23-131

In the United States Court of Appeals
for the Second Circuit

FRANKLIN LOVING,

Plaintiff-Appellant,

v.

ROBERT MORTON, Acting Superintendent of Downstate Corr. Facility,

Defendant-Appellee,

SUPERINTENDENT, DOWNSTATE CORR. FACILITY; M.D. JOHN OR JANE DOE; and NORIEL DEGUZMAN, Physician Assistant, Downstate Corr. Facility,

Defendants.

Appeal from the United States District Court for the
Southern District of New York, No. 3:20-cv-11135

UNOPPOSED BRIEF *AMICUS CURIAE* OF CLEAR, THE JEWISH COALITION FOR RELIGIOUS LIBERTY, AND THE SIKH COALITION IN SUPPORT OF APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, proposed *amici* state that they have no parent corporation and no stock.

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INTERESTS OF THE *AMICI*[1]

Creating Law Enforcement Accountability & Responsibility (CLEAR) is a project at City University of New York School of Law. CLEAR's mandate is to support Muslim and all other communities and movements in the New York City area and beyond that are targeted by local, state, or federal government agencies under the guise of national security and counterterrorism. CLEAR was founded in 2009 and is housed at the City University of New York School of Law, within Main Street Legal Services, Inc., the clinical arm of the law school. CLEAR represented the plaintiffs in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), at the heart of this litigation.

The Jewish Coalition for Religious Liberty is a nondenominational organization of Jewish communal and lay leaders who seek to protect the ability of all Americans to freely practice their faith and to foster cooperation between Jewish and other faith communities in the public square.

The Sikh Coalition is a nonprofit and nonpartisan organization dedicated to ensuring that members of the Sikh community in America can practice their faith. The Sikh Coalition defends the civil rights and civil liberties of Sikhs by providing

[1] All parties consented to the filing of this brief. *Amici* state that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person contributed money that was intended to fund preparing or submitting the brief.

direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement amongst Sikh Americans. The organization also educates community members about their legally recognized free exercise rights and works with public agencies and officials to implement policies that accommodate their deeply held beliefs. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001.

These organizations have an interest in ensuring that religious minorities' free exercise of religion in prison is protected.

SUMMARY OF THE ARGUMENT

The Second Circuit should re-examine its precedent to allow for monetary damages for individual-capacity suits under the Religious Land Use and Institutionalized Persons Act (RLUIPA) for three reasons. First, RLUIPA's text follows the same approach as 42 U.S.C. § 1983 and should be interpreted to afford the same types of broad remedies. Before *Employment Division of Oregon v. Smith*, 494 U.S. 872 (1990), reduced the availability of free exercise claims, free exercise claims for monetary damages were frequently brought under § 1983. RLUIPA simply restored this way of vindicating rights violations to incarcerated religious claimants.

Second, monetary damages are important to protect against a prison's strategic mooting of a case and to ensure that prisons receive court guidance on the legality of their actions. Without damages, RLUIPA cases are often mooted before a plaintiff can receive relief.

Third, individual-capacity damages under RLUIPA are vital to protect religious minorities in prisons. When religious minorities are not able to bring claims for damages, prison officials often lack incentives to sufficiently protect these religious rights. Incarcerated religious minorities are therefore disproportionately at risk of having their religious freedoms infringed upon absent a damages remedy to safeguard those rights.

ARGUMENT

I. RLUIPA mirrors Section 1983's language, which routinely provided for damages remedies pre-*Smith*.

Congress enacted RLUIPA to establish broad protections for religious claimants, including prisoners. Before *Employment Division v. Smith*, 494 U.S. 872 (1990), courts routinely permitted religious claimants to vindicate their free-exercise rights under 42 U.S.C. § 1983. *Employment Division v. Smith* stripped § 1983 of its protective force by holding that neutral laws of general applicability do not violate one's free exercise rights. In response, Congress enacted RLUIPA, adopting language that tracks § 1983's remedies language and restores the pre-*Smith* protections provided under the previous § 1983 constitutional regime. This

regime of damages remedies under § 1983 provided an important safeguard against governments strategically mooting religious claimants' cases.

