "Mass Incarceration: The Whole Pie 2024."

<sup>216</sup> Reiter, "Making Windows in Walls: Strategies for Prison Research."

<sup>217</sup> Pew Research Center, "U.S. Muslims Concerned About Their Place in Society."

<sup>218</sup> Marcus, "Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons."

<sup>219</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>220</sup> Pew Research Center, "U.S. Muslims Concerned About Their Place in Society," p. 37.

incarceration.<sup>221</sup> One scholar estimates that over 95% of Muslims in prisons are Black and converted to Islam during their confinement.<sup>222</sup>

There is a strong connection between race and religion for Muslim prisoners because Black men are overrepresented in prisons<sup>223</sup> and American sects of Islam (e.g., Moorish Science, Nation of Islam) were founded in part to raise the social standing of Black Americans,<sup>224</sup> particularly those in prison.<sup>225</sup> The inclination for religious blending and borrowing in prisons<sup>226</sup> has led to a type of Islam that is sometimes called “Prison Islam”<sup>227</sup> because it is a distinct form of Islam that is strongly influenced by Black American culture.<sup>228</sup> The connection between Blackness and Islam in prisons has spread beyond the NOI because of a move away from the “white devil” rhetoric toward a more global/mainstream practice of Islam.<sup>229</sup> Sunni Islam in federal prisons is dominated by Black Americans.<sup>230</sup> There could be racial divisions between Black and non-Black Muslims even if they are members of the same sect.<sup>231</sup> For instance, MENA Sunnis may not congregate in prisons because they are a minority and do not share an identity with Black American Sunnis.<sup>232</sup> Disproportionate barriers against Muslims seeking to practice their religion during incarceration, as indicated by the Commission’s 2008 report and this update (see Chapters 2 and 3), could stem from Islamophobia,<sup>233</sup> racial bias, or both. It is important to note that these biases are not necessarily tied to religious or racial animus, as stereotypes about non-dominant groups are widespread and frequently unconscious.<sup>234</sup>

<sup>221</sup> Nawal H. Ammar, Robert R. Weaver, and Sam Saxon, “Muslims in Prison: A Case Study from Ohio State Prisons,” *International Journal of Offender Therapy and Comparative Criminology*, 2004, vol. 48, <https://journals.sagepub.com/doi/abs/10.1177/0306624x03261558>.

<sup>222</sup> Van Baalen, “From “Black Muslim” to Global Islam,” p. 166.

<sup>223</sup> National Academies of Sciences, Engineering, and Medicine, *Reducing Racial Inequality in Crime and Justice: Science, Practice, and Policy*, National Academies Press, 2023, <https://doi.org/10.17226/26705>; Travis, Western, and Redburn, “The Growth of Incarceration in The United States”; David Garland, “The Current Crisis of American Criminal Justice: A Structural Analysis,” *Annual Review of Criminology*, 2023, vol. 6, <https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-030722-035139>.

<sup>224</sup> Antwi A. Akom, “Reexamining Resistance as Oppositional Behavior: The Nation of Islam and the Creation of a Black Achievement Ideology,” *Sociology of Education*, 2003, vol. 76, <https://www.jstor.org/stable/1519868>.

<sup>225</sup> Colley, ““All America is a Prison”: The Nation of Islam.”

<sup>226</sup> Van Baalen, “From “Black Muslim” to Global Islam.”

<sup>227</sup> See e.g., Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>228</sup> Van Baalen, “From “Black Muslim” to Global Islam,” p. 153.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons.”

<sup>234</sup> Cheryl Pritlove, Clara Juando-Prats, Kari Ala-Leppilampi, and Janet A. Parsons, “The Good, the Bad, and the Ugly of Implicit Bias,” *Lancet*, 2019, vol. 393, no. 10171, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)32267-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)32267-0/fulltext); see also Felicia Pratto and Andrew L. Stewart, “Group Dominance and the Half-Blindness of Privilege,” *Journal of Social Issues*, 2012, vol. 68, no. 1, <https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-4560.2011.01734.x>.

### Benefits and Risks of Religious Practice in Prison

Religion serves various functions during confinement. Increased religious participation is a common way to cope with social exclusion,<sup>235</sup> so religious practice can help people entering prison “overcome the depression, guilt, and self-contempt that so often accompanies the prison sentence.”<sup>236</sup> Ongoing participation in religious practice can provide people who live with the shame of being “banned from society” with a sense of worth.<sup>237</sup> Religious teachings often recognize human dignity and potential regardless of a person’s past behaviors,<sup>238</sup> so religion can provide deep meaning in a life of deprivation.<sup>239</sup> Religious practice often necessitates that believers reflect on past mistakes and commit to serving a higher purpose by being “a good person.”<sup>240</sup> In this way, religion can be a catalyst for rehabilitation because it requires a “total metamorphosis”<sup>241</sup> of a prisoner’s self-concept, life’s purpose, motivations, and actions.<sup>242</sup>

Practicing religion can also give prisoners a way to spend their time. Idle time is a major challenge to prisoners’ well-being and facility security.<sup>243</sup> Programs that build skills while providing structure fall under the umbrella category of “programming,” which includes education, drug treatment, religion, employment, and more.<sup>244</sup> Like education, employment, and social support programs,<sup>245</sup> religious programming has been shown to reduce misconduct during incarceration<sup>246</sup> and lower the chances of recidivism.<sup>247</sup> Most religious services are conducted by outside volunteers,<sup>248</sup> which also helps alleviate some of the feelings of alienation from society.<sup>249</sup> This is particularly meaningful for prisoners who do not receive visits.<sup>250</sup> Sometimes participating in religion gives

<sup>235</sup> Nilüfer Aydın, Peter Fischer, and Dieter Frey, “Turning to God in the Face of Ostracism: Effects of Social Exclusion on Religiousness,” *Personality and Social Psychology Bulletin*, 2010, vol. 36, no. 6, <https://journals.sagepub.com/doi/abs/10.1177/0146167210367491>.

<sup>236</sup> Todd R. Clear, Bruce D. Stout, Harry R. Dammer, Linda Kelly, Patricia L. Hardyman, and Carol Shapiro, “Does Involvement in Religion Help Prisoners Adjust to Prison?,” *National Council on Crime and Delinquency Focus*, 1992, vol. 19, no. 7, <https://www.issueab.org/resources/3385/3385.pdf>, p. 7. See also Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>237</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective,” p. 72.

<sup>238</sup> Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping.”

<sup>239</sup> Ellis, “Redemption and Reproach: Religion and Carceral Control in Action Among Women in Prison.”

<sup>240</sup> Dan Micklethwaite and Belinda Winder, “Religion and Prison,” In *Encyclopedia of Psychology and Religion* (Springer International Publishing, 2020), pp.1974-1978.

<sup>241</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*, p. 19.

<sup>242</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective,” p. 58.

<sup>243</sup> Western, “Inside the Box: Safety, Health, and Isolation in Prison.”

<sup>244</sup> Grant Duwe, “The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes,” National Institute of Justice, June 2017, <https://www.ojp.gov/pdffiles1/nij/250476.pdf>.

<sup>245</sup> Ibid.

<sup>246</sup> Kent R. Kerley, Heith Copes, Richard Tewksbury, and Dean A. Dabney, “Examining the Relationship Between Religiosity and Self-Control as Predictors of Prison Deviance,” *International Journal of Offender Therapy and Comparative Criminology*, 2011, vol. 55, no. 8, <https://journals.sagepub.com/doi/abs/10.1177/0306624X11387523>.

<sup>247</sup> Richard Stansfield, Thomas O’Connor, and Jeff Duncan, “Religious Identity and the Long-Term Effects of Religious Involvement, Orientation, and Coping in Prison,” *Criminal Justice and Behavior*, 2019, vol. 46, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/0093854818801410>.

<sup>248</sup> O’Connor and Perreyclear, “Prison Religion in Action and Its Influence on Offender Rehabilitation.”

<sup>249</sup> Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping.”

<sup>250</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*.

prisoners privileges, such as access to outside food,<sup>251</sup> toiletries,<sup>252</sup> or even being able to live in special religious housing.<sup>253</sup>

Additionally, being part of a religious group gives prisoners a sense of belonging.<sup>254</sup> Prisoners have to live in close physical proximity with other prisoners but are often emotionally isolated.<sup>255</sup> Belonging to a group can therefore provide protection in the inherently violent prison environment.<sup>256</sup> This protection can be particularly important for prisoners who are the most vulnerable to violence, such as those who are physically weak, effeminate, LGBTQ, or convicted sex offenders.<sup>257</sup>

The redemptive narrative that religion provides,<sup>258</sup> coupled with its material benefits,<sup>259</sup> makes tales of religious conversion<sup>260</sup> in prison common.<sup>261</sup> This religious conversion can take the form of identifying with a new religion<sup>262</sup> or being “born-again” into a strengthened commitment to faith and religiosity.<sup>263</sup> There are no national estimates of the prevalence of religious conversion in prison,<sup>264</sup> which is unsurprising given how little is known about confinement<sup>265</sup> and the fractured nature of the carceral system.<sup>266</sup> Still, many studies of religion in prison note this as an important phenomenon.<sup>267</sup> According to a 2012 Pew Research survey of prison chaplains, the majority of those sampled stated that religious conversion is common in prisons.<sup>268</sup>

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<sup>251</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>252</sup> Ellis, “Prisons as Porous Institutions.”

<sup>253</sup> Hallett and Johnson, “The Resurgence of Religion in America’s Prisons.”

<sup>254</sup> Van Baalen, “From “Black Muslim” to Global Islam.”

<sup>255</sup> Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping”; *see also* Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>256</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons,” p. 4; *see also* Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>257</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>258</sup> Byron R. Johnson, Grant Duwe, Michael Hallett, Joshua Hays, Sung Joon Jang, Matthew T. Lee, Maria E. Pagano, and Stephen G. Post, “Faith and Service: Pathways to Identity Transformation and Correctional Reform,” In Kent R. Kerley (ed), *Finding Freedom in Confinement: The Role of Religion in Prison Life* (Santa Barbara, CA: Praeger, 2018).

<sup>259</sup> Ellis, “Prisons as Porous Institutions.”

<sup>260</sup> Muslims say “revert” instead of “convert.” *See* Clear, Stout, Dammer, Kelly, Hardyman, and Shapiro, “Does Involvement in Religion Help Prisoners Adjust to Prison?”

<sup>261</sup> Kent R. Kerley and Heith Copes, ““Keepin’ My Mind Right” Identity Maintenance and Religious Social Support in the Prison Context,” *International Journal of Offender Therapy and Comparative Criminology*, 2009, vol. 53, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/0306624x08315019>; Shadd Maruna, Louise Wilson, and Kathryn Curran, “Why God Is Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative,” *Research in Human Development*, 2006, vol. 3, <https://www.capitalmass.org.uk/perch/resources/files/why-god-is-often-found-behind-bars.pdf>.

<sup>262</sup> *See e.g.*, Colley, ““All America is a Prison”: The Nation of Islam.”

<sup>263</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*, p. 19; *see also* Kent R. Kerley, *Religious Faith in Correctional Contexts* (Boulder, CO: First Forum Press, 2014).

<sup>264</sup> Van Baalen, “From “Black Muslim” to Global Islam.”

<sup>265</sup> Western, “Inside the Box: Safety, Health, and Isolation in Prison.”

<sup>266</sup> Kirk and Wakefield, “Collateral Consequences of Punishment: A Critical Review and Path Forward.”

<sup>267</sup> Maruna, Wilson, and Curran, “Why God Is Often Found Behind Bars.”

<sup>268</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains.”

Though religious practice seems to incur both personal<sup>269</sup> and societal benefits through desistance from crime,<sup>270</sup> there are critiques of religious practice in prison. One concern is that prisoners can use the pretense of religious conversion as a way to manipulate public sentiment and even parole boards.<sup>271</sup> Another concern is that prisoners might use religious practice to receive special privileges—such as being able to spend time out of their cells, eat snacks brought in by volunteers,<sup>272</sup> or receive other material supports such as toiletries<sup>273</sup>—by participating in religious programming regardless of their beliefs.<sup>274</sup> A major concern in this vein is that prisoners, particularly men, can participate in religious programming with the purpose of having contact with outsiders of the opposite sex.<sup>275</sup> In a qualitative study that explores the meaning of religion for prisoners, researchers suggest the idea that prisoners use religion as a form of manipulation is a “trope” because it is a common story about why prisoners practice religion without evidence.<sup>276</sup>

Perhaps a more serious concern is that religious practice in prisons could compromise safety. For instance, the Commission’s 2008 report reflects some practitioners’ concerns that prisoners could use religious objects as weapons, hide contraband in hair or facial hair that is grown out for religious reasons, or that gangs could use the guise of meeting for religious services to plan or execute illegal activities.<sup>277</sup> While the Supreme Court has acknowledged the primacy of prison safety by stating the need for “due deference” to prison officials in matters of safety when considering prisoners’ religious accommodations,<sup>278</sup> it has more recently required prison officials to prove that the accommodation poses real safety concerns.<sup>279</sup>

A specific concern about safety stems from the idea that religion in prison could lead to radicalization, or “an ideology that endorses the use of violence calculated to spread fear, disrupt the social order, and achieve political goals external to the prison environment.”<sup>280</sup> Prisons could

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<sup>269</sup> Iman Said and H. Daniel Butler, “Prison Religion: Exploring the Link Between Pre- and In-Prison Experiences to Religious Activity,” *Crime & Delinquency*, 2023,

<https://journals.sagepub.com/doi/full/10.1177/00111287221143947>.

<sup>270</sup> Stansfield, O’Connor, and Duncan, “Religious Identity and the Long-Term Effects of Religious Involvement, Orientation, and Coping in Prison”; Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>271</sup> Maruna, Wilson, and Curran, “Why God Is Often Found Behind Bars.”

<sup>272</sup> Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>273</sup> Ellis, “Prisons as Porous Institutions.”

<sup>274</sup> Maruna, Wilson, and Curran, “Why God Is Often Found Behind Bars.”

<sup>275</sup> Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping”; *see also* Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>276</sup> Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping”; Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective,” p. 63. *See also* Kerley and Copes, “‘Keepin’ My Mind Right’ Identity Maintenance and Religious Social Support in the Prison Context.”

<sup>277</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>278</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons.”

<sup>279</sup> *See Holt v. Hobbs*, 574 U.S. 352 (2015).

<sup>280</sup> Useem and Clayton, “Radicalization of US Prisoners,” p. 564; *see also* William J. Schultz, Sandra M. Bucerius, and Kevin D. Haggerty, “The Floating Signifier of “Radicalization”: Correctional Officers’ Perceptions of Prison Radicalization,” *Criminal Justice and Behavior*, 2021, vol. 48, no. 6,

<https://journals.sagepub.com/doi/abs/10.1177/0093854820969749>.



be “breeding grounds”<sup>281</sup> for radicalization because concentrated suffering, deprivation, and social isolation<sup>282</sup> might leave prisoners vulnerable to extremist conversion.<sup>283</sup> The risk could be particularly high for prisoners who view the U.S. government as engaging in unfair, racially biased punishments.<sup>284</sup> Prior research shows that prisoners are most vulnerable to terrorist recruitment when they are housed in overcrowded, maximum security prisons without sufficient rehabilitative programs or chaplains.<sup>285</sup> Once prisoners are recruited to an extreme religious group, they could then exercise their right to religious services as a pretense to meet for prohibited or illegal conduct.<sup>286</sup>

Prison officials tend to be most concerned about Islamic radicalization.<sup>287</sup> The FBI surveilled members of NOI beginning in the 1940s.<sup>288</sup> Their resulting report on the “extremely anti-American organization”<sup>289</sup> acknowledges the importance of prisons in the growth of the NOI, arguing that “obstruction of police and prison officials, excessive requests for freedom to practice their ‘religion’ in prison, and deliberate violations of certain laws are actions supported by NOI leaders and members.”<sup>290</sup> Post-9/11, the primary concern in U.S. prisons was the spread of Islamic factions related to international terrorist groups, such as al-Qaeda.<sup>291</sup> Imams and other Muslim volunteers face increased scrutiny because of fears about their potential to radicalize Muslim prisoners.<sup>292</sup> Because of the way established religions change in prisons,<sup>293</sup> all forms of “Prison Islam” are subject to suspicion of being a vehicle for radicalization.<sup>294</sup> Pew’s sample of prison chaplains do not view religious extremism as a major security threat, though they name Muslim prisoners as the group most likely to show extremism.<sup>295</sup>

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<sup>281</sup> Bert Useem, “US Prisons and the Myth of Islamic Terrorism,” *Contexts*, 2012, vol. 11, no. 2, <https://journals.sagepub.com/doi/full/10.1177/1536504212446458>.

<sup>282</sup> Travis, Western, and Redburn, “The Growth of Incarceration in The United States”; Western, “Inside the Box: Safety, Health, and Isolation in Prison”; Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*; Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping”; Clear, Hardyman, Stout, Lucken, and Dammer, “The Value of Religion in Prison: An Inmate Perspective.”

<sup>283</sup> Useem and Clayton, “Radicalization of US Prisoners.”

<sup>284</sup> Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>285</sup> *Ibid.*

<sup>286</sup> *See e.g.*, Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Management and Oversight of its Chaplaincy Services Program.”

<sup>287</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons”; *see also* Useem and Clayton, “Radicalization of US Prisoners.”

<sup>288</sup> Colley, ““All America is a Prison”: The Nation of Islam.”

<sup>289</sup> Federal Bureau of Investigation, “Nation of Islam: Part 1 of 3,”

<https://vault.fbi.gov/Nation%20of%20Islam/Nation%20of%20Islam%20Part%201%20of%203/view>, p. iii.

<sup>290</sup> Federal Bureau of Investigation, “Nation of Islam: Part 3 of 3,”

<https://vault.fbi.gov/Nation%20of%20Islam/Nation%20of%20Islam%20Part%203%20of%203/view>, p. 82.

<sup>291</sup> Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>292</sup> Useem and Clayton, “Radicalization of US Prisoners.”

<sup>293</sup> Van Baalen, “From “Black Muslim” to Global Islam.”

<sup>294</sup> Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>295</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains,” p. 17.

While there are few known instances of prison radicalization that led to an attempted act of terrorism,<sup>296</sup> prison officials and the federal government view<sup>297</sup> possible prisoner radicalization as an urgent concern.<sup>298</sup> DOJ's Office of the Inspector General (OIG) has shown multiple issues related to the potential for radicalization in recent audits of the BOP. For instance, a 2020 report finds that the BOP has not sufficiently monitored the communications of high-risk prisoners, including terrorists and those linked to terrorism.<sup>299</sup> An OIG audit of BOP's chaplaincy services argues that inadequate chaplaincy staffing, coupled with a lack of religious diversity, creates a security risk by allowing prisoners and volunteers who have not been sufficiently vetted to perform religious services for non-Christian prisoners.<sup>300</sup> In particular, OIG's audit shows four instances of Muslim prisoners with known links to terrorism being allowed to lead religious services.<sup>301</sup> While OIG calls allowing prisoners to perform religious leadership roles "undesirable,"<sup>302</sup> there is no consensus on its effect on radicalization. For instance, the author of a report submitted to the National Institute of Justice argues the opposite: "The most immediate safeguard against radicalization in overcrowded prisons may be religious programming led by inmates with moderate beliefs."<sup>303</sup> Data do show, however, there is stronger consensus that chaplains help protect against radicalization.<sup>304</sup>

Some argue that the perceived threat of Muslim prisoners is partially fueled by the lack of prison transparency and available data.<sup>305</sup> From the scant data that are available, research shows that the threat of broad radicalization is "miniscule."<sup>306</sup> Therefore, the fear about radicalization occurring on a large scale across the prison population may be outsized compared to its real threat. However, there have been cases where individuals who were radicalized in prison planned terrorist attacks

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<sup>296</sup> Useem and Clayton, "Radicalization of US Prisoners"; Mark S. Hamm, "Prisoner Radicalization: Accessing the Threat in U.S. Correctional Institutions," National Institute of Justice Journal, Oct. 26, 2008, <https://nij.ojp.gov/topics/articles/prisoner-radicalization-assessing-threat-us-correctional-institutions>.

<sup>297</sup> Hamm, "Terrorist Recruitment in American Correctional Institutions."

<sup>298</sup> See e.g., Dennis A. Ballas, "Prisoner Radicalization," Law Enforcement Bulletin, Federal Bureau of Investigations, Oct. 1, 2010, <https://leb.fbi.gov/articles/featured-articles/prisoner-radicalization>; Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>299</sup> Office of Inspector General, "Audit of the Federal Bureau of Prisons' Monitoring of Inmate Communications to Prevent Radicalization," Mar. 2020, <https://oig.justice.gov/sites/default/files/reports/a20042.pdf>.

<sup>300</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>301</sup> Ibid.

<sup>302</sup> Ibid, p. 32.

<sup>303</sup> Hamm, "Terrorist Recruitment in American Correctional Institutions," p. 115.

<sup>304</sup> Ibid; Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program"; Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>305</sup> Travis, Western, and Redburn, "The Growth of Incarceration in The United States."

<sup>306</sup> Hamm, "Terrorist Recruitment in American Correctional Institutions," p. 35; see also Useem and Clayton, "Radicalization of US Prisoners."

once released, and there is much that remains unknown about prison radicalization.<sup>307</sup> Researchers argue that speculation about the threat of radicalization may also be undergirded by stereotypes about Islam.<sup>308</sup> Many types of violence are inherent to prisons,<sup>309</sup> but scholars assert that “[t]he threat of prison radicalization is kept in the forefront of public awareness particularly by those who continue to view Islam per se as a threat to the United States in general.”<sup>310</sup>

The fear of religious radicalization also overlaps with race because of how race and religion are connected in U.S. prisons.<sup>311</sup> In a report for the National Institute of Justice, professor of criminology Mark Hamm argues that “the typical prison convert to Islam is a poor, [B]lack American upset about racism, not Middle East politics; someone who became a Muslim to cope with imprisonment, not to fulfil a religious obligation to Islamic law, Osama bin Laden, or al-Qaeda.”<sup>312</sup> Still, the marginalization of Black men through confinement might leave them vulnerable to radicalization.

Imam Abu Ishaq Abdul Hafiz, a retired chaplain from the Federal Bureau of Prisons, testified to the Commission that:

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

[T]here has been this tendency by politicians, as well as by sometimes the Justice Department, to feel that there is this danger of radicalization of Islam in the prisons. You can look back at the history of Islam in American prisons going back to the ‘40s, and particularly from the ‘60s until now, and you’re not going to find any conclusive evidence whatsoever that radicalization is one of the impetuses of why a person embraces Islam.

Many of the men and women, again, coming from the African American background are looking for transformation in their lives, looking for something to give them guidance and direction and purpose, and this is what the religion of Islam is.<sup>313</sup>

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<sup>307</sup> Ballas, “Prisoner Radicalization”; Jerome P. Bjelopera, Statement, Hearing on “Terror Inmates: Countering Violent Extremism in Prison and Beyond,” Committee on Homeland Security, Subcommittee on Counterterrorism and Intelligence, U.S. House of Representatives, Oct. 28, 2015, <https://docs.house.gov/meetings/HM/HM05/20151028/104102/HHRG-114-HM05-Wstate-BjeloperaJ-20151028.pdf>.

<sup>308</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons.”

<sup>309</sup> Kirk and Wakefield, “Collateral Consequences of Punishment: A Critical Review and Path Forward.”

<sup>310</sup> Van Baalen, “From “Black Muslim” to Global Islam,” p. 163.

<sup>311</sup> See *supra* notes 164-234 (discussing intersection of race and religion).

<sup>312</sup> Hamm, “Terrorist Recruitment in American Correctional Institutions,” p. 22.

<sup>313</sup> Abu Ishaq Abdul Hafiz, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 78-80.

While Islam is treated as the largest threat,<sup>314</sup> prisoner radicalization is not unique to this group. Research has found that religious conversion in prison is one pathway into White supremacy,<sup>315</sup> and that members of these groups (e.g., Christian Identity, Odinism, the World Church of the Creator, Asatru) have also been tied to terrorist groups after release.<sup>316</sup> Mark Hamm, professor of Criminology, argues that:

The danger to U.S. security is not the number of adherents to Islam, or to [W]hite supremacy religions, but in the potential for small groups of true believers to instigate terrorist acts upon their release from prison. A miniscule percentage of radicalized inmates will join terrorist networks, and they are likely to be fresh converts – the newly pious, those with an abundance of emotion and feeling – who are highly secretive about their intentions.<sup>317</sup>

Scholars have shown that as the scale and nature of incarceration changed in the late 20<sup>th</sup> century, the notion that prisons would serve a rehabilitative function was replaced by the rhetoric of punishment.<sup>318</sup> Examples of this cultural shift can be seen in legislation at that time, such as the 1994 Violent Crime Control and Law Enforcement Act, which made prisoners ineligible to receive Pell Grants to help pay for college.<sup>319</sup> This restriction was based on the idea that taxpayers should not pay for higher education for people convicted of crimes. Prisoner participation in education—including college programs—decreased substantially, leaving a programming vacuum.<sup>320</sup> In this new era when the rhetoric of rehabilitation shifted responsibility from the state to the individual,<sup>321</sup> religion became the primary way that prisoners could access programming and rehabilitation.<sup>322</sup> Though data are sparse, some studies indicate that most prisoners participate in some type of religious programming.<sup>323</sup>

<sup>314</sup> Marcus, “Jailhouse Islamophobia: Anti-Muslim Discrimination in American Prisons”; Useem and Clayton, “Radicalization of US Prisoners.”

<sup>315</sup> Ryan Andrew Brown, Todd C. Helmus, Rajeev Ramchand, Alina I. Palimaru, Sarah Weiland, Ashley L. Rhoades, Liisa Hiatt, “Violent Extremism in America,” Rand Corporation, 2021, [www.rand.org/content/dam/rand/pubs/research\\_reports/RRA1000/RRA1071-1/RAND\\_RRA1071-1.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RRA1000/RRA1071-1/RAND_RRA1071-1.pdf).

<sup>316</sup> Hamm, “Terrorist Recruitment in American Correctional Institutions.”

<sup>317</sup> Ibid.

<sup>318</sup> Phelps, “Rehabilitation in the Punitive Era.”

<sup>319</sup> Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*; see also Joshua Page, “Eliminating the Enemy: The Import of Denying Prisoners Access to Higher Education in Clinton’s America,” *Punishment & Society*, 2004, vol. 6, no. 4, <https://journals.sagepub.com/doi/abs/10.1177/1462474504046118>.

<sup>320</sup> Page, “Eliminating the Enemy”; Phelps, “Rehabilitation in the Punitive Era”; Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>321</sup> Becci and Dubler, “Religion and Religions in Prisons: Observations from the United States and Europe.”

<sup>322</sup> Clear, Stout, Dammer, Kelly, Hardyman, and Shapiro, “Does Involvement in Religion Help Prisoners Adjust to Prison?”; Thomas and Zaitzow, “Conning or Conversion? The Role of Religion in Prison Coping”; Hallett and Johnson, “The Resurgence of Religion in America’s Prisons.”

<sup>323</sup> Said and Butler, “Prison Religion: Exploring the Link Between Pre- and In-Prison Experiences.”

Most religious programming is Christian, which raises issues for non-Christian prisoners' equal access to religious practices, services, and faith practitioners.<sup>324</sup> For instance, the New Orleans Baptist Theological Seminary has education ministry programs that prisoners can complete in Louisiana, Mississippi, and Florida.<sup>325</sup> The Christian seminary program at the Louisiana State Penitentiary at Angola, which allows prisoners to earn a master's degree in Pastoral Ministry, is key to the prison's functioning.<sup>326</sup> There is no analogous non-Christian program at Angola.<sup>327</sup> Some programs use broad religious descriptions, such as "faith-based," even when their instructors are Christian.<sup>328</sup> Most prison volunteers are Christian: one scholar estimates that 85% of volunteers are Protestant Christians.<sup>329</sup>

In Pew's sample of prison chaplains, most reported a need for more religious volunteers to serve particular faiths and a third believe that there are more Christian volunteers than are needed to meet the needs of Christian prisoners.<sup>330</sup> In some instances religious groups are forbidden to meet without an outside volunteer, making the lack of non-Christian volunteers most burdensome for religious minorities.<sup>331</sup> At the Commission's briefing, Navdeep Singh, Acting Policy Director at the Sikh American Legal Defense and Education Fund, testified that "because federal prisons don't have Sikh-American chaplains or volunteers, these incarcerated individuals rely on ad hoc support by community members and their family, but security restrictions means that you may have to remove your turban in order to enter the facility to provide this care or spend time with your family" which may deter individuals from visiting and limit prisoners' access to family and same-faith practitioners.<sup>332</sup>

The largely Christian nature of religious programming and volunteers also extends to prison employees. According to Pew, seven in ten chaplains are White<sup>333</sup> and Protestant, and 85% are male.<sup>334</sup> OIG's audit of BOP's chaplaincy services finds a serious lack of religious diversity: 84% of chaplains for the federal system are Protestant.<sup>335</sup> Though chaplains are meant to attend to prisoners of all faiths, there are some religious rites that have to be performed by a member of the same faith.<sup>336</sup> Chaplains in many departments, including the BOP, are required to have a graduate

<sup>324</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*; see also Ellis, "Prisons as Porous Institutions."

<sup>325</sup> New Orleans Baptist Theological Seminary, "Prison Programs," <https://catalog.nobts.edu/generalinfo/campuses/prisonprograms>.

<sup>326</sup> Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>327</sup> Ibid.

<sup>328</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*, p. 5.

<sup>329</sup> Ibid, p. 4.

<sup>330</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>331</sup> Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration*.

<sup>332</sup> Navdeep Singh, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 155.

<sup>333</sup> Exclusively White chaplains serving mostly prisoners of color is a common issue and can be a source of tension. See Hallett, Hays, Johnson, Jang, and Duwe, *The Angola Prison Seminary*.

<sup>334</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains."

<sup>335</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>336</sup> Thomas and Zaitzow, "Conning or Conversion? The Role of Religion in Prison Coping."

degree in their field.<sup>337</sup> The OIG’s audit suggests that this degree requirement may be a barrier to hiring chaplains with a diversity of religious backgrounds. As the audit states:

[M]any faith groups recognized by the BOP do not have formal educational pathways to attain leadership positions in their faith. Graduate level programs are often found in seminary schools and are commonly obtained prior to ordination in many Protestant Christian denominations. While other faith traditions may have graduate programs directed to their faith, they may not be as prevalent and may not be required to become a religious authority within their faith. . . . BOP’s formal educational requirement may exclude otherwise qualified practitioners from applying and serving as chaplains because they may belong to faith groups without a wider organizational or educational structure, or because they have fewer practitioners in the United States that can meet these requirements.<sup>338</sup>

### *COVID in Prisons*

The COVID-19 pandemic caused emergency conditions in federal, state, and local institutions across the country. Prisons and jails faced serious public health concerns with the onset of the pandemic due to overcrowding, poorly ventilated facilities, high numbers of people with pre-existing medical conditions, and the custodial incapability to adhere to safety protocols.<sup>339</sup> Researchers found that U.S. prisons “were sites of 39 of the country’s 50 largest COVID-19 outbreaks in 2020.”<sup>340</sup> Incarcerated individuals were particularly vulnerable since many facilities had difficulties implementing public health safety measures.<sup>341</sup> According to the American Medical Association, incarcerated individuals were infected by the coronavirus at a rate more than five times the national rate in July 2020.<sup>342</sup> Though it is clear that prisoners were “especially susceptible to COVID-19 infection and death,” data limitations prevent a full understanding of prison mortality.<sup>343</sup> Still, researchers found that the total mortality in U.S. prisons increased 77%

<sup>337</sup> Pew Research Center, “Religion in Prisons – A 50-State Survey of Prison Chaplains”; *see also* Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Management and Oversight of its Chaplaincy Services Program.”

<sup>338</sup> Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Management and Oversight of its Chaplaincy Services Program.”

<sup>339</sup> Miltonette Olivia Craig, Mijin Kim, and Dawn Beichner-Thomas, “Incarcerated in a Pandemic: How COVID-19 Exacerbated the ‘Pains of Imprisonment,” *Criminal Justice Review*, 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10375228/#:~:text=In%20the%20first%20year%20of,et%20al.%2C%202020>.

<sup>340</sup> Emily Wang, Jonathan Zenilman, and Lauren Brinkley-Rubinstein, “Ethical Considerations for COVID-19 Vaccine Trials in Correctional Facilities,” *JAMA*, 2020, vol. 324, no. 11, <https://jamanetwork.com/journals/jama/article-abstract/2769694>.

<sup>341</sup> Newton E. Kendig, Sarah Bur, and Justin Zaslavsky, “Infection Prevention and Control in Correctional Settings,” *Emerging Infectious Diseases*, 2024, vol. 30, no.13, [https://wwwnc.cdc.gov/eid/article/30/13/23-0705\\_article#](https://wwwnc.cdc.gov/eid/article/30/13/23-0705_article#).

<sup>342</sup> Brendan Saloner, Kalind Parish, Julie Ward, Grace DiLaura, and Sharon Dolovich, “COVID-19 Cases and Deaths in Federal and State Prisons,” *JAMA*, 2020, vol. 324, no. 6, <https://jamanetwork.com/journals/jama/fullarticle/2768249>.

<sup>343</sup> Naomi F. Sugie, Kristin Turney, Keramet Reiter, Rebecca Tublitz, Daneila Kaiser, Rebecca Goodsell, Erin Secrist, Ankita Patil, and Monik Jimenez, “Excess Mortality in U.S. Prisons during the COVID-19 Pandemic,” *Science Advance*, 2023, vol. 9, no. 48, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10691764/>.

in 2020 compared to 2019, which was 3.4 times the increase in the general population.<sup>344</sup> Additionally, data show that the COVID-19 incidence rate was 3.3 times higher and the mortality rate was 2.5 times higher among state and federal prisoners compared to the U.S. general population.<sup>345</sup>

Due to the spread of the virus throughout carceral facilities across the nation, government officials instituted early release for thousands of prisoners.<sup>346</sup> Bureau of Justice Statistics (BJS) data show that from January 2020 to the end of February 2021, BOP and state DOCs released 648,400 prisoners, of which about 37,700 individuals (6%) were on an expedited basis.<sup>347</sup> However, data also suggest that during the first year of the pandemic, fewer people were released from prison than the prior year, which resulted in 19 state prison systems reaching 90% capacity or higher.<sup>348</sup> By the end of 2020, one in five state prison systems were at or above capacity.<sup>349</sup>

The pandemic resulted in increased stress and negative mental, physical, and emotional health for nearly all citizens, and exacerbated the harsh issues of confinement. Bruce Bryant, who was incarcerated at Sing Sing Correctional Facility in New York during the pandemic, described the early days of the pandemic in the prison:

At the start of the pandemic, the superintendent began hosting “press conferences” in the chapel with various leadership organizations, including the Inmate Liaison Committee. He begins by outlining his concerns and efforts to keep everyone safe, then asks the attendees if they have any questions... The meetings relieve some of the stress and anxiety within the prison. However, each time someone passes out or dies, it draws everyone’s attention back to the reality and heightens everyone’s sense of vulnerability... Every single night, I hear men coughing for hours. There are countless men who have symptoms: loss of taste

<sup>344</sup> Ibid.

<sup>345</sup> Neal Marquez, Julie A. Ward, and Kalind Parish, “COVID-19 Incidence and Mortality in Federal and State Prisons Compared With the US Population, April 5, 2020, to April 3, 2021,” *JAMA*, 2021, vol. 326, no. 18, <https://jamanetwork.com/journals/jama/article-abstract/2784944>.

<sup>346</sup> Emily A. Wang, Bruce Western, Emily P. Backes, and Julie Schuck, eds. “Decarcerating Correctional Facilities During COVID-19: Advancing Health, Equity, and Safety,” National Academies of Sciences, Engineering, and Medicine, Feb. 2021, <https://wisconsinwatch.org/wp-content/uploads/2021/02/25945.pdf>; Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, “Examining Prison Releases in Response to COVID: Lessons Learned for Reducing the Effects of Mass Incarceration,” Robina Institute of Criminal Law and Criminal Justice, July 2022, <https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2022-07/Examining%20Prison%20Releases%20in%20Response%20to%20COVID%20-%20July%202022.pdf>.

<sup>347</sup> E. Ann Carson, Melissa Nadel, and Gerry Gaes, “Impact of COVID-19 on State and Federal Prisons, March 2020-February 2021,” Bureau of Justice Statistics, Aug. 2022, <https://bjs.ojp.gov/content/pub/pdf/icsfp2021.pdf>.

<sup>348</sup> Emily Widra, “Since You Asked: Just How Overcrowded Were Prisons Before the Pandemic, and At This Time of Social Distancing, How Overcrowded are They Now?” Prison Policy Initiative, Dec. 21, 2020, <https://www.prisonpolicy.org/blog/2020/12/21/overcrowding/>.

<sup>349</sup> Prison Policy Initiative, “COVID-19 in Prisons and Jails,” July 2024, <https://www.prisonpolicy.org/virus/#:~:text=At%20the%20end%20of%202020,mostly%20due%20to%20reduced%20admissions>.

and smell, headaches and chills. Some are afraid to be quarantined because it means they'd go to the SHU (solitary confinement).<sup>350</sup>

For prisoners, the fear of contracting the virus compounded the stress of being incarcerated given that many facilities were at capacity or overcrowded prior to the pandemic, so public health measures were not possible.<sup>351</sup> As a result, many prisoners were confined to their cells and their movement and recreation time were severely limited.<sup>352</sup> However, depending on the facility and dorm units, isolation was not possible.<sup>353</sup> For example, Jennifer Graves, who was incarcerated at Florida Women's Reception Center during the pandemic, explained:

Soon after the doctor made rounds for the first time, the prison started socially distancing us. Only one dorm at a time is allowed in the chow room, there are only two women per table, and they told us we must remain 6 feet apart. But I sleep in an open dorm with 78 beds, eight showers, 12 toilets and eight sinks. Our bunks are only 2 feet apart, side by side. I asked if we could sleep head-to-toe to make some distance, and the answer was "not yet." What are they waiting for?<sup>354</sup>

In response to the virus, prisons began implementing testing, quarantines of prisoners who tested positive, mask mandates, suspensions of visitation, and restrictions on in-person programming (including religious services) to prevent the spread of the virus.<sup>355</sup> Yet reports from incarcerated individuals detail the often-inhumane conditions inside prisons during the pandemic.<sup>356</sup> A report from the Prison Accountability Project at UCLA School of Law describes the conditions in California State prisons during the pandemic:

In an effort to mitigate the spread of COVID-19, incarcerated people were routinely isolated in their cells for weeks or months at a time. Some people were locked in cells with up to seven other individuals—a practice that was profoundly detrimental to their well-being. Restrictions on in-person visitation, phone calls, programming, and recreation exacerbated the negative effects of isolation and catalyzed serious mental health issues, including depression, anxiety, and suicidal ideations. When coupled with decreased access

<sup>350</sup> Lewis, "How We Survived COVID-19 in Prison."

<sup>351</sup> Craig, Kim, and Beichner-Thomas, "Incarcerated in a Pandemic"; Sugie, Turney, Reiter, Tublitz, Kaiser, Goodsell, Secrist, Patil, and Jimenez, "Excess Mortality in U.S. Prisons during the COVID-19 Pandemic."

<sup>352</sup> Lewis, "How We Survived COVID-19 in Prison."

<sup>353</sup> Ibid.

<sup>354</sup> Ibid.

<sup>355</sup> Bureau of Justice Statistics, National Prisoner Statistics Program – Coronavirus Pandemic Supplemental Survey, 2021; Melissa J. Zielinski, Mariah Cowell, Chelsey E. Bull, Manasa Veluvolu, M. Forrest Behne, Kathryn Nowotny, and Lauren Brinkley-Rubinstein, "Policy and Public Communication Methods Among U.S. State Prisons During the First Year of the COVID-19 Pandemic," *Health Justice*, 2022, vol. 10, no. 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9435413/>.

<sup>356</sup> Prison Accountability Project, UCLA School of Law, "Systemic Failures: Conditions in California State Prisons During the Covid-19 Pandemic," June 2023, [https://law.ucla.edu/sites/default/files/PDFs/Prison\\_Law\\_and\\_Policy/Ready\\_for\\_Publication\\_PAP\\_Report\\_6.6.pdf](https://law.ucla.edu/sites/default/files/PDFs/Prison_Law_and_Policy/Ready_for_Publication_PAP_Report_6.6.pdf); Lewis, "How We Survived COVID-19 in Prison."



to prosocial programming, these restrictions fostered tension and violence in CDCR facilities, including abuse at the hands of correctional staff and violence between incarcerated people.<sup>357</sup>

Table 1.1 below shows some of the mitigation tactics adopted by state and federal prisons between March 1, 2020, and February 28, 2021. As the data below suggest, mitigation strategies to help reduce the spread of the virus depended on the facility. The BOP and a majority of state facilities instituted practices recommended by public health officials, such as isolating symptomatic prisoners, enforcing sick leave for symptomatic staff, checking staff's temperature before shifts, and providing face masks to both prisoners and staff.<sup>358</sup> Some facilities, however, did not take necessary precautions, such as providing masks to prisoners or staff. Jennifer Graves, who was incarcerated at the Florida Women's Reception Center during the pandemic, explained the conditions in her facility:

Preventive medicine is not the prison's forte. You must be almost dead before you can actually receive care. In late March, we started to worry when a doctor made rounds for the first time since the pandemic started. She instructed us to keep our hands and throats washed, even if it meant gargling with soap. She also suggested we keep our faces covered with a mask made out of toilet paper.<sup>359</sup>

James Ellis, who was incarcerated at the Marion Correctional Facility in Ohio, explained that the governor was not doing enough to protect prisoners at the facility. He wrote:

Sometimes I'd talk with the other guys about what we could do to let people know about our conditions. We'd see on the news that our prison was the number one hot spot in the country. We started sending out videos showing the conditions. We told our loved ones to share our stories on social media. The governor wasn't doing anything to get us relief. And some of the guards still refused to wear masks. There are people in here that treat us like we are not human. The ones that do, their co-workers call them "inmate lovers."<sup>360</sup>

Bruce Bryant, who was incarcerated at Sing Sing in New York, wrote:

The prison has tried to distance us. In the dining area, they only allow four people at a table, and now you don't have to wait for everyone to finish before you leave. They're disinfecting common areas, too; they're using bleach on the kiosk we use to send emails and on the telephones in the gym and on the yard. But what difference does that make when they bring people who were diagnosed with COVID back from the hospital just because

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<sup>357</sup> Prison Accountability Project, "Systemic Failures: Conditions in California State Prisons During the Covid-19 Pandemic."

<sup>358</sup> Carson, Nadel, and Gaes, "Impact of COVID-19 on State and Federal Prisons."

<sup>359</sup> Lewis, "How We Survived COVID-19 in Prison."

<sup>360</sup> Ibid.

they are feeling better? They aren't retested to see if they are still carrying the virus. And what difference does it make when the guards don't wear masks?<sup>361</sup>

Twenty-five DOCs imposed lockdowns across all facilities at some point from March 2020 to February 2021 (see Table 1.1).<sup>362</sup> Most state prisons and local jails suspended access to all outside visitors.<sup>363</sup> BJS data show that the BOP and all facilities in 48 states suspended in-person family visitation, and the BOP and 34 states suspended all in-person legal visits in response to the pandemic.<sup>364</sup>

Prisons also suspended most of their programming—such as educational and religious services—at some point during the pandemic.<sup>365</sup> As Table 1.1 below shows, 38 states and BOP facilities suspended all of their educational programs, 39 states and BOP facilities suspended all work programs, and 37 states suspended all ministry/religious service programs while BOP facilities suspended some of these services between March 2020 and February 2021.<sup>366</sup>

**Table 1.1: Number of Jurisdictions (States and BOP) with COVID-19 Mitigation Tactics (March 1, 2020-February 28, 2021)**

	<b>All Facilities</b>	<b>Some Facilities</b>	<b>No Facilities</b>	<b>NA/ Unknown</b>
All new prisoners tested at admission	39	6	4	2
Automatic quarantine of newly admitted prisoners	40	9	0	2
Lockdown of prisoners in cells	25	16	7	3
Daily temperature checks of prisoners	26	11	9	5
Staff temperature checks at start of shift	49	1	0	1
Isolation/quarantine of symptomatic prisoners	50	0	0	1
Enforced sick/administrative leave of symptomatic staff	48	0	0	3
Provision of hand sanitizer to prisoners	41	3	4	3
Provision of face masks to prisoners	49	0	0	2
Provision of face masks/gloves to staff	50	0	0	1
Viral testing of prisoners before release	32	7	9	3
Antibody/serology testing of staff	8	5	29	9
Antibody/serology testing of prisoners	13	7	22	9
<b>Complete suspension of:</b>				
Transfer between prisons and local jails	43	6	0	2

<sup>361</sup> Ibid.

<sup>362</sup> Carson, Nadel, and Gaes, "Impact of COVID-19 on State and Federal Prisons."

<sup>363</sup> Ibid.

<sup>364</sup> Ibid.

<sup>365</sup> Ibid.

<sup>366</sup> Ibid.

Educational programs	38	7	4	2
Drug/alcohol treatment programs	31	9	6	5
Prison labor programs	39	9	1	2
In-person family visitation	49	1	0	1
Legal visitation	35	6	8	2
Ministry/religious service programs	37	6	5	3

Note: Tactics were adopted at any time from March 1, 2020 to February 28, 2021 in none, some (at least one), or all government-operated and privately operated prisons in each jurisdiction.

Source: Bureau of Justice Statistics, National Prisoner Statistics Program – Coronavirus Pandemic Supplemental Survey, 2021. See Carson, Nadel, and Gaes, “Impact of COVID-19 on State and Federal Prisons.”

Widespread restrictions vastly changed prisoners’ daily lives during the height of the pandemic, including their access to religious services and programming. As discussed previously, religion can serve an important role in prisoners’ lives. When restrictions deprived prisoners of religious services and chaplain visits, some led their own prayer services for themselves and their peers. As James Ellis, a prisoner at Marion Correctional Facility in Ohio, described:

After we were tested, some of the officers stopped showing up for work. We felt like they had left us to die. On the inside, it felt like we were in the basement of a burning house with no way out. Some of the guys began having prayer circles. They would get in a circle and hold hands and pray to God.<sup>367</sup>

Losing access to religious leaders and worship was significant for many prisoners as they coped with feelings of depression, fear, isolation, and grief during the pandemic. Reverend Heidi Kugler, Chief of Chaplaincy Services for BOP, explained that “the pandemic . . . increased the need for chaplains to be more pastorally present as more individuals experienced . . . more deep loss and grief.”<sup>368</sup> However, prisons implementing policies to slow the spread of the virus—such as restricting access to chaplains, religious volunteers, and group prayers—negatively impacted many prisoners’ religious exercise.

