

CASE NO. 08-10358

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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JOSE MERCED, President, Templo Yoruba Omo Orisha Texas, Inc.

*Plaintiff – Appellant*

v.

KURT KASSON; MIKE COLLINS; BOB FREEMAN; CITY OF EULESS

*Defendants – Appellees*

Cons w/ 08-10506

JOSE MERCED, President, Templo Yoruba Omo Orisha Texas, Inc.

*Plaintiff – Appellee*

v.

CITY OF EULESS

*Defendant – Appellant*

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On appeal from the United States District Court for the Northern District of Texas  
(Honorable John H. McBryde, U.S.D.J.)

Case No. 4:06-CV-891

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**REPLY BRIEF OF APPELLEE,  
CITY OF EULESS**

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made so the judges of this court may evaluate possible disqualification or recusal.

Jose Merced (Plaintiff-Appellant)

Templo Omo Orisha Texas, Inc.

(Plaintiff – Appellant is President of this religious organization)

City of Euless (Defendant – Appellee)

Kurt Kasson (Defendant – Appellee)

Mike Collins (Defendant – Appellee)

Bob Freeman (Defendant – Appellee)

Professor Douglas Laycock (Attorney for Plaintiff – Appellant)

Eric Rassbach (Attorney for Plaintiff – Appellant)

Hannah Smith (Attorney for Plaintiff – Appellant)

Lori Windam (Attorney for Plaintiff – Appellant)

Luke Goodrich (Attorney for Plaintiff – Appellant)

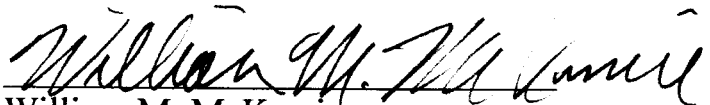
The Becket Fund for Religious Liberty (Law Firm for Plaintiff – Appellant)

William M. McKamie (Attorney for Defendant – Appellee)

Bradford E. Bullock (Attorney for Defendant – Appellee)

William Andrew Messer (Attorney for Defendant – Appellee)

Law Offices of William M. McKamie, P.C. (Law Firm for Defendant – Appellee)



William M. McKamie

Attorney in Charge for Defendants –  
Appellees

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## ARGUMENT

Merced has spent virtually his entire brief and reply brief operating on the presumption that it is a foregone conclusion that he shifted the burden to the City of Eules and that Eules failed to meet **its** burden.<sup>1</sup> Merced spent virtually no time explaining the dearth of evidence supporting his claims, his failure to object properly, his failure to preserve his record, and the fact that not only did the trial court find that Merced failed to establish a prima facie case and shift the burden to the City, but that even if he had, it **still** found that the City established evidence of a compelling interest in the neutral enforcement of its facially neutral animal control ordinances.

The City of Eules is entitled to attorney's fees because Merced utterly failed to carry **his** burden – that is, he established no grounds for his claim. The City did not craft ordinances giving city officials the unbridled discretion to distinguish between “necessary and “unnecessary” killings. It simply allows some for any purpose and prohibits others for any purpose. Most importantly though, Merced established no evidence whatsoever that the City has actually treated him any differently than it has treated anyone else who wanted to kill 39 animals at one time in their home.

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<sup>1</sup> Because the City has not cited additional authority and only makes a brief argument as to why it should be granted its attorney's fees, it has foregone a Table of Authorities section as well as a summary of its argument and another statement of facts.

Merced accuses the City of crafting a straw man argument, but he is the one who crafts the ultimate straw man – unless a city outlaws veterinarians and prohibits the killing of dangerous or rabid animals, it must grant him a permit so he can kill virtually any number of animals in his home. Merced’s solution, however would **necessarily** require the City ask the applicant whether the purpose of the killing is religious or not. As he concedes in his brief, after all, there are at least some legitimate considerations in regulating the killing of animals.

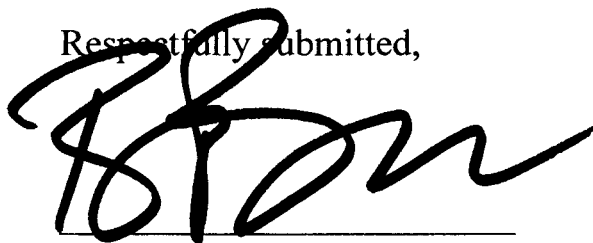
What constitutes a religious killing? Must the religious practice be recognized by some governing body of the religion? Must the permit be granted for the killing of **any** animal a purportedly religious adherent says is necessary for the practice of his religion? After all, the City has no evidence that keeping and killing a Siberian tiger is dangerous – it would just rely on common sense for that proposition.

These are the questions that Merced left unanswered for the trial court and it is because he brought a groundless claim based on an utter lack of evidence that the trial court abused its discretion when it denied Eules’ application for attorney’s fees.

**CONCLUSION**

Eules asks that this issue be remanded back to the trial court for consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. McKamie', written over a horizontal line.

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