

21-6883

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 20 2021

OFFICE OF THE CLERK

WALTER DELANEY BROKER, JR. SHABAZZALLAH PETITIONER
(Your Name)

vs.

M. E. Engelke, Director of Food Serv. et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Walter Delaney Broker, Jr. Shabazzallah (#1013834)
(Your Name)

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(Address)

Portsmouth, Virginia 23328
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

1. Does the RLUIPA require the lower courts to evaluate the claims raised under the Act under the legitimate penological interest test or the compelling interest test with the least restrictive means in a prison religious diet case?
2. Whether assuming that Petitioners religious exercise was substantially burdened in the context of his religious diet, did the lower courts hold prison officials to their burden of a compelling interest with the least restrictive means under RLUIPA and the Four Turner Factors under the First Amendment?

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:

N. Gregg (state dietitian); H. Porton (regional administrator); L. Fleming (warden); M. Broyles (Food operations manager); Q. Reynolds (unit manager); J. Combs (assistant warden); Sergeant Bryant; Chow Hall Officers (C and D side); Witt (correctional officer); Marcus Elam (regional administrator); Sgt. Kimberlin; E. Pearson (warden - Greensville); A. Anderson (Greenville food operations director); Creque (Greenville Food Services Manager); S. Tapp (Greenville Ombudsman); K. Phillips (Greenville Ombudsman)

RELATED CASES

Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court for the Western District of Virginia, Judgment entered March 2, 2016

Booker v. Engelke, et al., No. 16-66428, U.S. Court of Appeals for the Fourth Circuit, Judgment entered October 12, 2016

Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court for the Western District of Virginia, Judgment entered March 28, 2017

Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court for the Western District of Virginia, Judgment entered March 22, 2018

Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court for the Western District of Virginia October 23, 2018

Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court for the Western District of Virginia, Mediation Hearing /Minutes entered December 14, 2018 and January 2, 2019

Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court for the Western District of Virginia, Judgment entered March 26, 2019

Booker v. Engelke, et al., No. 19-6642, U.S. Court of Appeals for the Fourth Circuit, Judgment entered December 3, 2020

Booker v. Engelke, et al., No. 19-6642, U.S. Court of Appeals for the Fourth Circuit, Judgment entered September 21, 2021

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APPENDIX C	Booker v. Engelke, et al., No. 7:16-cv-00084, U.S. District Court For The Western District, March 26, 2019
APPENDIX D	Booker v. Engelke, et. al. No. 7:16-cv-00084, U.S. District Court For The Western District, March 22, 2018
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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

Religious Land Use And Institutionalized Persons Act

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix C-D to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 3, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 21, 2021, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Free Exercise Clause of the First Amendment of the United States Constitution

Religious Land Use And Institutionalized Persons Act of 2000

STATEMENT OF THE CASE

Petitioner is a muslim and is incarcerated in the Virginia Department of Corrections. Petitioner filed a complaint under 42 U.S.C. 1983 and the Religious Land Use And Institutionalized Persons Act because his religious rights had been ~~not~~ substantially burdened because he was suspended from the religious diet without a legitimate penological interest nor compelling interest with the least restrictive means and then was denied the proper religious diet consistent with his religious dietary laws. The prison officials responded that it could not accomodate Petitioner during suspension from religious diet and when the diet was abruptly changed to non-religious foods. After denial of respondents motion to dismiss. Respondents filed motion for summary ~~judgment~~ judgment. The court granted in part and denied in part. The respondents again filed a motion for summary judgment. The court then ordered mediation hearing. A settlement could not and was not reached. The court then granted summary ~~judgment~~ judgment and Petitioner appealed. The Fourth Circuit Court of Appeals affirmed the lower court on both RLUIPA and First Amendment claims, assuming that even if Petitioner was substantially burdened it was related to a legitimate penological interest. After petition~~s~~ for rehearing, Petitioner now seeks review in this Court.

REASONS FOR GRANTING THE PETITION

1. The Court has never decided the parameters of the Religious Land Use And Institutionalized Persons Act and a Free Exercise Clause under *Turner v. Safley* in a Religious Pet context in the prison setting. There are important Federal questions that have not been decided and there has been a decision in a way that conflicts with relevant decisions of this Court. There is no uniform law on this issue throughout the country nor within the respective Fourth Circuit Court of Appeals nor the District courts in Virginia, especially when it comes to District courts in sister states that have not only taken up this issue, but the issues involved and the substantial burdens.
2. Petitioner in this case could not afford to purchase food to accomodate his religious diet, when he was suspended from the common fare religious diet for allegedly taking non-common fare food, not food that violated his religious diet. VDOC created its own religious dietary laws, especially when Virginia Department of Corrections changed the common fare diet to food that was strictly prohibited by Petitioner's religious dietary laws and refusing to accomodate Petitioner during the Eid-al-Fitr and Eid-al-Adha Holy days even though the Respondents had a duty to accomodate under the Departmental Operating Procedure
3. The Respondents denied Petitioner's religious diet accomodation for his religious diet, suspended him from his religious diet and upheld the suspension, however the respondents and the lower courts held they could not be held liable, even though they were in the decision making chain concerning food service and religious diets.

