

18-9629
No. _____

Supreme Court, U.S.
FILED

MAY 14 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Reverend Matt Hale — PETITIONER
(Your Name)

vs.

Federal Bureau of Prisons, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Reverend Matt Hale #15177-424
(Your Name)

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ORIGINAL

QUESTION(S) PRESENTED

Whether the Tenth Circuit's usage of a factor-driven test for determining whether a particular belief system qualifies as a "religion" for purposes of the First Amendment free exercise clause and Religious Freedom Restoration Act is violative of the First Amendment to the Constitution of the United States and the holdings of this Court.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Additional respondents:

Federal Bureau of Prisons (hereafter "BOP");

David Berkebile; Blake Davis;

Christopher Synsvoll; Benjamin Brieschke;

S.M. Kuta; L. Milusnic; Patricia Rangel;

Wendy Heim; Diana Krist; A. Tuttoilmondo;

S. Smith; Hope Redden

All individual respondents are current or former employees at the United States Penitentiary, Administrative Maximum, at Florence, Colorado.

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Petition for a Writ of Certiorari

Petitioner Reverend Matt Hale

respectfully prays for a writ of certiorari
to review the judgment below.

Decision Below

The decision of the Tenth Circuit is
unreported. It is available on Lexis at
2019 U.S. App. LEXIS 379 and is
reproduced within Petitioner's Appendix
attached (A. 2-23).

Jurisdiction

The Tenth Circuit entered judgment on January 7, 2019. Hale's Petition for Panel Rehearing and for Rehearing En Banc was denied on March 18, 2019, a copy of the order denying same being reproduced in the attached appendix at A-1.

Constitutional and Statutory Provisions Involved

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

Religious Freedom Restoration Act
(hereafter "RFRA")

42 U.S.C. sec. 200066-1

Free exercise of religion protected

(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest

(2) is the least restrictive means of furthering that compelling governmental

interest.

(C) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

Statement of the Case

Petitioner Reverend Matt Hale is an ordained minister in the Church of the Creator and has been for the past 24 years. The Church of the Creator practices the religion of Creativity, founded by Ben (Bernhardt) Klassen in 1973 with the publication of

the first testament of that faith,
Nature's Eternal Religion. As the title of
that book would suggest, Creators — as
adherents of Creativity are called — believe
in a religion of Nature, not that of a
supernatural being; and believe that their
faith reflects the inherent religion of that
realm. As such, they believe in the natural,
physical world as opposed to a supernatural,
spiritual one; and that includes an avowed
belief in racism since all creatures in the
natural world, when observed, are seen to

adhere to racist values. Put another way, Creators are admittedly racist and have a racist worldview since they believe that racism is ubiquitous as far as the natural world is concerned; it is only among the races of men that racism is deplored while it flourishes elsewhere among the rest of the life of this planet. Simply put, every race in the natural world is racist for its own kind; it does not mingle, mix, or otherwise associate with those not of its own kind in any way. Creators in essence then reject the idea that human

life should be any different from animal life on that score and believe instead in a religion of Nature and her values.

Hale brought this case in 2014 because the respondents beg to disagree that a racist, non-metaphysical religion can be a religion at all and because they have sought to suppress, punish, and persecute Hale for wanting to exercise his religious beliefs and speech within his prison cell where he has lived in solitary confinement for most of the past 16 years. They do not believe that he should be allowed to write

sermons for his church, practice the raw food

(natural) diet required by his faith CA. 21-

22), or even write about Creativity in any

respect whatever within his correspondence

(A. 8). Hence the core dispute of this case:

Hale believes that he has the same rights under

the law as anybody else to practice the

faith which he deems to be true and the

respondents will have none of it.

The district court sided with the

respondents, granting them summary judgment on

March 28, 2018 on all ~~claims~~ claims which

Hale had brought to vindicate his religious rights. The Tenth Circuit affirmed on January 7, 2019 (rehearing denied March 18, 2019), holding with the district court that Creativity is not a religion entitled to First Amendment and RFRA protection. Both courts purported to follow the five-part test for determining whether a particular belief system qualifies as a religion which the Tenth Circuit had established in *United States v. Meyers*, 95 F.3d 1475, 1481-1484 (1996) (see A. 9-14; 31-45). (Notably, *Meyers* was itself a 2-1

decision with a vigorous dissent. See Meyers,
95 F.3d at 1489-1492 entire.)

