No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR,

Petitioner,

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE BRUDERHOF, CLEAR, THE JEWISH COALITION FOR RELIGIOUS LIBERTY, AND THE SIKH COALITION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JOHN A. MEISER
Counsel of Record
FRANCESCA MATOZZO
NOTRE DAME LAW SCHOOL
RELIGIOUS LIBERTY CLINIC
1338 Biolchini Hall of Law
Notre Dame, IN 46556
(574) 631-3880
jmeiser@nd.edu

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INTEREST OF *AMICI CURIAE*[1]

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

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[1] Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae*, their members, and their counsel made a monetary contribution to its preparation or submission.

Counsel of record for all parties received notice of *amici curiae*'s intention to file this brief at least ten days prior to the deadline.

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.

SUMMARY OF ARGUMENT

This Court should grant certiorari to make clear that monetary damages are available in suits brought against state officials in their individual capacities under the Religious Land Use and Institutionalized Persons Act. RLUIPA's text follows 42 U.S.C. § 1983's and should be interpreted to afford the same remedies. Before *Employment Division v. Smith*, section 1983 broadly permitted monetary damages to be awarded in First Amendment free-exercise claims. After *Smith*, RLUIPA simply restored this remedy to incarcerated religious claimants. The restoration of that remedy is a central component of the broad protections for religious freedom that Congress enacted in RLUIPA. The denial of such a remedy would undermine those protections and distort the statute Congress passed, rendering it out of step with both the pre-*Smith* regime it sought to restore and RLUIPA's sister statute the Religious Freedom Restoration Act.

Damages are critical not simply to hold officials liable for the full extent of the harms they cause, but often to ensure accountability *at all* by protecting inmates' meritorious claims from becoming moot before they can be adjudicated. Most concerning, without damages, prisons can strategically moot RLUIPA cases before a prisoner can receive relief, such as by strategically transferring the prisoner or altering the burdensome behavior to avoid a ruling on the merits of its actions. And even prisoners' rightful release or a prison's good-faith transfer decisions can effectively insulate violations from judicial review. Either way, many inmates' claims will never be vindicated.

The possibility of damages thus helps protect religious believers in prison by holding prison officials accountable and incentivizing them to take these rights seriously. This is especially critical for members of minority religions. Prison policies commonly fail to protect many minority religious practices. Prison officials do little better, routinely showing ignorance, skepticism, hostility, or outright discrimination toward incarcerated adherents of minority faiths. But that mistreatment often happens too quickly for aggrieved prisoners to prevent it through injunctive relief. And religious minorities are often by their very nature a small number of those jailed, lacking the numerosity required to sustain a class action. For those prisoners, judicial relief rests on damages or nothing.

An inability to receive monetary damages does not just imperil individual plaintiffs; it breeds systemic problems too. Unburdened by the threat of damages, prisons have little incentive to improve their policies and protect prisoners from future abuse. Allowing prisoners to seek damages would correct that distorted incentive—enabling them to vindicate their own rights and to demand that prisons fix inadequate or discriminatory policies to better respect others' rights in the future.

This Court should grant certiorari to ensure that these promises of RLUIPA are fulfilled.

ARGUMENT

I. Like RFRA, RLUIPA mirrors Section 1983's language, which authorized damages remedies for free-exercise violations pre-*Smith*.

Congress enacted RLUIPA to "provide very broad protection for religious liberty" in prisons and jails. *Holt v. Hobbs*, 574 U.S. 352, 355 (2015) (internal quotation marks omitted). 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. *Smith* largely foreclosed that relief for neutral and generally applicable government policies. In response, Congress enacted RFRA and RLUIPA, converting what was once a constitutional right into a statutory one. These statutes functionally restored the pre-*Smith* protections available under the § 1983 constitutional regime with remedial language tracking § 1983's. *See* Pet. 14–15; *Tanzin v. Tanvir*, 141 S. Ct. 486, 490–91 (2020) (interpreting the Religious Freedom Restoration Act).[2]

