

FROM *the* EDITOR



Welcome to the June 2024 issue of the *Religious Liberty Law Section Newsletter*.

On October 27, 1998, President Bill Clinton signed into law the International Religious Freedom Act of 1998. The Act was passed in response to a growing concern over religious persecution around the world. It reiterated the U.S. recognition of religious freedom as a fundamental right, the importance religious liberty has played in U.S. history, and the various international covenants recognizing and protecting religious freedom to which the U.S. was a party. The Act made religious freedom a cornerstone of U.S. foreign policy and created a policy structure that would reward foreign governments that respect religious freedom and penalize

those that do not. Unfortunately, a quarter of a century after the International Religious Freedom Act became law, religious persecution continues around the world. Anti-conversion laws are found throughout South and Southeast Asia, in particular in India, Nepal, Myanmar, and Bhutan. Seventy-nine countries have blasphemy laws and, in eight of those countries, violators are subject to the death penalty. In Nicaragua, Christian pastors and priests have been jailed. In Germany, a taxi driver was fined for having a small Bible verse and cross sticker on the rear of his vehicle. In Finland (as covered in the June 2022 issue of the Newsletter – *The Bible on Trial*) a Christian member of the Finnish Parliament was charged criminally for expressing her religious views on sexuality. In Nigeria, two universities prohibited Christian groups from worshiping on campus. In Algeria, a Christian pastor was convicted of “illegal worshiping.” And the list goes on. For these reasons, I have chosen the International Religious Freedom Act of 1998 as this issue’s Great Moments in Religious History.

I want to extend a special thank you to Kristina Hjelkrem, the author of this issue’s Feature Article – *Nicaragua: A Crises of Religious Liberty in Latin America* – which, in light of the subject matter of this issue’s Great Moments in Religious History, is particularly timely since it highlights the fact that religious liberty is still under attack around the world and that governments will seek to suppress religion when it threatens their political power.

As always, we hope you find this issue of the Religious Liberty Law Section Newsletter both informative and useful.

Bradley S. Abramson
Bradley S. Abramson, Editor

QUOTE DU JOUR

“Religious freedom cannot exist in any land where the state controls religion.

— U.S. Sen. Samuel Ervin, Jr.

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FROM *the* CHAIR

As is often the case, a challenge looks bigger and more daunting as you approach it, than it looks as you reflect on it after it is in the rearview mirror. I am thankful that I accepted the challenge to become the Chair of the Religious Liberty Law Section of the State Bar, especially now that I have completed the challenge and have handed that job to Andrew Petersen who is the current vice-chair, the only nominee and presumed new chair.

My thanks to Mona Fontes, Section and Online Communities Administrator for the State Bar. She is so organized and knowledgeable; she made the job of Chair easy. My thanks especially to Wally Larson, immediate past Chair for being supportive and for his (I am sure) many prayers on my behalf. Many thanks to Raj Gangadean, Brad Pew, Judge Francisca Cota, Brad Abramson and so many others who gave selflessly of their time and talents.

This Section has some of the best, brightest, and nicest lawyers in Arizona who believe in religious liberty and are passionate about keeping it at the forefront of our legal system. We also present some of the best CLE programs of any Section, including our latest, presented by former Arizona Supreme Court Justice Andrew Gould. Stay tuned for more exciting programs in the next year.

Encourage your friends and colleagues to join the section and become involved by agreeing to serve on the Executive Council. You do have the time, you just might not realize it. Religious liberty is a First Freedom and we lawyers need to be informed and available to protect it.

With gratitude,



Roberta S. Livesay, Chair



ROBERTA LIVESAY is a partner in the firm of Carden Livesay, Ltd. in Mesa where she litigates property valuation and catastrophic riverine flooding cases. She is a founding member of the Religious Liberty Law Section of the State Bar. She is also the Vice Chairman of Fellowship for Performing Arts, a professional non-profit theatre located in New York that produces theatre and film from a Christian worldview.

GREAT MOMENTS *in* RELIGIOUS LIBERTY HISTORY

International Religious Freedom Act of 1998 – Congressional Findings and Policy

(a) Findings – Congress makes the following findings:

- (1) The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation’s founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.
- (2) Freedom of religious belief and practice is a universal human right and fundamental freedom articulated in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (3) Article 18 of the Universal Declaration of Human Rights recognizes that “Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” Article 18(1) of the International Covenant on Civil and Political Rights recognizes that “Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.” Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government.
- (4) The right to freedom of religion is under renewed and, in some cases, increasing assault in many countries around the world. More than one-half of the world’s population lives under regimes that severely restrict or prohibit the freedom of their citizens to study, believe, observe, and freely practice the religious faith of their choice. Religious believers and communities suffer both government-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of “religious police”, severe prohibitions against construction and repair of places of worship, denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, and prohibitions against publishing, distributing, or possessing religious literature and materials.
- (5) Even more abhorrent, religious believers in many countries face such severe and violent forms of religious persecution as detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of or practice of their faith. In many countries, religious believers are forced to meet secretly, and religious leaders are targeted by national security forces and hostile mobs.
- (6) Though not confined to a particular region or regime, religious persecution is often particularly widespread, systematic, and heinous under totalitarian governments and in countries with militant, politicized religious majorities.



