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Via Email, Fax, Certified Mail

Guillermo Viera Rosa
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Diana Ronquillo
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cc:
Secretary Scott Kernan
California Department of Corrections and Rehabilitation
Scott.Kernan@cdcr.ca.gov

Re: Constitutional Violations

Dear Mr. Viera Rosa and Ms. Ronquillo,

This letter is written on behalf of Taylor Bast, a nontheistic Buddhist, who is currently being compelled by the state to participate in faith-based treatment in violation of his First Amendment rights, as well as his rights under the Equal Protection Clause of the Fourteenth Amendment. The relevant facts are as follows.

On or about June 2, 2016, Mr. Bast was told by his parole officer, Officer Radke, during a meeting in the Irvine parole office[1], that he was required to attend one of three faith-based programs or else face custody. Mr. Bast requested a secular alternative but was told none were available and that he could either attend a faith-based program or risk consequences including arrest and jail time. The following day, Mr. Bast had a meeting with Radke, his mother, and the unit supervisor. The unit supervisor and Radke told Mr. Bast that he could face repercussions for failing to attend one of the faith-based programs. Once again, he was not offered any secular

[1] Santa Ana 1&3 South Coast Orange GPS, 18002 Sky Park Circle Irvine, CA 92614

alternative. In addition, the unit supervisor demanded that he provide formal documentation proving his Buddhist and philosophical convictions.[2]

The foregoing actions amount to a clear violation of the First Amendment and the Equal Protection Clause. The purpose of this letter is notify you of said violations and demands that the State immediately: 1) provide Mr. Bast with a suitable secular alternative; 2) provide us with written assurances that Mr. Baker will not be required by the State to attend any faith-based program as a condition of his parole; and 3) provide us with written assurances that secular treatment options will be made known and available to anyone who is required by the State to complete a substance abuse program.

The American Humanist Association (AHA) is a national nonprofit organization with over 560,000 supporters and members across the country, including many in California. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including California, and we have litigated constitutional cases in state and federal courts from coast to coast, including California.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). Not only must the government not advance, promote, affiliate with, or favor any particular religion, it "'may not favor religious belief over disbelief.'" *Id.* at 593 (citation omitted). The Establishment Clause "'means at least' that [n]either a state nor the Federal Government" can "aid one religion, aid all religions, or prefer one religion over another." *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1125 (9th Cir. 2013) (citation omitted). It is also well settled that "religious beliefs protected by the . . . Establishment Clauses need not involve worship of a supreme being." *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013) (*Kaufman II*) (refusal to authorize Atheist study group violated Establishment Clause); *see also Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005) (*Kaufman I*) (same); *Am. Humanist Ass'n & Jason Michael Holden v. United States*, 2014 U.S. Dist. LEXIS 154670 (D. Or. Oct. 30, 2014) (refusal to authorize secular humanist study group in prison violates Establishment Clause and Equal Protection Clause).[3]

For "the government to coerce someone to participate in religious activities strikes at the core of the Establishment Clause of the First Amendment." *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007). *See also Torcaso v. Watkins*, 367 U.S. 488 (1961) (ruling that the government could not require persons who qualified for office to declare their belief in the existence of God). In *Torcaso*, the Supreme Court made clear that "[n]either a state nor the federal government can

[2] Mr. Bast has been on parole since July 2015, but due to personal struggles, recently relapsed resulting in jail time.
[3] *See also Allegheny*, 492 U.S. at 590; *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Kaufman II*, 733 F.3d 692; *Kaufman I*, 419 F.3d 678; *Reed v. Great Lakes Cos.*, 330 F.3d 931, 934 (7th Cir. 2003); *ACLU v. City of Plattsmouth*, 358 F.3d 1020, 1041 (8th Cir. 2004); *Desper v. Ponton*, 2012 U.S. Dist. LEXIS 166546, *5-6 (E.D. Va. 2012); *Hatzfeld v. Eagen*, 2010 U.S. Dist. LEXIS 139758, *17-18 (N.D.N.Y 2010); *Loney v. Scurr*, 474 F. Supp. 1186, 1194 (S.D. Iowa 1979); *State v. Powers*, 51 N.J.L. 432, 434-35 (N.J. Sup. Ct. 1889).

constitutionally force a person 'to profess a belief or disbelief in any religion."' *Id*. at 495. More generally, the government cannot "impose requirements which aid all religions as against non-believers," or aid "those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Id.* The Court held that doing so violates the mandate of "'separation between church and State.'" *Id.*

