UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

James Morning Raven Limbaugh, et al., Plaintiffs, v. Leslie Thompson, et al. Defendants.	Civil No. 2:93-cv1404-WHA
Native American Prisoners of Alabama-Turtle Wind Clan, et al., Plaintiffs, v. State of Alabama, Department of Corrections, et al., Defendants.	Civil No. 2:96-cv554-WHA **STATEMENT OF INTEREST OF THE UNITED STATES**

I.INTRODUCTION

The United States files this Statement of Interest, pursuant to 28 U.S.C. § 517, because this litigation implicates the proper interpretation and application of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA"). Congress gave both private plaintiffs and the United States the authority to bring suit to protect the federal religious rights of individuals confined to institutions. See 42 U.S.C. § 2000cc-2(f). Accordingly, the United States has a strong interest in ensuring that RLUIPA's requirements are vigorously and uniformly enforced.

Male prisoners confined by the Alabama Department of Corrections are required by Defendants to cut their hair short regardless of any contrary religious conviction, and Defendants have not shown that this requirement is the least restrictive means to further a

compelling government interest. Defendants contend that their policy does not substantially burden Plaintiffs' religious exercise and that it is in any case justified by the Defendants' interests in the security and management of its prison facilities.

Defendants' position does not conform with either the proper interpretation of RLUIPA or reasonable regulations necessary for prisoner safety and hygiene. A ban on a legitimate religious exercise is *ipso facto* a substantial burden on religion—Defendants' argument that the Plaintiffs are not substantially burdened is, in actuality, a request for a judicial determination of the importance and centrality of long hair to the Plaintiffs' religious practice. This determination, however, is explicitly forbidden by RLUIPA and relevant case law.

Moreover, the vast majority of correctional facilities nationwide, including the Federal Bureau of Prisons ("BOP"), do not have such total bans, undermining Defendants' claims that such bans are the least restrictive means to serve a compelling interest. Indeed, the fact that Defendants allow shoulder-length hair among the Alabama female prison population demonstrates that it is fully capable of assuring safety and hygiene in its facilities without a total ban. Contrary to RLUIPA's requirements, Defendants have not submitted evidence beyond conclusory statements in support of their claim that a total ban on long hair is the least restrictive means of achieving safety and security.

Defendants cannot satisfy RLUIPA's requirement that the substantial burden placed on religious exercise be justified through implementation of the least restrictive means to serve a compelling interest. Accordingly, RLUIPA requires that Defendants formulate a new policy that accounts for Defendants' obligations under RLUIPA.

II.BACKGROUND

Plaintiffs in this matter are adherents to Native American religious exercises. (P. Brief at 3). Among their religious traditions is the wearing of long hair, typically cut to indicate a time of mourning. (P. Brief at 5-15). Since 1993, the Plaintiffs have sought through this litigation to be exempt from Defendants' total ban on long hair worn by males. Defendants have contended that the Plaintiffs' religious exercise with respect to hair length is not substantially burdened by their short-hair policy and that the policy is in any case the least restrictive means to serve Defendants' compelling interests of safety and security within its prisons. (D. Brief at 9, 15-32).

After this court's decision granting summary judgment to the State on the hair-length claim, Plaintiffs appealed to the Eleventh Circuit. In a 2007 decision, the Eleventh Circuit remanded to this court. The Court of Appeals concluded "that on the present record factual issues do exist as to whether, *inter alia*, the defendants' total ban on the wearing of long hair and denial of an exemption to the plaintiffs based on the Native American religion is 'the least restrictive means of furthering the defendants' compelling government interests' in security, discipline, hygiene and safety within the prisons and in the public's safety in the event of escapes and alteration of appearances." *Lathan v. Thompson*, 251 F. App'x 665, 667 (11th Cir. 2007). This court then held an evidentiary hearing.

