

No. 14-10086

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**IN THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH  
CIRCUIT**

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS and FLORIDA  
DEPARTMENT OF CORRECTIONS,  
Defendants-Appellants

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On Appeal from the United States District Court  
for the Southern District of Florida  
Civil Action No. 1:12-cv-22958-PAS

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**Brief for the International Society for Krishna Consciousness, the Christian  
Legal Society, and the Hindu American Foundation as *Amici Curiae* in  
Support of Plaintiff-Appellee United States of America and Affirmance of the  
District Court**

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***United States v. Sec'y, Fla. Dep't of Corr.***  
**Case No. 14-10086**

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rule 26.1-1, *amici* the International Society for Krishna Consciousness, the Christian Legal Society, and the Hindu American Foundation state as follows:

The International Society for Krishna Consciousness, the Christian Legal Society, and the Hindu American Foundation have no parent corporations, and no publicly held corporation owns 10% or more of their stock.

*Amici* further certify that the following persons, associations of persons, or corporations may have an interest in the outcome of this case:

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## **INTEREST OF *AMICI CURIAE* AND AUTHORITY TO FILE**

The International Society for Krishna Consciousness (ISKCON) is a monotheistic faith within the Hindu tradition. ISKCON believes God has form and a loving disposition, and requires five essential practices: four forbidding illicit sex, meat-eating, gambling, and intoxication; and a fifth requiring the faithful and enthusiastic engagement in devotional service. As a part of its mission, ISKCON has established a prison outreach system propagating the philosophy of Krishna Consciousness. A vegetarian diet is a core principle of the religion and is a strict requirement for all adherents. ISKCON is therefore concerned about the outcome of the case before the Court, as it will have implications for the ability of inmates in American prisons to access religious meals.

The Christian Legal Society (CLS) is an association of Christian attorneys, law professors, and law students formed in 1963. CLS defends religious freedom through its legal advocacy arm, the Center for Law and Religious Freedom (“the Center”). For nearly four decades, the Center has sought to protect the free exercise rights of persons of all faiths, including the right of prisoners to practice their faith while incarcerated. The Center was an active leader in the broad coalition that secured passage of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, *et seq.* For over a decade, through its *amicus* briefs, CLS has urged a proper interpretation of RLUIPA in the courts. *See, e.g.,*



Brief of the Christian Legal Society and Prison Fellowship Ministries as *Amici Curiae* in Support of Petitioner, *Sossamon v. Texas*, 131 S. Ct. 1650 (2011) (No. 08-1438), 2010 WL 3167306 (whether RLUIPA waived state sovereign immunity from suit for monetary damages). Because RLUIPA relies upon the familiar “sincerity” test used in other religious freedom contexts, its application in the RLUIPA context will have an important impact on the religious freedom of all.

The Hindu American Foundation (HAF) is an advocacy organization for the Hindu American community. HAF educates the public about Hinduism, speaks out about issues affecting Hindus worldwide, and builds bridges with institutions and individuals whose work aligns with its objectives. Since its inception, HAF has made legal advocacy one of its main areas of focus. From issues of religious accommodation and discrimination to defending fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans at large and the courts about various aspects of Hindu belief and practice in the context of religious liberty, either as a party to the case or an *amicus curiae*. In the prison context, HAF advocates for Hindu American prisoners’ access to vegetarian meal options consistent with their faith. Consequently, HAF takes great interest in this case.

Counsel for *amici* obtained the consent of all parties to file this brief.

## **RULE 29(c)(5) STATEMENT OF *AMICI CURIAE* INDEPENDENCE**

No party's counsel authored this brief, in whole or in part. No party's counsel contributed money intended to fund preparing or submitting the brief. Further, no person—other than *amici curiae*, their members, or their counsel—contributed money intended to fund preparing or submitting the brief.

### **STATEMENT OF THE ISSUE**

What are the legal contours governing a prison's ability to assess the sincerity of inmates who seek accommodation based on their claimed religious belief?

