

No. 21-1405

In The
Supreme Court of the United States

LESTER J. SMITH,
Petitioner,

v.

TIMOTHY WARD, COMMISSIONER OF GEORGIA
DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

**BRIEF FOR PRISON SAFETY AND RELIGION
SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF
PETITIONER**

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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit erred in applying the Religious Land Use and Institutionalized Persons Act (RLUIPA) when it held that Georgia need not grant a religious accommodation offered in 39 other prison systems.

2. Whether RLUIPA allows religious accommodations to be denied based on any plausible risk to penological interests, if the government merely asserts that it chooses to take no risks.

3. Whether RLUIPA prohibits courts from granting any religious accommodation short of the full accommodation sought by a plaintiff prisoner.

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INTERESTS OF *AMICI CURIAE**

Amici curiae are academics who have researched and written extensively about the effects of religion and religious commitment on prison and prisoner well-being and on delinquency and recidivism. This case is important to *amici* because the Court's interpretation of RLUIPA could impact prisoners' access to resources and rights to religious practice that studies have indicated benefit prisons and prisoners.

Dr. Byron Johnson is Distinguished Professor of the Social Sciences at Baylor University. He is the founding director of the Baylor Institute for Studies of Religion as well as director of the Program on Prosocial Behavior. He is a leading authority on the scientific study of religion, the efficacy of faith-based organizations, and criminal justice. His recent publications have examined the impact of faith-based programs on recidivism reduction and prisoner reentry. Dr. Johnson has been the principal investigator on grants from private foundations as well as the Department of Justice, Department of Labor, Department of Defense, National Institutes of Health, and the United States Institute for Peace. He is the author of more than 250 articles and a number of books including *More God, Less Crime: Why Faith Matters and How It Could*

* Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties were timely notified pursuant to Rule 37.2(a) of *amici curiae*'s intent to file this brief, and all parties have provided written consent to its filing.

Matter More (2011) and *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (2016).

Dr. Michael Hallett is a full Professor in the Department of Criminology & Criminal Justice at the University of North Florida. Dr. Hallett has published several books, and his research appears in numerous additional books and journals including *Punishment & Society*, *Journal of Offender Rehabilitation*, *Critical Criminology* and others. Dr. Hallett focuses his research on corrections and social inequality; punishment and society; and religion and crime. Dr. Hallett designed Jacksonville Sheriff's Office Pretrial Services Unit (drug treatment/diversion) and has completed extensive work with local organizations including Prisoners of Christ, Operation New Hope, Hubbard House, the City of Jacksonville, JCCI, and others. Most recently, Dr. Hallett led a three-year study at America's largest maximum-security prison, the Louisiana State Penitentiary, known as "Angola," exploring the religious lives of long-term inmates. Dr. Hallett also serves as a Senior Research Fellow at Baylor University's Institute for Studies of Religion.

SUMMARY OF ARGUMENT

A vast body of research demonstrates that prisoner involvement in religious practice provides a host of benefits for prisoners, prisons, and society in general. Additionally, research establishes that fair treatment of prisoners, particularly those who perceive themselves to be of minority faiths, also promotes prison safety and well-being and leads to increased prisoner respect for correctional authority. In several respects, these mutually supporting bodies of research highlight the importance of RLUIPA's prisoner protections, show that religious freedom and prison safety are not always in competition, and underscore the need for this Court's review of the Eleventh Circuit's decision below.

First, the wisdom of RLUIPA is vindicated by research from the fields of sociology and criminology supporting the conclusion that prisoners' lives are improved by religious practice in ways that are also beneficial to society at large. Religious practice can positively transform prisoners' lives and identities. Religious observance can improve recidivism rates and peaceful behavior. And religious institutions, inside and outside of prisons, play a vital support role in prisoners' and prisons' well-being.

Accommodating individual religious practice can have a demonstrably positive effect on individual adjustment and rehabilitation and, as a result, on the overall prison security environment. Short-sighted and unsupported policies that impede individual religious practice in the name of prison security are

more likely to have the opposite effect. In *amici's* understanding of the best sociological data, allowing latitude in prisoner religious exercise meaningfully contributes to the prison security environment rather than harms prison security.

