No. 23-1197

IN THE

Supreme Court of the United States

DAMON LANDOR,

Petitioner,

v.

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

Respondents.

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

BRIEF OF THE TAYBA FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Tayba Foundation is a nonprofit charitable and educational organization that has served Muslims impacted by incarceration across the United States since 2004. Tayba believes in the power of human change through holistic education, guidance, and support rooted in the Islamic tradition.

Tayba focuses on three related program areas: education, life skills, and re-entry. These programs focus on character reformation through spiritual and behavioral modification, with the goal of giving incarcerated and recently incarcerated people the tools they need to re-integrate into society.

At its core, Tayba believes that the Islamic faith is a positive influence on the lives of current and former prisoners. Its participants have described their Islamic beliefs and practices as crucial to their mental and spiritual self-improvement—both while in prison and after their release.

Tayba's interest in this case stems from its longstanding efforts to support Muslim inmates over the past two decades. There are thousands of Muslims in prison, the majority having embraced the faith in custody. But sadly, the behavior of many prison officials toward Muslims poses a major obstacle to inmates who wish to practice Islam.

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[1] Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part and no person other than amicus or its counsel has made a monetary contribution intended to fund its preparation or submission. Pursuant to Rule 37.2, counsel for amicus provided parties' counsel with notice of their intention to file this brief on May 21 and 24, 2024.

In state prisons around the country, Muslims are targeted and deprived of basic accommodations for their faith—such as timely meals before and after religious fasts and the ability to pray without interference. This causes significant pain and spiritual torment to the inmates, and it thwarts Tayba in its mission. When prisoners are harassed because of their religion or denied the ability to practice it, Tayba's efforts to educate and promote reform are undermined, and other inmates are discouraged from practicing Islam or becoming Muslim in the first place.

Although Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to curb religious-liberty violations in prison, its reach is hamstrung where, as here, courts have found no monetary damages are available. Indeed, money is often the only way to compensate aggrieved prisoners and deter prison officials from unlawful behavior. The right to damages against state officials under RLUIPA is therefore critical to Tayba's mission of supporting the learning and practice of Islam as a means of encouraging prisoner rehabilitation and reentry.

SUMMARY OF ARGUMENT

In its unanimous passage of RLUIPA nearly a quarter century ago, Congress sought to correct a history of "frivolous or arbitrary" barriers to religious exercise faced by prison inmates. Unfortunately for vulnerable prisoners across the country—and Muslims in particular—these barriers persist. Pertinent to the present petition, moreover, the problem is exacerbated in deep and disturbing ways when the possibility of monetary relief from offending officers is categorically precluded.

Having addressed a similar crisis under RLUIPA's "sister" statute in *Tanzin v. Tanvir*, where this Court held that "appropriate relief" under the Religious Freedom Restoration Act of 1993 (RFRA) includes individual-capacity damages for egregious violations of religious liberty, the time has come for this Court to apply the same phrase in RLUIPA in the same way. For not only does the continued plight of Muslim and other inmates necessitate this Court's intervention, individual-capacity monetary relief is a constitutional remedy under either the Spending Clause or Section 5 of the Fourteenth Amendment.

Whether by dissenting from or concurring in the denial of en banc review, nearly every Fifth Circuit judge in this case looked to this Court as the one to fix the problem. We ask it to do so now.

ARGUMENT

I. Monetary relief under RLUIPA is critical for Muslim inmates.

A. RLUIPA's capacious protection is vital for Muslim inmates but falls short without a damages remedy.

The bedrock principle of religious liberty for all has guided American society since the founding era. But after this Court adopted a limited view of the constitutional right to free exercise, Congress enacted RFRA and RLUIPA to restore its robust protection in particular contexts. RLUIPA, which Congress passed unanimously, provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless imposing that burden is the "least restrictive

means" of furthering a "compelling governmental interest." 42 U.S.C. § 2000cc-1(a).

