No. 21–817

# In the Supreme Court of the United States



**Daemon Targaryen,**

***Petitioner*, v.**

**Lord Velaryon,**

**Master of Driftmark Prison,**

***Respondent*.**



**On Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit**



**RECORD ON APPEAL**

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WESTEROS

|  |  |
| --- | --- |
| **DAEMON TARGARYEN,**  **Plaintiff,** | **CIVIL NO. 1:CV-21-0377** |
| **v.**  **LORD VELARYON,**  **Defendant.** | **Judge Hightower** |

**MEMORANDUM OPINION AND ORDER**

Plaintiff, Daemon Targaryen, filed this case *pro se* on September 25, 2018 against the Master of Driftmark Prison, alleging a violation of his civil rights under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff complained that while he was housed in the Special Management Unit (“SMU”) at Driftmark Prison, the Master, Lord Velaryon, enforced a policy that prevented him from attending Sept prayer, a congregational prayer of the Faith of the Seven.

The Court interpreted the complaint to raise two interrelated, but separate, claims: (1) a violation of Targaryen’s right to freely exercise his religion; and (2) a violation of the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb *et seq*. Plaintiff asks this court to enjoin enforcement of the policy preventing inmates in the SMU from attending congregational prayer services. For reasons that will follow, I find in favor of Plaintiff and hold that Driftmark Prison may not enforce its policy prohibiting inmates in the SMU from attending congregational prayer.

## PROCEDURAL HISTORY

The present dispute began on September 25, 2018, when Plaintiff Targaryen submitted his *pro se* complaint. Following discovery, the Court denied Defendant Velaryon’s Motion for Summary Judgment because of outstanding issues of material facts. The parties agreed to a bench trial, and on January 12, 2019 the trial concluded.

## FINDINGS OF FACT

After hearing the testimony of the parties, and reviewing the evidence, the Court finds the following to be a statement of the relevant facts. On March 21, 2014, a jury convicted Daemon Targaryen of weapons trafficking in the United States District Court for the District of Westeros. For years, Targaryen acted as an unlicensed importer with an intent to distribute the weapons—primarily crossbows—through Westeros’s illegal weapons trade, with the end goal of taking up arms against the Crown. He was sentenced to thirty years in federal prison.

On January 14, 2016, Targaryen was transferred to Driftmark Prison, a federal prison on Driftmark Island, the largest island found in Blackwater Bay, located off the coast of the state of Westeros. He was placed in the SMU, the only special housing facility at Driftmark Prison. The SMU is similar to a Special Housing Unit (“SHU”), but is not primarily intended to be used as a punishment for an inmate’s actions. Instead, the SMU at Driftmark Prison maintains a strict regime for inmates convicted of crimes involving gang affiliation.

At Driftmark Prison, the inmates are generally confined in their solitary cells for twenty- three hours per day. They are given one hour to exercise, but they are still kept apart from other inmates during this time. Driftmark Prison divides an inmate’s time in the SMU into “stages.” Inmates refer to the first three stages of SMU as the “three-headed dragon,” due to its rigidity, inflexibility, and overall grueling requirements. An inmate’s progression through the stages is based on his time within the unit. Violations of SMU policy may result in demotion to a previous stage. Stage One is characterized by an extremely strict regime; as inmates advance through the stages, SMU policy grants them more freedoms that culminate at Stage Four. After completing Stage Four, the prison may reassign inmates to the general prison population at Driftmark Prison or to another facility.

Inmates in the SMU can still practice parts of their religion, despite their imprisonment. They may request a religious diet, observe fasting periods, pray in their cells, and request religious texts to read. Inmates may not, however, attend any form of congregational worship, study, or discussion until they reach Stage Four. Driftmark Prison is a long-term facility, and inmates take, at minimum, one year to advance to Stage Four of the SMU program. After inmates complete three additional months in Stage Four, they may reenter the general prison population at Driftmark Prison, where they can attend congregational worship, when provided, without restriction. Diversity of religion among SMU inmates fluctuates frequently, but the evidence introduced demonstrates that inmates typically practice various religious traditions native to Westeros including, but not limited to, the Faith of the Seven and devotion to the Old Gods of the Forest.

According to prison staff, part of the SMU program’s appeal is the regimented approach to discipline. As inmates progress through the stages, SMU policy affords them more freedoms, and the stages serve to incentivize good behavior. Therefore, the Defendant has testified that “changing the SMU program would undermine its primary appeal—discipline.” Further, the Defendant has introduced evidence that providing a separate congregational worship setting for SMU inmates in Stages One through Three, would require the prison to staff “three or four” additional guards during every shift in which congregational worship is provided in the SMU.

The Defendant introduced further evidence that the strict regime of the SMU enables prison staff to manage different sets of inmates that have conflicting gang affiliations. The prison has

used other methods of preventing gang conflicts in Driftmark Prison, such as sending inmates who violate prison policy to the now defunct SHU (which was replaced by the SMU). The Bureau of Prison’s (“BOP”) relevant policy on religious practice states: “Authorized congregate services will be made available for all inmates weekly with the exception of those detained in any Special Housing Units.”1 Driftmark Prison adopted additional regulations for the SMU that state the following: “Inmates housed in the Special Management Unit may attend congregational religious services once they reach Stage Four of the program.” Neither party has introduced evidence as to how common such policies are in other federal prisons.