III.ARGUMENT

RLUIPA provides persons in institutional settings with an important framework for challenging restrictions on their religious exercise. Under the statute, when a plaintiff shows that a government authority has placed a substantial burden on the plaintiff's religious exercise, the government authority must prove that the restriction furthers a compelling government interest and that the means of restricting religious exercise is the least restrictive alternative. 42 U.S.C. § 2000cc-2(b). Here, Defendants' argument that the hair policy does not pose a substantial burden is unpersuasive, and Defendants have failed to show that the policy is the least restrictive means of furthering a compelling government interest.

A. RLUIPA Offers Broad Protections of Religious Exercise by Institutionalized Persons

The Plaintiffs have offered evidence that their hair length is part of their Native American religious exercise. RLUIPA guarantees a right to "religious exercise," which it defines as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). Accordingly, under RLUIPA, a religious exercise is protected regardless of the perceived importance of that exercise in the overall religious tradition. This is consistent with the First Amendment requirement that courts are not to judge the merits or centrality of specific religious practices. *See Employment Div., Dept. of Human Resources v. Smith*, 494 U.S. 872, 886-87 (1990) ("Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim."); *Watts v. Florida Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007); *Benning v. Georgia*, 391 F.3d 1299, 1313 (11th Cir. 2004) (finding that RLUIPA's definition of religious exercise "'mitigates any dangers that entanglement may result from administrative review of good-faith religious belief.'") (quoting *Madison v. Riter*, 355 F.3d 310, 320 (4th Cir. 2003)). Instead, courts look only to see that there is a religious exercise that is impeded by an institutional policy. Whether the practice is universal to adherents of a particular faith is of no consequence. *See Thomas v. Review Board*, 450 U.S. 707, 715-16 (1981) (finding that even under less protective First Amendment free exercise doctrine " . . . it 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. Courts are not arbiters of scriptural interpretation."). Courts must apply a broad, inclusive standard when determining whether a religious exercise is burdened, rather than conducting their own assessments of the importance of the exercise. But it is just such an assessment that Defendants urge, as discussed in further detail below.

B. Defendants' Ban on Long Hair Imposes a Substantial Burden on the Religious Exercise of Native American Prisoners

Defendants' hair length policy imposes a substantial burden on Plaintiffs' religious exercise. Plaintiffs have cited extensive evidence that the length of their hair plays an important or central role in their religious tradition. (P. Brief at 9-15). Although it is not necessary for a given religious exercise to occupy a particularly important or central role in a religious tradition to merit RLUIPA's protection, *see* 42 U.S.C. § 2000cc-5(7)(A), limitation of such an exercise certainly satisfies RLUIPA's substantial burden standard. Indeed, numerous courts have concluded that restrictions on long hair comprise a substantial burden on religious exercise. *See Warsoldier v. Woodward*, 418 F.3d 989, 995-96 (9th Cir. 2005) (holding that state prison policy of requiring short hair placed a substantial burden on Native American's religious exercise); *Longoria v. Dretke*, 507 F.3d 898, 903 (5th Cir. 2007) (holding Native American prisoner had stated a claim that "grooming policy substantially burdened religious exercise."); *Thunderhorse v. Pierce*, 364 F. App'x 141, 146 (5th Cir. 2010) (noting cases in which Fifth Circuit has found religious exercise of long hair to be substantially burdened by grooming policy); *Smith v. Ozmint*, 444 F. Supp. 2d 502, 506 (D.S.C. 2006) (finding that "a policy which requires hair to be cut, and ensures compliance by force, imposes a substantial burden to one of the Rastafarian faith").

Citing *Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007), Defendants argue that their short hair policy poses only an incidental burden on Plaintiffs primarily because Defendants allow Plaintiffs to engage in other, related religious exercises—maintaining long hair, on the Defendants' account, is an unimportant religious exercise in the Native American religious tradition.[1] (D. Brief at 11-14). Defendants' argument conflicts with RLUIPA's express terms.