### **SUMMARY OF THE ARGUMENT**

Evaluating the sincerity of religious belief is central to the balance struck by Congress in RLUIPA between governmental efficiency and religious liberty, because it protects the faithful and government alike. RLUIPA imposes a significant duty on prisons to accommodate the religious practices of inmates but limits that obligation in a common-sense way: prisons must accommodate only those whose faith would be burdened otherwise. Absent sincerity testing—particularly where there is an incentive to lie (e.g., to get a better meal)—a flood of false requests could threaten the practicability of prisons offering the accommodation at all. Moreover, religious liberty and prison administration would be at loggerheads, a result contrary to what Congress intended.

The Florida Department of Corrections (FDOC) argues it cannot provide kosher meals because it is unable to effectively contain costs by limiting enrollment in the Religious Diet Program (RDP) in a constitutional manner. But prisons cannot deny religious meal requests based on the false choice between unconstitutionally scrutinizing religious beliefs and denying all such meals as too costly. Its present policies may cross the constitutional line by delving into the nature of faith, but FDOC has broad latitude to conduct a credibility assessment. Whether someone is telling the truth can hardly be a dilemma foreign to prisons.

Although not as straightforward an inquiry as evaluating physical evidence, the credibility of an individual is an issue familiar to courts and public officials. In the context of religion, courts commonly evaluate whether someone honestly believes what they say they believe when assessing religious liberty claims. Additionally, public officials inquire into state of mind in analogous contexts like asylum and conscientious objection. The parallel analyses in these other areas help clarify what is appropriate to consider when testing sincerity for prison accommodation.

The Religion Clauses of course constrain what evidence might be appropriate for measuring the sincerity of religious belief. Testing goes too far when it focuses on religious doctrine at the expense of personal religious experience. But courts, including this one, have developed fairly clear guidelines to balance the interests at stake in accordance with constitutional limitations.

Indeed, public officials should not inquire into the truth of a religious tenet or rely solely on the consistency between actions and belief. Similarly, government cannot favor one type of corroborative evidence of sincerity to the exclusion of all others. And testing cannot become a theological quiz show, where government officials seek to ensnare sincere believers in complex doctrinal traps unrelated to whether an individual's claim of religious conviction is credible.

There are numerous cost-effective techniques, however, that prisons can adopt that would guarantee inmate sincerity without infringing upon principles of religious liberty. We close with a bullet-point list of several examples. Accordingly, even in light of the district court's injunction, FDOC may conduct effective sincerity testing.

## **ARGUMENT AND CITATIONS OF AUTHORITY**

### **I. SINCERITY TESTING IS AS IMPORTANT AS IT IS UNREMARKABLE.**

#### **A. Sincerity Testing Is Essential To Religious Liberty.**

Federal law generally forbids a prison from denying a religious accommodation unless the prison meets the demands of strict scrutiny. 42 U.S.C. § 2000cc-1(a); *Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 532 (11th Cir. 2013). Before courts perform an analysis under RLUIPA, however, a claimant must prove the religious belief at the root of his claim is sincerely held. *Gardner v. Riska*, 444 F.

App'x 353, 355 (11th Cir. 2011) (per curiam). Sincerity is inherent in the very idea of religious exercise; if the belief is faked, there is no religious exercise to protect.

In the context of widely desired accommodations that cannot be granted for free—like kosher meals in prison—sincerity testing protects an individual's religious liberty by guarding against widespread abuse by others. If religious accommodations were granted to all who ask—both sincere believers and insincere free riders—their cost might become prohibitively expensive, and thus the government could (perhaps rightly) offer no accommodation at all. In short, the sincerity requirement prevents the First Amendment or RLUIPA from becoming a pretext to receive a secular benefit or “a limitless excuse for avoiding all unwanted legal obligations.” *Africa v. Pennsylvania*, 662 F.2d 1025, 1030 (3d Cir. 1981) (quoting Laurence H. Tribe, *Constitutional Law* 859 (1978)).