This case presents an egregious violation of an inmate's religious rights in prison. Damon Landor, a devout Rastafarian, had grown his hair over two decades in accordance with his Nazarite Vow to "let the locks of his head grow," until he was transferred with only three weeks left in his sentence. *Landor v. La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 339-40 (5th Cir. 2023). At Landor's new facility, officials threw away papers reflecting his prison-approved accommodation. *Id.* at 340. Landor also produced a copy of the Fifth Circuit's decision in *Ware v. Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017)—holding that a Rastafarian inmate must be allowed to grow his hair under RLUIPA—but officials threw that in the trash too. *Id.*

Then, rather than accommodating him, prison officials dragged Landor into a room, handcuffed him to a chair, and held him down while forcibly shaving his hair to the scalp. *Id.* Upon release, shaved bald, and without another remedy, Landor sued under RLUIPA for money damages. *Id.* And although the Fifth Circuit "emphatically condemn[ed]" the violation of Landor's rights, it held that RLUIPA does not allow monetary relief against state prison officials in their individual capacities. *Id.* at 345. As Landor is no longer in prison, the harm to him cannot be addressed. Nor, most painfully of all, can his locks be restored.

Similar to Landor, if not always as graphically, Muslim inmates experience mistreatment in prisons around the United States. Damages are likewise vital to compensate them and deter violations of their rights. Indeed, state prisons house thousands of Muslims—

with some reporting that more than 20% of their populations identify with Islam. *See* Muslim Advocates, *Fulfilling the Promise of Free Exercise for All: Muslim Prisoner Accommodation in State Prisons* 15 (July 2019), https://perma.cc/M8RX-BV97. But Muslims struggle disproportionately for their faith: government data shows, for example, that from 2001 to 2006 they brought 74 of 250 reported federal-court RLUIPA cases (nearly 30%). *Enforcing Religious Freedom in Prison*, U.S. Commission on Civil Rights, tbl. 4.1, at 82 (Sept. 2008), https://perma.cc/95CA-ZJ2Z. This is on top of the fact that Bureau of Prisons data for the same period showed Muslims sought pre-lawsuit administrative relief nearly four times as often as the next highest group. *See id.* at tbl.3.8, at 70.

As the most promising vehicle to secure their religious rights, RLUIPA is significantly diminished, along with its deterrent effect, when damages are unavailable to inmates who prevail. As with RFRA, a "damages remedy is not just 'appropriate' relief"—it's "also the *only* form of relief" for certain injuries. *Tanzin v. Tanvir*, 592 U.S. 43, 51 (2020). Even as a general matter, damages are "the default," and equitable relief "the "exception"; in many cases an injunction is "no remedy at all." *Sossamon v. Texas*, 563 U.S. 277, 296, 304 (2011) (Sotomayor, J., dissenting) (internal quotation marks omitted). So too for Landor and many Muslims in prison.

B. Muslim inmates are often targeted and denied the ability to practice their faith.

As Tayba can attest, Muslims suffer religious deprivations and discrimination in prison that cannot be relieved by an injunction alone. Prisoners are mistreated and harassed by staff simply because they

are Muslim. In other cases, prison officials disrespect, disregard, or refuse to accommodate Islamic practices. As an organization in constant correspondence with Muslim inmates across the country, Tayba regularly learns of religious deprivations as those it serves seek to practice their faith. And cases brought by Muslim inmates confirm such maltreatment.

In a Tayba survey conducted this year, Muslim inmates consistently reported egregious mistreatment. One respondent wrote of guards who "throw Qurans in [the] trash" and "stop Muslims from going to showers for Jumu'ah" to engage in ritual purification before the weekly congregational prayer. Inmates have asserted similar claims in court. *See*, *e.g.*, *Harris v. Escamilla*, 736 F. App'x 618, 620-22 (9th Cir. 2018) (recognizing free-exercise violation by officer accused of throwing prisoner's Quran on the ground and stomping on it, while emphasizing lack of damages under RLUIPA); *Lloyd v. City of New York*, 43 F.Supp.3d 254, 263-64 (S.D.N.Y. 2014) (allowing RLUIPA claim for inmates forced to pray in "frequently flooded" gymnasium or in a chapel that prevented prostration and was otherwise unsuitable for Muslim prayer).

