No. _____

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

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress has enacted two "sister" statutes to protect religious exercise: the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq*. In *Tanzin* v. *Tanvir*, 592 U.S. 43 (2020), this Court held that an individual may sue a government official in his individual capacity for damages for violations of RFRA. RLUIPA's relevant language is identical.

The question presented is whether an individual may sue a government official in his individual capacity for damages for violations of RLUIPA.

RELATED PROCEEDINGS

United States District Court for the Middle District of Louisiana:

Landor v. *Louisiana Department of Corrections & Public Safety*, No. 21-cv-733 (Sept. 29, 2022)

United States Court of Appeals for the Fifth Circuit:

Landor v. *Louisiana Department of Corrections & Public Safety*, No. 22-30686 (Feb. 5, 2024)

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

PETITION FOR A WRIT OF CERTIORARI

Damon Landor respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-13a) is published at 82 F.4th 337. The order of the court of appeals denying rehearing en banc (App., *infra*, 21a-36a) is published at 93 F.4th 259. The opinion of the district court (App., *infra*, 14a-20a) is not published but available at 2022 WL 4593085.

JURISDICTION

The court of appeals entered judgment on September 14, 2023, App., *infra*, 1a, and denied a timely petition for rehearing on February 5, 2024, *id.* at 21a. The Court has jurisdiction under 28 U.S.C. 1254(1). Because 28 U.S.C. 2403(a) may apply, this petition has been served on the United States. The court of appeals did not make a certification under 28 U.S.C. 2403(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. 2000cc-2 provides in relevant part:

> (a) Cause of Action.
>
> 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.

42 U.S.C. 2000cc-5(4)(A) provides that "[i]n this chapter," the term "government" means:

> (i) a State, county, municipality, or other governmental entity created under the authority of a State;
>
> (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
>
> (iii) any other person acting under color of State law.

Other pertinent statutory and constitutional provisions are reproduced in the appendix to this petition. App., *infra*, 37a-55a.

STATEMENT

In *Tanzin* v. *Tanvir*, 592 U.S. 43 (2020), this Court held that an individual may sue a government official in his individual capacity for damages for violations of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq*. This Court emphasized that RFRA's text was "clear," that Congress "made clear" that individual-capacity damages "must" be available,

and are often the "*only*" relief for violations of RFRA's protections for religious exercise. 592 U.S. at 47, 50-51.

This case presents the question of whether the same vital remedy is available against state officials under RFRA's "sister statute," the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq*. See *Holt* v. *Hobbs*, 574 U.S. 352, 356 (2015). The language of the statutes is "*in haec verba*." App., *infra*, 28a (Oldham, J., dissenting from the denial of rehearing en banc). Nonetheless, the courts of appeals unanimously hold that RLUIPA does *not* provide an individual-capacity damages remedy.

The "stark and egregious" facts of this case, App., *infra*, 23a-24a (Clement, J., concurring in the denial of rehearing en banc), vividly illustrate the importance of a damages remedy to protecting religious exercise. Petitioner Damon Landor is a devout Rastafarian who, for decades, "'let the locks of the hair of his head grow,' a promise known as the Nazarite Vow." App., *infra*, 2a (panel op.) (citing *Numbers* 6:5). When he was transferred to the Raymond Laborde Correctional Facility, he had a copy of a Fifth Circuit decision holding that RLUIPA gave him a right to keep his locks. Prison officials responded by throwing that decision *into the trash*, strapping Landor down, and shaving him bald. *Id.* at 2a-3a.

Without a damages remedy, RLUIPA's promise was empty. The panel could respond only by writing in italics that it "*emphatically* condemn[ed]" Landor's mistreatment—as it dismissed his claims and left Landor with no relief whatsoever. *Id.* at 13a.

That is a telltale sign that this Court's intervention is needed. No relief is not "appropriate relief" in the

"context of suits against Government officials." *Tanzin*, 592 U.S. at 49. Congress enacted both RFRA and RLUIPA to provide meaningful protection for religious liberty—not to allow officials to ignore those protections with impunity.

The Fifth Circuit nonetheless squarely reaffirmed its rule that individual-capacity damages are not available under RLUIPA. That decision prompted sharp division at the en banc stage, with 15 judges of the Fifth Circuit joining opinions calling for this Court's review. See *id.* at 23a-24a (Clement, J., concurring); *id.* at 25a-34a (Oldham, J., dissenting); *id.* at 35a-36a (Ho, J., dissenting). For example, Judge Clement urged that the question was one that "only the Supreme Court can answer." *Id.* at 23a.

This Court should take up that call. The Fifth Circuit's rule "cannot be squared with *Tanzin*" or this Court's caselaw interpreting RFRA and RLUIPA together as "sister" or "twin" statutes. App., *infra*, 25a, 28a (Oldham, J., dissenting). The Fifth Circuit did not identify a textual basis for its decision. None exists. Instead, it reasoned that a damages remedy "would run afoul of the Spending Clause." App., *infra*, 11a. That unqualified statement appears to hold that the damages remedy is unconstitutional or, at a minimum, applies constitutional avoidance. Either way, it is wrong, conflicts with this Court's precedents, and warrants review.