In prison, like in other contexts, there is a risk insincere individuals will seek accommodations. An inmate may claim a religious belief to receive a perceived benefit, like a special meal, or “merely to harass the prison staff with demands to accommodate his new faith.” *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988). Without effective sincerity tests, either prisons will rarely make accommodations and religious liberty will likely suffer, or prisons may face insurmountable costs by accommodating all who ask. Properly used, however, sincerity tests function as a “safety valve,” allowing prisons to keep costs in check. *See Note, In the Belly of*

*the Whale: Religious Practice in Prison*, 115 Harv. L. Rev. 1891, 1914 (2002). The threshold sincerity inquiry protects RLUIPA and other state and federal laws from devolving into mere “talismans for self-indulgence or material gain.” *Patrick v. LeFevre*, 745 F.2d 153, 157 (2d Cir. 1984) (discussing the sincerity inquiry that must be conducted before examining First Amendment claims).

B. At Bottom, Sincerity Testing Concerns One’s Credibility—An Inquiry Familiar To Public Officials In Many Contexts.

Asking whether an individual is sincere in her religious belief is not an esoteric question. It does not turn on religious doctrine or the truth of sacred mysteries. Rather, the relevant inquiry—whether a purported religious adherent is lying—is a question of fact answered by evidence typical of any credibility determination. *See Tagore v. United States*, 735 F.3d 324, 328 (5th Cir. 2013) (sincerity is “largely a matter of individual credibility”).

This factual analysis is part of the daily business of public officials. Indeed, scrutinizing the mind of a witness—even where it is difficult or uncomfortable—is a necessary exercise in areas of the law similar to RLUIPA, where attractive exceptions to general rules are often in play. The experience in evaluating sincerity in these contexts provides guidance.

For example, a sincerity inquiry is required for accommodation claims under the First Amendment, Religious Freedom Restoration Act (RFRA), and Title VII of the Civil Rights Act of 1964. *See, e.g., Gonzales v. O Centro Espirita*

*Beneficente Uniao do Vegetal*, 546 U.S. 418, 428, 126 S. Ct. 1211, 1219 (2006) (RFRA); *Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 833, 109 S. Ct. 1514, 1517 (1989) (First Amendment); *Tagore*, 735 F.3d at 328 (RFRA and Title VII). Among the factors in these contexts are the relative timing of the request and adoption of the belief, the presence of ulterior motives, and the consistency of the stated belief with past practice or the faith as the claimant understands it. *See, e.g., United States v. Quaintance*, 608 F.3d 717, 722-23 (10th Cir. 2010) (rejecting religious defense to prosecution based on opportunistic timing and motive); *Reed*, 842 F.2d at 963 (noting that “evidence of nonobservance is relevant on the question of sincerity”); *Martinelli v. Dugger*, 817 F.2d 1499, 1504-05 (11th Cir. 1987) (finding an accommodation claim sincere based on consistency with sacred writings on which claimant relied), *abrogation on other grounds recognized by Harris v. Chapman*, 97 F.3d 499, 503 (11th Cir. 1996).

The religious asylum context similarly demonstrates sincerity testing can be and is done. Indeed, sincerity testing is perhaps even more essential in this context because, without it, applicants would have a one-way ticket into the United States merely by checking a religion box on an application.

Asylum seekers can establish refugee status based on a “well-founded fear of [future] persecution on account of . . . religion.” *Yan v. Gonzales*, 438 F.3d 1249, 1251 (10th Cir. 2006) (first alternation in original) (*quoting* 8 U.S.C. §

1101(a)(42)(A)). In deciding whether the applicant will suffer persecution on the basis of religion, the Immigration Judge must decide whether the applicant has sincere beliefs that make him a target. *See id.* at 1252-53. And although complex questions of doctrine are impermissible, the judge may explore personal experience, religious activities, and lay understandings. *See id.*

Additionally, military conscription rules have famously required sincerity testing. To obtain a faith-based exception to the draft, Selective Service Boards have had to decide whether a registrant's religious beliefs against armed conflict are "sincerely held." *United States v. Seeger*, 380 U.S. 163, 185, 85 S. Ct. 850, 863 (1965). While the truth of a belief is not questioned, whether it is truly held is an issue in every case. *Id.* This threshold inquiry allowed the draft to function given the significant incentive for insincere claimants to avoid the dangers of warfare.