Indeed, Muslims in prison are often thwarted in prayer. *See*, *e.g.*, *Lovelace v. Lee*, 472 F.3d 174, 186-88 (4th Cir. 2006) (holding denial of group prayer during Ramadan triggers RLUIPA); *Tyson v. Guisto*, 360 F. App'x 900, 901 (9th Cir. 2009) (holding access to congregational Friday Jumu'ah prayer is protected by RLUIPA); *Clemons v. Basham*, No. 4:22-cv-158, 2023 WL 8619134, at **3-4 (E.D. Mo. Dec. 14, 2023) (Muslim inmates pepper sprayed while praying together).

Some prison officials go out of their way to bully Muslim inmates who pray. *See, e.g., Mack v. Yost*, 63 F.4th 211, 216-19, 237 (3d Cir. 2023) (rejecting qualified immunity on summary judgment for guards who made loud noises, kicked boxes, and otherwise harassed praying inmate); *Salahuddin v. Goord*, 467 F.3d 263, 278-79 (2d Cir. 2006) (condemning on free-exercise grounds correctional officers who forced inmate to choose between using the law library and attending Ramadan services); *Mayweathers v. Terhune*, 328 F.Supp.2d 1086, 1097 (E.D. Cal. 2006) (finding RLUIPA violation where officials punished inmates for missing work to attend hour-long Friday prayers where secular work exemptions were allowed); *Arroyo Lopez v. Nuttall*, 25 F.Supp.2d 407, 409-10 (S.D.N.Y. 1998) (rejecting qualified immunity for officer who shoved inmate while he was praying and prevented him from continuing).

And despite this Court's ruling in *Holt v. Hobbs*, 574 U.S. 352 (2015), which recognized a right to grow a half-inch beard under RLUIPA, officials continue to prohibit facial hair. A Muslim inmate told Tayba this year that "[j]ust the other day a brother was locked in confinement and written up simply because he had a beard" and "many throughout this system are harassed just for growing a beard." In a 2019 Tayba questionnaire, inmates also complained of a complete prohibition of facial hair as a burden on their religious practice. *See also Ashaheed v. Currington*, 7 F.4th 1236, 1241, 1249 (10th Cir. 2021) (reversing qualified-immunity finding for guard who allegedly forced Muslim inmate to shave beard out of animus).

Officials have also forced Muslims to remove or forgo head coverings in public, violating the

requirements of their faith. *See, e.g., Khatib v. Cnty. of Orange*, 639 F.3d 898, 901, 906 (9th Cir. 2011) (recognizing detainee's claim over being forced to remove her hijab); *Richardson v. Clarke*, 52 F.4th 614, 624 (4th Cir. 2022) (holding that policy requiring inmate "to either violate his religious beliefs—by refraining from wearing a head covering at all times—or risk discipline" created a substantial burden under RLUIPA).

Moreover, prison officials deny Muslim inmates meals that comply with their faith, and at times intentionally serve them religiously prohibited foods. *See*, *e.g.*, *Brandon v. Kinter*, 938 F.3d 21, 26-29, 43 (2d Cir. 2019) (reversing summary judgment where officials repeatedly served pork to inmate, refused to stop, and retaliated against him for grieving); *Dowl v. Williams*, No. 3:18-cv-0119, 2018 WL 2392498, at *1 (D. Alaska May 25, 2018) (inmates alleged prison served them pork during Ramadan); *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1317 (10th Cir. 2020) (recognizing denial of a halal diet puts Muslim inmate to a "Hobson's choice—either he eats a non-halal diet in violation of his sincerely held beliefs, or he does not eat").

Notably, Muslim inmates frequently face acute difficulty with meals in the holy month of Ramadan when many inmates are hampered from fasting in accordance with their faith. An inmate responded to Tayba's 2024 survey explaining, "Ramadan is always stressful because they . . . don't give us nutritional [and] quality food for us to thrive."

