

The Religious Rights of Prisoners

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time and under these circumstances, we are pleased to provide you with the following information which we hope you find useful.

I. General Principles

Prisoners enjoy qualified constitutional protection. Although the Supreme Court of the United States has maintained that "convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison,"¹ and that they "clearly retain protections afforded by the First Amendment,"² including the right of free exercise of religion,³ the Court has stressed that "[I]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights."⁴ This retraction is justified "both [by] the fact of incarceration and [by] valid penological objectives--including deterrence of crime, rehabilitation of prisoners, and institutional security."⁵

The Supreme Court in Turner v. Safley⁶ announced a standard for reviewing prison policies under the Constitution, holding that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."⁷ Courts are to consider four factors in determining whether this rational relationship exists: (1) whether there is a "valid, rational connection" between the prison regulation and the legitimate governmental objective proffered to justify it;⁸ (2) the availability of "other avenues" for exercising the protected right;⁹ (3) the impact that accommodation of the right might have upon other inmates, guards, and the distribution of prison resources;¹⁰ and (4) whether there are "ready alternatives" to the policy.¹¹

Factor (1) requires that the governmental objective be "legitimate and neutral,"¹² operating "without regard to the content of the [prisoners'] expression,"¹³ and that the connection between the policy and the objective not be "so remote as to render the policy arbitrary or irrational."¹⁴ While courts are to accord prison officials significant leeway in their efforts to "anticipate security problems and adopt innovative solutions,"¹⁵ prison officials are not permitted "to pil[e] conjecture upon conjecture"¹⁶ in justifying their policies.

The Supreme Court applied the "legitimate purpose/rational connection" rule in Turner to strike down a prison regulation which prohibited inmates from marrying other inmates or civilians unless the prison superintendent determined there were compelling reasons for marriage, such as pregnancy or childbirth.¹⁷

Prison officials claimed that the policy was necessary partly to prevent the formation of "love triangles" between inmates, but the Court, observing that such triangles were as likely to occur without formal marriages, found "no logical connection" between the marriage restriction and this objective.¹⁸ The Court also found that the prohibition overreached its goal of preventing female inmates from becoming too dependent through marriage as it banned also the marriages of male inmates and of inmates, male or female, to civilians, all of which prison officials conceded were no threat.¹⁹ Lastly, the Court questioned the connection between the policy and the proffered rehabilitative goal of avoiding dependency by pointing out that of the several requests for marriage by female inmates discussed at trial, only one was refused on the basis of fostering excessive dependency.²⁰

As for factor (1)'s requirement of neutrality, the Supreme Court stated in Cruz v. Beto²¹ that denying an inmate "a reasonable opportunity of pursuing his [or her] faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts"²² is "palpable discrimination by the State against [that faith]"²³ in violation of the Free Exercise Clause. Cruz, a Buddhist, alleged that he was denied access to the prison chapel that was open to members of other faiths, was prohibited from corresponding with his religious advisers and punished for sharing his religious materials where Jews and Christians were provided scriptures and chaplains at state expense, and was excluded from the merit system which rewarded inmates for attending religious services.²⁴ The Court reversed the lower court's dismissal of Cruz's complaint, concluding that if the allegations were true, Cruz suffered unconstitutional religious discrimination.²⁵

The Court in Cruz denied, however, that prison officials must treat all religions equally in all circumstances. While the Constitution demands that "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendment without fear of penalty,"²⁶ the Court stressed that it was not "suggest[ing] that every religious sect or group within a prison--however few in number--must have identical facilities or personnel. A special chapel or place of worship need not be provided for every faith regardless of size, nor must a chaplain, priest, or minister be provided without regard to the extent of the demand."²⁷

Factor (2) looks to whether the prisoner is "deprived of all forms of religious exercise,"²⁸ not to whether he or she is unable to practice any particular tenet of the religion. In O'Lone v. Estate of Shabazz,²⁹ the Supreme Court upheld a prison rule that precluded Muslims from observing Friday services on the grounds that Muslims "could freely observe a number of their religious obligations," such as congregating for prayer and discussion, conferring with an imam, and observing diet restrictions and the holy period of Ramadan.³⁰

As for factor (3), the Supreme Court has observed that "few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order."³¹ Particular deference is due the judgment of prison officials when the accommodation of an asserted right

would have a significant "ripple effect" throughout the prison community.³² The concerns here are that the accommodation will create an appearance of favoritism towards members of a particular religious group, creating inmate tension,³³ or give an incentive to other inmates to demand special treatment of a similar nature.³⁴

The Court has stressed that factor (4) is not a "least restrictive alternative" test in which prison officials "have to set up and then shoot down every conceivable method of accommodating the claimant's constitutional complaint."³⁵ The existence of "obvious, easy alternatives," however, may be evidence that the restriction is not reasonably related to legitimate penological interests, but is an "exaggerated response" to a problem.³⁶ This factor is a fortiori satisfied if prison officials prevail under the first and third factors.³⁷ Likewise, if plaintiffs prevail under the first or third factors, the fourth factor will not weigh in favor of prison officials.

As for application of these principles, the Court has approved of the following proof scheme: the burden falls initially upon the state to articulate a rational relationship between the challenged prison policy and legitimate penological objectives, at which point the burden switches to the plaintiff to show that the policies are "exaggerated responses" to the problems they address.³⁸

In 2000 Congress passed the Religious Land Use and Institutionalized Persons Act³⁹ (RLUIPA) which requires that regulations restricting religious exercise of prisoners: "(1) [be] in furtherance of a compelling governmental interest; and (2) [be] the least restrictive means of furthering that compelling governmental interest."⁴⁰

II. Specific Applications

The following subdivisions address particular issues concerning the religious rights of prisoners which frequently arise in litigation.

A. Personal Appearance and Clothing

A frequent source of prisoner litigation has been challenges to regulations affecting grooming and dress. These challenges arise from the fact that some religions prescribe dress and personal appearance codes for their members which often conflict with prison rules. Male Orthodox Jews, for example, are required to wear beards. Rastafarians and members of some Native American faiths must wear their hair long.

In the wake of Turner and O'Lone, courts fairly regularly reject prisoner pleas for accommodation in this area.

1. Hair Length and Beards

Prison officials regularly succeed in justifying beard and hair length restrictions as necessary in aiding the identification of inmates, preventing the concealment of contraband, and promoting prison hygiene.⁴¹ One court accepted the argument that long hair makes prisoners more attractive and hence increases the likelihood of homosexual attacks.⁴² However, the same court found that under the Turner analysis accommodating a Hassidic Jewish prisoner's beard and sidelocks was of de minimus cost to legitimate penological interests.⁴³

2. Head-coverings

Prison officials typically cite security and sanitation concerns in successfully defending challenges to bans on the use of head-coverings. The deference courts typically pay towards such regulation is illustrated in Young v. Lane.⁴⁴ Jewish inmates challenged a rule which prohibited them from wearing yarmulkes, the Jewish head covering, outside their cells and religious services. They pointed to the fact that the prison permitted the wearing of baseball caps at all times as evidence that the rule against yarmulkes could not be seen as advancing the suggested purposes of preventing the concealment of contraband and the formation of gangs.⁴⁵ The court rejected this argument, noting that prisons are permitted "to limit the effectiveness of gangs by restricting the variety of available headgear."⁴⁶ This decision is in accord with those of other courts since O'Lone.⁴⁷

3. Wearing of Medallions

While many prison systems permit the wearing of religious medallions, courts have upheld bans on the use of medallions by inmates where it was shown that an inmate could use the medallion as a weapon. For example, in Hall v. Bellmon,⁴⁸ the court held that a regulation prohibiting prisoners from possessing sharp items usable as weapons or items that could be worn around the neck was valid as applied to a Native American inmate who wished to wear a bear-tooth talisman and a medicine bag that had a thong which could be used for wearing around the neck.⁴⁹ The court concluded that the prohibitions "were reasonably related to the legitimate penological interest in protecting the safety of other inmates and prison personnel and preventing suicide attempts."⁵⁰

Although deferential to prison policies, courts do not rubber stamp rules restricting religious freedom. If the record indicates that prison officials have not offered a valid reason for the regulation,⁵¹ that easier alternatives to the challenged restriction exist,⁵² or that the rule is applied in a discriminatory manner,⁵³ courts will strike down the prison dress or grooming code.

