No. 20-1237

IN THE
United States Court of Appeals for the Tenth Circuit

TAJUDDIN ASHAHEED

Plaintiff-Appellant,

v.

THOMAS E. CURRINGTON

Defendant-Appellee.

On Appeal from the U.S. District Court for the
District of Colorado, No. 1:17-cv-03002-WJM-SKC
Hon. Judge William J. Martinez

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INTRODUCTION

Two central ideas dominate Currington's brief. Both are wrong. First, Currington contends that Ashaheed did not adequately allege discriminatory animus. In essence, Currington believes that Ashaheed needed direct evidence—at the pleading stage, and without the benefit of discovery—that Currington openly proclaimed his animus or used derogatory epithets. Not so. Discriminators rarely advertise their discriminatory intent, so the law recognizes that a plaintiff can show a defendant's bigoted motives through indirect evidence. In this case, the absurd excuses Currington offers for forcing Ashaheed to violate his faith support an inference of discriminatory intent—all the more so because Currington flagrantly violated written policy in insisting that Ashaheed shave off his beard.

Second, Currington claims that Ashaheed must lose on the ground of qualified immunity because none of this Court's prior published cases consider forcing a Muslim to shave his beard on intake to a prison. But qualified immunity does not require a factually identical case, as the Supreme Court repeatedly has declared. Rather, clearly established law forbids prison officials from stifling religious exercise on the basis of animus. Currington did just that. Thus, he cannot claim immunity.

ARGUMENT

I. Ashaheed plausibly stated a First Amendment religious discrimination claim that overcomes qualified immunity at the pleading stage.

A. Ashaheed plausibly alleged that Currington intentionally discriminated against him because of his religious beliefs.

Ashaheed's allegations of intentional discrimination easily meet the plausibility bar. Currington himself makes the point in his brief by arguing that his conduct was "*just as likely* the result of an honest mistake." Appellee's Br. 29–30 (emphasis added). When a party's conduct is just as likely the result of a malicious purpose as an innocent one, a court is not free to select the innocent explanation and end the case on a motion to dismiss. After all, "[i]f there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint . . . survives a motion to dismiss under Rule 12(b)(6)." *Rupp v. Pearson*, 658 F. App'x 446, 448–49 (10th Cir. 2016) (internal quotation omitted). In other words, "it is not necessary 'that the inference of . . . intent supported by the pleaded facts be *the most plausible* explanation of the defendant's conduct. It is sufficient if the inference of . . . intent is plausible.'" *Id.* at 449. Because that inference is plausible here, Ashaheed has adequately stated a free exercise claim. *See id.*

In this case, three factual points get Ashaheed's allegation of animus-driven discrimination well past the plausibility line. Informed of the religious significance

of Ashaheed's beard, Currington forced him to shave it (1) based on an absurdly illogical rationale, (2) in violation of policy, and (3) with a dismissive response and a threat of solitary confinement.

First, Currington's nonsensical rationale plausibly supports an inference of animus. Currington told Ashaheed that his beard was not "full" enough to avoid being shaved. Aplt. App. 207. Currington's brief posits that beards present dangers in a prison because they can allow a prisoner to change his appearance. Appellee's Br. 34–35. Quite obviously, the shorter and thinner a beard, the *less* these potential concerns matter. So Currington's attempt to justify a forced shave on the ground that the beard needed to be *fuller* does not pass muster.

In fact, in a wide range of contexts, courts routinely infer ill intent from non-existent or illogical explanations. After all, people act for a reason, and when that reason is not provided or lacks credibility, "the trier of fact can reasonably infer . . . that the [actor] is dissembling to cover up a discriminatory purpose." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000). Thus, "[p]roof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive." *Id.*

