No. 22-30686

In the United States Court of Appeals
for the Fifth Circuit

DAMON LANDOR,

Plaintiff-Appellant,

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY; JAMES M. LEBLANC, in his official capacity as Secretary thereof, and individually; RAYMOND LABORDE CORRECTIONAL CENTER; MARCUS MYERS, in his official capacity as Warden thereof, and individually; JOHN DOES 1-10; ABC ENTITIES 1-10,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana, No. 3:21-cv-733
The Honorable Shelly D. Dick, Chief Judge

UNOPPOSED MOTION OF THE BRUDERHOF, CLEAR, THE JEWISH COALITION FOR RELIGIOUS LIBERTY, AND THE SIKH COALITION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate potential disqualification or recusal.

1) Plaintiff-Appellant:

   Damon Landor

2) Defendants-Appellees:

   Louisiana Department of Public Safety and Corrections

   James M. LeBlanc

   Marcus Myers

   Raymond Laborde Correctional Center

3) Counsel for Plaintiff-Appellant:

   Zachary D. Tripp, Joshua Halpern, Shai Berman, and Sara Weiss of Weil, Gotshal, and Manges LLP

   Casey Denson and Mercedes Townsend of Casey Denson Law LLP

4) Counsel for Defendant-Appellee:

   Phyllis Esther Glazer and LaKeisha Ford, Louisiana Department of Justice, Office of the Attorney General

5) *Amici Curiae*:

The Bruderhof

Creating Law Enforcement Accountability and Responsibility (CLEAR) at the City of New York School of Law

The Jewish Coalition for Religious Liberty

The Sikh Coalition

6) Counsel for *Amici Curiae*:

Francesca Matozzo & Stephanie Barclay, Notre Dame Law School Religious Liberty Clinic

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

/s/ Francesca Matozzo

Attorney of record for the Bruderhof, CLEAR, the Jewish Coalition for Religious Liberty, and the Sikh Coalition

UNOPPOSED MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and Fifth Circuit Rule 27.4, the Bruderhof, Creating Law Enforcement Accountability & Responsibility (CLEAR), the Jewish Coalition for Religious Liberty, and the Sikh Coalition respectfully move for leave to file a brief as *amici curiae* in support of Plaintiff-Appellant Damon Landor's petition for rehearing en banc. A copy of the proposed brief is attached to this motion. Proposed *amici* have consulted with counsel for the parties concerning this motion. Plaintiff-Appellant consents to this motion. In an email dated October 12, 2023, counsel for Defendants-Appellees stated that they have no objection.

This petition for rehearing en banc concerns whether Landor can pursue damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA) after his religious dreadlocks were forcibly cut while he was in prison. Landor argues that this is a question of exceptional importance because an individual-capacity damages remedy is vital to protect religious exercise. In support of this motion, each proposed *amicus* states that it is an organization that is dedicated to, among other things, securing the religious freedoms that this case implicates.

This Court "should welcome amicus briefs for one simple reason: It is for the honour of a court of justice to avoid error in their judgments." *Lefebure v.*

D'Aquilla, 15 F.4th 670, 675 (5th Cir. 2021) (internal quotations and citations omitted). "Courts enjoy broad discretion to grant or deny leave to amici under Rule 29." *Id.* at 673. This Court is "well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted." *Id.* at 676 (quoting *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3d Cir. 2002)).

Here, as directed by this Court's rules, the proposed *amicus* brief presents arguments and insights that are not found in the appellant's brief. *See* 5th Cir. R. 29.2 (amicus briefs should "avoid the repetition of facts or legal arguments contained in the principal brief"). The proposed brief discusses how monetary damages provide an important safeguard against the strategic mooting of meritorious religious claims. And it shows how suits allowing these damages are vital to protect religious minorities in prisons who experience religious harms more often than majoritarian religions.

Participation by proposed *amici* will not delay the briefing or argument in this case. Proposed *amici* have filed this motion and its proposed brief within the time allowed by Federal Rule of Appellate Procedure 29(a)(6).

Because the brief will assist the Court, this motion should be granted and the attached brief filed.

Dated: October 18, 2023

Respectfully submitted,

/s/ Francesca Matozzo

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CERTIFICATE OF COMPLIANCE

This Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman. It complies with the limits of Fed. R. App. P. 27(d)(2) and Fifth Cir. R. 27.4 because it contains 430 words.