Under RLUIPA a court may award propriate relief against "any other person acting under color of State law." 42 U.S.C. § 2000cc-5(4)(A)(iii). This language mirrors § 1983's language, which provides a cause of action against "every person who [acts] under color of any statute . . . of any State." 42 U.S.C. § 1983. As the Supreme Court recently held, "under color of law" "draws on one of the most well-known civil rights statutes: 42 U.S.C. § 1983." *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020).[2] Because it "uses the same terminology as § 1983 in the very same field of civil rights law, it is reasonable to believe that the terminology bears a consistent meaning." *Id.* at 490–91 (internal quotation marks and citation omitted).

[2] To be sure, *Tanzin* involves the Religious Freedom Restoration Act (RFRA), rather than RLUIPA. But, as Appellant argues, the statutes should be interpreted the same. *See* Appellant's Br. 11–42; *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005). The Supreme Court has described RLUIPA and RFRA as "sister statute[s]" and routinely used RFRA and RLUIPA's case law interchangeably in interpreting the two statutes. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014); *see, e.g.*, *Ramirez v. Collier*, 142 S. Ct. 1264, 1278 (2022) (citing RFRA case in interpreting RLUIPA); *Holt v. Hobbs*, 574 U.S. 352, 362 (2015) (same). This Circuit has stated that RLUIPA ''mirrors RFRA[,]'" *Sabir v. Williams*, 52 F.4th 51, 60 n.5 (2d Cir. 2022) (quoting *Holt*, 574 U.S. at 357), and recognized that "courts commonly apply RFRA case law to issues arising under RLUIPA and vice versa." *Tanvir v. Tanzin*, 894 F.3d 449, 462 n.8 (2d Cir. 2018); *see also Redd v. Wright*, 597 F.3d 532, 535 n.2 (2d Cir. 2010) (similar); *Hankins v. Lyght*, 441 F.3d 96, 111 n.3 (2d Cir. 2006) (Sotomayor, J. dissenting) ("RLUIPA's remedial provision is virtually identical to RFRA's.").

"This availability of damages under § 1983 is particularly salient" given RLUIPA's origins. *Id.* at 492. RLUIPA, like RFRA, "made clear that it was reinstating both the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim." *Id.* at 492 (emphasis in original). In discussing the text that ultimately became RLUIPA, the House Judiciary Committee stated that the language intended to "creat[e] a private cause of action for damages, injunction, and declaratory judgment, and creat[e] a defense to liability, and provid[e] for attorneys' fees." House Report No. 106-219, Religious Liberty Protection Act of 1999, at 29 (July 1, 1999). The Committee also clarified that "[i]n the case of violation by a state, the Act must be enforced by suits against state officials and employees." *Id.*

"There is no doubt that damages claims have always been available under § 1983 for clearly established violations of the First Amendment." *Tanzin*, 141 S. Ct. at 492 (citing *Sause v. Bauer*, 138 S. Ct. 2561 (2018) (per curiam) and *Murphy v. Mo. Dep't of Corr.*, 814 F.2d 1252, 1259 (8th Cir. 1987)); *see DeMarco v. Davis*, 914 F.3d 383, 389–90 (5th Cir. 2019) (recognizing that damages may be available under § 1983 for a prison's destruction of an inmate's Bible). Before *Smith*, courts often entertained damages suits under § 1983 for claims similar to those vindicated by RLUIPA. For example, this Court allowed for the possibility of damages for a prison's failure to provide religious prisoners pork-free soap,

