

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-00245-MSK-MJW

REVEREND MATT HALE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT  
ON ALL REMAINING CLAIMS**

**TABLE OF CONTENTS**

<b>BACKGROUND</b> .....	1
<b>CLAIMS AND DEFENSES UPON WHICH JUDGMENT IS SOUGHT</b> .....	5
<b>I. The BOP is entitled to summary judgment on all claims that depend on a finding that Creativity is a “religion” under the First Amendment or RFRA. (Claims 1, 2, 3, 8, 9)</b> .....	5
A. Burden of proof and elements .....	5
1. Mr. Hale bears the burden to establish that Creativity is a religion .....	5
B. Element that cannot be proven: Creativity does not satisfy any of the <i>Meyers</i> factors	6
1. <u>Element 1</u> : Creativity does not address “ultimate ideas,” but instead the secular political goal of restructuring society to achieve white dominance .....	6
a. Creativity began as a political party based on secular maxims of white supremacy and anti-Semitism .....	10
b. Creativity’s core beliefs follow the secular maxims of Klassen’s Nationalist White party .....	13

- i. Creativity has central texts and maxims ..... 13
    - c. Like the maxims of the Nationalist White Party, Creativity’s core beliefs are narrow, political, and secular, and do not focus on ultimate or existential issues ..... 15
    - d. The Creativity “program” is a secular political agenda ..... 22
      - i. Creativity espouses a secular ideology called “Racial Socialism” ..... 22
      - ii. Creativity has a political program, which is to target non-white “enemies” in order to achieve racial dominance ..... 24
      - iii. Creativity’s program for achieving white dominance focuses on political tools and violent means directed to other groups ..... 25
        - a. Creativity aims to destroy Jewish people ..... 25
        - b. Creativity encourages violence and political exclusion directed at non-white people ..... 28
        - c. Creativity targets Christians ..... 29
        - d. Creativity espouses eugenics ..... 29
    - e. Conclusion: Creativity embraces no “ultimate ideas” ..... 30
  - 2. Element 2: Creativity is not comprehensive ..... 30
    - a. Creativity is not comprehensive because it is focused on the overarching goal of achieving white dominance while degrading others ..... 31
    - b. Conclusion: Creativity is not “comprehensive” ..... 31
  - 3. Element 3: Creativity is not metaphysical ..... 31
    - a. Creators disavow metaphysical beliefs and do not worship anything .... 32
    - b. Conclusion: Creativity has no “metaphysical beliefs” ..... 33
  - 4. Element 4: Creativity does not have a whole moral or ethical system, but instead is limited to white supremacy ..... 33

a.	Creativity’s “ethics” focus on a narrow issue: furthering white supremacy .....	34
b.	Conclusion: Creativity simply encourages white supremacy, and does not have a broader moral or ethical system .....	34
5.	<u>Element 5</u> : The “accoutrements” of Creativity do no more than support a secular belief system .....	35
a.	Creativity’s signs promote membership and secular beliefs, but do not reflect deeper religious meaning .....	36
i.	Creativity permits membership if you are white and pay a fee ..	36
ii.	While Creativity has “reverends,” the leaders created this position to seek to gain legal protection, and let any follower over the age of 16 claim this title .....	36
iii.	There ceremonies and holidays of Creativity, many of which Mr. Hale created, honor both Mr. Hale and other white supremacists .....	38
iv.	“Salubrious living,” a healthy lifestyle, was described by Creativity’s founder, but he did not follow it or command that others follow it .....	41
b.	Conclusion: The accoutrements of Creativity do not reveal religious meaning, but focus on promoting and celebrating secular white supremacy .....	42
<b>II.</b>	<b>Mr. Hale lacks standing to seek prospective relief related to the 2010 and 2013 mail restrictions. (Claims 1, 2 and 3) .....</b>	<b>43</b>
A.	Burden of proof and elements that Mr. Hale must prove .....	43
B.	<u>Element Mr. Hale cannot prove</u> : Mr. Hale cannot establish an actual and imminent threat of being placed on Restricted General Correspondence Status .....	45
<b>III.</b>	<b>Mr. Hale has not exhausted a challenge to the BOP’s current handling of his mail. (Claims 1, 2 and 3) .....</b>	<b>46</b>
A.	Mr. Hale has not exhausted his administrative remedies .....	46
1.	Burden of proof and elements of the defense .....	46

2. Element that Mr. Hale cannot overcome: He has not completed the exhaustion process ..... 48

**IV. The BOP is entitled to summary judgment on Claim 3, the RFRA claim challenging the mail restrictions ..... 48**

A. Burden of proof and elements ..... 49

B. Element 1: The BOP has a compelling security interest in prohibiting Mr. Hale from leading a violent Security Threat Group and inspiring other white supremacists ..... 51

1. Mr. Hale is the influential leader of a violent Security Threat Group ... 51

a. Mr. Hale’s conviction, which was based on threatening communications about a federal judge, related to his role in the Creativity Movement ..... 52

b. A significant number of other Creativity members are federal inmates, and some have engaged in race-based violence ..... 57

c. Creativity members and associates have committed serious acts of violence within BOP prisons ..... 59

d. Mr. Hale has inspired violent acts by others ..... 61

e. Other “Creators,” some of whom Mr. Hale associated with as a Creativity leader, have committed violent acts ..... 64

f. Creativity’s texts advocate harm to other races and religions, which creates dangers in a volatile prison setting ..... 65

g. Creativity’s foundational texts and Mr. Hale’s own statements support disobedience to the law ..... 68

h. Mr. Hale seeks to lead the Creativity Movement and other white supremacists with known violent histories ..... 71

2. ADX Wardens imposed mail restrictions to prevent Mr. Hale from leading a violent STG and other dangerous white supremacist groups ..... 72

a. July 2010 to January 2011: Mr. Hale’s mail was limited after he declared himself “Pontifex Maximus *Pro Tempore*” ..... 72

b.	January 2013 to July 2013: Mr. Hale’s mail was limited after he attempted to provide guidance to the leader of one of the country’s largest neo-Nazi groups .....	78
3.	More recently, Mr. Hale made threatening communications about a federal judge, confirming his continuing influence and danger to others .....	84
4.	The BOP determined that allowing Mr. Hale to lead an STG or to engage in communications related to the STG would threaten safety and security .....	90
C.	<u>Element 2</u> : These prohibitions on communications are the least-restrictive means to protect compelling security interests .....	93
D.	Conclusion .....	96
<b>V.</b>	<b>Mr. Hale cannot meet his burden to prove that the BOP’s procedures for handling his mail are irrational. (Claim 1)</b> .....	<b>96</b>
A.	Burden of proof and elements .....	97
1.	The rational basis standard is applied with deference to the correctional judgment of prison officials .....	97
2.	Mr. Hale bears the burden to prove that the BOP acted irrationally .....	99
B.	Elements that Mr. Hale cannot prove .....	102
1.	<u>Turner factor no. 1</u> : Mr. Hale cannot prove the absence of a rational connection between the BOP’s handling of his mail and its legitimate penological interests in preventing him from leading a violent STG and causing danger to others .....	102
2.	<u>Turner factor no. 2</u> : Mr. Hale cannot prove that alternative means of exercising the right are not available .....	102
3.	<u>Turner factor no. 3</u> : Mr. Hale cannot prove that his continuing communications about an STG would not have a negative impact on the security of others .....	104
4.	<u>Turner factor no. 4</u> : Mr. Hale cannot prove that there are obvious, easy alternatives that would not compromise the BOP’s legitimate penological interests .....	104

C.	Conclusion .....	105
<b>VI.</b>	<b>Mr. Hale cannot meet his burden to prove retaliation in the prison context, where the judgment of prison officials receives deference. (Claim 2)</b> .....	<b>105</b>
A.	Burden of proof and elements .....	106
B.	Elements that Mr. Hale cannot prove .....	108
1.	<u>Element 1: No protected right.</u> As a federal inmate, Mr. Hale has no constitutional right to engage in threatening communications about a judge, to run an STG, or to guide white supremacists outside the prison .....	108
2.	<u>Element 3: Reasonable restrictions.</u> Prison officials took reasonable actions to address Mr. Hale’s speech, which they judged to be dangerous .....	108
C.	Conclusion .....	109
<b>VII.</b>	<b>The BOP is entitled to summary judgment on Claims 8 and 9, which seek a “religious” diet of exclusively raw foods</b> .....	<b>109</b>
A.	The RFRA claim (Claim 9) .....	110
1.	Burden of proof and elements .....	110
2.	The BOP can prove its affirmative RFRA defense .....	111
a.	<u>Element 1:</u> The BOP has compelling interests in protecting institutional security and Mr. Hale’s own security, and in providing nutritional food to every inmate in its custody .....	111
i.	The BOP provides Mr. Hale with a no-flesh food tray and allows him to supplement that diet with items from the ADX commissary .....	111
ii.	The BOP relies on standardization to provide massive quantities of food to thousands of inmates .....	113
iii.	Altering the standardized trays would compromise the BOP’s ability to provide food to all its inmates .....	115

- iv. Providing Mr. Hale the diet he seeks jeopardizes security, including his own ..... 115
- v. The BOP also has a compelling interest in not awarding a racist STG with special food, because doing so will jeopardize security and serve as a recruiting tool for radical white supremacists ..... 118
- vi. The BOP must consider the effect of providing other inmates the same “religious diet” as Mr. Hale .....119
- vii. The BOP has a compelling interest in avoiding inmate theft and alcohol-related security problems that Mr. Hale’s diet could trigger .....122
  - a. Theft of Mr. Hale’s dietary items will be extremely difficult to control ..... 122
  - b. Raw foods are extremely dangerous in a correctional environment ..... 123
- viii. The BOP has determined that Mr. Hale’s proposed diet is nutritionally deficient and risks food-borne illness .....125
- ix. The BOP has determined that Mr. Hale’s proposed diet would be inordinately expensive in comparison with the standardized trays .....126
- b. Element 2: Denying Mr. Hale’s request for a raw-food diet is the least-restrictive means of facilitating these compelling security interests ..... 130
- B. The free exercise claim (Claim 8) ..... 130
  - 1. Burden of proof and elements ..... 130
  - 2. Elements that Mr. Hale cannot prove ..... 131
    - a. Turner factor no. 1: Mr. Hale cannot prove the absence of a rational connection between the denial of his dietary requests and the BOP’s legitimate penological interests in protecting institutional security and feeding the inmate population .....131
    - b. Turner factor no. 2: Mr. Hale cannot prove that alternative means of exercising the right are not available ..... 131

c.	<i>Turner factor no. 3</i> : Mr. Hale cannot prove that his demand for a raw-food diet would not impact the safety and security of other inmates, correctional staff, and his own safety .....	132
d.	<i>Turner factor no. 4</i> : Mr. Hale cannot prove that there are obvious, easy alternatives to denying his diet request .....	132
C.	Conclusion .....	132
<b>VIII.</b>	<b>Claim 5 is moot because Mr. Hale has his “bible”</b> .....	132
A.	Burden of proof and elements .....	133
B.	Element Mr. Hale cannot prove: No live case or controversy .....	134
1.	Mr. Hale has, and will be allowed to keep, <i>Nature’s Eternal Religion</i> . .....	134
C.	The BOP can prove that the exceptions to mootness do not apply .....	135
1.	The voluntary-cessation exception does not apply .....	135
a.	Legal standards .....	135
b.	There is no reasonable likelihood that the book will be taken from Mr. Hale, unless <i>his</i> actions jeopardize security .....	136
2.	The capable-of-repetition-yet-evading-review exception does not apply .....	137
a.	Legal standards .....	137
b.	The “duration” concern does not apply here, and there is no reasonable expectation the book will be taken from Mr. Hale. .....	137
D.	Conclusion .....	137
	<b>CONCLUSION</b> .....	138

## BACKGROUND

Matthew Hale is the long-time leader of a group known as the “Creativity Movement” (hereafter, “Creativity Movement” or “Creativity”).<sup>1</sup> He claims that the Creativity Movement is a religion and that, as a result, he has religious rights related to his leadership of that group. He brought this case challenging mail restrictions that had been imposed on him in 2010 and 2013, claiming that those restrictions had limited his religious rights. He also sought a raw food diet, on the ground that he needed it an adherent of the Creativity Movement. He claims that he also has a religious right to have a racially inflammatory book that he calls his “bible.” But the ample undisputed evidence shows that he cannot meet his burden on his claims.

The undisputed facts show that Creativity is not a religion, when viewed under the well-established standards courts have used in determining what groups are entitled to the special protections religions enjoy. A wealth of evidence shows that Creativity is a secular ideology, focused on the single overarching political goal of restructuring society to achieve white dominance over all other races. No Court has found that Creativity is a religion for purposes of the First Amendment or the Religious Freedom Restoration Act (“RFRA”). The undisputed facts support the same result here.

The evidence also shows that the Creativity Movement is highly dangerous. The Creativity Movement is a BOP-designated Security Threat Group because of its long history of racially motivated violence, on the streets and in prison.

The evidence shows that the mail restrictions imposed in 2010 and 2013, which Mr. Hale

---

<sup>1</sup> Because the remaining claims have subparts that are evaluated pursuant to multiple multi-factor tests, the BOP provides this background section as a roadmap for the analysis to follow.

challenges here, were imposed to address legitimate security concerns. Both times, Mr. Hale was attempting to use his influence as Creativity's long-time Pontifex Maximus to direct events outside the prison, once over the business of the Creativity Movement and once in connection with the activities of another radical white supremacist group. In 2010 and 2013, two former Wardens at the ADX exercised the authority granted them by federal regulation to limit the scope of Mr. Hale's correspondence privileges for a period of time. Those mail restrictions, however, have not been in place for years.

Mr. Hale does not have standing to pursue these claims. The last set of correspondence restrictions was removed in July 2013, before Mr. Hale even brought this lawsuit. Mr. Hale cannot prove that he faces a real and immediate danger of having those past restrictions reinstated based on the facts that prompted those restrictions at the time. No mail ban has been imposed on him since, more than three years later. In fact, since July 2013, Mr. Hale has been to another institution and back. In May 2016, Mr. Hale was transferred to the Federal Correctional Institution in Terre Haute, Indiana ("FCI Terre Haute"), where he had broad communications privileges, including access to email.

After that transfer, new facts arose that led to a new approach to Mr. Hale's mail. At FCI Terre Haute, Mr. Hale reestablished contact with his associates and followers in the Creativity Movement. He learned through communications with his followers that one of them was willing to "take out" a federal judge or prosecutor for Mr. Hale. Within a few weeks, Mr. Hale wrote, and the BOP email system inadvertently released, a "press release" about a federal judge. BOP officials considered the "press release" to constitute a credible threat against the judge, in light of its racially inflammatory language and its potential impact on Mr. Hale's like-minded and pliant

followers outside the prison. As a result of Mr. Hale's communications at FCI Terre Haute, he was returned to the ADX in April 2017.

Mr. Hale is now subject to a different approach to mail monitoring by the BOP. Under that approach, Mr. Hale is permitted to send and receive mail. But his mail must comply with the rules the Bureau of Prisons imposes on Security Threat Groups or "STGs." Mr. Hale cannot be allowed to hold a position of authority in his STG, to communicate about his STG, or to be involved in the business of running his STG. Notably, Mr. Hale has not administratively exhausted a challenge to this current, different approach.

Even if Mr. Hale had exhausted that approach and could challenge it here, the evidence shows that this new approach is warranted by compelling security interests. The BOP has a compelling security interest in preventing a white supremacist leader of Mr. Hale's stature to engage in communications that might trigger dangerous conduct outside the prison. The evidence shows that Mr. Hale has used his subtle and sophisticated communications skills to solicit the murder of a federal judge. And the undisputed and extensive evidence shows that allowing Mr. Hale to communicate with Creativity members or to seek to lead this STG poses major security risks. This record shows that even if the Creativity Movement were recognized as a religion, these security interests are compelling, and prison officials were motivated by the proper purpose of protecting these compelling interests.

The record also shows that even if the Creativity Movement were recognized as a religion, the BOP has acted properly in not creating a raw-food diet for Mr. Hale. The evidence about the Creativity Movement shows that this diet is merely suggested to members, a fact the Court can consider. And the BOP has compelling interests in not providing Mr. Hale the raw-

food diet he seeks.

Finally, Mr. Hale has a copy of *Nature's Eternal Religion*, his “bible.” ADX officials gave him a copy of that book in April 2014. He has the book now. There is no viable case or controversy for this Court to resolve.

In summary, the extensive record of undisputed evidence shows that Mr. Hale’s claims fail, for several reasons. First, the Creativity Movement fails to meet the legal standards courts have used to determine which groups are entitled to special legal protection as religions. Second, he lacks standing to attack the 2010 and 2013 mail restrictions that he seeks to challenge in this case, since those restrictions preceded this case and now have not been reimposed for more than three years, and he is now subject to a new mail-monitoring approach. Third, he has failed to exhaust his challenge to the new approach the BOP is taking to monitoring his mail. Fourth, even if the Creativity Movement were viewed as a religion, the BOP’s interests in the approach it is using in monitoring his mail are compelling, and thus satisfy the standards under both RFRA and the First Amendment. Fifth, even if the Creativity Movement were viewed as a religion, he is not obliged, as a member of the Creativity Movement, to follow this diet, and the BOP has compelling interests in not providing him that raw-food diet. Sixth, his claim about his “bible” is moot. The reasons for granting judgment are summarized below:

<b>CLAIM</b>	<b>GROUND FOR JUDGMENT FOR BOP</b>
Mail restriction claims: Claim 1 (First Amendment), Claim 2 (retaliation), Claim 3 (RFRA)	<ul style="list-style-type: none"> <li>• Creativity is not a religion</li> <li>• Lack of standing (past restrictions)</li> <li>• Failure to exhaust (current monitoring)</li> <li>• The BOP’s compelling reasons satisfy RFRA and the First Amendment</li> </ul>
Diet claims: Claim 8 (First Amendment), Claim 9 (RFRA)	<ul style="list-style-type: none"> <li>• Creativity is not a religion</li> <li>• The BOP’s compelling reasons satisfy RFRA and the First Amendment</li> </ul>
Book claim: Claim 5 (First Amendment)	<ul style="list-style-type: none"> <li>• Claim is moot</li> </ul>

## CLAIMS AND DEFENSES UPON WHICH JUDGMENT IS SOUGHT

### **I. The BOP is entitled to summary judgment on all claims that depend on a finding that Creativity is a “religion” under the First Amendment or RFRA. (Claims 1, 2, 3, 8, 9).**

The Court should enter judgment in favor of the BOP on Claims 3, 8, and 9, and the free exercise component of Claims 1 and 2, all of which depend on a finding that Creativity is a religion. Mr. Hale cannot meet his burden to prove that Creativity is a religion.

#### **A. Burden of proof and elements**

##### **1. Mr. Hale bears the burden to establish that Creativity is a religion.**

To claim special protections based on religion, Mr. Hale must prove that the beliefs he espouses are part of a religion that the courts will recognize. “Only beliefs rooted in religion are protected by the Free Exercise Clause, which by its terms, gives special protection to the exercise of religion.” *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 713 (1981); *see also, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (“[T]o have the protection of the Religion Clauses, the claims must be rooted in religious belief.”).

Mr. Hale bears the same burden under RFRA. RFRA requires a showing by the plaintiff that governmental restrictions “substantially burden [his] *exercise of religion*.” 42 U.S.C. § 2000bb-1(a) (emphasis added); *see also, e.g., Thiry v. Carlson*, 78 F.3d 1491, 1494 (10th Cir. 1996) (under RFRA, a plaintiff must establish three threshold requirements: “[t]he governmental action must (1) substantially burden, (2) a religious belief rather than a philosophy or way of life, (3) which belief is sincerely held by the plaintiff”); *Yellowbear v. Lampert*, 741 F.3d 48, 53 (10th Cir. 2014) (the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) “requires us

to ask whether an inmate’s (1) religious exercise is (2) substantially burdened by prison policy.”).

The Tenth Circuit examines five factors to evaluate whether a belief system is religious in nature: (1) whether the beliefs encompass “ultimate ideas”; (2) whether the beliefs are “comprehensive”; (3) whether the beliefs are “metaphysical” in nature; (4) whether the beliefs constitute a “moral or ethical system”; and (5) whether the beliefs are accompanied by “accoutrements of religion.” *United States v. Meyers*, 95 F.3d 1475, 1482 (10th Cir. 1996).

The undisputed facts show that Creativity is a secular program of racial socialism whose end goal is to purge the United States of “mud races” and achieve white dominance throughout the world. Under the *Meyers* test, such beliefs are not a religion.

**B. Element that cannot be proven: Creativity does not satisfy any of the *Meyers* factors.**

**1. Element 1: Creativity does not address “ultimate ideas,” but instead the secular political goal of restructuring society to achieve white dominance.**

To be a religion, *Meyers* requires that the beliefs address “ultimate ideas.” *See* 95 F.3d at 1483. “Ultimate ideas” concern “fundamental questions about life, purpose, and death . . . . These matters may include existential matters, such as man’s sense of being; teleological matters, such as man’s purpose in life; and cosmological matters, such as man’s place in the universe.” *Id.* at 1483; *see also Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (1981) (one factor for assessing whether beliefs are religious is that “a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters”). Beliefs that are based on “purely secular considerations” do not receive protection as “religious” beliefs, no matter how sincerely such beliefs are held. *Yoder*, 406 U.S. at 215. Concerns that are purely personal or social do not

satisfy the basic criteria for a religion, either. *Africa*, 662 F.2d at 1035 (holding that a group’s single governing principle to live in a “pure” and “natural” environment was secular in nature). A sincerely held “fundamental concern” does not equate to “fundamental and ultimate questions having to do with deep and imponderable matters.” *Id.* at 1032.

While a belief in white supremacy does not preclude a group from being a religion, there must be something more to it than the mere will to exalt one race over another. *Bellamy v. Mason’s Stores, Inc.*, 268 F. Supp. 1025, 1026 (E.D. Va. 1973) (holding that the Ku Klux Klan is not a religion under Title VII because the “proclaimed racist and anti-semitic ideology” has “a narrow, temporal and political character inconsistent with the meaning of ‘religion’ as used in § 2000e”), *aff’d*, 508 F.2d 504 (4th Cir. 1974); *cf. Sutton v. Rasheed*, 323 F.3d 236, 251-52 (3d Cir. 2003) (finding that Nation of Islam’s beliefs about racial segregation were religious in nature where they were based on the teachings of the “Qur’an, the Scriptures of all the Prophets of God, and the Bible”); *Wiggins v. Sargent*, 753 F.2d 663, 667 (8th Cir. 1985) (Church of Jesus Christ Christian’s white supremacist belief system was not precluded from being religious in nature where it was “based upon a literal interpretation of Biblical teachings”).

Every court that has addressed the question of whether Creativity constitutes a religion for purposes of the First Amendment, RFRA, or RLUIPA has found that it does not because it is based on purely secular considerations:

Creativity’s overarching concern is with a credo that addresses personal, social and moral questions, as set forth in its ultimate goal of “a sound mind in a sound body in a sound society in a sound environment,” as well as in Creativity’s Sixteen Commandments, and, in particular, Commandment IV, which states: “The guiding principle of all your actions shall be: What is best for the White Race?” Although the Sixteen Commandments also use such words as “avowed duty,” “holy responsibility,” and “sacred goal” to describe Creativity’s guiding principles, such principles reflect no more than a pragmatic philosophy that Creators must act to ensure the survival and promote the dominance of certain members of society.

*Conner v. Tilton*, C 07-4965, 2009 WL 4642392, at \*11 (N.D. Cal. Dec. 2, 2009) (internal citations omitted), *aff'd*, 430 F. App'x 617 (9th Cir. 2011).

“[T]he end that Creativity seeks is a society that has been restructured through white segregation, the attainment of which is not intertwined in any way with the contemplation of ‘deep and imponderable’ matters analogous to those with which traditional religions are concerned.” *Id.* at \*12. Another court emphasized that the secularity of Creativity is demonstrated by *Mr. Hale’s* key role in the group:

The secular philosophical concern underlying Creativity is evinced by the fact that Creators celebrate “Matt Hale Day” and “Benjamin Smith Memorial Day.” Matthew Hale was the former leader, or “Pontifex Maximus” of Creativity, who was convicted of plotting to have a United States District Judge murdered. Benjamin Smith, on the other hand, went on a shooting spree in July 1999, that left two persons dead and nine others wounded. Days after Hale had publicly announced that he was denied an Illinois law license, Smith traveled throughout Illinois and Indiana targeting black, Asian, and Jewish victims before committing suicide. Hale gave a eulogy at Smith’s memorial service, praising Smith’s willingness to take action and spread Creativity’s “sacred message.”

*Birkes v. Mills*, No. 03:10-cv-00032, 2011 WL 5117859, at \*4 (D. Ore. Sept. 28, 2011) (internal citations omitted), *adopted*, 2012 WL 930243 (D. Ore. Mar. 2012); *see also Prentice v. Nevada Dep’t of Corrs.*, No. 3:09-cv-0627, 2010 WL 4181456, at \*4 (D. Nev. Oct. 19, 2010) (concluding that Creativity is “not a religion for purposes of the rights guaranteed under the First Amendment”); *Stanko v. Patton*, 568 F. Supp. 2d 1061, 1072 (D. Neb. July 24, 2008) (finding that “the ‘White Man’s Bible’ and the organization founded by Klassen are not religious in any legally recognized sense of the word, but are fronts and fronts for white supremacist hate mongers,” and denying prisoner’s demand for a “religious” diet of nuts and fresh fruits: “Hate is not a religion and jails do not have to provide nuts and fresh fruits to satisfy the whims of haters.”), *aff’d*, 357 F. App'x 378 (8th Cir. 2009); *see also United States v. Magleby*, 241 F.3d 1306, 1317-18 (10th Cir. 2001) (referring to the Church of the Creator as “a hate group”).

Creativity has not been recognized as a religion for tax purposes, either. *Church of the Creator v. Comm. of Internal Revenue Serv.*, 707 F.2d 491, 491 (11th Cir. 1983) (Church of the Creator’s tax-exempt status under § 501(c)(3) of the Internal Revenue Code revoked in August 1981). North Carolina and Illinois rejected requests for tax-exempt status for Creativity, and Mr. Hale knows of no other states where Creativity members pursued tax-exempt status. May 26, 2017, Deposition of Matt Hale (excerpts), Ex. 9 at 16:21-17:20, 18:1-3.<sup>2</sup>

While one court found that Creativity qualified as a religion for purposes of an employment discrimination claim under Title VII, *Peterson v. Wilmur Commc’ns, Inc.*, 205 F. Supp. 2d 1014, 1021-24 (E.D. Wis. 2002), that ruling has no bearing here because the legal standards at issue were different. In this case, the Court must assess whether Creativity qualifies as a religion under the First Amendment and RFRA. “The standard applied to determine whether a particular set of beliefs qualifies as a religion for purposes of Title VII, however, is

---

<sup>2</sup> Several courts have assumed, without deciding, that Creativity is a religion, but still ruled against the plaintiff. *Deville v. Crowell*, No. 08-3076, 2011 WL4526772, at \*6 n.5 (D. Kan. Sept. 28, 2011) (noting the existence of the *Conner* line of authority in a case where defendants did not challenge “whether Creativity is a recognized religion within the meaning of the First Amendment,” but dismissing First Amendment claims where inmate failed to establish that any defendant had substantially burdened the exercise of his alleged religious beliefs); *Oakden v. Blienser*, No. C 05-2887, 2007 WL 2778788, at \*\*5-6 (N.D. Cal. Sept. 21, 2007) (assuming without deciding that Creativity is a religion where the record was “sparse regarding the overarching doctrinal parameters of the Church of the Creator,” but entering judgment in favor of defendants on dietary claim); *Reimann v. Murphy*, 897 F. Supp. 398, 402-03 (E.D. Wis. 1995) (prison officials provided “irrefutable evidence” that confiscation of issues of Creativity’s “Racial Loyalty Newsletter” was the least-restrictive means of furthering a compelling governmental interest under RFRA, where the issues were “replete with racial hatred and language inciting violence”); *see also Barletta v. Quiros*, No. 3:10-cv-939, 2013 WL 12073470, at \*5 (D. Conn. Feb. 21, 2013) (finding that court did not need to decide whether Church of the Creator was a religion to conclude that prison officials were entitled to qualified immunity on claims seeking Creativity “religious” literature, and observing that, “[t]o date, no court considering a First Amendment claim, has recognized this organization as a religion”).

broader than that applicable in the context of the First Amendment.” *Conner*, 2009 WL 4642392, at \*6 n.4 (citation omitted); *see also Deville*, 2011 WL 4526772, at \*6 n.5 (same). In any event, the *Peterson* case may not be correctly decided. The Equal Employment Opportunity Commission has questioned *Peterson*, observing that “the *Peterson* court might have reached a different conclusion had it considered whether the belief was merely one-dimensional and thus not religious, *i.e.*, not part of a moral or ethical belief system concerning ‘ultimate ideas’ about ‘life, purpose, and death.’” EEOC Compliance Manual § 12, Religious Discrimination, at n.28 (July 28, 2008), available at <https://www.eeoc.gov/policy/docs/religion.pdf>.

