

No. 24-718

IN THE

Supreme Court of the United States

BLAKE ANDREW WARNER,

Petitioner,

v.

HILLSBOROUGH COUNTY SCHOOL BOARD,

Respondent.

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

**BRIEF OF *AMICUS CURIAE*
AMERICAN HINDU COALITION
IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST¹

The American Hindu Coalition (“Coalition”) is a nonpartisan advocacy organization based in Washington, D.C., with significant membership in several states, that represents Hindus, Buddhists, Jains, Sikhs, and members of related minority religions. The Coalition files this brief to warn of the harm the Eleventh Circuit’s “counsel mandate” threatens for religious minorities. Coalition members’ religious practices are unfamiliar to mainstream America, leading to instances in which counsel may not as a practical matter be available. Parental *pro se* representation thus may be the only option for asserting certain claims on behalf of minors. The counsel mandate will thus effectively bar these minors from court in the name of protecting their legal rights.

Moreover, for the minority religions represented by the Coalition, the parent-child relationship is especially “sacred” and “far different from the relationship between an unlicensed non-attorney and a would-be client.” *Raskin on behalf of JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 298 (5th Cir. 2023) (Oldham, J.,

¹ Pursuant to Supreme Court Rule 37.6, the Coalition states that no counsel for a party authored this brief in whole or in part, that no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no entity or person, aside from *amicus curiae*, its members, or its counsel, made a monetary contribution to fund the preparation or submission of this brief. Counsel of record for all parties received timely notice of the intent to file this brief pursuant to Rule 37.2.

dissenting in part and concurring in the judgment). The Hindu faith has long recognized the parental right to make life-altering choices for children. The counsel mandate is thus uniquely problematic for Hindu parents because it can infringe on fundamental child-rearing decisions and force their children to be represented (if at all) by counsel who are unlikely to be familiar with their beliefs.

INTRODUCTION AND SUMMARY OF ARGUMENT

Four circuit courts have warned of “the potentially harmful effect of an unyielding application of the ‘counsel mandate’ on children’s access to justice.” *Grizzell v. San Elijo Elementary Sch.*, 110 F.4th 1177, 1180 (9th Cir. 2024) (collecting cases).² The mandate may even “force minors out of court altogether” where ‘counsel is as a practical matter unavailable.’” *Id.* The Coalition agrees with Petitioner that, given these well-founded concerns, the counsel mandate is an “aberration” that infringes “a child’s rights to access the courts and do so without a lawyer.” Pet. 4.

² *Raskin*, 69 F.4th at 286 (cautioning that an “absolute bar” to *pro se* representation “may not protect children’s rights at all”); *Elustra v. Mineo*, 595 F.3d 699, 705 (7th Cir. 2010) (cautioning that the mandate cannot be “ironclad”); *Tindall v. Poultney High Sch. Dist.*, 414 F.3d 281, 286 (2d Cir. 2005) (cautioning that an unyielding application of the counsel mandate might “force minors out of court altogether”).

I. The counsel mandate imposes unique burdens on members of minority faiths. It is crucial that counsel understand and account for their clients' religious beliefs to provide effective representation—even more so for religious minorities. Religious beliefs also often inform litigation strategy, provide crucial factual context, and undergird clients' legal claims. For Hindus, protecting a child's legal rights is deeply intertwined with the *dharmic* duties of child-rearing. Hindu parents raising their children in the faith have sacred obligations to protect their children's interests, especially their religious rights.

II. Unfortunately, counsel competent to account for these religious needs and vindicate these rights is often unavailable or inaccessible to religious minorities. Three compounding barriers separate them from counsel. *First*, western courts and counsel have long struggled with a basic understanding of minority faiths, such as the concept of *dharma* in Hinduism. Although the legal profession has somewhat improved in developing cross-cultural competency, religious competency is broadly ignored. *Second*, although some counsel mindful of minority faiths exist, many members of minority faiths (including lawyers) are concentrated in urban areas, so culturally competent counsel is often inaccessible to members of religious minorities living in rural areas. *Third*, even if members of minority faiths could find culturally competent counsel, many "cannot afford to pay" those lawyers. *Raskin*, 69 F.4th at 286 (citation omitted).

As a result, Hindu children (as well as children of other minority faiths) often have no practical choice

for affordable and effective representation beyond their parents' *pro se* representation. Likewise Hindu parents seeking to vindicate their children's rights and fulfill their sacred *dharmic* duties in child-rearing frequently have no choice but to proceed *pro se*.

By arbitrarily banning parental self-representation, the "counsel mandate" ironically forecloses "children's access to justice," *Grizzell*, 110 F.4th at 1180, and interferes with parents' fundamental religious duties. This Court should grant certiorari to reverse the decision below.

