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 Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, CENTER FOR PUBLIC JUSTICE, NATIONAL ASSOCIATION OF EVANGELICALS, PRISON FELLOWSHIP, RELIGIOUS FREEDOM INSTITUTE, ALLIANCE DEFENDING FREEDOM, AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF LOUISIANA, BAPTIST JOINT COMMITTEE FOR RELIGIOUS LIBERTY, COALITION OF VIRTUE, AND ETHICS AND RELIGIOUS LIBERTY COMMISSION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Amici agree with the Petitioner's statement of the Question Presented:

Congress has enacted two "sister" statutes to protect religious exercise: the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §§ 2000bb *et seq.*, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc *et seq*. In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), this Court held that an individual may sue a government official in his individual capacity for damages for violations of RFRA. RLUIPA's relevant language is identical. Indeed, RLUIPA was meant to reinstate RFRA's protections in state prisons.

The question presented is whether an individual may sue a government official in his individual capacity for damages for violations of RLUIPA.

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INTERESTS OF *AMICI CURIAE*[1]

Christian Legal Society (CLS) is an association of Christian attorneys, law students, and law professors. CLS was active in the drafting of and lobbying for passage of both the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). CLS believes that a free society prospers only when the free exercise of religion of all Americans is protected.

The **Center for Public Justice** believes that protecting religious freedom requires meaningful legal redresses when those rights are unjustifiably violated. This case reinforces such remedies for persons in contexts and institutions where they are most vulnerable. "Free Exercise" of religion requires not just the rights, but also effective remedies.

The **National Association of Evangelicals** is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves forty member denominations, as well as numerous evangelical associations, missions, social-service charities, refugee and humanitarian aid agencies. Evangelicals believe that religious freedom is a precious gift from God to all people, including prisoners, and that this fundamental right must be safeguarded by effective remedies.

Prison Fellowship® is the nation's largest Christian nonprofit equipping the church to serve

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[1] This brief was prepared and funded entirely by *amici* and their counsel. No other person contributed financially or otherwise.

currently and formerly incarcerated people and their families and to advocate for justice and human dignity both inside and outside of prison. For decades, Prison Fellowship has played a prominent role in our nation's capital, helping to pass groundbreaking federal and state legislation that makes the criminal justice system more restorative and protects the religious freedoms of incarcerated people, including RFRA and RLUIPA.

The **Religious Freedom Institute** (RFI) is committed to achieving broad acceptance of religious freedom as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. RFI works to make religious freedom a priority for government, civil society, religious communities, businesses, and the general public. RFI envisions a world that respects religion as an indispensable societal good and promises religious believers the freedom to live out their beliefs fully and openly. RFI thus seeks to ensure that governments do not inhibit the free exercise of religion and that religious believers, including those who are incarcerated, enjoy the full measure of protections afforded to religious practice under laws like RLUIPA.

Alliance Defending Freedom is a nonprofit, public-interest law firm devoted to protecting religious freedom, free speech, parental rights, marriage and family, and the right to life. ADF has litigated numerous RLUIPA cases and has a strong interest in ensuring RLUIPA provides a viable damages remedy to deter government officials from infringing religious freedom rights of individuals and

organizations. In many instances, damages are the only viable method to ensure the robust protection of religion that Congress intended when it enacted RLUIPA.

The **American Civil Liberties Union** (ACLU) is a nationwide, nonprofit, non-partisan organization with more than 1.3 million members, founded in 1920 and dedicated to the principles of liberty and equality enshrined in the Constitution and our nation's civil rights laws. In support of those principles, the ACLU has appeared before this Court in numerous prisoners' rights and religious freedom cases, both as direct counsel and as amicus curiae. The **American Civil Liberties Union of Louisiana** is the ACLU's Louisiana state affiliate.

The **Baptist Joint Committee for Religious Liberty** (BJC) has vigorously supported both the free exercise of religion and freedom from religious establishments for more than eight decades. BJC chaired the Coalition for the Free Exercise of Religion, which successfully urged Congress to pass RFRA and RLUIPA. BJC has continued to defend the constitutionality and applicability of the statutes in numerous cases in the courts.

The **Coalition of Virtue** (COV) is a domestic policy organization that advocates for the Muslim community's traditional family values in furtherance of the common good. It holds that all human beings are created by God with dignity, rights, and duties and that the virtues are the foundation of civilization. COV promotes virtue in society, grounded in divine guidance as embodied in the Islamic tradition, in cooperation with those who share its moral vision. It

envisions an America where families have a say in their children's education, equal opportunities are available to all, and the highest good is championed. It advocates for policies that safeguard the rights of parents, the integrity of marriage and the family, and the life of the unborn.

The Ethics and Religious Liberty Commission (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with nearly 13 million members in more than 45,000 churches and congregations. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious freedom, marriage and family, the sanctity of human life, and ethics. Religious freedom is an indispensable, bedrock value for Southern Baptists. The Constitution's guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith.

SUMMARY OF ARGUMENT

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc *et seq.*, protects religious exercise in state and local prisons, which house more than 85 percent of people incarcerated in the United States (*see infra* p. 17). RLUIPA's protections are vital because prisoners' fundamental "right to practice their faith is at the mercy of those running the institution." *Cutter v. Wilkinson*, 544 U.S. 709, 721 (2005) (quotation omitted).

