No. 21-1027

IN THE

Supreme Court of the United States

GREEN HAVEN PREPARATIVE MEETING, et al.,
Petitioners,

v.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, et al.,
Respondents.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether an unincorporated group of incarcerated persons may bypass the exhaustion requirements of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), simply by suing under the name of the group.

2. Whether religious organizations have Article III standing to challenge prison policies affecting religious gatherings by incarcerated persons, when the organizations have not argued or demonstrated that they or their members participated in or had a cognizable interest in those gatherings.

3. Whether petitioners demonstrated a likelihood of success on the merits of their challenge to the rescheduling of religious gatherings in a prison setting, when petitioners' evidence and arguments below showed that petitioners' requested dates had no religious significance and prison officials offered alternative dates that would impose lesser security concerns than the requested dates.

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INTRODUCTION

After several serious security breaches at Green Haven Correctional Facility, a maximum-security state prison, the New York State Department of Corrections and Community Supervision (DOCCS) implemented policies to reduce the size and number of gatherings (secular and religious) in the prison, particularly on weekends when security resources are more limited. As part of that initiative, DOCCS made security-related changes to the scheduling of two types of Quaker religious gatherings at Green Haven. DOCCS moved Quarterly Meetings, which include both incarcerated persons and nonincarcerated attendees from neighboring communities, from Saturdays to weekdays. And based on petitioners' statement that their faith required approximately two hours per week for meetings involving business concerns of a religious nature (called "meetings for worship with a concern for business" (MWCB)), DOCCS allowed five hours during weekdays for meetings, including MWCBs, which are attended exclusively by incarcerated persons. Petitioners, who are incarcerated and nonincarcerated Quakers and Quaker organizations to which the individual petitioners belong,[1] sought a preliminary injunction enjoin-

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[1] The incarcerated individual petitioners are Yohannes Johnson and Gregory Thompson. They are members of petitioner Green Haven Preparative Meeting (Green Haven Meeting), an unincorporated association comprised exclusively of incarcerated Quakers at Green Haven. CA2 J.A. 280-281. This brief refers to Johnson, Thompson, and Green Haven Meeting collectively as the "incarcerated petitioners."

The other petitioners are nonincarcerated individuals and religious organizations to which they belong: Bulls Head-Oswego Monthly Meeting, Poughkeepsie Monthly Meeting, Nine Partners

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ing the scheduling changes, which the courts below denied.

The petition for certiorari does not warrant this Court's review. The interlocutory decision below is a poor vehicle for resolving the questions the petition seeks to present, the analysis of the court of appeals does not implicate any circuit split, and the decision below was correct.

The interlocutory posture of the case strongly counsels against granting the petition. In affirming the denial of the motion for a preliminary injunction based on the limited record compiled for that purpose, the court of appeals expressly observed that petitioners remain free to pursue their claims and develop a record on the merits in ongoing district court proceedings.

Moreover, several of the questions presented by the petition were not raised below. For example, petitioners argue for the first time in this Court that the organizational petitioners other than Green Haven Meeting have a distinct basis for pursuing claims concerning MWCBs, which (unlike Quarterly Meetings) are attended only by members of Green Haven Meeting and other incarcerated persons. As another example, petitioners did not raise below their current argument that one of the petitioners is a minister whose claims warrant more searching review, but instead asserted that Quakers are unique among religions because they lack clergy.

Beyond these serious vehicle problems, petitioners do not demonstrate any circuit split, and the court of

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Quarterly Meeting, and New York Yearly Meeting. CA2 J.A. 281-284. This brief refers to the nonincarcerated individuals and their membership organizations as the "nonincarcerated petitioners."

appeals' analysis was consistent with the precedents of this Court and correct. The court of appeals correctly applied settled principles of Article III standing to the record and the claims that petitioners presented. Its application of a "reasonableness" standard to the nonincarcerated petitioners' claims properly follows this Court's decision in *Thornburgh v. Abbott*, 490 U.S. 401 (1989), and petitioners do not identify any appellate authorities holding that a different standard applies. And the court of appeals' determination that petitioners failed to establish a substantial burden on their religious exercise soundly rested on petitioners' own evidentiary submissions concerning Quaker religious practices. Finally, petitioners do not identify any appellate authorities conflicting with the court of appeals' conclusion that incarcerated persons cannot avoid the exhaustion requirement of the Prison Litigation Reform Act (PLRA) by suing under the name of an unincorporated association of incarcerated persons.

STATEMENT

A. Factual Background

This case concerns scheduling changes to certain Quaker religious gatherings at Green Haven Correctional Facility, a maximum-security prison in New York State, following a facility-wide effort to tighten security measures in response to several serious security breaches. *See* Pet App. 3a, 6a, 8a-13a. As described in further detail below, the changes did not preclude petitioners from participating in Quaker religious gatherings or dictate the content of those gatherings. Rather, the changes prevented inmates from holding their gatherings on their preferred days of the week,

which petitioners had not identified as being of any religious significance. Pet. App. 4a, 31a.

