



NYU | LAW

MOOT COURT BOARD

The Citadel Prison,
Petitioner,

-against-

Rick Sanchez,
Respondent.

Memorandum of Law

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QUESTION PRESENTED

Whether an inmate claiming that a prison policy violated his First Amendment right to freely exercise his religion must show that the policy imposed a substantial burden on his religious practice.

STATEMENT OF FACTS

The events alleged in this case took place within The Citadel Prison (“The Citadel”), a corrections facility located in the state of Altaria. The Citadel houses mostly people who have been convicted of white-collar crimes and are serving sentences of at least ten years. Rick Sanchez is incarcerated at The Citadel and, at the time this action commenced in 2025, was serving the third year of a fifteen-year-long sentence. In 2024, Mr. Sanchez converted to the little-known religion of Solsticism. Followers of Solsticism believe Holy Enlightenment can be achieved by harnessing the power of the Solstices.

Morty Smith is a corrections officer at The Citadel. For the past twenty years, he has exercised policing and patrolling authority over Cell Block B+, where Sanchez is housed. Officer Smith runs a tight ship and was named “Employee of the Year” in 2024, though his disciplinary record is not without blemishes. In 2015, Officer Smith was written up for being unnecessarily aggressive and manhandling an incarcerated person. In 2019, he was reprimanded by his supervisor for improperly confiscating an incarcerated person’s Quran and for telling them, “Your time would be better spent reading the Bible.” Officer Smith is a devout fundamentalist Christian and believes that all incarcerated people should be educated on “Christian values” as part of their rehabilitation process.

During the first year of his sentence, Mr. Sanchez was regularly lauded by Officer Smith for being an “excellent example to the other inmates.” However, during the third year of his sentence, Sanchez was frequently written up by Officer Smith for a variety of minor alleged infractions. Mr. Sanchez believed that these write-ups were motivated by Officer Smith’s disdain for Solsticism, but Mr. Sanchez did not raise these concerns with anyone.

In August 2025, Officer Smith confiscated Mr. Sanchez’s book, “A Guide to Solsticism,” because, allegedly, it “promoted violence.” In particular, Officer Smith was concerned about a chapter on martial arts techniques that can purportedly be used to harness the energy of the sun.

On September 22, 2025, Mr. Sanchez sought to observe the autumnal equinox in accordance with the customs of Solsticism. Accordingly, Mr. Sanchez requested The Citadel provide him a vegetarian meal, a quiet place to meditate, access to his copy of “A Guide to Solsticism” (as it contains the autumnal equinox hymns), and

thirty minutes of recreational yard time to perform a religious dance at 8:44 AM. The Citadel gave Mr. Sanchez a vegetarian meal and a quiet place to meditate, but it denied his other requests.

Mr. Sanchez lodged a complaint with prison administrators. After a months-long investigation, the prison administrators dismissed his complaint.

PROCEDURAL HISTORY

After the dismissal of his complaint, Mr. Sanchez filed suit against The Citadel, alleging that it violated his right to freedom of expression under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). Specifically, he argued that The Citadel imposed a burden upon his exercise of his religious beliefs by prohibiting him from celebrating the autumnal equinox properly. Both parties filed motions for summary judgment. The district court granted Defendant’s motion. Plaintiff subsequently appealed to the Fourteenth Circuit.

The district court ruled that The Citadel’s actions did not violate Mr. Sanchez’s freedom of expression. The district court applied the plain language of RLUIPA, determining that to hold a prison liable for violating an incarcerated person’s right to freedom of religious exercise, the incarcerated person must demonstrate that the prison’s actions imposed a substantial burden upon their religious practice. *Cf. Smith v. Goord*, 541 F. App’x. 133, 134 (2d Cir. 2013) (affirming a judgment in favor of the defendant prison where the plaintiff could not prove that his exercise of Islam was substantially burdened by the lack of Islamic services at the facility).

