

No. _____

SUPREME COURT OF THE UNITED STATES

**Steven Grimm, Petitioner,
vs.
United States of America, Respondent.**

On Petition for Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

1. Where a federal prisoner's religious beliefs prevented him from getting vaccinated, was it error for the district court to deny his motion for compassionate relief under 18 U.S.C. § 3582?
2. Where the district court denied a 2255 petition arguing 54 claims in a two-sentence order, did the court of appeals err in upholding the denial?

CORPORATE DISCLOSURE STATEMENT

There are no corporations with an interest in either party to this litigation.

LIST OF RELATED PROCEEDINGS

Caption	Court	Docket No.	Date of Entry of Judgment	Type of Proceeding
USA v Grimm et al.	USDC Nevada	2:08-cr-00064	13/30/12	Criminal Trial
USA v Grimm	9 th Circuit	12-10168, 13-10440*	7/29/15	Direct Appeal
USA v Grimm	9 th Circuit	16-10007	7/5/17	Second Direct Appeal
USA v Grimm	USDC Nevada	2:08-cr-00283	5/27/22	2255 Petition
USA v Grimm	USDC Nevada	2:08-cr-00283	9/23/22	Compassionate Relief Motion
USA v Grimm	9 th Circuit	22-15874	5/12/23	2255 Appeal
USA v Grimm	9 th Circuit	22-10257	6/21/23	Appeal of CR Motion

NB: The first case number was the initial direct appeal, and the second case number appealed the denial of a post-verdict motion for new trial. The Ninth Circuit consolidated the two cases and reversed the denial of the motion for a new trial, which was again denied by the district court on remand.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
LIST OF RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	iii
PUBLISHED CASE CITATIONS	1
JURISDICTIONAL STATEMENT	1
CONTROLLING LEGAL PROVISION	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
I. The First Amendment, RLUIPA, and This Court’s Precedent Establish that Religious Objections Cannot Be a Basis to Deny Compassionate Relief.	4
II. The District Court Erred in Denying the 2255 Motion Without Explaining Its Reasoning or Allowing Adequate Representation of Mr. Grimm.	9
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<i>Employment Div., Dept of H.R v. Smith</i> , 494 U.S.872 (1990)	8
<i>Holt v. Hobbs</i> , 574 US 352 (2015).	5, 6
<i>Sherbert v. Verner</i> , 374 U.S. 398, 404 (1963).	4
<i>Tandon v. Newsom</i> , 141 S. Ct. 1294 (2021).	5, 6
<i>Thomas v. Review Bd. of Ind. Emp’t Sec. Div.</i> , 450 US 707 (1981)	5
<i>Davis v. Fort Bend County</i> , 765 F.3d 480, 486 (5 th Cir. 2014)	8
<i>U.S. v. Brownlee</i> , 2022 U.S. App. LEXIS 348 (6 th Cir. Jan 4, 2022)	6

PUBLISHED CASE CITATIONS

Mr. Grimm's direct appeals, 2255 appeal, and compassionate relief appeals were all decided via unpublished opinions. However, two codefendant cases were published, both of which resulted in partial relief for Mr. Grimm: *United States v. Mazzeella*, 784 F.3d 532, 534-35 (9th Cir. 2015) (reversing denial of post-judgment motion for new trial); *United States v. Beecroft*, 825 F.3d 991, 1002 (9th Cir. 2016) (upholding the conviction but reversing the order of forfeiture). No district court decisions were published.

JURISDICTIONAL STATEMENT

Mr. Grimm was convicted of a federal offense in the federal court for the District of Nevada, making jurisdiction proper in this Court under 28 U.S.C. 1254. The Ninth Circuit denied his 2255 appeal on May 12, 2023. A petition for rehearing was timely filed, which was denied by the same court on June 16, 2023. The Ninth Circuit denied his compassionate relief appeal on June 21, 2023. This petition for a writ of certiorari timely follows.

CONTROLLING LEGAL PROVISION

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.

