



June 17, 2024

Via Electronic Submission

U.S. Commission on Civil Rights
1331 Pennsylvania Ave. N.W., Suite 1150
Washington, D.C. 20425

**Re: Public Comment Regarding the Federal Role in Enforcing Religious Freedoms
in Prison**

Dear U.S. Commission on Civil Rights:

The Texas Civil Rights Project (TCRP) submits this comment to the U.S. Commission on Civil Rights (the Commission) in response to the Commission’s call for public comments regarding the federal role in enforcing religious freedoms in prison. We submit this comment to emphasize and voice our concerns about current religious liberty violations in Texas that could potentially impact the entire country. Our expertise as civil rights attorneys and advocates in Texas, the second-most populous and second-most diverse state in the United States, allows us to add a unique perspective on this issue.¹

**I. Texas Prisons and Jails Have an Obligation to Comply with Federal Laws
Protecting Religious Liberty.**

Existing federal law protects the free exercise of religion for incarcerated individuals, but state and local actors in Texas institutions have consistently failed to uphold and enforce existing laws protecting religious liberty. As the United States Supreme Court has explained, Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) to provide “expansive protection for religious liberty.” *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). In support of enacting RLUIPA, Congress found that prisons and other penitentiary institutions “occasionally imposed frivolous and arbitrary restrictions” on religious practice.² However, in practice, RLUIPA has not extinguished frivolous and arbitrary restrictions of religious practice that pervade Texas jails and prisons.

¹ Jhair Romero, *Texas Ranks as 2nd-Most Diverse State in the U.S., Analysis Finds*, HOUS. CHRON., Sep. 27, 2023, <https://www.houstonchronicle.com/news/houston-texas/article/texas-ranks-2nd-most-diverse-state-u-s-analysis-18385968.php>.

² DEP’T OF JUST., *Statement of the Department of Justice on the Institutionalized Persons Provision of the Religious Land Use and Institutionalized Person Act (RLUIPA)* (2010), <https://www.justice.gov/crt/page/file/974661/dl?inline>.

Texas prisons and jails regularly engage in practices that violate the religious liberty of those in their custody. Such violations often occur due to the lack of any guardrails or oversight. For example, TCRP corresponds with individuals in solitary confinement in the Texas Department of Criminal Justice (TDCJ). TDCJ has recently begun providing tablets to incarcerated individuals, but severely limits the content for those in solitary confinement: according to reports, individuals in such restrictive housing could only access explicitly Christian programming on their tablets. This preferencing of overtly religious, and overtly Christian, programs even for individuals of minority faiths, or no faith at all, flies in the face of federal law.

Even less well known than religious violations in TDCJ are those perpetrated in local jails across the hundreds of counties in the State of Texas. In recent months, one example of such troubling state action illustrates the need for increased federal action—over the past couple months, Texans have witnessed law enforcement in county jails repeatedly and egregiously violate the religious rights of student protestors detained across the state, especially in Travis County in Austin, Texas.

II. State Jail Officials Fail to Protect the Religious Liberty of Detainees in Their Custody.

TCRP was on the ground during the recent arrests of student protesters in Austin, Texas, some of whom we now represent.³ Protesters have relayed their experiences and concerns about the treatment of minority religious groups, particularly Muslim women, in Texas jails and prisons. The following accounts are typical of the disregard for religious liberties with which jail staff operate.

a) Local Law Enforcement Officers Force Hijab-Wearing Muslim Women to Remove Their Hijabs in the Presence of Men.

At least two Texas county jails in populous counties, Travis County in Austin and Dallas County in Dallas, require hijab-wearing Muslim women to be photographed without their hijabs during the booking process, regardless of whether male law enforcement officers are nearby or present. In Dallas County, three women recently filed suit against Dallas County, the Dallas County Sheriff's Office, and three Dallas County correctional officers after being forced to remove their hijabs for booking photos.⁴ Photos of the women without their hijabs then appeared publicly in a news article and were shared with state agencies, including the Texas Board of Law Examiners.⁵

In Travis County, female students were also required to remove their hijabs for photos during booking. When asked for comment, a spokesperson for the Travis County Sheriff's Office stated:

³ Snena Dey & Ikram Mohamed, *UT-Austin student protesters balance end-of-year work with fallout from police crackdowns*, TEX. TRIB. (May 3, 2024, 5:00 AM), <https://www.texastribune.org/2024/05/03/ut-austin-finals-protest-fallout/>.

⁴ Joy Ashford, *Pro-Palestine Protestors Sue Dallas for Hijab Removal While in Custody*, THE DALL. MORNING NEWS (Mar. 29, 2024, 3:45 PM), <https://www.dallasnews.com/news/faith/2024/03/29/pro-palestine-protestors-sue-dallas-for-hijab-removal-while-in-custody/>.

⁵ *Id.*

TCSO's current operating procedure regarding booking photographs of individuals who wear head coverings is to allow them to keep their head covering on while fingerprints and booking photos are completed. For security purposes, and to have on file an unobstructed photo in the event of an escape from the facility, a separate photograph without the head covering is taken in private by an officer of the same gender, and these are maintained in a confidential, access restricted supervisor file, separate from booking photos.⁶

This reasoning is frivolous at best and pretextual at worst. The use of a religious head covering neither obstructs nor changes the facial features of an individual. Forcing women to remove religious apparel that does not obscure their facial features during booking is a violation of their religious liberty and does not make jails more secure.