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GREAT MOMENTS *in* RELIGIOUS LIBERTY HISTORY

International Religious Freedom Act of 1998 – Congressional Findings and Policy

- (7) Congress has recognized and denounced acts of religious persecution through the adoption of the following resolutions:
- (A) House Resolution 515 of the One Hundred Fourth Congress, expressing the sense of the House of Representatives with respect to the persecution of Christians worldwide.
 - (B) Senate Concurrent Resolution 71 of the One Hundred Fourth Congress, expressing the sense of the Senate regarding persecution of Christians worldwide.
 - (C) House Concurrent Resolution 102 of the One Hundred Fourth Congress, expressing the sense of the House of Representatives concerning the emancipation of the Iranian Baha'i community.

(b) Policy – It shall be the policy of the United States, as follows:

- (1) To condemn violations of religious freedom, and to promote, and to assist other governments in the promotion of, the fundamental right to freedom of religion.
- (2) To seek to channel United States security and development assistance to governments other than those found to be engaged in gross violations of the right to freedom of religion, as set forth in the Foreign Assistance Act of 1961, in the International Financial Institutions Act of 1977, and in other formulations of United States human rights policy.
- (3) To be vigorous and flexible, reflecting both the unwavering commitment of the United States to religious freedom and the desire of the United States for the most effective and principled response, in light of the range of violations of religious freedom by a variety of persecuting regimes, and the status of the relations of the United States with different nations.
- (4) To work with foreign governments that affirm and protect religious freedom, in order to develop multilateral documents and initiatives to combat violations of religious freedom and promote the right to religious freedom abroad.
- (5) Standing for liberty and standing with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational, and cultural channels, to promote respect for religious freedom by all governments and peoples.

SELECTED U.S. CASE LAW *Updates*



CASE 1

Missouri Dept. of Corrections v. Finney

601 U.S. ___, 2024 WL 674657 (2024)

DISMISSAL OF PROSPECTIVE JURORS DUE TO THEIR RELIGIOUS BELIEFS IMPLICATES FUNDAMENTAL RIGHTS.

In this case, a lesbian employee of the Missouri Department of Corrections sued the Department alleging sex discrimination. At the trial, the plaintiff's counsel asked prospective jurors whether any of them "went to a conservative Christian church." Two jurors answered yes and that they believed homosexuality was a sin, but that they could be objective and follow the law. The plaintiff's counsel moved to dismiss both prospective jurors for cause, and the court agreed, despite the court having noted that both jurors said they could follow the law and she believed them.

Although the Supreme Court denied cert, Justice Alito wrote separately, stating that the case raised an important issue, namely whether these for-cause dismissals were unconstitutional.

Justice Alito wrote: "The judiciary, no less than the other branches of State and Federal Government, must respect people's fundamental rights, and among these are the right to the free exercise of religion and the right

of the equal protection of the laws. When a court, a quintessential state actor, finds that a person is ineligible to serve on a jury because of his or her religious beliefs, the decision implicates fundamental rights ... Under the Free Exercise Clause, state actions that 'single out the religious for disfavored treatment' must survive 'the most rigorous' scrutiny ... Jurors are duty-bound to decide cases based on the law and the evidence, and a juror who cannot carry out that duty may properly be excused. But otherwise, I see no basis for dismissing a juror for cause based on religious beliefs."

CASE 2

Kim v. Board of Education of Howard County

93 F.4th 733 (4th Cir. 2024)

A GOVERNMENT POLICY THAT LIMITS STUDENT SCHOOL BOARD MEMBERSHIP AND VOTING TO PUBLIC SCHOOL STUDENTS DOES NOT VIOLATE THE FREE EXERCISE RIGHTS OF PRIVATE PAROCHIAL SCHOOL STUDENTS.

In this case, a student attending a Catholic high school challenged a Maryland County school board's implementation of a state statute that allowed student representatives to sit on school boards. The Catholic school student alleged that the county's policy of only allowing public

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school students to serve as student representatives and only allowing public school students to vote for those student representatives violated the Free Exercise rights of students attending private parochial schools. Specifically, the Catholic school student claimed that the county's method of selecting its board of education student representatives burdened the Catholic student's religious exercise by indirectly coercing students to choose between getting a religious education outside of public school and participating in choosing the school board's student representative.

The court concluded that the county's student representative selection process did not violate the Catholic school student's Free Exercise rights.

In coming to its conclusion, the court first concluded that the county's selection system was both neutral and generally applicable and, therefore, warranted only rational basis rather than strict scrutiny review.