Targaryen is a follower of the Faith of the Seven, as he and his family are prominent converts. Part of his faith includes a required group prayer practice, where followers gather on the seventh day of the week within a seven-walled building, called a “Sept,” and sing hymns. Targaryen was permitted to attend Sept prayers at previous prisons; however, his request to attend Sept prayer during Stages One of the SMU was denied by the Master of Driftmark Prison, Lord Velaryon. Targaryen filed the appropriate grievances within Driftmark Prison to request reversal of Velaryon’s decision, but his requests were denied. This dispute followed.

During periodic psychological screenings, SMU staff determined that Targaryen was a “low threat to himself and others.” All inmates in the SMU receive similar psychological screenings as part of the SMU program. No evidence presented suggests that Targaryen engaged in any violence or violations of the SMU program. Finally, Targaryen has not introduced evidence challenging his placement in the SMU program.

1 Bureau of Prisons, U.S. DEP’T OF JUST., *Religious Beliefs and Practices*, Program Statement 5360.09 (June 12, 2015).

## LEGAL STANDARD

* 1. *The Free Exercise Clause*

An inmate’s ability to practice his religion is necessarily limited by imprisonment. Restrictions on an inmate’s religious exercise, however, must be reasonable and pursue a legitimate penological interest to satisfy the demands of the First Amendment. *Turner v. Safley*, 482 U.S. 78, 89 (1987). To decide whether a prison policy is reasonable, courts must apply the four factors of the *Turner* test. *Id.* First, courts must determine whether the restriction has a valid and rational connection to the governmental interest justifying the restriction. Second, the court must evaluate the alternative means for the prisoner to exercise his religion. Third, courts examine the impact that accommodating the inmate would have on prison resources generally. Finally, the courts ask whether there are ready alternative policies that would achieve the same goal as the prison’s restriction. Overall, the *Turner* test does not involve keeping a tally, but is instead a holistic examination of the challenged policy and its impact on religious exercise.

While the Thirteenth Circuit has not provided guidance on the application of the *Turner* factors, the Supreme Court did when it decided *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). There, the Court held that a restriction on the practice of Jumu’ah, a Muslim congregational prayer ritual, was reasonable, even though Jumu’ah was a central part of the practice of the Islamic faith. *Id.* at 344. Inmates who were working outside of the prison were not allowed to return to the prison for Jumu’ah because it would have created significant safety and administrative concerns. *Id.* at 345. The inmate’s ability to attend other forms of group worship, however, was “virtually unlimited.” *Id.* at 353. On balance, the Court found that the restriction was reasonable.

* 1. *The Religious Freedom Restoration Act*

42 U.S.C. § 2000bb *et seq.* prevents the federal government from substantially burdening a prisoner’s exercise of religion unless the burden is “in furtherance of a compelling governmental interest” and “is the least restrictive means” of promoting that interest. It does not matter whether the burden is imposed on the central tenet of religion, such as the practice of Jumu’ah; all substantial burdens on the practice of religion are analyzed in the same way. *See Holt v. Hobbs*,

135 S. Ct. 853 (2015) (analyzing RFRA’s sister statute, the Religious Land Use and Institutionalized Persons Act of 2000).

Accordingly, plaintiffs must first establish that a challenged policy places a substantial burden on their practice of a genuinely held religious belief. If so, the Defendant must then show that the burden is the least restrictive method of accomplishing a compelling governmental interest. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). The standard under RFRA is a more stringent analysis than under the Free Exercise Clause.

## DISCUSSION

The Court finds that the challenged policy fails both the reasonableness test of *Turner* and the stricter standard of RFRA. Accordingly, the prison policy of Driftmark Prison prohibiting SMU inmates in Stages One through Three from participating in congregational worship is held void.

First, under *Turner*, the Court finds that the complete prohibition of *all forms* of congregational worship at Driftmark Prison is unreasonable. To begin, the prison maintains that allowing inmates in Stages One through Three of the SMU program to attend congregational worship would undermine the discipline of the SMU because it would change the program. The

structure of the SMU program, however, cannot justify a restriction on religious exercise on its

own. While the Court understands that separating conflicting gang members may achieve a penological goal, it is unclear whether the prohibition on congregational worship or study achieves that goal.

The alternatives to practicing congregational worship in the SMU program are scant, at best. Inmates may observe their religion in many other *individual* ways, but no amount of individual worship can make up for group prayer or study which is a fundamental religious experience. Plaintiff’s case is distinguishable from *O’Lone*, because in *O’Lone* the inmates were able to engage in other forms of group worship. That is not the case at Driftmark Prison.

The burden that would be imposed by allowing inmates in the SMU to attend group prayer does not seem substantial. First, some inmates—in Stage Four—may already attend group prayer. Second, having “three or four” additional guards in the SMU while congregational worship is being provided does not seem unreasonable for the prison to provide.

Lastly, alternative policies to the blanket prohibition of congregational worship exist, demonstrating that the ban is not the only way to promote discipline in the SMU. Inmates receive monthly psychological evaluations that determine their threat level. Therefore, a policy that allows “low risk” inmates to attend group worship seems far less arbitrary than determining which inmates can attend group worship based on their “stage” in the SMU program. Overall, when the *Turner* factors are applied to the SMU policy at Driftmark Prison, I cannot find that the policy is a reasonable restriction on Targaryen’s right to freely exercise his religion.

Second, even if the *Turner* factors favored the prison, RFRA dictates that the policy is void as well. It is evident that the challenged policy places a substantial burden on Targaryen’s ability to practice his religion. Sept prayer is required in the Faith of the Seven.