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[2] This Court has recognized that RFRA and RLUIPA are "sister statutes" that should be interpreted similarly. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014) (referring to RFRA and RLUIPA as "sister statutes"). The Courts of Appeals have done the same. *See, e.g.*, *Apache Stronghold v. United States*, 95 F.4th 608, 614 (9th Cir. 2024) (en banc) (per curiam); *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336 (5th Cir. 2022); *New Doe Child #1 v. Cong. of U.S.*, 891 F.3d 578, 589 (6th Cir. 2018); *Mack v. Warden Loretto FCI*, 839 F.3d 286, 304 n.103 (3d Cir. 2016); *Knight v. Thompson*, 797 F.3d 934, 946 & n.9 (11th Cir. 2015); *Haight v. Thompson*, 763 F.3d 554, 562 (6th Cir. 2014);

One of those protections is a damages remedy. As this Court has held for RFRA, "appropriate relief" includes monetary damages because damages were available under § 1983 and RFRA "uses the same terminology as § 1983 in the very same field of civil rights law." *Tanzin*, 141 S. Ct. at 490–91 (2020) (internal quotation marks omitted); *see also Franklin v. Gwinnet Cnty. Pub. Schs.*, 503 U.S. 60, 70 (1992) (presuming that "appropriate relief" means all remedies unless Congress says otherwise). RLUIPA uses the same text as RFRA—"appropriate relief" against a person acting under color of law—in the same context. *Compare* 42 U.S.C. § 2000cc-2(a), 2000cc-5(4)(A)(iii) *with* 42 U.S.C. §§ 2000bb-1(c), 2000bb-2(1). Moreover, "[t]he phrase 'persons acting under color of law' draws on one of the most well-known civil rights statutes: 42 U.S.C. § 1983. That statute applies to 'person[s] . . . under color of any statute,' and this Court has long interpreted it to permit suits against officials in their individual capacities." *Tanzin*, 141 S. Ct. at 490 (citing *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305–06 & n.8 (1986)). Accordingly, this Court should hold that RLUIPA, like RFRA, "reinstated pre-*Smith* protections and rights" and thus that "parties suing under [RLUIPA] must have at least the same avenues

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Korte v. Sebelius, 735 F.3d 654, 682–83 (7th Cir. 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1138 n.13 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Koger v. Bryan*, 523 F.3d 789, 798 (7th Cir. 2008); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007); *DeHart v. Horn*, 390 F.3d 262, 274–75 (3d Cir. 2004); *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 987 (8th Cir. 2004).

for relief against officials that they would have had before *Smith*." *Id.* at 492.

This Court's RLUIPA precedents reinforce that conclusion. "[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005). As this Court has recognized, the "sister statute[s]" RFRA and RLUIPA are clear examples, and indeed they are so similar that this Court often uses their case law interchangeably. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014); *see also, 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).

RLUIPA should thus be interpreted to embrace the longstanding rule that damages are appropriate relief. *See* Pet. 14–18. "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)). Before *Smith*, courts often entertained damages suits under § 1983 for claims similar to those RLUIPA now vindicates. The Fifth Circuit, for example, allowed the possibility of damages for the forceable cutting of a religious beard. *McFadden v. Lucas*, 713 F.2d 143, 148 (5th Cir. 1983). The Ninth Circuit did the same. *Swift v. Lewis*, 901 F.2d 730, 733 (9th Cir. 1990). The Fourth Circuit permitted the possibility of damages when officials denied a Muslim prisoner permission to distribute Arabic dictionaries

to assist Qur'an study. *Brown v. Peyton*, 437 F.2d 1228, 1233 (4th Cir. 1971). And the Seventh Circuit permitted damages for a Christian prisoner denied access to the Bible and the prison chapel. *Crowder v. Lash*, 687 F.2d 996, 1001 (7th Cir. 1982).[3] To this day, even after *Smith*, § 1983 allows damages in similar actions for free-exercise violations. *See, e.g.*, *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).