Second, perceptions of fairness and legitimacy play a critical role in supporting prison security. Because every prison requires the cooperation of its incarcerated inhabitants to maintain a stable environment, fairness in the exercise of prison authority promotes legitimacy and encourages self-regulation of the prisoners' own behavior. In this respect, current sociological and penological research suggests that policies like the GDOC policy at issue here may ultimately undermine prison security, even if they may be intended to promote it.

Numerous studies have shown that prisoner perceptions of fairness in both approach and outcome have a profound impact on overall social order within prisons. *Amici* believe this research suggests that, where prisoners see institutional policies as fair (for instance, by treating Muslim prisoners on equal footing with Christian prisoners), they are more likely to obey those policies and to view their issuers as legitimate sources of authority. This data suggests that prison security is harmed by a prison rulemaking process that prisoners, especially prisoners of minority faiths, reasonably understand to be arbitrary and unfair. These fairness considerations mean that policies like GDOC's may as well undermine prison security as promote it.

ARGUMENT

This petition asks the Court to weigh in on the appropriate level of deference to be afforded to prison officials in determining whether to accommodate one of their prisoner's sincere religious beliefs. That is an important issue, and one that has often been seen as involving two diametrically opposed goals: promoting prisoners' religious liberty and promoting prison security. But *amici* respectfully submit that this dichotomy is largely illusory. Two mutually supportive bodies of sociological and penological research show on the one hand that promoting prisoner's religious liberty can also promote the goal of prison security, and on the other hand that restricting religious liberty in ways seen to be arbitrary and unfair can undermine that goal. The Court should therefore review to Eleventh Circuit's decision and clarify that concerns about prison security do not support reflexive deference to prison policies that restrict religious practice.

I. Robust Religious Practice Benefits Prisoners and Prisons.

The wisdom of RLUIPA is vindicated by a vast body research from the fields of sociology and criminology supporting the conclusion that prisoners' lives are improved by religious practice. Religious practice can positively transform prisoners' lives and identities. Religious observance can improve recidivism rates and peaceful behavior. And religious institutions, inside and outside of prisons, play a vital support role in prisoners' and prisons' well-being.

Accommodating individual religious practice can have a demonstrably positive effect on individual adjustment and rehabilitation and, as a result, on the overall prison security environment. Short-sighted and unsupported policies that impede individual religious practice in the name of prison security are more likely to have the opposite effect. Based on the best sociological data available, *amici* submit that allowing latitude in prisoner religious exercise meaningfully contributes to the prison security environment rather than harms prison security.

A. *Religion Can Positively Transform Prisoners' Lives and Identities.*

Evidence suggests that religion can contribute to offender rehabilitation by providing a narrative for a new identity and by offering a source of meaning and purpose in life that also fosters virtues among the incarcerated.

For example, in a two-year post-release study, Johnson and Larson found that offenders who participated in a faith-based prison program and made a successful transition back to society were characterized by a new identity, commitment to prosocial norms and virtues, a new sense of meaning in life, as well as finding a purpose in a generative goal.¹ Similarly, based on 75 life story interviews with

¹ B. Johnson & D. Larson, *The InnerChange Freedom Initiative: A Preliminary Evaluation of a Faith-Based Prison Program*, Center for Research on Religion and Urban Civil Society (2003),

prisoner “converts,” a 2006 study found religious conversion led prisoners to develop a self-narrative that: (1) “[c]reates a new social identity to replace the label of prisoner or criminal”; (2) “[i]mbues the experience of imprisonment with purpose and meaning”; (3) “[e]mpowers the largely powerless prisoner by turning him into an agent of God”; (4) “[p]rovides the prisoner with a language and framework for forgiveness”; and (5) “[a]llows a sense of control over an unknown future.”²

Upon entrance into prison, an offender’s sense of self-worth is threatened, which is likely to cause an identity crisis. For those who want to change, the crisis becomes “an opportunity for identity work,” a chance for them to rewrite their narrative.³ Religion can help an individual write a narrative that allows a new start in life built on a new self. Identity transformation via religion is partly a cognitive process involving a change in self-concept and worldview.

