Statement of the Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, is a civil rights law that protects the religious freedom of persons confined to prisons, jails, and certain other institutions in which the government exerts a degree of control far greater than that which is found in civilian society.[1] After hearings in which Congress found that persons residing in institutions are sometimes subject to discriminatory or arbitrary denial of the ability to practice their faiths beyond what is needed for the security and proper functioning of the institution, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress found that individuals confined to institutions are often subject to the authority of a small number of local officials, and that the religious exercise of individuals in those institutions is often limited, sometimes in egregious and unnecessary ways. Congress also found that officials in these institutions occasionally imposed frivolous and arbitrary restrictions on the religious liberty of individuals confined to those institutions.[2] In introducing the bill that would become RLUIPA, Senator Kennedy noted that institutionalized persons were often denied opportunities to practice their religions even when such practice would not have harmed the discipline, order, or safety of the institutions in which they were located.[3] He also noted that restrictions on the practice of religion in the prison context could even be counter-productive: "[s]incere faith and worship can be an indispensible part of rehabilitation."[4]

Section 3(a) of RLUIPA prohibits regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an institution. This provision also makes clear that its prohibition applies even if the regulation imposing the burden is a rule general applicability. Regulations amounting to a substantial burden will be

[1] This Statement deals with RLUIPA's institutionalized persons provisions. Another section of RLUIPA protects individuals and religious institutions from discriminatory and unduly burdensome land use regulations.

[2] *See* 146 CONG. REC. S7774-01 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy) (describing purpose of and need for RLUIPA).

[3] 146 CONG. REC. S6678-02, at S6688 (daily ed. July 13, 2000).

[4] *Id.* at S6689.

permitted if the government can show that the regulation serves a "compelling government interest" and is the least restrictive way of the government to further the identified compelling interest.

RLUIPA's protections can be enforced by the Department of Justice or by private lawsuits. In the ten years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. To assist institutionalized persons in understanding their rights under RLUIPA, and to assist state and local governments in meeting the requirements imposed on them by RLUIPA, the Department of Justice has created this summary and accompanying questions and answers.

Date: October 15, 2010

Questions and Answers on the Institutionalized Persons Provisions of RLUIPA

1. Who is protected, and what types of activities are covered by RLUIPA?

RLUIPA protects all persons "residing in or confined to an institution" as defined by the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. While most claims address prisons and jails, the definition of "institution" in CRIPA includes state or local government operated intermediate and long-term care facilities, mental health facilities, correctional facilities, pretrial detention facilities, and juvenile detention facilities, so these facilities are also covered by RLUIPA. Private facilities are generally not covered by RLUIPA, but they may be covered if they are acting on behalf of a state or local government agency. RLUIPA does not apply to institutions owned or operated by the federal government, though another, similar law, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, does apply to those institutions.

2. What does "religious exercise" include?

RLUIPA defines religious exercise to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." As with all provisions of RLUIPA, according to Section 5(g) "religious exercise" must be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." Although the definition of "religious exercise" in RLUIPA is broad, an individual must nevertheless show that the exercise burdened is a part of the individual's religious beliefs, and not merely a secular or philosophical position. Additionally, the religious belief must be sincerely held, and institutions are permitted to inquire into the sincerity of the person's belief before accommodating the person's religious exercise.

Accordingly, courts have found that a variety of practices constitute religious exercise under RLUIPA, including: attending religious services, joining prayer groups, leaving

hair uncut, wearing head coverings, adhering to certain dietary restrictions, and receiving certain religious reading materials.

3. What kinds of burdens on religious exercise are "substantial burdens" under RLUIPA?

In the absence of a controlling interpretation from the Supreme Court, Courts of Appeals have formulated a number of standards governing how a regulation in the institutional context might amount to a "substantial burden." In the First Amendment context, the Supreme Court has defined a substantial burden as a restriction that has a "tendency to inhibit" a person's exercise of religion, and many courts have adopted or referred to this definition when considering whether a particular policy or practice constitutes a substantial burden under RLUIPA. As a general matter, these courts have focused on the degree to which a given regulation would require an adherent to significantly alter or abandon the adherent's religious practice. The substantial burden inquiry is fact-intensive, and the burden is on the person asserting a substantial burden to prove that the institution's policy or practice constitutes a substantial burden. Courts will also consider whether accommodations for religious practice burden the rest of the institutionalized population and whether they are administered neutrally among various faiths.

Applying these standards, courts have found that a substantial burden exists where institutional rules limit access to religious books, use coercion to require shearing of hair, or fail to provide necessary dietary accommodations. Conversely, courts have been reluctant to find a substantial burden where a religious practice was made merely inconvenient or more difficult, such as the use of soft-cover instead of a hard-cover Bible or the use of prison-distributed prayer towels instead of traditional prayer rugs.

4. What if the substantial burden is the result of a rule of general applicability?

RLUIPA makes clear that, even if the substantial burden on an institutionalized person's religious exercise is the result of a rule that applies to everyone in the institution, the institution will still be in violation of RLUIPA unless it can demonstrate that application of the rule is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest. For example, an institution may have a rule prohibiting headwear of any kind, but RLUIPA may require that Jewish individual be permitted to wear a yarmulke in observance of his religious practices, that a Sikh individual be permitted to wear his or her turban, or that a Muslim individual be permitted to wear her hijab.