"Events have causes; if the only explanations set forth in the record"—here, that Ashaheed's beard was too thin or short—"have been rebutted, the jury is

permitted to search for others, and may in appropriate circumstances draw an inference of discrimination." *Miller v. Eby Realty Grp. LLC*, 396 F.3d 1105, 1113–14 (10th Cir. 2005) (internal quotations omitted). For example, in *Marshall v. Wyo. Dep't of Corr.*, prison officials cut a Native American inmate's religious hairstyle because they "did not like it." *See* 592 F. App'x 713, 715 (10th Cir. 2014). Like Ashaheed, the prisoner in *Marshall* argued that prison officials acted not out of security concerns, but arbitrarily, because the prison system generally allowed prisoners to wear religious hairstyles. This Court agreed, finding it was a case of "outright arbitrary discrimination." *Id.* at 716. *See also Grayson v. Schuler*, 666 F.3d 450, 451–53 (7th Cir. 2012) (finding "outright arbitrary discrimination" when prison official selectively enforced hair-cutting policy to compel prisoner to cut his dreadlocks and offered only the unexplained rationale that they were a security risk); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1293–94 (10th Cir. 2004) (remanding free exercise claim for consideration of whether defendant's justification was pretext for religious discrimination); *Maye v. Klee*, 915 F.3d 1076, 1084 (6th Cir. 2019) (drawing inference of discrimination where a chaplain forbade a Muslim inmate from participating in an Islamic feast without any justification at all).

Second, Currington's direct violation of written policy further supports a plausible inference of intentional animus. The policy could not be clearer: "An offender who claims that a beard is a fundamental tenet of a sincerely-held religious

belief will not be required to shave as long as the offender obtains documentation from the Office of Faith and Citizen Program's coordinator." Aplt. App. 96. Currington's violation of the policy is equally clear: At intake to the prison, Currington forced Ashaheed to shave immediately. Aplt. App. 180, 207–08. Even when Ashaheed reiterated that he is a practicing Muslim and wears his beard as part of his religious identity, and that his Colorado Department of Corrections ("CDOC") file *already documented* this affiliation as required by CDOC policy, Currington didn't budge—he said he "didn't want to hear about it." Aplt. App. 205-07.

The law sensibly recognizes that deviations from policy can support a plausible inference of pretext and discriminatory intent—and here Currington blatantly violated policy. Evidence of pretext may include "evidence that the defendant acted contrary to a written company policy prescribing the action to be taken by the defendant under the circumstances." *Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1230 (10th Cir. 2000); *DePaula v. Easter Seals El Mirador*, 859 F.3d 957, 970 (10th Cir. 2017); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.").

In this case, Currington's status as a correctional sergeant—not a greenhorn—supports at least an inference that he had a strong knowledge of CDOC policies. By contending that Ashaheed's allegations "do not plausibly establish that Currington

knew he was violating the policy," Appellee's Br. 40, Currington essentially asks this Court to find that the *only* plausible scenario is that Currington did not understand the policy and believed that it contained an imaginary "beard fullness" requirement. However, a sergeant spends approximately 20 percent of his time "training new correctional officers" on applicable "procedures, rules, and regulations" and another 20 "making certain [that staff and offenders] are all in compliance with Department of Corrections Administrative Regulations." Aplt. App. 163–64. Nonetheless, on a motion to dismiss, Currington asks this Court to conclude that the only plausible inference is that he "was simply mistaken or misunderstood Ashaheed's entitlement to the exception." Appellee's Br. 40. Currington offers no explanation as to what might have caused this "mistake," and it surely did not stem from the religious exemption policy, which contains no mention of the word "full" or any related adjectives. Nor did Currington's actions reflect a mere oversight, since Ashaheed specifically protested the shaving of his beard and told Currington that his religious affiliation was *already* documented with CDOC.

Third, Currington's dismissive response to Ashaheed's legitimate expression of religious concerns—he "didn't want to hear about it"—further supports a plausible inference of discrimination. *See* Aplt. App. 207. Currington believes that he should get out at the pleading stage because he never "made any anti-Muslim

statements" to Ashaheed. Appellee's Br. 23. But a complaint need not allege that the defendant openly spewed epithets at the plaintiff because many discriminators do not openly proclaim their discriminatory intent. *Vill. of Arlington Heights*, 429 U.S. at 266 ("Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available."); *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983) ("There will seldom be 'eyewitness' testimony as to the [actor's] mental processes."). In this case, without discovery, it is simply impossible for Ashaheed to know whether Currington has been disciplined for other anti-Muslim or anti-religious conduct. The troubling combination of factors on the surface—ridiculous excuses, patent violations of policy, and dismissive treatment—underscores the need to find out what lies beneath. This is not a case where animus can be assumed away at the pleading stage.