Prison advocates argued that having access to practice one’s faith during COVID-19 was immensely important, especially given the heightened stress and fear associated with the pandemic. In a letter to prison administrators, Muslim Advocates, along with over 24 local and national faith organizations, wrote:

Prisons remain under an obligation to accommodate religious practice to the maximum extent possible, even as they act to mitigate the health crisis. While these obligations extend to all religions, prisons must be particularly sensitive to the needs of practitioners of minority religions. Muslims, for example, are disproportionately incarcerated in state

<sup>367</sup> Lewis, “How We Survived COVID-19 in Prison.”

<sup>368</sup> Reverend Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 90.

prisons relative to their share of the general population—and among prisoners, they are more likely to present grievances over religious issues and litigate those issues...

Yet even prior to the pandemic, many prison systems had poor records of accommodating the needs of minority religions. In fact, state prison systems often denied prisoners religiously appropriate food, prayer and worship opportunities. While reliable information on the federal prison system, local jails, and immigration detention facilities does not exist, it's clear that these problems are widespread.<sup>369</sup>

The Sikh Coalition also shared that restrictions on *kesh* (unshorn hair)—which is already often subjected to restrictions based on often arbitrary shaving requirements—were enhanced during the COVID-19 pandemic based on poor guidance around alternative forms of personal protective equipment, including facemasks, that do not require a wearer to be clean-shaven.<sup>370</sup>

### The Legal Right to Exercise Religion in Prison

The right to practice religion while incarcerated rests on prisoners' constitutional and statutory protections, which are tempered by the unique health, safety, and administrative concerns of state and federal correctional institutions. As the Supreme Court has stated, “[p]risoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison.”<sup>371</sup> At the same time, the right to exercise one’s religion “is necessarily limited by the fact of incarceration and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security.”<sup>372</sup> While freedom of religion is guaranteed by the First Amendment of the Constitution, court decisions and legislative decisions by Congress have been used to establish, stretch, and curtail its boundaries for prisoners over time.

It is common for prisoners to continue engaging with their case and the legal system more generally if civil rights violations occur during confinement. Low socioeconomic status is a strong predictor of incarceration,<sup>373</sup> so many prisoners cannot afford lawyers<sup>374</sup> and instead act on their own behalf (*pro se*). Though people have always had the right to act on their own behalf in U.S. courts,<sup>375</sup> non-

<sup>369</sup> Muslim Advocates, “Religious Practice and Ramadan during the Coronavirus Pandemic,” Apr. 2020, (internal citations omitted), <https://muslimadvocates.org/wp-content/uploads/2020/04/2020.04.15-Letter-to-Prisons-re-Religious-Practice-During-COVID-19-National.pdf>.

<sup>370</sup> The Sikh Coalition, *Enforcing Religious Freedoms in Prison Briefing*, written testimony.

<sup>371</sup> *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

<sup>372</sup> *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th Cir. 1987) (citing *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987)).

<sup>373</sup> Travis, Western, and Redburn, “The Growth of Incarceration in The United States.”

<sup>374</sup> Kelsey Brown, “How Twenty-First Century Technology Affects Inmates’ Access to Prison Law Libraries in the United States Prison System,” *Marq. Benefits & Soc. Welfare L. Rev.*, 2020, vol. 21, <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1064&context=benefits>.

<sup>375</sup> Drew A. Swank, “The Pro Se Phenomenon,” *BYU J. Pub. L.*, 2004, vol. 19, [https://heinonline.org/HOL/Page?handle=hein.journals/byujpl19&div=16&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/byujpl19&div=16&g_sent=1&casa_token=&collection=journals).

attorneys lack legal expertise and training in court procedures, so are at a disadvantage.<sup>376</sup> The courts recognize this disadvantage by holding *pro se* complaints to “less stringent standards than formal pleadings drafted by lawyers.”<sup>377</sup> Still, representing oneself is an impediment to bringing a successful suit as research shows that legal representation increases the likelihood of receiving a favorable outcome.<sup>378</sup> Most federal *pro se* cases are brought by prisoners<sup>379</sup> and *pro se* litigants in federal courts “fare extremely poorly.”<sup>380</sup>

### *The First Amendment & The Free Exercise Clause*

The First Amendment to the United States Constitution states “that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech.”<sup>381</sup> A prisoner, notwithstanding their status as a prisoner, “retains those First Amendment Rights,” including the “directive that no law shall prohibit the free exercise of religion.”<sup>382</sup> However, prisoners’ free exercise clause claims have been difficult to prove and substantial deference has been given prison administrators.<sup>383</sup> Congress later passed statutes like RFRA and RLUIPA (discussed below) to increase protection for religious liberties and provide more protection than constitutional free exercise claims. Nevertheless, the constitutional law is in flux and may be subject to change.<sup>384</sup>

The Supreme Court’s general rule for assessing free exercise claims was set forth in *Employment Division v. Smith*.<sup>385</sup> That standard favors prisons because it provides a simple principle: “a generally applicable and otherwise valid rule,” does not violate the Free Exercise Clause “if prohibiting the exercise of religion is not [its] object, but merely the incidental effect of its operation.”<sup>386</sup> *Smith* involved claimants for unemployment benefits who practiced their free exercise of religion by smoking peyote. The Court rejected their challenge because they were denied benefits based on a “generally applicable” and valid rule barring benefits to drug users. Prisons may easily satisfy that standard if their policies for security are not aimed at religion or

<sup>376</sup> Stephan Landsman, “The Growing Challenge of Pro Se Litigation,” *Lewis & Clark L. Rev.*, 2009, vol. 13, [https://heinonline.org/HOL/Page?handle=hein.journals/lewclr13&div=21&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/lewclr13&div=21&g_sent=1&casa_token=&collection=journals).

<sup>377</sup> *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

<sup>378</sup> Rebecca L. Sandefur, “The Impact of Counsel: An Analysis of Empirical Evidence,” *Seattle J. Soc. Just.*, 2010, vol. 9, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1076&context=sjsj>.

<sup>379</sup> United States Courts, “Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019,” Feb. 11, 2021, <https://www.uscourts.gov/news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019>.

<sup>380</sup> Mitchell Levy, “Empirical Patterns of Pro Se Litigation in Federal District Courts,” *U. Chi. L. Rev.*, 2018, vol. 85, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=6109&context=uclev>.

<sup>381</sup> U.S. Const. amend. I.

<sup>382</sup> *Id.*

<sup>383</sup> *O’Lone v. Estates of Shabazz*, 482 U.S. 342 (1987).

<sup>384</sup> See e.g., *Fulton v. City of Philadelphia* 141 S. Ct. 1868 (2021) (concurring Justices seek to overrule *Smith*). The Court has decided several free exercise cases in the past few years. See e.g., *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022); *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018).

<sup>385</sup> *Employment Division v. Smith*, 494 U.S. 872 (1990).

<sup>386</sup> *Id.* at 878.

hostile to religion but apply to all prisoners and thus are generally applicable rules.

Recently, in *Fulton v. Philadelphia*, the Supreme Court accepted *certiorari* to decide whether *Smith* should be overruled, but the Court refused to do so.<sup>387</sup> Instead, it elaborated on the requirement that the challenged policy be general and not hostile to religion. *Smith*'s generality rule does not apply in three cases: (1) when the government "proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature"<sup>388</sup>; or (2) when the law is not in fact general, but allows for individualized exemptions.<sup>389</sup> Finally, the *Smith* rule will not apply when a general ordinance does not treat religion and non-religion in similar fashion.<sup>390</sup>

Historically, prisoners' constitutional claims for free exercise have been very difficult to prove. In *O'Lone v. Estates of Shabazz*,<sup>391</sup> the Supreme Court treated prisoner claims for religious free exercise differently from claims outside the prison context. In that case, the Court gave strong deference to prison needs, deploying a four-part test first announced in *Turner v. Safley*,<sup>392</sup> a prison case that did not involve religious free exercise. Some appellate courts may feel bound by this line of cases given the state of their own precedent, even though *Smith* and now *Fulton* constitute the governing free exercise clause in all contexts, including prisons. As a recent appellate decision applying the old framework explained, the Fourth Circuit was still applying case law based on *Turner v. Safley* to free exercise claims in the prison context which "might have been made sense for a few years in the 1980s," but was ousted by *Smith* in 1990, and now *Fulton* in 2021.<sup>393</sup>

In the constitutional realm, the Court has recognized that deterrence, rehabilitation, and institutional security are all valid penological objectives that may limit prisoners' rights.<sup>394</sup> Conflicts over the exercise of religious liberty in prisons are inherently difficult, even intractable at times. In some instances, correctional institutions have been found to have erected frivolous and arbitrary barriers that have unnecessarily interfered with prisoners' free exercise rights.<sup>395</sup> However, not every denial of a religious accommodation amounts to discrimination on the basis of religion. Although the current constitutional standard permits broad latitude to prison officials' general rules, that standard is not applicable in the more protective statutory cases brought under RFRA and RLUIPA.

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<sup>387</sup> 141 S. Ct. 1868 (2021).

<sup>388</sup> *Id.* at 533, citing *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018).

<sup>389</sup> *Id.* at 533-34.

<sup>390</sup> *Id.* at 534 (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993)).

<sup>391</sup> 482 U.S. 342 (1987).

<sup>392</sup> 482 U.S. 78 (1987).

<sup>393</sup> *Firewalker-Fields v. Lee*, 58 F.4th 104, 114 n.2 (4th Cir. 2024) (recommending that if the claim survived *Smith* and *Fulton*, the court would then apply the deferential standard announced in *O'Lone* giving substantial deference to prison officials).

<sup>394</sup> *O'Lone*, 482 U.S. at 348 (citing *Pell v. Procunier*, 417 U.S. 817, 822-23 (1974)).

<sup>395</sup> See 146 Cong. Rec. 16698, 16699 (Joint Statement of Sen. Hatch and Sen. Kennedy on Religious Land Use and Institutionalized Persons Act).

### *Congressional and Legislative Action*

The federal government only oversees federal prisons, which are managed by the BOP and thus have generally consistent policies across the 122 federal institutions. Conversely, each state manages its own prison system, which can result in large variations in how grievances are addressed and how laws protecting prisoners' rights are interpreted. Considering these variations, Congress passed the Civil Rights of Institutionalized Persons Act (CRIPA) in 1980. This law provides a mechanism for the Attorney General to initiate litigation against states or their agents seeking equitable relief for deprivation of any institutionalized person's rights protected by the Constitution. A case may be brought if it is determined that such deprivation has caused grievous harm and is part of a pattern or practice of resistance to the full enjoyment of rights.<sup>396</sup> CRIPA also provides a mechanism for the Attorney General to intervene in certain actions on behalf of the United States.<sup>397</sup>

In response to the Supreme Court's narrow protection of religious rights under the free exercise clause, Congress passed two statutes that are more protective than the Constitution. First, in 1993, Congress enacted the Religious Freedom Restoration Act (RFRA)<sup>398</sup> in response to the Supreme Court's decision in *Employment Division v. Smith*.<sup>399</sup> *Smith* held that rules of general applicability may not be challenged under the free exercise clause. By contrast, RFRA allowed individuals to challenge general rules under a single strict scrutiny standard<sup>400</sup> if it burdened religious exercise.<sup>401</sup> Congress passed RFRA with the belief that it would provide a more workable solution for "striking sensible balances between religious liberty and competing prior governmental interests."<sup>402</sup> RFRA does not only apply to institutionalized persons, and suits can be filed for any allegation of religious discrimination.

Less than four years after RFRA's enactment, the Supreme Court struck down the provision in the law that applied to the states. In *City of Boerne v. Flores*, the Court held that RFRA exceeded Congress's enforcement power under Section 5 of the Fourteenth Amendment. The Court

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<sup>396</sup> 42 U.S.C. § 1997 *et seq.* (2000).

<sup>397</sup> *Id.* at § 1997(c) (2000); *see also Santana v. Collazo*, 89 F.R.D. 369, 372 (D.C. Puerto Rico 1981) (noting that it is evident from the legislative history that the *raison d'être* of the Act is to protect the rights of institutionalized persons because they themselves are unable or incapable of doing so.)

<sup>398</sup> 42 U.S.C. § 2000bb *et seq.* (2000). For the full text of RFRA.

<sup>399</sup> The case was filed by two employees of a drug rehabilitation center who were fired after ingesting peyote as a part of their religious ceremonies as members of the Native American Church. The Supreme Court vacated the ruling of the lower courts and ruled that Oregon's prohibition of illegal drugs for sacramental religious uses violated the Free Exercise Clause. The Court ruled that religious practitioners are not exempt from laws that are "neutral" and "generally applicable." *See Employment Div. v. Smith*, 494 U.S. 872 (1990) ("the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)" (internal quotation marks omitted)). *See Id.* at 879.

<sup>400</sup> Strict scrutiny is a form of judicial review that courts use to determine the constitutionality of certain laws. Laws subjected to strict scrutiny "are constitutional only if they are narrowly tailored measures that further compelling government interests." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

<sup>401</sup> 42 U.S.C. § 2000bb *et seq.* (2000).

<sup>402</sup> *Id.*

maintained that although Congress may enforce constitutional rights under Section 5 of the Fourteenth Amendment<sup>403</sup> and may remedy constitutional violations, RFRA exceeded Congress's enforcement clause authority, going beyond prevention or remediation and attempting "substantive change in constitutional protections."<sup>404</sup> As a result, RFRA was limited only to federal action, and not state or local action. Therefore, only federal prisoners could rely on RFRA to sue for violations of their religious freedom.

In response to the Court's decision in *City of Boerne*, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) in 2000, under its Spending and Commerce clause powers, increasing protections for the free exercise of religion by institutionalized persons.<sup>405</sup> Specifically, section 2000cc-1 provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to [a covered] institution, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person" advances a "compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest."<sup>406</sup> Put differently, RLUIPA requires prisons and jails to provide a compelling reason for not meeting a religious accommodation request, instead of merely a "legitimate" penological interest. If the request is denied, and a burden is imposed, the facility must use the "least restrictive means" to allow a prisoner to practice their religion. The passage of RLUIPA was intended to return free exercise protections to the level enjoyed prior to the *Smith* ruling.<sup>407</sup>

RLUIPA applies to people in state prisons or local jails. Individuals detained and/or incarcerated in privately-run and managed prisons and jails are generally also covered under RLUIPA because these facilities are seen to be operating on behalf of states or local municipalities. Federally incarcerated individuals' rights are protected under RFRA, but their rights are not covered under RLUIPA.<sup>408</sup>

RLUIPA passed unanimously in 2000. Proponents of the bill argued:

individuals confined to institutions are often subject to the authority of a small number of local officials, and that the religious exercise of individuals in those institutions is often limited, sometimes in egregious and unnecessary ways ... [O]fficials in these institutions occasionally imposed frivolous and arbitrary restrictions on the religious

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<sup>403</sup> Section 5 of the Fourteenth Amendment grants Congress "the power to enforce, by appropriate legislation, the provisions of" the Fourteenth Amendment, which, among other things, has been interpreted to require state compliance with the First Amendment. See Congressional Research Service, "The Religious Freedom Restoration Act: A Primer," Apr. 3, 2020, <https://crsreports.congress.gov/product/pdf/IF/IF11490>.

<sup>404</sup> *City of Boerne v. Flores*, 521 US 507, 532 (1997).

<sup>405</sup> Religious Land Use and Industrialized Persons Act, Pub. L. 106-274, 114 Stat. 804 (codified at 42 U.S.C. 2000cc (2000)).

<sup>406</sup> 42 U.S.C. § 2000cc-1 (2000). Additional sections of the act set forth requirements for and restrictions on judicial relief, rules of construction, and information on the act's relation to the Establishment Clause.

<sup>407</sup> See *Employment Div. v. Smith*, 494 U.S. 872 (1990).

<sup>408</sup> See e.g., *Gonzales v. O Centro Espirita Beneficente Unias Do Vegetal*, 126 S. Ct. 1211 (2006).



liberty of individuals confined to those institutions.<sup>409</sup>

One of the sponsors of RLUIPA, Senator Kennedy stated that institutionalized persons were often denied opportunities to practice their religions even when such practice would not “threaten the safety, order, or discipline in correctional facilities.” He also noted that restrictions on the practice of religion in the prison context could even be counter-productive because “[s]incere faith and worship can be an indispensable part of rehabilitation.”<sup>410</sup>

RLUIPA’s compelling interest test is similar to RFRA’s test for specific types of state actions. RLUIPA, however, included the addition of land use regulations. Under the statute, state and local governments “may not implement land use regulations in a way that imposes a substantial burden on the religious exercise of a person or religious institution unless the government can demonstrate that the regulation is in furtherance of a compelling government interest and is the least restrictive means of furthering that government interest.”<sup>411</sup> More importantly, for this report:

under RLUIPA, any state or local government accepting federal financial assistance is prohibited from imposing substantial burdens on the religious exercise of individuals who are confined to an “institution.” Under the statute, institutions include jails, prisons, correctional facilities, institutions for individuals who are mentally ill or disabled, pretrial detention facilities, and institutions for juveniles held awaiting trial or needing care or treatment.<sup>412</sup>

At the Commission’s briefing, Jane M.G. Foster Professor of Law at Cornell Law School, Nelson Tebbe, explained that:

RLUIPA applies an exceptionally powerful standard to religious exemption claims in the prison context, and it applies to all state and local governments. Therefore, it can and has dominated religious freedom litigation in the prison context. Though it does not apply to the federal government by its terms, its standard is similar to that of [RFRA] which does work against federal prisons. Therefore, in both the federal and state institutional settings the government must avoid imposing substantial burdens on sincere religious practices unless they can show that their rules are narrowly tailored to compelling interest.<sup>413</sup>

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<sup>409</sup> U.S. Department of Justice, “Statement of the Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA),” <https://www.justice.gov/crt/page/file/974661/dl>.

<sup>410</sup> Cong. Rec., (2000), vol. 146, <https://www.govinfo.gov/content/pkg/CRECB-2000-pt10/html/CRECB-2000-pt10-Pg14273-4.htm>.

<sup>411</sup> Congressional Research Service, “The Religious Freedom Restoration Act: A Primer.”

<sup>412</sup> Ibid.

<sup>413</sup> Nelson Tebbe, *Enforcing Religious Freedoms in Prison* testimony, pp. 23-24.

Institutionalized individuals who believe their rights under RLUIPA have been violated can bring a private civil suit for an injunction or declaratory relief. The Justice Department can investigate alleged religious violations under RLUIPA and may bring suit against a facility to enforce the statute.<sup>414</sup> RLUIPA does not apply to actions against the federal government or its correctional facilities.<sup>415</sup> Federally incarcerated individuals must bring a RFRA case instead for such claims. The Supreme Court has held in *Tanzin v. Tanvir* that those suing under RFRA are entitled to money damages as well as injunctive relief.<sup>416</sup> RFRA’s “appropriate relief” language, interpreted in *Tanzin*, is identical to RLUIPA, but the 11th Amendment may serve as a separate bar to damages actions. That Amendment provides states with sovereign immunity from damage liability. The Supreme Court held in *Sossamon v. Texas* that RLUIPA damage actions against officers in their official capacity are barred by the 11th Amendment.<sup>417</sup> Whether that applies to suits against individual officers in their individual capacity is now being challenged in *Landor v. Louisiana Dep’t of Corrections*.<sup>418</sup> If reversed, *Landor* would apply *Tanzin v. Tanvir* to RLUIPA, allowing state prisoners damage actions.

In the wake of the Supreme Court’s holding in *City of Boerne*, a number of states passed their own religious freedom acts. These include Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Missouri, New Mexico, Oklahoma, Rhode Island, South Carolina, and Texas, to name a few.<sup>419</sup> These state laws are called “state RFRA,” since their provisions frequently mirror the federal statute. In several cases, the analysis in state RFRA litigation mirrors that employed by RLUIPA. For example, the First District Court of Appeals in Texas stated that “[t]he language of RLUIPA regarding the burdens of proof required to demonstrate a violation is substantially similar to that language in the Texas Religious Freedom Restoration Act (TRFRA), and we thus refer to federal case law construing the RLUIPA burdens of proof for our analysis of TRFRA burdens of proof.”<sup>420</sup>

Since the Commission’s 2008 report on this topic, there have been several significant court cases that have challenged as well as clarified RLUIPA’s protections. For instance, *Holt v. Hobbs* in 2015 and *Ramirez v. Collier* in 2022 are two noteworthy cases involving incarcerated individuals, both of which upheld the religious rights of prisoners.

*Holt v. Hobbs* was the first Supreme Court case directly interpreting RLUIPA’s substantive

<sup>414</sup> U.S. Department of Justice, *A Guide to Federal Religious Land Use Protections*, 3 (2000), [http://www.usdoj.gov/crt/religdisc/rluipa\\_guide.pdf](http://www.usdoj.gov/crt/religdisc/rluipa_guide.pdf).

<sup>415</sup> *Yerushalayim v. U.S. Dep’t of Corrections*, 374 F. 3d 89, 92 (2d Cir. 2004) (*per curiam*).

<sup>416</sup> *Tanzin v. Tanvir*, 592 U.S. 43 (2020).

<sup>417</sup> *Sossamon v. Texas*, 563 U.S. 277 (2011).

<sup>418</sup> 82 F. 4th 337 (5th Cir. 2023), cert. pending (2024).

<sup>419</sup> ALA. CONST. art. I § 3.01 (1999); ARIZ. REV. STAT. ANN. § 41-1493.01 (1999); CONN. GEN. STAT. ANN. § 52-571b (1999); FLA. STAT. ANN. § 761.03 (1998); IDAHO CODE § 73-402 (2000); 775 ILL. COMP. STAT. ANN. 35/15 (1998); MO. REV. STAT. § 1.302 (2003); N.M. STAT. ANN § 28-22-3 (2000); 51 OKLA. STAT. § 251-258 (2000); R.I. GEN. LAWS § 42-80.1 (1998); S.C. CODE ANN. § 1-32-10 (1999); 5 TEX. Civ. Prac. & Rem. Code Ann. § 110.0009(b) (1999).

<sup>420</sup> *Balawajder v. Texas Dep’t of Criminal Justice Inst’l Div.*, 217 S.W.3d 20, 26 (Tex. 2006).

provisions following the legislation's passage.<sup>421</sup> Prior to *Holt*, the Court held in *Cutter v. Wilkinson* that RLUIPA did not violate the Establishment Clause.<sup>422</sup> The Court also held, however, that if prisoners' requests "for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition."<sup>423</sup> The *Cutter* ruling led to mixed levels of protections in the lower courts and a circuit split developed as courts struggled to determine whether they should offer deference to prison officials or if they should take a "harder look" at the explanations offered.<sup>424</sup> Some even argued that the *Cutter* ruling ostensibly took "the teeth out of the strict scrutiny language in the RLUIPA" due to the degree of deference courts gave to prison officials.<sup>425</sup>

The *Holt* Court held that the strict scrutiny standard required by the statute was "exceptionally demanding" and that the protections it afforded were "expansive."<sup>426</sup> Despite the protections RLUIPA offers, some incarcerated individuals still experience barriers when attempting to practice their religion. In *Holt*, a Muslim prisoner in an Arkansas state prison sued in federal court for his right to wear a half-inch beard in accordance with his Muslim beliefs. Professor Douglas Laycock, who represented Mr. Holt before the Supreme Court and continues to represent him in ongoing litigation, submitted a written statement to the Commission stating that Arkansas prison officials refused to let Mr. Holt grow a half-inch beard even though other prisoners were allowed to grow a quarter-inch beard for medical reasons.<sup>427</sup> The Supreme Court overturned the lower court's decision and ruled in favor of Mr. Holt, agreeing that his request to grow a religious beard violated RLUIPA because the Arkansas Department of Corrections' policy failed to prove that prohibiting beards was the least restrictive means to further its interest in (1) preventing prisoners from hiding contraband and (2) quickly and reliably identifying prisoners.<sup>428</sup>

The ruling in *Holt* is considered a clear statement that courts should not give broad deference to prison officials or accept prison administrators' statements about governmental interests as a basis for denying religious accommodations.<sup>429</sup> The Court also clarified that the burden is on the prison, not the prisoner, to show that the prison's denial of a religious accommodation advances a "compelling government interest" through the least restrictive means.<sup>430</sup> In other

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<sup>421</sup> See *Holt v. Hobbs*, 574 U.S. 352 (2015).

<sup>422</sup> See *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>423</sup> *Id.* at 726.

<sup>424</sup> See e.g., Bollman, "Deference and Prisoner Accommodations Post-Holt."

<sup>425</sup> Nathan Lobaugh, "Yellowbear v. Lampert—Putting Teeth into the Religious Land Use and Institutionalized Person Act of 2000," *Am. Indian L. Rev.*, 2017, vol. 41, no. 2, <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1085&context=ailr>.

<sup>426</sup> *Holt v. Hobbs*, 574 U.S. 352, 358, 364 (2015).

<sup>427</sup> Douglas Laycock, Written Statement for the *Federal Role in Enforcing Religious Freedoms in Prison* briefing, pp. 6-7 (hereinafter Laycock Statement).

<sup>428</sup> See *Holt v. Hobbs*, 574 U.S. 352 (2015).

<sup>429</sup> *Id.*

<sup>430</sup> *Id.* at 362.

words, a prison cannot simply argue that a denial is due to broad security or safety concerns; rather, the prison must point to a specific security or safety threat advanced by the specific restriction in place. Eric Treene, former DOJ prosecutor, explained in his testimony to the Commission that the Supreme Court’s ruling in *Holt* “made clear that RLUIPA’s requirement that prisons meet the strict scrutiny standard in order to substantially burden inmate religious exercise in fact should be applied strictly.”<sup>431</sup>

In 2022, the Supreme Court reevaluated RLUIPA’s requirements that prisoners must establish a substantial burden on religious exercise and that the government (i.e., prisons and jails) must meet the strict scrutiny standard in *Ramirez v. Collier*.<sup>432</sup> This suit was brought by John Ramirez, a man on Texas’s death row who was denied permission to have his pastor present at his execution and “be permitted to ‘lay hands’ on him and ‘pray over’ him during the execution.”<sup>433</sup> The prison denied Mr. Ramirez’s request, stating that “spiritual advisors are not allowed to touch an inmate in the execution chamber.”<sup>434</sup> Mr. Ramirez filed suit in federal district court, claiming this restriction was a violation of the free exercise clause of the First Amendment and RLUIPA.<sup>435</sup> The Supreme Court held that Texas’s restrictions on religious touch and audible prayer in the execution chamber likely violated RLUIPA because the policy posed a burden on religious exercise and was not the least restrictive means of furthering the state’s compelling interests.<sup>436</sup>

In both the *Holt* and *Ramirez* cases, the Supreme Court established standards to determine what constituted a substantial burden that gave deference to the religious needs of incarcerated individuals and refused to defer to prison authorities’ claims of compelling interest. Nevertheless, some prison officials continue to resist accommodating prisoners’ religious practices. Professor Douglas Laycock wrote in his statement to the Commission that even after the Court’s decision in *Holt*, officials in the Arkansas Department of Corrections refuse to provide religious accommodations unless required to do so by a court order.<sup>437</sup>

While *Holt* and *Ramirez*, among others, may suggest that the lower courts would move toward less deference to prison officials’ assertions of compelling interest, an early analysis of federal

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<sup>431</sup> Eric W. Treene, Written Statement for the *Federal Role in Enforcing Religious Freedoms in Prison* briefing, pp. 3-4 (hereinafter Treene Statement).

<sup>432</sup> *Ramirez v. Collier*, 595 U.S. 411 (2022).

<sup>433</sup> *Id.* at 1, [https://www.supremecourt.gov/opinions/21pdf/21-5592\\_feah.pdf](https://www.supremecourt.gov/opinions/21pdf/21-5592_feah.pdf).

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> The *Ramirez* case came before the Court in a preliminary posture. The Court wrote: “Our holding today arises in the context of a preliminary injunction. And our analysis turns on Texas’s specific execution protocol, chamber, and historical practices. Further proceedings on remand, if necessary, might shed additional light on Texas’s interests, and on whether its policies are narrowly tailored. . . . We hold that Ramirez is likely to prevail on the merits of his RLUIPA claims, and that the other preliminary injunction factors justify relief.” *Ramirez v. Collier*, 595 U.S. \_\_\_\_ (2022), at 22, [https://www.supremecourt.gov/opinions/21pdf/21-5592\\_feah.pdf](https://www.supremecourt.gov/opinions/21pdf/21-5592_feah.pdf).

<sup>437</sup> Laycock Statement at 5. (The Director of the Department of Corrections] further testified that even if he had fully adequate staff and fully adequate space, such that all his (much exaggerated) practical objections were overcome, Arkansas still would not permit separate Jumu’ah services without a court order.).

cases post-*Holt* show mixed rulings.<sup>438</sup> Nick Reaves, Counsel for the Becket Fund for Religious Liberty, testified to the Commission that some lower courts continue to give too much deference to prison officials despite *Holt* and *Ramirez*:

I'd like to address the legal deference that some courts continue to give to prison officials when applying strict scrutiny...Normally, the strict scrutiny analysis is very demanding. Some courts, however, continue to cite discredited dicta from the Supreme Court's decision in *Cutter vs. Wilkinson* to inject deference to prison officials into the strict scrutiny analysis. This is error. Instead of deferring to courts, courts must in the first instance determine whether prison officials' assertions are supported by persuasive arguments and actual evidence. . . . A prison official's mere assertion that an accommodation could be costly or might interfere with prison safety or security doesn't cut it.

Correcting these lingering errors will go a long way to realizing RLUIPA's promise that the freedom to practice one's religion should not needlessly be curtailed even for those serving time in our nation's prisons.<sup>439</sup>

This risk might be particularly true for religious minorities. Nelson Tebbe, Jane M.G. Foster Professor of Law at Cornell Law School, testified that even though he is "heartened by some Supreme Court decisions where the justices really have taken seriously the claims of minority religious people,"<sup>440</sup> he believes that "there's reason to be concerned that courts might overlook or disregard the practices of minority religions."<sup>441</sup>

### *Prison Litigation Reform Act*

Prisoners' suits for free exercise face unique burdens not shared by other free exercise litigants. In 1996, Congress passed the Prison Litigation Reform Act (PLRA).<sup>442</sup> Proponents of the Act claimed that too many incarcerated individuals were filing frivolous cases against the government.<sup>443</sup> Some legal scholars argue that the passage of the PLRA has made it more difficult for incarcerated individuals to file and win federal civil rights lawsuits.<sup>444</sup> For instance, in 1995, prisoners represented about 19% (approximately 40,000) of new lawsuits in federal court. At that time, prisoner plaintiffs had a success rate of under 15%. Comparatively, in 2001, filings by prisoners declined 43% from 1995, even though the prison population increased by

<sup>438</sup> See e.g., Bollman, "Deference and Prisoner Accommodations Post-Holt."

<sup>439</sup> Nick Reaves, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 47-49.

<sup>440</sup> Nelson Tebbe, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 54.

<sup>441</sup> *Ibid.*, p. 53.

<sup>442</sup> See 42 U.S. Code § 1997e.

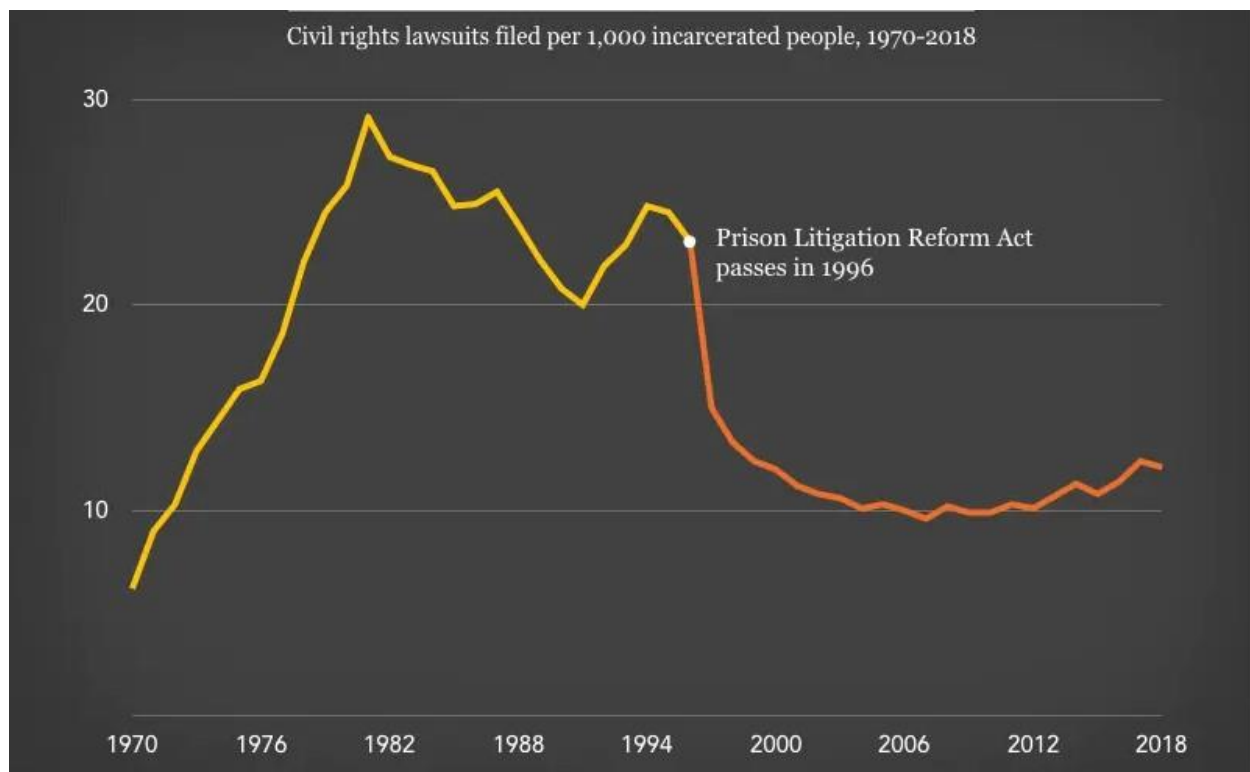
<sup>443</sup> See 141 CONG. REC. S14, 626-27 (daily ed. Sept. 29, 1995).

<sup>444</sup> Margo Schlanger, "Inmate Litigation," *Harvard L. Rev.*, 2003, vol. 116, no. 6, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2295&context=articles>; Andrea Fenster and Margo Schlanger, "Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act," Prison Policy Initiative, Apr. 26, 2021, [https://www.prisonpolicy.org/reports/PLRA\\_25.html](https://www.prisonpolicy.org/reports/PLRA_25.html).

23%.<sup>445</sup> While these numbers may suggest that the PLRA accomplished its intended goal of reducing the number of frivolous lawsuits, they may also suggest that the legislation created barriers for legitimate cases. Moreover, prior to the passage of the PLRA, data suggest that the rising number of cases filed by incarcerated individuals was correlated with the rising prison population and not necessarily an increase in trivial cases.<sup>446</sup>

Figure 1.1 below shows the rate of federal civil rights filings from 1970-2018 and the impact of the PLRA passing in 1996. As the graph demonstrates, filings dropped immediately following its passage. On the other hand, as the graph shows, the rate of litigation brought by prisoners was already decreasing when the PRLA was enacted.

**Figure 1.1: Federal Lawsuits Filed by Incarcerated Individuals, per 1,000 (1970-2018)**



Source: Andrea Fenster and Margo Schlanger, “Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act,” Prison Policy Initiative, Apr. 26, 2021.

<sup>445</sup> Schlanger, “Inmate Litigation.”

<sup>446</sup> Margo Schlanger, “Trends in Prisoner Litigation, as the PLRA Approaches 20,” *Correctional Law Reporter*, 2017, vol. 28, no. 5., <https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Publications/Trends%20in%20Prisoner%20Litigation%20as%20the%20PLRA%20Approaches%2020.pdf>.

Legal scholars also suggest that the PLRA mandated several new rules that made filing a civil rights claim more difficult, regardless of the claim's legitimacy. For example, the law mandates that prisoners exhaust all the prison administrative grievance processes prior to filing a case in state or federal court. However, evidence suggests that navigating the grievance process can be difficult and may result in meaningful allegations not being investigated. Data also suggest that grievances are sometimes thrown out for minor mistakes, such as failing to fill out a form correctly, using the wrong color ink on a form, or not making a timely complaint.<sup>447</sup> A more detailed discussion of the grievance process is below.

The PLRA exhaustion rule also mandates that every claim brought in a prisoner's lawsuit must be exhausted unless the prisoner can show that they were unable to obtain the proper forms or that there was no administrative remedy available.<sup>448</sup> Some legal activists argue that, while the rule is intended to deter prisoners from filing unexhausted claims in their lawsuits, in practice it creates additional legal hurdles for incarcerated individuals seeking redress. In one amicus brief, lawyers for the ACLU claimed that:

[T]his logic assumes incorrectly that even the most conscientious prisoner can reliably determine in advance which of his claims a court will find to be exhausted. Since its enactment, the PLRA has generated vast amount of case law, particularly regarding the exhaustion requirement, much of it contradictory, ambiguous or turning on idiosyncratic factual distinctions. ... [As a result] the rule has had the most pernicious effect on prisoners' ability to seek relief in federal court, for it means that one small mistake can cost a prisoner his entire lawsuit.<sup>449</sup>

If a prisoner does not exhaust all administrative remedies, the Court will dismiss the claim, regardless of merit. In 2007, however, the Supreme Court held that: "The PLRA does not require dismissal of the entire complaint when a prisoner has failed to exhaust some, but not all, of the claims included in the complaint."<sup>450</sup>

The PLRA also allows a court to dismiss claims it finds to be frivolous, limits attorney fee reimbursements, and limits prisoners' recovery of damages for mental or emotional injuries

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<sup>447</sup> Priyah Kaul, Greer Donley, Ben Cavaturo, Anelisa Benavides, Jessica Kincaid, and Joseph Chatham, "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey," Michigan Law Prison Information Project, Oct. 18, 2015,

<https://www.law.umich.edu/special/policyclearinghouse/Site%20Documents/FOIARepor10.18.15.2.pdf>: Fenster and Schlanger, "Slamming the Courthouse Door."

<sup>448</sup> See 42 U.S. Code § 1997e.

<sup>449</sup> American Civil Liberties Union, Brief for the U.S. Supreme Court as Amicus Curiae, *Jones v. Bock*, 2005, [https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison\\_and\\_Jail\\_Grievance\\_Policies/Jones\\_Brief.pdf](https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison_and_Jail_Grievance_Policies/Jones_Brief.pdf); see also John Boston, "The Prison Litigation Reform Act," Legal Aid Society, Feb. 27, 2006, [https://law.yale.edu/sites/default/files/documents/pdf/Boston\\_PLRA\\_Treatise.pdf](https://law.yale.edu/sites/default/files/documents/pdf/Boston_PLRA_Treatise.pdf).

<sup>450</sup> *Jones v. Bock*, 549 U.S. 199 (2007).

unless that injury co-occurs with a physical injury or sexual act.<sup>451</sup> The limits on financial compensation can be prohibitive for prisoners. For example, the filing fee for any civil action in the federal court for the Central District of California, including for “civil cases filed under the Prison Litigation Reform Act (PLRA),” is \$350.<sup>452</sup> While low-income individuals who are not incarcerated can have federal court filing fees waived by bringing lawsuits *in forma pauperis* (i.e., in the manner of a pauper), incarcerated individuals are ineligible for this waiver despite only making about \$0.10 to \$0.65 an hour on average.<sup>453</sup> This means that a prisoner in California would be responsible for the \$350 federal filing fee. While individuals are allowed to pay these fees in installments over time, the PRLA’s “three strikes rule”<sup>454</sup> states that after filing three claims that are dismissed as frivolous, malicious, or not proper, incarcerated plaintiffs may be required to pay all fees upfront. Some argue that this provision can limit prisoners’ ability to file discrimination claims due to the significant burden for prisoners filing *pro se* to navigate the complex legal system.<sup>455</sup> However, others argue that this provision may disincentivize false claims which in turn allows for worthy claims to be heard.<sup>456</sup>

Some scholars argue that, while it is important that security is maintained in carceral facilities, legislation and court rulings over the past several decades have given undue deference to prison officials. For example, Professor of Law at the University of California Los Angeles, Sharon Dolovich, argues that the courts have shown “dispositional favoritism” toward prison officials.<sup>457</sup> She describes this as:

a readiness to look upon prison officials and their evidence and arguments with favor and sympathy, while at the same time regarding incarcerated litigants and their evidence and arguments with skepticism and even hostility. The product of this divergent normative orientation is judicial reasoning that, among other things, automatically

<sup>451</sup> See 42 USC § 1983; see also 42 U.S. Code § 1997e.

<sup>452</sup> See U.S. District Court Central District of California, “Schedule of Fees,” Mar. 2024, <https://www.cacd.uscourts.gov/sites/default/files/forms/G-072/G-72.pdf>.

<sup>453</sup> Walter Bell, “Increasing Prison Wages to Dollars Just Makes Sense,” Vera Institute, Feb. 7, 2023, <https://www.vera.org/news/increasing-prison-wages-to-dollars-just-makes-sense#:~:text=The%20current%20wage%20scale%20for,%240.25%20per%20hour%20or%20less.>

<sup>454</sup> Each lawsuit or appeal filed that a judge dismisses as frivolous, malicious, or does not state a proper claim counts as a “strike.” See e.g., *Jennings v. Natrona Co. Detention Center*, 175 F.3d 775 (10<sup>th</sup> Cir. 1999). An appeal of a dismissed action that is dismissed is a separate strike, even if that dismissal happened prior to the implementation of the PLRA. See e.g., *Ibrahim v. District of Columbia*, 208 F.3d 1032 (D.C. Cir. 2000); see also 28 U.S.C. § 1915g – Three Strikes Provision; American Civil Liberties Union, “Know Your Rights: The Prison Litigation Reform Act (PRLA),” [https://www.aclu.org/sites/default/files/images/asset\\_upload\\_file79\\_25805.pdf](https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf).

<sup>455</sup> The only exception to this rule is if the plaintiff is at risk of suffering serious physical injury in the immediate future. See 28 U.S.C. § 1915g; see also Fenster and Schlanger, “Slamming the Courthouse Door”; American Civil Liberties Union, “Know Your Rights: The Prison Litigation Reform Act (PRLA)”; Eleanor Umphres, “150% Wrong: The Prison Litigation Reform Act and Attorney’s Fees,” *Am. Crim. L. Rev.*, 2019, vol. 261, no. 56, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/amcrimlr56&div=10&id=&page=>.

<sup>456</sup> 141 Cong. Rec. 26,548 (1995) (text of S. 1279).

<sup>457</sup> Sharon Dolovich, “The Coherence of Prison Law,” *Harv. L. Rev. F.*, 2022, vol. 301, no. 135, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/forharoc135&div=23&id=&page=>; Schlanger, “Inmate Litigation.”



presumes good faith and expertise on the part of defendant prison officials, views prisoners in general with suspicion, and scarcely considers the real-life impact of case outcomes for the actual human beings who live behind bars.<sup>458</sup>

The PLRA arguably manifests this skepticism because it placed restrictions on the types of lawsuits prisoners can file. Under the PLRA, for instance, they can no longer file a suit for mental or emotional injury unless they can show physical injury.<sup>459</sup> While this prohibition has broad implications beyond the purview of this report, some courts have ruled that it applies even to claims of religious discrimination.<sup>460</sup>

## Federal Role

As stated above, RLUIPA protections do not extend to federally incarcerated individuals. The DOJ, however, can enforce RLUIPA on behalf of state prisoners in a variety of ways: by conducting investigations, making findings, entering into voluntary agreements and consent decrees, intervening in existing lawsuits, filing statements of interest, and filing litigation on behalf of the United States.

The DOJ may also seek a court order requiring a facility to amend policies or practices that substantially burden prisoners' religious rights. These responsibilities fall under the purview of the Special Litigation Section (Section) of the Civil Rights Division (CRT). The Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country.<sup>461</sup>

According to a DOJ report, from 2000-2020, the Department conducted 68 formal and informal investigations, initiated three lawsuits, and filed eight statements of interest and 13 amicus briefs involving RLUIPA and institutionalized persons.<sup>462</sup> More specifically, the CRT has written statements of interest regarding restrictions on beards and hair length, Ramadan accommodations, religious diets, and access to tobacco for religious use. The DOJ has also intervened in litigation to protect incarcerated individuals' rights to access religious texts, and

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<sup>458</sup> Sharon Dolovich, "How Prisoners' Rights Lawyers Do Vital Work Despite the Courts," *U. St. Thomas L.J.*, 2023, vol. 19, no. 435, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/usthomlj19&div=22&id=&page=>.

<sup>459</sup> As of the writing of this report, circuit courts are still split on the requirements of the PLRA. But the Seventh Circuit holds that a violation of a prisoner's constitutional rights is sufficient to constitute an actionable injury under the PLRA. *Rowe v. Shake*, 196 F.3d 778, 781-82 (7th Cir. 1999); see 42 U.S.C. § 1997e(e).

<sup>460</sup> See e.g., *Mayfield v. Texas Department of Criminal Justice*, 529 F.3d 599 (2008) (court held "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury [42 U.S.C. § 1997e(e)]. Mayfield has not alleged any physical injury and his complaint seeks only compensatory damages. As such, Mayfield's claims for damages are barred by § 1997e(e)."

<sup>461</sup> U.S. Department of Justice, "Statement of the Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)," <https://www.justice.gov/crt/page/file/974661/dl>.