Beyah v. Coughlin, 789 F.2d 986, 989 (2d. Cir. 1986), and for a prison official's failure to recognize a religious group. *Patrick v. LeFevre*, 745 F.2d 153, 156 (2d Cir. 1984). The Fifth and Ninth Circuits did the same for the forceable cutting of a religious beard. *McFadden v. Lucas*, 713 F.2d 143, 148 (5th Cir. 1983); *Swift v. Lewis*, 901 F.2d 730, 733 (9th Cir. 1990). Similarly, the Fourth Circuit recognized that § 1983 permitted damages if a Muslim prisoner was denied permission to distribute Arabic dictionaries to assist in the study of the Qur'an, *Brown v. Peyton*, 437 F.2d 1228, 1233 (4th Cir. 1971), while the Seventh Circuit recognized damages for a Christian prisoner denied access to the Bible and the right to visit the prison chapel. *Crowder v. Lash*, 687 F.2d 996, 1001 (7th Cir. 1982). Suits for damages on religious claims were also ubiquitous in the district courts.[3] RLUIPA intended to restore this state of affairs after *Smith*'s weakening of free-exercise protections.

[3] *See*, *e.g.*, *Ross v. Coughlin*, 669 F. Supp. 1235, 1243 (S.D.N.Y. 1987) (allowing damages for Jewish prisoners who were denied a kosher diet and aspects of their religious garb); *Harris v. Lyons*, No. 89-cv-3131, 1989 WL 52521 (E.D. Pa. 1989) (permitting damages claims for denial of religious counseling and services); *Battle v. Anderson*, 376 F. Supp. 402, 420 (E.D. Okla. 1978) (acknowledging a right for Muslim inmates denied communal prayer to sue for damages despite finding contributing fault in that instance).

II. The possibility of damages is an important safeguard against the mooting of meritorious religious claims.

Under § 1983, the possibility of at least nominal damages provided an important mechanism for free exercise claims to proceed even if claims for injunctive relief were rendered moot. In this Circuit, the availability of a damages remedy kept alive the claim of a religious inmate who had been denied access to prayer services after his claim for injunctive relief was mooted by his release. *Young v. Coughlin*, 866 F.2d 567, 568–70, 568 n.1 (2d Cir. 1989); *see also Patrick v. LeFevre*, 745 F.2d 153, 156 n.2 (2d Cir. 1984) (damages claim for prison's refusal to recognize Nation of Islam as a valid religion not mooted by prisoner's transfer). So too in the Fifth Circuit, a group of prisoners could pursue damages for being denied access to religious services in prison after their request for injunctive relief was mooted by their transfers and releases. *Beck v. Lynaugh*, 842 F.2d 759, 762 (5th Cir. 1988); *see also Kauffman v. Johnston*, 454 F.2d 264, 266 (3d Cir. 1972) (similar); *United States ex rel. Jones v. Rundle*, 453 F.2d 147, 150 (3d Cir. 1971) (similar). And in the Eleventh Circuit, a damages claim prevented transfer from mooting the case of a prisoner who adhered to the Nation of Islam for a prison's failure to accommodate his December Ramadan observance. *Diaab v. Green*, 794 F.2d 685 (11th Cir. 1986) (unpublished) (*appended to Saleem v. Evans*, 866 F.2d 1313, 1315 (11th Cir. 1989)).

By contrast, when injunctive relief is the only relief available to a plaintiff, prisons can evade a merits determination by strategically mooting the case. For example, the Texas prison system litigated a pro se kosher diet case to judgment during the same time that it tried to settle a kosher diet case by a represented prisoner. *See Moussazadeh v. Tex. Dep't of Crim. Just.*, 703 F.3d 781, 786 (5th Cir. 2012); *Baranowski v. Hart*, 486 F.3d 112, 116 (5th Cir. 2007). The Florida prison system did the same, refusing for years to provide kosher diets to pro se litigants but then strategically attempting to moot the case when a prisoner was represented by counsel. *See Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 532 (11th Cir. 2013); *Gardner v. Riska*, 444 F. App'x 353, 354 (11th Cir. 2011); *Linehan v. Crosby*, No. 4:06-cv-225, 2008 WL 3889604, at *12–13 (N.D. Fla. Aug. 20, 2008).