Defendant maintains, as he did above, that allowing inmates the freedom of attending group worship would destroy the entire goal of the SMU system—discipline and order. Therefore, Defendant argues that the challenged restriction is the only way to accomplish a compelling governmental interest in prison safety and order. If the inmates are allowed to attend group worship the aura of discipline in the SMU will evaporate, according to the warden. Further, he maintains that it would be impossible to provide group worship that accommodates for every conflicting gang affiliation.

As discussed above, however, if the policy were applied on an inmate’s psychological condition or actual threat to others, the Court would be more convinced by Defendant’s argument. But because the prohibition is based on the “stage” of the inmate in the SMU program, the Court cannot agree that the policy is the “least restrictive means” to secure order and safety. Because the means used are not the least restrictive, the Court does not decide whether the interest in discipline is compelling enough to restrict the practice of religion.

## CONCLUSION

Of course, Targaryen’s ability to practice his religion will be limited by the very nature of his imprisonment. Regardless, Targaryen retains his right under the Constitution to be free of unreasonable restraints on his freedom to exercise his religion in prison. Further, RFRA protects his exercise of religion even more robustly. Therefore, the Court holds the prison policy of Driftmark Prison prohibiting inmates in Stages One through Three from participating in congregational worship void.

## IT IS SO ORDERED.

**Judge:** *Judge Otto Hightower* **Date:** *03/22/2021*

In The

UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

No. 21–8885 Lord Velaryon,

Appellant, v.

Daemon Targaryen,

Appellee.

On Appeal from the United States District Court for the District of Westeros

(D.C. Civil Action No. 1:CV-21-0377) District Judge: Honorable Otto Hightower

ARGUED: January 13, 2023

Before: STRONG, LANNISTER, and BEESBURY,

*Circuit Judges.*

## OPINION OF THE COURT

**LANNISTER,** *Circuit Judge*

This Court must answer a question of first impression before the Thirteenth Circuit: What protections do the Constitution and Congress provide for inmates’ access to group prayer? This case raises important considerations of faith and public policy, as we weigh the right of free exercise against the institutional needs of prison facilities.

This dispute began when Daemon Targaryen, Appellee, filed a *pro se* complaint with the district court. Targaryen is incarcerated at Driftmark Prison, located in the state of Westeros, and alleged2 that his rights under the Free Exercise Clause and the Religious Freedom Restoration Act (“RFRA”) were violated when he was denied any form of group prayer or worship. The district court agreed, and ordered that Driftmark Prison refrain from enforcing a policy prohibiting inmates at certain stages in the Special Management Unit (“SMU”) 3 from attending congregational worship. The Appellant, Lord Velaryon, the master of Driftmark Prison, appealed the decision.

While we review the district court’s findings of fact for clear error, we review the application of the law to those facts de novo. *See Mathews v. Chevron Corp.*, 362 F.3d 1172 (9th Cir. 2004). We issued a stay pending this appeal, Fed. R. App. P. 8, and now we reverse.

I

The relevant facts were determined by the district court following a brief trial. We adopt the factual findings of the court below entirely, as we find no clear error. Fed. R. Civ. P. 52(a)(6).

2 The complaint did not explicitly raise these causes of action; however, the district court interpreted the pro se complaint liberally in the interest of justice. *See* Erickson v. Pardus, 551 U.S. 89 (2007). Neither party disputed the district judge’s interpretation, and we find no error.

3 SMU designation is non-punitive, and is designed to identify and accommodate inmates who present difficult security and management concerns—especially those involved in gang-related activity. Bureau of Prisons (“BOP”), U.S. DEP’T OF JUST., Special Management Units, Program Statement P5217.02 (Aug. 9, 2016).

Appellee was transferred to Driftmark Prison in 2016, where he was placed in the SMU.4 While confined, he requested permission to attend a weekly Sept prayer service, which Appellant denied. Part of the SMU regime at Driftmark Prison includes a rule prohibiting inmates in Stages One through Three of the SMU program from attending congregational worship. Appellee used the appropriate grievance procedures to request an administrative solution. Those requests were denied.

Appellee practices the Faith of the Seven, and the Appellant does not question the sincerity of his belief. Group prayer, especially on the seventh day of the week, Sept prayer, is an important aspect of Targaryen’s faith. Other practices of his faith include reading the Seven-Pointed Star (holy book of the Seven), wearing signs of devotion on one’s clothing, and daily prayer—all of which Appellee was able to do while in the SMU.

According to the district court, the SMU is characterized by “a very strict regime,” designed to promote order and discipline, and therefore safety. The regime includes incentives for good behavior, by providing more freedom to the inmates as they progress through the various stages of the SMU. Once inmates reach Stage Four, they are allowed to attend group prayer. The strict regime of the SMU also allows the prison to closely monitor the interactions of inmates that have conflicting gang affiliations.

Accommodating inmates in Stages One through Three of the SMU program would require four additional staff for every shift every time congregational worship is provided. Meaning that if congregational worship is provided twice a day in different shifts at the prison, eight additional staff members would need to be present throughout the day.

II

This case requires us to resolve a dispute governed by both the Constitution and statute. First, we must determine whether Appellee’s right to free exercise has been violated under the *Turner* standard. Second, we must answer whether SMU policy is prohibited by RFRA.

4 Appellee is no longer in the SMU; however, we do not find this case to be moot. First, it is possible that he may be redesignated into Stage One of the SMU at any time. Second, both parties admit that the issues in this case are capable of repetition, and would otherwise evade review because of the short duration of the SMU program. *See* 523 U.S. 1, 17 (1998).

