# Sincere Prisoners

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## Introduction

In September, 2007, two separate federal courts in separate jurisdictions decided two prisoners' respective Free Exercise claims within ten days of one another. However, each federal court applied a different standard of review. In *Kay v. Bemis*,[1] the plaintiff, a Utah prisoner and alleged follower of the "Wiccan" faith, brought, among other claims, a 42 U.S.C. § 1983 civil rights complaint against several officers of his prison asserting that the defendants violated his First Amendment right to freely practice his religion by denying him tarot cards, incense and religious books.[2] Section 1983 of the Civil Rights Act states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured….

Although Kay's claims were dismissed by the District Court, the Court of Appeals for the 10th Circuit reversed in part because it was unnecessary for Kay "to show that the use of tarot cards and other items were 'necessary' to the practice of his religion if his belief in their use was *sincerely held*."[3] In *Oakden v.*

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[1] 500 F.3d 1214 (10th Cir. 2007).

[2] The Wiccan faith is described as a "polytheistic faith based on beliefs that prevailed in both the Old World and the New World before Christianity. Its practices include the use of herbal magic and benign witchcraft." *Id.* at 1219 (citing *O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 400 (7th Cir. 2003)).

[3] *Id.* at 1220 (emphasis added).

*Bliesner*,[4] on the other hand, the plaintiff, a member of the "Church of the Creator," brought a Free Exercise of religion claim for the defendant's failure to provide the plaintiff with a raw-food diet, as allegedly required by "Church" doctrine.[5] The District Court, however, granted summary judgment in favor of the defendants because the plaintiff failed to show that eating a raw-food diet was "*central* to [his] religious doctrine."[6]

Although *Kay* and *Oakden* are just two cases, they are representative of the split in the Federal Circuit Courts regarding prisoners' rights and many prisoners' ability to practice their religion.[7] This note will uncover the origins of this divide in the Courts and then illustrate how courts following the current "sincerely held" standard and the "central" standard undermine Supreme Court precedent. To that end, this note will illustrate the inherent legal and practical problems arising when any court or prison administrator determines which religious beliefs are "central" to a particular religious doctrine, as well as the many opportunities for prisoners' abuse of the court system that arise from adopting an overly deferential "sincerely held" standard.

This note will contend that a prisoner's religious belief, in order to qualify for protection under the First Amendment, should in fact meet a modified version of the "sincerely held" standard; a prisoner should have to demonstrate that his or her religious belief is based on a passage from scripture, preferably receives some support from historical and biblical tradition, and plays a central role in the prisoner's daily life.[8] Lastly, this note will demonstrate the benefits of

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[4] 2007 WL 2778788 (N.D. Cal. 2007).
[5] The Church of the Creator is a group, as described by the District Court, whose "primary objective… is the 'survival, expansion and advancement of the white race.'" *Id.* at 3 (citation omitted).
[6] *Id.* at 15 (emphasis added). In the first part of its holding, the District Court also stated that the record was insufficient to find that the "Church of the Creator" was not a "religion within the meaning of the First Amendment." *Id.* at 14.
[7] *U.S. Const. amend. I* ("Congress shall make no law respecting an establishment of religion, or prohibiting the Free Exercise thereof….").
[8] This standard is derived from *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984) *aff'd sub nom. per curiam by an equally divided Court Jensen v. Quaring*, 472 U.S. 478 (1985), in which the court used the aforementioned factors to determine whether the plaintiff-prisoner sincerely held her religious beliefs.

encouraging truly sincere inmate religious participation, including reduced violence.

## I. Supreme Court Precedent

As recently as fifty years ago, Federal Courts refused to intervene in prisoners' claims against the enforcement of various prison regulations, for fear of disrupting the prison administrators' abilities to run an effective prison.[9] This approach began its "demise"[10] in 1964 beginning with *Cooper v. Pate*,[11] in which a prisoner brought a claim pursuant to Section 1983 of the Civil Rights Act, and the Supreme Court held that the prisoner's complaint supported his cause of action.[12] After *Cooper*, the Supreme Court slowly began to hear prisoners' claims, but the Court, throughout the 1970s and until the late 1980's, did not establish a clear standard of review;[13] the result was a hodgepodge of different standards of review in the Circuit Courts.[14]

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[9] *See*, *e.g.*, *Banning v. Looney*, 213 F.2d 771, 771 (10th Cir.) ("Courts are without power to supervise prison administration or to interfere with the ordinary prison rules or regulations."), *cert. denied*, 348 U.S. 859 (1954); *Williams v. Steele*, 194 F.2d 32, 34 (8th Cir.) (holding that "[s]ince the prison system of the United States is entrusted to the Bureau of Prisons … the courts have no power to supervise the discipline of the prisoners nor to interfere with their discipline….") *rehearing denied*, 194 F.2d 917, *cert. denied*, 344 U.S. 822 (1952); *Fussa v. Taylor*, 168 F.Supp. 302, 303-304 (M.D. PA 1958) ("In the present case we are dealing with the ordinary censoring of mail which comes within the rules and regulations of the penitentiary with the administration of which the courts have uniformly held they will not interfere."). *See also* Mayu Miyashita, Comment, *City of Boerne v. Flores and its Impact on Prisoners' Religious Freedom*, 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 519, 525-26 (1999) (stating that prisoners were effectively "slaves of the state." (quoting Louis M. Holscher, *Sweat Lodges and Headbands: An Introduction to the Rights of Native American Prisoners*, 18 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 33, 36 (1992))).

[10] Blischak, *infra* note 12, at 459.

[11] *Cooper v. Pate*, 378 U.S. 546 (1964).

[12] *Cooper*, 378 U.S. 546. The plaintiff's complaint "alleged that prison officials had denied him permission to purchase religious publications and had revoked other privileges solely because of his religious beliefs." Matthew P. Blischak, *O'Lone v. Estate of Shabazz: The State of Prisoners' Religious Free Exercise Rights*, 37 AM. U.L. REV. 453, 459-460 (1988).

[13] *See*, *e.g.*, *Cruz v. Beto*, 405 U.S. 319 (1972) (confirming that prisoners maintain some degree of First Amendment rights, but not articulating any clear standard of review); *Procunier v. Martinez*, 416 U.S. 396, 413-414 (1974) (holding unconstitutional, on First Amendment grounds, a prison regulation involving reading and censorship of prisoners' mail by applying a two part test: first, whether prison officials demonstrated that the regulation in question furthers "substantial governmental interests of security, order, and

For simplicity's sake, the various standards of review created by the circuit courts can be readily divided into five categories. The earliest test was the "clear and present danger" test, in which the Court for the Eastern District of Virginia ruled that to justify a prison's impediment to a prisoner's Free Exercise of religion, "prison officials must prove by satisfactory evidence that the teachings and practice of the sect create a clear and present danger to the orderly functioning of the institution."[15] Later, some circuit courts "made no distinction between prisoners' Free Exercise rights and those of free persons."[16] In these cases, the courts applied a strict scrutiny standard of review.[17] Other courts, however, ruled that "restrictions on a prisoner's Free Exercise rights must be the least restrictive means to achieve valid correctional goals."[18] Still other courts

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rehabilitation"; and second, that breadth of the restriction is not "unnecessarily broad"); *Pell v. Procunier*, 417 U.S. 817 (1974) (requiring a prisoner to satisfy a reasonableness test in a Free Exercise of religion claim); *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119 (1977); *Bell v. Wolfish*, 441 U.S. 520 (1979).

[14] *See* Blischak, *supra* note 12, at 467-68. It is also worth noting that the different circuit courts' standards formulated in the absence of clear Supreme Court authority are similar to the current circuit split with regard to prisoners' religious beliefs and whether they must be "sincerely held" or "central to" in order to be protected under the Free Exercise clause.

[15] *Banks v. Havener*, 234 F.Supp. 27, 30 (1964). For a more in-depth analysis of the "clear and present danger" test and other tests, see Comment, *The Religious Rights of the Incarcerated*, 125 U. PA. L. REV. 812 (1977).

[16] *Id.* (citing *Barnett v. Rodgers*, 410 F.2d 995 (D.C. Cir. 1969)). *See also Weaver v. Jago*, 675 F.2d 116, 119 (6th Cir. 1982) (citing *Kennedy v. Meachum*, 540 F.2d 1057, 1061 (10th Cir. 1976)).

[17] In a strict scrutiny standard of review, the defendant must make two showings. First, the defendant must show that the government regulation which restricts the prisoner's Free Exercise of religion is justified "by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate….' The second is an equally convincing showing that 'no alternative forms of regulation would combat such abuses without infringing First Amendment rights.'" *Barnett*, 410 F.2d at 1000 (citations omitted).