B. Meals

Another significant source of litigation consists of inmate challenges to prison diet policies. Requests most commonly come from inmates of the Jewish and Muslim faiths, although a number of lesser known

religions, such as the Rastafarian religion, also have dietary laws. Although a number of prison systems voluntarily provide special diets to prisoners, many have refused to do so.

Setting the trend in cases dealing with inmate meal requests was Kahane v. Carlson,⁵⁴ in which the court ruled that the plaintiff, an Orthodox Jewish Rabbi, was entitled to a kosher diet while confined. The court ruled that because Jewish dietary laws "are an important, integral part of the covenant between the Jewish people and the God of Israel,"⁶⁵ the prison was required not to "unnecessarily prevent Kahane's observation of his dietary obligation."⁶⁶ As there were approximately only a dozen Orthodox Jews in the prison and since the other prisons in the area managed to accommodate kosher diets, the court held that the administrative difficulties associated with providing Kahane with a kosher diet were "surmountable."⁶⁷ The court, however, noted that the prison could decide for itself how to implement the special diet, provided it gave a "diet sufficient to sustain the prisoner in good health without violating the Jewish dietary laws. . ."⁶⁸

One court has summarized the Kahane decision as granting prisoners the right to a religious diet where the cost is not "prohibitive" or "administratively unfeasible."⁶⁹ Courts since Kahane have recognized the right of an inmate to a religious diet,⁷⁰ provided the costs associated with providing the diet are not overwhelming and prison officials can offer no rational purpose for denying it.⁷¹ Where this showing cannot be made, however, courts have denied requests for religious diets. In Kahey v. Jones⁷², the court rejected a Muslim inmate's request that she be provided a religious diet of "regular meals consisting of eggs, fruit and vegetables served with shells or peels, on paper plates."⁷³ Although the prison had provided the inmate, who was Muslim, a pork-free diet, she further demanded a diet which did not include any food that was cooked with utensils that had come into contact with pork, thus insuring that all she received was not contaminated⁷⁴. The court held that the administrative costs that such an accommodation entailed were more than "de minimis"; the prison's food service was not meant to be, the court remarked, a "full scale restaurant."⁷⁵

If the rationales offered by prison officials for rejecting demands for a religious diet do not stand up to careful scrutiny, courts will reject them. For example, in Hanafa v. Murphy⁷⁶ the court reversed the grant of summary judgment in favor of defendants who rejected, by reference to administrative costs, a Muslim inmate request that he be served food from trays free of pork so that there was no risk that his pork-free meal would be contaminated. Noting that "a prisoner is entitled to practice his religion insofar as doing so does not unduly burden the administration of the prison,"⁷⁷ the court closely reviewed the rationales offered by the prison and found them wanting.⁷⁸

First, the court dismissed the defendants' contention that it was inconvenient to make up trays with no pork on them as "trivial" since there were no more than eleven inmates who wished to have a pork-free meal.⁷⁹ The court then held that the defendants' claim that accommodating plaintiff's would cause hostility towards Muslims to ripple was not credible since what plaintiff requested was not a major concession. Finally, there was no evidence to support the defendants' fear the workers preparing the trays would try to smuggle contraband to the Muslim inmates.⁸⁰ Without evidence of "a far more taxing" demand on prison

resources and "without detailed objections based on cost and feasibility," summary judgment, ruled the court, was inappropriate.⁷¹

In sum, to succeed in a suit for a religious diet, an inmate must show that his or her desire is sincere. The court cannot inquire into the whether or not the practice is generally accepted by the particular faith.⁷² Lastly, the cost, administrative burdens and threats to security entailed by the requested accommodation must not be excessive.⁷³

There are several additional rules. First, equal protection demands prohibit disparate treatment in the provision of religious diets. Hence, a prison may not provide kosher meals to Jewish inmates and arbitrarily fail to satisfy the needs of Muslim inmates by failing to provide them with a protein substitute for pork.⁷⁴ Also, prison officials who provide religious meals will not be held liable if they on one occasion deny these meals.⁷⁵ Moreover, in cases of special holidays where religious meals are consumed, prison officials may discharge their constitutional duty by permitting inmates to purchase their provisions at their own expense.⁷⁶ Lastly, prison officials may not punish inmates for refusing to handle food that their religion prohibits them from handling.⁷⁷

C. Religious Services

Group services are an important, if not integral, part of most religions, and prisons have long encouraged such services in the recognition that religion can help rehabilitate prisoners. Courts have long held that the denial of group congregation is an actionable claim under the First Amendment.⁷⁸ Recognizing at once the importance of group worship and the need for prison order and security, courts continue to grapple with the many questions about this right that have surfaced in litigation.

1. Inmate-led Services

One such question is whether inmates have the right to lead congregate services. Courts that have considered this question have held that at least when in-house or outside clergy are available (the latter even upon a volunteer basis), inmates have no right to displace them.⁷⁹ Inmate-led services can threaten prison security in a number of ways. They can "establish a leadership structure within the prison alternative to that provided by the lawful authorities,⁸⁰ and foster "conflicts. . .because inmates lack[] the requisite religious expertise to resolve issues that [arise] during the religious meeting.⁸¹ In addition, inmate-led services can be used for gang meetings, for the "dissemination of views interfering with order in the prison,"⁸² or for extortion or the conduct of kangaroo courts.⁸³

Even if the prison allows inmates of some faiths to hold religious services, it may constitutionally deny this privileges to inmates of other faiths if the tenets of their faith are potentially threatening.⁸⁴ Such disparate treatment must not be arbitrary or discriminatory⁸⁵ If a prison chooses to forbid inmate-led

services, it must make reasonable efforts to arrange for outside clergy to lead the services⁸⁶ unless the religion promotes doctrine that threatens prison security such that it is not safe to let its adherents meet within the prison at all.⁸⁷

2. Inmate Meetings in the Yard

A similar question is whether inmates have the right to gather informally for unsupervised group worship in the prison yard. Prison officials justify prohibitions on such gatherings as "preventing gang activity and maintaining order in the prison,"⁸⁸ and courts generally are deferential to such bans.⁸⁹ There is no equal protection violation in banning group prayer but permitting other group activities like boxing, basketball, and discussion because the latter activities do not, as is the danger with group prayer meetings, involve "an organized, functioning alternative authority structure among inmates."⁹⁰

3. Services Offered

Another question courts frequently face is to what extent prison officials can discriminate among religions or sects in providing opportunities for group services. Particular religions may espouse doctrine potentially threatening to institutional goals such that prison officials may permissibly ban their services on the principle that "prison authorities can limit associational contacts among inmates where legitimate interests such as rehabilitation and security come into play."⁹¹

Courts have also held that not every sect is entitled to its own particular group services but that the services of a more broadly defined religion are sufficient for that sect so long as there is a rational relationship between the services and the teachings of the subsidiary sect.⁹² Courts have recognized that "the large number of religious groups represented in the prison population and such factors as security, staffing, and space" can make separate services for all groups logically unmanageable.⁹³

A related question is whether prison officials are required to allow inmates from distant parts of the prison to congregate. Although prison officials may limit such prisoner traffic for legitimate reasons⁹⁴ they may not do so based on a claim that "any time the normal routine of an institution is altered the good order and security of that facility are potentially compromised."⁹⁵

4. Segregated Inmates

So far we have dealt with the rights of prisoners in the general prison population to gather for religious services. What of prisoners who are punitively segregated from other inmates? The Supreme Court has declared that inmates have a right to exercise their religion "without fear of penalty," i.e., prison officials cannot deprive a segregated inmate of religious services, or of any other religious opportunity, solely in order to punish.⁹⁶

Courts are divided in their approaches when prison officials cite security reasons for the denial. Some courts have upheld a categorical refusal to permit any segregated inmates to attend services.⁹⁷ These cases tend to rely upon the fact that the segregated inmates had alternative methods of practicing their religion⁹⁸ but this tendency is not universal.⁹⁹ Other cases hold that a flat ban on attendance at religious services to all inmates in punitive segregation is invalid, and that the Constitution requires individual attention to the threat to security posed by each inmate.¹⁰⁰ These cases require an individual "determination as to the necessity of [an inmate's] exclusion from the services."¹⁰¹

Inmates in protective custody present a related but different question as they have been separated from the general prison population, not through any fault of their own, but because they cannot be protected adequately otherwise. Moreover, where inmates in punitive segregation typically remain there for finite periods, inmates in protective custody remain separated indefinitely, as long as there is danger to them in the general population.