The district court recognized as much in its first motion to dismiss order. Aplt. App. 190–93. Currington asserts that the notion that the district court initially concluded that Ashaheed stated a religious animus claim "overstates the district court's order." Appellee's Br. 21–22. But in the section of the order titled "Plaintiff Adequately Stated A Free Exercise Claim Under Rule 12(b)(6)," the district court recounted Currington's "fullness" justification and his threat to throw Ashaheed in solitary confinement, concluded the claim could not be dismissed for lack of an

adequately alleged constitutional violation, and proceeded to the qualified immunity analysis. Aplt. App. 190–94.

B. Currington is not entitled to qualified immunity for intentionally discriminating against Ashaheed on the basis of his faith.

Currington does not—and could not—dispute the central premise of Ashaheed's argument for overcoming qualified immunity on the First Amendment religious discrimination claim: "It is clearly established that the First Amendment prohibits invidious discrimination on the basis of religion." Opening Br. 14. Because the complaint plausibly alleges animus-driven religious discrimination for the reasons stated in Section I.A, Currington is not entitled to qualified immunity at the pleading stage.

Shrum v. City of Coweta, 449 F.3d 1132, 1144 (10th Cir. 2006), makes the point crystal clear: a court cannot award qualified immunity if the defendant's discriminatory intent turns on disputed facts and inferences. In *Shrum*, a police officer who doubled as a minister alleged that his supervisor transferred him to the day shift "precisely because of [his supervisor's] knowledge of his religious commitment"—he knew the officer served as a minister during the day. *Id.* The supervisor, on the other hand, asserted the transfer was for "neutral" reasons—the officer needed additional training and had performance issues. *Id.* The case turned on this dispute—the officer had presented evidence suggesting those "neutral" reasons were, in fact, pretextual. *Id.* Noting that "non-neutral state action imposing

a substantial burden on the exercise of religion violates the First Amendment," this Court found that the claim should proceed to trial. *Id.* at 1145. If the officer was "singled out precisely because of [his supervisor's] knowledge of his religious commitment," then qualified immunity was not available; but if the finder of fact ultimately concluded that the supervisor acted for his asserted neutral reasons, qualified immunity was available to him. *Id.*

The same is true here: Ashaheed alleges that Currington forced him to shave his beard "precisely because of [Currington's] knowledge of his religious commitment." *See id.* Currington, on the other hand, asserts that he acted for a "neutral" reason—he made a mistake. *See id.* But even at this initial stage, Ashaheed has presented evidence suggesting that reason doesn't hold water: Currington's deviation from procedure, dubious explanation for his conduct, notice from Ashaheed that he was violating CDOC policy, and responsibilities as a sergeant all suggest he didn't make a mistake. Therefore, the determination of whether qualified immunity is available cannot be made at this stage; this, too, is "a case where the claim of qualified immunity collapses into the merits." *Id.*

Because clearly established law forbids animus-driven religious discrimination and Ashaheed has plausibly alleged just that, Currington must lose this appeal unless he can convince this Court of *all three* of the following propositions: (1) the Court should disregard the Supreme Court's recent clarification

that general rules of constitutional law overcome qualified immunity when they apply with obvious clarity to a given case, (2) Ashaheed must cite a factually-identical case by this Court or the Supreme Court, *and* (3) the factually-identical case from this Court or the Supreme Court must be published. Currington loses because *every one* of these premises is wrong.

First, this Court should reverse the district court's grant of qualified immunity because the general constitutional rule against government officials squelching religious freedom based on animus applies with obvious clarity to this case. After Ashaheed filed his opening brief, the Supreme Court clarified in *Taylor v. Riojas* that "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." 141 S. Ct. 52, 52–54 (2020) (citing and quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). That is clearly the case here. Ashaheed showed in his opening brief, and Currington does not dispute, that clearly established law prohibits animus-driven suppression of religious exercise. Opening Br. 22–23. That rule applies with obvious clarity here because the complaint plausibly alleges that Currington prevented Ashaheed from wearing a beard mandated by his faith, and that he did so based on anti-Muslim animus.

