No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR,

Petitioner

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY; JAMES M. LEBLANC, IN HIS OFFICIAL CAPACITY AS SECRETARY THEREOF, AND INDIVIDUALLY; RAYMOND LABORDE CORRECTIONAL CENTER; MARCUS MYERS, IN HIS OFFICIAL CAPACITY AS WARDEN THEREOF, AND INDIVIDUALLY; JOHN DOES 1-10; ABC ENTITIES 1-10,

Respondents.

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

BRIEF ON BEHALF OF AGUDATH ISRAEL OF AMERICA AS *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, Agudath Israel of America ("Agudath Israel") has a strong interest in safeguarding religious liberties across the nation by ensuring that victims of religious discrimination—particularly those covered by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq*. (2006) ("RLUIPA")—can obtain adequate relief such as money damages through the courts. This appeal concerns a RLUIPA claim by a Rastafarian man who, while incarcerated, was forcibly shaved by prison officials in contravention of his religious beliefs. The Court of Appeals' construction of RLUIPA also implicates the statue's strong policy against land use-based religious discrimination. Agudath Israel thus writes to inform the Court of the significant impacts the Court of Appeals' flawed interpretation of RLUIPA could have for victims of both Religious Land Use-related and Incarcerated Persons-related discrimination that include Agudath Israel's constituents.

Agudath Israel, founded in 1922, is a national grassroots Orthodox Jewish organization. Among its other functions, Agudath Israel articulates the position of the Orthodox Jewish community on a broad

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[1] In accordance with Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and the undersigned counsel contributed the costs associated with the preparation and submission of this brief. Additionally, consistent with Rule 37.2, *amicus curiae* provided notice to counsel for both parties of their intent to file this brief.

range of legal issues affecting religious rights and religious liberty. Agudath Israel regularly engages all levels of government—including through the submission of *amicus curiae* briefs—to advocate for the interests of the Orthodox Jewish community throughout the United States.

Agudath Israel was one of the organizations that advocated for passing RLUIPA and its constituents are often plaintiffs in actions brought pursuant to RLUIPA as well as its sister legislation, the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq*. ("RFRA").

Agudath Israel regularly assists constituents facing religious discrimination, including direct involvement in multiple RLUIPA cases across the United States and before this Court.[2] As such, Agudath Israel has significant experience related to the issues central to this appeal—including the importance of permitting recovery of monetary damages to compensate victims and deter future religious discrimination.

* * *

[2] *See, e.g.*, *Amicus Curiae* Brief of Agudath Israel of America, *Thomas Walker v. John Baldwin et al.* No. 22-2342 (7th Cir. Oct. 31, 2022); *Amicus Curiae* Brief of the National Jewish Commission on Law and Public Affairs, No. 13-6827 (May 29, 2014) (including Agudath Israel).

INTRODUCTION

Congress adopted RLUIPA to "protect one of the most fundamental aspects of religious freedom—the right to gather and worship." *See The Religious Land Use and Institutionalized Persons Act of 2000*, 146 Cong. Rec. 14,612 (2000) (statement of Hon. Charles T. Canady) [hereinafter *RLUIPA, statement of Rep. Canady*]. But RLUIPA cannot protect this vital right when meaningful relief (e.g., monetary damages) is unavailable. The Court of Appeals' decision—denying monetary damages under RLUIPA—eliminates the best deterrent to prevent violation of the statute in a moment when protection of religious rights is so desperately needed.

Antisemitism in the United States is at an all-time high. *Audit of Antisemitic Incidents 2023*, ADL Center on Extremism at 5 (April 16, 2024) [hereinafter *2023 ADL Audit Report*]. In the months since the October 7th attack on Israel, antisemitic incidents in the United States have risen to an alarming level. *Id.*; *see* Holly Huffnagle*, The State of Antisemitism in America 2023: Insights and Analysis*, AMERICAN JEWISH CONGRESS (2024). This increase in targeting the Jewish community is but only one egregious example of the recent upward—and concerning—trend in religious discrimination against many different religious groups. *Id.* (noting that 63% of American Jews say the status of Jews in the U.S. is less secure compared to one year ago. In 2022, this number was 41%. In 2021, it was 31%.); *see* Jonathan Fox, *Thou Shalt Have No Other Gods Before Me: Why Governments Discriminate Against Religious Minorities* 9 (Cambridge Univ.

Press, Feb. 2020) [hereinafter Fox, *Why Governments Discriminate*].