STATEMENT OF THE CASE

Steven Grimm was originally convicted in 2012 after a trial that lasted for 37 days. The convictions were for various fraud offenses stemming out of what the Ninth Circuit described as a “complex mortgage fraud scheme” where the defendants were alleged to have recruited straw buyers to purchase homes via false information on loan statements, and then to have skimmed money off the top while allowing some of the loans to default. *United States v. Mazzeella*, 784 F.3d 532, 534-35 (9th Cir. 2015) (co-defendant appeal). He was originally indicted in 2008, at the height of the housing crisis.¹

A series of appeals ensued, ultimately resulting in the conviction being upheld. Steven then filed a 2255 petition with 54 separately delineated grounds for relief, which was denied in the following order: “Defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or

¹ Nevada, and Las Vegas in particular, were among the worst-hit places in the country. In November 2011 when the jury was empaneled, 60% of homes were underwater on their mortgages and the unemployment rate was 12.6%.

<https://vegasinc.lasvegassun.com/business/tourism/2011/sep/13/underwater-mortgages-declines-nevada-still-leads-n/>; <https://datacommons.org> (BLS statistics).

correct his sentence is DENIED. IT IS FURTHER ORDERED that defendant is denied a certificate of appealability.” Doc. 873.

Separately, Mr. Grimm filed a motion for compassionate relief under 18 U.S.C. § 3582, on the grounds that COVID, along with his various health conditions,² supported relief. The motion contained a letter from Steven outlining his religious objections to the COVID vaccine (in short, that the vaccine was developed with stem cells derived from an abortion, which violated his religious objection to abortion). 2-ER-10.³ The district court denied the motion for relief without ever addressing the religious objections. 1-ER-2.

Both the 2255 denial and the compassionate relief denial were appealed to the Ninth Circuit. The Ninth Circuit affirmed the 2255 denial in a pro forma statement that it would not grant a certificate of appealability. Doc. 22, Case 22-15874. It also upheld the denial of compassionate relief, asserting that Steven had not actually raised the

² Steven has diabetes and high blood pressure; is a former smoker; is obese, is in his 60s, and has been a “long hauler” since he contracted COVID initially in December 2020. Each of these is a risk factor for contracting severe, life-threatening COVID. 3-ER-103-05.

³ References to “ER,” “SER”, and “FER” pertain to the various excerpts of record filed in the Ninth Circuit case, 22-15874.

religious objection in the district court and that under plain error review, his religious objections were not “clear or obvious under existing law” as a basis for relief. Doc. 32, Case 22-10257.

REASONS FOR GRANTING THE WRIT

I. The First Amendment, RLUIPA, and This Court’s Precedent Establish that Religious Objections Cannot Be a Basis to Deny Compassionate Relief.

The Free Exercise Clause of the First Amendment protects a person’s right to abstain from conduct on religious grounds. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963). This freedom is broadly protected under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* A government act that compels an individual to act in a way that conflicts with their religious observance or practice, or substantially pressures the adherent to modify such observance or practice, is a substantial burden on the exercise of religion, triggering strict scrutiny analysis. *Sherbert*, 374 U.S. at 404.

“Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting

substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.” *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 US 707, 717-18 (1981).

Under RFRA, once a plaintiff establishes that a particular act would burden their religious beliefs, the government must bear burden of proving that law is the “least restrictive means of advancing a compelling state interest” to justify the burden on free exercise. 42 U.S.C. § 2000bb *et seq.* The same standard specifically applies to federal prisoners under the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc *et seq.*; *Holt v. Hobbs*, 574 US 352 (2015).

“[N]arrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID.” *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). Where the government allows secular activities to happen but bans similarly situated religious activities, that is a violation of strict scrutiny. *Id.* “Where the Government permits

other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for religious exercise too.” *Id.*

There does not appear to be a published case from the Supreme Court or any Court of Appeals dealing squarely with the specific issue of religiously motivated vaccine objections under § 3582. The Sixth Circuit has mentioned religious objections as a reason that would justify compassionate relief for a non-vaccinated person; however, since the inmate in that case did not actually have a religious objection, that statement was non-binding dictum. *U.S. v. Brownlee*, 2022 U.S. App. LEXIS 348 at *4 (6th Cir. Jan 4, 2022). Additionally, in *Holt v. Hobbs*, this Court held that where inmates were allowed to grow beards for medical reasons, they could not be denied the right to grow beards for religious reasons as well under strict scrutiny analysis. 574 U.S. at 355-56.

