

OCT 15 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY MICHAEL ZIMMERMAN,

Defendant - Appellant.

No. 08-50298

D.C. No. 2:06-cr-00096-FMC-2

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Florence-Marie Cooper, District Judge, Presiding

Argued and Submitted October 7, 2009  
Pasadena, California

Before: PREGERSON, REINHARDT and WARDLAW, Circuit Judges.

Gregory Michael Zimmerman (“Zimmerman”) appeals from the district court’s denial of his claim under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 (“RFRA”), and its order that he submit to DNA testing as a condition

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

of his probation. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

(1) The district court appropriately followed the mandate in *United States v. Zimmerman*, 514 F.3d 851 (9th Cir. 2007) (“*Zimmerman I*”). There, we remanded with instructions to the district court to “determine the precise scope of Zimmerman’s beliefs”; to “determine whether [any] additional beliefs [aside from his beliefs about blood] are also religiously based”; and “to determine whether Zimmerman’s religious beliefs are sincerely held.” *Id.* at 854. The district court followed these instructions when it concluded that, although Zimmerman had religious beliefs, his belief that drawing his blood or using other bodily fluids for the purpose of DNA testing is not one of his sincerely held religious beliefs.

(2) The district court’s finding that Zimmerman’s beliefs about the testing of his DNA were not sincerely held religious beliefs is not clearly erroneous. *See Zimmerman I*, 514 F3d at 854 (whether beliefs are sincerely held is a question of fact); *U.S. v. Becerra-Garcia*, 397 F.3d 1167, 1172 (9th Cir. 2005) (factual findings reviewed for clear error); *see also United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998) (factual findings accepted unless “we are left with the definite and firm conviction that a mistake has been committed”). The district court examined Zimmerman about his willingness to give bodily fluids for medical

purposes and found that Zimmerman voluntarily parts with biological fluids in other circumstances. Moreover, the district court had the opportunity to observe Zimmerman, and we are “especially reluctant to set aside a determination . . . that depends wholly on a credibility finding.” *Becerra-Garcia*, 397 F.3d at 1172.

(3) Having found that Zimmerman’s beliefs about DNA testing were not sincerely held religious beliefs, the district court was not required to make findings as to the remaining elements of Zimmerman’s RFRA claim. *Id.* (“[I]f the district court determines that Zimmerman’s beliefs are religious and sincere, it must then ask whether his exercise of religion will be substantially burdened by giving up a DNA sample.” (emphasis added)).

**AFFIRMED.**