

23-131

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

FRANKLIN LOVING,

Plaintiff-Appellant,

—against—

ROBERT MORTON, ACTING SUPERINTENDENT OF DOWNSTATE CORR. FACILITY,

Defendant-Appellee,

SUPERINTENDENT, DOWNSTATE CORRECTIONAL FACILITY, M.D.

JOHN OR JANE DOE, NORIEL DEGUZMAN, PHYSICIAN ASSISTANT,

DOWNSTATE CORR. FACILITY,

Defendants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF OF *AMICI CURIAE* 27 RELIGIOUS ORGANIZATIONS
IN SUPPORT OF APPELLANT**

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INTEREST OF *AMICI CURIAE*¹

Amici are American religious or religiously affiliated organizations representing a wide array of faiths and denominations. Led by the Muslim Bar Association of New York, *amici* include congregations and houses of worship, as well as professional groups that work with or represent faith communities (“Religious Organizations”). As such, *amici* have an interest in ensuring that the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is properly interpreted to allow anyone whose religious freedom has been unlawfully burdened to seek the full panoply of remedies authorized by the statute, including money damages against individual officers. As explained further, absent such damages, RLUIPA violations against religious minorities in state institutions have gone entirely unremedied. *Amici* have a clear interest in ensuring that robust enforcement mechanisms are in place to prevent RLUIPA from becoming an empty promise.

¹ Consistent with Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, has contributed money that was intended to fund preparing or submitting this brief. All parties provided consent for *amici curiae* to file this brief.

Amici are identified here by name, with a fuller description of their identities and interests attached to this brief as Appendix A: Albuquerque Mennonite Church; Association of Muslim American Lawyers (AMAL); Association of U.S. Catholic Priests (AUSCP); Campus Ministry of Roman Catholic Archdiocese of New York at Hostos and Bronx Community College of City University of New York; Council on American-Islamic Relations (CAIR); Catholic Charities of Trenton, NJ; Central Conference of American Rabbis (CCAR); Church Council of Greater Seattle; Congregation Shaarei Shamayim; East End Temple; El Paso Monthly Meeting of the Religious Society of Friends; The Episcopal Diocese of Long Island; Faith in New Jersey; Global Justice Institute; The Interfaith Center of New York (ICNY); Islamic Society of Central Jersey (ISCJ); Jewish Center for Justice; Men of Reform Judaism; Muslim Bar Association of New York (MuBANY); Muslim Public Affairs Council (MPAC); Muslim Urban Professionals (Muppies); National Association of Muslim Lawyers (NAML); New Jersey Muslim Lawyers Association (NJMLA); Social Action Committee of the First Unitarian Universalist Church of Austin; Union for Reform Judaism;

Unitarian Universalist Mass Action Network; Women of Reform
Judaism.

SUMMARY OF ARGUMENT

Amici, religious and religiously-affiliated organizations of numerous faiths and denominations, have a unique appreciation of the potential dangers posed to disfavored religious groups by state officials. This danger has been ever-present throughout American history, even as the identities of the disfavored religious groups have changed over time.

Congress has recognized the vulnerability of religious adherents to government hostility, and enshrined broad protections of religious liberty in two related statutes: the Religious Freedom Restoration Act of 1993 (RFRA) and RLUIPA. RFRA, which was enacted in response to the Supreme Court's decision in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), prohibits the federal government from imposing any substantial burden on the free exercise of religion unless such burden furthers "a compelling governmental interest" and is "the least restrictive means" of doing so. RFRA further establishes a federal cause of action to obtain "appropriate relief" for any violation of the statute. Just over two years ago, the Supreme Court made clear that such "appropriate relief" includes damages against federal officials in their individual capacities.

RLUIPA, the statute at issue here, was enacted in 2000 after the Supreme Court invalidated RFRA in part, and provides the same protections to the religious exercise of institutionalized persons, as well as protecting individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws. For the same reasons that the Supreme Court recently found dispositive as to RFRA, RLUIPA should be interpreted to authorize suits for money damages against state officials in their individual capacities.

Providing a damages remedy pursuant to RLUIPA is essential to achieving the statute's explicit textual aims and protecting religious rights in the United States. Injunctive relief alone is not sufficient. Many inmates suing under RLUIPA are released or transferred by the time their claims are adjudicated and therefore have no injunctive claims. Or the government may stop its challenged conduct when facing legal challenge and thereby evade judicial scrutiny by mooting the injunctive claim. These concerns are not idle fears. As detailed through caselaw recounted later in this brief, many inmates of a variety of faiths, including Muslims, Jews, and Rastafarians, have had their religious liberty egregiously violated in state institutions but, without money

damages available, have received no “appropriate relief.” Money damages are necessary to ensure compensation for the deprivation of legally guaranteed rights, deterrence of officials from engaging in unconstitutional behavior, and vindication of rights that have played a central role in the history of the United States.

For the reasons set forth herein and in Appellant’s and other *amici*’s briefs, *amici* urge the Court to reverse the judgment of the District Court and remand the case for further proceedings.