The rising animus towards religious groups does not always occur in an overt and public manner. Often, government actors violate critical religious rights in a more subtle, but equally damaging manner—through zoning ordinances, state and local regulations, and prison or jail policies that deprive citizens of the free exercise of their rights under the Constitution.[3] RFRA and RLUIPA were implemented to redress these violations.[4]

Congress adopted RFRA and RLUIPA as part of a broader statutory framework to protect the Constitutional guarantee of the free exercise of religion when threatened by state and federal governmental action. These laws are particularly important safeguards for religious rights as governmental action has a "tendency to coerce individuals into acting contrary to their religious beliefs." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 439–50 (1988). The Court of Appeals' decision threatens to frustrate these efforts, leaving some of the most important religious interests exposed to harmful discrimination—with

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[3] Daniel Dalton, *This Religious-Freedom Fight is Remaking America: RLUIPA in the Spotlight*, DALTON + TOMICH (Nov. 13, 2017), https://daltontomich.com/rluipa-the-quiet-religious-freedom-fight-that-is-remaking-america/.

[4] Noel Sterett, *How a little-known federal land use law could help combat antisemitism in America*, RELIGION NEWS SERVICES (Jul 2, 2021), https://religionnews.com/2021/07/02/how-a-little-known-federal-real-estate-law-could-help-combat-antisemitism-in-america/ (hereinafter, Sterett, RELIGION NEWS SERVICES).

perpetrators facing little recourse, and victims receiving only hollow relief.

Monetary relief is often the only tool to truly compensate a RLUIPA victim. Take the present case—an incarcerated man whose hair was cut contrary to his Nazarite vow which requires him to "let the locks of the hair of his head grow." Pet. App. 2a–3a (quoting *Numbers* 6:5). By the time his case made it through the courts, Mr. Landor had long been released. *Id.* at 3a. This case illustrates that injunctive relief, the only relief available under the Court of Appeals' interpretation of RLUIPA, is often no relief at all. *See id.* at 16a. But that result frustrates the entire purpose of RLUIPA even in instances where the law is violated "in a stark and egregious manner." *Id.* at 23a.

Worse, the Court of Appeals' ruling removes the most effective deterrent to prevent state officials from violating fundamental religious rights in the future. The availability of injunctive relief at some indefinite future date does little to discourage abuse by the individuals entrusted to implement government oversight in a non-discriminatory manner. Only the knowledge that officials must pay individual monetary damages for violating religious rights will realistically dissuade them from engaging in such "stark and egregious" RLUIPA violations. *Id.*

The Court of Appeals' misapplication of the law is even more disturbing given that the rationale behind this Court's decision in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), that RFRA permits monetary damages, applies equally to RLUIPA.

Accordingly, this Court should grant *certiorari* to settle this critical issue left unresolved following the Court's decision in *Sossamon v. Texas*, 563 U.S. 277 (2011), and ensure that individuals like Mr. Landor and Agudath Israel's constituents receive full protection of their Constitutional rights guaranteed by RLUIPA.

ARGUMENT

I. RLUIPA is a Critical Tool to Remedy and Discourage Religious Discrimination.

Congress enacted RFRA and RLUIPA for a simple purpose: To eliminate previous gaps in the protections afforded against religious discrimination. Both RFRA and RLUIPA should be understood based not only on their clear text but also through the lens of their shared and unambiguous purpose—to compensate victims with meaningful relief and snuff out religious discrimination through powerful deterrence. The Court of Appeals' decision threatens both objectives, thereby jeopardizing critical religious rights.

A. Congress enacted both RFRA and RLUIPA to address gaps in protection against religious discrimination.

Before the enactment of RFRA, religious individuals, entities, and institutions facing discrimination could only seek relief under the free exercise clause of the Constitution. Bram Alden, *Reconsidering RLUIPA: Do Religious Land Use Protections Really Benefit Religious Land Users?,* 57 UCLA L. Rev. 1779, 1780–82 (2010); *see* Christopher L. Eisgruber &

Lawrence G. Sager, *Religious Freedom And The Constitution* 270–71 (2010). This avenue of relief was shown to be inadequate by *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

There, this Court held that a neutral law of general applicability that burdens the exercise of religion is not subject to the ordinary strict scrutiny under the Free Exercise Clause. *Id.* at 888–89. In the wake of *Smith*, accommodations from general laws that did not target religion were not required absent a showing of compelling interests. Moreover, religious individuals or entities may sustain substantial discrimination, so long as the discriminatory acts had purportedly nondiscriminatory reasons. It thus became clear to Congress that the free exercise clause itself did not secure vital religious liberties and thereby additional protection was needed. H.R. Rep. No. 103–88, at 1 (1993).