For these reasons, courts are in agreement that the denial of requests for religious services to a protective custody inmate must be supported by a showing that the inmate's presence at the services would pose a serious security threat.¹⁰² Courts have also required that such inmates be provided alternative means of practicing their religion.¹⁰³ An identical analysis is applied when the denial of access to religious services is a consequence of a prisonwide lockdown, during which inmate activity is suspended throughout the institution¹⁰⁴

D. Access to Clergy

A prison need not hire clergy, or reimburse visiting clergy, of all faiths regardless of the number of their adherents.¹⁰⁵ A more difficult question is whether prison officials are required, upon inmates' request, to provide the services of visiting clergy. The trend in the cases is to hold that if inmates of a particular faith are prohibited from conducting services without the supervision of clergy, then they must make reasonable attempts to solicit outside clergy of that faith.¹⁰⁶ Volunteer clergy are constitutionally entitled to enter the prison and provide their services unless prison officials can establish that their presence poses a clear and present danger to prison security.¹⁰⁷ Prison officials may require visiting clergy to file a program statement which describes "the time, place and nature of the services to be conducted and identifying the clergy who will conduct them."¹⁰⁸ Furthermore, visiting clergy are subject, as are all visitors, to searches and contraband, although they may not be harassed to deter them from visiting.¹⁰⁹

Access to clergy is especially important to inmates held in protective or punitive segregation. They are often not permitted to attend congregate services for security reasons.¹¹⁰ Therefore, private visits by clergy are their only means of receiving guidance from ministers of their faith.¹¹¹ Hence, total deprivation of access to ministers while in segregation would raise serious free exercise questions.¹¹² Also, to provide an

atmosphere amicable to meaningful spiritual counseling, the right of access to clergy for segregated inmates includes the right to "truly private meetings."¹¹³

However, the need for increased security in segregation units has been held to justify restrictions on access to clergy that are greater than those imposed on inmates in the general population. Thus, one court upheld a delay in honoring a request for visitation by a Catholic priest when the delay was due to change in policy which limited segregated inmates to meetings with clergy who were on the prison staff even though general population inmates could visit with outside clergy.¹¹⁴

E. Access to Religious Mail and Publications

The free exercise rights of inmates have been held to include the right to religious correspondence.¹¹⁵ The Supreme Court has distinguished between outgoing and incoming mail.¹¹⁶ The Court has held that because censorship of prisoner mail affects the interests of both inmates "and those who have a particularized interest in communicating with them," an interest "grounded in the First Amendment's guarantee of freedom of speech," restrictions on outgoing mail are subject to strict scrutiny.¹¹⁷ Incoming mail, on the other hand, because it may be expected "to circulate among prisoners, with the concomitant potential for coordinated disruptive conduct," can be censored or withheld if the restriction meets the Turner "rational relation" standard.¹¹⁸ The Court has noted that "freedom from censorship is not equivalent to freedom from inspection or perusal"¹¹⁹ and, indeed, all Supreme Court cases dealing with prison censorship of inmate mail presuppose the validity of prison inspection of inmate mail. Religious mail is reviewed under the same standards as other mail.¹²⁰ However, even though religious mail is subject to inspection and censorship, prison officials may not treat it more harshly than ordinary mail.¹²¹

To many prisoners, the receipt of religious literature and publications from the outside is an important means of practicing their religion. The religious literature most frequently censored is that which is racially oriented, such as the literature of the Aryan Nations Church. Recognizing that the "the mix of different races and religions assembled in a prison setting is potentially volatile, because many of the inmates have already demonstrated a tendency toward violent, anti-social behavior and irrational thought,"¹²² courts have held that "[w]hen the mere presence of volatile items, even religious items, indisputably threatens the security of the inmate and staff at a penal institution, a prohibition on those materials may be justified."¹²³ Courts have warned, however, that prison officials may not censor or ban materials simply because they find their content repugnant, but must limit their restrictions "to those materials that advocate violence or are so racially inflammatory as to be reasonably likely to cause violence at the prison."¹²⁴

If a prison does indeed decide to withhold a particular incoming publication, an inmate has a right under the Due Process Clause to be notified in writing of the withholding, to be informed of the reasons for the action, and to have a reasonable opportunity to complain to an official other than the person who originally took the action.¹²⁵

D. Access to Religious Accouterments

The religious frequently make use of special jewelry or accessories in the practice of their faith. Naturally, religious prisoners will want to have access to such accouterments. They are often permitted these materials for rehabilitative reasons, but occasionally prison officials deny these articles to inmates out of security concerns.

In evaluating the legitimacy of these restrictions under the Turner standard, courts will consider the physical characteristics of the banned items to see whether they pose a threat to order and security. Courts have upheld bans on drugs,¹²⁶ incense,¹²⁷ necklaces, and rosaries¹²⁸ and candles.¹²⁹

E. Work-Religion Conflicts

In O'Lone v. Estate of Shabazz¹³⁰ the Supreme Court held that prison officials may, in order to preserve security and administrative convenience, bar Muslims from returning from their outside work posts to the prison each Friday afternoon for religious services.¹³¹ Lower courts have followed O'Lone in deferring to prison officials' rational determination that granting of requests for work leave would compromise legitimate penological objectives.¹³²

F. Religious Objections to Medical or Psychological Treatment

The government has subjected prisoners to treatment and testing of various degrees of intrusiveness, either to protect prison security or to further the rehabilitation of the prisoner. Case law on the issue of religious objections to such programs is spare. What seems to be settled is that the prisoner must delineate with some specificity the precise religious objection he or she has to the testing or treatment; it is not enough to merely recite the word "religion" in one's pleading.¹³³ Courts, however, have rejected even properly pleaded free exercise objections. In an unpublished decision, the U.S. Court of Appeals for the Tenth Circuit held that an inmate's free exercise objection to a sex offender treatment program was "legally frivolous" and "well outside the protective realm of the Free Exercise Clause."¹³⁴ Another court ruled against a free exercise challenge to compulsory participation by selected inmates in an alcohol and substance abused program, finding a rational relation between the requirement and the "governmental interests in reducing drug dependency of inmates, reducing recidivism, providing treatment with the best chance for success inside and outside the prison system, and increasing security."¹³⁵

An inmate stands a better chance of success by alleging that the treatment or testing was administered by procedures that were unfair under the Due Process Clause.¹³⁶ Nevertheless, once procedural requirements are met, prison officials can permissibly subject prisoners to quite invasive testing

and treatment. The Supreme Court, for instance, has upheld the forced administration of antipsychotic drugs to mentally unstable prisoners.¹³⁷

III. Conclusion

As is evident, prisoners retain only limited protection under the Free Exercise Clause. As long as a particular religious hardship is the product of a policy or regulation that is rationally related to legitimate penological objectives such as security, deterrence and rehabilitation, the inmate has no free exercise claim.