<sup>462</sup> U.S. Department of Justice, *Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act*, Sept. 2020, p. 25, <https://www.justice.gov/crt/case-document/file/1319186/dl>.

to enable Sikh prisoners to keep hair unshorn.<sup>463</sup>

The DOJ has also entered settlement agreements regarding RLUIPA violations. For instance, the DOJ entered into one such agreement with the Connecticut Department of Corrections (CDOC) over a policy that required a chaplain or an approved outside volunteer of like-faith to supervise the group religious practices.<sup>464</sup> Through the agreement, the CDOC revised its policy to allow chaplains, staff, and volunteers of other faiths to supervise group religious practice and allow incarcerated individuals to also lead some group religious activities. The agreement also required the CDOC to implement a new “inmate conductor” program allowing prisoners to take an active role in facilitating collective religious activities. The agreement also required the CDOC to collect and review data on a regular basis to ensure that the new policy has the intended effect of increasing access to group worship or collective religious activities.<sup>465</sup> This revised policy is significant because data show that there is a shortage of chaplains and religious volunteers for some minority faiths.<sup>466</sup>

Another settlement agreement involved the Michigan Department of Corrections (MDOC) in 2021. The DOJ entered into this agreement over policies that were found to violate RLUIPA.<sup>467</sup> Some of the policies included:

- A five-person minimum for group worship and religious activities,
- Prohibited group religious practice for certain religious groups, including Hindu, Yoruba, Hebrew Israelite, and Thelema practitioners, and
- Limited access to the kosher-for-Passover diet to those on the kosher diet year-round.<sup>468</sup>

In 2024, the DOJ announced that MDOC had successfully resolved alleged religious violations and implemented revisions to the above policies. The new policies now allow groups of two or more to gather for religious practices, permit previously banned groups to hold group services, and allow people to participate in the Passover diet even if they do not participate in the kosher

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<sup>463</sup> U.S. Department of Justice, “Statement of the Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA).”

<sup>464</sup> U.S. Department of Justice, *Agreement Between the United States and the Connecticut Department of Corrections*, July 20, 2020, [https://www.justice.gov/d9/2024-03/fully\\_executed\\_agreement\\_2024.03.11\\_cdcc\\_rluiipa\\_settlement\\_agreement\\_final\\_-\\_doj\\_signed\\_sb.pdf](https://www.justice.gov/d9/2024-03/fully_executed_agreement_2024.03.11_cdcc_rluiipa_settlement_agreement_final_-_doj_signed_sb.pdf).

<sup>465</sup> U.S. Department of Justice, “Justice Department Secures Agreement with Connecticut Department of Correction to Protect Religious Rights in Prison,” Mar. 15, 2024, <https://www.justice.gov/opa/pr/justice-department-secures-agreement-connecticut-department-correction-protect-religious>.

<sup>466</sup> See e.g., Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Management and Oversight of its Chaplaincy Services Program”; Dalia Faheid, “There Are 11,073 Muslims in Federal Prisons But Just 13 Chaplains To Minister To Them,” *NPR*, July 12, 2021, <https://www.npr.org/2021/07/12/1014823399/muslim-chaplains-federal-prisons-islam-religion-shortage>.

<sup>467</sup> U.S. Department of Justice, *Agreement Between the United States and the Michigan Department of Corrections*, Oct. 29, 2021, <https://www.justice.gov/crt/case-document/file/1458121/dl?inline>.

<sup>468</sup> *Id.*

diet year-round.<sup>469</sup>

As similarly noted in previous Commission reports,<sup>470</sup> the DOJ does not provide a publicly available exhaustive list of all the legal actions taken by the agency. Therefore, it is difficult to determine if there are particular patterns or trends in the types of cases the Department enters into. In a press release announcing that the MDOC's successful implementation of the settlement agreement's required reforms, Assistant Attorney General Kristen Clarke stated that "[a]ll people have the right to religious freedom and the right to be free from religious discrimination in our country, and that right exists across the country, including inside our jails and prisons." Clarke also stated that the settlement agreement with the MDOC should serve as a model for increased access to "meaningful religious activities across the system."<sup>471</sup>

### Grievance Process

The grievance process is the primary way that incarcerated individuals ensure that their constitutional rights are protected; it also establishes the responsibilities of prison and jail staff and administrators in protecting those rights. The grievance process is critical since it may affect a prisoner's ability to bring the alleged violation to federal court. As discussed above, the PLRA requires that prisoners exhaust all administrative remedies at the facility and state level prior to filing in federal court.<sup>472</sup> The Supreme Court in *Woodford v. Ngo* wrote that the requirement would give prisons and DOCs the ability to resolve cases without undue interference, reduce the number of frivolous lawsuits in federal court, and develop an administrative record.<sup>473</sup> But given every prisoner's constitutional right of access to federal courts, it is essential for the grievance process to be fairly administered.<sup>474</sup> Fairness, however, is a serious challenge because the grievance process relies on jails and prisons to address and resolve their own prisoners' complaints without outside oversight.<sup>475</sup>

It is common for prisoners to encounter issues with their conditions of confinement because they live in closed, inherently violent institutions.<sup>476</sup> It is important to note, however, that not all issues

<sup>469</sup> U.S. Department of Justice, "Justice Department Announces Successful Policies Overhaul at Michigan Department of Corrections to Expand Opportunities for Religious Exercise," Jan. 18, 2024, <https://www.justice.gov/opa/pr/justice-department-announces-successful-policies-overhaul-michigan-department-corrections>.

<sup>470</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>471</sup> U.S. Department of Justice, "Justice Department Announces Successful Policies Overhaul at Michigan Department of Corrections."

<sup>472</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant part at 42 U.S.C. § 1997e).

<sup>473</sup> 548 U.S. 81 (2006).

<sup>474</sup> U.S. Amend. V.

<sup>475</sup> Van Swearingen, "Imprisoning Rights: The Failure Of Negotiated Governance in the Prison Inmate Grievance Process," *Calif. L. Rev.*, 2008, vol. 96, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/calr96&div=39&id=&page=>; see also Calavita and Jenness, "Inside the Pyramid of Disputes."

<sup>476</sup> Calavita and Jenness, "Inside the Pyramid of Disputes."

or conditions of confinement within a carceral facility are considered “grievable” matters. Some DOCs clearly delineate between grievable and non-grievable matters while others do not. In a 50-state study of prison grievance procedures, Kaur and colleagues maintain that:

Whether and how a policy defines grievable matters will significantly affect a prisoner’s ability to seek remedies for alleged problems. A clear definition contributes to a more effective and manageable policy. Lack of clarity creates a horizontal equity problem, because similarly situated grievants may not be treated the same by different staff members reviewing grievances. Moreover, lack of clarity may lead a prisoner plaintiff to believe that he can file directly in federal district court; if a matter is not grievable, no “administrative remedy [is] available,” under the PLRA. If the jurisdiction successfully persuades the court that this was an error, the prisoner will be out of luck—it will be too late to grieve, and the federal lawsuit will be procedurally barred.<sup>477</sup>

Prison practices that infringe on prisoners’ right to freely practice their religion without a clear and compelling justification are not only grievable but may also violate RLUIPA. Remediating a grievance (discussed in detail below) requires that prisoners go through a multistage process that may include filing an informal complaint which moves to a formal stage if an adequate solution cannot be reached. If the two parties still cannot reach a suitable agreement on the accommodation, a prisoner has the right to file a federal lawsuit under RLUIPA. If the prisoner wins their case, at either the facility level or through the court’s ruling, they are entitled to a remedy. These remedies vary widely depending on the facility and DOC. For religious grievances, remedies are typically being granted access to a religious diet, religious accessories, freedom to practice, or other religious accommodations. Generally, prisons have much more developed remedial policies than jail systems.<sup>478</sup>

The lack of data and researcher access makes understanding processes and procedures within carceral institutions challenging.<sup>479</sup> Gatekeepers (both formal and informal)—such as DOCs, prison officials, correctional officers, and chaplains—can impede researchers from collecting valuable information regarding conditions of the carceral experience.<sup>480</sup> Some prison researchers maintain that:

[P]risons have historically been associated with a “fortress mentality” due to prison officials’ reluctance to let outsiders in. Whether this reluctance stems from a suspicion of

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<sup>477</sup> Priyah Kaul, Greer Donley, Ben Cavataro, Anelisa Benavides, Jessica Kincaid, and Joseph Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey,” Michigan Law Prison Information Project, Oct. 18, 2015, <https://www.law.umich.edu/special/policyclearinghouse/Site%20Documents/FOIARepor10.18.15.2.pdf>.

<sup>478</sup> Ibid.

<sup>479</sup> See e.g., Janani Umamaheswar, “Gate Keeping and the Politics of Access to Prisons: Implications for Qualitative Prison Research,” *Journal of Qualitative Criminal Justice & Criminology*, vol. 2, no. 2, 2014, <https://www.qualitativecriminology.com/pub/v2i2p3/release/1>.

<sup>480</sup> Ibid.

outsiders or from a basic interest in preserving prison security, access to prisons has become increasingly difficult in recent years.<sup>481</sup>

Due to this lack of transparency, issues affecting prisoners' rights often only come to light when redress is sought through legal recourse. Some legal scholars argue that:

[L]awyers constitute perhaps the only exception to what otherwise amounts to prison officials' virtually absolute power of secrecy and exclusion. When lawyers file complaints that state a cause of action, the right of discovery allows them, among other things, to get access to internal records and documents and to conduct interviews with prison residents. And when cases succeed on the merits...lawyers have the right to monitor compliance with any court orders. This right gets them through the prison gates and into the facilities themselves.<sup>482</sup>

Since facilities are not obligated to share information regarding prisoner grievances, most sources of data are from prison policy manuals and/or accounts from formerly incarcerated individuals about navigating the system. When facilities do provide information regarding their grievance processes, or the number of grievances submitted, researchers are forced to accept the data provided by the facility without any ability to verify its accuracy. As a result, these data must be interpreted cautiously, as it may behoove prison administrators to guard information about their grievance processes. Given these concerns, researchers are often distrustful of information provided by both prison staff and prisoners.<sup>483</sup>

The grievance process is further complicated because grievance policies often vary widely between state prison systems and local jails. Overall, state prison policies are more in-depth than jail policies, though New York City Jail's policies are a notable outlier.<sup>484</sup> There is generally more policy uniformity across federal prisons since they are all managed by the Bureau of Prisons (BOP). However, the way BOP policies are implemented may vary from institution to institution, which is discussed further in Chapter 2. Because of differences by jurisdiction and facility, the steps that incarcerated individuals must take to file a grievance range from simple to highly complex. These variations not only make it difficult for researchers and legal professionals to navigate, but also illustrate the challenges that prisoners face, especially if they are transferred to different facilities during their incarceration.

Generally, most grievance procedures have three stages: an informal resolution stage, a formal grievance stage, and if needed, an appeal stage.<sup>485</sup> A prisoner can file a grievance (or complaint)

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<sup>481</sup> Umamaheswar, "Gate Keeping and the Politics of Access to Prisons"; see also Mary Bosworth, Debi Campbell, Bonita Demby, and Seth M. Ferranti, "Doing Prison Research: Views from Inside," *Qualitative Inquiry*, 2005, vol. 11, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/1077800404273410>.

<sup>482</sup> Dolovich, "How Prisoners' Rights Lawyers Do Vital Work Despite the Courts."

<sup>483</sup> Bosworth, Campbell, Demby, and Ferranti, "Doing Prison Research: Views from Inside."

<sup>484</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey."

<sup>485</sup> *Ibid.*

for many reasons (e.g., harassment, medical issues, use of force, confinement, property, religion, abuse, records, or sentence administration). Chapter 2 of this report presents the grievance process and grievance outcomes for alleged religious violations and religious discrimination for the 20 sampled facilities.

Several correctional systems start with the requirement that a prisoner seek “informal resolution” that encourages or requires prisoners to attempt to resolve the issue by requesting a conversation with staff (e.g., BOP, Missouri, Pennsylvania). Some state policies, such as Vermont’s, go further and require the prisoner and relevant staff member(s) to agree to an “identifiable solution or plan to resolve the complaint.”<sup>486</sup> Virginia’s policy requires the prisoner to “demonstrate that he or she has made a good faith effort to resolve the issue informally.”<sup>487</sup> If a prisoner is dissatisfied with the informal resolution, the next step is often for staff members to sign a form stating that the issue could not be resolved (e.g., Maine, South Carolina, New York) before moving to the formal stage of the grievance process.<sup>488</sup>

This informal resolution stage is meant to reduce the administrative burden on the facility. However, it raises serious concerns about retaliation, especially if the prisoner must confront the staff member accused in the complaint. Kaul and colleagues argue that:

[I]f staff members become aware of allegations against them, they may apply implicit or explicit coercive or retaliatory pressure on the prisoner filing the grievance. Some policies attempt to mitigate this effect by exempting prisoners from informal resolution in cases of abuse (e.g., Pennsylvania), but fear of retaliation may be nearly as serious in non-abuse contexts. Even if policies include anti-retaliation provisions, fear of retaliation may deter prisoners from filing legitimate grievances.<sup>489</sup>

Retaliation or the threat of retaliation by staff against prisoners who submit grievances is a well-documented problem with the grievance process.<sup>490</sup> In light of this issue, some states (e.g., Colorado, Illinois, Nevada, North Dakota) have implemented the assistance of mediators, and allow prisoners to informally discuss grievances with trained professionals tasked with helping prisoners identify ways to address their complaint.<sup>491</sup>

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<sup>486</sup> Vermont Administrative Code, 13-005 Code Vt. R. 13-130-005-X.

<sup>487</sup> Virginia Department of Corrections, Operating Procedure § 866.1.V.A.

<sup>488</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey.”

<sup>489</sup> Ibid.

<sup>490</sup> See e.g., Van Swearingen, “Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Grievance Process,” *Calif. L. Rev.*, 2008, vol. 96, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/calr96&div=39&id=&page=>; Calavita and Jenness, “Inside the Pyramid of Disputes.”

<sup>491</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey.”

If the prisoner's issue is not resolved during the informal stage in the process, a prisoner has the right to file a formal grievance. Variations in the process can vary dramatically depending on the facility, such as the steps, procedural requirements, and specific time limits for both the prisoner and the prison officials.<sup>492</sup> Some jurisdictions have eased the submission process by establishing a "general submission box" that is located on facility grounds (e.g., Alaska, New Mexico, Harris County). Others require prisoners to submit their forms in person to a specified staff member (e.g., a case manager, a reviewing authority, Facility Grievance Coordinator). Some jurisdictions' submission requirements are less clear. In South Carolina, for example, prisoners must determine which staff member has the authority to address and accept grievances.<sup>493</sup> This can cause significant issues, as prisoners may have to confer with several staff members to find the appropriate official. This can not only be overly burdensome and time consuming for prisoners, but given their restricted freedom of movement, it can also result in their time to file a grievance expiring.<sup>494</sup>

Generally, formal grievances are reviewed by a designated official or a panel of officials who issue a formal response to the prisoner.<sup>495</sup> If the grievance is granted, the prisoner is offered a solution for their complaint (e.g., receive a medical procedure for a condition that the prisoner believes has not been adequately addressed).<sup>496</sup> The deciding body can dismiss or close a grievance for many reasons, including that they deem it as frivolous, moot, or not a matter they can address.<sup>497</sup> Depending on the nature of the complaint, the response may or may not include a resolution.

The last stage of the grievance process is the appeals stage. Most policies include some mechanism for prisoners to appeal the outcome of the formal grievance process. The appeals process involves escalating the complaint to be reviewed by a higher level of the prison or jail administration, which is often that state's DOC. Some jurisdictions require that grievants be notified in writing about the outcome of the appeal, but others do not. Several jurisdictions have reworked their appeals process, so the managing DOC is not responsible for reviewing the complaint, and instead utilize an independent committee or a separate DOC to conduct the review.<sup>498</sup>

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<sup>492</sup> Ibid.

<sup>493</sup> Ibid.

<sup>494</sup> Ibid.

<sup>495</sup> For grievance procedures and sample forms by jurisdiction, see Michigan Law, "Prison Grievance Procedures and Samples,"

<https://www.law.umich.edu/facultyhome/margoschlanger/Pages/PrisonGrievanceProceduresandSamples.aspx>.

<sup>496</sup> See Valerie Jenness and Kitty Calavita, "'It Depends On the Outcome': Prisoners, Grievances, and Perceptions of Justice," *Law & Society Review*, 2018, vol. 52, no. 1, <https://www.cambridge.org/core/journals/law-and-society-review/article/abs/it-depends-on-the-outcome-prisoners-grievances-and-perceptions-of-justice/B6B3E629D7D28989E4504FA4E1041B20>.

<sup>497</sup> Columbia University, "Chapter 15: Inmate Grievance Procedures," In *Jailhouse Lawyers Manual* <https://jlm.law.columbia.edu/files/2021/02/22.-Chapter-15.pdf>.

<sup>498</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey."

Since many prisoners are unable to afford legal representation and have few other mechanisms available to address issues during confinement, they depend on the grievance system to resolve the majority of complaints. The need to rely on this system is concerning if it does not operate in a fair and impartial manner.

### *Barriers to the Grievance Process*

An effective grievance process can be beneficial for both prisoners and prison administrators since it can ensure accountability, build trust in the process, reduce costly litigation, and teach prisoners constructive ways to handle conflicts and issues that arise during incarceration.<sup>499</sup> Conversely, a complaint system that lacks transparency, is seen as overly burdensome, or fails to resolve legitimate grievances results in prisoners losing confidence in the system.<sup>500</sup> This loss of trust or inability to navigate the grievance system is significant because prisoners must fully exhaust all administrative remedies at the facility prior to filing a lawsuit in federal court. Therefore, if the system is inaccessible, civil rights violations may not be addressed or resolved.

One study surveying incarcerated individuals in Texas shows that over half of respondents reported never having a grievance satisfactorily resolved during their incarceration (55%) and reported that grievances were often unanswered or unreturned (55%). The vast majority of respondents also stated that the grievance process was not effective (91%). These data do not imply that all complaints were necessarily merited nor that the prison's resolution was wrong; however, these data do suggest that prisoners may be less likely to utilize the system due to either a real or perceived belief that it cannot address valid civil rights violations. Moreover, the study finds that despite Texas DOC's governing grievance policy stating that "persons participating in the inmate grievance procedure shall not be subject to reprisal,"<sup>501</sup> 85% of prisoners reported experiencing staff retaliation for utilizing the grievance system.<sup>502</sup>

Several other states face similar issues. For example, in 2022 long delays and allegations of unfairness in Vermont's grievance system triggered an audit report which found the process "was marred by poor record keeping, a lack of oversight, and a lack of clear responses."<sup>503</sup> A 2022 Fourth Circuit Court of Appeals ruling found that North Carolina's grievance system was so opaque it ostensibly operated as a "a real world 'Catch-22,' a dilemma from which there is no escape, one in which the only solution is denied by a circumstance inherent in the problem."<sup>504</sup>

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<sup>499</sup> Prison Justice League, "A 'Rigged System': How the Texas Grievance System Fails Prisoners and the Public," June 2017, [https://www.prisonpolicy.org/scans/prison\\_justice\\_league/a\\_rigged\\_system.pdf](https://www.prisonpolicy.org/scans/prison_justice_league/a_rigged_system.pdf).

<sup>500</sup> Ibid.

<sup>501</sup> Texas Administrative Directive (AD-03.82 rev. 9), p. 2.

<sup>502</sup> Prison Justice League, "A 'Rigged System': How the Texas Grievance System Fails Prisoners and the Public."

<sup>503</sup> Douglas R. Hoffer, "Department of Corrections: Significant Deficiencies Demonstrate Need for Overhaul of the Prisoner Grievance Process, Vermont State Auditor, Dec. 16, 2022, <https://auditor.vermont.gov/sites/auditor/files/documents/Final%20DOC%20Grievance%20Report.pdf>.

<sup>504</sup> Griffin v. Bryant, 56 F.4<sup>th</sup> 328 (4<sup>th</sup> Cir. 2022).



Issues with the grievance process was a common theme at the Commission’s briefing. For instance, Co-Founder and CEO of Link Outside, Amin Eshaiker, testified that their survey of incarcerated Muslims, correctional officers, and religious volunteers across the country shows that:

[D]espite laws and statutes, incarcerated Muslims are still regularly having to file grievances to practice some of their most basic religious rights in prisons. Oftentimes institutions do not have either a Muslim chaplain or an outside partner to be able to deal with grievances. So oftentimes the correctional staff will take these grievances and use their own discretion to determine [] if any accommodation could be provided in light of institutional policies.<sup>505</sup>

### Time Limits

The majority of prison policies have established time limits at both the informal and formal grievance stages. These time limits can impact a prisoner’s ability to file the grievance, obtain and properly complete the correct forms, and submit the forms to the appropriate prison official. Many jurisdictions impose a statutory limit from when the incident occurred to when the grievance must be filed. Some offer more flexibility and “start the clock” when the incident occurs or when the prisoner becomes aware of the incident. The distinction becomes important when, for instance, a prisoner alleges that a staff member stole personal property but does not realize it is missing for a period of time.

The time limits to file an initial informal grievance can range from a few days to a few months, depending on the DOC and nature of the grievance.<sup>506</sup> Prison advocates argue that:

Imposing a short time limit for prisoners to initiate the first step of the grievance process is the easiest way for a prison to limit the accessibility of the process. Prisoners need adequate time, especially in the first stage of the grievance process, to decide whether to file a grievance; understand the grievance process, which may require reading a lengthy policy; obtain, complete, and submit relevant forms; and contact necessary third parties, particularly if informal resolution is required.<sup>507</sup>

Advocates maintain that time limits need to provide prisoners enough time to properly file a grievance but also be short enough for prison officials to address before the evidence becomes moot.<sup>508</sup>

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<sup>505</sup> Amin Eshaiker, *Enforcing Religious Freedoms in Prisons* testimony, p. 109.

<sup>506</sup> See e.g., The Center for Constitutional Rights and The National Lawyers Guild, “Jailhouse Lawyer’s Handbook,” 2021, [https://www.jailouselaw.org/sites/all/themes/rktp\\_jailouselaw/assets/pdf/Jailhouse%20Lawyers%20Handbook%202021.pdf](https://www.jailouselaw.org/sites/all/themes/rktp_jailouselaw/assets/pdf/Jailhouse%20Lawyers%20Handbook%202021.pdf).

<sup>507</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey.”

<sup>508</sup> Ibid.

Prison officials and administrators also have imposed time limits on when they must provide a response or resolution to the claim. Many policies require that the prison provide an initial response within 30 days or fewer.<sup>509</sup> However, some allow officials over a month to initially respond to the grievance and offer a possible extension. For instance, the Georgia Department of Corrections allows prison administrators 40 days to deliver a decision with the possibility of an additional 10-day extension.<sup>510</sup> Depending on the nature of the claim, this could pose issues for the grievance resolution. Joshua McDaniel, Associate Clinical Professor of Law at Harvard Law School and Director of Harvard's Religious Freedom Clinic, testified that the grievance process is a

time-consuming process that can last months. And for some denials of religious exercise, like Ramadan accommodation, time can be of the essence. If a prison, for example, denied Ramadan accommodations for a Muslim inmate, and it takes that inmate two or three months to complete the grievance process, Ramadan will be over before the inmate can sue. Or, if a prison serves non-kosher meals to a Jewish inmate for every meal, the inmate may have to starve or violate his faith for a period of months before obtaining judicial review. Or ... if a prison shuts down all worship services for inmates, they may need to go months without those services before they can get a temporary restraining order or preliminary injunction.<sup>511</sup>

If the reviewing official rejects the prisoner's grievance at the formal stage,<sup>512</sup> all state policies allow for prisoners to appeal that decision, but they must meet a new filing deadline if they choose to appeal. These time limits vary greatly depending on the DOC. For example, in Mississippi, a prisoner has five business days to file an appeal, whereas in California a prisoner has 60 business days to file.<sup>513</sup> As for the prisons, appeal reviews can be lengthy given that they may be reviewed by higher level administrators or outside committees. These time limits can also range from 15 days<sup>514</sup> to 120 calendar days<sup>515</sup> to respond.

As stated above, these procedures need to be transparent and made available for prisoners to effectively access the grievance system. If they are unaware of the facility's policies, they may be unable to pursue their complaint further to meet the PLRA's requirement to exhaust all

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<sup>509</sup> Ibid.

<sup>510</sup> Georgia Department of Corrections, "Statewide Grievance Procedure," May 10, 2019, <https://public.powerdms.com/GADOC/documents/105711>, p. 11.

<sup>511</sup> Joshua McDaniel, *Enforcing Religious Freedoms in Prisons* testimony, pp. 34-35.

<sup>512</sup> Prisoners' grievances may be rejected for numerous reasons, such as the issue is non-grievable, prison cannot accommodate due to safety and security reasons, lack of resources, the request did not follow proper procedures, the grievance included too many issues. See *infra* notes (discussing barriers to the grievance process).

<sup>513</sup> Mississippi Department of Corrections, "Grievance Procedures – Offender," June 1, 2003, [https://www.law.umich.edu/special/polyclearinghouse/Documents/Mississippi\\_SOP.pdf](https://www.law.umich.edu/special/polyclearinghouse/Documents/Mississippi_SOP.pdf); Prison Law Office, "How to File CDCR Administrative Grievances and Appeals," Dec. 2023, <https://prisonlaw.com/wp-content/uploads/2023/12/AdminAppeals-Dec-2023v2.pdf>.

<sup>514</sup> Maine Department of Corrections, Inmate Grievance Policy, Policy Number 4.4, p. 13

<sup>515</sup> Georgia Department of Corrections, "Statewide Grievance Procedure," May 10, 2019, <https://public.powerdms.com/GADOC/documents/105711>, p. 11.

administrative remedies.<sup>516</sup> For instance, in one appeals case, the Fifth Circuit ruled that the Mississippi Department of Corrections' lack of procedural and substantive transparency resulted in the grievance process being effectively unavailable for incarcerated individuals. The Court wrote that Mississippi's grievance "scheme is 'so opaque that it becomes, practically speaking, incapable of use' by an ordinary prisoner."<sup>517</sup>

### Standardization

At the Commission's briefing, several panelists testified that the lack of consistent state policies makes the grievance process difficult to navigate, especially for prisoners who have limited access to information and resources.<sup>518</sup> Moreover, several also pointed out that while state procedures can be challenging to follow, local jail procedures can be even more vague and difficult to adhere to.<sup>519</sup> For instance, Shaykh Rami Nsour, Founding Director of the Tayba Foundation, testified that:

Prison and jail administrators have a very difficult job balancing between maintaining safety and security while also accommodating the free practice of religion. Navigating this process has been done in a way that has led to a lack of consistent policies around the nation. There must be an objective definition and application regarding which religious practices pose a threat to safety and security and which do not. It should not be subjective and inconsistent.<sup>520</sup>

For example, California state prisons are regulated by the California Department of Corrections and Rehabilitation (CDCR) which has policies regarding religious practice in prison. Local facilities, however, operate under the Board of State and Community Corrections and have the autonomy to "develop written policies and procedures to provide opportunities for incarcerated persons to participate in religious services, practices, and counseling on a voluntary basis."<sup>521</sup> This language may allow for inconsistencies in religious regulations between local jails. Leena Sabagh, Associate Manager at CAIR-California said, "While CDCR oversees the state system, it does not have jurisdiction over county jails, which set their own policies. The result is a patchwork of standards that can change from one facility to another."<sup>522</sup> In an effort to standardize policies and address inconsistencies the California state legislature passed SB 309 in October 2023.<sup>523</sup> The bill

<sup>516</sup> See *supra* notes 447-450 and *infra* notes 538-554 (discussing the exhaustive requirements of the PLRA).

<sup>517</sup> See *Huskey v. Fisher*, USDC (N.D. Miss.), Case No. 1:17-cv-00140 (quoting *Ross v. Blake*, 578 U.S. 632 (2016)).

<sup>518</sup> Rami Nsour, *Enforcing Religious Freedoms in Prisons* testimony, p. 131; Aaron Lipskar, *Enforcing Religious Freedoms in Prisons* testimony, pp. 133-35; Navdeep Singh, *Enforcing Religious Freedoms in Prisons* testimony, pp. 156-57.

<sup>519</sup> Joshua McDaniel, *Enforcing Religious Freedoms in Prisons* testimony, p. 65.

<sup>520</sup> Rami Nsour, *Enforcing Religious Freedoms in Prisons* testimony, pp. 104-05.

<sup>521</sup> Cal. Code Regs., Tit. 15 § 1072; California Board of State and Community Corrections, <https://www.bscc.ca.gov/>.

<sup>522</sup> Brian Osgood, "California Mulls Statewide Standards for Religious Garb in Jails," *Al Jazeera*, Feb. 21, 2023, <https://www.aljazeera.com/news/2023/2/21/california-mulls-statewide-standards-for-religious-garb-in-jails>.

<sup>523</sup> C.A. SB 309, Correctional Facilities: Religious Accommodations of 2023, Reg. Sess. 2023-2024, [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=202320240SB309](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240SB309).

provides uniform protections in its Penal Code for religious grooming, clothing, and headwear in prisons and jails across the state.<sup>524</sup> It also requires all local detention facilities to outline a policy regarding religious clothing, grooming, and headwear by January 1, 2025.<sup>525</sup> While this Act makes progress toward a more cohesive set of protections for religious exercise in prisons, it is limited to religious grooming, clothing, and headwear.

Other panelists at the Commission's briefing recommended that state DOC policies should be uniform, like BOP's policies, so incarcerated individuals will be able to more effectively access and utilize the grievance system. For example, Rabbi Aaron Lipskar, CEO of the Aleph Institute, testified that ensuring prisoners' religious freedoms is

about standardizing and having uniform policies as it relates to many of the [religious] observances that become challenging in a lot of these other environments. For example, having a handbook like the Bureau of Prisons has, which clearly outlines what the requirements are, it does not leave it open to interpretation whether it's by a local chaplain or by a local prison official, or sometimes even by an inmate.<sup>526</sup>

This lack of standardization can also cause confusion among prison staff about religious practices, especially for non-Christian faiths. Rabbi Lipskar explained that many of the religious accommodation issues his organization encounters are at the state and local levels. He testified:

Whenever there is a problem, we work closely with leadership to get those things resolved. But unfortunately, it is within many of the state systems—and this is where we come to RLUIPA and even smaller than that in many of the county jails—where we find that these [religious] accommodations are not being met. And even when it is very well-meaning people who would like to help achieve accommodating these things, the answer usually is that there is nothing within policy or other types of issues that preclude them from providing that... so, once again, it's about education and enforcing [RLUIPA] through standardized policy and looking at the environments that are just not adhering to that.<sup>527</sup>

### Procedural Requirements

Beyond the time limits prisoners have to meet, seeking redress may be hindered by additional burdensome and complicated procedural requirements. For example, most state prisons require prisoners to fill out different forms for each step of the grievance process. Some facilities have unique forms for each type of grievance. When utilized in a proper and transparent manner, these forms can be beneficial for both administrative staff and prisoners. Many states and the BOP use

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<sup>524</sup> Cal. Pen. Code § 2607.

<sup>525</sup> C.A. SB 309, 2023-2024.

<sup>526</sup> Aaron Lipskar, *Enforcing Religious Freedoms in Prisons* testimony, pp. 133-34.

<sup>527</sup> *Ibid.*, p. 93 and p. 134.

three or fewer forms in their grievance process. Arizona, on the other hand, utilizes seven different forms, which can lead to confusion and unnecessarily burden prisoners.<sup>528</sup>

Some policies require prisoners to request forms from various staff members. As discussed above, this may disincentivize some prisoners from seeking redress due to fear of their complaint not being taken seriously or facing retribution from prison staff. Prison advocates argue that administrative forms need to be readily available for prisoners and should be located in accessible areas, such as the prison library or cafeteria.<sup>529</sup>

In a 50-state survey of prison policies, Kaur and colleagues find barriers to the grievance process in the completing and submission of the forms. The researchers show that some DOCs are very specific in their submission requirements.<sup>530</sup> For example, West Virginia's policy states: "The inmate may attach to the grievance only one (1) 8.5 x 11-inch page with writing on a single side. Only one staple may be used to affix the pages together. The inmate may not tear, fold or affix tape to the forms, except that the forms may be folded and placed into a number 10 envelope."<sup>531</sup> By comparison, other jurisdictions are broader in their submission process, which may make it easier for prisoners to complete and submit their forms. For example, Florida DOC's policy states a prisoner "shall state his grievance in Part A. If additional space is needed, the inmate shall use attachments rather than multiple copies of Form DC1-303. Only 2 additional pages of narrative will be allowed."<sup>532</sup>

Additionally, almost all DOCs require that forms are completed in English, which may raise issues for prisoners who have limited English proficiency or are non-native English speakers. This potential hurdle is exacerbated by the fact that many policies do not allow prisoners to seek assistance in completing their forms.<sup>533</sup> Some policies do allow for an individual to assist a prisoner in completing a form, such as Washington, D.C., with a policy that "the DDPCM [Deputy Director for Programs and Case Management] or designee shall ensure that non-English speaking inmates, inmates who cannot read or are otherwise impaired (physically or mentally), receive assistance in order to understand and access the inmate grievance procedures."<sup>534</sup> For those policies that allow assistance, some specify that a prisoner can receive aid from a staff member but not a fellow prisoner. The BOP has a lenient policy as it allows other prisoners, staff, family members, and attorneys the right to assist during the grievance process. The BOP policy also requires that

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<sup>528</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey."

<sup>529</sup> Ibid.

<sup>530</sup> Ibid.

<sup>531</sup> West Virginia Department of Corrections, "Inmate Grievance Procedures," Feb. 1, 2014.

<sup>532</sup> Florida Department of Corrections, Grievance Procedures, 33-103.006, 1(c).

<sup>533</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey."

<sup>534</sup> District of Columbia Department of Corrections, "Policy and Procedure," May 20, 2023,

[https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204030.1M%20Inmate%20Grievance%20Procedure%20\(IGP\)%2005-20-2022.pdf](https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204030.1M%20Inmate%20Grievance%20Procedure%20(IGP)%2005-20-2022.pdf).

wardens “ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English.”<sup>535</sup>

Another potential barrier is that a majority of state DOC policies prohibit prisoners from raising multiple complaints in the filing, even if the issues are interrelated. This single-subject rule can be used as a procedural hurdle and can cause a complaint to be dismissed—not based on its merit, but on the failure to comply with the rule.<sup>536</sup> If a complaint is dismissed for failure to comply, most policies will not allow a prisoner to amend, re-file, or appeal the decision. Depending on the facility, a prisoner may or may not be notified why their grievance was returned. Moreover, some policies go a step further and classify this noncompliance as a “procedural violation” and a “misuse of the system” which may subject a prisoner to punishment.<sup>537</sup>

The single-subject rule may pose additional challenges for prisoners because it means that legitimate issues may not be investigated or addressed. Many of the policies that impose a single-subject rule also impose limits on the number of grievances that a prisoner can file during a period of time. Therefore, if prisoners must restrict their grievances to single issues, they may reach their grievance limit more quickly and be forced to decide which issue to pursue first. While, on its face, this policy might streamline the administrative process, time limits mean the excluded issues may be barred and therefore go unresolved.

### Exhaustion Rule

The PLRA exhaustion provision is intended to protect the facility and its “administrative agency authority.” The exhaustion rule gives an agency ““an opportunity to correct its own mistakes before it is haled into federal court,” and it discourages “disregard of [the agency’s] procedures.””<sup>538</sup> The Supreme Court stated: “Congress enacted § 1997e(a) to reduce the quantity and improve the quality of prisoner suits.”<sup>539</sup> This provision, however, is the most litigated PLRA rule.<sup>540</sup>

The logic behind the PLRA mandate was to encourage “prisoners to make full use of inmate grievance procedures and thus give prison officials the opportunity to resolve prisoner complaints.”<sup>541</sup> The rule was intended to reduce the overall number of lawsuits, especially those

<sup>535</sup> 28 CFR § 542.16.

<sup>536</sup> See e.g., Eliza Fawcett and Chris Gelardi, “‘A Waste of Time’: Inside New York’s Broken Jail Accountability System,” *New York Focus*, Dec. 4, 2023, <https://nysfocus.com/2023/12/04/county-jails-grievance-scoc>.

<sup>537</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey.”

<sup>538</sup> *Woodford v. Ngo*, 548 U.S. 81, 89 (2006).

<sup>539</sup> *Porter v. Nussle*, 534 U.S. 516, 524 (2002)(Ginsburg, J.).

<sup>540</sup> John Boston, “The Prison Litigation Reform Act,” *Legal Aid Society*, Feb. 27, 2006, [https://law.yale.edu/sites/default/files/documents/pdf/Boston\\_PLRA\\_Treatise.pdf](https://law.yale.edu/sites/default/files/documents/pdf/Boston_PLRA_Treatise.pdf); Ryan Lefkowitz, “Prisoner’s Dilemma –Exhausted Without a Place of Rest(itution): Why the Prison Litigation Reform Act’s Exhaustion Requirement Needs to Be Amended,” *St. Mary’s Law Review on Race and Social Justice*, 2018, vol. 20, no. 2, <https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1001&context=thescholar>.

<sup>541</sup> *Bey v. Johnson*, 407 F.3d at 807.

that were viewed as frivolous.<sup>542</sup>

Some scholars argue, however, that even without an exhaustion requirement, prisoners would not be incentivized to file unexhausted claims that would inevitably be dismissed. Others argue that the exhaustion rule further punishes prisoners because it assumes that a *pro se* prisoner will have the ability and legal knowledge to determine which claims are exhausted and which are not when considering whether to include a particular claim in their lawsuit.<sup>543</sup> In an amicus brief, attorneys for the ACLU wrote that “[s]uch an assumption is highly implausible when one considers that even trained lawyers are often stymied by the enormous body of case law that has developed around the question of what does and does not constitute adequate exhaustion.”<sup>544</sup> As stated previously, the Supreme Court has held that the PLRA does not require “total exhaustion” of claims, but rather, that a district court should “dismiss[] unexhausted claims as it encounter[s] them and proceed[] with the exhausted ones.”<sup>545</sup>

Kaur and colleagues argue that:

The complexity of prison grievance policies play a large role in when, and whether, prisoners can file lawsuits. For example, if final administrative resolution of a prisoner’s grievance does not occur until years after the relevant incident, a prisoner may lose steam before he or she is even eligible to file suit.

Furthermore, the Court in *Woodford* interpreted the PLRA’s exhaustion provision not merely to postpone, but to bar, lawsuits if prisoners fail to comply with any procedural elements of a grievance policy. Under this interpretation, even good faith errors with regard to minor procedural requirements can render a prisoner’s purported harm unredressable both administratively and judicially. For example, if a grievance policy requires a prisoner to file a grievance within three days of the relevant incident, a prisoner who misses the three-day deadline is barred from raising the complaint both in the prison grievance system and federal courts.<sup>546</sup>

At the federal court stage, prisoners are no longer restricted to focus only on one issue in their lawsuit. In most cases, prisoners (like nonincarcerated individuals) may combine several claims within one lawsuit. However, the exhaustion rule may pose an additional hurdle for prisoners as they navigate the grievance process. For instance, in *Edmonds v. Payne*, a prisoner sued several

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<sup>542</sup> *Porter v. Nussle*, 534 U.S. 516, 522 (2002) (“Floor statements ‘overwhelmingly suggest[ed] that Congress sought to curtail suits qualifying as ‘frivolous’ because of their ‘subject matter,’ e.g., suits over ‘insufficient storage locker space,’ ‘a defective haircut,’ or ‘being served chunky peanut butter rather than the creamy variety.’”

<sup>543</sup> *See Blackmon v. Crawford*, 305 F. Supp. 2d 1174, 1180 (D. Nev. 2004) (“such incentives will have little effect because many prisoners do not understand the exhaustion rule in the first place.”); *see also* American Civil Liberties Union, Brief for the U.S. Supreme Court as Amicus Curiae, *Jones v. Bock*, 2005.

<sup>544</sup> American Civil Liberties Union, Brief for the U.S. Supreme Court as Amicus Curiae, *Jones v. Bock*, 2005.

<sup>545</sup> *Jones v. Bock*, 549 U.S. 199, 224 (2007).

<sup>546</sup> Kaul, Donley, Cavataro, Benavides, Kincaid, and Chatham, “Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey.”

correctional officers over allegations of failing to treat his Hepatitis C. The court found that while the “plaintiff ha[d] availed himself of the grievance process on many of his claims,” he failed to “specifically grieve one of the defendants’ alleged interference with his treatment.”<sup>547</sup> Edmonds explained that he was unable to bring that grievance claim because he was transferred to a different facility and by the time he was transferred back, the grievance would most likely have been rejected due to time limits. The court, however, denied providing a decision on the merits of his entire case because “he failed to realize that a court would expect him to file a grievance that would most likely be rejected as untimely.”<sup>548</sup>

Similarly, at the Commission’s briefing, Colie Levar Long testified to the many grievances he tried to file during his incarceration that were denied due to technicalities. In one instance, he filed a tort claim in federal court due to a prison guard tearing up his Qur’an and confiscating his prayer rug “because they said it had gang colors in it and things of that nature.”<sup>549</sup> The Court, however, denied hearing his case because it stated that he did not fully exhaust the administrative remedies prior to filing.<sup>550</sup> Therefore, Long was not able to seek relief despite this potential RLUIPA violation.

Assistant Clinical Professor of Law at Harvard Law School and Director of Harvard’s Religious Freedom Clinic, Joshua McDaniel, testified that the PLRA’s exhaustion mandate disadvantages prisoners who must spend months exhausting administrative remedies, during which time a prisoner’s rights under RLUIPA may continue to be violated. As such, he recommended that when a prisoner alleges an “imminent need for a religious accommodation” (e.g., dietary requirement for religious holiday), there should be a

provision built into the PLRA like a safety valve that allows a prisoner to go to court and get a temporary restraining order or a preliminary injunction pending the outcome of the grievance process. So, allow the grievance process to play out, but allow a federal court to come in and say, no, you need to provide the Ramadan accommodations.<sup>551</sup>

Founding Director of the Prison Religion Project and Center for Engaged Religious Pluralism and Professor of Social Ethics, Law and Public Life, and of Politics at Saint Mary’s College, Barbara McGraw, also testified that:

A major impediment to inmates’ religious rights is when an institution that doesn’t embrace RLUIPA requires the inmate to go through a grievance process to receive an accommodation rather than having a proactive religious request procedure. And such institutions’ grievance processes are often overly cumbersome, not transparent, or

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<sup>547</sup> American Civil Liberties Union, Brief for the U.S. Supreme Court as Amicus Curiae, *Jones v. Bock*, 2005.

<sup>548</sup> Ibid.

<sup>549</sup> Colie Levar Long, *Enforcing Religious Freedoms in Prisons* testimony, p. 189.

<sup>550</sup> Ibid.

<sup>551</sup> Joshua McDaniel, *Enforcing Religious Freedoms in Prisons* testimony, p. 71.



undermined by institutional staff who delay a decision or fail to inform inmates of next steps.

Certainly, the reason for grievance procedures ought not be thwarting inmates' religious rights. The purpose ought to be to give the institution and the inmate the opportunity to resolve the matter without litigation, and hopefully that is accomplished before the damage is done. The [PLRA] should be modified to require that such procedures are transparently available, easy to understand, easy to do, and expeditious. . . . And the Supreme Court or Congress should give RLUIPA more teeth by providing a remedy for violations that would serve as a forceful deterrent so that [] violations. . . would be a lot less likely to happen.<sup>552</sup>

Similarly, Associate Counsel at First Liberty, Camille Varone, maintained that, despite congressional directives and years following RLUIPA's enactment, egregious violations of prisoners' religious rights continue to occur. She explained that the Supreme Court has ruled that the "strict exhaustion remedies can be waived where the grievance process functions as a dead end . . . but many inmates are unaware of these procedural rights."<sup>553</sup> As such, she argues that there needs to be federal action for "statutory amendments, new regulations, or enforcement changes to ensure inmates have access to meaningful grievance process" and for the DOJ to "vigorously defend inmates' religious rights when the opportunity arises."<sup>554</sup>

Given the challenges discussed above, the grievance data presented in Chapter 2 and RLUIPA case analysis in Chapter 3 should be interpreted cautiously, since grievances are likely to go un- or underreported because navigating the process deters many prisoners. Additionally, given the power dynamics inherent in carceral institutions, evidence from formerly incarcerated individuals suggests that grievances may be ignored or discarded, and that prisoners are pressured to retract complaints to falsely lower their facility's grievance numbers. Therefore, the data presented from the sampled facilities suffers from an inherent selection bias because only prisoners who were able to navigate the system and proceed far enough in the process have their grievances captured. Moreover, and as discussed previously, choosing to submit a grievance can be a daunting experience depending on a facility's procedures. Many may decide that the risks are just too high.

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<sup>552</sup> Barbara McGraw, *Enforcing Religious Freedoms in Prisons* testimony, pp. 150-51.

<sup>553</sup> Camille Varone, *Enforcing Religious Freedoms in Prisons* testimony, p. 44.

<sup>554</sup> Camille Varone, *Enforcing Religious Freedoms in Prisons* testimony, p. 45.

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## CHAPTER 2: Prisoners' Free Exercise Claims

The previous chapter presented the legal and constitutional foundation of prisoners' religious rights, as well as an overview of the grievance process. This chapter examines the 20 sampled facilities and discusses alleged incidents of religious discrimination captured by prisoners' grievances filed from 2017 through 2023. This chapter also provides a summary of the complaints related to religious discrimination in prisons filed with the Commission. The chapter concludes with an analysis of the impact of COVID-19 and its continuing legacy on the ability of prisoners to exercise their religious liberties.

This report uses the same sample of 20 facilities as the Commission's 2008 report to compare changes in the prisons' policies and adherence to RLUIPA over the past 16 years. The facilities range from minimum to maximum security, including the only federal "supermax" facility. All facilities house adult prisoners. One state prison is a female-only facility, and one federal prison includes separate facilities for men and women. Two jails were studied: one male-only facility and one co-ed facility.

These 20 facilities were selected for the 2008 report through a combination of reputational, network, and snowball sampling methodologies. The Commission first focused on facilities across the country that had records of alleged or actual religious discrimination grievances filed by incarcerated individuals. Next, the Commission sought experts, such as prisoner advocate organizations and faith-based organizations that focused on the free exercise of religious rights, to recommend federal, state, and/or local facilities with alleged or actual religious discrimination against incarcerated individuals.<sup>555</sup> The third and final stage of the sampling frame for the 2008 report included selecting facilities from the recommendations that maximized the number of states in which the selected facilities were located, ensuring a reasonably balanced representation of security levels, and including at least one women's prison and one privately managed prison. The eight federal prisons<sup>556</sup> in the sample are:

1. Federal Correctional Institution Danbury, Danbury, Connecticut
2. Federal Correctional Institution La Tuna, Anthony, Texas
3. Federal Correctional Institution Schuylkill, Minersville, Pennsylvania

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<sup>555</sup> The list of non-profit organizations included: American Civil Liberties Union (Southern California and Connecticut offices), American Friends Service Committee (Maine and New Jersey offices), Human Rights Watch, Maine Indian Tribal State Commission, Muslim Advocates, Muslim Chaplain Association, Muslim Public Affairs Council, Prison Fellowship, Prison Legal News, Sikh American Legal Defense and Educational Fund, Sikh Coalition, The Aleph Institute, The Becket Fund for Religious Freedom, United Church of Christ.