A

The First Amendment provides in relevant part that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .” U.S. CONST. amend. I. Not only must the Federal Government refrain from the “impermissible establishment of religion,” but it must allow all citizens to freely exercise their faith. *Town of Greece, New York v. Galloway*, 134 S. Ct. 1811, 1815 (2014); *see Locke v. Davey*, 540

U.S. 712, 718 (2004) (“These two Clauses, the Establishment Clause and the Free Exercise Clause, are frequently in tension.”). In the prison context, applying the same standards to prisoners would create an even greater tension than what already exists within the Constitution.

Therefore, the Supreme Court declined to apply the typical Free Exercise standards to prisoners, instead opting for a far more deferential “reasonableness” standard. *Turner v. Safely*, 482 U.S. 78 (1987). The very purpose of imprisonment is to limit the freedom of the imprisoned. For example, the Muslim faith directs followers to make a pilgrimage to Mecca; however, allowing an *inmate* to complete this journey while serving a sentence would be inconsistent with the nature of punishment. Accordingly, all inmates lose the ability to practice their faith however they wish, because free exercise is necessarily at odds with incarceration.

An inmate’s right of free exercise is limited by incarceration. That is not to say prison regulations that restrict religious practice are not scrutinized. First, the regulation must be designed to accomplish some legitimate penological goal. *Id.* at 89–

90. If the policy at issue is arbitrary, then there is no reason to proceed further with the analysis. If the restriction is designed to

5 The district court erroneously considered the First Amendment question even though it concluded that RFRA resolved the dispute. Federal courts should refrain from answering constitutional issues when a narrower decision exists, and the district court should have declined to address the implication of the First Amendment in this case. *See* Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936). Because we conclude that RFRA is not dispositive, we will address both issues.

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achieve a penological goal, however, courts must consider three more factors.

The second factor is the alternative means an inmate retains to practice his faith. *Id.* at 90. Third, the court must consider the impact that making the requested accommodation will have on the prison. *Id.* Finally, courts must consider whether a ready alternative to the restriction exists that would accomplish the same asserted penological goal. *Id.* Importantly, the burden is on the inmate to demonstrate a “ready” alternative; one that can be implemented at “*de minimis*” cost to the prison. *Zargary v. City of New York,* 412 Fed. App’x 339, 343 (2d Cir. 2011).

The Supreme Court previously applied this standard to a prisoner’s request to attend Jumu’ah, group prayer required by the Islamic faith. *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). There, allowing prisoners to attend Jumu’ah would have created security concerns because it would have required them to return to the prison. Allowing prisoners to do so would have placed a burden on the entrance to the facility and created a security risk. *Id.* at 366.

Many of our sister circuits have applied the *Turner* standard and found in favor of the prison given the test’s deferential standard. *See Josselyn v. Dennehy*, 333 Fed. App’x 581 (1st Cir. 2009). In *Baranowski*, the Fifth Circuit found that denying Jewish inmates access to a weekly Sabbath service was reasonable. *Baranowski*,

486 F.3d at 112. The court found that the prison’s policies were legitimately connected to penological concerns of the prison, including security and resource limitations, and there were no easy alternatives to providing the service. *Id.* at 121. Further, the inmate was still able to participate in alternative means of worship by having access to religious materials and to the chapel, and accommodating every individual’s religious requests would overly burden the prison administration. *Id.* at 121–22; *see Adkins v. Kaspar*, 393 F.3d 559 (5th Cir. 2004).

In *Murphy v. Missouri Department of Corrections*, the Eighth Circuit Court of Appeals affirmed the lower court’s finding that a restriction on a group’s worship was reasonable. *Murphy v. Missouri Department of Corrections*, 372 F.3d 979, 986 (8th Cir. 2004). Applying the *Turner* factors, the court found first that the restriction preventing the group’s worship was rationally connected to a legitimate interest in prison safety, and then that there were alternative ways for the inmate to practice his faith outside of group

worship, including observing holy days, praying in his cell, and occasionally meeting with Christian Separatist Church6 clergy. *Id.* at 983.

The court then found that accommodating the inmate’s request for group worship would burden the prison not only in terms of staffing the services, but also because it would likely lead to violence and the need for increased security. *Id.* at 984. Finally, the court noted that there were no obvious alternatives that would serve both the inmate and the prison, and therefore held that the restriction was reasonable. *Id.*; *see also Garraway v. Lappin*, 490 Fed. App’x 440 (3d. Cir. 2012) (holding that an inmate’s request for unfettered access to group prayer created safety concerns, and so restrictions on congregational prayer were reasonable).

Limits exist. For example, prisons may not require inmates to prove their faith. *Wall v. Wade*, 741 F.3d 492 (4th Cir. 2014). A corollary to that rule is that courts should not determine what is “central” to a religious practice. *Adkins*, 393 F.3d at 570.

1

The governing rules of the *Turner* standard are clear. What is even clearer is that Federal Courts should give great deference to the determinations of prison facilities. Courts are simply unable to adequately gauge the needs and intricacies of running a federal penitentiary. Accordingly, it is evident that Driftmark Prison’s policy of prohibiting inmates in Stages One through Three of the SMU survives the *Turner* test.

First, the policy serves a legitimate penological interest. The district court characterized the prohibition on congregational worship as being self-serving for the SMU program. This is simply incorrect. The SMU restrictions are structured to separate inmates with conflicting gang affiliations. Allowing any congregation— religious or otherwise—conflicts with that purpose.