The "stark and egregious" facts of this case (Pet. App. 23a (Clement, J., concurring in denial of rehearing en banc)) dramatize the necessity for RLUIPA to provide effective protection. Louisiana state prison officers held down Petitioner Damon Landor, a devout Rastafarian, and shaved his dreadlocks without justification—tossing in the trash a copy of a federal court decision that Landor gave them upholding Rastafarian prisoners' right to wear dreadlocks. *Id.* at 2a–3a. Petitioner cannot seek prospective relief based on these blatant violations: prospective claims are moot because his sentence ended shortly afterward, and he was released. His sole chance for effective relief is to seek damages from the offending officials in their individual capacities.

Under RLUIPA, people incarcerated in state prisons that receive federal funding can bring a claim and "obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). That language clearly authorizes damages relief against officials in their individual capacities. In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), this Court held, unanimously, that individual-capacity damages are "appropriate relief" under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1(c). That conclusion requires the same result under RLUIPA, which uses the identical phrase, which derives directly from RFRA, and which this Court has called RFRA's "sister" statute. *Ramirez v. Collier*, 595 U.S. 411, 424 (2022); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015).

This brief details why RLUIPA authorizes individual-capacity damages relief, especially given this Court's identical ruling in *Tanzin*. The clarity of that conclusion satisfies the Court's requirement that

conditions accompanying the provision of federal funds must be set forth clearly. And the Spending Power easily allows Congress to impose such liability on prison officials.

I. Individual-capacity damages against officials are "appropriate relief" under RLUIPA, just as under RFRA. Every ground on which this Court unanimously reached that conclusion under RFRA applies as much or more to RLUIPA.

A. RFRA's and RLUIPA's remedial provisions use identical language: "appropriate relief against a government." *Tanzin* read that language to authorize individual-capacity damages relief under RFRA. Accordingly, the same result follows under RLUIPA.

B. *Tanzin* read the phrase "appropriate relief" in the light of RFRA's "context"—and the context here shows that RFRA and RLUIPA are "sister statutes" enacted for the identical purpose of securing broad religious freedom. Thus, this Court has repeatedly used RFRA cases to interpret RLUIPA and vice versa. It is crucial to recognize just how intimately the two statutes are tied. RFRA originally covered state, local, and federal laws, making no distinction between them. This Court then invalidated RFRA's state and local applications in *City of Boerne v. Flores*, 521 U.S. 507 (1997). In response, Congress enacted RLUIPA to reinstate RFRA's protection in the contexts of prison and land-use regulations. RLUIPA does not merely parallel RFRA; it is made of the same genetic material. Accordingly, it makes no sense to interpret the same phrase in the two statutes differently.

C. *Tanzin* also found individual-capacity damages relief justified in the light of RFRA's origins and

purposes. RFRA reinstated both the substantive and remedial law that existed before *Employment Division v. Smith*, 494 U.S. 872 (1990)—and that law, *Tanzin* found, authorized damages relief against individual officials under 42 U.S.C. § 1983. RLUIPA likewise reinstates pre-*Smith* law; by the same reasoning, RLUIPA authorizes such relief.

D. Finally, *Tanzin* reasoned that individual-capacity damages are the only effective relief for some RFRA violations, including some burdens on prisoners. So too for RLUIPA. As in RFRA cases, damages can be crucial in RLUIPA cases because the prisoner has suffered past, consummated harm or because prospective relief has become moot. If anything, effective relief is more vital under RLUIPA because the vast majority of the nation's prisoners are in state and local systems.

II. RLUIPA's grounding in the Spending Power does not undercut its clear authorization of individual-capacity damages relief.

A. This Court's Spending Power precedents require that conditions accompanying federal funds must be clear so that states can know what they are accepting. But as Part I shows, RLUIPA's authorization of individual-capacity damages relief is clear. *Tanzin*'s holding and reasoning that RFRA's identical statutory language authorized such relief were unanimous. And *Tanzin* repeatedly used language treating its conclusion or reasons as "clear"—as involving "no doubt" and a kind of relief that has "commonly" or "long been available."

The intimate relationship between RFRA and RLUIPA (Part I-B) also clarifies RLUIPA's

authorization of individual-capacity damages. RLUIPA's reason for being was to reinstate pieces of RFRA—including those covering state and local prison regulations—that this Court had excised in *City of Boerne*. Thus, it makes no sense to interpret "appropriate relief" differently in the two statutes. Because RFRA authorizes individual-capacity damages, so does RLUIPA.

B. It is also meritless to say that that Congress lacks power to impose a damages remedy on individual officials because they are not direct recipients of federal funds or parties to the funding agreement. The Spending Power authorizes Congress to reach prison officials whose behavior undercuts Congress's goal of ensuring that federally funded prisons do not substantially burden prisoners' religious exercise. To hold that Spending Power legislation can restrict only direct grant recipients is inconsistent with key precedents, with basic constitutional principles, and with key bodies of legislation.

Most obviously, *Sabri v. United States*, 541 U.S. 600 (2004), upheld Congress's use of the Spending Power to impose criminal liability on individuals who bribe officials of local governments receiving federal funds. *Sabri* also confirms the basic constitutional principles that Congress can enact laws "necessary and proper" (Art. I, § 8, cl. 18) to carrying out its power to spend for the general welfare. RLUIPA's protection of religious exercise in federally funded prisons easily serves the "general welfare." Congress permissibly sought to ensure that prisons it funds are not used to burden the constitutionally protected interest in religious exercise; it also heard considerable evidence

that incarcerated persons' religious practice can promote their rehabilitation and reduce recidivism. To achieve these goals, imposing liability on prison officials who burden the religious exercise of incarcerated persons is "convenient," "useful," and "plainly adapted," thus satisfying the Necessary and Proper Clause. And barring the use of the Spending Power to restrict individuals or entities not directly receiving the federal funds would undermine Congress's recognized powers over spending, most notably, the power to prohibit bribes of officials in federally funded entities or programs.