One sociological theory posits that four types of “cognitive transformations” are necessary for an individual’s move away from crime: (1) one’s openness to change (a general cognitive readiness for change);

https://media4.manhattan-institute.org/pdf/crrucs_inner-change.pdf.

² S. Maruna et al., *Why Is God Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative*, 3 RESEARCH IN HUMAN DEVELOPMENT 161, 174 (2006).

³ IAN O’DONNELL, PRISONERS, SOLITUDE, AND TIME 258 (2014).

(2) one's exposure to a particular hook (or set of hooks) for change; (3) one's construction of a conventional "replacement self" or a new identity; and (4) one's perception of crime to be negative, unviable, or personally irrelevant.⁴ For Giordano and colleagues, identity transformation also involves "emotional transformations" that lead to "an increased ability to regulate their emotions in socially acceptable ways," thereby reducing the likelihood to identify oneself with negative emotions.⁵ Religion is a major hook for change among offenders, as it functions as a catalyst that provides a highly prosocial replacement self, along with positive emotions.⁶

A related theory posits that offenders are content with their criminal identity so long as it is perceived to be beneficial.⁷ However, the identity becomes problematic as offenders see "failures or dissatisfactions across many aspects of [their] life [being] linked together and attributed to the criminal

⁴ P. Giordano et al., *Gender, Crime, and Desistance: Toward a Theory of Cognitive Transformation*, 107 AM. J. SOCIOLOGY 990 (2002).

⁵ P. Giordano et al., *Emotions and Crime Over the Life Course: A Neo-Meadian Perspective on Criminal Continuity and Change*, 112 AM. J. SOCIOLOGY 1603, 1610 (2007).

⁶ P. Giordano et al., *A Life-Course Perspective on Spirituality and Desistance from Crime*, 46 CRIMINOLOGY 99 (2008).

⁷ R. Paternoster & S. Bushway, *Desistance and the Feared Self: Toward an Identity Theory of Criminal Desistance*, 99 J. CRIM. LAW & CRIMINOLOGY 1103, 1123 (2009).

identity itself.”⁸ This cognitive process, the “crystallization of discontent,” weakens offenders’ attachment to a criminal identity and motivates them to move toward a new, anti-criminal identity.⁹ The process of repentance and self-reflection involves this crystallization of discontent, as prisoners attribute failures in life to their old self and criminal identity.

A 2018 study provides evidence that religion contributed to such cognitive and emotional transformations and crystallization of discontent.¹⁰ Specifically, using survey data from 2,249 inmates at America’s largest maximum-security prison, the Louisiana State Penitentiary (sometimes referred to as Angola), researchers found religious conversion was positively related to cognitive transformation and crystallization of discontent. Inmate religiosity was also positively related to emotional transformation.¹¹

Humans have an innate need to live a meaningful life. Offenders have the same need to find meaning, even if they might feel they have failed to do

⁸ *Id.*

⁹ See R. Baumeister, *The Crystallization of Discontent in the Process of Major Life Change*, in *CAN PERSONALITY CHANGE?* (T. Heatherton & J. Weinberger, eds., 1994).

¹⁰ S. Jang et al., *Religion and Misconduct in “Angola” Prison: Conversion, Congregational Participation, Religiosity, and Self-Identities*, 35 *JUSTICE Q.* 412 (2018).

¹¹ *Id.*; see also M. HALLETT ET AL., *THE ANGOLA PRISON SEMINARY: EFFECTS OF FAITH-BASED MINISTRY ON IDENTITY TRANSFORMATION, DESISTANCE, AND REHABILITATION* (2017).

so. Incarceration likely aggravates their lack of meaning in life, as prisons are places of exclusion and isolation that negatively affect a sense of meaning. Research shows a positive association between religiosity and a sense of meaning and purpose in life among prisoners as well as people in general populations.¹² A study of male inmates at three maximum-security prisons in Texas found that inmate religiosity was positively related to perceived meaning in life.¹³ A recent study of South African prisoners also found that religious inmates were more likely to report a sense of meaning and purpose in life than their less or non-religious peers.¹⁴