Hale, however, disputes that the two
lower courts were actually faithful to the
Meyers test, asserting that the low threshold
Meyers factors (Id at 1482-1483) are

overwhelmingly met by the plain evidence of
Hale's case. In brief, Creativity possesses

1) "ultimate ideas," namely that the Eternal

Laws of Nature must be followed within the

daily lives of its adherents; 2) a "moral or

ethical system," namely that "what is good

for the White Race is the highest virtue and what is bad for the White Race is the ultimate sin"; 3) "comprehensiveness," in that Creativity guides the lives of its adherents in every aspect of their existence, including their health, their morals, their treatment of the environment, their politics, and their place in the universe as espoused by the dozen books written by its Founder; and 4) "accoutrements of religion" as the lower courts themselves found (A. 12-13; 43-45).

Not only did the lower courts fail to

consider the evidence of the case in the light most favorable to Hale as the law of summary judgment requires — taking as true the BOP's various unsubstantiated and unproven assertions that there is a "threat" posed by Hale, Creativity, and its adherents simply by virtue of their faith (see e.g. A. 3-4, 14-18; 46-51) — but they did exactly what courts must not do in evaluating whether particular belief systems are entitled to constitutional and RFRA protection: imposed upon Creativity a preconceived notion of

what a religion should be (see e.g. A. 10 and 36). They did not, in other words, accept Creativity's fulfillment of the Meyers factors at face value but rather chose to impose additional conditions beyond that of Meyers which Creativity could not or should not meet as far as they were concerned.

For example, the district court conceded that "Creativity does have a moral or ethical system" (A. 39) (emphasis added), but since the moral or ethical system in question is (supposedly) based on "elemental self-interest"

as far as that court was concerned, it doesn't count for purposes of fulfilling Meyers (A. 40). On the other hand, even though Creativity's beliefs are numerous and clearly representative of its obedience to the values of the natural world — and thus are "connected" accordingly — the Tenth Circuit chose to characterize them as "unconnected" and "not representative of any ultimate and comprehensive truth" (A. 12), thus leaving the "comprehensiveness" factor unfulfilled in its view. Neither court would

accept the simple fact that Creators derive
their beliefs from Nature and that Nature

can be the basis for religious belief just

as a deity can. They erred accordingly.

As things stand, Hale's religious liberties

have been eliminated by the respondents in

this case. Not only is he compelled to eat

food daily which is repulsive to his sincerely

held beliefs — a sincerity which the respondents

do not challenge — but he is not allowed to

discuss his religion at all within his correspondence

(A. 4 and 8). Even though there is no

record evidence whatever that Creators have ever acted in concert to commit a violent or other illegal act — whether within the BOP or as free people — all known Creators have been listed and labeled as a "security threat group" by the BOP the same way that the Third Reich marked all Jews with a yellow star (A. 46-48). (By the BOP's reasoning, the "grouping" and mistreatment of all Jews by that government was appropriate since at least one believer in Judaism did, after all, commit a violent act during its tenure.)

In sum, fundamental constitutional and statutory guarantees have been made a mockery of by the respondents in this case, as well as by the lower courts. Were Hale a Christian, Muslim, or Jew, it is inconceivable that he and his fellow Creators would be treated this way in the United States of America. On the other hand, since he is a Creator — a believer in an unpopular racist religion — the respondents feel free to deny him his rights as they please and have received their imprimatur from the lower courts to continue

doing so. There is no record evidence that Hale has ever sought to commit a violent or other illegal act with his prison correspondence; on the contrary, the record evidence is that he has repudiated such conduct and believes that violence, and illegal conduct in general, is against the tenets of the very religion the respondents would treat so badly. All the same he is held responsible for the criminal acts of other people he does not know and with whose actions he does not agree the same way that a Christian, Muslim, or Jew

might have been held responsible in times past for the actions of every other Christian, Muslim, or Jew. "Guilt by mutual religious belief" is the "law" of the Tenth Circuit.

Reasons for Granting the Writ

The Tenth Circuit, as well as the Third, are the only jurisdictions in the country which require that the adherent of an unpopular professed religion pass an objective test in order for his or her First Amendment or RFRA rights to be upheld. (See also Africa v.

Pennsylvania, 662 F.2d 1025, 1032-1036

(3rd Cir. 1981)). Popular or mainstream

religions, such as Christianity, Islam, or

Judaism, do not have to undergo any such test

in the Tenth Circuit. Rather, they are assumed

to be religions entitled to constitutional and

statutory protection while Creativity is not

and that is of dubious constitutionality in

itself. The Court should grant the writ to

determine whether such a test — required of

non-mainstream religions only — comports with

the Constitution of the United States.

Certainly this Court has never required any sort of factor-driven test in order for a professed religion to be granted constitutional and statutory protection. On the contrary, this Court has defined religion in a broad and inclusive manner, placing the focus upon the role which the professed religion plays within the adherent's own life, not upon whether outside, even hostile parties, would deign to believe that the professed religion measures up to what they think a religion should be. See U.S. v. Seeger, 380 U.S.