1. "'[I]n recognition of the First Amendment right of religious liberty,'" DOCCS's general policies seek to "'provide as many opportunities as feasible for the practice of inmates' chosen faiths, consistent with the safe and secure operation of the DOCCS correctional facilities.'" Pet. App. 7a-8a (alteration marks omitted) (quoting DOCCS's Directive on Religious Programs and Practices (CA2 J.A. 573)). In order to implement this policy in an equitable manner, DOCCS must consider the needs of a wide variety of faith communities with varying numbers of adherents at each facility. For instance, the inmates at Green Haven practice over thirty distinct religions, and the number of adherents per religion ranges from one to over three hundred. CA2 J.A. 556. For faiths with six to ten adherents, like the Quakers at Green Haven, inmates may hold religious gatherings twice a month subject to the availability of space and staffing, and the facility superintendent "may also approve additional gatherings 'if the accommodation can be made without incurring additional costs/resources.'" Pet. App. 8a (quoting Directive (CA2 J.A. 556)). Petitioners do not challenge the reasonableness of DOCCS's system-wide policies concerning inmates' freedom to practice their religion. *See* Pet. App. 8a. Rather, they challenge the application of those policies to Quaker religious gatherings at Green Haven.

Green Haven is a maximum-security facility housing approximately 1,900 inmates. CA2 J.A. 550. In 2014, an investigation revealed that significant amounts of contraband, including drugs and weapons, were being smuggled into the facility. As part of a broader initiative to improve security at the facility,

Green Haven's superintendent directed a general reduction in the size and number of gatherings (secular and religious) at the facility that include civilians and occur on weekends because those gatherings require extra security to protect civilian volunteers and generally maintain safety in the facility, and this burden is heightened on the weekends, when fewer staff members are on duty.[2] Additional security risks arise when gatherings entail inmates being away from their cells when a mandatory count of inmates occurs. The absence of inmates during mandatory counts increases the risk of inmates absconding. Pet App. 9a-10a.

2. The new security measures affected the scheduling of two types of Quaker religious gatherings: Quarterly Meetings, where neighboring Quaker communities gather to worship, and meetings involving business concerns of a religious nature, referred to as "meetings for worship with a concern for business" (MWCBs). Prior to the security changes, Quarterly Meetings at Green Haven were generally held on Saturdays,[3] with

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[2] DOCCS's policies provide that "civilian religious volunteers must be registered in order to be permitted into correctional facilities to assist in programs." Pet. App. 8a.

[3] Petitioners are wrong to suggest that Quarterly Meetings at Green Haven were uniform in content, duration, participation, and timing for the past thirty-five years. Pet. 8. Petitioners' own evidentiary submissions showed that no gatherings occurred in 1981 and 1987, and the descriptions of gatherings from 1980 to 1992 suggest that there was only one gathering per year in the years when gatherings occurred. CA2 J.A. 608-609. For example, petitioners' brief to the court of appeals stated that, from 1980 until 2015, nonincarcerated Quakers came to Green Haven to gather with incarcerated Quakers "usually once a year." Br. for Appellants (CA2 Br.) at 10-11. Moreover, petitioners' evidence showed that the number of permitted nonincarcerated participants fluctuated

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six to nine inmates in attendance and up to fifteen registered civilian volunteers allowed to attend.[4] The ratio of civilians to inmates for these meetings was higher than typical for special events at Green Haven and required additional staff to ensure the civilians' safety. *See* Pet. App. 6a-7a, 9a-10a.

In 2015, in light of the directive to reduce the size and number of gatherings with civilians requiring additional security, prison administrators reevaluated the schedule for Quarterly Meetings. Incarcerated Quakers at Green Haven asked for Quarterly Meetings to remain on Saturdays, but they did not identify the requested dates as having any particular religious significance. Prison administrators therefore proposed to schedule the 2015 Quarterly Meetings for Friday evenings, as close as possible to the requested dates. Pet. App. 10a-11a. When petitioners objected, Deputy Superintendent Jaifa Collado offered to schedule the meetings on any other weekday evening and to schedule one of the Quarterly Meetings for a longer duration to allow for a meal and a longer meeting time, consistent with DOCCS policies permitting one such nonfamily special event per religious group per year. Petitioners rejected that proposal as well (which DOCCS

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over the years. Christopher Sammond represented that the number of nonincarcerated participants was limited to five in 2006. CA2 J.A. 403.

[4] Due to security concerns, and "[a]fter noticing that only a few of the volunteers actually attended the Quarterly Meetings," Green Haven administrators limited the maximum number of nonincarcerated participants at the December 27, 2014 Quarterly Meeting "to any four from the list of registered volunteers." Pet. App. 10a. The visitor logs for the Quaker Meetings in 2014 indicate that the nonincarcerated Quakers attending were all "registered volunteers." CA2 J.A. 521, 524, 527, 530.

remains willing to honor), and thus the 2015 Quarterly Meetings were never held. *See* Pet. App. 10a-11a; CA2 J.A. 572.

3. In 2018, DOCCS made certain security-related schedule changes to incarcerated Quakers' MWCBs, which nonincarcerated Quakers do not attend. As described in a letter from nonincarcerated Quakers to DOCCS, Quakers typically meet weekly for one hour for worship, a short break for fellowship, and then an additional hour for spiritual deepening (the practice of Quaker testimonies) and business. CA2 J.A. 569-570; *see* CA2 J.A. 554, 572. Prior to 2018, Quaker inmates at Green Haven were permitted to meet every Thursday and Friday for 2.5-hour meetings supervised by a civilian, and every Saturday for ninety minute meetings supervised by an inmate. CA2 J.A. 550, 571.