[1] Defendants argue the point although the question of substantial burden does not appear to be before this court. The Eleventh Circuit ordered this court to consider on remand open factual questions, including whether "the defendants' total ban on the wearing of long hair and denial of an exemption to the plaintiffs based on the Native American religion is 'the least restrictive means of furthering the defendants' compelling government interests' in security, discipline, hygiene and safety within the prisons and in the public's safety in the event of escapes and alteration of appearances." *Lathan v. Thompson*, 251 F. App'x 665, 667 (11th Cir. 2007). The circuit court did not question

RLUIPA protects practices "whether or not compelled by, or central to, a system of religious belief," 42 U.S.C. § 2000cc-5(7)(A), and courts are not permitted to evaluate the importance of a religious exercise to a religious tradition.[2] RLUIPA therefore explicitly contradicts Defendants' contention that long hair is simply not an important enough religious exercise to merit RLUIPA's protection.

Nor can the test for determining a substantial burden delineated in *Allen* be read to require that a religious exercise be a central tenet of faith or a compelled religious practice in contravention of the statute's express terms. In *Allen*, the Eleventh Circuit distinguished between substantial burdens on religious exercise and incidental burdens on religious exercise.

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whether the policy banning long hair substantially burdens Native American religious practice.

[2] The Supreme Court's aversion to adopting a requirement that religious exercise be mandated by a faith in order to be protected flows directly from the Court's consistent position that "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981). *See also*, *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969) (holding that the First Amendment "forbids civil courts" from "the interpretation of particular church doctrines and the importance of those doctrines to the religion"); *Jones v. Wolf*, 443 U.S. 595, 603 (1979) (adopting a neutral-principles approach to resolving church property disputes because it frees courts from deciding "questions of religious doctrine, polity, and practice"); *United States v. Ballard*, 322 U.S. 78, 87 (1944) ("[L]ittle indeed would be left of religious freedom" if courts were allowed to determine "truth or falsity" of religious beliefs); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, *religion*, or other matters of opinion or force citizens to confess by word or act their faith therein.") (emphasis added). To require a court to inquire into whether a particular religious practice is compelled by the believer's faith is to force a court into a role "not within the judicial function and judicial competence" because it necessitates a judgment as to what a religion requires of its believers. *Thomas*, 450 U.S. at 707. *See also Smith v. Ozmint*, 444 F. Supp. 2d 502, 506 n. 4 (D.S.C. 2006) (noting that prison officials' argument that a burden is not "substantial" because other religious practices are permitted is in actuality a prohibited inquiry into the importance of the practice). Of course, courts are permitted to examine the sincerity of religious belief under RLUIPA. *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005) ("[RLUIPA] does not preclude inquiry into the sincerity of a prisoner's professed religiosity.").

But the distinction was not based on whether a prisoner was given opportunities to engage in other religious exercises, as Defendants argue, but rather on whether there had been any evidence—beyond the statement of the prisoner—that denial of the religious exercise in question was a substantial burden. *See Allen*, 502 F.3d at 1278-79. The *Allen* court concluded only that the inmate in question had offered no meaningful evidence that the religious exercise he requested was more than an idiosyncratic, unrelated desire.[3] *Id.* at 1278. In the court's own words, the inmate "failed to establish the relevance of the crystal to his practice of Odinism, as he was obligated to do in order to demonstrate that the denial of that item would significantly hamper his religious observance." *Id.* *Allen* is therefore best understood as simply requiring probative evidence that the exercise denied by prison authorities is, in fact, a religious exercise rather than simply an idiosyncratic desire of the plaintiff. Such idiosyncratic desires are virtually by definition "incidental."

Defendants' argument about the burden imposed by their short hair policy is not based on the proven relevance of wearing long hair to Native American religious practice, the central inquiry in *Allen*, but on the inapposite considerations of 1) other Native American religious practices Defendants do permit; 2) Plaintiffs' testimony articulating the importance of long hair to their religious practice in diverse ways; and 3) expert testimony that not all Native Americans feel compelled by their Native American religious practice to wear long hair.[4]