<sup>556</sup> The list of facilities reflects their names at the time the report was written. In 2024, the BOP changed the names of seven facilities—including Lewisburg, Lompoc, and Marion—to more accurately reflect changes in current security levels. See Federal Bureau of Prisons, "Name Changes Approved for Seven FBOP Facilities," <https://www.bop.gov/resources/news/20240404-name-changes-approved-for-seven-fbop-facilities.jsp#:~:text=Federal%20Bureau%20of%20Prisons&text=This%20recommendation%20was%20made%20i n,in%20which%20it%20is%20located.>

4. United States Penitentiary Lewisburg, Lewisburg, Pennsylvania
5. United States Penitentiary Lompoc, Lompoc, California
6. United States Penitentiary Marion, Marion, Illinois
7. United States Penitentiary Florence Administrative Maximum, Florence, Colorado
8. United States Penitentiary Terre Haute, Terre Haute, Indiana

The 10 state prisons are:

1. Northeast Ohio Correctional Center in Youngstown, Ohio<sup>557</sup> (privately managed by CoreCivic)
2. California Department of Corrections and Rehabilitation, California State Prison Solano, Vacaville, California
3. California Department of Corrections and Rehabilitation, California Correctional Institution, Tehachapi, California
4. Delaware Department of Correction, Delores J. Baylor Women's Correctional Institution, New Castle, Delaware (women's prison)
5. Florida Department of Corrections, Union Correctional Institution, Raiford, Florida
6. Florida Department of Corrections, Wakulla Correctional Institution, Crawfordville, Florida (a faith- and character-based prison)
7. Maine Department of Corrections, Maine State Prison, Warren, Maine
8. New Mexico Corrections Department, Lea County Correctional Facility, Hobbs, New Mexico (privately managed by Global Expertise Outsourcing Group)
9. New York State Department of Corrections, Fishkill Correctional Facility, Beacon, New York
10. Texas Department of Criminal Justice, Stiles Unit, Beaumont, Texas

The two county jails are:

1. Harris County Jail, Houston, Texas
2. Men's Central Jail, Los Angeles, California

While this report utilizes the same facilities as the Commission's 2008 report, two notable differences warrant attention. First, the Northeast Ohio Correctional Center (NEOCC) was categorized as a federal prison in the 2008 report but is categorized as a state prison in this report. At the time of the 2008 report, Corrections Corporation of America (now CoreCivic), who owns the Northeast Ohio Correctional Center, contracted with the Bureau of Prisons to house federal prisoners. The BOP ended the contract in 2015 and, in 2021, President Biden issued an executive

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<sup>557</sup> In 2014, the Bureau of Prisons ended their contract with the Northeast Ohio Correctional Center and transferred all federally held prisoners to other facilities. See Stephan Koff, "Federal Prison in Youngstown Might Not Feel Effects of Private-Prison Phase-Out," *Cleveland.com*, Aug. 18, 2016, [https://www.cleveland.com/metro/2016/08/federal\\_prison\\_in\\_youngstown\\_u.html](https://www.cleveland.com/metro/2016/08/federal_prison_in_youngstown_u.html).

order to end the federal government's use of privately operated prisons.<sup>558</sup> Since 2017, the Ohio Department of Rehabilitation and Correction has contracted with CoreCivic to house state prisoners at the Northeast Ohio Correctional Center.<sup>559</sup> Second, in the 2008 report, Federal Correctional Institution (FCI) Danbury was a female-only facility. Danbury is now made up of three facilities, with the FCI housing men and the Federal Satellite Low-Security (FSL) prison and Satellite Prison Camp (SCP) housing women.<sup>560</sup>

These facilities are used as case studies, not a representative sample, as information from these 20 facilities cannot be generalized to all carceral facilities. At the same time, there is no expectation that these jails and prisons are exceptional in how they facilitate or limit religious access, how they allow prisoners to grieve perceived mistreatment, or in the volume and nature of the data they shared with the Commission.

This chapter relies upon information obtained from interrogatories and document requests sent to the selected facilities; it is supplemented with publicly available data where possible. As discussed in Chapter 1, information provided by the facilities needs to be interpreted with caution since the data are not verifiable. The data analyzed and presented, in both the 2008 report and this update, have an inherent selection bias as they were brought by prisoners who were motivated and capable of making it through the difficult grievance process.<sup>561</sup> Given the extreme power imbalance within carceral institutions and possible fear of correctional officer retribution, grievances are likely to go unreported or be underreported. Therefore, the data available are likely an undercount of the actual issues that prisoners face. It is important to acknowledge that many individuals choose not to file complaints because the process can be burdensome and possibly dangerous.<sup>562</sup>

The Commission is appreciative of the institutions that were responsive to the interrogatories and provided information in a timely manner. The Commission is especially appreciative of the BOP's responsiveness, which coordinated responses from the eight federal prisons selected for this report and responded quickly to follow-up questions from Commission staff. However, two state facilities and both local facilities failed to respond to the Commission's request, even after multiple reminders and offers to discuss any questions or concerns they may have. The lack of response from these institutions demonstrates one of the many barriers researchers encounter in obtaining information about the protection of prisoners' civil rights. If a federal agency such as the U.S. Commission on Civil Rights, whose mission is to investigate national civil rights issues, is unable

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<sup>558</sup> Exec. Order. No. 14006, 86 FR 7483 (January 26, 2021), <https://www.federalregister.gov/documents/2021/01/29/2021-02070/reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention>.

<sup>559</sup> A Joint Committee of the Ohio General Assembly Report on the Unannounced Inspection of Northeast Ohio Correctional Center, Mar. 23, 2023, <https://www.ciic.ohio.gov/ciic-api/public/files/ciic/2412234a-abac-440e-ae97-4f2b18425387/v1/northeast-ohio-correctional-complex-2023-unannounced-inspection-report.pdf>.

<sup>560</sup> Department of Justice, "Inmate Admission & Orientation Handbook, Federal Correctional Institution Danbury," [https://www.bop.gov/locations/institutions/dan/dan\\_ao-handbook.pdf?v=1.0.0](https://www.bop.gov/locations/institutions/dan/dan_ao-handbook.pdf?v=1.0.0).

<sup>561</sup> See *supra* notes (discussing grievance process procedures).

<sup>562</sup> See *supra* notes (barriers to the grievance process).

to obtain information from these institutions, other researchers are also unlikely to gain access. The lack of access to information from the prisons raises concerns not only for understanding the extent to which religious freedoms are protected, which is the focus of this report, but also for understanding other issues affecting prisoners, such as humane treatment and adequate healthcare.

The lack of response from some sampled facilities affirms that a major barrier to understanding how prisoners exercise their religious freedom is the dearth of data collected by facilities and/or their unwillingness to share their data with outsiders.<sup>563</sup> It is important to note, however, that this arrangement is not inevitable. In fact, there is one facet of incarceration where facilities have been required to consistently collect and share data for two decades. Congress unanimously passed the Prison Rape Elimination Act of 2003 (PREA) in response to the ubiquity of prisoner sexual assault and its substantial moral, mental health, and public health consequences.<sup>564</sup> While prisoners necessarily lose some of their rights during confinement, PREA was meant to enforce the fact that rape is not an acceptable punishment for breaking the law and therefore should not be a consequence of incarceration.<sup>565</sup>

Data collection is essential to PREA's mission because of the axiom that "what gets measured gets done."<sup>566</sup> PREA is unique because it mandates that the Bureau of Justice Statistics (BJS) collects annual statistics about prison rape<sup>567</sup> in *all* facilities in *all* carceral systems in the U.S.<sup>568</sup> This could serve as a model for data collection during confinement because most large scale criminal justice legislation, such as the First Step Act of 2018,<sup>569</sup> only applies to federal prisoners, who comprise approximately 11% of the incarcerated population.<sup>570</sup> PREA applies to every incarcerated person in the U.S. regardless of age, jurisdiction, or facility type.<sup>571</sup> Because data collection is

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<sup>563</sup> Jeremy Travis, Bruce Western, and F. Stevens Redburn, "The Growth of Incarceration in The United States: Exploring Causes and Consequences," National Research Council of the National Academies, 2014, <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

<sup>564</sup> Robert W. Dumond, "Confronting America's Most Ignored Crime Problem: The Prison Rape Elimination Act of 2003," *Journal of the American Academy of Psychiatry and the Law Online*, 2003, vol. 31, no. 3, [https://www.researchgate.net/profile/Robert-Dumond-2/publication/9034610\\_Confronting\\_America's\\_most\\_ignored\\_crime\\_problem\\_The\\_Prison\\_Rape\\_Elimination\\_Act\\_of\\_2003/links/568adef808ae051f9afa8420/Confronting-Americas-most-ignored-crime-problem-The-Prison-Rape-Elimination-Act-of-2003.pdf](https://www.researchgate.net/profile/Robert-Dumond-2/publication/9034610_Confronting_America's_most_ignored_crime_problem_The_Prison_Rape_Elimination_Act_of_2003/links/568adef808ae051f9afa8420/Confronting-Americas-most-ignored-crime-problem-The-Prison-Rape-Elimination-Act-of-2003.pdf).

<sup>565</sup> Kevin R. Corlew, "Congress Attempts to Shine a Light on a Dark Problem: An In-Depth Look at the Prison Rape Elimination Act of 2003," *Am. J. Crim. L.*, 2005, vol. 33, [https://heinonline.org/HOL/Page?handle=hein.journals/ajcl33&div=11&g\\_sent=1&casa\\_token=&collection=journal](https://heinonline.org/HOL/Page?handle=hein.journals/ajcl33&div=11&g_sent=1&casa_token=&collection=journal).

<sup>566</sup> Corlew, "Congress Attempts to Shine a Light on a Dark Problem," p. 177.

<sup>567</sup> Prison Rape Elimination Act §30303.

<sup>568</sup> Hayden Smith, "Correctional Officer and Inmate Perceptions of the Prison Rape Elimination Act (PREA): A Thematic Analysis," *Journal of Crime and Justice*, 2021, vol. 44, no. 2, <https://www.tandfonline.com/doi/abs/10.1080/0735648X.2020.1856169>.

<sup>569</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Dec. 2022, Federal Prisoner Statistics Collected under the First Step Act, 2022, NCJ 304953, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fpscfsa22.pdf>.

<sup>570</sup> Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2024," Prison Policy Initiative, Mar. 14, 2024, <https://www.prisonpolicy.org/reports/pie2024.html>.

<sup>571</sup> Corlew, "Congress Attempts to Shine a Light on a Dark Problem."

expensive, PREA also outlined grants for training and technology even with shrinking budgets for more traditional corrections expenditures.<sup>572</sup> It also tied federal funding to compliance to incentivize jurisdictions to collect and share data on sexual assaults.<sup>573</sup>

While PREA has not met its goal of eliminating sexual assault in carceral facilities,<sup>574</sup> the law demonstrates that standardized data collection in prisons and jails is both possible and fruitful. In addition to providing data about sexual violence, data collected to comply with PREA has illuminated other issues in corrections, such as staff shortages that curtail prisoners' ability to participate in programming.<sup>575</sup> Legislation requiring standardized data collection across jurisdictions, including prisoner religion, could help protect prisoners' fundamental rights.

## Facility Demographics

As the previous chapter discussed, collecting data on incarcerated individuals is challenging, therefore this report utilizes many different sources to provide an overview of the religious landscape in prisons. The data provided below on the capacity, total number of prisoners, and racial demographics of the facilities come from the 2019 Census of State and Federal Adult Correctional Facilities and the 2019 Census of Jails. These surveys are conducted approximately every five to seven years by the Bureau of Justice Statistics (BJS), and 2019 is the most recent year available at the writing of this report. The statistics on prisoners' religious demographics come from the facilities' interrogatory responses and may represent different years, depending on when the facility collected the data. Facilities typically record a prisoner's religious identity at the time of admittance. Therefore, the facilities' reported numbers may not accurately depict the religious demographics of prisoners who became religious or changed their religious identity while incarcerated.<sup>576</sup>

The racial demographics of the general public come from the 2019 yearly estimates from the U.S. Census Bureau. The religious preference statistics for the general public come from Pew's 2015 Religious Landscape study, which is the most recent data on the religious preferences of Americans available at the state level. Because the data were obtained from various sources with different data collection methodologies in different years, the data presented should be taken as approximate estimates for comparison reasons, rather than an exact snapshot at one moment in time.

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<sup>572</sup> Ibid.

<sup>573</sup> Prison Rape Elimination Act §30305.

<sup>574</sup> Claire C. Barlow and Alexander D. Klein, "Taking the Prison Rape Elimination Act Seriously: Setting Clear Standards for Identifying and Protecting Vulnerable Prisoners from Sexual Violence in Confinement," *U. St. Thomas LJ*, 2023, vol. 19,

[https://heinonline.org/HOL/Page?handle=hein.journals/usthomlj19&div=16&g\\_sent=1&casa\\_token=](https://heinonline.org/HOL/Page?handle=hein.journals/usthomlj19&div=16&g_sent=1&casa_token=)

<sup>575</sup> See e.g., Smith, "Correctional Officer and Inmate Perceptions of the Prison Rape Elimination Act."

<sup>576</sup> While the facilities that responded to the Commission allow prisoners to change their recorded religious preference, prisoners may not make the effort to change their religious preference on record unless doing so is necessary for a requested religious accommodation.

### *Federal Prisons*

Table 2.1 provides a summary of the selected federal prisons. All the institutions except Danbury are male-only facilities. The sample of prisons includes a mix of security levels, including low-security (e.g., Danbury), medium-security (e.g., Schuylkill), and the highest security federal “supermax” (Florence). The prisons also vary in size, ranging from 378 prisoners (Florence) to 1,707 prisoners (Lompoc). As of 2019, all but two of the prisons (Florence and Lewisburg) were operating above their rated capacity or “the maximum number of beds or prisoners authorized by a rating official for safe and efficient operation.”<sup>577</sup>

**Table 2.1 Summary of Selected Federal Prisons in 2019**

<b>Prison</b>	<b>Sex</b>	<b>Security Level</b>	<b>Capacity</b>	<b>Number of Prisoners</b>
Danbury FCI, FSL, and SCP <i>Danbury, CT</i>	Males and Females	Low	892	1,005
La Tuna FCI and SCP <i>Anthony, TX</i>	Males	Low	1,005	1,187
Schuylkill FCI and SCP Minersville, PA	Males	Medium	1,010	1,240
Florence ADMAX USP <i>Florence, CO</i>	Males	Administrative	551	378
Lewisburg USP and SCP <i>Lewisburg, PA</i>	Males	High*	1,196	1,023
Lompoc USP and SCP <i>Lompoc, CA</i>	Males	Medium*	1,445	1,707
Marion USP and SCP <i>Marion, IL</i>	Males	Medium	1,050	1,373
Terre Haute USP <i>Terre Haute, IN</i>	Males	High	1,126	1,366

Note: FCI refers to Federal Correctional Institution; FSL refers to Federal Satellite Low-Security Prison; SCP refers to Satellite Prison Camp; USP refers to United States Penitentiary; Capacity refers to rated capacity. Some names have changed since 2019.

Source: 2019 Census of State and Federal Adult Correctional Facilities, United States Bureau of Justice Statistics, ICPSR38325-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2022-08-18. <http://doi.org/10.3886/ICPSR38325.v2>.

\* Change in security level since the 2019 Census of State and Federal Adult Correctional Facilities. Lewisburg is now medium; Lompoc is now low.

<sup>577</sup> United States Bureau of Justice Statistics, 2019 Census of State and Federal Adult Correctional Facilities Questionnaire, ICPSR38325-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2022-08-18, <http://doi.org/10.3886/ICPSR38325.v2>.



### Racial Demographics

Table 2.2 displays the racial demographics of prisoners in the selected federal prisons compared to the U.S. population. The selected prisons vary greatly in the racial and ethnic demographics of the individuals in custody, but all have a larger share of non-White populations than the overall U.S. population. The larger share of non-White populations in the selected prisons reflect the demographics of the national prison population, with Black individuals being the most overrepresented in U.S. prisons.<sup>578</sup> Nationwide, 30% of those incarcerated in state and federal prisons are White, 32% are Black, 23% are Hispanic, 2% are American Indian or Alaska Native, 1% are Asian, Native Hawaiian, or Other Pacific Islander, and 10% are multiracial or some other race.<sup>579</sup> Of the selected prisons, Schuylkill federal prison in Pennsylvania has the smallest proportion of White prisoners, with a population that is only 18% White. Marion, a federal prison in Illinois, has the highest percentage of White prisoners (52%) but is still below the share of the overall U.S. population that is White and non-Hispanic (60%).

All but one of the federal prisons have a larger share (and most have a far larger share) of Black people compared to the general U.S. population. Schuylkill has the largest percentage of Black prisoners, with an incarcerated population that is 60% Black, while the general population of the U.S. is only 13% Black. La Tuna federal prison in Texas has the smallest share of Black prisoners (8%), but its percentage of Hispanic prisoners (58%) far exceeds the percentage of Hispanic individuals in the U.S. population (19%). Lompoc federal prison in California also has a majority-Hispanic population of prisoners (51%) and has the largest Asian population (6%) of the selected prisons. La Tuna and Marion have the largest population of Native American prisoners (6% in both prisons).

**Table 2.2: Racial Demographics of Selected Prisons Compared to the U.S. Population, 2019**

	White	Black	Hispanic	Asian	Native American	Other/ >1 Race/ Unknown
<b>U.S. Population</b>	<b>60%</b>	<b>13%</b>	<b>19%</b>	<b>6%</b>	<b>1%</b>	<b>2%</b>
<b>Selected Federal Prisons</b>						
Danbury FCI, FSL, and SCP <i>Danbury, CT</i>	44%	31%	23%	2%	1%	0%
La Tuna FCI and SCP <i>Anthony, TX</i>	27%	8%	58%	2%	6%	0%
Schuylkill FCI and SCP <i>Minersville, PA</i>	18%	60%	21%	1%	<1%	0%

<sup>578</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Prisons Report Series, Preliminary Release," Sept. 2023, <https://bjs.ojp.gov/preliminary-data-release-prisons>.

<sup>579</sup> Ibid.

Florence ADMAX USP <i>Florence, CO</i>	41%	37%	18%	2%	2%	0%
Lewisburg USP and SCP <i>Lewisburg, PA</i>	28%	48%	21%	1%	2%	0%
Lompoc USP and SCP <i>Lompoc, CA</i>	23%	19%	51%	6%	2%	0%
Marion USP and SCP <i>Marion, IL</i>	52%	34%	6%	1%	6%	0%
Terre Haute USP <i>Terre Haute, IN</i>	36%	40%	20%	<1%	4%	0%

Note: The U.S. Census Bureau collects Hispanic ethnicity separately from race. Hispanic individuals may be of any race. To make the national estimates comparable with the data from the prisons, the percentages for the racial categories in the national data refer to non-Hispanic individuals and the Hispanic category includes all Hispanic individuals of any race.

Sources: 2019 Census of State and Federal Adult Correctional Facilities, United States Bureau of Justice Statistics, ICPSR38325-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2022-08-18. <http://doi.org/10.3886/ICPSR38325.v2>. U.S. Census Bureau, Population Division, Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2019 (NC-EST2019-SR11H), June 2020.

### *Religious Demographics*

Prisons collect most prisoner demographic information, including religious affiliation, when the prisoner enters a facility. The BOP began this practice for federal prisoners in 1992.<sup>580</sup> Prisons need to know about religious affiliations in order to provide religious accommodations, but as discussed in Chapter 1, they can also use this information for religious discrimination.<sup>581</sup> For instance, some prisons used Nation of Islam membership to segregate members from each other in the mid-20<sup>th</sup> century.<sup>582</sup>

One of the main findings of the Commission's 2008 report is that people of non-Christian faiths are overrepresented and people of Christian faiths are underrepresented in prisons compared to the general population, with 78.4% of Americans identifying as Christians in 2007 compared to 66.2% of federal prisoners.<sup>583</sup> In particular, there were higher shares of Muslims and followers of Native

<sup>580</sup> Susan Van Baalen, "From "Black Muslim" to Global Islam: A Study of the Evolution of the Practice of Islam by Incarcerated Black Americans, 1957–2007," Unpublished Dissertation, 2011, Georgetown University, <https://www.proquest.com/openview/34649007910fcd6df46d665b30e61d68/1?pq-origsite=gscholar&cbl=18750>.

<sup>581</sup> Ibid; see also *supra* notes (discussing Nation of Islam).

<sup>582</sup> Zoe Colley, "'All America is a Prison': The Nation of Islam and the Politicization of African American Prisoners, 1955–1965," *Journal of American Studies*, 2014, vol. 48, no. 2, <https://www.cambridge.org/core/journals/journal-of-american-studies/article/abs/all-america-is-a-prison-the-nation-of-islam-and-the-politicization-of-african-american-prisoners-19551965/5C3C1A175048A5088393DACD8277F472>; see also *supra* notes (discussing Nation of Islam).

<sup>583</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, <https://www.usccr.gov/files/pubs/docs/STAT2008ERFIP.pdf>.

American religions in federal prisons. The 2008 report shows that 9.3% of federal prisoners were Muslim, which included all sects.<sup>584</sup> Similarly, BOP data from 2016 show that approximately 10% of all federal prisoners identify as Muslim, including members of the Nation of Islam and the Moorish Science Temple.<sup>585</sup>

The First Step Act of 2018 requires BJS to collect a variety of data on characteristics of prisoners housed in BOP prisons on a yearly basis. This includes data on certain demographic categories such as marital status, veteran status, citizenship, English-speaking status, education, medical conditions, and participation in treatment programs. However, religious preference is not among the requirements for yearly data collection.<sup>586</sup> As a result, it is difficult to ascertain yearly changes in the religious landscape of federal prisons. To achieve a better understanding of the religious affiliations of prisoners, the Commission requested BOP data on the religious affiliations of prisoners at the sampled institutions. While the BOP does not collect yearly statistics on the religious affiliations of adults in custody, the BOP was able to provide a snapshot of the religious affiliations of current prisoners (as of June 2024) provided by prisoners at intake. Table 2.3 compares the religious affiliation of current BOP prisoners to the religious affiliation of the U.S. population from Pew's 2015 Religious Landscape Study, which is the largest recent study of religiosity in the United States.<sup>587</sup>

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<sup>584</sup> Ibid.

<sup>585</sup> Federal Bureau of Prisons, "Inmate Religious Stats," FOIA Records Available Online, 2016, <https://www.bop.gov/foia/docs/inmatereligionstatsjune2016.pdf>.

<sup>586</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Dec. 2022, Federal Prisoner Statistics Collected under the First Step Act, 2022, NCJ 304953, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fpscfsa22.pdf>.

<sup>587</sup> Pew's 2015 study is the most recent data available that has a large enough sample to investigate state- and county-level data about religious preferences, which is necessary to compare religious preferences in state prisons and county jails to the religious demographics of their state or county (in the next section). Although the religious preferences of Americans have changed slightly over the last ten years, these numbers provide a rough estimate of the relative sizes of religious groups in the prisons compared to the general U.S. population. For example, a 2023 Gallup poll found that 68% of Americans identify as Christians, which is only slightly lower than Pew's 2015 estimate and still a far larger percentage than the Christian population in any of the selected federal prisons.

**Table 2.3: Religious Demographics in Selected Prisons Compared to the U.S. Population**

Religion	U.S.	Danbury	Florence	La Tuna	Lewisburg	Lompoc	Marion	Schuylkill	Terre Haute
Christian	71%	39%	20%	42%	29%	47%	22%	17%	26%
Jewish	2%	8%	19%	5%	6%	4%	6%	3%	17%
Buddhist	1%	1%	2%	1%	<1%	2%	1%	<1%	1%
Hindu	1%	<1%	<1%	<1%	<1%	<1%	<1%	0%	<1%
Muslim	1%	12%	28%	3%	12%	4%	10%	25%	17%
Atheist/Agnostic	7%	<1%	0%	0%	0%	<1%	<1%	0%	<1%
Other	2%								
Afro-Caribbean		4%	4%	4%	3%	3%	2%	4%	7%
Native Peoples	<1%	3%	8%	7%	3%	2%	6%	2%	8%
Pagan	<1%	2%	8%	1%	2%	2%	5%	1%	4%
Sikh		<1%	0%	0%	<1%	<1%	0%	0%	0%
Other		1%	2%	5%	2%	1%	1%	1%	1%
None/No Preference	16%	27%	11%	32%	36%	35%	45%	45%	17%
Unknown	1%	2%	0%	2%	6%	1%	<1%	1%	1%

Sources: Pew Research Center, 2015, Religious Landscape Study, <https://www.pewresearch.org/religious-landscape-study/database/>. Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories follow-up questions, June 2024.

Table 2.3 demonstrates the broad religious diversity of federal prisoners. The proportion of Christians (including Catholic, Protestant, Latter Day Saint, Jehovah’s Witness, Seventh Day Adventist, and various smaller denominations) housed in the selected federal prisons is far smaller than the proportion of Christians in the overall U.S. population. Whereas approximately 71% of the U.S. population identifies as Christian, the prison with the highest percentage of Christians is FCI Danbury, with 39% of prisoners identifying as Christian. On the low end, USP Schuylkill’s prisoner population is 17% Christian.

On the other hand, the proportion of Muslims in the selected federal prisons are all larger than the proportion of Muslims in the U.S. population. While the U.S. population is only about 1% Muslim, the Muslim populations in the selected prisons range from 3% to 28%. In fact, two of the selected prisons (Florence and Schuylkill) have more Muslim prisoners than Christian prisoners. All the sampled federal prisons also have a higher share of Jewish people than the general U.S. population. Florence and Terre Haute have the largest percentage of Jewish prisoners (19% and 17% respectively, compared to only 2% of the U.S. population). The federal prisons also have larger proportions of individuals practicing Native American and Pagan religions than the general American public. For example, 8% of the population of Florence and Terre Haute prisons identify with Native American religions, compared to less than 1% of the U.S. population. Similarly, 8% of Florence prisoners identify with Pagan religions, compared to less than 1% of the U.S. population. Finally, although Pew does not provide data on the prevalence of Afro-Caribbean

religions, it appears that a greater proportion of federal prisoners identify with Afro-Caribbean religions than the general American public. Individuals identifying with religions Pew classifies as “other”<sup>588</sup> make up only 2% of the general American public, whereas prisoners identifying with Afro-Caribbean faiths make up at least 2%, and as much as 7%, of the sampled federal prisons' populations.

### *State Prisons*

Table 2.4 provides a summary of the selected state prisons. Two of the state prisons are privately managed; Northeast Ohio Correctional Center is managed by CoreCivic and Lea Correctional Facility is managed by the GEO Group, Inc. The rest of the prisons are managed by their state's Department of Corrections (DOC). All the institutions except Delores J. Baylor Women's Correctional Institution are male-only prisons. Half are medium security, and the other half are high security. The prisons range in size from 316 prisoners at Baylor to 4,576 prisoners at California State Prison Solano. Most of the selected prisons were operating within their housing capacities as of 2019, but the California and Florida prisons were above capacity. California State Prison Solano, in particular, was operating at about 1.75 times its capacity.

**Table 2.4 Summary of Selected State Prisons**

<b>Prison</b>	<b>Management</b>	<b>Sex</b>	<b>Security Level</b>	<b>Capacity</b>	<b>Number of Prisoners</b>
Northeast Ohio Correctional Center <i>Youngstown, OH</i>	CoreCivic	Males	Medium	1,020	913
Lea County Correctional Facility <i>Hobbs, NM</i>	GEO Group	Males	Medium	1,293	1,259
California State Prison Solano <i>Vacaville, CA</i>	State of California	Males	Medium	2,610	4,576
California Correctional Institution <i>Tehachapi, CA</i>	State of California	Males	High	2,783	3,765
Delores J. Baylor Women's Correctional Institution <i>New Castle, DE</i>	State of Delaware	Females	Medium	454	316
Union Correctional Institution <i>Raiford, FL</i>	State of Florida	Males	High	1,452	1,752
Wakulla Correctional Institution <i>Crawfordville, FL</i> (Faith/character-based prison)	State of Florida	Males	High	1,280	1,523

<sup>588</sup> This category combines Pew's “other world religions” and “other faiths” categories.

Maine State Prison <i>Warren, ME</i>	State of Maine	Males	High	993	901
Fishkill Correctional Facility <i>Beacon, NY</i>	State of New York	Males	Medium	1,857	1,483
Stiles Unit <i>Beaumont, TX</i>	State of Texas	Males	High	2,979	2,920

Note: Capacity refers to rated capacity, except in the California prisons for which rated capacity is unknown. For the CA prisons, design capacity is used.

Sources: 2019 Census of State and Federal Adult Correctional Facilities, United States Bureau of Justice Statistics, ICPSR38325-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2022-08-18. <http://doi.org/10.3886/ICPSR38325.v2>; Northeast Ohio Correctional Center Inspection Report, October 2020 <https://www.ciic.ohio.gov/ciic-api/public/files/ciic/c23b8842-e8c7-497a-a748-490a66634146/v1/northeast-ohio-correctional-center-2020-inspection-report.pdf>.

### *Racial Demographics*

Table 2.5 displays the racial demographics in the selected state prisons compared to the overall population in each state. Like the federal prisons, all the state prisons have a larger share of Black people than their state's general population. For example, Ohio's population is about 13% Black, yet Black individuals make up more than 60% of the prisoners at Northeast Ohio Correctional Facility. The facility with the smallest share of Black prisoners is Lea County Correctional Facility in New Mexico, with 8% Black prisoners, while Black individuals make up about 2% of the general population in New Mexico.

The proportion of White prisoners is lower than the proportion of White individuals in the state's population for every selected prison except Union Correctional Institution in Florida, which has about the same proportion of White individuals as the state of Florida. California State Prison Solano has the smallest percentage of White prisoners (14%), and Maine State Prison has the largest percentage of White prisoners (about 78%, though the population of Maine is 93% White). Lea County Correctional Facility in New Mexico has the highest percentage of Hispanic (59%) and Native American prisoners (7%).

**Table 2.5: Racial Demographics of Selected Prisons Compared to their State's Population**

State	Prison	White	Black	Hispanic	Asian	Native American	Other/ >1 Race/ Unknown
California		37%	6%	39%	15%	0%	3%
	California State Prison Solano	14%	44%	35%	1%	1%	5%
	California Correctional Institution	23%	23%	47%	1%	1%	5%

Delaware		62%	22%	10%	4%	<1%	2%
	Delores J. Baylor Women's Correctional Institution	56%	42%	2%	<1%	0%	<1%
Florida		53%	16%	26%	3%	<1%	2%
	Union Correctional Institution	53%	39%	7%	<1%	<1%	1%
	Wakulla Correctional Institution	39%	44%	16%	1%	<1%	<1%
Maine		93%	2%	2%	1%	1%	2%
	Maine State Prison	78%	13%	<1%	<1%	3%	6%
New Mexico		37%	2%	49%	2%	9%	2%
	Lea County Correctional Facility	25%	8%	59%	<1%	7%	1%
New York		55%	15%	19%	9%	<1%	2%
	Fishkill Correctional Facility	22%	47%	29%	1%	1%	2%
Ohio		78%	13%	4%	3%	<1%	2%
	Northeast Ohio Correctional Center	36%	61%				3%
Texas		41%	12%	40%	5%	<1%	2%
	Stiles Unit	30%	41%	29%	<1%	0%	<1%

Note: The U.S. Census Bureau collects Hispanic ethnicity separately from race. Hispanic individuals may be of any race. To make the national estimates comparable with the data from the prisons, the percentages for the racial categories in the national data refer to non-Hispanic individuals and the Hispanic category includes all Hispanic individuals of any race. The data available for Northeast Ohio Correctional Facility includes only Black, White, or another race. Therefore, the Other/Unknown column for that facility includes Hispanic, Asian, and Native American individuals.

Sources: 2019 Census of State and Federal Adult Correctional Facilities, United States Bureau of Justice Statistics, ICPSR38325-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2022-08-18. <http://doi.org/10.3886/ICPSR38325.v2>; United States Census Bureau, State Population by Characteristics, 2010-2019, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html>; Northeast Ohio Correctional Center Inspection Report, October 2020, <https://www.ciic.ohio.gov/ciic-api/public/files/ciic/c23b8842-e8c7-497a-a748-490a66634146/v1/northeast-ohio-correctional-center-2020-inspection-report.pdf>.

*Religious Demographics*

The Commission's 2008 report compared prisoners' religious preferences to national-level statistics on religious identification.<sup>589</sup> The issue with this approach is that religion varies by location. For instance, according to Pew's 2015 Religious Landscape Study, the percentage of individuals identifying as Christian in the states sampled for this report ranges from 60% in Maine and New York to 77% in Texas.<sup>590</sup> Therefore, Table 2.6 compares the religious demographics from the state prisons for which we received religious data to the religious demographics in that state.

In all the selected prisons, Christianity had the largest following among prisoners. However, like the federal prisons, the state prisons all had a smaller proportion of Christians than the general population of their states. For example, about a third of Maine State Prison's population identify as Christian, compared to about 60% of Maine's general adult population. Stiles Unit in Texas has the largest share of Christian prisoners among the selected prisons, with 69% of their prisoners identifying as Christian, compared to 77% of Texas's overall adult population.

Also like the federal prisons, all the sampled state prisons have larger proportions of prisoners identifying as Muslim than the general adult population in their state. For example, 14% of the prisoners housed at Northeast Ohio Correctional Center identify as Muslim, compared to only 1% of the adult population in Ohio. Union Correctional Institution, Wakulla Correctional Institution, and Stiles Unit also have a larger share of Jewish people than their states. Florida's population is about 3% Jewish compared to 16% of Union CI's prisoners and 12% of Wakulla CI's prisoners. Similarly, 1% of Texas's population is Jewish, compared to 7% of Stiles Unit's prisoners. Maine State Prison also has significant populations of prisoners identifying with Afro-Caribbean religions (5%), Native religions (10%), and Pagan religions (6%).

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<sup>589</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>590</sup> Pew Research Center, "America's Changing Religious Landscape," May 12, 2015, <https://www.pewresearch.org/wp-content/uploads/sites/20/2015/05/RLS-08-26-full-report.pdf>.



**Table 2.6: Religious Demographics in Selected Prisons Compared to their State's Population**

Religion	Delaware	Baylor CI	Florida	Union CI	Wakulla CI	Ohio	NEOCC	Maine	Maine SP	Texas	Stiles
Christian	69%	41%	70%	60%	67%	73%	29%	60%	33%	77%	69%
Jewish	3%	< 1%	3%	16%	12%	1%	<1%	2%	0%	1%	7%
Buddhist	<1%	0%	< 1%	1%	<1%	1%	0%	1%	1%	1%	1%
Hindu	2%	0%	< 1%	0%	<1%	<1%	0%	<1%	0%	<1%	0%
Muslim	1%	5%	< 1%	7%	6%	1%	14%	<1%	8%	1%	10%
Atheist/Agnostic	5%	1%	7%	0%	<1%	5%	<1%	6%	1%	5%	0%
Other	1%		2%			2%		5%		1%	0%
Afro-Caribbean		0%		0%	1%		1%		5%		1%
Baha`i		0%		0%	0%		0%		0%		0%
Native Peoples		0%		1%	<1%		<1%		10%		4%
Pagan		0%		2%	2%		1%		6%		2%
Sikh		0%		0%	0%		0%		0%		0%
Taoist		0%		0%	0%		0%		0%		0%
Recent movements		0%		0%	<1%		0%		0%		0%
Other		2%		<1%	<1%		9%		9%		1%
None/No Preference	18%	39%	17%	8%	9%	17%	24%	24%	25%	13%	5%
Unknown	1%	12%	<1%	5%	2%	<1%	21%	2%	0%	<1%	1%

Note: In state data, the Unknown category refers to "Don't Know" answers to the religion question on Pew's survey.

Sources: Pew Research Center, 2015, Religious Landscape Study, <https://www.pewresearch.org/religious-landscape-study/database/>. Responses to USCCR interrogatories from Baylor Correctional Institute, Union Correctional Institute, Wakulla Correctional Institute, Northeast Ohio Correctional Center, Maine State Prison, and Stiles Unit.

### County Jails

The two county jails selected for this investigation are Harris County Jail in Houston, Texas and Men's Central Jail in Los Angeles, California. While neither of the county jails responded to the Commission's interrogatories, Tables 2.7 and 2.8 below summarize publicly available data on these jails. Data on the religious makeup of the selected jails is not included because this information is not publicly available.

Table 2.7 provides a summary of the two jails. Both jails are managed by their respective county sheriff's offices, and both have mixed levels of security. Harris County Jail houses men and women, while Men's Central is one of several male-only jails in Los Angeles County. As of 2019, Harris County Jail was operating within its rated capacity, while Men's Central Jail was operating 21% over its rated capacity.

**Table 2.7: Summary of Selected County Jails**

Jail	Management	Sex	Security Level	Capacity	Number of Prisoners
Harris County Jail <i>Houston, TX</i>	Harris County Sheriff's Office	Males and Females	Mixed	9,184	7,862
Men's Central Jail <i>Los Angeles, CA</i>	Los Angeles County Sheriff's Office	Males	Mixed	3,512	4,455

Sources: Los Angeles County Sheriff's Department, Custody Division Population Year End Review, 2019, [https://lasd.org/pdf/Transparency\\_Custody\\_Division\\_Population\\_2019\\_Year\\_End\\_Report.pdf](https://lasd.org/pdf/Transparency_Custody_Division_Population_2019_Year_End_Report.pdf).

United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Census of Jails, 2019, Inter-university Consortium for Political and Social Research [distributor], 2022-03-30, <https://doi.org/10.3886/ICPSR38323.v1>.<https://doi.org/10.3886/ICPSR38323.v1>.

In June 2021, the Los Angeles County Board of Supervisors voted to close Men's Central Jail (MCJ) due to overcrowding and unsafe conditions of the facility. A report by the workgroup created to investigate options for closing Men's Central noted that:

MCJ is an unsafe, crowded, crumbling jail facility built in 1963 that is unsuitable for the individuals being detained and the employees working there. As documented in multiple lawsuits, the facility is inadequate for the provision of essential medical and mental health care and other services and programs to address the complex needs of the more than 4,000 individuals who end up there—who are overwhelmingly Latinx, Black, and other people of color.<sup>591</sup>

The workgroup's initial plan set out a series of benchmarks to close the jail within 18-24 months through reducing the population of incarcerated individuals in LA county, for example by increasing the capacity of community-based systems of care for those who have serious mental health, substance abuse, or medical needs.<sup>592</sup> However, as of 2024, Men's Central remains open, and, in January 2024, the Los Angeles County Justice Care and Opportunities Department released a new five-year plan to close the facility.<sup>593</sup>

### *Racial Demographics*

Like the state and federal prisons, both county jails house Black prisoners in far greater proportions than the Black population of their respective counties. Table 2.8 provides the racial demographics in the two selected jails compared to the demographics in their counties. Black residents make up about 19% of Harris County, Texas, while half of the individuals incarcerated in Harris County jail

<sup>591</sup> Christina R. Ghaly, "Developing a Plan for Closing Men's Central Jail as Los Angeles County Reduces its Reliance on Incarceration," Health Services Los Angeles County, Mar. 30, 2021, [https://file.lacounty.gov/SDSInter/bos/bc/1104568\\_DEVELO\\_1.PDF](https://file.lacounty.gov/SDSInter/bos/bc/1104568_DEVELO_1.PDF), p.15.

<sup>592</sup> Ibid.

<sup>593</sup> Songhai Armstead, "Jail Closure Update," Los Angeles County Justice Care and Opportunities Department, Jan. 30, 2024, <https://file.lacounty.gov/SDSInter/bos/supdocs/188244.pdf>.

are Black. Similarly, the population of Los Angeles County is only 8% Black, but Black men make up 29% of the men incarcerated in LA County jails.<sup>594</sup> LA County jails also house a slightly higher percentage of Hispanic individuals (53%) than the percentage of Hispanic residents in the county (49%). On the other hand, Harris County jail has a smaller share of Hispanic prisoners (16%) than in the county's general population (44%). Harris County jail has a slightly larger share of White prisoners (33%) than the county's White population (29%), while LA County jails have a smaller share of White prisoners (14%) among incarcerated men than the county's overall percentage of White residents (26%).

**Table 2.8: Racial Demographics of Selected Jails Compared to their County's Population**

County	Jail	White	Black	Hispanic	Asian	Native American	Other/ >1 Race/ Unknown
Harris County, TX		29%	19%	44%	7%	0%	1%
	Harris County Jail	33%	50%	16%	1%	<1%	1%
Los Angeles, CA		26%	8%	49%	15%	0%	2%
	LA County Jails (male prisoners)	14%	29%	53%	<1%	<1%	4%

Note: The racial demographics for Los Angeles County jails are only available for the county as a whole, rather than individually for each facility. The numbers reflect the percent of incarcerated males in Los Angeles County jails for each racial/ethnic group, rather than those specifically incarcerated at Men's Central.

Sources: Los Angeles County Sheriff's Department, Custody Division Population Year End Review, 2019, [https://lasd.org/pdf/Transparency\\_Custody\\_Division\\_Population\\_2019\\_Year\\_End\\_Report.pdf](https://lasd.org/pdf/Transparency_Custody_Division_Population_2019_Year_End_Report.pdf).

United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Census of Jails, 2019, Inter-university Consortium for Political and Social Research [distributor], 2022-03-30, <https://doi.org/10.3886/ICPSR38323.v1>.

## Grievance Process and Incidents of Alleged Religious Discrimination in Federal Facilities

The BOP sets broad policies—including religious accommodation policies—for federal prisons that operate under its authority. The BOP has a central Chaplaincy Office which provides oversight and assistance to the individual institutions' chaplaincy staff. Each institution is also required to develop an Institution Supplement setting out its policies and procedures for religious programming. The Institution Supplement must receive approval from the BOP regional director prior to issuance.

<sup>594</sup> The racial demographics for Los Angeles County jails are only available for everyone incarcerated in the county, rather than individually for each facility. The numbers in Table 2.8, therefore, reflect the percent of incarcerated males in Los Angeles County jails for each racial/ethnic group, rather than those specifically incarcerated at Men's Central.

The BOP's religious freedom policy states that the agency will provide "inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, consistent with the security and orderly running of the institution and the Bureau of Prisons."<sup>595</sup> At each individual institution, chaplains manage the religious programming including: leading group religious services in their own tradition, providing individual pastoral care and counseling to prisoners, and coordinating volunteers who provide religious services for prisoners of other faiths. Chaplain Heidi Kugler, the National Chaplaincy Administrator for the Federal Bureau of Prisons, testified to the Commission that:

Religious freedoms for adults in federal custody includes, but is not limited to, access to worship across faith lines, sacred scripture study opportunities, faith-based reentry programming, personal and congregant religious property, religious attire, religious dietary accommodations, and access to religious services providers.<sup>596</sup>

Chaplain Kugler also spoke to the training that staff receive on religious accommodations, stating that:

The Bureau has strengthened religious rights and training to our staff to further uphold the religious rights of the incarcerated. Agency employees receive annual training by our chaplains to strengthen their religious understanding, sensitivity, and accommodations to adults in custody. Our office presents religious training and consults on religious practices with other disciplines.<sup>597</sup>

Despite these policies, a July 2021 Office of the Inspector General audit of the BOP's Chaplaincy services program finds that "a significant shortage in the number of chaplains and other chaplaincy services staff impairs the BOP's ability to implement a safe and effective religious services program."<sup>598</sup> For example, the audit finds that as of March 2020, the BOP chaplaincy staff was approximately 30% below the BOP's guidelines. The audit also notes the lack of religious diversity among BOP chaplains, finding that 84% of BOP's chaplains identify with a Protestant Christian tradition while only 34% of prisoners with recorded faith preferences identified as Protestant. Moreover, the audit finds that Catholics and Muslims—the groups with the largest prisoner populations after Protestants—were significantly underrepresented among chaplains and at least 16 faith groups had no representation at all among BOP chaplains.

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<sup>595</sup> U.S. Department of Justice, Federal Bureau of Prisons, "Program Statement 5360.10: Religious Beliefs and Practices," Oct. 24, 2022, [https://www.bop.gov/policy/progstat/5360\\_009.pdf](https://www.bop.gov/policy/progstat/5360_009.pdf), p. 1.

<sup>596</sup> Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p 86-87.

<sup>597</sup> *Ibid.*

<sup>598</sup> Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program," July 2021, <https://oig.justice.gov/sites/default/files/reports/21-091.pdf>, p. i.

The national-level discrepancy between the faith traditions of BOP chaplains and prisoners is borne out in the federal prisons selected for this study. For example, both FCI Schuylkill and Florence Administrative Maximum (ADX Florence) have more Muslim prisoners than Christian prisoners, but neither institution currently has any Muslim chaplains on staff, nor do any Muslim organizations provide services to prisoners on a volunteer or contractual basis.<sup>599</sup> While ADX Florence did have a Muslim chaplain from 2018-2020, and Schuylkill had a Muslim chaplain in 2018 and 2020, both prisons had at least two Protestant Christian chaplains across all years for which the Commission received data from the BOP.<sup>600</sup> Similarly, FCC Terre Haute has only slightly more prisoners identifying as Christian (26%) than Jewish (17%) or Muslim (17%), yet had only Christian chaplains (between three and five chaplains depending on the year) across all the years for which the institution provided data (2018-2022).