Nothing in RLUIPA's text or history suggests it discarded this longstanding rule. On the contrary, as its text makes clear, RLUIPA restored protections that *Smith* had weakened by extending RFRA's remedial scheme to additional contexts. *Cf. Tanzin*, 141 S. Ct. at 492 (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"). And the

[3] *See also Young v. Coughlin*, 866 F.2d 567, 568 & n.1 (2d. Cir. 1989) (allowing Muslim prisoner's claim that officials had prevented him from attending religious services to continue, although his injunctive claims were moot); *Conley v. Branston*, 489 F.2d 1472 (Table), 1988 WL 61509, at *1 (6th Cir. 1988) (per curiam) (reversing dismissal of Cherokee prisoner's damages claim that officials prohibited him from wearing a religious headband); *Patrick v. LeFevre*, 745 F.2d 153, 155–56 & n.2 (2d Cir. 1984) (sustaining a damages action when officials denied recognition of prisoner's religion, although injunctive claims were mooted when prisoner was transferred); *Owens v. Kelley*, 681 F.2d 1362, 1370 (11th Cir. 1982) (reversing summary judgment on prisoner's first amendment claims and noting that the county could be held liable for damages); *Jerry v. Francisco*, 632 F.2d 252, 255 (3d Cir. 1980) (per curiam) (reversing dismissal of prisoner's free-exercise damages claim although injunctive claims were moot).

House Judiciary Committee stated that the text that ultimately became RLUIPA was 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." H.R. Rep. 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.*

Just as RFRA and RLUIPA set out the "same standard" for judging the merits of a claim, *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006), both statutes' "appropriate relief" language should be read to mean the same thing. That is, both statutes should be interpreted to "provide[], as one avenue for relief, a right to seek damages against Government employees." *Tanzin*, 141 S. Ct. at 492.

II. The possibility of damages protects against the mooting of meritorious religious claims.

Critically, the availability of at least nominal damages allows otherwise meritorious religious-liberty claims to proceed even when the possibility for injunctive relief becomes moot.

Before *Smith*, the Courts of Appeals regularly permitted groups of prisoners to seek damages under § 1983 against prisons that denied access to religious services—even after transfers or releases mooted their claims for injunctive relief. For example, a Muslim inmate denied access to prayer services was able to seek damages after his release mooted his claim for injunctive relief. *Young v. Coughlin*, 866 F.2d 567, 568

n.1, 568–70 (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). Similarly, a Nation-of-Islam prisoner could continue his damages claim for a prison's failure to accommodate December Ramadan observance even after he was transferred to another prison. *Diaab v. Green*, 794 F.2d 685 (11th Cir. 1986) (unpublished), *appended to Saleem v. Evans*, 866 F.2d 1313, 1315 (11th Cir. 1989); *see also Beck v. Lynaugh*, 842 F.2d 759, 762 (5th Cir. 1988) (free-exercise damages claim live while injunctive relief moot); *Kauffman v. Johnston*, 454 F.2d 264, 266 (3d Cir. 1972) (per curiam) (similar); *United States ex rel. Jones v. Rundle*, 453 F.2d 147, 150 (3d Cir. 1971) (same).

The ability to vindicate these rights even after transfer or release not only offers a remedy to those prisoners harmed, but the prospect of liability is also an important catalyst for policy changes to ensure that others will not be similarly aggrieved. For example, prior to a RLUIPA suit, the Virginia Department of Corrections provided religious items through the commissary, including items related to Christianity, Judaism, Islam, Sikhism, Odinism, and Wicca. *Burke v. Clarke*, 842 F. App'x 828, 831 (4th Cir. 2021). But it did not offer items related to Rastafarian worship, and the Department's list of approved religions specified that Rastafarians, in particular, were required to abide by grooming standards. *Id.* When a Rastafarian inmate refused to cut his dreadlocks, he was consigned to solitary confinement. *Id.* His requests for religious items and holy day meals were summarily denied: "Can't. Don't have any of this." *Id.* at 832. Only after that litigation, which ended in settlement, Virginia

now lists a Rastafarian crown in its list of approved religious items. Va. Dep't of Corr. Operating Proc. 841.3, attach. 6 (2023). It also has removed any Rastafarian-specific grooming restrictions. *Id.* attach. 1.