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[3] The *Allen* court's inquiry into whether the requested religious exercise was "fundamental" should not be read as establishing a threshold below which authentic claimed religious exercises do not merit RLUIPA's protection; the court itself acknowledged this limitation by citing RLUIPA's prohibition on considering the centrality of a religious exercise. *See* 502 F.3d at 1278. The court instead could find no evidence in the record that the requested practice was an authentic religious exercise as defined by RLUIPA: "In short, neither Smith's request, nor the outside sources that he submitted in connection with it, demonstrate the need for a quartz crystal in order to practice Odinism." *Id.*

[4] Defendants also argue that long hair might distinguish Native American religious practitioners as a group from the remainder of the prison population, thereby implying the receipt of special privileges. While this may be germane to determining whether Defendants' policies serve a compelling government interest, it is difficult to see how this possibility bears in any way on the substantial burden analysis.

Allen does not support any of these arguments as a basis for finding that Plaintiffs' religious exercise is not substantially burdened. Instead, as *Allen* requires, Plaintiffs have cited considerable evidence regarding the importance of long hair in their religious practice, (P. Brief at 9-15). Such evidence has been the basis for other courts to conclude that restrictions on long hair comprise a substantial burden on religious exercise. *See Warsoldier*, 418 F.3d at 995-96; *Longoria*, 507 F.3d at 903; *Thunderhorse*, 364 F. App'x at 146; *Ozmint*, 444 F. Supp. 2d at 506.

C. Defendants Have Not Demonstrated That the Total Ban Is in Actual Furtherance of a Compelling Governmental Interest

Once Plaintiffs have demonstrated a substantial burden on religious exercise under RLUIPA, Defendants must show that the ban on long hair furthers a compelling governmental interest. Defendants must first show that the challenged burden is in actual furtherance of a cited compelling interest—a tangential or tenuous relationship between the policy and the interest is insufficient. *See* 42 U.S.C. § 2000cc-1(a)(1). Specifically, Defendants have the burden of showing that security, their asserted compelling interest, is actually furthered by banning these specific Plaintiffs from having long hair. 42 U.S.C. § 2000cc-1(a) (prohibiting government imposition of a substantial burden on "religious exercise of a person" unless "the government demonstrates that imposition of the burden on *that person*" furthers a compelling government interest) (emphasis added); *see, e.g.*, *Jova v. Smith*, 582 F.3d 410, 415 (2d Cir. 2009) ("[T]he state may not merely reference an interest in security or institutional order in order to justify its actions."); *Washington v. Klem*, 497 F.3d 272, 283 (3d Cir. 2007) ("Even in light of the substantial deference given to prison authorities, the mere assertion of security or health reasons is not, by itself, enough for the Government to satisfy the compelling governmental interest requirement. Rather, the particular policy must further this interest."); *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 988-89 (8th Cir. 2004) ("[Officials] must do more than offer conclusory statements and offer post hoc rationalizations.").

In this case, the Defendants have not demonstrated that the blanket ban on long hair for men in correctional facilities actually increases security—their policy does not meaningfully further their stated compelling interest. While the Defendants articulated some circumstances in which long hair could conceivably be tied to potential security risks, they have not cited evidence of actual or threatened security breaches caused by nonconformity with the policy in Defendants' facilities for men or with respect to these Plaintiffs. Even the expert testimony about the relationship between hair length and security risks in another state was not supported by specific evidence. (D. Brief at 25) ("Angelone testified that the situation vastly improved during his time as Commissioner and that in his judgment the grooming policy played a role.").

As Congress acknowledged when passing RLUIPA, prisons retain the authority to ensure order and security. 146 Cong. Rec. 16698, 16699 (2000) (joint statement of Sen. Hatch and Sen. Kennedy on RLUIPA) (hereinafter Joint Statement) ("[T]he committee expects that the courts will continue the tradition of giving due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline." (quoting S. Rep. 103-111 at 10 (1993))). Maintaining security is a well-recognized compelling state interest. *See*, *e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709, 717, 722 (2005). However, simply uttering the word "security" is not enough to meet the state's burden of demonstrating that a compelling interest is at stake. Joint Statement, 146 Cong. Rec. at 16699 ("[I]nadequately formulated prison regulations and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet the act's requirements." (quoting S. Rep. 103-111 at 10 (1993))); *see also Spratt v. Rhode Island Dep't of Corr.*, 482 F.3d 33, 39 (1st Cir. 2007) ("[M]erely stating a compelling interest does not fully satisfy [State]'s burden on this element of RLUIPA"). Only when prison authorities have shown a close-fitting connection between the claimed security interest and the religious exercise, should the case move forward for a determination of whether the policy in question is the least restrictive means of protecting that interest.