The courts, including the Ninth Circuit, have been unanimous in concluding that forcing prisoners and parolees to attend a religious program (including Narcotics Anonymous and Alcoholics Anonymous[4]) as a condition of their confinement or parole violates their rights under the Establishment Clause.[5] The state may only offer religious-based substance abuse programs if

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[4] "Programs such as AA and NA are 'fundamentally religious.'" *Neasman v. Swarthout*, 2012 U.S. Dist. LEXIS 130292, *19 n.2 (E.D. Cal. Sept. 12, 2012) (citing *Turner*, 342 F. Supp. 2d. at 896-97.).

[5] *See Hazle v. Crofoot*, 727 F.3d 983, 996 (9th Cir. 2013) (discussing *Inouye's* conclusion "that a parolee's right to be free from coerced participation in a religious treatment program was a matter of 'uncommonly well-settled case law' that was 'enough for [the Ninth Circuit] to hold that the law was clearly established sufficient to give notice to a reasonable parole officer, in 2001'") (quoting *Inouye*, 504 F.3d at 716)); *Inouye*, 504 F.3d at 710 (9th Cir. 2007); *Pirtle v. Cal. Bd. of Prison Terms*, 611 F.3d 1015, 1024 (9th Cir. 2010) (noting that requiring prisoner to attend AA as a condition of parole would "likely" violate the First Amendment); *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014) ("Randall Jackson has pled facts sufficient to state a claim that a parole stipulation requiring him to attend and complete a substance abuse program with religious content in order to be eligible for early parole violates the Establishment Clause of the First Amendment."); *United States v. Logins*, 503 F. App'x 345, 352 n.4 (6th Cir. 2012) ("Although we hold that it is permissible for a district court to leave the probation officer discretion to select a substance abuse treatment program, that discretion is of course limited by the defendant's other substantive rights. For example, a probation officer may not abuse his or her discretion by requiring a defendant on supervised release to participate in a faith-based substance abuse treatment program which is inappropriate given the defendant's religious beliefs.") (citations omitted)); *Warner v. Orange County Dep't of Probation*, 115 F.3d 1068, 1074-75 (2nd Cir. 1997) (it was unconstitutional to impose participation in AA/NA as a probation condition); *affirmed*, 173 F.3d 120, 121 (2d Cir. 1999); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996); *Harris v. Risbon*, 2015 U.S. Dist. LEXIS 14548, *5 (M.D. Pa. Feb. 6, 2015) ("Thus, it appears likely that Plaintiff will succeed on the merits: as applied to a prisoner who is an atheist and does not wish to be a part of TC for reasons of religious freedom, the prison's actions violate the Establishment Clause of the First Amendment."); *White v. Spikes*, 2015 U.S. Dist. LEXIS 12019, *16-17 (N.D. Tex. Jan. 9, 2015) ("The clearly established precedent establishes that coercion is shown if a prisoner or parolee has no choice but to attend the religiously-based substance abuse program — that is, there is not a reasonable secular alternative program — and/or faces significant penalties if he or she refuses to attend the religiously-based program."); *Cullen v. Saddler*, 2015 U.S. Dist. LEXIS 27459, *13 (C.D. Ill. Mar. 6, 2015) (parolee was entitled to damages for forced AA attendance); *Stokley v. Dismas Charities, Inc*., 2014 U.S. Dist. LEXIS 102234, *9 (W.D. Ky. July 25, 2014); *Anderson v. Craven*, 2010 U.S. Dist. LEXIS 25140, *4 (D. Idaho Mar. 16, 2010) ("The law is clear that probation or parole conditions requiring a person to attend AA violates the First Amendment's Establishment Clause"); *Cain v. Caruso*, 2009 U.S. Dist. LEXIS 71692, 2009 WL 2475456, at *11 (E.D. Mich. Aug. 11, 2009) ("[B]ecause of the religious focus of the [Alcoholics Anonymous/Narcotics Anonymous] programs, forcing prisoners and parolees into such programs violates their clearly established constitutional rights.") (citing *Inouye*, 504 F.3d at 713); *Thorne v. Hale*, 2009 U.S. Dist. LEXIS 25938, 2009 WL 890136, at *16 (E.D. Va. Mar. 26, 2009) (noting that "[t]oo many courts have found similar allegations of forced compliance with religious addiction treatment programs constitutionally problematic for [either defendant] to claim that she was not on notice of a potential constitutional violation"); *Armstrong v. Beauclair*, 2007 U.S. Dist. LEXIS 24008 (slip op.) (D. Idaho 2007) (striking down AA/NA requirement as parole condition where no secular alternatives were offered); *Messere v. Dennehy*, 2007 U.S. Dist. LEXIS 65529, *17-18 (D. Mass. Aug. 8, 2007); *Moeller v. Bradford County*, 444 F. Supp. 2d 316 (M.D. Pa. 2006) (prisoner who alleged that he was required to attend religiously-oriented education and vocational training or forego any such training stated a claim for violation of the Establishment Clause); *Catala v. Comm'r*, 2005 U.S. Dist. LEXIS 31695, *5-6 (D.N.H. Nov. 22, 2005) ("The Warden's response to Catala on its face is problematic and demonstrates his failure to understand the well-established First Amendment prohibition against forced attendance at religious-based programs."); *Turner v. Hickman*, 342 F. Supp. 2d 887, 895-97 (E.D. Cal. 2004) (failing to offer the inmate a secular alternative for parole