The Fourteenth Circuit reversed in part and affirmed in part. For the RLUIPA claim, the Fourteenth Circuit upheld the district court’s ruling, holding that Plaintiff did not demonstrate a substantial burden on his religious rights. The Fourteenth Circuit reversed the district court’s ruling on the First Amendment claim, holding that incarcerated people are not required to demonstrate that the prison’s actions substantially burdened their religious practices. The court found that The Citadel had violated Mr. Sanchez’s right to free exercise because he demonstrated a burden on his sincerely held religious beliefs.

The Citadel filed a petition for a writ of certiorari, which the Supreme Court granted. This is a case of first impression for the Supreme Court, which it reviews de novo. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414 (1971).

SUMMARY

This case concerns the standard the courts should apply when assessing whether a prison’s policies violate an incarcerated individual’s First Amendment

right to freely exercise their religion. At the summary judgement stage, a court assessing a free exercise claim must determine what degree of interference with their religious practice an incarcerated plaintiff must proffer to demonstrate that their First Amendment rights were violated. In other words, the question is whether a plaintiff must show that a prison policy substantially burdened their religious rights to survive a motion for summary judgment.

Some circuits require a plaintiff making a RLUIPA claim to demonstrate—as a threshold matter—that the government’s actions imposed a substantial burden on their religious exercise. Others have adopted a less demanding standard. The Second Circuit requires only that the plaintiff demonstrate *a* burden on their religious exercise. *See Kravitz v. Purcell*, 87 F.4th 111, 129–30 (2d Cir. 2023). The Sixth Circuit has done away with the burden requirement altogether and inquires only whether the plaintiff is sincere in their beliefs. *See Ackerman v. Washington*, 16 F.4th 170, 180–81 (6th Cir. 2021).

Petitioner will argue for a reversal of the Fourteenth Circuit’s decision regarding the First Amendment claim. First, it will argue that the Supreme Court should adopt the substantial burden test that is used in the Fourth, Eighth, Tenth, and D.C. Circuits. Applying the facts of this case, Petitioner will argue that Mr. Sanchez has not demonstrated that his religious beliefs were substantially burdened by the prison’s policies and actions. Without the threshold showing needed to make out a *prima facie* case, the district court granted Petitioner’s motion for summary judgment. The district court’s application of the substantial burden test to RLUIPA claims, Petitioner could argue, harmonizes the statute with the First Amendment. *See English v. Trump*, 279 F. Supp. 3d 307, 327 (D.D.C. 2018) (noting that constructions of a statute that are harmonious with the Constitution are preferred to other constructions). Further, allowing a plaintiff to show a non-substantial burden would undermine the government’s penological interests. *Adams v. Comm’r*, 170 F.3d 173, 177 (3d Cir. 1999) (noting that “Religious beliefs can be accommodated . . . but there is a point at which accommodation would radically restrict the operating latitude of the legislature”). Petitioner may argue that adopting a test as broad as the one embraced by the Second Circuit will give rise to meritless claims that will interfere with the daily operation of the criminal justice system. In the alternative, Petitioner could argue that, even under a lower standard, Mr. Sanchez’s claim fails because his beliefs are not sincerely held.

Respondent will argue for the Fourteenth Circuit’s ruling to be upheld and that the substantial burden test is not appropriate. This argument will revolve around the Supreme Court’s general stance against passing judgment on the importance or unimportance of an individual’s religious beliefs, which a substantial burden test would force courts to do. *See, e.g., Emp’t Div. v. Smith*, 494 U.S. 872, 886–87 (1990) (adopting a narrower reading of the Free Exercise Clause because judges are not meant to inquire into the centrality of particular beliefs or practices to a faith); *Ford*