In Defendants' facilities for women, hair length is not similarly restricted, further indicating that the interest in security is not closely tied to hair length. *Cf. Church of the*

Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 543 (1993). ("The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause."). Defendants have cited no evidence that the permissive policy regarding women's hair length has eroded security.[5] Defendants did not identify any examples of contraband in hair in the women's facilities, where long hair is permitted. (P. Brief at 18). Defendants also acknowledged that women inmates have escaped and their ability to change their hairstyles has not dictated a change in grooming policy. (P. Brief at 19).

Even if some connection between grooming and security is accepted, Defendants certainly have not shown that hair length policy has a meaningful impact on security. Defendants have offered no specific evidence that their policy meaningfully advances the interest in improving security in their prisons. Indeed, as Plaintiffs and Defendants acknowledge, "some forty state prisons and the Federal Bureau of Prisons either do not require short hair or recognize a religious exception to a grooming policy requiring short hair." (P. Brief at 16; D. Brief at 29). That each of these prison systems permits long hair underscores the negligible gains in security—if any—Defendants' restrictive grooming policy may achieve.

Defendants are under an obligation to provide specific evidence regarding their security interests with respect to the these Plaintiffs. *See Spratt*, 482 F.3d at 39 (criticizing prison authority affidavit that cited no evidence in support of restricting religious exercise). Without such evidence, Defendants have not met their burden of establishing that Defendants' ban on these Plaintiffs having long hair furthers a compelling interest in safety and security.

[5] The paucity of evidence cited by Defendant in this regard is similar to the lack of evidence offered to justify the differing treatment of women in *Warsoldier*, 418 F.3d at 1000, and distinguishes it from *Fegans v. Norris*, 537 F.3d 897, 904-05 (8th Cir. 2008) (citing evidence offered to justify differing treatment of women).

D. Defendants' Ban on Long Hair is not the Least Restrictive Means of Serving a Compelling Government Interest

Even if the Defendants had established that the ban on long hair furthers a compelling state interest in security, Defendants have not demonstrated that the blanket rule is the least restrictive means of serving that interest. In order to meet their burden under this prong of the RLUIPA analysis, Defendants must demonstrate 1) that they considered alternatives, 2) that widely accepted alternatives employed elsewhere cannot be implemented, and 3) that concerns about alternatives measures are based on real evidence rather than on conclusory statements.

Defendants did not offer evidence that they considered alternatives to their policy burdening Plaintiffs' religious exercise, as RLUIPA requires. *See, e.g.*, *Fegans v. Norris*, 537 F.3d 897, 904 (8th Cir. 2004) (upholding policy where state had actually attempted a less restrictive alternative). It is not enough to assert that no exceptions are possible. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (interpreting the precursor to RLUIPA and finding "RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability."). Instead, where less restrictive alternatives are available, State officials must consider and offer a legitimate reason for rejecting those alternatives. *See, e.g.*, *Washington v. Klem*, 497 F.3d 272, 284 (3d Cir. 2007); *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005) ("CDC cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."); *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 989 (8th Cir. 2004) ("It is not clear that MDOC seriously considered any other alternatives, nor were any explored before the district court."). Rather than actually considering alternatives, Defendants explain that they made a "judgment on this matter" when establishing their grooming policy, though they did not review less restrictive grooming policies. (D. Brief at 29; P. Reply Brief at 17). An unsupported "judgment" is insufficient under the standards described in *Warsoldier* and *Klem*.

