RODRIGUEZ V. BURNSIDE: PRISON'S SHOWER POLICY SURVIVES FIRST AMENDMENT SCRUTINY OVER PRISONER'S FREE EXERCISE CHALLENGE

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In *Rodriguez v. Burnside*, the United States Court of Appeals for the Eleventh Circuit considered whether two Georgia prison policies that governed the transportation of inmates to showers interfered with the plaintiff inmate's First Amendment right to free exercise of religion.[1] "To test whether a state prison regulation violates an inmate's constitutional rights, courts ask whether the regulation is reasonably related to a legitimate penological interest."[2] Because the prison's regulation survived this strict scrutiny, the Eleventh Circuit affirmed summary judgment in favor of the prison officials.[3]

Plaintiff Hjalmar Rodriguez was incarcerated at Hays State Prison.[4] After killing a fellow inmate, "prison officials moved [Rodriguez] into the Special Management Unit at the Georgia Diagnostic and Classification Prison."[5] This unit was designed for inmates that posed significant threats to prison security and therefore enforced more rigorous safety policies on resident inmates.[6] To transport Special Management Unit inmates to the showers, officers followed a strict set of procedures.[7] Inmates required the "dedicated attention of between two and five officers;" they were only permitted to wear "boxers and shower shoes when walking to the shower" and had their items thoroughly checked for contraband.[8] This process, though admittedly tedious, was designed to ensure the safety of the prison as well as to "stop the flow of contraband and weapons that could be hidden in clothing and taken to the shower."[9] Due to the time commitment required to

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[1] Rodriguez v. Burnside, 38 F.4th 1324, 1328 (11th Cir. 2022).

[2] *Id.*

[3] *Id.* at 1335.

[4] *Id.* at 1328.

[5] *Id.*

[6] *Id.*

[7] *Rodriguez*, 38 F.4th at 1328.

[8] *Id.* at 1328–29.

[9] *Id.* at 1329.

transport these inmates to the showers, inmates in this unit were limited to three showers per week.[10]

Rodriguez objected to the shower policies, arguing they violated his First Amendment right to free exercise of religion.[11] "As a Muslim, Rodriguez practiced *ghusl*, a ritual bathing that involves washing the whole body multiple times and that must be completed every [twenty-four] hours."[12] Although Rodriguez conceded that he could perform a simpler, alternative bathing ritual called *wudu*, Rodriguez believed that prison officials were violating his First Amendment rights by not allowing him to shower daily.[13] "Rodriguez's religious beliefs also dictated that he dress modestly 'by wearing garments that cover from mid-stomach or the naval to the bottom of the knees' around anyone but immediate family."[14] These beliefs conflicted with the prison's shower transport policy of only allowing "boxers and shower shoes."[15] To challenge the policies, "Rodriguez sued several prison officials under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc–1, and 42 U.S.C. § 1983," claiming the policies violated the First and Fourteenth Amendments by restricting his rights to freely exercise his religion.[16] The United States District Court for the Middle District of Georgia granted summary judgment in favor of the prison officials.[17]

Reviewing *de novo* the district court's decision, the Eleventh Circuit emphasized that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution."[18] However, these protections may be limited if they conflict with the inmate's prisoner status or with the "legitimate penological objectives of the corrections system."[19] Since operating a prison is inherently difficult, prison officials are afforded broad deference and courts "exercise judicial restraint regarding prisoner complaints."[20] Under this standard, prison policies that limit an inmate's constitutional rights must be "reasonably

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[10] *Id.* at 1328.
[11] *Id.* at 1329.
[12] *Id.*
[13] *Rodriguez*, 38 F.4th at 1329.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 1330 (quoting Turner v. Safley, 482 U.S. 78, 84 (1987)).
[19] *Rodriguez,* 38 F.4th at 1330 (quoting Pesci v. Budz, 935 F.3d 1159, 1165 (11th Cir. 2019)).
[20] *Id*.

related to legitimate penological interests."[21] Plaintiff inmates must show that "the logical connection between the regulation and the asserted goal is so remote as to render the policy . . . irrational."[22]

The United States Supreme Court has outlined a primary factor and three secondary factors to frame the court's analysis of whether a prison regulation is reasonably related to a legitimate penological interest.[23] Primarily, courts ask whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it."[24] Secondarily, courts ask (1) whether the inmate had "alternative means" to exercise his religion; (2) how much of an impact that accommodating the inmate's request would have on the allocation of the prison's resources; and (3) whether any "obvious, easy alternatives" to the regulation exist, which would suggest the policy is inherently unnecessary.[25] The secondary factors merely provide a lens through which to view the primary analysis—"whether the prison regulation is reasonably related to legitimate penological interests."[26] If this connection exists, the prison policy is valid and enforceable; if not, "the regulation fails, irrespective of whether the other factors tilt in its favor."[27]

First analyzing the prison's "three-showers-per-week limitation," the Eleventh Circuit re-emphasized that prisons "deserve deference in how they allocate [limited prison] resources."[28] The court highlighted that inmate shower transport involves significant risk while promoting prison security is "perhaps the most legitimate of penological goals."[29] Using the primary analysis factor, the court found that a rational connection existed "between limiting the frequency of showers and furthering safety and security" because the inmates in the Special Management Unit were the "most 'violent, disruptive, predatory' inmates in the Georgia prison system."[30] Therefore, the prison's three-shower-per-week limit was a "reasonably calculated response[] to the risks involved in transporting this category of inmates."[31] Prison officials do