4. The district court ruling was that because the substantial burden test under the RLUIPA is heightened then it demands Petitioner shows more than that his religious exercise was burdened and he had to meet this heightened test. See Appx C p.16 and because of this heightened standard, Petitioner's religious exercise could not be burdened. The district court passed on the Free Exercise Claim without opinion
5. Even though Petitioner was suspended from the only religious diet available to him, the district court nevertheless ruled no substantial burden could exist because commissary remained available at a cost. See Appx C p.16-17
6. Further the District court ruled that because common fare is a standardized menu then Petitioner could not overcome Turner v. Safley, 482 U.S. 78, 90 (1987) and did not rule on the claim under the alleged allegation under the RLUIPA. See Appx C p.17-19
7. The Court of Appeals for the Fourth Circuit went further because Petitioner raised the issue that his claims under RLUIPA were not evaluated properly and after assuming Petitioner's religious exercise was substantially burdened, ruled that Petitioner's RLUIPA claims and First Amendment claims were related to the prisons legitimate penological interests in balancing inmates religious dietary restrictions with the agencies operations. See Footnote 1 and Appx B p.2.
8. The Court can see that Appx B is not only wrong and unjust to Petitioner, but for prisons across the country in every circuit because it side steps the main purpose of the RLUIPA and the least restrictive means test. This is also considering that the Free Exercise clause in the First Amendment under Turner v Safley in the prison setting has been watered down to

the point where the respondents do not have to put forth evidence that could be proven in court. For example, even though sweet tooth food as in cakes and cookies and some entrees are/were available for purchase, the Respondents never put forth evidence showing not only that Petitioner could purchase it but also that the commissary met his nutritional needs. Petitioner put forth evidence that he could not afford it but that, that would cause an additional substantial burden.

9. The Respondents changed the suspension policy in the middle of the proceedings conceding that the religious diet agreement was in violation of both the First Amendment and RLUIPA, however the district court and the Fourth Circuit evaluated the agreement under the mootness standard and this is even though Petitioner's suspension and the changing of the religious diet menu was ruled as not being a substantial burden on his religious exercise.
10. The cessation on the main part of the claim leaves no defense on the suspension from the religious diet nor the diet itself. Since the agreement was in error everything that flowed from it was in error.
11. This case is so important, because even though *Turner v Safley* is not fact specific as in the RLUIPA, there still must be evidence. A general reading of policy is not any type of evidence that could be presented in court to meet the four *Turner* factors.

12. Likewise, RLUIPA contemplates a "more focused" inquiry and requires the Government to demonstrate the compelling interest test is satisfied through application of the challenged law to the person - the particular claimant whose sincere exercise of religion is being substantially burdened. See Holt v Hobbs, 574 U.S. (2015), No. 13-4827 quoting Hobby Lobby, 573 U.S.
13. The Respondents were never required to comply with the RLUIPA rigorous standard of compelling interest and least restrictive means. See Appx C.
14. The Respondents were never required to comply with the Turner factors.
15. The religious diet context is a very different context that has not been visited and by taking up this petition it will not only clarify and unify the law throughout the circuit, but it will allow the RLUIPA and Free Exercise Clause to achieve its goal in the prison setting without exaggerated excuses and discrimination.
16. A prison system cannot justify that it is against operational ~~but~~ budget without stating the budget and implementing a separate diet that it said was impossible to setup at a cost (3) times what Petitioner proposed. See Footnote 1
17. Numerous courts have stated that Petitioner has religious right to a diet consistent with his religious scruples, but it is not clear, how, who and

when is it necessary.

18. Petitioners informal brief as well as his petition for rehearing addressed these issues with the conflicting cases along with not only other prisons have found that Petitioners diet could be implemented and that Virginia itself had implemented this diet apart from other diets in the year 1989 without no additional burdens on the Department.
19. This case is the perfect case to decide the parameters and to clarify the RLUIPA and Free Exercise Clause in a Religious Diet substantial burden in prison

Footnote 1

The Court should take judicial notice where VDOC officials implemented an Orthodox Jewish Diet at the same time medication hearings were going on at a cost of \$9.75, more than (3) times what Petitioner requested in his Complaint and subsequent proceedings. This can be noticed at Operating Procedure 841.3, X, B. This is readily available to the Public without no addition proof in Virginia Department of Corrections Operating Procedure on-line, See Estes v. Clarke, 2018 US, Dist. LEXIS 94322 (June, 2018)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Walter Delaney Booker, Jr. Shabazzallah

Date: December 14, 2021