[18] Blischak, *supra* note 13, at 467 (citing *Shabazz v. Barnauskas*, 790 F.2d 1536, 1539 (11th Cir. 1986)). In such cases, there were two different tests for two different factual scenarios. For prison regulations that did not impinge upon a fundamental right, "the prison regulation must further a substantial government interest. A regulation will be taken to further such an interest if it is rationally related to it." *Shabazz*, 790 F.2d at 1539. However, if a prison regulation did impinge upon the practice of a fundamental right, such as the Free Exercise of religion, "a regulation's restriction … must be no greater than necessary to protect the governmental interest involved." *Id. See also Teterud v. Burns*, 522 F.2d 357, 359 (8th Cir. 1975) (holding that "a regulation which is more restrictive than necessary to meet the institutional objectives … will be struck down").

applied a rational relationship test,[19] which placed a burden on the prisoner to demonstrate that the regulation beared no relationship to a legitimate penal interest.[20] Finally, other courts developed an intermediate standard of review.[21] It is from decisions emanating from this time, when courts were unsure of what standard to follow for prisoners' Free Exercise claims, that the circuit courts developed standards of review in regard to sincere or central religious beliefs.[22]

The Supreme Court, despite an apparent acquiescence to the different standards of the circuit courts, clarified the appropriate standard of review for prisoners' Free Exercise claims in *Turner v. Safley*,[23] and *O'Lone v. Estate of Shabazz*.[24] In *Turner*, the Court first acknowledged that prisoners retain some constitutional rights, such as the "right to petition the government for the redress of grievances,"[25] the right to be protected from "racial discrimination by the Equal Protection Clause of the Fourteenth Amendment,"[26] and "due process."[27]

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[19] Blischak, *supra* note 12, at 467. *See*, *e.g.*, *Little v. Norris*, 787 F.2d 1241, 1244 (8th Cir. 1986); *Walker v. Mintzes*, 771 F.2d 920, 929 (6th Cir. 1985).

[20] *Little*, 787 F.2d at 1244. The *Little* court states that "[o]nce the prison officials have produced evidence that the restriction placed on an inmate's religious freedom was in response to a security concern, the burden is on the inmate to show by substantial evidence that the prison officials' response was exaggerated." *Id.* The court states, in no uncertain terms, that "[a]n inmate's exercise of freedom of religion may be restricted by the reasonable requirements of prison security." *Id.*

[21] Blischak, *supra* note 12, at 467. *See*, *e.g.*, *Maydun v. Franzen*, 704 F.2d 954, 959-60 (7th Cir.), *cert. denied*, 464 U.S. 996 (1983) (holding "prison rules that incidentally restrain the Free Exercise of religion are justified only 'if the state regulation has an important objective and the restraint on religious liberty is reasonably adapted to achieving that objective'") (citations omitted).

[22] This topic will be explored in more detail, *infra* notes 71-74, 75-85.

[23] 482 U.S. 78 (1987). In *Turner*, "state prisoners challenged the constitutionality of two prison regulations." Jennifer Ellis, *DeHart v. Horn: Extending First Amendment Free Exercise Protections to Prisoners' Individually held Religious Beliefs*, 11 GEO. MASON U. CIV. RTS. L.J. 357, 360 (2001). The first regulation allowed correspondence between inmates at different institutions only for immediate family members and correspondence between inmates concerning legal matters. All other correspondence was, for all intents and purposes, prohibited. The second regulation only allowed inmates to marry with permission of the superintendent of the prison, yet only when there were "compelling reasons to do so." *Turner*, 482 U.S. at 82.

[24] 482 U.S. 342 (1987).

[25] *Turner*, 482 U.S. at 84 (citing *Johnson v. Avery*, 393 U.S. 483 (1969)).

[26] *Id.* (citing *Lee v. Washington*, 390 U.S. 333 (1968)).

[27] *Id.* (citing *Wolff v. McDonnell*, 418 U.S. 539 (1974) and *Haines v. Kerner*, 404 U.S. 519 (1972)).

However, prisoners' rights must be weighed against the recognition that "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform."[28] Mindful of the separation of powers, especially because prison administration is a task that has been committed to the legislative and executive branches, the Court held that federal courts should "accord deference to the appropriate prison authorities."[29]

In consideration of this policy, the Court imposed a tremendous burden on inmates and held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."[30] To determine the reasonableness of a prison regulation, courts should consider four factors:

> [W]hether: (1) a "valid, rational connection" exists between the regulation and the legitimate interest advanced by the regulation; (2) alternative means for exercising the asserted right remain available; (3) accommodation of the asserted right will adversely affect guards, other inmates, and the allocation of prison resources generally; and (4) an obvious alternative to the regulation exists "that fully accommodates the prisoner's rights at de minimus cost to valid penological interests."[31]

This standard is necessary if "prison administrators …, and not the courts, [are] to make the difficult judgments concerning institutional operations."[32] The Court also specifically rejects the "inflexible strict scrutiny analysis," which would "hamper" prison administrators' response to security problems and would "distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand."[33]

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[28] *Turner*, 482 U.S. at 84 (citing *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)).
[29] *Turner*, 482 U.S. at 85.
[30] *Id.* at 89.
[31] *Substantive Rights Retained by Prisoners*, 35 GEO. L.J. ANN. REV. CRIM. PROC. 929 (2006) (citing *Turner*, 482 U.S. at 89-91).
[32] *Turner*, 482 U.S. at 89 (citing *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 128 (1977)).
[33] *Turner*, 482 U.S. at 89.

Seven days after *Turner*, the Court decided *O'Lone v. Estate of Shabazz*, and applied the newly established *Turner* test to a prisoner's Free Exercise claim under the First Amendment.[34] Again, the Court reiterated that courts need to afford "deference" to prison officials and rearticulated the *Turner* test.[35] Most importantly, in interpreting the second prong of the *Turner* test,[36] the Court first determined the relevant analysis from *Turner* was not whether Turner had other means to communicate, but whether Turner was deprived of "all means of expression."[37] Accordingly, in *O'Lone*, the Court held that the appropriate question was not whether Shabazz had other means to participate in Jumu'ah, which he did not, but whether the inmates "retain[ed] the ability to participate in other Muslim religious ceremonies."[38]

Thus, the Court chided the Third Circuit for compelling prison officials "to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint"[39] as ignoring the "respect and deference" that the Constitution allows for prison officials'

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[34] The prisoners, in *O'Lone*, were members of the Islamic faith and "challenged policies adopted by prison officials which resulted in their inability to attend Jumu'ah, a weekly Muslim congregational service…." 482 U.S. at 346. The Court notes that Jumu'ah is "commanded by the Koran and must be held every Friday after the sun reaches its zenith and before the Asr, or afternoon prayer." *Id.* at 345(citations omitted). The Court found further that there is no question that Shabazz's "sincerely held" religious beliefs required attendance at Jumu'ah. *Id.*

[35] *Id.* at 349. The reasonableness test is less restrictive than the test "ordinarily applied to alleged infringements of fundamental constitutional rights." *Id.*

[36] *See supra* note 31 and accompanying text ("[W]hether alternative means for exercising the asserted right remain available….").

[37] *O'Lone*, 482 U.S. at 352 (citing *Turner*, 482 U.S. at 92).

[38] *O'Lone*, 482 U.S. at 352. "Thus, under *O'Lone*, the prison regulation was upheld because the Court found that the prisoners retained a 'circumscribed right' in the asserted ceremonial beliefs (i.e., the prisoners had viable prayer alternatives)." Ellis, *supra* note 23, at 373.

[39] *Id.* at 350 (citing *Turner*, 482 U.S. at 90-91). The Court of Appeals required that the prison officials prove that "no reasonable method exists by which [prisoners'] religious rights can be accommodated without creating bona fide security problems." *Shabazz v. O'Lone*, 782 F.2d 416, 420 (3rd Cir. 1986). The Third Circuit also required that prison officials should be required "to produce convincing evidence that they are unable to satisfy their institutional goals in any way that does not infringe the inmates' free exercise rights." *Id.* at 419.

judgments.[40] Although the Court was sympathetic to the central importance of Jumu'ah to the plaintiff, the Court was more sympathetic to the prison officials and their ability to run an orderly facility.[41]

After *Turner* and *O'Lone*, there was, at long last, a universal standard by which federal courts would decide prisoners' Free Exercise claims.[42] Despite apparently settling the controversy over the appropriate standard of review, however, federal courts are now split again over whether the religious beliefs of prisoners must be "sincerely held" or "central to" a religious doctrine.[43]

## II. The "sincerely held" and the "central to" standards.

Strictly speaking, neither the "sincerely held" standard, as currently applied, nor the "central to" standard is mentioned explicitly in the *Turner* and *O'Lone* decisions;[44] in fact, as applied by the Circuit Courts, both tests function as prerequisites determining whether an inmate's belief is even subject to First Amendment protection.[45] Although these tests are technically not part of the

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[40] *O'Lone*, 482 U.S. at 350.

[41] *Id.* at 351-52 (The Court first noted that, under the second of the *Turner* factors, there was no way to "minimize the *central importance* of Jumu'ah *to respondents*…." However, the Court reiterated that it is "extraordinarily difficult for prison officials to assure that every Muslim prisoner is able to attend that service" and the Court was "unwilling to hold that prison officials are required by the Constitution to sacrifice legitimate penological objectives to that end.") (emphasis added).

[42] Congress' subsequent enactment of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (1993), which was held unconstitutional in *City of Boerne v. Flores*, 117 S.Ct. 2157 (1997), and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc (2000), does not change the validity of the *O'Lone* test. The RFRA and RLUIPA created separate causes of action for inmates to challenge prison regulations, but do not affect an inmate's claim brought pursuant to and directly under the First Amendment "for the simple reason that a congressional enactment cannot modify the Supreme Court's constitutional interpretation…." *Show v. Patterson*, 955 F. Supp. 182 (S.D. N.Y. 1997) (citing *Jolly v. Coughlin*, 76 F.3d 468, 475 (2nd Cir. 1996)).

[43] *See supra* notes 1-8.