In January 2018, DOCCS officials identified a problem with overcrowding, due to excessive call outs, in the location that incarcerated Quakers used for their Saturday meetings. DOCCS officials concluded that the number of nonadherents who were attending religious programs was a factor contributing to the excessive call outs, which pose a security risk. For example, on January 6, 2018, the Saturday Quaker meeting was attended by nine adherents and twelve nonadherents. The unusually high ratio of nonadherents to adherents in the Quaker Saturday weekly meetings—along with the fact that the Saturday meetings were being supervised by an incarcerated Quaker rather than a civilian—raised concerns among DOCCS officials that the meetings were being used for an unauthorized group activity rather than for religious business. CA2 J.A. 550-551. After careful consideration of these issues, Deputy Superintendent Marlyn Kopp issued a memorandum in

July 2018 withdrawing approval of Saturday call outs for the Quaker meetings. CA2 J.A. 553.

Deputy Superintendent Kopp did not preclude incarcerated Quakers from holding MWCBs; rather, she explained that the incarcerated Quakers' other weekly meeting times—a total of five hours on Thursdays and Fridays—which were supervised by a civilian, were sufficient to encompass that activity. These weekly meeting times exceeded the standard time allotted to religions with an equivalent number of adherents, and gave incarcerated Quakers ample time to hold MWCBs according to their own submissions describing the practice. Pet. App. 11a-13a; *see* Pet. App. 6a, 8a.

B. Procedural History

1. In September 2018, petitioners here—incarcerated and nonincarcerated individuals, as well as associations to which they belong (see *supra* at 1 n.1)—filed this federal lawsuit asserting various claims against DOCCS, Green Haven Correctional Facility, and several DOCCS officials. Petitioners' complaint divided their claims between those asserted by the incarcerated petitioners and those asserted by the nonincarcerated petitioners.

As relevant here, the incarcerated petitioners claimed that DOCCS's rescheduling of the Quarterly Meetings and MWCBs, which they characterized as a termination of those meetings, violated their rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq., and the Free Exercise Clause of the First Amendment. The nonincarcerated petitioners alleged that DOCCS's rescheduling of the Quarterly Meetings prevents them from worshipping with incarcerated Quakers in viola-

tion of the Free Exercise Clause of the First Amendment.[5] CA2 J.A. 307-313. The incarcerated petitioners did not file administrative grievances concerning the scheduling changes prior to bringing this lawsuit. Pet. App. 23a; *see* CA2 J.A. 277-319.

2. In October 2019, the district court denied petitioners' motion for a preliminary injunction. Pet. App. 15a. The court concluded that even though a violation of petitioners' religious liberties would establish irreparable harm, the incarcerated petitioners' failure to exhaust their administrative remedies undermined their ability to show a likelihood of success on the merits. Pet. App. 50a-54a. The court further concluded that all petitioners had failed to show that the challenged limitations on the Quarterly Meetings or MWCBs create a substantial burden on their ability to engage in their beliefs. Pet. App. 56a. Emphasizing that the sincerity of all petitioners' beliefs was not in question, the court observed that petitioners were not maintaining that their faith required holding Quarterly Meetings or MWCBs on a Saturday. Pet. App. 56a. The court also found that DOCCS presented legitimate penological justifications for scheduling the Quarterly Meetings and Quaker inmates' weekly gatherings (including time to conduct MWCBs) on weeknights.

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[5] The incarcerated petitioners also asserted claims under the Establishment Clause of the First Amendment and New York Correction Law § 610, and all petitioners asserted claims under the Equal Protection Clause of the Fourteenth Amendment and the Free Exercise Clause of the New York State Constitution. CA2 J.A. 313-316. Petitioners' preliminary injunction motion and appeal to the Second Circuit did not explain why they were entitled to injunctive relief on those claims. Accordingly, the Second Circuit found that those claims were waived for purposes of this appeal and did not consider them. Pet. App. 21a n.6.

Pet. App. 57a. The court subsequently denied petitioners' motion for reconsideration because the motion was premised on arguments that the court considered and rejected in its initial decision.[6] Pet. App. 35a-38a.

3. The Court of Appeals for the Second Circuit (Livingston, Cabranes, Lynch, JJ.) unanimously affirmed the denial of a preliminary injunction. The court concluded—and DOCCS did not contest—that the nonincarcerated petitioners had standing to claim that DOCCS's policies concerning Quarterly Meetings adversely impacted their First Amendment rights, but that they lacked standing to assert claims concerning MWCBs, because the record did not show that the nonincarcerated petitioners attended those gatherings, were directly affected by any changes in the frequency of those gatherings, or claimed any right to attend those gatherings. And the court concluded that the incarcerated petitioners had standing to challenge all of the policy changes at issue. The court also agreed with the district court—and DOCCS did not dispute—that any violation of petitioners' religious liberties would establish irreparable harm. Pet. App. 18a-20a.