Further, the SMU rewards inmates with greater freedom as they advance through the various stages. This regimented approach provides its own benefits that serve a legitimate penological interest, namely discipline and order. It is no wonder that “changing the

6 The safety concerns posed by allowing the Christian Separatist Church to congregate in prison were obvious considering that the church is a religious group that believes it needs to separate itself from non-Caucasians. *Murphy*, 372 F.3d at 981. A similar threat is posed by allowing inmates with conflicting gang memberships to worship together.

SMU program would undermine its primary appeal” as Appellant has argued. The structure of the SMU serves the twin goals of protecting inmates with opposing gang membership and promoting order and safety. Therefore, this factor should have been afforded much greater weight than the district court afforded it.

Second, the district court described Appellee’s alternative means of religious practice as “scant.” We disagree. As the Supreme Court noted in *O’Lone*, individual prayer and worship are sufficient means of practicing faith while incarcerated. *O’Lone*, 482.U.S. at 352. While it is true that in *O’Lone* the inmates were afforded other means of group prayer, it is important to stress that designation in the SMU is only temporary. *Id.* Considering that prisons are under no obligation to provide congregational worship when safety is an issue, 7 we see no reason why the prison should hold congregational services for inmates in the SMU, a unit which is established to house inmates with heightened security risks.

Additionally, it is important to note that the relative importance of a practice to a religious tradition does not change our analysis. *See DeHart v. Horn*, 227 F.3d 47 (3d. Cir. 2000). Completely denying a requested religious diet is acceptable. *See Sefeldeen v. Alameida*, 238 Fed. App’x 204 (9th Cir. 2007); *Goff v. Graves*, 362 F.3d 543 (8th Cir. 2004). So too is completely denying congregational worship, as long as there are alternative means of religious expression. Appellee has various other means of religious expression, and so we cannot fairly say that this factor works in his favor.

Third, the burden imposed on the prison by the Appellee’s requested accommodation is great. As discussed above, changing the SMU regime necessarily undermines its twin goals of security and discipline. Further, the evidence as discussed by the court below shows that additional guards will have to be brought in for each additional shift anytime a congregational prayer service is held. Importantly, it is not just the Sept prayer service that would impose this burden. Congregational worship is also an aspect of Christianity, Judaism, differing forms of Paganism, and various other religious traditions.

7 For example, inmates in Special Housing Units (“SHUs”) are denied any form of congregational worship, and congregate worship can be suspended in cases of emergency. BOP, U.S. DEP’T OF JUST., *Religious Beliefs and Practices*, Program Statement 5360.09 (June 12, 2015).

Providing additional staff for each of these services multiplies the burden imposed on the prison. It is not just “three or four” additional staff that must be provided per week, but three or four each shift.

If the prison permits all inmates in the SMU to participate in congregational worship, it will also have to account for the different gangs to which inmates belong to. The prison will have to hold additional services, or hire additional security staff. Either result places a greater burden on the prison. Therefore, this factor weighs in favor of Appellant.

Finally, as demonstrated by our analysis so far, an alternative policy to the rule against congregational worship in Stages One through Three of the SMU is unsustainable. The *Turner* standard requires a “ready” alternative, meaning an alternative that is easy to administer. Providing various services with additional staff is hardly a “ready” alternative.

The district court proposed that an alternative policy could be based on an inmate’s “threat level.” For example, Appellee was determined to be of little threat to himself or others. Additionally, the district court found the fact that the prison already provides congregational services particularly convincing. Simply put, these facts are irrelevant. The SMU is designed to identify and separate inmates with gang affiliations. The psychological exams are not an adequate method of replacing the structure and discipline of the SMU regime.

The “ready” alternative proposed by the district court fails for two additional reasons. First, the burden to show a ready alternative falls to the inmate, not the district court’s imagination. Second, a “ready” alternative imposes a *de minimis* cost to the prison. Considering the amount of additional staff necessary for the proposed alternative to function, the cost imposed by the district court’s solution is far more than merely *de minimis.*

The prison has determined that the SMU regime, including the emphasis on solitary detention, is the best means to accomplish its goals. Courts should not second guess prison staff when it comes to policies regarding safety and order. We decline to do so today.

After reviewing the *Turner* factors, and keeping in mind the deferential purpose of our review, we hold that the rule against

congregational worship in Stages One through Three of the SMU program is reasonable.

B

The second touchstone of our analysis is RFRA. 42 U.S.C.

§ 2000bb *et seq.* Congress enacted RFRA following the Supreme Court’s decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), when the Court held that religion cannot allow a person to evade a law of neutral applicability. *Id.* Under RFRA, Congress statutorily “raised the bar” of scrutiny on any action that places a substantial burden on the exercise of religion. Once a plaintiff demonstrates a substantial burden on religion, the government must demonstrate that the burden is the least restrictive means of achieving a compelling government interest. If it cannot, the government’s action is unlawful. RFRA applies to the incarcerated and non-incarcerated alike. *See Holt v. Hobbs*, 135 S. Ct. 853 (2015).

RFRA provides a higher standard of review than that which applies to First Amendment free exercise claims. *Murphy*, 372 F.3d at 986. Congress enacted RFRA to clarify that “neutral” laws or governmental policies—laws of “general applicability”—may interfere with free religious exercise as greatly as laws or governmental policies specifically intended to interfere with such exercise. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, at 2761 (2014) (quoting 42 U.S.C. § 2000bb–1(a)). The RFRA

standard is as follows: if Plaintiff establishes that a government policy imposes a substantial burden on his exercise of religion, Plaintiff is entitled to an exemption from the interfering governmental policy unless the government “demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Burwell*, 134 S. Ct. at 2761 (quoting 42 U.S.C. § 2000bb–1(b)).