Tanzin's holding that RFRA's identical text is unambiguous "now foreclose[s]" application of constitutional avoidance. App., *infra*, 32a (Oldham, J., dissenting). A holding that RLUIPA's damages remedy is unconstitutional independently warrants review because it invali-

dates an act of Congress. *E.g.*, *United States* v. *Kebodeaux*, 570 U.S. 387, 391 (2013) (collecting cases). The rule that Congress cannot impose an individual-capacity damages remedy further conflicts with *South Dakota* v. *Dole*, 483 U.S. 203 (1987), and *Sabri* v. *United States*, 541 U.S. 600 (2004), and the panel recognized that the Sixth Circuit had "explicitly denounced" that rule. App., *infra*, 9a n.5 (citing *Haight* v. *Thompson*, 763 F.3d 554, 567-70 (6th Cir. 2014)).

This Court's grant of certiorari in *Tanzin*—without a circuit conflict—shows that this issue is sufficiently important to warrant this Court's review. More than one million people are incarcerated in state prisons and local jails. Under the prevailing rule in the circuit courts, those individuals are deprived of a key remedy crucial to obtaining meaningful relief.

The time for review is now. In 2010, the Solicitor General urged that the Fifth Circuit's rule was "incorrect," but recommended further percolation. Brief for the United States as Amicus Curiae 10-11, *Sossamon* v. *Texas*, 563 U.S. 277 (2011) (No. 08-1438), 2010 WL 990561 (U.S. *Sossamon* Br.). Fourteen years later, the unanimous rule in the circuits is that RLUIPA does not provide an individual-damages remedy, with six circuits reaffirming that rule after *Tanzin* and three holding that RLUIPA's individual-capacity damages remedy is unconstitutional. The nationwide rule is thus that RLUIPA lacks a remedy Congress "must" have provided and that is often the "*only*" means for providing effective relief. *Tanzin*, 592 U.S. at 50-51. This Court should grant certiorari and reverse, thus restoring pre-*Smith* rights and remedies nationwide.

A. RFRA And RLUIPA

Congress has enacted two "sister" statutes—RFRA and RLUIPA—to protect religious exercise in the wake of *Employment Division* v. *Smith*, 494 U.S. 872 (1990). See *Holt*, 574 U.S. at 356. RFRA applies to the federal government, whereas RLUIPA "applies to the States and their subdivisions," protects institutionalized persons and land use, and "invokes congressional authority under the Spending and Commerce Clauses." *Id.* at 357.

The text of the two statutes "mirror[]" one another. *Ibid.* First, both statutes restore the pre-*Smith* compelling-interest test. See 42 U.S.C. 2000bb-1(a) (RFRA); 42 U.S.C. 2000cc-1(a) (RLUIPA).

Second, both statutes provide an express cause of action for an aggrieved person to "obtain appropriate relief against a government." 42 U.S.C. 2000bb-1(c) (RFRA); 42 U.S.C. 2000cc-2(a) (RLUIPA).

Third, both statutes define "government" to include an "official" or "other person acting under color" of law. 42 U.S.C. 2000bb-2(1) (RFRA); 42 U.S.C. 2000cc-5(4)(A) (RLUIPA); compare 42 U.S.C. 1983.

B. This Court's Decision In *Tanzin*

In *Tanzin*, this Court unanimously held that RFRA provides for damages against individual officials. First, the Court concluded that "RFRA's text provides a clear answer" to the question of whether "injured parties can sue Government officials in their personal capacities": "They can." *Tanzin*, 592 U.S. at 47.

Second, this Court held that the "plain meaning" of "appropriate relief" in individual-capacity suits includes damages. *Id.* at 48-49. "In the context of suits against Government officials, damages have long been awarded as appropriate relief." *Id.* at 49. Before *Smith*, the Court

emphasized, damages were available under Section 1983 in suits against "state and local government officials." *Id.* at 50. The Court found that history "particularly salient" because Congress "made clear" it was reinstating pre-*Smith* substantive and remedial protections. *Ibid.* This Court concluded that RFRA plaintiffs "must have at least the same avenues for relief," including individual-capacity damages. *Id.* at 51.

The Court observed that damages are "not just 'appropriate'" relief, but also "the *only* form of relief that can remedy some RFRA violations." *Ibid.* For example, the "destruction of religious property" and an autopsy "that violated Hmong beliefs" are cases in which "effective relief consists of damages, not an injunction." *Ibid.*

C. Factual Background

Petitioner Damon Landor "is a devout Rastafarian who vowed to 'let the locks of the hair of his head grow,' a promise known as the Nazarite Vow." App., *infra*, 2a (citing *Numbers* 6:5).[1] When he began a five-month term of incarceration in Louisiana prison, he had "kept that promise [] for almost two decades." *Ibid.* His locks "fell nearly to his knees." *Id.* at 26a (Oldham, J., dissenting).

By that time, the Fifth Circuit had already held that Louisiana's policy of prohibiting Rastafarian inmates from wearing dreadlocks violated RLUIPA. *Ware* v. *Louisiana Department of Corrections*, 866 F.3d 263, 266 (5th Cir. 2017); see *id.* at 273 (noting that the U.S. Bureau of Prisons and 38 other jurisdictions accommodate prisoners with dreadlocks). And the first four months of

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[1] This case arises from a motion to dismiss, so the Fifth Circuit took "the facts in the complaint … as true." App., *infra*, 2a n.1.

Landor's incarceration were uneventful. He was housed in facilitates that "respected Landor's vow and allowed him to either wear his hair long or to keep it under a 'rastacap.'" App., *infra*, 2a.