Sincerity testing in the conscientious objector context demonstrates important considerations that government officials can make. For example, boards must give weight to a registrant's personal statement. *United States v. Hayden*, 445 F.2d 1365, 1374 (9th Cir. 1971). Furthermore, there is a presumption that any evidence probative of sincerity, including the registrant's demeanor, can be considered. *See United States v. Aull*, 341 F. Supp. 389, 392-93 (S.D.N.Y. 1972). Context matters, but any fact that may seem insignificant alone can resolve the sincerity analysis in the aggregate. *United States v. Henderson*, 411 F.2d 224, 227 (5th Cir. 1969).



Finally, prisons themselves validly engage in sincerity testing, whether under RLUIPA or otherwise. In *Gardner*, for example, this court identified factors that could be relied upon to show a prisoner was insincere in his claims that his religion required a kosher diet. 444 F. App'x at 355. Among other things, the court relied on prison officials' testimony they saw the claimant buy and consume non-Kosher items. *Id.* Additionally, the court gave weight to the claimant's failure to offer any evidence or point to any reason why a kosher diet was important to his faith. *Id.* Cases cited by FDOC similarly demonstrate that prisons can permissibly consider an inmate's religious history, knowledge of and ability to articulate the basis of his religious belief, and basic understanding of his claimed religion. *See Adams v. Burnett*, No. 06-cv-72, 2007 WL 329992, at \*5 (W.D. Mich. Jan. 31, 2007); *McManus v. Bass*, No. 05-cv-117, 2006 WL 753017, at \*8 (E.D. Va. Mar. 22, 2006).

## II. CONSTITUTIONAL LIMITATIONS ON SINCERITY TESTING ARE WELL-ESTABLISHED AND PRISONS CAN HANDLE THEM.

While the Religion Clauses and analogous statutes, including RLUIPA, restrict certain sincerity testing—either as an entangling establishment or an undue burden on free exercise—these limits are fairly clear and leave prisons broad discretion to test credibility. *See, e.g., Jackson v. Mann*, 196 F.3d 316, 320 (2d Cir. 1999).

Sincerity testing cannot turn on the objective truth of a belief or its consistency with established dogma or group identity. The truth of a religious belief or its

doctrinal soundness is not questioned. *Seeger*, 380 U.S. at 185, 85 S. Ct. at 863. Rather, the focus is whether the belief is truly held by the individual as a matter of his personal religious experience. *Id.* Likewise, an inmate need not be an official member of a recognized group or agree with that group to sincerely hold a religious belief of the group. *See Thomas v. Review Bd.*, 450 U.S. 707, 715-16, 101 S. Ct. 1425, 1430-31 (1981) (rejecting intra-faith disagreement as conclusive evidence of insincerity); *Jackson*, 196 F.3d at 320 (similarly rejecting a rabbi's opinion that an inmate was not Jewish as conclusive evidence of insincerity). Prisons cannot enforce religious orthodoxy, and lack of membership in a group does not make a religious belief less sincere.

Sincerity tests also cannot require an individual to act in perfect compliance with his stated beliefs or require expert knowledge of religious doctrine. *See Yan*, 438 F.3d at 1252-56; *Reed*, 842 F.2d at 963. While “backsliding” is relevant, it cannot be dispositive, because otherwise it would make prison officials “religious police.” *Reed*, 842 F.2d at 963 (evidence of non-observance, though relevant, cannot be conclusive). Sincerity testing is not a game of “gotcha.” Similarly, knowledge of one's faith can be probative, but administering a mini-catechism to an inmate to judge his sincerity impermissibly ignores what should be the focus: whether a personal religious belief is truly held. *Compare Yan*, 438 F.3d at 1252 (detailed scriptural and church examination inappropriate), *with Robinson v. Foti*,

527 F. Supp. 1111, 1113 (E.D. La. 1981) (plaintiff found insincere because he failed to show he was familiar with any aspect of claimed religion).

Finally, sincerity should not be rejected based on one factor to the exclusion of others. For example, prisons cannot require an inmate to provide outside corroboration of sincerity—like supporting testimony from friends or relatives—if he has presented probative, alternative evidence. *See Mosier v. Maynard*, 937 F.2d 1521, 1527 (10th Cir. 1991).