The second premise necessary for Currington to win this appeal—that First Amendment free exercise claims require a factually-identical case to overcome qualified immunity—is also wrong. In *Sause v. Bauer*, the Supreme Court dispensed

with that notion in summarily reversing this Court. This Court had concluded that "Sause doesn't identify a single case in which this court, or any other court for that matter, has found a First Amendment violation based on a factual scenario even remotely resembling the one we encounter here." *Sause v. Bauer*, 859 F.3d 1270, 1275 (10th Cir. 2017). The Supreme Court summarily reversed the grant of qualified immunity in a unanimous opinion, stating that "[t]here can be no doubt that the First Amendment protects the right to pray," and noting the petitioner's argument that "the absence of a prior case involving the unusual situation alleged to have occurred here does not justify qualified immunity." *Sause v. Bauer*, 138 S. Ct. 2561, 2562 (2018).

Indeed, the Supreme Court has repeatedly underscored that "the very action in question" does not need to have "previously been held unlawful" for qualified immunity to fail. *Hope*, 536 U.S. at 739; *see also White v. Pauly,* 137 S. Ct. 548, 551 (2017) (quoting *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)) ("[T]his Court's case law 'do[es] not require a case directly on point' for a right to be clearly established, 'existing precedent must have placed the statutory or constitutional question beyond debate.'"); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (same). After all, qualified immunity operates "to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Hope*, 536 U.S. at 739 (quoting *Saucier v.*

Katz, 533 U.S. 194, 206 (2001)). Prison officials are on notice that intentionally discriminating against an inmate because of his religion is unlawful.

Undeterred by these decisions, Currington argues that the only sort of prior decision that could clearly establish the law would be one holding that a prison official violated the First Amendment by requiring "a Muslim inmate to shave his beard during the prison intake process." Appellee's Br. 11, 12, 18, 19, 24 n.5, 27, 28, 38, 42. This approach would require an absurd level of factual correspondence and represents the very sort of qualified immunity analysis that the Supreme Court repeatedly has disavowed. At bottom, Currington urges this Court to repeat the error that resulted in summary reversal in *Sause*.

In fact—and turning to the third erroneous premise necessary for Currington to win—he urges this Court to go even further than it erroneously did in *Sause* by requiring not only a case with similar facts but a *published* case with similar facts. Appellee's Br. 27–28. But this Court itself has rejected that notion. When presented with the opportunity to declare that only published cases constitute clearly established law, this Court declined and instead reiterated that it "ha[s] never held that a district court must ignore unpublished opinions in deciding whether the law is clearly established." *Morris v. Noe*, 672 F.3d 1185, 1197 n.5 (10th Cir. 2012).

This Court's unpublished decision in *Marshall* bears striking factual similarity to this case. There, the plaintiff alleged that prison officials required him to shave

his kouplock, a Native American religious hairstyle, because "they did not like it." *Marshall*, 592 F. App'x at 715. The district court held that the defendants were entitled to qualified immunity because an inmate has no clearly established right to wear a kouplock—the same rationale Currington persistently urges this Court to adopt by asserting that no decision establishes that a Muslim inmate has a right to maintain his beard during the prison intake process. *Id.* But this Court vacated the district court's judgment and found that qualified immunity was not warranted. *Id.* at 714. And it did so without identifying a factually identical case, as Currington claims is required. This makes sense: as Currington states, qualified immunity exists to allow officials "breathing room to make reasonable but mistaken judgments"—but there is nothing mistaken or reasonable about intentionally discriminating on the basis of religion. Appellee's Br. 15 (quoting *Stanton v. Sims*, 571 U.S. 3, 5 (2013)).

Just like the *Marshall* plaintiff, who alleged that prison officials shaved his kouplock not out of security concerns, but arbitrarily because "they did not like it," *Marshall*, 592 F. App'x at 715, Ashaheed alleged that Currington acted not out of concern for prison security, but arbitrarily because he did not like Ashaheed's identification as a Muslim. Aplt. App. 207–09. And just like Marshall, who pointed out that the prison system generally allowed prisoners to wear religious hairstyles like the kouplock, Ashaheed pointed to a specific CDOC policy that allows prisoners to maintain a beard when it is part of their religious beliefs. Aplt. App. 206–07.