Congress therefore enacted RFRA with a "remedial goal of identifying budding or disguised constitutional violations that would otherwise survive judicial scrutiny under *Smith*." *Flores v. City of Boerne, Tex.*, 73 F.3d 1352, 1359 (5th Cir. 1996), *rev'd sub nom. City of Boerne v. Flores*, 521 U.S. 507 (1997). It did so by reinstating the strict scrutiny standard of review and decreeing that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability[.]" 42 U.S.C. § 2000bb-1(a).

Just four years after RFRA was passed, however, this Court held that applying RFRA to the states exceeded Congress' power under section 5 of the

Fourteenth Amendment. *City of Boerne*, 521 U.S. at 529–30. Thus, even after RFRA, religious discrimination plaintiffs remained exposed to the lingering effects of "the aftermath of *Smith*." *Ramirez v. Collier*, 595 U.S. 411, 424 (2022).

Congress responded by enacting RLUIPA. *Holt*, 574 U.S. at 357. As this Court noted, "RLUIPA [was] Congress' second attempt to accord heightened statutory protection to religious exercise in the wake of this Court's decision in [*Smith*]." *Sossamon*, 563 U.S. at 281. Congress was explicit in its intent to provide meaningful relief. The well-reasoned approach behind RLUIPA was best summarized by Representative Canady:

> [RLUIPA] approaches the issue of protecting free exercise in a way that will not be subject to the same challenge that succeeded in Boerne. . . . While it does not fill the gap in the legal protections available to people of faith in every circumstance, it will provide critical protection in two important areas where the right to religious exercise is frequently infringed.

RLUIPA, statement of Rep. Canady, *supra*, at 14,612.

"RLUIPA establishes statutory protections for the free exercise of religion that exceed the requirements contained in the Constitution." *Alive Church of the Nazarene, Inc. v. Prince William Cnty., Virginia*, 59 F.4th 92, 101–02 (4th Cir. 2023); *see Milon v. LeBlanc*, 496 F. Supp. 3d 982, 987 (M.D. La. 2020) ("RLUIPA's

provisions are sweeping" (citing *Holt*, 574 U.S. at 356)).

RLUIPA was designed to ensure that states and their subdivisions may be held accountable for religious discrimination and to afford "expansive protection for religious liberty," for two groups of plaintiffs which are particularly susceptible to religious discrimination but were not specifically protected under RFRA: (i) victims of discrimination affecting religious land-use and (ii) victims of religious discrimination while institutionalized. *Holt*, 574 U.S. at 358.

B. Congress designed RLUIPA's land-use provisions to protect core religious rights which are particularly susceptible to governmental discrimination.

The land-use provision of RLUIPA strives to protect the core of any religion: The right to assemble and worship. *RLUIPA, statement of Rep. Canady, supra,* at 14,612. But land-use discrimination can take many forms and often is cloaked in facially neutral zoning justifications, making it harder to show discriminatory intent. *See id.* Commentators have highlighted this fact, noting that:

> As zoning powers expanded, religious and racial minorities were often the ones that suffered. Local zoning boards were increasingly vested with discretionary authority over who went where and on what conditions. Religious assemblies in particular found themselves up against unequal and

> burdensome regulations that made it nearly impossible to locate in their community.[5]

For example, Orthodox Jewish communities often face discrimination when attempting to establish synagogues—particularly in rural areas where Orthodox Jewish houses of worship have not historically existed. *See, e.g.*, *Congregation Kol Ami v. Abington Twp.*, 309 F.3d 120, 124 (3d Cir. 2002) (discussing a "Synagogue that desire[d] to relocate to a 10.9–acre parcel of land in the midst of a purely residential section").

Protecting against discrimination in these instances is essential. Jewish law "forbids use of motorized vehicles on the Sabbath and on most Jewish holidays . . . . Accordingly, a synagogue must be in close proximity to the home. Orthodox Jews choose their homes to be within walking distance of an Orthodox synagogue. They will not ordinarily attend synagogues which are located at great distances from their homes." Expert Report by Rabbi Shmuel Goldin ¶ 1(c), ECF No. 54-1, *Young Israel of Bal Harbour, Inc.*, *v. Town of Surfside*, No. 10-cv-24392, 2011 WL 13130864 (S.D. Fla. Dec. 19, 2011).

Indeed, as Representative Canady explained, Congress enacted RLUIPA with these precise considerations in mind: "Attempting to locate a new church in a residential neighborhood can often be an exercise in futility. Commercial districts are frequently the only feasible avenue for the location of new churches, but

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[5] Sterett, RELIGION NEWS SERVICES *supra*.

many land use schemes permit churches only in residential areas[.]" *RLUIPA, statement of Rep. Canady, supra,* at 14,612.