ARGUMENT

I. BECAUSE RELIGIOUS CONVICTIONS AFFECT LITIGATION STRATEGY AND CLAIMS, COUNSEL MUST GRASP THEIR CLIENTS' RELIGIOUS BELIEFS

A. Religion anchors how many people understand and interact with the world around them. *2023 PRRI Census of American Religion: County-Level Data on Religious Identity and Diversity*, Pub. Religion Rsch. Inst. (Aug. 29, 2024) <https://perma.cc/L5PC-9UQE> (73% of Americans identify as religious). In fact, for many, "religion is first and foremost a way of seeing . . . it can't change the facts about the world we live in, but it can change the way we see those facts." James A. Sonne, *Cross-Cultural Lawyering and Religion: A Clinical Perspective*, 25 *Clinical L. Rev.* 223, 226 (2018) (quoting Harold Kushner, *Who Needs God* 21 (2002)) (alterations adopted). By molding

worldviews, religion changes individuals' choices and actions, too. This link between religion and everyday life is so vital that it is enshrined by and defended in the U.S. Constitution. The First Amendment “protects not just the right to *be* a religious person, holding beliefs inwardly and secretly; it also protects the right to *act* on those beliefs outwardly and publicly.” *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 510 (2020) (Gorsuch, J., concurring).

Religion also colors how an individual interacts with the legal system. Religious beliefs, for example, affect “evaluations of narrative” and “assessment of responsibility” when considering whether factual circumstances give rise to legal claims. *Cross-Cultural Lawyering, supra*, at 227 (explaining that litigation experiences and strategies are “sure to differ” among clients with various religious convictions). In addition, religious beliefs may alter remedies. *See, e.g.*, Pet’rs’ Br. at 3, *Uzuegbunam v. Preczewski*, 592 U.S. 279 (2021) (No. 19-968) (seeking only nominal damages and explaining that the petitioners “do not engage in their expression for money They merely share the Gospel out of love for others”).

Clients’ religious beliefs and practices play an obvious role when those beliefs and practices form key facts or principal claims, as in cases involving the Religious Freedom Restoration Act or the First Amendment. *See, e.g.*, *Singh v. Berger*, 56 F.4th 88, 103 (D.C. Cir. 2022) (noting that “Sikhs have historically endured persecution, torture, and death” rather than cut their hair); Compl. at 4, *Dubash v. City of Houston*, No. 4:23-cv-03556 (S.D. Tex. Sept. 20, 2023)

“Plaintiff . . . is a follower of the Vedantic stream of Hinduism [and believes] that his religion requires him to advocate for animal rights.”).

But religion factors in other areas as well. Asylum claims, for instance, may depend on a claim of religious persecution. *See, e.g., Rusak v. Holder*, 734 F.3d 894, 898 (9th Cir. 2013). And in Fourth Amendment cases, courts must determine whether a search is reasonable by “balancing . . . the need for the particular search against the invasion of personal rights that the search entails.” *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). An officer’s awareness of and response to a person’s religious beliefs may affect the reasonableness inquiry.³

Given the centrality of religion in life and law, counsel must familiarize themselves with their clients’ applicable religious beliefs to provide effective representation. This is particularly important in

³ For example, Muslims must observe decency (*ihitisham*); modesty (*hijab*), which includes dress and behavior; and seclusion (*khalwa*), which means an unrelated, unmarried man and woman must not be alone together. *Surah An-Nisa* 4:1; *see also* Ani Amelia Zainuddin & Zeleha Abdullah Mahdy, *The Islamic Perspectives of Gender-Related Issues in the Management of Patients With Disorders of Sex Development*, Nat’l Libr. Med. (April 21, 2016) <https://perma.cc/DWD7-EMEB>. So, whether an intrusive search of an observant Muslim woman is reasonable may depend on whether officers knowingly disregarded her religious concerns. *See, e.g.,* Press Release, ACLU of Ill., *ACLU of Illinois Challenges Ethnic and Religious Bias in Strip Search of Muslim Woman at O’Hare International Airport* (Jan. 16, 2002) <https://perma.cc/PM9X-JGD2>.

cases involving cross-cultural representations. *See, e.g., Cross-Cultural Lawyering, supra*, at 249 (cautioning against a “Western understanding” of clients’ personal beliefs). Overlooking these concerns might cause counsel to misunderstand a core belief underlying a particular action. *See id.* Or counsel might accidentally pursue a remedy that is inconsistent with the client’s religious needs. *See id.* at 254 (“the interaction of faith and money is a difficult issue”).

It is therefore crucial that counsel representing a person with sincerely held religious convictions understand how those beliefs affect the litigation and the remedies in any case.