v. McGinnis, 352 F.3d 582, 593 (2d Cir. 2003) (finding that the substantial burden test was inappropriate where an incarcerated individual was not provided with a meal for Eid because courts are ill-suited to make decisions regarding the importance of one's religious beliefs). Respondent may contend that, where the substantial burden test has been applied, courts have conflated First Amendment claims with RLUIPA claims, misapplying the statute. Furthermore, the specter of a flood of meritless claims is misplaced because inquiring into the sincerity of a plaintiff's beliefs adequately weeds out baseless claims. In the alternative, Respondent could argue that his religious beliefs were substantially burdened, such that he still prevails even under Petitioner's test. Lastly, Respondent could argue that a decision for Petitioner would result in the widespread deprivation of incarcerated individuals' First Amendment rights. *See Bell v. Wolfish*, 441 U.S. 520, 545 (1979) (emphasizing that incarcerated individuals maintain their Constitutional rights while they are incarcerated).

DISCUSSION

I. A Circuit Split Exists on the Appropriate Test, Stemming from Inconsistent Supreme Court Rulings.

The Supreme Court has never directly addressed whether the substantial burden test applies in the prison context. Nonetheless, the Fourth, Eighth, Tenth, and D.C. Circuits require an incarcerated individual who alleges a First Amendment Free Exercise Clause violation to demonstrate that the policy at issue imposes a substantial burden on their religious practice. *See, e.g., Firewalker-Fields v. Lee*, 58 F.4th 104, 114 (4th Cir. 2023) (noting that even after an incarcerated individual demonstrates an initial showing of a substantial burden, the policy may nonetheless be upheld if it is reasonably related to penological interests); *Blair v. Raemisch*, 804 F. App'x. 909, 916–17 (10th Cir. 2020) (requiring that an incarcerated individual plead facts sufficient to suggest that their religious beliefs were substantially burdened in Free Exercise claims); *Gladson v. Iowa Dep't of Corr.*, 551 F.3d 825, 832 (8th Cir. 2009) (explaining that demonstrating a substantial burden is a threshold matter for Free Exercise claims arising under RLUIPA).

The Second, Third, Sixth, and Ninth Circuits, however, no longer require demonstrating a substantial burden as a threshold matter. *See Kravitz v. Purcell*, 87 F.4th 111, 130 (2d Cir. 2023) (holding that a plaintiff need only show a burden, not a substantial burden, on their sincere religious beliefs); *Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 170 (3d Cir. 2002) (holding that plaintiffs need only show “a sufficient interest in the case to meet the normal requirement of constitutional standing,” rather than a substantial burden); *Hartmann v. Stone*, 68 F.3d 973 (6th Cir. 1995) (outlining the *Tenaflly* test and rejecting the substantial burden requirement).

This lack of clarity emerged over the past six decades. In *Sherbert v. Verner*, the Court invoked the substantial burden requirement in a Free Exercise claim. 374 U.S. 398, 403–07 (1963) (holding that the plaintiff succeeded in her claims because she was able to demonstrate a substantial infringement of her rights and the government was unable to demonstrate a compelling state interest in response). In claims made by incarcerated peoples, the *Sherbert* standard was partly adopted by the Court in a multi-part inquiry. *See, e.g., Turner v. Safely*, 482 U.S. 78, 89–92 (1987) (upholding the constitutionality of a prison policy that limited correspondence between incarcerated people). The Court held that even if a regulation or policy substantially burdens the exercise of a religious belief, it is still permissible if: (1) it is reasonably related to a penological interest, (2) incarcerated people have other avenues through which to exercise their asserted right, and (3) providing an accommodation would create unwanted tension in the prison. *Id.* To have a viable alternative avenue requires that incarcerated individuals have *some* means through which they may practice their religion and does not require a prison to grant all requests for religious accommodations. *Rodriguez v. Burnside*, 38 F.4th 1324, 1332 (11th Cir. 2022).

Confusion has now arisen regarding the appropriate standard by which free exercise claims are evaluated because *Turner* has since been superseded by RLUIPA. *See* 42 U.S.C. § 2000cc (2000). Although the text of RLUIPA makes it clear that a plaintiff must allege a substantial burden on their religious beliefs to survive the summary judgment stage, it is unclear whether this language (and burden) applies to civil rights claims arising under § 1983. *See id.* (“No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution.”).