Here, the undisputed facts show that Mr. Hale cannot show that Creativity’s beliefs address the broad range of ideas that a religion would address. Creativity is focused on secular white supremacy. The evidence shows, in fact, that its maxims about white superiority originated in a political party that was also created by the founder of Creativity, where they existed independently of any “religious” gloss.

**a. Creativity began as a political party based on secular maxims of white supremacy and anti-Semitism.**

1. Before Ben Klassen created Creativity in 1973, he founded a political party called the Nationalist White Party in 1970. *See Ben Klassen, Klassen Letters Volume One 1969-1976*, Ex. 5, downloaded from <https://ia800308.us.archive.org/13/items/TheKlassenLettersVolumeOne1969-1976/k11.pdf>; *see also* Declaration of Lieutenant Amy Kelley, Ex. 11 at ¶ 46).<sup>3</sup>

---

<sup>3</sup> The downloaded version of the Klassen letters does not contain a title page. Also, pursuant to the terms of the Protective Order in this case, Doc. 80, the BOP has informed Mr. Hale that it has removed the confidentiality designations for all exhibits attached to this motion (including excerpts from Mr. Hale’s deposition transcript), except where those documents contains redactions. Therefore, the “confidential” or “confidential – not to be retained” designations on

2. Klassen identified this “guiding principle” of the Nationalist White Party: “Every law that is passed, every action that is taken will have this as its basic and only consideration: **Will it benefit the White Race?** This is the guiding principle of our movement.” Ex. 5 at 40 (emphasis added).

3. Klassen’s fourteen-point “Creed”<sup>4</sup> for the Nationalist White Party contained maxims about white supremacy, anti-Semitism, and the need for black “repatriation”:

**Point 1:** “We believe that the White Race was created in the Image of the Lord, and represents His noblest and loftiest creation.”

**Point 2:** “It is our sacred determination to drive the Jew from all vestiges of power and influence, first in America, and finally, render him harmless in, and to the whole family of White nations throughout the world.”

**Point 3:** “We will allow only members of the White Race to become citizens of America. This excludes members of the Jewish race and the Black race. Only American citizens will be allowed to hold public office and positions in governments. Only American citizens will be allowed in the professions, in banking, in the judiciary, in the news media, in radio and television, and in positions of education and cultural leadership.”

**Point 4:** “We are therefore determined to carry out Abraham Lincoln’s plan, the repatriation of the black man back to his native Africa, the homeland from whence he was forcefully torn. This resettlement of the black man to the underpopulated black countries of Africa will be carried out with just compensation and in such a manner as to increase the economic viability of the resettlement areas.”

**Point 5:** “We plan to change the immigration laws to prevent any further colored masses from migrating into our land, or mixing into our national blood stream. We are therefore determined to strictly control immigration and limit it to people of the White Race only.”

**Point 6:** “[R]epatriation of the Negro back to Africa is a major constructive step in this direction.”

---

any exhibit attached to this motion has been withdrawn.

<sup>4</sup> The fourteen points are set forth in full at Ex. 5, pp. 34-41.

**Point 7:** “We will therefore make it mandatory that no Jew can exercise any control or hold office in any labor union.”

**Point 8:** “Not only do the farmers produce the nation’s food and fibre, but also greatly fortify the strength of our White racial stock . . . . Our American soil is sacred and no one but the White American will be allowed to own farm land.”

**Point 9:** “We are determined to free the economy of continued manipulation by the clique of international bankers and the perennial uncertainty created by such manipulations.”

**Point 10:** “Our money system is now in in the hands of the Federal Reserve which in turn is in the hands of the International Jewish bankers.”

**Point 11:** “The United States is now the only nation powerful enough to dislodge the Jew from its national body. The power of the International Jew must be broken once and for all. Never again must the family of White nations let the Jew dupe them into fighting fratricidal wars, White brother killing White brother. Once awakened and organized, the White Race is the most powerful force on the face of the earth and never again shall the Jew enslave, plunder, and put into bondage the Creators of civilization, culture and beauty.”

**Point 12:** “We must keep impressing upon the mind of every child, every adult, the ideals of ‘Racial Loyalty, Racial Pride, and Racial Unity.’ Also, our news media, theatre, radio and television must be utilized to impress this great truth upon the White people of America so that never again will the White Man’s thinking be sabotaged and subverted for his own destruction.”

**Point 13:** “Every law that is passed, every action that is taken will have this as its basic and only consideration: **Will it benefit the White Race?** This is the guiding principle of our movement.”

**Point 14:** “Having realized these fundamental truths, our people must again be inspired to a fervent, resolute will to power, to an unshakeable faith in their ability to gain that power and a fiery determination to again be masters of their own destiny. We must exalt and glorify our White heritage and instill Racial Pride. This is the true task and ideological objective of the Nationalist White Party.”

Ex. 5 at 34-41 (emphasis added).

4. The insignia Klassen developed for the Nationalist White Party became the symbol of the Creativity Movement. Compare *id.* at 41 with Ben Klassen & Victor Wolf, *The*

*Little White Book*, Ex. 8 at 2 (showing the same logo as “the COTC Logo”); Ex. 9 at 267:13-16 (authenticating *The Little White Book*).

**b. Creativity’s core beliefs follow the secular maxims of Klassen’s Nationalist White party.**

**i. Creativity has central texts and maxims.**

5. A central text in Creativity is *Nature’s Eternal Religion*, which Klassen published in 1973. Amended Complaint, Doc. 10 at ¶ 5; *see also* Ben Klassen, *Nature’s Eternal Religion*, Ex. 1; Ex. 9 at 116:3-117:11 (authenticating book); Ex. 2, Klassen Foreword to *Nature’s Eternal Religion*.<sup>5</sup>

6. Mr. Hale has written that *Nature’s Eternal Religion* “sets forth the fundamentals of our Racial Religion. It exposes the whole panorama of the sinister conspiracy that is threatening the mongrelization and destruction of the White Race and lays out an effective program for the solution of the ills that beset us.” Matt Hale, *Creator Membership Manual* (3rd Edition), Ex. 7 at 32; Ex. 9 at 187:7-14 (authenticating Membership Manual).

7. Mr. Hale wrote that Klassen’s next book, *The White Man’s Bible*, “extends the Creed and Program as set forth in [*Nature’s Eternal Religion*] by expanding into the area of Salubrious Living, which takes in nine chapters on natural foods and proper diet; how to regain super health and keep it; Organic Farming; a clean environment, and much more. It also exposes alien, Jewish Christianity and much, much more.” Ex. 7 at 32; *see also* Ben Klassen, *The White Man’s Bible*, Ex. 3; Ex. 9 at 116:3-117:11 (authenticating book).

---

<sup>5</sup> On July 28, 2017, undersigned counsel received word from Mr. Hale that the foreword to *Nature’s Eternal Religion* was not included in the edition of the book found at Exhibit 1. Mr. Hale represented that Exhibit 2, which he produced to the BOP, is that foreword.

8. *Nature's Eternal Religion* and *The White Man's Bible* are considered by Mr. Hale personally and other Creators "to be their Holy Scripture and sacred." Doc. 10 at ¶ 5; Ex. 9 at 172:17-173:2, 173:23-25.

9. *Salubrious Living* is another of Creativity's "three basic books," which Mr. Hale also considers to be sacred. See Ben Klassen, *Salubrious Living, A Natural Life Style for Achieving and Maintaining the Ultimate in Super Health and Well-Being as Taught and Practiced by The Church of Creativity*, Ex. 4, downloaded from <https://ia800308.us.archive.org/32/items/SalubriousLiving/salubriousliving.pdf>; see also Ex. 11 at ¶ 45; Ex. 9 at 172:14-23.

10. Mr. Hale wrote that *Salubrious Living* "expands on the details of healthy living as introduced by [*The White Man's Bible*] under Salubrious Living section. It is a complete philosophy in itself and sets forth a NATURAL LIFE STYLE for achieving and maintaining the ultimate in superb health and well-being as taught and practiced by our Church." Ex. 7 at 32-33 (emphasis in original).

11. According to Mr. Hale, *Nature's Eternal Religion*, *The White Man's Bible*, and *Salubrious Living* contain the truth. Ex. 9 at 173:19-22.

12. Of all the statements in *Nature's Eternal Religion*, *The White Man's Bible*, and *Salubrious Living*, Mr. Hale has only questioned one thing Klassen said, and that was Klassen's statement that Adolf Hitler died in combat. *Id.* at 174:3-175:3.

13. Mr. Hale does not disagree with anything else Klassen wrote in these three books. *Id.* at 176:15-19.

14. *The Little White Book*, which was also written by Klassen, is a summary of “the Creed and Program of Creativity.” Ex. 7 at 33.

15. For Mr. Hale, Klassen is of more and greater importance than a theologian in the Christian church or a Talmudic scholar in Judaism. Ex. 9 at 178:2-9.

**c. Like the maxims of the Nationalist White Party, Creativity’s core beliefs are narrow, political, and secular, and do not focus on ultimate or existential issues.**

16. Neither Klassen nor Mr. Hale are interested in “ultimate questions,” as shown below.

17. Klassen said that Creators “should not preoccupy ourselves with such pointless questions” like how creation came to be. Ex. 5 at 162-163 (July 15, 1974, letter to John P. Kay).

18. Mr. Hale said that Creativity does not seek to answer the question, Why were you born?, which “implies that there had to be a being that made us in order to come up with a why . . . We reject that.” Ex. 9 at 254:8-23.

19. For Mr. Hale, Creativity “espouses nature’s truth,” and the fundamental truth of nature can be summarized in one word: “race.” *Id.* at 178:18-20.

20. Creativity evaluates and answers *all* questions solely in terms of the benefit to white people: “Our GOLDEN RULE IS: *What is good for the White Race is the highest virtue; what is bad for the White Race is the ultimate sin.*” Ex. 8 at 34.

21. The “four basic foundations” of Creativity’s “religious creed are: A SOUND MIND IN A SOUND BODY in a SOUND SOCIETY in a SOUND ENVIRONMENT.” *Id.* (emphasis in original).

22. When asked for one sentence that “would sum up the mission of the World Church of the Creator,” Mr. Hale responded:

The mission of the World Church of the Creator is to assure and secure for all times the existence of the White Race upon the face of this planet. Now, in order to accomplish this, *we must achieve social and political power*. Only by courage, education, discipline, leadership, and organization can we attain this power.

See “World Headquarters Church Info Packet” (excerpt) produced by Mr. Hale, Ex. 23 at BOP 31816 (emphasis added).

23. Creativity has Five Fundamental Beliefs, Sixteen Commandments, and a “Creed and Program.”

24. The “Five Fundamental Beliefs of Creativity” equate the “religion” of Creativity with the mere fact of being white and what is best for those who are white:

1. **WE BELIEVE** that *our Race is our Religion*.
2. **WE BELIEVE** that the White Race is Nature’s Finest.
3. **WE BELIEVE** that racial loyalty is the greatest of all honors, and racial treason is the worst of all crimes.
4. **WE BELIEVE** that what is good for the White Race is the highest virtue, and what is bad for the White Race is the ultimate sin.
5. **WE BELIEVE** that the one and only, true and revolutionary White Racial Religion – Creativity – is the only salvation for the White Race.

Ex. 8 at 10-11 (bolded emphasis in original; other emphasis added).

25. Each of the Sixteen “Commandments” of Creativity exhorts followers to take practical steps to elevate the white race above all others, while degrading their non-white “enemies”:

**Commandment Number 1:** It is the avowed duty and holy responsibility of each generation to assure and secure for all time the existence of the White Race upon the face of this planet.

**Commandment Number 2:** Be fruitful and multiply. Do your part in helping to populate the world with your own kind. It is our sacred goal to populate the lands of this earth with White people exclusively.

**Commandment Number 3:** Remember that the inferior colored races are our deadly enemies, and the most dangerous of all is the Jewish race. It is our immediate objective to relentlessly expand the White Race, and keep shrinking our enemies.

**Commandment Number 4:** The guiding principle of all your actions shall be: What is best for the White Race?

**Commandment Number 5:** You shall keep your race pure. Pollution of the White Race is a heinous crime against Nature and against your own race.

**Commandment Number 6:** Your first loyalty belongs to the White Race.

**Commandment Number 7:** Show preferential treatment in business dealings with members of your own race. Phase out all dealings with Jews as soon as possible. Do not employ n\*\*\*\*\*s or other coloreds. Have social contacts only with members of your own racial family.

**Commandment Number 8:** Destroy and banish all Jewish thought and influence from society. Work hard to bring about a White world as soon as possible.

**Commandment Number 9:** Work and creativity are our genius. We regard work as a noble pursuit and our willingness to work as a blessing to our race.

**Commandment Number 10:** Decide in early youth that during your lifetime you will make at least one major lasting contribution to the White Race.

**Commandment Number 11:** Uphold the honor of your race at all time.

**Commandment Number 12:** It is our duty and our privilege to further Nature's plan by striving towards the advancement and improvement of our future generations.

**Commandment Number 13:** You shall honor, protect and venerate the sanctity of the family unit, and hold it sacred. It is the present link in the long golden chain of our White Race.

**Commandment Number 14:** Throughout your life you shall faithfully uphold our pivotal creed of Blood, Soil and Honor. Practice it diligently, for it is the heart of our faith.

**Commandment Number 15:** As a proud member of the White Race, think and act positively, be courageous, confident and aggressive. Utilize constructively your creative ability.

**Commandment Number 16:** We, the Racial Comrades of the White Race, are determined to regain complete and unconditional control of our own destiny.

*Id.* at 16-18.

26. Creativity's twenty-point "Creed and Program" is a pragmatic philosophy for achieving the "prime goal" of ensuring "the survival, expansion and advancement of the White Race":

**Number 1:** CREATIVITY is a *racial religion* whose prime goal is the survival, expansion and advancement of the White Race.

**Number 2:** Our organization is known as the CHURCH OF THE CREATOR. Our movement and religious philosophy are called CREATIVITY, and members of our church are called CREATORS.

**Number 3:** Every issue, whether religious, philosophical, political or racial, is viewed *through the eyes of the White Man*, and exclusively from the point of view of the White Race as a whole.

**Number 4:** The cardinal test of any theory, plan, or program is this: *Will it accrue to the benefit of the White Race?*

**Number 5:** We believe that the White Race is Nature's finest creation of all time and *our most precious treasure is our White Gene Pool*. Guarding the purity of our worldwide Gene Pool, enhancing it, and the upgrading of our future generations is our highest responsibility and our most sacred duty.

**Number 6:** The four basic foundations of our religious creed are: A SOUND MIND IN A SOUND BODY in a SOUND SOCIETY in a SOUND ENVIRONMENT.

**Number 7:** Our GOLDEN RULE IS: *What is good for the White Race is the highest virtue; what is bad for the White Race is the ultimate sin.*

**Number 8:** A thorough and comprehensive study of history has convinced us that the *Jews, with their odious Talmudic and Judaic religion, are the most sinister and*

*dangerous parasites in all history, and that they now control and manipulate the finance, the propaganda, the media and the governments of the world. It is our sacred duty and unswerving goal to get these parasites off the back of the White Race, and enable the White Race to again take control of its destiny and restore it into its own capable hands. DELENDA EST JUDAICA!*<sup>6</sup>

**Number 9:** *We mean to cleanse our own territories of all the Jews, n\*\*\*\*\*s and mud races, and send them back to their original habitat. Starting first with the United States, we then want to help each White country to free their territories of the contamination of mud races, and prevent not only race-mixing, but geographic mixing of races within any of the lands now occupied by the White Race.*

**Number 10:** *A tremendous weapon in the world Jewish drive of race-mixing and proliferation of the mud races has been Jewish Christianity, concocted for the very purpose of mongrelizing and destroying the White Race. It is our avowed objective to expose this Jewish swindle and replace it with a sound, healthy racial religion of our own.*

**Number 11:** *Our first and foremost problem in saving the White Race from mongrelization and genocide is to straighten out the confused and scrambled thinking of the White Race itself. Once we have accomplished that much, getting the Jews, n\*\*\*\*\*s and mud races off our backs will be relatively easy. When this has been accomplished, we then propose to expand the White Man's territory slowly and gradually, similarly to the historic "Winning of the West" in early America, until the White Man inhabits all the good lands of this Planet Earth.*

**Number 12:** *Simultaneously with the above, we mean to promote and practice Eugenics for the upgrading and advancement of the human species itself, as is spelled out in our THREE BASIC BOOKS: *Nature's Eternal Religion, The White Man's Bible, and Salubrious Living.**

**Number 13:** *We also are deeply concerned about the now rapidly deteriorating environment of our Planet Earth, which has not only become racially polluted, but is becoming highly contaminated with overwhelming masses of chemical wastes, nuclear wastes, and other dangerous and toxic poisons. As soon as the White race again has control of its own destiny we mean to reverse this process, clean up the Planet and again make it a clean, pleasant and viable place for the White Race to live.*

**Number 14:** *We also mean to address the problem of farmlands and soil fertility, a problem that is now out of control. As set forth in *The White Man's Bible**

---

<sup>6</sup> "Delenda est Judaica" means the "Jews must be destroyed." See Fact ¶ 61, below.

(*Creative Credo No. 13, 14, and 15*), we plan to put into operation a program of restoring the fertility of the soil and conserving its stability on a worldwide basis.

**Number 15:** We are also concerned about the physical and mental health of our people. In order to enhance and upgrade the physical well-being of both young and old, we mean to promote a natural life style as set forth in *The White Man's Bible*, and further amplified in *Salubrious Living*. The salient components for such a program are summarized in both books under the FOURTEEN BASIC POINTS OF SALUBRIOUS LIVING.

**Number 16:** Our basic philosophy is spelled out under the heading of THE SIXTEEN COMMANDMENTS in both *Nature's Eternal Religion*, and *The White Man's Bible*, and is part and parcel of our creed.

**Number 17:** Our *DECLARATION OF INDEPENDENCE FROM JEWISH TYRANNY* is set forth in *The White Man's Bible*, (*Creative Credo No. 67*).

**Number 18:** Our program to overcome the tyranny and violence directed against the White Race is spelled out on Page 401 of *The White Man's Bible*, and we mean to follow and implement these steps, including Articles 7 and 8 in the order listed, if and when the time should come when we are compelled to do so.

**Number 19:** In *Creative Credo No. 65*, we have an additional creed of our Church enabling the White Race to protect itself from a hostile government, under the heading *Articles for the Defense of the White Race*. This, too, is part and parcel of our creed and program.<sup>7</sup>

**Number 20:** In a rapidly degenerating world that is now overcrowded and overrun with an explosion of inferior mud races; a world that is drug-ridden and already overly polluted with toxic chemicals and nuclear wastes; a world now steeped in anarchy, chaos and terrorism, it is nevertheless our ultimate and continuing goal to build in its place a WHITE AND BRIGHTER WORLD for our future generations.

*Id.* at 33-38 (emphasis in original).

27. “Articles 7 and 8” (referenced in Number 18 of the “Creed and Program”)

anticipates using violence against Jewish people and envisages the need to destroy the Jews “down to the last man”:

---

<sup>7</sup> These “Articles” are found in *The White Man's Bible*, Ex. 3 at 327-330.

7. **So far everything is legal.** We have demanded nothing more than our Constitutional rights, the same as every other citizen. We hope we will need go no further.

Now we come to the crux of our position: **Should the Jewish government use force to violate our Constitutional rights** to freely practice our religion; to peacefully assemble; to peacefully organize; to distribute our White Man’s Bible; to use mails and any other prerogative in promoting and expanding our legal religious organization and the full practice of our religion, **then we have every right to declare them as open criminals violating the Constitution and the highest law of the land. They then obviously are the criminals, and we can then treat them like the criminal dogs they are and take the law into our own hands.** This is the obvious logical thing to do. *We must then meet force with force and open warfare exists. It will then be open season on all Jews.*

8. Should the Jews use assassination against our members, or our leaders, then the White Race must meet fire with fire, and **retribution and vengeance will be our answer.** For every one of ours they kill we will exact ten times their number, starting with the rabbis. When law and persuasion no longer protect our rights to survival then we must—as all free, courageous, intelligent people have done through the ages—turn on our tormentors with a furious vengeance *and destroy them down to the last man.* This is the thing the Jews fear above all—violence directly against their race, and rightfully so. With our superior numbers and fighting qualities, the Jews would be wiped out mercilessly, should they violate our Constitutional rights and inflict violence against us.

Ex. 3 at 326 (bolded emphasis in original; italicized emphasis added).

28. The “Fourteen Principles of Salubrious Living” are a set of maxims about lifestyle choices designed to enhance the health and well-being of white people. Ex. 8 at 19-21.

29. The “Fourteen Principles” exhort Creators to:

- Live “in harmony with the Laws of Nature”
- Eat organically grown, uncooked food
- Avail themselves of “a clean, wholesome environment” and get out in the sunshine every day
- Engage in “strenuous physical exercise several times a week”
- Get enough sleep

- Choose a form of gratifying recreation
- Have a sense of purpose, security and confidence
- Have self-mastery over their life and work
- Be gregarious with other white people
- Engage in a “[h]ealthy expression” of their “sexual instincts”
- Live in a pleasing and healthy environment
- Not use any medicines or put anything artificial in their bodies
- Fast to remove toxins from their bodies
- Live in and promote “a eugenic White society” to perpetuate “our precious White Race,” and “cull the misfits” so “that each generation advances to higher and more salubrious levels, physically, aesthetically and mentally.”

Ex. 8 at 19-21.

30. Klassen’s *Salubrious Living*, which is sacred to Mr. Hale, advises Creators on health-related topics, including “The Best Sources of Minerals and Vitamins,” “Better Vision Without Glasses,” “Building Strong Feet,” and “Keep Your Hair.” Ex. 4 at 1.

**d. The Creativity “program” is a secular political agenda.**

**i. Creativity espouses a secular ideology called “Racial Socialism.”**

31. Creativity has a “political and philosophical program to reorient the White Man’s thinking, to promote our own interests, to promote our own race and promote and assure our survival and well-being, now!” Ex. 1 at 283.

32. “Ideologically,” Creators “espouse Racial Socialism.” *Id.* at 220.

33. “Racial socialism” is a “society organized for the best interests of our White Race.” Ex. 7 at 32.

34. Klassen includes “Racial Socialism” under the heading of “The Salvation” of the white race. Ex. 1 at 178, 226 (chapter called “Racial Socialism” contained in “Book II—The Salvation”).

35. Klassen’s “conclusions on Racial Socialism are summed up with the following observations”:

1. The White Race thrives best in an organized society which is socialism.
2. The White Race cannot survive otherwise.
3. The White Man has an inborn natural order that he fits into.
4. The key to such a society is the Leadership Principle.
5. Private property rights are not in conflict with Racial Socialism but an integral part of it.
6. Only through an organized society can an individual adequately protect his property.
7. The White Man thrives ideally under a socialist government, provided he maintains control of his own destiny and protects himself from the destructive intrusion of the Jew.
8. The ideal situation is that combination whereby the religion and the government of a race blend together in perfect harmony to promote the best interests of the race.
9. Keeping the Jew out and keeping the race pure can best be accomplished by having a social structure whose foundation is race.

*Id.* at 232 (Klassen’s summation of his “conclusions on Racial Socialism”).

36. According to Mr. Hale, many of the principles of National Socialism are “incorporated in my religion. And that was one of the attractions of Creativity is that it incorporates all the great things of National Socialism within its ten[ets].” Ex. 9 at 87:22-88:3.

ii. **Creativity has a political program, which is to target non-white “enemies” in order to achieve racial dominance.**

37. “Creativity’s key criteria is **What is Best for the White Race**. *What is good for the White Race is the highest virtue; what is bad for the White Race is the ultimate sin*. That is our Golden Rule.” Ex. 8 at 27 (emphasis in original).

38. Creators believe that “[t]he White Race is the Master Race.” *Id.* at 80.

39. Creators “**are only interested in the White Race**,” and not “n\*\*\*\*\*s, hottentots, aborigines nor their lower cousins in the primate group such as monkeys, chimpanzees or gorillas.” Ex. 3 at 121 (emphasis in original).

40. The Jews take “top priority” among Creativity’s enemies. *Id.* at 133; *see also id. passim* & Ex. 1 *passim* (repeated degrading references to Jews and persons of color); Ex. 8 at 9 (“Jews, n\*\*\*\*\*s and the mud races” are the “mortal racial enemies” of Creators).

41. Creators believe that “[t]he root of all evil is the Jew.” Ex. 8 at 32 & 81; Doc. 10 at ¶ 78.

42. Creators believe that “[i]ntense hate of the Jew is the beginning of the White Man’s liberation.” Ex. 8 at 81.

43. While the Jewish people are Creators’ “most dangerous natural enemy, . . . the n\*\*\*\*\*s are, next to the Jews, our most deadly menace, *one with which we cannot co-exist in the same country, or even on the same continent[.]*” Ex. 1 at 196 (emphasis added); Ex. 8 at 16 (Commandment Number 3) (Jews are the “most dangerous” of Creators’ “deadly enemies”).

44. Creators’ “proper attitude towards the n\*\*\*\*\*r at all times must be one of hostility and contempt.” Ex. 1 at 32-33; *accord* Ex. 3 at 133.

45. Creators “are proud to be the enemies of Christianity.” Ex. 1 at 274.

**iii. Creativity’s program for achieving white dominance focuses on political tools and violent means directed to other groups.**

**a. Creativity aims to destroy Jewish people.**

46. Creators have a “total program of cutting down the Jew and creating racial loyalty among the White people.” Ex. 1 at 199.

47. Creators learned how not to structure their anti-Jewish program “from the Nazi experience and the mistakes made in dealing with the Jewish monster.” Ex. 8 at 42; *see also* Ex. 1 at 332 (describing Nazi Germany’s actions toward Jews as “a positive program”).

48. The first part of the program is to deprive Jews of their position in society.

49. In the present, Creators are commanded to have no dealings with Jews and other persons who are not “white.” Commandment Number 7, Ex. 8 at 17.

50. For example, according to Mr. Hale, if Creators were to observe a little Jewish girl being struck by a car, they would not help her: “[M]ost Creators would probably say, Well, that person’s Jewish; they’re not my concern,” and “I will do what nature commands me to do and be indifferent.” Ex. 9 at 292:23-293:9, 294:5-18.

51. In a similar vein, after the beheading of *Wall Street Journal* Reporter Daniel Pearl, Mr. Hale wrote: “We couldn’t care less about the death of this Jew who along with the rest of his parasitic race are clearly a form of vermin far more dangerous in fact than the kind that run on four legs.” Ex. 18, *New York Times, Hate, American Style*, downloaded from <http://www.nytimes.com/2002/08/30/opinion/hate-american-style.html>; Ex. 11 at ¶ 49.

52. Creators should refuse “to ever work for a Jew, or a Jewish outfit.” Ex. 1 at 199.

53. Then, once Creators “are organized, we must **drive the Jews from power**, politically, financially, and from every other field.” Ex. 3 at 89 (discussing “Creative Credo #18, The Melting Pot—The Ugly American Dream”) (emphasis in original).

54. Creators will “**boycott . . . every Jew and every aspect of Jewish influence in our society**”:

This includes boycotting the Jews in business, in their professions, in their political activities, in education, in religion, in the news media, theater, etc. Not only will we boycott them, but **we will expose them, point them out** and wage propaganda warfare against them, just as they are presently doing again the White Race.

Ex. 8 at 62 (emphasis in original).

55. After Creators have driven Jews from political office, they will pass laws to ensure that Jews are further degraded:

**[W]e will follow this up with legal measures to forever exclude the Jews from positions of power or influence in government, education, propaganda, arts and theater** or any other meaningful influence in our society, as did Hitler in Germany, and as did the Byzantine Empire over a thousand years earlier, and as the bandit state of Israel has done to all peoples who are not of Jewish birth.

*Id.* at 63 (emphasis in original).

56. Creators believe that laws that marginalize and diminish Jews on the basis of their race are “legal.” *Id.* (“**So far everything is legal.**”) (emphasis in original).

57. Eventually, non-white persons like Jews must be eliminated: “The people of the future world must be the White Race and *the White Race exclusively.*” Ex. 3 at 83-84; *id.* at 127 (Creators anticipate “a future race that is . . . **White and Cleansed** of all traces of any of the mud races.”) (emphasis in original).