A fundamental change in self-identity from a criminal to a conventional self plays a key role in rehabilitation. Religion can provide prisoners with a narrative of repentance, responsibility-taking, and redemption, which gives them hope for a new start, enabling them to replace their old criminal identity with a new conventional one. Offenders also need to

¹² See, e.g., V. Costin & V. Vignoles, *Meaning Is About Mattering: Evaluating Coherence, Purpose, and Existential Mattering as Precursors of Meaning in Life Judgments*, 118 J. PERSONALITY & SOCIAL PSYCH. 864 (2020); K. VAIL & C. ROUTLEDGE, *THE SCIENCE OF RELIGION, SPIRITUALITY, AND EXISTENTIALISM* (2020); M. Steger & P. Frazier, *Meaning in Life: One Link in the Chain from Religiousness to Well-Being*, 52 J. COUNSELING PSYCH. 574 (2005).

¹³ See Jang, *supra* n.10.

¹⁴ S. Jang et al., *The Effect of Religion on Emotional Well-Being Among Offenders in Correctional Centers of South Africa: Explanations & Gender Differences*, 38 JUSTICE Q. 1154 (2021).

understand how a lack of life goals or unmet human needs might have led them to live a life of crime. Research demonstrates that religion tends to help prisoners meet two intrinsic human needs, a sense of meaning and purpose and moral character, which in turn reduced the risk of interpersonal aggression.¹⁵

Results from analyzing data from a quasi-experimental study assessing a faith-based program called The Prisoner's Journey (TPJ), operated by Prison Fellowship International, provides evidence of the cross-cultural effect of religion on prisoner rehabilitation. The study indicated that TPJ-increased religiosity contributed to identity transformation via crystallization of discontent, enhanced the perception of meaning and purpose in life, and fostered the virtues of forgiveness, empathy, gratitude, and self-control among prisoners in Colombia, South America.¹⁶ Some of these indicators of rehabilitation, in turn, were found to reduce the risk of interpersonal aggression.¹⁷ These findings are largely consistent with previous research in Western countries.¹⁸

¹⁵ *See id.*

¹⁶ B. JOHNSON ET AL., THE RESTORATIVE PRISON: ESSAYS ON INMATE PEER MINISTRY AND PROSOCIAL CORRECTIONS (2022).

¹⁷ *Id.*

¹⁸ *See, e.g.,* Hallett, *supra* n.11; Jang, *supra* n.10; K. Kerley & H. Copes, "Keepin' My Mind Right": Identity Maintenance & Religious Social Support in the Prison Context, 53 INT. J. OFFENDER THERAPY & COMP. CRIMINOLOGY 228 (2008); S. MARUNA, MAKING

In sum, research shows that promoting religious practice among prisoners is not only a matter of religious freedom but can also help individual prisoners to flourish as human beings and to decrease the likelihood of troublesome behavior both while incarcerated and following release.

B. Religious Devotion Can Improve Recidivism Rates and Increase Peaceful Behavior.

In addition to transforming prisoner's identities, current research suggests that religious devotion can reduce recidivism and increase peaceful behavior.

A meta-analysis was performed in 2012 consisting of “the most comprehensive assessment of the religion-crime literature to date by reviewing 270 studies published between 1944 and 2010.”¹⁹ The results “confirm[ed] that the vast majority of the studies”—approximately 90 percent (244 out of 270)—“report pro-social effects of religion and religious involvement on various measures of crime and delinquency.”²⁰ The studies that were part of this

GOOD: HOW EX-CONVICTS REFORM & REBUILD THEIR LIVES (2001).

¹⁹ B. Johnson & S. Jang, *Crime and Religion: Assessing the Role of the Faith Factor*, in CONTEMPORARY ISSUES IN CRIMINOLOGICAL THEORY AND RESEARCH: THE ROLE OF SOCIAL INSTITUTIONS: PAPERS FROM THE AMERICAN SOCIETY OF CRIMINOLOGY 2010 CONFERENCE 117, 120 (Richard Rosenfeld et al., eds., 2012).

