

# **Substantive Law in Prisoner Cases Typically Selected for Mediation**



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# Agenda



- First Amendment Free Exercise
- RLUIPA
- Eighth Amendment – Deliberate Indifference
- Questions

# First Amendment Free Exercise



- “The government shall not prohibit the free exercise of religion.” U.S. Const. amend I.
- Free-exercise rights are “necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security.” *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th Cir. 1987), citing *O’Lone v. Shabazz*, 482 U.S. 342, 348 (1987)

# First Amendment Free Exercise



- A prisoner's constitutional right to free exercise of religion must be balanced against the state's right to limit First Amendment freedoms to attain valid penological objectives such as rehabilitation of prisoners, deterrence of crime, and institutional security. *See O'Lone*, 482 U.S. at 348-49.

# First Amendment Free Exercise



- **Elements**

1. Show that the religious practice at issue concerns a sincerely held belief and that the claim is rooted in religious belief.
2. Demonstrate a burden to a sincerely held belief.
3. If the regulation or conduct at issue impinges on the plaintiff's constitutional rights, it is valid if it is reasonably related to legitimate penological interests.

# First Amendment Free Exercise



- The Ninth Circuit has explained that “[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.” *Shakur v. Schriro*, 514 F .3d 878, 884 (9th Cir. 2008)(quoting *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989)).
  - Monts --- Backsliding is okay

# First Amendment Free Exercise



- The constitutional guarantee of free exercise of religion “is not limited to beliefs which are shared by all of the members of a religious sect.” *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 715-16 (1981).
  - Like all religions, people practice their faith in different ways and interpret religious doctrine differently.

# First Amendment Free Exercise



- “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 713-14 (1981).
- The request, however, must be rooted in religious belief and “not in ‘purely secular’ philosophical concerns.” *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (internal citations omitted); *Shakur*, 514 F.3d at 885.

# First Amendment Free Exercise



- To substantially burden the practice of an individual's religion, the interference must be more than an isolated incident or short-term occurrence. *See Canell v. Lightner*, 143 F.3d 1210, 1215 (9th Cir. 1998). Prison officials' negligent or accidental actions that impinge on an inmate's religious practice are insufficient to support a First Amendment claim. *See Lovelace v. Lee*, 472 F.3d 174, 194 (4th Cir. 2006).

# First Amendment Free Exercise



- If a substantial burden exists, the policy is scrutinized using the *Turner v. Safely* test.
  - (1) whether there exists a valid, rational connection between the prison regulation and the legitimate governmental interest put forth to justify it;
  - (2) whether there are alternative means of exercising the regulated right that remain open to the inmate (not narrow);

# First Amendment Free Exercise



- (3) the impact that accommodation of the asserted constitutional right will have upon guards, other inmates, and prison resources; and
- (4) whether there exist ready alternatives that fully meet the inmate's demands at a *de minimis* cost to valid penological interests. (Burden is on the inmate)

# First Amendment Free Exercise



## Case Examples

First Amendment claim brought by Native American prisoner alleging the denial of a religious diet.

Plaintiff, a Native American Pascua Yaqui, believed the spirit of any animal he consumes must be honored with a "Deer Dancer Ceremony," and because that cannot be done for the meat he consumes in prison, he requested a vegetarian diet so that he can avoid eating meat that has not been properly honored through the Yaqui Deer Ceremony.

# First Amendment Free Exercise



Defendant denied the diet request on the ground that Plaintiff did not have a sincerely held religious belief to support his desire to eat a vegetarian diet, meaning that Plaintiff's religion did not require him to consume a vegetarian diet. But that is not what the Ninth Circuit looks at when determining whether an inmate's religious accommodation request is sincerely held. Just before trial was set to begin, parties entered into a settlement.

# First Amendment Free Exercise



Plaintiff sought relief from repeated disciplinary tickets for sharing kosher meal with other inmates. He alleged that Defendants' actions burdened his free exercise rights. But Plaintiff never alleged that sharing food was a tenet of his religious practice. Rather, it was a moral belief that motivated his practice, which brought his actions outside the ambit of Free Exercise protection.

# RLUIPA



## Religious Land Use and Institutionalized Persons Act of 2000

42 U.S.C. § 2000cc-1(a)(1)-(2)

# RLUIPA



- Government may not impose a substantial burden on the religious exercise of a confined person unless:
  1. Burden furthers a “compelling governmental interest” and
  2. does so by “the least restrictive means”

# RLUIPA



- **Elements**

1. Plaintiff must show that the exercise of his religion is at issue.
2. Plaintiff bears the burden of establishing a prima facie claim that the defendant's conduct substantially burdened his religious exercise.
3. If the plaintiff meets the prima facie burden, then the burden shifts to the defendant to prove that the substantial burden on the inmate's religious practice both furthers a compelling governmental interest and is the least restrictive means of doing so.

# RLUIPA



This is a strict scrutiny standard and it difficult for defendants to meet on summary judgment.

Defendants must come forward with more than assertions of generic security concerns. They must demonstrate with **evidence** that accommodation of a particular religious request impacts a compelling interest and that they have pursued lesser restrictive means of accommodating the right without success.

# RLUIPA



“[I]n light of RLUIPA, no longer can prison officials justify restrictions on religious exercise by simply citing to the need to maintain order and security in a prison. RLUIPA requires more.” *Greene v. Solano County Jail*, 513 F.3d 982, 989-90 (9th Cir. 2008). Prison officials must show that they “actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.” *Id.* at 990.