### *Procedures for Religious Accommodations*

During intake screenings, federal prisoners are asked about their religious preference, which is entered into SENTRY, BOP's data collection system. This religious preference is meant to assist the chaplains with developing religious programming. The designation of religious preference may also be used to determine the religious activities in which the prisoner is authorized to participate. For example, the BOP guidelines state that "inmates who do not declare a religious preference or indicate membership in a different faith group may be restricted from participating in religious activities that are only for members of that faith."<sup>601</sup> According to the guidelines, prisoners may submit a written request to the chaplains to change their religious designation at any time, and chaplains are required to make the requested change in SENTRY in a "timely fashion." However, the chaplains are also charged with monitoring "patterns of changes in the inmate's declarations of religious preference to prevent abuse or disrespect by inmates."<sup>602</sup>

Prisoners are introduced to religious services during orientation and must complete a form to request religious accommodations. The BOP guidelines offer accommodations for religious headwear, such as yarmulke, kufi, hijab, Rastafarian crown, Sikh turban, Native American headbands, and religious scarves.<sup>603</sup> Other ceremonial clothing, such as prayer robes, religious shirts, or capes, may be worn only during religious services in the chapel.<sup>604</sup> Religious diets, such

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<sup>599</sup> Federal Correctional Institutional Schuylkill, Response to Interrogatories from the U.S. Commission on Civil Rights, May 2024; Florence Administrative Maximum, Response to Interrogatories from the U.S. Commission on Civil Rights, May 2024.

<sup>600</sup> Religious Services Annual Reports, FY 2018-2021, Florence Administrative Maximum Prison, Provided by BOP in response to follow-up questions from the U.S. Commission on Civil Rights Interrogatories, June 2024; Religious Services Annual Reports, FY 2018-2021, Federal Corrections Institute Schuylkill, Provided by BOP in response to follow-up questions from the U.S. Commission on Civil Rights Interrogatories, June 2024.

<sup>601</sup> U.S. Department of Justice, Federal Bureau of Prisons, "Religious Beliefs and Practices."

<sup>602</sup> Ibid.

<sup>603</sup> Ibid.

<sup>604</sup> Ibid.

as no-flesh, halal, and kosher, are also accommodated with a written request from the prisoner.<sup>605</sup> Chaplains may arrange for one annual ceremonial meal for each religious group.<sup>606</sup> Prisoners requesting a ceremonial meal must submit a request to the chaplain at least 60 days before the meal; the chaplain then consults with the Food Services Administrator to develop the menu.<sup>607</sup>

If the facility does not have a standard accommodation in place for a prisoner's religious accommodation request, the prisoner must submit a "New or Unfamiliar Religious Components Questionnaire" with supporting documentation to the institution chaplain. The chaplain will then convene a Religious Issues Committee (RIC) meeting that includes chaplaincy staff, legal staff, and correctional services staff to make a recommendation to the warden about accommodating the request.<sup>608</sup> This process is an example of what Barbara A. McGraw, Founding Director of the Prison Religion Project and Center for Engaged Religious Pluralism, calls a "proactive religious request procedure." She testified that "What is needed across the country is training on how RLUIPA's analysis works, and on the vast diversity of religions we have in this country well beyond the Abrahamic faiths. When prison authorities take RLUIPA to heart, which some do, the positive impact has been profound for inmates and the institutions themselves."<sup>609</sup>

### *Grievance Process*

Federal prisoners who believe that their religious liberties have been violated can seek resolution through BOP's Administrative Remedy Program. This process allows a prisoner to "seek formal review of an issue relating to any aspect of his/her own confinement,"<sup>610</sup> including religious accommodations. Each institution's warden appoints one staff member to serve as the Administrative Remedy Coordinator to oversee the program at the facility, and one staff member to serve as the Administrative Remedy Clerk, who is responsible for accurately maintaining records of the grievances and outcomes in SENTRY as well as generating prisoner notices.<sup>611</sup>

Before filing a formal grievance, prisoners are required to attempt to resolve the issue informally by bringing the issue of concern to the attention of staff. The Administrative Remedy Program procedures state that "the Warden is responsible for ensuring that effective informal resolution procedures are in place and that good faith attempts at informal resolution are made in an orderly and timely manner by both inmates and staff."<sup>612</sup>

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<sup>605</sup> Ibid.

<sup>606</sup> Ibid.

<sup>607</sup> Ibid.

<sup>608</sup> Ibid.

<sup>609</sup> Barbara McGraw, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 148.

<sup>610</sup> U.S. Department of Justice, Federal Bureau of Prisons, "Program Statement 1330.18: Administrative Remedy Program," Jan. 6, 2014, [https://www.bop.gov/policy/progstat/1330\\_018.pdf](https://www.bop.gov/policy/progstat/1330_018.pdf).

<sup>611</sup> Ibid.

<sup>612</sup> Ibid.

If the issue is not resolved informally, the prisoner can then submit a formal Administrative Remedy Request. The informal process and submission of the Administrative Remedy Request form must occur within 20 days of the incident for which the prisoner seeks a remedy (though extensions may be permitted if the prisoner can prove a valid reason for the delay).<sup>613</sup> If prisoners believe that submitting the request at their own institution would risk their safety or well-being, they may submit the request to the regional director and explain in writing why they believe the request is sensitive. If the regional director agrees that the request is sensitive, it will be accepted. Otherwise, prisoners must resubmit the request locally to their warden.<sup>614</sup>

Prisoners who are not satisfied with the warden's response to their formal request may submit an appeal to the regional director within 20 days of the warden's response. The regional director's response can then be appealed to the general counsel within 30 days. This is the final level of the internal appeal, and courts often require prisoners to appeal to the general counsel before pursuing legal action.<sup>615</sup>

The Commission inquired about both informal and formal grievances. However, there appears to be very little tracking of informal grievances within the sample of federal institutions studied. None of the sampled institutions were able to provide exact numbers of informal grievances. FCI La Tuna, for example, noted that they do not have documentation of informal grievances for the studied time period.<sup>616</sup> USP Terre Haute could only estimate the number of informal grievances going back to 2021 based on the number of emails sent to their religious services mailbox.<sup>617</sup> As a result, it is very difficult to understand the volume or nature of informal grievances at the sampled federal institutions. It is equally difficult to determine whether requiring prisoners to seek informal resolutions impedes the formal Administrative Remedy Process.

More troubling, testimony from Colie Levar Long, a former prisoner at several federal prisons, suggests that many potential grievances never make it to the formal process due to feelings of helplessness. Prisoners often believe that correctional officers will not take their grievances seriously and fear retribution from the offending staff member. Long testified that there is a "huge gap between the policy as it's written and the policy as it's practiced."<sup>618</sup> Specifically, Long stated that:

[O]n numerous occasions, I was deprived of the opportunity to have a Qur'an because it was in Arabic, I was not allowed to break my fast with my brothers during the month of Ramadan, and experienced unwarranted body searches and pat-downs

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<sup>613</sup> Ibid.

<sup>614</sup> Ibid.

<sup>615</sup> Ibid.

<sup>616</sup> FCI La Tuna, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

<sup>617</sup> Terre Haute USP, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

<sup>618</sup> Colie Levar Long, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 168.

when I attended Friday Jumu'ah prayer, all in the name of maintaining an orderly running of the institution.<sup>619</sup>

Yet, when Long attempted to file grievances, he testified that staff members would tear up the complaint in front of him or allow it to get lost in the institutional mail system.<sup>620</sup> Long also expressed concerns about complaints not being taken seriously because allegations are not investigated by an objective or independent third party. For instance, Long explained that the staff member assigned to investigate the allegation may be friends with the offending officer. Even a complaint that makes it to the regional director may be burdened by the director's ties to the correctional institution's staff. Moreover, Long testified about the real fear of retaliation among prisoners who file grievances. He emphasized that:

[T]he most ominous aspect of the inmate grievance procedure is the pervasive fear of retaliation from correctional staff. I have witnessed many men who dared to file a grievance suddenly find themselves the subject of surprise cell inspections where miraculously a shank or some other form of illegal contraband is found in their cell.

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

When prisoners who are seen as grievance filers are put on diesel therapy, you are always considered in transit, so you're moved from one facility to the next with no personal property, no stamps, no ability to contact your loved ones, and no food supplies. This can amount to years in the hole.<sup>621</sup>

Prison officials' abuse of the grievance system was a common theme during the Commission's briefing. As mentioned in Chapter 1, Catherine Sevchenko, Senior Legal Counsel for the National Council for Incarcerated and Formerly Incarcerated Women and Girls, described how a lieutenant at one prison threatened Native American prisoners with revoking sweat lodge access to keep them from filing grievances.<sup>622</sup> Sevchenko went on to echo Long's testimony about the barriers prisoners face when attempting to file grievances, stating:

The PLRA is a huge roadblock to filing grievances. BOP staff routinely lose the paperwork. They refuse to give out forms. When people then just write it on regular paper, they are told "oh, well, this is not a form, so we're not going to accept it."

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<sup>619</sup> Ibid, p. 168.

<sup>620</sup> Ibid, p. 168.

<sup>621</sup> Ibid, p. 169.

<sup>622</sup> Catherine Sevchenko, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 178-79.



So, basically, there is virtually no way to seek support and to correct any abrogation of religious rights.<sup>623</sup>

The Commission heard a similar account from Camille Varone, Associate Counsel at the First Liberty Institute. She spoke of a supervisory chaplain (SC) at a facility in Minnesota who “stopped using the electronic request system and, instead, required prisoners to submit paper forms, which he alone handled.”<sup>624</sup> Varone reported that:

Leading up to Palm Sunday, Catholic inmates handed in a paper form requesting to purchase palm leaves for the Chapel. The SC said he never saw the request. Our client found the form and showed it to him. The SC ripped it up, threw it in the trash, and said, “I don’t see any request.” Even after the warden required the SC to switch back to electronic forms, he would still delete files from the system. One Muslim inmate requested to observe Ramadan, but the SC deleted the request from his inbox. When the inmate showed him the request in his sent folder, the SC threw the inmate in solitary.<sup>625</sup>

Although the BOP has policies that are intended to prevent violations of religious liberties—including Program Statement 5360.10, *Religious Beliefs and Practices*, Program Statement 3420.12, *Standards of Employee Conduct*, and Program Statement 1210.25, *Office of Internal Affairs*—these examples suggest that prison staff do not always adhere to the policies. Violations against incarcerated individuals’ civil rights can flourish when there is a culture of silence and a climate that tolerates prisoner mistreatment.<sup>626</sup> The BOP’s policies are only as good as its commitment to enforce them. Therefore, greater oversight and accountability may be required to ensure that BOP’s policies are applied consistently and that there are consequences when violations occur. In the example above, Varone testified that one of the facility chaplains reached out to First Liberty about the supervisory chaplain who was abusing the grievance system. After First Liberty and the Harvard Religious Freedom Clinic sent the BOP a letter demanding action, the BOP quickly responded by removing the chaplain from that institution.<sup>627</sup> However, Varone further testified that “this SC did not face any real consequences. Instead, the Bureau simply transferred him to another facility to continue the same patterns somewhere else.”<sup>628</sup> This suggests the need for better oversight to ensure that the BOP can identify instances of abuse without having to rely

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<sup>623</sup> Ibid, p. 179.

<sup>624</sup> Camille Varone, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 43.

<sup>625</sup> Ibid, p. 43.

<sup>626</sup> See e.g., U.S. Commission on Civil Rights, *Women in Prison: Seeking Justice Behind Bars*, Feb. 2020, <https://www.usccr.gov/files/pubs/2020/02-26-Women-in-Prison.pdf>; Prison Policy Initiative, “Breaking the Silence: Civil and Human Rights Violations Resulting from Medical Neglect and Abuse of Women of Color in Los Angeles County Jails,” 2015, [https://www.prisonpolicy.org/scans/dignity\\_and\\_power\\_now/breaking\\_silence\\_report\\_2015.pdf](https://www.prisonpolicy.org/scans/dignity_and_power_now/breaking_silence_report_2015.pdf).

<sup>627</sup> Camille Varone, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 44.

<sup>628</sup> Ibid., pp. 44-45.

on whistleblowers at its institutions.<sup>629</sup> It also suggests the need for greater consequences for staff members who violate BOP policies.

While it is difficult to ascertain how widespread the abuse of the grievance system is from these examples, they suggest that the process for remediation may not function as intended. Below is a discussion of the grievance data the Commission received from the BOP, which should be interpreted cautiously as the numbers cannot be externally verified and may be an underreporting of religious discrimination occurring in federal prisons. Although these numbers reflect the formal grievances filed by prisoners, the testimony suggests that there is reason to believe that there are many more complaints that do not make it to the formal process.

### *Religious Grievances Filed (2017-2023)*

There were 579 total grievances related to religious freedoms filed in the selected federal prisons between 2017-2023.<sup>630</sup> Across all the federal institutions sampled, only one of these grievances resulted in a favorable outcome for the prisoner.<sup>631</sup> Many grievances were closed with the response of “informational purposes only.” This response is used when the institution is explaining a particular policy or clarifying an issue related to the prisoner’s concern.<sup>632</sup> This response may be used when, for example, a prisoner complains that religious services were canceled due to a lockdown.<sup>633</sup> In such a case, the response would explain relevant BOP policies and why services were canceled. The “informational purposes only” response is also issued after allegations of staff misconduct to inform the filing prisoner that the complaint is being investigated.<sup>634</sup> However, BOP has no mandate to notify a prisoner of the findings of a misconduct investigation once it is completed.

The surveyed institutions rejected some grievances for technical reasons, such as failure to attempt to resolve the matter informally before filing a formal grievance, improper completion of the Administrative Remedy form, late submission, or filing multiple grievances about the same issue. Other grievances were denied because prison officials determined that granting the request would interfere with the safety, security, or orderly operation of the institution.<sup>635</sup>

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<sup>629</sup> The BOP wrote to the Commission that it has updated several of its policies to “strengthen the agency’s commitment to enforce religious freedoms and hold staff accountable to ensure religious freedoms for adults in federal custody.” See Program Statement 5360.10 *Religious Beliefs and Practices*, updated Oct. 24, 2022; Program Statement 3420.12, *Standards of Employee Conduct*, updated June 24, 2024; and Program Statement 1210.25, *Internal Affairs, Office of*, updated Aug. 1, 2023; BOP Affected Agency Review, Dec. 19, 2024 [on file].

<sup>630</sup> U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 24.

<sup>631</sup> The granted grievance was related to denial of religious literature at USP Lewisburg in 2021.

<sup>632</sup> Bureau of Prisons, Response to follow-up questions from USCCR interrogatories, June 2024.

<sup>633</sup> *Ibid.*

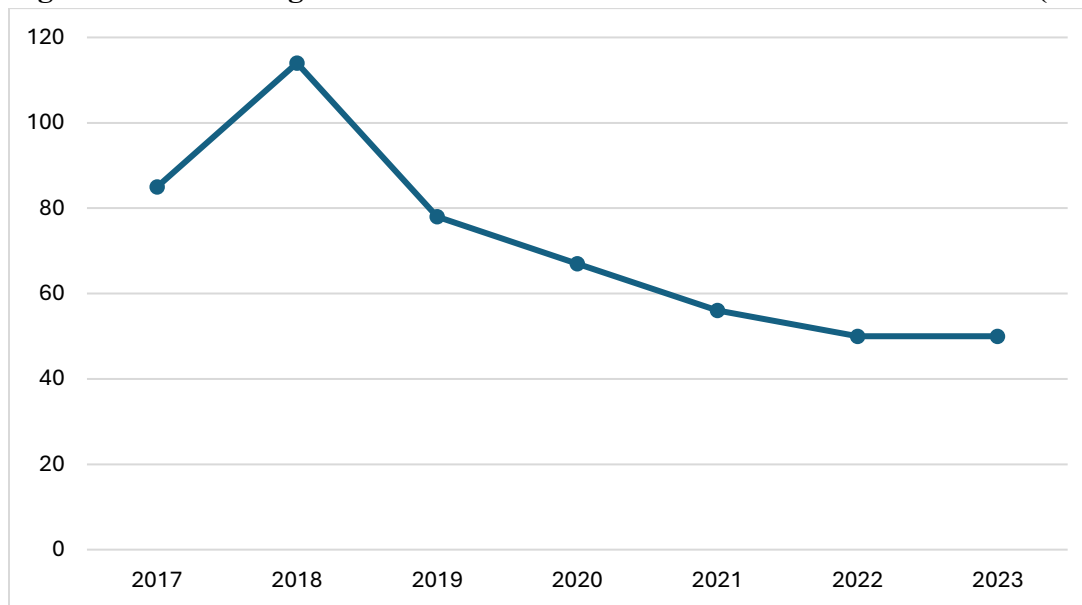
<sup>634</sup> *Ibid.*

<sup>635</sup> U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 24.

Figure 2.1 below displays the trend in the total number of religious grievances filed across all the selected federal institutions from 2017-2023. The average number of grievances per year is about 71, which is lower than the average of about 89 grievances per year from 1997-2007 in the Commission's 2008 report.<sup>636</sup> Between 2017-2023, the number of grievances reported in one year ranged from 50 to 114, compared to a range of 63 to 150 from 1997-2007.

Overall, there was a slight downward trend in total grievances after a spike in 2018. However, the number of grievances varies significantly across institutions. The spike in 2018 appears to be driven by increased numbers of religious grievances filed at two institutions: Terre Haute and Marion.

**Figure 2.1 Total Religious Grievances Filed at Selected Federal Institutions (2017-2023)**



Source: U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 24.

Table 2.9 below shows the number of religious grievances filed each year by institution. During the seven years studied, the cumulative number of grievances filed ranges from only two at FCI La Tuna to 195 at ADX Florence.<sup>637</sup> While several institutions reported years in which no grievances related to religious freedoms were filed, the largest number of religious grievances filed in a single year was 51 at USP Terre Haute in 2018.<sup>638</sup>

<sup>636</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>637</sup> U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 24.

<sup>638</sup> *Ibid.*

**Table 2.9 Religious Grievances Filed in Sampled Federal Institutions (2017-2023)**

Prison	2017	2018	2019	2020	2021	2022	2023	Total
Danbury	17	14	3	0	4	5	3	46
La Tuna	2	0	0	0	0	0	0	2
Schuylkill	5	1	4	1	2	2	0	15
Florence	48	44	49	45	38	14	36	274
Lewisburg	1	1	1	3	1	0	1	8
Lompoc	1	1	0	1	1	1	0	5
Marion	6	25	12	9	15	18	6	91
Terre Haute	17	51	16	16	11	16	11	138
<b>Total</b>	<b>97</b>	<b>137</b>	<b>85</b>	<b>75</b>	<b>72</b>	<b>56</b>	<b>57</b>	<b>579</b>

Source: U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 24.

Most of the federal prisons reported fewer average religious grievances per year between 2017-2023 compared to the period for the 2008 report (1993-2007). Table 2.10 shows the average yearly number of religious grievances for each federal prison from 2017-2023 compared to 1993-2007. Lewisburg prison had the largest decline since the previous report, averaging 11 religious grievances per year from 1993-2007 down to an average of one grievance per year between 2017-2023. Terre Haute was the only prison that had a substantial increase in the average number of yearly religious grievances, increasing from an average of 14 grievances per year from 1993-2007 to an average of 20 grievances per year from 2017-2023.

**Table 2.10 Average Yearly Religious Grievances in Sampled Federal Prisons (1993-2007 and 2017-2023)**

Prison	1993-2007 Yearly Average	2017-2023 Yearly Average
Danbury	6	7
La Tuna	7	0
Schuylkill	4	2
Florence	27	28
Lewisburg	11	1
Lompoc	5	1
Marion	14	13
Terre Haute	14	20

Sources: U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 24; U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, <https://www.usccr.gov/files/pubs/docs/STAT2008ERFIP.pdf>.

As in the 2008 report, larger federal prisons did not necessarily have more religious grievances than smaller institutions, despite their greater number of prisoners. In fact, ADX Florence, with

only 378 prisoners, is significantly smaller than the rest of the institutions but had the largest number of religious grievances. On the other hand, Lompoc is the largest of the selected federal prisons with over 1,700 prisoners but had only five religious grievances filed from 2017-2023.

It is unclear why there is such a large disparity in the number of grievances filed across the institutions, especially given that the grievance process is standardized across BOP facilities. It could be that facilities with a small number of grievances are able to resolve many prisoner concerns through the informal processes. Due to the barriers and challenges of the grievance system, however, it is also possible that prisoners are less likely to file grievances in some institutions, believing that the grievance will not be taken seriously or because they fear retaliation. Differing numbers of grievances by institution could also be related to the facility's security level as prisoners in lower security prisons have the most programming opportunities and fewest restrictions on their daily routines,<sup>639</sup> so may have fewer grievable circumstances. In supermax facilities, the highest level of security, prisoners are kept in cells for 23 hours per day without programming;<sup>640</sup> lawyers, academics, and journalists have argued that serious civil rights violations are particularly common and well-hidden at ADX Florence.<sup>641</sup> These conditions of confinement may make it unlikely that staff and prisoners communicate effectively enough to solve issues informally.<sup>642</sup> Other factors influencing the grievance numbers could include differences in record-keeping, availability of forms, prisoners' knowledge of the grievance process, and availability of help for prisoners who wish to submit grievances.

Notably, BOP's policies are standardized across facilities, so the disparity in the number of grievances recorded across facilities, coupled with testimonials of abuse, suggests that policies are applied differently across facilities. These data could also suggest that facilities have different cultures in addressing prisoners' grievances, despite standardized policies. Similar to other types of institutional discrimination (e.g., workplace), the institutional culture and willingness to address and remedy a civil rights issue is paramount. As a result, greater oversight of the grievance process may be required to monitor BOP policy enforcement across institutions.<sup>643</sup>

A prisoner may file a religious grievance for many reasons, including denial of a religious diet, access to religious materials or services, religious dress, or grooming requirements mandated by that religious practice (e.g., growing a beard or having long hair). Table 2.11 shows the nature of

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<sup>639</sup> Federal Bureau of Prisons, "About Our Facilities," [https://www.bop.gov/about/facilities/federal\\_prisons.jsp](https://www.bop.gov/about/facilities/federal_prisons.jsp).

<sup>640</sup> Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, "The Effect of Supermaximum Security Prisons on Aggregate Levels Of Institutional Violence," *Criminology*, 2003, vol. 41, no. 4, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2003.tb01022.x>.

<sup>641</sup> Laura Rovner, "On Litigating Constitutional Challenges to The Federal Supermax: Improving Conditions and Shining a Light," *Denv. L. Rev.*, 2017, vol. 95, <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1016&context=dlr>.

<sup>642</sup> Briggs, Sundt, and Castellano, "The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence."

<sup>643</sup> See e.g., Michele Deitch, "But Who Oversees The Overseers?: The Status of Prison and Jail Oversight in the United States," *Am. J. Crim. L.*, 2020, vol. 47, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajcl47&div=13&id=&page=>.

the religious grievances filed in the selected federal institutions across the seven years studied. Record keeping on the precise complaint filed in the grievance varies across institutions and it was not possible to determine the nature of the complaint for every religious grievance. However, the available data provide a general idea of the types of complaints that are common in federal prisons.

The most common types of religious grievances at the sampled federal institutions relate to religious diets or food, followed by access to religious services or prayers. The proportion of grievances related to these two subjects vary by institution. Grievances related to religious diets were much more common than complaints about access to services or prayers at ADX Florence. On the other hand, access to religious services was by far the most common complaint at Danbury FCI. At the other institutions, prisoners filed grievances related to religious diet or food in similar numbers to grievances related to services or prayers.

**Table 2.11 Nature of Religious Grievances in Selected Federal Institutions (2017-2023)**

Prison	Service or Prayer	Diet or Food	Dress, Hair, or Beard	Literature	Other
Danbury	42	4	0	0	0
La Tuna	1	0	0	0	1
Schuylkill	4	2	0	2	0
Florence	24	128	2	7	39
Lewisburg	2	4	0	1	1
Lompoc	0	3	0	1	1
Marion	46	41	1	5	0
Terre Haute	20	21	0	0	0
<b>Total</b>	<b>139</b>	<b>203</b>	<b>3</b>	<b>16</b>	<b>42</b>

Note: Totals across rows do not always add up to the total number of grievances for each institution in Table 2.9 because grievances may belong to multiple categories, or the nature of the grievance was unknown or not provided by the institution.

Source: U.S. Department of Justice, Federal Bureau of Prisons, Response to U.S. Commission on Civil Rights Interrogatories, May 2024, at 26.

Examples of religious grievances related to religious services or prayers include denials of access to congregate prayer services, requests for staff or volunteers of Islamic faith, accommodation for holy days and days off work, access to sweat lodges, access to the Native American sacred pipe, requests for Saturday morning Jewish services, confiscation or denial of religious items (such as prayer beads), use of sage and incense for religious services, and lack of access to worship space. Examples of grievances related to religious diets or foods include the Muslim ceremonial meal

being served cold, prisoners on the halal diet not receiving adequate numbers of calories, inadequate options for those receiving religious diets, and denials of religious diets.<sup>644</sup>

Grievances related to denials of access to religious literature were less common, with 16 grievances filed across all selected institutions from 2017-2023. Although most federal prisons did not provide the religion associated with the complaints, four out of the five literature-related complaints at USP Marion related to Muslim texts.<sup>645</sup>

There were only three grievances filed in the selected federal institutions related to religious dress, hair length, or beard length. This may be because federal prisons do not restrict hair length or beards, provided that the prisoner keeps it “neat and clean.”<sup>646</sup> Additionally, BOP policies clearly spell out the requirements for accommodating religious dress and head coverings across a variety of religious groups.<sup>647</sup> However, the record-keeping system for the Administrative Remedy program does not have specific codes for complaints related to religious clothing, hair or beard length, or literature; codes are only available for complaints related to religious programming, diet and food, and religious rituals.<sup>648</sup> Therefore, it is possible that the low number of complaints in these categories also reflects BOP’s method of record keeping.

Institutions do not consistently track the religious affiliation of the prisoner making each grievance. However, from the examples where the religious affiliation is documented, most complaints are from prisoners of non-Christian faiths, especially Muslims. This aligns with testimony the Commission heard from Chaplain Heidi Kugler of the BOP Central Chaplaincy Office, stating that “our office has seen more RFRA claims from Islamic adults in custody than other faith groups but work consistently to try to resolve them at every turn.”<sup>649</sup>

The finding that many of the grievances come from Muslim prisoners is also consistent with more troubling testimony provided by Colie Levar Long, who spoke of widespread discrimination against Muslim prisoners. He explained that Muslim prisoners are treated “like terrorists” and that “[o]ne [correctional officer] said it was his patriotic duty to punish Muslims who were in the custody of Bureau of Prisons.”<sup>650</sup> Long also provided the example of a lead Chaplain at USP Atwater who displayed in his office “a picture of him standing in front of a Black Hawk helicopter with an assault rifle in his hand and his foot on top of a man [lying] on the ground with a turban around his head.” Long further testified that:

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<sup>644</sup> Religious diets may be denied due to questions about the sincerity of the prisoner’s beliefs or due to the cost and administrative burden of requests that are outside of the standard options for religious diets.

<sup>645</sup> USP Marion, Response to U.S. Commission on Civil Rights Interrogatories, Attachment C, May 2024.

<sup>646</sup> U.S. Department of Justice, Federal Bureau of Prisons, “Program Statement 5230.05: Grooming,” Nov. 4, 1996, §551.2 and §551.4, [https://www.bop.gov/policy/progstat/5230\\_005.pdf](https://www.bop.gov/policy/progstat/5230_005.pdf).

<sup>647</sup> U.S. Department of Justice, Federal Bureau of Prisons, “Religious Beliefs and Practices.”

<sup>648</sup> Florence Administrative Maximum Prison, Response to follow-up questions from U.S. Commission on Civil Rights Interrogatories, June 27, 2024.

<sup>649</sup> Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 88.

<sup>650</sup> Colie Levar Long, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 165.

This picture was indicative as to what this chaplain's demeanor was towards incarcerated Muslims. He would go out of his way to leave his office in the chapel area and patrol the compound to ensure that Muslims were not praying in congregation on the rec yard. He stated he considered us Muslims as gang members, and per BOP policy, it was prohibited for three or more known gang members to congregate in any open space.<sup>651</sup>

Imam Abu Ishaq Abdul Hafiz, a retired BOP chaplain and Director of the Prison Outreach Program in Southern California, also spoke of perceived biases toward Muslim prisoners, stating:

I just got a call two days ago from Muslims at a federal prison who continually are crying and are hurt because of not having the ability to have their congregate prayers given to them, and it's always an excuse... this is not happening with other faith traditions... And this is why they feel that it's done from a prejudicial and a bias when they see that...there is never a situation where the Christian services are not held, the Protestant, or the Catholic services.<sup>652</sup>

That many religious complaints come from prisoners of non-Christian faiths may also reflect the lack of religious diversity among BOP chaplains. Although it is BOP policy to ensure equal treatment of all religious traditions, testimony from the Commission's briefing suggests that the enforcement of these policies varies across institutions. For example, Joshua McDaniel, Director of Harvard's Religious Freedom Clinic, testified that "at the federal level there seems to be much more structure in place and many more structural guarantees that are there. But you still have a lot of issues with particular chaplains, particular prison officials, prison guards at particular institutions."<sup>653</sup> This, again, underscores the importance of oversight and accountability for prison staff to ensure that regulations set forth in BOP policy are consistently followed.

That only one of the grievances (out of 579 filed in the selected institutions) was resolved in favor of the prisoner in a seven-year time span across eight institutions further suggests that prisoners may not be submitting complaints because they doubt that their complaints will be taken seriously.<sup>654</sup> If prisoners hear that grievance requests are almost never granted, they may be less likely to risk filing a complaint, even when they believe their religious freedoms have been violated. As discussed in Chapter 1, the fear of utilizing a facility's grievance system can greatly impact a prisoner's civil rights since they do not have any legal recourse until all administrative remedies are exhausted.<sup>655</sup>

The decrease in the number of granted grievances is a clear deviation from the findings in the Commission's 2008 report. The single granted grievance in this report represents 0.2% of the total

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<sup>651</sup> Ibid, p. 166.

<sup>652</sup> Imam Abu Ishaq Abdul Hafiz, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 81.

<sup>653</sup> Joshua McDaniel, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 65.

<sup>654</sup> See *supra* notes 489-491, 618-629 (discussing distrust in the grievance system); see also *infra* notes 675-688.

<sup>655</sup> See *supra* notes 447-450, 538-554 (discussing PLRA exhaustion rule).



grievances filed. In contrast, the 2008 report found that about 7% of the filed grievances were granted in favor of the prisoner between 1997-2007 (68 out of a total of 997 religious grievances over ten years). This change could reflect an increase in the BOP's ability to grant religious accommodations to prisoners before the issue rises to the level of a formal grievance. However, testimony from formerly incarcerated individuals as well as volunteers and staff from religious organizations who work with prisoners suggest that there are many cases in which prisoners' religious freedoms continue to be violated. Moreover, these findings raise questions about the efficacy and fairness of the grievance process in federal prisons to ensure the protection of religious liberties.

### **Grievance Process and Incidents of Alleged Religious Discrimination in State and Local Facilities**

As discussed in the introduction of this chapter, two state prisons and both of the local jails selected for this report failed to respond to the Commission's interrogatories. As a result, this section focuses on the grievance process and incidents of alleged religious discrimination in the state prisons that responded.<sup>656</sup> Prisons in six states responded to the Commission's requests: California (California State Prison Solano and California Correctional Institution), Delaware (Baylor Women's Correctional Institution), Florida (Union Correctional Institution and Wakulla Correctional Institution), Maine (Maine State Prison), Ohio (Northeast Ohio Correctional Center), and Texas (Stiles Unit).

There was a large variety in the timeliness and quality of the interrogatory responses received from state institutions. For example, the Commission only received a response from Northeast Ohio Correctional Center (NEOCC) after multiple requests and having to reach out to the Ohio Department of Rehabilitation and Corrections for additional information that NEOCC was unable to provide. The other privately managed prison in the sample, Lea County Correctional Facility in New Mexico, failed to provide any responses to the Commission's interrogatories. This lack of transparency from private prisons is indicative of an enduring pattern for these institutions.<sup>657</sup> Prison data are already difficult to obtain and acquiring information from private prisons is significantly more challenging. David Fathi, Director of the American Civil Liberties Union National Prison Project, notes that private prisons "are typically not subject to open meeting and freedom of information laws that apply to state and local departments of corrections."<sup>658</sup> Therefore, assessing the state of confinement and these facilities' adherence to prisoners' constitutional rights becomes a near impossibility.

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<sup>656</sup> Comparisons between the facilities that reported data for the 2008 report and this report are made where possible.

<sup>657</sup> Mike Tartaglia, "Private Prisons, Private Records," *Boston University Law Review*, 2014, vol. 94, [https://heinonline.org/HOL/LandingPage?handle=hein.journals/bulr94&div=70&id=&page=.](https://heinonline.org/HOL/LandingPage?handle=hein.journals/bulr94&div=70&id=&page=)

<sup>658</sup> David C. Fathi, "The Challenge of Prison Oversight," *Am. Crim. L. Rev.*, 2010, vol. 47, [https://heinonline.org/HOL/LandingPage?handle=hein.journals/amcrimlr47&div=50&id=&page=.](https://heinonline.org/HOL/LandingPage?handle=hein.journals/amcrimlr47&div=50&id=&page=) p. 1462.

Additionally, neither of the two county jails selected for this report responded to the Commission's requests. This is especially concerning given the expert testimony the Commission heard suggesting that local institutions are less likely to have policies in place for protecting religious freedoms compared to federal and state institutions. For example, Joshua McDaniel, Director of Harvard's Religious Freedom Clinic, stated that while federal institutions have "many more structural guarantees... the lower you go, the smaller—so, especially with local institutions, with jails... it just becomes a little bit more Wild West in those types of situations."<sup>659</sup>

### *Religious Accommodations*

Most of the state prisons that responded to the Commission's interrogatories for this report have religious accommodation policies similar to BOP's. However, the responsive institutions may have more concrete policies for protecting religious freedoms than those that did not respond. It is important to note that some policies may be available publicly, for instance, if the policy is listed in the state code. Still, even when written into a state code, prison-specific policies are generally not easily located unless the specific code is known. Additionally, institution-specific policies are often not publicly available online which makes analysis of these policies nearly impossible. These issues further point to the lack of transparency of carceral facilities.

All state prisons that responded to the Commission's interrogatories mentioned that prisoners are made aware of religious programming and the processes for seeking religious accommodation during orientation. All responding prisons also had policies in place to accommodate various religious practices, such as religious diets (e.g., kosher, halal), ceremonies (e.g., Ramadan, Passover), headwear (e.g., kufi, hijabs and yarmulke), and religious items (e.g., prayer beads, prayer rugs, medallions, and medicine bags).

The specificity and breadth of the religious accommodation policies, however, vary by state. California, for example, has very specific regulations on allowable religious items detailed in the Religious Personal Property Matrix in the California Code of Regulations, which specifies allowable colors, materials, and sizes for each item. Similarly, the Florida Department of Corrections' Religion Technical Guide and the Texas Department of Criminal Justice's Chaplaincy Department Manual detail the religious accommodations for each religious group.

The policies of prisons in smaller states (Maine and Delaware) do not provide as much detail as the larger states but still have provisions for religious accommodations written into their regulations. For example, the Maine Code of Rules provides lists of allowable personal and group religious items. While Delaware's Department of Corrections policy notes that religious programs should include provisions for possession of allowable religious items, it does not specify particular religious items like the other states. Still, Baylor Women's Correctional Institution's Inmate Housing Rules and Reference Guide states that Muslim prisoners may possess three khimars, two

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<sup>659</sup> Joshua McDaniel, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 65.

sets of arm-covering hijabs, and one prayer rug. Likewise, Baylor's Commissary List includes the Holy Bible/Santa Biblia, Qur'an, Noble Qur'an, a hijab, and a prayer rug. Each prison also has a process through which prisoners can request religious accommodations that are not already provided in its official policy.

### *Grievance Processes*

Each of the responding prisons also has a standard grievance process for responding to a wide range of prisoner complaints, including allegations of abridgment of religious liberties. All the grievance processes have at least two levels, including at least one level of appeal. However, the state prisons vary in whether an initial attempt at informal resolution is required, time constraints for when grievances and appeals must be submitted, types of possible responses, levels of appeal, and record keeping of the grievances. For example, Texas and Florida generally require prisoners to attempt to resolve a complaint informally before filing a formal grievance, while California does not require an attempt at informal resolution. In Maine, staff are required to attempt to resolve a grievance informally with the prisoner as a first step after the grievance form is submitted. Each state also has time limits for when a grievance must be submitted. These periods range from 7 days (Delaware) to 60 days (California) after an incident occurs or a prisoner becomes aware of an adverse policy, decision, or action.

Delaware's grievance process is unique among the selected prisons in that it includes prisoner representatives in the process for determining the outcome of grievances. The Delaware Department of Corrections' policy requires that prisons convene a Resident Grievance Committee (RGC) to hear grievances that are not resolved informally. The committee has two prisoner representatives and two staff members, each with one vote. The inmate grievance chairperson (IGC) is a staff member who oversees the grievance process and only votes in the case of a tie. The IGC forwards the committee's recommendation to the warden who has the individual power to uphold, deny, or remand the grievance back to the RGC for further investigation.

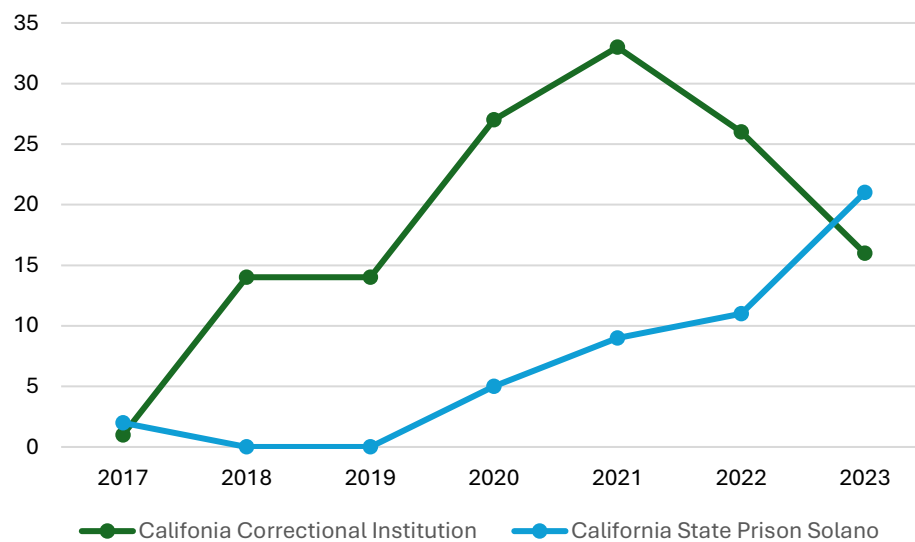
Because the grievance process in state prisons varies by state, the magnitude of the grievances filed, granted, and denied are not comparable across state institutions as they are for federal prisons. Therefore, the data presented on the number, outcome, and nature of the grievances in state prisons is presented separately for each state.

### *California Correctional Institution and California State Prison Solano*

The two California prisons selected for this report are both governed by the grievance policies of the California Department of Corrections and Rehabilitation (CDCR). Figure 2.2 displays the number of religious grievances filed at California Correctional Institution (CCI) and California State Prison Solano (SOL) from 2017-2023. All the grievances are formal grievances, as California

does not have an informal grievance process.<sup>660</sup> There was an increase in grievances filed in 2020 for both prisons. At CCI, the number of grievances filed continued to increase in 2021, but decreased in 2022 and 2023, whereas the number of grievances at SOL continued to increase through 2023. CCI averaged about 19 religious grievances per year from 2017-2023, which represents an increase from the average of five religious grievances per year in the Commission's 2008 report (from 2004-2007).<sup>661</sup> SOL, on the other hand, had fewer religious grievances on average from 2017-2023 (average of seven per year) compared to the 2008 report (average of 19 per year).

**Figure 2.2 Number of Religious Grievances Filed at Selected California State Prisons (2017-2023)**



Source: California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 24.

<sup>660</sup> California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 24.

<sup>661</sup> The California prisons only provided data from 2004 to 2007 for the 2008 report. U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

In California prisons, grievances are either granted, denied, or redirected to the appropriate authority for a response.<sup>662</sup> Tables 2.12 and 2.13 present outcomes of the grievances filed at CCI and SOL, respectively. No religious grievances were granted at either institution from 2017 through 2019, though SOL reported no religious grievances filed in 2018 and 2019. The ratio of grievances granted to those denied was highest for both institutions in 2023, with SOL granting as many grievances as it denied.

**Table 2.12 Outcomes of Religious Grievances Filed at California Correctional Institution (2017-2023)**

California Correctional Institution	2017	2018	2019	2020	2021	2022	2023	Total
Granted	0	0	0	1	0	1	3	5
Denied	1	14	14	15	10	5	5	64
Redirected	0	0	0	11	23	20	8	62
<b>Total</b>	<b>1</b>	<b>14</b>	<b>14</b>	<b>27</b>	<b>33</b>	<b>26</b>	<b>16</b>	<b>131</b>

Source: California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

**Table 2.13 Outcomes of Religious Grievances Filed at California State Prison Solano (2017-2023)**

California State Prison Solano	2017	2018	2019	2020	2021	2022	2023	Total
Granted	0	0	0	1	2	1	9	13
Denied	2	0	0	3	4	8	9	26
Redirected	0	0	0	1	3	2	3	9
<b>Total</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>9</b>	<b>11</b>	<b>21</b>	<b>48</b>

Source: California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

<sup>662</sup> Cal. Code Regs. Tit. 15, § 3483 (g) (4) states that redirected claims will be “forwarded to the appropriate authority described below because it fits one of the following circumstances:

- (A) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division;
- (B) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator;
- (C) A request for an interview, item, assistance, or service shall be redirected to a staff member designated by the Hiring Authority for a response;
- (D) A request for records that is made pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator;
- (E) A request regarding institutional placement or search preference pursuant to the Transgender Respect, Agency, and Dignity Act of 2020 shall be redirected to the Prison Rape Elimination Act Compliance Manager;
- (F) A complaint regarding a classification committee decision about institutional placement pursuant to the Transgender Respect, Agency, and Dignity Act of 2020 shall be redirected to the Departmental Review Board via the Office of Appeals; or
- (G) An allegation against an inmate or parolee shall be redirected to a staff member designated by the Hiring Authority for a response.”

The nature of religious grievances that were granted or denied at the two California prisons is summarized in Tables 2.14 and 2.15. At CCI, most religious grievances were related to services or prayers. SOL, on the other hand, had more grievances related to religious diets or food. The California prisons were not able to provide the religious affiliation of the prisoners that filed grievances. However, of the five cases that became lawsuits against CCI during this time period, the claimant was Muslim in two cases, Native American in two cases, and Messianic in one case.<sup>663</sup> The one lawsuit regarding violation of religious freedoms filed at SOL was brought by a Muslim claimant.<sup>664</sup>

**Table 2.14 Nature of Religious Grievances Granted and Denied at California Correctional Institution (2017-2023)**

California Correctional Institution	Service or Prayer	Diet or Food	Dress, Hair, or Beard	Literature	Other
Granted	3	0	0	0	2
Denied	62	0	0	0	2
<b>Total</b>	<b>65</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>

Source: California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

**Table 2.15 Nature of Grievances Granted and Denied California State Prison Solano (2017-2023)**

California State Prison Solano	Service or Prayer	Diet or Food	Dress, Hair, or Beard	Literature	Other
Granted	2	10	0	0	1
Denied	7	16	0	0	3
<b>Total</b>	<b>9</b>	<b>26</b>	<b>0</b>	<b>0</b>	<b>4</b>

Source: California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

In a written statement to the Commission, Gabriel S. Galanda, Chairman of a non-profit that supports the rehabilitation of incarcerated Indigenous persons, explained that despite the passage of RLUIPA, incarcerated Native persons continue to have their religious rights infringed upon, including in California. For instance, in 2013:

California enacted “emergency” regulations limiting incarcerated Indigenous persons from accessing previously allowed religious property, such as pipes and pipe bags, hand drums and rattles, among other items, and by increasing the burden on incarcerated Indigenous persons seeking to get approval for religious items. Significant portions of these emergency

<sup>663</sup> California Department of Corrections and Rehabilitation, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 29.

<sup>664</sup> Ibid.

regulations were made permanent, and the January 2023 update to the regulations continues to prohibit tobacco, kinnikinnick, individual use of prayer ties, and sacred pipes.<sup>665</sup>

### *Delores J. Baylor Women's Correctional Institution*

There were 35 religious grievances filed over the study period at Baylor Women's Correctional Institution in Delaware, averaging about five per year.<sup>666</sup> This is similar to the four average religious grievances per year from 2004-2007 in the Commission's 2008 report.<sup>667</sup> Table 2.16 shows the outcome of grievances by year. Overall, 24 grievances were settled in the informal stage, 10 were denied in the informal stage, and one was denied in the formal stage. Reasons for denials included security risks (1), incomplete paperwork (1), failure to make an initial request through the chaplain (2), and the same complaint was filed more than once (7). Table 2.17 shows that the majority of religious grievances were related to denial of access to services or prayers. Of the 35 complaints, 18 were filed by Muslim prisoners, six were filed by Jehovah's Witness prisoners, and the religion of the complainant was unspecified in 11 cases.

**Table 2.16 Outcomes of Religious Grievances Filed at Baylor Women's Correctional Institution (2017-2023)**

Outcome	2017	2018	2019	2020	2021	2022	2023	Total
Settled in formal grievance	0	0	0	0	0	0	0	0
Settled in informal grievance	5	1	2	4	3	3	6	24
Denied in formal grievance	0	0	1	0	0	0	0	1
Denied in informal grievance	0	1	5	2	1	0	1	10
<b>Total</b>	<b>5</b>	<b>2</b>	<b>8</b>	<b>6</b>	<b>4</b>	<b>3</b>	<b>7</b>	<b>35</b>

Source: Delores J. Baylor Women's Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

**Table 2.17 Nature of Religious Grievances Filed at Baylor Women's Correctional Institution (2017-2023)**

Nature of Grievance	2017	2018	2019	2020	2021	2022	2023	Total
Service or Prayer	5	2	7	5	1	0	5	25
Diet or Food	0	0	0	0	0	0	0	0
Dress, Hair, or Beard	0	0	1	3	0	1	0	5
Literature	0	0	1	1	0	1	1	4
Other	0	0	0	0	3	1	1	5

<sup>665</sup> Gabriel S. Galanda, Written Statement for *Enforcing Religious Freedoms in Prison Briefing*, p. 2 (internal citations omitted) (hereinafter Galanda Statement).

<sup>666</sup> Delores J. Baylor Women's Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 24.