[44] *See supra* notes 23-41.

[45] *See Snyder v. Murray City Corp.*, 124 F.3d 1349, 1352 ("The first questions in any free exercise claim are whether the plaintiff's beliefs are religious in nature, and whether those religious beliefs are sincerely held."). *See*, *e.g.*, *Kay*, 500 F.3d at 1220-21 (determining that the district court erred in requiring the plaintiff to demonstrate that requested "religious" items were "necessary" to the Wiccan practice, and so the court also erred when it therefore refused to determine whether the prison restrictions were justified by reasonable penological interests or apply any prong of the *Turner* test). *See also Boles v. Neet*, 486 F.3d 1177, 1182 (10th Cir. 2007) (requiring the plaintiff to show, as the first step of a Free Exercise of religion claim, that the Warden's conduct

*Turner* and *O'Lone* analyses, the Supreme Court's analysis in these two cases and the Court's overall objectives should weigh heavily in a federal court's decision regarding whether to apply the "sincerely held" or "central" standard.

In determining whether an alleged set of beliefs and practices amounts to a "religion," courts are often very willing to conduct an extensive factual inquiry into the set of beliefs.[46] However, in assessing the sincerity of an inmate's beliefs, neither the "sincerely held" standard nor the "central to" standard makes an inmate vigorously prove the truthfulness of his or her alleged belief.[47] In light of Supreme Court precedent, it is clear that both the "sincerely held" and "central to" standard misapply the Court's intent in regard to prisoners' rights. Rather, courts should require that inmates substantially prove the sincerity of their beliefs, both to reduce the risks of abuse and to ensure that the benefits of religious prisoners are truly realized.

### A. The "sincerely held" standard, as applied, misconstrues Supreme Court precedent and is practically and logically unsound.

To reiterate the holding in *Kay v. Bemis*, the Tenth Circuit held that a prisoner's belief, in order to qualify for protection under the Free Exercise clause, must be "genuine and sincere," not "required" by the prisoner's religion.[48] The

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"substantially burdened his sincerely-held religious beliefs") (citations omitted). In theory, the "sincerely held" test and "central to" test can undermine the *Turner* and *O'Lone* tests; after all, if a prisoner's religious beliefs in question are not protected under the First Amendment, a court need not apply the *Turner* test.

[46] Although it is not proper for courts to settle religious disputes, see *infra* notes 57 and accompanying text, "courts routinely undertake factual inquiry into religious practices and doctrines in determining whether a set of beliefs and practices amounts to a 'religion.'" Jared A. Goldstein, *Is There A "Religious Question" Doctrine? Judicial Authority to Examine Religious Practices and Beliefs*, 54 CATH. U.L. REV. 497, 526 (2005). The Supreme Court has given implicit authority for courts to undertake this type of analysis. *See Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)("A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.")

[47] See *infra* notes 50-51 and accompanying text.

[48] 500 F.3d 1214, 1220 (10th Cir. 2007).

*Kay* court, however, was certainly not the first to apply this standard of review in a prisoner's Free Exercise of religion claim.[49]

Many courts that follow the "sincerely held" standard do so because they are reluctant to delve too deeply into the realm of religion.[50] Consequently, such courts only deny an inmate's claim if it is ""so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause" and otherwise acquiesce to inmates' claims of sincerity on slight evidence.[51] The reasoning behind this deference, as stated in *Thomas*, is that "it is not within the judicial function and judicial competence to inquire whether [an inmate] or his fellow worker more correctly perceived the commands of their common faith."[52] However, the "sincerely held" standard is fundamentally unworkable and based on outdated Supreme Court precedent.

### 1. The "sincerely held" approach is practically and logically unsound.

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[49] *See*, *e.g.*, *LaFevers v. Saffle*, 936 F.2d 1117 (10th Cir. 1991); *Martinelli v. Duger*, 817 F.2d 1499, 1503 (11th Cir. 1987); *Furqan v. Georgia State Bd. of Offender Rehabilitation*, 554 F. Supp. 873 (N.D. GA 1982).

[50] In *Thomas v. Review Bd. Of Indiana Employment Security Div.*, a Jehovah's Witness was forced to quit his government job or else produce armaments in violation of his religion, and subsequently was denied unemployment compensation. 450 U.S. 707 (1981). The Indiana court, in denying his benefits, gave significant weight to the fact that other Jehovah's Witnesses had no problem working on this job. *Id.* at 715. The Supreme Court, however, held that "courts are not arbiters of scriptural interpretation," *id.* at 716, and the only religious beliefs that would not be entitled to First Amendment protection are claims that are "so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause…." *Id.* at 715.

[51] The Supreme Court adopted *Thomas*' "so bizarre" language in prisoners' Free Exercise claims, albeit shortly before the *Turner* decision. *See Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 834 n.2 (1989). Since then, federal courts holding by the "sincerely held" approach adopted the "so bizarre, so clearly nonreligious in motivation" standard to determine the sincerity of an inmate's belief. *See Kay v. Bemis*, 500 F.3d 1214, 1219-20 (10th Cir. 2007); *Ford v. McGinnis*, 352 F.3d 582, 589 (2nd Cir. 2003); *Sutton v. Rasheed*, 323 F.3d 236, 252 (3rd Cir. 2003).

[52] *Thomas v. Review Bd. Of Indiana Employment Security Div.*, 450 U.S. 707, 716 (1981). *See also Jolly v. Coughlin*, 76 F.3d 468, 476 (2nd Cir. 1996) (The court held some inquiry into whether Jolly was sincere in his religious belief and whether the belief was religious in nature. The court did not inquire in great detail, however, stating "[a]n inquiry any more intrusive would be inconsistent with our nation's fundamental commitment to individual religious freedom; thus, courts are not permitted to ask whether a particular belief is appropriate or true - however unusual or unfamiliar the belief may be.").

There are two real practical problems with this level of deference. The first problem is that, logically, it is not determinative of the sincerity of an inmate's belief.[53] The Supreme Court initially introduced the *Thomas* "so bizarre" approach in response to the Indiana Courts, which attempted to determine the sincerity of Thomas's beliefs by comparison with the beliefs of another Jehovah's Witness.[54] For that limited purpose - to prevent courts from becoming arbiters of intra-faith conflicts while recognizing different methods of worship in the same religion - the "so bizarre" approach is effective; but, used as an objective test to determine whether a certain belief is religious in nature and truly held, the test is not effective.[55] After all, a religious belief may be insincerely held but at the same time it might not be "so bizarre" as to lose its First Amendment

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[53] Even among courts that apply the "sincerely held" approach and follow the "so bizarre" standard to determine an inmate's sincerity, there seems to be some confusion as to whether the "so bizarre" test is actually used to determine the sincerity of an inmate's belief or determine whether the belief is religious in nature. *Compare Kay*, 500 F.3d at 1219-20 ("We have said that summary dismissal on the sincerity prong is appropriate only in the 'very rare case[ ]' in which the plaintiff's beliefs are 'so bizarre, so clearly nonreligious in motivation that they are not entitled to First Amendment protection.') (citations omitted) *with Sutton*, 323 F.3d 236, 252 ("Furthermore, we cannot say [the tenets of the Nation of Islam] are 'so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause.'… Therefore… plaintiffs' sincerely-held views are sufficiently rooted in religion to merit First Amendment protection.") (citations omitted) *and Mosier v. Maynard*, 937 F.2d 1521, 1526 (10th Cir. 1991) ("Without question, the prison may determine whether plaintiff's beliefs are sincere, meaning whether they are 'truly held and religious in nature.' Some asserted religious claims may be 'so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause.'") (citing *Martinelli v. Dugger,* 817 F.2d 1499, 1504 (11th Cir. 1987), *cert. denied,* 484 U.S. 1012 (1988) (other citations omitted)).

[54] *Thomas*, 450 U.S. at 715.

[55] In *Sutton*, the court appears to hold that because the inmate's beliefs are not "so bizarre" that they are sufficiently rooted in religion to be protected by the First Amendment – however, because there is no other inquiry as to whether the prisoner's beliefs are "truly held," it is unclear whether the "so bizarre" test also determines whether the inmate is sincere in his or her beliefs. Similarly, in *Mosier*, the court concludes that sincere beliefs require that they be truly held and religious in nature, but is unclear how the "so bizarre, so clearly nonreligious in motivation" standard functions to determine whether the beliefs are truly held.

protection.[56] More importantly, determining the bizarreness of a relatively unknown religious belief and the possibility of an ulterior motive requires that courts conduct a type of analysis into an inmate's religion that the Supreme Court wanted to avoid in the first place – mainly, that federal courts become "arbiters of spiritual interpretation."[57] However, even if courts only apply the "so bizarre" approach to determine whether a belief is "religious in nature," rather than to determine an inmate's sincerity, it appears then that federal courts merely determine that an inmate's belief is religious in nature and then take an inmate's "word for it" that the belief is sincerely held.

The second practical problem with the "so bizarre" standard is that it places an undue burden on prison administrators, which is precisely the problem

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[56] In fact, in a prison, inmates have many incentives to lie about the sincerity of their beliefs to obtain certain benefits not available to the general inmate population. *See* Heather Davis, *Comment: Inmates' Religious Rights: Deference to Religious Leaders and Accommodation of Individualized Religious Beliefs*, 64 ALB. L. REV. 773 (2000). Inmates who are members of certain religious groups are entitled to receive certain benefits that non-religious inmates do not receive. *Id.* at 784 ("For example, in New York, inmates who are members of religious groups in correctional facilities can receive special meals, wear religious symbols and special headgear, and attend both regular and holiday services.") (citations omitted). With so many incentives to lie about the sincerity of their religious beliefs, it is certainly plausible that many inmates will claim to sincerely hold subjectively normal religious beliefs, one that has already passed the *Turner* test, and then become entitled to obtain undeserved benefits.