Endnotes

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1. Bell v. Wolfish, 441 U.S. 520, 545 (1979).
 2. Pell v. Procunier, 417 U.S. 817, 822 (1974).
 3. See Cruz v. Beto, 405 U.S. 319 (1972) (reversing the dismissal of a prisoner's complaint alleging that he was denied the opportunities to practice his faith that were accorded other religious inmates); Cooper v. Pate, 378 U.S. 546 (1964) (same).
 4. Price v. Johnston, 334 U.S. 266, 285 (1948).
 5. Pell, 417 U.S. at 822-23.
 6. 482 U.S. 78 (1987).
 7. Id. at 89. The Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb et seq., which mandated much closer scrutiny of prison regulations substantially burdening inmates' free exercise of religion than does Turner, was struck down in June of 1997 by the Supreme Court in City of Boerne v. P.F. Flores, --- S. Ct. ----, 1997 WL 345322. Consequently, prisoners now enjoy only as much constitutional protection as they enjoyed under pre-RFRA case law.
 8. Id. (quoting Block v. Rutherford, 468 U.S. 576, 586 (1984)).
 9. Id. at 90.
 10. Id.
 11. Id. at 89-91.
 12. Id. at 90.
 13. Id.
 14. Id.
 15. Id. at 89; see also Hadi v. Horn, 830 F.2d 779, 785 (7th Cir. 1987) (upholding prison regulations that precluded Muslim inmates from attending Jumu'ah services, despite the officials' failure to demonstrate a threat to cite an actual breach of security, either present or past; observing that "prison officials need not wait for a problem to arise before taking steps to minimize security or health risks"); Butler-Bey v. Frey, 811 F.2d 449, 450 (8th Cir. 1987) ("prison officials need only show that the regulated practice creates a potential threat to institutional security"); Standing Deer v. Carlson, 831 F.2d 1525, 1529 (9th Cir. 1987) ("we do not require that prison officials demonstrate that the prisoners' religious practices are causally related to existing institutional problems"); Jones v. North Carolina Prisoners' Union, 433 U.S. 119, 131 (1977) (upholding ban, imposed for security reasons, on inmate solicitation of other inmates to join a inmate union, noting that "[r]esponsible prison officials must be permitted to take reasonable steps to forestall such a threat [of violence], and they must be permitted to act before the time when they can compile a dossier on the eve of a riot").
 16. Reed v. Faulkner, 842 F.2d 960, 963 (7th Cir. 1988) (invalidating a requirement that Rastafarians cut their dreadlocks because there was no reason to believe that relaxing the rule would cause the racial violence that prison officials feared would occur); see also Whitney v. Brown, 882 F.2d 1068, 1074 (6th Cir. 1989) (striking down a policy precluding Jews from gathering for religious services for fear that minimum and medium security Jewish inmates would be harmed in traveling into maximum security areas; pointing out the prison's inconsistent practice of permitting an outside Rabbi and his volunteers into these areas on a regular basis; maintaining that prison officials may not justify policies with a "flurry of disconnected and self-conflicting points"); Williams v. Lane, 851 F.2d 867, 875 (7th Cir. 1988) (officials do not have carte blanche to proffer reasons that are "arbitrary, exaggerated and pretextual").
 17. 482 U.S. at 98-99.

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18. *Id.* at 98.
19. *Id.*
20. *Id.* at 99.
21. 405 U.S. 319 (1972).
22. *Id.* at 322.
23. *Id.*
24. *Id.* at 319-20.
25. *Id.* at 322.
26. *Id.* n.2.
27. *Id.* For application of this standard, see Woods v. Evatt, 876 F. Supp. 756 (D. S.C. 1995) (holding that prison restriction of Muslim services withstood equal protection scrutiny; although Christian groups were allowed to use the area for masses, Muslims who were excluded from doing the same had no equal protection claim where their services would prevent 90% of the prison population from having visitation hours); Allen v. Toombs, 827 F.2d 563, 567-68 (9th Cir. 1987) (upholding prison policy providing that only outside volunteer spiritual leaders could conduct the Native American Pipe Ceremony for inmates, despite the presence of full-time chaplains for Christian inmates, because the policy leaves a "reasonable opportunity" for Native American inmates to practice their religion and "the prison administration is not under an affirmative duty to provide each inmate with the spiritual counselor of his choice"); Gittlemacker v. Prasse, 428 F.2d 1 (3d Cir. 1970) (holding that the state was not required to hire a Jewish chaplain for a prison with only two or three Jewish inmates).
28. O'Lone v. Estate of Shabazz, 482 U.S. 342, 352 (1987).
29. 482 U.S. 342.
30. *Id.*; see also Turner, 482 U.S. at 92 (upholding ban on inmate-to-inmate correspondence because it "does not deprive prisoners of all means of expression"); Thornburgh v. Abbott, 490 U.S. 401, 417 (1989) (noting that Turner and O'Lone make clear that "the right in question must be viewed sensibly and expansively"). For application of the "alternative means" standard, see Iron Eyes v. Henry, 907 F.2d 810, 815 (8th Cir. 1990) (upholding hair length restriction as applied to Native American inmates because alternative means of practicing their religion remained, such as the sweat lodge, ghost dance and pipe ceremony); Fromer v. Scully, 874 F.2d 69 (2d Cir. 1989) (upholding beard length restriction as applied to Orthodox Jewish inmates because they were free to fulfill other religious obligations, such as dietary restrictions). But see Whitney v. Brown, 882 F.2d 1068, 1070 (6th Cir. 1989) (striking prison policy which precluded Jewish inmates from attending a congregate Passover service; solo observance not acceptable alternative since it would be a "miserable" experience).
31. Turner, 482 U.S. at 90.
32. *Id.*
33. See, e.g., Friend v. Kolodzieczak, 923 F.2d 126, 128 (9th Cir. 1990) (upholding regulation prohibiting inmates from possessing rosaries and scapulars in their cells); Fromer v. Scully, 874 F.2d at 76 (upholding hair length restriction as applied to Orthodox Jewish inmates); Standing Deer v. Carlson, 831 F.2d 1525, 1529 (9th Cir. 1987) (upholding regulation banning wearing of headgear, including religious headgear, in prison dining hall); Martinelli v. Dugger, 817 F.2d 1499 (11th Cir. 1987) (upholding prison diet policies and grooming restrictions as applied to Greek Orthodox inmate), cert. denied, 484 U.S. 1012 (1988); O'Lone, 482 U.S. at 353.
34. See, e.g., Akbar v. Borgen, 803 F. Supp. 1479, 1486 (E.D. Wis. 1992) (upholding regulations prohibiting unsanctioned group activities); Woods v. O'Leary, 890 F.2d 883 887 (7th Cir. 1989) (upholding prison's refusal to permit inmate to mail documents relating to group that was allegedly a church); Kolodzieczak,

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- 923 F.2d at 128 (upholding regulation prohibiting inmates from possessing rosaries and scapulars in their cells).
35. Turner, 482 U.S. at 90.
36. Id.
37. The Supreme Court in O'Lone gave only fleeting reference to the fourth factor after it had concluded, utilizing the third factor, that there were no acceptable alternatives to prison regulation precluding attendance by Muslim inmates at Friday services. See 482 U.S. at 353. See also Pollock v. Marshall, 845 F.2d 656, 659 (6th Cir. 1988) (blurring analysis under first, third and fourth factors).
38. See Thornburgh v. Abbott, 490 U.S. 401, 413 (1989).
39. 42 U.S.C. 2000cc-1 provides "(a) General Rule.--No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person-- (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. (b) Scope of Application.--This section applies in any case in which-- (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.
40. 42 U.S.C. 2000cc-1(a)(1), (2).
41. See, e.g., Iron Eyes v. Henry, 907 F.2d 810 (8th Cir. 1990); (upholding prison rule, as applied to member of Native American faith, requiring inmates to wear their hair above the shoulders); Friedman v. Arizona, 912 F.2d 328 (9th Cir. 1990) (upholding prison rule restricting beards to one inch in length as applied to Orthodox Jewish inmate); Fromer v. Scully, 874 F.2d 69 (2d Cir. 1989) (upholding rule prohibiting beards, except for medical reasons, as applied to Orthodox Jewish inmate); Pollock v. Marshall, 845 F.2d 656 (6th Cir. 1988) (upholding hair length restriction as applied to member of Native American faith); Martinelli v. Dugger, 817 F.2d 1499 (11th Cir. 1987) (validating hair and beard length restriction as applied to Greek Orthodox inmate); Brightly v. Wainwright, 814 F.2d 612 (11th Cir.) (upholding grooming rules as applied to member of Ethiopian Zion Coptic Church), cert. denied, 484 U.S. 944 (1987); Cole v. Flick, 758 F.2d 124 (3d Cir.), (upholding hair length restrictions as applied to member of Native American faith), cert. denied, 474 U.S. 921 (1985).
42. Pollock, 845 F.2d at 659.
43. Flagner v. Wilkinson, 241 F.3d 475 (6th Cir. 2001)
44. 922 F.2d 370 (7th Cir. 1991).
45. Id. at 375.
46. Id. at 376.
47. See, e.g., Benjamin v. Coughlin, 905 F.2d 574, 578-79 (2d Cir.), cert. denied, 498 U.S. 951 (1990) (upholding restrictions on the wearing of Rastafarian crowns because "of the ease with which contraband can be secreted" in them); Standing Deer v. Carlson, 831 F.2d 1525 (9th Cir. 1987) (validating, as applied to members of Native American faith, rule banning wearing of headgear in prison dining halls because of sanitation concerns); Butler-Bey v. Frey, 811 F.2d 449 (8th Cir. 1987) (upholding ban on wearing headgear in designated places as applied to members of Moorish Science Temple desiring to wear fezes, because contraband and weapons might be secreted in them).
48. 935 F.2d 1106 (10th Cir. 1991).
49. Id. at 1113.