a "secular alternative . . . is provided." *Miner v. Goord*, 354 Fed. Appx. 489, 491-92 (2d Cir. 2009) (citations omitted).

The Ninth Circuit has expressly held that requiring a drug offender to attend faith-based meetings violated the Establishment Clause because no viable secular alternatives were presented, as here. *Inouye*, 504 F.3d at 710. The offender, also a Buddhist, objected to the program's emphasis on "a higher power." *Id.* The court noted that the "Hobson's choice [the state] offered Inouye -- to be imprisoned or to renounce his own religious beliefs -- offends the core of Establishment Clause jurisprudence." *Id.* at 714. In so ruling, the court also observed that by "2001, two circuit courts, at least three district courts, and two state supreme courts had all considered whether prisoners or parolees could be forced to attend religion-based treatment programs. Their unanimous conclusion was that such coercion was unconstitutional." *Id.* at 715. The court thus found: "An officer . . . having available near-unanimous judicial invalidation of religious coercion in this and similar contexts, . . . should not have reasonably repeated the same mistake." *Id.* at 717.

In *Hazle v. Crofoot*, 727 F.3d 983, 996 (9th Cir. 2013), the Ninth Circuit reiterated that "a parolee's right to be free from coerced participation in a religious treatment program was a matter of *'uncommonly well-settled case law'* that was 'enough for [the Ninth Circuit] to hold that the law was clearly established sufficient to give notice to a reasonable parole officer, in 2001.'" (quoting *Inouye*, 504 F.3d at 716) (emphasis added).[6] In *Hazle*, the court specifically held that a parolee was entitled to compensatory damages as a matter of law because his First Amendment rights were indisputably violated when he was required to attend a religious-based treatment program as a condition of parole. The court explained, as relevant here: "Plaintiff Barry Hazle is an atheist who, over his numerous objections, was forced as a condition of parole to participate in a residential drug treatment program that required him to acknowledge a higher power." 727 F.3d at 986. *See also Cullen v. Saddler*, 2015 U.S. Dist. LEXIS 27459, *13 (C.D. Ill. Mar. 6, 2015) (parolee was entitled to compensatory damages for being forced to attend a religious substance abuse program).