But the court held that none of the petitioners had shown they were likely to succeed on the merits of their claims. The court held that the incarcerated individual petitioners were unlikely to succeed on the merits of their claims because they had failed to exhaust their administrative remedies before filing suit, as the Prison Litigation Reform Act (PLRA) requires. The court

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[6] DOCCS then filed a dispositive motion, seeking dismissal of petitioners' claims under Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. *See* Notice of Defs.' Mot. to Dismiss & for Summary J., No. 18-cv-8497 (S.D.N.Y. Jan. 27, 2020), ECF No. 75. That motion remains pending before the district court.

concluded that the incarcerated petitioners could not avoid the exhaustion requirement by suing under the name of Green Haven Preparative Meeting (Green Haven Meeting)—an unincorporated association composed exclusively of incarcerated Quakers—because Green Haven Meeting's claims concern the rights of its members, who are bound by the exhaustion requirements of the PLRA, 42 U.S.C. § 1997e(a). Pet. App. 22a-26a.

And the court of appeals concluded that the nonincarcerated petitioners failed to show a likelihood of success on their claim that the scheduling changes to the Quarterly Meetings infringed their rights under the Free Exercise Clause. Reviewing the First Amendment claims of the nonincarcerated petitioners under a reasonableness standard pursuant to *Thornburgh v. Abbott*, 490 U.S. 401 (1989), the court, like the district court, held that, so long as incarcerated and nonincarcerated Quakers remained free to gather for communal religious services, the nonincarcerated petitioners did not have a constitutional right to dictate the dates of those gatherings, particularly where the requested date had no religious significance. Pet. App. 28a-30a.

The court also found that the scheduling changes were amply supported in the record by legitimate penological reasons—namely, security concerns and the equitable allocation of scarce resources among the diverse religious groups at Green Haven. Pet. App. 30a-33a. The court emphasized that its conclusion as to petitioners' likelihood of success on the merits was based on the record at this stage of the proceedings and did not control the result on a more fully developed record. Pet. App. 33a.

REASONS FOR DENYING THE PETITION

This petition for interlocutory review is a poor vehicle for addressing the questions identified in the petition for certiorari because several of the questions that petitioners seek to raise were not asserted below, are unsupported by record evidence, and may be raised and developed in future phases of the ongoing district court proceedings. Moreover, the court of appeals' interlocutory decision denying a preliminary injunction does not conflict with any rulings from this Court or another federal court of appeals, is fact-bound and case-specific, and is correct. As the court of appeals correctly concluded based on settled law and petitioners' own evidence, petitioners did not show a likelihood of success on the merits of their claim that security-related scheduling changes to Quaker religious gatherings at Green Haven Correctional Facility violated their right to freely exercise their religion. Accordingly, the petition for certiorari should be denied.

I. This Petition for Interlocutory Review Is a Poor Vehicle for Considering the Questions the Petition Seeks to Raise.

A. The Interlocutory Posture of This Case Warrants Denial of the Petition.

The posture of this case counsels against granting the petition for a writ of certiorari. Although the district court denied petitioners' motion for a preliminary injunction, they remain free to pursue their claims on the merits and to develop a record supporting their claims—as the court of appeals expressly noted (Pet. App. 33a). This Court has frequently noted that the interlocutory posture of a case is sufficient to warrant denying certiorari. *See, e.g.*, *Kennedy v. Bremerton Sch.*

Dist., 139 S. Ct. 634, 635-36 (2019) (statement of Alito, J., respecting the denial of certiorari); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam); *see also Virginia Military Inst. v. United States*, 508 U.S. 946, 946 (1993) (op. of Scalia, J., respecting the denial of certiorari).

Denying certiorari review of an interlocutory decision promotes judicial efficiency because the proceedings on remand may affect the consideration of the issues presented in a petition. It also enables issues raised at different stages of an action to be consolidated in a single petition. *See Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam). This case presents no occasion for this Court to depart from that practice. As discussed above, the court of appeals' conclusions concerning standing and the merits were fact-specific determinations based on the record presented on the preliminary injunction motion. That analysis could change if the courts below are presented with a more developed record. *See* Pet. App. 33a. Efficiency concerns thus support denying certiorari at this stage of proceedings.

B. Several Questions the Petition Seeks to Raise Were Not Raised Below.

Several questions identified in the petition for certiorari were not raised below and are of little if any relevance to the merits of the fact-specific claims that petitioners presented on their motion for a preliminary injunction.

1. Petitioners now seek to present a question concerning the standing of Quaker entities other than Green Haven Meeting (i.e., the nonincarcerated organi-

zational petitioners) to pursue claims about the scheduling of MWCBs. Pet. 18-20. But the nonincarcerated organizational petitioners did not assert any claims about MWCBs below, and the court of appeals' ruling on standing merely tracks the fact-specific record and arguments presented to it.