The court concluded that the challenged selection policy was neutral because the policy did not consider religious motivation, but rather depended upon public school enrollment. The court stated that "[t]o the extent the law has an effect of excluding religious students, it does so 'in spite of' and not 'because of' those students' religious reasons for forgoing public education."

The court concluded that the challenged policy was generally applicable because the law "makes no distinction between religious and secular. It bars non-public-school students, religious and non-religious alike, from choosing or serving as the student member" and "does not vest school administrators with authority to allow some non-public-school students to vote."

The court also addressed those relatively recent U.S. Supreme Court cases that involved government grant programs that expressly excluded religious schools – such as *Carson v. Makin*, *Espinoza v. Montana Dept. of Revenue*, and *Trinity Lutheran Church of Columbia, Inc. v. Comer* – because, the court held, "[t]he programs in those cases explicitly barred public funds from going to religious actors 'solely because of their religious character'". The court stated that "[t]hese cases stand only for the point that religious schools cannot be excluded from grant programs solely because of their religious character. States do not need to include private schools, but if they do, states 'cannot disqualify some private schools solely because they are religious'".

In this case, however, the court held, "Howard County does not let any private schools, religious or nonreligious [sic], participate in selecting the board of education student member. The process does not exclude students

because of their religious exercise. Rather, it excludes students who choose not to attend public school for whatever reason."

Having concluded that rational basis, rather than strict scrutiny, review must apply in analyzing the Catholic school student's constitutional claims, the court found that the county's rationale for restricting student voting and school board membership to public school students satisfied rational basis review because rational basis review requires only "that the law at issue be rationally related to a legitimate governmental interest".

CASE 3

Billard v. Charlotte Catholic High School; Mecklenburg Area Catholic Schools; Roman Catholic Diocese of Charlotte

___ F.4th ___, 2024 WL 2034860 (4th Cir. 2024)

AN ENGLISH AND DRAMA TEACHER AT A ROMAN CATHOLIC HIGH SCHOOL WAS A MINISTER FOR PURPOSES OF THE MINISTERIAL EXCEPTION.

In this case, a Roman Catholic high school terminated an English/Drama teacher after learning of the teacher's plan to marry his same-sex partner. The teacher sued for sex discrimination under Title VII.

Although the high school had waived the ministerial exception defense in the lower proceedings, the 4th Circuit Court of Appeals resurrected the defense *sua sponte*, stating that "because the ministerial exception 'implicate[s] important institutional interests of the court,' we retain discretion to raise and consider it *sua sponte* – even if waived." The court went on to observe that "The ministerial exception does not protect the church alone; it also confines the state and its civil courts to their proper roles ... The exception operates structurally, in other words, to 'categorically prohibit[] federal and state governments from becoming involved in religious leadership disputes.'"

Turning to the ministerial exception defense, the court noted that "the ministerial exception is a 'well-settled' doctrine." The court observed that although, in *Hosanna-Tabor Evangelical Lutheran Church v. E.E.O.C.*, the U.S. Supreme Court emphasized several factors in determining whether an employee was a minister for purposes of the ministerial exception, it paid careful attention to the employee's job duties, stating that "[w]hat matters, at bottom, is what an employee does," and how those functions and duties interact with the mission of a religious school."

In this case the court noted that the high school's "educational mission is driven by the Catholic faith." The court observed that the high school expected its teachers to begin each class with a prayer and to accompany their students to school Mass. In addition, the school evaluated its teachers –

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including teachers who taught secular subjects – “on the ‘catholicity’ of their classroom environment, their ability to teach their subjects in a manner ‘agreeable with Catholic thought,’ their willingness to ‘[c]ontribut[e] by example to an atmosphere of faith commitment,’ and their aptitude in ‘implement[ing] the diocesan and school’s mission statements.’” The school also “requires its employees [whether Catholic or not] to conform to Catholic teachings.” It prohibited its employees from “engaging in or advocating for conduct contrary to the moral tenets of the Catholic faith, including the Catholic Church’s rejection of same-sex marriage.” The court noted that the teacher had gone out of his way to meet these expectations. All of which “indicates the performance of ‘vital religious duties’ that implicate the ministerial exception.”

Although it did not appear to be determinative to the court’s conclusion, the court also noted that the teacher filled in – albeit rarely – for teachers who taught religion.

After noting that ministerial exception cases are “highly fact-intensive, turning on consideration of a ‘variety of factors’ and ‘all relevant circumstances’ rather than a bright-line rule or even a ‘rigid formula’”, the court concluded that this teacher fell within the category of employees who “‘serve as a messenger or teacher of the faith’ covered by the ministerial exception.”

When the ministerial exception applies – the court concluded – “it unambiguously commands that we ‘stay out’” and, in accord therewith, the court found in favor of the school.