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[21] *Id.* (quoting *Turner*, 482 U.S. at 89).
[22] *Id.* (quoting *Turner*, 482 U.S. at 89–90).
[23] *Id.*; *see Turner*, 482 U.S. at 89–91.
[24] *Rodriguez*, 38 F.4th at 1330; *Turner*, 482 U.S. at 89.
[25] *Rodriguez*, 38 F.4th at 1330; *Turner*, 482 U.S. at 90.
[26] *Rodriguez*, 38 F.4th at 1331.
[27] *Id.*
[28] *Id.*
[29] *Id.* (quoting Overton v. Bazzetta, 539 U.S. 126, 133 (2003)).
[30] *Id.*
[31] *Id.*

not need to present evidence of an actual security breach to justify a policy; rather, prison officials may anticipate security breaches and develop policies to mitigate the risk of a security breach.[32] Thus, the policy limiting inmates in the Special Management Unit to three showers per week was reasonable.[33]

The Eleventh Circuit concluded that Rodriguez had many alternative opportunities to exercise his religion, including *wudu*, an adjusted meal schedule to observe Ramadan, and a "Friday Jumah service."[34] In addition, "daily showers would have been a severe drain on the prison's limited resources" and would have interfered with the prison's operations.[35] Finally, Rodriguez was "not proposing an alternative policy" but rather was requesting "an individual exemption" by proposing to be moved to a cell with a personal shower.[36] To successfully challenge the weekly shower limitation, "Rodriguez must do more than propose a personal accommodation. He must present an obvious alternative policy that could replace the current one on a prison-wide scale."[37] Thus, the Eleventh Circuit determined that the alternative means, resource allocation, and easy alternative policy factors disfavored Rodriguez.[38]

The Eleventh Circuit then used the same four factors to "consider whether it was reasonable to limit prisoners to wearing only boxers and shoes to the shower."[39] The court concluded that the policy was warranted because "contraband could be hidden in clothing" and safety is perhaps the most important of penological goals.[40] Analyzing the primary factor, the court concluded that this clothing policy "rationally advance[d]" the legitimate penological interest of officer and inmate safety because "more clothing presents a greater safety threat."[41] The Eleventh Circuit further found that the remaining three factors "implicate[d] much of the same reasoning behind the [three-showers-per-week] policy."[42] Specifically, "Rodriguez was allowed alternative

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[32] *Rodriguez*, 38 F.4th at 1331.

[33] *Id.*

[34] *Id.* at 1332. The Friday Jumah Service involved a Muslim chaplain participating in Friday prayer with those prisoners who wished to participate. *Id.*

[35] *Id.*

[36] *Id.*

[37] *Rodriguez,* 38 F.4th at 1332.

[38] *Id.* at 1333.

[39] *See id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

means of exercising his religious beliefs," such as *wudu* and Friday prayer services.[43] Allowing more clothing would require the attention of more officers to transport inmates to the showers.[44]

Rodriguez presented an alternative solution that the court found worth analyzing.[45] Rodriguez suggested that since "prisoners must never be removed from their cells in anything more than a t-shirt, boxers, and shower shoes," this policy should also apply to shower transports.[46] However, the court noted that although prisoners are allowed to wear shirts during other activities, this did not "render it illogical . . . to allow less clothing on the way to the shower."[47] The court concluded that "[b]ecause Rodriguez's proposal would introduce the exact risk of harm the prison is working to prevent, it [was] not an obvious, easy alternative to the existing policy."[48] Thus, considering all four factors, the Eleventh Circuit concluded that the prison officials "did not violate Rodriguez's First Amendment right to freely exercise his religion."[49]

The Eleventh Circuit reasoned that, although Rodriguez was still entitled to constitutional rights as a prisoner, prison officials may curtail constitutional rights if the rights conflict with a legitimate penological interest.[50] Since accommodating Rodriguez's request would have created undue risk and strain on the limited resources of the prison, the prison's shower transport policies survived First Amendment scrutiny.[51] Furthermore, Rodriguez was able to participate in constitutionally adequate alternative religious ceremonies.[52] Therefore, "Rodriguez's constitutional challenge fail[ed]" because his requests directly

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[43] *Rodriguez*, 38 F.4th at 1333.

[44] *Id.* at 1333–34.

[45] *See id.* at 1334.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Rodriguez*, 38 F.4th at 1334. The Eleventh Circuit also addressed whether the prison officials were entitled to qualified immunity. *Id.* Qualified immunity shields public officials from liability where the officials "are acting within the scope of their discretionary authority" and applies unless a plaintiff can show "(1) that the officials violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." *Id.* (internal quotation marks omitted) (quoting Wade v. United States, 13 F.4th 1217, 1225 (11th Cir. 2021)). The Eleventh Circuit concluded that the prison officials were entitled to qualified immunity because Rodriguez failed to show that they would have had reasonable warning that they were violating a "clearly established" constitutional right. *Id.* Therefore, "[e]ven if the prison's policies were improper, the prison officials would be entitled to qualified immunity." *Id.* at 1335.

[50] *Id.*

[51] *See Rodriguez*, 38 F.4th at 1335

[52] *See id.* at 1332.

conflicted with the legitimate safety concerns of the prison.[53] The Eleventh Circuit affirmed summary judgment in favor of the prison officials.[54]

[53] *Id.* at 1335.
[54] *Id.*