Petitioners' complaint expressly divided their claims between those claims asserted by the incarcerated petitioners (Johnson, Thompson, and Green Haven Meeting) and those claims asserted by the nonincarcerated petitioners (the remaining individuals and entities). The First Amendment claims of the incarcerated petitioners concerned DOCCS's scheduling changes to both Quarterly Meetings and MWCBs. CA2 J.A. 310-311 (¶¶ 140-141). The claims and factual allegations of the nonincarcerated petitioners concerned Quarterly Meetings alone. CA2 J.A. 311-312 (¶¶ 149, 151). In particular, the factual allegations relating to the nonincarcerated organizational petitioners asserted that those organizations were filing suit to address perceived harms to the ability of their members to worship with incarcerated individuals: a practice that occurred at Quarterly Meetings, but not MWCBs. For example, the complaint explained that the New York Yearly Meeting seeks to "redress the deprivation of their constitutional right to worship *with* Green Haven Meeting and its members." CA2 J.A. 284 (emphasis added).

Petitioners' briefing to the courts below similarly did not identify a claim by the nonincarcerated organizational petitioners concerning the MWCBs. Instead, they argued that the nonincarcerated organizational petitioners had the right to worship *with* inmates at Green Haven—a practice that occurred only at Quarterly Meetings—and "to represent the constitutional interests of their parishioners," who were not identified

as participating in MWCBs. CA2 Br. for Appellants (CA2 Br.) 21; *see* Pls. Mem. in Supp. of Mot. for Prelim. Inj. ("SDNY Br.") 6-8 (S.D.N.Y. Mar. 29, 2019), ECF No. 34. In advancing substantive arguments concerning the nonincarcerated petitioners' Free Exercise claims, petitioners' briefing made no specific reference to MWCBs. CA2 Br. 19-23; Reply Br. for Appellants (CA2 Reply Br.) 1-2; SDNY Br. 26-27.

While petitioners now make arguments about the interest that specific nonincarcerated organizational petitioners have in MWCBs, they did not previously raise those particular interests. Petitioners' briefs to the courts below did not describe any interest of New York Yearly Meeting and Nine Partners Quarterly Meeting in "protect[ing] the practice of their religion throughout their jurisdictions" (Pet. 19), let alone signal to the court that those organizations sought on that basis to pursue claims concerning MWCBs. Petitioners also never argued to the courts below that Poughkeepsie Monthly Meeting has a distinct interest in inmates' MWCBs based on its supervision of Green Haven Meeting.[7] *See* Pet. 20. Nor did petitioners ever mention that petitioner Johnson is a member of Bulls Head-Oswego Meeting, which they now claim is a basis for giving that entity standing to challenge the scheduling changes to MWCBs. Pet. 20.

In sum, the court of appeals properly considered the arguments and evidence presented to it in reaching its fact-specific conclusion that the nonincarcerated organizational petitioners lacked standing to pursue claims concerning MWCBs. Pet. App. 17a-19a.

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[7] The parties did not dispute, and the court of appeals agreed, that Green Haven Meeting had standing to assert claims concerning all of the challenged policy decisions. Pet. App. 20a.

2. Petitioners also failed to raise below their proffered question concerning the appropriate legal standard to apply to Free Exercise claims by nonincarcerated petitioners. Petitioners' briefing to the courts below treated the Free Exercise claims of both the nonincarcerated petitioners and the incarcerated petitioners together, applying the standard contained in *Turner v. Safley*—which held that a prison regulation impinging inmates' constitutional rights "is valid if it is reasonably related to legitimate penological interests," 482 U.S. 78, 89 (1987)—for all of the petitioners' Free Exercise claims. Pet. App. 27a; CA2 Br. 19-20, 27-31; SDNY Br. 23-24.

Petitioners are also mistaken to claim that this case presents the question of "what standard applies to free exercise claims by ministers in a prison setting" based on purportedly distinct interests held by petitioner Donald Badgley. Pet. 21. Neither petitioners' complaint nor their briefing to the courts below identified Badgely as a minister or argued that he had any distinct interest in this matter; the opening brief to the court of appeals did not refer to Badgley at all, apart from a cursory reference in a footnote listing his name along with those of the other individual petitioners. CA2 Br. 1 n.2.

Indeed, far from claiming any distinct standard applied to any particular petitioner's activities as ministers, petitioners asserted that Quakers are unique among religions because they lack clergy. According to petitioners' briefs to the courts below, adherents may "access the Voice of the Divine directly, without the mediating influence of clergy." CA2 Br. 6; *accord* SDNY Br. 1. And according to Badgley, "Friends historically rejected the role of clergy, doctrine, rites and ritual as superfluous and even an impediment to discerning the

guidance of the Divine."[8] CA2 J.A. 36; *accord* SDNY Br. 5.

Furthermore, the evidence submitted by petitioners below contradicts their new claim that Badgley has an interest that is distinct from the interests of other individual petitioners. Accordingly to Badgley, he participated in Quarterly Meetings at Green Haven "as a member of Poughkeepsie Meeting to bring a message and/or program *or just as a fellow worshiper*." CA2 J.A. 41, 601-602 (emphasis added). In sum, petitioners' submissions below did not raise a question as to the legal standard applicable to ministers seeking to exercise their First Amendment rights in a prison setting.