### III. FDOC CAN TEST THE SINCERITY OF THOSE SEEKING RELIGIOUS ACCOMMODATION IN LEGAL AND COST-EFFECTIVE WAYS.

As the United States describes in its brief, FDOC's current policies may be constitutionally suspect. (*See* Br. of Plaintiff-Appellee at 48-51, *United States v. Sec'y, Fla. Dep't of Corr.*, No. 14-10086 (7th Cir. May 21, 2014).) But FDOC still has a broad array of options even if the Court upholds the district court's injunction.

Though circumstances vary, included below is a non-exhaustive list of seven possible lines of inquiry FDOC could pursue to evaluate sincerity. On balance, any test should consider the totality of the circumstances. As long as FDOC is determining if a belief is honestly held rather than objectively true, however, each of the following is a valid consideration.

- **The ability of the inmate to describe his personal experience with the purported faith.** An inmate's emotional and personal narrative describing the

role of his faith in his life is a touchstone of the sincerity inquiry. *See Yan*, 438 F.3d at 1252-56. For instance, the depth—or lack thereof—with which an inmate speaks about his conversion to a faith is probative of sincerity. *See id.*

- **Whether the inmate designated a registered religion, is a member of a congregation, or participates in religious activities for purposes other than the desired accommodation.** Though prisons cannot require an inmate to be a member of a recognized faith, *Jackson*, 196 F.3d at 320, an inmate's religious history and activities can be considered, *see Yan*, 438 F.3d at 1252-56. For example, a prison cannot refuse to accommodate an inmate who self-identifies as Hindu merely because he is not of Indian descent and was not part of a Hindu community outside of prison.
- **The extent to which an inmate might have a motive unrelated to religious conviction.** When a religious accommodation can be seen as a secular benefit, the incentive for insincere requests is heightened. Sincerity tests may consider whether the circumstances of a given request indicate the possibility of ulterior motives to seek special treatment. *See Quaintance*, 608 F.3d at 722-23. To the contrary, where there is no apparent secular enticement—for example, requests for fasting accommodations or circumcision—sincerity is more likely.
- **The timing of the inmate's accommodation request.** Among the particular factors a prison may consider in determining sincerity is whether the timing of

an inmate's request is opportune. For example, if an inmate is caught smoking a cigarette in violation of prison policy, the sincerity of his claimed recent conversion to a faith requiring tobacco use is suspect. *See id.*

- **Consistency of an inmate's actions with his purported beliefs.** While prisons cannot expect an inmate's acts to conform perfectly at all times with his stated belief, inconsistencies between action and belief are probative of sincerity and may be considered. *Reed*, 842 F.2d at 963; *see Gardner*, 444 F. App'x at 355.
- **The ability of the inmate to articulate his stated religious beliefs.** A prison may require an inmate to explain the basic requirements behind his request for accommodation, even though his explanation need not conform to a common understanding of the faith. *Thomas*, 450 U.S. at 715-16, 101 S. Ct. at 1430-31; *Gardner*, 444 F. App'x at 355. For example, an inmate seeking a kosher meal would unlikely be sincere if he cannot describe anything about the meal that makes it kosher.
- **Regarding methods, in-person interviews that consider the inmate's demeanor are appropriate.** Sincerity being a question of credibility, the body language, tone, and contradictory statements of an inmate observed during the interview are probative. *See, e.g., Aull*, 341 F. Supp. at 392-93.

In sum, prisons have a wide degree of freedom to test sincerity. Religious liberty and cost-effective prison policy are not mutually exclusive.

## CONCLUSION<sup>1</sup>

For the foregoing reasons, FDOC may conduct sincerity testing that bolsters the religious liberty of inmates and limits the cost of accommodation.

Dated: May 28, 2014

Respectfully submitted,

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<sup>1</sup> Special thanks to Jordan Rice and Dalton Rodriguez, students in the Stanford Law School Religious Liberty Clinic, who assisted in the preparation of this brief.

## **CERTIFICATE OF COMPLIANCE**

I certify that the following statements are true:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 3393 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2011 in 14-point Times New Roman font.

Executed this 28th day of May 2014.

*s/ James A. Sonne*

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## CERTIFICATE OF SERVICE

I certify that on the date indicated below, I filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send notification to the counsel of record for the parties. I also sent a copy of the foregoing document by overnight courier service to:

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