And even if a prison does not intentionally moot a case, it can often escape liability for RLUIPA violations because the prisoner is released or transferred before a court reaches a final merits determination. *See, e.g.*, *Chesser v. Director, Fed. Bureau of Prisons*, No. 15-cv-1939, 2016 WL 1170448, at *2–4 (D. Colo. Mar. 25, 2016) (deeming a case moot when a Muslim inmate had been transferred before he sued the prison for denying him the right to communal prayer). Prisoners may spend years under offending policies yet still be unable to receive redress. Take, for example, the case of a Sikh prisoner who litigated a case for four years within this Circuit before he was released from prison. *Singh v. Goord*, No. 05-cv-

9680, 2010 WL 1875653, at *1, *5 (S.D.N.Y. Mar. 9, 2010), *report and recommendation adopted*, No. 05-cv-9680, 2010 WL 1903997 (S.D.N.Y. May 10, 2010). The court earlier in the litigation had agreed that the prison possibly violated RLUIPA. *Singh v. Goord*, 520 F. Supp. 2d 487, 508 (S.D.N.Y. 2007). But the final judgment came a year after his release, at which time the court held that his claims were moot. *Singh*, 2010 WL 1875653, at *3. Or consider the case of a Native American prisoner who litigated a RLUIPA case for three years before he was released. *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012). It took the courts an additional five years to issue a final judgment, only to hold that his RLUIPA claims were moot upon that release. *Id.* And recently, an inmate who was refused a kosher diet was released from prison during litigation and so barred from making a RLUIPA claim without the possibility of damages. *Quarles v. Thole*, No. 20-cv-697, 2022 WL 425362, at *3 (S.D. Ill. Feb. 11, 2022); *see Mitchell v. Denton Cnty. Sheriff's Office*, No. 4:18-cv-343, 2021 WL 4025800, at *8–9 (E.D. Tex. Aug. 6, 2021) (similar). These cases would have remained live if damages claims were permitted.

On the other hand, the specter of liability for unlawful conduct incentivizes prison officials to "err on the side of protecting" rights. *See Owen v. City of Independence*, 445 U.S. 622, 651–52 (1980). Even nominal damages would provide redress for "not easily quantifiable, nonpecuniary rights," like religious

privacy violations, by altering the relationship between the plaintiff and the defendant. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800, 801 (2021). And damages suits allow for more merits determinations and development of case law, providing clear guidance both to the violating prison itself and to other prisons in the same jurisdiction.

III. Individual-capacity damages under RLUIPA are vital to protect religious minorities in prisons.

Individual-capacity damages under RLUIPA are vital for protecting incarcerated religious claimants, particularly religious minorities. Loving's case is but one of many examples of how injunctive relief is insufficient to achieve RLUIPA's goal of providing broad protections for incarcerated religious claimants.

A. Religious minorities face particular challenges to their religious practice in prisons.

Religious minorities are particularly susceptible to infringements of their religious practice in prisons. Prison officials are less likely to be aware of the needs of religious minority groups, may be less motivated to dedicate resources to accommodate religious requests that come up less often, and may even be hostile to or skeptical of these beliefs and religious groups.

Religious minorities disproportionately suffer restrictions on their religious exercise. An analysis published in 2018 revealed that over half of all prisoner decisions involved religious minorities that were not Christian. Luke W. Goodrich

& Rachel N. Busick, *Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases*, 48 Seton Hall L. Rev. 353, 376 (2018). Moreover, a survey of federal cases from 2017–2019 showed that Muslim prisoners like Loving face myriad challenges practicing their faith in prisons, ranging from their religious dietary restrictions to prayer and Ramadan observance. *See* Muslim Advocates, *Fulfilling the Promise of Free Exercise for All: Muslim Prisoner Accommodation in State Prisons* 47–48 (July 2019), https://perma.cc/M8RX-BV97.