And the continuing number of cases on the issue show insufficient traction. *See, e.g.*, *Lovelace*, 472 F.3d at 186-88 (holding denial of food outside fasting hours

triggers RLUIPA); *Hunafa v. Murphy*, 907 F.2d 46, 47-49 (7th Cir. 1990) (holding prison not entitled to summary judgment on claim it offered Muslim inmate "improper choice" between adequate nutrition and his faith); *Flores v. City of New York*, No. 21-cv-1680, 2022 WL 4705949, at **23-26 (S.D.N.Y. Aug. 8, 2022) (finding denial of pre-dawn meal actionable under RLUIPA); *Dowl*, 2018 WL 2392498, at *2 (requiring meals with at least 2600 calories where inmates alleged confiscation of food and a diet of 500 to 1100 calories a day, with pork); *Torres v. Aramark Food*, No. 14-cv-7498, 2015 WL 9077472, at *9 (S.D.N.Y. Dec. 16, 2015) (finding a sub-2000-calorie diet to be inadequate and thus a substantial burden); *Rice v. Curry*, No. C09-1496, 2009 WL 3334878, at **1-2 (N.D. Cal. 2009) (finding denial of pre-dawn meal actionable under RLUIPA); *Muhammad v. San Joaquin Cnty. Jail*, No. Civ S-02-0006, 2006 WL 1282944, at *3 (E.D. Cal. May 10, 2006) (finding denial of after-sunset meals to be a triable free-exercise issue).

Muslim inmates are even disciplined when they cannot strictly comply with prison rules while fasting. *See*, *e.g.*, *Holland v. Goord*, 758 F.3d 215, 217-18 (2d Cir. 2014) (confining to administrative segregation a Muslim inmate who could not provide urine sample within three hours after he explained he could not drink water during his daytime Ramadan fast); *Omaro v. O'Connell*, No. 14-cv-06209, 2016 WL 8668508, at **2, 6-7 (W.D.N.Y. Nov. 4, 2016) (finding removal of prisoner from Ramadan meal plan for breaking the fast early out of medical necessity violated his clearly established free-exercise rights).

As the late Reverend Chuck Colson observed in supporting the passage of RLUIPA—and as Tayba

holds as a fixed star—faith is often "the one thing that will turn the lives of . . . prisoners around." *Protecting Religious Liberty After Boerne v. Flores: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 5 (1997) (Statement of Charles W. Colson) ("*House Hearing after Boerne*"). Sadly, however, prison officials still too often obstruct inmate religious practice. Stronger medicine is needed.

II. This Court must clarify that RLUIPA includes money damages.

A. As sister statutes, RFRA and RLUIPA should both include money damages against officers as "appropriate relief."

In *Tanzin*, this Court unanimously determined that RFRA's right to "appropriate relief" includes the ability of litigants "to obtain money damages against federal officials in their individual capacities." 592 U.S. at 52. This Court should determine that RLUIPA, as RFRA's sister statute, likewise allows that relief.

This Court rightly stressed the integral bond between RFRA and RLUIPA in *Tanzin*. *Id*. at 51-52. Indeed, the statutes not only include the identical remedial term of "appropriate relief," they share a common purpose. And although RFRA applies to the federal government while RLUIPA applies to the states, the context of their respective "appropriate relief" provisions—against individual officers—is likewise the same.

Start with the text. RFRA provides "[g]overnment may [not] substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(a). And while

RLUIPA's pertinent protection covers only institutionalized persons, it similarly states that "[n]o government shall impose a substantial burden on the religious exercise of" such persons. 42 U.S.C. § 2000cc-1(a). Both statutes also define "government" to include an individual officer. In the case of RFRA, it's an "official (or other person acting under color of law) of the United States, or of a covered entity." 42 U.S.C. § 2000bb-2(1). In RLUIPA, it's a state or local "official" or "person acting under color of State law." 42 U.S.C. § 2000cc-5(4). Finally, and most pertinently, each law identically allows victims to "obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a) (RLUIPA); 42 U.S.C. § 2000bb-2(1)(c) (RFRA).