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eligibility violative of Establishment Clause); *Nusbaum v. Terrangi*, 210 F. Supp. 2d 784, 789-91 (E.D. Va. 2002); *Bausch v. Sumiec*, 139 F. Supp. 2d 1029 (E.D. Wis. 2001); *Alexander v. Schenk*, 118 F. Supp. 2d 298, 301-02 (N.D.N.Y. 2000); *Warburton v. Underwood*, 2 F. Supp. 2d 306, 318 (W.D.N.Y. 1998); *Rauser v. Horn*, 1999 U.S. Dist. LEXIS 22583, at *19-*20 (W.D. Pa. Nov. 2, 1999) (coerced participation in NA/AA violated Establishment Clause), *rev'd on other grounds,* 241 F.3d 330 (3d Cir. 2001); *Ross v. Keelings*, 2 F. Supp. 2d 810, 817-18 (E.D. Va. 1998); *Warburton v. Underwood*, 2 F. Supp. 2d 306, 318 (W.D.N.Y. 1998) (allegation that inmate was required to participate in Narcotics Anonymous as a condition for the restoration of his good time credits states a claim of violation of the Establishment Clause); *Arnold v. Tenn. Board of Paroles*, 956 S.W.2d 478, 484 (Tenn. 1997) (where program is religious and is the only one available, forced participation violates Establishment Clause); *Griffin*, 88 N.Y.2d at 691-92 (same); *Yates v. Cunningham*, 70 F. Supp. 2d 47, 48 n.2 (D.N.H. 1999); *Cf. United States v. Smith*, 2009 U.S. Dist. LEXIS 22657, *2 (E.D. Wash. Mar. 6, 2009) ("if the substance abuse evaluation concludes that Defendant would benefit from a substance abuse treatment program, Defendant is to participant in such a program. In that event, Defendant's probation officer will work with Defendant to find a secular substance abuse treatment program."); *In re Garcia*, 106 Wn. App. 625, 634-635 (Wash. Ct. App. 2001) (agreeing that "mandating attendance at [A.A.] classes" violates the Establishment Clause but finding no violation where "alternative classes without religious-based content were provided").

[6] *See also United States v. Smith*, 2009 U.S. Dist. LEXIS 22657, *2 (E.D. Wash. Mar. 6, 2009) (requiring "Defendant's probation officer [to] work with Defendant to find a secular substance abuse treatment program."); *Armstrong v. Beauclair*, 2007 U.S. Dist. LEXIS 24008, *15 (D. Idaho Mar. 29, 2007) ("The law has been clear for many years that an inmate may not be forced to participate in a religiously-oriented prison program.").

In *Kerr v. Farrey*, the Seventh Circuit held that requiring an inmate to attend faith-based 12-step meetings for parole eligibility violated the Establishment Clause. 95 F.3d 472, 474 (7th Cir. 1996). In that case, NA was the only program available and the inmate was "subject to significant penalties if he refused to attend the NA meetings." *Id.* at 479.

The Second Circuit reached a similar conclusion in *Warner*, finding a probation condition requiring attendance at AA meetings violative of the Establishment Clause. 115 F.3d 1068 (2d Cir. 1997). The court based its decision on the fact that "[n]either the probation recommendation, nor the court's sentence, offered Warner *any choice* among therapy programs." *Id.* at 1075. To the contrary, they all "directly recommended A.A. therapy to the sentencing judge, without suggesting that the probationer might have any option to select another therapy program, free of religious content." *Id*.[7]

More recently, in *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014), the Eighth Circuit ruled:

> The fact that Jackson did not have a constitutional right to, or statutory guarantee of, early parole does not preclude him from stating a claim of unconstitutional coercion. "It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice." *Lee*, 505 U.S. at 596; *Kerr*, 95 F.3d at 474-75 …*Griffin*, 673 N.E.2d at 106 (state's requirement that inmates attend substance abuse treatment program's AA meetings to be eligible for the jail's discretionary Family Reunion Program was coercive). The Missouri Board of Probation and Parole may have discretion in deciding whether to grant early parole to an OUTP graduate, but that fact alone does not shield the defendants from potential liability for implementing a program that is alleged to violate the First Amendment.

Not only must secular alternatives be available, but the "secular alternatives must, of course, be meaningful, rather than available in name only." *Bausch v. Sumiec*, 139 F. Supp. 2d 1029, 1033 n.4, 1034 (E.D. Wis. 2001) (Establishment Clause violated where state presented 12-step program as a condition of parole, even though plaintiff may not have objected, because the religious program "was presented to plaintiff as the only available and feasible alternative to revocation, he faced the 'force of law' and the 'threat of penalty.'"). *See White v. Spikes*, 2015 U.S. Dist. LEXIS 12019, *16-17 (N.D. Tex. Jan. 9, 2015) (the "secular alternative program"

