

No. 22-7614 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 11 2023

OFFICE OF THE CLERK

Lisa A. Biron,
Petitioner

V.

Jody Upton, Warden; Leticia A. Armstrong; Emily Dixon,
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO
THE FIFTH CIRCUIT COURT OF APPEALS
PETITION

Lisa A. Biron (Reg. #12775-049
Federal Correctional Institution
P.O. Box 1731
Waseca, MN 56093

Questions Presented

- I. Does the Religious Freedom Restoration Act ("RFRA") and its compelling government interest/least restrictive means-test apply to protect a federal inmate's religious liberties when she has adequately pleaded a substantial burden on the practice of her Christian faith, or is RFRA-protection eviscerated if a court finds that defendant-jailers' actions are reasonably related to legitimate penological interests?
- II. Does qualified immunity shield rogue government officials from personal liability under RFRA or the First Amendment for taking away a prisoner's Christian self-authored writings, because there is no case directly on point, or is her constitutional and statutory right to write so clearly established and her "freedom of opinion and its expression . . . too certain to need discussion[,]" Mutual Film Corp. v. Industrial Com., 236 U.S. 230, 243 (1915), when the defendants' conduct serves no legitimate penological purpose and its own policy permits inmates to write?
- III. Is Ms. Biron's First Amendment or RFRA injunctive relief claim for the return of her property (144-pages of Christian writings authored by her) moot because the writing was taken by the defendants at a different federal Bureau of Prisons facility from where she resides now, or is the claim still viable because the federal Bureau of Prisons is a single national prison system and the defendants at the prior facility remain in wrongful possession of her property and refuse to give it back?
- IV. Does an appellate court get to decide in the first instance, as the Fifth Circuit panel-majority has done, that the defendants did not substantially burden the practice of Ms. Biron's faith by halting her God-given writing assignment; and what is a "substantial burden" on religious exercise in the federal prison context?

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

Petitioner, Lisa A. Biron, respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

The opinion of the District Court for the Northern District of Texas appears at Appendix A to the Petition.

The Fifth Circuit Order on Petition for Rehearing appears at Appendix B to the Petition.

The Judgment of the Fifth Circuit Court of Appeals appears at Appendix C to the Petition and is unpublished.

Jurisdiction

The United States Court of Appeals for the Fifth Circuit issued its judgment on December 14, 2022. The Petition for Rehearing was denied on February 13, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional & Statutory Provisions Involved

U.S. Constitution Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

42 U.S.C. § 2000bb-1 (Religious Freedom Restoration Act):

"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). . . . Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person — is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling government interest." 42 U.S.C. § 2000bb-1(a)-(b).

Statement of the Case

Petitioner, Lisa A. Biron, was in the process of drafting a Christian manuscript when federal Bureau of Prisons ("FBOP") psychologist-defendants at FMC Carswell, Texas took it from her. Ms. Biron is convicted of sex offenses, but was not in the sex offender treatment program. As alleged in her operative complaint:¹

- "It is Ms. Biron's sincerely held religious belief that she was directed by God to research, pray about, and study the Bible concerning God's view of morality involving sex and sexual conduct, and to record these findings in writing for use in her rehabilitation and to help disciple and educate others in this vital subject."
- "[D]espite Ms. Biron's refusal to submit to treatment by Emily Dixon, Defendant Dixon conducted a targeted search of Ms. Biron's locker and removed all 144 pages of this manuscript draft and notes written by Ms. Biron . . .";
- "Defendant Armstrong advised Ms. Biron that her writing would not be returned to her and was permanently confiscated because it was 'sexually explicit.'"²
- "Defendants' actions in confiscating Ms. Biron's writing as 'hard contraband' served solely as forced treatment to alter her behavior";
- Her sincerely held religious belief "is diametrically opposed to

1 Ms. Biron filed this law suit in Tarrant County, Texas because in that court she is eligible for waiver of the filing fee. Defendants removed the case to federal court.

2 Ms. Biron has included a copy of her First Verified Amended Complaint at Appendix D, which explains with specificity her Christian beliefs and describes the contents of the writing which is God-honoring and definitely not sexually explicit.

to the philosophical underpinnings of the secular humanistic discipline of psychology."

The taking of the writing halted the writing process which Ms. Biron was undertaking in obedience to God as an exercise of her Christian faith. The defendants still have the draft and are, therefore, still violating her rights by causing her to be unable to continue and complete her God-given assignment.

Relevant to this Petition, the appellate panel-majority held the claims were moot because Ms. Biron is not at FMC Carswell, but at FCI Waseca;³ the defendants are shielded by qualified immunity, and, even if they are not, they did not substantially burden Ms. Biron's religious exercise, and "violated no law or constitutional provision" because defendants' actions were "reasonably related to legitimate penological interests." (Dec. 14, 2022 Judgment.)