²⁰ *Id.*

systematic review “utilize[d] vastly different methods, samples, and research designs,” and yet nearly all pointed to the same conclusion: “increasing religiosity is consistently linked with decreases in various measures of crime or delinquency,” a link that was “particularly pronounced among the more methodologically and statistically sophisticated studies that rely upon nationally representative samples.”²¹

The task of reintegrating offenders back in their communities has proven difficult for correctional leaders and governmental actors in recent decades. This problem has been exacerbated by the sheer number of prisoners returning to American communities each year. Between 1980 and 2006, the U.S. prison population increased by 467 percent (from 319,598 to 1,492,973), and the parole population increased by 362 percent (from 220,438 to 798,202).²² The prison population decreased by about 7 percent (from 1,615,500 to 1,505,400) between 2009 and 2016, and the parole population continued an upward trend,

²¹ *Id.*; accord B. Johnson et al., *A Systematic Review of the Religiosity and Delinquency Literature: A Research Note*, 16 J. OF CONTEMP. CRIM. JUS. 32, 46 (2000); C. Salas-Wright et al., *Buffering Effects of Religiosity on Crime: Testing the Invariance Hypothesis Across Gender and Developmental Period*, 41 CRIM. JUS. & BEHAVIOR 673, 688 (2014).

²² U.S. Department of Justice, *Adults on Probation, in Jail or Prison, and Parole*, SOURCEBOOK OF CRIMINAL JUSTICE, Table 6.1.

showing an almost 10 percent increase between 2006 and 2016 (from 798,202 to 874,800).²³

Several correctional programs have been implemented over the years to help address the difficult adjustment period when prisoners transition back into society. Halfway houses, community corrections, intensive supervision, and community reintegration programs represent a few of the various post-release efforts designed to make prisoner reentry into society less difficult for ex-prisoners while ensuring public safety.²⁴ But despite spending exceeding \$60 billion annually, the likelihood that a former prisoner will succeed in the community has not improved. In a 2018 study that followed more than 400,000 people released from state prisons in 30 states in 2005, 68 percent were arrested within 3 years of release, and 79 percent within 5 years of release.²⁵

Growing caseloads have made effective case management of former prisoners in the community increasingly difficult. A by-product of heavy caseloads is increasing occupational stress on parole officers.²⁶

²³ *Id.*

²⁴ See generally J. PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* (2009).

²⁵ M. Alper et al., *2018 Update On Prisoner Recidivism: A 9-Year Follow-Up Period (2005-2014)*, U.S. Department of Justice, Special Report (2014), available at [bjs.gov/content/pub/pdf/rprts05p0510.pdf](https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf).

²⁶ P. Finn & S. Kuck, *Addressing Probation and Parole Officer Stress*, Final Report to the National Institute of Justice, U.S.

In addition, when parole officers are spread too thin to effectively manage clients in the community, ex-offenders inevitably do not receive the supervision and assistance they clearly need.²⁷ Even though the problems faced by ex-prisoners returning to society are readily identifiable, governmental efforts to address these reentry and aftercare problems remain limited.²⁸

On the other hand, private efforts to confront these correctional problems have produced some positive preliminary results. A five-year Louisiana Department of Corrections study, for example, revealed that of those inmates who received faith-based education before their release, only 30% returned to prison.²⁹ This was well below the statewide recidivism rate at the time of 46.6%, and far below the national recidivism rate of 65%.³⁰ Other studies show similar results.³¹

Department of Justice, National Criminal Justice Reference Service (2003).

²⁷ M. Phelps, *The Paradox of Probation: Community Supervision in the Age of Mass Incarceration*, 35 LAW POLICY 51, 51–80 (2013).

²⁸ See generally J. TRAVIS & C. VISHER, EDS., PRISONER REENTRY & CRIME IN AMERICA (2005).

²⁹ R. Bergeron, Jr., *Faith on the Farm: An Analysis of Angola Prison's Moral Rehabilitation Program Under the Establishment Clause*, 71 LA. L. REV. 1221, 1222 n.6 (2011).