Similarly, when seeking a preliminary injunction from the district court, petitioners never argued that DOCCS was impermissibly imposing a licensing requirement on participants in Quarterly Meetings. And petitioners did not argue in their opening brief to the court of appeals that DOCCS had imposed any such licensing requirement. Although petitioners did present an affirmation from Badgley representing that, in the past, nonincarcerated Quakers had participated in Quarterly Meetings as visitors rather than as registered volunteers (CA2 J.A. 602-603), other evidence showed that the nonincarcerated participants in past Quarterly Meetings had been registered volunteers (CA2 J.A. 521, 524, 527, 530; *see* CA2 J.A. 403

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[8] Amici supporting petitioners similarly represent that Quakerism is "a communion of all believers, the 'blessed children of God' are invited to carry all roles, responsibilities and disciplines of the Quaker faith." Br. for Nat'l Council of Churches of Christ in the USA et al. as Amici Curiae ("Amici Br.") 10.

(petitioner Sammond referring to participants in 2006 Quaker religious gatherings as "volunteers").[9]

The district court did not resolve this discrepancy in the record because it was not asked to do so. Petitioners did not argue to the district court that requiring nonincarcerated persons who wished to attend Quarterly Meetings to register as volunteers impeded the religious practice of any individual petitioner. Petitioners do not explain how the completion of the volunteer application form, which seeks information about a prospective volunteer's involvement with the criminal justice and corrections systems (CA2 J.A. 613-617) would burden their ability to practice their religion. And to the extent petitioners now claim that their religious observance is burdened by restrictions imposed on the relationships between inmates and volunteers, the evidentiary support on which they rely to describe the restrictions is a DOCCS policy that permits volunteers to seek an exemption from such restrictions. CA2 J.A. 623. Petitioners did not argue to the courts below or present any evidence showing that they sought and failed to secure an exemption. In sum, the courts below did not address the legal standards applicable to ministerial licensing requirements because no claim of ministerial licensing was raised to them.

Along similar lines, petitioners' argument that the court of appeals erred in finding no substantial burden on their religious exercise (Pet. 26-28) rests on a mischaracterization of the record presented to the courts below. As the courts below emphasized, the evidence proffered to support petitioners' preliminary

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[9] DOCCS requires prospective volunteers for all religious groups to complete an application and agree to abide by DOCCS's standard of conduct for volunteers. *See* CA2 J.A. 613-624.

injunction motion did not identify Saturdays as having any particular doctrinal significance for the Quaker faith.

Petitioners characterized their preference for Saturday meetings as a matter of convenience. Badgley declared that holding the Quarterly Meetings on Saturdays "was the only way many Friends with employment or parenting responsibilities could attend; and holding them during the day enabled Friends to participate who had to travel a long distance to the remote Green Haven CF location or who do not drive at night." CA2 J.A. 41. Mary Cadbury Foster stated that a Saturday meeting "enabled greater participation by employed Friends (who otherwise would have had to give up vacation or personal days, if they could get off work at all), by Friends with young children, by elderly and other Friends who are unable to travel or uncomfortable traveling to and from the remote location of Green Haven CF and/or traveling after sun set, and by speakers and other guests with other workweek commitments."[10] CA2 J.A. 216.[11] While petitioners now claim that the volunteer-registration requirement, limits on attendance, and duration of the meetings pose

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[10] She also gave a conclusory statement that Saturday meetings "minimized program time limits or restrictions that would adversely affect the depth and richness of sessions held on a weekday" (CA2 J.A. 216), without explaining how a shorter meeting time was inadequate or contending that Quarterly Meetings required a particular duration of time.

[11] Two of the petitioners did not mention Saturdays at all. Frederick Doneit, Sr. declared that he participated in Quarterly Meetings from 1992 to 2000, and did not speak to the need for meetings held on Saturdays. CA2 J.A. 322-323. And Rachel Ruth described the Quarterly Meeting dates scheduled by DOCCS as "arbitrary," but did not provide any evidence that the scheduling changes posed a substantial burden. CA2 J.A. 396.

a substantial burden (Pet. 27-28), petitioners' preliminary injunction submissions did not contain evidence supporting those claims.

II. The Decision Below Does Not Implicate a Circuit Split, Is Consistent with This Court's Precedents, and Is Correct.

There is no split of court of appeals authority on any of the issues that petitioners seek to present for review. The decision is consistent with the precedents of this Court and is correct.

1. Both courts below correctly concluded that an unincorporated association consisting solely of incarcerated persons may not bypass the PLRA's exhaustion requirement by filing suit under the name of the association. Petitioners do not identify any split of authority on this question. Rather, petitioners contend that the court of appeals "disregarded fundamental principles of statutory construction." Pet. 28.

Contrary to petitioners' assertions, the courts below correctly construed the PLRA. Under petitioners' proposed construction, any incarcerated person could bypass the PLRA's exhaustion requirement by forming an unincorporated association of incarcerated persons to sue.[12] The court of appeals reasoned that petitioners'

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[12] Contrary to petitioners' suggestion (Pet. 31-32), the courts below did not find that Green Haven Meeting was created in order to pursue this lawsuit. *See* Pet. App. 6a. The court of appeals simply observed that petitioners' proposed rule had no limiting principle and would allow any group of incarcerated persons to avoid the PLRA's exhaustion requirement by suing under the guise of an association. Pet. App. 25a-26a. Indeed, petitioners' counsel conceded as much during oral argument before the district

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construction thus "vitiates the PLRA's requirements." Pet. App. 25a. As the court of appeals reasoned, to the extent that Green Haven Meeting could assert a RLUIPA claim as an association that "metaphorically" resides in a prison, it derives that status from the status of its members. Pet. App. 25a. Because they are bound by the requirements of the PLRA, so too is Green Haven Meeting when it asserts the claims of its members. Pet. App. 25a-26a.