ARGUMENT

I. Every Ground on Which This Court Unanimously Held That RFRA Authorizes Individual-Capacity Damages Relief Also Shows Clearly That RLUIPA Authorizes Such Relief.

This Court, in *Tanzin v. Tanvir*, 592 U.S. 43, held unanimously that RFRA authorized individual-capacity damages relief. The Court based that decision on RFRA's text, on its context and origins, and on the point that only such relief could remedy certain RFRA violations. Every one of those grounds applies as much or more to RLUIPA. Thus, RLUIPA likewise authorizes such relief.

A. *Tanzin* Read the Identical Text Found in RLUIPA—"Appropriate Relief Against a Government"—to Authorize Individual-Capacity Damages Suits Under RFRA.

This Court, in *Tanzin*, began "[a]s usual," with the statutory text (592 U.S. at 46), holding that RFRA's phrase authorizing claimants to "obtain appropriate

relief against a government," 42 U.S.C. § 2000bb-1(c), authorizes individual-capacity damages claims. 592 U.S. at 45. First, the Court held, "RFRA's text provides a clear answer" that suits against "government" include suits against officials in their individual capacities. *Id.* at 47. The statutory definition of "government," in 42 U.S.C. § 2000bb-2(1), includes an "official," which "does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" *Id.* at 47 (quoting 10 *Oxford English Dictionary* 733 (2d ed. 1989)). Second, the Court held, damages against officials were "appropriate relief" because "[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief," and "damages against federal officials remain an appropriate form of relief today." *Id.* at 49 (citations omitted).

RLUIPA, identically, allows a claimant to "obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). And like RFRA, RLUIPA defines "government" to include a "branch, department, agency, instrumentality, or official" or "other person acting under color of . . . law." 42 U.S.C. § 2000cc-5(4).

Just as individual-capacity damages are "appropriate" against federal officials under *Tanzin*, they are "appropriate" against state and local officials under RLUIPA. *Tanzin* stated not only that "damages have long been awarded as appropriate relief" in "suits against Government officials," but specifically that damages are "commonly available against state and local government officials." 592 U.S. at 49, 50. The Court observed that it had interpreted 42 U.S.C. § 1983, by the time of RFRA's enactment, "to permit monetary recovery against officials who violated

'clearly established' federal law." *Id.* at 50 (citations omitted).

Identical phrases in closely related statutes call for identical meanings. *Tanzin* itself relied on the existence of parallel language in RFRA and § 1983—"person[s]" acting "under color" of law—to "confirm[ ]" that the former statute, like the latter, authorizes individual-capacity suits. *Id.* at 48. The Court invoked the principle that when two statutes "use[ ] the same terminology . . . in the very same field of civil rights law, 'it is reasonable to believe that the terminology bears a consistent meaning.'" *Id.* at 48 (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012)). RFRA and RLUIPA likewise should have a consistent meaning.

Tanzin also said that the phrase "appropriate relief" must be read in the light of its "context." 592 U.S. at 49. And the reason why RFRA and RLUIPA both use that identical phrase (and many others) is their context. The two statutes are intimately related.

B. RLUIPA and RFRA Are "Sister Statutes" That Are Essentially Identical in That RLUIPA Reenacted RFRA for Certain Contexts.

The context of RLUIPA is clear, and this Court has repeatedly recognized it. RLUIPA and RFRA are "sister statute[s]." *Ramirez v. Collier*, 595 U.S. 411, 424 (2022); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015). "Congress enacted [both] 'in order to provide very broad protection for religious liberty.'" *Holt*, 574 U.S. at 356 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). As *Holt* noted, RFRA was enacted to reinstate protection for religious exercise

after this Court held in *Employment Division v. Smith*, 494 U.S. 872 (1990), "that "neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment." *Holt*, 574 U.S. at 356–57. Then, after this Court invalidated RFRA as applied to states and their subdivisions (*City of Boerne v. Flores*, 521 U.S. 507 (1997)), Congress enacted RLUIPA to reinstate RFRA's protections against those entities in two contexts: land-use regulations and institutionalized persons' (including prisoners') religious exercise. *Holt*, 574 U.S. at 357. RLUIPA "mirrors RFRA" in providing that government actions that substantially burden religion must further a compelling government interest and must be the least restrictive means of furthering that interest. *Id.* at 357–58. RLUIPA "allows prisoners 'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'" *Id.* at 358 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006)).

That context has crucial implications for the issue here.

1. RFRA and RLUIPA's status as "sister statutes," designed to provide the same "broad protection" for religious freedom under "the same standard" (*supra*), confirms that identical phrases in them should have identical meanings. This Court regularly cites RFRA decisions to interpret RLUIPA. In interpreting RLUIPA's "compelling interest" test, the Court in *Holt v. Hobbs*, quoted and followed principles from decisions interpreting that test under RFRA. *Holt*, 574 U.S. at 362–63 (quoting *Hobby Lobby*, 573 U.S. at 726–27; *O Centro*, 546 U.S. at 431). In turn, *O Centro*,

546 U.S. at 436, quoted and followed principles from a decision under RLUIPA. *Cutter v. Wilkinson*, 544 U.S. 709, 722–23 (2005).