B. Relevant here, Hinduism is both a faith and a way of life that shapes many Americans’ interactions with the world. Hinduism, which is also known as *Sanatana Dharma* (“Eternal Order” or “Eternal Path”), is a minority religion in the United States, comprising only around 1% of the total population or an estimated 3.3 million Americans. *Who We Are Today*, Am. Hindu Coal. (last accessed Jan. 22, 2025) <https://perma.cc/T7Y8-L42E>.

Hinduism began thousands of years ago in India. It remains a centerpiece of life there today, where over one billion Indians consider themselves Hindu, and it has also extended around the globe. *See Hinduism*, N. Territory Gov’t of Australia 1 (last accessed Jan. 21, 2025) <https://perma.cc/FWG7-86EW> (summarizing origins of Hinduism); *Hindus*, Pew Rsch. Ctr. (Apr. 2, 2015) <https://perma.cc/NL2M-KFRY>.

Hinduism has a range of beliefs and rituals. *See Hinduism, supra*, at 1 (summarizing its origins). This is because Hinduism, unlike faiths with a founder or central text, is a family of traditions without an organizational hierarchy or central administration. *Id.*

Although Hindus express their faith in a variety of ways, they universally recognize certain foundational concepts. Chief among these is *dharma*: “the social and ethical system” by which Hindus structure their life. *Id.*; *see also* Ludo Rocher, *Hindu Conceptions of Law*, 29 *Hastings L.J.* 1283, 1285 (1978) (explaining that *dharma* regulates a Hindu’s “activities” and “nature”).

Hindus also believe in karma. Karma “is the law of cause and effect in which each and every action has a reaction, generating conditions to be experienced within this lifetime or the next.” *Hinduism, supra*, at 2. Accordingly, Hindus believe that attitudes drive actions which in turn create destiny. *Id.* For Hindus, an individual goes through this cycle of cause and effect—through the process of reincarnation—“until such time as the individual soul” emerges into a divine state. *Id.* Hindus achieve the divine state when their souls obtain self-realization of their “own essential divinity,” a status referred to as *moksha*. *Id.*

Many Hindus structure their social and ethical existence according to the teachings of ancient and holy texts. Critically, influential scripts emphasize child-rearing as essential to *dharma*. *See, e.g., Dharma Sastra*, Vol. 6 *Manu Sanskrit*, Chapter III, pp. 80–93 <https://perma.cc/53MX-GP7L> (explaining that the

vow and institution of marriage are defined and sanctioned by divine authority). “Parents are indeed the first guru . . . [t]he child’s deepest impressions come from what the parents do and say.” *Educational Insight: Raising Children as Good Hindus*, Hinduism Today (Apr. 1, 2021) <https://perma.cc/EMA7-QYTS>; see also Kewal Motwani, *Manu Dharma Sastra: A Sociological and Historical Study* 121 (1958) (“The educative influence of the mother during the early years is incalculable. She is the first teacher of the child The father and the mother transmit to the child the social ideals and values.”). Hindu legal texts called *Dharmaśāstras*, which date back two millennia, provide detailed instructions regarding the rights and responsibilities of both parents in the *dharmic* duty of child-rearing.

For Hindu parents, their religious beliefs impose a duty to ensure that their children’s religious exercise is not infringed. Hinduism recognizes child-rearing as the most righteous *dharmic* duty. Hindu parents tasked with raising their children in the faith thus have a “sacred” duty to assert claims on behalf of their children when their kids’ religious freedom is threatened by the state. *Raskin*, 69 F.4th at 298 (Oldham, J., dissenting in part and concurring in the judgment).

II. BECAUSE MINORITY FAITHS OFTEN STRUGGLE TO SECURE COMPETENT COUNSEL, THE COUNSEL MANDATE RISKS FORCING CHILDREN OF MINORITY FAITHS OUT OF COURT AND INTERFERING WITH “SACRED” PARENTAL DUTIES

Religious minorities must overcome compounding barriers to secure effective legal representation. To start, Hinduism, as well as other minority faiths, has long been misunderstood by courts and counsel. To illustrate, British judges struggled “to apply the *dharma* texts as legal codes in Anglo-Hindu law courts” when called upon to adjudicate cases involving Hindus. *Hindu Conceptions of Law, supra*, at 1287. “No matter how much they were concerned not to interfere with the religious beliefs of the Hindus,” British courts and counsel struggled to distinguish “rules of positive law” from Hindu “moral precepts.” *Id.* (quoting S.V. Gupte, *Hindu Law in British India* 49 (2d ed. Bombay 1947)). Courts had special difficulty applying *dharma* in cases involving family or probate. *Id.* at 1287–89 (collecting cases); *see also id.* at 1304 (explaining that, although “British judges were given the task of applying [Hindu] laws in the courts,” they did not have “the general background” to understand Hinduism).