[57] *Thomas*, 450 U.S. at 716. *See*, *e.g.*, *Sutton*, 323 F.3d 236. To determine the sincerity of the inmate's belief, and applying the "so bizarre" approach, the *Sutton* court conducted a thorough analysis of the tenets of the Nation of Islam. *Id.* at 252. The Court first noted that the nation of Islam believes in the teachings of Allah, as written in the Qur'an. *Id.* The court further noted that practitioners of the Nation of Islam "believe that Allah (God) appeared in the person of Master W. Fard Muhammad in July 1930 and that Fard Muhammad is the long-awaited 'Messiah' of the Christians and the 'Mahdi' of the Muslims." *Id.* Lastly, the court noted that the "Nation of Islam… want[s] to establish a separate territory where black people can live independently" and "believe the offer of integration is hypocritical…." *Id.* The court, in *Sutton*, conducted this analysis merely to determine the normality of the plaintiff's religious beliefs. *But see Thomas*, 450 U.S. at 716 ("[I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith."). Although the *Sutton* court did not step in to resolve an intra-faith dispute among members of the Nation of Islam to determine whether an inmate is a "true" practitioner of his or her faith, the court was forced to make extensive findings of fact about the tenets of a particular religion and then determined, based on those facts, whether the inmate seemingly followed that religion. This analysis violated the spirit of *Thomas*, in that courts are forced to make extensive findings about the tenets of a certain religion to determine whether an alleged practitioner of the religion truly follows it.

which the Supreme Court sought to avoid. To reiterate, one of the main concerns of the *Turner* court was that "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform."[58] Furthermore, the Court adopted a rational basis standard of review to ensure that "prison administrators …, and not the courts … make the difficult judgments concerning institutional operations."[59] Essentially, the Supreme Court did not want to involve prison administrators in endless litigation that would undermine their ability to run a prison.[60] However, under the "sincerely held" approach, as currently applied, courts are still required to conduct extensive factual findings into the bizarreness of an inmate's claim.[61]

Prison administrators must first evaluate all inmate requests for religious accommodation. Prison officials are ill equipped to determine the veracity of an inmate's sincerity on a level required by the courts.[62] To compound the problem of individualized sincerity determinations, "[i]n some states, inmates may switch their religious affiliation as often as they like, with no verification process," which enables prisoners to abuse the system and forces prison administrators into constant litigation.[63]

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[58] *Turner*, 482 U.S. at 84 (citing *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)).
[59] *Turner*, 482 U.S. at 89.
[60] To that end, and as stated before, the appropriate analysis under the second prong of the *Turner* test - if alternative means for exercising the asserted right remain available – is not whether an inmate had other means to express this particular belief, but whether he or she was deprived of "all means of expression." *See supra* note 37.
[61] *Supra* notes 58-60. In fact, determining the sincerity of an inmate's belief may be a more exacting analysis than the *Turner* test. Under the *Turner* test, a prison administrator only needs to have a rational basis for denying the requested religious accomodation. *See supra* note 30. Under the "so bizarre" approach, however, courts are required to delve into the thicket of theology and see whether an inmate's alleged belief is "so bizarre" in the context of the inmate's alleged religion.
[62] As noted earlier, inmates have strong incentives to lie about the sincerity of their religious beliefs to obtain benefits not otherwise available. *See* Davis, *supra* note 56, at 784-85 ("Inmates are restricted in their daily activities, and belonging to a religious group while incarcerated is one of the few ways to actually receive more privileges and alter the conditions of their confinement."). *See also* Davis, *supra* note 56, at 785 ("In New York State, there are approximately 70,000 inmates in the correctional system…. Indeed, these systems would likely be severely taxed if they were required to make individualized sincerity determinations for even a fraction of these inmates.") (citations omitted).
[63] *In the Belly of the Whale: Religious Practice in Prison* [hereinafter *Belly of the Whale*], 115 HARV. L. REV. 1891, 1901 (2002) ("These permissive policies, however, may

Other states require that inmates "provide some documentation from an authorized religious leader substantiating their commitment to their new faith to obtain the privileges of the new religious group."[64] The main problem with this approach is that it does not afford enough protection to "individualized" religious beliefs, and also undermines the whole reason the *Thomas* court created the "so bizarre" analysis.[65] The *Thomas* court did not want to determine the sincerity of a plaintiff's individual beliefs by way of comparison to other practitioners of the religion – just because one practitioner of the faith may hold a certain belief does not mean that everyone will.[66] Essentially, under the "sincerely held" approach, and especially with regard to individualized religious beliefs, prison administrators and officials must determine whether the inmate is indeed sincerely a member of a religion, a task that may be difficult even for a theologist.[67]

The Supreme Court sought to avoid this type of exacting review by prison officials and administrators, whereby prisoners are able to "set up" any conceivable challenge to a prison administrator's authority and prison officials must then "shoot down" an inmate's claim.[68] Although some states limit the

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prompt inmates to manipulate the system, changing religious affiliation simply to obtain special privileges.") (citations omitted).

[64] *Id.* at 1901-02.

[65] *See* Davis, *supra* note 56, at 775 n.19 ("The term 'individualized beliefs' has been used to describe the beliefs of one who practices a unique or unrecognized religion, as distinguished from one who practices a personal variation of a recognized religion.") (citations omitted).

[66] *See also DeHart v. Horn*, 227 F.3d 47, 55-56 (3rd Cir. 2000) (holding that to "discount [a] sincerely held religious belief because it was not in the mainstream… would be inconsistent with a long line of Supreme Court precedent.").

[67] *See* Davis, *supra* note 56, at 777. Davis notes:

> Correctional facility officials lack the requisite knowledge of each religious group's practices, norms, and traditions. Without such knowledge, correctional facility officials are not able to effectively determine whether an inmate is a bona-fide [sic] member of a religious group. The most serious concern is that correctional facility officials may deem an inmate to be a member of a religion even though the inmate is not in conformity with the religion's standards; the correctional officials would, in effect, be forcing a religion to accept an inmate who does not meet that religion's standards.

*Id.* (citations omitted).

[68] *See O'Lone*, *supra* note 40 and accompanying text.

number of a times an inmate can switch religions throughout the year,[69] this does not effectively change the myriad of claims an inmate may be able to set up under a "sincerely held" approach.[70]

### 2. The "sincerely held" approach relies on outdated precedent.

The Tenth Circuit, in support of the *Kay* decision, relies upon *LaFevers v. Saffle*, another prisoner First Amendment Free Exercise case.[71] *LaFevers*, in turn, does not rely on any cases which should have any bearing on an inmate's Free Exercise challenge; none of the cases *LaFevers* relies upon involve a prisoner's Free Exercise of religion challenge in the post-*Turner* and *O'Lone* era.[72] In

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[69] One quarter of states "restrict the frequency with which inmates may switch designated religious affiliations. Frequency limitations range from bimonthly to annually." *Belly of the Whale*, *supra* note 63, at 1902 (citing *Memorandum, Harvard Law Review Ass'n, Prison Religious Accommodations* (Mar. 12, 2002) (on file with the Harvard Law School Library); Wash. Dep't of Corr., Policy Directive 560.200: Religious Freedom, at 3 (Jan. 21, 2000); Tex. Dep't of Criminal Justice, Administrative Directive AD-07.20 (rec. 5), at 3 (Dec. 19, 2000)).

[70] Of course, applying a reasonable relationship test, the courts should favor a prison regulation if it is reasonably related to a penological interest. However, assuming that a religious belief defeats the reasonable relationship test – for instance, keeping kosher – prison officials must then conduct exhaustive review of a prisoner's sincerity and perhaps sacrifice penological interests for an insincere religious belief. *See*, *e.g.*, *Jackson v. Mann*, 196 F.3d 316 (2nd Cir. 1999) (holding that because the prison's Jewish chaplain - based on the plaintiff answers in a questionnaire given by the chaplain - did not recognize the plaintiff as Jewish, Jackson was properly denied kosher food). *Cf*. *Smith*, 494 U.S. 872, 906-07 (1990) (O'Connor, J., concurring) (stating that there is no reason why courts cannot make "factual findings as to whether the claimant holds a sincerely held religious belief that conflicts with … the challenged law").

[71] 936 F.2d 1117 (10th Cir. 1991). In *LaFevers*, the plaintiff alleged his First Amendment rights were violated due to the warden's refusal to provide him with a vegetarian diet. This denial, the plaintiff alleged, infringed on his beliefs and practices as a Seventh Day Adventist. *Id.*

[72] *Id.* at 1119. The first two cases the Tenth Circuit relies upon are *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829 (1989), and *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707 (1981). The immediate, most striking problem with relying upon either Supreme Court case is that neither involves a prisoner's Free Exercise claim – in fact, both opinions involve unemployment compensation benefits. *Frazee* involved the plaintiff's inability to collect unemployment benefits because he refused to take a job that required him to work on Sunday, and the plaintiff's sincerely held religious beliefs precluded him from working on Sunday. *Frazee*, 489 U.S. at 830-31. *Thomas*, likewise, involved the State's refusal to award unemployment compensation benefits to an employee fired from his job that allegedly violated his

essence, the Tenth Circuit, in *LaFevers*, applies standards used as part of the compelling interest test and the "no reasonable alternatives" test. The Supreme Court clearly rejected a compelling interest test for prisoners' Free Exercise claims and similarly rejected the "no reasonable alternative" approach from the Eleventh Circuit.[73] In effect, in *LaFevers*, the Tenth Circuit applied outdated and inapplicable precedent, which was subsequently applied to Kay's claim.