In 2000, Congress enacted RFRA’s “sister statute,” the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc *et seq*. *Holt*, 135 S. Ct. at 860. While RLUIPA provided the same liberty protections to prisoners under the same standard as RFRA, RLUIPA restated the definition of “exercise of religion” without reference to the First Amendment. *Burwell*, 134

U.S. at 2761–62. Since RLUIPA, this Court has construed both

statutes as an “obvious effort [by Congress] to effect a complete separation from First Amendment case law.” *Id.*

Courts consistently interpret RFRA’s protections broadly, as Congress intended. *Id.* at 2767 (“By enacting RFRA, Congress went far beyond what this Court has held is constitutionally required.”) For example, Congress made clear that RLUIPA might require the government to “incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.” 42 U.S.C.

§ 2000cc–3(c). Yet while the government’s burden is higher in claims arising under RFRA than in claims arising under the First Amendment, this Court and other circuits have “nevertheless accorded a significant degree of deference to the expertise of prison officials in evaluating whether they meet that burden.” *Murphy*, 372 F.3d at 987. All Americans are entitled to robust religious liberty protections, but the prison context is unique. “[C]entral to all other corrections goals is . . . internal security.” *Pell v. Procunier*, 417

U.S. 817, 821 (1974); *see also Holt*, 135 S. Ct. at 864 (“Prison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise.”).

Appellant does not contest whether the practice Plaintiff seeks permission to perform constitutes a “religious exercise” within the meaning of RFRA. This Court will thus assume for the purposes of this opinion that Sept prayer is religious exercise worthy of protection. *Cf. O’Lone*, 482 U.S. at 344.

1

This Court must first consider whether Targaryen established that Driftmark Prison’s policy places a “substantial burden” on his exercise of the Faith of the Seven. The District Court found it “evident” that the prison’s prohibition on congregational prayer among prisoners in Stages One through Three of the prison regime places a substantial burden on Targaryen. This Court disagrees. Analysis of RFRA’s language and the nature of the religious exercise in question leads this Court to conclude that Driftmark Prison’s policy does not place a substantial burden on Targaryen.

RFRA does not define “substantial burden”; however, a Joint Statement to Congress by RLUIPA’s sponsors instructed that the phrase “should be interpreted by reference to Supreme Court jurisprudence.” 146 Cong. Rec. S7774, 7776 (July 27, 2000). Fellow circuit courts, in turn, “create[d] several definitions . . . with

minor variations” of the standard. *Washington v. Klem*, 497 F.3d 272, 279 (3d Cir. 2007). The Tenth Circuit, for instance, determined that the “substantial burden” inquiry is subjective and fact-intensive; the court assesses “the coercive impact of the government’s actions.” *Williams v. Wilkinson*, 645 F. App’x 692, 702 (10th Cir. 2016). The Fifth Circuit avoids inquiring whether the practice in question is central to the prisoner’s religious doctrine “to avoid the greater harm

. . . of having courts presume to determine the place of a particular belief in religion.” *Adkins*, 393 F.3d at 570. Instead, the Fifth Circuit asks whether the challenged policy “truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs.” *Baranowski v. Hart*, 486 F.3d 112, 124 (5th Cir. 2007) (quoting *Adkins*, 393 F.3d at 569–70).

Using a slightly different construction of the “substantial burden” test, the Third Circuit requires a prisoner to prove he is either (1) “forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates versus abandoning one of the precepts of his religion in order to receive a benefit” or (2) that “the government puts substantial pressure on [him] to substantially modify his behavior and to violate his beliefs.” *Klem*, 497 F.3d at 277. In a similar vein, the Fourth Circuit finds a substantial burden where the government regulation “places the person between a rock and a hard place”; that is, where the government policy forces a choice between “following the precepts of her religion and forfeiting government benefits, on the one hand, and abandoning one of the precepts of her religion on the other hand.” *Incumaa v. Stirling*, 791 F.3d 517, 525 (4th Cir. 2015). These constructions find considerable support in *Lyng v. Northwest Indian Cemetery Protective Association*, which held that the government is not required to justify interference with religious exercise if the government action does not “penalize” religious exercise or “coerce” violations of religious beliefs. 485 U.S. 439, 449 (1988). *Cf. Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App’x 729, 736 (6th Cir. 2007) (“[I]n tension with this broader definition of religious exercise, Congress has cautioned that we are to interpret ‘substantial burden’ in line with the Supreme Court's ‘Free Exercise’ jurisprudence, which suggests that a ‘substantial burden’ is a difficult threshold to cross.”).

To be clear, this preliminary question is whether SMU policy imposes a substantial burden on Targaryen, not whether it is possible for Targaryen to engage in other religious practices. *Holt*, 135 S. Ct. at 862.

Here, we find that the SMU policy did not substantially burden Targaryen’s right to free exercise. Drawing from Third and Fourth Circuits’ definitions of “substantial burden,” we conclude that Targaryen was not forced between a proverbial “rock and hard place” by the SMU policy. Appellant Velaryon did not coercively force Targaryen to choose between punishment and prayer. Nor did Velaryon penalize or threaten to penalize Targaryen for practicing his religion. Rather, the SMU’s nondiscriminatory restriction on group worship simply made this form of prayer unavailable to Targaryen for a short time.