58. An “all out war,” or Racial Holy War (“RAHOWA”), is required to “destroy [Creativity’s] enemies.” Ex. 8 at 31 (“Lessons of Nature for White Survival,” Number 8)

(emphasis in original); *see also* Ex. 7 at 32 (defining “Rahowa” as “the battle cry and greeting of Creators; the struggle for the survival, expansion, and advancement of our White Race”).

59. “The end (White survival) justifies the means (any and all means deemed effective and necessary).” Ex. 8 at 32

60. Creators anticipate that “**the Jewish government**” may “use force to violate our constitutional rights,” allowing Creators to “**take the law into [their] own hands,**” and triggering “open warfare” against and “open season on all Jews.” *See* Fact ¶ 27, above (bolded emphasis in original; italicized emphasis added); *accord* Ex. 7 at 10; *see also* Declaration of Anthony Garrow, Ex. 10 at ¶ 27 (Hale’s description of anticipated order from Judge Lefkow as an act “*that in effect places our Church in a state of war with this federal judge and any acting on authority from her kangaroo court*”) (emphasis added); *see also* Ex. 17, “Rigged Court System Declares War on Church,” from Matthew Hale, “*The Struggle*” newsletter, dated “December 29AC,”<sup>8</sup> downloaded from <https://archive.org/details/RiggedCourtSystemDeclaresWarOnChurch>; Ex. 11 at ¶ 48.

61. The Creativity Program requires that, in the end, the Jews must be destroyed: “DELEND A EST JUDAICA!” Ex. 8 at 34 (emphasis in original); *accord* at 29, 58 (calling for the destruction of the Jews “throughout the world”); *id.* at 24 (explaining that “DELEND A EST JUDAICA” means the “Jews must be destroyed!”).

62. “When Creativity triumphs the White Race will be Jew-proof for all time.” *Id.* at 54.

---

<sup>8</sup> As further explained below, Mr. Hale invented the “AC” method for numbering years. Facts ¶¶ 98-99, below.

**b. Creativity encourages violence and political exclusion directed at non-white people.**

63. Creativity’s program includes directives for dealing with its other “enemies.”

64. The Creativity political program is against “subsidizing the n\*\*\*\*\*s, Jews and mud races of the world both at home and abroad. Let the bastards starve!” Ex. 3 at 75; *id.* at 73 (section entitled “Can’t Subsidize the World”).

65. Creators can have no business dealings with African Americans during “the transition period where we are not yet united enough to ship the n\*\*\*\*r back to Africa[.]” Ex. 1 at 199.

66. When the “transition period” has ended, “[i]t is our program to ship the n\*\*\*\*\*s back to Africa, and the Mexicans and other mud races back to wherever they came from.” Ex. 3 at 86 (in discussion of “Creative Credo #17, Only a Homogenous Society Can Be Governed and Can Endure”).

67. Creators have a “Systematic Planned” Program for white colonization that includes “**Clear[ing] out the Scum**: “The Third Step we must take after stopping mud migration into White countries, “**is to expel those coloreds already here**. We must ship the American n\*\*\*\*\*s back to Africa, the Jamaicans back to Jamaica, the Mexicans back to Mexico, the Cubans back to Cuba, the Chinese back to China, the Hindus back to India, etc. The same steps must be taken in England, Sweden, Germany, France, and all the other basically White countries.” *Id.* at 105 (in “Creative Credo #21, Colonization—A Basic Urge in Every Creature of Nature’s Realm”) (emphasis in original).

**c. Creativity targets Christians.**

68. As for Creativity’s Christian enemies, “Christianity must be *exposed, defeated and eliminated* in order to save the White Race.” Ex. 8 at 7 (from 18 “Daily Affirmations”; bolded emphasis in original; italicized emphasis added).

**d. Creativity espouses eugenics.**

69. Creators believe in a “deliberate program of upbreeding,” including “sterilizing the morons, the idiots, the genetically diseased and the misfits”:

It is that simple. It is Racial Eugenics in practice. It is the very heart of our religion, CREATIVITY.

Ex. 1 at 94.

70. Once the removal of “alien mud races” is accomplished, Creators will “encourage the **more desirable specimen** of our own race **to have more children**,” and “[i]nduce the **less desirables** of the White Race to have **smaller families**.” Ex. 3 at 130 (emphasis in original).

71. Creativity does not exclude white people from this program of racial eugenics, because “[e]ven among the present White Race there are parasites, drones, insane, morons, pathological criminals and genetic cripples that the world and our White society would be better off without. Nature gives us a further law in this response—**Any organism that fails to excrete its wastes, soon dies**.” *Id.* at 84-85 (emphasis in original).

72. Creators “will eventually have to come to a **Genetic Grading System**, a system not unlike that now employed by the army for physical fitness,” as well as the “**Sterilization of the Incurable Misfits**, idiots, and genetically diseased.” *Id.* at 130-31 (emphasis in original).

**e. Conclusion: Creativity embraces no “ultimate ideas”**

The undisputed facts show that Mr. Hale cannot meet his burden to establish that Creativity has any belief that addresses “ultimate ideas.” Creativity is based on the secular, personal, and social consideration of ensuring that white people dominate the physical world, now and in the future. The evidence is that this focus is on issues earthly, political, antagonistic, and violent, and does not extend broadly to an extensive belief system covering issues that are ultimate, profound, or imponderable.

**2. Element 2: Creativity is not comprehensive.**

The *Meyers* test also asks whether the claimant’s asserted religious beliefs are “comprehensive” in nature. *Meyers*, 95 F.3d at 1483. “Religious” beliefs usually provide a *telos*, an overreaching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs generally are not confined to one question or a single teaching.” *Id.*; see also *Africa*, 662 F.3d at 1035 (a religion “has a broader scope” than “one question or one moral teaching”). *Id.*

This element of comprehensiveness requires examination of whether a set of beliefs, even if many, are wide-ranging, or if they actually focus on a single central idea. As one court explained, when considering whether the Creativity Movement met this “comprehensiveness” element, “a relationship exists between the criterion of comprehensiveness and the criterion of fundamental and ultimate questions”:

In particular, while Plaintiff’s evidence shows that Creativity’s doctrines address a wide range of concerns, the evidence also shows that the essence of Creativity is confined to “one question or one moral teaching” which, again, can be summed up by Creativity’s Golden Rule: “What is good for the White Race is the highest virtue: What is bad for the White Race is the ultimate sin.”

*Conner*, 2009 WL 4642392, at \*12 (finding that plaintiff’s belief system in Creativity, “while governing his behavior in wide-ranging respects, is not sufficiently comprehensive to meet the [comprehensiveness] criterion”). Here, Mr. Hale also cannot meet his burden to show that the belief system of Creativity is comprehensive in nature, because the undisputed evidence in the record shows that Creativity’s various views are centered on a single issue, white supremacy.

**a. Creativity is not comprehensive because it is focused on the overarching goal of achieving white dominance while degrading others.**

73. Mr. Hale cannot point to a single Creativity belief that is not directed toward the narrow objective of securing a society dominated by white people.

74. All facts related to the “ultimate ideas” factor, *see* ¶¶ 1-72, above, show that Creativity is solely devoted to this singular, secular goal.

75. To put it succinctly, “Creativity’s key criteria is **What is Best for the White Race**. *What is good for the White Race is the highest virtue; what is bad for the White Race is the ultimate sin*. That is our Golden Rule.” Ex. 8 at 27 (emphasis in original).

**b. Conclusion: Creativity is not “comprehensive”**

The undisputed facts show that Mr. Hale cannot meet his burden to prove that Creativity, focused as it is on doing exclusively what is best for the “White Race,” is a comprehensive belief system.

**3. Element 3: Creativity is not metaphysical.**

Under *Meyers*, the Court must determine whether the allegedly religious beliefs are “metaphysical” in nature. “Religious beliefs often . . . address a reality which transcends the physical and immediately apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often believe that these places are

inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.” *See* 95 F.3d at 1483. Mr. Hale cannot meet his burden to prove this factor because the evidence shows that Creativity is not metaphysical, and in fact rejects the spiritual dimension.

**a. Creators disavow metaphysical beliefs and do not worship anything.**

76. Creativity rejects any notion of metaphysical beliefs that transcend the physical, observable world.

77. Klassen wrote that “[a] CREATOR is not superstitious and disdains belief in the supernatural. He will waste no time giving credence to, or playing silly games with imaginary spooks, spirits, gods and demons.” Ex. 8 at 15 (from section entitled “What a CREATOR is not”); *id.* at 73 (discussing the “spooks-in-the-sky swindle”).

78. Klassen wrote that, “[i]f there is one erroneous idea that set in motion all the other suicidal ideas the White Man now nurtures, it is the ‘spooks in the sky’ swindle that the Jew foisted on the White Man, nearly 2,000 years ago.” Ex. 3 at 115.

79. Creators “see a world in which superstition, fear of hell, and ‘spooks in the skies’ will be buried with the superstitions of our barbarian ancestors. No longer will superstition be exploited for profit by con-artists to torment and dominate the minds of the gullible.” *Id.* at 8.

80. Mr. Hale rejects the idea of the existence of god or the supernatural, which he deems “to be a contradiction in terms.” Ex. 9 at 254:24-255:10.

81. Creators “do not regard Nature as our god, do not worship Nature, or the White Race, or anything else. We believe ‘worship’ per se is silly and demeaning, and have the same opinion about believing in spooks, spirits, and the supernatural.” Ex. 5 at 247 (September 18, 1975, letter to Annie Laurie Reaves); *see also* Ex. 9 at 281:17 (“So we don’t worship nature.”).

82. According to Mr. Hale, Creators “don’t like the word worship. . . . We think that’s demeaning. . . . we don’t believe in being humble, which to us means being low.” *Id.* at 281:5-17.

**b. Conclusion: Creativity has no “metaphysical beliefs.”**

The undisputed facts show that Mr. Hale cannot meet his burden to prove that Creativity’s beliefs “address a reality which transcends the physical and immediately apparent world.” *Meyers*, 95 F.3d at 1483.

**4. Element 4: Creativity does not have a whole moral or ethical system, but instead is limited to white supremacy.**

The *Meyers* analysis also evaluates whether a set of beliefs amounts to a “Moral or Ethical System”:<sup>9</sup>

Religious beliefs often prescribe a particular manner of acting, or way of life, that is “moral” or “ethical.” In other words, these beliefs often describe certain acts in normative terms, such as “right and wrong,” “good and evil” or “just and unjust.” The beliefs then proscribe those acts that are “wrong,” “evil,” or “unjust.” A moral or ethical belief structure also may create duties—duties often imposed by some higher power, force, or spirit—that require the believer to abnegate elemental self-interest.

*Meyers*, 95 F.3d at 1483. A court may thus consider whether the purported religion requires its adherents to “abnegate elemental self-interest.” *Id.*

Mr. Hale cannot meet his burden to prove this factor. Creativity does not attempt to develop a full system of moral or ethical behavior that would cover the whole range of human experience, or promote any abnegation of self-interest. Rather, it has a very narrow focus, exhorting its followers to espouse white supremacy.

---

<sup>9</sup> This factor is not found in the *Africa* analysis, and therefore was not analyzed in *Conner*. See 2009 WL 4642392, at \*\*7-14 (analyzing whether Creativity addressed “fundamental and ultimate questions,” was “comprehensive in nature,” and had “formal and external signs”).

**a. Creativity’s “ethics” focus on a narrow issue: furthering white supremacy.**

83. Creativity’s only definition of what is right and wrong, good and evil, just or unjust, depends on what it views as beneficial to the white race.

84. All facts related to the “ultimate ideas” factor, *see* Facts ¶¶ 1-72, above, show that Creativity is solely devoted to this singular, secular goal.

85. “Creativity’s key criteria is **What is Best for the White Race**. *What is good for the White Race is the highest virtue; what is bad for the White Race is the ultimate sin*. That is our Golden Rule.” Ex. 8 at 27 (emphasis in original).

86. Self-interest is the very crux of Creativity, as shown by its “Golden Rule.” *See id.*

87. Creativity does not offer moral or ethical guidance on issues on which the white race stands neither to benefit nor to suffer harm.

88. As Mr. Hale said, if a Creator observed a Jewish child facing a life-or-death situation, the beliefs of Creativity counsel indifference: “[M]ost Creators would probably say, Well, that person’s Jewish; they’re not my concern,” and “I will do what nature commands me to do *and be indifferent*.” Ex. 9 at 292:23-293:9, 294:5-18 (emphasis added); *see also* Fact ¶ 51, above (“We couldn’t care less about the death of this Jew,” a reporter who was beheaded by Islamic extremists.).

**b. Conclusion: Creativity simply encourages white supremacy, and does not have a broader moral or ethical system.**

The undisputed facts show that Mr. Hale cannot meet his burden to prove that Creativity’s “key criteria”—its “Golden Rule”—rises to the level of a “moral or ethical system.” *Meyers*, 95 F.3d at 1483.

**5. Element 5: The “accoutrements” of Creativity do no more than support a secular belief system.**

A court may also examine whether a purported religion has signs and symbols and other religious accoutrements; if such signs and symbols exist, the court should examine them to determine if they reflect religious beliefs or mere secular ones. The presence of certain “external signs may indicate that a particular set of beliefs is ‘religious[.]’” *Meyers*, 95 F.3d at 1483. But “a belief system that is secular in nature does not become a religion simply by its use of religious terminology.” *Conner*, 2009 WL 4642392, at \*11.

Mr. Hale cannot meet his burden to prove this factor. Creativity does have a leadership structure, as well as symbols and holidays, many of which Mr. Hale invented. But those accoutrements do not strongly show a religious approach, but instead suggest a world-bound focus on the political goals of the Movement, including a leadership structure and celebration of men associated with the movement. As one court found in examining Creativity:

While plaintiff has presented evidence that shows Creativity has formal and external characteristics that might be considered similar to those associated with more traditional religions, their sole purpose is to support what the Court already has found to be a secular belief system. Accordingly, the Court finds plaintiff’s evidence fails to create a triable issue with respect to whether such characteristics qualify Creativity [as] a religion.

*Id.* at \*13 (rejecting the religiosity of Creativity on this factor, despite the existence of these externalities: a “well-defined organizational structure,” ordination of “clergy, who must be familiar with the teachings of Creativity and must take an oath to follow and promote those teachings,” “formal group worship services,” operation of a “prison ministry,” formal ceremonies, and holidays).

a. **Creativity's signs promote membership and secular beliefs, but do not reflect deeper religious meaning.**

i. **Creativity permits membership if you are white and pay a fee.**

89. Anyone who is white and who pays the annual dues can become a Creator. Ex. 7 at 12.

90. A person can receive "Official Supports Status" if he or she pays \$50. *Id.* at 13.

ii. **While Creativity has "reverends," the leaders created this position to seek to gain legal protection, and let any follower over the age of 16 claim this title.**

91. Creativity has "reverends," one of whom is Mr. Hale.

92. Klassen created Creativity "reverends" to enable Creators to "fully utilize the extraordinary prestige and influence religious titles exercise in our culture and society":

**The Jews have bragged time and again that practically every new issue (such as integration and mongrelization) that they want to slop on the White Race they promote first through the ministers (the White Man's) and the churches as a moral issue. Why? Because there is an inherent "reverence" for "the Reverend." They not only use this ploy with the White "Reverends," but also and especially by means of black "Reverends" who, though they are just recently emerged from the jungles, are now instantly converted into a near deity by turning their collar around and draping them with the religious mantle of "Reverend."**

Ex. 8 at 68-69 (emphasis in original).

93. Klassen described the "game" of using the status of "reverend" to bring credibility to Creativity:

WHEN THEY PICKED an alleged communist, panderer and car thief by the name of Martin Luther K\*\*n to head up the "civil rights" movement of the sixties, they first of all made sure that he had the title of "Reverend".

...

**WELL, TWO CAN PLAY THAT GAME. We now have a religion of our own, a White Man's religion, established for the survival of the white Race, for the White Man's benefit. It is called CREATIVITY. Since religion is like fire, let us make sure we utilize ours to burn down the treacherous façade that is being**

**used against us, and to fuel our own engines to steamroller the Jews and other mud races out of our culture.**

*Id.* at 69-70 (emphasis in original; underlined emphasis added).

94. Klassen listed the following among the tactical “advantages” to having “ministers” in Creativity:
1. The **prestige** and **recognition** that automatically go with the title are a most valuable asset that has long been recognized by the Christians, Jews and n\*\*\*\*\*s. *We too, can capitalize on it.*
  2. The **legal protection under the First Amendment** is much more pervasive for a religious group, front, organization, or whatever, than say a political group (like the Nazis) . . . Whereas, the media or any political hack will eagerly kick a Nazi around like some dog, they will differentially [sic] treat with kid gloves any “Reverend” who heads up a religious organization . . .
  3. It lays the basis for the **legitimate claim of exemption from the tyrannical and voracious Jewish tax collectors**. It is no guarantee, but it is a strong claim that we can and must defend. If the Jewish synagogues get tax exemptions, why shouldn’t we? If the n\*\*\*\*\*s’ “religious” establishments get tax exemptions, why shouldn’t we? If the Catholic Church, which is headquartered in a foreign country, gets tax exemptions, why shouldn’t we? . . .

*Id.* at 71-73 (bolded emphasis in original; italicized emphasis added).

95. Any aspiring “reverend,” “deemed to be a legitimate White Man or Woman over the age of 16,” who has “convinced us that you are dedicated to the noble cause of the White Race, . . . will be awarded a Certificate of Minister, with all the ensuing credentials for becoming an inspirational leader in your area. This will have the further advantage of giving you the prestige and credentials to form a Church group of your own . . .” *Id.* at 75-76 (emphasis in original).

96. Klassen named a 16-year-old boy as a “Minister,” hoping to persuade his prominent white supremacist father to join Creativity. Klassen, *Trials, Tribulations and*

*Triumphs*, downloaded from

<https://ia902707.us.archive.org/9/items/TrialsTribulationsAndTriumphs/eBook-BenKlassen-TrialsTribulationsAndTriumphs.pdf>, Ex. 6 at 155-56; *see also* Ex. 11 at ¶ 47.

97. Creativity “reverends” were obliged to swear an oath of allegiance to Mr. Hale personally, when he was Pontifex Maximus: “Having been duly accepted for the ministry in the World Church of the Creator, I hereby reaffirm my undying loyalty to the White Race and the World Church of the Creator and furthermore swear allegiance unto Pontifex Maximus Matt Hale, and his duly appointed successors.” *Todd v. California Dep't of Corr. & Rehab.*, 1:12-CV-01003-LJO, 2013 WL 1281611, at \*1 (E.D. Cal. Mar. 26, 2013), *subsequently aff'd in part, vacated in part*, 615 Fed. App'x 415 (9th Cir. 2015).

**iii. The ceremonies and holidays for Creativity, many of which Mr. Hale created, honor both Mr. Hale and other white supremacists.**

98. Mr. Hale invented a new year-dating system for Creativity that mimics that of Christianity.

99. “[A]s Pontifex Maximus, I hereby declare that we consider the Christian numbering of the years to be void, and that henceforth, what was formerly ‘1973’ shall be marked as the Incepto de Creativitat (Inception of Creativity) or I.C. This will be equivalent to the Christian year ‘0’ . . .” Ex. 7 at 37-38.

100. Mr. Hale declared that the “Five Fundamental Beliefs” of Creativity,” *see* Fact ¶ 24, above, were “[t]o be memorized and repeated as a sacred religious ritual by every Creator five times a day.” *Id.* at 6.

101. Mr. Hale wrote down certain ceremonies for Creators, including a wedding ceremony, a “child pledging ceremony,” a “Confirmation of Loyalty to the White Race” ceremony, and a “goodbye” ceremony for the dead. *Id.* at 24-31.

102. Mr. Hale cannot present evidence of more than a few scattered examples of these “ceremonies” being used.

103. A number of Creativity “holidays” were devised by Mr. Hale.

104. Mr. Hale declared that February 20, Klassen’s birthday, would be a Creator holiday called “Klassen Day.” *Id.* at 38.

105. Mr. Hale declared that February 21, the anniversary of the publication of *Nature’s Eternal Religion*, would be a holiday called “Founding Day.” *Id.*

106. In the 1990s, Mr. Hale declared December 29 to be “West Victory Day.” Ex. 9 at 312:4-11.

107. On West Victory Day, “the White Man defeated the inferior red Indian at the battle of Wounded Knee Creek. This marked the end of the Indian’s [sic] organized resistance to the White Man’s domination of America. Therefore, we dedicate this day to celebrating this victory of the White Race over the savage red Indians, thereby making America unquestionably the territory of the White Man.” Creativity Prison Ministries Membership Manual, Ex. 11 at ¶ 42 & Attachment 7, BOP 3066-3067.

108. In December 2002, Mr. Hale added another holiday to the Creativity calendar around Christmastime called “Festum Album.” *See* Ex. 19, the Reverend Matt Hale Archive, In Klassen We Trust: The White Power Hour with Rev. Matt Hale – Show 60 – Festum Album, downloaded from <https://reverendmatthearchive.wordpress.com/audio/radio/program/in->

klassen-we-trust-the-white-power-hour-with-rev-matt-hale/in-klassen-we-trust-show-60-festum-album/; *see id.* (comparing Festum Album to Hanukkah, which the Jews “brazily rubbed in our faces every year”); *see also* Ex. 11 at ¶ 50.

109. Creators celebrate “Alamo Day” on March 6:

On this day . . . 182 heroic White Men died at the hands of our racial enemies—the Mexican muds—during the storming of the Alamo after a siege lasting 13 days. These brave White Men, knowing they were doomed, fought to the bitter end, taking between 1500 to 1600 of the enemy with them. Their deaths also inspired the White Texans to exact vengeance on the enemy and run the Mexicans out of Texas.

Ex. 11 at Attachment 7, BOP 3064-3065.

110. Mr. Hale declared that “Martyrs” Day” be celebrated on September 15. Ex. 7 at 38; Ex. 9 at 308:16-309:11.

111. Some people honor Mr. Hale on “Martyrs’ Day.” *Id.* at 309:13-16.

112. On July 2, 1999, Benjamin Smith, a Creativity Movement member and close associate of Mr. Hale, went on a shooting rampage that targeted black, Asian and Jewish victims. Smith killed two people and wounded nine others before killing himself. Ex. 10 at ¶ 35; *see also United States v. Hale*, 448 F.3d 971, 975 (7th Cir. 2006) (observing that evidence showed Smith’s rampage was undertaken for the purpose of avenging the decision to deny Mr. Hale an Illinois law license, announced a few days before the murders).

113. Creators celebrate “Benjamin Smith Memorial Day” on July 4, the day on which “Ben Smith gave his life for his beliefs”:

Having been wounded in his attempt to do his part to secure the Survival, Expansion, and Advancement of the White Race, he was denied adequate medical care and allowed to die in police custody. Therefore, we dedicate this day to remembering our fallen Comrade and the sacrifice that he made for our Race.

Ex. 11 at Attachment 7, BOP 3065.

114. Creators celebrate “Matt Hale Day” on July 27, Mr. Hale’s birthday. Ex. 11 at Attachment 7, BOP 3065; *see also Birkes v. Mills*, No. 03:10-cv-00032, 2011 WL 5117859, at \*1 (D. Ore. Sept. 28, 2011) (finding that “[t]he secular philosophical concern underlying Creativity is evinced by the fact that Creators celebrate ‘Matt Hale Day’”).

115. Matt Hale Day is described in the *Creativity Prison Ministries Membership Handbook* this way:

Matt Hale, a former Pontifex Maximus of the Church, was having so much success in spreading the Message and Creed of Creativity to the White masses that the Jewish Occupation Government of America framed him and locked him in prison for 40 years. Matt Hale was born on this day in the Second Year Prior to Creativity (2 P.C./1971), and we dedicate this day to ensuring that this Comrade who placed the best interests of the Church and the White Race before his own freedom is never forgotten.

Ex. 11 at Attachment 7, BOP 3065.

**iv. “Salubrious living,” a healthy lifestyle, was described by Creativity’s founder, but he did not follow it or command that others follow it.**

116. Klassen created the trapping of “salubrious living” for Creativity. Facts ¶¶ 28-30, above.

117. The “Fourteen Principles of Salubrious Living” are a set of statements about lifestyle choices, including a “fruitarian” or “raw food” diet, designed for the purpose of enhancing the health and well-being of white people. Ex. 8 at 19-21.

118. In *The Little White Book*, Klassen, the “prophet” and founder of Creativity, wrote:

**IMPORTANT NOTE:** At this point we Creators would like to clarify a very prevalent misconception that one cannot join the Creativity Movement without changing his eating habits. That is simply not true! Our goals of Salubrious Living, Latin as a universal language, organic farming, Eugenics, etc., are the long-term ADVANCEMENT-stage goals.

Ex. 8 at 22-23; *see also* Doc. 10 at ¶ 12 (“Ben Klassen is considered a Prophet by those who adhere to the religion he began.”).

119. Klassen’s writings show that he ignored the rules about the diet.

120. In *Trial, Tribulations and Triumphs*, Klassen describes eating “a good prime rib dinner” (p. 97), a “shrimp and steak” dinner (p. 99), a “Spanish steak” (p. 128), “crayfish et’ouffe [sic]” (p. 140), a “seafood gourmet repast” (p. 147), “a highball” followed by “a good dinner of chicken soup, chicken casserole with water chestnuts, and peach turn-overs with ice cream” (p. 148), a “turkey dinner” with a “glass of wine” (p. 158), a “big lunch of B-Q spare-ribs” (p. 159), a “big seafood lunch at the Red Lobster Restaurant” (p. 193), a “good cornish hen dinner” (p. 211), and a “big turkey dinner” (p. 211). Ex. 6 (all citations in this paragraph).

121. Mr. Hale testified in his deposition that *Trials, Tribulations and Triumphs* is one of the “sacred” books of Creativity. Ex. 9 at 123:9-25.

**b. Conclusion: The accoutrements of Creativity do not reveal religious meaning, but focus on promoting and celebrating secular white supremacy.**

The undisputed facts show that Mr. Hale cannot establish that the “religious” accouterments of Creativity are anything other than trappings added to a belief system focused on elevating whites in secular society.

In sum, the undisputed facts show that Creativity is nothing more than a narrow, earth-bound, non-metaphysical, secular, violent ideology aimed at dominance of the white race and the degradation of all others. Because Mr. Hale cannot establish that Creativity is entitled to protection as a religion under the First Amendment or RFRA, the BOP is entitled to judgment on Claims 3, 8, and 9, and the free exercise component of Claims 1 and 2.

**II. Mr. Hale lacks standing to seek prospective relief related to the 2010 and 2013 mail restrictions. (Claims 1, 2 and 3)**

Even if Creativity were a religion, the BOP is entitled to summary judgment on Claims 1, 2 and 3, which challenge past restrictions on Mr. Hale’s mail privileges. When Mr. Hale brought this case, he had recently been on Restricted General Correspondence Status. He has not been on that status since 2013, before he filed this lawsuit. The facts relating to his mail privileges are now significantly different. Thus, to the extent he seeks to continue to challenge his placement, in 2010 and 2013, on Restricted General Correspondence Status, the Court lacks subject-matter jurisdiction because Mr. Hale does not have standing to bring those claims.

**A. Burden of proof and elements that Mr. Hale must prove**

As the party invoking federal jurisdiction, Mr. Hale bears the burden to establish that the Court has subject-matter jurisdiction to hear his claims. *Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005). The Supreme Court has repeatedly emphasized that a plaintiff must demonstrate standing separately for each claim and for “each form of relief sought.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Mr. Hale’s only remaining remedy is injunctive relief. *See* Doc. 10 at 31 (Order ruling that Mr. Hale’s remaining “claims may proceed *only to the extent they seek injunctive relief* against the Bureau of Prisons”) (emphasis added).

Standing to seek prospective injunctive relief “has three requirements: (1) an injury in fact; (2) causation; and (3) redressability.” *Colorado Outfitters Ass’n v. Hickenlooper*, 823 F.3d 537, 544 (10th Cir. 2016) (citing *Lujan v. Defenders of Wildlife*, 504 US. 555, 560-61 (1992)). “[S]tanding for retrospective relief may be based on past injuries, whereas [] claims for prospective relief require a continuing injury.” *PeTA v. Rasmussen*, 298 F.3d 1198, 1202 (10th

Cir. 2002); *Facio v. Jones*, 929 F.2d 541, 544 (10th Cir. 1991) (To have standing to “maintain a declaratory or injunctive action,” a plaintiff must “demonstrate a good chance of being likewise injured in the future.”).

When a plaintiff seeks injunctive relief to address a claimed future harm, “a plaintiff must offer something more than the hypothetical possibility of injury. The alleged injury must be concrete, particularized, and *actual or imminent*.” *Colorado Outfitters*, 823 F.3d at 544-45 (emphasis added); *id.* (noting that the injury must be “certainly impending”); *see also, e.g., City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (standing requires an actual, ongoing injury or a showing that the plaintiff is “immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical”) (internal quotations omitted).