Prisons often fail to accommodate the religious practice of religious minorities because they are simply unfamiliar with minority faith requirements. Take, for example, the case of an Orthodox Jewish prisoner who was improperly denied kosher meals with rabbinical supervision, as mandated by his faith, because the prison official believed (mistakenly) that supervision was unnecessary to render the food kosher. *Estes v. Clarke*, No. 7:15-cv-155, 2018 WL 2709327, at *5–6 (W.D. Va. June 5, 2018). Another prison denied a Jewish prisoner a three-person self-guided Torah study group because it asserted that Jewish law required a minimum of ten people. *Ben-Levi v. Brown*, 136 S. Ct. 930, 934 (2016) (Alito, J., dissenting from denial of cert.). It did so even though he told the prison that studying in a smaller group was better than not studying in a group at all. *Id.* at 935. Or consider *Walker v. Baldwin*, where a prison forcibly cut a Rastafarian's

dreadlocks, claiming (implausibly) that they had "never heard of Rastafarianism, and they were unfamiliar with Rastafarian beliefs and practices." No. 3:19-cv-50233, 2022 WL 2356430, at *2 (N.D. Ill. June 30, 2022), *appeal pending*, No. 22-2342 (7th Cir.).

Prisons also have less incentive to adjust non-accommodating policies or update trainings to address minority faiths because they may rarely detain a prisoner of that faith. The failure to do so subjects religious minorities to infringements that majority religions do not face. For example, while Muslim practices generally forbid autopsies and cremation, many states automatically conduct autopsies on prisoners and have policies that default to cremation without a provision for religious beliefs. *See* Muslim Advocates, *supra*, at 23–24. Further, in this Circuit, the New York Department of Corrections and Community Supervision's *Religious Programs and Practices* directive makes no specific mention of halal or vegan dietary options for religious prisoners, and it makes no provision in its policy limiting individual prayer to private living quarters for religions that require the faithful to pray in ritually clean spaces.[4] *See* N.Y. Dep't of Corr. & Cmty. Supervision, *Religious Programs and Practices* 7, 11 (2015). And many other state prison systems have explicit policies for more common

[4] *See* Noushad Muneer, *How to Perform Salah (Ritual Prayer)*, Simply Islam Academy, https://perma.cc/N2VT-78S8.

religious practices while failing to delineate policies for other minority faiths. *See* Brenda S. Riley, *Religious Accommodations in Prison: The States' Policies v. the Circuit Courts*, Appendix A (Aug. 2019) (Ph.D. dissertation, Sam Houston State University) (detailing state policies on religious property, religious assembly, religious diet, religious grooming, and religious accommodation for pat and strip searches).

The failure of many prison guidelines to incorporate religious minorities' practices can lead to violations of their religious rights. For instance, because a prison only admitted a "Rastafarian exception" to dreadlocks, not other faiths, a member of the African Hebrew Israelites of Jerusalem was forced to cut his religiously worn dreadlocks. *See Grayson v. Schuler*, 666 F.3d 450, 452 (7th Cir. 2012). In this same vein, a prison policy did not list prayer oil as an approved item for Muslim inmates, so the prison wrongfully denied a Muslim prisoner's request for it. *Charles v. Verhagen*, 348 F.3d 601, 605 (7th Cir. 2003). And when state guidance did "not address the Sikh faith given the relatively low number of Sikhs incarcerated to date," a prison denied the Sikh prisoner a number of accommodations to which he was entitled. *Singh*, 520 F. Supp. 2d at 508. Prison officials are less likely to respect religious practices when policies do not account for them.