ARGUMENT

I. CONGRESS ENACTED RLUIPA TO PROVIDE EXPANSIVE PROTECTIONS FOR THE EXERCISE OF RELIGIOUS FREEDOMS.

RLUIPA, like “its sister statute,” RFRA, was enacted “to provide very broad protection for religious liberty.” *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). RLUIPA’s expansive protection of the free exercise of religion is deeply rooted in American history, which shows why money damages must be available to vindicate its promises. *See Tanzin v. Tanvir*, 141 S. Ct. 486, 492 (2020).

The right to freely practice one’s faith—and to generally be free of governmental burdens on that right—can be traced to well before the

founding of the country. In the “[c]enturies immediately before and contemporaneous with the colonization of America,” government-supported persecution of religious minorities was rampant: “Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews.” *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 8-9 (1947). Even in the new world, “many of the old world practices and persecutions” remained. *Id.* at 10. Practitioners of minority faiths “were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated.” *Id.* Indeed, Rhode Island’s founder, the Protestant dissenter Roger Williams, had been banished from the Massachusetts Bay Colony for his religious views. See Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1424-25 (1990).

But eventually, by 1791, “[f]reedom of religion was universally said to be an unalienable right” among the states. See McConnell, *supra*, at 1456. With the ratification of the First Amendment’s Free Exercise

Clause, the government committed “itself to religious tolerance,” such that “upon even slight suspicion that proposals for state intervention stem[med] from animosity to religion or distrust of its practices, all officials [would] pause to remember their own high duty to the Constitution and to the rights it secures.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993). For many years, the Supreme Court enforced the Free Exercise Clause through the “compelling interest” test—*i.e.* that government may not substantially burden the exercise of unless “necessary to further a compelling state interest.” *Holt*, 574 U.S. at 357.

However, in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), the Supreme Court drastically limited the scope of the First Amendment’s Free Exercise Clause. Overturning longstanding precedent, the Supreme Court held that, under the First Amendment, “neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest.” *See City of Boerne v. Flores*, 521 U.S. 507, 514 (1997) (citing *Smith*, 494 U.S. at 885).

In response, “Congress enacted RFRA in order to provide greater protection for religious exercise than is available under the First Amendment.” *Holt*, 574 U.S. at 357. In doing so, Congress rejected *Smith* as incompatible with the nation’s long history of safeguarding religious freedom. Congress restored, by statute, the longstanding “compelling interest test” that *Smith* largely overturned—*i.e.* that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the burden furthers “a compelling governmental interest” and “is the least restrictive means of” doing so. 42 U.S.C. § 2000bb-1(a),(b). To fully protect a person’s right to free exercise of religion, RFRA provided a right of action for any “person whose religious exercise has been burdened” to “obtain appropriate relief against a government.” *Id.* § 2000bb-1(c). As the Supreme Court made clear in *Tanzin*, such relief includes money damages against officers in their individual capacities. *See* 141 S. Ct. at 493.

RFRA was subject to legal challenges and the Supreme Court ultimately held that RFRA is unconstitutional as applied to the States and its subdivisions, though it remained in force as to the federal

government. *City of Boerne*, 521 U.S. at 532-36. Congress responded by enacting RLUIPA under the Spending and Commerce Clauses to restore and expand the pre-*Smith* protections for religious freedoms in two areas: (i) land-use regulation and (ii) the religious exercise of institutionalized persons. *See Holt*, 574 U.S. at 357; *see also* 42 U.S.C. §§ 2000cc, 2000cc-1. RLUIPA, like RFRA, provides “expansive protection for religious liberty,” and, for institutionalized persons, it “mirrors RFRA” by prohibiting the government from imposing a substantial burden on a prisoner’s religious exercise unless the burden furthers “a compelling governmental interest” and “is the least restrictive means of” doing so. *Holt*, 574 U.S. at 357-58; 42 U.S.C. § 2000cc-1(a). And like RFRA, RLUIPA expressly creates a federal cause of action that allows “[a] person [t]o assert a violation of [RLUIPA] as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.” *Id.* § 2000cc-2(a).

Thus, like RFRA, RLUIPA “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.” *Tanzin*, 141 S. Ct. at 492. Accordingly, claims under RLUIPA “must have at least the same avenues

for relief against officials that they would have had before *Smith*,” and “one [such] avenue for relief” includes “a right to seek damage against Government employees.” *Id.*

II. MONEY DAMAGES UNDER RLUIPA ARE VITAL TO PROTECTING DISFAVORED RELIGIOUS GROUPS FROM DISCRIMINATION

It is not by accident that money damages are available under RLUIPA—such remedies are essential to vindicating rights, particularly when injunctive relief is unavailable.

A. Money Damages Are An Essential Mechanism of Vindicating Critical Rights

Money damages are “the traditional form of relief offered in the courts of law.” *Curtis v. Loether*, 415 U.S. 189, 196 (1974). They are “commonly available against state and local government officials,” *Tanzin*, 141 S. Ct. at 491, and they serve at least three central purposes. First, “damages [are] an instrument of corrective justice, an effort to put plaintiff in his or her rightful position.” Dan B. Dobbs & Caprice L. Roberts, *Law of Remedies: Damages—Equity—Restitution* § 3.1 at 215 (3d. ed. 2017) (hereinafter, “Law of Remedies”). Where a person violates the legal rights of another and causes injury, a factfinder awards damages in order to right the wrong done to the plaintiff by the

defendant. See Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 11 at 19-20 (2d ed. 2011); see also 4 Fowler Harper, Fleming James, Jr., & Oscar S. Gray, *Harper, James and Gray on Torts* § 25.1 at 1299 (2007) (“The cardinal principle of damages in Anglo-American law is that of *compensation* for the injury caused to the plaintiff by defendant’s breach of duty.” (emphasis in original)).