<sup>667</sup> Baylor Women's Prison only provided data from 2004 to 2007 for the 2008 report. U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

Note: There were four grievances that overlap more than one category, resulting in a total of 39 for this table breakout, although there were only 35 distinct grievance reports.

Source: Delores J. Baylor Women's Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

### *Union Correctional Institution and Wakulla Correctional Institution*

The Florida Department of Corrections provided data on informal and formal grievances filed at its Union and Wakulla prisons for each year from 2017-2023. Data from Union CI are shown in Table 2.18 and data from Wakulla CI are shown in Table 2.19.

There were a total of 550 informal grievances (average of 79 per year) and 188 formal grievances related to religious freedoms (average of 27 per year) filed at Union CI from 2017 through 2023.<sup>668</sup> The most informal grievances were filed in 2023, and the most formal grievances were filed in 2018. Prison officials were more likely to approve informal grievances than formal grievances. Approval rates for informal grievances ranged from 8% in 2017 to 28% in 2022. The highest approval rate for formal grievances was 12% in 2022, and there were four years in which none of the formal grievances were approved (2018, 2020, 2021, and 2023).

**Table 2.18 Outcome of Religious Grievances Filed at Union Correctional Institution (2017-2023)**

Type	Outcome	2017	2018	2019	2020	2021	2022	2023	Total
Informal	Approved	6	13	17	8	11	23	12	90
	Denied	61	57	54	69	42	50	63	396
	Returned	6	14	9	8	8	8	11	64
	<b>Total</b>	<b>73</b>	<b>84</b>	<b>80</b>	<b>85</b>	<b>61</b>	<b>81</b>	<b>86</b>	<b>550</b>
Formal	Approved	1	0	2	0	0	3	0	6
	Denied	16	26	20	26	11	17	22	138
	Returned	4	10	11	7	2	6	4	44
	<b>Total</b>	<b>21</b>	<b>36</b>	<b>33</b>	<b>33</b>	<b>13</b>	<b>26</b>	<b>26</b>	<b>188</b>

Source: Union Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

Wakulla, a faith and character-based prison, had a total of 1,309 informal grievances (average of 187 per year) and 342 formal grievances (average of 49 per year) related to religion from 2017 to 2023. The most informal grievances were filed in 2019, and the most formal grievances were filed in 2020. Like at Union CI, informal grievances were approved more often than formal grievances.

<sup>668</sup> Union Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.



Approval rates of informal grievances at Wakulla ranged from 14% in 2020 to 22% in 2019 and 2022, while approval rates of formal grievances ranged from 2% in 2021 and 2022 to 13% in 2019.

**Table 2.19 Outcome of Religious Grievances Filed at Wakulla Correctional Institution (2017-2023)**

Type	Outcome	2017	2018	2019	2020	2021	2022	2023
Informal	Approved	33	30	56	33	31	34	33
	Denied	114	107	167	186	126	92	97
	Returned	8	28	26	18	39	27	24
	<b>Total</b>	<b>155</b>	<b>165</b>	<b>249</b>	<b>237</b>	<b>196</b>	<b>153</b>	<b>154</b>
Formal	Approved	3	2	6	2	1	1	2
	Denied	31	29	23	42	31	25	30
	Returned	14	9	16	20	29	16	10
	<b>Total</b>	<b>48</b>	<b>40</b>	<b>45</b>	<b>64</b>	<b>61</b>	<b>42</b>	<b>42</b>

Source: Wakulla Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, November 2024, at 25.

Florida has only two categories for classifying religious grievances: “religious diet” and “religious freedoms,” which covers all religious grievances other than those related to diet or food (e.g., religious services, items, literature, clothing, etc.) Tables 2.20 and 2.21 show the outcomes of formal and informal grievances across the two categories at Union CI and Wakulla CI, respectively.

**Table 2.20 Nature and Outcome of Religious Grievances Filed at Union Correctional Institution (2017-2023)**

Type	Outcome	Religious Freedom	Religious Diet
Informal	Approved	20	70
	Denied	75	321
	Returned	18	46
	<b>Total</b>	<b>113</b>	<b>437</b>
Formal	Approved	2	4
	Denied	13	125
	Returned	5	39
	<b>Total</b>	<b>20</b>	<b>168</b>

Source: Union Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

**Table 2.21 Nature and Outcome of Religious Grievances Filed at Wakulla Correctional Institution (2017-2023)**

Type	Outcome	Religious Freedom	Religious Diet
<b>Informal</b>	Approved	109	141
	Denied	255	634
	Returned	70	100
	<b>Total</b>	<b>434</b>	<b>875</b>
<b>Formal</b>	Approved	9	8
	Denied	71	140
	Returned	52	62
	<b>Total</b>	<b>132</b>	<b>210</b>

Source: Wakulla Correctional Institution, Response to U.S. Commission on Civil Rights Interrogatories, November 2024, at 26.

Both selected Florida prisons had more grievances related to religious diets than other religious freedoms. Union CI had about four times as many informal grievances categorized under religious diet compared to those categorized under religious freedom. This disparity increases for formal grievances, with more than eight times as many formal grievances categorized as relating to religious diet than religious freedom. Wakulla CI had about twice as many informal religious grievances related to diets compared to other religious freedoms and about 1.6 times as many formal grievances related to diets compared to other religious freedoms.

At Union CI, informal grievances related to religious freedoms were approved at similar rates to those related to religious diets (18% of informal grievances related to religious freedoms were approved compared to 16% of those related to religious diets). However, formal grievances related to religious freedoms were more likely to be approved than those related to religious diets (10% of formal grievances related to religious freedoms were approved compared to 2% of those related to religious diets). At Wakulla CI, grievances related to religious freedoms were more likely to be approved than grievances related to religious diets at both the informal and formal stages. About 25% of informal grievances related to religious freedoms were approved, compared to 16% of informal grievances related to religious diets. For formal grievances, 7% of those related to religious freedoms were approved, compared to 4% of those related to religious diets.

### *Maine State Prison*

Maine State Prison’s grievance process changed during the study period. Before 2022, informal grievances “took place exclusively between the resident...and the supervisor with jurisdiction over the subject matter being grieved” and “there was no central repository for records related to this process and no central database maintained for informal grievances.”<sup>669</sup> As a result, Maine State

<sup>669</sup> Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 24.

Prison was unable to provide numbers of informal grievances from 2017-2021. Additionally, under the previous policy, dismissed formal grievances were not logged into a database, whereas the current policy logs all grievances, including informal grievances and dismissed formal grievances. Therefore, the spike in the number of religious grievances in 2022 and 2023 in Table 2.22 may be attributed to changes in record keeping, rather than an increase in the overall number of grievances. Before the change in tracking of informal grievances, Maine State Prison averaged seven religious grievances per year from 2017 to 2021.<sup>670</sup> This is similar to the 2008 report's average of eight religious grievances per year between 2002 and 2007.<sup>671</sup>

**Table 2.22 Outcome of Religious Grievances Filed at Maine State Prison (2017-2023)**

Outcome	2017	2018	2019	2020	2021	2022	2023	Total
Informal Resolution						19	12	31
Granted	1	0	0	0	1	0	0	2
Denied/Dismissed	10	6	6	3	7	13	13	58
Unknown Outcome	1	0	0	0	0	0	0	1
<b>Total</b>	<b>12</b>	<b>6</b>	<b>6</b>	<b>3</b>	<b>8</b>	<b>32</b>	<b>25</b>	<b>92</b>

Source: Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

Table 2.23 shows the nature of the formal and informal grievances filed between 2017-2023 at Maine State Prison. There were slightly more grievances related to denial of access to services or prayers than grievances related to religious diets or food. There was only one grievance related to religious dress, hair length, or beard length, likely because Maine's policy does not restrict hair or beard length. There were six grievances related to denial of access to literature or reading material. Most of the grievances were related to an issue other than those listed above, many having to do with religious items.

**Table 2.23 Nature of Religious Grievances Filed at Maine State Prison (2017-2023)**

Nature of Grievance	2017	2018	2019	2020	2021	2022	2023	Total
Service or Prayer	4	1	0	0	4	6	6	21
Diet or Food	1	2	0	3	2	7	1	16
Dress, Hair, or Beard	0	0	0	0	0	1	0	1
Literature	1	0	0	0	0	3	2	6
Other	6	3	6	0	2	15	16	48

Source: Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

<sup>670</sup> Ibid.

<sup>671</sup> Maine State Prison only provided data from 2002 to 2007 for the 2008 report. U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

Maine State Prison also provided data on the religious affiliation of the prisoner filing each complaint. Table 2.24 shows the nature of religious grievances by religious groups. Of complaints where religion was specified, Muslim prisoners filed the most complaints, followed closely by prisoners identifying with Afro-Caribbean religions.

**Table 2.24 Religion of Complainant and Nature of Denied Grievances at Maine State Prison (2017-2023)**

Religion	Service or Prayer	Diet or Food	Dress, Hair, or Beard	Literature	Other	Total
Christian	0	0	0	0	1	1
Jewish	2	0	0	0	4	6
Muslim	4	6	0	0	1	11
Afro-Caribbean	2	3	1	0	4	10
Native Peoples	1	0	0	0	2	3
Pagan	1	0	0	0	0	1
Hindu	0	0	0	0	1	1
Recent Movements	0	0	0	0	1	1
Unspecified	5	1	0	4	14	24

Source: Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

#### *Northeast Ohio Correctional Center*

A total of 62 religious grievances were filed at Northeast Ohio Correction Center from 2017-2023. About 55% (34) of these grievances were informally resolved in the first stage of the grievance process. Of the 28 grievances that moved on to the formal stage, 82% (23) were denied, 14% (4) were granted, and 4% (1) were withdrawn. Table 2.25 displays the number of religious grievances by outcome for each year from 2017-2023. Table 2.26 provides the nature of the religious grievances by outcome aggregated across the seven-year time span. Grievances related to religious diet or food were the most frequent (41%), followed by those related to services or prayers (26%). About 10% (6) of the grievances related to religious literature and only one grievance (2%) related to religious dress, hair, or beards. About 21% (13) of the grievances did not fall into any of the above categories.

**Table 2.25 Outcome of Religious Grievances Filed at Northeast Ohio Correctional Center (2017-2023)**

Outcome	2017	2018	2019	2020	2021	2022	2023	Total
Informally Resolved	1	10	11	1	0	2	9	34
Granted	0	1	1	2	0	0	0	4
Denied	0	3	4	5	3	3	5	23
Withdrawn	0	0	0	0	0	1	0	1
<b>Total</b>	<b>1</b>	<b>14</b>	<b>16</b>	<b>8</b>	<b>3</b>	<b>6</b>	<b>14</b>	<b>62</b>

Source: Ohio Department of Rehabilitation and Correction, Response to U.S. Commission on Civil Rights Interrogatories, October 2024, at 26.

**Table 2.26 Nature and Outcome of Religious Grievances Filed at Northeast Ohio Correctional Center (2017-2023)**

Outcome	Service or Prayer	Diet or Food	Dress, Hair, or Beard	Literature	Other	Total
Informally Resolved	10	11	1	2	10	34
Granted	1	2	0	1	0	4
Denied	5	12	0	3	3	23
Withdrawn	0	1	0	0	0	1
<b>Total</b>	<b>16</b>	<b>26</b>	<b>1</b>	<b>6</b>	<b>13</b>	<b>62</b>

Source: Ohio Department of Rehabilitation and Correction, Response to U.S. Commission on Civil Rights Interrogatories, October 2024, at 26.

Of the grievances for which religious affiliation was available, 35% (6) were filed by Muslim prisoners, 24% (4) by Jewish prisoners, 18% (3) by Pagan prisoners, 12% (2) by Native American prisoners, and 12% (2) by Christian prisoners.

### *Stiles Unit*

From 2017 through 2023, there were 765 religious grievances filed by prisoners housed at Stiles Unit.<sup>672</sup> This averages to about 109 grievances per year, which is higher than the 2008 report's average of 101 grievances per year from 2003-2007.<sup>673</sup> Table 2.27 below displays the outcomes of the grievances filed from 2017-2023. There were significantly more grievances filed from 2017 to 2019 than were filed from 2020 to 2023. The percentage of religious grievances granted ranges from just under 8% in 2021 to 24% in 2019. Most denied grievances were rejected because agency policy, rules, regulations, or procedures were found to have been applied appropriately. Other

<sup>672</sup> Stiles Unit, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

<sup>673</sup> Stiles Unit only provided data from 2003 through 2007 in the 2008 report. For the 2008 report, Stiles Unit reported grievances filed at the prison level and at the regional level separately. The average number of grievances per year combines grievances reported at the prison and regional levels. U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

grievances were denied because the claim was not supported by evidence, and one claim was denied because program access was deemed appropriate.

**Table 2.27 Outcome of Religious Grievances Filed at Stiles Unit (2017-2023)**

Outcome	2017	2018	2019	2020	2021	2022	2023	Total
Granted	14	46	37	5	3	5	12	122
Denied	122	195	115	55	35	55	66	643
<b>Total</b>	<b>136</b>	<b>241</b>	<b>152</b>	<b>60</b>	<b>38</b>	<b>60</b>	<b>78</b>	<b>765</b>

Source: Stiles Unit, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 25.

Table 2.28 shows the nature of the religious grievances filed at Stiles Unit for each year from 2017-2023. By far, the most grievances were related to denial of access to religious services or prayer. This is followed by denial of access to religious diets or food, and then religious dress, hair length, or beard length. Access to religious literature was the least common of the four grievance categories.

**Table 2.28 Nature of Religious Grievances Filed at Stiles Unit (2017-2023)**

Nature of Grievance	2017	2018	2019	2020	2021	2022	2023	Total
Service or Prayer	111	156	78	44	23	40	45	497
Diet or Food	9	39	50	5	5	7	23	138
Dress, Hair, or Beard	10	23	11	6	7	6	2	65
Literature	1	7	2	0	1	2	3	16
Other	5	16	11	5	2	5	5	49

Source: Stiles Unit, Response to U.S. Commission on Civil Rights Interrogatories, June 2024, at 26.

### *Fishkill Correctional Facility*

While Fishkill Correctional Facility did not respond to the Commission's interrogatory requests after multiple requests, annual grievance reports from the New York Department of Corrections and Community Supervision (DOCCS) for 2017 through 2022 are publicly available. These reports provide statistics on grievances filed at each of the state's prisons and include a category for religion. The number of religious grievances filed at Fishkill Correctional Facility are summarized in Table 2.29 below. The average of four religious grievances filed per year from 2017-2022 is significantly lower than the average of 18 per year from 2004-2007.<sup>674</sup>

<sup>674</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

**Table 2.29 Number of Religious Grievances Filed at Fishkill Correctional Facility (2017-2022)**

Year	Number of Grievances
2017	6
2018	7
2019	5
2020	0
2021	2
2022	2

Source: New York DOCCS, Incarcerated Grievance Program Annual Reports 2017-2022, <https://doccs.ny.gov/research-and-reports?keyword=grievance>.

A recent report by the Correctional Association of New York (CANY) discussed several issues with grievance processes across many of the state's prisons.<sup>675</sup> The 2023 report finds that prisoners believe the grievance process is ineffective in addressing issues of confinement and provides "very poor outcomes."<sup>676</sup> Investigators find the Incarcerated Grievance Program (IGP) to be "rife with delays, inconsistent across facilities, and undermined by retaliatory actions against those who file grievances."<sup>677</sup> Survey results show that 80% (447) of respondents did not file a grievance, despite having a legitimate reason to do so, out of fear of retaliation. Additionally, 61% (443) of respondents stated that they had experienced retaliation after filing a grievance.<sup>678</sup> Examples of the reasons prisoners provided for not filing grievances included:

- Because the retaliation is not always worth it.
- [I have been] threatened with violence by facility staff if [a] grievance is filed.
- It's in my best interest not to. They will beat you.
- I felt it didn't warrant the retaliation that I'd get.<sup>679</sup>

Many also reported not filing a grievance due to a lack of trust in the efficacy of the IGP system. For example, prisoners stated that they did not file grievances because:

- I knew nothing would come of it.
- . . . the IGP supervisor cannot be trusted. He is for the staff and security, well the administrations at Eastern and DOCCS, which is totally wrong alright.

<sup>675</sup> The Correctional Association of New York is a non-profit organization that is mandated by the state to conduct oversight of state correctional facilities. See Correctional Association of New York, "Smoke Screen: Experiences with the Incarcerated Grievance Program in New York State Prisons," Oct. 2023, [https://static1.squarespace.com/static/62f1552c1dd65741c53bbcf8/t/651ec66e5505c5122ed0154a/1696515700783/CANY\\_GrievanceReport\\_2023Oct.pdf](https://static1.squarespace.com/static/62f1552c1dd65741c53bbcf8/t/651ec66e5505c5122ed0154a/1696515700783/CANY_GrievanceReport_2023Oct.pdf).

<sup>676</sup> Correctional Association of New York, "Smoke Screen: Experiences with the Incarcerated Grievance Program in New York State Prisons."

<sup>677</sup> Ibid.

<sup>678</sup> Ibid.

<sup>679</sup> Ibid, p. 91.

- The grievance never reaches its destination.
- They brush our valid issues under the rug. Most of the time, we never hear anything back.
- The program does not work.
- If it's a serious grievance like something such as abuse or harassment by a C.O. [correctional officer] they just throw the grievance out, then tell the C.O. about it then the CO retaliates against you.
- . . . its worthless and takes a long time.
- . . . it is a farce, an attempt to make the system look humane but is corrupt.
- ... if you're not willing to go to court, it would make no sense since most if not all grievances are shot down and it takes years to appeal to Albany.
- [I have] lost faith in the process.<sup>680</sup>

Although the CANY report does not focus specifically on religious grievances, the report finds that there may be a general distrust of the grievance system among prisoners, which could lead prisoners to be less likely to file any type of grievance. The report also shows a similar pattern for grievances regarding free exercise of religion specifically. One prisoner who filed a grievance stated that his religious services were not available and was told by staff and correctional officers that if he chose to file, he would be subject to harassment and other forms of retaliatory punishment. The CANY report finds that from 2014-2021 there were a total of 4,083 religious grievances in New York state prisons.<sup>681</sup>

The grievance process in county jail systems in New York have similar issues to the state prison system. Prisoners believe that “the grievance process is a waste of time” and also fear retaliation for filing.<sup>682</sup> In New York, each county jail establishes its own grievance program. Similar to other state and jail systems, the process includes an informal stage and formal stage at the facility level, and if the grievance is denied at the facility level, prisoners can appeal that decision directly to the New York State Commission of Correction (SCOC), which sends the grievance to the Citizens’ Policy and Complaint Council (CPCRC) for review and disposition.<sup>683</sup>

The CPCRC, formed by the SCOC following the 1971 Attica prison riot, decides whether grievances should be granted or denied.<sup>684</sup> When the CPCRC grants a grievance, the jail must make the appropriate changes or remedies; if the grievance is denied, no action is required. According

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<sup>680</sup> Ibid, p. 91.

<sup>681</sup> Ibid, p. 78.

<sup>682</sup> Eliza Fawcett and Chris Gelardi, “‘A Waste of Time’: Inside New York’s Broken Jail Accountability System,” New York Focus, Dec. 4, 2023, <https://nysfocus.com/2023/12/04/county-jails-grievance-scoc>.

<sup>683</sup> Ibid.

<sup>684</sup> New York State Commission of Correction, *New York State Commission of Correction Annual Report, 2019*, Mar. 17, 2021, [https://scoc.ny.gov/system/files/documents/2023/09/scoc\\_annualreport\\_2019.pdf](https://scoc.ny.gov/system/files/documents/2023/09/scoc_annualreport_2019.pdf).



to a 2020 report, the average grievance took 67 days to adjudicate, despite New York code stating that resolutions should be reached in 45 days.<sup>685</sup>

According to investigative reporters with New York Focus, at a meeting in November 2023, the CPCRC decided 304 grievance cases in 40 minutes—an average of eight seconds per case. The CPCRC denied 293 of those cases (96%), which follows a similar pattern from previous years. Reports show that between 2019 and 2021, the CPCRC reviewed over 12,500 grievances in New York county jails yet rejected more than 98%.<sup>686</sup> In 2021—the most current data available at the writing of this report—the SCOC rejected 4,825 grievances, partially accepted 61, and only accepted two appeals in their entirety. The SCOC claims that “the high denial rate for appealed grievances can be explained by the fact that most grievances with merit are decided in favor of incarcerated people at the local level.”<sup>687</sup> However, the article notes that SCOC’s “own inspection reports reflect rampant violations in grievance policy across counties.”<sup>688</sup>

Prison officials, like incarcerated individuals, want the grievance process to work. Rochester’s Monroe County jail superintendent Maurice Leone, for example, explained that “it’s in everyone’s best interest for the grievance process to work effectively.” He argues that in facilities that ignore grievances, issues compound, and “that’s where you get adverse effects like a riot. We don’t want that. Nobody wants that.”<sup>689</sup>

The New York Department of Corrections and Community Supervision (NYDOCCS) told the Commission that they are currently considering several policies to improve the grievance process, including:

- The potential to allow grievances to be filed by tablet or through kiosks to prevent forms from being inaccessible, lost, or delayed.
- Form[ing] a grievance task force to evaluate the [current] process, potential concerns raised and define steps to address failures to process grievances in a timely manner.<sup>690</sup>

### **Grievances Filed with the U.S. Commission on Civil Rights (2020-2023)**

The U.S. Commission on Civil Rights also receives complaints from prisoners who believe their civil rights have been violated. While the Commission has the authority to investigate complaints, it does not have enforcement authority. As a result, it handles complaints by referring complainants to the appropriate federal agency with responsibility for enforcement. For prisoners alleging

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<sup>685</sup> New York State Commission of Correction, *New York State Commission of Correction Annual Report, 2020*, Sept. 2023, [https://scoc.ny.gov/system/files/documents/2023/09/2020\\_scoc\\_annual\\_report.pdf](https://scoc.ny.gov/system/files/documents/2023/09/2020_scoc_annual_report.pdf).

<sup>686</sup> New York State Commission of Correction, *New York State Commission of Correction Annual Report, 2019*; New York State Commission of Correction, *New York State Commission of Correction Annual Report, 2021*, Sept. 2023, [https://scoc.ny.gov/system/files/documents/2023/09/scoc\\_2021\\_annual\\_report.pdf](https://scoc.ny.gov/system/files/documents/2023/09/scoc_2021_annual_report.pdf).

<sup>687</sup> Fawcett and Gelardi, “‘A Waste of Time’: Inside New York’s Broken Jail Accountability System.”

<sup>688</sup> Ibid.

<sup>689</sup> Ibid.

<sup>690</sup> NYDOCCS Affected Agency Review, Dec. 20, 2024 [on file].

religious discrimination, the Commission forwards those complaints to the Special Litigation Section (SPL) or the Federal Coordination and Compliance Section (FCS) at the U.S. Department of Justice’s Civil Rights Division.

The Commission received a total of 81 complaints related to prisoners’ religious liberties over four years (see Table 2.30). This averages to about 20 complaints per year compared to an average of 27 complaints per year from 2005 to 2007, from the 2008 report.<sup>691</sup> While the Commission does not record details of each complaint, recent examples include complaints about accommodations for religious diets, religious services, and access to religious literature and spiritual items.<sup>692</sup> For example, a Jewish prisoner complained that the prison does not serve kosher meals and that he was only allowed to access scripture during recreation time, when there is so much noise that he is unable to concentrate.<sup>693</sup>

**Table 2.30 Grievances Filed with the U.S. Commission on Civil Rights (2020-2023)**

	Telephone	Email	Mail	Total
<b>2020</b>	9	8	6	<b>23</b>
<b>2021</b>	6	1	0	<b>7</b>
<b>2022</b>	5	5	22	<b>32</b>
<b>2023</b>	5	0	14	<b>19</b>
<b>Total</b>	<b>25</b>	<b>14</b>	<b>42</b>	<b>81</b>

Note: The recorded number of letters received via postal mail in 2020 and 2021 is an undercount because staff were not in the office to receive mail due to the pandemic. The letters received during the pandemic were recorded after staff returned to the office in 2022. As a result, the count of letters recorded in 2022 includes those received during the pandemic.

Like the grievances filed with correctional institutions, many complaints to the Commission come from prisoners who are religious minorities. An Odinist prisoner, for instance, wrote that he is not allowed to have religious services because he is the only Odinist at the facility and was denied access to approved religious vendors to purchase spiritual items.<sup>694</sup>

Prisoners often write to the Commission after multiple attempts to resolve the issue through their institution’s grievance process have failed. One prisoner wrote that his kosher meal request had been denied because the chaplain “could not ascertain the genuineness of [his] religious following” even after the prisoner provided a letter of endorsement from faith group leaders.<sup>695</sup> Another prisoner wrote:

<sup>691</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>692</sup> Because some prisoners wrote that they fear retaliation, the examples in this section are anonymized. Names and institutions have been removed from quotes.

<sup>693</sup> Complaint to U.S. Commission on Civil Rights [on file].

<sup>694</sup> Ibid.

<sup>695</sup> Ibid.

I am a practitioner of Wicca. I believe in the domination of Osana. As a part of my religious beliefs, I am supposed to eat with nature. The only way to do this is to eat on the rec yard. I have made multiple requests to be allowed to do this. All of these requests have been denied.<sup>696</sup>

Moreover, prisoners tell the Commission that they have been threatened with retaliation and violence for filing grievances or lawsuits. For example, one prisoner wrote:

Some staff have commenced in acts of retaliation by making threats of violence against me. . . . [S]taff members have confronted me saying, "I've got friends on the list of people you're suing. If you keep it up, you'll get hurt."<sup>697</sup>

The prisoners also describe harassment and violence at the hands of correctional officers on account of their religious beliefs. A Muslim prisoner wrote that an officer accosted him while praying, saying "this is not a Muslim prison [n-word]." Then the prisoner described being assaulted by two officers, writing:

[The officers] took me outside and [one officer] told me "you see this badge, it's a skull, [it] means criminal punisher. I am gonna show you." And he picked me up and slammed me on the . . . left side of my head, causing me to go unconscious. As I came to, he continued to beat me mercilessly . . . and was yelling, "call on Allah now [n-word]." I tried, but [he] started choking me.<sup>698</sup>

Another Muslim prisoner wrote:

In 2019, at [a federal prison] on the 9-11 anniversary [because] I am Muslim, . . . the guards straight up told me as they tortured me, "we're going to enjoy beating you. . . because me and my officers are white and proud and we are going to enjoy beating your ass on the anniversary of 9-11 the day 18 years ago your brothers flew planes into the towers."<sup>699</sup>

While these are only a few examples of the letters the Commission receives from prisoners each year, they reflect broader themes the Commission heard in testimony about the difficulty religious minorities face in practicing their religion in prison, fear of retaliation for filing complaints, and religion-based harassment and discrimination (especially against Muslim prisoners).

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<sup>696</sup> Ibid.

<sup>697</sup> Ibid.

<sup>698</sup> Ibid.

<sup>699</sup> Ibid.

### COVID-19 Impacts on Facilities

As discussed in Chapter 1, the COVID-19 pandemic had a profound effect on life within America's prisons and jails. To better understand the extent to which the pandemic affected religious freedoms in prisons, the Commission included several questions in the interrogatories to the selected facilities about the effect of the pandemic on religious programming, staff, and morale.

As discussed previously, prisoners of all faiths face obstacles to religious exercise. However, prisoners of non-Christian faiths are disproportionately likely to have their free exercise rights violated, and the pandemic exacerbated these challenges. Observing Ramadan while incarcerated, for example, is often challenging for Muslim prisoners in normal circumstances, but changes to prison policies implemented during the pandemic made its observance even more difficult. For instance, the pandemic reduced prisoners' access to commissaries, which Muslim prisoners rely on during the month to access enough food after fasting.<sup>700</sup> Additionally, due to complications with vendors and the food supply chain, many Muslim prisoners had issues obtaining halal food during the pandemic.<sup>701</sup>

The Commission also heard testimony suggesting that some prison officials used the pandemic as an excuse to cut religious programming and services. Camille Varone, Associate Counsel at First Liberty Institute, explained one case about a supervisory chaplain (SC) at a facility in Minnesota who

shut down nearly all religious programming, cut off access to outside faith volunteers, and prohibited inmates from gathering with others who share their faith across cohorts. Ironically, inmates were still required to cross cohorts while working, picking up meals, and waiting for medical services.

But the problem went much deeper than how the SC implemented Bureau of Prisons policies. We heard from an inmate who was continually denied the ability to practice his Reform Jewish faith. The SC denied the inmate's rabbi access to the facility and told Jewish inmates that they would never see their rabbi again. The SC destroyed numerous books, DVDs, tapes, and CDs that the inmate used for religious study. The SC would berate the inmate even in his own cell. In fact, the SC intimidated him so much that the inmate was afraid to come out of his unit. His physical and emotional health suffered from the stress of seeking to practice his faith.<sup>702</sup>

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<sup>700</sup> Connor Echols, "COVID-19 Brings New Challenges For Muslim Inmates During Ramadan," Injustice Watch, Apr. 28, 2020, <https://www.injusticewatch.org/criminal-courts/illinois-prisons/2020/covid-19-brings-new-challenges-for-muslim-inmates-during-ramadan/>.

<sup>701</sup> Ibid.

<sup>702</sup> Camille Varone, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 41-42.

Likewise, BOP's COVID restrictions limited prisoners' access to religious services.<sup>703</sup> In an Office of the Inspector General (OIG) report, investigators stated that BOP's religious services "had been significantly impacted by the COVID-19 pandemic."<sup>704</sup> As early as March 2020, however, BOP implemented new guidelines requiring all chaplains to make daily visits to accommodate the spiritual needs of prisoners. Reverend Heidi Kugler testified that the BOP chaplaincy program adapted to address the difficulties of providing religious services during the pandemic. For example, she explained that:

When COVID challenged our ability to conduct group congregant, chapel congregant worship, and group religious programming, as it did in the wider community for parishes, mosques, synagogues, and other places of worship, the Bureau provided religious accommodations in different, modified, and safe, least restrictive means. For instance, rather than adults in custody gathering in the chapels, the chaplains went to the housing units to ensure that those in our custody received what was necessary to practice and grow in their faith. Worship and religious practice in the housing units were modified to include increased self-study, religious observances... [and] Chaplains conducted daily and pastoral rounds in the housing units and offered regular memorials and grief care.<sup>705</sup>

The new BOP guidelines allowed for outside faith contractors to continue visiting facilities, subject to health screenings and the individual facility's protocols. Many facilities nonetheless limited the use of the contractors, and volunteer faith providers were suspended across all BOP facilities for a period of time during 2020.<sup>706</sup>

By September 2020, BOP began modifying religious programs to be conducted in chapel spaces. According to the OIG report, these modifications included "rotating faith groups to the chapel and conducting services with inmates from different housing units, using social distancing and safety practices, as well as the development of institutional plans to safely celebrate religious holidays."<sup>707</sup> By November 2020, the BOP began permitting religious volunteers to resume meeting with prisoners during holiday observances.<sup>708</sup>

Chief of BOP's Chaplaincy Services, Heidi Kugler, explained:

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<sup>703</sup> BOP wrote to the Commission that "all BOP COVID protocols followed guidelines of the Center of the Disease Control (CDC), World Health Organization (WHO), consultation with the Department of Justice (DOJ) and the White House (WH). Additionally, the specific institution that Ms. Varone referenced was a federal medical center where additional medical considerations were needed as they sought to modify programming under COVID." See BOP Affected Agency Review, Dec. 19, 2024 [on file].

<sup>704</sup> Office of Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>705</sup> Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 89.

<sup>706</sup> *Ibid.*

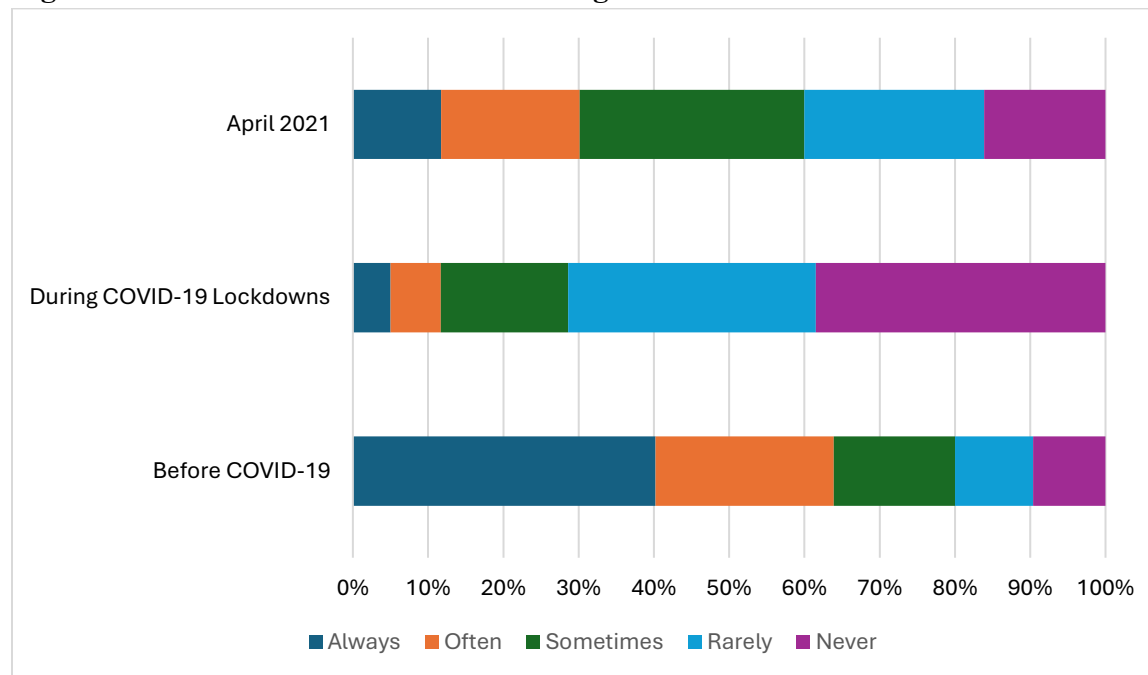
<sup>707</sup> Office of Inspector General, "Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program."

<sup>708</sup> *Ibid.*

Our office worked with the field chaplains and community religious partners to develop new religious devotionals and relevant materials for those in our custody. In time, [] specific worship and faith-based reentry programs moved outside and into smaller groups in the housing units and chapel areas until it was safe enough to gather in larger group settings. As operational and safety modifications eased, in-person chapel and worship resumed.<sup>709</sup>

In March 2021, the Justice Department’s OIG conducted its first ever survey of federal prisoners to collect perspectives regarding their institutions’ handling of the pandemic and how pandemic-era policies affected prisoners.<sup>710</sup> The survey respondents comprised 126,000 prisoners housed throughout 122 BOP institutions. While BOP policy states that “religious accommodations shall be afforded to inmates and that religious services will be provided on a weekly basis,” the policy also grants individual facilities discretion to determine the appropriate level of programming when a “state of emergency exists.”<sup>711</sup> Approximately 71% of the survey’s respondents stated that they could rarely or never access these resources during COVID-19 lockdowns, compared to 20% reporting the same prior to the pandemic. See Figure 2.3 below.

**Figure 2.3: Federal Prisoner Access to Religious Resources**



Note: Responses represent approximately 94% or more of all BOP prisoners. The remainder did not respond or said this item did not apply. Values may not sum to 100 due to rounding.

Source: Office of the Inspector General, “Inmate Perceptions of the Federal Bureau of Prisons’ Management of the Coronavirus Disease 2019 Pandemic,” U.S. Dep’t of Justice, May 2023.

<sup>709</sup> Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 90.

<sup>710</sup> Office of the Inspector General, “Inmate Perceptions of the Federal Bureau of Prisons’ Management of the Coronavirus Disease 2019 Pandemic,” U.S. Dep’t of Justice, May 2023, <https://oig.justice.gov/reports/inmate-perceptions-federal-bureau-prisons-management-coronavirus-disease-2019-pandemic>.

<sup>711</sup> Ibid.

### *Technology*

Given that many facilities completely suspended their in-person religious services as well as outsider access to prisons, many religious services became available only virtually. For example, the California Department of Corrections and Rehabilitation asked Jehovah's Witnesses to provide worship services via video for the prison's television network, which broadcasts to all state prisons. In July 2021, the network aired a 28-minute program with American Sign Language (ASL) translation three times a day, seven days a week, across all 33 state prisons.<sup>712</sup> In Cook County Jail, the sheriff's office prohibited all religious volunteers from conducting in-person services but allowed organizations to send "appropriate religious books and pamphlets for detainees to continue their worship in custody."<sup>713</sup>

Prison advocates argue that being in a religious minority can be very isolating and that the pandemic only increased that feeling. Maryam Kashani, a Muslim professor and organizer with the non-profit group Believers Bail Out, explained that one of her clients in Cook County Jail was the only Muslim in his cell block, and due to the sheriff's office's restrictions "he [was] basically in charge of his own religious services ... and [had] no access to other people, which is really isolating and is really not how we generally practice Ramadan or Islam at all. To be alone during Ramadan is really hard."<sup>714</sup>

Similar to other carceral facilities, the BOP transitioned many of its religious programs and services to a virtual format to better meet the needs of prisoners during the pandemic. Chaplain Heidi Kugler, National Chaplaincy Administrator for BOP, testified that the BOP also started to utilize closed-circuit television systems (CCTV) to broadcast worship services across faiths in accordance with safety guidelines.<sup>715</sup> Kugler also explained that some of the transitions to providing virtual services have been positive. She testified:

Video conferencing was one thing that the Bureau is pretty excited about that was an offshoot of COVID, a positive one. In addition to looking for ways that we can honor in-person service providers, through volunteers and contractors and the chaplains, we are looking at ways that we can utilize videoconferencing equipment to expand religious offerings. [For example,] [i]n a rural location where they might not have a service provider from that faith tradition, and they have it in another location, it can be provided via video conferencing in the chapel. So that there is a way to—not to discount mandatory services that require in person, by any means,

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<sup>712</sup> Gralyn Matthews, "How Prison Ministries Adapted During COVID-19," *Corrections* 1, June 18, 2021, <https://www.corrections1.com/coronavirus-covid-19/articles/how-prison-ministries-adapted-during-covid-19-IKSYQyMtZ8TO1o9b/>.

<sup>713</sup> Echols, "COVID-19 Brings New Challenges for Muslim Inmates During Ramadan."

<sup>714</sup> *Ibid.*

<sup>715</sup> Heidi Kugler, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 89.

but so that there can be continual faith development for those in custody in our care.<sup>716</sup>

Similarly, Rabbi Aaron Lipskar, CEO of the Aleph Institute, explained that the expansion of religious materials and accessibility to worship services virtually was beneficial for prisoners, especially during the pandemic. He explained:

[T]here is tremendous, tremendous benefit [to] the tablets and [having access to] this technology because it's making so much important material and information available, and throughout COVID we saw that . . . within many places video visitation was possible through that technology, and, unfortunately, in the federal system, there were people that were completely, confined for 23 hours a day just in their unit, and there was [at least] that level of interaction.<sup>717</sup>

Experts acknowledge that technology provided access to religious services during the pandemic when it was not safe to meet face-to-face. Yet several experts also expressed concern that prisons have used virtual religious services to replace in-person services and pastoral care, despite the pandemic being over. Father Dustin Feddon explained that, since the pandemic-induced shift to virtual programming and the use of tablets, some facilities are “using the pandemic as an opportunity to rely more and more on these technologies and limiting access for pastoral care support, face-to-face support, [and] in-person support.”<sup>718</sup> He testified that prison and jail officials have frequently told chaplains that prisoners requesting religious services like Mass “can simply watch it on video. And anyone that is a practicing Catholic knows that you simply don't watch Mass on television, it is communal and social and physical and material.”<sup>719</sup> Similarly, Heather Rice-Minus, President of Prison Fellowship, explained that “there's no substitute for in-person programming, including faith-based programming and services. Emerging technology should supplement, not supplant, its availability.”<sup>720</sup>

Experts at the Commission's briefing also noted difficulties that religious organizations often face providing services through the prisons' virtual platforms. One point of friction is the fee structure: religious organizations and prisoners often must pay to access digital services. Heather Rice-Minus explained that:

[W]hile tablets can be a useful tool that makes education and rehabilitation programs more widely available, there can be repercussions on certain providers, especially those who are smaller in nature, not being able to get their content onto tablets.<sup>721</sup>

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<sup>716</sup> Ibid, p. 128.

<sup>717</sup> Rabbi Aaron Lipskar, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 126.

<sup>718</sup> Father Dustin Feddon, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 98.

<sup>719</sup> Ibid., p. 123.

<sup>720</sup> Heather Rice-Minus, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 174

<sup>721</sup> Ibid., p. 174.



Several panelists also testified that the proliferation of using tablets to provide religious accommodations is troubling because it has allowed technology companies to profit off prisoners' religious needs. Father Dustin Feddon explained that "trying to provide pastoral support electronically ends up costing the individual. We oftentimes end up having to pay for their emails to even respond to us."<sup>722</sup> He spoke about one county jail in North Florida that would not allow him to provide in-person pastoral care to a particular prisoner; he was only able to meet with the prisoner via video conferencing and realized "the exorbitant fee that was involved in [] relying on their video technology."<sup>723</sup>

Heather Rice-Minus, President of Prison Fellowship, also explained that it has been increasingly difficult for her organization to get religious materials into prisons due to the limited number of tablet providers contracted with state DOCs:

Most DOCs partner with private tablet providers to provide this technology, and currently 30 states provide tablets to prisoners. However, not all of the content and the functions of the tablets are free. This is typically relied on those who are incarcerated to pay extra costs for certain features.<sup>724</sup>

### *Staffing Issues*

Some institutions also provided information on the negative impact the pandemic had on staffing numbers and morale. Several institutions noted frequent staffing shortages during the pandemic due to quarantine requirements for staff exposed to the virus, which led to other staff being required to work overtime.<sup>725</sup>

Rice-Minus posited that some of the issues with providing religious accommodations during the pandemic were due to severe staffing shortages. She testified:

When I think about this issue of the impact of COVID-19 on prisons and religious liberty, I have to speak to the staffing shortage we're currently facing in corrections... And so, amidst this staffing crisis, prisons have to grapple with the COVID-19 pandemic. Many prisons as a result saw restrictions or suspensions of programming due to COVID-19.<sup>726</sup>

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<sup>722</sup> Father Dustin Feddon, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 97.

<sup>723</sup> *Ibid.*, p. 123.

<sup>724</sup> Heather Rice-Minus, *Enforcing Religious Freedoms in Prison Briefing* testimony, pp. 173-74.

<sup>725</sup> FCI La Tuna, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

<sup>726</sup> Heather Rice-Minus, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 172.

In 2022, the U.S. Census Bureau found that the number of people working in state prisons decreased to its lowest point in over two decades and dropped by 10% in 2019 alone,<sup>727</sup> despite the fact that state prison populations continue to rise.<sup>728</sup>

Father Dustin Feddon also testified that staffing shortages may be a contributing factor in religious needs not being met, stating:

I think some of this is also a staff shortage. It takes a lot of staff sometimes to transport volunteers into these facilities or to transport inmates from their dorms into the chapels. And, frankly, staff oftentimes are simply exhausted and see this as —religious services as a privilege and not a fundamental right. And we see this as an increasing issue over the past couple of years.<sup>729</sup>

A National Institute of Corrections survey finds that the most cited hardship emerging from the pandemic was staffing shortages. Survey respondents reported “significantly reduced staffing capacities” due to hiring freezes, staff quarantines, and calling out of shifts, as well as staff burnout, increased retirements, declines in mental health and morale, and lack of access to vaccines.<sup>730</sup>

The sampled facilities also mentioned the additional duties that staff faced during the pandemic, including managing the logistics of testing and moving prisoners in and out of quarantine, delivering food and medications, conducting illness surveillance, and conducting inventories of Personal Protective Equipment.<sup>731</sup> All of this, coupled with concerns about contracting the virus, impacted staff morale. For example, Maine State Prison explained:

During the many outbreak periods experienced over the course of the pandemic, staff endured very challenging working conditions, managing universal testing, and coordinating meals and medications for populations that were in quarantine status due to outbreaks. Many staff were required to work in units wearing full Personal Protective Equipment and Tyvek suits.<sup>732</sup>

Similarly, USP Marion told the Commission:

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<sup>727</sup> Nicholas Saxon, Paul Villena, Sean Wilburn, Sarah Andersen, Dylan Maloney, and Ross Jacobson, “Census of Government, Survey of Public Employment & Payroll Summary Report: 2022,” U.S. Census Bureau, June 14, 2023, <https://www.census.gov/library/publications/2023/econ/g23-aspep.html>.

<sup>728</sup> Weihua Li, Beth Schwartzapfel, and Michael R. Sisak, “Jail Populations Creep Back Up After COVID-19,” Marshall Project, June 7, 2021, <https://www.themarshallproject.org/2021/06/07/jail-populations-creep-back-up-after-covid-19>; Jacob Kang-Brown, Chase Montagnet, and Jasmine Heiss, “People in Jail and Prison in Spring 2021,” Vera Institute, June 2021, <https://www.vera.org/publications/people-in-jail-and-prison-in-spring-2021>.

<sup>729</sup> Dustin Feddon, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 99.

<sup>730</sup> Tammy Felix, David Pyrooz, Meghan Novisky, Jennifer Tostlebe, and Jessica Dockstader, “Effects of COVID-19 on Prison Operations,” National Institute of Corrections, 2022, <https://s3.amazonaws.com/static.nicic.gov/Library/033677.pdf>.