To make this showing, Mr. Hale may not rely on speculation, nor is it enough to “observe that the challenged conduct is repeatable in the future” or “that the purportedly illegal practice is commonly used.” *Lebron v. Rumsfeld*, 670 F.3d 540, 561 (4th Cir. 2012) (citing *Golden v. Zwickler*, 394 U.S. 103, 109 (1969); *Lyons*, 461 U.S. at 106)).

The undisputed facts show that Mr. Hale cannot meet his burden to prove the injury-in-fact element of standing. The last mail restrictions at issue here were removed before he filed this lawsuit. He is not on Restricted General Correspondence Status now. He cannot show that he faces an actual and imminent threat of being placed on Restricted General Correspondence Status again.

**B. Element Mr. Hale cannot prove: Mr. Hale cannot establish an actual and imminent threat of being placed on Restricted General Correspondence Status.**

1. The mail restrictions at issue in Claims 1, 2 and 3 were in place from July 2010 to January 2011 and from January 2013 to July 2013. Declaration of Blake Davis, Ex. 12 at ¶¶ 22, 34; Declaration of David Berkebile, Ex. 13 at ¶¶ 18, 22.

2. Mr. Hale is not on Restricted General Correspondence Status under 28 C.F.R. § 540.15 at this time. Ex. 11 at ¶ 34.

3. An inmate who is on Restricted General Correspondence Status ordinarily can communicate only with his spouse, mother, father, children, and siblings. 28 C.F.R. § 540.15(d)(1).

4. There are no restrictions on the persons outside the prison with whom Mr. Hale can correspond. Ex. 11 at ¶ 34.

5. Mr. Hale can communicate with persons of his choosing, including his followers in the Creativity Movement. *Id.*

6. Many of Mr. Hale's current correspondents are his fellow adherents of Creativity who are not members of his immediate family.

7. Since Mr. Hale was redesignated to the ADX on April 7, 2017, he has exchanged correspondence with people outside the prison. From that date to July 26, 2017, he had sent 64 pieces of non-legal mail and received 109 pieces of non-legal mail. *Id.* at ¶ 35.

8. Like every other inmate, Mr. Hale and his correspondents cannot talk about the business of the Creativity Movement because it is a designated STG. *Id.* at ¶¶ 24, 25, 29, 33, 34.

9. Mr. Hale and his correspondents can talk about any matter unrelated to the Creativity Movement, provided those communications are not detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if they might facilitate criminal activity. *Id.* at ¶ 35.

**III. Mr. Hale has not exhausted a challenge to the BOP’s current handling of his mail. (Claims 1, 2 and 3)**

When he brought this case, Mr. Hale challenged the past restrictions imposed on him in 2010 and 2013. He did not challenge the BOP’s approach to his mail at the time the complaint was filed. Nor has he amended his complaint to challenge the BOP’s current approach to monitoring his mail. Any challenge to that current approach would be unexhausted.

**A. Mr. Hale has not exhausted his administrative remedies.**

**1. Burden of proof and elements of the defense**

An inmate must exhaust all administrative remedies that are available to him before seeking judicial review of the decision. *See, e.g., United States v. Wilson*, 503 U.S. 329, 335-36 (1992); *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1236-37 (10th Cir. 2005). The Supreme Court has reaffirmed that “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (2007); *see also Ross v. Blake*, \_\_ U.S. \_\_, 136 S.Ct. 1850, 1856-57 (2016) (The Prison Litigation Reform Act’s exhaustion requirement “suggests no limits on an inmate’s obligation to exhaust—irrespective of any ‘special circumstances.’ And that mandatory language means a court may not excuse a failure to exhaust, even to take such circumstances into account.”). The BOP bears the burden to prove the affirmative defense of failure to exhaust administrative remedies. *See Jones*, 549 U.S. at 212; *see also Freeman v. Watkins*, 479 F.3d 1257, 1260 (10th Cir. 2007). The exhaustion requirement applies to all suits regarding prison

life, whether they challenge general circumstances or particular episodes. *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

The BOP maintains a four-step administrative remedy program, which permits inmates to raise grievances. 28 C.F.R. §§ 542.10–542.19. In Step 1, the inmate must attempt informal resolution of his complaint with the appropriate BOP staff member by filing an Informal Resolution Form (“BP-8”). *Id.* § 542.13. Assuming no satisfactory resolution is achieved, the inmate must file an Administrative Remedy Request (“BP-9”) within 20 calendar days of the event giving rise to the grievance. *Id.* § 542.14. If the inmate is dissatisfied with the outcome at Step 2, he must file an appeal (“BP-10”) to the Regional Director within 20 days. *Id.* § 542.15(a). If the Step 3 appeal is unsuccessful, the inmate must file an appeal (“BP-11”) to the General Counsel of the BOP within 30 days. *Id.* § 542.15(a). The General Counsel has 40 days to respond to the BP-11 appeal, and may extend the response time by 20 days. 28 C.F.R. § 542.18.

To properly exhaust, “prisoners must ‘complete the administrative review process in accordance with the applicable procedural rules.’” *Jones*, 549 U.S. at 218 (quoting *Woodford v. Ngo*, 548 U.S. 81, 88 (2006)). The grievance complaining of the alleged wrong must provide the prison with “a fair opportunity to consider the grievance” and also must enable prison officials to “tak[e] appropriate measures to resolve the complaint internally.” *Kikumura v. Osagie*, 461 F.3d 1269, 1283 (10th Cir. 2006) (internal quotation marks and citations omitted). In the Tenth Circuit, a prisoner must exhaust his administrative remedies *before* filing his civil action. *Ruppert v. Aragon*, 448 F. App’x 862, 863 (10th Cir. 2012) (“Since the PLRA makes exhaustion a precondition to filing a suit, an action brought before administrative remedies are exhausted must be dismissed without regard to concern for judicial efficiency.”) (citing 42 U.S.C.

§ 1997e(a); *Jernigan v. Stuchell*, 304 F.3d 1030, 1033 (10th Cir. 2002)); *see also Duplan v. Harper*, 188 F.3d 1195, 1199 (10th Cir. 1999).

As set forth below, Mr. Hale did not exhaust any grievance regarding the BOP's current approach to his mail before filing this lawsuit.

**2. Element that Mr. Hale cannot overcome: He has not completed the exhaustion process.**

1. Since Mr. Hale returned to the ADX on April 7, 2017, Mr. Hale has filed administrative remedies related to how ADX personnel handle his general (non-legal) correspondence. Declaration of Cassandra Grow, Ex. 22 at ¶ 12.

2. Mr. Hale has not completed the exhaustion process in connection with any of those remedies. *Id.* at ¶¶ 13-19.

**IV. The BOP is entitled to summary judgment on Claim 3, the RFRA claim challenging the mail restrictions.**

Even if Creativity were a religion, the BOP is entitled to summary judgment on Claim 3, the RFRA claim challenging Mr. Hale's mail restrictions.

When summary judgment is sought on a claim seeking injunctive relief, the plaintiff must produce evidence that his rights were being violated at two points in time: (1) when the suit was filed, and (2) at the time of summary judgment. As the Supreme Court has explained in the context of another claim asserting constitutional violations in prison, "When an inmate is seeking an injunction on the ground that there is a contemporary violation of a nature likely to continue, . . . to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, [violating his rights] and that they will continue to do so[.]" *Farmer v.*

*Brennan*, 511 U.S. 825, 845-46 (1994) (discussing the summary judgment standard in the context of Eighth Amendment claims seeking injunctive relief).

The undisputed facts show that Mr. Hale cannot meet this standard here. First, he brought this claim challenging unique correspondence restrictions that had expired before he filed this lawsuit. Thus, he cannot show that he was subject to a constitutional violation at the time of the filing of his complaint. Second, as explained below, there is no current violation of his rights. The extensive undisputed evidence shows that the Creativity Movement is highly dangerous, and that Mr. Hale's role and actions as a leader in that Movement present very significant dangers. The BOP thus has compelling security interests in its current approach to monitoring his mail, and this approach is the least restrictive means to achieve those interests.

**A. Burden of proof and elements**

The BOP bears the burden to establish the affirmative defense under RFRA. The defense has two elements: that the burden on Mr. Hale's exercise of religion "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b); *see also Ghailani v. Sessions*, 859 F.3d 1295, 1306 (10th Cir. 2017) ("Subsection (b) of RFRA is an 'affirmative defense,' and the burden is placed squarely on the Government by RFRA.") (quoting *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, 546 U.S. 418, 429 (2006)). This is a "focused" inquiry in which the Court "scrutinize[s] the asserted harm of granting specific exemptions to particular religious claimants." *Gonzales*, 546 U.S. at 431.

The Supreme Court has emphasized that "context matters" in the application of the compelling governmental interest standard. *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005)

(interpreting RLUIPA). The Court’s analysis of the affirmative defense is informed by the unique prison environment. Courts must assess both the compelling interest and least-restrictive means standards “with due deference to the experience and expertise of prison and jail administrators.” *Id.* at 717 (quoting S. Rep. No. 111, 103d Cong., 1st Sess. at 10 (1993), *reprinted in* 1993 U.S. Code Cong. & Admin. News 1892, 1899-1900, 1993 WL 286695, at \*10 (July 27, 1993)). In *Cutter*, the Court stressed, “We do not read RLUIPA to elevate accommodation of religious observances over an institution’s need to maintain order and safety.” *Id.* at 722.

“The legitimate and compelling state interest in protecting the community from crime cannot be doubted.” *Schall v. Martin*, 467 U.S. 253, 264 (1984). Neither can the fact “that security is a compelling state interest, and that deference is due to institutional officials’ expertise in this area.” *Cutter*, 544 U.S. at 725 n.13. In the debate about RFRA, Congress recognized that prison administrators bear a heavy obligation to protect safety and security and that prison resources are limited:

The [Senate Judiciary Committee] does not intend [RFRA] to impose a standard that would exacerbate the difficult and complex challenges of operating the Nation’s prisons and jails in a safe and secure manner. Accordingly, the committee expects that the courts will continue the tradition of giving due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.

*See* 1993 WL 286695, at \*10.

The undisputed facts show that the BOP’s approach to handling Mr. Hale’s mail is supported by compelling security interests. Based on known dangers about Mr. Hale’s communications and his stature and influence outside the prison, the BOP has a compelling

security interest in prohibiting him from leading a violent Security Threat Group and inspiring other white supremacists. Creativity is a violent hate group that seeks to exclude and exterminate others on the basis of race. The undisputed facts also show that the approach the BOP has taken is the least-restrictive means of achieving these compelling interests. Mr. Hale is not cut off from the world, and still has ample opportunity to communicate with others.

**B. Element 1: The BOP has a compelling security interest in prohibiting Mr. Hale from leading a violent Security Threat Group and inspiring other white supremacists.**

**1. Mr. Hale is the influential leader of a violent Security Threat Group.**

1. To provide for the safety of staff and inmates, the security and orderly running of BOP institutions, the welfare of the community, and, in some cases, national security, BOP staff identify and monitor illicit groups, gangs, or organizations as Security Threat Groups, commonly known as “STGs.” BOP intelligence personnel have determined that these STGs pose unique security threats, based on the groups’ history, resources, and/or special skills. Ex. 10 at ¶ 7.

2. The BOP defines an STG as an inmate group, gang, or organization acting in concert to promote violence, escape, drug, disruptive, and/or terrorist activity. These groups or organizations, formed in the community or in prison, include drug organizations, terrorist groups, organized street gangs, prison gangs, independent groups, or geographically based groups or gangs. STGs may act on behalf of themselves or other structured entities. *Id.* at ¶ 8.

3. The purpose of designating a group as an STG is to increase prison staff’s security awareness about the group and potential dangers the group may pose, both within the prison and to persons on the outside. *Id.* at ¶ 9.

4. An STG designation helps staff anticipate how an inmate may act in prison and the risks he may pose to other inmates. *Id.*

5. When the BOP designates a group, gang, or organization as an STG, it does so on the basis of information it obtains about the group, both from open sources and through intelligence collected within BOP facilities. That information includes documented information concerning the criminal conduct of persons known to be associated with the group, including their crimes of conviction, related judicial decisions, and their presentence investigation reports. *Id.* at ¶ 10.

6. The BOP designated the Creativity Movement as an STG in 1993. *Id.* at ¶ 6.

7. The BOP's continued designation of the Creativity Movement as an STG is based on documented information about acts of violence, frequently motivated by hatred of Jews and races considered to be "non-white," committed by persons known to be members, associates, suspects, and leaders in the Creativity Movement. *Id.* at ¶ 16.

8. Acts of violence associated with the group include those of Mr. Hale, whose solicitation of the murder of a federal judge was directed tied to his role in the Creativity Movement and its ideology. *Id.*

**a. Mr. Hale's conviction, which was based on threatening communications about a federal judge, related to his role in the Creativity Movement.**

9. In its STG analysis, the BOP takes into account information showing that Mr. Hale's own conviction for a crime of violence was directly tied to the activities and ideology of the Creativity Movement. *Id.* at ¶¶ 16, 25-27.

10. Mr. Hale was officially the supreme leader, or “Pontifex Maximus,” of the Creativity Movement for ten years, beginning in 1996. *Id.* at ¶ 24; *see also* Ex. 9 at 50:17-51:2.

11. During Mr. Hale’s tenure as Pontifex Maximus, the Creativity Movement, then known as the “World Church of the Creator” (“WCOTC”), became embroiled in a trademark battle with another organization using the title “Church of the Creator.” *Hale v. United States*, No. 1:08 CV 94, 2010 WL 2921634, at \*1 (N.D. Ill. July 22, 2010) (citing *TE-TA-MA Truth Foundation-Family of URI, Inc. v. World Church of the Creator*, 297 F.3d 662 (7th Cir. 2002)), *aff’d*, 710 F.3d 711 (7th Cir. 2013).<sup>10</sup>

12. WCOTC won the trademark case in the district court, but lost on appeal. *TE-TA-MA*, No. 00 C 2638, 2002 WL 126103 (N.D. Ill. Jan. 31, 2002) (district court order granting summary judgment in favor of WCOTC), *rev’d*, *TE-TA-MA*, 297 F.3d 662.

13. After the Seventh Circuit reversed the district court, United States District Judge Joan Lefkow entered “a permanent injunction against World Church in accordance with the Seventh Circuit’s mandate[.]” *TE-TA-MA Truth Foundation-Family of URI, Inc. v. World Church of the Creator*, 246 F. Supp. 2d 980, 982 (N.D. Ill. 2003). As a result of that order, the WCOTC now goes by the name “Creativity Movement.” *Hale v. United States*, 710 F.3d 711, 712 (7th Cir. 2013).

14. As shown below, information maintained by BOP intelligence officials shows that the crimes for which Mr. Hale was convicted are directly tied to Judge Lefkow’s order, his

---

<sup>10</sup> The Court can take judicial notice of facts about Mr. Hale’s criminal background and court proceedings in other cases that “have a direct relation to matters at issue” in this case. *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979). Such facts are “not subject to reasonable dispute because” they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b)(2).

leadership role in the Creativity Movement, and the racially inflammatory maxims contained in Creativity's texts.

15. The solicitation charge on which Mr. Hale was convicted was based on his soliciting a cooperating witness to:

[E]ngage in conduct constituting a felony that has as an element the use, attempted use, and threatened use of physical force against the person of another – namely, the forcible assault upon, and the murder of, United States District Judge Joan Humphrey Lefkow, in violation of Title 18, United States Code, Sections 111(a) and 1114 – and under circumstances strongly corroborative of that intent, did solicit, induce, and otherwise endeavor to persuade the cooperating individual to engage in such conduct.

Ex. 10 at ¶ 25.

16. The cooperating witness was a WCOTC member who Mr. Hale had appointed to head the “White Berets,” a group within the WCOTC that served as Mr. Hale’s security force. *Id.* at ¶ 26; *see also* Ex. 8 at 83-87 (describing “the Mission of the COTC White Berets and White Rangers: Church security and self-defense”).

17. On November 29, 2002, Mr. Hale sent an email to the cooperating witness and others regarding the anticipated order from Judge Lefkow against the WCOTC, following the reversal by the Seventh Circuit. Ex. 10 at ¶ 27; *see also* Facts § I., ¶ 60, above.

18. In the email, Mr. Hale repeatedly invoked the “Church,” his “religion,” and its “Holy Books”:

Until we receive such word or documentation [of the court order], our position is that we have not received legal notice of such a sick, draconian [sic] order *that in effect places our Church in a state of war with this federal judge* and any acting on authority from her kangaroo court.

...

Instead, those who adhere to the Holy Books of our Creativity religion have the words of its Founder most truly imprinted upon their hearts and minds: “Should the Jewish Occupational government use force to violate our Constitutional rights to freely practice our religion; to peacefully assemble; to peacefully organize; to

distribute our White Man’s Bible; to use the mails and any other prerogative in promoting and expanding our legal religious organizations and the full practice of our religion, then we have every right to declare them as open criminals violating the Constitution and the highest law of the land. They then obviously are the criminals and we can then treat them like the criminal dogs they are and take the law into our own hands. This is the obvious, logical thing to do. We must then meet force with force and *open warfare exists*. . . .

Ex. 10 at ¶ 27 (emphasis added).

19. Mr. Hale concluded the email with the word “RAHOWA!,” a term used by the Creativity Movement to mean “Racial Holy War.” *Id.*

20. Mr. Hale’s November 29, 2002, email quotes from “CREATIVE CREDO #64” in a Creativity Movement text, *The White Man’s Bible*. *Id.* at ¶ 28.

21. The passage ends with the words, “It will then be *open season on all Jews*.” *Id.* (emphasis added).

22. On December 4, 2002, Mr. Hale sent a racially charged email to the cooperating witness in which he sought the “home addresses” of Judge Lefkow and others. *Id.* at ¶ 30.

23. In that email, Mr. Hale dubbed Judge Lefkow a “PROBABLE JEW OR MARRIED TO JEW,” and labeled two attorneys as “JEW(s)” and another attorney as “TRAITOR OR WHITE.” *Id.* (emphasis in original).

24. In the same email, Mr. Hale explicitly invited the cooperating witness to take “*any*” action the witness might choose, and specifically invoked “Racial Holy War”:

**Any action of any kind** against those seeking to destroy our religious liberties is entirely up to each and every Creator according to the dictates of his own conscience. RAHOWA!

*Id.* (capitalized emphasis in original; bolded emphasis added).

25. The next day, Mr. Hale had a conversation with the cooperating witness, in which the witness specifically referenced Mr. Hale's December 4, 2002, "e-mail about the Jew judge[.]" *Id.* at ¶ 31. Mr. Hale told the witness that this information was "for educational purposes *and for whatever reason you wish it to be.*" *Id.* (emphasis added).

26. The cooperating witness told Mr. Hale that he was working on getting the address information and sought direction from Mr. Hale:

CI: Are we gonna ah . . . I'm working on it. I, I got a way of getting it. Ah, when we get it *are we going to exterminate the rat?*

HALE: Well *whatever you wanna do basically.*

CI: The Jew rat.

Hale: . . . you know, ah . . . my position has always been that I you know, I'm gonna fight within the law and, but ah that informations been provided *if you wish to, ah, do anything yourself, you can.* So that makes it clear.

CI: Consider it done.

HALE: Good.

*Id.* (emphasis added).

27. On December 17, 2002, in another conversation with the cooperating witness, Mr. Hale sought to shield himself from accountability for any attack against Judge Lefkow, but encouraged the witness to proceed:

During their lengthy conversation, defendant HALE expressed concern about their being overheard. After the cooperating individual told defendant HALE that plans for "exterminating the rat" were in motion, defendant HALE instructed the cooperating individual that in order to shield defendant HALE from legal accountability for any attack, the cooperating individual was not to disclose any details to defendant HALE, so that HALE could later deny such knowledge. Defendant HALE reiterated that "whatever a person wants to do, that's their own decision," and later told the cooperating individual that if there was a "serious altercation, *I'm not gonna say that I won't be happy about it . . .*"

*Id.* at ¶ 32 (emphasis added).

28. Mr. Hale was convicted of soliciting a crime of violence (the murder of Judge Lefkow) in violation of 18 U.S.C. § 373, and two counts of obstruction of justice, in violation of 18 U.S.C. § 1503. He is serving a 480-month sentence. *Id.* at ¶ 24; Ex. 11 at ¶ 5.

**b. A significant number of other Creativity members are federal inmates, and some have engaged in race-based violence.**

29. As part of the process for identifying inmates affiliated with STGs, the BOP has validated (i.e., identified through BOP procedures) 94 inmates, including Mr. Hale, as members and associates of the Creativity Movement. Ex. 10 at ¶ 61.

30. This set of 94 prisoners reflects a high level of criminality associated with a group of Creativity's historical size. At the time of Mr. Hale's arrest, when he was in charge of membership applications for the group, there were only 300 paid members, in and out of prison, on its rolls. Ex. 9 at 15:1-14.

31. Information maintained in BOP records shows a high level of violence associated with persons affiliated with Creativity, reaching to its top levels, including Mr. Hale, the group's long-time "Pontifex Maximus." Ex. 10 at ¶ 63.

32. The Chief of the BOP's Sacramento Intelligence Unit, who is designated as an expert in this case pursuant to Fed. R. Civ. P. 26(a)(2)(C), reviewed information maintained in BOP records concerning the validated members and affiliates of Creativity. *Id.* at ¶ 62.<sup>11</sup>

---

<sup>11</sup> Mr. Garrow explained that his analysis of members and associates of Creativity was based on information obtained from the BOP's electronic database, including compiled intelligence and sentencing data. Ex. 10 at ¶ 62. Mr. Garrow is not authorized to reveal the names of inmates who are not parties to this lawsuit. *Id.* However, while the names and register numbers of these inmates were redacted before Mr. Garrow's summary analysis was produced to Mr. Hale, he

33. Information maintained in BOP records shows that validated members and associates of Creativity have committed crimes triggered by racial animus, including a plot to instigate a race war by bombing an African-American church and assassinating Rodney King (during the arrest of a person associated with this plot, police seized pipe bombs, machine guns and racist paraphernalia, including Confederate and Nazi flags and a framed portrait of Adolph Hitler); a plot to send a letter bomb to a rabbi; a plot to conduct a series of political bombings targeting synagogues, Jewish-related agencies, military facilities and radio and television stations; the bombing of the NAACP office in Tacoma, Washington; vandalism of a Jewish business; the racially motivated arson of an African American family's home; several arson attacks against synagogues in California; firebombing a synagogue; cross burning; the murder of a Jewish radio host; and a plot to murder music artists Ice-T and Ice Cube. The latter plot included a plan to use sniper fire directed at other victims, to be targeted by race. *Id.* at ¶ 64.

34. Information maintained in BOP records further shows that other violent acts committed by validated Creativity members and associates include murder, murder for hire, lynching, violent extortion with intent to kill, violation of civil rights resulting in death, theft/possession of dynamite, assault, forcible sexual abuse, sexual assault of a minor, sexual contact with a three-year-old daughter, escape, bomb making, inciting a riot, kidnapping, bank robbery, home invasion, hostage taking, and torture, among other crimes. *Id.* at ¶ 65.

35. The crimes of validated members and associates of the Creativity Movement also include crimes against government officials, including the solicitation of the murder of a federal

---

received the substantive information about the nature of the inmates' crimes. *Id.*

judge (by Mr. Hale), conspiracy to kill a government witness, attacks on a U.S. Border Patrol agent and other law enforcement officers, and threats to other public officials. *Id.*

**c. Creativity members and associates have committed serious acts of violence within BOP prisons.**

36. In its STG analysis of the Creativity Movement, the BOP also takes into account the fact that validated members and associates of the group have engaged in extremely violent conduct in prison, resulting in the deaths of and serious injuries to other BOP inmates. *Id.* at ¶¶ 66-70.

37. In an attack at USP Lewisburg in November 1996, a Creativity-validated inmate stabbed and killed a white supremacist inmate who had recently converted to Islam. *Id.* at ¶ 67.

38. This incident led to a second, retaliatory homicide three days later, when a white inmate was murdered by five African American Muslim inmates. *Id.*

39. The murder by the Creativity-validated inmate at USP Lewisburg culminated with the murder of two African American inmates by white supremacist inmates in August 1997. *Id.*

40. Another Creativity-validated inmate murdered a fellow inmate in a Federal Medical Center by tying the inmate victim to a chair and beating him to death with a fire extinguisher. *Id.* at ¶ 68.

41. A Creativity-validated inmate was among those inmates who incited one of the most violent race riots in recent BOP history: the riot at the U.S. Penitentiary in Florence, Colorado (“USP Florence”) on April 20, 2008—Hitler’s birthday—in which two inmates were killed and many others injured. *Id.* at ¶ 70.

42. The Hitler's birthday riot has had long-term, nationwide implications for the BOP. All institutions continue to be placed on heightened alert status, and SIS Departments are scrupulous of monitoring inmate communications, on and around the anniversary of the riot. Ex. 13 at ¶ 9.

43. During the Hitler's birthday riot, the Creativity-validated inmate severely beat and nearly killed another inmate. Ex. 10 at ¶ 70.

44. Mr. Hale testified in his deposition about this Creativity-validated inmate, whom he knew when both of them were housed on the same range at the ADX.<sup>12</sup> *Id.* at ¶¶ 70-71; Ex. 9 at 154:9-155:18.

45. Mr. Hale testified that this inmate "believed in Creativity," was a "full Creator," and was "similarly strong" to Mr. Hale in his beliefs about Creativity. Ex. 9 at 155:16-18.

46. The inmate and Mr. Hale talked about their "religion" together. *Id.* at 155:13-15.

47. Documentation in BOP files shows that Mr. Hale described himself as "mentoring" this inmate while the two were housed on the same range at the ADX in 2010. Ex. 10 at ¶ 72.

48. In the BOP's correctional judgment, Mr. Hale's "mentoring" of any inmate, especially one with a validated connection to Creativity, indicates Mr. Hale's desire to guide and direct other inmates. *Id.*

49. In the BOP's correctional judgment, Mr. Hale's "mentoring" of another active member of his STG is a serious security concern because it reinforces a "leader/follower" relationship and places one inmate in a position of authority over another inmate. *Id.* at ¶ 73.

---

<sup>12</sup> Although Mr. Hale knows the inmate's name, the BOP is not authorized to release it here.

**d. Mr. Hale has inspired violent acts by others.**

50. The BOP's STG assessment of Creativity also takes into account the violent actions of other persons who were closely associated with Mr. Hale or who were motivated to act because of his stature and influence. *Id.* at ¶ 34.

51. On July 2, 1999, Benjamin Smith, a WCOTC/Creativity Movement member and close associate of Mr. Hale, went on a shooting rampage that targeted black, Asian, and Jewish victims. Smith killed two people and wounded nine others before killing himself. *Id.* at ¶ 35; *see also United States v. Hale*, 448 F.3d 971, 975 (7th Cir. 2006) (discussing Smith and his connection to Mr. Hale).

52. Evidence presented in Mr. Hale's criminal trial indicated that Smith's rampage was undertaken for the purpose of avenging the decision to deny Mr. Hale an Illinois law license, which was announced a few days before the murders. *Id.*

53. Mr. Hale had named Smith "Creator of the Month" at some point in 1999, and he believes he also named Smith "Creator of the Year" for 1998. Ex. 9 at 321:20-25.

54. After the shootings, Mr. Hale eulogized Smith, praising him as Mr. Hale's "prodigy" and "among the finest." Ex. 10 at ¶ 37.<sup>13</sup>

55. Mr. Hale denied that Smith was a "lunatic," "villain," "hatemonger," or "terrorist." *Id.*

56. Mr. Hale described Smith's murders of innocent minority people as acts of "love" inspired by Smith's devotion to Creativity: "But we know, as witnesses to the world's greatest

---

<sup>13</sup> A written transcript of the eulogy is attached to Mr. Garrow's declaration at Attachment 6. The audio of the eulogy can also be downloaded at <https://inhalewetrust.wordpress.com/church-sermons/memorial-service-benjamin-august-smith-by-pm-matt-hale/>. An audio recording of the eulogy was provided to Mr. Hale in discovery.

idea – CREATIVITY – that this man [Smith] was far from those words. That what (sic) he did what he did, *he acted out of love . . . for us.*” *Id.* (emphasis added).

57. Mr. Hale described Smith’s murders in religious terms, saying that he was “struck by [Smith’s] willingness to take action for his people, not to sit in the easy chair and allow life to go by, but to go out into the world, and to spread our *sacred message.*” *Id.* at ¶ 39.