That all changed with "only three weeks left in his sentence," when Landor was transferred to the Raymond Laborde Correctional Center. *Ibid.* When he arrived, Landor explained to an intake guard "that he was a practicing Rastafarian and provided proof of past religious accommodations." *Ibid.* "Landor also handed the guard a copy of [the] decision in *Ware*." *Ibid.*

The guard was unmoved. He "threw" the Fifth Circuit's decision "in the trash." *Ibid.* The guard summoned the warden, respondent Marcus Myers, who "demanded Landor hand over documentation from his sentencing judge that corroborated his religious beliefs." *Ibid.* Landor "offered to contact his lawyer to obtain those materials." *Id.* at 26a (Oldham, J., dissenting). "In response, the warden glibly quipped that it was '[t]oo late for that.'" *Ibid.* "The warden instructed prison guards to escort Landor to another room, where Landor was forcibly handcuffed to a chair." *Ibid.* "As two guards held Landor down," another "shaved his head to the scalp." *Ibid.*

D. Procedural History

Once released, Landor sued. As relevant, he brought individual-capacity damages claims under RLUIPA against Warden Myers and James LeBlanc, the Secretary of Louisiana's Department of Corrections and Public Safety, as well as the John Doe guards who played a role in Landor's religious abuse. App., *infra*, 3a.

1. The district court granted a motion to dismiss. App., *infra*, 14a-20a. Relying on circuit precedent, the district court held that RLUIPA does not provide for

damages against individual state officials. *Id.* at 16a. Because Landor had been released, the district court dismissed his RLUIPA claims for injunctive relief as moot. See *ibid.*

2. The court of appeals affirmed. App., *infra*, 2a-13a. The panel "*emphatically* condemn[ed] the treatment that Landor endured," but found that it was bound by prior circuit precedent to hold that, "under RLUIPA, he cannot seek money damages from officials in their individual capacities." App., *infra*, 13a; see *id.* at 1a (circuit precedent "already answered" the question).

The panel squarely rejected the argument that *Tanzin* abrogated that prior precedent. See *id.* at 8a-11a. The panel did not identify a textual basis for distinguishing RLUIPA from RFRA and recognized that the texts are "almost the same." *Id.* at 10a. Instead, following circuit precedent, the panel emphasized that RFRA and RLUIPA "rely on different Congressional powers." *Id.* at 8a. The panel reasoned that "Spending Clause legislation" "'operates like a contract,' so '"only the grant recipient—the state—may be liable for its violation."'" *Id.* at 6a (citation omitted).

The panel concluded that, "although RLUIPA's text suggests a damages remedy, recognizing as much would run afoul of the Spending Clause." *Id.* at 11a. The panel recognized, however, that the Sixth Circuit had "explicitly denounced" the rule that it is unconstitutional to impose an individual-capacity damages remedy under RLUIPA. See *id.* at 9a n.5 (citing *Haight*, 763 F.3d at 567-70).

3. A divided court of appeals denied rehearing en banc, with 11 judges voting against rehearing and 6 voting in favor. App., *infra*, 21a-36a. 15 judges joined opinions respecting the denial of review.

a. Judge Clement concurred in the denial of rehearing, joined by 8 other judges (Jones, Stewart, Graves, Higginson, Engelhardt, Wilson, Douglas, and Ramirez). App., *infra*, 23a-24a. Judge Clement emphasized that "Landor clearly suffered a grave legal wrong," and that respondents "knowingly violated Damon Landor's rights in a stark and egregious manner, literally throwing in the trash our opinion holding that Louisiana's policy of cutting Rastafarians' hair violated [RLUIPA] before pinning Landor down and shaving his head." *Ibid.*

Judge Clement urged that "only the Supreme Court can answer" "whether a damages remedy is available to him under RLUIPA." *Id.* at 23a. Judge Clement noted that in *Sossamon* v. *Texas*, 563 U.S. 277 (2011), this Court held that RLUIPA did not abrogate state sovereign immunity and provide for damages against a State. Judge Clement explained that "threading the needle between *Sossamon []* and *Tanzin* is a task best reserved for the court that wrote those opinions." *Id.* at 24a.

b. Judge Oldham dissented, joined by five other judges (Smith, Elrod, Willett, Ho, and Duncan). App., *infra*, 25a-34a.

First, Judge Oldham reasoned that this Court's interpretation of RFRA in *Tanzin* is "dispositive of [the] interpretation of RLUIPA['s]" remedial provisions. *Id.* at 28a. The operative provisions of the two laws are "*in haec verba*," this "Court has called RLUIPA and RFRA 'sister' or 'twin' statutes," and this Court "has repeatedly

interpreted one statute by looking to its precedent interpreting the other." *Ibid.* "Given *Tanzin*," Judge Oldham concluded, "RLUIPA (like RFRA) authorizes damages suits against state officials." *Id.* at 29a.