Dated: October 18, 2023

/s/ Francesca Matozzo
Francesca Matozzo

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2023, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: October 18, 2023

/s/ Francesca Matozzo
Francesca Matozzo

No. 22-30686

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BRIEF *AMICUS CURIAE* OF THE BRUDERHOF, CLEAR, THE JEWISH COALITION FOR RELIGIOUS LIBERTY, AND THE SIKH COALITION IN SUPPORT OF REHEARING EN BANC

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   Phyllis Esther Glazer and LaKeisha Ford, Louisiana Department of Justice, Office of the Attorney General

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/s/ Francesca Matozzo

Attorney of record for the Bruderhof, CLEAR, the Jewish Coalition for Religious Liberty, and the Sikh Coalition

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

INTERESTS OF THE *AMICI*

The Bruderhof is a Christian community stemming from the Anabaptist tradition. The Bruderhof was founded in 1920 in Germany in the aftermath of World War I. During Hitler's reign, the community was targeted for its conscientious refusal to support Hitler's militaristic and genocidal policies. Eventually, the Bruderhof left their homes in Germany and fled to England before immigrating to Paraguay and later to the United States, attracted by this nation's founding principles of tolerance and liberty. The Bruderhof's interest in this case arises from its belief that freedom from government coercion is essential for people of all faiths in matters of sincere religious practice. From its own experience, the Bruderhof knows the value of court-enforced standards for religious freedom that offer protection from the vagaries of political majorities.

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).

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 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.[1]

[1] *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.

SUMMARY OF THE ARGUMENT

The Fifth Circuit should rehear en banc the panel decision in this case because it presents a "question of exceptional importance" under Fed. R. App. P. 35: whether the Religious Land Use and Institutionalized Persons Act (RLUIPA) authorizes monetary damages. This issue is exceptionally important for two reasons.

First, allowing monetary damages under RLUIPA would protect inmates against the mooting of meritorious claims. Under current precedent, there is no recourse when prisons strategically moot a case to prevent an adverse judgment or when the claimant is otherwise transferred or released before a judgment. Allowing damages under RLUIPA would hold prisons better accountable when they violate prisoners' religious rights and ensure that courts may correct violations of RLUIPA and guide prisons' actions.

Second, monetary damages under RLUIPA are particularly 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 the religious rights of these numerically small populations. Religious minorities are therefore disproportionately at risk of having their religious exercise curtailed upon absent a damages remedy to safeguard those rights.

ARGUMENT

I. The availability of monetary damages under RLUIPA would protect against the mooting of meritorious religious claims.

When injunctive relief is the only relief available to a religious claimant, prisons can evade a merits determination by mooting the case intentionally or unintentionally through the prisoner's release or transfer. *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); *Quarles v. Thole*, No. 20-cv-697, 2022 WL 425362, at *3 (S.D. Ill. Feb. 11, 2022) (kosher-diet case mooted by prisoner's release); *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). Prisoners may spend years under offending policies but never be able to receive redress because their case is moot by the time a decision is reached. *See, e.g.*, *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012) (mooting a Native American prisoner's eight-year RLUIPA claim because the prisoner was released in the third year of litigation); *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) (a four-year case mooted when the final judgment came a year after a plaintiff was released from prison, despite the court's determination that the prison possibly violated RLUIPA). Many

of these cases would have remained live if damages claims were permitted under RLUIPA.

Indeed, prisons can evade a merits determination by strategically mooting RLUIPA cases. For example, in this Circuit, 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).

Allowing damages prevents such gamesmanship and incentivizes prison officials to "err on the side of protecting" rights. *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 forcible hair-cutting. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800, 801 (2021). Damages would also allow more merits determinations and lead to a more robust development of the

law. This development would provide clear guidance to both the violating prison itself and the many other prisons facing similar issues.

II. The availability of monetary damages under RLUIPA is exceptionally important to protect religious minorities in prisons.

Monetary damages under RLUIPA are vital for protecting religious minorities in particular. Landor's case is but one vivid example of how injunctive relief is insufficient to achieve RLUIPA's goal of providing broad protections for incarcerated religious claimants.

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

Religious minorities disproportionately suffer restrictions on their religious exercise in prison. 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). Prison officials may be less aware of, less motivated to accommodate, and more hostile to minority religious beliefs.

Prisons often fail to accommodate the religious practice of religious minorities because they are simply unfamiliar with minority faith requirements. *See, e.g.*, *Ben-Levi v. Brown*, 136 S. Ct. 930, 934 (2016) (Alito, J., dissenting from denial of cert.) (Jewish prisoner denied a three-person Torah study group because

prison asserted that Jewish law required ten people minimum); *Estes v. Clarke*, No. 7:15-cv-155, 2018 WL 2709327, at *5–6 (W.D. Va. June 5, 2018) (Orthodox Jewish prisoner denied kosher meals with rabbinical supervision because prison official mistakenly believed supervision unnecessary); *Walker v. Baldwin*, No. 19-cv-50233, 2022 WL 2356430, at *2 (N.D. Ill. June 20, 2022), *aff'd*, 74 F.4th 878 (7th Cir. 2023) (Rastafarian's dreadlocks forcibly cut off because officials claimed they had "never heard of Rastafarianism, and they were unfamiliar with Rastafarian beliefs and practices"). Many prison handbooks do not have guidance for specific minority faith practices, increasing the likelihood that prisons will not know how to accommodate them. *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).