Where the Establishment Clause is implicated, in the past the Court applied *Lemon v. Kurtzman* and its line of cases, which require laws and policies that comply with the Establishment Clause to have a secular purpose and secular effect, and not to “foster an excessive government entanglement with religion.” 403 U.S. 602, 612–13 (1971). Following *Lemon*, its test was invoked inconsistently or sometimes ignored altogether. *See* Mark Strasser, *Establishment Clause Health on a Restricted, Artificial Lemon Diet*, 29 B.U. Pub. Int. L.J. 169, 169–70 (2019). Finally, in 2022, the Court abandoned the *Lemon* test altogether due to the inconsistent outcomes it invited. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022). The Court’s repudiation of *Lemon* left lower courts without guidance regarding the applicable standard in Free Exercise claims. *See Firewalker-Fields*, 58 F.4th at 111 (remanding a case for further proceedings on the Establishment Clause issue so that the lower court could determine which analysis to apply in light of the renouncement of the *Lemon* test).

Subjected to this uncertainty, courts, tracking RLUIPA’s text, have applied the substantial burden test in § 1983 claims about free exercise of religion that arise

in prisons. *See, e.g., Nicholson v. Ferreira*, No. 3:20cv1214(KAD), 2021 U.S. Dist. LEXIS 18381, at *15 (D. Conn. Feb. 1, 2021) (employing the substantial burden test to determine whether an incarcerated person’s First Amendment rights were violated by the alleged confiscation of his prayer rug and Quran); *Owens-Ali v. Pennell*, 672 F. Supp. 2d 647, 652 (D. Del. 2009) (employing the substantial burden test to determine whether an incarcerated person’s First Amendment rights were violated by refusal of a religious diet and transfer to different facility); *Firewalker-Fields*, 58 F.4th at 111 (requiring an incarcerated person to make a *prima facie* case demonstrating that the prison’s policies that kept him from attending Friday prayer services were substantially burdensome); *Richardson v. Clarke*, 52 F.4th 614, 622 (4th Cir. 2022) (“A plaintiff seeking relief under the RLUIPA bears the initial burden of proving that the challenged policy ‘implicates his religious exercise.’”); *Brown v. Collier*, 929 F.3d 218, 229 (5th Cir. 2019) (holding that the RLUIPA prevents government practices that substantially burden the religious exercise of an incarcerated individual unless the practice furthers a compelling governmental interest and is the least restrictive means of doing so).

II. The Parties Will Dispute Whether the Substantial Burden Test, or Some Lower Standard, Applies.

Petitioner will argue that substantial burden test applies, as it is supported by the plain text of RLUIPA and blocks frivolous claims. Respondent, on the other hand, will argue a less strict standard applies. Respondent may argue that this Court adopt the standard set out in *Kravitz v. Purcell*, under which a plaintiff need only demonstrate that they suffered a burden. 87 F.4th 111, 125–27 (2d Cir. 2023). Alternatively, Respondent may argue that courts should inquire into the sincerity of the belief in question, following *Ackerman v. Washington*. 16 F.4th 170, 180 (6th Cir. 2021).

A. Petitioner Will Argue That the Substantial Burden Test Applies Because It Safeguards Against Self-Serving Claims and Congressional Silence Implies Support for the Test.