[7] *Accord Matter of David Griffin v. Coughlin*, 88 N.Y.2d 674, 686 (N.Y. 1996) ("No secular drug and alcohol addiction treatment program devoid of A.A.'s practices and doctrines, which would qualify an inmate for eligibility to participate in the Family Reunion Program, is offered as a substitute."). *See also Glenn v. N.H. State Prison Family Connections Ctr*., 2012 U.S. Dist. LEXIS 78689, *12-13 (D.N.H. 2012) ("by offering Christian religious services conducted by state-employed chaplains and Christian Bibles at no cost, and not providing a paid Imam or Qur'ans to inmates, the prison is demonstrating a preference for Christianity over Islam" failing "strict scrutiny"); *Sherman-Bey v. Marshall*, 2011 U.S. Dist. LEXIS 73801, *27-28 (C.D. Cal. 2011) (Moorish Science Temple inmate stated Establishment Clause and Equal Protection claims where he was denied group study on same terms as other religions); *Rouser v. White*, 707 F. Supp. 2d 1055, 1060, 1066-67 (E.D. Cal. 2010) (prison violated Establishment and Equal Protection Clauses by treating Wiccans differently with respect to group worship).

must be "reasonable"). In addition, the State has an affirmative duty to make such alternatives known to parolees. *See Warner*, 115 F.3d at 1075 (finding it coercive to sentence probationer to AA "without suggesting that the probationer might have any option to select another therapy program, free of religious content").[8]

An individual cannot "be considered to have a choice when the available options are unknown to him." *Bausch*, 139 F. Supp. 2d at 1035. Indeed, it is the "**government's obligation always to comply with the Constitution, rather than to do so only upon request**." *Id.* (emphasis added). The court in *Bausch* explained: "Defendants' assertion that they stood ready to provide a secular alternative, if asked, would reduce the evil of government inducements to participate in religiously-based programs only for 'those brave or resourceful enough to assert their rights *but [not for] the untold number who feel they have little choice but to comply*.'" *Id.* (emphasis added). The court recognized the unequal bargaining power of the respective parties, noting that the parolee is "in no position to request concessions or to propose alternatives . . . plaintiff had nothing on his side, and his parole officer and the administrative law judge had a very credible threat of prison on their side. The atmosphere that plaintiff faced . . . was thus *inherently coercive*." *Id.* at 1035-36. *See also Armstrong v. Beauclair*, 2007 U.S. Dist. LEXIS 24008, *17 (D. Idaho Mar. 29, 2007) ("they violated the Establishment clause when they did not relieve Plaintiff of the requirement to complete the only available program (which had a religious component) after they knew of Plaintiff's religious-based objections."); *Warner*, 115 F.3d at 1073 ("Finally, the dissent argues that, because Warner -- following the advice of his attorney -- sampled the A.A. sessions prior to sentence and made no objection to their religious content at the time of sentence, the probation department's recommendation was not a proximate cause of the injury. The dissent argues also that Warner's conduct constituted consent. We are not persuaded by either argument."); *see id.* at 1074 ("the mere fact of his brief presentence attendance, designed to demonstrate his commitment to rehabilitation, did not amount to a consent to the aspect of the sentence that essentially required him to attend religious exercises.").

Any attempt to coerce a nontheistic parolee to participate in religious programming "despite [his] sincere religious objections [is also] a violation of the Free Exercise Clause." *Separationists, Inc. v. Herman*, 939 F.2d 1207, 1215 (5th Cir. 1991).[9] The "free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the . . . government may not compel affirmation of religious belief." *Employment Div. v. Smith*, 494 U.S. 872, 876-877 (1990) (citing *Torcaso*, 367 U.S. 488). The Supreme Court has recognized that the First Amendment "on the subject of religion has a double aspect." *Cantwell v. Conn*., 310 U.S. 296, 303-04 (1940). It explained:

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[8] *See also Rauser*, 1999 U.S. Dist. LEXIS 22583, at *19 (W.D. Pa. 1999); *Griffin*, 88 N.Y.2d 674; *Arnold*, 956 S.W.2d at 484 (Tenn. 1997).

[9] *See also Ferguson v. Commissioner*, 921 F.2d 588, 590-91 (5th Cir. 1991) (holding that requiring a witness to swear or affirm when doing so is against that person's sincerely held beliefs violates the Free Exercise Clause); *Gordon v. Idaho*, 778 F.2d 1397, 1401 (9th Cir. 1985); *United States v. Looper*, 419 F.2d 1405, 1407 (4th Cir. 1969); *Nicholson v. Board of Comm'rs*, 338 F. Supp. 48, 56-58 (M.D. Ala. 1972) (required oath containing words "so help me God" violates Free Exercise Clause); *Silverman v. Campbell*, 486 S.E.2d 1, 2 (S.C. 1997) (holding that a state statute requiring "so help me God" at the conclusion of an oath of office for public notary violated the No Religious Test Clause). *Cf. Sherbert v. Verner*, 374 U.S. 398, 402 (1963) (citing *Torcaso*) (Free Exercise Clause does not allow government to "compel affirmation of a repugnant [religious] belief").