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50. *Id.*; see also Friend v. Kolodzieczak, 923 F.2d 126 (9th Cir. 1990) (upholding general ban on inmate possession of personal property not supplied by the jail--instituted to "limit the means by which inmates may obtain drugs, fabricate weapons and otherwise disrupt jail"--as applied to Roman Catholic prisoner who wished to possess a rosary and scapular in his cell); Rowland v. Jones, 452 F.2d 1005, 1006 (8th Cir. 1971) (upholding ban on possession of medallions worn around the neck as "within the discretion of prison authorities by reason of their potential danger as a weapon").
51. In Swift v. Lewis, 901 F.2d 730 (9th Cir. 1990), for example, prison officials asserted the common identification and security interests for a hair and beard restriction, but offered no evidence that the restriction was based on these interests. The court reversed a summary judgment in favor of defendants, noting that "prison officials must at least produce some evidence that their policies are based on legitimate penological justifications. . . [i]f it were otherwise, judicial review of prison policies would not be meaningful." Id. at 732. See also Reed v. Faulkner, 842 F.2d 960, 963 (7th Cir. 1988) (holding that hair length restriction on Rastafarians cannot be justified on grounds that the rule is designed to prevent racial conflict when there is no evidence that the challenged practice denotes racial superiority, and no evidence that even if it did, the practice would lead to violence. Defendants may not pile "conjecture upon conjecture" in this fashion.).
52. The Second Circuit held in Benjamin v. Coughlin, 905 F.2d 571 (2d Cir.), cert. denied, 498 U.S. 951 (1990), that there were easy obvious alternatives to rule requiring Rastafarians to cut their hair for prison photographs, instituted supposedly to facilitate identification of inmates. Since plaintiffs were permitted to regrow their hair after their initial photograph was taken, the only valid reason to cut their hair for photograph was to expose their facial features. However, since "tying plaintiffs' hair in pony tails adequately accommodates the interests of prison authorities in revealing an inmate's cranial and facial features," there was an alternative practice which the court held must be implemented. Id. at 576-77.
53. For example, in Reed v. Faulkner, 842 F.2d 960, a group of Rastafarian inmates challenged a hair-length rule. Prison officials admitted that they did not enforce this rule against Native Americans in the prison. They offered no reason for the disparity in treatment of the two groups. The court observed that "[i]f safety, security, sanitation, and other reasons advanced in support of the regulation were deemed overridden by the claims of American Indians. . .it is not obvious why Rastafarians should be forced to comply with the regulation." Id. at 964. The court held that if, after remand, defendants offered no rational justification for the differential treatment, there would be "a denial of equal protection of the laws in an elementary sense." Id.
54. 527 F.2d 492 (2d Cir. 1975).
55. Id. at 495.
56. Id.
57. Id.
58. The court refused to order that Kahane be provided frozen dinners. Id. at 496.
59. Benjamin, 905 F.2d 571, 579 (2d Cir.), cert. denied, 498 U.S. (1990).
60. Benjamin, 905 F.2d at 579 Hunafa v. Murphy, 907 F.2d 46, 47 (7th Cir. 1990) (noting, in scrutinizing prison dietary regulations, that "a prisoner is entitled to practice his religion"); McElyea v. Babbitt, 833 F.2d 196, 198 (9th Cir. 1987) ("Inmates. . .have the right to provided food sufficient to sustain them in good health that satisfies the dietary laws of their religion"); Ross v. Coughlin, 669 F. Supp. 1235, 1243 (S.D.N.Y. 1987) ("the state's obligation to provide an adequate kosher diet is a clearly established constitutional right").
61. The case of LeFevres v. Safle, 936 F.2d 117 (9th Cir. 1991) provides a case of an irrational denial.

Prison officials denied a Seventh Day Adventist's request for a vegetarian diet because they deemed the diet nutritionally inadequate. In response, the inmate submitted evidence that the American Dietetic Association considered a vegetarian diet healthful. The court held that on this evidence a fact-finder could reasonably conclude that the restriction was illogical. *Id.* at 1119-20.

62. 836 F.2d 948 (5th Cir. 1988).

63. *Id.* at 949.

64. *Id.* at 949.

65. *Id.* at 950-51; see also *Martinelli v. Dugger*, 817 F.2d 1499, 1507 (11th Cir. 1987) (holding that failure to provide full kosher diet is rationally related to "goal of avoiding excessive administrative expenses"; *Udey v. Kastner*, 805 F.2d 1218 (5th Cir. 1986) (holding that prison not obligated to provide special diets of organically grown produce washed in distilled water where costs of providing it are over \$15,000 per year and where granting the request would encourage many fraudulent or exaggerated claims for similar treatment)).

66. 907 F.2d 46 (7th Cir. 1990).

67. *Id.* at 47.

68. *Id.* at 47-48.

69. *Id.* at 47.

70. *Id.*

71. *Id.* at 47-48.

72. *DeHart v. Horn*, 227 F.3d 47 (3d Cir. 2000).

73. *Kahey*, 936 F.2d at 949-50.

74. *United States ex rel Wolfish v. Levi*, 439 F. Supp. 114 (S.D.N.Y. 1977), *aff'd*, 573 F.2d 118 (2d Cir. 1978), *rev'd on other grounds sub nom, Bell v. Wolfish*, 441 U.S. 520 (1979).

75. *Muhammad v. McMickens*, 708 F. Supp. 607 (S.D.N.Y. 1989) (rejecting suit for a single denial of a request for a religious meal; "it is well settled that an allegation of a single constitutional deprivation will not invoke municipal liability `unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy which can be attributed to a municipal policymaker'" (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985) (plurality opinion))).

76. *Al-Almin v. Gramley*, 926 F.2d 680 (7th Cir. 1991) (holding that Constitution is satisfied by permitting Muslims to purchase, at their own expense, commercially prepared and packaged food for Ramadan and the feast of Eid-Ul-Fitr).

77. *Hayes v. Long*, 72 F.3d 70 (8th Cir. 1995) (holding that prison officials violated free exercise rights of Muslim inmate forced to handle pork); *Champman v. Pickett*, 586 F.2d 22 (7th Cir. 1978) (same). Cf. *Franklin v. Lockhart*, 890 F.2d 96 (8th Cir. 1989) (holding that allegation that plaintiff was required to handle manure and dead animals contrary to Muslims beliefs stated a constitutional claim).

78. See *Lawson v. Dugger*, 840 F.2d 781, 786 (11th Cir. 1987), *vacated* 490 U.S. 1078 (1989) (holding that religious inmates have a "fundamental right" to gather for worship services); *Cooper v. Pate*, 382

F.2d 518, 522 (7th Cir. 1967) (noting that First Amendment guarantee of religious freedom protects "an exercise of religion so widely considered essential as worship services"). Occasional or isolated failures to hold services are not unconstitutional if they are justified by legitimate penal considerations. See, e.g., Ali Shaheed v. Winston, 885 F.Supp. 861, 867 (E.D. Va. 1995) (occasional cancellation and cutting short of religious services justified as "strict adherence to the schedule for feeding inmates and moving them around the jail [was] necessary to keep the facility running in a smooth and orderly fashion"); Hadi v. Horn, 830 F.2d 779, 788 (7th Cir. 1987) (occasional cancellation of religious services justified as "result of the prison's attempt to accommodate the religious, social and recreational needs of approximately 2,000 prisoners. . .within the resources available in a penal facility").