163, 176 (1965) (describing religion as

"[a] sincere and meaningful belief which

occupies in the life of its possessor a place

parallel to that filled by... God" and those

"beliefs which are based upon a power or

being, or upon a faith, to which all else...

is ultimately dependent") and Welsh v.

United States, 398 U.S. 333, 340 (1970)

(when an individual has beliefs which "occupy

in the life of [the] individual 'a place

parallel to that filled by... God' in traditionally

religious persons," a religion is at issue; quoting

Seeger). Indeed, this Court has said that "it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment." Fowler v. Rhode Island, 345 U.S. 67, 70 (1953). In sum, the "task is to decide whether the beliefs professed by [the individual] are sincerely held and whether they are, in his own scheme of things, religious." Seeger, 380 U.S. at 185 (emphasis added).

With these cases taken together then, it is undeniable that Creativity is a religion

according to this Court's understanding: 1) it is based upon a power, Nature, to which all of its beliefs are ultimately dependent, 2) Nature occupies a place with Creators parallel to that filled by God in traditionally religious persons, 3) Hale's beliefs are sincerely held and religious within his own scheme of things, and 4) it is no business of the Tenth Circuit to say that what is religious to Creators is not religion under the protection of the First Amendment. This Court should intervene in the Tenth Circuit's attempt to impose an illegal

test that denies people their First Amendment and RFRA rights.

As stated above, the Tenth and Third circuits are the only circuits to impose a test for (unpopular) religions. The other circuits have been faithful to the understanding of religion which this Court has promulgated above, namely that the existence of religious belief is dependent upon the adherent's subjective and sincere understanding, not the objective view of some outsider. In the Ninth Circuit for example, "[t]he task is to

decide whether the beliefs professed... are sincerely held and whether they are, in [the individual's] own scheme of things, religious."

United States v. Ward, 989 F.2d 1015,

1018 (9th Cir. 1992) (emphasis added), quoting

Seeger at 185. In the Eighth, the question

is whether "a given belief that is sincere

and meaningful occupies a place in the life

of its possessor parallel to that filled by

the orthodox belief in God." Quaring v.

Peterson, 728 F.2d 1121, 1123 (8th Cir. 1984),

quoting Seeger at 165-166. The Second Circuit

likewise employs the Seeger understanding that "religion" is whatever role a belief system plays in the life of a person that is akin to the role of religion in others. International Society for Krishna Consciousness, Inc. v.

Barber, 650 F.2d 430, 439-440 (2nd Cir. 1981); Patrick v. LeFevre, 745 F.2d 153, 157 (2nd Cir. 1984) (what matters is whether the plaintiff's beliefs "are sincerely held and whether they are, in his own scheme of things, religious"), quoting Seeger at 185.

In the Fourth Circuit, the Seeger understanding

is likewise adopted word for word (*Dettmer*

v. Landon, 799 F.2d 929, 931 (4th Cir.

1986), quoting *Seeger* at 166) and *Seeger*

is likewise relied upon in the Fifth, Sixth,

and Seventh. See *Davis v. Fort Bend*

County, 765 F.3d 480, 485 (5th Cir. 2014);

Flagner v. Wilkinson, 241 F.3d 475, 481

(6th Cir. 2001); and *Kaufman v. McCaughtry*,

419 F.3d 678, 681-682 (7th Cir. 2005).

This split in the circuits concerning such

a fundamental right as free exercise of religion

—with the Tenth Circuit actually an outlier

in violation of the holdings of this Court—
provides compelling reasons for why the Court
should grant the writ. Both Rule 10(a) and
10(c) of the Rules of the Supreme Court of
the United States are in fact met. The
Court should resolve the circuit split, exercise
its supervisory power to bring the Tenth
(and Third) circuits in line with its own
precedent, and settle once and for all, for
the entire country, that the existence of First
Amendment and RFRA rights is not dependent
upon an objective test promulgated by a

court but rather the sincere beliefs of the
professed religious believer. If he believes
himself to be religious, and those beliefs
occupy within his life a place parallel to
that filled by God in traditionally religious
persons, those beliefs should be protected
under the First Amendment and RFRA.

Whether or not a person is allowed to practice
his faith should not depend upon where he
lives in the United States. This case is
every bit as important as Burwell v. Hobby

Lobby Stores, Inc., 573 U.S. _____, 134

S. Ct. 2751 (2014), and ever more
so, for what is at stake here is not only
the right of the people of this country to
obey the dictates of their sincerely held
beliefs as in Burwell but the right of
unpopular religions to exist at all. What
has happened to Creativity today will happen
to another, more popular religion, tomorrow.

Conclusion

Reverend Matt Hale respectfully requests
that this Court issue a writ of certiorari.

Respectfully submitted,

Rev. Matt Hale, J.D.

May 9, 2019

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