CASE 4

Vlaming v. West Point School District

895 S.E.2d 705 (Virginia 2023)

A PUBLIC HIGH SCHOOL TEACHER SET FORTH SUFFICIENT FIRST AMENDMENT FREE SPEECH AND FREE EXERCISE CLAIMS, AS WELL AS CLAIMS UNDER THE STATE’S RFRA AND FOR BREACH OF CONTRACT, WHERE THE SCHOOL TERMINATED THE TEACHER FOR FAILING TO FOLLOW THE SCHOOL’S DIRECTIVE THAT THE TEACHER USE A STUDENT’S PREFERRED PRONOUNS.

In this case, the Supreme Court of Virginia found that the plaintiff had alleged sufficient claims under the Virginia Constitution and Virginia statutes and for breach of contract after he was terminated from his employment as a public high school French teacher for referring to his students by their names instead of the student’s preferred pronouns that differed from the student’s biological sex, in violation of the school’s policy that mandated the use of preferred pronouns.

Considering, first, the teacher’s claim that the school violated his free exercise of religion rights under the Virginia Constitution, the Court framed the issue as “whether [in using

a student’s name rather than preferred pronouns] Vlaming’s sincerely held religious beliefs caused him to commit overt acts that ‘invariably posed some substantial threat to public safety, peace or order’ ... and if so, whether the government’s compelling state interest in protecting the public from that threat, when examined under the rigors of strict scrutiny, could be satisfied by ‘less restrictive means’”? The Court answered that inquiry in the negative, finding that “When religious liberty merges with free-speech protections, as it does in this case, mere ‘objectionable’ and ‘hurtful’ religious speech, is not enough to meet this standard ... ‘In an open, pluralistic, self-governing society, the expression of an idea cannot be suppressed simply because some find it offensive, insulting, or even wounding’ ... A lawful government ‘is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government’ ... Government may neither compel affirmation of a repugnant belief ... nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities’ ... Absent a truly compelling reason for doing so, no government committed to these principles can lawfully coerce its citizens into pledging verbal allegiance to ideological views that violate their sincerely held religious beliefs.”

The Court rejected the idea that the free exercise of religion protects only belief, not conduct, stating that “we first recognize that the right to ‘exercise’ one’s religion, if it means anything, includes the right to speak or not speak and to act or not act based upon one’s religious sincerely held opinions or beliefs” and that “the First Amendment’s free-exercise right ‘protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’”

Based on its analysis, the Court concluded that the teacher’s allegations were sufficient to set forth a violation of his free exercise rights under the Virginia Constitution.

The Court also concluded that the teacher’s allegations were sufficient to set forth a statutory free-exercise claim under the Virginia Religious Freedom Restoration Act, which provides that “[n]o government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability” unless the government demonstrates that “‘application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) [is] the least restrictive means of furthering that compelling governmental interest.’”

The Court also found that the teacher alleged a sufficient

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free speech claim under a compelled speech analysis, under which the teacher challenged the attempt by the government to ‘compel an individual to create speech [he] does not believe’ and to ‘utter what is not in [his] mind’ about a question of political and religious significance.” The Court noted that, under the compelled speech analysis, the teacher alleged that the school terminated him “not because of what he said but because of what he refused to say.”

In this regard, the Court noted that the constitutional right of free speech “includes both the right to speak freely and the right to refrain from speaking at all.” The Court stated that “[i]t is a ‘cardinal constitutional command’ that government coercion, even when indirect, cannot constitutionally compel individuals to ‘mouth support’ for religious, political, or ideological views that they do not believe “ . . . and that “the freedom to speak or not to speak generally endures ‘regardless of whether the government considers [the] speech sensible and well intentioned or deeply ‘misguided’ and likely to cause ‘anguish’ or ‘incalculable grief.’” Indeed, the Court stated, “[f]orcing creedal conformity is more pernicious than silencing dissent because the former seeks to monopolize the marketplace of ideas by making everyone in the market say the same thing about the same idea.”

In the context of this case, the Court recognized that public schools have the right to require its teachers to teach the curricular materials for the classes the teachers are employed to teach. But, with respect to the compelled use of a student’s preferred pronouns, the Court noted that “[t]he coerced masculine pronouns had nothing to do with any curricular topic related to [what the teacher here taught]

the French language.” Moreover, the Court recognized that “[t]he concept of ‘gender identity’ is among many ‘controversial subjects’ that are rightly perceived as ‘sensitive political topics’” and that “[t]he ideological nature of gender-identity-based pronouns involves a palpable ‘struggle over the social control of language in a crucial debate about the nature and foundation, or indeed real existence, of the sexes’ . . . [c]ompelling an educator’s ‘speech or silence’ on such a divisive issue would cast ‘a pall of orthodoxy over the classroom’ on a topic that has ‘produced a passionate political and social debate’”.

The Court rejected the school’s argument that it could compel the teacher to use government-mandated pronouns because “doing so was among the ‘official duties’ that he owes to the School Board”, stating that, if that were true, “the government could define away a teacher’s right against compelled speech by unilaterally deeming such speech a compulsory official duty.”

