

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

UNITED STATES OF AMERICA

*** CASE NO. 2:18-cr-22**

VERSUS

*** JUDGE WOOD**

ELIZBETH MCALISTER, ET AL

*** MAGISTRATE JUDGE CHEESBRO**

**MEMORANDUM IN SUPPORT OF DEFENDANT’S
MOTION FOR EVIDENTIARY HEARING
TO PROVIDE TESTIMONY ON DEFENDANT’S
RELIGIOUS FREEDOM RESTORATION ACT DEFENSES**

NOW INTO COURT COMES Defendant Elizabeth McAlister who files this memorandum in support of her motion for an evidentiary hearing. Ms. McAlister requests an evidentiary hearing to testify about how her actions at the United States Naval Submarine Base Kings Bay in Saint Marys, Georgia were religiously motivated and how the government’s criminal prosecution of her for those actions substantially burdens her religious expression under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb et seq., raised in Defendant’s Motion to Dismiss (Rec. Doc. 87).

Ms. McAlister further states in support of this motion:

1. On August 2, 2018, the Court heard Defendants’ Motions to Dismiss and other pre-trial motions and the governments’ responses. Then on August 15, 2018 the Court ordered Defendants and the government to submit additional briefing on Defendants’ RFRA arguments raised in their respective Motions to Dismiss. (*See* Court’s Order, Rec. Doc. 220)

2. Defendant argued that she had acted pursuant to her religious beliefs when she entered the Kings Bay Naval Base on April 4, 2018 with her codefendants and engaged in symbolic disarmament of the Trident missile carrying nuclear warheads on display there. Apart from their legal arguments, the Court did not hear sworn testimony from any defendant or witness on the issue of Defendants' religious motivations or the substantial burden that the government placed on their religious expression by criminally prosecuting them for their actions that night.
3. In their accompanying responses to the Court's August 15th Supplemental Briefing Order, Defendants have submitted affidavits answering the Court's RFRA questions. (*See* Defendants' Responses to Court's RFRA Briefing Order, filed concurrently) Defendant incorporates and adopts herein the legal arguments in that brief.

The Law Requires an Evidentiary Hearing

4. The RFRA statute requires an in-depth factual inquiry into (1) the scope of Defendants' religious beliefs; (2) whether Defendant's beliefs are religious; (3) whether Defendant's beliefs are sincerely held and (4) whether the government's actions in prosecuting defendants for their actions imposes a substantial burden on defendants' religious exercise. *See* United States v. Zimmerman, 514 F.3d 851, 853 (9th Cir. 2007); Hobby Lobby, 134 S.Ct. 2751, 2778 (2014) (The Court must also determine the precise nature of the defendants' activities that are "conduct[ed] in accordance with *their* religious beliefs") That is a highly subjective inquiry and specific to each defendant. Hobby Lobby, 134 S.Ct. at 2778 (emphasis in original). Once defendants have made that showing in the district court, then the burden shifts to the government to show that the burden on defendant's exercise of religion is nonetheless permissible because (1) it

further a compelling governmental interest (2) through the least restrictive means.

Zimmerman, 514 F.3d at 853; Gonzales v. O Centro Espírita Beneficente Uniao do Vegetal, 546 U.S. 418, 429, 126 S.Ct. 1211, 163 L.Ed.2d 1017 (2006)

5. Whether religious beliefs are religious in nature, the extent to which defendant sincerely holds those beliefs are questions of fact. Hobby Lobby, 134 S.Ct. at 2774 n. 28 (“To qualify for RFRA's protection, an asserted belief must be ‘sincere’....”); United States v. Zimmerman, 514 F.3d 851, 854 (9th Cir. 2007) (stating that sincerity is “a question of fact”).
6. The government contends that Defendant’s actions were motivated by her religious faith. (Government’s Supplemental Briefing, Rec. Doc. 227 at 6, 9) The Court also noted that the government “now contends that Defendants’ actions in this case were not religious in nature and thus not protected under RFRA.” (Court’s Supplemental Briefing Order, Rec. Doc. 220 at 3) Because the government contends this critical issue, the “district court should hear directly from [the defendant], as [her] credibility and demeanor will bear heavily on whether [her] beliefs are sincerely held.” Zimmerman, 514 F.3d at 853-54.
7. The government also argues that Defendant’s specific actions for which she is being criminally prosecuted – pouring blood, breaking a padlock, cutting fences, and such - were not in themselves religiously motivated. (Rec. Doc. 227 at 6, 10; *see also* Government’s Supplemental Response in Opposition to Defendants’ Motions to Dismiss, Rec. Doc. 214 at 2) The government also acknowledges that the Court must conduct a balancing test and weigh a number of factors to determine whether Defendant’s beliefs are “truly religious.” (Rec. Doc. 227 at 9)

8. The Court recognized a need for such a factual development and stated in its Supplemental Briefing Order that the record had not been “sufficiently developed” in this case for the Court to make a ruling on Defendants’ RFRA claims. (Rec. Doc. 220 at 4)
9. In response, Defendant submits an affidavit in support of her legal brief to attempt to address the RFRA issues more fully. However, the kind of demonstration that the Court is seeking in asking Defendant to “thoroughly address” the RFRA requirements and explain how each of Defendant’s actions were religious motivated in addition to how her religious exercise is now substantially burdened, requires additional testimony from Defendant and others to “fully develop[] the RFRA issue.” (See Rec. Doc. 220 at 5)

Therefore, for the reasons stated above and in Defendant’s concurrently filed responsive briefing, Defendant requests an evidentiary hearing in this matter to demonstrate to the Court that her actions at the Kings Bay Naval Base on April 4, 2018 were motivated by her sincerely held religious beliefs and that the government’s criminal prosecution of her for those acts substantially burdens Defendant’s religious expression.

Respectfully submitted,

/s William P. Quigley
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel registered for electronic service.

/s William P. Quigley
William P. Quigley