Although federal law protecting religious liberty is only haphazardly enforced, it is also potentially costly to force women to remove their hijabs under the guise of "security." Earlier this year, a woman in Tennessee reached a settlement with Rutherford County after she was forced to remove her hijab for a booking photo in 2023.⁷ Rutherford County agreed to pay her \$100,000, update its booking and jail policies to accommodate religious apparel, and delete her booking photos and all video footage showing her without her hijab.⁸ Their revised booking policy states that "arrestees and citation recipients are not required to remove religious head coverings for booking photos as long as the view of the face and profile are not obstructed by religious attire."⁹

The settlement occurred in January 2024. There is no evidence or indication that Rutherford County is any less secure since the policy was revised to accommodate religious attire. Concerns about safety due to religious head coverings in booking photos are frivolous and pretextual. The federal government should make clear that counties are not free to engage in such violative practices.

b) Local Law Enforcement Officers Fail to Provide Other Reasonable and Appropriate Religious Accommodations to Allow Muslim Detainees to Practice Their Faith.

⁶ Johann Castro and Laura Sather, *Rights of Female Students Violated in Travis County Jail, According to CAIR; Travis County Sheriff's Office Responds*, KVUE NEWS (May 2, 2024, 9:36 PM), <https://www.kvue.com/article/news/local/travis-county-jail-accused-violating-righst-female-detainees-after-university-of-texas-protest/269-299c7163-f99e-49cf-bd93-7c4e47be3a24>.

⁷ Angele Latham, *Settlement Reached Over Forced Removal of Hijab in Rutherford County*, THE TENNESSEAN (Jan. 29, 2024, 5:04 AM), <https://www.tennessean.com/story/news/religion/2024/01/29/rutherford-county-settles-religious-discrimination-lawsuit-over-hijab-removal/72359099007/#>.

⁸ *Id.*

⁹ *Id.*

According to a female Muslim student who was recently detained at the Travis County Jail, law enforcement officers at the jail refused to provide reasonable accommodations to enable her to practice her religion. According to this student's Islamic faith, she is required to pray at specific times of day, to cover her head and arms during prayer, and to place a covering on the ground while kneeling for prayer. Although Travis County Jail personnel could have easily accommodated these requirements, they failed to do so, instead interfering with the student's practice of religion.

The student requested that jail staff allow her to use the keffiyeh with which she entered the jail to cover her head. Officers told her no.¹⁰ Law enforcement officers also refused to provide her with long sleeves to cover her arms, even though sweatshirts were available. Similarly, officers refused to provide anything for her to kneel on during prayer until approximately ten hours after she arrived at the jail, when she was taken to a cell and given a towel for other purposes. All of the student's reasonable requests for religious accommodation were denied, even after another student detained in the jail tried to intercede on her behalf. Ultimately, she was forced to pray in a seated position, unable to kneel, without her necessary religious coverings, and without knowing whether she was praying on time or in the right direction.

Other Muslim students arrested in Travis County also reported to TCRP that law enforcement officers in the jail told a Muslim woman that she was not entitled to her hijab because she was wearing a short-sleeved shirt. The Muslim woman tried to explain that individuals may choose to wear the hijab in different ways, but jail staff refused to listen. Another woman was told she could wear only the county-provided jail uniform, which left her arms, neck, and portions of her chest exposed in a manner violative of the modesty central to her religious beliefs. This directive was despite the jail having long-sleeved sweatshirts readily available to detainees.

The federal government should increase oversight of state and local facilities, many of which depend on federal funding and house federal prisoners and detainees. These violations of federal religious protections cannot be allowed to persist unchecked.

III. Conclusion and Recommendations

To better protect incarcerated people practicing a minority religion, TCRP requests that the U.S. Commission on Civil Rights take a more proactive approach in its protection of religious liberty in jails and prisons. Religious violations have real consequences on the lives of their subjects. Muslim women forced to remove their hijabs, expose their skin, and unreasonably limit their prayer practices experience humiliation, shame, embarrassment, and distress. These religious liberty violations can trigger both immediate and long-term psychological and emotional distress. Yet these violations are also completely avoidable. There is no valid security reason to require hijab-wearing Muslim women to remove their hijabs during the booking process, to deny detainees reasonable accommodations for modesty, or to unreasonably limit their religious practices.

While existing federal law should protect detainees from such dehumanizing treatment, to date Texas jails and prisons have been free to act largely free from federal scrutiny. This lack of oversight has led to a continued pattern of egregious violations of federal law. Whereas TCRP is

¹⁰ A keffiyeh is a traditional Arab head covering.

limited in its ability to force Texas institutions to comply with their legal obligations, the federal government has untapped authority that could bring meaningful change to incarcerated individuals. For example:

- The Department of Justice could initiate an investigation under the Civil Rights of Institutionalized Persons Act into jail policies that unnecessarily interfere with the demands for modesty, prayer, and other aspects of religious practice for Muslim women.
- The President could issue an executive order requiring certain basic yet specific religious protections for any local or state facilities housing federal detainees, as many Texas facilities do.
- The federal government could provide state and local carceral facilities with model policies and trainings to assist in updating their practices to comply with federal law.

TCRP requests that the Commission make recommendations to federal agencies, including the Department of Justice, to update and improve guidance on religious freedom in prisons and jails. Should any additional information or resources be helpful to the Commission, please do not hesitate to contact us at the emails below.

Regards,

/s/ Christina Beeler

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