Without damages, prisons can instead strategically moot cases to evade merits decisions and ultimately resist necessary policy corrections—or legal accountability at all. For example, the Florida prison system refused for years to provide kosher diets to pro se litigants before strategically attempting to moot a case by changing its policy as soon as a prisoner acquired counsel. *See Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 532 (11th Cir. 2013); *see also Gardner v. Riska*, 444 F. App'x 353, 354 (11th Cir. 2011); *Linehan v. Crosby*, 346 F. App'x 471, 472 (11th Cir. 2009). The Texas prison system took a similar tack, litigating a pro se kosher diet case to judgment while trying to moot or 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) (represented plaintiff); *Baranowski v. Hart*, 486 F.3d 112, 116 (5th Cir. 2007) (pro se plaintiff). Prisons can also escape liability for RLUIPA violations by releasing or transferring inmates, strategically or otherwise. *See, e.g.*, *Firewalker-Fields v. Lee*, 58 F.4th 104, 113–14, 118 (4th Cir. 2023) (holding moot RLUIPA claim of a Muslim prisoner denied Friday Prayer after transfer because "[RLUIPA] only provides equitable relief"); *Colvin v. Caruso*, 605 F.3d 282, 287–89 (6th Cir. 2010) (deeming case moot when prisoner was transferred shortly after filing suit for denial of kosher diet); *Warner v. Patterson*, 534 F. App'x 785, 788–89 (10th Cir. 2013) (holding moot RLUIPA claims of an Odinist

prisoner denied religious items because he had been released).[4]

Some prisoners spend years under offending policies only to find that redress is unavailable. Consider a Sikh prisoner who litigated a case against New York prison officials for *four years* before he was released from prison. Though the court had previously ruled that the prisoner may succeed on his RLUIPA claims at trial, it ultimately declared those claims mooted by his eventual release. *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); *Singh v. Goord*, 520 F. Supp. 2d 487, 508 (S.D.N.Y. 2007). Even worse, a prison in Michigan held a Christian prisoner under appalling conditions in solitary confinement at least 23 hours a day for nearly thirteen years without access to any of the group religious services his faith required. *Selby v. Caruso*, 734 F.3d 554, 556–57, 561 (6th Cir. 2013). But

[4] To be sure, courts have sometimes applied a mootness exception when prisons voluntarily change policies or transfer a prisoner. *See, e.g.*, *Rich*, 716 F.3d at 532; *Wall v. Wade*, 741 F.3d 492, 497–98 (4th Cir. 2014); *Burke*, 842 F. App'x at 835–36; *Lozano v. Collier*, 98 F.4th 614, 620 (5th Cir. 2024). But these exceptions are often narrowly applied and thus unavailable to many prisoners. *See, e.g.*, *Alvarez v. Hill*, 667 F.3d 1061, 1064–65 (9th Cir. 2012); *Incumaa v. Ozmint*, 507 F.3d 281, 288–89 (4th Cir. 2007). They are especially unlikely to apply to released prisoners because the law operates on the assumption that they will not reoffend and thus not again be subjected to the offending conduct. *See, e.g.*, *United States v. Sanchez-Gomez*, 584 U.S. 381, 391 (2018). And because mootness exceptions are flexible, a court may decline to invoke them in prisoner cases for a variety of other reasons. Such mechanisms thus offer little recourse for many prisoners and do not obviate the need for damages remedies.

eighteen months after he filed his pro se complaint, the court declared the inmate's RLUIPA claims moot because officials had returned him back to the general prison population, though no "significant event . . . convinced prison officials to release" him. *Id.* at 558, 561; *Selby v. Caruso*, No. 09-cv-152, 2012 WL 7160402 (W.D. Mich. Aug. 16, 2012), *report and recommendation adopted in part and denied in part*, No. 2:09-cv-152, 2013 WL 623046 (W.D. Mich. Feb. 20, 2013); *see also Alvarez*, 667 F.3d at 1064 (Native American prisoner in RLUIPA litigation for eight years before learning his claims mooted by his release five years before final judgment). Prisoners serving shorter sentences are even less likely to see their cases to completion.