79. Benjamin v. Coughlin, 905 F.2d 571, 577 (2d Cir.), cert. denied, 498 U.S. 951 (1990); Cooper v. Tard, 855 F.2d 125, 129-30 (3d Cir. 1988); Hadi v. Horn, 830 F.2d 779, 784 (7th Cir. 1987); Tisdale v. Dobbs, 807 F.2d 734, 736, 740 (8th Cir. 1986). Courts are especially deferential to requirements that guards be present at religious gatherings. See, e.g., Butler-Bey v. Frey, 811 F.2d 449, 451 (8th Cir. 1987) (noting, in upholding prison rule that religious meetings be supervised by guards, that a "guard need only be present; the plaintiff need not find a free-world sponsor to preside over their religious services").
80. Tard, 855 F.2d at 129.
81. Hadi, 830 F.2d at 779.
82. Id.
83. Benjamin v. Coughlin, 708 F. Supp. 57 (S.D.N.Y. 1989), aff'd, 905 F.2d 571 (2d Cir.), cert. denied, 498 U.S. 951 (1990).
84. Hobbs v. Parnell, 754 F. Supp. 1040, 1044 (D. Del. 1991) (citing evidence that inmate-led services by members of the Nation of Islam were particularly disruptive and had led in the past to confrontations with prison personnel).
85. Johnson-Bey v. Lane, 863 F.2d 1308, 1312 ("prisons are entitled to employ chaplains and need not employ chaplains of each and every faith to which prisoners might happen to subscribe, but may not discriminate against minority faiths except to the extent required by the exigencies of prison administration").
86. Id. at 1311, 1313 ("the reasonableness of the ban on inmates' conducting their own religious services is related to the availability of substitutes, whether chaplains employed by the prison or ministers invited on a visiting basis"; inmates may not be given the "run-around," and prison officials may not delay or refuse to arrange for outsider to conduct services for inmate member of the Moorish Science Temple); Lane v. Griffin, 834 F.2d 403, 407 (noting that eight-month delay in arranging for a Muslim chaplain to conduct services was unconstitutional if delay was not "reasonably related" to valid governmental interests). Once solicitation of free-world sponsors is made, however, prison officials are not liable if no suitable volunteers respond to the call. See, e.g., Benjamin, 905 F.2d at 578 ("the apparent unavailability of a Rastafarian Elder or similar religious authority willing to serve as an outside sponsor is not the fault of the defendants. Had plaintiffs proved that [the prison] arbitrarily rejected outside sponsors, then a cognizable claim might exist").
87. See, e.g., McCabe v. Arave, 827 F.2d 634, 637 (9th Cir. 1987) (flat ban on group worship by inmate members of the Church Jesus Christ Christian because the religion "preaches racial hatred, revenge, and violence").
88. Akbar v. Borgen, 803 F. Supp. 1479, 1485 (E.D. Wis. 1992).
89. See Akbar, 803 F. Supp. at 1485 (E.D. Wis. 1992) (upholding flat prison ban on unsupervised group

activity); Tard, 855 F.2d at 126 (upholding prohibition on unsupervised group prayer as applied to Muslim inmates who engaged in group prayer called a "Du'a," during which they stood in a circle for a few minutes in the prison yard); Shabazz v. Coughlin, 852 F.2d 697, 701 (2d Cir. 1988) (noting that "no decisions in this circuit clearly foreshadow [the right to pray in the prison yard]. Nor are there cases in other circuits condemning or condoning such practices").

90. Cooper, 855 F.2d at 130.
91. Childs v. Duckworth, 509 F.Supp. 1254, 1263 (N.D. Ind. 1981) (upholding prison's refusal to permit inmate to form satanist church and hold services because "the generalized concepts of satanism were inconsistent with the rehabilitative goals [of the prison]"), aff'd, 705 F.2d 915 (7th Cir. 1983).
92. See Muhammad v. New York City Dep't of Corrections, 904 F. Supp. 161 (S.D.N.Y. 1995) (holding that prison officials did not violate RFRA by denying Nation of Islam (NOI) inmates access to a NOI chaplain and the opportunity to conduct NOI religious services; the generic Muslim prayer services, religious study groups and visitations by clergymen were sufficient); Clifton v. Craig, 924 F.2d 182 (10th Cir.), cert. denied, 502 U.S. 827 (1991); (holding that services for Christians were sufficient to accommodate the needs of Church of Christ members); Matiyn v. Commissioner Dept. of Corrections, 726 F. Supp. 42 (W.D.N.Y. 1989) (holding that services with Shia Muslims were sufficient for Sunni Muslims).
93. Clifton, 924 F.2d at 185.
94. In O'Lone v. Estate of Shabazz, the Supreme Court cited security and rehabilitative goals in upholding prison rules precluding Muslim inmates assigned to outside work details from returning to the prison for Jumu'ah, a weekly Friday service. 482 U.S. 342, 350-533 (1987). See also Zatko v. Rowland, 835 F. Supp. 1174 (N.D. Cal. 1995) (holding that where inmate is in the most dangerous class of prisoners, it is permissible to prevent participation in group religious services if the safety risk to the general population is too great and there are alternative means of worship); McCabe, 827 F.2d at 637 (holding that prison officials could deny close-custody inmates the opportunity to attend services of the Church Jesus Christ Christian, a religion linked with the Aryan Nation, which preaches "racial hatred, revenge, and violence").
95. Whitney v. Brown, 882 F.2d 1068, 1074 (6th Cir. 1988). In Whitney, Jewish inmates requested that they be allowed to congregate for Passover services once each year and weekly for Sabbath services. The prison was divided into several complexes according to the different security classifications of inmates, and inmates were allowed to travel between complexes except for medical reasons. Id. at 1069-70. However, for 45 years before the recently imposed restrictions, the prison had allowed the few Jewish inmates in the prison to gather for religious services. Id. at 1070. The court noted that given the amount of traffic permitted for medical reasons and the fact that only six inmates sought the accommodation, "a policy prohibiting the intercomplex travel of a few Jewish inmates to weekly Sabbath services in a maximum security complex is inconsistent and irrational." Id. at 1076. The court failed to see how any of the security interests supposedly served by the ban "suddenly became threatened" after forty-five years of weekly inmate travel to Sabbath services. Id.
96. Cruz, 405 U.S. 319, 322 n.2 (1972).
97. See, e.g., Matiyn v. Henderson, 841 F.2d 31, 37 (2d Cir. 1988) (holding that exclusion of inmate in punitive segregation from congregate religious services was valid for "reasons related to legitimate penological objectives"); Alimym v. Miles, 679 F. Supp. 1, 2 (W.D.N.Y. 1988) (upholding state correctional services directive which denied inmates in segregation units permission to attend regularly scheduled congregate religious services).
98. See McDonald v. Hall, 579 F.2d 120, 121 (1st Cir. 1978) (upholding prison rule because "any inmate