Second, damages deter future violations. See *Law of Remedies* § 3.1 at 216 (a “damages judgment can provide an appropriate incentive to meet the appropriate standard of behavior”). Damages, a cost to the liable defendant, raise the price of unlawful conduct and make it less attractive to potential wrongdoers. See *Owen v. City of Indep., Mo.*, 445 U.S. 622, 651-52 (1980) (“The knowledge that a municipality will be liable for all of its injurious conduct [in a Section 1983 suit], whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens’ constitutional rights.”); cf. Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* at 26 (1970).

Third, damages vindicate the legal rights of the plaintiff. This rationale has a deep historical basis; many writes “[i]n the early Republic”

enabled “individuals to test the legality of government conduct” through suits against officers for money damages. *Tanzin*, 141 S. Ct. at 491 (quoting James E. Pfander & Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification and Gov’t Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1871-75 (2010)). In this way, damages are a “vital component of any scheme for vindicating cherished constitutional guarantees.” *Owen*, 445 U.S. at 651.

For these reasons, particularly “[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief.” *Tanzin*, 141 S. Ct. at 491. This is true of claims under § 1983, as well as its precursor. *See id.* at 491-92 (citing cases). It is also true of RFRA, which, as the Supreme Court made clear in *Tanzin*, provides “at least the same avenues for relief against officials” as available pre-*Smith* under § 1983. *See id.* at 492. As *Tanzin* further explained, RFRA “uses the same terminology as § 1983 in the very same field of civil rights law,” and it thus followed that RFRA authorizes the same remedies, including suits against individual officers for money damages. *See* 141 S. Ct. at 490, 492. Because RLUIPA—RFRA’s “sister statute,” *Holt*, 574 U.S. at 356—was enacted to “allow prisoners to seek religious accommodations

pursuant to the same standard as set forth in RFRA,” it should be interpreted no differently. *Holt*, 574 U.S. at 358 (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006)).

B. Injunctive Relief Alone Is Insufficient to Vindicate the Rights of Religious Minorities Under RLUIPA

As with RFRA, damages are sometimes “the *only* form of relief that can remedy” RLUIPA violations, because “[f]or certain injuries . . . effective relief consists of damages, not an injunction.” *Tanzin*, 141 S. Ct. at 492 (emphasis in original). This is especially true for RLUIPA violations at institutions that, like Downstate Correctional Facility (“Downstate”), largely function as a reception facility for new prisoners, who generally will remain there for a relatively short period before being transferred elsewhere within the correctional system.

Consider the facts of this very case. When Mr. Loving was admitted to Downstate, the medical professionals conducting Mr. Loving’s physical examination forced Mr. Loving to strip down to his underwear and refused Mr. Loving’s basic request to close the room’s curtains, thus exposing Mr. Loving to others at the facility. JA-61-62. This violated Mr. Loving’s religious beliefs as a Muslim, which, as Mr. Loving alleged,

“forbid[s] for his naked body to be exposed in such a manner.” JA-62 (alteration in original). Prison officials had no compelling reason to deny Mr. Loving privacy during his examination; indeed, per Mr. Loving’s allegations, denying Mr. Loving his privacy was plainly forbidden by New York Department of Corrections and Community Supervisions (“DOCCS”) policy, which provides that “No inmate shall be required to undress in front of others during medical examinations, other than a physician.” JA-62 (emphasis removed). Mr. Loving thus alleged a clear and egregious violation of his religious liberty by DOCCS officers.

Congress enacted RLUIPA to vindicate precisely the rights of observant individuals like Mr. Loving. *See Cutter v. Wilkinson*, 544 U.S. 709, 716-17 (2005) (“To secure redress for inmates who encountered undue barriers to their religious observances, Congress carried over from RFRA the ‘compelling governmental interest’/‘least restrictive means’ standard.”). But because Mr. Loving was transferred from Downstate, he can no longer seek injunctive relief. Money damages against the officers therefore are the only “effective relief” for the violation of his religious freedom. *See Tanzin*, 141 S. Ct. at 492.