Without incentives to learn about and accommodate minority religions, prisons often violate minority religious rights. *See Grayson v. Schuler*, 666 F.3d 450, 452 (7th Cir. 2012) (denial of dreadlocks to member of the African Hebrew Israelites of Jerusalem when policy only admitted a "Rastafarian exception"); *Charles v. Verhagen*, 348 F.3d 601, 605 (7th Cir. 2003) (denial of Muslim prisoner's request for prayer oil when not an approved item in prison policy).

Without any countervailing liability concerns, prisons will often fail to dedicate resources to accommodate religious minorities that more prevalent religious groups would receive. *See Estes*, 2018 WL 2709327, at *6–7 (arguing kosher meals with rabbinical supervision cost-prohibitive); *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").

At worst, prisons may be hostile, skeptical, or outright discriminatory against minorities because their practices are less well-known than other religions. This Circuit's prisons, for spurious security reasons, have denied Native Americans possession of religious locks of hair, Odinists the ability to study runestones, and Sikhs properly sized cloths for their turbans. *See Chance v. Tex. Dep't of Crim. Just.*, 730 F.3d 404, 418 (5th Cir. 2013); *Mayfield v. Tex. Dep't of Crim. Just.*, 529 F.3d 599, 616 (5th Cir. 2008); *Singh*, 520 F. Supp. 2d at 502. In *Chance* and *Mayfield*, this Court called into doubt prisons' purported security justifications. *See Chance*, 730 F.3d at 418; *Mayfield*, 529 F.3d at 616.

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 uniquely threatened by restrictions on their religious practice in prisons. To be sure, prisons are not expected to have comprehensive knowledge of every minority religion or its practice. But, through

RLUIPA, Congress mandated that prisons take seriously requests for religious accommodation rather than relying on ignorance to deny minorities their ability to practice their faith.

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

Injunctive relief is plainly insufficient to remedy the unique violations that incarcerated religious minorities face. Religious minorities often suffer profound harms that happen too quickly for them to receive injunctive relief. Further, they are less able than majority religions to rely on class actions to avoid mootness. Thus, courts are rarely able to provide binding guidance to prisons on what RLUIPA requires for minority faith practice.

Minority religious prisoners often suffer profoundly harmful violations that happen so quickly that seeking injunctive relief is not an option. For example, Sikh prisoners routinely are forced to shave their beards in contravention of their religious beliefs.[2] Moreover, a survey of federal cases from 2017–2019 showed

[2] *See*, *e.g.*, Sikh Coalition, *Complaint to the U.S. Department of Justice, Civil Rights Division re: Surjit Singh* (May 24, 2021), https://perma.cc/KNR9-9KLK; 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).

that, for Muslim prisoners, issues concerning dietary restrictions, prayer, and Ramadan observance particularly predominate. *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. Without damages, there is often no redress at all for these abrupt and serious, but potentially fleeting, injuries.

Religious minorities are particularly susceptible to mooting gamesmanship because few coreligionists may be incarcerated in the prison at the same time. Class actions normally can keep prison litigation live even when all the named plaintiffs' claims have become moot, but minority religious claimants' lack of numerosity often renders class actions impossible. *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 less prevalent a religion is, the less likely 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 a RLUIPA claim moot "unless the suit has been certified as a class action" (internal quotation marks and citation omitted)).

Landor's case provides a clear example of why damages are exceptionally important to remedy violations of minorities' religious rights. In *Ware v. Louisiana Department of Corrections*, this Court already held that the Louisiana Department of Corrections' policy prohibiting dreadlocks violates RLUIPA. 866 F.3d 263, 272–74 (5th Cir. 2017). The prison egregiously ignored this binding ruling, threw out the copy of the *Ware* decision that Landor gave the guards, and forcibly shaved his religious dreadlocks. Op. 2–3. A clearer RLUIPA violation hardly exists, and the three-judge panel "*emphatically* condemn[ed]" this behavior. Op. 12. Yet the panel held that his claim was barred by mootness. *Id.* Landor and Ware experienced the same violation of their rights. But Ware had enough time to seek an injunction to protect himself. *See Ware*, 866 F.3d at 267. That option was unavailable to Landor, who suffered a profound religious harm but could receive no relief for it. This perverse result cannot be what Congress meant when it passed RLUIPA.

Damages remedies would protect religious minorities like Landor, who lack the numbers of adherents to avoid mootness issues through class actions and who may rapidly suffer deeply violative harms that an injunction cannot remedy. Because barring damages for religious minorities allows constitutional violations to continue without remedy, this court should rehear en banc this question of exceptional importance.

CONCLUSION

This Court should rehear the case en banc and recognize that RLUIPA allows individual damages to provide robust relief for vulnerable religious minorities in prison.

Dated: October 18, 2023

Respectfully submitted,

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This amicus brief complies with Federal Rule of Appellate Procedure 29(b)(4) and Fifth Circuit Rule 29 as it contains 2,502 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.

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