³⁰ *Id.*

³¹ B. Johnson, *Religious Programming, Institutional Adjustment and Recidivism Among Former Inmates in Prison Fellowship*

C. *Religion and Faith-Based Groups Improve Prisoners' Well-Being.*

Finally, religion in prisons provides a vital means of improving prisoners' overall well-being.

Since most major religions value virtues like forgiveness, empathy, gratitude, and self-control, religious involvement is expected to increase personal virtues. Religion also provides contexts where narratives and orientation toward the divine are fostered. Research provides evidence that religion fosters virtues among individuals in the general population.³² While research on religiosity and

Programs, 14 JUSTICE Q. 145 (1997); Johnson, *supra* n.1; B. Johnson, *Religious Program and Recidivism Among Former Inmates in Prison Fellowship Programs: A Long-Term Follow-Up Study*, 21 JUSTICE Q. 329 (2004); B. Johnson, et al., *Recidivism Reduction and Return on Investment: An Empirical Assessment of the Prison Entrepreneurship Program*, Special Report, Institute for Studies of Religion, Baylor University (2013); G. Duwe et al., *Bible College Participation and Prison Misconduct: A Preliminary Analysis*, 54 J. OFFENDER REHAB. 371 (2015); S. Jang et al., *Existential and Virtuous Effects of Religiosity on Mental Health and Aggressiveness among Offenders*, 9 RELIGIONS 182 (2018).

³² R. Emmons & R. Paloutzian, *The Psychology of Religion*, 54 ANN. REV. PYSCH. 377 (2003); N. Krause et al., *Religious Involvement and Happiness: Assessing the Mediating Role of Compassion and Helping Others*, 158 J. SOC. PYSCH. 256 (2018); M. McCullough et al., *Religious Involvement & Morality: A Meta-Analytic Review*, 19 HEALTH PSYCH. 211 (2000); M. Rye et al., *Religious Perspectives on Forgiveness*, in FORGIVENESS: THEORY, RESEARCH, & PRACTICE (M. McCullough et al., eds., 2000); C. Batson et al., "And Who Is My Neighbor?" *Intrinsic Religion as a Source*

virtues among prisoners is limited, in 2018, a study found that religious inmates reported higher levels of forgiveness, empathy, and gratitude than their less or non-religious counterparts.³³

Another case study took place at the Riverside Regional Jail in Virginia. From September 2018 to March 2020, 349 prisoners participated in a one-week faith-based program.³⁴ The prisoners who participated in the program experienced “reduce[d] post-traumatic stress disorder as well as enhance[d] prosocial and virtuous behavior among jail inmates.”³⁵ What’s more, the positive effects of the one-week religious study program continued three months after inmates completed the program.³⁶ These remarkable results may well be explained, in part, by the way faith and spiritual commitment promote “important

of Universal Compassion, 38 J. SCIENTIFIC STUDY OF RELIGION 445 (1999).

³³ Jang, *supra* n.31.

³⁴ B. Johnson et.al., *New Hope for Offender Rehabilitation: Assessing the Correctional Trauma Healing Program*, Program on Prosocial Behavior, Institute for Studies of Religion, Baylor University 1, 5 (Mar. 2021), <https://perma.cc/FC23-Q5PW>.

³⁵ M. Hallett & B. Johnson, *A Church Without Walls, Behind Walls: How Evangelicals are Transforming American Prisons*, PUBLIC DISCOURSE (Oct. 25, 2021), <https://perma.cc/7Z4R-4CD2> (noting how faith-based programming replaces social isolation with emotional support, offering inmates “social capital otherwise totally inaccessible to them”).

³⁶ Johnson, *supra* n.34, at 48.

characteristics such as forgiveness, * * * resilience, * * * and a sense of meaning and purpose in life.”³⁷

Moreover, religiously motivated volunteers continue to provide prisoners with non-religious (*e.g.*, adult basic education, anger management, and entrepreneurship) and religious programs. The work of faith-based groups and individuals comes at a time when prison administrators find it increasingly difficult to fund educational, vocational, and rehabilitative programs due to constricting budgets.