This is not a one-off problem, nor is it limited to reception facilities. Mr. Loving's plight has in fact been shared by many other Muslims and members of other minority faiths in a variety of prisons throughout the country. In *Banks v. Dougherty*, Larry Banks and Walter Carlos, two practicing Muslims who had been involuntarily committed at Chicagoland's Elgin Mental Health Center in Illinois, were denied "the right to attend Jumu'ah services," and Banks, in particular, was denied "a halal diet and sufficient food to fast during Ramadan." See 2010 WL 747870, at *1-2 (N.D. Ill. Feb. 26, 2010). Because they were no longer committed at Elgin, only money damages could have vindicated their rights under RLUIPA. Yet the court dismissed their claims for money damages, leaving them with no "appropriate relief" despite RLUIPA's provision to the contrary. *Id.* at *5; see also *Banks v. Sec'y Pennsylvania Dep't of Corr.*, 601 F. App'x 101, 103 (3d Cir. 2015) (holding that Muslim inmate who had been transferred to a new facility within the Pennsylvania prison system could not assert a RLUIPA claim against prior-facility's officials who had restricted his use of prayer oils during services and his participation in the feasts of Eid al-Fitr and Eid al-Adha); *Al Saud v. Lamb*, 2020 WL 1904619, at *5 (D. Ariz. Apr. 17, 2020)

(dismissing claims under RLUIPA brought by a practicing Muslim who was not provided a halal diet in prison).

The same result befell Scott Rendelman, an Orthodox Jew who, while incarcerated in a Maryland prison, lost 30 pounds after prison officials categorically refused to accommodate his request for a kosher diet. *See Rendelman v. Rouse*, 569 F.3d 182, 184-85 (4th Cir. 2009). Mr. Rendelman, too, was left with “no appropriate relief,” because he had been transferred from the Maryland prison system to federal custody—mooting injunctive relief—and the court interpreted RLUIPA as not permitting claims for money damages. *See id.* at 187-88; *see also Mitchell v. Denton Cnty. Sheriff’s Off.*, 2021 WL 4025800, at *8 (E.D. Tex. Aug. 6, 2021), *report and recommendation adopted*, 2021 WL 3931116 (E.D. Tex. Sept. 1, 2021) (denying monetary relief under RLUIPA to Jewish inmate deprived of kosher food); *White v. York*, 2017 WL 1194514, at *4 (N.D.N.Y. Mar. 10, 2017), *report and recommendation adopted*, 2017 WL 1194368 (N.D.N.Y. Mar. 30, 2017) (dismissing RLUIPA claim for money damages brought by Rastafarian man denied his religiously mandated diet).

Consider, moreover, the case of Alphonse Porter, who had been confined at the Louisiana State Penitentiary. *See Porter v. Manchester*, 2021 WL 389090, at *1 (M.D. La. Jan. 4, 2021), *report and recommendation adopted*, 2021 WL 388831 (M.D. La. Feb. 3, 2021). Mr. Porter, a Rastafarian, alleged in his verified complaint that prison leadership ordered officers “to use a chemical agent and other malicious and sadistic tactics if [Mr. Porter] did not renounce his religious beliefs.” *Id.* at *2. Mr. Porter further alleged that the officers escorted him to a lobby and “threatened to harm [him] if he did not cut his hair and shave his beard and surrounded [him] in a threatening manner.” *Id.* After Mr. Porter kneeled and began praying, an officer (Major Voorhies) “hit [Mr. Porter] in his side twice with a chair[,] . . . stood over [Mr. Porter], threatened to kill him, jerked [Mr. Porter] up from the floor, grabbed [Mr. Porter] by the throat and slammed him against a concrete wall.” *Id.* A second officer (Damon Turner) “then grabbed [Mr. Porter] and slammed him to the floor causing [Mr. Porter] to hit his head and become dizzy.” *Id.* Major Voorhies, straddling Mr. Porter, then struck Mr. Porter in the mouth with clippers, “causing [Mr. Porter’s] mouth to bleed and resulted in two chipped and loose teeth.” *Id.* And it only got worse:

Voorhies then pushed the blades of the clippers into [Mr. Porter's] face causing him to bleed while Voorhies shaved one patch of facial hair on each side of [Mr. Porter's] face. [Mr. Porter] was again hit with the clippers by Voochries on the side of the head, then Voochries forcefully cut a large patch of hair on both sides of [Mr. Porter's] head.

While [Mr. Porter's] hair and beard were being shaved, defendant Turner stood on [Mr. Porter's] wrist and waist chain cuffs causing [Mr. Porter] to scream out in pain. Defendant [Captain Juan] Manchester stood by watching and laughing. Defendant [Col. Trent] Barton looked in from the disciplinary court room and stated, "There is a lot more of that to come" if [Mr. Porter] "didn't believe in the defendants as Gods."

Id. And ten days later, after "notic[ing] that [Mr. Porter] still had patches shaven out of his hair and beard," the defendants "sprayed [Mr. Porter] with an excessive amount of chemical agent and was not allowed to decontaminate." *Id.*

Despite this extraordinary record, Mr. Porter was denied all recourse under RLUIPA. The district court found that injunctive relief was moot because Louisiana had subsequently changed its policy to allow religious exemptions to prison grooming standards. *Id.* at *5. As for money damages, the district court held that RLUIPA does not authorize such damages against officers in either their official or individual capacities. *Id.* at *4. That is a perversion of RLUIPA's guarantee of all

“appropriate relief” to those whose religious liberty has been violated. But that is the result under the rule that the District Court applied here.