<sup>731</sup> USP Marion, Response to U.S. Commission on Civil Rights Interrogatories, May 2024; Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

<sup>732</sup> Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

[I]f an inmate tested positive for COVID in a quarantine unit then the entire inmate group in that area had to have their quarantine time started over and retested as negative in 10-14 days before they could be safely placed in a regular general population unit. This continued for approximately 2 years on the daily. The unit used for quarantine was not big enough to handle all of the inmates that were being sent to the institution, so it was a constant logistical problem moving and testing inmates to limit exposure to other inmates who were already in quarantine...All of this directly impacted staff morale and was a huge safety concern for staff as well.”<sup>733</sup>

### *Post-Pandemic*

While the prisons that responded to the Commission's interrogatories say they have lifted all pandemic-related restrictions on religious programming, several experts testified about continuing problems they have encountered, especially in county jails. For example, Rabbi Aaron Lipskar noted that “there are county jails that still follow quarantine procedures when a new prisoner comes in, and that seriously hampers their ability to have access to their religious services [or get] the things that they need.”<sup>734</sup> Additionally, Rabbi Lipskar explained that these jails are restricting prisoners from receiving proper religious diets because they are unable to do “sincerity testing” meant to ensure that the prisoners are sincere enough in their religious beliefs to meet religious diet accommodation requirements.<sup>735</sup>

Similarly, Father Duston Feddon, Founder and Executive Director of Joseph House, testified that some facilities, especially county jails, have struggled to ensure that prisoners' religious freedoms are being upheld post-pandemic. He stated:

[F]rom my own personal experience, I can tell you that there were individuals who I needed to provide pastoral support who had ended up recidivating and were in a county facility, and well into 2023, I was still unable to visit with them face to face.<sup>736</sup>

Several experts also noted delays in resuming volunteer programs after COVID restrictions were lifted. Eric Treene, former Special Counsel for the Justice Department, testified that “the difficulty of restarting volunteer programs post-COVID is an issue I've heard from a range of religious groups, including Christian, Muslim, and Jewish groups. One cause is the shortage of staff for screening, since staffing reduced during COVID has not returned to previous levels.”<sup>737</sup>

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<sup>733</sup> USP Marion, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

<sup>734</sup> Aaron Lipskar, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 126.

<sup>735</sup> *Ibid.*

<sup>736</sup> Dustin Feddon, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 121.

<sup>737</sup> Eric Treene, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 31.

Prior to the pandemic, many facilities relied upon religious volunteers to meet the religious needs of prisoners. However, during the pandemic most facilities prohibited outsiders' access due to health concerns. Imam Abdul Hafiz testified that providing care for Muslim prisoners has always been challenging and the pandemic exacerbated these issues. He explained that:

[I]t was very difficult being a provider going into the institutions prior to COVID and then, having that taken away, but understanding, you know, the danger for everybody. And later when things began to get better, it still was a slow process for the inmates to be able to put . . . into circumstances or situations where outside persons could be in their space.<sup>738</sup>

Prison officials also noted difficulties reinstating volunteer programs in their responses to the Commission's interrogatories. Maine State Prison, for example, stated that "during the COVID-19 period, many volunteers ceased their volunteer activities, despite our efforts to facilitate those activities remotely, and have not returned. For that reason, pandemic circumstances did have an impact on religious and spiritual services provided by volunteers."<sup>739</sup>

The evidence in this section demonstrates that the COVID-19 pandemic created unique challenges for prisoners in exercising their religious liberties. And even after the pandemic, testimony suggests that religious organizations continue to face obstacles in returning to prisons to provide in-person support. The decline in religious volunteers is especially impactful for prisoners in the religious minority because most chaplains are Christian, and therefore prisons must rely on volunteers to provide services for prisoners practicing other religions. As the data on the religious affiliations of prisoners at the beginning of this chapter demonstrate, prisoners represent a broad range of religions. Thus, the decline in the ability of outside volunteers to provide prisoners with services in their own faith affects many prisoners across the country.

Yet the grievance data in this chapter demonstrate that the pandemic only amplified challenges to prisoners' religious freedom that existed long before the pandemic. The grievance data do not demonstrate a clear trend in the number of grievances filed pre- and post-pandemic; some institutions reported more religious grievances since the pandemic, while others reported fewer. Similarly, some institutions had increases in grievances compared to the 2008 report, while grievances filed in other institutions declined since 2008.

Many of the same themes appeared throughout the grievance data and the testimony at the Commission's briefing. These include the difficulty religious minorities, in particular, face in exercising religious freedoms, from maintaining religious diets to participating in services and rituals to accessing religious items and literature. The fear of retaliation and lack of confidence in the grievance process also emerged as a consistent theme in the testimony, surveys of prisoners, and written complaints to the Commission. As a result, there are likely many more complaints that

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<sup>738</sup> Imam Abdul Hafiz, *Enforcing Religious Freedoms in Prison Briefing* testimony, p. 120.

<sup>739</sup> Maine State Prison, Response to U.S. Commission on Civil Rights Interrogatories, May 2024.

are not reported through the facilities' grievance systems. Still, under the PLRA, prisoners are required to exhaust the institutional grievance process before filing a lawsuit. As Chapter 1 explains and data collected by the Commission show, barriers to the grievance process may hinder prisoners' ability to have civil rights violations addressed. After a prisoner has exhausted the facility's internal processes and no resolution has been reached, the last option to remedy the alleged violation is to file a lawsuit. As such, the next and last chapter of the report provides an analysis of lawsuits filed by prisoners with alleged RLUIPA violations that were decided from 2017-2023.

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## CHAPTER 3: RLUIPA Cases and Analysis

Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect against religious discrimination in various contexts, including carceral facilities.<sup>740</sup> RLUIPA strengthened prisoners' religious freedom by establishing a strict scrutiny standard that requires jails and prisons to provide a compelling reason for not meeting a religious accommodation.<sup>741</sup> While the Justice Department can investigate alleged religious violations under RLUIPA and may sue a facility to enforce the statute,<sup>742</sup> most suits are brought directly by prisoners.

A prisoner who believes a state prison or local jail has violated their right to religious freedom can bring a private civil suit under RLUIPA for injunctive and/or declaratory relief, but not for monetary damages.<sup>743</sup> In *Sossamon v. Texas*, a prisoner sued Texas prison officials under RLUIPA for injunctive and monetary relief. Mr. Sossamon argued that he was denied access to the prison's chapel for religious worship and was not allowed to attend religious services. The Fifth Circuit held that Mr. Sossamon could not sue Texas officials under RLUIPA due to sovereign immunity.<sup>744</sup> The Supreme Court affirmed the lower court's order holding that states, by accepting federal funding, do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA.<sup>745</sup> As such, state and local prisoners cannot sue states under RLUIPA for monetary damages.<sup>746</sup>

*Sossamon* has since been distinguished in the Supreme Court's 2020 *Tanzin v. Tanvir* decision. In *Tanzin*, the Supreme Court clarified the definition of "appropriate relief" in the Religious Freedom Restoration Act (RFRA), which applies to federal prisoners. The *Tanzin* decision held that RFRA allows for monetary damages against federal officials in their individual capacities who are found to substantively burden a person's free exercise rights.<sup>747</sup> RLUIPA has the identical "appropriate

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<sup>740</sup> U.S. Department of Justice, Civil Rights Division, "Religious Land Use And Institutionalized Persons Act," <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>.

<sup>741</sup> Religious Land Use and Industrialized Persons Act, Pub. L. 106-274, 114 Stat. 804 (codified at 42 U.S.C. 2000cc (2000)).

<sup>742</sup> U.S. Department of Justice, Civil Rights Division, "A Guide to Federal Religious Land Use Protections," [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rluipa\\_guide.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rluipa_guide.pdf).

<sup>743</sup> 42 U.S.C. 2000cc (2000).

<sup>744</sup> *Sossamon v. Texas*, 563 U.S. 277 (2011).

<sup>745</sup> *Id.* at 280. "The doctrine of sovereign immunity precludes plaintiffs from obtaining monetary damages against state actors in their official capacities". See *Reid v. Griffin*, 808 F.3d 1191, 1192 (8th Cir. 2015); *Murphy v. Arkansas*, 127 F.3d 750, 754, 8th Cir. 1997 (damages claims against state officials acting in their official capacities are barred "either by the Eleventh Amendment or because in these capacities they are not 'persons' for § 1983 purposes"). However, sovereign immunity does not bar a plaintiff from obtaining: (1) prospective injunctive relief against state actors named in their official capacities; and (2) monetary damages against state actors named in their individual capacities. See *Murphy*, 127 F.3d at 754.

<sup>746</sup> *Sossamon v. Texas*, 563 U.S. 277 (2011).

<sup>747</sup> *Tanzin v. Tanvir*, 592 U.S. 43, 52 (2020).

relief” language and in general when “sister statutes” like these have the same language, a court will rule that language controls both statutes, which would mean that damages could be available in RLUIPA cases when individual officers are sued in their personal capacity.<sup>748</sup> Despite the similarity of the statutes, however, that does not foreclose a separate constitutional claim that damages against officers in their personal capacities violates the Eleventh Amendment. As of the writing of this report, federal prisoners can sue for monetary damages under RFRA,<sup>749</sup> whereas state and local prisoners cannot sue for monetary damages under RLUIPA.<sup>750</sup>

Though RLUIPA allows prisoners to sue for religious freedom violations, it is important to note that it was passed after the Prison Litigation Reform Act (PLRA) of 1996, which made it more difficult for prisoners to file and win federal civil rights lawsuits.<sup>751</sup> While Congress passed PLRA to discourage frivolous lawsuits,<sup>752</sup> the law introduced significant barriers to prisoners filing civil rights claims regardless of their legitimacy.<sup>753</sup> In order to understand how prisoners are currently using RLUIPA to sue over violations of religious freedom, we analyzed 843 RLUIPA cases decided from 2017-2023. We present descriptive statistics of RLUIPA cases in this period by judicial circuit, religion, type of accommodation requested, reasons the prison denied the accommodation, and the court’s disposition.

### Prior Evidence about RLUIPA Cases

While religious freedom is a central right in the United States, religious freedom cases comprise a small share of overall litigation.<sup>754</sup> The Commission’s 2008 report analyzed reported RLUIPA cases from 2001 to 2006.<sup>755</sup> It finds that there were few RLUIPA cases in that period (250) compared to the number of prisoners, that most prisoners brought their cases *pro se* (75%), and that defendants almost always prevailed (84% of the decided cases).<sup>756</sup>

More recent research has investigated RLUIPA cases following *Holt v. Hobbs* (2015) due to the significance of the decision strengthening prisoners’ religious freedom rights. In deciding *Holt*, the Supreme Court instructed lower courts not to give broad deference to prison officials. Perhaps most importantly, the Court also clarified that lower courts should place the burden of showing a

<sup>748</sup> See *Landor v. Louisiana Dep’t of Corrections*, 82 F. 4th 337 (5th Cir. 2023), cert. pending (2024)).

<sup>749</sup> *Tanzin v. Tanvir*, 592 U.S. 43, 52 (2020).

<sup>750</sup> *Sossamon*, 563 U.S. at 277.

<sup>751</sup> Margo Schlanger, “Inmate Litigation,” *Harvard L. Rev.*, 2003, vol. 116, no. 1555, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2295&context=articles>; Andrea Fenster and Margo Schlanger, “Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act,” Prison Policy Initiative, Apr. 26, 2021, [https://www.prisonpolicy.org/reports/PLRA\\_25.html](https://www.prisonpolicy.org/reports/PLRA_25.html).

<sup>752</sup> See 42 U.S. Code § 1997e.

<sup>753</sup> Fenster and Schlanger, “Slamming the Courthouse Door.”

<sup>754</sup> Luke W. Goodrich and Rachel N. Busick, “Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases,” *Seton Hall L. Rev.*, 2018, vol. 48, no. 353, <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1629&context=shlr>.

<sup>755</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, <https://www.usccr.gov/files/pubs/docs/STAT2008ERFIP.pdf>.

<sup>756</sup> *Ibid.*



“compelling government interest” in the denial of a religious accommodation on the prison.<sup>757</sup> To test whether *Holt* impacted RLUIPA decisions, Wasserman and colleagues analyzed the 135 RLUIPA cases that were decided by a court of appeals from June 2012 to February 2018. They find a modest but statistically significant increase in the share of decisions that favor the prisoner following *Holt*.<sup>758</sup> It is important to note, however, that most of the original sample of cases (59%) were dismissed because the court believed the prisoner failed to show that the facility where they were housed substantially burdened their sincerely held religious beliefs.<sup>759</sup> Most of the claims dismissed on these grounds, which the researchers call “non-merit,” were filed by *pro se* plaintiffs, indicating that the civil procedure process is challenging for non-lawyers to successfully navigate.<sup>760</sup> This is consistent with findings from the Commission’s 2008 report and other research on religious freedom cases showing that most prisoner cases are both *pro se* and unsuccessful.<sup>761</sup>

While there are no empirical studies looking exclusively at case analysis pre-*Holt*, a 2018 study finds that religious liberty cases in the Tenth Circuit from 2012 to 2017 showed a 25% partial success rate for prisoner cases.<sup>762</sup> In a 2018 study that only investigates post-*Holt* cases, Bollman analyzed 115 RLUIPA cases that ruled on prisoners’ requests for religious accommodations from January 20, 2015 to January 20, 2017. He finds that in about 28% of cases, the courts found in favor of prisoners and granted the religious accommodations.<sup>763</sup> Of the cases finding in favor of prisoners, 49% were due to the facility not using or considering the least restrictive alternative.<sup>764</sup> Bollman shows that for most cases in his study, the courts determined that the prison regulation in question did not pose a substantial burden to the religious exercise (47%), which made up the majority of the rulings in favor of the prison (73%). He contends that this result could be the courts using a substantial burden analysis to avoid determining the level of deference given to prison officials post-*Holt* and use this analysis as a “substitute for deference in order to give prison officials latitude to maintain prison control.”<sup>765</sup>

Bollman also finds that post-*Holt*, 26% of the courts applied a “hard look” review (i.e., questioning the explanations offered by prison officials), 7% a “deferential” review (i.e., deferring to explanations offered by prison officials), and 6% a “mixed” review (i.e., the remainder found no substantial burden or the case was moot).<sup>766</sup> This is significant because

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<sup>757</sup> See *Holt v. Hobbs*, 574 U.S. 352 (2015).

<sup>758</sup> Lewis M. Wasserman, John P. Connolly, and Kent R. Kerley, “Religious Liberty in Prisons under the Religious Land Use and Institutionalized Persons Act following *Holt v. Hobbs*: An Empirical Analysis,” *Religions*, 2018, vol. 9, no. 7, <https://www.mdpi.com/2077-1444/9/7/210>.

<sup>759</sup> *Ibid.*

<sup>760</sup> *Ibid.*

<sup>761</sup> Goodrich and Busick, “Sex, Drugs, and Eagle Feathers.”

<sup>762</sup> *Ibid.*

<sup>763</sup> Barrick Bollman, “Deference and Prisoner Accommodations Post-*Holt*: Moving RLUIPA Toward “Strict in Theory, Strict in Fact,”” *Nw. U. L. Rev.*, 2018, vol. 839, no. 12, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1325&context=nulr>, at. 874.

<sup>764</sup> *Ibid.*, p. 868.

<sup>765</sup> *Ibid.*, p. 877.

<sup>766</sup> *Ibid.*

prior to *Holt*, case law shows a split among circuit courts, with multiple circuits applying a deferential approach to prison officials' assertions and fewer circuits engaging in hard looks. In *Cutter v. Wilkinson*, the Court held that RLUIPA did not prioritize religious accommodations over prison safety/security,<sup>767</sup> so post-*Cutter*, "many district and circuit courts began to allow prison officials to broadly assert compelling interests, such as security and cost, without providing a scintilla of concrete justification for their respective policies."<sup>768</sup>

Bollman shows that a few circuits that had engaged in hard looks pre-*Holt* were *more* deferential after the Supreme Court's ruling, suggesting that despite the Court's ruling, case law is applied unevenly, particularly when grappling with subjective concepts like a "compelling interest" and "least restrictive means."<sup>769</sup> Overall Bollman's study shows that the *Holt* decision had a strong and positive effect on the number of prisoners obtaining religious accommodations and has also impacted the lower courts' approach to reviewing religious liberty cases. For instance, post-*Holt*, six circuits—the First, Third, Fifth, Eighth, Tenth, and Eleventh—exclusively followed the hard look analysis and the Fifth and Eleventh had been more deferential in RLUIPA cases prior to the ruling. Bollman maintains that while *Holt* seems to have pushed courts to apply a harder look analysis, the Supreme Court's "failure to repudiate or distinguish *Cutter* has led to some confusion at the circuit level."<sup>770</sup>

Table 3.1 below shows that *Holt* had a substantial impact on the success rate of prisoners seeking accommodations under RLUIPA, with the First and the Seventh circuits granting the most accommodations. Both of these circuits apply a hard look analysis, suggesting correlations between courts applying a more stringent RLUIPA standard and the success of the prisoner's case on the merits. However, Bollman caveats that despite the increase of prisoner success, most cases in this sample were still dismissed or denied without accommodation due to lack of substantial burden.<sup>771</sup> Conversely, Table 3.1 also shows that some circuits are much less likely to rule in favor of the incarcerated individuals and offer more deference to prison officials even after the *Holt* ruling. Table 3.1 suggests that directly following the *Holt* decision, courts may be applying the substantial burden threshold differently with some lower courts scrutinizing prisoners' claims just as closely as prison officials' claims to determine the sincerity of the alleged burden. This is significant because this variation between circuits could impact the likelihood of a prisoner receiving their accommodation depending on where they are incarcerated.

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<sup>767</sup> See *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>768</sup> Nathan Lobaugh, "Yellowbear v. Lampert—Putting Teeth into the Religious Land Use and Institutionalized Person Act of 2000," *Am. Indian L. Rev.*, 2017, vol. 41, no. 2, <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1085&context=airl>.

<sup>769</sup> Bollman, "Deference and Prisoner Accommodations Post-Holt"; see also Treene Written Testimony, p. 9.

<sup>770</sup> Bollman, "Deference and Prisoner Accommodations Post-Holt."

<sup>771</sup> *Ibid.*, p. 874.

**Table 3.1: Success Rate across Circuits (2015-2017)**

<b>Circuit</b>	<b>Accommodations</b>	<b>%</b>	<b>No Accommodation</b>	<b>%</b>	<b>Total Cases</b>
First	11	78.57	3	21.43	14
Second	2	40.00	3	60.00	5
Third	4	33.33	8	66.67	12
Fourth	5	15.63	27	84.38	32
Fifth	6	54.55	5	45.45	11
Sixth	0	0.00	13	100.00	13
Seventh	12	75.00	4	25.00	16
Eighth	5	55.56	4	44.44	9
Ninth	2	10.53	17	89.47	19
Tenth	1	33.33	2	66.67	3
Eleventh	7	38.89	11	61.11	18
DC	0	0.00	0	0.00	0
<b>Total</b>	<b>55</b>	<b>36.18</b>	<b>97</b>	<b>63.82</b>	<b>152</b>

Source: Bollman, "Deference and Prisoner Accommodations Post-Holt."

In a written statement to the Commission, Gabriel Galanda, Huy Chairman, explained that significant disparities remain across Federal Circuits in how the religious rights of Native Persons are interpreted, even post-*Holt*. He wrote:

The inconsistency of Federal courts protecting incarcerated Indigenous persons' religious freedoms allow states and/or facilities in significant portions of the country to roll back access to religious items and ceremonies while incarcerated Indigenous persons engage in costly and lengthy litigation to attempt to have their rights protected. Examples of recent violations of incarcerated Indigenous persons' religious freedoms include:

- Refusal to honor dietary restrictions even though such restrictions are honored for other faith groups;
- Denial of ability to wear religious head covering, to regularly access smudging, prayer pipes, sweatlodge, and other ceremonies, and to possess certain sacred medicines and medicine bag;
- Refusal to allow incarcerated Indigenous persons to use larger gathering spaces for Indigenous ceremonies despite allowing other religious groups to do so;
- Denial of access to existing ceremony grounds and sacred items and refusal to hire Indigenous spiritual advisors, allow Indigenous volunteers, or meet with Indigenous community members; and
- Only being permitted to become spiritual guides after graduating from a Christian

“Bible College.”<sup>772</sup>

Despite the *Holt* ruling, Nick Reaves, Counsel for The Becket Fund for Religious Liberty, testified that RLUIPA continues to be “misapplied and misunderstood” in the courts. He argues that lower courts’ attempts to narrow RLUIPA’s protections are inconsistent with the statute and the Supreme Court’s *Holt* ruling. He states that:

[T]hese errors fundamentally misunderstand the proper role of the courts in assessing religious accommodations. No secular authority is competent to determine whether, for example, using unscented prayer oils has the same religious effect as using scented prayer oils, or whether reading the text of the Prophet Mohammed is a sufficient alternative to growing an untrimmed beard.

Instead, having determined that the practice in question is both sincere and religious, courts and prison officials must take the religious practice as given, and determine solely whether the burden on it is substantial ... The bottom line is this: RLUIPA demands that all sincere religious exercise, mainstream or idiosyncratic, mandatory or permissive, must be treated the same under law.<sup>773</sup>

While Bollman’s study offers an important look at the shift in courts post-*Holt*, there are no other empirical studies examining RLUIPA cases since 2017. In order to examine whether these trends have continued, the Commission collected and analyzed all federal RLUIPA cases that were decided from 2017-2023. The methods and results are discussed below.

### Data Collection

To investigate current trends in RLUIPA’s application, Commission staff first created a data set of post-*Holt* RLUIPA claims brought by prisoners. To create this data set, we searched for the following in Westlaw’s Federal Cases database: adv: “42 U.S.C. § 2000cc-1 (2000)” & DA (aft 12-31-2016 & bef 01-01-2024). This search identified RLUIPA cases that specifically apply to institutionalized persons decided within the time of this study. The dates on Westlaw are for case decisions, not initiations. This search yielded an initial 1,797 results including cases from district, appeals, and the Supreme Court. After identifying and omitting cases that were not brought by prisoners or did not include a RLUIPA claim, there were 1,741 RLUIPA cases decided between 2017-2023.

It is common for cases to go through multiple rounds of court decisions for various motions (e.g., to dismiss, summary judgement, extension for discovery, venue change). For this study we want to analyze cases with a final adjudication of the RLUIPA claim(s), therefore we only include the most recent iteration of a case. Approximately 24% of RLUIPA cases went through the court

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<sup>772</sup> Galanda Statement, p. 3 (internal citations omitted).

<sup>773</sup> Nick Reaves, *Enforcing Religious Freedom in Prisons Briefing* testimony, pp. 46-47.

system multiple times in this period. Additionally, because this is a point-in-time analysis, many cases in the sample (28%) had a pending decision for a RLUIPA claim. We omit those from the final sample of cases. The case analysis discussed in this report is for 843 unique cases with settled RLUIPA claim(s).

The Commission used three stages of coding to create this data set of RLUIPA cases decided from 2017-2023. First, an initial set of coders from the Commission’s Office of Civil Rights Evaluation (OCRE) and Office of General Counsel (OGC) collected and recorded data from Westlaw’s summary of each case. Next, OGC lawyers completed data collection for subjective variables and reviewed cases that were difficult to assess. Finally, OCRE social scientists reviewed and edited coding for each case to ensure consistency in coding and omit cases with a pending RLUIPA claim. OCRE social scientists analyzed the resulting data set.

Following the Commission’s 2008 report, we recorded whether the case had an individual or multiple plaintiffs and if the plaintiff represented themselves (*pro se*). We also recorded demographic information for individual plaintiffs, including their gender, race (if known), and religion. We used the same religious categories from the 2008 report, which were informed by Harvard’s Pluralism Project and the Encyclopedia of American Religions.<sup>774</sup> It is important to note that umbrella categories illuminate trends but necessarily mask important differences within groups, such as African Hebrew Israelites being categorized as Jewish though they originated in the last half of the 20<sup>th</sup> century and are tied directly to Black Power movements in the U.S.<sup>775</sup> We added a category of “other” for religions that were named but difficult to categorize. The religious categories are shown in Table 3.2 below.

**Table 3.2: Religious Classification for RLUIPA Cases**

<b>Religious Category</b>	<b>Included Religions, Denominations, and Faith Groups</b>
<b>Afro-Caribbean</b>	African Traditional Spirituality, Ausar Auset Society, Ethiopian Zion Coptic, Rastafarian, Yoruba, Yoruba-Santeria, Yoruna/Palero/Vodun
<b>Atheist</b>	Atheist
<b>Baha`i</b>	Baha`i
<b>Buddhist</b>	Buddhist
<b>Christian</b>	Apostolic Faith Church; Catholic, Christian; Christian (unspecified); Christian Separatist; Church of Christ; Church of Christ, Scientist; Church of God; Community of Christ; Episcopal; Greek Orthodox; Identity Christian; Jehovah's Witness; Latter Day Saints; Mennonite; Occult/Esoteric Christian; Orthodox Christian; Protestant; Russian Orthodox; Sacred Name Sabbatarian; Seventh Day Adventist; The Way International; Unity Christian

<sup>774</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, p. 199.

<sup>775</sup> Michael T. Miller, “The African Hebrew Israelites of Jerusalem and Ben Ammi’s Theology of Marginalisation and Reorientation,” *Religions*, 2020, vol. 11, no. 2, <https://www.mdpi.com/2077-1444/11/2/87>.

<b>Hindu</b>	Hare Krishna, Hindu, Siddha Yoga
<b>Jewish</b>	African Hebrew Israelite, Assemblies of Yahweh, Hebrew-Israelite, House of Yahweh, Israyl Identity Faith, Jewish, Nazarite, Yahwist, Yahweh Evangelical, Messianic Jewish
<b>Muslim</b>	Five Percent Nation, Moorish Science Temple, Muslim, Muslim - not indicated, Muslim - other, Muslim - Shi'ite, Muslim - Sunni, Nation of Islam, Nuwaubu
<b>Native Peoples</b>	Native American
<b>Pagan</b>	Asatru, Asatru/Odinism, Asatru/Theodism, Druid, Earthbased, Neo-pagan, Odinit, Ordo Templi Orientis, Satanist, Thelema, Wiccan, Wotanism, Wotanist/Odinit
<b>Sikh</b>	Sikh
<b>Taoist</b>	Taoist
<b>Recent movements</b>	Astara, Church of Scientology, Church Universal and Triumphant, Institute of Divine Metaphysical Research, Ma'at, Melanic, Tulukeesh, Unification Church, Unitarian Universalism, Universal Life Church, Veganism, White Supremacist
<b>Other</b>	Named religions outside of the above categories
<b>Unknown</b>	Unspecified

To create the RLUIPA data set, we also collected information about each case, including the facility and state in which the alleged religious discrimination occurred, the court and judicial circuit that heard the case, and the date the decision was filed. We included the basis of the alleged religious discrimination in the following categories: accessories, diet, dress, forced participation, grooming, literature, practice, same religion leader, other, and unknown. This categorization was the same used in the 2008 report with slight modifications. The analysis includes up to five bases for each case as some claims rest on multiple categories of alleged religious discrimination. An explanation of each religious discrimination basis on which the claim was brought is shown below in Table 3.3.

**Table 3.3: Classification for Religious Discrimination Basis of RLUIPA Cases**

<b>Category</b>	<b>Meaning</b>
<b>Accessories</b>	Could not access or keep a religious item or physical artifact, including prayer rug/mat, jewelry (e.g., pendants, prayer beads), cauldron, kirpan, prayer oil, incense, etc.
<b>Diet</b>	Could not access necessary religious food (e.g., halal, kosher, vegetarian) or anything related to food access/cost of fasting for religious purposes
<b>Dress</b>	Could not wear or access modified clothing, tunic, or any religious head covering (e.g., kippah, yarmulke, skull cap, turban, hijab)
<b>Forced participation</b>	Exposed to religious practice without desire (e.g., loud service close to a cell that the prisoner could not leave, taken to a service or religious program without choice)
<b>Grooming</b>	Prisoner could not grow (or cut) facial hair or hair, denied access to hygiene/washing necessary to practice religion
<b>Literature</b>	No access or insufficient access or handling of religious texts (e.g., Bible, Qur'an, Torah, Book of Mormon, etc.)
<b>Practice</b>	Could not sufficiently practice religion for reasons other than those above, such as inability to gather as a group, administer dying rites in their belief (e.g., touching, laying hands), and no/limited access to chaplains/volunteers/religious programming during pandemic
<b>Same religion leader</b>	No/limited access to a religious leader (i.e., chaplain, volunteer) of the same religion
<b>Other</b>	Any religious request that is not captured in the above categories
<b>Unknown</b>	The basis of the religious claim is unknown

The data set also includes a variable that captures why the jail or prison denied the prisoner's religious accommodation if Westlaw's case summary includes that explanation. We again relied upon the categories used in the 2008 report with slight modifications. The data set captures up to three reasons the accommodation was denied. The categories and the explanations for the denials are shown below in Table 3.4.

**Table 3.4: Classification for Religious Accommodation Denial by Jail/Prison**

<b>Category</b>	<b>Meaning</b>
<b>Safety/security</b>	The religious accommodation would compromise the safety/security of individuals or the facility
<b>Administrative Burden</b>	There is inadequate staffing to allow or provide the accommodation (e.g., supervising communal prayer)
<b>Cost</b>	The cost of the material, food, or objects is too high
<b>Health</b>	The practice or item would compromise the health of the prisoner or other prisoners (e.g., lice in long hair)
<b>Moot</b>	The case is no longer relevant because the prison has changed its practice/policy, or the prisoner is no longer at the facility
<b>Ingenuine/Not Religious</b>	The prisoner's request does not stem from sincere religious belief, or the request is not tied to religion
<b>RLUIPA Unconstitutional</b>	The prison denies the constitutionality of RLUIPA
<b>Procedural failure</b>	The prisoner failed to properly fill out the required forms or exhaust the full grievance process
<b>Not Reached</b>	Prison attempted and failed to resolve the prisoner's request
<b>Other</b>	Any other reason the prison denied the prisoner's request for access to religious practice
<b>Unknown</b>	The case does not specify why the prison denied the religious request

To offer a more comprehensive assessment of each case, we also include a subjective measure of whether religion was the primary cause of the plaintiff's complaint. If it seems that religion was embedded in a larger problem of conditions of confinement, abuse, or material deprivations, religion was not coded as primary to the complaint. Though this variable is subjective and could be coded differently by different people, it should elucidate the centrality of religion in cases including a RLUIPA claim because federal cases brought by prisoners tend to include multiple claims, such as violations of the First Amendment's Free Exercise Clause or the Fourteenth Amendment's Equal Protection Clause.

For the RLUIPA data set, there are two measures of how the case was decided. The first variable captures the decision for the entire case, including all claims. This variable was coded as "defendant(s) successful" when the defendant (i.e., staff from facility or Department of Corrections) prevailed on all the plaintiff's claims. Conversely, this variable was coded as "plaintiff(s) successful" when the prisoner prevailed on all claims. This variable was coded as having a "mixed result" when the plaintiff prevailed on some claims. The final option category for this variable is "no decision," which means that none of the plaintiff's claims were adjudicated within the period of the study.

The other measure of how the case was decided is based solely on the plaintiff's RLUIPA claim(s). This variable includes the coding categories of the plaintiff prevailing on all RLUIPA claims or



some RLUIPA claims if they brought multiple, such as for diet and practice. Another category captures the defendant (i.e., staff from prison or DOC) prevailing, for instance if the court agreed that the facility denied the prisoner's requested religious accommodation for legitimate penological reasons, such as prison safety.<sup>776</sup> There are also three categories that capture if the RLUIPA claim was dismissed because it did not have merit. The first of these "non-merit" categories<sup>777</sup> measures if the case was dismissed because the plaintiff did not exhaust remedies at the facility-level before bringing the claim to court, which is required by the PLRA, or the prisoner exceeded the PLRA's "three strikes" rule for filing cases deemed to be frivolous.<sup>778</sup> The second category captures whether the case was dismissed on religious grounds, including the plaintiff not stating their religion, the judge not believing in the sincerity of their religion, or the plaintiff failing to demonstrate how the prison's refusal of the requested accommodation substantially burdened their religion.<sup>779</sup> The final category of dismissals includes all other reasons, such as lack of standing (e.g., RLUIPA does not apply to federal prisoners), the RLUIPA claim is illegitimate (e.g., plaintiffs cannot sue for financial compensation), and mootness (e.g., the prisoner is no longer housed in that facility).<sup>780</sup>

Because the Commission made decisions both about which cases to include in this data set and about how to quantify text-based legal information, there is subjectivity embedded in the analysis.<sup>781</sup> The point estimates in this chapter are intended to reveal trends about post-*Holt* RLUIPA cases, not serve as precise statistics.

## RLUIPA Case Results

The analysis of RLUIPA cases decided between 2017-2023 demonstrates that:

- There were many more cases with RLUIPA claims from 2017-2023 (1,741)<sup>782</sup> compared to 2001-2006 (250).
- Most prisoner plaintiffs are men (94.4%).
- Prisoners represented themselves (*pro se*) in 89.7% of cases.
- Muslim prisoners initiated the largest share of cases with a RLUIPA claim (38.9%), followed by Jewish prisoners (16.3%), and prisoners with an unknown religion (13.1%).

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<sup>776</sup> Wasserman, Connolly, and Kerley, "Religious Liberty in Prisons under the Religious Land Use and Institutionalized Persons Act following *Holt v Hobbs*."

<sup>777</sup> *Ibid.*

<sup>778</sup> 42 U.S.C. § 1997e.

<sup>779</sup> Wasserman, Connolly, and Kerley, "Religious Liberty in Prisons under the Religious Land Use and Institutionalized Persons Act following *Holt v Hobbs*."

<sup>780</sup> *Ibid.*

<sup>781</sup> W. James Potter and Deborah Levine-Donnerstein, "Rethinking Validity and Reliability in Content Analysis," *Journal of Applied Communication Research*, 1999, vol. 27, no. 3, <https://www.tandfonline.com/doi/abs/10.1080/00909889909365539>.

<sup>782</sup> This is the total number of RLUIPA cases from 2017-2023. For the analysis we use the most recent iteration of the case where the RLUIPA claim was settled (N=843).

- The largest share of cases involved a RLUIPA claim about diet (43.2%) and restrictions on the ability to freely practice (43.2%).
- The defendant (i.e., staff from prison or Department of Corrections) prevailed entirely on most cases involving a RLUIPA claim (70.8%).
- The defendant prevailed on most settled RLUIPA claims (94.4%).

Table 3.5 below shows the characteristics of the RLUIPA cases and the plaintiffs that brought them. The vast majority of RLUIPA cases in this data set were decided in district courts (93.5%). Cases in this data set were only settled by appellate courts when the higher court upheld the lower court's ruling. Most cases with a RLUIPA claim were primarily about religion (76.5%). The cases that were not coded as primarily about religion were largely about issues of confinement. For instance, in *Martratt v. Gladieux*, a pre-trial detainee in an Indiana jail brought a claim about overcrowding and insufficient staffing that he alleged impacted his health and safety.<sup>783</sup> As part of his case he brought a RLUIPA claim because he said he was not given the opportunity to attend church or chapel services. While some of his claims about unconstitutional conditions of confinement were allowed to move forward, his RLUIPA claim was dismissed because he did not name his religion or how it was substantially burdened by not being able to attend church or chapel services.<sup>784</sup>

Most plaintiffs in this data set were men (94.4%) who named multiple staff and/or administrators from the facility or Department of Corrections (DOC) as defendants, including wardens, officers, or chaplains. Most also brought their cases *pro se* (89.7%). This is consistent with other research showing that the vast majority of prisoner litigation cases are brought without a lawyer,<sup>785</sup> including religious freedom cases.<sup>786</sup>

Consistent with the Commission's 2008 report, most RLUIPA claims in the study period were brought by non-Christian prisoners. Table 3.5 shows the number of cases by religion and the percentage of cases by religion. The largest share of cases was brought by Muslim prisoners (38.9%), followed by Jewish prisoners (16.3%), and prisoners with an unknown religion (13.1%). Prisoners with an unknown religion typically did not state their religion in their lawsuit, though it is also possible that Westlaw's case summary did not include that information for some cases. Because it is common for prisoners to blend and modify established religions,<sup>787</sup> plaintiff religions that are difficult to categorize into the larger categories shown in Table 3.2 above (e.g., Mystic, Natsarim, One God) are coded as other.

<sup>783</sup> *Martratt v. Gladieux*, N.D. Ind. No. 1:23-CV-117-HAB-SLC (2023).

<sup>784</sup> *Id.*

<sup>785</sup> Jonathan Abel, "Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries," *Geo. LJ*, 2012, vol. 101, [https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2788&context=faculty\\_scholarship](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2788&context=faculty_scholarship).

<sup>786</sup> See e.g., Wasserman, Connolly, and Kerley, "Religious Liberty in Prisons under the Religious Land Use and Institutionalized Persons Act following *Holt v Hobbs*."

<sup>787</sup> Susan Van Baalen, "From "Black Muslim" to Global Islam: A Study of the Evolution of the Practice of Islam by Incarcerated Black Americans, 1957–2007," Unpublished Dissertation, 2011, Georgetown University, <https://www.proquest.com/openview/34649007910fcd6df46d665b30e61d68/1?pq-origsite=gscholar&cbl=18750>.

**Table 3.5: RLUIPA Case and Plaintiff Characteristics (2017-2023), N=843**

	Number of Cases	% of Cases
Court Type		
District	788	93.5
Appeals	53	6.3
Supreme Court	2	0.2
Religion Primary to Case	645	76.5
Plaintiff <i>Pro Se</i>	756	89.7
Plaintiff Gender		
Male	796	94.4
Female	21	2.5
Transgender	5	0.6
Multiple Plaintiffs	21	2.5
Plaintiff Religion		
Afro-Caribbean	45	5.3
Atheist	3	0.4
Baha`i	1	0.1
Buddhist	17	2.0
Christian	69	8.2
Hindu	6	0.7
Jewish	137	16.3
Muslim	328	38.9
Native Peoples	41	4.9
Pagan	42	5.0
Sikh	1	0.1
Taoist	4	0.5
Recent Movements	5	0.6
Multiple	9	1.1
Other	25	3.0
Unknown	110	13.1

In the study period, 2017-2023, the number of cases per federal circuit generally reflects the size of the circuit. In this period the Ninth Circuit ruled on the highest number of cases. The Ninth Circuit includes California, Oregon, Washington, Arizona, Nevada, Idaho, Montana, Alaska, Hawaii, and certain Pacific Islands, so reflects the largest circuit population represented by 29

judges.<sup>788</sup> In the same period, there were seven RLUIPA cases decided in the First Circuit, which has just six judges and includes Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico.<sup>789</sup> See Figure 3.1 below.

**Figure 3.1: RLUIPA Cases in Federal Court by Circuit (2017-2023)**

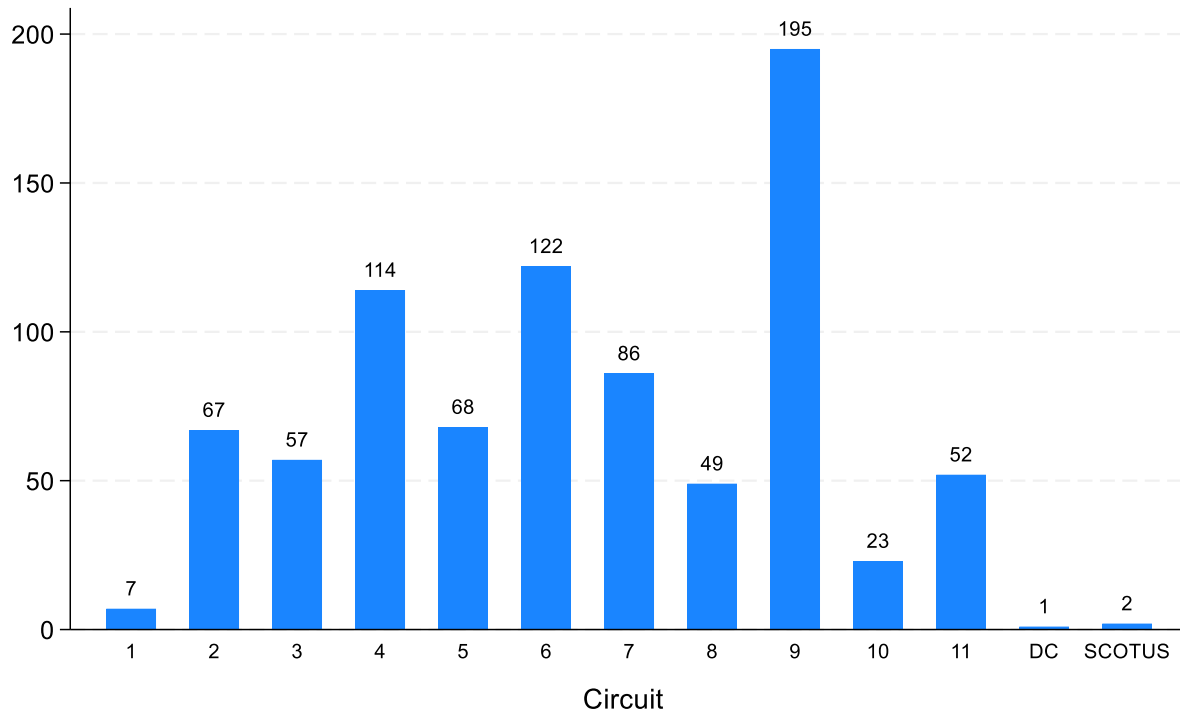


Table 3.6 shows the reasons why prisoners brought RLUIPA claims, which are largely consistent with those from 2001-2006.<sup>790</sup> Most prisoners who initiated a case had one clear RLUIPA claim (68.2%). In 3.0% of cases, the basis of the claim is unknown. Diet comprised the largest share of cases for prisoners who initiated a case with a single RLUIPA claim (25.0%). Indeed, diet was a basis for RLUIPA claims in 43.2% of total cases. Many cases with a diet complaint highlight that religious freedom during incarceration does not mean complete alignment between how prisoners prefer to practice their religion and what the prison will allow. Even for religious diets, prisoners do not get to individualize their meal preferences.<sup>791</sup> For instance, halal dietary laws include

<sup>788</sup> Offices of the United States Attorneys, “Introduction to the Federal Court System,” <https://www.justice.gov/usao/justice-101/federal-courts>.

<sup>789</sup> Ibid.

<sup>790</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008.

<sup>791</sup> *Andreola v. State of Wis.*, 2006 WL 897787.

requirements about how meat is slaughtered,<sup>792</sup> but courts have determined that providing Muslim prisoners with vegan meals is sufficient for satisfying their religious practice under RLUIPA.<sup>793</sup>

Another common basis for a RLUIPA claim in this data set was being denied the ability to adequately practice religion, such as not being able to gather as a group or having no or limited access to religious programming. A total of 43.2% of all cases included that claim. Though many prisons limited religious programming during the COVID-19 pandemic,<sup>794</sup> there are only a handful of plaintiffs in this data set that cite pandemic-related restrictions for curtailing their ability to practice their religion. This small share is likely an artifact of only including cases with settled RLUIPA claims in our data set, so future research could investigate how the pandemic affected RLUIPA lawsuits as these claims are decided.

**Table 3.6: Percentage of RLUIPA Cases by Basis and Number of Bases, N=843**

Basis	Number of Bases					% of Cases with Basis
	1	2	3	4	5	
Accessories	5.2	5.5	5.2	2.7	1.1	19.7
Diet	25.0	8.4	6.4	2.3	1.1	43.2
Dress	1.9	1.3	1.5	0.7	0.8	6.3
Forced Participation	0.9	0.7	0.5	0.0	0.0	2.1
Grooming	5.6	1.8	0.5	0.5	0.2	8.5
Literature	4.0	4.3	3.2	2.5	0.7	14.7
Practice	20.2	12.5	6.8	2.7	1.1	43.2
Same Religion Leader	0.4	1.9	1.3	0.9	0.1	4.6
Other	2.0	1.4	0.9	0.0	0.2	4.6
Unknown	3.0	0.0	0.0	0.0	0.0	3.0
<b>% of Cases with Number of Bases</b>	68.2	37.7	26.3	12.3	5.3	

While the reason or reasons prisoners brought their suits is straightforward for most cases, fewer RLUIPA cases on Westlaw include a reason(s) that the prison provided for originally denying the prisoner's religious accommodation request (see Table 3.7). Approximately one third of cases had no clear reason for the denial. Nevertheless, this information is included to demonstrate the prison's reasoning when it is available. Half of the cases included one known reason why the prison denied the original request (50.1%). The largest share of cases with one known cause name prison

<sup>792</sup> Joe M. Regenstein, Muhammad M. Chaudry, and Carrie E. Regenstein, "The Kosher and Halal Food Laws," *Comprehensive Reviews in Food Science and Food Safety*, 2003, vol. 2, no. 3, <https://ift.onlinelibrary.wiley.com/doi/abs/10.1111/j.1541-4337.2003.tb00018.x>.

<sup>793</sup> *Davis v. Heyns*, 2017 WL 8231366 (C.A.6 (Mich.), 2017).

<sup>794</sup> E. Ann Carson, Melissa Nadel, and Gerry Gaes, "Impact of COVID-19 on State and Federal Prisons, March 2020-February 2021," Aug. 2022, <https://bjs.ojp.gov/content/pub/pdf/icsfp2021.pdf>.

safety/security (16.7%) as the reason for denying the requested religious accommodation. This is also the largest category of all denials, with 29.2% of cases citing safety/security as a reason to deny the prisoner's request. The next largest share of denials is for a procedural failure on the prisoner's part, which represents 12.9% of all cases.

**Table 3.7: Percentage of RLUIPA Cases by Denial and Number of Denials, N=843**

Denial	Number of Denials			% of Cases with Denial
	1	2	3	
Safety/Security	16.7	9.0	3.4	29.2
Administrative Burden	3.1	1.9	0.8	5.8
Cost	1.4	3.9	1.3	6.6
Health	2.1	1.2	1.1	4.4
Moot	3.1	2.1	1.3	6.5
Ingenuine/Not Religious	5.7	2.8	1.3	9.8
RLUIPA Unconstitutional	0.0	0.2	0.0	0.2
Procedural Failure	6.8	4.4	1.8	12.9
Not Reached	4.3	4.2	0.1	8.5
Other	6.9	1.8	0.2	8.9
Unknown	32.7	0.0	0.0	32.7
<b>% of Cases with Number of Denials</b>	82.8	31.6	11.4	

A primary contribution of this updated study is that all RLUIPA cases were decided post-*Holt*, which Bollman's study (discussed above) shows increased the share of decisions favoring the prisoner.<sup>795</sup> For this analysis, court decisions are presented in two ways. The first illustrates the overall disposition of the case, as most cases involve multiple claims. The second is for the RLUIPA claim(s) specifically. The key finding is that it is rare for the plaintiff to prevail entirely either for the whole case (3.0%) or the RLUIPA claim(s) (4.5%).

Table 3.8 below shows the disposition of cases by prisoner religion. Apparent differences in how cases were decided by religion are not substantively meaningful as they reflect considerable differences in the number of cases by religion (see Table 3.5 above); we do not determine statistical differences in judges' rulings between religions. We discuss the disposition aggregated by religion, shown in the bottom row of Tables 3.8 and 3.9.