Among their many initiatives, prison ministries provide a variety of rehabilitative programs, from women’s ministries to leadership training and other courses.³⁸ One ministry offers a yearlong “academy” that teaches courses in addiction recovery, healthy relationships, and important life skills such as “financial responsibility, time management, healthy habits, legal issues, employment, and coping skills.”³⁹ Prison ministries not only serve the incarcerated, but also come to the aid of youth in detention, assist released prisoners in reentry and reintegration, and

³⁷ *Id.*

³⁸ *E.g.*, In-Prison Programs, Prison Fellowship, <https://perma.cc/WAH7-4JUG> (last visited June 5, 2022).

³⁹ Prison Fellowship Academy, Prison Fellowship, <https://perma.cc/4BD3-DW85> (last visited June 5, 2022).

serve families and children of the incarcerated as well as victims.⁴⁰

II. Prison Security Is Enhanced When Prisoners Perceive Religious Exemptions to Be Fair, Both Generally and Specifically in the Context of Muslim Prisoners.

Perceptions of fairness and legitimacy also play a critical role in supporting prison security. Because every prison requires the cooperation of its incarcerated inhabitants to maintain a stable environment, fairness in the exercise of prison authority promotes legitimacy and encourages self-regulation of the prisoners' own behavior. In this respect, current sociological and penological research suggests that policies like GDOC's policy of restricting beard length without accommodation for Muslim prisoners, while ostensibly adopted to further prison security, instead risk undermining it.

Numerous studies have shown that prisoner perceptions of fairness in both approach and outcome have a profound impact on overall social order within prisons. *Amici* believe this research suggests that where prisoners see institutional policies as fair, they are more likely to obey them and view their issuers as legitimate sources of authority. This data suggests that prison security is harmed by a prison rulemaking process that prisoners, especially prisoners of minority

⁴⁰ Sharing God's Grace and Jesus' Love to Incarcerated Individuals Through Correctional Ministry, Correctional Ministries Institute, <https://perma.cc/Z5GQ-5PC4> (last visited June 5, 2022).

faiths, reasonably understand to be arbitrary and unfair. While a policy like GDOC's might be intended to promote prison security, its perceived unfairness among prisoners could ultimately undermine prison security.

A. *Prisoners Are More Likely to Obey Rules They Perceive to Be Fair.*

A substantial body of research that perceptions of legitimacy may provide a tool for increasing voluntary rule compliance: positive prisoner views of the institutional process afforded to them directly correlate with reduced instances of misconduct. Scholars have described these perceptions of fairness as the single “strongest and most consistent predictor” of decisional acceptance, rule compliance, and grievances across organizational settings.⁴¹

When the decisions made by officials in the criminal justice system are perceived as being fair, the institution issuing the decision is more likely to be seen as “legitimate,” such that “although at times specific policies can be disagreeable, the institution itself ought to be maintained—it ought to be trusted and granted its full set of powers.”⁴² Fairness is built in part on the perception that officials have acted with “neutrality,” using “assessments of honesty, impartiality, and the use of fact, not personal

⁴¹ T. Tyler & E. Lind, *A Relational Model of Authority in Groups*, 25 *ADVANCES IN EXP. SOCIAL PSYCH.* 115, 131–32 (1992).

⁴² V. Baird, *Building Institutional Legitimacy: The Role of Procedural Justice*, 54 *POL. RESEARCH Q.* 333, 334 (2001).

opinions” in considering one’s case.⁴³ Those under the authority of the criminal justice system are more likely to internalize these institutional rules and norms as a basis for self-regulation.⁴⁴ This occurs even when cooperation is not necessarily in the individual’s immediate self-interest but is seen as the “appropriate and proper” course supporting the criminal justice system authorities’ objectives.⁴⁵

Studies also show a robust relationship between prison policies that accommodate religious practices and a diminished deviance among prisoners. This relationship is observed across various measures of religious practice or participation, when tested against indicators of “deviance” as varied as instances of disciplinary confinement.⁴⁶ The free exercise of

⁴³ T. Tyler, *Procedural Fairness & Compliance with the Law*, 133 SWISS J. ECON. & STATISTICS 219, 228 (1997).