5. What are examples of compelling interest that would permit an institution to impose a substantial burden on religious exercise?

A "compelling governmental interest" is an interest "of the highest order." In the context of RLUIPA's institutionalized persons provisions, a compelling governmental interest is one that furthers "good order, security and discipline, consistent with consideration of costs and limited resources." When determining whether a compelling governmental

interest exists, courts will give some deference to the administrators of institutions in determining appropriate regulations for those institutions, but will nevertheless require that administrators support their assertions of appropriateness with specific evidence. Bare assertions that a religious accommodation will compromise the security or integrity of an institution will not suffice. Similarly, inconsistent or arbitrary regulations will not qualify as serving compelling interests.

When institutions have provided concrete evidence, courts have recognized that a variety of regulations that substantially burden religious exercise also serve a compelling interest. For example, requiring grooming in segregated holding has been found to further the compelling interest of health and security, refusing to meet certain dietary needs has been found to serve the compelling interest of controlling cost, and placing certain restrictions on the formation of organized groups has been found to serve the limited interest of preventing the growth of gangs. On the other hand, courts have rejected assertions of compelling governmental interest in the orderly administration of a prison's dietary system when the prison already serves meals that would satisfy the prisoner's dietary needs, and have found that an arbitrary limit on the number of books an inmate could keep in his cell did not further any compelling interest.

6. What actions must an institution take to demonstrate that imposition of the substantial burden is the least restrictive means to achieve the compelling governmental interest?

To impose a substantial burden on an institutionalized person's religious exercise, not only must the institution demonstrate that a compelling governmental interest necessitates the imposition of the burden, but it also must demonstrate that the institutional regulations at issue are the least restrictive means to further that interest. Courts have struck down institutional regulations, even where the regulations serve a compelling interest, when the regulations were not the least restrictive means to further that compelling interest.

To satisfy the "least restrictive means" requirement of RLUIPA, courts have required institutions to show that alternative means of satisfying the compelling government interest were considered and found insufficient. Evidence that other, similarly situated institutions achieve the same end through a less restrictive regulation has been used by courts to strike down institutional regulations. Courts have also examined regulations burdening religious exercise closely to determine whether a less restrictive regulation within the institution is possible, such as allowing an inmate to verify his or her own religious needs rather than requiring the intervention of a religious official, or allowing an inmate to have religious material when the regulation restricting such material conflicts with other, more permissive regulations within the institution.

7. Must a religion be "recognized" in order to be protected by RLUIPA?

RLUIPA has been used to protect the religious practices of a wide variety of religious traditions, including Buddhism, Christianity, Hinduism, Islam, Judaism, Native American religions, and Sikhism. RLUIPA's protections also extend to subgroups within religious traditions.

Some institutions, however, only recognize certain religious traditions in their policies. If an institution's policies only recognize certain religious traditions in such a way that a person's religious practice is substantially burdened, these policies would violate RLUIPA unless the institution can establish that the policies are in furtherance of a compelling government interest and are the least restrictive means of furthering that interest. For example, Seventh Day Adventism and Messianic Judaism share religious beliefs and practices with both Christianity and Judaism, and adherents to these traditions may have their religious exercise substantially burdened if they are required to choose between institutional policies designed only to accommodate the religious practices of adherents to Christianity or Judaism.

8. When must someone file suit under RLUIPA?

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation.

9. What can an institution do to avoid liability under RLUIPA?

RLUIPA contains a "safe harbor" provision that protects institutions from application of RLUIPA's enforcement provisions if they take steps to ameliorate the violation. Section 5(e) provides that a government can avoid the force of RLUIPA's provisions: (1) by changing the policy or practice that results in a substantial burden on religious exercise; (2) by retaining the policy or practice and exempting the substantially burdened religious exercise; (3) by providing exemptions from the policy or practice for applications that substantially burden religious exercise; or (4) by any other means that eliminates the substantial burden.

10. What is the Department of Justice's role in enforcing RLUIPA?

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages. In other words, the Department may bring suit seeking an order from a court requiring an institution that has violated RLUIPA, for example, to amend the policy or practice that results in a substantial burden on the religious exercise of an individual confined to that institution. The Department may not, however, seek monetary awards on behalf of persons that have been injured. Those who have suffered monetary damages from RLUIPA violations may file individual suits.

Responsibility for coordinating investigations and suits pursuant to the institutionalized persons provisions of RLUIPA has been delegated to the Special Litigation Section of the

Civil Rights Division. The Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you wish to bring a potential case to the attention of the Department of Justice, you should do so as soon as possible to allow adequate time for review.

The Department exercises its prosecutorial discretion in deciding whether to file a RLUIPA suit. The Department receives many complaints from individuals and groups whose rights under RLUIPA may have been violated, and cannot bring suit in all cases that may involve valid claims. Rather, the Department endeavors to select cases for prosecution that involve important or recurring issues, that will set precedents for future cases, that involve particularly serious violations, or that will otherwise advance the Department of Justice's goals of advancing civil rights for all. Aggrieved individuals and institutions are encouraged to seek private counsel to protect their rights, in addition to contacting the Department of Justice.

11. How can someone contact the Department of Justice about a RLUIPA matter?

The Civil Rights Division's Special Litigation Section may be reached by phone at:

(202) 514-0195
(877) 218-5228
(202) 305-1882 (TTY)
(202) 514-0212 (fax)

The mailing address is:
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