

# THE RUTHERFORD INSTITUTE

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July 24, 2012

Via email and facsimile

Sheriff Joe Arpaio  
Maricopa County Sheriff's Office  
100 West Washington, Suite 1900  
Phoenix, AZ 85003

**Re: *RLUIPA Protections – Michael Salman, P884174***

Dear Sheriff Arpaio:

The Rutherford Institute represents Michael Salman, P884174, a devout Christian who is serving a 60-day sentence in the Tent City Jail for allegedly violating the Phoenix zoning ordinance and commercial building code by hosting private Bible studies in his home.

Institute attorneys are presently engaged in challenging the legality of Mr. Salman's detention in the courts. Please bear in mind, however, that for the duration of time Mr. Salman is detained under your supervision, he remains entitled to the protections afforded him under the U.S. Constitution, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (RLUIPA)<sup>1</sup> and Arizona's Free Exercise of Religion Act (FERA).<sup>2</sup>

Institute attorneys have already been called upon to intervene once after learning that officials at Tent City had refused to accommodate Mr. Salman's request to observe the Sabbath while incarcerated as part of his sincerely held Christian beliefs about not working on Sundays.

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<sup>1</sup> 42 U.S.C. § 2000cc-1(a).

<sup>2</sup> Arizona's Free Exercise of Religion Act (FERA), Ariz. Rev. Stat. §§ 41-1493 *et seq.*

According to our sources, a correctional officer allegedly threatened to throw Mr. Salman “in the hole” if he refused to report for his assigned work duties in the jail kitchen each Sunday throughout the term of his sentence. Thankfully, we were able to clear up that particular matter without undue burden on Mr. Salman’s observation of the Sabbath while in jail, and jail officials offered to assign Mr. Salman to a “job” that does not entail working on Sundays.

As you know, such a refusal to accommodate Mr. Salman’s right to exercise his religious beliefs while in jail would have constituted a violation under the First and Fourteenth Amendments to the U.S. Constitution, RLUIPA and FERA. Specifically, under RLUIPA, no government officials or institutions may impose a substantial burden on an inmate’s religious exercise unless they can demonstrate that it is the least restrictive means of furthering a compelling government interest.<sup>3</sup> These requirements apply even where the burden is imposed pursuant to a rule of general applicability.<sup>4</sup>

Moreover, federal courts have ruled specifically that religious prisoners are entitled to observe the Sabbath in accordance with their religious traditions while in prison.<sup>5</sup> “[P]unishing an individual for practicing a central tenet of his faith [by requiring work on the Sabbath] does violate RLUIPA unless ‘the job is essential to the prison operation and the work assigned cannot be accomplished on another day’ or by some other inmate...”<sup>6</sup> In fact, courts have gone so far as to hold that even minimal “work” requirements, such as requiring an inmate to clean his or her own cell, constitute a “substantial burden” on the religious exercise of an inmate whose religion requires a day of rest on the Sabbath.<sup>7</sup>

In the same way that RLUIPA and FERA require jail officials to accommodate Mr. Salman’s beliefs about not working on the Sabbath, these principles apply equally to Mr. Salman’s right to assemble with his fellow inmates for religious worship and Bible studies, both of which are key tenets to practicing his Christian faith.

Since being detained in the Tents Jail, Mr. Salman has begun leading Bible studies for and with his fellow inmates. On a recent night, the number of attendees grew to more than 20 men, causing the guards to direct them inside to a day room. However, after a short time, the group was directed to disperse by the guards and locked down.

Given that federal and state law assures Mr. Salman of the right to exercise his religious beliefs while incarcerated, we hereby request that you provide immediate written assurance that Mr. Salman’s rights will be respected throughout the term of his

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<sup>3</sup> 42 U.S.C. § 2000cc-1(a).

<sup>4</sup> *Id.*

<sup>5</sup> *Mayweathers v. Terhune*, 328 F.Supp.2d 1086 (E.D. Cal. 2004).

<sup>6</sup> *Snyder v. Trudell*, 2009 WL 37183, \*6 (E.D. Mich. 2009).

<sup>7</sup> *Gillard v. Kuykendall*, 295 Fed. Appx. 102, 105 (8<sup>th</sup> Cir. 2008).

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sentence, including his right to fellowship with other Christians and witness to non-Christians by participating in and leading Bible studies with other inmates.

In light of the time-sensitive nature of this matter, we require your response by no later than the close of business on Friday, July 27, 2012.

Sincerely yours,

John W. Whitehead  
President

THE RUTHERFORD INSTITUTE

cc: Capt. Don Marchand, Tents Warden  
Jack Wilenchik, Esq., Wilenchik & Bartness (Affiliate, The Rutherford Institute)  
Mrs. Suzanne Salman