The *Midrash Sephardi* case from the Southern District of Florida underscores the importance of accessible synagogues for worship. Midrash Sephardi and Young Israel of Bal Harbour—both synagogues in Miami, Florida—challenged as discriminatory a series of decisions by the Town of Surfside which rejected requests for zoning variances. *Sephardi v. Town of Surfside*, No. 99-1566, 2000 WL 35633163, at *1 (S.D. Fla. July 31, 2000). Specifically, the zoning variances sought would allow the synagogues to operate in business districts and would have enabled congregants of each synagogue to "walk to service[s] both on Holy Days and on [], the[] Sabbath, [] to participate in congregational worship." *Id.*

Both the district court and the Eleventh Circuit rejected the plaintiffs' RLUIPA claims, with the latter court remarking: "While we certainly sympathize with those congregants who endure Floridian heat and humidity to walk to services, the burden of walking a few extra blocks, made greater by Mother Nature's occasional incorrigibility, is not 'substantial' within the meaning of RLUIPA." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1228 (11th Cir. 2004). The Eleventh Circuit's comments betray a fundamental lack of appreciation for RLUIPA's land-use protections as they pertain to Orthodox Jewish houses of worship.

These are not isolated examples. Synagogues across the country continue to face similar opposition from state and local governments. *See, e.g.*, *Chabad*

Lubavitch of Litchfield Cnty., Inc. v. Borough of Litchfield, Connecticut, No. 3:09-CV-1419 (JCH), 2017 WL 5015624, at *1 (D. Conn. Nov. 2, 2017); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood, Fla.*, 430 F. Supp. 2d 1296, 1305 (S.D. Fla. 2006).

Sadly, the lack of consequences for individual officials encourages them to prolong proceedings. "It shouldn't take 10 years to get permission to build a synagogue, but it did in Clifton[,]" New Jersey.[6] Sadly, this is not uncommon. Government efforts to prevent the establishment or construction of synagogues often last for years. And, in many cases (like for Petitioner), this results in the only relief presently available under RLUIPA—injunctive relief—being worthless by the time the plaintiff gets to court.

Another common form of land-use discrimination concerns what is known in Jewish law as an "*eruv*." As described by the Third Circuit "Orthodox Jewish residents['] . . . faith forbids them from pushing or carrying objects outside their homes on the Sabbath" but "they may engage in such activities outside their homes on the Sabbath within an *eruv*, a ceremonial demarcation of an area . . . construct[ed] [] by attaching *lechis*—thin black strips made of the same hard plastic material as, and nearly identical to, the coverings on ordinary ground wires—vertically along utility poles." *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 152 (3d Cir. 2002).

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[6] Elizabeth Kratz, *New Jersey Shul Wins $2.5 Million In Landmark Religious Discrimination Case*, Jewish News Syndicate (Jan. 8, 2019), https://www.jns.org/new-jersey-shul-wins-2-5-million-in-landmark-religious-discrimination-case/.

An eruv is often indispensable for certain members of Orthodox Jewish communities, as "[w]ithout an *eruv* Orthodox Jews who have small children or are disabled typically cannot attend synagogue on the Sabbath." *Id.* Yet such communities regularly face substantial hurdles in securing and maintaining *eruvin*, as state and local governments regularly exhibit varying degrees of implicit or overt discrimination in blocking their establishment with no legitimate basis to do so.[7]

In *Tenafly*, the plaintiffs requested permission to erect an *eruv* on utility poles in a portion of the town. *Tenafly Eruv Ass'n v. Borough of Tenafly*, 155 F. Supp. 2d 142, 148–49 (D.N.J. 2001). The public hearings considering the request included statements displaying antisemitic rhetoric:

> They think we're going to turn it into an Orthodox Community. . . . that seems to be a concern that the Orthodoxy would take over. . . . I would worry that by our giving this, we're saying that they have a right to have a community in our community, and our community is so small, it's not like we're so big that they need to congregate in one area. . . . I just don't see a need to give this to them.

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[7] See Charlotte Elisheva Fonrobert, *Installations of Jewish Law In Public Urban Space: An American Eruv Controversy*, 90 CHI.-KENT L. REV. 63, 64–65 (2015).

> This is a very serious concern . . . that's expressed [] by a lot of people about a change in the community. . . . It's become a change in every community where an ultra-orthodox group has come in. They've willed the change. They've willed a change in the state of Israel. They've willed it so much so that they've stoned cars that drive down the streets on the Sabbath. Ultra-Orthodox. My friend's son became an Ultra-Orthodox person[.]

Id. at 152–54.[8] The Borough Council denied the Association's request. *Id.* at 156–62. In response, the Eruv Association challenged the Borough decision, arguing that the: "Borough Council's decision was animated by religious discrimination[.]" *Id.* at 171.