Inmates with religious dietary needs often suffer acutely when their rights are not respected. Such inmates face a "Hobson's choice" between not eating or violating their faith. *Norwood v. Strada*, 249 F. App'x 269, 272 (3d Cir. 2007). Yet, despite the drastic harms that result when religious inmates are not given appropriate meals, prison officials all too often escape liability without the possibility of monetary damages. Consider an Orthodox Jewish prisoner in Maryland who was refused a kosher diet and lost 30 pounds because officials "told him that it was his choice not to eat the [non-kosher] food." *Rendelman v. Rouse*, 569 F.3d 182, 184–85 (4th Cir. 2009). Officials transferred the prisoner, and his RLUIPA claims were thus mooted. *Id.* at 187–89. Another inmate was likewise refused a kosher diet but was released from prison during litigation—so he, too, was barred from making a RLUIPA claim. *Quarles v. Thole*, No. 20-cv-697, 2022 WL 425362, at *3 (S.D. Ill. Feb. 11, 2022). Similarly, a Muslim inmate was forced to cook pork in violation of

Islamic teaching or face disciplinary action. *Jones v. Williams*, 791 F.3d 1023, 1028 (9th Cir. 2015). Yet his RLUIPA claims were moot because he had been released during the pendency of his appeal. *Id.* at 1031, 1031 n.4.

For all these inmates—who suffered flagrant violations of their beliefs—damages were not merely "appropriate relief," 42 U.S.C. § 2000cc-2(a), they were the only relief.[5] Even nominal damages would help. They would remedy violations of "not easily quantifiable, nonpecuniary rights," like haircutting. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021). Nominal damages also "'affec[t] the behavior of the defendant towards the plaintiff,'" forcing prisons to take religious practices seriously. *Id.* at 801 (alteration in original) (quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)). Indeed, allowing damages in any form will help protect prisoners from gamesmanship or happenstance mooting their meritorious RLUIPA claims—and, in turn, prevent government officials from escaping accountability for even these egregious violations of federal rights.

[5] Some of these cases also presented First Amendment claims for damages under § 1983 that were allowed to proceed. But such claims cover a narrower set of violations, given the diminished constitutional protections that exist under current free exercise jurisprudence. Limiting prisoners' religious-liberty claims to this narrower avenue under *Smith* would negate the entire point of RLUIPA. *See supra* Part I.

III. Damages are vital to protect religious minorities in prisons.

Damages under RLUIPA are vital to protect religious minorities in particular. Just the possibility of damages incentivizes prison officials to "err on the side of protecting" rights. *See Owen v. City of Independence*, 445 U.S. 622, 652 (1980). Landor's case is but one vivid example of how underrepresented or disfavored religious believers suffer without damages: prison officials "literally thr[ew] in the trash" the controlling Fifth Circuit "opinion holding that Louisiana's policy of cutting Rastafarians' hair violated [RLUIPA] before pinning Landor down and shaving his head." *Landor v. La. Dep't of Corr. & Pub. Safety*, 93 F.4th 259, 260 (5th Cir. 2024) (en banc) (Clement, J., concurring in denial of rehearing en banc). Only damages can deter such outrageous conduct in the future.

A. Religious minorities are particularly likely to suffer mistreatment and disregard in prison.

Religious minorities disproportionately suffer religious infringements in prison. They are—by definition—a small percentage of total prison populations. Given that reality, prison officials are less likely to understand and respect religious minorities' beliefs and are often less motivated to dedicate resources to accommodating them. Worse, some officials betray skepticism or outright hostility toward these beliefs and practices.

A 2018 analysis revealed that over half of all prisoner decisions involved non-Christian religious minorities. 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). That is so even though it is estimated that only one-third of prisoners are non-Christian. *See Religion in Prisons—A 50-State Survey of Prison Chaplains*, Pew Rsch. Ctr. (Mar. 22, 2012), https://bit.ly/3X8E5uU.

Prison officials often fail to offer adequate accommodations to these individuals because they are simply unfamiliar with their faiths and their needs. Take, for example, a prison that denied a Jewish prisoner permission to form a three-person Torah study group because, as it (mis)read Jewish law, a ten-person quorum was required. *Ben-Levi v. Brown*, 136 S. Ct. 930, 932, 934 (2016) (Alito, J., dissenting from denial of certiorari); *see also Estes v. Clarke*, No. 7:15-cv-155, 2018 WL 2709327, at *5–6 (W.D. Va. June 5, 2018) (prison defending its decision to deny an Orthodox Jewish prisoner rabbinical supervision for kosher meals on the grounds that it believed Orthodox Judaism did not require it). A recent survey of federal cases showed that Muslim prisoners likewise routinely face opposition to their dietary restrictions, 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://bit.ly/4aJoXY0. Or consider *Walker v. Baldwin*, where prison officials forcibly cut a Rastafarian's dreadlocks, claiming 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), *aff'd*, 74 F.4th 878 (7th Cir. 2023).