Often prisons will fail to dedicate resources to accommodate religious minorities based on cost and other administrative concerns that more prevalent religious groups would not face. For example, a prison in this Circuit denied a Sunni Muslim prisoner's request to pray and fast for Ramadan separate from Shi'ite Muslims, citing unsubstantiated security concerns and resource constraints. *Salahuddin v. Goord*, 467 F.3d 263, 275 (2d Cir. 2006). Similarly, a Muslim prisoner was improperly denied special Ramadan meals because the prison argued that it would take significant "administrative effort" and would increase costs. *Omaro v. O'Connell*, No. 6:14-cv-6209, 2016 WL 8668508, at *5–7 (W.D.N.Y. Nov. 4, 2016); *see Ali v. Stephens*, 822 F.3d 776, 796 (5th Cir. 2016) (denying a Muslim prisoner the ability to wear a kufi at all times, arguing without evidence that "every Muslim inmate will wear a kufi" if one prisoner is permitted to do so); *United States v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1341, 1349 (11th Cir. 2016) (denial of kosher meals for cost-containment); *see also Cotton v. Cate*, 578 F. App'x 712, 713 (9th Cir. 2014) (denial of Kemetic diet to Shetaut Neter practitioner to maintain "simple food service"); *Russell v. Pallito*, No. 5:15-cv-126, 2019 WL 2125101, at *12 (D. Vt. Jan. 7, 2019) (denial of halal requests in order to avoid "jealousy and security concerns amongst inmates"), *report and recommendation adopted*, 2019 WL 2125523 (D. Vt. May 15, 2019); *Estes*, 2018 WL 2709327, at *6–7 (denial of a kosher meal prepared in the presence of a rabbi).

At worst, religious minorities may face hostility, skepticism, or discrimination because their practices are less well-known than other religions. In one particularly shocking example of prison skepticism or outright hostility in this Circuit, prison officials severely limited the time a Sikh inmate could wear a kara, a steel bracelet he believed his faith required him to wear, to thirty minutes at a time during meals for fear it could be used as a weapon—even though the prison's own captain of security testified that it posed "no more of a security risk than a metal crucifix, which is allowed by the prison." *Singh*, 520 F. Supp. 2d at 500. That same prison also made it impossible for the Sikh inmate to wear his religiously mandated turban by denying the material for the turban, even though prisoners were permitted other, larger sheets and religious materials. *Id*. at 502. In the Fifth Circuit, a prison denied a Native American prisoner's ability to possess locks of his deceased parents' hair for religious reasons out of fear that the "privilege of receiving something other inmates are not allowed" could "breed animosity" with other prisoners. *Chance v. Tex. Dep't of Crim. Just.*, 730 F.3d 404, 418 (5th Cir. 2013). Another Texas prison denied an Odinist prisoner the ability to personally study runestones because they "could be used to gamble, pass secret messages, and identify gang members." *Mayfield v. Tex. Dep't of Crim. Just.*, 529 F.3d 599, 616 (5th Cir. 2008). In both cases, the Fifth Circuit called into doubt prisons' purported security justifications. *See Chance*, 730 F.3d at 418; *Mayfield*,

529 F.3d at 616. Likewise, the Seventh Circuit has rejected similar arguments that minority religious symbols could be mistaken for gang signs. *See Knowles v. Pfister*, 829 F.3d 516, 518 (7th Cir. 2016) (Wiccan pentacle); *Schlemm v. Wall*, 784 F.3d 362, 366 (7th Cir. 2015) (Native American headband).

Prisons are often unaware of minority religious practices, lack guidance that explicitly incorporates them, and may be hostile to religions with which they are less familiar. Hence, religious minorities are often uniquely subject to undue restrictions on their religious practice in prisons. To be sure, prisons are not expected to have comprehensive knowledge of every minority religious practice. But they must take seriously requests for religious accommodation rather than relying on ignorance to deny minorities their ability to practice.

B. Injunctive relief is insufficient to protect religious minorities' religious exercise.

Injunctive relief is insufficient to remedy the distinctive issues that religious minorities face because they are less able to rely on class actions to avoid mootness and may suffer profound harms that happen too quickly to permit injunctive relief. Thus, courts are rarely able to provide binding guidance on what RLUIPA requires.