Taken in the light most favorable to Ashaheed, the facts indicate that his case, like *Marshall*, is one of "outright arbitrary discrimination rather than of a failure merely to accommodate religious rights." *Marshall*, 592 F. App'x at 716 (quoting *Grayson*, 666 F.3d at 453). Based on the similarity between Marshall and Ashaheed's allegations, the same conclusion is compelled here as it was there: the plaintiff has adequately pleaded a plausible claim of unconstitutional discrimination sufficient to defeat a claim to qualified immunity.[1]

Finally, the parade of cases Currington cites on pages 38–40 of his brief is irrelevant. None of those cases involved allegations that a prison official required a prisoner to shave out of religious hostility, as Ashaheed alleges. *See Green v. Polunsky*, 229 F.3d 486 (5th Cir. 2000); *Lovell v. McAuliffe*, No. 9:18-CV-0685-

[1] In attempting to distinguish *Marshall*, Currington misstates the facts of that case. He claims that prison officials "specifically and repeatedly targeted" Marshall by "forcing him to cut his hair and then badgering him once it began to grow back," thereby demonstrating "a pattern of continued harassment," whereas Ashaheed's allegations "assert only a one-time misapplication" of the religious exemption. Appellee's Br. 29–30. But Marshall alleged two separate claims: one based on the shaving of the kouplock, and one based on the subsequent harassment by different prison officials at a different facility. *Marshall*, 592 F. App'x at 715 ("Claim 1 alleges that prison officials at Wyoming State Penitentiary required Mr. Marshall to shave his kouplock because they did not like it. Claim 2 alleges that, several months later at Wyoming Honor Conservation Camp, prison officials arbitrarily harassed him about his kouplock (which by then had begun to grow back)."). This Court vacated the judgment as to both claims, including the "one-time" discriminatory shaving of the kouplock. *Id.* at 716. A "one-time" violation of a constitutional right is still a violation.

TJM/CFH, 2020 WL 4938165 (N.D.N.Y. July 14, 2020); *Hancock v. Cirbo*, No. 17-CV-02255-RM-NRN, 2018 WL 6605839 (D. Colo. Dec. 14, 2018); *Black v. Walker*, No. 5:11-CV-472-CAR-CHW, 2013 WL 782868 (M.D. Ga. Jan. 23, 2013); *Oakes v. Green*, No. 08-CV-12-HRW, 2008 WL 559683 (E.D. Ky. Feb. 27, 2008).

II. Ashaheed plausibly stated an Equal Protection Claim that overcomes qualified immunity at the pleading stage.

The previous section explains why Ashaheed has plausibly alleged invidious discrimination on the basis of religion. Those allegations also adequately plead an equal protection violation that overcomes qualified immunity because it is "beyond debate" that invidious discrimination on the basis of religion violates the Equal Protection Clause. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). It is clearly established that a state may not discriminate against people because of their religion. *See, e.g.*, *Morris Cty. Bd. of Chosen Freeholders v. Freedom from Religion Found.*, 139 S. Ct. 909, 909 (Mem.) (2019) ("As this Court has repeatedly held, governmental discrimination against religion—in particular, discrimination against religious persons, religious organizations, and religious speech—violates . . . the Equal Protection Clause."); *see also* Opening Br. at 31–32 (citing cases).

Here, Ashaheed alleges that he was singled out for discriminatory treatment because of his Muslim faith. The evidence of animus discussed above shows that, for purposes of the pleading stage, Currington violated clearly established law.

Currington misses the point by fixating on Ashaheed's allegation that Currington routinely permits non-Muslim prisoners to keep religious items such as bibles, crosses, and wedding rings during the intake process. *See* Appellee's Br. 44–45; Aplt. App. 212. The crux of Ashaheed's equal protection claim is the well-pled allegation that Currington mistreated him and deviated from policy specifically because of his *Muslim* faith, while following policy and not engaging in mistreatment during the intake of prisoners of *other* faiths. As Section I details, Ashaheed plausibly alleged as much. Currington's differential treatment of non-Muslim prisoners simply confirms the point and demonstrates the egregiousness of Currington's unconstitutional conduct.