The Court also found that the teacher alleged a sufficient due process claim because the school’s purported personal pronoun policy did not adequately put the teacher on notice that not using third-person pronouns constituted an unlawful discriminatory act against transgender students.

Finally, the Court determined that because the teacher asserted legally viable free exercise, free speech, and state Religious Freedom Restoration Act claims, the teacher necessarily alleged a sufficient breach of contract claim against the school as well.

Two justices filed a separate opinion concurring in part, and three justices filed a partial concurring and partial dissenting opinion.



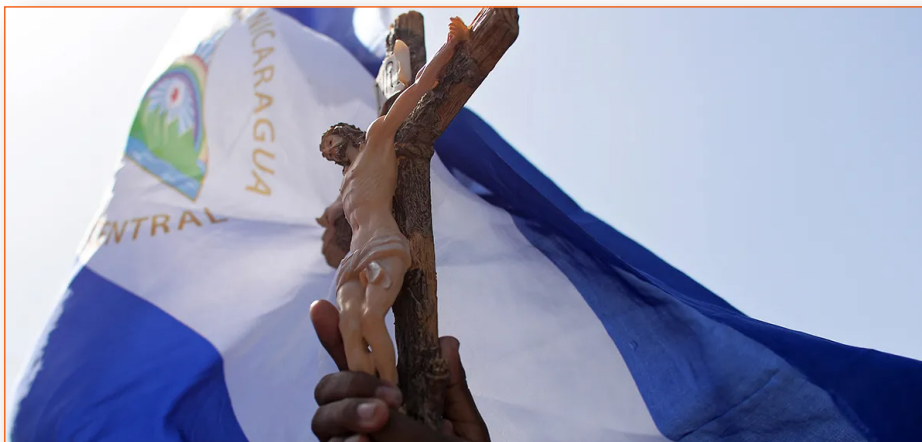
FEATURE ARTICLE



ABOUT THE AUTHOR

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Nicaragua: A Crisis of Religious Liberty in Latin America

By **Kristina Hjelkrem**

In 2019, the United States Commission on International Religious Freedom published data showing that 46% of Nicaraguans are Catholic and 33% identify as Protestant Christians¹. An overwhelming proportion of Nicaragua's population professes a faith, and a large majority identifies as Christian. Nicaraguan President Daniel Ortega and his wife, Vice President Rosario Murillo, publicly identified as Catholic since 2005. For a Western country, these numbers should not surprise. How is it then that in this Western country with a Christian majority, a bishop of the Catholic Church was sentenced to 26 years in prison for “propagating false news” and “undermining national integrity”?

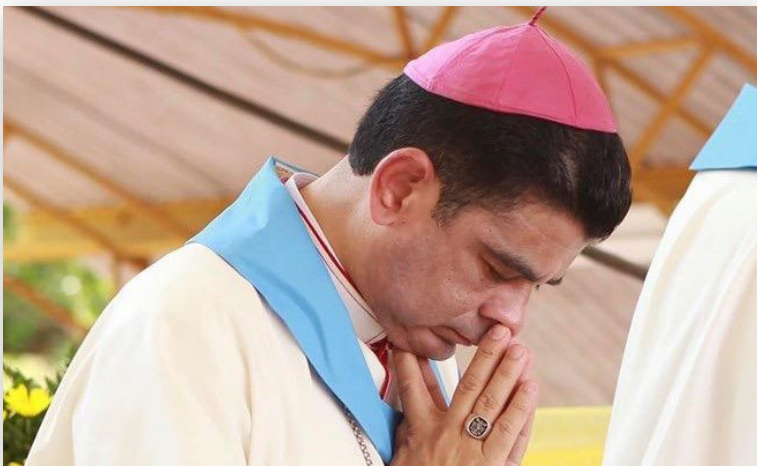
Nicaragua has been in turmoil since April 2018 with the eruption of civil unrest and mass protests against the government. The state's reaction to this social dissent has been the use of violence and repression, strongly condemned by defenders of

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human rights and civil society organizations². Religious leaders also raised their voices calling for peace and justice. Amid the ongoing human rights crisis, the Ortega government, enraged by the Catholic Church's efforts, initiated a systematic persecution of the Church. Nicaraguan authorities orchestrated attacks against religious leaders, religious orders, and places of worship, as well as Catholic charitable and educational institutions, including universities, non-profit organizations, and media. All these attacks against religious institutions have occurred despite the government previously inviting the Catholic Church to act as a mediator in the national dialogue process between the regime and the opposition.

The Nicaraguan government's persecution of people of faith is a clear violation of its population's right to religious freedom and shows how the protection of personal freedoms can never be taken for granted. The Nicaraguan ruling party is acting under the view that churches and religious institutions are the last remaining obstacle to the government's objective of totalitarian social control. Bishop Rolando Álvarez, reading the abundance of signs pointing to totalitarianism in Nicaragua, refused to be cowed into silence.