Second, Judge Oldham explained that *Tanzin*'s interpretation of the text foreclosed application of constitutional avoidance, because that canon "cannot be invoked where there is no ambiguity." *Id.* at 33a. He similarly concluded that *Tanzin*'s interpretation of the text "obviates any argument about clear notice and the phrase 'appropriate relief against a government.'" *Ibid.*

Third, Judge Oldham concluded that an individual-capacity damages remedy is constitutional under *South Dakota* v. *Dole*, 483 U.S. 203 (1987). App., *infra*, 31a-32a. He further explained that *Sabri* v. *United States*, 541 U.S. 600 (2004), forecloses an additional requirement that Congress cannot "regulat[e] anyone beyond the recipient." App., *infra*, 30a.

c. Judge Ho dissented, joined by Judge Elrod. App., *infra*, 35a-36a. Responding to Judge Clement, Judge Ho explained that *Tanzin* already distinguished *Sossamon*: "'*[T]he obvious difference*'" between *Sossamon* and *Tanzin* and this case was that *Tanzin*, like this case, "*feature[d] a suit against individuals, who do not enjoy sovereign immunity*." App., *infra*, 36a (quoting *Tanzin*, 592 U.S. at 51-52) (emphasis in dissent).

REASONS FOR GRANTING THE PETITION

As 15 judges of the Fifth Circuit recognized, this case presents a question that warrants this Court's review: whether RLUIPA—like RFRA and Section 1983—provides a damages remedy against individual officials. That is a question that "only the Supreme Court" can decide. App., *infra*, 23a (Clement, J., concurring).

The Fifth Circuit held that RLUIPA's individual-capacity damages remedy is unconstitutional or, at a minimum, applied constitutional avoidance to hold that RLUIPA lacks such a remedy. Either way, the decision conflicts with this Court's precedents and warrants review. *Tanzin*'s holding that RFRA's meaning is "clear" and "must" provide that remedy "now foreclose[s]" application of constitutional avoidance. App., *infra*, 32a (Oldham, J., dissenting). The Fifth Circuit's rule that, under the Spending Clause, Congress can impose a remedy only against a direct recipient of federal funds also conflicts with this Court's decisions in *Dole* and *Sabri*, *id.* at 32a-33a, and has been "explicitly denounced" by the Sixth Circuit, App., *infra*, 9a n.5; see *Haight* v. *Thompson*, 763 F.3d 554, 570 (6th Cir. 2014) (Sutton, J.).

This case thus presents a vitally important question of federal law that warrants this Court's review. The Fifth Circuit's invalidation of RLUIPA's damages remedy on constitutional grounds alone warrants review because it effectively invalidates a critical component of an act of Congress. *E.g.*, *United States* v. *Kebodeaux*, 570 U.S. 387, 391 (2013) (collecting cases). This Court also granted certiorari in *Tanzin* without a circuit conflict, recognizing the importance of the availability of individual-capacity damages under RFRA.

This Court's intervention is more sorely needed here. In *Tanzin*, this Court *affirmed* the unanimous view of the circuits that RFRA provides an individual-damages remedy. Here, the unanimous view of the circuits is that RLUIPA does *not* provide that same remedy, thus depriving more than a million people of a remedy that Congress "must" have provided, and that is often the "only" means for effectively protecting religious liberty.

Tanzin, 592 U.S. at 51. This Court's intervention is warranted to restore the pre-*Smith* protections for religious exercise that Congress enacted RFRA *and* RLUIPA to provide.

This is an ideal vehicle. The damages issue is the only question in the case. It is squarely presented. It is outcome-dispositive. It generated sharp division among the en banc court. And the "stark and egregious" facts, App., *infra*, 23a (Clement, J., concurring), illustrate that, without a damages remedy, RLUIPA's promise is often hollow. It is often damages or nothing. This Court should grant certiorari and reverse.

I. The Fifth Circuit's Holding That RLUIPA Does Not Provide For Individual-Capacity Damages Conflicts With This Court's Precedents

The Fifth Circuit held that an individual may not sue a government official in his individual capacity for damages for violations of RLUIPA. App., *infra*, 4a-11a. The Fifth Circuit's rationale is ambiguous, however. Portions of the panel opinion suggest an exercise in "statutory interpretation" informed by the canon of constitutional "avoid[ance]." *Id.* at 6a. Other portions appear to reason that an individual-damages remedy is unconstitutional: It "would run afoul of the Spending Clause." *Id.* at 9a, 11a; see *id.* 9a n.5 ("[B]ecause RLUIPA is Spending Clause legislation, non-recipients of funds cannot be liable."). Under either rationale, the Fifth Circuit's holding is wrong, conflicts with this Court's precedents, and warrants this Court's review.

A. The Fifth Circuit's Interpretation Of RLUIPA Conflicts With This Court's Interpretation Of Identical Language In RFRA

Tanzin held that RFRA permits a plaintiff to recover damages from government officials in their individual capacities. RLUIPA must do so as well. A holding that RLUIPA does not provide for individual-capacity damages "cannot be squared with *Tanzin*" or this Court's "routine[]" practice to interpret RFRA and RLUIPA in "in parallel." App., *infra*, 25a (Oldham, J., dissenting). In particular, *Tanzin* "now foreclose[s]" application of constitutional avoidance. *Id.* at 32a.

1. This Court has repeatedly described RFRA and RLUIPA as "sister" statutes, with "mirror[ing]" text. *Holt*, 574 U.S. at 356-57; *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014); *Ramirez* v. *Collier*, 595 U.S. 411, 424 (2022). This Court has emphasized their shared history and purpose: Congress enacted both in the wake of *Smith* "to provide very broad protection for religious liberty." *Holt*, 574 U.S. at 356 (citation omitted). Congress sought to "counter" *Smith* by restoring "pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim." *Tanzin*, 592 U.S. at 50. Indeed, Congress modeled RLUIPA on RFRA. *Holt*, 574 U.S. at 356.