# RLUIPA



The Ninth Circuit has specifically rejected the idea that courts must “completely defer to [prison officials’] judgment.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005)

# RLUIPA



## Case Examples

RLUIPA claim brought by Muslim alleging that the ADC grooming policy that restricted his beard length violated his rights. Because Plaintiff did not cut his beard, he was reclassified from Level III to Level IV, which resulted in a transfer, and he was subject to numerous disciplinary actions. The Court granted Plaintiff's Motion for a TRO and PI on the basis that Defendants had not established that particular security concerns supported their grooming policy. The parties settled the case but this issue persists.

# Deliberate Indifference



- The Eighth Amendment prohibits the imposition of cruel and unusual punishments and “embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

# Deliberate Indifference



- **Medical Care Claims**

- The government has an obligation to provide medical care for those whom it punishes by incarceration. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

# Deliberate Indifference



Mere negligence or medical malpractice does not violate the Constitution. *See Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980); *see also Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004).

Not even gross negligence is sufficient. Failing to perceive the risk, while nothing to commend, does not give rise to an Eighth Amendment claim.

# Deliberate Indifference



Also, a difference of opinion as to the appropriate medical treatment does not establish deliberate indifference. *See Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

Thus, when an inmate disagrees with a treatment plan, or even when two physicians disagree, there is no deliberate indifference claim. But when a physician prescribes certain treatment and it isn't provided, or it's vetoed by administrative staff or a non-physician, that may give rise to a valid claim.

# Deliberate Indifference



- **Elements**
  1. **Objective Standard.** A prisoner must show a “serious medical need”.
  2. **Subjective Standard.** Must show that the defendant’s response to that need was deliberately indifferent.

# Deliberate Indifference



## Objective Standard

A “serious’ medical need exists if the failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds, WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal citation omitted).

# Deliberate Indifference



## **Objective Standard**

Examples of a serious medical need include “[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain.”

*McGuckin*, 974 F.2d at 1059-60.

# Deliberate Indifference



## Subjective Standard

- First, the prisoner must show that the defendants was aware of the serious medical need and the risk to the prisoner's health and safety.
- Next, the prisoner must show a purposeful act or failure to respond to the prisoner's medical need.
  - Indifference may be shown when a prison official denies, delays, or intentionally interferes with medical treatment, or by the way in which the official provides medical care. *Jett*, 439 F.3d at 1096 (citations omitted).
  - Finally, the prisoner must demonstrate harm caused by the indifference. *Jett*, 439 F.3d at 1096. Pain can be sufficient.

# Deliberate Indifference



## Case Examples

Eighth Amendment claim brought by a jail inmate who was diagnosed many years ago with Multiple Sclerosis. There was no dispute that the jail physician did not provide medication for Plaintiff's MS for over six months, despite a recommendation from an outside physician and Plaintiff experiencing significant pain and debilitating symptoms that interfered with his ability to participate in his criminal trial. Summary judgment denied and defense verdict at trial.

# Deliberate Indifference



Plaintiff suffered from Benign Prostatic Hyperplasia and his symptoms worsened from frequent urination (8-12 times per night) to an inability to urinate without a catheter. In July 2009, the Plaintiff was referred to see an outside urologist and he filed his lawsuit when he still had not seen a urologist by October 2010. He saw a urologist shortly thereafter and surgery was recommended and received. Plaintiff was awarded damages at trial.

# Deliberate Indifference



- **Failure-to-Protect Claims**
  - “[P]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.” *Farmer*, 511 U.S. at 833.

# Deliberate Indifference



- **Elements**

1. Must show that his incarceration posed a substantial risk of serious harm.
2. Must show that prison officials knew of the risk to plaintiff but were indifferent and unresponsive to it.

# Deliberate Indifference



## **Types of cases**

Inmates seeking protective custody who have been labeled a snitch or whose crimes might predispose them to violence at the hands of other inmates

# Deliberate Indifference



In *Farmer v. Brennan*, the Supreme Court established the standard used to determine whether inmates can prevail against prison officials on an Eighth Amendment challenge to prison conditions.

# Deliberate Indifference



The plaintiff in *Farmer* was a biologically male, preoperative transsexual who wore women's clothing, had undergone estrogen therapy, and had received silicone breast implants. 511 U.S. at 829. After her conviction and incarceration for credit card fraud at the age of 18, the plaintiff claimed to have continued hormonal treatment by using drugs smuggled into prison. *Id.*

# Deliberate Indifference



Several years into her federal sentence, the plaintiff was transferred to a higher-security facility and placed in the general male prison population. *Id.* at 830. The plaintiff alleged that, within two weeks, she was beaten and raped by another inmate. *Id.*

## Deliberate Indifference



The plaintiff filed a *Bivens* complaint alleging that defendant prison officials transferred her to general population despite knowledge that the penitentiary had a violent environment and history of inmate assaults, and despite knowledge that the plaintiff was a transsexual with feminine characteristics who would be particularly vulnerable to sexual attacks. *Id.* at 830-31. She alleged that this amounted to a deliberately-indifferent failure to protect her safety in violation of the Eighth Amendment. *Id.* at 831.

# Deliberate Indifference



The district court granted the defendants' motion for summary judgment, concluding they were not deliberately indifferent to the plaintiff's safety because the plaintiff "never expressed any concern for [her] safety to any of" the defendants. *Id.* at 832.

## Deliberate Indifference



The Supreme Court reversed and remanded. It held that the plaintiff had raised a genuine issue of material fact as to the officials' knowledge of the risk, despite not having expressed any concern prior to the attack. *Id.* at 848. The plaintiff was a non-violent transsexual who was young and effeminate and thus “likely to experience a great deal of sexual pressure” in the prison. *Id.* Additionally, the plaintiff had been segregated because of concerns for her safety on at least one previous occasion. *Id.* at 830.

# Questions



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