58. Mr. Hale refused to condemn Smith for the murders. *Id.* at ¶ 38.

59. Mr. Hale called Smith “a *martyr*, for our speech as White people in America and around the world,” and said that Smith would want Creators to “*make the max out of the publicity* that has ensured, due to his shootings, and due to his death.” *Id.* at ¶ 39 (emphasis added).

60. After Mr. Hale was convicted and sent to prison, a person Mr. Hale apparently had never met was motivated to avenge Mr. Hale’s criminal conviction. *Id.* at ¶ 40.

61. William White was convicted of soliciting the murder of the foreperson of the jury in Mr. Hale’s criminal case. *United States v. White*, 610 F.3d 956 (7th Cir. 2010); *see also United States v. White*, 698 F.3d 1005 (7th Cir. 2012), *cert. denied*, 133 S. Ct. 1740 (2013).

62. In March 2005, White posted on a website that “everyone associated with the Matt Hale trial *has deserved assassination* for a long time. He also wrote a posting naming individuals involved or related in some way to Hale’s conviction, such as federal agents and prosecutors and other citizens advocating for Hale’s arrest, stating that any of them may be the next targets of an ‘unknown nationalist assassin.’” *See* 610 F.3d at 957 (emphasis added).

63. More than three years later, on September 11, 2008, White posted an entry on the website *overthrow.com* entitled “The Juror Who Convicted Matt Hale,” identifying the juror by name and including a color photograph of the juror:

Gay anti-racist [Juror A] was a juror who played a key role in convicting Matt Hale. Born [date], [he/she] lives at [address] with [his/her] gay black lover and [his/her] cat [name]. [His/Her] phone number is [phone number], cell phone [phone number], and [his/her] office is [phone number].

*Id.* at 957-58; *see also* Ex. 10 at ¶ 40.

64. The next day, White posted the juror’s place of employment. *Id.*

65. Hal Turner, a radio talk show host, was convicted of threatening to assault or murder three Seventh Circuit judges, based on a written statement that discussed Mr. Hale and Judge Lefkow and her family. *United States v. Turner*, 720 F.3d 411 (2d Cir. 2013), *cert. denied*, 135 S. Ct. 49 (2014), *reh’g denied*, 135 S. Ct. 698 (2014).

66. In a blog post, Turner “referred to the infamous murders of United States District Court Judge Joan Lefkow’s husband and mother in Judge Lefkow’s Chicago home on February 28, 2005, which he connected to Judge Lefkow’s role in a court case involving a white supremacist organization, the ‘World Church of the Creator,’ and its leader, Matthew Hale[.]” *Id.* at 415.

67. Turner wrote on his blog:

This is not the first politically-motivated trash to come out of the Seventh U.S. Circuit Court of Appeals. In fact, it was the Seventh U.S. Circuit Court of Appeals that decided in the Matt Hale Case, that a group which fraudulently trademarked the name “World Church of the Creator” despite the fact they knew that name had been used by a Church for 30 years, could KEEP the name because the church who had used it for 30 years didn’t challenge the Trademark filing!

By not challenging the Trademark registration, the people who had used the name for years LOST IT.

That decision lead [*sic*] to an order by a lower court for the Church to “surrender its Bibles for destruction because they infringed on the trademark” given to the fraudsters.

Shortly thereafter, a gunman entered the home of that lower court Judge and slaughtered the Judge's mother and husband. *Apparently, the 7th U.S. Circuit court didn't get the hint after those killings. It appears another lesson is needed.*

*Id.* (emphasis added).

68. Turner tracked down and posted addresses for the Seventh Circuit judges. *Id.* at 417.

69. Immediately after Mr. Hale's incarceration, Turner sought to interview Mr. Hale for Turner's radio show. Ex. 11 at ¶ 44 & Attachment 9.

**e. Other "Creators," some of whom Mr. Hale associated with as a Creativity leader, have committed violent acts.**

70. On May 17, 1991, a Creativity "reverend" named George Loeb murdered an African American veteran in a Jacksonville, Florida, parking lot after an alleged dispute between the two men. *See Mansfield v. Pierce*, 153 F.3d 721, at \*\*1 (4th Cir. 1998) (discussing murder of Mansfield by Loeb and lawsuit by Mansfield's mother to collect on \$1 million civil judgment against the Church of the Creator).

71. Joel Dufresne, a Creativity "reverend," is serving multiple terms of imprisonment of 25 to 75 years each for criminal sexual conduct. *Dufresne v. Palmer*, No. 12-cv-1210, 2017 WL 874933, at \*\*1, 3, 6, 16 (W.D. Mich. Mar. 6, 2017), *appeal filed* (6th Cir. Mar. 29, 2017).

72. Joshua Gilmore, a member of the Church of the Creator, is serving consecutive terms of life imprisonment for two attempted murders in 1997. *Gilmore v. Cate*, No. CIV S-04-2395, 2009 WL 2914985, at \*1 (E.D. Cal. Sept. 9, 2009), *aff'd*, 498 F. App'x 688 (2012).

73. A couple who had met through "a prison outreach program run by the World Church of the Creator" were convicted of bank robbery, counterfeiting, and the planned

construction of an explosive device. *United States v. Felton*, 417 F.3d 97, 100-01 (1st Cir. 2005) (affirming convictions).

74. The evidence presented at defendant Felton’s criminal trial included her “association with Matthew Hale and a photograph of [her] engaging in a Nazi salute while standing with Hale; a World Church of the Creator pamphlet containing an article written by [the defendant] about ‘white power’ rallies she had attended; and a separate pamphlet by the church that discussed an apocalyptic ‘future’ in which white women were ‘publicly gang-raped’ by ‘Negroids.’” *Id.*

75. Michael Todd, who Mr. Hale had ordained as a “reverend,” is in the California state prison system on a murder “charge” that he received as a juvenile. Ex. 9 at 326:14-327:7; *see also Todd v. California Dep’t of Corrs.*, No. 12-cv-01003, 2017 WL 2264847, at \*6 (E.D. Cal. May 23, 2017) (dismissing Todd’s *Bivens* claims demanding “religious” accommodations for Creativity, and observing that the court “found no other circuits or district courts recognizing Creativity as a religion when considering a First Amendment, Establishment Clause, or equal protection claim, and many courts have viewed Creativity as a white supremacist organization”).

76. Mr. Todd is the “Princeps” of Creativity Prison Ministries. Ex. 11 at ¶ 42 & Attachment 7, BOP 2939.

**f. Creativity’s texts advocate harm to other races and religions, which creates dangers in a volatile prison setting.**

77. In its assessment that the Creativity of the Creativity Movement as an STG, the BOP takes into account Creativity texts that degrade and advocate harm to other races and religions. Ex. 10 at ¶¶ 21-23.

78. Creativity texts are permeated with degrading references to people who are not white. Facts § I, ¶¶ 25-27, 40-47, 52-68, 70.

79. In *The White Man's Bible* alone, a variant of the word “n\*\*\*\*\*r” appears some 330 times, and a variant of the word “Jew,” 1,600 times. *See generally* Ex. 3.<sup>14</sup>

80. Creativity’s texts seek the destruction of the Jews: “DELENDA EST JUDAICA!” Facts § I, ¶¶ 26, 61.

81. Creators “therefore consider the Jew as a deadly and implacable enemy and declare everlasting war on the Jews, a war to the finish, until we have expelled them from all the lands inhabited by the White Race.” Ex. 10 at ¶ 22.

82. Creativity’s texts envisage circumstances in which Creators “can then treat [the Jews] like the criminal dogs they are and take the law into our own hands. We must then meet force with force and open warfare exists. It will then be *open season on all Jews.*” *Id.* at ¶¶ 20, 28 (emphasis added).

83. Creativity’s texts state that the group’s “prime goal” is to “expunge” Jews and blacks from America and all other “White areas” as well. *Id.* at ¶ 20.

84. Creativity’s texts direct that the group’s adherents cannot have dealings with Jews, cannot “employ “n\*\*\*\*\*s and other coloreds,” and must “[h]ave social contacts only with members of your own racial family.” *Id.* at ¶ 17.

85. Creativity’s texts advocate the use of “terrorism” if Creators think their “survival” is at stake: “The issue we must resolve is this: if our survival is at stake, is so-called ‘illegal’

---

<sup>14</sup> The document was searched using the “ctrl/shift/F” function.

terrorism justified? And the answer overwhelmingly is—hell yes!” Ex. 3 at 322; *see also* Ex. 10 at ¶ 21.

86. In the correctional judgment of the BOP, these texts demonstrate that the group is a dangerous presence in a prison setting, where many inmates are members of the groups despised by Creators. Ex. 10 at ¶ 18.

87. No matter how Mr. Hale may choose to cast the teachings of Creativity, its core maxims focus on the disparagement and extermination of other religions and peoples on the basis of race. Facts § I, ¶¶ 25-27, 40-47, 52-68, 70.

88. Such disparaging language is expressly prohibited by BOP policy, which identifies “disparagement of other religions” as an unauthorized practice. Ex. 10 at ¶ 89 & Attachment 12, BOP Program Statement PS5360.09, *Religious Beliefs and Practices*, Section 7, Paragraph c., BOP 10267 (including “disparagement of other religions” as among the “religious practices and activities that are never authorized”) (emphasis added).

89. Examples of prohibited “disparagement of other religions” include hate speech and the exclusion of any inmate from a religious service. Ex. 10 at ¶ 89.

90. Sound correctional judgment supports the BOP policy prohibiting disparagement of other religions. *Id.* at ¶¶ 85-87.

91. Racial conflicts cause serious problems in BOP institutions and are known to trigger violent disturbances and even homicides, as demonstrated by the Hitler birthday riot at USP Florence in 2008, in which a “Creator” played a key role. *Id.* at ¶ 85; *see also* Facts ¶¶ 41-43, above.

92. In the correctional judgment of the BOP, this undercurrent of animosity has the potential to erupt into race-related violence. Ex. 10 at ¶ 87.

**g. Creativity’s foundational texts and Mr. Hale’s own statements support disobedience to the law.**

93. In its assessment that the Creativity Movement warrants continuing designation as an STG, the BOP has taken into account information showing that the group advocates disobedience to the law. Ex. 10 at ¶¶ 20-22, 27-29, 33.

94. Creativity’s founding texts advocate disobedience to the law, as shown below.

95. Creativity anticipates situations where Creators can treat the “Jewish government” “like the criminal dogs they are and take the law into our own hands. We must then meet force with force and open warfare exists. It will then be open season on all Jews.” Ex. 10 at ¶¶ 20, 28.

96. If Creators believe that their rights have been violated, they do not have to obey the law: “WE CREATORS therefore deem **any government that violates the Constitution, and violates our civil rights as nothing more than a band of criminals.** . . . Militant resistance is our only defense.” Ex. 3 at 329 (emphasis in original).

97. *The White Man’s Bible* specifically advocates terrorism in a subsection entitled “Criminal Rebels become Legal Rulers”: “Terrorism and violence works and has been used repeatedly since the beginning of history.” Ex. 10 at ¶ 21.

98. In the next subsection of *The White Man’s Bible*, Klassen states: “Yes, terrorism is bloody, cruel and victimizes innocent people, but it is a traditional power device and has been used consistently ‘from above’ by politicians in power, and ‘from below’ by those who would like to be in power. The latter have succeeded surprisingly often, and even the American

Revolution itself was a power play of violence ‘from below against the British who used terror ‘from above.’” *Id.*

99. In the Creator Membership Manual, Mr. Hale wrote that “[i]t is thus a matter of tactics rather than morals. While yes, using violence against the enemies of our people is justified and indeed moral for that reason, violence against them is counterproductive as a tactic and hence unwise.” Ex. 7 at 10.

100. Mr. Hale has told adherents of Creativity who live in other countries that they are not required to obey laws that do not conform with the views of Creativity:

Creators overseas should apply America’s constitutional standards to their countries—if English law or the English constitution, for example, says it’s illegal to distribute literature which ‘fosters hatred among races,’ you have no obligation whatever to obey this law, and will be praised by your fellow Creators in America for not doing so. If Germany says that you cannot ‘deny the ‘Holocaust’, you have no obligation to follow such an absurd and pathetic ‘law’. We shall have freedom of religion no matter where we are thus *laws that prevent the free exercise of our religion are null as far as we are concerned.*

*Id.* at 10 (emphasis added).

101. Mr. Hale’s own criminal convictions stem from his resistance to the order Judge Lefkow was compelled to issue after her initial decision in favor of the World Church of the Creator was reversed by the Seventh Circuit:

[O]n November 19, 2002, Judge Lefkow entered a detailed order requiring the World Church to stop using variations of the trademarked name “Church of the Creator,” to turn over books and other materials bearing the name or obliterate any infringing mark from them, and relinquish custody of the domain names of the World Church’s websites to the Foundation. The Foundation soon returned to court seeking enforcement of the order *after Hale publicly stated that he would not comply.* The court granted the Foundation’s motion and ordered Hale to show cause why he should not be held in contempt.

*United States v. Hale*, 448 F.3d at 975 (emphasis added).

102. Mr. Hale himself has told members and supporters of Creativity that they are not required to obey the law, including orders issued by federal courts.

103. On June 30, 2000, Mr. Hale put a recorded message on a voice mailbox accessed by his followers, telling them that he could not “recommend” that they obey the law:

Hale left a message on his “hotline” (a voice mailbox that followers could call to hear recorded messages) announcing that the Supreme Court of the United States had declined to hear his challenge to the denial of his Illinois law license. Hale stated that he could “*no longer in good faith and good conscience urge, recommend, or instruct my adherents and supporters in general to obey the laws of this land.*” Hale declared the United States government “illegitimate” and stated that he and his followers “are free according to our own conscience to take whatever actions we deem necessary to resist this tyranny.” He said that “whatever blood is spilled will be on the hands of those who so severely wronged us today” and urged his followers to “do what is right today to fight for our white race to secure the existence of our people for all time on this planet.”

*Id.* at 976–77 (emphasis added); *see also* Ex. 10 at ¶ 33.

104. Ben Smith’s shooting rampage began within two days of Mr. Hale disseminating this message. *See* Facts ¶¶ 51-52, above.

105. Mr. Hale encouraged breaking the law in his communications about Judge Lefkow. In the November 29, 2000, email Mr. Hale sent to the cooperating witness and others, *see* Fact ¶ 18, above, he described Judge Lefkow’s order as a “sick, draconian [sic] order that in effect places our Church in a state of war with this federal judge and any acting on authority from her kangaroo court[.]” Ex. 10 at ¶ 27.

106. Mr. Hale wrote that Judge Lefkow lacked “constitutional power” to issue the order:

*A federal judge has no constitutional power* to either rewrite our religion or order the destruction of our religious books. While this is obvious to all of you, my Brothers and Sisters, it must be made obvious to the world. Even though we do not currently know for sure what the supposed order of the judge with the Jew surname says, the world must be informed of the persecution of our Holy Church so that

despite the best efforts of the Jewish tyrants, our World Church of the Creator will only grow stronger.

Ex. 17 at BOP 32112 (emphasis added).

107. Mr. Hale aimed a message directly at Judge Lefkow, “the judge with the Jew surname,” in which he asserted that her “alleged order” was illegal and concluded with a call to “Racial Holy War”:

We call upon Judge Lefkow to recognize that her alleged order violates the supreme law of the land: the Constitution of the United States. We call upon her to recognize that the ordering of a church to “deliver up for destruction” its religious texts is a blatant infringement of the free exercise of our religious beliefs and is thus proscribed by the First Amendment. By your actions, Judge Lefkow, you have made yourself part of the criminal conspiracy to destroy rights that you swore to uphold when you became a judge. It is not too late, however, for you to reverse your present course. RAHOWA!

*Id.*

**h. Mr. Hale seeks to lead the Creativity Movement and other white supremacists with known violent histories.**

108. In June 2010, Mr. Hale declared himself “Pontifex Maximus Pro Tempore” of the Creativity Movement, which prompted his placement on Restricted General Correspondence Status. *See* Facts ¶¶ 121-129, below.

109. In late December 2012, Mr. Hale reached out to the leader of the National Socialist Movement with advice about how to employ “mass activism tactics” to enable people to “reach us,” and to “[m]ake sure that the Holy Swastika is seen everywhere!”—a communication that prompted Mr. Hale’s placement on Restricted General Correspondence again. *See* Facts ¶¶ 153-159, 161-162, below (emphasis in original).

110. Very recently, on June 2, 2017, in a sworn statement before a court reporter made at his request, Mr. Hale confirmed his continuing desire to lead the Creativity Movement. Ex. 10

at ¶ 55.

111. Mr. Hale stated that he rejects the recent election of a new “Pontifex Maximus” for the Creativity Movement, and that his personal involvement is required in order for such an election to have legitimacy:

Fourth, though I have been told that a new Pontifex Maximus for my church has been chosen, I am personally compelled to reject that selection since it goes against the guidelines set forth by our founder Ben Klassen and his final book, *Trials, Tribulations and Triumphs*.

*I furthermore remain interested in the possibility of myself assuming the position of Pontifex Maximus pro tempore so that I can successfully oversee a true, legitimate election of our next Pontifex Maximus pursuant to our teachings.*

I continue to deny that the BOP has any legal authority to stop me from being Pontifex Maximus pro tempore of my church for the purpose of my overseeing that legitimate election. I continue to fight for that right to be PM pro tempore through the prosecution of this lawsuit.

*Id.* (emphasis added).

2. **ADX Wardens imposed mail restrictions to prevent Mr. Hale from leading a violent STG and other dangerous white supremacist groups.**
  - a. **July 2010 to January 2011: Mr. Hale’s mail was limited after he declared himself “Pontifex Maximus Pro Tempore.”**

112. Blake Davis was the Warden at the Federal Correctional Complex (“FCC”) in Florence, Colorado, which includes the ADX, from August 2009 to May 2012. Ex. 12 at ¶¶ 1-2.

113. Warden Davis knew that Mr. Hale had solicited the murder of a federal judge, using communications designed to allow him to deny his involvement in the crime. *Id.* at ¶ 6.

114. Warden Davis knew of the need to ensure that Mr. Hale’s communications could not be used to harm another judge. *Id.* at ¶¶ 5, 18.

115. Warden Davis knew that Mr. Hale had been the “Pontifex Maximus” of the Creativity Movement, that the group was driven by racial animosity, and that the group was designated by the BOP as an STG. *Id.* at ¶¶ 7-8.

116. Mr. Davis knew that Mr. Hale had many followers outside the prison over whom he was able to exert influence. *Id.* at ¶ 7.

117. The fact that Mr. Hale had held a leadership role in an STG was important to Warden Davis’s analysis of the risks posed by Mr. Hale’s communications. *Id.* at ¶ 8.

118. Warden Davis took STG designations seriously. *Id.*

119. Warden Davis knew that STGs are closely monitored because inmates associated with those groups are most likely to be involved in violence, compromising staff, and other criminal activities. *Id.*

120. Warden Davis knew that a designated associate of the Creativity Movement was responsible for triggering a deadly, racially motivated riot at the U.S. Penitentiary in Florence, Colorado, on April 20, 2008, Hitler’s birthday. *Id.*

121. In June 2010, Mr. Hale proclaimed himself “Pontifex Maximus *Pro Tempore*” of the Creativity Movement. *Id.* at ¶¶ 19-20.

122. Mr. Hale made this announcement in a six-page document entitled “Calling All Creators, An Address from Reverend Matt Hale, Pontifex Maximus Pro Tempore,” which he sent to people associated with the Creativity Movement. *Id.* at ¶ 19.

123. Mr. Hale’s “address” was for the purpose of unifying the “Church.” *Id.* at ¶ 20.

124. Mr. Hale said that he was “the only man who now stands in a position uniquely capable of bringing about this vital unity of our Creativity family *across the globe.*” *Id.*

125. Mr. Hale gave specific guidance and directions for people outside the prison to follow, including directing white supremacists about tactics, public relations, group infighting, and living in accordance with Creativity’s “commandments.” *Id.*

126. Mr. Hale directed the recipients of his address to disseminate it to “Creators” by website and email. *Id.*

127. Warden Davis knew of Mr. Hale’s proclamation of a leadership role, described in ¶¶ 121-126, above, and in his correctional judgment, Mr. Hale’s action posed a security risk that placement on Restricted General Correspondence Status. *Id.* at ¶ 21.

128. Warden Davis was authorized to make this decision by federal regulation and BOP policy. 28 C.F.R. § 540.15 (a Warden is authorized to “place an inmate on restricted general correspondence based on misconduct or as a matter of classification”); BOP Program Statement 5265.14, *Correspondence* (April 5, 2011) (excerpt), Ex. 24 at BOP 10483 (“The Warden may reject correspondence sent by or to an inmate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity. Correspondence which may be rejected by a Warden includes, but is not limited to, correspondence which contains . . . [m]atter which depicts, describes, or encourages activities which may lead to the use of physical violence or group disruption.”); *see also* Ex. 11 at ¶ 51.<sup>15</sup>

129. Warden Davis approved the restriction of Mr. Hale’s general correspondence privileges in July 2010, and Mr. Hale received notification of the restrictions on July 22, 2010. Ex. 12 at ¶ 22.

---

<sup>15</sup> This provision was in the prior version of the Program Statement in effect in July 2010.

130. In exercising his correctional judgment to place Mr. Hale on Restricted General Correspondence Status, Warden Davis took into account these facts about Mr. Hale's crimes and continuing influence:

- Mr. Hale was attempting to reassume the position of "Pontifex Maximus" in the Creativity Movement, a position he held when he solicited the murder of a federal judge who had issued a decision against the group.
- Mr. Hale's correspondence showed his intense desire to lead a BOP-designated STG, the same group over which he had supreme authority as "Pontifex Maximus" when he solicited the murder of a federal judge.
- Mr. Hale had solicited the judge's murder by means of subtle communications that allowed him to distance himself from any actual act of violence.
- Numerous affiliates of Creativity and other white supremacist groups sought out communications with Mr. Hale as soon as his communications were expanded following the removal of his Special Administrative Measures and post-SAMs BOP mail restrictions in August 2009.

*Id.* at ¶¶ 6, 14, 15, 17, 24, 25, 27-29, 37, 38.

131. In Warden Davis's correctional judgment, correspondence in which Mr. Hale held himself out as the supreme leader of an STG considered with his position of influence in that STG had the potential to incite violence in the community, especially in light of the violent proclivities of persons affiliated with the Creativity Movement. *Id.* at ¶ 38.

132. In Warden Davis's correctional judgment, even if Mr. Hale's communications about the STG appeared benign, it is very difficult for the BOP to know precisely what those communications may mean to affiliates of the STG on the street and how they might react to Mr. Hale's directives. *Id.* at ¶ 32.

133. In Warden Davis's correctional judgment, Mr. Hale's clear purpose and determined efforts to lead, guide, and direct persons outside the prison associated with the

Creativity Movement posed a security threat that could only be addressed by restricting the scope of his contacts outside the prison for a period of time. *Id.* at ¶ 28.

134. In Warden Davis's correctional judgment, to ensure that no correspondence left the prison that might prompt new acts of violence, it was necessary to attempt to break any dangerous ties that Mr. Hale might have established or reestablished since August 2009, after Mr. Hale's post-SAMs restrictions were removed. *Id.*

135. In Warden Davis's correctional judgment, it would have been in direct opposition to sound security and safety practices for Mr. Hale to continue to send, and also to receive, communications from affiliates of the Creativity Movement and other white supremacist groups. *Id.* at ¶ 29.

136. Incoming communications about the Creativity Movement and other groups might have provided information that could have been used by Mr. Hale and other inmates to disrupt the safety and security of the prison or to compromise the safety of staff. *Id.*

137. In Warden Davis's correctional judgment, even though Mr. Hale's correspondence was reviewed, it is not always possible to detect communications that may pose risks, neither is it possible to identify all risks that may be associated with Mr. Hale's contacts outside the prison. *Id.* at ¶ 32.

138. In evaluating Mr. Hale's efforts to lead the Creativity Movement, Warden Davis also took into account the fact that, as a federal inmate, Mr. Hale is prohibited from holding a leadership role in *any* group or organization outside the prison, be it civil, cultural, political, or religious. *Id.* at ¶¶ 25-26; *see also* Ex. 10 at ¶¶ 11-14.

139. By regulation, inmates are prohibited from conducting a business, which has been interpreted by the BOP to include taking a leadership role in any group or organization outside the prison. Ex. 12 at ¶ 25; *see also* 28 C.F.R. § 541.3, Prohibited Act No. 334; *see also* 28 C.F.R. § 540.14(d)(4) (authorizing the Warden to reject correspondence that includes “direction of an inmate’s business”: “An inmate . . . may not direct a business while confined.”).

140. For example, an inmate cannot maintain his position as an officer of a company or engage in any other conduct related to his former business; he cannot practice the profession he practiced before his incarceration; and he cannot serve in a leadership role in any civil, cultural, or political organization outside the prison. Ex. 12 at ¶ 25; *see also* Ex. 10 at ¶ 12.

141. This rule also prohibits an inmate from functioning as a religious leader or cleric, such as a priest, imam, rabbi, or minister, or from being addressed with such honorifics as “Reverend” or “Father” to outside correspondents. For example, a BOP inmate who had been a priest in the Roman Catholic or Orthodox Christian churches cannot continue to serve as a confessor or spiritual guide to persons outside the prison. Ex. 12 at ¶ 26; Ex. 10 at ¶¶ 12-13.

142. The prohibition against running an organization outside the prison applies with particular force to STGs: an inmate cannot correspond about STGs, conduct STG business, or hold a leadership role in an STG. Ex. 10 at ¶ 11; Ex. 11 at ¶¶ 24-27, 33; Ex. 12 at ¶ 37.

143. Warden Davis personally told Mr. Hale that his mail had been restricted in July 2010 because he was not allowed to be the Pontifex Maximus. Ex. 9 at 48:8-49:10 (stating that Warden’s Davis’s statement was made in “very plain English”); *see also* Ex. 12 at ¶ 33.

144. Warden Davis reviewed Mr. Hale’s Restricted General Correspondence Status in January 2011 and decided to give Mr. Hale a chance to demonstrate that he could obey the rules

and refrain from directing an STG. Mr. Davis decided to remove the restrictions at that time.

Ex. 12 at ¶ 34.

**b. January 2013 to July 2013: Mr. Hale’s mail was limited after he attempted to provide guidance to the leader of one of the country’s largest neo-Nazi groups.**

145. David Berkebile was the Complex Warden at the Federal Correctional Complex in Florence, Colorado (“FCC Florence”) from May 6, 2012, through September 30, 2013. Ex. 13 at ¶¶ 1-2.

146. Like Warden Davis, Warden Berkebile knew about the Creativity Movement and Mr. Hale’s position in that group, including that the Creativity Movement was an STG and that Mr. Hale was its leader; that Mr. Hale held the position of “Pontifex Maximus” over the Creativity Movement and was recognized as a national and international leader among white supremacists; that Mr. Hale was an influential leader and had many followers outside the prison; that Mr. Hale had been convicted for soliciting the murder of a federal judge after she had issued an order against the Creativity Movement; and that Mr. Hale was a sophisticated communicator who had graduated from law school. *Id.* at ¶¶ 5-8.

147. Warden Berkebile knew that the Creativity Movement embraces a white supremacist ideology, expresses hatred of “muds” or “non-white” people (especially Jews and African Americans), and uses extremely inflammatory rhetoric in speaking about those people who are deemed to be not white. *Id.* at ¶ 8.

148. Warden Berkebile knew that the Creativity Movement was violent and that, in addition to Mr. Hale’s soliciting the murder of a federal judge, the group was part of the larger

white supremacist movement that included groups like the Order, which was responsible for the murder of a Jewish radio talk show host in Denver in 1984. *Id.*

149. Warden Berkebile also knew that the strong racial animosity associated with the Creativity Movement had caused serious problems in BOP institutions, including the Hitler's birthday riot at USP Florence on April 20, 2008, which was triggered by an associate of Creativity. *Id.* at ¶ 9.

150. After Warden Berkebile arrived at FCC Florence in May 2012, SIS Department staff briefed him about Mr. Hale's communications, including Mr. Hale's continuing efforts to direct and manage the Creativity Movement by means of correspondence with followers and supporters throughout the world. *Id.* at ¶ 11.

151. Warden Berkebile decided that it was appropriate for him to take some time to evaluate the intelligence about Mr. Hale's communications, both to enable him to become familiar with Mr. Hale's communications and to give him a better framework to assess potential risks associated with those communications. *Id.* at ¶ 12.

152. Warden Berkebile continued to receive briefings on Mr. Hale's communications for several months. *Id.* at ¶ 13.

153. In Warden's Berkebile's correctional judgment, the risks associated with Mr. Hale's correspondence escalated in late December 2012, when he attempted to send correspondence to Jeff Schoep, the "Commander" of the National Socialist Movement, one of the largest neo-Nazi groups in the United States. *Id.* at ¶ 14.