Without the availability of money damages, state institutions and their officers have even escaped accountability by simply changing their practices and thereby mooting any requested injunctive relief. That was the case in *Porter*. It was also the case in *Haight v. Thompson*, in which a Kentucky prison denied Randy Haight and Gregory Wilson access to visiting clergy members but successfully evaded Mr. Haight’s and Mr. Wilson’s RLUIPA claims just “by altering its policy” with respect to clergy visits. 763 F.3d 554, 560, 568 (6th Cir. 2014); *see also Pilgrim v. New York State Dep’t of Corr. Servs.*, 2011 WL 6031929, at *4 (N.D.N.Y. Sept. 1, 2011), *report and recommendation adopted*, 2011 WL 6030121 (N.D.N.Y. Dec. 5, 2011) (RLUIPA claim by Rastafarian who was disciplined for his dreadlocks dismissed as moot because of prison system’s later change in policy regarding dreadlocks).

Such cases are all too common and fly in the face of RLUIPA’s “very broad protection for religious liberty,” *Holt*, 574 U.S. at 356, and its express provision of “appropriate relief” for *any* violation of it, 42 U.S.C. § 2000cc-2(a). That is why the Supreme Court in *Tanzin* held “that

RFRA’s express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities.” 141 S. Ct. at 493. Pointing to “RFRA’s origins” and the statute’s “reinstate[ment] [of] pre-*Smith* protections and rights,” *Tanzin* recognized that “it would be odd to construe RFRA in a manner that prevents courts from awarding [effective] relief” when such relief “consists of damages, not an injunction.” *Id.* at 492. RLUIPA—which “mirrors RFRA,” and contains the same, broad remedial language, *compare* 42 U.S.C. § 2000bb-1(c) (RFRA), *with id.* § 2000cc-2(a) (RLUIPA)—should be interpreted likewise. *See also id.* § 2000cc-3(g) (RLUIPA “shall be construed in favor of a broad protection of religious exercise”). This Court should overrule its pre-*Tanzin* precedent to the contrary.

CONCLUSION

For these reasons, *amici* urge the Court to reverse the District Court’s decision and remand for further proceedings.

Date: April 27, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Local Rule 29.1 because it contains 3,949 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a) because it was prepared using Microsoft Word in Century Schoolbook 14-point font, a proportionally spaced serif typeface.

/s/ Adeel A. Mangi
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2023, I electronically filed the foregoing Brief of *Amici Curiae* of 27 Religious Organizations using the CM/ECF system, which will send notification of such filing to all parties of record. I further certify that I will cause 6 paper copies of this brief to be received by the Clerk, in compliance with Local Rule 31.1.

/s/ Adeel A. Mangi
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APPENDIX A

1. Albuquerque Mennonite Church

Part of Mennonite Church USA, Albuquerque Mennonite Church is a community of over 100 Mennonites who believe strongly in the connections between peacemaking and justice, and the Kingdom of God that Jesus taught about and lived out. Albuquerque Mennonite Church holds that every person is created in God's image, valued without regard to origin, sexual identity, affiliation, or status. We are a Christian community of peace and justice, including love and advocacy for our incarcerated siblings.

2. Association of Muslim American Lawyers (AMAL)

The Association of Muslim American Lawyers (AMAL) seeks to assist the Muslim-American community's exercise of legal rights through education; encourage entry into the legal profession; assist members in their professional development; promote the administration of justice; benefit the community with legal resources and services; identify and explore themes common to American and Islamic jurisprudence; and promote the highest standards of professionalism, integrity and honor amongst AMAL members. We support strong protections for the religious freedoms of prisoners and other incarcerated persons, and we believe that recognizing money damages under RLUIPA is essential to ensuring that prisoners from religious minorities are treated with respect and dignity.

3. Association of U.S. Catholic Priests (AUSCP)

The Association of U.S. Catholic Priests (AUSCP) was founded in 2011 to be the pastoral and collegial voice of our member priests, all in good standing in dioceses and religious communities. Inspired by the teachings of Vatican II and by the call of Pope Francis to synodality, we invite the participation of all the members of the People of God. The

AUSCP serves as a home for the People of God, offering mutual support and a collegial voice within our pilgrim Church and world, through contemplation, dialogue and prophetic action. The AUSCP has taken a number of positions involving the rights of incarcerated persons, including advocating for the end of the death penalty. We support strong legal protections for prisoners and incarcerated persons to exercise their religious beliefs freely.

4. Campus Ministry of Roman Catholic Archdiocese of New York at Hostos and Bronx Community College of City University of New York

The Catholic Campus Ministry and Interfaith Department has been funded by the Roman Catholic Archdiocese of New York since the 1970's. We strongly believe that prisoners and other incarcerated persons should be free to exercise their religious freedoms according to their beliefs. It would cause great harm if prisoners were left with no recourse for egregious violations of their religious freedoms.

5. Council on American-Islamic Relations (CAIR)

CAIR is a grassroots civil rights and advocacy group. We are America's largest Muslim civil liberties organization with our national headquarters on Capitol Hill in Washington D.C., and regional offices nationwide. Since CAIR's establishment in 1994, we have worked to promote a positive image of Islam and Muslims in America. Through media relations, government relations, education and advocacy, CAIR puts forth an Islamic perspective to ensure that Muslim voices are represented. In offering this perspective, CAIR seeks to empower the American Muslim community and encourage their participation in political and social activism. CAIR is committed to protecting the civil rights of all Americans, regardless of faith, and supporting domestic policies that promote civil rights, diversity, and freedom of religion. CAIR's civil rights department counsels, mediates, and advocates on behalf of Muslims and persons from other faiths who have experienced

religious discrimination, defamation, or hate crimes. We have joined numerous *amicus* briefs across the country advocating greater protections for religious freedom, and we believe that having a damages remedy against officials in their individual capacity under RLUIPA would better protect the rights of prisoners and incarcerated persons.