Bishop Rolando Álvarez

THE PERSECUTION OF BISHOP ROLANDO ÁLVAREZ

Bishop Rolando Álvarez has been persecuted by Nicaraguan authorities due to the pastoral work he has carried out: the active defense – based on Christian principles – of human dignity and freedoms. The overt persecution of the bishop started on August 4, 2022, when police agents prevented him from leaving his residence, the Episcopal Curia of Matagalpa, to celebrate mass at a nearby cathedral. With the bishop were other members of the Catholic Church, including laypeople, seminarians, and priests. Some laypeople were allowed to leave the Curia, but the bishop,

seminarians, priests, and a cameraman were forced to remain there for 15 days.

During the early morning hours of August 19, 2022, the police forcibly entered the Episcopal Curia of Matagalpa to arbitrarily arrest bishop Rolando Álvarez and seven other members of the Catholic Church. Álvarez was transferred to Managua, to his family residence, and placed under house arrest by the police. No arrest warrant was shown at any time.

Bishop Rolando Álvarez considered it his religious duty to preach in his diocese of Matagalpa about human dignity, as well as to denounce the violations of human rights that contradict God-given freedoms. He preached human rights and freedom according to the teachings of the social doctrine of the Catholic Church³. Despite being harassed and threatened several times by the government for his preaching, Álvarez continued to speak from the pulpit, adhering to his message of faith and justice. Unfortunately, with the ultimate aim of silencing him, the Ortega government illegally detained him and sentenced him to prison with egregious violations of due process of law, by convicting him in absentia, with no access to the charges and the evidence leveled against him, and without the presence of his attorney to act in his defense.

In the mock criminal process that followed, the bishop was prevented from appointing his attorney until late in the proceedings, and once he was able to appoint counsel of his choice, she was not allowed access to the case file or the accusations against the bishop. To this day the specific facts and charges brought against the bishop have not been disclosed, even to him. The meager case file documents that were released paint a clear picture of the bishop being investigated for his homilies delivered in churches and posted online. The sermons included expressions such as:

“What does God want in my personal, family, marital life? What does God want in my work life, in social, political and economic life? What does God want from our country?”⁴

“[...] and they can take many things away from us, of course, but the dignity that comes from the Father and the Son and the Holy Spirit of whom we are the temple, and the freedom that Christ has given us, because the apostle says, ‘Christ has set us free to be free,’ no one and nothing can take that inner freedom away from us.”⁵

The defense of the bishop in the criminal proceedings was constantly obstructed and directly impeded by court officials.

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On February 9, 2023, while awaiting trial, Álvarez was taken out of prison and transferred to the airport to be expelled from the country. Nicaraguan authorities did not inform Bishop Álvarez why he was being placed on a plane or where he would be going. Álvarez refused to board the plane. It was at this time that he became a visible, and international, sign of the injustices being committed in Nicaragua.

A PRISONER OF CONSCIENCE

On February 10, 2023, the bishop was condemned in a sham trial at which he was not present and at which he, therefore, could not testify nor cross-examine witnesses. The decision condemning the bishop has not been published or made known to him or his lawyer. Álvarez was convicted for “undermining national integrity” and “propagation of false news through information and communication technologies.”

In addition to sentencing him to 26 years in prison, the decision also declared the loss of his nationality and his rights as a citizen, in perpetuity, according to an unconstitutional law that has not been duly approved by the legislature.

An appeal to the Managua Court of Appeals against the conviction resulting from the sham trial was denied on procedural grounds for failing to challenge specific parts of the judgment, which the court had not provided. There is no further effective legal recourse available to the bishop in Nicaragua. Álvarez is the first Nicaraguan bishop to become a prisoner of conscience serving a long-term sentence. The bishop spent 11 months in prison, deprived of contact with his legal representation.

During that time, ADF International filed a complaint on his behalf, seeking justice for the bishop at the Inter-American Commission on Human Rights denouncing multiple violations of human rights, including that of his rights to freedom of conscience, religion, and expression.

As the bishop remained imprisoned, ADF International and other advocates raised international pressure for the release of the bishop. The day after the United States Congress released the notice of a congressional hearing on Bishop Álvarez’s case (“An Urgent Appeal to Let Bishop Álvarez Go”⁶, which took place on November 30, 2023), Nicaraguan authorities published pictures and videos of Álvarez in prison, along with a press release stating that “the conditions of confinement [of Bishop Álvarez] are preferential and the regime of medical consultations, family visits, remission and receipt of packages is strictly complied with, contrary to what slanderous campaigns would have us believe.”⁷

The photo op was little more than a boldface sham. Reliable sources have assured those advocating for the bishop that Álvarez’s prison conditions were abysmal and that the State was not in compliance with its human rights obligations. Based on the testimonies received about Álvarez’s prison conditions, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights ordered Nicaragua to release the bishop and demanded that, until then, his right to health, life, and personal integrity be guaranteed⁸.