Unfortunately, our Anglo-American legal system and its courts and counsel still struggle with a general understanding of Hinduism and other minority faiths, giving children of religious minorities few

practical options to secure competent representation outside of their parents.

Where cultural competency and access to justice have intersected in other areas, such as race, the legal profession has provided training to help counsel vindicate their clients' rights. *See, e.g.*, Ilana Kowarski, *How U.S. Law Schools Are Preparing Students For Racial Justice Work*, U.S. News (Oct. 21, 2022) <https://perma.cc/W52B-6TLB>. But unfortunately, similar cultural training for lawyers involving religious faiths (to say nothing of minority faiths) are noticeably absent. Many attorneys are therefore underprepared to understand how religion might affect their client's legal interests. *See* James A. Sonne, *Religious Liberty, Clinical Education, and the Art of Building Bridges*, 22 *Clinical L. Rev.* 251, 280 (2015) (describing how religion "is a factor [that] many lawyers often seem to undervalue or ignore"). Moreover, "many lawyers do not have any religious affiliation," meaning they may not be particularly fluent "when it comes to representing a religious client." *Cross-Cultural Lawyering*, *supra*, at 244–45.

The lack of training, coupled with a general ambivalence to religious affiliation, impairs the ability of counsel to effectively represent children of the Hindu faith (as well as other minority faiths). Most attorneys in this country are unfamiliar with foundational concepts of *dharma* that guide how Hindus structure their social and ethical existence. That matters when counsel must consider factual context and legal claims. As a result, Hindu parents might justifiably

refuse to waste money on ineffective, expensive counsel who do not understand their faith tradition and thus will be unable to adequately defend their children's legal rights in the first place.

To be sure, culturally competent counsel mindful of minority faiths exist, and attorneys who are themselves members of religious minorities will be well attuned to religious concerns. But other barriers limit access to those qualified counsel.

One barrier is geography. Most members of minority religious populations are concentrated in a few urban areas. Hindu Americans, who total less than 1% of the population, “are primarily concentrated near major metropolitan areas.” *2023 PRRI Census of American Religion, supra*. Buddhist Americans, who also make up around 1% of the population, are primarily concentrated “in California, New York, or other major metropolitan areas on the East and West Coasts.” *Id.* Outside of those urban areas, minority religious groups are thinly spread across the nation, making it difficult for them to find a lawyer with a similar religious background, let alone one specializing in the unique legal issues they face. *See* Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 Harv. L. & Pol’y Rev. 15, 22 (2018) (“Despite the immense need for lawyers in rural America, the number of attorneys practicing in rural areas falls painfully short.”). The likelihood that children of minority faiths living in rural areas will find effective counsel is thus slim to none. The only practical choice is their parents.

Another barrier is cost. Even if religious minority families could find culturally competent counsel, obtaining legal counsel is expensive. “Children represent a disproportionate number of those living in poverty in the United States,” and “there is a dearth of legal services available” in this country “to meet the legal needs of those who cannot afford to pay.” *Raskin*, 69 F.4th at 286 (quoting Lisa V. Martin, *No Right to Counsel, No Access Without: The Poor Child’s Unconstitutional Catch-22*, 71 Fla. L. Rev. 831, 856 (2019)). “As a result, ‘the mandate that parents retain counsel to advance their children’s claims cannot be met by a substantial portion of families.’” *Id.* (quoting Martin, *supra*, at 858); see also Mary C. Slosar, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, Legal Servs. Corp. 25 (2022) <https://perma.cc/YBC6-G2Y2> (“21% of children in the U.S. live in households with incomes below 125% of the poverty threshold.”). This reality is more troubling for children of religious minorities. See Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, Pub. Religion Rsch. Inst. 31 (Sept. 6, 2017) <https://perma.cc/HWS7-Q4BS> (noting that 38% of Muslim families and 31% of Buddhist families have household incomes of less than \$30,000 per year). Without income to spare, legal representation for them is far too often out of reach. See Slosar, *supra*, at 7–9.

* * *

Given these compounding barriers to affordable and competent counsel, the children of minority faiths often have no path to effective representation beyond

their parents. But by arbitrarily barring parental representation for children, the “counsel mandate” ironically forecloses “children’s access to justice.” *Grizzell*, 110 F.4th at 1180. Worse still, the counsel mandate also prevents Hindu parents from fulfilling their sacred child-rearing duties when they cannot secure or afford counsel, because it prohibits them from vindicating their children’s religious rights in court. The mandate hurts more than it helps, and it should be eliminated.

CONCLUSION

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

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