2. Moreover, RFRA and RLUIPA's relationship is even closer than their parallel language suggests. RLUIPA reenacts RFRA as applied to certain laws (state and local land-use and prison regulations). That context makes it clear that phrases in RLUIPA mean the same thing as identical phrases in RFRA.

When RFRA was "first enacted," as *Tanzin* emphasized, it covered both federal actions and state and local actions; "[i]t made no distinction between state and federal officials." 592 U.S. at 50. That coverage included federal and state prisons, which Congress brought within RFRA after focused debate. *See* 139 Cong. Rec. S14350–14368 (daily ed. Oct. 27, 1993); *See also* 139 Cong. Rec. at S14468 (daily ed. Oct. 27, 1993) (recording that Senate rejected amendment to exclude prisoner claims, by 58–41 vote). Then *City of Boerne* struck down RFRA's applications to state and local laws. Congress "responded to *City of Boerne* by enacting RLUIPA, which applies to the States and their subdivisions and invokes congressional authority under the Spending and Commerce Clauses." *Holt*, 574 U.S. at 357.

In short, Congress enacted RLUIPA to reinstate, for certain state and local laws, the coverage of RFRA that *Boerne* had invalidated. Put differently: RFRA and RLUIPA are not simply related statutes, or even parallel statutes. RLUIPA's reason for being was to reimpose pieces of RFRA that *Boerne* had excised. It is in that full sense that RLUIPA "mirrors" RFRA and is its "sister" (*Holt*, 574 U.S. at 357, 356). The two have

the same genetic material. Accordingly, similar phrases in them should be interpreted the same.

Holding that RLUIPA does not authorize individual-capacity damages relief would deny a state prisoner relief for the identical wrong for which a federal prisoner can obtain relief under RFRA. That result utterly contradicts the statutes' clear context: RLUIPA was meant to reinstate RFRA's protections for persons in state and local prisons.

C. Just as with RFRA, RLUIPA Reinstated the Law Before *Employment Division v. Smith*—Law That Allowed Damages Suits Against Individual Officials.

Tanzin also reasoned that individual-capacity damages relief was appropriate "in light of RFRA's origins." 592 U.S. at 50. As the Court noted, those origins, particularly for RFRA's remedies provision, were in 42 U.S.C. § 1983, which provides civil remedies for violations of rights "under color of" law—the same phrase that both RFRA and RLUIPA adopt to define actions by "government" (42 U.S.C. § 2000bb-2(1); 42 U.S.C. § 2000cc-5(4)). *See Tanzin*, 592 U.S. at 50. Moreover, *Tanzin* said, "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.* (emphasis in original). The Court added:

> There is no doubt that damages claims have always been available under § 1983 for clearly established violations of the First Amendment. See, e. g., *Sause v. Bauer*, 585 U.S. [957] (2018) (per curiam) (reversing grant of qualified immunity in a case seeking damages under §

> 1983 based on alleged violations of free exercise rights and Fourth Amendment rights); *Murphy v. Missouri Dept. of Corrections*, 814 F.2d 1252, 1259 (8th Cir. 1987) (remanding to enter judgment for plaintiffs on [ ] § 1983 free speech and free exercise claims and to determine and order "appropriate relief, which . . . may, if appropriate, include an award" of damages)."

Tanzin, 592 U.S. at 50–51. "Given that RFRA reinstated pre-*Smith* protections and rights," the Court reasoned, "parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*," including "a right to seek damages against Government employees." *Id.* at 51.

This reasoning under RFRA applies as much or more to RLUIPA. The § 1983 cases that this Court cited (*Sause* and *Murphy*) were suits against state actors. RLUIPA's purpose was to reinstate RFRA's standard—and in turn RFRA's "reinstate[ment of] pre-*Smith* protections and rights"—against state action in prison and land-use contexts. *Tanzin*, 592 U.S. at 51. Accordingly, just as with RFRA, "parties suing under [RLUIPA] must have at least the same avenues for relief" that they had before *Smith*, including damages relief against state and local officials. *Id.*[2]

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[2] Although it is sufficient that RLUIPA's plain language, context, and origins authorize individual-capacity damages relief, the legislative history bolsters that conclusion. The House committee report on the bill that became RLUIPA explains that the bill's sections on relief "track RFRA, creating a private cause of action for damages, injunction, and declaratory judgment, and creating a defense to liability, and providing for attorneys' fees." H. Rep.

D. Just as with RFRA, Damages Are Often the Only Effective Relief for Prisoners in Key RLUIPA Cases.

As its final reason for recognizing individual-capacity damages relief under RFRA, *Tanzin* stated:

> A damages remedy is not just "appropriate" relief as viewed through the lens of suits against Government employees. It is also the *only* form of relief that can remedy some RFRA violations. For certain injuries, . . . effective relief consists of damages, not an injunction.

592 U.S. at 51 (emphasis in original). As an example, the Court highlighted the case of "destruction of [a prisoner's] religious property" by prison officers. *Id.* (citing *DeMarco v. Davis*, 914 F.3d 383, 390 (5th Cir. 2019)).