### B. Centrality to the religion is also an inappropriate standard.

As previously stated, in *Oakden v. Bliesner*,[74] the plaintiff, a member of the "Church of the Creator,"[75] brought a Free Exercise claim for the defendant's failure to provide the plaintiff with a raw-food diet, and the district court affirmed summary judgment because the plaintiff failed to show that eating a raw-food diet was "*central* to [his] religious doctrine."[76] Of course, *Oakden* was not the first case to apply this standard of review.[77] Courts held, before *Turner*, that the importance of a belief to a particular religion could be determined by whether

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sincerely held religious beliefs. *Thomas*, 450 U.S. 707. In both *Thomas* and *Frazee*, also, the Court applies a compelling interest test and both cases hold that "[b]ecause [the plaintiff] unquestionably had a sincere[ly held religious] belief that… prevented [the plaintiff] from doing such work, he was entitled to invoke the protection of the *Free Exercise Clause*." *Frazee*, 489 U.S. at 833 (describing the holding in *Thomas*). The Court, in *Turner* and *O'Lone*, though, rejects applying a compelling interest test for a prisoner's Free Exercise claims. *See supra* note 40 and accompanying text. The third case upon which *LaFevers* relies upon is *Martinelli v. Dugger*, 817 F.2d 1499 (11th Cir. 1987). *Martinelli*, unlike *Frazee* and *Thomas*, is a prisoner's Free Exercise of religion challenge authored by the Eleventh Circuit, but predated the *Turner* and *O'Lone* decisions by a few days and applied the "least restrictive means" test. 817 F.2d 1499, 1505. This approach is clearly rejected by the Supreme Court in *Turner* and *O'Lone*. *See supra* note 30 and accompanying text. None of these cases, thus, should have any bearing on the holding in *LaFevers*, because none of these cases involves a Free Exercise challenge by a prisoner applying an appropriate or rejected standard of review.

[73] *See supra* note 31 and accompanying text.

[74] 2007 WL 2778788(N.D. Cal. 2007).

[75] The Church of the Creator is a group, as described by the District Court, whose "primary objective… is the 'survival, expansion and advancement of the white race.'" *Id.* at 3 (citation omitted).

[76] *Id.* at 15 (emphasis added).

[77] *See*, *e.g.*, *Spies v. Voinovich*, 173 F.3d 398 (6th Cir. 1999) (holding that Spies' vegan beliefs were not "required" by Buddhism and thus not constitutionally protected).

other inmates followed the same practice.[78] This type of analysis, however, suffers from the same problems as does the "sincerely held" standard – it requires that courts and prison administrators conduct an intrusive review of a prisoner's beliefs and is based on out-of-date precedent.

### 1. The "central to" standard is too intrusive and is based on outdated precedent.

The most important problem with the "central to" standard is that it is based on unrelated and outdated precedent.[79] Outside the prison context, the Supreme Court has consistently rejected the notion that courts should determine whether a particular belief is "central to" to a particular religion for fear that courts will improperly interfere in religious disputes.[80] Considering the Supreme

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[78] *See*, *e.g.*, *Kahey v. Jones*, 836 F.2d 948 (5th Cir. 1988) (denying a Muslim prisoner's request for a particular accomodation because other Muslims did not adhere to the belief); *Kahane v. Carlson*, 527 F.2d 492, 495 (2nd Cir. 1975) (holding that an Orthodox Jewish prisoner was entitled to a kosher diet because kosher is "an important, integral part of the covenant between the Jewish people and the God of Israel"). The *Kahane* decision was reinforced after *Turner* and *O'Lone*, in *Bass v. Coughlin*, 976 F.2d 98, 99 (2nd Cir. 1992):

> The principle [*Kahane*] established was not placed in any reasonable doubt by … *O'Lone* ..., and *Turner* ..., that prison officials need meet less exacting standards when a prisoner's interest in marrying, or attending religious ceremonies, or maintaining the length of his hair is to be balanced against interests of rehabilitation and prison security.

[79] *Oakden*, for its holding, relies on *Freeman v. Arpaio*, 125 F.3d 732 (9th Cir. 1997), which in turn relies upon *Graham v. C.I.R*, 822 F.2d 844 (9th Cir. 1997). *Graham*, however, is totally unrelated to prisoners' First Amendment claims – it involves charitable contributions to religious causes – and *Graham*, in fact, relies upon *Thomas v. Review Board*, 450 U.S. 707 (1981), a case that, as previously noted, is inapplicable and applies a higher standard of review than is allowed in a prison context. *See supra* note 72 and accompanying notes. In fact, courts that also follow the "sincerely held" approach also cite *Thomas* for authority. *Id.*

[80] *See Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953) ("[I]t is no business of the courts to say what is a religious practice or activity for one group is not religion under the protection of the First Amendment."); *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."); *Employment Div., Dep't of Human Resources v. Smith*, 494 U.S. 872 (1990) ("Judging the centrality of different religious practices is akin to the unacceptable business of evaluating the relative merits of differing religious claims."). Furthermore, as noted earlier, in *Thomas*, the Supreme Court rejected the notion that the sincerity of a

Court's concern for the effective maintenance of prisons, the "central to" analysis is especially inappropriate when it requires that prison administrators conduct an analysis of religious claims.[81] As previously noted, the Supreme Court set out the *Turner* doctrine in order to ensure appropriate deference to prison officials and not undermine their ability to effectively operate a prison.[82] But, under the "central to" standard, once a prisoner brings a claim for religious accommodation for a belief that is allegedly "central to" the inmate's religious beliefs, prison officials are still required to determine whether a particular religious belief is, in fact, "central to" the prisoner's religion.[83] This may be especially difficult for "individually held" religious beliefs, where a particular inmate may deem one

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plaintiff's religious beliefs could be determined by comparison to the beliefs of other members of the faith. *Supra* note 51. In conducting a "central to" analysis, the court is, effectively, interjecting itself into a religion and, by virtue of how others practice the faith, determining the importance of a practitioner's beliefs. *See also DeHart. V. Horn*, 227 F.3d 47. The *DeHart* court states:

> [N]ot only did the District Court undertake to evaluate the "centrality" of a vegetarian diet in the Buddhist faith, it also purported to determine what was generally accepted Buddhist doctrine and to discount DeHart's sincerely held religious belief because it was not in that mainstream. This is simply unacceptable. It would be inconsistent with a long line of Supreme Court precedent to accord less respect to a sincerely held religious belief solely because it is not held by others.

*Id.* at 55 (citations omitted).

[81] See *supra* notes 58-67 and accompanying text. *See also Oakden*, 2007 WL 2778788, at *15 (N.D. Cal. 2007) (noting that the developed record does not support finding that the prisoner's belief was central to his religious beliefs). Furthermore, in *O'Lone*, the Court makes no indication that a prisoner's religious beliefs must be "central to" his or her religion – in fact, the Court conducts the *Turner* analysis after concluding that Shabazz's "sincerely held religious beliefs compelled attendance at Jumu'ah." *O'Lone*, 482 U.S. at 345. Of course, this alone does not invalidate the "central to" standard; after all, the Court never expressly holds that, in the prison context, religious beliefs must merely be "sincerely held" and that any other test subjects the inmate to too exacting a standard of review. However, under the second prong of the *Turner* test a court must inquire whether an inmate is deprived of all means of expression, suggesting that even beliefs that are not "central to" the practice of an inmate's religion can be infringed or constitutionally protected, so long as the inmate is not deprived of all means of practicing his or her religion. Logically, then, the Supreme Court did not intend to only protect religious beliefs that are "central to" an inmate's religious beliefs.

[82] *Supra* notes 28-29 and accompanying text.

[83] *See*, *e.g.*, *Oakden*, 2007 WL 2778788, at *15 ("The *record is adequately developed* regarding whether a raw-food diet is mandated by the Church of the Creator, and the Court finds no such mandate.") (emphasis added).

particular part of his or her religion to be more important than another.[84] Determining the importance of a religious belief is a task unwanted by courts and must be even more daunting for untrained prison officials.

## III. An inmate's beliefs should be considered "sincerely held," and thus entitled to First Amendment protection, when an inmate demonstrates actual sincerity in the belief.

An inmate's beliefs, in order to be entitled to First Amendment protection, need only be "sincerely held" by the inmate. The problem with the "sincerely held" approach, as currently applied, and as demonstrated before, is that it places an undue burden on prison administrators to determine the veracity of an inmate's claim.[85] Instead, in the spirit of *Turner* and *O'Lone*, the burden should be entirely on the inmate to show that his or her belief is, in fact, sincerely held. To do so, an inmate should demonstrate that his or her belief is based on a passage from scripture, preferably receives some support from historical and biblical tradition, and plays a central role in his or her daily life. This standard is derived from *Quaring v. Peterson*;[86] this not a post-*Turner* decision, but *Quaring* should not be disregarded simply because it has little, if any, constitutional weight. Rather, this test should be applied because it is the most simple and pointed test of the sincerity of an inmate's belief that best fits with Supreme Court precedent. This note will now examine each prong of the modified sincerity test.