The facts of this case are entirely distinct from *Holt* and *Burwell*, in which plaintiffs claiming RLUIPA and RFRA protection, respectively, were forced to choose between remaining faithful to their religious practices and violating government policy. The government forced those plaintiffs to make a difficult choice that interfered with their free religious exercise. Here, SMU policy does not put any pressure on Targaryen to violate his religious beliefs. Thus, he cannot meet the required burden of establishing that SMU policy imposes a substantial burden. *See generally* Chad Flanders, *Substantial Confusion About “Substantial Burdens”*, 2016 U. Ill. L. Rev. Online 27 (2016) (distinguishing between “direct or indirect *coercion*” and mere “inconvenience on religious exercise” under RFRA).

Our conclusion also finds support in *Baranowski*, a Fifth Circuit decision. 486 F.3d at 112. There, a prison’s refusal to allow congregational worship among Jewish inmates in the absence of an outside volunteer or rabbi did not impose a substantial burden on the plaintiff inmate under RLUIPA. Due to the prison policy at issue, Jewish prisoners could not celebrate the Sabbath or other holy days in congregation. The Court held that this deprivation did not rise to the level of a substantial burden on plaintiff’s rights. It simply did not amount to “tru[e] pressur[e]” on the plaintiff. *Id.* at 124. Similarly here, a short deprivation of the right to congregational worship in the SMU does not rise to the level of a substantial burden on Targaryen’s religious practice.

Moreover, courts generally hold that a restriction on congregational worship is not actionable under RFRA if the restriction flows from “a dearth of outside qualified volunteers” to attend and help control the congregation. *Adkins*, 393 F.3d at 571; *see also Smith v. Kyler*, 295 F. App’x 479, 483 (3d Cir. 2008). Although here, the SMU’s explicit prohibition on congregational

worship distinguishes this case from *Adkins*, *Kyler*, and *Baranowski* in this respect, it is worth noting that courts do not require prisons to provide an opportunity for congregational worship if the opportunity does not readily exist.

2

In the alternative, assuming that SMU’s policy poses a substantial burden to Targaryen’s free religious exercise, his claim still fails under RFRA. Even if a government policy substantially burdens a plaintiff’s free exercise, the policy is lawful if it is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000bb-1(b).

Appellant Velaryon meets this burden of proof. SMU’s policy serves a compelling governmental interest and is the least restrictive means of furthering that interest. Lord Velaryon claims that SMU’s limited restriction on congregational worship maintains prison safety and order. The District Court did not squarely address the issue of whether this interest is sufficiently compelling under RFRA; the court apparently took the import of this interest for granted. However, the District Court concluded that SMU’s policy is not the least restrictive means of maintaining prison safety and order. We disagree.

i

*Holt* requires courts hearing RFRA and RLUIPA claims to scrutinize a purported governmental interest according to the particular facts of each case. *Holt*, 135 S. Ct. at 863. Appellant Velaryon thus bears the burden of establishing not only that SMU policy enhances prison safety and order in a general sense, but also that the interest in prison safety and order is “satisfied through application [of SMU’s policy] . . . ‘*to [Targaryen]’—the particular claimant*.” *Id.* (emphasis added) (quoting *Burwell*, 134 S. Ct. at 2779).

On the other hand, we note that the Supreme Court has refused to “elevate accommodation of religious observances over an institution’s need to maintain order and safety.” *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005); *see also Grutter v. Bollinger*, 539 U.S.

306, 327 (2003) (finding that the “compelling governmental interest” standard is highly contextual); *Hamilton v. Schriro*, 74 F.3d 1545, 1550 (8th Cir. 1996) (“[C]ourts should be loath to substitute their judgment for that of prison officials and administrators.”). This

Court hereby adopts the Eighth Circuit’s contention that “[a] prison’s interest in order and security is always compelling.” *Fowler*

*v. Crawford*, 534 F.3d 931, 939 (8th Cir. 2008).

Here, it is apparent that SMU’s restriction on congregational worship furthers a compelling governmental interest in prison safety, discipline, and control. On a general level, “inducing prisoners to comply with prison rules by limiting certain liberties” serves this interest. *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 412 (D. Mass. 2008), *aff’d sub nom. Crawford v. Clarke*, 578 F.3d 39 (1st Cir. 2009) (finding that a prison’s restriction on Jumu’ah worship served a compelling State interest). As applied to Targaryen, specifically, this policy surely serves Lord Velaryon’s purported interests by reducing the risk of disruption among inmates caused by unequal treatment of prisoners with different religious practices. The policy also undoubtedly incentivizes Targaryen to progress quickly through the regimented SMU program, thereby increasing the likelihood he will exhibit good behavior.

ii

This Court additionally finds that SMU’s policy, while restrictive, is the least restrictive means of furthering Appellant’s interest in maintaining prison security and order. Under RFRA, after the defendant convinces the court that a challenged policy furthers a compelling governmental interest, the defendant must additionally prove that the government “lacks other means of [furthering that interest] without imposing a substantial burden on the exercise of religion.” *Holt*, 135 S. Ct. at 864 (quoting *Burwell*, 134 S. Ct. at 2780).

This “least-restrictive-means standard” is, admittedly, “exceptionally demanding.” *Holt*, 135 S. Ct. at 864 (quoting *Burwell*, 134 S. Ct. at 2780). Yet the Supreme Court has long acknowledged the danger of applying the standard too strictly; indeed, any judge could “come up with something . . . a little less ‘restrictive’ in almost any situation,” but “such a draconian constriction of RLUIPA’s [and RFRA’s] least restrictive means test would . . . be inconsistent with congressional intent.” *Fowler v. Crawford*, 534 F.3d 931, 941 (8th Cir. 2008) (citing *Illinois State Board Electricity v. Socialist Workers Party,* 440 U.S. 173, 188–89 (1979) (Blackmun, J., concurring)). Thus, although Appellant Velaryon may not rely on “conclusory statements” to satisfy the least- restrictive-means standard, *Spratt v. Rhode Island Department Of Corrections*, 482 F.3d 33, 42 (1st Cir. 2007), this Court will generally defer to Appellant’s judgment of the necessity of SMU’s restrictive policy.

