

Religious Free Exercise Rights: Immigration Detention

As an immigration detainee, you have legal protections that allow you to practice according to your sincerely held religious beliefs while detained. The strongest protections for your religious exercise rights in detention likely come from two statutes, the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), depending on the facility. Both statutes restrict the government's ability to limit your religious practices. They also allow you to seek relief from a court if you believe your rights are being violated. Other state and federal statutes, as well as constitutional provisions, may also provide you with other protections.

Religious Practices that May be Entitled to Protection:

- Religious apparel or headgear (hijab, kufi, yarmulke, etc.)
- Haircuts, shaving, or grooming norms
- Religious diets (halal, kosher, vegetarian, etc.)
- Accessing religious services (e.g. weekly congregational prayer) or worship areas
- Receiving visits from religious advisors
- Sending and receiving religious mail
- Refusing medical treatment for religious reasons
- Religious activities allowed in prison (if you were previously in prison) but that are not allowed at your immigration facility

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If you wish to practice your religion in a certain way but cannot, then you can check whether your rights have been violated by going through these questions.

Question 1: Is Your Activity Religious Exercise?

The law defines religious exercise very broadly. To be protected, the activity just needs to be rooted in a sincerely held belief that is religious in nature. Even practices that are not central to or compelled by your system of belief are typically protected under the law.

Question 2: Is the Facility Burdening Your Religious Exercise?

Next, you are required to show that the facility's conduct "substantially burdens" your religious exercise rights. Generally, substantial burden means that the facility's actions either prevent you from engaging in religious practice in a manner that (1) is more than a mere inconvenience, or (2) pressures you to change your behavior and violate your beliefs.

Question 3: Are the Facility's Actions Justified?

If you show your religious practice is substantially burdened, the facility must then justify this burden by showing some "compelling government interest." Reducing expenses, for example, is not generally considered a compelling reason, but ensuring safety and security is compelling. In addition, the facility must show the burden placed on your practice is the "least restrictive means" for achieving that goal. This is a very difficult standard for the facility to meet. For example, if your facility allows other similar practices or if other facilities or prisons allow the practice, then your facility likely did not select the least restrictive means.



How to Make Your Voice Heard: Grievances and Civil Complaints

If your religious rights are being violated while at a detention facility you generally have two options. You can file a grievance (a procedure for making complaints at a detention facility) or you can file a civil complaint (lawsuit) in court.

To learn more about the grievance procedure at your facility, ask an officer for the detainee handbook, which may also be available in the library. Look for information on the grievance procedure and where to obtain grievance forms. Be sure you understand the steps of the grievance procedure. When filing a grievance, be sure to:

- Check “grievance” and not just “request.”
- Provide as much detail as possible on the forms.
- Include specific examples of the problem, how often it occurs, and the officers personally involved in each incident.
- As described in Steps One and Two above, explain why your practice is religious and how the facility has placed a substantial burden on this practice. Ask for more sheets of paper if needed.
- Submit your grievance as soon as possible after the incident and submit any appeals on time.
- Fully complete the administrative appeal process, even if you get replies partially resolving the issue. (This might require submitting one or two appeals to the facility warden depending on your facility rules.)
- Keep copies of all your requests, grievances, and appeals.

The internal grievance procedure may not always address the problem. You may also be able to file a civil complaint in federal court. It is generally best to exhaust the internal grievance procedure before going to court. If you exhaust the grievance procedures, this will demonstrate to the court that the facility unreasonably refused to adequately address the problem even when you asked. Some laws may require you to go through the grievance procedures before you can go to court.

Contact Muslim Advocates to report religious harassment, discrimination, or free exercise violations in immigration detention:

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