The same reasoning clearly holds under RLUIPA, which reinstates RFRA's protections for state and local prisoners. RLUIPA rests on the recognition that a prison's control over prisoners can be "severely disabling to private religious exercise"; "'institutional residents' right to practice their faith is at the mercy of those running the institution.'" *Cutter*, 544 U.S. at 720–21 (quoting 146 Cong. Rec. 16698, 16699 (2000) (joint statement of Senators Hatch and Kennedy)). The necessity of individual-capacity damages in

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No. 106-219, *Religious Liberty Protection Act of 1999*, at 29 (July 1, 1999). It adds that "[i]n the case of violation by a state," sovereign immunity means that "the Act must be enforced by suits against state officials and employees." *Id.* This explanation was repeated, nearly verbatim, in the lead Senate sponsors' section-by-section analysis of the final bill. 146 Cong. Rec. 19123–24 (Sept. 22, 2000).

certain cases applies as much to state prisoners as to federal prisoners.

If anything, the ability of prisoners to obtain effective judicial relief is more consequential under RLUIPA than under RFRA. The vast majority of prisoners are in state prisons: "At year end 2022, state departments of corrections (DOCs) had jurisdiction over 87% of all prisoners in the United States, while the [federal Bureau of Prisons] had legal authority over 13% of the prison population." E. Ann Carson and Rich Kluckow, *Prisoners in 2022—Statistical Tables* 5 (Nov. 2023) (report of the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics), https://bjs.ojp.gov/document/p22st.pdf. By 2023, the state and local share had increased to more than 88%: of the nation's 1.21 million prisoners, 1.07 million were in state prisons. Bureau of Justice Statistics, *Preliminary Data Release—Prisons (2023)* (Dec. 2024), https://bjs.ojp.gov/preliminary-data-release-prisons-2023.

Damages against prison officials are the only effective form of relief in two key situations: (1) when a prison official has caused consummated harm that could not have been anticipated in time to get an injunction or (2) when a prisoner has suffered a harm but claims for injunctive relief have become moot. Of course, the necessity for damages in both situations applies equally in state and local prisons as in federal prisons.

1. Cases of consummated, unanticipated harm, such as destruction of religious property.

For some prisoners, the burden on religion is the destruction or seizure of religious property. Such cases involve a tangible, consummated harm for which compensatory relief is clearly "appropriate." And injunctive relief will likely be impractical because the victim is generally unaware of the impending harm before it happens. Thus, damages are crucial when prison guards damage, seize, or destroy a prisoner's religious books—as in *DeMarco*, the case this Court cited in *Tanzin*, 592 U.S. at 51. *See DeMarco*, 914 F.3d at 390 (prisoner's Bible and other religious books "were allegedly destroyed, leaving damages as his only recourse"). *See also, e.g.*, *Harris v. Escamilla*, 736 Fed. Appx. 618 (9th Cir. 2018) (prison officer allegedly threw down prisoner's Qur'an and stomped on it, rendering it unusable); *Rasul v. Myers*, 512 F.3d 644 (D.C. Cir. 2008) (flushing Qur'ans down toilet), *vacated on other grounds and remanded,* 555 U.S. 1083 (2008); *Jama v. U.S. Immigration and Naturalization Serv.,* 343 F. Supp. 2d 338, 378 (D.N.J. 2004) (refugees detained at a facility operated by an INS contractor alleged that personnel had seized their Qur'ans and Bibles). And damages are the only possible remedy for the assault, battery, and forcible shaving of plaintiff's head in this case.

2. Cases where prospective claims become moot.

Even when prisoner claims involve continuing rather than past harms, prospective relief may be unavailable because the plaintiff has already been released or transferred—as this case also exemplifies.

Pet. App. 8-9. *See, e.g.*, *Harris*, 736 Fed. Appx. at 621 (dismissing claims for prospective relief as moot because plaintiff "has been moved to a new prison facility" and "does not allege any statewide policy impacting his religious activities"); *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012) (prisoner's release in third year of litigation mooted claim for injunctive relief); *Moussazadeh v. Texas Dep't of Crim. Just.*, 2009 WL 819497, at *9–11 (S.D. Tex. 2009) (holding Jewish prisoner's case moot, after years of litigation and attempted settlement, because state transferred him to another facility that offered kosher food), *rev'd on other grounds*, 364 Fed. Appx. 110 (5th Cir. 2010) (per curiam); *Jama*, 343 F. Supp. 2d at 376 n.30 (stating that because "none of the Plaintiffs remain in custody . . . injunctive and declaratory relief clearly would be inadequate" and damages "would be the only appropriate relief").

Prisons can and do transfer prisoners for the very purpose of mooting any prospective relief. Holding that individual-capacity damages are unavailable would incentivize that behavior, which further shows why such damages are "appropriate relief." But the concern about mootness does not depend on hypothesizing that prisons will engage in manipulation. "Appropriate" relief requires compensating prisoners for their losses and deterring prison officials from unreasonably burdening religious exercise, even when the release or transfer that renders injunctive relief moot is legitimate.[3]

[3] State prisoners like Petitioner cannot obtain damages from the state given sovereign-immunity principles and *Sossamon v.*

II. RLUIPA's Grounding in the Spending Power Does Not Undercut its Clear Authorization of Individual-Capacity Damages Relief.