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- may, upon request, avail himself of religious counselling or discussions"); Sharp v. Sigler, 408 F.2d 966, 971 (8th Cir. 1969).
99. In both Matiyn, 841 F.2d at 31, and Aliym, 679 F. Supp. at 1, the courts denied attendance at services without any discussion of alternative means for the inmate to practice his or her religion.
100. See, e.g., LaReau v. MacDougall, 473 974, 99 (2d Cir. 1972), cert. denied, 414 U.S. 878 (1973); Mawhinney v. Henderson, 542 F.2d 1, 3 (2d Cir. 1976) ("not every prisoner in segregation can be excluded from a chapel services because not all segregated prisoners are potential troublemakers, the prison authorities must make some discrimination among them"); Beck v. Lynaugh, 842 F.2d 759 (5th Cir. 1988).
101. Mawhinney, 542 F.2d at 3.
102. See, e.g., Stroud v. Roth, 741 F. Supp. 559 (E.D. Pa. 1990) (upholding denial of access to religious services for protective custody inmate who was placed in segregation for protection after he had attacked the inmate Imam and after he received threats from other inmates); Bellamy v. McMickens, 692 F. Supp. 205 (S.D.N.Y. 1988) (validating denial of access to services to inmate who was in protection because he was informer in organized crime case); Termund v. Cook, 684 F. Supp. 255, 259, 262 (D. Utah 1988) (upholding temporary denial of religious services for all inmates in protective custody when evidence showed serious security problems in the unit including "fires and throwing of debris at officers"); Tyler v. Rapone, 603 F. Supp. 268 (E.D. Pa. 1985).
In addition, the restriction can remain in place only as long as needed for security reasons.
Termunde, 684 F. Supp. at 263 (noting that if security reasons no longer justify the regulation, it is impermissible because "fossilized policy cannot be a rationale for contemporary restriction").
103. See Griffin v. Coughlin, 743 F. Supp. 1006 (N.D.N.Y. 1990) (holding that inmates are entitled to private meaningful religious meanings with religious advisors in a private meeting room); Stroud, 741 F. Supp. at 562 (holding that prison was required to allow inmate to watch closed circuit television or videotapes of the prison service); Bellamy, 692 F. Supp. at 215 (approving alternative means in the form of visits by ministers and bible study classes); McCabe v. Arave, 625 F. Supp. 1199 (D. Idaho 1986), aff'd in part, rev'd in part, 827 F.2d 634 (9th Cir. 1987) (holding that it is permissible to deny protective custody inmate permission to attend services of a particular denomination if he is permitted to attend interdenominational services).
104. Divers v. Dept. of Corrections, 921 F.2d 191 (8th Cir. 1990) (noting that denial of religious services during lockdown is an actionable claim and that defendants must produce a justifiable rationale for the restriction); martin v. Lane, 766 F. Supp. 641 (N.D. Ill. 1991) (denying summary judgment for defendants when they produced no evidence justifying denial of services during lockdown). See also Bruscino v. Carlson, 854 f.2d 162, 166 (7th Cir. 1988), cert. denied, 491 U.S. 907 (1988) (holding that denial of religious services to inmates in highest security institution in the federal prison system justified by the "extraordinary security problems at the prison"); Ra Chka v. Franzen, 727 F. Supp. 454 (N.D. Ill. 1989) (holding that reorganization of facility following lockdown into three separate security units justified suspension of normal Muslim services where each individual unit was permitted to have its own Muslim services). Cf. Padraza v. Meyer, 919 F.2d 317 (5th Cir. 1990) (ruling that convicted inmates awaiting transfer to state prison are considered "high escape risks" and can permissibly be excluded from congregate services for the general population when they are offered services in the "security vestibule" of their cell block).
105. Cruz v. Beto, 405 U.S. 319, 322 n. 2 (1972) (noting that clergy need not be provided "without regard to the extent of the demand"); see also Young v. Lane, 922 F.2d 370, 377 (7th Cir. 1991) (upholding refusal by prison officials to reimburse visiting rabbi while simultaneously reimbursing

other visiting clergy; "we can locate no contrary precedent that sufficiently particularizes plaintiffs' argument that defendants must compensate outside clergy to minister to the needs of a religious group that constitutes less than one percent of the prison population"); Card v. Dugger, 709 F. Supp. 1098, 1109 (M.D. Fla. 1988) (upholding failure to provide death row inmate with in-house Catholic priest, even though all the prison chaplains are Southern Baptist, where vast majority of the prison population is Protestant, and where the chaplains are instructed to meet the needs of all inmates or secure the services of volunteer outside clergy); Allen v. Toombs, 827 F.2d 563, 568-69 (9th Cir. 1987) (holding that Native American inmates had reasonable opportunities to practice their religion when prison officials permitted weekly access by volunteer clergy, when available; "the prison administration is not under an affirmative duty to provide each inmate with the spiritual counselor of his choice"); Thompson v. Commonwealth of Ky., 712 F.2d 1078, 1081-82 (6th Cir. 1983) (upholding refusal to provide Muslim clergy at state expense, even though prison employed full-time Christian clergy, because the Free Exercise Clause "does not insure that all sects will be treated alike in all respects"); Bethea v. Daggett, 329 F. Supp. 796, 798 (N.D. Ga. 1970), aff'd per curiam, 444 F.2d 112 (5th Cir. 1971) (holding that refusal to provide in-house Black Muslim minister was constitutional because inmates were allowed to hold two meetings per week, select one of their number to serve as religious leader, and reproduce and distribute religious materials).

106. See section C(1) above.
107. Cooper v. Pate, 382 F.2d at 522; Saleem v. Evans, 866 F.2d 1313, 1317-18 (11th Cir. 1989) (holding that allegation that prison refused to allow entry of Muslim Imam of Nation of Islam and only allowed Imam from American Muslim states a cause of action). One court has held that a clergyman who is a convicted felon may be barred on the ground that his presence in the facility represents a valid security threat. See Johnson-Bey v. Lane, 863 F.2d 1308, 1311 ("It [the prison] need not yield to their [the inmates'] desire to invite convicted felons, frocked or unfrocked, to conduct religious services in the prison").
108. Johnson-Bey, 863 F.2d at 1309; see also Childs v. Duckworth, 705 F.2d 915, 921 (7th Cir. 1983) (noting "rules that regulate all inmate meetings, requiring prisoners to provide the name of a sponsor and all information on the organization's proposed activities, are appropriate restrictions narrowly designed to promote the legitimate governmental interest in institutional discipline and security"). Also, the prison may relegate responsibility of screening to a "Chaplaincy Counsel" comprised of representatives of religious organizations that provide clergy to the prison. Siddiqi v. Leak, 880 F.2d 904, 909 (7th Cir. 1989) (finding that "use of the Council to screen applicants is rationally related to the legitimate objective of security").
109. See, e.g., Finney v. Hutto, 410 F. Supp. 21 (E.D. Ark. 1976), aff'd, 548 F.2d 780 (8th Cir. 1978).
110. See section C(4) above.
111. See, e.g., Peterkin v. Jeffes, 661 F. Supp. 895 (E.D. Pa. 1987), aff'd in part, vacated in part, 855 F.2d 1021 (3d Cir. 1988), aff'd on remand, 953 F.2d 1380 (3d Cir. 1992) (upholding restriction on congregate services for inmates on death row in part because inmates were permitted to receive visits from outside clergy).
112. Perhaps prison officials recognize this since there are no reported decisions addressing the constitutionality of complete bans on clergy visitation to segregated inmates. Courts have, however, upheld such bans in cases of genuine emergency, such as a prison lockdown. See Rogers v. Scurr, 676 F.2d 1211, 1216 (8th Cir. 1982) (noting that "[n]o constitutional right of a prisoner is violated when he is not allowed to see visitors during an emergency lockdown, even if the requested visitor is a religious adviser); White v. Keller 588 F.2d 913 (4th Cir. 1978).