Other prison policies betray a similar ignorance. Some policies are simply too general or vague, lacking much guidance on what accommodations might be

requested and how they should be handled. *See, e.g.*, Miss. Dep't of Corr., Inmate Handbook (2023), https://bit.ly/3RyqLwj (listing no religious accommodations for diet, grooming requirements, or authorized personal property); City of N.Y. Dep't of Corr., Directive 3261, app'x A (Sept. 10, 2012), https://bit.ly/4bJdQzl (listing few approved items in its RLUIPA guidance). And policies often have gaps in guidance specifically related to minority faiths. *See, e.g.*, S.C. Dep't of Corr. Policy PS-10.05 (2015) & OP-22.13 (2006) (offering Rastafarians no religious exceptions to the grooming policies); Ga. Dep't of Corr. Pol'ys & Procs. 106.08 (2020), 106.12 (2022), 106.13 (2012) (offering special guidelines regarding Islam, Wicca, and Native American spirituality, but no other religions); Okla. Dep't of Corr. Pol'ys & Procs. OP-030112, attach. B (2022) (not specifically listing any approved Hindu spiritual items); N.Y. Corr. Cmty. Supervision Directive No. 4202, at 12 (May 11, 2023) (offering only a "Kosher Diet as an alternative religious meal option for multiple religions"). These gaps make it more likely that prisoners will face resistance in receiving accommodations.

Prisons also lack motivation to improve policies that fail to accommodate less-common faiths because they may rarely detain a prisoner of that faith. For instance, because a prison in Illinois admitted only a "Rastafarian exception" to its dreadlocks ban, a member of the African Hebrew Israelites of Jerusalem was forced to cut his religious dreadlocks. *See Grayson v. Schuler*, 666 F.3d 450, 452 (7th Cir. 2012). Likewise, a Wisconsin 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 New York's 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. *Singh*, 520 F. Supp. 2d at 508.[6]

Prisons likewise fail to dedicate resources to accommodate religious minorities because of cost and other administrative concerns. For example, a prison in Texas wrongfully denied a Muslim prisoner permission to wear a kufi at all times, arguing that otherwise "every Muslim inmate will wear a kufi." *Ali v. Stephens*, 822 F.3d 776, 796 (5th Cir. 2016); *cf. Gonzales*, 546 U.S. at 435–36 (dismissing this "classic rejoinder of bureaucrats throughout history"). Similarly, an Orthodox Jewish prisoner in Virginia was improperly denied kosher meals with rabbinical supervision because the prison argued that it would be cost-prohibitive. *Estes*, 2018 WL 2709327, at *6–7; *see 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, 714 (9th Cir. 2014) (denial of Kemetic diet to Shetaut Neter practitioner to maintain "simple food service").

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[6] Prison officials are less likely to respect religious practices when prison policies do not expressly account for them. But even when prison policies mandate certain accommodations, prisoners may still not receive them. *See, e.g.*, *Robbins v. Robertson*, 782 F. App'x 794, 797 (11th Cir. 2019) (involving an inmate's claim that prison officials "failed to observe its own regulations" regarding food service, leaving him undernourished); *Sutton v. City of Philadelphia*, 21 F. Supp. 3d 474, 481 (E.D. Pa. 2014) (holding moot claims for injunctive and declaratory relief where an inmate was denied the vegetarian meals that aligned with his religious practice, although the prison policy offered it).

Worse, religious minorities may face skepticism, discrimination, or outright hostility because their practices are not as well-known or readily accepted as those of other religions. For example, a Texas prison denied a Native American prisoner permission 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 denied an Odinist prisoner the ability to 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. The Seventh Circuit has likewise 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).