This Court has repeatedly interpreted "one statute by looking to its precedent interpreting the other." App., *infra*, 28a (Oldham, J., dissenting). For example, in *Holt*, this Court relied on RFRA precedents to construe RLUIPA's narrow-tailoring provision. See 574 U.S. at 362-64 (quoting *Hobby Lobby*, 573 U.S. at 726-27 and *Gonzales* v. *O Centro Espirita Beneficente Uniao do Veg-*

etal, 546 U.S. 418, 430-31, 434 (2006)). The Court similarly relied on RFRA precedents to support the interpretation of RLUIPA in *Ramirez* v. *Collier*, 595 U.S. 411, 425, 427 (2022). And in *Hobby Lobby*, this Court relied on text that appears only in RLUIPA to support its interpretation of RFRA. See 573 U.S. at 730 (citing 42 U.S.C. 2000cc-3(c)).

The Fifth Circuit did not offer a textual basis for distinguishing RLUIPA from RFRA. None exists. The "operative provisions of RFRA and RLUIPA are *in haec verba*." App., *infra*, 25a. Both provide that an individual aggrieved by the deprivation of religious liberty under the pre-*Smith* compelling-interest test may "obtain appropriate relief against a government," and both define "government" to include an "official" or any "other person acting under color" of "law." 42 U.S.C. 2000cc-2(a), 2000cc-5(4)(A) (RLUIPA); 42 U.S.C. 2000bb-1(c), 2000bb-2(1) (RFRA). So everything *Tanzin* said about RFRA applies at least as strongly—if not even more strongly—to RLUIPA.

Tanzin teaches that, by authorizing suits against an "official" or any "other person acting under color of law," Congress provided a "clear answer" that "injured parties can sue Government officials in their personal capacities." 592 U.S at 47; see 42 U.S.C. 2000bb-2(1) (RFRA); 42 U.S.C. 2000cc-5(4)(A) (RLUIPA). "The term 'official' does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" *Tanzin*, 592 U.S. at 47 (quoting 10 Oxford English Dictionary 733 (2d ed. 1989)). "The phrase 'persons acting under color of law' draws on one of the most well-known civil rights stat-

utes: 42 U.S.C. § 1983," which "this Court has long interpreted" to "permit suits against officials in their individual capacities." *Id.* at 48.

Next, *Tanzin* holds that the "plain meaning" of "appropriate relief" "[i]n the context of suits against Government officials" necessarily includes damages because "damages have long been awarded as appropriate relief" in that context. *Id.* at 48-49. Before *Smith*, damages were "available under § 1983" against state and local officials "for clearly established violations" of the compelling interest test. *Id.* at 50. "Given that RFRA" and RLUIPA "reinstated pre-*Smith* protections and rights, parties suing under RFRA" and RLUIPA "must have at least the same avenues for relief against officials that they would have had before *Smith*," which includes "a right to seek damages against Government employees." *Id.* at 51. Indeed, that reasoning applies even more strongly here because RLUIPA—like Section 1983—applies to state officials.

Finally, *Tanzin* emphasized that individual-capacity damages are often "not just 'appropriate,'" but indeed the "*only* form of relief." *Tanzin*, 592 U.S. at 51. For example, if a victim has been released or transferred, or has died, or if a claim involves a "destruction of religious property," then "effective relief consists of damages, not an injunction." *Ibid.* Under both statutes, no relief is not "appropriate relief."

2. *Tanzin* also forecloses application of constitutional avoidance. Constitutional avoidance "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Jennings* v. *Rodriguez*, 583 U.S. 281, 296 (2018) (citation omitted). The Court in *Tanzin*

performed that ordinary textual analysis—of exactly the same text—and held that the text supplies a "clear answer": It "must" provide an individual-damages remedy. 592 U.S. at 47, 51. "*Tanzin* thus compels [one] to reject the argument that the relevant portion of RLUIPA … is ambiguous," and pushes "constitutional avoidance []off the table." App., *infra*, 33a (Oldham, J., dissenting).

RLUIPA's text further confirms that avoidance has no role: Congress provided 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." 42 U.S.C. 2000cc-3(g). Constitutional avoidance is thus foreclosed by *Tanzin* and by the statute itself.

3. The en banc concurrence chose a different tack. The concurrence observed that this Court held in *Sossamon* that the term "appropriate relief" "did *not* clearly allow for monetary damages" against "state employees sued in their *official* capacities" in RLUIPA suits. App., *infra*, 24a (emphasis in original) (citing *Sossamon*, 563 U.S. at 285-86). The concurrence questioned whether "RLUIPA's 'appropriate relief' language [is] sufficiently clear to put the state and/or its employees on notice that the employees can personally be held liable for monetary damages." *Ibid.* The concurrence urged this Court to "thread[] the needle between *Sossamon []* and *Tanzin*." *Ibid.*

This Court should indeed take the case—but *Tanzin* already supplies a clear answer. Congress speaks clearly when its intent "is 'clearly discernible' from the sum total of its work." *Dep't of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 54 (2024). And *Tanzin*

establishes that Congress's intent was clearly discernable: Congress intended to make damages available against individual officials, just like in RFRA and Section 1983.

In particular, *Tanzin* establishes that Congress was clear about the meaning of "appropriate relief" "in the "context of suits against Government officials": "Damages are … commonly available against state and local government officials" and "must" be available because Congress "made clear" it was restoring pre-*Smith* substantive protections "*and* the right to vindicate those protections by a claim," which included individual-capacity damages under Section 1983. 592 U.S. at 49-51.