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113. Griffin v. Coughlin, 743 F. Supp. 1006, 1028 (N.D. N.Y. 1990). In Griffin the court held that since inmates in protective custody could not attend group services, they had a right to private unmonitored meetings with clergy and religious advisers in private rooms available in the unit. Id. The court found no valid security concerns outweighing "the need for privacy in confidential communications between inmate and spiritual advisor." Id.
114. McClafilin v. Pearce, 743 F. Supp. 1381, 1385 (E.D. Wash. 1990) (holding that "[n]on essential elements of a religion may be withheld from inmates in a disciplinary segregation unit, even though they are provided in the general population").
115. Taylor v. Sterett, 532 F.2d 462, 479 n.24 (5th Cir. 1976) ("A prisoner's freedom of religion under the First Amendment is a well established right that affords protection to correspondence of a religious nature").
116. Thornburgh v. Abbott, 490 U.S. 401, 410-13 (1989).
117. Procnier v. Martinez, 416 U.S. 396, 408 (1974). Censorship of outgoing mail is justified if the following criteria are met:
- First, the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements. Rather, they must show that a regulation authorizing mail censorship furthers one or more of the substantial governmental interests of security, order, and rehabilitation. Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Thus a restriction on inmate correspondence that furthers an important or substantial interest of penal administration will nevertheless be invalid if its sweep is unnecessary broad. This does not mean, of course, that prison administrators may not be required to show with certainty that adverse consequences would flow from the failure to censor a particular letter. Some latitude in anticipating the probable consequences of allowing certain speech in a prison environment is essential to the proper discharge of an administrator's duty. But any regulation or practice that restricts inmate correspondence must be generally necessary to protect one or more of the legitimate governmental interests defined above. Id. at 413-14. The Court applied this standard to strike down California penal regulations providing for the censorship of inmate correspondence that "unduly complain," "magnify grievances," or "expres[s] inflammatory political, racial, religious or other views or beliefs." Id. at 414. The Court observed that the regulations "fairly invited prison officials and employees to apply their own personal prejudices and opinions as standards for prisoner mail censorship." Id.
118. Thornburgh, 490 U.S. at 413. In Thornburgh, the Court upheld on its face a prison rule which authorized wardens to reject an incoming publication if it was found "to be detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity." Id. at 405, 419.
119. Wolff v. McDonnell, 418 U.S. 539, 576 (1974).
120. Woods v. O'Leary, 890 F.2d 883, 885 (7th Cir. 1989) (noting that "the mere fact that the [plaintiff's belief system] may be a religion does not remove and venture [plaintiff] wishes to engage in from the prison officials' scrutiny"; therefore, rules governing bulk mailings applied to inmate's religious organization).
121. Valiant-Bey v. Morris, 829 F.2d 1441, 1443 (8th Cir. 1987) (ruling that allegation that prison officials singled out and delayed delivery of mail sent by the Moorish Science Temple stated a claim of religious discrimination); McCabe v. Arave, 827 F.2d 634, 638 (9th Cir. 1987) (observing, while

scrutinizing a ban on the literature of the Church Jesus Christ Christian, that the "Supreme Court has consistently noted the absence of content regulation in upholding regulations that infringed upon the First Amendment rights of prisoners").

122. Stefanow v. McFadden, 103 F.3d 1466, 1473 (9th Cir. 1996).
123. George v. Sullivan, 896 F. Supp. 895, 898 (W.D. Wis. 1995) (upholding ban on the receipt by inmates of the literature of the Church Jesus Christ Christian, a white supremacist organization that prison officials determined to be "gang related"); see also Stefanow, 103 F.2d at 1473-75 (same); Lawson v. Singletary, 85 F.3d 502, 506, 511-12 (upholding facial validity of prison regulations banning any publication which "depicts, describes, or encourages activities which may lead to the use of physical violence or group disruption" or which "otherwise presents a threat to the security, order or rehabilitative objectives of the correctional system or the safety of any prison"); McCorkle v. Johnson, 881 F.2d 993, 995 (11th Cir. 1989) (upholding ban on "The Satanic Bible" because "persons following its teachings would murder, rape or rob at will without regard for moral or legal consequences").
124. Murphy v. Missouri Dept. of Corrections, 814 F.2d 1252, 1257 (8th Cir. 1987); see also McCabe v. Arave, 827 F.2d 634, 638 (9th Cir. 1987) (declaring that "literature advocating racial purity, but not advocating violence or illegal activity as a means of achieving this goal, and not so racially inflammatory as to be reasonably likely to cause violence at the prison, cannot be constitutionally banned as rationally related to rehabilitation").
125. Procunier, 416 U.S. at 417.
126. L'Aquarius v. Maynard, 634 F.2d 1310 (Okla. 1981) (upholding denial of marijuana for Rastafarian religious ceremonies).
127. Munir v. Scott, 792 F. Supp. 1472 (E.D. Mich. 1993) (noting that incense may mask the smell of illegal drugs and irritate other inmates); Childs v. Duckworth, 509 F. Supp. 1254 (N.D. Ind. 1981), aff'd, 705 F.2d 915 (7th Cir. 1983) (same).
128. Hall v. Bellmon, 935 F.2d 1113 (10th Cir. 1991) (upholding denial of beartooth necklace due to its suitability as a weapon); Friend v. Kolodzieczak, 923 F.2d 126 (9th Cir. 1991) (upholding denial of rosary and scapular).
129. Ward v. Walsh, 1 F.3d 873 (9th Cir. 1993) (noting that candles pose a fire hazard); Childs, 509 F. Supp. 1254 (noting that candles pose a fire hazard and can be used to make key molds).
130. 482 U.S. 342.
131. Id. at 350.
132. See, e.g., Abdur Ra'oof v. Dep't of Corrections, 528 N.W.2d 840 (Mich. 1995) (upholding prison regulation preventing inmates from attending religious ceremonies while on work detail because excusal would create a security risk); Mumim v. Phelps, 857 F.2d 1055 (10th Cir. 1988) (upholding refusal to transport Muslim inmates back to main prison for religious services); Johnson v. Bruce, 771 F. Supp. 327 (D. Kan. 1991), aff'd, 961 F.2d 220 (10th Cir. 1992) (holding that conducting Muslim Friday afternoon services in the evening after completion of work is reasonable).
133. Boyd v. Coughlin, 914 F. Supp. 828, 834 (N.D.N.Y. 1996) (holding that inmate stated no free exercise objection to compulsory Alcoholics Anonymous program because he "failed to set forth one belief or practice forbidden or required by his religion, much less one that is affected adversely by governmental compulsion"); Stafford v. Harrison, 766 F. Supp. 1014, 1017 (D. Kan. 1991) (rejecting free exercise objection to compulsory AA program because "[t]here is no evidence that any practice or ritual central to plaintiff's religion was implicated by the requirement that he undergo substance abuse treatment. . . plaintiff has not shown the program caused him to abandon or contravene any

tenet of his faith"); Dunn v. White, 880 F.2d 1188, 1198 (10th Cir. 1989) (rejecting free exercise objection to compulsory AIDS testing; "By relying entirely on the word 'religion' rather than any specific belief, whether as part of a personal faith or as a tenet of an organized group or sect, plaintiff has supported his first amendment claim with only a conclusory allegation of religious exemption. . .Without more specific allegations, plaintiff's complaint fails to state a claim that the prison violated his right to religious freedom"). The Second Circuit has embraced an interpretation of the Free Exercise Clause which would disqualify many religious objections to compulsory treatment and testing. In rejecting a free exercise claim brought by public school parents and students that certain portions of public school curriculum presented the students with material repugnant to their faith, the court noted that the Free Exercise Clause only prohibits 'governmental compulsion either to do or refrain from doing an act forbidden or required by one's religion, or to affirm or disavow a belief forbidden or required by one's religion.' Mozert v. Hawkins County Bd. of Educ., 827 F.2d 1058, 1066 (2d Cir. 1987), cert. denied, 484 U.S. 1066 (1988). Hence, mere exposure by the state to ideas contrary to one's religious sentiments is not a free exercise violation. Id. Because the students in Mozert did not show they themselves were required to participate in reading exercises or role playing involving the antagonistic ideas, the court held that no free exercise violation occurred. Id. The rationale of Mozert would justify under the Free Exercise Clause any treatment or testing which does not compel one to act or profess beliefs in contradiction to one's religion. Conceivably, such a rationale would justify the recently developed treatment for sex offenders in which the inmate is exposed to pornographic material and shocked upon sexual arousal until rid of the bad impulses.

134. Swisher v. Stovall, Nos. 92-CV-3530-S, 92-CV-3225-S, 1992 WL 295119 at *2 (10th Cir. Oct. 13, 1992).
135. Boyd, 914 F. Supp. at 834.
136. See, e.g., Washington v. Harper, 494 U.S. 210 (1990) (objecting on due process grounds to forced administration of antipsychotic drugs); Vitek v. Jones, 445 U.S. 480 (1980); (objecting on due process grounds to involuntary transfer from prison to mental institution).
137. Washington, 494 U.S. at 227; see also Dunn, 880 F.2d at 1197 (upholding nonconsensual AIDS test).