The legislative history bolsters the statutes' common meaning. RLUIPA was the culmination of a three-year effort in Congress to protect in a narrow yet critical way against "frivolous or arbitrary" barriers to religious exercise faced by prison inmates. 146 CONG. REC. 16,698, 16,699 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy); *Cutter v. Wilkinson*, 544 U.S. 709, 716-17 (2005). Indeed, RLUIPA is a "tailored" effort to constitutionally restore RFRA protection in contexts of special need—here, in prison—in response to this Court's invalidation of RFRA as against the states in *City of Boerne v. Flores*, 521 U.S. 507 (1997). 146 CONG. REC. 14,283, 14,283 (July 13, 2000) (statement of Sen. Hatch (for himself and Sens. Kennedy, Hutchinson, Daschle, Bennett, Lieberman, and Schumer)).

The shared language and purpose of RFRA and RLUIPA thus make them "sister" or "twin" statutes. *Landor*, 93 F.4th 259, 264 (5th Cir. 2024) (Oldham, J., dissenting from denial of reh'g en banc) (citations

omitted). Indeed, this Court has "repeatedly interpreted one statute by looking to its precedent interpreting the other"—as in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718, 730 (2014), *Holt v. Hobbs*, 574 U.S. 352, 362-64 (2015), and other cases. *Landor*, 93 F.4th at 264 (Oldham, J., dissenting from denial of reh'g en banc) (citations omitted). As Judge Oldham urged in dissenting from the Fifth Circuit's denial of rehearing en banc, therefore, "Supreme Court precedent . . . commands [courts] to interpret the two statutes in tandem." *Id.*

Accordingly, because *Tanzin* authorizes money damages against individual officers as "appropriate relief" against the government for burdens on religious exercise under RFRA, RLUIPA should be so interpreted as well.

B. *Sossamon II* does not preclude holding that RLUIPA authorizes individual-capacity money damages from officers.

Despite the two statutes' common language, purpose, and history, the Fifth Circuit held that its own precedent precluded it from applying *Tanzin*'s interpretation of "appropriate relief" in RFRA to that same phrase in RLUIPA. *Landor*, 82 F.4th at 341 (citing *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316 (5th Cir. 2009) ("*Sossamon I*")). The supposed difference? Congress cited different constitutional powers in passing each statute: Section 5 of the Fourteenth Amendment for RFRA, and the Spending and Commerce Clauses for RLUIPA. And, the Fifth Circuit insisted, as Spending Clause legislation, RLUIPA creates a contract between the federal government and only the state; or, the Spending

Clause "does not impose direct liability on a non-party to the contract between the state and the federal government." *Id.* (internal quotation marks omitted).

This Court, of course, took up the Fifth Circuit decision in *Sossamon I*. *Sossamon v. Texas*, 563 U.S. 277 (2011) ("*Sossamon II*"). But it decided in *Sossamon II* only that, based on sovereign immunity concerns, RLUIPA's "appropriate relief" provision did not allow money damages in a suit against the state and officers in their official capacities. 563 U.S. at 293; *see also Landor*, 93 F.4th at 261 (Oldham, J., dissenting from denial of rehearing en banc) (emphasizing that *Sossamon II* held only that "in the context of state employees sued in their *official* capacities, RLUIPA did *not* clearly allow for monetary damages").

Whatever the continued merits of *Sossamon II*, however, it does not in fact govern the question here. Because sovereign immunity is a special barrier to damages only in official-capacity suits, *Sossamon II* "should have no bearing" on this case. *Landor*, 93 F.4th at 261 (Ho, J., dissenting from denial of reh'g en banc). As this Court observed in *Tanzin*, "damages have long been awarded as appropriate relief" in suits against government officials in their individual capacities. *Tanzin*, 592 U.S. at 49. Indeed, this Court cited this "obvious difference" in distinguishing *Sossamon II*'s holding on official-capacity liability from a "suit against individuals, who do not enjoy sovereign immunity." *Id.* at 52. And the context of *Tanzin*—a suit against government officials in their individual capacities—is the same here.

It may be, as Judge Clement observed below, that "threading the needle between" *Sossamon II*'s preclusion of official-capacity damages for state

officials under RLUIPA and *Tanzin*'s provision of individual-capacity damages for federal officials under RFRA is "a task best reserved for the court that wrote those opinions." *Landor*, 93 F.4th at 261 (Clement, J., concurring in denial of reh'g en banc). Regardless, this Court should take up that task.