In one striking example, prison officials in Nevada prevented a Muslim inmate from using scented oil for prayer because they believed it was "not *really that important* to his worship practice," although they allowed nonreligious scented items. *Johnson v. Baker*, 23 F.4th 1209, 1213–15 (9th Cir. 2022). In New Jersey, prison officials trampled a Sikh inmate's holy turban, smeared it with spilled paint, and threw it away. *Singh v. United States*, No. 24-6027, ECF 1 (D.N.J. filed May 10, 2024). In New York, prison officials imposed limitations on a Sikh inmate wearing a kara, a steel bracelet his faith required him to wear, 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 denied the Sikh inmate a proper-sized cloth for his religiously mandated turban even though prisoners were permitted other, larger sheets and religious materials. *Id.* at 502; *see also Wall*, 741 F.3d at 494 (prison policy required Muslim inmates to "provide some physical indicia of Islamic faith" to participate in Ramadan).

All told, many prisons are unaware of minority religious practices, lack guidance that expressly incorporates them, and sometimes flatly challenge religions with which government officials are less familiar—or perhaps less comfortable. This uniquely threatens religious minorities in prisons. To be sure, prisons are not expected to have comprehensive knowledge of every religious practice. But religious minorities disproportionately face challenges that majority religious adherents do not.

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

Injunctive relief is plainly insufficient to remedy the unique violations that incarcerated religious minorities face. These individuals are less able than members of majority religions to rely on class actions that avoid mootness. And they often suffer profound harms that happen too quickly for injunctive relief in an individual case. So courts seldom have the opportunity to issue binding guidance on what RLUIPA requires for these faiths.

Religious minorities are particularly susceptible to gamesmanship because few coreligionists may be

incarcerated in a given prison at the same time. This lack of numerosity precludes class actions, which 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 smaller a religion is, the less likely its adherents are to be able to avail themselves of class actions to vindicate their 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" (cleaned up)).

Moreover, some grave violations of minority prisoners' religious tenets are too swift for injunctions to prevent. For example, prison officials in Arizona 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://bit.ly/4bL80hc. He had never before 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.[7] Similarly, a prison warden in Colorado

[7] *See*, *e.g.*, Sikh Coalition, *Urgent Action Requested: Save Satnam Singh's Hair from Being Forcibly Cut* (Apr. 1, 2006), https://bit.ly/3V4QwFq (Sikh prisoner with no disciplinary record forced to cut beard); Sikh Coalition, *Legal Victory: Sikh*

refused to accommodate an Orthodox Jewish prisoner who needed to leave the prison premises for surgery. *See Boles v. Neet*, 486 F.3d 1177, 1179 (10th Cir. 2007). The inmate asked to bring his yarmulke and tallit katan, without which he 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.

Landor's case is a particularly shocking example of RLUIPA's inadequacy without damages. As Judge Clement highlighted, Landor's complaint could hardly allege a more obvious RLUIPA violation, yet Landor had no opportunity to seek an injunction. *Landor*, 93 F.4th at 260. Without damages, Landor cannot vindicate this egregious violation of his rights—and the Louisiana Department of Public Safety and Corrections has little incentive to change its ways. This perverse result cannot be what Congress meant when it passed RLUIPA.

Like Landor, many religious prisoners suffer injustices that injunctions and declaratory relief cannot remedy. Damages are necessary to protect them from prisons' mistreatment and disregard.

Prisoners Can Maintain Kesh (June 10, 2011), https://bit.ly/4e7r9Lw (Sikh inmate received multiple sanctions for keeping beard); Sarah Netter, *Sikh Activists Upset over Inmate's Haircut*, ABC News (Oct. 6, 2008), https://bit.ly/3V4KB2V (Sikh prisoner repeatedly forced to cut beard).

CONCLUSION

For the foregoing reasons, *amici curiae* urge the Court to grant certiorari and reverse.

Respectfully submitted,

JOHN A. MEISER
Counsel of Record
FRANCESCA MATOZZO
NOTRE DAME LAW SCHOOL
RELIGIOUS LIBERTY CLINIC
1338 Biolchini Hall of Law
Notre Dame, IN 46556
(574) 631-3880
jmeiser@nd.edu
Counsel for Amici Curiae

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