This case arises in the exact same context: "suits against Government officials." *Id.* at 49. *Tanzin*'s holding about what Congress "made clear" in this context thus "obviates any argument" that states or their officials lacked "clear notice" of officials' individual liability. App., *infra*, 33a (Oldham, J., dissenting).

Tanzin also recognized the "obvious difference" between this case and *Sossamon*: Unlike in *Sossamon*, this case and *Tanzin* are "suit[s] against individuals, who do not enjoy sovereign immunity." *Tanzin*, 592 U.S. at 52. Per *Tanzin*, *Sossamon* "ha[s] no bearing on suits against individual officers in their individual capacities." App., *infra*, 36a (Ho, J., dissenting).

B. The Fifth Circuit's Holding That A Damages Remedy Is Unconstitutional Conflicts With This Court's Spending Clause Cases

To the extent the Fifth Circuit held that RLUIPA's individual-damages remedy is unconstitutional, that ruling independently warrants review, conflicts with

this Court's Spending Clause cases, and has been "explicitly denounced" by the Sixth Circuit. App., *infra*, 9a n.5. The United States has also urged that it is "incorrect." U.S. *Sossamon* Br. 10.

1. The invalidation of a federal statute on constitutional grounds is inherently worthy of this Court's review. See, *e.g.*, *United States* v. *Hansen*, 599 U.S. 762 (2023); *United States* v. *Vaello Madero*, 596 U.S. 159 (2022); *Kebodeaux*, 570 U.S. at 391 (collecting cases). For example, in *Cutter* v. *Wilkinson*, 544 U.S. 709 (2005), this Court granted review of a decision holding RLUIPA unconstitutional under the Establishment Clause.

The invalidation of a RLUIPA's individual-capacity damages remedy is particularly pernicious because it defeats Congress's goal of restoring pre-*Smith* "substantive protections … *and* the right to vindicate those protections by a claim." *Tanzin*, 592 U.S. at 51. Before *Smith*, individual-capacity damages were available under Section 1983 against state officials under the compelling-interest test. See *id.* at 50-51. Under the Fifth Circuit's view, now they are not.

2. The panel's constitutional ruling conflicts with this Court's Spending Clause precedents. At the outset, it is well-settled that it is appropriate for "private plaintiffs" to obtain "monetary relief" in suits under Spending Clause legislation. *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216 (2022); *e.g.*, *Health & Hosp. Corp.* v. *Talevski*, 599 U.S. 166 (2023) (damages under Section 1983); *Franklin* v. *Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 72-73 (1992) (Title IX).

The Fifth Circuit nonetheless reasoned that "the Spending Clause do[es] not empower Congress" to impose liability on anybody other than "the grant recipient—the state." App., *infra*, 6a (citation omitted), 11a. "[N]on-recipients of funds cannot be liable." *Id.* at 9a n.5.

This Court's decisions in *Dole* and *Sabri* foreclose that rule. First, the court of appeals did not dispute that RLUIPA satisfies the familiar *Dole* test. As Judge Oldham explained, (1) a damages remedy pursues the general welfare by "protect[ing] prisoners' religious exercise rights"; (2) Congress provided "'clear notice' of this Spending Clause condition," as established by *Tanzin*'s interpretation of the same text; (3) a damages remedy is "reasonably related to … protect[ing] free exercise in prison" because "monetary liability for state officials should deter government misconduct and protect religious exercise"; and (4) imposing individual liability on state officials does not violate any other constitutional principle. App., *infra*, 31a-32a. *Dole* does not impose any additional requirement that the defendant be the immediate grant recipient. See *ibid.*

This Court has also squarely upheld imposition of liability beyond the immediate grant recipient. For example, in *Sabri* v. *United States*, 541 U.S. 600 (2004), this Court upheld the imposition of criminal liability under spending legislation (18 U.S.C. 666) against a private party who bribed an employee of a municipal agency that received more than $10,000 in federal funds. *Id.* at 604-07. This Court explained that the Spending Clause, in conjunction with the Necessary and Proper Clause, empowers Congress "to see to it that taxpayer dollars appropriated under [the spending] power are in fact spent for the general welfare, and not frittered away"

toward other ends. *Id.* at 605. *Sabri* thus upheld Congress's imposition of liability on somebody other than the grant recipient. See also *Grove City Coll.* v. *Bell*, 465 U.S. 555, 564 (1984) (holding that Title IX applies to private colleges that are not direct recipients of federal funds, finding "no support" for a "perceived distinction between direct and indirect aid").

As the United States has explained, *Sabri* establishes that, "[j]ust as Congress may attach conditions to its disbursement of federal funds, so it is empowered to prevent third parties from interfering with a fund recipient's compliance with those conditions." U.S. *Sossamon* Br. 13. "Congress's power to prevent such interference is 'bound up with congressional authority to spend in the first place.'" *Ibid.* (quoting *Sabri*, 541 U.S. at 608). "Attaching 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." *Ibid.* (quoting *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819)).