On January 14, 2024, Bishop Rolando Álvarez, another bishop, 15 priests, and two seminarians were illegally expelled from Nicaragua and sent to the Vatican. Official announcements from the Nicaraguan government stated that the sending of the prisoners to the Vatican was achieved “in fulfillment of Agreements of Good Faith and Good Will, which seek to promote understanding and improve communication between the Holy See and Nicaragua, for Peace and Good”⁹. Reliable sources have also confirmed that the expulsion of the bishop and the other prisoners to the Vatican was the result of delicate negotiations between the Nicaraguan government and the Holy See.

While Bishop Álvarez has thankfully been released from his imprisonment in Nicaragua, his sufferings have not ended. He is currently recovering from this ordeal and recouping his health, and he has been deprived of the right to return to his homeland of Nicaragua and to freely exercise his ministry in Matagalpa. On February 27, 2024, the Inter-American Commission on Human Rights notified the Nicaraguan government of the complaint presented by ADF International on behalf of Bishop Álvarez. The Nicaraguan government must submit a response within the next four months. After that time, the Commission will be able to rule on the admissibility and merits of the case.

Bishop Álvarez remained faithful to his witness to the Christian message, even at great cost to himself. It is a blessing to all of society that there exist courageous individuals willing to give their lives for freedom and truth, denouncing the abuses of authoritarianism. This case sheds light on a terrible fact: religious freedoms are not guaranteed in the Western world. A totalitarian regime will stop at nothing to silence dissent, having no qualms about the imprisonment of peaceful religious leaders. For the sake of freedom in Latin America, we hope that the Inter-American Commission on Human Rights condemns Nicaragua and upholds the protection of all human rights, including key rights to freedom of expression and religion.

– continued

ENDNOTES

1. United States Commission on International Religious Freedom. Annual Report 2020, pg. 85 Available at: www.uscirf.gov/sites/default/files/USCIRF%202020%20Annual%20Report_Final_42920.pdf
2. Inter-American Commission on Human Rights. "Closure of civic space in Nicaragua". OEA/Ser.L/V/II. Doc. 212/23. September 23, 2023.
3. The compendium of the Social Doctrine of the Catholic Church, issued in 2004 and whose introduction expressly states that "[t]his document is intended first of all for Bishops," reaffirms the perennial Christian defense of human dignity and reaffirms the support of the Catholic Church for the movement of the "identification and proclamation of human rights." This is also evidenced by the fact that it devotes the entire third chapter to "the human person and human rights," of which section IV concentrates on "human rights". Compendium of the Social Doctrine of the Church, to His Holiness Pope John Paul II, Master of Social Doctrine and Evangelical witness to justice and Peace. 2004. Available at: www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html.
4. "Monseñor Rolando Álvarez insiste en que la política es para 'servir al pueblo' y no para lucrarse." Artículo 66. October 18, 2020. Free English translation. Original in Spanish "¿Qué es lo que Dios quiere en mi vida, personal, familiar, matrimonial? ¿Qué es lo que Dios quiere en mi vida laboral, en la vida social, política y económica? ¿Qué quiere Dios de nuestro país?". Available at: www.articulo66.com/2020/10/18/monsenor-rolando-alvarez-politicos-nicaragua/.
5. "Monseñor Álvarez pide un milagro para vivir en libertad, sin presos políticos y exiliados." 100 Noticias Nicaragua. January 20, 2022. Free English translation. Original in Spanish "Y nos pueden quitar muchas cosas claro, pero la dignidad que procede del Padre y del Hijo y del Espíritu Santo del que somos templo, y la libertad que Cristo que nos ha dado por que dice el apóstol "para ser libres nos liberó Cristo", esa libertad interior nadie ni nada nos la puede arrebatar". Available at: www.youtube.com/watch?v=0r632HD_ERg.
6. Subcommittee on Global Health, Global Human Rights and International Organizations' hearing "An Urgent Appeal to Let Bishop Alvarez Go". Foreign Affairs Committee. United States Congress. Available at: <https://foreignaffairs.house.gov/hearing/part-2-the-martyrdom-of-bishop-alvarez-nicaraguas-prisoner-of-conscience/>.
7. "(VIDEO Y FOTOS): Vivencia de Rolando Álvarez en el Sistema Penitenciario Nacional". El 19 Digital. November 28, 2023. Free English translation. Original in Spanish: "las condiciones de reclusión son preferenciales y se cumple estrictamente con el régimen de consultas médicas, visitas familiares y recibimiento de paquetes, contrario a lo que campañas calumniosas pretenden hacer creer" Available at: www.el19digital.com/articulos/ver/titulo:147011-video-y-fotos-vivencia-de-rolando-alvarez-en-el-sistema-penitenciario-nacional?cf_chl_tk=7IcTq7OkGqCGf_dX6pr_WXGvArxNdKuoZt9iuxcaD7c-1701318891-0-gaNycGzND6U.
8. IACHR grants precautionary measures to Rolando José Álvarez Lagos, bishop of Matagalpa, in Nicaragua: "CIDH otorga medidas cautelares a Rolando José Álvarez Lagos, obispo de Matagalpa, en Nicaragua". OAS. April 14, 2023. Available at: www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/064.asp. IACHR Court extends provisional measures for Monsignor Álvarez and orders his immediate release: "Corte IDH amplía medidas provisionales a monseñor Álvarez y ordena su libertad inmediata". Artículo 66. June 28, 2023. Available at: www.articulo66.com/2023/06/28/corte-idh-medidas-provisionales-monsenor-alvarez-ortega-libertad/.
9. The Government of Nicaragua and the Holy See agree to send to the Vatican the bishops, priests and seminarians imprisoned in Nicaragua: "Gobierno de Nicaragua y Santa Sede acuerdan envío de Obispos, Sacerdotes y Seminaristas". January 14, 2024. Available at: www.el19digital.com/articulos/ver/titulo:148277-gobierno-de-nicaragua-y-santa-sede-acuerdan-envio-de-obispos-sacerdotes-y-seminaristas.