Religious minorities are particularly susceptible to mooting gamesmanship because few coreligionists may be incarcerated in the prison at the same time. This lack of numerosity renders infeasible class actions, which normally can keep

prison litigation live even when all the named plaintiffs' claims have become moot. *See, e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 523, 526 n.5 (1979) (holding that a conditions-of-confinement class action remained live notwithstanding that all the named plaintiffs were transferred or released). Because class actions are permitted only "when the class is so numerous that joinder of all members is impracticable," Fed. R. Civ. P. 23(a)(1), the more in the minority a religion is, the less likely it is that its adherents will be able to avail themselves of class actions to vindicate their legal rights. *See, e.g.*, *Alvarez*, 667 F.3d at 1064 (holding RLUIPA claim moot because an inmate's release from prison generally moots injunctive and declaratory relief claims "unless the suit has been certified as a class action") (internal quotation marks and citation omitted).

Moreover, minority religious prisoners may suffer a violation that is profoundly harmful to them but happens so quickly it cannot be halted by an injunction. For example, prison officials forcibly restrained a Sikh prisoner and shaved his beard over his objection. *See* Sikh Coalition, Complaint to the U.S. Department of Justice, Civil Rights Division re: Surjit Singh (May 24, 2021), https://perma.cc/KNR9-9KLK. He never before had cut his beard in any way, and the forced shaving "caused him deep shame and mental trauma, including severe

depression." *Id.* at 2. Sikh prisoners routinely face these harms.[5] Similarly, a prison warden refused to accommodate an Orthodox Jewish prisoner who needed to leave the prison premises to go to surgery. *See Boles v. Neet*, 486 F.3d 1177, 1179 (10th Cir. 2007). The inmate requested that he be allowed to bring his yarmulke and tallit katan, without which the inmate believed he could not walk more than four cubits. *Id.* at 1179 n.2. The official denied the request, and the inmate delayed surgery rather than violate his beliefs. *Id.* at 1179. Without damages, there is often no redress at all for these abrupt and serious injuries.

Loving's case provides a clear example of why damages are needed to remedy violations of minorities' religious rights. On multiple occasions, Loving alleges that he was stripped for a physical examination with a curtain drawn so that he was exposed beyond his medical examiner, in contravention of policy. *See* JA 34–35. Loving made it clear to the examiners that this action was an abuse of his sincerely held religious beliefs. All that he requested is simply that the privacy curtain be closed, but the prison refused. *Id.* Thus, the violations happened to

[5] *See*, *e.g.*, Sikh Coalition, *Urgent Action Requested: Save Satnam Singh's Hair from Being Forcibly Cut* (Apr. 1, 2006), https://perma.cc/W3AP-GDNS (Sikh prisoner with no disciplinary record forced to cut beard); Sikh Coalition, *Legal Victory: Sikh Prisoners Can Maintain Kesh* (June 10, 2011), https://perma.cc/F89B-E2HA (Sikh inmate received multiple sanctions for keeping beard); Sarah Netter, *Sikh Activists Upset over Inmate's Haircut*, ABC News (Oct. 6, 2008), https://perma.cc/3QE7-A938 (Sikh prisoner repeatedly forced to cut beard).

Loving in an instant. But the district court dismissed Loving's case because he had been transferred by the time of the court's ruling. Congress could not have intended that RLUIPA would tolerate this perverse outcome.

Damages remedies would protect religious minorities who lack the numbers of adherents to avoid mootness issues through class actions and who may suffer deeply violative harms that an injunction cannot remedy.

CONCLUSION

This Court should recognize that RLUIPA restores § 1983's prior protections to provide robust relief for vulnerable religious minorities in prison.

Dated: April 27, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief complies with Federal Rule of Appellate Procedure 29(a)(5) and Second Circuit Rule 29.1 as it contains 4,467 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). The brief's typesize and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in 14-point Times New Roman, a proportionally spaced font.

Dated: April 27, 2023

/s/ Francesca Matozzo
Francesca Matozzo

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Second Circuit by using the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

Dated: April 27, 2023

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