In the end, the district court concluded that the town's denial of the Eruv Association's request was not motivated by discriminatory intent . *Id.* at 182–85.[9] Although the Third Circuit overturned the district court's refusal to grant a preliminary injunction, the case dragged on for years. *Tenafly Eruv Ass'n*, 309 F.3d at 177–79.

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[8] Notably, the Eleventh Circuit recently held that this sort of "neighborhood character" argument is not a "compelling government interest[] sufficient to justify abridging core constitutional rights." *Thai Meditation Ass'n of Alabama, Inc. v. City of Mobile, Alabama*, 83 F.4th 922, 931 (11th Cir. 2023).

[9] Notably, under the current conception of RLUIPA the lack of discriminatory intent would not have mattered. *See, e.g.*, *Holt v. Hobbs*, 574 U.S. 352, 357–58 (2015).

Had monetary damages been available, the underlying discriminatory conduct could likely have been deterred thereby preventing a "long, drawn-out lawsuit [which] senselessly divided the small community, opening a rift that was slow to mend."[10] *Tenafly* is not an outlier and numerous other *eruv* cases have played out similarly. *See Fonrobert*, *supra*, at 64–65.[11]

Many other types of land-use discrimination similarly impact Orthodox Jewish communities. Examples include Jewish schools, ritual bathhouses, and other forms of religious land-use. *See, e.g.*, *WR Prop. LLC v. Twp. Of Jackson*, C.A. 17-3226, 2021 WL 1790642, at *1 (D.N.J. May 5, 2021) (challenging enforcement of ordinances "intentionally enacted to prevent the construction of Orthodox Jewish schools") Complaint ¶ 3, *United States v. Vill. Of Airmont*, No. 20 Civ. 10121, 2020 WL 9349493 (S.D.N.Y. Dec. 2, 2020) (challenging zoning ordinances "prohibiting homeowners from clearing trees to construct [], ritual huts required under Orthodox Jewish beliefs, or to install mikvahs, ritual baths necessary for religious observance").

As these cases illustrate, government actors often hide discriminatory intent by purportedly basing zoning decisions on facially neutral policies and by taking

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[10] Deena Yellin, *Eruv Lawsuit In Tenafly Provides A Cautionary Tale*, northjersey.com (July 30, 2017), https://www.northjersey.com/story/news/2017/07/30/tenaflys-eruv-lawsuit-provides-cautionary-tale/507868001/.

[11] *See, e.g.*, Complaint, ECF No. 1, *Bergen Rockland Eruv Ass'n et al. v. Township of Mahwah et al.*, No. 17-cv-06054 (D.N.J. Aug. 11, 2017); *E. End Eruv Ass'n v. Vill. of Westhampton Beach*, 828 F. Supp. 2d 526 (E.D.N.Y. 2011).

action through bureaucratic channels.[12] Crucially, injunctive relief is not always available or effective in these cases.[13] In today's fraught political environment, with antisemitism and other forms of religious discrimination precipitously rising, instances of covert discrimination and "one-off" statements by government officials have become more common. Thus, the inability of RLUIPA plaintiffs to seek monetary damages makes it almost certain that this trend will continue.

Orthodox Jews are not alone in facing land-use discrimination relating to houses of worship. A mosque in Michigan recently engaged in a multi-year RLUIPA challenge to restrictions preventing the mosque's construction.[14] Similarly, a Buddhist meditation center in Alabama faced strong public opposition—including comments highlighting the Buddhist character of the proposal—which resulted in the Planning Commission rejecting the center's plans and refusing to

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[12] *See* Kevin M. Powers, *The Sword And The Shield: RLUIPA And The New Battle Ground Of Religious Freedom*, 22 BUFF. PUB. INT. L.J. 145, 186–89 (2004).

[13] *See, e.g.*, Steve Lieberman, *Judge Dismisses Yeshiva's Discrimination Lawsuit Against Clarkstown*, Lohud.com (July 14, 2022), https://www.lohud.com/story/news/local/2022/07/14/ateresbais-yaakov-academy-lawsuit-against-clarkstown-dismissed/65373185007.

[14] Jennifer Chambers, *First Mosque Opens In Troy, But Legal Battle With City Continues*, Detroit News (Sept. 17, 2022), https://www.detroitnews.com /story/news/local/oakland-county/2022/09/17/mosque-opens-troy-legal-battle-continues/10412605 002/.

provide a zoning accommodation.[15] Churches too have faced similar obstacles.[16]

C. RLUIPA's institutionalized person provisions are designed to protect those most vulnerable to discrimination

Similarly, RLUIPA's institutionalized person provision aims "to protect the religious exercise of a class of people particularly vulnerable to government regulation[.]" *RLUIPA, statement of Rep. Canady, supra,* at 14,612; *see Holt v. Payne*, 85 F.4th 873, 879 (8th Cir. 2023) (per curiam) ("A policy that compels an inmate to choose between violating his religious beliefs or violating the policy and incurring disciplinary action imposes a substantial burden.").