6. Catholic Charities of Trenton, NJ

Since 1913, Catholic Charities, Diocese of Trenton, has been saving lives, restoring dignity and helping individuals and families achieve self-sufficiency. Central New Jersey residents, regardless of faith background, have always found Catholic Charities programs to be welcoming and compassionate. A private nonprofit, we offer mental health, social and crisis services to individuals and families, particularly those impacted by trauma and adversity. Any type of discrimination on the basis of religion hinders our ability to change our society in a positive manner. We join this coalition of religious groups because we wish to underscore the importance of recognizing money damages against officials in their individual capacity under RLUIPA.

7. Central Conference of American Rabbis (CCAR)

The Central Conference of American Rabbis (CCAR), whose membership includes more than 2000 Reform rabbis, comes to this issue out of a commitment to religious freedom. The Religious Land Use and Institutionalized Persons Act (RLUIPA) affirms our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faith must be free to follow the dictates of their conscience.

8. Church Council of Greater Seattle

The Church Council of Greater Seattle is a membership organization of 320 congregations from 16 Christian denominations in Martin Luther King Jr. County and South Snohomish County in the

State of Washington. Founded in 1919, we have worked for over a century to forge ecumenical and interreligious relationships and to serve vulnerable and marginalized populations in our midst. We are proud, for instance, to have opposed the internment of Japanese-Americans during World War II and to have continued to minister to them during and after the war. We believe in the inherent dignity and worth of every human being as a child of God. We believe that God's love has no exclusions.

9. Congregation Shaarei Shamayim

Congregation Shaarei Shamayim is a growing, open, pluralistic congregation of 190 households located in Madison, Wisconsin. We believe that Judaism is a means for bringing justice, holiness, and joy to our world. We are building Jewish community rooted in creativity and authenticity, and we are reimagining the possibilities for Jewish life, identity, and community. Working for social justice is one of our core values. We are inspired by Jewish tradition to fight for a sustainable world, care for the vulnerable, and create racial and economic justice. We engage in programs to keep up on current issues, partner with community organizations to amplify our voices, and get involved in efforts to make our city, region, and world a better place for everyone. We believe in religious pluralism, and therefore support the rights of everyone to worship according to their own beliefs. We have a long history of supporting prisoners, and reintegrating those released from prison into society through the participation of our members in Circles of Support. We have filed *amicus* briefs before various courts across this nation in support of the religious freedoms of persecuted minorities. Recently, we were part of a coalition of religious organizations that filed an *amicus* brief urging the U.S. Supreme Court to recognize the availability of money damages against officials in their individual capacity under RFRA.

10. East End Temple

The East End Temple is a Reform Jewish congregation located in lower Manhattan in New York City that is dedicated to protecting the most vulnerable in our society. The congregation is committed to ensuring that the rights all individuals—including and especially the right to freely practice their faiths—is adequately protected.

11. El Paso Monthly Meeting of the Religious Society of Friends

The El Paso (Texas) Monthly Meeting of the Religious Society of Friends is a Quaker religious group. Early members of our denomination were subject to legal punishment in Britain and New England, including imprisonment, harsh physical punishments, and even state sanctioned death. Out of these early experiences, we have developed an abiding interest in just and humane treatment of those imprisoned and in freedom of religion.

12. The Episcopal Diocese of Long Island

The Episcopal Diocese of Long Island consists of 140 parish churches from the Brooklyn Bridge to the end of Suffolk County. We have joined numerous *amicus* briefs across the country advocating greater protections for religious freedom. We believe that having a damages remedy against officials in their individual capacity under RLUIPA would better protect the rights of prisoners and incarcerated persons.

13. Faith in New Jersey

Faith in New Jersey is a racially diverse, multi-faith, power-building vehicle for faith leaders, houses of worship, and spiritual communities. By organizing individuals directly impacted by incarceration, immigration, an immoral economy, gun violence, and systemic racism, we work together to advance a social and economic justice agenda at the local, state, and federal level. Our mission is to

develop grassroots community leaders, analyze the policies that shape our communities, and mobilize faith voices and faith voters to effectively act on the prophetic call to build the Beloved Community. We believe that our loved ones who are incarcerated are created in the image of God. They are vulnerable members of our society living within a traumatizing carceral system and it is our collective responsibility to ensure they are treated with dignity. Because of our commitment to meaningful protections for our siblings that are incarcerated, our organization has advocated for greater civilian oversight of prisons and detention facilities, restorative community-based justice practices in lieu of criminalization, and ending mass incarceration. We also support greater legal safeguards to ensure that incarcerated persons can freely exercise their religious beliefs.