2. The court of appeals also properly applied settled precedents governing Article III standing to conclude that, on the record before it, the nonincarcerated organizational petitioners lacked standing to pursue claims concerning MWCBs. Petitioners claim to identify contrary decisions from the Seventh Circuit and this Court on this question. Pet. 18 n.19. But those decisions reflect the well-settled proposition that religious entities may represent the interests of their parishioners as well as their own rights. *See, e.g.*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 525 (1993); *Korte v. Sibelius*, 735 F.3d 654, 674-75 (7th Cir. 2013).

The court of appeals' decision is entirely consistent with these precedents. The court agreed with petitioners that the nonincarcerated individual petitioners have standing to assert their own constitutional rights in the prison setting which were infringed upon by Green Haven's policy changes, and the nonincarcerated organizational petitioners have standing to represent the constitutional rights of their parishioner-members.

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court, agreeing to the court's observation that, in counsel's view, "a group of prisoners can just create a group, give it a name and say the group is not prisoners, and, therefore, does not have to exhaust." J.A. 859 (cross-talk omitted).

Pet. App. 17a. In holding that the nonincarcerated petitioners lacked standing to challenge scheduling changes to MWCBs, the court emphasized that the record did not show any impact on the nonincarcerated petitioners' rights from the scheduling changes to MWCBs, because they did not allege that they attended the Saturday MWCBs and "are not directly affected by any changes in the frequency of religious services that they do not attend and claim no right to attend." Pet. App. 18a-19a.

Contrary to petitioners' suggestion, the court of appeals did not reject the general principle that religious organizations may assert their own rights. Rather, it held that only Green Haven Meeting, and not any of the other organizational petitioners, had alleged a basis for associational standing to assert claims concerning MWCBs, because only Green Haven Meeting had members who were incarcerated and participated in MWCBs, and petitioners did not present argument that the other organizational petitioners had distinct interests in pursuing claims regarding MWCBs. As described above, petitioners' arguments for the standing of the nonincarcerated organizational petitioners concerned only the Quarterly Meetings, where they alleged impairment of their ability to worship with incarcerated Quakers, and not the MWCBs, where they made no such allegation. See *supra* at 13-15.

3. The standard applied by the court of appeals to the Free Exercise claims of the nonincarcerated petitioners is consistent with precedent and correct. Petitioners do not purport to identify a circuit split, but rather assert that "decisions continue to suggest that constitutional rights of nonprisoners in the prison set-

ting *may* differ from the circumscribed rights accorded prisoners."[13] Pet. 21 (emphasis added).

The decision below is entirely consistent with the Eighth Circuit authority on which petitioners rely. The Eighth Circuit—like the court of appeals here—has concluded that *Abbott*, 490 U.S. at 407, supports applying the same standard of review to claims of incarcerated persons and claims of civilians who wish to exercise their First Amendment rights in a prison setting. *See Human Rights Defense Ctr. v. Baxter Cnty. Ark.*, 999 F.3d 1160 (8th Cir. 2021) (per curiam).

In particular, the Eighth Circuit has held that "[t]o determine whether a jail or prison policy infringes on the First Amendment rights of inmates, *as well as those seeking to communicate with them*, the relevant inquiry is whether the policy is reasonably related to legitimate penological interests," a standard under which courts give "substantial deference to the professional judgment of prison administrators." *Id.* at 1164 (quotation and alteration marks omitted) (emphasis added). To be sure, the Eighth Circuit found a question as to whether the prison policy at issue there amounted to a de facto ban on a nonincarcerated entity communicating with incarcerated persons by rendering such communications "illusory, impractical, or otherwise unavailable." *Id.* at 1165. Here, by contrast, the record establishes that DOCCS has afforded the nonincarcerated petitioners

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[13] Petitioners reference *United States v. Haymond*, 139 S. Ct. 2369 (2019), which concerned whether an individual's right to a trial by jury was violated by a statutory provision requiring a judge to impose an additional prison sentence on an individual on supervised release who is discovered to possess child pornography. Petitioners do not explain how this decision suggests that a different legal standard applies to the Free Exercise claims of the nonincarcerated petitioners here.

opportunities to have religious gatherings with prisoners and has sought to work with them to schedule a time for the gatherings that is consistent with the security needs of Green Haven Correctional Facility.

In affirming the denial of petitioners' requested preliminary injunction, the court of appeals recognized that "regulations limiting association of prisoners with outsiders do not affect inmates alone" and "can work a consequential restriction on the constitutional rights of those who are not prisoners." Pet. App. 28a (quotation and alteration marks omitted). The court further noted that although some cases have suggested that more searching scrutiny may apply when nonincarcerated persons bring First Amendment challenges to prison rules affecting them, this Court ultimately concluded in *Abbott* that prison regulations affecting the First Amendment rights of nonincarcerated persons are subject to the standard elucidated in *Turner v. Safley*, 482 U.S. 78 (1987): "whether the regulations are reasonably related to legitimate penological interests." *Abbott*, 490 U.S. at 404 (quotation marks omitted).