It is common for the defendant (i.e., staff from prison or DOC) to prevail entirely, which occurred in 70.8% of cases included in this study. In approximately one quarter of cases the plaintiff (i.e., prisoner) prevailed on some claims, meaning they were granted injunctive relief on at least one

<sup>795</sup> Wasserman, Connolly, and Kerley, "Religious Liberty in Prisons under the Religious Land Use and Institutionalized Persons Act following *Holt v Hobbs*."

claim, or any claim (not necessarily RLUIPA) remained after adjudication. The rarest outcome was for the plaintiff to prevail entirely, which only happened in 3.0% of cases (Table 3.8).

**Table 3.8: Percentage of Case Decisions for All Claims, N=843**

	<b>Plaintiff Prevailed on All Claims</b>	<b>Plaintiff Prevailed on Some Claims</b>	<b>Defendant Prevailed</b>	<b>Pending</b>
Afro-Caribbean	4.4	24.4	71.1	0.0
Atheist	33.3	0.0	66.7	0.0
Baha'i	0.0	0.0	100.0	0.0
Buddhist	0.0	47.1	52.9	0.0
Christian	10.1	24.6	65.2	0.0
Hindu	0.0	33.3	66.7	0.0
Jewish	0.7	26.3	73.0	0.0
Muslim	3.0	23.2	73.5	0.3
Native Peoples	4.9	29.3	65.9	0.0
Pagan	4.8	26.2	69.0	0.0
Sikh	0.0	0.0	100.0	0.0
Taoist	0.0	50.0	50.0	0.0
Recent Movements	0.0	20.0	80.0	0.0
Multiple	0.0	33.3	66.7	0.0
Other	0.0	24.0	76.0	0.0
Unknown	0.0	30.9	68.2	0.9
<b>Total</b>	<b>3.0</b>	<b>26.0</b>	<b>70.8</b>	<b>0.2</b>

Table 3.9 shows the disposition of just the RLUIPA claim(s). As with the whole case, the most common outcome is that the defendant prevailed on the RLUIPA claim (94.5%). This includes 12.9% of RLUIPA claims where the defendant prevailed outright and 81.6% of RLUIPA claims that were dismissed for non-merit.<sup>796</sup> The plaintiff prevailed on some RLUIPA claims in 1.1% of cases and all RLUIPA claims in 4.5% of cases.

<sup>796</sup> See Wasserman, Connolly, and Kerley, "Religious Liberty in Prisons under the Religious Land Use and Institutionalized Persons Act following *Holt v Hobbs*."

**Table 3.9: Percentage of Case Decisions for RLUIPA Claims, N=843**

	Plaintiff Prevailed on All RLUIPA	Plaintiff Prevailed on Some RLUIPA	Defendant Prevailed	RLUIPA Claim Dismissed		
				Procedural	Religious	Other
Afro-Caribbean	4.4	0.0	22.2	4.4	22.2	46.7
Atheist	33.3	0.0	0.0	0.0	66.7	0.0
Baha'i	0.0	0.0	100.0	0.0	0.0	0.0
Buddhist	5.9	5.9	11.8	5.9	52.9	17.6
Christian	10.1	0.0	18.8	2.9	40.6	27.5
Hindu	16.7	16.7	0.0	16.7	50.0	0.0
Jewish	1.5	0.0	9.5	7.3	36.5	45.3
Muslim	4.9	0.9	14.6	7.9	34.5	37.2
Native Peoples	9.8	4.9	17.1	4.9	26.8	36.6
Pagan	9.5	2.4	14.3	4.8	42.9	26.2
Sikh	0.0	0.0	0.0	0.0	100.0	0.0
Taoist	0.0	0.0	25.0	0.0	50.0	25.0
Recent Movements	0.0	0.0	0.0	0.0	60.0	40.0
Multiple	0.0	0.0	0.0	0.0	66.7	33.3
Other	0.0	4.0	8.0	16.0	28.0	44.0
Unknown	0.0	0.0	5.5	2.7	56.4	35.5
<b>Total</b>	<b>4.5</b>	<b>1.1</b>	<b>12.9</b>	<b>6.3</b>	<b>38.6</b>	<b>36.7</b>

A successful plaintiff RLUIPA claim means they received some relief for the violation of their religious freedom. Most RLUIPA claims in 2017-2023 that led to injunctive relief were for diet, grooming, or religious practice. For instance, Mr. White, a state prisoner in the Texas Department of Criminal Justice (TDCJ), had to adhere to the TDCJ grooming policy requiring all men to have short hair. Mr. White is a Choctaw Indian whose faith mandated that he wear his hair long, but TDCJ did not make exceptions to their policy regardless of religious beliefs, citing health and safety reasons. Mr. White requested that he be allowed to wear his hair long at the prison where he was housed, then grieved the prison's denial of his request. He exhausted the internal process and then sued for injunctive relief under RLUIPA. After several hearings in the court system, a district judge ruled that Mr. White's religious freedom under RLUIPA had been violated and ordered a permanent injunction requiring TDCJ to allow him an exception to their policy. While the Court agreed that the male grooming policy serves a compelling government interest of helping maintain prison safety and health, it disagreed that the blanket policy regardless of religion is the least restrictive means of furthering that interest.<sup>797</sup>

In 12.9% of cases, the Court recognized the validity of the plaintiff's RLUIPA claim but did not provide injunctive relief because they agreed with the defendant(s) that there was a compelling government interest in refusing the requested accommodation. For instance, in *Morris-Bey v.*

<sup>797</sup> *White v. Davis*, 2019 WL 13274921, (W.D. Texas, Apr. 23, 2019).



*Liebel*, a Muslim state prisoner was only allowed to purchase the religious oils he used for daily prayers through the commissary to ensure that they were safe and certified halal.<sup>798</sup> In 2017, the commissary stopped selling oils for five months because of concerns that they were tainted with drugs. In the period the commissary stopped selling oils, Mr. Morris-Bey was not allowed to purchase the oils from outside vendors. While the Court acknowledged that Mr. Morris-Bey's lack of access to oils substantially burdened his religion, it ultimately favored the defendants, arguing that "the compelling governmental interest here is the safety and security of the prison and that the temporary halting of the sale of the oils was the least restrictive means of promoting that interest."<sup>799</sup>

The most common outcome for RLUIPA claim(s) in this data set is that the Court dismissed them (81.6%), functionally favoring the defendants. The smallest share of dismissals was because the plaintiff failed to exhaust all administrative remedies in their facility prior to filing suit (6.3%), which is required by the PLRA, or exceeded the PLRA's three-strikes rule.<sup>800</sup> The PLRA stipulates that when suits initiated by prisoners are dismissed as frivolous, malicious, or not a proper claim, the plaintiff can receive a "strike" against them. If an incarcerated plaintiff receives three strikes, they have to pay all court fees upfront, making it challenging to file additional discrimination claims.<sup>801</sup> Most cases in this data set include a discussion of PLRA regardless of whether it was used as a basis for dismissal because of the law's centrality in prisoner suits.

The largest share of RLUIPA claim dismissals were for religious reasons (38.6%). Courts use a burden shifting analysis for RLUIPA claims that first requires the plaintiff to demonstrate that they have a sincerely held religious belief that is substantially burdened by the prison refusing the accommodation. Once established, the burden moves to the defendants to show that there is a "compelling governmental interest" to refuse the accommodation and that they are using the "least restrictive means" to protect that interest.<sup>802</sup> Courts rarely dismissed a RLUIPA claim from 2017-2023 because they found that the religion or the plaintiff's religious belief was insincere. This is expected as RLUIPA has an expansive definition of religious exercise as "any exercise of religion" that does not have to be "compelled by, or central to, a system of religious belief."<sup>803</sup> On the other hand, it was common for courts to dismiss RLUIPA claims because the plaintiff failed to convince them that the lack of accommodation was a substantial burden on their religious exercise. Courts made this determination because the impediment to religious freedom did not last long enough to

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<sup>798</sup> *Morris-Bey v. Liebel*, 2019 WL 4542700.

<sup>799</sup> *Id.*

<sup>800</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant part at 42 U.S.C. § 1997e).

<sup>801</sup> Each lawsuit or appeal filed that a judge dismisses as frivolous, malicious, or does not state a proper claim counts as a "strike." See e.g., *Jennings v. Natrona Co. Detention Center*, 175 F.3d 775 (10<sup>th</sup> Cir. 1999). An appeal of a dismissed action that is dismissed is a separate strike, even if that dismissal happened prior to the implementation of the PLRA.

<sup>802</sup> *Wisconsin v. Yoder*, 92 S.Ct. 1526; 42 U.S.C. § 2000cc-1 (2000).

<sup>803</sup> *Shakur v. Schriro*, 514 F.3d 878.

be perceived as a substantial burden<sup>804</sup> or the requested accommodation was not seen as necessary for religious practice.<sup>805</sup> One common circumstance for dismissals in this category were from prisoners who had their religious diet (e.g., halal, kosher) revoked after prison administrators checked their commissary purchases and found that some items did not adhere to their stated religion, making their belief seem insincere.<sup>806</sup>

In over a third of cases RLUIPA claims were dismissed for reasons other than religion or procedural failure (36.7%). Because RLUIPA provides injunctive relief, many cases were dismissed as moot if the prisoner had been transferred to another facility because the prison could no longer provide their requested accommodation. While declaratory relief is possible under RLUIPA, claims were often dismissed as moot if there was no chance for injunctive relief because of the low likelihood that the alleged deprivation would recur.<sup>807</sup> Courts also frequently dismissed RLUIPA claims when the plaintiff only sought monetary damages from defendants, which are not allowed under RLUIPA.<sup>808</sup>

Similarly, plaintiffs can only file a RLUIPA claim against defendants in their official capacities,<sup>809</sup> so courts dismissed individual capacity claims in this data set. Courts also dismissed some claims against defendants in their official capacities because they were protected by qualified immunity, which prevents state actors from being sued for violating someone's rights under certain circumstances.<sup>810</sup> In the case of *Mullenix v. Luna*, the Supreme Court held that:

The doctrine of qualified immunity shields officials from civil liability so long as their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” A clearly established right is one that is “sufficiently clear that every reasonable official would have understood that what he is doing violates that right.”<sup>811</sup>

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<sup>804</sup> See e.g., *McLeod v. Smith* 2018 WL 11176017. While incarcerated at Rikers, the plaintiff was unable to attend the Jumah service, which is part of his religious obligation as a Muslim. The Court dismissed his claim because he was denied access to only one service, which did not constitute a substantial burden to his religion.

<sup>805</sup> See e.g., *Jean-Denis v. Inch* (N.D. Fla. Mar. 16, 2021). A Catholic prisoner in Florida requested multiple accommodations for his religious practice, such as being able to grow his hair and nails indefinitely. The Court dismissed the plaintiff's case for failure to state a claim because the plaintiff did not adequately demonstrate how these practices were tied to Catholicism.

<sup>806</sup> See e.g., *Nye v. Klemm* 2023 WL 6819993.

<sup>807</sup> Jennifer D. Larson, “RLUIPA, Distress, and Damages,” *University of Chicago Law Review*, 2007, vol. 74, no. 4, <https://www.jstor.org/stable/20141867>.

<sup>808</sup> *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015).

<sup>809</sup> See e.g., *Wood v. Yordy*, 753 F.3d 899, 902–04 (9th Cir. 2014).

<sup>810</sup> Cornell Law School, Legal Information Institute, “Qualified Immunity,” [https://www.law.cornell.edu/wex/qualified\\_immunity](https://www.law.cornell.edu/wex/qualified_immunity).

<sup>811</sup> *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (citations omitted).

In correctional facilities, this means that certain actions taken by prison officials (e.g., wardens, correctional officers, chaplains) are protected under qualified immunity.<sup>812</sup> One critique of the doctrine of qualified immunity is that it allows for civil rights violations without accountability.<sup>813</sup> This might be particularly important in the prison context because the lack of transparency<sup>814</sup> could easily allow correctional officers to ignore or breach prisoners' rights without oversight or consequence.<sup>815</sup>

Even when qualified immunity is not part of the case, correctional officers' actions or inactions were central to many cases in this data set, particularly when plaintiffs understood that controlling their access to religious expression was a way for some officers to enact perceived religious and/or racial biases.<sup>816</sup> The case of *Mease v. Washington* is an example of how a prisoner's religion, an officer's discretion, and punishment overlap. Mr. Mease, a member of the Nation of Islam who was a state prisoner in Michigan, refused an officer's order to break his fast during Ramadan to take medication for a scabies outbreak at the facility, explaining that he would need to take it after sunset to adhere to his religious beliefs. According to Mr. Mease, his request for this religious accommodation led to officer retaliation in the form of being moved to administrative segregation, confiscation of his religious objects, losing his job, and multiple false misconduct tickets. The Court dismissed Mr. Mease's RLUIPA claims because he had been transferred to another facility so could not receive injunctive relief and was not eligible for monetary relief under RLUIPA.<sup>817</sup>

The substantial number of dismissals in this data set demonstrate that it is common for plaintiffs to misunderstand RLUIPA, particularly *pro se* plaintiffs. Though *pro se* complaints "must be held to less stringent standards than formal pleadings drafted by lawyers,"<sup>818</sup> it is evident that not having legal training is a significant impediment to bringing successful suits.<sup>819</sup> In some claims that could lead to a straightforward religious accommodation, RLUIPA claims were dismissed on technical grounds, such as only asking for monetary damages or bringing individual instead of official capacity claims. For example, a Muslim woman who was incarcerated in an Ohio jail was not

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<sup>812</sup> Joshua L. Johnston, "A House Built on Sand: The Qualified Immunity Case for Keeping the Smith Doctrine," *Mary's LJ*, 2023, vol. 54,

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/stmlj54&div=29&id=&page=>.

<sup>813</sup> See e.g., Nicole B. Godfrey "The Religious Freedom Restoration Act, Federal Prison Officials, and the Doctrinal Dinosaur of Qualified Immunity," *NYUL Rev.*, 2023, vol. 98, <https://www.nyulawreview.org/wp-content/uploads/2023/10/98-NYU-L-Rev-1045.pdf>.

<sup>814</sup> Jeremy Travis, Bruce Western, and F. Stevens Redburn, "The Growth of Incarceration in The United States: Exploring Causes and Consequences," National Research Council of the National Academies, 2014, <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

<sup>815</sup> John J. Gibbons and Nicholas de B. Katzenbach, "Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons," *Wash. UJL & Pol'y*, 2006, vol. 22, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wajlp22&div=27&id=&page=>.

<sup>816</sup> There is overlap between race and religious groups in prison (see Chapter 1). See e.g., *Huapaya v. Davis*. The plaintiff alleged that correctional officers stopped him from attending Jumah services because he is White and most Muslims in the facility were African American.

<sup>817</sup> *Mease v. Washington*, No. 2:20-cv-176 (W.D. Mich. May 13, 2021).

<sup>818</sup> *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

<sup>819</sup> Abel, "Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries."

allowed to wear a hijab, which violated her sincerely held religious belief. She alleged that officers punished her in various ways for sometimes wearing a makeshift hijab made from a bedsheet, including by cutting off access to the phones. Because her only RLUIPA claim sought monetary damages, that claim was dismissed.<sup>820</sup>

One reason why so many prisoners act on their own behalf is because low socioeconomic status predicts incarceration,<sup>821</sup> so many prisoners cannot afford lawyers.<sup>822</sup> Law libraries have become a critical, though flawed, pathway for prisoners to access legal research and eventually the court system by acting on their own behalf.<sup>823</sup> Though the Supreme Court guaranteed prisoners “adequate law libraries or adequate assistance from persons trained in the law”<sup>824</sup> in 1977, there are serious restrictions on prisoners’ access to a law library in some facilities.<sup>825</sup> Moreover, the Supreme Court’s finding in *Lewis v. Casey*<sup>826</sup> requires prisoners show “actual injury” when bringing suit for law library issues, which weakened facility commitment to law libraries.<sup>827</sup> There has always been a gap between theoretical access and true access to the law for prisoners without legal training.<sup>828</sup> In the 21<sup>st</sup> century the vast majority of law libraries in carceral facilities have transitioned to exclusively electronic resources, which has largely exacerbated access issues as most prisoners do not have strong technological training.<sup>829</sup>

It should be noted that some cases with RLUIPA claims are insufficient in ways that seem to go beyond a lack of formal legal training. Some of these seem to intentionally use religion as a façade for achieving other aims. For instance, there are several suits in the data set where prisoners used religion as a way to further White supremacist ideologies.<sup>830</sup> Other cases are written so outside of

<sup>820</sup> *Chapman v. Franklin Cnty. Sheriff*, No. 2:22-CV-2524, (S.D. Ohio July 22, 2022).

<sup>821</sup> Travis, Western, and Redburn, “The Growth of Incarceration in The United States.”

<sup>822</sup> Kelsey Brown, “How Twenty-First Century Technology Affects Inmates’ Access to Prison Law Libraries in the United States Prison System,” *Marq. Benefits & Soc. Welfare L. Rev.*, 2020, vol. 21, <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1064&context=benefits>.

<sup>823</sup> Abel, “Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries.”

<sup>824</sup> *Bounds v. Smith*, 430 U.S. 813 (1977).

<sup>825</sup> Dale Chapell, “Are Prison Law Libraries Adequate?” *Prison Legal News*, Apr. 2020,

<https://www.prisonlegalnews.org/news/2020/apr/1/are-prison-law-libraries-adequate/#:~:text=Over%2040%20years%20ago%2C%20the,persons%20trained%20in%20the%20law.%E2%80%9D>.

<sup>826</sup> *Lewis v. Casey*, 518 U.S. 343.

<sup>827</sup> Chapell, “Are Prison Law Libraries Adequate?”

<sup>828</sup> Abel, “Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries.”

<sup>829</sup> Brown, “How Twenty-First Century Technology Affects Inmates’ Access to Prison Law Libraries”; Abel, “Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries.” See also Stephen Raheer and Andrea Fenster, “A Tale of Two Technologies: Why “Digital” Doesn’t Always Mean “Better” for Prison Law Libraries,” Prison Policy Initiative, Oct. 28, 2020, <https://www.prisonpolicy.org/blog/2020/10/28/digital-law-libraries/#:~:text=These%20legal%20resources%20are%20essential,of%20running%20a%20physical%20library>.

<sup>830</sup> See e.g., *Lowery v. Gonzales*, No. 23-10366 (5th Cir. Dec. 6, 2023). The plaintiff is a member of Church of Jesus Christ Christian who initiated his suit because “his religious beliefs include a requirement that he be segregated from all non-white races.” The Court dismissed his case both because he did not show how racial integration burdened his religion and because the government has a compelling interest in prohibiting discrimination, including racial segregation.

the legal standard that the Court mentions the difficulty of understanding them.<sup>831</sup> A prisoner who brings multiple cases that are deemed frivolous can be treated as an “abusive litigant,”<sup>832</sup> which negatively impacts their ability to be taken seriously by the Court.

While this type of lawsuit is what the PLRA was designed to address, even poorly constructed lawsuits brought by incarcerated plaintiffs have some potential to benefit individuals and the legal system more generally. For individuals, access to law libraries that allow prisoners to participate and represent their interests in the criminal legal system increases their perceptions of its legitimacy.<sup>833</sup> For the larger system, some RLUIPA cases lead to changes in prison policies that facilitate the exercise of religious freedom. For instance, Maryland’s Department of Public Safety and Correctional Services (DPSCS) banned all maximum-security prisoners from participating in congregate ceremonies. A maximum-security prisoner who was a member of the Native American Faith Group sued because he was denied access to participating in a sweat lodge ceremony. As a result of his lawsuit, DPSCS changed their policy from a categorical prohibition to a case-by-case analysis of whether a prisoner’s participation in congregate services would introduce a safety risk regardless of their security classification.<sup>834</sup>

Courts generally require prisoners to exhaust the grievance process within their institution before pursuing legal action against the prison.<sup>835</sup> Because the lawsuits analyzed in this chapter likely began as grievances filed at a state or local facility, it is unsurprising that the trends in the court cases are similar to those in the grievances filed at the sampled institutions discussed in Chapter 2.<sup>836</sup> For example, the finding that most lawsuits were brought by non-Christian plaintiffs, with Muslims making up the largest share, reflects similar trends in the grievances filed in the sampled institutions. The bases of complaints are also similar for lawsuits and grievances, with most lawsuits and grievances relating to either religious diets or the ability to practice religion. The most common reasons prisons provided for denying grievances were safety/security and the prisoner’s procedural failures, which are also reflected in the RLUIPA case analysis. Finally, trends in the outcomes of the lawsuits are similar to trends in the outcomes of grievances, with the prisoner prevailing in a small proportion of either the grievances or lawsuits.

There are many more prisoner cases with a RLUIPA claim in 2017-2023 compared to 2001-2006, the period of the Commission’s 2008 study. While the study period is longer for this report, 843 unique cases with settled RLUIPA claim(s) is substantially higher than the 250 cases with a RLUIPA claim in the original study. Some of the difference in number of cases could be driven by

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<sup>831</sup> See e.g., *Dees v. Lamar*. Even after amending his initial complaint for being incomprehensible, he raised unrelated claims against unrelated defendants. The Court dismissed all of his claims.

<sup>832</sup> See e.g., *Daker v. Bryson*, 5:15-CV-88-CAR-CHW, 2017 WL 11427081, at \*5 (M.D.).

<sup>833</sup> Brown, “How Twenty-First Century Technology Affects Inmates’ Access to Prison Law Libraries.”

<sup>834</sup> *Pevia v. Green*, 695 F. Supp. 3d 628 (D. Md. 2023).

<sup>835</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant part at 42 U.S.C. § 1997e).

<sup>836</sup> Only six of the 14 facilities that responded to the Commission’s interrogatories are state prisons. State prisoners can file RLUIPA claims, and federal prisoners can file RFRA claims. The grievance data provided by facilities can illuminate similarities and differences to RLUIPA cases, but are not generalizable.

different strategies to find and identify RLUIPA cases,<sup>837</sup> but these results demonstrate that there are more cases with RLUIPA claims now compared to shortly after RLUIPA was passed in 2000. This is consistent with a finding in the 2008 report that RLUIPA claim cases were increasing over time.

The overall findings of this study are similar to those of the 2008 report. From 2017-2023, most prisoner cases with a settled RLUIPA claim were brought by non-Christian male prisoners, most of them were brought *pro se*, and it was rare for the plaintiff to prevail partially or entirely. We do not conduct tests of statistical significance to compare these results to those of the Commission's 2008 study, but there is no indication from these results that *Holt* substantially increased the share of cases where the plaintiff prevailed, either for the entire case or the RLUIPA claim(s) specifically. While prisoners might be able to bring more suits now based on RLUIPA, they are not more successful in getting their religious accommodations met using RLUIPA.

The finding that a plurality of RLUIPA cases decided in this period were brought by Muslim prisoners (38.9%) suggests that this group continues to face discrimination in carceral facilities. Though increasing in number,<sup>838</sup> Muslims in the U.S. are still viewed as a religious outgroup.<sup>839</sup> The stereotype that Muslims are potentially dangerous and prone to radicalization<sup>840</sup> might be particularly salient in prisons because of the history of American sects of Islam that began in African American communities and grew in prisons (see Chapter 1).<sup>841</sup> Moreover, Muslim prisoners are also likely to belong to marginalized racial groups. While the plaintiff's race was not mentioned in most cases in this data set (94.5%), there is evidence that most Muslim prisoners in the U.S. are Black.<sup>842</sup> Conversely, most prison staff,<sup>843</sup> including chaplains,<sup>844</sup> are White. This means that White prisoners and Christian prisoners are part of dominant social groups whose norms

<sup>837</sup> U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison*, Sept. 2008, p. 79.

<sup>838</sup> Pew Research Center, "America's Changing Religious Landscape," May 12, 2015, <https://www.pewresearch.org/wp-content/uploads/sites/20/2015/05/RLS-08-26-full-report.pdf>.

<sup>839</sup> Sheryll Cashin, "To Be Muslim or Muslim-Looking in America: A Comparative Exploration of Racial and Religious Prejudice in the 21st Century," *Duke FL & Soc. Change*, 2010, vol. 2, <https://heionline.org/HOL/LandingPage?handle=hein.journals/dukef2&div=8&id=&page=>.

<sup>840</sup> Louise Cainkar and Saher Selod, "Review of Race Scholarship and the War on Terror," *Sociology of Race and Ethnicity*, 2018, vol. 4, no. 2, <https://journals.sagepub.com/doi/abs/10.1177/2332649218762808>.

<sup>841</sup> Zoe Colley, "'All America is a Prison': The Nation of Islam and the Politicization of African American Prisoners, 1955-1965," *Journal of American Studies*, 2014, vol. 48, no. 2, <https://www.cambridge.org/core/journals/journal-of-american-studies/article/abs/all-america-is-a-prison-the-nation-of-islam-and-the-politicization-of-african-american-prisoners-19551965/5C3C1A175048A5088393DACD8277F472>; Mark S. Hamm, "Terrorist Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups," National Institute of Justice, Dec. 2007, <https://www.ojp.gov/pdffiles1/nij/grants/220957.pdf>; Garrett Felber, "'Shades of Mississippi': The Nation of Islam's Prison Organizing, the Carceral State, and the Black Freedom Struggle," *Journal of American History*, 2018, vol. 105, no. 1, <https://academic.oup.com/jah/article-abstract/105/1/71/5000190>.

<sup>842</sup> See e.g., Van Baalen, "From 'Black Muslim' to Global Islam."

<sup>843</sup> Federal Bureau of Prisons, "Staff Ethnicity/Race," Updated Sept. 7, 2024, [https://www.bop.gov/about/statistics/statistics\\_staff\\_ethnicity\\_race.jsp](https://www.bop.gov/about/statistics/statistics_staff_ethnicity_race.jsp).

<sup>844</sup> Pew Research Center, "Religion in Prisons – A 50-State Survey of Prison Chaplains," March 22, 2012, <https://www.pewresearch.org/religion/2012/03/22/prison-chaplains-exec/>.

are treated as the default,<sup>845</sup> which is likely one reason why Muslim prisoners have the most cases with RLUIPA claims. As a fundamental right in the U.S.,<sup>846</sup> it is critical that religious freedom be protected for all groups, even those marginalized by religion, race, and incarceration.

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<sup>845</sup> Felicia Pratto and Andrew L. Stewart, “Group Dominance and the Half-Blindness of Privilege,” *Journal of Social Issues*, 2012, vol. 68, no. 1, <https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-4560.2011.01734.x>.

<sup>846</sup> Elyse Slabaugh, “Dignity, Deference, and Discrimination: An Analysis of Religious Freedom in America's Prisons,” *BYU L. Rev.*, 2023, vol. 49, <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3468&context=lawreview>.

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## Statement of Commissioner Gail Heriot

This may be an appropriate time to put in a good word for the Prison Litigation Reform Act of 1995 (“PLRA”).

In 1995, Members of Congress were concerned that prisoners were bringing far too many frivolous or otherwise ill-considered lawsuits. PLRA was passed to discourage that behavior. Among other things, it provides that, before such a federal lawsuit can be brought, prison officials must be given the opportunity to resolve prisoner complaints through an administrative process. This relatively non-controversial requirement helps ensure that disputes are resolved more efficiently.

PLRA also prohibits courts from awarding money damages for mental or emotional injury in the absence of a physical injury—a somewhat more controversial provision, but perhaps not overwhelmingly so. In the context of a religious liberty lawsuit, that will ordinarily mean a court is limited to issuing an injunction. For example, an adherent to a traditional Native American religion could bring a lawsuit asking the court for an injunction requiring prison officials to provide him with a sweat lodge. But damages for purely emotional harm arising out of the past failure to provide a sweat lodge would not be available. This prohibition helps ensure that, when a lawsuit is brought, it will be based on a prisoner’s sincere desire for religious liberty rather than a belief that his lawsuit can make him rich.

Occasionally I hear from well-meaning people who advocate repealing PLRA altogether or creating exceptions to these requirements. They want super-duper legal protections to apply to lawsuits to enforce religious liberties—including money awards for hurt feelings and other emotional distress. But here, as everywhere, balance is necessary. I believe PLRA helps provide that balance and should be retained.

Don’t get me wrong. Laws that protect the ability of prisoners to worship freely are necessary and important. Fostering their spiritual lives is a win for everyone. In years past, I have personally participated in religious services at R.J. Donovan Correctional Facility in San Diego and found them to be a moving experience. It was obvious from the faces of the prisoners that they felt the same way.

But it’s important to remember that this is a tricky area of both the law and human relations. Prisoners are not always reasonable in their demands and not always acting in good faith. When it’s too easy to bring a lawsuit and the incentives to abuse the system are too great, things can get out of hand. I can’t say that PLRA will strike the perfect balance in every single case—no law ever could—but I believe it’s had a salutary effect. We’re better off with it than without it.

Prison officials have to make a lot of judgment calls in this area. They are not always easy. Under the First Amendment, prison officials obviously cannot play favorites between Methodists and Roman Catholics, Christians and Buddhists, or Muslims and Jews. That's clear enough—but what it means in real world situations can be far less clear. Suppose, for example, one religion has strict dietary rules and rules of proper dress, all of which costs the prison quite a bit to provide. Another religion has no such mandatory rules, but has many non-mandatory, but much-beloved, traditions that would be just as expensive to provide and mean a lot to the faithful. How should that be budgeted when the funds are insufficient even to give the adherents of the first religion the things that are required? On the one hand, it seems fair to give mandatory practices some level of priority over non-mandatory ones. On the other, it seems unfair to penalize the adherents to the religion that does not impose mandatory practices.

I honestly have no idea how to allocate limited resources in these situations. All I know is that resources are always limited and that there is no way to please everyone. One way to bring down the temperature to make sure that the disputes don't enter the courts prematurely and that prisoners don't perceive lawsuits as potentially lucrative. PLRA does that.

The problems that can arise with non-traditional religions are even trickier. Under the First Amendment, prison officials cannot play favorites between long-standing religions and new-fangled ones. They cannot simply laugh it off if a prisoner professes to embrace Raëlism (which posits that humankind was created by extraterrestrials) or Jediism (which ... well ... you probably can figure out if you are a sci-fi movie fan). At some point in its history, every religion was a new one.

Presumably if a prisoner purports to profess a religion that seems wholly fantastical, prison officials can question his sincerity. But they can't question the sincerity of those who profess newly invented religions unless they are also willing to question the sincerity of those who profess traditional religions. That can get prison officials into some very awkward positions. There are plenty of individuals who purport to be members of mainstream religions who are insincere. But no one with the gift of wisdom would relish the task of sorting out the believers from the unbelievers. In the absence of clear signs to the contrary, the tendency is to assume sincerity, and for the most part that's probably the right approach, especially given how fluid the line between belief and non-belief can be.

There are two things that make the enforcement of religious liberties in the prison context special. First, is the obvious one I already alluded to: Prisoners are in prison for a reason. They did not play by the rules prior to becoming prisoners, and many do not play by the rules once they become prisoners. And they have a lot of free time on their hands. There is a long history of prisoners taking advantage of laws and policies that are aimed at fostering their religious liberty.

The most amusing example may be the long-standing “fight” over the Church of the New Song. Note that the acronym for the Church of the New Song is CONS. (I doubt that was an accident.) Established over half a century ago, CONS claimed as a major tenet that prisoners should have steak and wine at dinner. Very funny, guys.

Less amusing is the rise of paganism inspired by Norse mythology in prison. When the Commission looked into that belief in 2008, it found that it was sometimes thinly disguised white supremacy. As I wrote in my Commissioner Statement then:

Wotanists worship—or purport to worship—the ancient Norse gods, chief among them Wotan (or Odin). In fact, Wotanists tend to be white supremacists, whose taste in literature runs to racist screeds and violent rants. Prison officials, of course, are not required to take a prisoner’s word for it when he claims adherence to a particular faith and argues that his free exercise of that faith is being substantially burdened by prison policies. But they must be even-handed in how they evaluate the sincerity of those who purport to traditional and non-traditional religions. This can lead to a “grievance fatigue” that may result in a tendency to err on the side of accommodation (although the Commission does not purport to have found particular instances of over-accommodation).

Surprisingly (at least to me), we were presented with evidence at the earlier briefing that other forms of Odinism/Asatru—ones that haven’t been found to emphasize white supremacy—are considered quite normal in prison. For example, the National Institute of Corrections’ reference manual on inmate religious beliefs and practices listed “Odinism/Asatru” along with “Protestant Christianity,” “Buddhism,” “Islam,” and other traditional faiths as religions that prison authorities must deal with on a fairly regular basis. Among the long list of religious items that such a congregation is permitted to have is “Thor’s Hammer.”

The second thing to remember about how prison context differs from other contexts is that federal policy requires the prison authorities not just to tolerate the exercise of religion, but to subsidize it. You can see the difference that makes in the Church of the New Song case (and maybe in the case of some of the other unusual religions mentioned in this statement). If the prisoners were having to pay for their own steak and wine, they would have had different attitude. On the outside, where individuals ordinarily have to finance their own religious exercise, they are much less likely to purport to profess a religion just to annoy or oppress. Doing so doesn’t help them put a claim on the state’s resources; rather, it takes away from their own resources. The prison context is thus likely to generate a different set of disputes than the non-prison context.

What’s the bottom line here? I’m not sure there can be one other than to point out that PLRA puts a mild brake on prison litigation, including that brought to enforce religious liberty. I wouldn’t want to be the one to remove that brake.

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## Statement of Commissioner Glenn D. Magpantay

This report is of profound significance, and I commend Commissioner Peter Kirsanow for his leadership in spearheading this report on protecting the religious rights of incarcerated individuals. His dedication to revisiting and expanding upon the Commission's landmark 2008 statutory enforcement report, *Enforcing Religious Freedom in Prison*, demonstrates an unwavering commitment to safeguarding First Amendment rights for those in our prison system.

The free exercise of religion, a core pillar of American society protected by the First Amendment, is fundamental to our nation's identity. Religious texts like the Bible, Torah, and Qur'an are essential to the practice of faith for the half of Americans<sup>847</sup> who identify as religious, including myself. Yet despite our constitutional promise of religious freedom for all, millions of incarcerated citizens are denied access to these sacred texts, effectively preventing them from practicing their faith while in jail.

I am proud that the U.S. Commission on Civil Rights investigated the religious freedom of incarcerated individuals from 2017 to 2023. We found numerous barriers, but the most disturbing were the barriers preventing incarcerated individuals from obtaining religious texts while in prison, a First Amendment violation.

PEN America, a non-profit in pursuit of civil liberties through literacy, provided insightful written comments about restrictions on religious texts in prisons across nation.<sup>848</sup> Their research revealed that prison chaplains often wielded capricious discretion in banning religious materials, resulting in what appears to be systematic bias favoring of Christian material over those of religious minorities. At the Tennessee Trousdale Turner Correctional Facility in 2022, the Qur'an, Torah, Bhagavad Gita and Norse mythology books were banned while the Bible remained freely available.<sup>849</sup>

A significant number of prisoners are Muslim or convert to Islam during their incarceration. Religion in general, and Islam in particular, facilitate rehabilitation. The Qur'an embodies teachings of compassion, kindness, and forgiveness (both forgiving others and seeking forgiveness). Yet, in one incident, an officer deliberately stomped on an inmate's Qur'an, leaving

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<sup>847</sup> Jeffrey M. Jones, *In U.S., 47% Identify as Religious, 33% as Spiritual*, GALLUP (Sept. 22, 2023), <https://news.gallup.com/poll/511133/identify-religious-spiritual.aspx#:~:text=Americans%20description%20of%20their%20beliefs,religious%20and%2018%25%20as%20neither.>

<sup>848</sup> Challenges in Accessing Religious Texts in America's Prisons," Statement for the United States Commission on Civil Rights, PEN AMERICA (June 2024).

<sup>849</sup> Liam Adams, *Trousdale Turner didn't accommodate Muslim inmates, briefly banned Quran, documents reveal*, THE TENNESSEAN, (May 18, 2022, 1:48 PM), [https://www.tennessean.com/story/news/religion/2022/05/18/trousdale-turner-tennessee-prison-muslim-inmates-quran-banned/9735400002/.](https://www.tennessean.com/story/news/religion/2022/05/18/trousdale-turner-tennessee-prison-muslim-inmates-quran-banned/9735400002/)

a visible boot print after the prisoner retrieved it from the garbage.<sup>850</sup> Though Muslim prisoners are overrepresented in state prisons<sup>851</sup>—in one facility, 17 prisoners were forced to share a single copy of the Qur'an. In 2022, the Michigan Department of Corrections effectively banned the Qur'an by prohibiting foreign language books,<sup>852</sup> since the text is traditionally written in Arabic. These obstacles of access, desecration and scarcity are intolerable.

While Christian texts generally faced fewer restrictions, they are not entirely exempt—inmates have been denied access to materials like the *Colored Pencil Painting Bible*<sup>853</sup> and *Our Daily Bread*, a popular Christian devotional.<sup>854</sup>

Prison officials often justify these religious restrictions under the guise of maintaining institutional safety and security. While a reasonable goal, such prohibitions can be overly broad. It thereby prevents incarcerated individuals from practicing essential tenets of their faith—rights explicitly guaranteed by the First Amendment.

Moreover, these restrictions directly violate the federal Religious Land Use and Institutionalized Persons Act (RLUIPA),<sup>855</sup> which was specifically designed to protect incarcerated individuals from religious discrimination and ensure their right to practice their faith within prison walls.

At least 70% of the prison population practices a form of religion.<sup>856</sup> Faith, devotion, and worship serves as critical avenues for "prosocial connections<sup>857</sup> and social support networks, making individuals less likely to recidivate."<sup>858</sup> Through religious connections, recently released prisoners can reintegrate. They can build and repair relationships, find jobs, and establish vital support systems as they transition back into their communities. This support is enhanced by access to

<sup>850</sup> Tasmiha Khan, *The many ways Muslim prisoners are denied religious rights in prison*, VOX (Feb. 15, 2021, 12:00 PM), <https://www.vox.com/first-person/22280568/prison-muslim-prisoners-quran-religious-freedom-jake-angeli-q-shaman>.

<sup>851</sup> Leila Fadel, *Muslims Over-Represented in State Prisons, Report Finds*, NPR, (July 25, 2019, 1:25 PM), <https://www.npr.org/2019/07/25/745226402/muslims-over-represented-in-state-prisons-report-finds>.

<sup>852</sup> <sup>852</sup>Michelle Jokisch Polo, *ACLU wants the state Department of Corrections to allow inmates access to foreign language books*, WKAR PUB. MEDIA, (Sep. 22, 2022, 10:51 AM), <https://www.wkar.org/wkar-news/2022-09-22/aclu-wants-the-state-department-of-corrections-to-allow-inmates-access-to-foreign-language-books>.

<sup>853</sup> *Reading Between the Bars*, PEN AMERICA (Oct. 25, 2023), <https://pen.org/report/reading-between-the-bars/>.

<sup>854</sup> *Religious Land Use and Institutionalized Persons Act*, U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION (JULY 22, 2016), <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act-0>, (Examples of our Work with People Seeking the Freedom to Worship in Institutions).

<sup>855</sup> *Religious Land Use and Institutionalized Persons Act*, 42 U.S.C. §2000cc (2000).

<sup>856</sup> U.S. DEP'T OF JUSTICE, OFF. OF THE INSPECTOR GEN., AUDIT OF THE FEDERAL BUREAU OF PRISONS' MANAGEMENT AND OVERSIGHT OF ITS CHAPLAINCY SERVICES PROGRAM 21-091 (2021), <https://oig.justice.gov/sites/default/files/reports/21-091.pdf>.

<sup>857</sup> Prosocial connections are behaviors that are intended to help other people. They can be actions that are "characterized by a concern for the rights, feelings, and welfare of other people.", Kendra Cherry, MSED, *The Basics of Prosocial Behavior*, Very Well Mind (Jan. 27, 2025), <https://www.verywellmind.com/what-is-prosocial-behavior-2795479#:~:text=They%20help%20us%20forge%20connections,and%20welfare%20of%20other%20people>.

<sup>858</sup> *Supra* note 10.

religious texts and other reading materials. According to U.S. Department of Education research, exposure to books in prison—particularly religious texts—reduces recidivism by increasing education, intelligence, and empathy.<sup>859</sup> Beyond their educational value, religious texts play a unique role in helping incarcerated individuals confront shame, build personal dignity, and develop the emotional tools needed for successful rehabilitation.

I am a civil rights lawyer and a devout practicing Roman Catholic. I believe that my Lord sends his Holy Spirit upon me with the blessing of conviction, strength, and wisdom. I strive to follow Jesus and continue his work of love, forgiveness, and justice here on earth. My success and resilience derive from the Holy Spirit.

We have a moral and constitutional obligation to protect the religious rights of all Americans, including those who are incarcerated. The arbitrary banning of religious texts violates the First Amendment and strikes at the heart of religious freedom.

Prison facilities and jailers must allow prisoners to practice their faith during their incarceration. Equitable policies must ensure that all inmates have equal access to religious texts, replacing discriminatory practices with solutions that honor both security needs and constitutional rights.

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<sup>859</sup> *Justice and Education Departments Announce New Research Showing Prison Education Reduces Recidivism, Saves Money, Improves Employment*, U.S. DEP'T OF JUSTICE (Aug. 22, 2013), <https://www.justice.gov/archives/opa/pr/justice-and-education-departments-announce-new-research-showing-prison-education-reduces>.

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## Statement of Vice Chair Nourse

The Commission's report, *Enforcing Religious Freedoms in Prison 2017-2023*, updates the prior Commission report on the ability of prisoners to access religious materials and practice their religion freely. We know that religion can serve rehabilitative purposes. I want to thank Commissioner Kirsanow and his special assistant, Carissa Mulder, along with the OCRE staff led by Dr. Marik Xavier-Brier, for their work on the report.

This report finds that people who are incarcerated in the United States face significant barriers to exercising their religion, whatever religion that may be, and that COVID exacerbated the availability of regular services. It also finds, consistent with our earlier report, that non-Christian prisoners experience a disproportionate restriction on the free practice of their religion within carceral settings. This particular finding, while notable, is based on a smaller than optimal sample, given that a number of prisons failed to respond to the Commission's requests. The report also studied 843 reported free exercise statutory cases, and found that the vast majority of these claims, too, were made by non-Christian minority prisoners.

One significant difference between the last report and this report is the changing and complex legal landscape for constitutional free exercise claims. Given the complexity of this issue, and with no intent to contradict the underlying report, I offer the following summary:

Since the last report, the Supreme Court has decided several prominent religion clause cases, to increase protection of religious free exercise for all Americans. See e.g., *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) [hereinafter *Fulton*]; *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018). Long before these cases, when prisoners made claims, the constitutional analysis proceeded based on a general framework set forth in *Turner v. Safley*, 482 U.S. 78, a 1978 case dealing with inmate marriage and correspondence, which was highly deferential to prisons. *Turner's* framework was applied to a religious freedom claim in *O'Lone v. Estates of Shabazz*, 482 U.S. 342 (1987). The last report, and some witnesses for this one, relied upon that framework. Courts of appeal, as well, continue to use that framework, but it is in my opinion that it is outdated, and has been superseded by more recent Supreme Court decisions,<sup>860</sup> that should be applied when those prisoners are bringing constitutional claims, under 42 U.S.C. sec. 1983,<sup>861</sup> which are more highly protective of religious exercise.

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<sup>860</sup> *Firewalker-Fields v. Lee*, 58 F.4th 104, 114 n.2 (4th Cir. 2023) (arguing that the court's own analysis, which relied upon *Turner* and *Shabazz*) was out of date because it did not follow *Smith* and *Fulton*).

<sup>861</sup> This statute allows prisoners to bring claims for violation of their constitutional rights. It is a separate statute from the ones on which this report focuses, RIUPLA and RFRA.

Today, there remain significant questions about the scope of the free exercise right for all Americans, including prisoners. Some Supreme Court Justices have indicated that they wish to add protection by overruling a key precedent, *Employment Div v. Smith*, 494 U.S. 872 (1990)[hereinafter *Smith*], but the full Court has not yet done so. In *Fulton*, Justice Alito provided a forceful opinion arguing that *Smith* had to be overruled because it did not give sufficient protection for religious rights. 593 U.S. at 545-555 (Alito, J. concurring). *Smith* held that a litigant had no free exercise claim when he was challenging a “generally applicable” rule. *Id.* at 534 (quoting *Smith*). Under *Smith*, prison safety and security regulations could not be challenged as unconstitutional if they barred free exercise as they were typically “generally applicable” rules. In *Fulton*, the Supreme Court concluded that the rule at issue was not a “generally applicable” rule because it included a number of exceptions; *Fulton* now limits *Smith* in that sense, broadening the sphere of claims that can be made against general regulations.<sup>862</sup>

That explains the status of the *constitutional* rights at issue.

Prisoners, however, have broader *statutory* rights. In part responding to *Smith*, Congress stepped in to address the issue, passing the Religious Land Use and Institutionalized Persons Act [RLUIPA]. RLUIPA allows for a statutory, as opposed to a constitutional, claim for a violation of a prisoner’s religious rights, as this report details. Under the statute, borrowing from terms applicable then to free exercise claims, it rejected the “generally applicable” rule and required the government to show a compelling interest if a practice substantially burdened a prisoner’s free exercise.

The bottom line: the legal analysis has changed since the last report on matters related to the Constitution, but the statutory right considered here, remains the same, for the vast number of persons incarcerated in state and local prisons. Prisoners may seek declaratory and injunctive relief, but not monetary damages. *See, e.g., Holt v. Hobbs*, 574 U.S. 352 (2015) (applying RLUIPA), *Ramirez v. Collier*, 595 U.S. 411 (2022) (applying RLUIPA). Federal prisoners, however, may have other avenues of relief. In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), the Supreme Court held that prisoners suing under a different statute, the Religious Freedom Restoration Act, could, in theory, obtain money damages.<sup>863</sup>

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<sup>862</sup> As the *Fulton* majority explained: “The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, because it “invite[s]” the government to decide which reasons for not complying with the policy are worthy of solicitude, *Smith*, 494 U.S. at 884, 110 S.Ct. 1595—here, at the Commissioner’s “sole discretion.” *Fulton*, 593 U.S. at 537.

<sup>863</sup> The author acknowledges, for the sake of her ethical obligations, that she signed on to an amicus brief in *Tanzin v. Tanvir* on the interpretation of RFRA, in her personal capacity as a law professor and expert, before she joined the Commission.