The rule here is clear. Under this Court’s precedent, the statutory commands of Congress, and the Constitution itself, the Bureau of Prisons and the courts cannot deny compassionate relief based solely on

the exercise of the right to religious freedom. Yet that is precisely what happened in Steven's case. The district court denied his motion for compassionate relief without going through strict scrutiny review. In fact, it merely made a cursory passing reference to his "personal choice to refuse vaccination" before citing his lack of vaccination as a justification to deny the motion. 1-ER-6. This was incorrect.

The Ninth Circuit sanctified this incorrect ruling by upholding it on appeal. The Ninth Circuit's opinion incorrectly claimed that Steven had not raised the issue in the district court, and then further asserted that he could not prevail under plain error review because the error was not "clear or obvious under current law." Doc. 33, p. 2, Case 22-10257.

The Ninth Circuit incorrectly stated that Steven had not raised the religious liberty argument in the district court. He did raise it – the motion itself contained a letter outlining his religious beliefs which led him to refuse vaccination. 2-ER-10-11, SER 19-20. And the reply cited a number of cases on the topic for the proposition that his religious

beliefs defeated the vaccination requirement that the courts have otherwise read into the compassionate relief statute.⁴

The Ninth Circuit was incorrect to assert that Steven had failed to raise religious liberty in the district court; he clearly did so. But it was equally wrong to assert that current caselaw allowed the court to avoid addressing the issue. This Court’s jurisprudence has required strict scrutiny related to religious liberty for decades, and it very recently reaffirmed this principle in the specific contexts of both COVID and federal prisons. While there has not yet been a case about the intersection between COVID and the Bureau of Prisons, that is slicing the salami too thinly. Caselaw is quite clear that Steven Grimm’s religious objections to vaccination cannot be a reason to deny him compassionate relief. He therefore respectfully asks the Court to grant certiorari on this issue.

⁴ For instance, “[C]aselaw is clear that ‘courts must not presume to determine... the plausibility of a religious claim.’ *Employment Division, Dept of Human Resources v. Smith*, 494 U.S.872, 887 (1990). ‘[J]udicial inquiry into the sincerity of a person’s religious belief must be handled with a light touch, or judicial shyness. Examining religious convictions any more deeply would stray into the realm of religious inquiry, an area into which we are forbidden to tread.’ *Davis v. Fort Bend County*, 765 F.3d 480, 486 (5th Cir. 2014) (quotations and citations omitted).” FER 6.

II. The District Court Erred in Denying the 2255 Motion Without Explaining Its Reasoning or Allowing Adequate Representation of Mr. Grimm.

As stated above, Steven Grimm's trial took 37 days, and involved a substantial amount of pretrial litigation and complicated technical testimony about the mortgage industry. After his conviction and direct appeals, he filed a 2255 petition with 54 separately delineated grounds for relief. The first lawyer appointed by the court had a contentious relationship with Mr. Grimm, did not file an amended petition, and ultimately withdrew. The second lawyer appointed was given just four months to review the record, before the district court denied the entire petition in a two-sentence order that did not offer any justification or specific holdings.

The most serious ground in the petition was the presence of a social media influencer named Helena Garcia in the courtroom, who had built her brand around publicly confronting "scammers" and then posting the videos on Youtube or on a short-lived reality tv show. She also bragged about having six restraining orders as well as having been

banned from a judge's courtroom for her intervention in the proceedings.⁵

Ms. Garcia was also a real estate agent,⁶ who had previously attempted to list properties on behalf of some of Grimm's business partners. When Steven would not sign off on the deal, Ms. Garcia began harassing him and defaming him to various other business affiliates. This resulted in Mr. Grimm suing Garcia for defamation, although the suit had been dismissed by the time of the trial.⁷

Throughout the trial, Ms. Garcia was observed by Mr. Grimm and other members of the defense observing the trial in the courtroom, as well as speaking to jurors in the cafeteria, outside during smoking breaks, and in other situations. Doc. 707-2, p. 55. In an affidavit obtained by the Government during the 2255 proceedings, trial counsel

⁵ <https://kjzz.org/content/7841/la-protectora-confronts-scammers-who-prey-immigrants>

⁶ In 2016 she had her license revoked by the Nevada Real Estate Commission for fraud.