> On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts, - freedom to believe and freedom to act.

Id. As such, the government cannot condition parole eligibility on participation in religious-based programming, lest it be in violation of the Free Exercise Clause:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 717-18 (1981).

In addition to violating the First Amendment, *supra*, the state's actions also contravene the Equal Protection Clause insofar as it is only offering religious programs. This system necessarily discriminates against nontheist parolees.[10] The "equal protection guarantee ensures that prison officials cannot discriminate against particular religions." *Freeman v. Arpaio*, 125 F.3d 732, 737 (9th Cir. 1997). Prisons must afford an inmate of a minority religion "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts." *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (per curiam). The "denial of [a] privilege to adherents of one faith while granting it to others is discrimination on the basis of religion." *Native American Council of Tribes v. Solem*, 691 F.2d 382, 384-85 (8th Cir. 1982) (emphasis added).[11] The federal district court of Oregon recently agreed with us that refusing to recognize a Humanist meeting group while recognizing such groups for theistic religions is a violation of Equal Protection. Specifically, the court wrote:

> Here, plaintiffs have clearly shown that Holden's religious beliefs were the reason why defendants refused to grant his requests. Defendants' actions need not be

[10] *See Hatzfeld v. Goord*, 2007 U.S. Dist. LEXIS 98782, *13-14 (N.D.N.Y 2007) (where Hepatitis C treatment could only be obtained through participation in theistic substance abuse program, defendants discriminated against inmate "because he was an atheist."). *See also Cooper v. Pate*, 378 U.S. 546 (1964) (inmate stated claim when "alleging that solely because of his religious beliefs he was denied . . . privileges enjoyed by other prisoners"); *Reed v. Faulkner*, 842 F.2d 960, 964 (7th Cir. 1988) ("defendants are treating the Rastafarians differently from American Indians (and doing so deliberately) for no reason at all; and if so this is a denial of equal protection of the laws in an elementary sense.").

[11] *See Cooper*, 382 F.2d at 522. *See also Brown v. Johnson*, 743 F.2d 408, 413 (6th Cir. 1984) ("by allowing prisoners of other faiths and their respective churches to hold group worship services, while denying plaintiffs the same privilege" undoubtedly "is a distinction among religious faiths."); *Fulwood*, 206 F. Supp. at 374 ("By allowing some religious groups to hold religious services" while "denying that right to petitioner and other Muslims, respondents have discriminated" on the basis of religion); *Cf. Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869 (7th Cir. 2014) (statute violated Equal Protection because it arbitrarily discriminated against Humanists).

> malicious, only motivated by the fact that plaintiffs' hold a different set of religious beliefs. Allowing followers of other faiths to join religious group meetings while denying Holden the same privilege is discrimination on the basis of religion. Therefore, the court finds that plaintiffs have alleged sufficient facts to state an equal protection claim for relief that is plausible on its face.

Am. Humanist Ass'n v. United States, 2014 U.S. Dist. LEXIS 154670, *16-17 (D. Or. 2014).

By forcing Mr. Bast to attend a religious program as a condition of parole, the State is violating his "clearly established" constitutional rights under "uncommonly well-settled case law." *Hazle*, 727 F.3d at 996. It is beyond dispute "that requiring a parolee to attend religion-based treatment programs violates the First Amendment." *Inouye*, 504 F.3d at 712. As such, the State and its officials may be sued under 42 U.S.C. § 1983 for damages, an injunction, and attorneys' fees. Because the law is clearly established, *supra*, qualified immunity will most likely be denied. *See Inouye*, 504 F.3d at 712-15 ("The vastly overwhelming weight of authority on the precise question in this case held at the time of Nanamori's actions that coercing participation in programs of this kind is unconstitutional. . . . He had a wealth of on-point cases putting him, and any reasonable officer, on notice"); *Bausch*, 139 F. Supp. 2d at 1037-39 (law at that time was "clearly established" and no qualified immunity was available); *Turner*, 342 F. Supp. 2d at 895-97.

We are most hopeful that you will recognize the concerns raised by this letter and address them properly. To avoid legal action, please respond within seven (7) days. We thank you in advance for your attention to this matter.

Very truly yours,

Monica Miller, Esq.
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