C. The Spending Clause permits money damages against individual officers.

In *Sabri v. United States*, this Court specified that the Spending Clause allows federal power to be brought "to bear directly on individuals"—not just states that receive the relevant federal aid. 541 U.S. 600, 608 (2004). The Spending Clause, together with the Necessary and Proper Clause, gives Congress the flexibility, "by rational means, to safeguard the integrity" of the recipient of its funds. *Id*. at 605. And the "power to keep a watchful eye on expenditures and on the reliability of those who use public money is bound up with congressional authority to spend in the first place." *Id.* at 608.

This is especially true in discrimination cases. As President Kennedy observed in an analogous context during the passage of the Civil Rights Act, Congress retains an interest in ensuring "public funds . . . not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." 109 CONG. REC. 11,174, 11,178 (June 19, 1963) (President Kennedy's message to Congress). Congress likewise maintains in RLUIPA the ability to ensure that "[n]o person" is "subjected to discrimination under any program or activity receiving federal financial assistance, because of a religious practice." *House*

Hearing after Boerne at 54 (Statement of Prof. Douglas Laycock).

Accordingly, and as the United States submitted in *Sossamon II*, "[a]ttaching civil liability to an individual official's interference with a state agency's compliance with RLUIPA is a straightforward and plainly adapted means of ensuring that federal funds are not spent contrary to the purposes of the statute." Brief for the United States as Amicus Curiae, p. 13, *Sossamon v. State of Tex.*, 563 U.S. 277 (2011), 2010 WL 990561. Indeed, RLUIPA includes officers in its definition of the government. 42 U.S.C. § 2000cc-5(4).

Finally, it should be noted, *Tanzin* dispenses with any argument about alleged ambiguity regarding extending liability to officers. *See South Dakota v. Dole*, 483 U.S. 203, 207 (1987). Because *Tanzin* stressed as a long-standing principle that "appropriate relief" for individual-capacity liability properly entails money damages, the same phrase in RLUIPA provides that clarity as well. *See Tanzin*, 592 U.S. at 52 (recognizing the "exact remedy" of personal liability of government officials as existing "since the dawn of the Republic"); *see also Landor*, 93 F.4th at 265 (Oldham, J., dissenting from denial of rehearing en banc) (arguing "appropriate relief" in RLUIPA gives "clear notice" of the "unambiguous condition[]" of money damages).

D. Alternatively, Section 5 authorizes RLUIPA protection of inmate religious exercise and, in turn, monetary relief.

Even if the Fifth Circuit were correct that monetary damages are unavailable under RLUIPA as a Spending Clause matter, this Court should still allow them because RLUIPA is valid as applied to

prisons and their officials under Section 5 of the Fourteenth Amendment. Individual-capacity damages are therefore constitutional in any event.

It is entirely appropriate to uphold an exercise of Congressional power on constitutional grounds different from those articulated by Congress. "The constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948); *see also Mills v. State of Me.*, 118 F.3d 37, 43 (1st Cir. 1997) (citing authority from multiple circuits that Congressional authority is not limited to a statute's invocation of its constitutional justification, including in the context of Section 5). Thus, what Congress presents as a condition imposed through the Spending Clause can alternatively be understood as "prophylactic legislation" that "prevent[s] and deter[s] unconstitutional conduct"—here, the restriction of inmate religious exercise. *Nev. Dept. of Hum. Res. v. Hibbs*, 538 U.S. 721, 727-728 (2003).