The court of appeals examined *Abbott*'s rationale for applying the *Turner* framework to Free Speech Clause claims and properly concluded that the same reasons support *Turner*'s application to Free Exercise Clause claims. As the court observed, prison officials exercise less control over the exercise of religious rights by nonincarcerated persons than by incarcerated persons. The nonincarcerated petitioners "are free to schedule the number, location, and timing of their meetings, both for worship and for the conduct of business, at their own discretion and as suits their interest and convenience" in the community. Pet. App. 28a. But when they "seek to enter the domain of the prison itself" to exercise First Amendment rights, the same security

concerns apply as have been recognized repeatedly by this Court in the context of claims by incarcerated persons. Pet. App. 28a. The court of appeals thus applied the correct legal standard to the Free Exercise claims of the nonincarcerated petitioners.

The courts below also correctly applied that standard to the underlying facts. Defendants proffered evidence that security concerns, as well as equitable allocation of scarce resources, motivated their decision to schedule Quarterly Meetings on weekdays. In particular, events involving civilian volunteers require extra security to protect the volunteers and maintain safety in the facility; and this burden is heightened on the weekends, when fewer staff members are on duty. Gatherings in the prison setting also pose a further security risk when they require absences from a cell at the time of regularly scheduled head counts. CA2 J.A. 512. In light of major security breaches at Green Haven in the past, prison administrators sought to mitigate security risks by limiting the number and duration of weekend gatherings, both religious and secular. Under the applicable standard, such judgments by prison administrators are afforded substantial weight and deference. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349-50, 352 (1987).

Petitioners miss the mark in suggesting that DOCCS's reasoning is irrational because no problems had previously arisen at Quaker religious gatherings at Green Haven. Pet. 23-25. As the court of appeals observed, the Quaker religious gatherings that DOCCS sought to reschedule had all of the hallmarks of events that had given rise to safety concerns and security breaches in the past. The Quarterly Meetings involved outside visitors, required extra security to protect civilian visitors and to maintain safety in the facility,

and imposed such challenges on weekends, when fewer staff members are on duty. Pet. App. 32a. And the Saturday MWCBs were contributing to overcrowded weekend gatherings with no civilian supervision and involved excessive call outs for incarcerated nonadherents. Pet. App. 32a.

Petitioners mischaracterize the record in contending that the courts below "question[ed] the Quaker community's unanimous testimony" that Quaker religious gatherings "designed by prison officials did not qualify as a real Quaker meeting" (Pet. 26-28).[14] Neither DOCCS nor the courts below questioned the sincerity of petitioners' religious beliefs nor their representations about the fundamental tenets of their faith or practice. And DOCCS never purported to dictate the content of Quarterly Meetings.

Instead, the courts below emphasized that petitioners' evidentiary submissions showed their preferred dates had no religious significance, and that they preferred Saturdays for logistical reasons.[15] Pet. App. 31a, 56a-57a. The courts also noted that DOCCS

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[14] Petitioners also rely on inapposite lower court decisions: *Koger v. Bryan* concerned prison officials' refusal to provide a prisoner with a diet consistent with his religious belief and officials' requirement that a clergy verify his religious beliefs, 523 F.3d 789, 798-800 (7th Cir. 2008). *Islamic Center of Mississippi, Inc. v. City of Starkville* concerned zoning ordinances that made attending a mosque relatively inaccessible "to Muslims who lack automobile transportation." 840 F.2d 293, 299 (5th Cir. 1988).

[15] The court of appeals emphasized that DOCCS did not forbid incarcerated and nonincarcerated Quakers from gathering for communal religious services and did not cancel Quarterly Meetings. Pet. App. 31a n.7. Amici's assertion that DOCCS canceled the Quarterly Meetings rests on a misunderstanding of the factual record, and their speculation that DOCCS might cancel Quarterly Meetings at other facilities is baseless. *See* Amici Br. at 11, 15, 17.

offered alternative schedules for Quaker gatherings "to fulfill the religious goal of communal discussion and worship services, in ways that imposed lessened security risks and a lesser burden on prison staff than the risks and burden posed by Plaintiffs' preferred schedule." Pet. App. 32a. Petitioners proffered no evidence beyond conclusory assertions to support their contentions that the duration of the meeting, the elimination of a meal, the limitation on the number of participants, and the volunteer-registration requirement substantially burden their exercise of religion.[16] And in any event, DOCCS addressed many of those concerns by offering to schedule one of the Quarterly Meetings as a special event allowing for a meal and a longer meeting time, consistent with DOCCS policies permitting one nonfamily special event per religious group per year. *See* Pet. App. 11a.

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[16] Amici are thus mistaken in claiming that the lower courts made "determinations as to what is proper Quaker worship and what it requires" based on anything other than the record provided by petitioners. Amici Br. at 20.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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