In support of the substantial burden standard, Petitioner may make various arguments. Their strongest argument would be that the substantial burden test sets an appropriately high bar for Free Exercise claims; otherwise, there is a concern that the decisions in *Sherbert* and *United States v. Seeger* would spark meritless religious freedom claims. *See* John Sexton, *Toward a Constitutional Definition of Religion*, 91 Harv. L. Rev. 1056, 1077 (1978); *United States v. Seeger*, 380 U.S. 163, 187 (1965) (holding that a person’s religious practice should be accommodated even if their belief is unorthodox, so long as it is sincerely held); *Sherbert v. Verner*, 374 U.S. 398, 403–07 (1963). This concern was echoed by the D.C. Circuit, which upheld the substantial burden test in § 1983 actions to prevent claims that are “self-serving” or “find [no]

support in the religion to which [the plaintiff] subscribes.” *Levitan v. Ashcroft*, 281 F.3d 1313, 1321 (D.C. Cir. 2002).

Petitioner may also argue that the substantial burden test is necessary to effectively balance genuine religious beliefs with legitimate government interests. *See Roman Catholic Bishop v. City of Springfield*, 724 F.3d 78, 97 (1st Cir. 2013) (calling the substantial burden test a “backstop [for] the explicit prohibition of religious discrimination in RLUIPA’s subsection (b)”).

Petitioner may also invoke the canons of statutory interpretation. Per the Acquiescence Rule, Congress’s silence regarding the substantial burden test in § 1983 claims implies its acceptance of judicial precedent. Petitioner may also argue that adopting a test that requires prisoners to assert any burden, rather than a substantial burden, is overly broad and can lead to confusion.

B. Respondent Will Argue Its Rule Disambiguates RLUIPA and § 1983 Claims and That the Substantial Burden Test Should Not Apply Because It Would Require Courts to Pass Judgment on the Validity of Individuals’ Religious Beliefs.

Respondent will note that RLUIPA and § 1983 claims arise out of different statutes and argue that the Court should not conflate the two. RLUIPA should only be construed to alter the common law if that disposition is made clear in the statute, as doing otherwise would violate the canon presuming against changing the common law. *See United States v. Tex.*, 507 U.S. 529, 534 (1993) (noting that “statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident”). Applying the substantial burden test to § 1983 claims suggests that the RLUIPA has altered the common law, which currently does not provide a uniform standard for § 1983 claims. *See Gittlemacker v. Prasse*, 428 F.2d 1, 6 (3d Cir. 1970) (stating that courts’ “decisions have not been characterized by a uniformity of expression in enunciating standards for measuring the adequacy of a claim under Section 1983”). Nowhere in the statute is it made evident that the RLUIPA was intended to alter the requirements of § 1983 claims. *See* 42 U.S.C. § 2000cc (2000).

In defending the Fourteenth Circuit’s judgement, Respondent could point to the importance of courts not passing judgment on individuals’ religious beliefs. *See Emp’t Div. v. Smith*, 494 U.S. 872, 886–87 (1990); *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715 (1981) (applying the substantial burden test but nevertheless holding that “courts should not undertake to dissect religious beliefs”); *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989). Adopting the substantial burden test requires courts to evaluate the substantiality of an incursion on an incarcerated individual’s religious beliefs, in effect passing judgment on which practices may be worth dispensing with, a task that courts are not well-positioned to accomplish. This, in turn, may lead to unpredictable and unjust results. *See Kravitz*, 87 F.4th at 125

(holding that a denial of Halal food to a Muslim incarcerated individual for fifty-five hours did not constitute a substantial burden).

III. Respondent Will Argue That the Substantial Burden Test Should Not Be Applied Because There Is a Lack of Clarity Regarding the Difference Between a Substantial and Insubstantial Burden. Petitioner Will Argue That the Substantial Burden Test is Necessary to Ensure That Religious Beliefs Are Sincerely Held.

The parties will disagree about whether the substantial burden test is workable. See *Kravitz v. Purcell*, 87 F.4th 111, 120 (2d Cir. 2023) (explaining that the Supreme Court has rejected the premise “that courts can differentiate between substantial and insubstantial burdens”). Either way, both sides will likely argue how these different burdens apply to the facts presented in the record.

