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Protecting Religious Freedom at Guantanamo Bay: *Rasul v. Rumsfeld* 433 F. Supp. 2d 58 (D.D.C. 2006)

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The issues before the United States District Court for the District of Columbia were the following: (1) whether the Religious Freedom Restoration Act ("RFRA")[1] applied outside of the United States; (2) whether it applied to the U.S. Naval Station at Guantanamo Bay, Cuba ("GITMO"); (3) whether a claim of liability under RFRA was stated; and (4) whether the government enjoyed qualified immunity from suit under RFRA.[2] The court, per Judge Urbina, held: (1) RFRA applies to government action outside the United States; (2) RFRA applies specifically at GITMO; (3) plaintiffs stated a claim of liability under RFRA; and (4) defendants do not enjoy qualified immunity for any violation of RFRA.[3]

Plaintiffs, all citizens of the United Kingdom, were former detainees, held by the United States government at GITMO.[4] They alleged defendants, various military

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[1] 42 U.S.C. § 2000bb-1 (2005).

[2] Rasul v. Rumsfeld (*Rasul II*), 433 F. Supp. 2d 58, 59 (D.D.C. 2006).

[3] *Id.*

[4] *Id.*

officials,[5] committed atrocities such as disturbing the practice of their religion, forced shaving of their religious beards, and placing the Koran in a toilet.[6]

Plaintiffs filed a complaint against defendants alleging violations of international law, constitutional law, and RFRA.[7] Defendants moved to dismiss the claims for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.[8] In a memorandum opinion, the court dismissed the first two sets of claims and requested further briefing on the RFRA issue.[9]

Looking at the plain language of RFRA, specifically the words "because RFRA applies in 'each territory and possession of the United States,'" the court concluded that the statute's plain language states unambiguously that it applies beyond the continental United States and to its territories and possessions.[10] Based on Supreme Court precedent, RFRA specifically applies to GITMO because GITMO constitutes a possession of the United States,[11] and thus falls within the plain language of RFRA. The court rejected

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[5] *See id.* at 61 n.1.

[6] *Id.* at 59. Other examples of abuse alleged by plaintiffs include extensive abuse and interrogations, pervasive interrogation techniques, torture, beatings, cavity searches, and an overall change in the treatment of military prisoners. *Id.* at 60.

[7] 42 U.S.C. § 2000bb, *et seq.* (2004).

[8] *Rasul II*, 433 F. Supp. 2d at 61. The claims were raised under FED. R. CIV. PRO. 12(b)(1) & 12(b)(6), respectively.

[9] *See* Rasul v. Rumsfeld (*Rasul I*), 414 F. Supp. 2d 26 (D.D.C. 2006).

[10] *Rasul II*, 433 F. Supp. 2d at 63 (quoting RFRA, 42 U.S.C. at §2000bb-2(2)).

[11] *Id.* at 64 (citing Vermilya-Brown v. Connell, 335 U.S. 377, 389 (1948) (interpreting 42 U.S.C. § 1651 (1942)). While the court admits that this case and statute are not directly on point, they do "inform the contours both of the phrase 'territory and possession' and the nature of the United

defendants' suggestion that it look to the legislative history of RFRA, both because the language is so unambiguous it is unnecessary to "delve into [such] murky waters" and because legislative history in general is "akin to looking over a crowd and picking out your friends."[12]

The court also rejected defendants' claims that they were entitled to qualified immunity under the doctrine's two-pronged test because 1) plaintiffs alleged the depravation of an actual constitutional right; and 2) that right was clearly established at the time of the alleged violation.[13] Under the first prong, the court found easily that "[f]lushing the Koran down the toilet and forcing Muslims to shave their beards falls comfortably within the conduct prohibited by RFRA."[14] Under the second prong, the court found nothing that could be viewed as calling into question RFRA's applicability to GITMO.[15] This finding, coupled with the plain text of RFRA, "should have placed defendants on notice that they were prohibited from the alleged conduct" at GITMO.[16]

States' hold" on GITMO. *Id.* at 64-65. The court also cited, much more persuasively, Rasul v. Bush, 542 U.S. 466, 480 (2004) (calling GITMO a "territory over which the United States exercises plenary and exclusive jurisdiction." (internal quotations omitted)). *Id.* at 65. For essentially the same reasons, RFRA also applies to aliens. *Id.* at 66-67.

[12] *Id.* at 66 (internal citation and quotation marks omitted).

[13] *Id.* at 67-68 (citing Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 389 (1971); Saucier v. Katz, 533 U.S. 194, 201 (2001); Crawford-El v. Britton, 523 U.S. 574, 591 (1998)).

[14] *Id.* at 69.

[15] *Rasul II*, 433 F. Supp. 2d at 70.

[16] *Id.* at 71.

Concluding in frank terms, the court highlighted the seriousness of the case before it:

> The plaintiffs allege that representatives of the United States government perpetrated blatant and shocking acts against them on account of their religion. Such activities, if true, constitute a direct affront to one of this nation's most cherished constitutional traditions. [That] right to religious freedom is embodied within RFRA's prohibition on government action. . . . The court recognizes that the defendants are not constitutional law scholars well versed on the jurisdictional reach of RFRA. [G]iven the abhorrent nature of the allegations and given our Nation's fundamental commitment to religious liberty, it seems to this court that in this case a reasonable official would understand that what he is doing violates that right.[17]

To some, *Rasul II* likely will represent a blow to the Bush administration and the War on Terror. By opening the doors to civil lawsuits brought by prisoners at GITMO, most if not all of whom are enemies of the United States, the government is exposed. Civil lawsuits that bring uncomfortable details about members of our Armed Forces to the fore of the evening news hurt public perception about our mission and our leaders.

In this case, the government's attempt to shield themselves from liability for these alleged violations is nothing short of shameful. The actions alleged before the District Court are of the type the Founding Fathers had in mind when they drafted the words of the Religion Clauses of the First Amendment.[18] Similarly, they are the sort of despicable acts that Congress sought to deter by passage of RFRA.[19] The District Court, by correctly interpreting the reach and scope of RFRA, promotes the kind of accountability

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[17] *Id.* (internal citations and quotation marks omitted).

[18] *See* Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 313 (2000) (quoting Engel v. Vitale, 370 U.S. 421, 430 (1962) "[T]he common purpose of the Religion Clauses is to secure religious liberty." (internal quotation marks omitted)).

[19] *See* 42 U.S.C. § 2000bb (b)(2).

that is essential if the United States expects to be (and to be perceived as) a leader in the fight against terror and a protector of human rights.[20]

One can only hope that the allegations made by the plaintiffs are false. But if they are not, plaintiffs must be able to proceed with, succeed in, and collect on their RFRA claim. The fact that these men were prisoners, wards of the United States, does not serve as an excuse for such behavior; it only intensifies the wrongness of the situation. To engage in this type of "blatant and shocking" behavior not only burdens legitimate religious exercise without any compelling government interest, but such behavior offends an essential pillar of our Republic. Allowing plaintiffs' suit to go forward was not only legally sound, but also morally necessary.[21]

[20] *See* Beth Stephens, *Accountability Without Hypocrisy*, 36 NEW ENG. L. REV. 919, 926-27, 926 n.22 (2002) (explaining how civil law suits increase accountability).

[21] While a legally sound decision should never fall second to a Judge's moral preference, sometimes the legally sound thing to do is also the *morally* sound thing to do. This decision is such an instance.