RFRA and RLUIPA's intimate relation in their text, context, and purpose are unquestionable, and no court of appeals has questioned them. But courts that have denied individual-capacity damages under RLUIPA have reasoned that it differs from RFRA in one respect: it rests on Congress's power to attach conditions to the provision of federal funds (Art. I, § 8, cl. 1). Individual-capacity damages are unavailable under RLUIPA, these courts say, either (1) because the statute is not sufficiently clear or (2) because Congress may not, under the Spending Power, impose liability on a person or entity other than the direct recipient of federal funds. Both assertions are meritless.[4]

A. RLUIPA's Authorization of Individual-Capacity Damages Relief is Sufficiently Clear Under the Spending Power, Given That RLUIPA Is Virtually Identical to RFRA.

Some courts have held that RLUIPA does not authorize individual-capacity damages relief with sufficient clarity to satisfy the criteria for exercise of

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Texas, 563 U.S. 277 (2011). Compensation can come only from individual-capacity suits against the offending officials.

[4] This Court's decision in *Sossamon*, is irrelevant to this case. The suit in *Sossamon* sought monetary relief from the state, relief barred by sovereign immunity. But both *Tanzin* and this case "feature[ ] a suit against individuals, who do not enjoy sovereign immunity." *Tanzin*, 592 U.S. at 52. That is an "obvious difference." *Id.*

the Spending Power. *See Ali v. Adamson*, 132 F.4th 924 (6th Cir. 2025) (reaffirming *Haight v. Thompson*, 763 F.3d 554 (6th Cir. 2014)); *Rendelman v. Rouse*, 569 F.3d 182, 187–89 (4th Cir. 2009). Those courts draw on this Court's decisions analogizing the provision of federal funds with conditions to a contract. "When Congress attaches conditions to a State's acceptance of federal funds, the conditions must be set out 'unambiguously'" so that the recipients of funds can "accept them 'voluntarily and knowingly.'" *Arlington Cent. Sch. Dist. Bd. of Ed. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst State Sch. and Hosp. v. Halderman,* 451 U.S. 1, 17 (1981)); *see Arlington Cent.*, 548 U.S. at 296 ("we must ask whether the [statute involved] furnishes clear notice regarding the liability at issue").

Thus, the Sixth Circuit in *Ali*, writing after *Tanzin*, asserted that RLUIPA's "origins" and "context" differ from RFRA's because, given RLUIPA's grounding in the Spending Power, "[its] remedies demand clarity and RFRA's do not." *Ali*, 132 F.4th at 933. The court said that the phrase "appropriate relief" did not "unambiguously" authorize individual-capacity damages. *Id.*

But this argument fails because of two key points, both of which we have previewed in Part I.

1. First, *Tanzin* did not just hold that RFRA authorized individual-capacity damages relief; it also treated the statutory language as clearly providing for damages remedies. The decision was unanimous, itself an indication of the "clarity" of its conclusion. More important, the Court repeatedly noted that RFRA's statutory text—again identical to RLUIPA's—made its conclusion clear (emphasis

added):

- On whether government officials can be sued in their personal capacities, "RFRA's text provides a **clear answer**: They can." *Tanzin*, 592 U.S. at 47. (That is because the text provides an "**express** definition" of "government" that includes officials. *Id.* (quoting 42 U.S.C. § 2000bb-2(1)).
- As to whether relief can include damages, "damages have **long been** awarded as appropriate relief" and are "**commonly available** against state and local government officials." *Tanzin*, 592 at 49, 50.
- "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 "there is **no doubt** that damages claims have always been available under § 1983 for clearly established violations of the First Amendment." *Id.* at 50 (citing cases).

This Court treated RFRA's authorization of individual-capacity damages relief as clear. And as Part I shows, *Tanzin*'s interpretation of the identical statutory language demonstrates that Congress did make a clear statement. Thus, even if the Sixth Circuit were correct that Spending Clause legislation requires an especially clear statement, RLUIPA's authorization of such relief meets that test.

2. Second, RLUIPA's authorization is clear because of the intimate relationship between RFRA and RLUIPA. *See supra* Part I-B. To restate briefly: RFRA and RLUIPA are not simply related statutes, or

even parallel statutes. RFRA, as first enacted, covered state and federal laws, including prison regulations, without differentiation. After *Boerne* struck down RFRA's state-law applications, Congress enacted RLUIPA precisely to reinstate pieces of RFRA—those covering state and local prison or land-use regulations—that *Boerne* had excised. RLUIPA "mirrors" RFRA and is its "sister" (*Holt*, 574 U.S. at 357, 356) in that the two are made of the same genetic stuff.

The courts of appeals that have found RLUIPA unclear on damages have reasoned as if Congress first covered federal actions (in RFRA) and then decided (in RLUIPA) to cover state actions. But, in reality, Congress covered state actions in RFRA and then, after *Boerne*, recaptured some of that coverage in RLUIPA. Thus, it makes no sense to interpret RLUIPA differently from RFRA. Even applying a "clear statement" rule, RLUIPA and RFRA should be interpreted the same.

In finding RLUIPA's phrasing insufficiently clear, the Sixth Circuit reasoned that the identical phrase may mean two different things in two statutes resting on different constitutional powers. *Ali*, 132 F.4th at 932. The court relied on *District of Columbia v. Carter*, 409 U.S. 418 (1973), which held that the District of Columbia counted as a "State or Territory" under 42 U.S.C. § 1982 but not under 42 U.S.C. § 1983. But §§ 1982 and 1983 did not merely rest on different congressional powers. They also had different "roots" in separate civil rights laws from 1866 and 1871 (*Carter*, 409 U.S. at 423), and they covered materially different conduct: racial discrimination by private, federal, and state actors

versus Fourteenth Amendment violations of all kinds by state (and only state) actors. *Id.* at 424. These differences amounted to "such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed with different intent." *Id.* at 421 (cleaned up). Comparing these differences to this case simply dramatizes the intimate relationship between RFRA and RLUIPA.