### A. The belief is based on a passage from scripture.

The foremost requirement for an inmate to demonstrate the sincerity of his or her belief should be that the inmate actually point to a specific passage in scripture that reasonably supports the inmate's religious belief.[87] A passage in scripture, requiring or alluding to certain behaviors or customs among a religion's

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[84] *See supra*, note 65.
[85] *See supra* notes 58-63 and accompanying text.
[86] 728 F.2d 1121 (8th Cir. 1984), *aff'd sub nom. per curiam by an equally divided Court Jensen v. Quaring*, 472 U.S. 478 (1985).
[87] This is not the same as the "central to" standard – here, there is no requirement that an inmate's belief in a cited passage be one that is of the utmost importance to a particular religion.

practitioners, helps determine the sincerity of an inmate's belief in that prison officials can ensure that the prisoner's alleged religious beliefs are not "made up" or "secular in nature."[88]

To some degree, courts already employ this standard in prisoners' rights cases, often to determine whether a particular belief is religious in nature.[89] In the sincerity context, the same test could be utilized to determine whether an inmate actually sincerely believes a particular belief.[90] Furthermore, an inmate could demonstrate, based on specific sections of scripture, how a particular section of the scripture can be interpreted as mandating a certain practice.[91]

There are two possible practical problems with this requirement: a lack of access to religious books, and accommodation of individualized religious beliefs. First, in response to fear of growing Islamic fundamentalist prison populations,[92]

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[88] *See* U.S. v. Seeger**,** 380 U.S. 163, 185 (1965) ("we hasten to emphasize that while the 'truth' of a belief is not open to question, there remains the significant question whether it is 'truly held'").

[89] *See Spies v. Voinovich*, 173 F.3d 398, 406 (6th Cir. 1999) (holding that a Zen Buddhist prison was not constitutionally entitled to a vegan meal, when the "prison has provided Spies with the *vegetarian* meal he is required to eat under Buddhist practice"); *Guzzi v. Thompson*, 470 F. Supp.2d 28, 29 (D. Mass. 2007) (holding that a Catholic prisoner was not entitled to preliminary injunctive relief because he failed to put forth "any admissible evidence that supports a reasonable factual inference that his alleged system of religious beliefs requires him to maintain a kosher diet"); *Cape v. Crossroads Correctional Center*, 99 P.3d 171, 175 (Mont. 2004) (Catholic prisoner was not entitled to "religious meals" of fish and unleavened bread on certain Christian holidays because the Catholic Church only required "meatless meals" on those days). These cases demonstrate, as do countless other federal cases, that many courts are more than willing to look to scripture to determine whether a particular belief is based in religion.

[90] An ability to cite a particular portion of scripture mandating such practice not only proves that the belief is religious in nature, but also shows that the inmate has spent some time formulating his or her religious beliefs.

[91] For instance, in *Quaring*, the district court noted that "[Quaring] appeared ready to support her interpretation of the Bible, based on her knowledge of several portions of the Old Testament." 728 F.2d at 1125.

[92] According to some sources, "radicalization and recruitment of terrorists in US prisons present a threat of 'unknown magnitude,' according to national security experts." Alexandra Marks, *Islamic Radicals in Prison: How many?*, CHRISTIAN SCIENCE MONITOR, Sept. 20, 2006, at 3, 1/2 p, 1 bw. This fear is not unfounded, as in September 2005, "police in California disrupted what they say was a plot by … a self-styled leader of an Islamist inmate group[] to blow up government facilities and Jewish synagogues in the Los Angeles area." *Id.* In the past, prison officials have denied other prisoners access to non-religious newspapers out of security concerns. *See* Charles Lane, *In 1st Amendment Case Court Considers Pa. Inmates' Access to Papers*, WASHINGTON POST,

some prison chaplains have been removing religious books from the library.[93] If a prisoner has no access to a religious book, then obviously that same prisoner will be unable to cite a passage from scripture to demonstrate his or her sincerity. This can be remedied, however, with less overbroad and more precise removals of religious material that may incite violence.[94]

A more fundamental problem comes with regard to how courts should handle individualized religious beliefs, which may or may not be found in the body of sacred writings. For those beliefs that are reasonably supported by scripture or are based on reasonable interpretation,[95] courts should give just as much weight to that belief as they would any belief that would be considered

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Mar. 28, 2006 (remarking how some inmates use newspapers filled with hardened toothpaste as a club, and so Pennsylvania prison officials denied about 40 inmates access to reading material).

[93] *See* Laurie Goldstein, *Prisons Purge Books on Faith from Libraries*, N.Y. TIMES, Sept. 10, 2007, at A1 (noting that in "federal prisons nationwide, chaplains have been quietly carrying out a systematic purge of religious books and materials that were once available to prisoners in chapel libraries"). It is also not only Islamic fundamentalists who have been denied reading material, but many prisons have responded very broadly. *Id.* ("The Bureau of Prisons said it relied on experts to produce lists of up to 150 book titles and 150 multimedia resources for each of 20 religions or religious categories – everything from Bahaism [sic] to Yoruba.").

[94] Currently, prison officials remove a wide array of religious books. *Id.* (quoting the president of Prison Fellowship, a Christian group, comparing the prison book removals to "swatting a fly with a sledgehammer"). *See also* Lisa Miller, *BeliefWatch: Banned?*, NEWSWEEK, Aug. 13, 2007, at 12 (describing an Indiana federal prison limiting access to hundreds of books, including "works by the great 12th-century rabbi and physician Maimonides, as well as the Zohar, the ancient text upon which the mystical practice of Kabbalah is based;" this has sparked criticism from Orthodox Jewish leaders, who claim that the prison is "throwing the baby out with the bath water"). It should also be noted that an inmate's claim to religious, yet violence inciting reading material would not pass even the first prong of the *Turner* test, because a "valid, rational connection" exists between the regulation, banning certain books, and the legitimate interest advanced by the regulation, security. *Turner*, 482 U.S. 78, 89.

[95] For instance, in *Quaring*, the plaintiff refused to have a photograph taken for a driver's license based on a literal interpretation of the Second Commandment, "Thou shalt not make unto thee any graven image or likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth." *Exodus* 20:4; *Deuteronomy* 5:8. Based on Quaring's individual interpretation of the Second Commandment, she believed that she was prohibited from having a photograph of herself taken for a driver's license. Thus, the Eighth Circuit held, "[a]lthough Quaring's beliefs might seem unreasonably doctrinaire to many, that 'does not mean that they can be made suspect before the law.'" *Quaring*, 728 F.2d at 1125 (citing *United States v. Ballard,* 322 U.S. 78, 87 (1943)).

"central to" a particular religion.[96] However, courts should be unwilling to accommodate religious beliefs not based on any passage from scripture.[97] If this prevents a prisoner from practicing a part of his individually held religious beliefs, this restriction should pass constitutional muster, so long as the prisoner is not denied all means of practicing his or her faith.[98] After all, this is a prison; a little more than forty years ago, the same prisoner would have had no First Amendment rights.[99] To prevent the pendulum from swinging too far in the opposite direction and thereby impinging upon prison officials' ability to run an effective facility, courts should measure the sincerity of an inmate's belief based on whether it has support in scripture.

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[96] A favorable application of such an approach is found in *Dehart v. Horn*, in which the inmate became a Buddhist while incarcerated, and "[b]ased on his own reading of the Sutras, which are Buddhist religious texts… became a vegetarian." 227 F.3d 47, 49 (3rd Cir. 2000). Apparently, "[t]he First Precept in Buddhism prohibits the killing of any living thing, and [Dehart]… interpreted that Precept as requiring that he follow a vegetarian diet." *Id.* The prison officials challenged accommodating DeHart's claim based on whether vegetarianism is mandated by any recognized Buddhist sect, not the sincerity of Dehart's beliefs. The Third Circuit, however, reversed summary judgment in favor of the prison officials, holding that the prison was "constitutionally required to serve a diet consistent with his religious beliefs" regardless of whether "the diet was… mandated by Dehart's religion []or a belief shared by others practicing his religion." Ellis, *supra* note 23 at 366 (citing *Dehart*, 227 F.3d at 59-60).

[97] *See*, *e.g.*, *Spies*, 173 F.3d 398; *Guzzi*, 470 F. Supp. 2d 28. In both cases, the prisoner's beliefs were not based on any passage of scripture. As such, the prisoner's respective claims were, and should be, denied by the courts.

[98] *See Turner*, 482 U.S. at 90 (holding that the second factor for determining the reasonableness of a prison restriction "is whether there are alternative means of exercising the right that remain open to prison inmates"). In applying the second prong of the *Turner* test, in *O'Lone*, to "the very stringent requirements as to the time at which Jumu'ah may be held..." the Court noted that "[w]hile we in no way minimize the central importance of Jumu'ah to respondents, we are unwilling to hold that prison officials are required by the Constitution to sacrifice legitimate penological objectives to that end." *O'Lone*, 482 U.S. at 351. Thus, even when dealing with a religious belief "commanded by the Koran" and of "central importance" to the practitioner, the Court has been willing to err on the side of restricting a prisoner's religious belief, in favor of legitimate security concerns. *Id.* at 345 (citing *Koran* 62:9-10). Similarly, then, courts should err on the side of restricting a prisoner's alleged religious practice when not based on a passage from scripture. A prisoner may actually sincerely believe that he or she is required to follow the alleged religious practice not based in scripture, but so long as that prisoner is not deprived of all means of practicing his or her religion, courts should find that a prisoner insincerely believes in an alleged religious practice if it is not based in scripture.