In reviewing the adoption of RLUIPA, a record of discriminatory barriers to religious exercise in prison readily emerges. As this Court stressed in *Cutter*, "Congress documented, in hearings spanning three years, that 'frivolous or arbitrary' barriers impeded institutionalized persons' religious exercise." 544 U.S. at 716 (citing 146 CONG. REC. 16698, 16699 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy). As the bill's co-sponsors said, "[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways." *Id.*

When it comes to interpreting and responding to a record of harms, it is proper to "give Congress 'wide

latitude' in enacting preventative or remedial measures." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1238 (11th Cir. 2004) (quoting *Boerne*, 521 U.S. at 520). Here, RLUIPA protects inmates from severe and documented religious discrimination in the prison context, where that harm occurs all too frequently. RLUIPA is therefore valid under Section 5 as a (1) "[l]ess sweeping" successor to RFRA, *Cutter*, 544 U.S. at 715; that is (2) "responsive to, or designed to prevent, unconstitutional behavior," *Boerne*, 521 U.S. at 532; and (3) is "congruent and proportional to its remedial object," *Hibbs*, 538 U.S. at 740.

In passing RLUIPA, Congress ultimately cited the Spending and Commerce Clauses. *Cutter*, 544 U.S. at 715. But in the debates leading to passage, Section 5 was discussed as well. As one of many experts so testified, "Congress could and should use section 5 to pass targeted exemptions in specific areas" based on "specific findings." *House Hearing after Boerne* at 77 (Statement of Thomas Berg).

And indeed, the legislative history showed "that institutionalized persons have been prevented from practicing their faith." 146 CONG. REC. 14,283, 14,284 (July 13, 2000) (statement of Sen. Hatch (for himself and Sens. Kennedy, Hutchinson, Daschle, Bennett, Lieberman, and Schumer)). As Tayba and its community know well, "[i]n the prisons, the problem is really severe." *House Hearing after Boerne* at 4 (Statement of Charles W. Colson).

This is precisely what Congress sought to address. In response to concerns that RFRA and prior post-*Boerne* proposals were too broad, Senator Hatch and his co-sponsors adopted a "tailored" solution that targeted the specific areas of land use and prisons,

where the record of religious-liberty violations was—and, sadly, remains—overwhelming. 146 CONG. REC. 14,283, 14283 (July 13, 2000) (statement of Sen. Hatch (for himself and Sens. Kennedy, Hutchinson, Daschle, Bennett, Lieberman, and Schumer)).

By targeting areas with records replete with violations, Congress remedied the incongruence and disproportionality of RFRA raised in *Boerne*. *See Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 994-95 (9th Cir. 2006) (emphasizing in upholding RLUIPA land-use provision under Section 5 that "RLUIPA solely includes 'remedies aimed at areas where . . . discrimination has been most flagrant'") (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966)).[2] Individual-capacity damages under RLUIPA are therefore valid under Section 5.

III. This Court should grant the petition for the further reason that *Tanzin* resolved any supposed constitutional ambiguity.

Where a court confronts ambiguous statutory language, the canon of constitutional avoidance allows it to choose an interpretation that would not run afoul of the Constitution. To a point, this can be a tool of statutory interpretation. *See Hooper v. People of State of Cal.*, 155 U.S. 648, 657 (1895) ("[t]he elementary rule is that every reasonable construction must be resorted to in order to save a statute from unconstitutionality"). But this avoidance "cannot be

[2] Although *Guru Nanak* involved RLUIPA's land-use provision, it stressed in its Section 5 analysis that RLUIPA's coverage is "[l]ess sweeping" than RFRA in applying only "to regulations regarding land use and prison conditions." 456 F.3d at 994 (citing *Cutter*, 544 U.S. at 715).

invoked where there is no ambiguity." *Landor*, 93 F.4th at 266 (Oldham, J., dissenting from denial of rehearing en banc).

Because *Tanzin* made clear that "appropriate relief" includes individual-capacity money damages under RFRA, the rejection of that holding for the same language and issue in RLUIPA cannot be justified as constitutional avoidance. This Court should hear this case and bring its interpretation of RLUIPA in line with its decision four years ago in *Tanzin*.

CONCLUSION

The time has come for this Court to decide whether, as in *Tanzin* for RFRA, RLUIPA provides individual-capacity damages. Six judges on the Fifth Circuit favored rehearing this case, and nine others proclaimed that "only the Supreme Court can answer" the question it poses. *Landor*, 93 F.4th at 260 (Clement, J., concurring in denial of reh'g en banc).

The petition for a writ of certiorari should be granted, and the decision below reversed.

Respectfully submitted,

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