<https://red.nv.gov/uploadedFiles/rednv.gov/Content/Meetings/REC/2016/Orders/Garcia%20Helena2015-0006firstamendeddecision.pdf> (order revoking license).

⁷ The lawsuit was filed in the Eighth Judicial District Court of Nevada, case number 08A556881.

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6666167> (case docket)

stated that she “haunted the hallways like a specter.” Doc. 801-1, p. 11. He further stated that when the defense first became aware of her presence, “it was immediately asked that the Court conduct an inquiry.” However, “it could not be established that she had done more than ride an elevator and greet members of the jury.” *Id.*

Trial counsel’s recollections were not supported by the record, however. Although Mr. Grimm stated that he and other members of the defense were aware of Ms. Garcia’s presence throughout the trial, it was not until the thirtieth day that any of the defense lawyers finally mentioned it to the court. Specifically, the attorney for Grimm’s co-defendant stated to the court that he had observed Garcia coming out of the bathroom with two of the jurors while talking with them, and then getting into an elevator together while still talking. He also noted that Garcia had been a “regular attender of frequency here [at the trial]” and was a “vitriolic” critic of Grimm and the other defendants. When the judge asked him if they had been discussing the case, the attorney answered that he had not been able to make out any conversation. Doc. 507, pp. 59-60.

This did not result in any action by the court. The judge asked “Is there something that you wish the Court to do or are you just bringing it to my attention?” The lawyer responded, “I wish you could do something about it but I’m not sure what you can do about it.” The judge assented and the matter was dropped. At no point did Mr. Grimm’s attorney get involved and at no point did anyone ask for an inquiry into the content of the conversation or move for a mistrial. Doc. 507, pp. 60-61.

This was just one issue raised in the 2255 petition, as previously stated, there were 54 other claims raised. The district court initially refused to appoint counsel for two years after the petition was filed, before finally relenting in August 2020. Doc. 802. However, that counsel did not file an amended petition and eventually withdrew, leading to the appointment of a second attorney in January 2022. Before the second attorney could review the entire 37-day trial transcript, the court denied the petition in the following order: “Defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence is DENIED. IT IS FURTHER ORDERED that

defendant is denied a certificate of appealability.” Doc. 873. The Ninth Circuit then denied a COA in a similarly pro forma order.

Denial of the petition was clearly erroneous. The jury tampering claim by itself was manifestly handled incorrectly; a person with a history of professional animosity toward Steven, and who bragged about her proclivity for disrupting court proceedings, had been seen speaking to jurors in his case. The court did not inquire into this as required under caselaw; defense counsel stated on the record that he thought a hearing had been held, although this was incorrect.

On its face this claim implicated the basic structural fairness of the trial, yet it was not addressed by the district court or the court of appeals. And this was just one claim out of 54. The courts did not even pretend to review any of these claims; they simply and tersely stated that the petition was denied, and that no certificate of appealability should issue. But given the serious conceded errors in the case (again, Mr. Grimm’s conviction was reversed twice on direct appeal before even getting to the habeas stage), procedural fairness requires that he at least be given a fair consideration of his claims. He therefore

respectfully requests that the Court grant certiorari and remand his petition.

CONCLUSION

Steven Grimm's right to religious liberty was violated by the compassionate relief denial. In addition, his constitutional rights were violated by the lower courts' failure to consider or address any of the claims in his 2255 petition. It is therefore appropriate for this Court to grant certiorari, and Mr. Grimm respectfully asks that it do so.

DATED: 8/7/23

Jim Hoffman, Esq