Here too, government officials often use institutional concerns—such as safety and security—in denying religious rights. *See Lozano v. Collier*, 98 F.4th 614, 624 (5th Cir. 2024) (per curiam) (denying inmate from attending communal prayer services

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[15] Following a decade-long legal battle the Eleventh Circuit recently determined that the district court wrongly granted summary judgment for the city and that the city had not demonstrated a compelling government interest in blocking the meditation center. *Thai Meditation Ass'n of Alabama*, 83 F.4th 929–31.

[16] *E.g.,* Emma Green, *The Quiet Religious-Freedom Fight that is Remaking America*, The Atlantic (Nov. 5, 2017), https://www.theatlantic.com/politics/archive/2017/11/rluipa/543504/ (discussing zoning issues that prevented the North Jersey Vineyard Church from constructing and occupying the building it purchased to hold services).

citing security concerns); *Price v. Caruso*, 451 F. Supp. 2d 889, 891–92 (E.D. Mich. 2006) (same).

Judge Oldham distilled the unique challenges of keeping religious practices while incarcerated:

> Outside a prison, voluntary choice is the baseline. . . . People can choose when, where, how, and whether to worship. And the government is generally under no legal compulsion to affirmatively subsidize or support those choices. . . . **Inside a prison, everything is different. *The baseline is not voluntary choice but involuntary coercion.*** Government defendants control the minute details of most inmates' lives, from when and what they eat to what they wear and where they sleep. [] In such a setting, **religious individuals are unable to voluntarily perform their desired religious practices unless the government *affirmatively acts* to lift its coercive power** through a religious accommodation.

Lozano, 98 F.4th at 628–29 (Oldham, J., concurring) (citation and internal quotations omitted) (emphasis added).

Agudath Israel's institutionalized constituents likewise encounter issues similar to what Petitioner faced here. For example, Agudath Israel has been involved in cases where Jewish incarcerated individuals

were denied kosher food,[17] prevented from attending communal prayer services,[18] or (like Mr. Landor) forced to alter their garb or appearance in a manner that conflicted with Jewish law.[19]

As these examples demonstrate, RLUIPA must be given its full intended effect to combat the rise of antisemitism and other religious animus. Fox, *Why Governments Discriminate*, *supra*, at 8. In some instances, however—like here—the unavailability of monetary damages guts RLUIPA.

D. The availability of monetary damages is equally crucial for both RLUIPA and RFRA.

Both the deterrent and compensatory values of the availability of monetary damages against individual actors make it an indispensable component of RLUIPA's effectiveness. *See* Alden, *supra*, at 1809–11; Powers, *supra*. A good example of the inadequacy of injunctive relief is the long-running Congregation Shomrei Torah case in Clifton.

In that case, an Orthodox Jewish synagogue contracted to buy the property anticipating a

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[17] *E.g.,* Press Release, *Inmate Wins Right To Kosher Meals For Orthodox Jews*, Becket Religious Liberty for All, (Apr. 3, 2017), https://www.becketlaw.org/media/inmate-wins-right-kosher-meals-orthodox-jew/.

[18] *E.g.,* Neela Banerjee, *Imprisoned, Rabbi Sues Over Space For Prayer*, N.Y. Times (Feb. 16, 2008), https://www.nytimes.com/2008/02/16/us/16prison.html.

[19] *E.g., Fox v. Maryland*, C.A. No. CCB-20-2085, 2021 WL 4169493, at *9–11 (D. Md. Sep. 14, 2021).

straightforward process, but the City of Clifton imposed inconsistent requirements seemingly designed to block the synagogue's construction.[20]

Resolving the dispute took dozens of planning board appearances and four court hearings.[21] Thus, despite the synagogue receiving a settlement under RLUIPA, this dispute stretched on for far too long, and critically, monetary relief was only attained through mediation—not on the merits.

The unavailability of money damages made it impossible for the synagogue to recoup the substantial costs it expended during the lengthy legal battle. This underscores how, for many potential plaintiffs, the inability to obtain monetary damages makes litigation impossible because they have no way to pay substantial legal fees and other costs incurred during protracted RLUIPA litigation.