14. Global Justice Institute

The Global Justice Institute serves as the social justice arm of Metropolitan Community Churches and works with LGBTQI activists and allies around the world to support projects for social change. We believe that every human being is created to reflect the image of God and is worthy of dignity and respect and that no one should face inhumane confinement. We are strongly committed to reforming our criminal justice system and ending mass incarceration. We support the rights of incarcerated persons, including the advancement of greater legal safeguards to enable such persons to worship freely according to their religious convictions. We have signed *amicus* briefs submitted before various courts across this country advocating greater protections for religious liberties, including urging the U.S. Supreme Court to recognize the availability of money damages against officials in their individual capacity under RFRA.

15. The Interfaith Center of New York (ICNY)

The Interfaith Center of New York (ICNY) is a secular non-profit organization with a mission to “overcome prejudice, violence, and

misunderstanding by activating the power of the city’s grassroots religious and civic leaders and their communities.” Over the course of 25 years, ICNY has built the most religiously-diverse and civically-engaged network of grassroots and immigrant religious leaders across the five boroughs of Manhattan, Queens, Brooklyn, Staten Island and The Bronx. These include Muslim, Sikh, Hindu, Buddhist, Christian, Jewish, Afro-Caribbean, and Native American New Yorkers who have either attended one or more of our social justice retreats, participated in our religious diversity education programs for social workers, teachers, lawyers, and NYPD officers, or joined multi-faith advocacy work on immigration and religious freedom. Through our advocacy work, ICNY helps New Yorkers and others build relationships of mutual respect and understanding across faith lines. We give people the tools they need to participate in the civic life of our multicultural democracy. Our organization stands with efforts to ensure that federal laws protecting religious freedom, such as RLUIPA, are properly interpreted to allow for the maximum range of legal remedies.

16. Islamic Society of Central Jersey (ISCJ)

The Islamic Society of Central Jersey (ISCJ) is an organization of Muslim Americans that was formed in 1975 that provides religious, educational and social services to its members, as well as to the community at large. The ISCJ established a place of worship in South Brunswick, NJ in the early 1980s. The ISCJ aspires to be the anchor of a model community of practicing Muslims of diverse backgrounds, democratically governed, efficiently served, relating to one another with inclusiveness and tolerance, and interacting with neighbors and the community at large in an Islamic exemplary fashion. The ISCJ is very concerned about the issues raised in this matter as it believes that incarcerated persons should have strong legal protections to exercise their religious beliefs freely.

17. Jewish Center for Justice

The Jewish Center for Justice was founded in 2017 as a platform for social justice, education, and leadership development. Our mission is to empower current and future leaders to build a more compassionate and just society. Our advocacy program is wide-ranging dealing with issues from racial and economic justice, LGBTQI rights, gun violence prevention, immigration, gender equity, and criminal justice reform. Our organization seeks to mobilize Jewish communities and pro-democracy people of faith in support of criminal justice reform, and rebuilding an American justice system that is more fair, just, and compassionate. We support efforts to build an American justice system that honors rehabilitation and creates pathways for acceptance and reintegration back into society. We support legislation to address the legacies of slavery and inequality, eliminate mandatory minimums, reduce the U.S. prison population, and establish common-sense restorative justice programs across America. We are engaged with our coalition partners in the fight for abolishing life without parole for children nationwide, prohibiting courts from increasing a defendant's sentence based on acquitted conduct, and eliminating the longstanding sentencing disparity between crack and powder cocaine. In 2020, we joined an *amicus* brief in *Tanzin v. Tanvir* urging the U.S. Supreme Court to recognize money damages against federal officials in their individual capacity under RFRA.

18. Men of Reform Judaism

The Men of Reform Judaism comes to this issue out of a commitment to religious freedom. The Religious Land Use and Institutionalized Persons Act (RLUIPA) affirms our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faith must be free to follow the dictates of their conscience.

19. Muslim Bar Association of New York (MuBANY)

MuBANY is one of the nation's largest and most active professional associations for Muslim lawyers. MuBANY provides a range of services for the legal and larger Muslim community. One of MuBANY's missions is to improve the position of the Muslim community in American society. MuBANY seeks to support the Muslim community by educating the community, advancing and protecting the rights of Muslims in America, and creating an environment that helps guarantee the full, fair and equal representation of Muslims in American society. We believe that prisoners and other incarcerated persons should be able to exercise their religious beliefs freely. Prisoners from all faiths and communities have unfortunately had their religious freedoms violated egregiously by state prison personnel who have refused, for no compelling reason, to accommodate their religiously prescribed diets, clothes, and other important aspects of their faith. Too often, prison officials are able to escape any liability by transferring the affected prisoners or by changing their practices at the last minute. In the past, we urged courts to recognize a damages remedy against officials in their individual capacity under RFRA, including before the U.S. Supreme Court in *Tanzin v. Tanvir*. We urge this Court to do the same for RLUIPA and vindicate Mr. Loving's right to religious freedom.