154. Mr. Hale has known Schoep for 15 or 16 years. Ex. 9 at 81:23-82:14

155. Before Mr. Hale's incarceration, Schoep invited Mr. Hale to give a speech at a National Socialist rally at the Kansas state house, which Mr. Hale did. *Id.* at 82:15-83:21.

156. According to publicly available information, Schoep was with Mr. Hale when Mr. Hale was arrested for soliciting the murder of a federal judge. *See* <http://www.mourningtheancient.com/schoep.htm>, Ex. 25 at BOP 32381-32382 (“I was there with [Mr. Hale] and others in Chicago getting ready to attend his court hearing over the stripping of his organizations [sic] name, and after he walked through the metal detectors for court the Federal Marshalls [sic] grabbed him.”).

157. Mr. Hale had himself been a National Socialist for many years. Ex. 9 at 86:8-87:1.

158. Mr. Hale still admires and believes in many of the principles of National Socialism. *Id.* at 87:22-24.

159. In Mr. Hale’s letter to Schoep, encouraging him to employ “mass activism tactics” as the “only way that we can win”:

I am more convinced than ever that mass activism in the streets is the only way that we can win. It is the only way that we can reach the people who don’t necessarily wish to be reached. Street demonstrations, rallies in parks, and meetings in public libraries are an absolute must. The internet is only good for those who are trying to reach us and books are only good for those who seek them out to read! So, I urge you to never give up the mass activism tactics, my Brother! Make sure that the Holy Swastika is seen everywhere!

Ex. 13 at ¶ 14 (emphasis in original).

160. Mr. Hale stated that his letter to Schoep was “religious to the extent that our religion is about straightening out the white man’s thinking,” and “mass activism . . . is in line with Creativity’s teachings of straighten out the white man’s thinking.” Ex. 9 at 89:3-90:3.

161. Warden Berkebile, who understood the Creativity Movement to be “a hostile white supremacist group hiding under the umbrella of ‘religion,’” looked at the communication differently. Ex. 13 at ¶¶ 8, 23, 24.

162. Warden Berkebile placed Mr. Hale on Restricted General Correspondence Status in January 2013. *Id.* at ¶ 18.

163. Warden Berkebile's correctional judgment was informed by many factors.

164. Based on his correctional experience, Warden Berkebile was aware that "street demonstrations" by white supremacists are not typically peaceful protests, and that rallies by white supremacists are dangerous gatherings that frequently turn violent. *Id.* at ¶ 15.

165. In Warden Berkebile's correctional judgment, it was extremely dangerous to allow the leader of the Creativity Movement to encourage the well-recognized leader of the National Socialist Movement to engage in such activities. *Id.*

166. In Warden Berkebile's correctional judgment, the language in Mr. Hale's letter to Schoep demonstrated Mr. Hale's efforts to control not only the Creativity Movement, a BOP-designated STG, but to exert a more expansive role by guiding a wider spectrum of white supremacist activity among other groups. *Id.* at ¶ 16.

167. In Warden Berkebile's correctional judgment, this correspondence was different in kind, not merely degree, from Mr. Hale's correspondence during the preceding seven months of Warden Berkebile's tenure at FCC Florence. *Id.*

168. Warden Berkebile's focus was on Mr. Hale again asserting a leadership role (utilizing his status as the leader of an STG); his attempting to bridge or merge multiple white supremacist factions; and engaging another national leader within white supremacy circles. *Id.* at ¶ 17.

169. In Warden Berkebile's correctional judgment, Mr. Hale was urging a well-established, well-recognized national leader of a white supremacist group to pursue specific

means to fight for their perceived common cause, as evidenced by Mr. Hale’s use of the word “us” in the letter, and his admonition to Schoep to ensure that “the Holy Swastika is seen everywhere!” *Id.* at ¶¶ 14, 17.

170. The fact that Mr. Hale urged “mass activism” did not alter Warden Berkebile’s assessment of this letter as a dangerous communication. The National Socialist Movement, like the Creativity Movement, has used extremely violent and hate-filled rhetoric against Jews and African Americans. *Id.* at ¶ 17.

171. In Warden Berkebile’s correctional judgment, what mattered was that Mr. Hale was attempting to assert a mentoring role in a white supremacist organization that was larger in terms of membership than the Creativity Movement. *Id.*

172. In Warden Berkebile’s correctional judgment, Mr. Hale was using the power of his communications to attempt to activate followers and sympathizers who had the potential to violate laws and victimize others. *Id.*

173. Warden Berkebile evaluated Mr. Hale’s inciting correspondence to the leader of the National Socialist Movement in the context of Mr. Hale’s history, including his influence among white nationalists outside the prison. *Id.* at ¶ 18.

174. In Warden Berkebile’s correctional judgment, the correspondence raised grave concerns that Mr. Hale’s communications posed increasing risks to the safety and security of the public because it could trigger violence outside the prison. *Id.*

175. In Warden Berkebile’s correctional judgment, allowing Mr. Hale to receive incoming communications from white supremacists also posed a security risk. *Id.* at ¶ 19.

176. In Warden Berkebile's correctional judgment, permitting Mr. Hale to get correspondence from those he wanted to influence (whether the Creativity Movement, the National Socialist Movement, or other white supremacist groups) would allow Mr. Hale to receive information giving him insight into the actions taking place within those groups outside the prison, and perhaps within the prison as well. *Id.*

177. White supremacist groups are very active in the federal prison system. *Id.*

178. In Warden Berkebile's correctional judgment, allowing Mr. Hale to receive correspondence during a period when his outgoing communications were restricted might also have helped him develop methods of maintaining communications through unauthorized channels; have given him confirmation as to whether or not any illicit messages were getting through to the correspondents the BOP attempting to disrupt; have given personalized context and understanding to issues presented in the wider media which would be beneficial for Mr. Hale's future joint planning with associates outside the prison; and have allowed him to receive instructions or to monitor communications taking place between other factions of the same type of white supremacist groups. *Id.* at ¶ 20.

179. In Warden Berkebile's correctional judgment, nothing short of putting Mr. Hale on Restricted General Correspondence Status would have sufficed to address and alleviate the BOP's security concerns at that point, when Mr. Hale had shown that he was keenly interested in being directly involved with white supremacist activities outside the prison. *Id.* at ¶ 18.

180. The purpose of the mail restrictions was not punitive, but to immediately disrupt and prevent information from being shared which could endanger the public, staff, or inmates. *Id.* at ¶ 21.

181. Warden Berkebile reviewed Mr. Hale’s mail restrictions in July 2013 and approved their removal. *Id.* at ¶ 22.

182. Warden Berkebile wanted to give Mr. Hale yet another a chance to demonstrate that he could obey the rules and refrain from directing the activities of a BOP-designated STG and other white supremacist groups outside the prison. *Id.*

**3. More recently, Mr. Hale made threatening communications about a federal judge, confirming his continuing influence and danger to others.**

183. In May 2016, Mr. Hale was transferred from the ADX to Terre Haute, where he arrived on May 31, 2016. Ex. 11 at ¶ 11.

184. At FCI Terre Haute, Mr. Hale had access to the inmate email system, which allows inmates to send emails to persons outside the prison, as well as to significantly more telephone time than he had while incarcerated at the ADX. Ex. 10 at ¶ 42.

185. A series of concerning communications between Mr. Hale and Creativity Movement followers began shortly after his arrival at FCI Terre Haute. Ex. 11 at ¶ 13.

186. In June 2016, Mr. Hale learned the name of the outside expert witness retained by the BOP in this civil lawsuit. *Id.*

187. Very shortly after this disclosure, Mr. Hale emailed his followers seeking information about the expert witness. A statement from Mr. Hale, in which he refers to the expert as a “Jew” and “Jew lackey” who “besmeared [Hale’s] person,” was later posted on several white supremacist websites. *Id.*

188. In the BOP's correctional judgment, such inflammatory statements and inciting communications from Mr. Hale must be reviewed in light of his followers' and sympathizers' propensity towards violence, as well as in light of his criminal offense. *Id.* at ¶ 14.

189. In the BOP's correctional judgment, the expert's supposed embrace of Judaism, coupled with Mr. Hale's denunciation of the purported injustice done to him by the expert, is very similar to the focus on the presumed Jewishness of the judge whose murder Mr. Hale was convicted of soliciting in 2002. *Id.*; *see also* Fact ¶106, above (referring to Judge Lefkow as "the judge with the Jew surname").

190. On June 27, 2016, Mr. Hale placed a telephone call to a follower ("Follower #1"). Ex. 10 at ¶ 43; Ex. 11 at ¶ 15.

191. Follower #1, an adherent of Creativity, told Mr. Hale that he had been waiting 13 years to speak with Mr. Hale and that he was "greatly honored" by Mr. Hale's call. Ex. 10 at ¶ 44.<sup>16</sup>

192. Mr. Hale told Follower #1 that Mr. Hale blamed the outcome of his criminal trial on the closing argument of the federal prosecutor. That federal prosecutor is now a federal judge. *Id.*

---

<sup>16</sup> Mr. Hale's communications with Follower #1 and Follower #2 are analyzed in a memorandum prepared by a BOP Intelligence Operations Officer. Ex. 10 at ¶ 43. That memorandum, with some redactions, was produced to Mr. Hale in discovery. Because of the sensitive nature of this document, which reveals BOP investigatory techniques and contains sensitive personal information about two of Mr. Hale's followers, the contents of that document are described here and in Mr. Garrow's declaration, but not attached as an exhibit. If the Court wishes to review this document, the BOP will file the document, along with an appropriate motion to restrict access to it.

193. Mr. Hale and Follower #1 discussed the possibility of Follower #1 moving to Illinois and possibly buying the house where Mr. Hale was raised, and renting Mr. Hale's old post office box as a tribute to him. *Id.* at ¶ 45.

194. Follower #1 told Mr. Hale:

My loyalties are to you. You are my Fuhrer! You are my leader. I will follow you to the ends of the earth! I would jump out of an airplane without a parachute for you! Only kidding.

*Id.*; Ex. 11 at ¶ 15.

195. In the assessment of BOP intelligence officials, the follower's "only kidding" comment is a common tactic used in communications between inmates and persons outside the prison and was not taken literally. Ex. 10 at ¶ 45.

196. Mr. Hale told Follower #1: "Well that's what every leader wants to know. I would never ask you to do that." *Id.*; Ex. 11 at ¶ 15.

197. On July 13, 2016, approximately two weeks after the telephone conversation between Mr. Hale and Follower #1, Mr. Hale received an email communication from another follower and fellow "Creator" ("Follower #2"). Ex. 10 at ¶ 46.

198. In that email, Follower #2 informed Mr. Hale that Follower #1 had said this to Follower #2: "**You know [Follower #2] if you want me to take out any of the judges or prosecutors you just let me know.**" *Id.* (emphasis in original); Ex. 11 at ¶ 16.

199. Follower #2 also told Mr. Hale: "**Now Matt I'm not saying not to use these parasites. If you can use them, by all means get what you can out of them. Just realize their true intentions.**" Ex. 10 at ¶ 46 (emphasis in original).

200. On August 21, 2016, Mr. Hale drafted a “Press Release” (“Press Release #1”) to be disseminated to his followers via media outlets, including particularly white supremacist websites. Ex. 10 at ¶ 47; Ex. 11 at ¶ 17.

201. By that point, Mr. Hale had learned that the prosecutor in his criminal case had been appointed as a federal judge. Ex. 10 at ¶ 48; Ex. 11 at ¶ 18.

202. In the BOP’s assessment, the language of Press Release #1 is racially charged and blatantly hostile toward the federal judge, whom Mr. Hale calls a “Jewish crypto-homosexual communist who prosecuted the Reverend Matt Hale, leader of the pro-White and anti-Jewish Church of the Creator, on blatantly false charges that he had ‘solicited’ the murder of a federal judge in late 2002[.]” Ex. 10 at ¶ 48; Ex. 11 at ¶ 18.

203. Mr. Hale cast himself in the role of victim and accused the federal judge of prosecuting him “on blatantly false charges.” *Id.*

204. Mr. Hale wrote in Press Release #1:

[The federal judge] will do great . . . for the federal, Jewish tyranny that presently rules over us and help consign some more innocent people to a prison cell for decades like he did me. [He] is living proof of why people would have the silly idea that the Nazis would try to kill six million Jews, for in my particular case he prosecuted a man he knew to be innocent all along only so that a critic of the Jewish domination of our country could be silenced. He caused enormous grief to me, my family, and my church. Well, in any case, it is my hope that [he] will one day receive his comeuppance. [The federal judge] has no business ever wearing a robe of justice and it is a true indictment of the legal system of this country that it would such [sic] a scoundrel as him with that robe.

Ex. 10 at ¶ 48; Ex. 11 at ¶ 18.<sup>17</sup>

---

<sup>17</sup> Because of the BOP’s security concerns about Press Release #1, which to the BOP’s knowledge has not been publicly disseminated, it is described here and in the declarations, but not attached as an exhibit. However, the document (which Mr. Hale wrote) was produced to him in discovery. If the Court wishes to review Press Release #1, the BOP will file the document,

205. After BOP officials rejected this email as drafted, Mr. Hale emailed his mother a second version of the “Press Release” (“Press Release #2). Mr. Hale’s mother filed a copy of Press Release #2 with this Court. *See* Docket 100 at 2-3; *see also* Ex. 10 at ¶ 49; Ex. 11 at ¶ 19.

206. Mr. Hale’s email attaching Press Release #2 was also rejected, but a problem with the BOP’s email system allowed the email to be released to Mr. Hale’s mother. Ex. 10 at ¶ 49; Ex. 11 at ¶ 19.

207. Mr. Hale’s mother disseminated Press Release #2 to multiple white supremacist websites, where it continues to be accessible. *Id.*

208. Mr. Hale changed a few words from Press Release #1 in Press Release #2: he edited his prior remark about the Holocaust to say that the federal judge “is living proof of why anti-semitism is on the rise all over the world[.]” He put the word “legal” before the word “comeuppance.” Ex. 10 at ¶ 50; Ex. 11 at ¶ 19.

209. In the correctional judgment of the BOP, Mr. Hale’s communications about a federal judge were a credible threat. Ex. 10 at ¶ 56; Ex. 11 at ¶ 32.

210. In reaching this conclusion, the BOP considered these facts:

- Both press releases use racially charged terms that are plainly designed to incite Mr. Hale’s followers and supporters in the Creativity Movement and other white supremacist groups who are susceptible to such rhetoric.
- Both press releases specifically discussed the “Church of the Creator,” an STG, and described Mr. Hale as the “leader” of that group.
- Mr. Hale and the two followers involved in the pre-press-release communications are conversant in the same texts and are familiar with the language of Creativity, including the “*open warfare*” and “*open season on all Jews*” language discussed in Facts § I, ¶¶ 27, 60, and Facts ¶¶ 18, 82, 95 in this section.
- Mr. Hale holds a supreme leadership role in a group guided by an ideology of virulent anti-Semitism and expressed hatred for persons of “mud” races.

---

along with an appropriate motion to restrict access to it.

- Mr. Hale’s criminal history includes his conviction for the solicitation of the murder of a federal judge.
- Just a few weeks before the press releases were drafted, one follower called Mr. Hale his “Fuhrer” and told another follower that he would be willing “take out” a prosecutor or judge for Mr. Hale.
- Mr. Hale responded to the “Fuhrer” comment with his assent to a leadership role: “Well that’s what every *leader* wants to know.”
- Other people have been inspired to act to avenge perceived injustices to Mr. Hale, including Benjamin Smith and William White.

Ex. 10 at ¶¶ 51-54, 56; *see also* Ex. 11 at ¶ 20.

211. Mr. Hale was placed in the Special Housing Unit (SHU) in FCI Terre Haute on August 25, 2016, pending an investigation into whether he circumvented the BOP’s mail monitoring procedures. Ex. 11 at ¶ 20.

212. Mr. Hale was found guilty of (Attempted) Abuse of the Mail Which Circumvents under BOP Disciplinary Code 296. *Id.*

213. The incident precipitated Mr. Hale’s re-referral back to the ADX. *Id.* at ¶ 21.

214. After conducting a hearing and reviewing the evidence, a BOP Hearing

Administrator concluded:

Due to his stature and influence the statements in inmate Hale’s ‘press release’ specifically referring to his hope that [the federal judge] will receive his ‘comeuppance’ are believed to be another attempt by inmate Hale to orchestrate violence against the judge, either by [Follower #1] or another disciple of similar mindset. As he continues a pattern of this behavior, it appears he would be unable to function in a less restrictive correctional environment without being a threat to others or to the secure and orderly operation of a less secure correctional facility.

*Id.*

**4. The BOP determined that allowing Mr. Hale to lead an STG or to engage in communications related to the STG would threaten safety and security.**

215. Upon Mr. Hale’s return to the ADX on April 7, 2017, the ADX SIS Department carefully evaluated the history of Mr. Hale’s communications, considering his status and influence as the validated leader of an STG, his conduct at FCI Terre Haute, his offense history, his continuing role as a leader in the Creativity Movement, and the concern that his large group of followers and sympathizers might act on any perceived directive for violence or retribution. *Id.* at ¶ 22.

216. The BOP was obliged to take steps to ensure that the release of a communication like that in the “Press Release” does not happen again. *Id.* at ¶ 23.

217. The SIS Department monitors and manages Mr. Hale’s communications consistent with his status as the validated national leader of an STG and in accordance with BOP policies. *Id.*

218. There are two key components to the monitoring of Mr. Hale’s communications. *Id.*

219. First, if Mr. Hale’s incoming or outgoing correspondence contains *any reference* to Creativity, the Creativity Movement, the Worldwide Church of the Creator, the Creativity Alliance, or any permutation of or code for these group names, that correspondence will be rejected in accordance with BOP policy. *Id.* at ¶ 24.

220. Correspondence from any BOP inmate is ordinarily rejected if it mentions, either explicitly or in code, STG information such as names, ranks, operations, or directions. *Id.*; *see also* 28 C.F.R. § 540.14(d).

221. The SIS Department at the ADX treat Mr. Hale's correspondence in accordance with this rule because he is a validated leader of an STG. *Id.*

222. The second component of the monitoring of Mr. Hale's communications at the ADX is that he is not allowed to use, or to be addressed by, honorifics such as "Reverend" or "Pontifex Maximus." *Id.* at ¶ 25.

223. The use of the term "Reverend" in the Creativity Movement connotes rank and stature within the organization, as Mr. Hale informed SIS staff. Mr. Hale also stated he himself has "ordained" individuals as "Reverends" in the Creativity Movement. *Id.*; *see also* Ex. 9 at 224:1-7 (Mr. Hale ordained "40 plus" reverends).

224. Mr. Hale is also not allowed to refer to himself or to be referred to by others as "Pontifex Maximus," "PM," or permutations thereof. Within the Creativity Movement, the term Pontifex Maximus, Latin for "*highest* priest," also connotes rank, stature, and control of the STG. Ex. 11 at ¶ 25.

225. While it is standard BOP practice to reject correspondence referencing an inmate's rank within an STG, BOP inmates are not allowed to hold positions of authority in *any* group outside the prison, even if it is not a designated STG. *Id.* at ¶ 26.

226. In the BOP's correctional judgment, when a group has been found sufficiently dangerous to be accorded STG status, any communications about the group, and any attempt by an inmate to elevate himself to a position of authority in that group, can be dangerous. *Id.* at ¶ 27.

227. From a correctional management perspective, a bright-line rule about STG-related communications is necessary because intelligence personnel cannot be certain which STG-

related communications may be benign and which may implicate dangers. *Id.*

228. Intelligence about the activities of an STG is always fluid, and keeping track of the many components of the group on the street and in the prison is not an exact science. *Id.* at ¶ 28.

229. It is extremely difficult for BOP intelligence personnel to track and have complete awareness of the activities of numerous persons in widely varying locations. *Id.*

230. Intelligence about the group's activities can change on a day-to-day basis, and BOP intelligence personnel do not have access to that information in real time. Inevitably, intelligence is delayed. *Id.*

231. The BOP cannot be certain that it has a full understanding of the implications of communications among a complex web of associates, or how those associates will react to communications from an inmate. *Id.*

232. Dangers may not be fully apparent until a dangerous plan or risk comes to fruition, such as an executed hit on a targeted individual in the community or a deadly fight on a prison yard between two rival STGs. *Id.*

233. To reduce these dangers, the BOP must be proactive, which is why it is warranted to restrict communications about STGs. *Id.* at ¶ 29.

234. Mr. Hale's communications demonstrate that he wants to keep his memory alive among his followers, who continue to seek to communicate with him about the Creativity Movement. *Id.* at ¶ 30.

235. It is extremely dangerous if Mr. Hale is allowed to continue to write about the group and to provide guidance and direction. SIS Department personnel cannot be certain of the

precise meaning and implications of his words, or how his communications will be interpreted or used by others. SIS staff may understand the communication in one way, but Mr. Hale's followers may have another interpretation. *Id.*

236. In the BOP's correctional judgment, incoming communications to Mr. Hale about the STG also pose risks. *Id.* at ¶ 31.

237. Mr. Hale was returned to the ADX because he could not be safely housed in an open-population prison as a result of his communications. *Id.*

238. The BOP must anticipate that, if Mr. Hale receives communications about the Creativity Movement and gains knowledge about the group's activities outside the prison, he may make decisions based on that information or attempt to disseminate those communications to others, both within the prison and by means of telephone calls. *Id.*

239. When the BOP did not consistently adhere to the practice of prohibiting STG-related communications in Mr. Hale's case, he was able to communicate with his followers—one of whom told him that Mr. Hale was his "Führer"—and ultimately issued a communication that, in the BOP's assessment, presented a credible threat to a federal judge. *Id.* at ¶ 32.

**C. Element 2: These prohibitions on communications are the least-restrictive means to protect compelling security interests.**

240. Mr. Hale's threatening communications concerning a federal judge show that Mr. Hale's use of his STG status poses dangers. Facts ¶¶ 183-239, above, this section.

241. In Mr. Hale's case, a bright-line rule about STG-related communications is necessary because intelligence personnel cannot be certain which STG-related communications may be benign and which may implicate dangers. Ex. 11 at ¶ 27.

242. It is extremely difficult for BOP intelligence personnel to maintain a current,

complete understanding of the implications of communications between Mr. Hale and his complex web of associates. *Id.* at ¶ 28.

243. Dangers may not be fully apparent until a dangerous plan or risk comes to fruition. *Id.*

244. The Creativity Movement, and Mr. Hale's exalted historical role in that group, create inherent dangers that can never be eliminated, but must be controlled, to prevent harm to others. Facts ¶¶ 1-111, this section, above.

245. Mr. Hale persisted in his commitment to being the "Pontifex" and continued to guide and direct not only the adherents of Creativity, but white supremacists in other groups. Facts ¶¶ 121-126, 150, 151, 153, 159, 160, this section, above.

246. Wardens Davis and Berkebile tried a letter-by-letter approach to managing Mr. Hale's communications for a period of time. Ex. 12 at ¶¶ 16-17; Ex. 13 at ¶¶ 11-13.

247. The letter-by-letter approach remains risky, because even if Mr. Hale's communications about the STG appeared benign, it is very difficult for BOP intelligence personnel to know precisely what those communications may mean to affiliates of the STG on the street or how those persons may react to Mr. Hale's message. Ex. 11 at ¶¶ 27-30.

248. It is also difficult for BOP intelligence personnel to anticipate what information Mr. Hale may glean from incoming communications from associates of the STG on the street, which could allow him to continue to engage in unauthorized communications with and about the Creativity Movement. *Id.* at ¶ 31.

249. A complete break-off of STG-related communications was the only means of protecting security as to Mr. Hale, where he showed (and continues to show) an unrelenting

interest in playing a leadership role in white supremacist activities outside the prison. Ex. 10 at ¶ 55 (June 2, 2017, statement by Mr. Hale: *I furthermore remain interested in the possibility of myself assuming the position of Pontifex Maximus pro tempore so that I can successfully oversee a true, legitimate election of our next Pontifex Maximus pursuant to our teachings.*”).

250. The risks and difficulties attendant on permitting Mr. Hale to retain a leadership role in the Creativity Movement, and to communicate about matters related to the STG, are demonstrated in Mr. Hale’s recent communications concerning a newly appointed federal judge, in which he held himself out as the “*leader of the pro-White and anti-Jewish Church of the Creator . . .*” Ex. 10 at ¶ 14 (emphasis added); *see also* Facts ¶¶ 200-210, this section, above.

252. Prison personnel were not able to prevent that communication from leaving the institution, even though it was assessed to constitute a credible threat against a federal judge and had been rejected. Ex. 10 at ¶¶ 49, 51-56.

253. The proactive rule that Mr. Hale cannot engage in communications about the Creativity Movement helps to defuse these dangers. Ex. 11 at ¶ 29.

254. The fact that Mr. Hale cannot communicate about or hold a leadership role in the Creativity Movement does not mean that he is subject to mail restrictions. Mr. Hale has not been on Restricted General Correspondence Status since July 2013. *Id.* at ¶ 34.

255. Mr. Hale can correspond with people outside the prison, including persons who are known to be adherents of the Creativity Movement and/or personal followers of his. *Id.*

256. Mr. Hale and his followers can talk about any matter unrelated to the Creativity Movement, provided those communications are not determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate

criminal activity. *Id.*

257. Since Mr. Hale returned to the ADX on April 7, 2017, he has sent and received correspondence that complies with these rules. From that date to July 26, 2017, Mr. Hale had received 109 pieces of non-legal mail from correspondents outside the prison and had sent 64 pieces of non-legal mail to correspondents outside the prison. *Id.* at ¶ 35.

#### **D. Conclusion**

The undisputed facts show that the BOP is entitled to summary judgment on Claim 3, a RFRA challenge to the BOP's handling of Mr. Hale's mail. The BOP has compelling interests in its approach to managing his mail. The undisputed evidence shows that the risks posed by Mr. Hale and his connection to the violent Creativity Movement are deeply concerning. The evidence also shows that the BOP uses the least-restrictive means to manage his mail: its approach has addressed specific security concerns Mr. Hale has presented, but has not cut Mr. Hale off from the outside world. The Court should grant summary judgment dismissing Mr. Hale's claim for injunctive relief based on the alleged violation of RFRA.

#### **V. Mr. Hale cannot meet his burden to prove that the BOP's procedures for handling his mail are irrational. (Claim 1)**

The BOP is entitled to summary judgment on Claim 1, a First Amendment claim alleging that his mail restrictions violated Mr. Hale's free exercise and freedom of speech and association rights. The standards applicable to this claim are far more deferential than those applicable to his RFRA claim. The undisputed facts show that Mr. Hale cannot meet his burden to prove that the manner in which his mail is handled is so disconnected from any legitimate penological interest as to have been *irrationally* imposed. As noted above, because Mr. Hale seeks injunctive relief,

he must show that this standard was met both at the time of filing of his complaint, and at the current time. *Farmer*, 511 U.S. at 845-46.

**A. Burden of proof and elements**

**1. The rational basis standard is applied with deference to the correctional judgment of prison officials.**

As the Court recognized in its order on the motion to dismiss, Doc. 66 at 14-15, restrictions on any alleged infringement of Mr. Hale’s First Amendment rights in prison are evaluated under the test set forth in *Turner v. Safley*, 482 U.S. 78, 89 (1987), to determine if the restrictions were “reasonably related to legitimate penological interests.” *Id.* at 89; *see also Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007) (on a free exercise claim, the court first determines whether a prison regulation “substantially burdened sincerely-held religious beliefs,” then “balance[s] the factors set forth in *Turner* . . . to determine the reasonableness of the regulation”) (quotations and internal citations omitted). The *Turner* test is “a unitary, deferential standard for reviewing prisoners’ constitutional claims” that does not depend on an assessment of the purported value of the content of the speech. *Shaw v. Murphy*, 532 U.S. 223, 229 (2001) (“[T]he *Turner* test, by its terms, simply does not accommodate valuations of content. On the contrary, the *Turner* factors concern only the relationship between the asserted penological interests and the prison regulation.”).

*Turner*’s deferential rational-basis standard reflects the principle that “lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” *Pell v. Procunier*, 417 U.S. 817, 822 (1974) (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948)); *see also Hudson v. Palmer*, 468 U.S. 517, 523 (1984) (recognizing that inmates retain only those First Amendment

rights “not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system”); *Jones v. N. Carolina Prisoners’ Labor Union, Inc.*, 433 U.S. 119, 125-26 (1977) (“Perhaps the most obvious of the First Amendment rights that are necessarily curtailed by confinement are those associational rights that the First Amendment protects outside of prison walls . . . . Equally as obvious, the inmate’s ‘status as a prisoner’ and the operational realities of a prison dictate restrictions on the associational rights among inmates.”); *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (“The free exercise right, however, is necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security.”).