Bearing this deference, this Court finds that Appellant has clearly met his burden of establishing that a restriction on congregational worship is the least restrictive means of maintaining prison safety and order among early-Stage SMU prisoners. First, the policy clearly prevents gang violence, which is more likely to occur among early-Stage SMU prisoners than others in the Driftmark Prison system. Second, the policy clearly relieves the SMU of the logistical and economic burden of hiring additional guards to supervise congregational worshippers. Third, Appellant has demonstrated that the SMU’s institutional strength derives largely from its regimented discipline regime. It is reasonable to believe that the progression of freedoms granted to SMU prisoners from Stage One to Stage Four incentivizes good behavior, increasing prison safety and order and decreasing the time each prisoner spends in the SMU before graduating from the program. Unlike “superficial” justifications for restrictive policies advanced by defendants who do not meet RFRA’s standard of proof, Appellant Velaryon has “explain[ed] in a responsive fashion why the [SMU] policy’s burdens on religious exercise are justified” in this case. *Lovelace v. Lee*, 472 F.3d 174, 193 (4th Cir. 2006).

This Court does acknowledge that, where other prisons manage to successfully accommodate the religious exercise in question, the prison denying an accommodation “must, at a minimum, offer persuasive reasons why it believes that it must take a different course.” *Holt*, 135 S. Ct. at 866. *See also Procunier v. Martinez*, 416 U.S. 396, 414, n.14 (1974) (“While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.”). In this case, Appellant must explain why prisoners in Stages One through Three at the SMU are denied the privilege of participating in congregational worship, whereas prisoners in Stage Four and other non-SMU prisoners at Driftmark Prison are permitted to partake in such worship. Again, deferring to Appellant Velaryon’s experience with the SMU prison population, this Court finds that early-Stage SMU prisoners should be subject to greater restrictions for the three reasons outlined by Lord Velaryon, stated above. Additionally, this Court tends to agree with sister circuits that “[e]vidence of the rules in other prisons is not, by itself, sufficient to call into question the prison’s explanation.” *Mays v. Springborn*, 575 F.3d 643, 647 (7th Cir. 2009); *see also Spratt*, 482 F.3d at 42.

The District Court in this case nonetheless concluded that because congregational worship is available to non-SMU prisoners and Stage Four SMU prisoners, SMU’s current policy cannot be the least restrictive means of maintaining safety and order. The District Court no doubt derived this conclusion from *Holt v. Hobbs*, in which the Supreme Court urged wariness of “underinclusive” restrictive policies. In *Holt*, the Court found that a prison policy restricting one prisoner from growing a beard for religious purposes but permitting another prisoner to maintain a beard for dermatological purposes could not be the least restrictive means of promoting prison safety. The Court further urged courts not to assume that plausible, less restrictive alternate policies will be ineffective simply because the defendant so asserts. *Id.* at 866 (citing *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 824 (2000).

However, the District Court in this case erred by failing to distinguish the truly “underinclusive” policy at issue in *Holt* with the technically “underinclusive,” yet benign, SMU policy. Unlike in *Holt*, the SMU policy applies equally to all SMU prisoners in Stages One through Three. The policy technically exempts prisoners in Stage Four and non-SMU prisoners, but this Court must defer to the prison’s findings that the restrictive policy is no longer necessary to promote prison safety and control beyond Stages One through Three in the SMU. Thus, the “underinclusivity” of the SMU’s restriction on congregational worship does not pose an obstacle to Appellant’s least-restrictive-means argument.

This Court will not be the first or last to hold that congregational worship is simply unfeasible in a detention setting. *See, e.g.*, *Brown v. Johnson*, 743 F.2d 408, 412 (6th Cir. 1984) (“Although the plaintiffs were forbidden to hold group services, individual counselling and religious ministry sessions were available

. . . indicating the prison officials’ attempt to accommodate the plaintiffs’ interests . . . .”). Here, SMU policy did not substantially burden Targaryen’s religious exercise. Even if it did, the policy was lawful under RFRA; it is the least restrictive means of maintaining safety and order in the SMU.

III

In no way do we diminish the importance of group worship, and we agree with the district court that congregational worship is a “fundamental religious experience.” It provides spiritual reassurance that we are not alone in our faith. Furthermore, incarceration is not designed to infringe on religious expression, which can often serve as a means of rehabilitation. When the two conflict, however, reasonable restrictions on the free exercise of religion are not only Constitutional, but necessary.

For the foregoing reasons, we reverse the judgment of the district court, and direct the court to enter judgment in favor of Appellant.

*It is so ordered.*

No. 21–817

# In the Supreme Court of the United States



## Daemon Targaryen,

***Petitioner*, v.**

## Lord Velaryon,

**Master of the Driftmark Prison,**

***Respondent*.**



The Petition for Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit is granted and limited to the following questions:

1. Whether the application of the Special Management Unit Policy at Driftmark Prison prohibiting congregational prayer violated Petitioner’s right to freely exercise his religion; and
2. Whether the application of the Special Management Unit Policy at Driftmark Prison prohibiting congregational prayer violated Petitioner’s rights under the Religious Freedom Restoration Act.