[99] *See supra*, note 9 and accompanying text.

### B. A "sincerely held" religious belief should preferably receive some support from historical and biblical tradition.

In order to establish the sincerity of his or her belief, a prisoner should also demonstrate that his or her tradition receives some support from historical or biblical tradition.[100] Again, to some degree, courts currently employ this technique in determining whether a belief is religious in nature or a part of a "system of religious belief."[101] As applied to determine the sincerity of an inmate's beliefs, this step in the inquiry might also be considered as an alternative for courts unwilling to proscribe all religious beliefs not based in scripture.[102] Furthermore, this step should be considered preferable, not a required proof of sincerity; thus, this step would not preclude practice of modern religious beliefs, so long as those beliefs are, at a minimum, based in scripture.[103]

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[100] In *Quaring*, this was accomplished when "Dr. John Turner, a professor of religious studies, testified that Quaring's beliefs can be analogized to the Hebrew concept that images of things in creation are an attempt to capture God and His creations, and that such an attempt is forbidden." 728 F.2d at 1124. The *Quaring* court also "briefly surveyed the literature discussing the Second Commandment's prohibition against the making of likenesses of God's creation." *Id.* at 1124 n.3.

[101] *Guzzi*, 470 F. Supp. 2d at 29. For instance, in *Guzzi*, the court "left open the possibility that Guzzi could prove through expert testimony that the system of religious beliefs to which he allegedly subscribes - Orthodox Catholicism - commands him to keep kosher." *Id.* In this particular case, the court did not require that Guzzi prove the sincerity of his belief by reference to the Bible, which is not difficult to do. *See Genesis* 32:33; *Exodus* 22:30; *Exodus* 23:19. A Jewish prisoner seeking a kosher diet could cite these portions of the Bible, and, to satisfy this prong of the sincerity test, also refer to the fact that "for hundreds of years it has been understood to refer at least in part to the system of *Jewish* dietary laws." *Ran-Dav's County Kosher, Inc. v. State*, 579 A.2d 316, 320 (N.J.Super. Ct. App. Div. 1990) (emphasis added). This could be accomplished through all sorts of admissible evidence: for instance, by reference to *Encyclopedia of Religion* or the *Talmud*, as in *Ran-Dav*. *Id.* Guzzi, of course, was unable to find any historical or Biblical support for his alleged religious belief that required him, as a Catholic, to keep a kosher diet, and accordingly, the court denied his claim. *Guzzi*, 470 F. Supp. 2d 28.

[102] If a particular religious belief is not based in any scriptures, a court might still consider the belief sincerely held as long as there is a long historical tradition supporting the belief. In *DeHart*, for instance, the practitioner's request for a vegetarian diet was not based on the mandates of any sect of Buddhism, but could be supported by broad historical traditions of vegetarianism in Buddhism. 227 F.3d 47.

[103] At first blush it might appear that these first two tests, taken together, give preference to older religious beliefs. As described, if a belief is not written in a book of scripture, a

### C. An inmate must demonstrate that an alleged sincerely held religious belief plays a central role in his or her daily life.

The last requirement of the sincerity test should be whether the inmate's alleged religious belief plays an important role in his or her life.[104] This will demonstrate conclusively for the court that the inmate sincerely believes the alleged religious requirement – if the prisoner's daily practices demonstrate that the inmate sincerely embodies this belief.[105]

Naturally, an inmate challenging a prison regulation may be unable to demonstrate that a particular religious belief or practice is central to his or her daily life because he or she has been barred from practicing this belief by the prison regulation that the inmate is currently challenging.[106] A simple solution to

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court might consider a long historical tradition as proof of sincerity on the part of the inmate in the belief and therefore, a court might favor older religions over more modern religions, which may not have long traditions. The short answer to this critique is that prison is not an appropriate place to for an inmate to "discover" that a particular belief or conduct is "required" by his or her religion, when that belief is not written down before hand. As indicated above, the Supreme Court is most concerned with prison officials' ability to maintain an effective prison. *See supra* notes 28-29. At least, with older traditions that an inmate claims to sincerely hold, it is apprent that an inmate is not simply exploiting the good faith of prison administrators by "making up" religious requirements.

[104] In *Quaring*, for example, the sincerity of Quaring's belief that she was prohibited from taking a photo for a driver's license was proven by the fact that "[her] behavior in every way conforms to the prohibition as she understands it: her home contains no photographs, television, paintings, or floral-designed furnishings, and, as she testified, she goes so far as to remove or obliterate pictures on food containers." 728 F.2d at 1125.

[105] To take some examples from previously cited cases, in *Jackson v. Mann*, the plaintiff, after being denied kosher food, "refused for eight days to eat the non-kosher food provided to him." 196 F.3d at 318. Likewise, in *DeHart*, in which the inmate claimed to require a vegetarian diet in accordance with Buddhism, DeHart could testify or by some other means demonstrate that he had actively sought out vegetarian food. For instance, DeHart could prove that he had, to the best of his abilities, only selected non-meat food in the cafeteria or that he, on some occasions, passed up some meals in furtherance of his beliefs. *See generally,* 227 F.3d 47. In *O'Lone*, in which Shabazz sought to attend Jumu'ah, Shabazz could demonstrate that not only did he attend Jumu'ah before the prison instituted new security procedures, see 482 U.S. at 345, but Shabazz could also demonstrate that he attends other daily Muslim prayer services and would, given the opportunity and in accordance with the tenets of Islam, attend Jumu'ah.

[106] An example of this quandary would be in a case similar to *Kay v. Bemis*, in which the inmate was denied tarot cards. It would be impossible for the inmate to demonstrate that

this is that the inmate can demonstrate that he or she practices other related requirements of his or her religion,[107] or that certain ceremonies have been conducted without the proper formalities, due to the challenged prison regulations.[108] If an inmate believes that he or she is only required to conduct one religious practice that contravenes prison regulations and courts cannot prove his or her sincerity by reference to other religious practices that the inmate practices or any affirmative conduct on the inmate's part, in this circumstance, the courts should judge such an inmate's claim with intense scrutiny as being most likely motivated by fraud to break prison regulations and obtain special privileges.[109]

### D. Applying the modified sincerity test to *Kay* and *Oakden*.

To demonstrate the intricacies of this modified sincerity test in practice, this paper will apply this test to *Kay* and *Oakden*, the two cases cited in the beginning of this paper.

#### 1. *Kay v. Bemis*.

To reiterate, in *Kay v. Bemis*, the inmate was an alleged practitioner of the Wiccan faith precluded from purchasing incense, books referring to magic and witchcraft, and tarot cards.[110] The Tenth Circuit, in remanding a portion of Kay's complaint dismissed by the district court,[111] first noted that "Kay's complaint

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use of tarot cards plays a central role in the inmate's life when there is a prison regulation barring their use. *See generally* 500 F.3d 1214.

[107] In *O'Lone*, for instance, Shabazz can demonstrate that he sincerely believes that he is required to attend Jumu'ah by showing that he currently attends other required Muslim prayer services. 482 U.S. 342.

[108] To continue the earlier example, in *Kay*, the inmate can demonstrate that he continues to conduct the ceremony or worship in which tarot cards are required, but only without the tarot cards. This will demonstrate that the inmate is sincere in his beliefs.

[109] Hence, in a case such as *Guzzi*, in which a prison claimed to require kosher meals in accordance with the Jewish faith, Guzzi could demonstrate that he has affirmatively sought out kosher meals in the dining hall by selective eating or that he went hungry on many occasions. However, he would be unable to prove the sincerity of his beliefs by reference to his practice of other related aspects of Judaism, most obviously because he is a Catholic. *See generally,* 470 F. Supp.2d 28.

[110] To state again, "Wicca is a polytheistic faith based on beliefs that prevailed in both the Old World and the New World before Christianity. Its practices include the use of herbal magic and benign witchcraft." 500 F.3d at 1219 n.5 (citations omitted).

[111] The district court held that the plaintiff did not sufficiently identify to which religion the plaintiff belonged, and did not allege any facts from which one could conclude that his beliefs were sincerely held.

clearly identifies his religion as 'Wicca'" and at two other points in his complaint, Kay refers to Wicca as "his religion."[112] The Tenth Circuit also noted that there were some factual allegations conveying the sincerity of Kay's beliefs.[113]

Based on the facts pieced together from the district court and Tenth Circuit opinions, it is unclear whether Kay's claim satisfies the first two prongs of the modified sincerity test. It is vague, from the facts given, whether Kay can identify a specific portion of any Wiccan scriptures where use of incense, witchcraft books, and tarot cards would be required. On the other hand, it appears that the tradition of Wiccan ideology calls for use of "use of herbal magic and benign witchcraft."[114] Assuming Kay can either identify any passage from a Wiccan scripture that could be reasonably interpreted as calling for Kay's requested items or can identify Wiccan traditions calling for use of these items, Kay's claim could pass the first two prongs of the sincerity test.