Petitioner may offer different formulations of what constitutes a substantial burden. In one formulation, a substantial burden “forces adherents of a religion to refrain from religiously motivated conduct or expression that manifests a central tenet of a person’s religious beliefs, or compels conduct or expression that is contrary to those beliefs.” *McNair-Bey v. Bledsoe*, No. 97-1701, 1998 U.S. App. LEXIS 31162, at *7 (7th Cir. Dec. 9, 1998). The burden must be “more than an inconvenience.” *Graham v. Comm’r*, 822 F.2d 844, 850–51 (9th Cir. 1987), *aff’d sub nom. Hernandez v. Comm’r*, 490 U.S. 680 (1989). Perhaps the most workable standard Petitioner can advance is that a substantial burden is one that has “a tendency to coerce individuals into acting contrary to their religious beliefs or exert substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Patterson v. Cal. Dep’t of Corr. & Rehab*, No. 22-16512, 2023 U.S. App. LEXIS 20174, at *1 (9th Cir. Aug. 4, 2023).

Respondent, on the other hand, will argue a lower standard applies. He might argue that at most, he is required to demonstrate that his beliefs are sincerely held and were violated. See *Kravitz*, 87 F.4th at 123. Respondent will have to contend with concerns that even the *Kravitz* standard is too permissive and would overburden the penal system. Respondent can explain that this standard is not limitless. Even if a plaintiff is able to articulate a sincere religious belief at the summary judgment stage, the state may nevertheless impose a burden on a religious practice if doing so arises out of a strong state interest and the state has examined and rejected less restrictive alternatives in good faith. See John Sexton, *Toward a Constitutional Definition of Religion*, 91 Harv. L. Rev. 1056, 1078 (1978). Respondent may also argue that it is well-established that incarcerated people retain their constitutional rights, especially those related to the First Amendment. See *Beard v. Banks*, 548 U.S. 521, 528 (2006). Thus, given the importance of the First Amendment, a more lenient standard may align more with its purposes.

IV. If the Substantial Burden Test Applies, the Parties Will Dispute Whether Petitioner's Actions Amount to a Substantial Burden or Are Legitimate and Fall Within the Scope of Prison Authority.

If the Court applies the substantial burden test, the parties will disagree as to whether Mr. Sanchez's religious beliefs were substantially burdened.

A. Respondent Will Argue That the Refusal of Extra Time in the Yard Is a Substantial Burden Whereas Petitioner Will Argue That It Is an Inconvenience Outweighed by Penological Objectives.

Whether the denial of extra time outside constitutes a substantial burden is a fact-bound inquiry, where no set of facts appear to be outcome determinative. *Compare Reed v. Hardy*, No. 11 C 3777, 2012 U.S. Dist. LEXIS 179325, at *11–12 (N.D. Ill. Dec. 19, 2012) with *Sutherland v. Ky. Dep't of Corr.*, No. 2022-CA-0230-MR, 2022 Ky. App. Unpub. LEXIS 684, at *8 (Ky. Ct. App. Dec. 2, 2022). To manage this ambiguity, Respondent could argue that without a compelling justification, refusing yard time to an incarcerated individual (or creating a schedule that forces them to choose between religious services and yard time) demonstrates a substantial burden. *See Reed*, 2012 U.S. Dist. LEXIS 179325, at *11–12 (finding that the defendants failed to provide a legitimate penological reason for denying incarcerated people yard time for a five-month-long period).

Petitioner will reference case law that suggests the opposite. *See, e.g., Sutherland*, 2022 Ky. App. Unpub. LEXIS 684, at *8 (holding that a policy that prevents one incarcerated person from listening to the Bible in the yard yet allows for incarcerated individuals to listen to music does not constitute a substantial burden); *Sisney v. Reisch*, 674 F.3d 839, 845 (8th Cir. 2012) (upholding summary judgment against a plaintiff who requested to eat his food outside in a Sukkah for the holiday of Sukkot, because the prison articulated a legitimate penological reason for refusal). Respondent should argue that no alternatives were considered after denying Mr. Sanchez's request.