Monetary damages also serve as a deterrent by ensuring personal culpability. This is particularly warranted where, as here and in many of the most extreme RLUIPA cases, the perpetrators are lone actors or small groups of individual state officials—as opposed to the state acting as a whole on an institutional level. *See, e.g.*, *Warzek v. Prison*, No. 120CV00027ADAGSAPC, 2023 WL 5929359, at *1–3 (E.D. Cal. Sept. 12, 2023) (addressing RLUIPA violations for prison intentionally providing spoiled Kosher

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[20] Evan Seeman, *Clifton, NJ Pays $2.5 Million To Settle RLUIPA Dispute*, RLUIPA Defense Blog (Jan. 10, 2019), https://www.rluipa-defense.com/2019/01/clifton-nj-pays-2-5-million-to-settle-rluipa-dispute/; *see* Kratz, *supra*.

[21] Kratz, *supra*; *see* Seeman, *supra*.

meals, often with mold, and holding that certain members of the prison staff bore the responsibility while others did not).

The deterrent value of RLUIPA also is important because, in many instances, plaintiffs give up before their RLUIPA claims are fully heard.[22]

As the Fourth Circuit has observed, "a government imposes a substantial burden on religious practice when it puts a person between a rock and a hard place—forcing them to choose between a government-provided benefit and their religious convictions." *Pendleton v. Jividen*, 96 F.4th 652, 656 (4th Cir. 2024) (quotations omitted). American citizens should not have to make that choice to observe their religion as guaranteed under the Constitution.

Under the Court of Appeals' interpretation, however, RLUIPA's currently available remedies do not suffice. Even though the lower court "emphatically condemn[ed] the treatment that Landor endured" it declined to provide any relief to him, as following the *Sossoman* decision there is uncertainty as to whether monetary damages are available against Federal

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[22] *See* Susan Ingram, *County Reaches Settlement With ARIEL And Rabbi Belinsky In Religious Land-Use Discrimination Suit*, BALTIMORE JEWISH TIMES (Aug. 10, 2022), https://www.jewishtimes.com/county-reaches-settlement-with-ariel-and-rabbi-belinsky-in-religious-land-use-discrimination-suit/ (RLUIPA case settled after eight years of litigation where, "[t]he congregation had to sell the property" it planned to build on "as the hearings dragged on for years"); *cf. Sephardi v. Town of Surfside*, No. 99-1566, 2003 WL 25728155, at *1 (S.D. Fla. Jan. 6, 2003) (highlighting that one of the synagogues challenging the zoning ordinances relocated during the pendency of the case).

officials in their *individual* capacities. Pet. App. 13a; *see id.* at 8a–9a.

Thus, the Court of Appeals' erroneous interpretation of RLUIPA turns on an issue that "has not been" directly addressed "but should be, settled by this Court." SUP. CT. R. 10(c); *see* Pet. App. 24a. This is a question that "only the Supreme Court can answer[,]" *Id.* at 23a, and it must do so now—to resolve this "important question of federal law" and achieve the promise of RLUIPA. SUP. CT. R. 10(c).

II. The Court of Appeals' Decision Misapplies This Court's Precedent and Misinterprets RLUIPA's Text and Statutory Framework.

A. *Tanzin* confirms that monetary relief must be available under RLUIPA.

This Court's interpretation of RFRA should be dispositive here. RFRA prohibits the Federal Government from imposing substantial burdens on religious exercise, absent a compelling interest pursued through the least restrictive means. *Tanzin*, 592 U.S. at 45. In *Tanzin*, the Court unanimously held that RFRA's statutory phrase "appropriate relief against a government" includes damages against government officials in their individual capacities. 592 U.S. at 45 (citing 42 U.S.C. § 2000cc-2(a)).

In doing so, the Court confirmed the "propriety of individual-capacity suits," *id.* at 48, based on the legal "backdrop against which Congress enacted" RFRA. *Id.* "[O]ne of the most well-known civil rights statutes," 42 U.S.C. § 1983, covers "person[s] . . . under color of

any statute," a phrase the Court noted it has long interpreted to permit suits against officials in their individual capacities. *Tanzin*, 592 U.S. at 48. The Court also highlighted the broad definition of "government" in RFRA when first enacted, which included not only "officials" but also "other person[s] acting under color of law." *Id*. at 50.

The Court explained that Congress would have understood the phrase "appropriate relief" to include damages when it enacted RFRA. Damages were "commonly available against state and local government officials," both under Section 1983 and its 1871 precursor. *Id*. at 49–50. And money damages have "long been awarded as appropriate relief" since the "early Republic," through suits "test[ing] the legality of government conduct." *Id*. at 49 (quotations omitted).