By contrast, it could not be clearer from RFRA's and RLUIPA's "roots" (*id.* at 423) that RLUIPA reimposes the same standard as RFRA. That is why the Court repeatedly uses decisions under one as authority under the other. *See supra* pp. 12–13.[5]

B. Under the Spending Power, Congress Can Impose Individual Liability on Prison Officials Even Though They Do Not Directly Receive Federal Funds.

Some courts offer a different reason why RLUIPA's grounding in the Spending Power means that it does not authorize individual-capacity damages even though RFRA's identical phrasing does. These courts take the analogy between federal spending and contracts and extend it much further. They state flatly that, under that analogy, it is unconstitutional for Spending Power legislation to impose liability on a person or entity other than the direct recipient of the funds. "'[O]nly the grant recipient"—here, the state

[5] As Petitioner notes, officials subject to individual-capacity damages relief will still be able to assert qualified immunity, which "ensures still more notice by limiting personal liability to violations of clearly established law." Petitioners' Br. 36.

prison system—"may be liable for [the] violation" of conditions, since 'individual RLUIPA defendants are not parties to the [funding] contract in their individual capacities.'" *Barnett v. Short*, 129 F.4th 534, 543 (8th Cir. 2025) (quotation omitted). *See also Tripathy v. McKoy*, 103 F.4th 106, 114 (2d Cir. 2024) (quotation omitted) ("like a contract, RLUIPA can impose 'individual liability only on those parties actually receiving state funds.'"); *Barnett*, 129 F.4th at 542 (the official "has not consented to any conditions of federal funding, so it's hard to understand how Congress's spending power can be brought to bear on her directly").

This argument is unsustainable—and indeed the Sixth Circuit has rejected it, in an opinion by Chief Judge Sutton. *Haight*, 763 F.3d 554. As that court said, the theory that only the direct contracting party can be liable "proves too much":

> If accepted, it would mean that even an eminently clear statute—say, that "plaintiffs could obtain money damages in actions against state and local prison officials, whether sued in their official or individual capacity"—would not permit money damages. That is not consistent with *Dole* or *Arlington Central* or *Pennhurst* itself.

Haight, 763 F.3d at 570.

This Court has used the "contract" analogy to justify requiring clear conditions that give states notice of the obligations that accompany the federal funds. *See, e.g.*, *Arlington Cent.*, 548 U.S. at 296; *Pennhurst*, 451 U.S. at 17. But the Court has not used the contract analogy to disable Congress from

unambiguously imposing conditions on persons or entities simply because they are not direct recipients of the funds in question or direct signatories to the funding contract. Indeed, to hold that Spending Power legislation can only restrict grant recipients is inconsistent with precedent, with basic constitutional principles, and with key bodies of legislation.

1. The most obvious precedent is *Sabri v. United States*, 541 U.S. 600 (2004), which upheld Congress's use of the Spending Power to impose criminal liability on individuals who bribed officials of local governments receiving federal funds. 18 U.S.C. § 666(a)(2). Obviously, those individuals neither received federal funds nor entered into any contract with the federal government. Yet the Court upheld Congress's power to impose liability on them.

2. In upholding that power, the Court in *Sabri* relied on basic constitutional principles:

> Congress has authority under the Spending Clause to appropriate federal moneys to promote 'the general welfare,' Art. I, § 8, cl. 1, and it has corresponding authority under the Necessary and Proper Clause, Art. I, § 8, cl. 18, to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare.

Sabri, 541 U.S. at 605 (internal quote marks added). The specific interest in *Sabri* was ensuring that funds provided for the general welfare are "not frittered away in graft or on projects undermined when funds are siphoned off or corrupt public officers are derelict about demanding value for dollars." *Id.*

Here too, the combination of the Spending Clause and the Necessary and Proper Clause supports Congress's power to impose liability on prison officials who substantially burden prisoners' religious exercise. Congress means to subsidize state prisons in which religious freedom is protected, and not those in which religious freedom is unnecessarily burdened. To achieve that goal requires effective remedies, and it requires constraints on the behavior of those who do the work of the prisons and who do, or do not, burden religious freedom.

"[T]he general welfare" in the Spending Clause is a very broad term on which courts must "defer substantially to the judgment of Congress." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987); *id.* at 208 ("'the concept of welfare . . . is shaped by Congress'") (quotation omitted). RLUIPA's protection of religious exercise in federally funded prisons serves the "general welfare" in two ways. First, protecting religious exercise, a constitutionally protected interest, itself directly serves the general welfare. Congress can ensure that its funds do not support burdens on that fundamental interest, just as it can act—and has acted in civil rights statutes—"to ensure 'that funds of the United States are not used to support racial discrimination.'" *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 632 n.13 (1984) (quoting 110 Cong. Rec. 6544 (1964) (remarks of Sen. Humphrey)).