Congress's power to require state officials to comply with RLUIPA, and to face individual liability if they do not, is particularly clear because Congress could impose the same remedy even under an analogy to ordinary contract principles. Because "[m]oney is fungible," the covered state officials are themselves indirect recipients of federal funds through their employment. *Sabri*, 541 U.S. at 606. And, by definition, they have their own contracts with the funding recipient. Ordinarily, "the parties to a contract—including the government, in a contract between the government and a private party—are presumed or deemed to have contracted with reference

to existing principles of law." 11 Williston on Contracts § 30:19 (4th ed. updated May 2023) (footnotes omitted). RLUIPA is an "existing principle[] of law." *Ibid.* RLUIPA's individual-capacity damages remedy is thus analogous to interpreting State officials' contracts with the direct funding recipient to incorporate RLUIPA's protections and to make individual prisoners third-party beneficiaries with the ability to enforce RLUIPA "in an action for damages." Restatement (Second) of Contracts § 307 cmt. a (1981).

3. The Fifth Circuit also recognized that its constitutional reasoning conflicts with the Sixth Circuit's reasoning in *Haight*, which "explicitly denounced the third-party liability rational[e]." App., *infra*, 9a n.5. In *Haight*, the Sixth Circuit (per Judge Sutton) held before *Tanzin* that RLUIPA did not provide a damages remedy because it was not clear. 763 F.3d at 570. The Sixth Circuit went on, however, to conclude that Congress had constitutional authority to impose such a remedy. *Ibid.* The Sixth Circuit explained that a rule restricting Congress to regulating the immediate recipient of federal funds "proves too much" and is "not consistent with *Dole*." *Ibid.* That conflict with *Dole*—recognized by the Sixth Circuit as well as the dissenting judges below—underscores the need for this Court's review.

II. The Question Presented Is Exceptionally Important

1. The divided en banc opinions highlight the importance of the question presented. Fifteen judges on the Fifth Circuit wrote opinions calling for this Court's review: Nine judges joined a concurrence urging that "only the Supreme Court" can decide "whether a damages remedy is available." App., *infra*, 23a. They further urged that "[t]hreading the needle between *Sossamon []*

and *Tanzin* is a task best reserved for the court that wrote those opinions." *Id.* at 24a.

Six judges dissented, emphasizing that the panel decision conflicts with this Court's precedents. Judge Oldham was joined by five other judges in concluding that the panel's result "cannot be squared with *Tanzin*." App., *infra*, 25a. And Judge Ho was joined by Judge Elrod in explaining that *Tanzin* supplied an "obvious" basis for distinguishing *Sossamon*. App., *infra*, 36a.

2. This Court's grant of certiorari in *Tanzin* reinforces that the RLUIPA question warrants this Court's review. This Court granted in *Tanzin* to review the RFRA question when "no circuit conflict exist[ed]." Petition for a Writ of Certiorari 11, *Tanzin*, 592 U.S. 43 (No. 19-71), 2019 WL 3075898. The parallel RLUIPA question is no less important. If anything, the need for this Court's intervention is greater because of the conflict with *Tanzin*, *Dole*, and *Sabri*, and the effective invalidation of a federal statute on constitutional grounds.

The position of the lower courts further reinforces the need for review. Before this Court granted certiorari in *Tanzin*, the courts of appeals unanimously held—correctly—that RFRA provides an individual-capacity damages remedy, thus providing effective relief for violations of the pre-*Smith* compelling-interest test. *E.g.*, *Tanvir* v. *Tanzin*, 894 F.3d 449, 453 (2d Cir. 2018). The Court accordingly granted certiorari and *affirmed*.

By contrast, the courts of appeals now unanimously hold—incorrectly and in conflict with *Tanzin*—that RLUIPA lacks a damages remedy. See *Washington* v. *Gonyea*, 731 F.3d 143, 145 (2d Cir. 2013); *Sharp* v. *Johnson*, 669 F.3d 144, 154-55 (3d Cir. 2012); *Rendelman* v. *Rouse*, 569 F.3d 182, 189 (4th Cir. 2009); *Sossamon* v.

Texas, 560 F.3d 316, 328-29 (5th Cir. 2009); *Haight*, 763 F.3d at 567-70; *Nelson* v. *Miller*, 570 F.3d 868, 889 (7th Cir. 2009); *Scott* v. *Lewis*, 827 F. App'x 613 (8th Cir. 2020); *Wood* v. *Yordy*, 753 F.3d 899, 904 (9th Cir. 2014); *Stewart* v. *Beach*, 701 F.3d 1322, 1335 (10th Cir. 2012); *Smith* v. *Allen*, 502 F.3d 1255, 1275-76 (11th Cir. 2007).

Several of those circuits hold that RLUIPA's damages remedy is unconstitutional. See App., *infra*, 11a; *Wood*, 753 F.3d at 904; *Stewart*, 701 F.3d at 1335. And every circuit to face an individual-capacity damages claim since *Tanzin* has reaffirmed its prior position. See App., *infra*, 1a; *Burke* v. *Clarke*, 842 F. App'x 828, 836 (4th Cir. 2021); *Heyward* v. *Cooper*, 88 F.4th 648, 656 (6th Cir. 2023); *Jones* v. *Slade*, 23 F.4th 1124, 1140 n.4 (9th Cir. 2022); see also *Cordero* v. *Kelley*, No. 21-1498, 2022 WL 212828, at *2 (3d Cir. Jan. 24, 2022); *Ravan* v. *Talton*, No. 21-11036, 2023 WL 2238853, at *6-7 (11th Cir. Feb. 27, 2023).