Tanzin's reasoning in concluding monetary damages are "appropriate relief" under RFRA applies equally to RLUIPA. *First*, RLUIPA's remedial text is "materially identical to RFRA's." Pet. App. 31a (Oldham, J., dissenting from denial of rehearing *en banc*). Persons whose rights were violated under either statute may "obtain appropriate relief against a government." 42 U.S.C. §§ 2000bb-1(c), 2000cc-2(a). *Second*, both statutes share the same "legal backdrop" (42 U.S.C. § 1983) and operate in the "very same field of civil rights law" as Section 1983. *See Tanzin*, 592 U.S. at 48. *Third*, the remedy of "appropriate relief" against individual officials, "as understood by an ordinary person at the time of RFRA's enactment," plainly encompassed money damages. Pet. App. 31a; *see also Tanzin*, 592 U.S. at 50-51. And *fourth*, as

highlighted above, damages may be the only form of relief for many RFRA or RLUIPA violations. As the Court noted in *Tanzin*, effective relief for certain injuries, like wasted plane tickets—or here the forcible shaving of a devout Rastafarian's head—"consists of damages, not an injunction." *See id.*

B. RFRA and RLUIPA share identical relief provisions and the same goals.

This Court repeatedly has recognized that RFRA and RLUIPA are "sister" statutes enacted "'to provide very broad protection for religious liberty.'" *Holt*, 574 U.S. at 356 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)); *Ramirez*, 595 U.S. at 424; *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 703 n.13 (2020) (Alito, J., concurring) ("twin").

To that end, Congress used identical relief language in both statutes:

RFRA –

> A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding *and obtain appropriate relief against a government*. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

42 U.S.C. § 2000bb-1(c) (emphasis added).

RLUIPA –

> A person may assert a violation of this chapter as a claim or defense in a judicial proceeding *and obtain appropriate relief against a government*. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

42 U.S.C. § 2000cc-2(a) (emphasis added).

Congress also defined "government" broadly in both statutes to include "official[s]" as well as "any other person acting under color of State law." *Id.* § 2000cc-5(4)(A)(iii); *id.* § 2000bb-2(1); *Tanzin*, 592 U.S. at 47–48. Aside from the relief provisions and definitions, Congress included a general instruction that RLUIPA must be interpreted broadly. 42 U.S.C. § 2000cc-3(g) (directing that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."). And this Court has interpreted the two statutes in tandem. Pet. App. 28a–29a (citing cases).

The plain linguistic parallels between RLUIPA and RFRA weigh strongly in favor of interpreting the former as this Court has the latter: that "appropriate relief" must encompass monetary damages against individuals.

C. The Court of Appeals' decision contradicts the undisputed purpose of RLUIPA—a broad statute intended to protect religious exercise.

RLUIPA's purpose also confirms that monetary damages should be available as "appropriate relief" against individual state officials. The Court of Appeals' decision contravenes this purpose.

In enacting RLUIPA, Congress was emphatic that the statute must be interpreted broadly. 42 U.S.C. § 2000cc-3(g) (RLUIPA "shall be construed in favor of a broad protection of religious exercise[.]"). A narrow reading of what constitutes "appropriate relief," as the Court of Appeals applied below, defeats that purpose. *See, e.g.*, *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 56 (1983) (statute should not be interpreted "to produce a result at odds with the purposes underlying the statute" but rather "in a way that will further Congress' overriding objective").

A narrow reading in this context is particularly harmful because the statute is remedial. *See, e.g.*, *United States v. Nat'l Ass'n of Sec. Dealers, Inc.*, 422 U.S. 694, 725 (1975) ("The narrower interpretation of this provision advanced by the Government would disserve the broad remedial function of the statute."). As Judge Oldham explained in his dissent below, "[i]f RLUIPA aims to protect free exercise in prison, then monetary liability for state officials should deter government misconduct and protect religious exercise." Pet. App. 31a–32a.

* * *

In sum, this petition presents no hard questions. Is there a need to protect fundamental religious rights? Clearly. Is there a need to protect those most vulnerable in their ability to exercise their religious rights? Of course. Is it preferable to prevent violations of fundamental religious rights rather than providing relief that only sometimes addresses past violations? No question. Are monetary damages more likely to deter individual government officials from violating the religious rights of those most vulnerable? Undoubtedly. Did Congress intend to provide as much protection as possible? Their consistent legislative efforts leave no doubt. Did this Court hold that the operative legislative language provides monetary relief against individual government officials? A review of *Tanzin* shows unequivocally that this Court did so.

The only remaining question is whether this Court will again give effect to Congress' intent. Agudath Israel trusts this Court will answer that question in the affirmative and authorize monetary damages for violations of RLUIPA.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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