Defendants have also failed to show that they cannot implement widely accepted alternatives to its blanket policy. Both parties acknowledge that forty state prisons and the BOP have implemented such alternatives, either by granting a religious exemption or by having less restrictive grooming policies in general. Where there are successful, less restrictive policies in place elsewhere, prison authorities must show evidence that their situation is different. *Warsoldier*, 418 F.3d at 1000 ("[T]he failure of a defendant to explain why another institution with the same compelling interests was able to accommodate the same religious practices may constitute a failure to establish that the defendant was using the least restrictive means.").

Here, the evidence demonstrated that a more permissive policy has not hampered security in other prisons and even in a portion of their own system. Defendants do not distinguish their circumstances; Defendants' merely assert that because other southern states have restrictive policies, the Alabama Department of Corrections need not consider the prevailing approach. (D. Brief at 29).

Finally, where prison authorities reject alternatives, their reasons must not be "grounded on mere speculation, exaggerated fears, or post-hoc rationalizations." Joint Statement, 146 Cong. Rec. 16699; *see also Warsoldier*, 418 F.3d at 1000 ("prison officials must set forth detailed evidence, tailored to the situation before the court, that identifies the failings in the alternatives advanced by the prisoner."); *Spratt*, 482 F.3d at 41 ("RIDOC offers no explanation for why alternative policies would be unfeasible, or why they would be less effective in maintaining institutional security"). When rejecting less restrictive policies during the hearing on this matter, Defendants have not offered specific evidence supporting legitimate security concerns in Defendants' facilities, but rather have relied on conclusory statements to support their positions. For example, Defendants asserted that they cannot allow exceptions because hair length differences would induce jealousy, but they have cited no specific evidence that similar exceptions had caused any danger at Defendants' facilities or elsewhere. (D. Brief at 19, 26; P. Reply Brief at 28-29). In fact, Defendants do allow prisoners to engage in other religious practices that set them apart. Native American inmates in Defendants' prisons are

allowed medicine bags and participate in sweat lodge ceremonies, which set them apart from their peers. (P. Reply Brief at 28-29).

Similarly, Defendants make conclusory statements to support their position that exceptions to the long hair policy would allow inmates to hide contraband and would make it easier for escapees to go undetected. While there was general testimony about contraband in the prisons, Defendants have cited no evidence of contraband in hair in Alabama. (*See* D. Brief at 16, 19). Likewise, Defendants introduced testimony about inmates who had escaped from their facilities and were eventually identified and returned to custody, but they did not cite evidence of difficulty capturing an Alabama escapee who had changed his appearance. (D. Brief at 22). Defendants dismiss possible less restrictive policies based on safety concerns that they do not support with specific evidence.

Importantly, Defendants allow women to maintain long hair, undermining their position that an alternative policy permitting long hair would lead to disastrous outcomes. *See Hialeah*, 508 U.S. at 547 ("[i]t is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest of the "highest order" . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.'" (citation omitted)). Defendants argue that the comparison to women is inapposite, saying that, "female inmates have exhibited lower misconduct rates than male inmates," though there was evidence at trial that there are assaults and violent acts in Defendants' facilities for women. (D. Brief at 37; P. Reply Brief at 33). Defendants' expert explained, without supporting evidence, that women should have differential treatment because requiring short hair for women "would promote a stereotype of homosexuality among the women." (D. Reply Brief at 25). The total ban on long hair is thus an example of a policy rooted in conclusory positions rather than specific evidence. RLUIPA is intended to ensure that such policies do not burden sincere religious practice.

Defendants have not demonstrated that their ban on long hair is the least restrictive means of furthering their interest in security.

IV.CONCLUSION

Defendants have not met their burden of demonstrating that there is a compelling interest justifying the substantial burden they have placed on Native American religious practitioners, nor have they shown that their total ban on long hair is the least restrictive means for furthering a compelling interest. As the State has not met its obligations under RLUIPA, the United States urges the Court to vacate Defendants' policy and require Defendants to formulate a new policy that recognizes its obligations under RLUIPA.

DATED: April 8, 2011

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CERTIFICATE OF SERVICE

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