20. Muslim Public Affairs Council (MPAC)

The MPAC is a national public affairs nonprofit organization working to promote and strengthen American pluralism by increasing understanding and improving policies that impact American Muslims. Over the past 30 years, MPAC has built a reputation for being a dynamic and trusted American Muslim voice for policymakers, opinion shapers, and community organizers across the country. We design and execute innovative and effective legislative, strategic messaging, and issue advocacy campaigns. MPAC leverages relationships with legislators, government agencies, executive departments, and thought leaders to improve policies on national security, civil liberties, immigration, public safety and religious freedom for all Americans. Over the past 15 years, we have participated as *amicus curiae* in cases

concerning civil liberties (*Boumediene v. Bush & al-Odah v. U.S.*); immigration (*Department of Homeland Security v. Regents of the University of California, Donald Trump v. IRAP, and Arizona v. U.S.*); and religious liberties (*Tanzin v. Tanvir, Masterpiece Cakeshop v. Colorado Civil Rights Commission, and Holt v. Arkansas Dept. of Correction*). We strongly support the rights of prisoners and other incarcerated persons to exercise their sincerely-held religious beliefs freely. In far too many instances, Muslims prisoners are denied access to their religiously mandated diet; Muslim women are required to remove their hijabs; and Muslim men are forced to shave their beards. State officials frequently evade any legal responsibility for their actions by transferring impacted prisoners to other correctional facilities. Since this is a pervasive problem, which affects members of all faiths and communities, we believe that the remedy of money damages against officials in their individual capacity under RLUIPA is essential for protecting the religious freedoms of all inmates and detainees.

21. Muslim Urban Professionals (Muppies)

Muppies is a nonprofit, charitable organization dedicated to empowering and advancing Muslim business professionals to be leaders in their careers and communities. Muppies consists of over 3,300 members in 33 countries and 11 active local city committees across the globe. Our desire is to live in a society that understands, respects, and includes Muslims in mainstream culture by aiding in efforts that improve the representation and inclusion of Muslims. Our mission is to create a global community of diverse individuals who will support, challenge, and inspire one another by providing a platform for networking, mentorship, and career development. We have advocated for the rights of immigrants, DACA recipients, and the LGBTQI community by joining amicus briefs filed in various courts across the country. We support protecting the religious freedoms of prisoners and other incarcerated persons.

22. National Association of Muslim Lawyers (NAML)

The National Association of Muslim Lawyers (NAML) is an association of Muslim lawyers, Muslim Law students, and legal professionals in the United States. NAML provides networking and mentorship services, organizes educational programs on current legal topics of interest, supports regional Muslim bar associations, and serves the law-related needs of the general public through community service efforts. NAML has an interest in issues that affect the Muslim American community, and it seeks to ensure that the law fully and adequately protects the rights of religious minorities.

23. New Jersey Muslim Lawyers Association (NJMLA)

The NJMLA is a volunteer association of lawyers, judges, and law students who work or reside in the New Jersey area. NJMLA works to advance the goals, needs, and interests of Muslim attorneys in New Jersey through networking, mentorship, and education. NJMLA also works to address issues affecting not only the New Jersey but also the national Muslim community. This includes ensuring that federal laws protecting the rights of Muslim Americans, such as RLUIPA, are properly interpreted to allow for the maximum range of remedies.

24. Social Action Committee of the First Unitarian Universalist Church of Austin

The Social Action Committee of the First Unitarian Universalist Church of Austin is dedicated to social action at the local, state, national, and global levels. Our members have a strong calling toward anti-oppression, interfaith and social justice work and are especially involved in immigrant rights and racial justice. Through service and outreach, we live our church mission to nourish souls, transform lives, and do justice. Our members support projects in the areas of hunger, homelessness, affordable housing, public health, eldercare, immigration reform, reproductive rights, prisoner rights, economic justice, LGBTQ rights, and environmental stewardship. We address social justice issues

through education, service, community organizing, and advocacy. We are strongly committed to protecting the civil rights of all detained and incarcerated persons, and we collaborate closely with the Inside Books Project to provide free books and educational materials to over 120,000 prisoners across Texas. Protecting the religious freedoms of incarcerated persons is vital; and money damages are a crucial mechanism for ensuring that the promise of religious freedom under RFRA and RLUIPA is not illusory. For this reason, we recently joined an amicus brief in *Tanzin v. Tanvir* urging the U.S. Supreme Court to recognize the availability of money damages against officials in their individual capacity under RFRA.

25. Union for Reform Judaism

The Union for Reform Judaism, whose 900 congregations across North America includes 1.3 million Reform Jews, comes to this issue out of a commitment to religious freedom. The Religious Land Use and Institutionalized Persons Act (RLUIPA) affirms our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faith must be free to follow the dictates of their conscience.

26. Unitarian Universalist Mass Action Network

The Unitarian Universalist Mass Action Network is a state action network that works in coalition with frontline partners and organizations led by those who are directly affected by injustice. Our mission is to organize and mobilize Unitarian Universalists to confront oppression. It is through our social justice work that we live our values and principles that define our faith. We believe that those within the criminal law system must be afforded basic rights and that those who violated those rights must be held accountable.

27. Women of Reform Judaism

The Women of Reform Judaism, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, come to this issue out of a commitment to religious freedom. The Religious Land Use and Institutionalized Persons Act (RLUIPA) affirms our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faith must be free to follow the dictates of their conscience.