B. Petitioner Will Argue the Denial of the Book Is an Inconvenience Outweighed by Penological Objectives, While Respondent Will Argue the Denial Was Unreasonable and Substantially Burdened His Religious Practice.

Petitioner will argue that prison officials are given wide discretion in determining which books incarcerated individuals are not allowed to have in their possession. *See Munson v. Gaetz*, 673 F.3d 630, 636 (7th Cir. 2012) (upholding the dismissal of the plaintiff's complaint that the confiscation of his medical book was a constitutional violation because prison officials are granted substantial discretion in furthering penological goals). Petitioner may then argue that confiscation of, and

subsequent refusal to return, Mr. Sanchez's religious text was reasonably related to state interests, such as maintaining a non-violent environment within a prison. *See Demarco v. Bynum*, 50 F.4th 479, 482–83 (5th Cir. 2022) (holding that the confiscation of the plaintiff's religious text was constitutional because it was improperly stored according to prison rules and those rules served to further the penological interest of preventing trafficking). Petitioner may argue that summary judgment is appropriate if Mr. Sanchez did not properly describe how the book relates to his ability to practice his religion. *See Rountree v. Clarke*, No. 7:11CV00572, 2015 U.S. Dist. LEXIS 28511, at *21–22 (W.D. Va. Mar. 9, 2015) (finding for the defendant where the plaintiff did not meet her burden of demonstrating that the prison's confiscation of her religious books would substantially burden her religious practice); *Marron v. Miller*, No. 7:13CV00338, 2014 U.S. Dist. LEXIS 86629, at *8–9 (W.D. Va. June 24, 2014) (granting a defendant prison's motion to dismiss, in part because the plaintiff failed to explain how the confiscation of his religious texts would substantially burden his religious practice).

Conversely, Respondent will argue that the confiscation of his book was not reasonably related to a state interest and that the prison failed to articulate how this book could be dangerous. *See Nichols v. Nix*, 810 F. Supp. 1448, 1469 (S.D. Iowa 1993) (finding that the confiscation of a series of books based on pure conjecture that they could be disruptive was unconstitutional). Respondent may argue that Officer Smith's claim that this book could be "dangerous" was pretextual given his disdain for Mr. Sanchez. If the confiscation was in fact motivated by animus, it will be more difficult for Petitioner to demonstrate that this was a facially neutral—and thus more permissible—occurrence. *See Emp't Div. v. Smith*, 494 U.S. 872, 881–82 (1990) (holding that a state law outlawing peyote use was constitutionally valid because the law was facially neutral and not intended to restrict religious exercise, regardless of its consequences). Furthermore, courts are typically more sensitive to the confiscation of religious texts. *See Shaw v. Norman*, No. 6:07cv443, 2009 U.S. Dist. LEXIS 52461, at *8 (E.D. Tex. June 19, 2009) (finding that the confiscation of a Quran central to the plaintiff's religious practice constituted a substantial burden that was not outweighed by government interests).

CONCLUSION

Respondent and Petitioner each have multiple arguments available to them to argue for or against the adoption of a substantial burden test as a threshold matter for First Amendment claims. Ultimately, Petitioner will argue that the substantial burden test should be applied because it has historically been the standard. Petitioner will also argue that the substantial burden test prevents insincere and self-interested claims. Respondent, on the other hand, will argue that the circuit split is evidence of the fact that courts are not required to abide by the substantial burden test when assessing Free Exercise Clause claims. Although Petitioner's argument regarding precedent may be stronger, Respondent has stronger public policy arguments in

support of the contention that the substantial burden test should be done away with. Namely, Respondent's strongest arguments are that (1) the substantial burden test improperly requires courts to inquire as to the validity of one's religion, and (2) that the substantial burden test has not been applied uniformly, which can be especially troublesome at the summary judgment stage. Regardless of which standard is adopted, there must be a factual inquiry as to how these standards apply to the contested religious accommodations in this case.