NEWS *and* ANNOUNCEMENTS



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RESOURCES

LAW RESOURCES

Federal Statutes

Religious Freedom Restoration Act of 1993 – 42 U.S.C. § 2000bb, et seq.

Religious Land Use and Institutionalized Persons Act (RLUIPA) – 42 U.S.C. § 2000cc, et seq.

Equal Access Act – 20 U.S.C. § 4071

Office of the U.S. Attorney General

October 6, 2017 Memorandum: Federal Law Protections for Religious Liberty.

www.justice.gov/crt/page/file/1006786/download

October 6, 2017 Memorandum: Implementation of Memorandum on Federal Law Protections for Religious Liberty.

www.justice.gov/crt/page/file/1006791/download

July 30, 2018 Memorandum: Religious Liberty Task Force.

www.justice.gov/opa/speech/file/1083876/download

U.S. Department of State

February 5, 2020 Declaration of Principles for the International Religious Freedom Alliance.

www.state.gov/declaration-of-principles-for-the-international-religious-freedom-alliance/

2019 Annual Report of the U.S. Commission on International Religious Freedom.

www.uscifr.gov/sites/default/files/2019USCIRFAnnualReport.pdf

July 26, 2019 2nd Annual Ministerial to Advance Religious Freedom: Remarks by Vice President Pence.

<https://trumpwhitehouse.archives.gov/briefings-statements/remarks-vice-president-pence-2nd-annual-religious-freedom-ministerial/>

U.S. Department of Justice and U.S. Department of Education

January 16, 2020 Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools.

www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

U.S. Department of Labor

August 10, 2018 Directive 2018-03: To incorporate recent developments in the law regarding religion-exercising organizations and individuals.

www.dol.gov/ofccp/regs/compliance/directives/dir2018_03.html

May 2020 Guidance Regarding Federal Grants and Executive Order 13798 – Equal Treatment in Department of Labor Programs for Religious Organizations.

www.dol.gov/agencies/oasam/grants/religious-freedom-restoration-act

U.S. Department of Health and Human Services

Final Regulations Protecting Statutory Conscience Rights in Health Care 45 CFR Part 88

www.hhs.gov/sites/default/files/final-conscience-rule.pdf

U.S. Department of Veterans Affairs

VA Directive 0022, Religious Symbols in VA Facilities.

Arizona Statutes

Arizona Freedom of Religion Act –
Ariz. Rev. Stat. § 41-1493.01

Other Resources

American Charter of Freedom of Religion and Conscience.
<http://www.americancharter.org>

RESOURCES

CLE VIDEOS

2017 ANNUAL CONVENTION CLE

Introduction: Religious Liberty Law Section CLE at the State Bar of Arizona 2017 Annual Convention, held on June 16, 2017

Presenter: David Garner (Osborn Maledon, P.A.)

[\[watch video \]](#)

Historical foundations of religious liberty law

Presenter: Professor Owen Anderson (Arizona State University)

[\[watch video \]](#)

Debate: Resolving conflicts between religious liberty and anti-discrimination laws

Participants: Jenny Pizer (Lambda Legal), Kristen Waggoner (Alliance Defending Freedom), Alexander Dushku (Kirton McConkie)

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Panel Discussion: High profile religious liberty law issues

Moderator: Robert Erven Brown (Church & Ministry Law Group at Schmitt Schneck Even & Williams PC)

Panelists: Eric Baxter (The Becket Fund for Religious Liberty), Alexander Dushku (Kirton McConkie), Will Gaona (ACLU of Arizona), Jenny Pizer (Lambda Legal), Professor James Sonne (Stanford Law School), and Kristen Waggoner (Alliance Defending Freedom)

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