⁴⁴ D. Smith, *The Foundations of Legitimacy*, in LEGITIMACY & CRIMINAL JUSTICE: AN INTERNATIONAL PERSPECTIVE 30 (Tom R. Tyler, ed., 2007); T. TYLER, WHY PEOPLE OBEY THE LAW 25 (1990) (when people believe that they are being treated fairly, they are more likely to accept the “need to bring their behavior into line with the dictates of an external authority”).

⁴⁵ T. Tyler & J. Fagan, *Symposium: Legitimacy and Criminal Justice, Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 263 (2008).

⁴⁶ T. Clear & M. Sumter, *Prisoners, Prison, and Religion*, 35 J. OF OFFENDER REHAB. 125, 152 (2002); T. O’Connor & M. Perryclear, *Prison Religion in Action and Its Influence on Offender Rehabilitation*, 35 J. OF OFFENDER REHAB. 11, 26, 28 (2002) (the number of infractions); K. Kerley et al., *Religiosity, Religious*

religion retains its importance as a variable in these contexts “even after other variables [are] entered into the equation.”⁴⁷

B. Muslim Prisoners in Particular Are Sensitive to Unfair Treatment Based on Religion.

Additional studies and research indicate that the concerns about the fair treatment and accommodation of religious practice are particularly important for Muslim prisoners.

Sociologists Ryan Williams and Allison Liebling in the United Kingdom have found that differential treatment of Muslim inmates may cause ideological radicalization.⁴⁸ Another study of the causes of Muslim prisoner radicalization in the United States similarly found that restrictions on Muslim prisoners’ practice of their faith increases the risk of

Participation, and Negative Prison Behaviors, 44 J. FOR THE SCI. STUDY OF RELIGION 443, 453 (2005) (propensity to engage in conflict with fellow prisoners).

⁴⁷ T. Clear et al., *Does Involvement in Religion Help Prisoners Adjust to Prison?*, NCCD Focus, at 1, 4 (Nov. 1992); see also B. Johnson, *Religious Participation and Criminal Behavior*, in EFFECTIVE INTERVENTIONS IN THE LIVES OF CRIMINAL OFFENDERS 3, 14–15 (J.A. Humphrey & P. Cordella, eds., 2014).

⁴⁸ R. Williams & A. Liebling, *Do Prisons Cause Radicalization? Order, Leadership, Political Charge and Violence in Two Maximum Security Prisons*, BRITISH J. CRIMINOLOGY (forthcoming 2022), <https://doi.org/10.1093/bjc/azab122>.

radicalization.⁴⁹ While Islam tends to bring peace, rather than violence, to inmates, some prisons that restrict peaceful Muslim practices have seen their efforts backfire, instead stoking radicalization.⁵⁰ Meanwhile, authentically devout Muslim prisoners in the United States have been found to be less of a security problem than general prison populations.⁵¹

This research suggests that providing reasonable religious accommodations for prisoners and treating different religious groups fairly, including and especially Muslim prisoners, makes prisons safer, rather than more dangerous.

⁴⁹ F. Cilluffo et al., *Out of the Shadows: Getting Ahead of Prisoner Radicalization*, The George Washington University Homeland Security Policy Institute & The University of Virginia Critical Incident Analysis Group (2006).

⁵⁰ SpearIt, *Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?*, 49 GONZAGA L. REV. 37 (2014).

⁵¹ M. Hamm, *Prison Islam in the Age of Sacred Terror*, 49 BRITISH J. CRIMINOLOGY 667 (2009).

CONCLUSION

The common perception that promoting prisoners' religious liberty and protecting prison security are diametrically opposed aims is flawed. To the contrary, the available evidence shows that promoting prisoners' religious practice tends to *improve* prison security (and have other salutary effects), while restricting prisoners' religious practice can tend to *undermine* prison security. The Court should grant the petition for a writ of certiorari, and clarify that, under RLUIPA, decisionmakers should not reflexively assume that accommodating religion will undermine prison security.

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