The Supreme Court has made clear that, in applying *Turner*, courts must defer to prison officials on “disputed matters of professional judgment.” *Beard v. Banks*, 548 U.S. 521, 530 (2006).<sup>18</sup> The Court “must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) (collecting cases).

---

<sup>18</sup> *Accord, e.g., O’Lone*, 482 U.S. at 353 (“We take this opportunity to reaffirm our refusal, even where claims are made under the First Amendment, to substitute our judgment on difficult and sensitive matters of institutional administration for the determinations of those charged with the formidable task of running a prison.”) (quotations omitted); *Bell v. Wolfish*, 441 U.S. 520, 562 (1979) (“The wide range of ‘judgment calls’ that meet constitutional and statutory requirements are confined to officials outside of the Judicial Branch of Government.”); *Jones v. N. Carolina Prisoners’ Labor Union*, 433 U.S. at 126, 132 (noting that “[b]ecause the realities of running a penal institution are complex and difficult, we have also recognized the wide-ranging deference to be accorded the decisions of prison administrators,” and deferring to prison officials who used “informed discretion” to reach reasonable conclusions, so long as not “conclusively wrong”).

**2. Mr. Hale bears the burden to prove that the BOP acted irrationally.**

Under *Turner*, Mr. Hale bears the burden to establish the absence of any rational connection between how mail is handled and the BOP's legitimate penological interests. *Overton*, 539 U.S. at 132 ("The burden moreover, is not on the State to prove the validity of prison regulations but on the prisoner to disprove it."); *see also Shaw*, 532 U.S. at 232 (under *Turner*, the court must decide whether the inmate has met his "heavy burden" to "overcome the presumption that the prison officials acted within their 'broad discretion'") (quoting *Thornburgh v. Abbott*, 490 U.S. 401, 413 (1989)).

*Turner* identified four factors that courts should consider in determining whether a restriction is reasonably related to legitimate penological interests. However, *Turner* does not require that all four factors weigh in favor of the government to find that a restriction is rationally imposed. *See Beard*, 548 U.S. at 32-33 (prison policy upheld as reasonable, even though prisoners had *no* "alternative means" of receiving the information at issue); *see also Henderson v. Terhune*, 379 F.3d 709, 715 (9th Cir. 2004) (not every *Turner* factor "must be met in order to find that a regulation is reasonably related to legitimate penological interests").

1. The legitimate penological interest factor. "First, there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Turner*, 482 U.S. at 89. The Tenth Circuit has emphasized that this factor "is the most important . . . it is not simply a consideration to be weighed but rather an essential requirement." *Al-Owhali v. Holder*, 687 F.3d 1236, 1240 (10th Cir. 2012) (internal quotation marks and citation omitted); *see also Beard*, 548 U.S. at 532 (observing that "the second, third, and fourth factors, being in a sense logically related to the Policy itself, here add little, one way or another, to the first factor's basic logical rationale").

This factor is satisfied if prison officials, in their professional judgment, believe that a restriction would advance the desired goals, even if there is no concrete proof that it will. *Johnson v. California*, 543 U.S. 499, 513 (2005) (observing that the *Turner* test does not require proof that the policy at issue in fact advances the stated goal, but that it is sufficient that officials “might reasonably have thought” it would); *Beard*, 548 U.S. at 534-35 (where inmate asserted that a 25% success rate in program graduation was low, the Court noted that “there is nothing to indicate that a 25 percent graduation rate is low, rather than, as the Secretary suggests, acceptably high”; upholding a restriction even absent a showing that the restriction had “proven effective”).

Prison officials are allowed to impose restrictions to address their concern about *potential* threats. “Responsible prison officials must be permitted to take reasonable steps to forestall such a threat, and they must be permitted to act before the time when they can compile a dossier on the eve of a riot.” *Jones v. N. Carolina Prisoners’ Labor Union*, 433 U.S. at 132-33 & 136 (holding that for the district court to require a “demonstrable showing that the Union was in fact harmful” would be “inconsistent with the deference federal courts should pay to the informed discretion of prison officials”). Officials can exercise their professional judgment to take preventive actions without waiting for detailed evidence confirming that greater harm will ensue in the absence of the restrictions. *Florence v. Bd. of Chosen Freeholders of County of Burlington*, 566 U.S. 318, 334 (2012) (applying *Turner* in rejecting argument that detainees should be exempt from invasive searches absent a “particular reason to suspect them” and holding that officials can reasonably find such an evidentiary standard “unworkable”).

2. The alternative means factor. The second *Turner* factor is “whether there are alternative means of exercising the right that remain open to prison inmates.” *Turner*, 482 U.S. at 90. Alternatives need not be ideal; they need only be available. *See Overton*, 539 U.S. at 135. Even if the available alternative is not the “best method” from the inmate’s point of view, the second *Turner* factor “does not undercut the challenged restriction.” *Wardell v. Duncan*, 470 F.3d 954, 961-62 (10th Cir. 2006).

3. The impact-of-the-accommodation factor. “A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally.” *Turner*, 482 U.S. at 90. “When accommodation of an asserted right will have a significant ‘ripple effect’ on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials.” *Id.* The Court should consider whether accommodating the right would have more than a “negligible” effect. *Overton*, 539 U.S. at 136 (in upholding restrictions on visitors to prisoners, observing that allowing the visitors “surely would have more than a negligible effect on the goals served” by the visitation restrictions).

4. The “obvious, easy alternatives” factor. The fourth *Turner* factor is whether there are “obvious, easy alternatives” that suggest that the restriction is an “exaggerated response” to governmental concerns. *Turner*, 482 U.S. at 90. “This is not a ‘least restrictive alternative’ test: prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant’s constitutional complaint.” *Id.* at 90-91. *Turner* asks “whether the prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted right while not imposing more than a *de minimis* cost to the valid penological goal.”

*Overton*, 539 U.S. at 136. “[W]hen prison officials are able to demonstrate that they have rejected a less restrictive alternative because of reasonably founded fears that it will lead to greater harm, they succeed in demonstrating that the alternative they in fact selected was not an ‘exaggerated response’ under *Turner*.” *Thornburgh*, 490 U.S. at 419.

The undisputed facts show that Mr. Hale cannot meet his burden to show that the manner in which his mail is handled is an irrational approach unrelated to legitimate prison interests.

**B. Elements that Mr. Hale cannot prove**

**1. Turner factor no. 1: Mr. Hale cannot prove the absence of a rational connection between the BOP’s handling of his mail and its legitimate penological interests in preventing him from leading a violent STG and causing danger to others.**

1. The undisputed facts show that the BOP’s approach to handling Mr. Hale’s mail passes muster under RFRA’s rigorous standard: the restrictions are the least-restrictive means of facilitating the BOP’s compelling security interests in prohibiting Mr. Hale from leading a violent STG and inspiring other white supremacists to engage in violence. Facts § IV., ¶¶ 1-257.

2. These same facts show that the BOP has legitimate penological interests under *Turner* and that there is a rational connection between the manner in which Mr. Hale’s mail is handled and the BOP’s legitimate penological interests. *See id.*

**2. Turner factor no. 2: Mr. Hale cannot prove that alternative means of exercising the right are not available.**

3. Mr. Hale can communicate with persons of his choosing, including his followers in the Creativity Movement. Ex. 11 at ¶ 34.

4. Many of Mr. Hale’s current correspondents are fellow adherents of Creativity who are not members of his immediate family. *See id.*

5. From April 7, 2017, the date Mr. Hale was redesignated to the ADX, through July 26, 2017, he had sent 64 pieces of mail and received 109 pieces of mail. *Id.* at ¶ 35.

6. Mr. Hale and his correspondents can talk about any matter unrelated to the Creativity Movement, provided those communications are not detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if they might facilitate criminal activity. *Id.* at ¶ 34.

7. Mr. Hale is allowed to have Creativity books that he deems to be “sacred” and to retain those books in his cell, including *Nature’s Eternal Religion* and *The White Man’s Bible*, provided he does not give them to other inmates or use them in some way that might incite disruption in the prison. *Id.* at ¶¶ 39-41.

8. Mr. Hale faces no restrictions on several activities that could be deemed “religious,” including praying, engaging in contemplation about Creativity, or reciting the “Fundamental Beliefs” or “Daily Affirmations” of Creativity.

9. Even when Mr. Hale was on Restricted General Correspondence Status, he was allowed to write to his immediate family, which included his parents and three siblings. Ex. 12 at ¶ 22 & Attachment 2; Ex. 13 at ¶ 18 & Attachment 2; *see also* Ex. 9 at 18:18-19:12.<sup>19</sup>

10. When Mr. Hale was on Restricted General Correspondence Status, there were no restrictions on his telephone privileges. Ex. 12 at ¶ 22 & Attachment 2; Ex. 13 at ¶ 18 & Attachment 2; *see also* Ex. 9 at 23:5-10.

---

<sup>19</sup> Mr. Hale’s father passed away before the 2013 restrictions were imposed.

11. When Mr. Hale was on Restricted General Correspondence Status, there were no restrictions on his visiting privileges. Ex. 12 at ¶ 22 & Attachment 2; Ex. 13 at ¶ 18 & Attachment 2; *see also* Ex. 9 at 23:14-23.

12. When Mr. Hale was on Restricted General Correspondence Status, there were no restrictions on his access to books or television. Ex. 12 at ¶ 22 & Attachment 2; Ex. 13 at ¶ 18 & Attachment 2.

13. During the periods when Mr. Hale was on Restricted General Correspondence Status he wrote two books, which he later published as *Ending White Slavery* and *The Racial Loyalist Manifesto*. Ex. 9 at 44:20-45:5; *see also* Exhibits 21 & 22 (cover pages from books).

**3. Turner factor no. 3: Mr. Hale cannot prove that his continuing communications about an STG would not have had a negative impact on the security of others.**

14. The record evidence shows that the BOP's approach to managing Mr. Hale's mail has been the least-restrictive means the BOP could have employed to facilitate its compelling security interest in prohibiting him from leading a violent STG and inspiring other white supremacists to act violently. Facts § IV., ¶¶ 1-257.

15. These same facts show that allowing Mr. Hale to communicate about the business of the Creativity Movement and to exercise a leadership role in the group could create grave risks to the safety and security of others, both outside the prison and within it. *See id.*

**4. Turner factor no. 4: Mr. Hale cannot prove that there are obvious, easy alternatives that would not compromise the BOP's legitimate penological interests.**

16. The undisputed facts show that the BOP's approach to managing Mr. Hale's mail is the least-restrictive means of facilitating the BOP's compelling security interests in prohibiting

him from leading a violent STG and inspiring other white supremacists. Facts § IV., ¶¶ 1-257.

17. Those same facts show that Mr. Hale cannot meet his burden to prove that there are “obvious, easy” alternatives to handling his mail that would not seriously compromise the BOP’s legitimate penological interests. *See id.*

18. When Mr. Hale was allowed to engage in communications with affiliates of the Creativity Movement on the street and to hold himself out as “the leader of the pro-White and anti-Jewish Church of the Creator,” he was able to issue what the BOP found to be a credible threat against a federal judge. *See id.* at ¶¶ 190-210.

### **C. Conclusion**

The undisputed evidence shows that Mr. Hale cannot prove that the method of handling his mail fails the deferential *Turner* rational-basis test, where a less-restrictive method resulted in the dissemination of a threatening communication about a judge. The Court should grant summary judgment dismissing Mr. Hale’s claim for injunctive relief based on the alleged violation of the First Amendment.

## **VI. Mr. Hale cannot meet his burden to prove retaliation in the prison context, where the judgment of prison officials receives deference. (Claim 2)**

Mr. Hale alleged that the past mail restrictions violated his First Amendment rights on the ground that they were retaliatory because, he alleged, they were imposed in response to his “trying to participate in his Church and religious faith as well as his freedom of speech.” Doc. 10 at ¶ 80. The Court allowed this First Amendment retaliation claim to proceed, but only to the extent he seeks injunctive relief. Doc. 66 at 30-31. Because Mr. Hale seeks injunctive relief, he must show that his rights are being violated at the current time. *Farmer*, 511 U.S. at 845-46.

The BOP is entitled to judgment on this claim, for three reasons. First, the free exercise aspect of this claim fails because Mr. Hale cannot meet his burden to prove that Creativity is a religion. Facts § I., ¶¶ 1-121, above. Second, Mr. Hale lacks standing to pursue forward-looking injunctive relief based on past mail restrictions, because the facts relating to his current mail privileges are now significantly different. Facts § II., ¶¶ 1-9, above. Third, even if he still has standing to pursue this claim, he cannot satisfy the retaliation standard in the prison context, where prison restrictions are judged by the deferential *Turner* standard.

**A. Burden of proof and elements**

Mr. Hale bears the burden to prove that: (1) he was engaged in constitutionally protected activity; (2) the BOP's actions caused him "to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity"; and (3) the BOP's "adverse action was substantially motivated as a response to the plaintiff's exercise of constitutionally protected conduct." *Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007) (addressing a retaliation claim outside the prison context) (citation omitted). He must show that prison officials are retaliating or harassing him for exercising his constitutional rights. *Fogle v. Pierson*, 435 F.3d 1252, 1264 (10th Cir. 2006).

In applying this test, the Court also must take into account the prison context, where restrictions on speech must be considered under *Turner's* "unitary, deferential standard for reviewing prisoners' constitutional claims[.]" *Shaw*, 532 U.S. at 229. Under *Turner*, courts must accord deference to the correctional judgment of prison officials, who are charged with the complex task of protecting the safety of the prison, prison staff, and the public. *See supra* at pp. 97-100. The prison officials' assessment of whether a restriction advances the penological goals

is entitled to deference. *Johnson*, 543 U.S. at 513 (observing that the *Turner* test does not require proof that the policy at issue in fact advances the stated goal, but that it is sufficient that officials “might reasonably have thought” it would); *Beard*, 548 U.S. at 534-35 (upholding a restriction even absent a showing that the restriction had “proven effective”).

The *Turner* test requires special consideration of First Amendment retaliation claims raised in the prison context. First, not all speech in prison is constitutionally protected activity. A prisoner’s rights may be restricted in ways that “would raise grave First Amendment concerns outside the prison context.” *Thornburgh*, 490 U.S. at 407; *cf. Overton*, 539 at 131 (“An inmate does not retain rights inconsistent with proper incarceration . . . And . . . freedom of association is among the rights least compatible with incarceration”). Federal prison officials are specifically authorized to restrict speech when the officials judge that speech as posing risks. 28 C.F.R. § 540.14(d)(2) (“The Warden may reject correspondence sent by or to an inmate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity,” including correspondence which contains “[m]atter which depicts, describes, or encourages activities which may lead to the use of physical violence or group disruption[.]”).

Second, even if a prison does impose restrictions “motivated as a response to” an inmate’s speech, such action is still proper under *Turner* so long as the restriction is reasonably related to legitimate penological goals. *Shaw*, 532 U.S. at 229 (holding that the *Turner* test does not vary depending on “valuations of content. On the contrary, the *Turner* factors concern only the relationship between the asserted penological interests and the prison regulation.”).

Here, the undisputed evidence shows that Mr. Hale’s “retaliation” claim fails for several reasons. The evidence regarding the BOP’s approach to his mail does not show that he has been and is being harassed due to the exercise of his religion. Mr. Hale engaged in communications that raised serious security concerns. He had no protected right to engage in those concerning communications, which prompted the BOP’s decisions about his mail. And even if his speech were protected, the BOP’s approach to his mail is reasonable and proper under *Turner*, because it addresses compelling security concerns.

**B. Elements that Mr. Hale cannot prove**

1. **Element 1: No protected right. As a federal inmate, Mr. Hale has no constitutional right to engage in threatening communications about a judge, to run an STG, or to guide white supremacists outside the prison.**

The communications that prompted the decisions about how to manage Mr. Hale’s communications are not constitutionally protected activity in the prison context.

1. In the BOP’s correctional judgment, Mr. Hale’s communications posed a credible threat to a federal judge. Facts § IV., ¶¶ 190-210, above.

2. In the BOP’s correctional judgment, communications in which Mr. Hale exercised a leadership role in, provided guidance and direction to, and communicated about the business of an STG (as well as other white supremacist groups) posed a security threat. Facts § IV., ¶¶ 1-182, 215-239, above.

2. **Element 3: Reasonable restrictions. Prison officials took reasonable actions to address Mr. Hale’s speech, which they judged to be dangerous.**

The BOP’s approach to managing Mr. Hale’s mail was reasonably related to several legitimate penological goals: preventing him from threatening people outside the prison; from

leading, guiding, and conducting the business of an STG; and from inspiring other white supremacists outside the prison.

3. Facts § IV., ¶¶ 1-239, above.

**C. Conclusion**

The undisputed evidence shows that Mr. Hale cannot prove that the method of handling his mail is retaliatory in the prison context, where prison officials took reasonable actions to address grave concerns associated with his speech, and the judgment of those officials is entitled to deference. The Court should grant summary judgment dismissing Mr. Hale’s claim for injunctive relief based on alleged retaliation.

**VII. The BOP is entitled to summary judgment on Claims 8 and 9, which seek a “religious” diet of exclusively raw foods.**

Even if Creativity were a religion, the BOP is entitled to summary judgment on Mr. Hale’s RFRA and free exercise claims challenging the BOP’s refusal to provide him a “religious” diet consisting entirely of raw foods. As to Mr. Hale’s RFRA claim, the undisputed facts show that he is not obliged, as a member of the Creativity Movement, to follow the special raw-food diet he seeks. The Court may take this evidence into account in assessing the BOP’s interests. The evidence shows that accommodating his demand for a special raw-food diet that no other BOP inmate receives, and that costs multiple times more than every other inmate diet, would jeopardize the BOP’s compelling security interests. Such an accommodation would threaten institutional security as well as Mr. Hale’s personal security. The enormous costs of Mr. Hale’s nutritionally deficient, exclusively raw-food menu also would compromise the prison’s ability to provide nutritious food to the rest of the inmate population.

The BOP can prove that refusing to make Mr. Hale a class of one when it comes to food is the least-restrictive means of furthering these compelling security interests. For the same reasons, Mr. Hale cannot show that this correctional decision lacks a rational basis.

**A. The RFRA claim (Claim 9)**

**1. Burden of proof and elements**

BOP bears the burden to prove that not providing Mr. Hale a raw-food diet is the least-restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000bb-1(b). The same standards discussed earlier apply. *See supra* pp. 49-50.

In addition, the Court may also take into account the extent of the restriction on the inmate. A “prisoner’s religious dietary practice is substantially burdened when the prison forces him to choose between his religious practice and adequate nutrition.” *Nelson v. Miller*, 570 F.3d 868, 879 (7th Cir. 2009), *quoted with approval in Abdulsheeb v. Calbone*, 600 F.3d 1301, 1317 (10th Cir. 2010) (interpreting RLUIPA). RFRA, like RLUIPA, “protects ‘any exercise of religion, whether or not compelled by, or central to, a system of religious belief,’ 42 U.S.C. § 2000cc–5(7)(A), but, of course, a prisoner’s request for an accommodation must be sincerely based on a religious belief and not some other motivation.” *Holt v. Hobbs*, \_ U.S. \_\_, 135 S. Ct. 853, 862 (2015). In addition, a court may consider “questions of degree”: a court may take into account the extent of the apparent imposition on a prisoner’s religious belief in determining whether the government’s interests are compelling and its policies narrowly tailored. *Yellowbear*, 741 F.3d at 64 (discussing RLUIPA).

**2. The BOP can prove its affirmative RFRA defense.**

**a. Element 1: The BOP has compelling interests in protecting institutional security and Mr. Hale’s own security, and in providing nutritional food to every inmate in its custody.**

1. Mr. Hale demands a diet consisting entirely of raw foods: “What is absolutely critical in any case is that all foods be uncooked, unheated, unsalted, unsugared, or otherwise unprocessed in any way. (No canned food is acceptable, for example.)” Declaration of Derrick Jones, Ex. 14 at ¶ 5.

2. Mr. Hale’s dietary request cannot be accommodated at FCC Florence without significantly compromising the operations of the Food Service Department and its mission to provide all BOP inmates with meals that are nutritionally adequate, properly prepared, and attractively served, and to identify, develop, and manage essential resources to meet the operational needs of the Food Service program. *Id.* at ¶ 6.

3. Accommodating Mr. Hale’s dietary request would have significant negative effects on the security and orderly running of the ADX and FCC Florence as a whole. *Id.*

4. If the BOP were required to provide Mr. Hale’s diet on “religious” grounds, those negative effects would spread to institutions throughout the BOP. *Id.*

**i. The BOP provides Mr. Hale with a no-flesh food tray and allows him to supplement that diet with items from the ADX commissary.**

5. By policy, the Food Service Department must utilize one of five BOP National Menu options, which include approved menus, recipes, and product specifications. *Id.* at ¶ 7.

6. The National Menu establishes mandatory standards for food preparation and meal services for all inmates throughout the BOP, including the inmates housed at FCC Florence. *Id.*

7. The National Menu ensures that the BOP meets the accreditation standards of the American Correctional Association (“ACA”), which “require[s] that at least three meals (including two hot meals) are provided at regular meal times during each 24-hour period[.]” *Id.*

8. Under the National Menu, inmates at FCC Florence can select one of five standardized food trays: (1) a “regular” tray, which contains animal products, including pork products; (2) a “no pork” tray, which, as its name suggests, contains animal products other than pork; (3) a “heart healthy” tray, which limits fat and sodium intake; (4) a Certified Food tray, which meets both kosher and halal standards; and (5) a “no-flesh” tray, which primarily contains plant-based entrees, whole grains, fruits, and vegetables. The menus for each of these trays repeat on a five-week cycle. *Id.* at ¶ 8.

9. BOP inmates requesting religious diets are offered a Certified Food tray or the no-flesh tray. *Id.* at ¶ 9.

10. Alterations to the five standardized trays are made in rare cases, and only when an inmate has a unique medical need that cannot be met with any of the standardized trays. *Id.* at ¶ 10.

11. Mr. Hale has selected the “no-flesh” tray. *Id.* at ¶ 9.

12. Mr. Hale also purchases food items from the ADX commissary. Ex. 22 at ¶ 4.

**ii. The BOP relies on standardization to provide massive quantities of food to thousands of inmates.**

13. The Food Service Department at FCC Florence could not operate efficiently within budgetary and security constraints without menu standardization. Ex. 14 at ¶ 13.

14. Food Services is a complex operation that must satisfy many exacting standards for nutrition, sanitation, food handling, preparation, and serving. *Id.*

15. All four kitchens at FCC Florence, including the kitchen at the ADX, are equivalent to professional kitchens in restaurants or hotels, except that they must serve a much larger number of people, three meals a day, every day of the year, under a very strict schedule and following very specific menu and food preparation guidelines. *Id.*

16. The four kitchens at FCC Florence must meet professional public health standards for safety and cleanliness, including standards for food temperature, safety, sanitation, health, hygiene, and storage. *Id.*

17. Maintaining these high sanitation standards alone—separate and apart from any food-preparation work—takes a great deal of time. The smallest task is regulated, from the frequent required testing of food temperature to the proper stacking of just-washed trays to prevent contamination. *Id.*

18. Another time-consuming task is the strict regulation and need to maintain constant accountability of kitchen equipment and utensils to prevent their use as weapons against other inmates or prison staff. *Id.*

19. The kitchen at the ADX is in continuous operation from 3:30 a.m. to 7 p.m., seven days a week. *Id.* at ¶ 14.

20. The ADX kitchen uses the smallest possible number of BOP employees to keep this complex operation going. Two BOP staff members, or Cook Supervisors, are assigned to each of two shifts. The two staff members on each shift supervise approximately 15 inmate food workers per shift. *Id.* at ¶ 14.

21. These inmate workers from the Federal Prison Camp at FCC Florence perform all tasks required to operate the food service and to uphold policies regarding food safety. *Id.*

22. Were the food trays not standardized, it would be impossible for two BOP staff members per shift to ensure that over 1,300 meals per day are prepared, cooked, and delivered to the approximately 439 inmates currently housed at the ADX; to clean up after each meal; to verify that food is properly stored and equipment cleaned; and to do the necessary preparation work for the next meal and the next day's meals. *Id.* at ¶ 15.

23. The same standardization of meal trays makes it possible to prepare the nearly 10,000 meals per day served across the Florence Complex. *Id.* at ¶ 15 n.2.

24. The massive quantity of food that must be prepared every day to sustain the ADX population alone is illustrated by the statistic that food service workers prepare 1,400 pancakes for just one breakfast for ADX inmates. *Id.* at ¶ 15.

25. There is no downtime whatsoever in the ADX kitchen. While one meal is being prepared and served, preparation for the next meal has begun. *Id.*

26. The standardization of meal trays allows for an assembly-line-style operation in which all work can be completed and all inmates can be fed. *Id.*

**iii. Altering the standardized trays would compromise the BOP's ability to provide food to all its inmates.**

27. Preparing a separate “raw” tray would require additional work for food services workers and the Food Service Department, which is already operating at maximum capacity. *Id.* at ¶ 17.

28. The Food Service Department could not simply give Mr. Hale a bag of apples, oranges, carrots, or potatoes. By policy, raw fruits and vegetables must be handled in accordance with special food safety food protocols that require thorough washing and temperature control to ensure that Mr. Hale does not get sick from eating those foods. The foods would have to be washed, cut, and individually wrapped before delivery to Mr. Hale. *Id.*

**iv. Providing Mr. Hale the diet he seeks jeopardizes security, including his own.**

29. Creating a special raw-food diet for Mr. Hale creates security risks, both to him personally and to other inmates and staff on the Florence Complex and, ultimately, throughout all BOP institutions where declared adherents of Mr. Hale's “religion” will surface. *Id.* at ¶¶ 18, 32; Declaration of Brad Trate, Ex. 15 at ¶¶ 8-10.

30. Prison management is grounded on the principle that all inmates are treated and managed equitably, and that inmates are not allowed to obtain preferential treatment over other inmates. Ex. 15 at ¶¶ 7-8.

31. Fresh food is highly desirable among an inmate population that does not ordinarily receive significant amounts of fresh fruits and vegetables as part of the standardized National Menus. Ex. 14 at ¶ 19.

32. There is no way to give one inmate large amounts of fresh produce without creating discord and unrest among all other inmates. *Id.*

33. Even the Certified Food tray, the tray designed to meet inmates' religious needs, contains very little fresh produce; that change was made several years ago to eliminate perceived differences in treatment in the all-important arena of food. *Id.*

34. It is also a risk to Mr. Hale to establish him as a class of one when it comes to his food. *Id.* at ¶ 20.

35. The inmate food service workers from the Federal Prison Camp will know that they are preparing a one-of-a-kind food tray, replete with large quantities of fresh fruits and vegetables. *Id.*

36. It will be obvious that this special tray with fresh food surpasses the food provided to all other inmates in quality, taste, and cost. *Id.*

37. While the Food Service Department never identifies the recipients of particular food trays to inmate food service workers, the BOP must anticipate that the inmate workers will easily learn that this special diet is being served to Mr. Hale. *Id.*

38. Word of an inmate who is served delicacies like fresh berries, avocados, and almonds will spread quickly through the Federal Prison Camp community and, then, to other prisons. *Id.*

39. This lawsuit is a matter of public information, and inmates will quickly connect Mr. Hale to a unique, delicious food tray. *Id.*; Ex. 15 at ¶ 13.

40. There is no way the BOP can prevent the spread of this information when Mr. Hale has identified himself as the recipient of that tray. Ex. 14 at ¶ 20.

41. The BOP cannot accede to Mr. Hale's food demands where they create an unacceptable risk to his safety and security. *Id.* at ¶ 21.

42. Many inmates at FCC Florence, nearly 40% of whom are non-white, harbor strong animosity toward white supremacists and some are likely to know Mr. Hale. *Id.*

43. An inmate who opposes Mr. Hale's ideology could achieve notoriety among his peers by causing harm to Mr. Hale. *Id.*

44. There is a history of such race-targeted violence at FCC Florence, which was the site of one of the worst race riots in BOP history, the 2008 Hitler birthday riot that left two inmates dead and others seriously injured. *Id.*

45. In this volatile environment, the BOP must err on the side of protecting Mr. Hale's security and take into account the serious risk that attempts will be made to sabotage his special food tray. *Id.* at ¶ 22.

46. Not every inmate can be watched at every moment in a fast-moving kitchen operation with only two Cook Supervisors. *Id.*

47. There is no way the BOP can implement security controls that will guarantee Mr. Hale's food will not be tampered with. *Id.* at ¶¶ 22-23.

48. Another risk is that inmates who wish to communicate with Mr. Hale could pass messages to him via his one-of-a-kind, easily identifiable food tray. *Id.* at ¶ 23.