III. Ashaheed plausibly stated a First Amendment *Turner* claim that overcomes qualified immunity at the pleading stage.

Ashaheed has stated a claim under a second theory of First Amendment liability. A prison official who substantially burdens an inmate's sincerely-held religious belief without a legitimate penological interest violates the First Amendment. *Turner v. Safley*, 482 U.S. 78, 84, 89 (1987); *Boles v. Neet*, 486 F.3d 1177, 1181 (10th Cir. 2007).

While *Turner* itself involved a prison regulation, this Court has recognized that "*Turner* is no less applicable" when a plaintiff "is not challenging a prison regulation per se," but rather a defendant's "individual actions." *Boles*, 486 F.3d at 1181 n.4. "An individualized decision to deny a prisoner the ability to engage in

religious exercise is analyzed in the same way as a prison regulation denying such exercise." *Id.* (quoting *Salahuddin v. Goord*, 467 F.3d 263, 274 n.4 (2d Cir. 2006)). Thus, the law is clearly established that prison officials cannot infringe a prisoner's exercise of his faith "with no valid penological justification." *Id.* at 1183.

Here, Currington violated clearly established law because he quite obviously acted "with no valid penological justification," *id.*, at least for purposes of a motion to dismiss. The rationales he has offered are simply absurd, as demonstrated above, *see supra* Section I, and he is therefore not entitled to qualified immunity.

If anything, the rationales Currington now offers through counsel only dig a deeper hole. At the time he forced Ashaheed to shave, Currington made no mention of security or ease of inmate identification; all he said was that Ashaheed's beard was not "full" enough to "qualify" for the exemption. Aplt. App. 207. But now, equipped with counsel and time to consult the CDOC handbook, Currington references the CDOC policy's statement that "for security purposes . . . newly admitted offenders [must] be clean shaven during the admission process." Appellee's Br. 35 (quoting Aplt. App. 96).

These post-hoc rationales fail because, under *Turner*, "[p]rison officials are not entitled to . . . deference . . . if their actions are not actually motivated by legitimate penological interests at the time they act." *Quinn v. Nix*, 983 F.2d 115, 118 (8th Cir. 1993). As has already been made clear, Currington was not actually

motivated by a legitimate penological interest in security or quick inmate identification; he was motivated by anti-Muslim animus. *See supra* Section I.A. Indeed, the district court correctly recognized this, finding the facts of this case could not "plausibly lead to the proposition that Defendant's actions were undertaken to further the state's interest in prison security and identification of its prisoners." Aplt. App. 192. Why? Because Currington's actions were instead "designed to disrupt Plaintiff's religious practices and were intentionally directed at Plaintiff due to Defendant's hostility towards the religion of Islam." *Id.* To contend otherwise is to overlook Currington's proffered rationale at the time—that Ashaheed's beard was not "full" enough—and propose a "[p]ost hoc justification" of the sort that courts rightly refuse to accept. *Salahuddin*, 467 F.3d at 276–77.

At minimum, the district court prematurely dismissed Ashaheed's claim. *Turner* requires a three-step inquiry—only the first of which is appropriate to consider at the motion to dismiss stage. Under the first step of the analysis, Ashaheed must allege that Currington's conduct substantially burdened his sincerely-held religious beliefs. *Boles*, 486 F.3d at 1182. Wisely, Currington does not dispute that his conduct did so. That should end the inquiry: this Court has recognized that only the first step—whether a plaintiff has alleged a substantial burden of his sincerely-held religious beliefs—"is relevant at the motion-to-dismiss stage." *Williams v. Wilkinson*, 645 F. App'x 692, 704 (10th Cir. 2016) (citing *Kay v. Bemis*, 500 F.3d

1214, 1219 (10th Cir. 2007)). Identifying the legitimate penological interests and whether the *Turner* factors justify the burdensome conduct should be examined at the summary judgment stage.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court decision.

Dated: February 24, 2021

Respectfully submitted,

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CERTIFICATES OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(g)(1) because it contains 4,420 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Dated: February 24, 2021

/s/ David M. Shapiro
David M. Shapiro
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Dated: February 24, 2021

/s/ David M. Shapiro
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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2021, I electronically filed a true, correct, and complete copy of the foregoing Reply Brief of Appellant with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

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/s/ David M. Shapiro
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