Ms. Biron filed a petition for panel rehearing which was denied on February 13, 2023.

3 The court of appeals stated that Ms. Biron's transfer mooted most of her claims. Ms. Biron was transferred to Waseca, MN more than a year before she filed this law suit. The case was not moot then and it is not moot now because RFRA allows personal liability damages, and defendants still have her property.

Reasons for Granting the Petition

This case is of exceptional importance to a group of people who are especially vulnerable to government-intrusion on their right to religious expression and the ability to practice their faith: federal prisoners. And while this case involves one prisoner, in one unpublished appellate decision, the decision is so obviously wrong, and such a slap to the face of religious liberties, that this Court should grant review to ensure a quick retreat from the precipice of the slippery slope to government oppression that the Fifth Circuit panel-majority has emboldened.

Is RFRA a Real Thing?

By granting this Petition, this Court can give guidance to lower courts that would, like the Fifth Circuit panel-majority, subject a federal inmate's religious rights under RFRA to rational basis review. The panel-majority held that even if Ms. Biron's religious exercise was substantially burdened, the defendants' actions in taking her writing, and halting her God-ordained writing project were "reasonably related to legitimate penological interests." Butts v. Martin, 877 F.3d 571, 584 (5th Cir. 2017) (quoting the rational basis test set forth by this Court in Turner v. Safley, 482 U.S. 78 (1987)). This Court should grant review in order to vacate and remand for a correct analysis under RFRA and its strict scrutiny review.

Qualified Immunity & the Plainly Incompetent

Moreover, by granting this Petition, the Court can define the boundaries of qualified immunity, when the actions of the FBOP defendants are so obviously unlawful that there will not likely ever be a case like it directly on point. See District of Columbia v. Wesby, 138 S. Ct. 577,

590 (2018); Stanton v. Sims, 571 U.S. 3, 6 (2013). What government-psychologist, other than one who is "plainly incompetent", Stanton, 571 U.S. at 6, would think it is lawful to sensor and take away a person's Biblical writings when that person has never consented or signed up to be treated by them? Guidance from this Court is necessary to protect inmates from these abuses of power.

The Old FBOP Transfer/Mootness Trick

Famously, when a FBOP inmate brings claims against the FBOP for injunctive relief that inmate often gets transferred to a different facility mooting the claim. That is not what happened here. In this case, Ms. Biron had been at her new facility for more than a year when she filed this law suit for damages, and more importantly for the return of her writings.

"It is no small matter to deprive a litigant of the rewards of [her] efforts Such action on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that [she] sought." Adarand Constructors, Inc. v. Slater, 528 U.S. 216, 224 (2000)(per curium).

This Court should grant this Petition to vacate and remand the case to order the return of her property. Stealing is wrong. Moreover, the FBOP is a single agency. The FBOP locations are not independent prisons, but are unified and operating at a national level according to national policy. Management of a prisoner is intended to be standardized nationally, and the inmate's central file travels with her upon transfer. The Court could take this opportunity to clarify if, in the case of a FBOP-inmate suing the FBOP over actions of its employees that are condoned at the national central office-level (and they are if the administrative remedy

is exhausted), the case becomes moot via transfer to, or residing at, a different FBOP facility under the same centralized management.

Substantial Burden Under RFRA

Finally, this Court should grant the Petition to explain what a "substantial burden" under RFRA means in the prison context, and whether an appellate court acts appropriately as the fact finder as it did in this case. Here, the Fifth Circuit panel-majority took it upon itself to summarily and in conclusory fashion decide that Ms. Biron "made no showing that the confiscation of her manuscript poses a 'substantial[] burden' on her religious exercise." (Judgment at 5 (quoting 42 U.S.C. § 2000bb-1(a),(b)).)

Indeed, it is difficult to imagine what the Fifth Circuit panel-majority would ever consider a substantial burden on a prisoner's religious exercise if the fact pattern in this case is not: federal government actors stopped Ms. Biron from completing her God-ordained and directed assignment to write her Christian Biblical manuscript that she was drafting in obedience to God because the sincere practice of her Christian faith requires that she act in obedience to God. The government accomplished this by stealing her work, lying about its contents, and refusing to give it back.

Conclusion

Ms. Biron hopes that this Court is alarmed enough by this situation that it grants certiorari to address one or more of the questions presented. This country is in a dangerous place concerning the religious liberties that our Founders held dear and understood as vital to a free republic.

Wherefore, Ms. Biron respectfully requests that this Honorable Court

grant this Petition for a Writ of Certiorari.

Respectfully submitted,

5/11/2023
Date

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Verification of Timely Filing

I, hereby declare, under the penalty of perjury, that this Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari were mailed postage prepaid to this Court by depositing said mail in the inmate legal mail system on this date.

5/11/2023
Date

Lisa Biron
Lisa A. Biron