49. Potential messages may contain information that could jeopardize the security of the institution and the safety of the public. *Id.*

50. While it is impossible to know what the content of such messages might be, sound correctional judgment requires that steps be taken to ensure that no message is transmitted to Mr. Hale in this manner. *Id.*

51. There is a history of inmate food-service workers sneaking items onto the trays of ADX inmates, including written messages hidden in food items. *Id.* at ¶ 22.

52. These types of risks are one reason the Food Service Department serves food in a manner that ensures the absolute anonymity of the recipient of the tray. *Id.* at ¶ 24.

53. At the ADX, inmate food-service workers know that they prepare a certain number of each standardized food tray and a certain number of medical trays. However, the workers do not know the identity of the specific inmate who will receive a particular tray. *Id.*

54. That anonymity prevents the sabotaging of meal trays and the passing of messages or contraband to a targeted inmate. *Id.*

55. Anonymity is achieved at the other prisons at FCC Florence by means of a “blind feeding” wall. Inmate food servers stand on one side of a large, opaque wall and pass food through a serving slot to the unseen inmates on the other side. *Id.*

56. If Mr. Hale receives a one-of-a-kind raw-food tray, there is no way to protect his identity. *Id.*

57. These problems remain if Mr. Hale receives some quantity of additional fresh foods, short of a full-blown raw-food diet: Mr. Hale would still be set apart as a unique inmate who is treated better than his peers, with all the risks that entails. *Id.*

- v. **The BOP also has a compelling interest in not awarding a racist STG with special food, because doing so will jeopardize security and serve as a recruiting tool for radical white supremacists.**

58. Food, and competition for food, is often a source of trouble in housing units at FCC Florence. *Id.* at ¶ 25.

59. Food is one of the most important commodities for the prison population and is therefore a source of power and status. *Id.*

60. In the correctional judgment of the BOP, if an inmate receives delicious fresh food because he espouses white supremacist beliefs he claims to be his “religion,” racial discord will ensue. *Id.*

61. In the correctional judgment of the BOP, inmates may believe prison administrators are endorsing white supremacist ideas by affording Mr. Hale this very special accommodation. *Id.*

62. As a result, the BOP must anticipate serious disruption to the security of the institution and the safety of staff and inmates. *Id.*

63. The BOP cannot limit a fresh-food diet to one inmate in one prison if he obtains that food on the basis of a “religion” grounded on white supremacy. *Id.* at ¶ 26.

64. There are many other inmates who subscribe to a white supremacist ideology, including a large population of white supremacist inmates housed at USP Florence. *Id.*

65. In the correctional judgment of the BOP, the availability of a diet laden with fresh fruits and vegetables would be an enormous recruiting tool for white supremacist groups. Jones *Id.*

**vi. The BOP must consider the effect of providing other inmates the same “religious diet” as Mr. Hale.**

66. Once a group is recognized as a “religion,” the BOP cannot deny other inmates the right to declare themselves adherents of that religion. *Id.* at ¶ 27.

67. When it comes to food, the BOP does not question the sincerity of an inmate who professes to adhere to beliefs that are recognized as “religious” in nature in order to receive a particular diet. *Id.*

68. Mr. Hale himself has sought to obtain a religious diet before, declaring himself to be Jewish at one point so that he could receive the Certified Food tray, which at that time included more fresh fruits and vegetables. The BOP honored his request. *Id.*

69. In the correctional judgment of the BOP, when it becomes known that a white supremacist inmate at the ADX receives a “religious” diet of exclusively fresh foods, inmates at other prisons at FCC Florence and throughout the BOP will declare themselves to be of the same “religion” so that they also can eat fresh foods such as blueberries and avocados. *Id.* at ¶ 26; Ex. 15 at ¶¶ 10, 14.

70. Mr. Hale seeks a special diet based on his association with an STG that promotes racial divisiveness and race-driven violence. Ex. 15 at ¶ 9.

71. There are over 90 designated STGs in the BOP, many of which—like the Creativity Movement—promote the ideas of racial superiority and segregation on the basis of races. These groups cover a spectrum of races. *Id.*

72. In the correctional judgment of the BOP, if Mr. Hale were to obtain a special diet solely on the basis of his association with the Creativity Movement, demands for special food privileges by members and associates of those STGs that promote similar racial ideas (whether white groups or those of other races) would be certain to follow. *Id.*

73. In the correctional judgment of the BOP, white supremacist inmates who want more fresh food will either declare themselves to be adherents of the Creativity Movement or demand special dietary privileges under the pretense that their particular white racial group is also a “religion.” *Id.*

74. In the correctional judgment of the BOP, other groups that espouse racial separatist ideas may leave aside the “religion” rhetoric of the Creativity Movement, but still

demand a special diet because they will accurately perceive that Mr. Hale garnered a unique, sought-after privilege on the basis of his belief that his race is the best race. *Id.*

75. In the correctional judgment of the BOP, if Mr. Hale is entitled to a special diet because he thinks white people are best, there is no supportable basis for the BOP to refuse special foods to inmates of other races based on the food preferences of their cultures or purported religious beliefs. *Id.*

76. Correctional officials know from observation and researching inmate behavior that inmates carefully watch how their fellow inmates are treated, are acutely aware of any differences in treatment among inmates (whether real or suspected), and engage in disruptive behavior when they believe that a certain inmate or group receives better treatment. *Id.* at ¶ 11.

77. Even apparently small slights or *de minimis* differences in treatment can trigger a violent response, especially when it comes to food. *Id.*

78. Since 2009, there have been 111 food strike incidents across Bureau facilities, each posing medical and physical hazards to staff and inmates. *Id.*

79. Hunger strikes can also compromise the institution, staff, and inmates in many ways. Hunger strikes can pose risks to the health of the hunger striker and, by diverting prison security and medical resources, the safety and security of other inmates in the prison. *Id.*

80. To avoid serious security problems like these, fairness and consistency are the precepts the BOP follows in managing inmates in every prison. *Id.* at ¶ 26.

81. That insistence on fairness and consistency is reflected in the BOP's decision to limit food options by offering only standardized food trays, each of which has been certified by a dietician as meeting inmates' nutritional needs. *Id.*

82. The Food Service Department frequently observes food-related pressure in the open-population prisons at FCC Florence. Ex. 14 at ¶ 28.

83. Even if some white supremacist inmates do not want to eat a raw food diet, they may be pressured to declare Creativity as their religion by group leaders in the prison. Jones 28

84. Leaders of prison groups on those yards are known to issue orders to group members and affiliates about what to eat. *Id.*

85. A notable example of this is the declaration by white supremacist leaders at FCC Florence that fried chicken in a “black” food and not to be consumed by white inmates. *Id.*

86. The vast majority of white inmates in the open-population prisons at FCC Florence do not eat the fried chicken meal, but select a peanut butter and jelly sandwich to make a statement against black inmates. *Id.*

87. In the correctional judgment of the BOP, were these same white inmates to receive Mr. Hale’s “religious” diet and sit down in the dining hall with a bowl of fresh blueberries that no black inmate would have, a full-on riot could ensue. *Id.*

**vii. The BOP has a compelling interest in avoiding inmate theft and alcohol-related security problems that Mr. Hale’s diet could trigger.**

**a. Theft of Mr. Hale’s dietary items will be extremely difficult to control.**

88. Fresh foods are prized on a prison yard not only for consumption but for making alcohol. While alcohol can be made from other food items, alcohol made from fresh food tastes better and is known to be preferred by inmates. *Id.* at ¶ 29.

89. Mr. Hale sample menu contains an average of 21.7 servings of fruit per day, including more than 10 servings of citrus fruit. Declaration of Mitchel Holliday, Ex. 16 at ¶ 7.

90. In the correctional judgment of the BOP, the Food Service Department must anticipate that inmate food workers will steal the fresh produce, unusual both in its type and

quantity, that would have to be ordered to accommodate Mr. Hale's dietary demands. Ex. 14 at ¶ 29.

91. In the correctional judgment of the BOP, the Food Service Department must anticipate that inmate workers will steal as much of Mr. Hale's food as they can manage, no matter how carefully the two Cook Supervisors supervise them. *Id.*

92. There is currently a serious theft problem among inmate food-services workers at the ADX and across FCC Florence, which the Food Service Department finds extremely difficult to control. *Id.*

93. In the correctional judgment of the BOP, fresh food items purchased especially for Mr. Hale, and eventually other inmates who will declare Creativity as their religion, would exacerbate this theft problem. *Id.*

94. In the correctional judgment of the BOP, even if inmate food-service workers do not want to steal Mr. Hale's special food, they may be pressured to do so by other inmates, creating another collateral security problem caused by giving Mr. Hale a diet that no other inmate enjoys. *Id.*

**b. Raw foods are extremely dangerous in a correctional environment.**

95. Providing a raw-food diet to Mr. Hale and the other inmates who will request it will exacerbate the serious security problems caused by homemade alcohol. Ex. 15 at ¶ 15.

96. The production of alcohol is one of the most serious security issues the BOP faces. *Id.* at ¶ 16.

97. Since 2009, there have been 1,959 alcohol-related security incidents in institutions throughout the BOP. *Id.*

98. These incidents included the killing of a correctional officer by two intoxicated inmates at USP Atwater in 2008, as well as hundreds of other assaults on both staff and other inmates. *Id.*

99. Alcohol-related security incidents occur on a weekly basis. *Id.*

100. In the BOP's correctional judgment, it would be against sound correctional judgment to take Mr. Hale at his word when he asserts that he does not consume alcohol and could be trusted with raw food. *Id.* at ¶ 18.

101. Sound correctional judgment requires that the BOP look at the objective evidence demonstrating the consequences associated with the illicit production of alcohol in a prison setting. *Id.* at ¶ 17.

102. Even if Mr. Hale has no interest in making alcohol, the same is not true of most of the inmate population. *Id.* at ¶ 19.

103. Giving Mr. Hale large amounts of raw fruits and vegetables makes him vulnerable to threats and manipulation by other ADX inmates who want that food, not just for the production of alcohol but also for smuggling, selling, or trading those items for other items of contraband. *Id.*

104. In the correctional judgment of the BOP, the fact that Mr. Hale is housed in his own cell at the ADX does not eliminate these risks. *Id.*

105. Mr. Hale is allowed to talk with other inmates and is moved from his cell to recreation areas and for other activities. *Id.*

106. In the correctional judgment of the BOP, if Mr. Hale has food that is highly prized by other inmates, there are no security controls that will absolutely guarantee that his food will

not wind up in the possession of other ADX inmates. *Id.*

107. In the volatile and dangerous ADX environment, the BOP must take every possible step to avoid that risk, including not introducing a large amount of raw food into an ADX housing unit. *Id.*

**viii. The BOP has determined that Mr. Hale’s proposed diet is nutritionally deficient and risks food-borne illness.**

108. The BOP has conducted a nutritional analysis of Mr. Hale’s sample one-week menu. Ex. 16 at ¶¶ 5-7.

109. The BOP cannot accommodate the diet Mr. Hale requests because it fails to meet the average daily nutrient intake level estimated to meet the requirements of healthy individuals. *Id.* at ¶¶ 6-7.

110. These nutritional deficiencies have the potential to lead to dietary related health issues including, but not limited to, obesity, decreased bone health, and gastrointestinal issues. *Id.* at ¶¶ 7-8.

111. The Bureau avoids serious health risks like those created by Mr. Hale’s menu by adhering to National Menus for the standardized food trays, which are used for food preparation and meal service for all inmates throughout the BOP. *Id.* at ¶ 8.

112. Nutritional analyses for the National Menus are certified in writing by a Registered Dietitian. *Id.*

113. The National Menus are reviewed at least annually to ensure that the Bureau meets the accreditation standards of the American Correctional Association (“ACA”), which “require[s] that at least three meals (**including two hot meals**) are provided at regular meal times during each 24-hour period[.]” *Id.* at ¶ 9 (emphasis in original).

114. These ACA accreditation standards are mandatory and it is extremely critical that the BOP abide by these standards. *Id.*

115. The diet Mr. Hale demands violates mandatory ACA standards and risks serious compromise to this health. *Id.* at ¶ 11.

116. The BOP cannot provide Mr. Hale meals that it knows to be nutritionally deficient simply because he wants them. *Id.*

117. A raw-food diet also raises serious concerns about cleanliness and exposure to food-borne illnesses. Ex. 14 at ¶ 31.

118. It would be extremely difficult for Mr. Hale to consume all of the raw food on his menu at every meal. *Id.*

119. In order to avoid the problems of food hoarding and the health risks associated with that, the safest practice would be to search Mr. Hale's cell after every meal to ensure that all fresh produce had been consumed or returned, but constant cell searches are not practicable. *Id.*

**ix. The BOP has determined that Mr. Hale's proposed diet would be inordinately expensive in comparison with the standardized trays.**

120. The BOP must take into account the inordinate cost of providing a raw-food diet to Mr. Hale, multiplied by the number of other inmates who are likely to follow him as adherents of the Creativity "religion." *Id.* at ¶ 33.

121. The Food Service Department must purchase sufficient food to offer three meals, seven days a week, to every inmate in each of the four prisons at FCC Florence, which currently house approximately 3,187 inmates. *Id.* at ¶ 34.

122. The annual Food Service Department budget must also cover many other non-food operating expenses, including the purchase and maintenance of kitchen equipment, the purchase of cleaning equipment and supplies, and the purchase and repair of tables and chairs for the FCC Florence prisons with dining facilities. *Id.*

123. Factoring in all of these costs, the average daily food budget for each inmate across all prisons at FCC Florence is approximately \$3.20. *Id.* at ¶ 35.

124. The daily cost per ADX inmate per day is slightly higher, at approximately \$4.25. *Id.*

125. This extra expense for ADX inmates is due to all inmates receiving their trays via “satellite feeding,” i.e., plating the food on individual trays before it is delivered to each inmate in his cell. This process increases costs because every item on the menu for each and every meal must be delivered to each inmate, even though inmates often do not eat everything on their trays and may not select some of those items if given the opportunity. *Id.*

126. The average cost for a Certified Food tray across the BOP is approximately \$7.23 per inmate per day. *Id.* at ¶ 36.

127. The extra expense associated with the Certified Food tray is attributable to the fact that the tray is a prepackaged, microwavable tray that is purchased from an outside vendor, rather than prepared at FCC Florence. *Id.*

128. The average cost of Mr. Hale’s raw-food diet, based on the one-week sample menu he provided, varies between \$10.52 and \$15.56 per day. *Id.* at ¶ 37.

129. Based on these figures, the yearly cost of Mr. Hale’s diet for him alone would range between \$3839.80 and \$5679.40.

130. By contrast, the yearly food cost for the average prisoner at FCC Florence is \$1168.

131. Food Service Department personnel calculated the cost of Mr. Hale's sample menu based on current pricing lists for food suppliers to FCC Florence, which reflects less-expensive summer food prices when fresh produce is more readily available. *Id.*

132. The cost of Mr. Hale's menu will be significantly higher at other times of the year. *Id.*

133. While Mr. Hale may be willing to substitute other, less expensive items for some of those listed on his sample menu, Mr. Hale will need variety in order to make the diet sustainable. The sample menu, which contains a variety of foods, provides a good indication of what types of food Mr. Hale *could* eat on a long-term basis and the costs to the BOP of providing that food to him. *Id.* at ¶ 37 n.2

134. In its correctional judgment, the BOP must anticipate that many white supremacists will seek the same raw-food diet as Mr. Hale on "religious" grounds. *Id.* at ¶ 38.

135. Were that to happen, it would have a devastating impact on the Food Service Department budget at FCC Florence, to the detriment of the health and well-being of other inmates. *Id.*

136. There is no extra money in the Food Service Department budget at FCC Florence to accommodate the extraordinarily high cost of Mr. Hale's raw-food diet. *Id.*

137. The Food Service Department personnel carefully allocate the food budget to stretch it to the end of the fiscal year. In recent years, food services personnel have literally

counted pennies to ensure that all inmates receive every meal in the last few weeks of the fiscal year. *Id.*

138. Under current budgetary constraints, it is simply impossible for the Food Service Department at FCC Florence to pay for the food that Mr. Hale demands, especially in light of the fact that the same expensive food would have to be purchased for all other inmates at FCC Florence who will claim to share Mr. Hale’s “religious” beliefs. *Id.* at ¶ 39.

139. The Food Service Department cannot reduce expenses in other areas enough to cover these costs. *Id.*

140. Were the BOP compelled to provide this diet to Mr. Hale and the other inmates who will follow him with their own requests for raw-food diets, the BOP’s ability to purchase the food necessary to sustain the entire inmate population at FCC Florence would be seriously compromised. *Id.*

141. The BOP cannot let Mr. Hale pay for the privilege of receiving special food, assuming he were willing to do that. *Id.* at ¶ 41.

142. If Mr. Hale is allowed to purchase a diet he prefers, other inmates will want to do the same. *Id.*

143. The Food Service Department cannot accommodate all the individualized food requests that are certain to follow if one inmate is allowed to select the food he wants. *Id.*

144. The Food Service Department is not running a restaurant and cannot function if it is put in that position. *Id.*

**b. Element 2: Denying Mr. Hale’s request for a raw-food diet is the least-restrictive means of facilitating these compelling security interests.**

145. Mr. Hale has made it clear that the diet he seeks would consist entirely of raw foods: “What is absolutely critical in any case is that all foods be uncooked, unheated, unsalted, unsugared, or otherwise unprocessed in any way. (No canned food is acceptable, for example).” *Id.* at ¶ 5.

146. The BOP has permitted Mr. Hale to select from one of five standardized food trays, and he has selected a “no-flesh” tray, which primarily contains plant-based entrees, whole grains, fruits, and vegetables. The menus for each of these trays repeat on a five-week cycle. *Id.* at ¶¶ 8, 11.

147. As set forth above, the BOP’s approach of providing Mr. Hale several choices is the least-restrictive means available, as several compelling security interests prevent it from fully accommodating Mr. Hale’s demand for an absolutely raw-food diet. Facts ¶¶ 1-144, this section, above.

**B. The free exercise claim (Claim 8)**

**1. Burden of proof and elements**

Under *Turner*, Mr. Hale bears the burden to establish the absence of any rational connection between the denial of his request for a raw-food diet and the BOP’s legitimate penological interests. *See Kay*, 500 F.3d at 1218.

2. Elements that Mr. Hale cannot prove

- a. **Turner factor no. 1: Mr. Hale cannot prove the absence of a rational connection between the denial of his dietary requests and the BOP's legitimate penological interests in protecting institutional security and feeding the inmate population.**

148. The undisputed facts which show that the decision about Mr. Hale's diet passes muster under RFRA also show that the BOP's decision was rational. Facts ¶¶ 1-144, this section, above.

- b. **Turner factor no. 2: Mr. Hale cannot prove that alternative means of exercising the right were not available.**

149. Even if he does not have a raw-food diet, Mr. Hale has alternative means of exercising his alleged religion, as set forth below.

150. Mr. Hale can supplement his diet through purchases from the ADX commissary, which includes dried fruits. Ex. 22 at ¶ 4.

151. Mr. Hale is allowed to have Creativity books that he deems to be "sacred" and to retain those books in his cell, including *Nature's Eternal Religion* and *The White Man's Bible*, provided he does not give them to other inmates or use them in some way that might incite disruption in the prison. *Id.* at ¶¶ 39-41.

152. There are no restrictions on several other activities that could be deemed "religious," including praying, engaging in contemplation about Creativity, or reciting the "Fundamental Beliefs" or "Daily Affirmations" of Creativity.

- c. **Turner factor no. 3: Mr. Hale cannot prove that his demand for a raw-food diet would not negatively impact the safety and security of other inmates, correctional staff, and his own safety.**

153. The undisputed facts show that acceding to Mr. Hale's dietary demands would compromise institutional safety and security, the safety of correctional staff, and his own safety, as well as the food budget at FCC Florence to the detriment of other inmates. Facts ¶¶ 1-144, this section, above.

- d. **Turner factor no. 4: Mr. Hale cannot prove that there are obvious, easy alternatives to denying his diet request.**

154. The undisputed facts show that there is no easy, obvious alternative to denying Mr. Hale's request for a very special accommodation that would not seriously compromise the BOP's valid penological goals. Facts ¶¶ 1-144, this section, above.

### C. Conclusion

The BOP is entitled to summary judgment on Mr. Hale's RFRA and Free Exercise claims challenging the denial of his raw-food diet. Nothing short of a complete denial of Mr. Hale's extremely special and unique request facilitates the BOP's compelling security interests, and it was rational for the BOP to reject that accommodation in light of the significant negative security consequences.

### VIII. Claim 5 is moot because Mr. Hale has his "bible."

In Claim 5, Mr. Hale challenges the BOP's alleged refusal to allow him to have *Nature's Eternal Religion*. Doc. 10 at ¶¶ 87-90. The Court limited this claim to a free-speech claim only, with no religious component. Doc. 66 at 18.

The Court lacks subject-matter jurisdiction over this claim because it is moot. The undisputed facts show that, even though the book is replete with racially inflammatory language,

prison officials gave Mr. Hale a copy of *Nature's Eternal Religion* in April 2014 and he has the book now.

**A. Burden of proof and elements**

Mr. Hale bears the burden to prove that the Court has jurisdiction to decide this claim. *See, e.g., Delgado*, 428 F.3d at 919.

The Constitution limits federal court jurisdiction “to deciding actual ‘Cases’ or ‘Controversies.’” *Hollingsworth v. Perry*, \_ U.S. \_\_, 133 S. Ct. 2652, 2661 (2013) (quoting U.S. Const. Art. III, § 2). The Supreme Court has made clear that “courts have no business deciding legal disputes or expounding on law in the absence of such a case or controversy.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quotation omitted). “The narrow scope of Article III, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Brown v. Buhman*, 822 F.3d 1151, 1164 (10th Cir. 2016) (quotation omitted), *cert. denied*, 137 S. Ct. 828 (Jan. 23, 2017).

“Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction.” *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010) (quoting *Disability Law Ctr. v. Millcreek Health Ctr.*, 428 F.3d 992, 996 (10th Cir. 2005)). A “suit becomes moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quotation omitted). “The crucial question is whether granting a present determination of the issues offered will have some effect in the real world.” *Wyoming v. U.S. Dep’t of Agriculture*, 414 F.3d 1207, 1212 (10th Cir. 2005). “[A] case becomes moot when a plaintiff no longer suffers actual injury that can be redressed by a

favorable judicial decision.” *Ind v. Colo. Dep’t of Corrs.*, 801 F.3d 1209, 1213 (10th Cir. 2015) (quotation marks omitted).

**B. Element Mr. Hale cannot prove: No live case or controversy**

**1. Mr. Hale has, and will be allowed to keep, *Nature’s Eternal Religion*.**

1. Mr. Hale received a copy of *Nature’s Eternal Religion*, the “main Bible” of Creativity, on April 1, 2014, when he was incarcerated at the ADX. Ex. 9 at 137:22-138:5.

2. Mr. Hale was away from the ADX for a period of time, when he was incarcerated at FCI Terre Haute from late May 2016 through late March 2017. Ex. 11 at ¶ 11.

3. Mr. Hale returned to the ADX on April 7, 2017. *Id.* at ¶ 35.

4. At the ADX, Mr. Hale is allowed to have Creativity books and to retain those books in his cell, including *Nature’s Eternal Religion* and *The White Man’s Bible*. *Id.* at ¶ 39.

5. *Nature’s Eternal Religion* contains racially inflammatory language. *See* Ex. 1 *passim* (over 200 references to “n\*\*\*\*r”).

6. Notwithstanding this inciting language, in the correctional judgment of ADX personnel, the book can be controlled in the ADX environment, where inmates are single celled. Ex. 11 at ¶ 39.

7. In an open-population prison, where inmates move without restraint through the housing unit and can easily exchange reading materials with other inmates, the book could create serious security problems and a different approach might be required. *Id.*<sup>20</sup>

---

<sup>20</sup> In a case where the religiosity of Creativity was not challenged, the court found that a prison’s confiscation of Creativity materials was the least-restrictive means of furthering a compelling governmental interest under RFRA. *Reimann v. Murphy*, 897 F. Supp. 398, 400 (E.D. Wis. 1995) (observing that the language of Creativity’s “Racial Loyalty” newsletter was “replete with racial hatred and language inciting violence” and made frequent reference to “Rahowa”—

8. At the ADX, Mr. Hale will be allowed to retain the book in his cell, provided he does not give them to other inmates or use them in some way that might incite disruption in the prison. *Id.* at ¶ 40.

9. The same standard will be followed for other Creativity books while Mr. Hale is confined in the ADX: Mr. Hale will be allowed to have the books if he does not use the books and the information contained in them in a manner that might disrupt the safety and security of the institution. *Id.* at ¶ 41.

**C. The BOP can prove that the exceptions to mootness do not apply.**

These facts also show that Mr. Hale cannot prevail on any argument that this claim falls within an exception to the mootness doctrine.

**1. The voluntary-cessation exception does not apply.**

**a. Legal standards**

The doctrine of voluntary cessation does not appear to apply when the requested relief has been provided—here, Mr. Hale has received the book. *F.E.R. v. Valdez*, 58 F.3d 1530, 1534 (10th Cir. 1995) (where a party requested files to be returned to a psychiatrist, and they were returned, “[t]he exception of voluntary cessation is not applicable” because the files had been provided).

---

“Racial Holy War”); *see also* *Byrnes v. Biser*, No. 06-249J, 2007 WL 3120296, at \*3 (W.D. Pa. Oct. 23, 2007) (evaluating confiscation of *Nature’s Eternal Religion* under *Turner*, and finding that the prison “has a valid rational interest in refusing inmates access to *Nature’s Eternal Religion*”; prisoner failed to pursue claim seeking to compel the prison to recognize Creativity as a religion); *Thornburgh*, 490 U.S. at 41 (“The problem is not . . . in the individual reading the materials in most cases. The problem is in the material *getting into the prison.*”) (emphasis added).

Regardless, the exception would not apply. While the BOP bears “the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur,” this “burden is not insurmountable, especially in the context of government enforcement.” *Brown*, 822 F.3d at 1166-67 (quoting *Already*). The burden “has not prevented governmental officials from discontinuing challenged practices and mooted a case.” *Silvery Minnow*, 601 F.3d at 1115-16 (holding that a federal agency’s adoption of a new policy mooted a claim challenging prior versions of that policy).

“[I]n this governmental context, most cases that deny mootness rely on *clear showings* of reluctant submission by governmental actors and a desire to return to the old ways.” *Id.* at 1116 (internal brackets, quotation marks, and citation omitted) (emphasis in original). Moreover, “government actors in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties.” *Id.* at 1117 and n.15 (quotation omitted). The Tenth Circuit has recognized that government “self-correction ... provides a secure foundation for mootness so long as it seems genuine.” *Id.* at 1118 (citation omitted).

The undisputed facts show that the BOP has met its burden to show that it has not attempted “to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior.” *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001).

**b. There is no reasonable likelihood that the book will be taken from Mr. Hale, unless *his* actions jeopardize security.**

10. Facts ¶¶ 4, 6-9, this section, above.

**2. The capable-of-repetition-yet-evading-review exception does not apply.**

**a. Legal standards**

“This exception applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Ghailani v. Sessions*, 859 F.3d 1295, 1301 (10th Cir. 2017) (finding that exception did not apply where inmate’s SAMs were allowed to expire and there was “no reasonable expectation” that he “will be subjected to SAMs again”) (citations and internal quotation marks omitted).

**b. The “duration” concern does not apply here, and there is no reasonable expectation the book will be taken from Mr. Hale.**

11. Facts ¶¶ 4, 6-9, this section, above.

**D. Conclusion**

The BOP is entitled to summary judgment on Mr. Hale’s free speech claim concerning *Nature’s Eternal Religion* because it is moot.

## CONCLUSION

The Court should enter judgment in favor of the BOP on all remaining claims in this case. Mr. Hale's religion-based claims are not viable because the Creativity Movement is not a religion, but instead a secular ideology focused on the single overarching political goal of restructuring society to achieve white dominance over all other races. But even if the Court assumes, without deciding, that this group is a religion, the BOP is still entitled to summary judgment on all claims, for the reasons set forth above.

Respectfully submitted on August 1, 2017.

ROBERT C. TROYER  
Acting United States Attorney

s/ Susan Prose  
Susan Prose  
Assistant United States Attorney  
1801 California Street, Suite 1600  
Denver, Colorado 80202  
Telephone: (303) 454-0100; Fax: (303) 454-0404  
Email: susan.prose@usdoj.gov

Counsel for the Federal Bureau of Prisons

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on August 1, 2017, I served the foregoing document, with copies of the exhibits and unpublished opinions referenced therein, on the following by U.S. mail:

Matthew Hale  
Reg. No. 15177-424  
ADX – Florence  
P.O. Box 8500  
Florence, CO 81226

s/ Susan Prose  
Susan Prose  
United States Attorney's Office