Kay's sincerity would also be proved by the Tenth Circuit's factual stipulations – that Kay "surreptitiously brought tarot cards into the [Bonneville Community Correctional Facility] and was disciplined for it."[115] Kay's persistence in asking for the requested items and his willingness to face disciplinary action suggests strongly that Kay is indeed sincere in his religious beliefs. At this point, depending on how well Kay could establish that his beliefs are based in scripture and are based in Wiccan tradition, a court could reasonably find that Kay's sincerely held religious beliefs mandate use of the requested items.

**2. *Oakden v. Bliesner.***

To restate the holding in *Oakden v. Bliesner*,[116] the plaintiff requested a raw food diet[117] in accordance with his affiliation in the Church of the Creator.[118]

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[112] 500 F.3d at 1219 (citing Complaint, 2007 WL 218757, at *5, *7 (D.Utah 2007)).
[113] According to the Tenth Circuit, "Kay persistently asked prison administrators for permission to possess tarot cards in order to practice his religion. On two occasions, he surreptitiously brought tarot cards into the [Bonneville Community Correctional Facility] and was disciplined for it." 500 F.3d at 1220 (citing Complaint, 2007 WL 218757 at *7).
[114] *See supra* note 2.
[115] *See supra* note 113.
[116] 2007 WL 2778788.

To determine whether Oakden was entitled a raw food diet, the district court applied the "central to" test, and thus held that Oakden was not entitled to a raw food diet.[119]

Applying the *Oakden* court's stipulated facts to the modified sincerity test, Oakden would likely still be denied a raw food diet. The first two prongs of the sincerity test only marginally favor the Plaintiff: the facts strongly indicate that a raw food diet is not written in any scriptures of the Church of the Creator,[120] but there does appear to be some tradition among its members that a raw food diet is preferable, but not required.[121] However, under the third prong of the test, there is

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[117] *Id.* at 1 (citing Pl.'s Compl. ¶ 25.)) ("a 'raw-food diet[]' consists of food that has been organically grown, and is 'uncooked, unprocessed, unpreserved and not tampered with in any other way'").

[118] In the first portion of the decision, the district court first considered whether the Church of the Creator was entitled to First Amendment protection. The court "assume[d], without deciding, that the Church of the Creator is a religion within the meaning of the First Amendment." *Id.* at 5.

[119] *Id.* at 6 ("In sum, plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, specifically, that defendants prevented him from engaging in conduct mandated by his faith.").

[120] At one point, defendant "Bliesner researched the Church of the Creator on the Internet, and determined that it did exist, and that its followers were predominantly vegetarian. Bliesner did not notice that a raw-food diet was recommended." *Id.* at 2. Another defendant, Somera, also noted that the

> Oregon-based Church of the Creator does not make any reference to a special diet requiring raw foods or salubrious living. [However,] Somera's findings regarding the Church of the Creator were limited to the Oregon-based Church of the Creator, and not to plaintiff's alleged religion of the same name based out of Florida.

*Id.* at 3 (citing Tama Decl., Ex. B at 6.).

[121] The district court stated what it thought to be several "undisputed" facts regarding the Church of the Creator: first, "Creativity recommends that its members follow a lifestyle known as 'salubrious living ….'" *Id.* (citing Pl.'s Compl. ¶ 24.). Second, "Creative Credo No. 5 defines 'salubrious living' as 'an effective, systematic program for the upgrading of the health and vigor of our precious White Race ….'" *Id.* (citing Tama Decl., Ex. D at 2:8-12.). Third, "Creative Credo No. 6 *recommends* its members eat a "frugitarian," or raw-food, diet …. *Id.* (citing Tama Decl., Ex. D at 2:15-18; Pl.'s Compl. ¶ 25) (emphasis added). Fourth, "Creativity *believes in*, but does not require, that its members follow a raw-food diet …." *Id.* (citing Tama Decl., Ex. D at 3:28-4:5) (emphasis added). Fifth, "the '16 Commandments of Creativity' do not discuss 'salubrious living' or require that its members follow a raw-food diet…." *Id.* (citing Tama Decl., Ex. D at 4:13-17). It appears that the official Church of the Creator doctrine does not require that its members adhere to a raw food diet, but, given church preference and belief in the ideal of a raw food diet, there is a strong suggestion that such a diet is an actual tradition among its members.

no indication in *Oakden* that a raw food-diet plays a central role in the plaintiff's daily life. Other than to file prison requests and this complaint, the plaintiff in no other way demonstrated the sincerity of his beliefs.[122] Based on only slight tradition, it would be difficult for a court to reasonably conclude that the plaintiff is sincere in his beliefs, and the district court would still dismiss the plaintiff's complaint.

## IV. Benefits of requiring heightened scrutiny of prisoner's sincerity.

There are two benefits in requiring prisoners to prove the sincerity of their beliefs with heightened scrutiny. First, this standard more aptly applies the spirit of Supreme Court precedent. Prison administrators will not have to probe, in any fashion, into the tenets of a particular religion because the inmate will be required to show the prison officials exactly where a particular requirement is found in scripture, how it is based in tradition, and how it actively plays a central role in the inmate's daily life.[123] Furthermore, this standard does not judge the sincerity of an inmate's belief by reference to the others' interpretation of a particular religion's dogma.[124]

The second benefit in applying this test is that it is more likely to cut down on abuse of overly deferential sincerity tests and encourage positive behavior most closely associated with religious practice in prison. This standard will cut down on abuse of prison systems because it requires that an inmate actually demonstrate with affirmative acts, not just pleadings and requests to prison

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[122] Furthermore, the prison was willing and able to supply Oakden with a vegetarian, "Special Religious Diet." *Id.* at 1 ("The diet is made up of food items within the normal institutional food supplies, excluding beef, pork, and poultry."). Based on available evidence in the case, this would satisfy Church of the Creator doctrine requiring a meat-free diet, and, through negative inference, it is implied that the plaintiff ate this food rather than starve. *Cf. Jackson*, *supra* note 70 (observing that the plaintiff starved himself for eight days rather than eat non-kosher food).

[123] *See supra* notes 88-109 and accompanying text.

[124] First, by rejecting totally the "central to" standard, this modified sincerity test does not require that a prisoner demonstrate the sincerity of his claim by way of comparison to other practitioners of the religion. *Cf. supra* note 51. Likewise, this test does not judge the sincerity of an inmate's belief by how "bizarre" it seemingly is. *Cf. supra* notes 53-55.

officials, that an inmate requires a special accommodation on account of a specific, well-documented religious belief.[125]

It is well documented that there are many benefits of having prisoners involved with religion, including reduced levels of violence.[126] Studies supporting these findings also indicate that factors identified by the modified sincerity test as the strongest proof of an inmate's sincerity are also those factors most likely to lead to reduced inmate violence.[127] If the inmate is only taking advantage of the prison system to get benefits he or she could not otherwise obtain, then the benefits of permitting religious worship in prison, including reduced violence, are much less likely to be achieved.

## Conclusion

Neither the current "sincerely held" test nor the "central to" test is an appropriate standard for determining whether an inmate's religious belief is entitled to First Amendment protection. The Supreme Court, first and foremost, is concerned with the burden on prison administrators and second, with prisoners'

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[125] Even if an inmate attempts to abuse the prison system by switching religions to obtain certain benefits, see *supra* note 56, an inmate will be required to conduct actual research into a particular religion to point to a particular portion of religious text and a specific tradition. Likewise, the inmate may have to make actual sacrifices to convey how a particular religious belief plays a central role in his or her daily life. Even if the prisoner goes so far as to fake these three requirements, at the very minimum, the prisoner will be forced to research the religion and, with any luck, may become more involved in the religion on an actual sincere level.

[126] *See*, *e.g.*, Kent R. Kerley, Todd L. Matthews & Troy C. Blanchard, *Religiosity, Religious Participation, and Negative Prison Behaviors*, 44(4) J. SCI. STUDY RELIGION 443 (2005) (finding that "inmates believing in a higher power and attending the Operation Starting Line[, a one-day evangelical and entertainment event at the prison in which this study was conducted,] are less likely to engage in one or more fights per month because they participate in fewer arguments").

[127] The Kerley study indicates that the third prong of the sincerity test – how the belief plays a central role in the inmate's daily life – most strongly indicates reduced levels of violence. Kerley, *supra* note 127. The study finds that "'Religiosity' – believing in a higher power, *attending worship services* and *participating* in faith based prison programs – directly reduces inmate arguments, and thereby the fights that typically follow…." Joyce Howard Price, *Faith cuts inmate anti-social behavior, study finds*, WASHINGTON TIMES, Dec. 18, 2005, at A2 (emphasis added). Specifically, "74 percent of inmates who do not believe in a higher power engaged in at least one fight a month versus 53 percent of inmates who do believe." *Id.* Furthermore, "inmates who believe God's law determines right and wrong were 58 percent less likely to fight at least once a month." *Id.* This study supports the conclusion that an inmate must actually be sincere in his or her belief in order for there to be reduced violence due to religious involvement.

rights. Both standards, however, place undue burdens on prison administrators and violate the spirit of Supreme Court precedent. This is why federal courts should adopt the modified sincerely held test proposed in this note. This standard will place a heightened burden on inmates to prove the sincerity of their beliefs, will effectively remove most burdens from prison administrators, and will encourage sincere religious practice, which in turn will lead to a reduction in violence.