Second, Congress heard "strong evidence that spiritual development and religious practice promote rehabilitation and reduce recidivism in inmates." Derek I. Gaubatz, *RLUIPA at Four: Evaluating the Success and Constitutionality of RLUIPA's Prisoner*

Provisions, 29 Harv. J.L. & Pub. Pol'y 501, 511 (2005) (citing legislative testimony that, among other things, "religious observance by prisoners . . . cut recidivism rates by two-thirds"; noting that "[e]ven opponents of the Act were forced to concede the rehabilitative effects of prisoner religious exercise"). *See also* Petitioner's Br. 34 (citing evidence that Congress heard).

The Necessary and Proper Clause allows Congress to enact legislation that is "convenient, or useful," "conducive," or "plainly adapted" to carrying out its other powers, including spending federal money. *McCulloch v. Maryland*, 17 U.S. 316, 413, 418, 421 (1819). Holding prison officials liable for damages under RLUIPA easily meets any of those standards. As just noted, RLUIPA reflects Congress's judgment that "the general welfare" means federal funds should not go to prison systems that substantially burden prisoners' exercise of religious freedom. It is by the actions of officials that prisons impose such burdens. Those officials, like the bribegiver in *Sabri*, undermine Congress's goal of ensuring that federal funds serve the general welfare.

3. Barring the use of the Spending Power to restrict individuals or entities not directly receiving the federal funds would undermine significant bodies of federal legislation. *See* Petitioner's Br. 38–41, 44–46 (detailing examples). As *Sabri* shows, such a rule would destroy Congress's ability to protect the integrity of federal funding by prohibiting private persons from offering bribes or government officials from taking them.

Congress has also imposed regulation beyond direct aid recipients in prohibiting discrimination or

other wrongs by educational institutions based on the federal aid their students receive. In *Grove City College v. Bell*, 465 U.S. 555 (1984), this Court held that certain programs in a college were subject to Title IX's nondiscrimination rules, even though the college received no direct federal aid, because "some of its students receive BEOGs [federal education grants] and use them to pay for their education" at the college. *Id.* at 563. The Court found "no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the federal government are subject to regulation." *Id.* at 564. Colleges choose to participate in such student aid programs, and they benefit indirectly from the aid given directly to their students. But if that justifies reaching the colleges, it also justifies reaching prison officials. They choose to work for state prison systems that receive federal aid, and they benefit from the aid, which helps defray their salaries and support the institutions where they work.

4. The Fifth Circuit panel here attempted to distinguish *Sabri* on the ground that it involved "liability for a person who directly threatened the 'object' of a spending agreement, namely federal dollars, while *Landor* is a civil case that's based on conduct unrelated to the federal purse." Pet. App. 12a. Similarly, the Eighth Circuit asserted that the anti-bribery law "is too dissimilar from RLUIPA" to justify imposing liability on officials under RLUIPA. *Barnett*, 129 F.4th at 543 (asserting that "[t]he law in *Sabri* didn't impose conditions of federal funding on nonrecipients; it simply punished those who attempted to interfere with the disbursement of federal funds"); accord *Tripathy*, 103 F.4th at 115.

This argument distinguishes nothing. An employee who unnecessarily burdens a prisoner's religious freedom in a federally subsidized prison diverts the federal subsidy from a prison in which religious freedom is protected to one in which it is not. This threatens the federal purpose just as much as did the briber in *Sabri*. And in any event, Congress can attach conditions to federal funds to promote "the general welfare"; its power goes well beyond keeping the funds from being lost or misspent. *Dole*, 483 U.S. at 208. It was the dissent in *Dole* that argued that Spending Power legislation could do no more than specify or control "how the funds Congress has appropriated are expended." *Id.* at 218 (O'Connor, J., dissenting); *see id.* at 216. No other justice agreed with that restrictive position.

Far from stretching the Spending Power beyond the use approved in *Sabri*, RLUIPA's use of that power is more modest than that in *Sabri*. As the federal government has pointed out in this case, "the bribery statute regulates the conduct of the entire public," but "RLUIPA's damages remedy applies only to governmental officials and persons acting under color of law who (by hypothesis) have voluntarily undertaken to execute the State's obligations under the federal spending contract, and who therefore may fairly be held to account for compliance with the terms of that contract." Br. of United States in Support of Cert. 19.

5. Finally, even if courts must find an analogy to contract law to justify any imposition of liability under the Spending Power, there are ample analogies here for imposing liability on prison officials who substantially burden prisoners' religious exercise. As

Petitioner observes, "Through a State's voluntary acceptance of federal funds with clear notice of RLUIPA's conditions, and through a person's voluntary work as an officer for a federally-funded state program subject to those same conditions, agreement to RLUIPA's terms is properly deemed to be incorporated into respondents' employment contracts." Petitioner's Br. 49. "They have implicitly consented to RLUIPA's rights and remedies." *Id.*

Relatedly, officials who unjustifiably burden a prisoner's religious exercise cause their state employer to breach its funding agreement with the federal government. Even unrelated persons who "cause a breach . . . or disruption of performance" of a contract between two other parties can be held liable for civil damages. *See Restatement (Third) of Torts: Liability for Economic Harm* § 17 (2020). And prison officials are not unrelated persons: as the state's agents, they commit the very acts by which the state breaches its agreement. Congress demands that prison systems receiving federal funds agree not to impose substantial burdens on incarcerated persons' religious exercise without compelling justification. Officials who impose such burdens—flagrantly so, in this case—surely undermine their employer's performance of that agreement.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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