The nationwide entrenched rule about RLUIPA thus conflicts with this Court's own interpretation of RFRA: Even though RLUIPA was modeled on RFRA and the relevant text is identical, RLUIPA does *not* provide a damages remedy. In the many cases like this one where damages are the "*only*" way to provide effective relief, *Tanzin*, 592 U.S. at 51, RLUIPA thus provides no remedy at all. This Court's intervention is thus needed to restore RLUIPA's pre-*Smith* protections for religious exercise.

3. The RLUIPA no-damages rule has broad practical importance. RLUIPA specifically protects people who are institutionalized. 42 U.S.C. 2000cc-1(a); *Cutter*, 544 U.S. at 716 n.4 ("Every State … accepts federal funding

for its prisons."). According to published federal statistics, on December 31, 2021, there were approximately 959,300 people incarcerated in state prisons and approximately 636,300 in local jails. See U.S. Dep't of Just., Off. of Just. Programs, Bureau of Just. Stat., Correctional Populations in the United States, 2021 – Statistical Tables 14 tbl. 9 (Feb. 2023).[2] On that date in correctional facilities operated by or contracted to states in the Fifth Circuit alone, federal statistics report that 116,467 sentenced prisoners were incarcerated in Texas, 26,287 in Louisiana, and 16,873 in Mississippi. See U.S. Dep't of Just., Off. of Just. Programs, Bureau of Just. Stat., Prisoners in 2022 – Statistical Tables 31-32 tbl. 18 (Nov. 2023).[3]

Without a damages remedy, those numerous individuals will often be left without meaningful protection for their religious exercise. For example, the no-damages rule ensured that respondent officials would not be held accountable for violating the religious rights of a prisoner set for release in just three weeks and prevented him from obtaining any relief for the abuse he suffered.

Numerous amici participated below to emphasize the importance of damages to vindicating RLUIPA's substantive protections. They urged that "RLUIPA's remedial aims require damages." Prof. Laycock C.A. Br. 15-19. Individual-capacity damages are "vital to protect religious minorities in prisons." Bruderhof C.A. Br. 4. Without "robust enforcement mechanisms," RLUIPA threatens to "becom[e] an empty promise." 35 Religious Organizations C.A. Br. 1.

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[2] https://bjs.ojp.gov/document/cpus21st.pdf

[3] https://bjs.ojp.gov/document/p22st.pdf

The amici further explained that money damages "raise the price of unlawful conduct and make it less attractive to potential wrongdoers." 19 Religious Organizations C.A. Reh'g Br. 6. And money damages are particularly important in the state prison context because individuals are often transferred or released before a claim can be fully adjudicated, thus "moot[ing] claims for injunctive or declaratory relief." Bruderhof C.A. Reh'g Br. 4–6; see also Prof. Laycock C.A. Br. 17-18 (explaining that prisons can "strategically moot claims before courts [can] award relief, thwarting RLUIPA's protections of religious freedom"). The Fifth Circuit's rule also jeopardizes "well-documented benefits of religious exercise in prison," as religious practice has been shown to reduce prison misconduct, improve prison safety, and lower recidivism. Prof. Johnson C.A. Br. 4-18.

III. This Is An Ideal Vehicle

1. This is an ideal vehicle because the RLUIPA question is squarely presented and outcome-dispositive: The district court dismissed Landor's RLUIPA claims solely on the ground that individual-capacity damages are not available. App., *infra*, 16a. Landor appealed solely on the RLUIPA question, the panel affirmed, and the court of appeals denied en banc review. *Id.* at 2a, 21a-22a. If this Court holds that RLUIPA provides individual-capacity damages, the court of appeals' judgment must be reversed. If not, then not.

2. The "stark and egregious" facts make this an even more compelling vehicle for this Court's review. App., *infra*, 23a-24a (Clement, J., concurring). When Landor was incarcerated on a five-month sentence, he had kept the Nazarite Vow not to cut his hair for "almost two dec-

ades," with locks that fell "nearly to his knees." App., *infra*, 26a (Oldham, J., dissenting). The Fifth Circuit had squarely held that Louisiana's policy of forbidding dreadlocks violates Rastafarians' rights under RLUIPA. See *Ware*, 866 F.3d at 266, 273. Landor handed respondents a copy of *Ware* when he arrived at their facility. App., *infra*, 26a (Oldham, J., dissenting). RLUIPA and *Ware* thus provided *Landor* a written guarantee that he could keep his hair. Yet respondents threw the opinion into the trash, strapped Landor down, and shaved him bald. *Id.* at 2a-3a.

The Fifth Circuit, however, held that Landor has no remedy for this blatant RLUIPA violation.[4] That is proof positive that this Court's intervention is needed. Congress did not enact RLUIPA so that courts would be powerless to remedy egregious violations of religious liberty and state officials could avoid being held accountable for violating the religious freedom of their wards. Congress enacted RLUIPA to "reinstat[e] both the pre-

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[4] These allegations are not isolated. At least five other suits have been filed since *Ware* alleging that state officials in Louisiana violated Rastafarian's rights under RLUIPA by forcibly shaving their dreadlocks. See *Deramus* v. *Claiborne Par. Det. Ctr.*, No. 21-2566, 2021 WL 6427047, at *4-5 (W.D. La. Dec. 22, 2021), *report and recommendation adopted*, 2022 WL 110274 (Jan. 11, 2022); *Milon* v. *LeBlanc*, No. 19-717, 2021 WL 4810708, at *1 n.1 (M.D. La. Aug. 23, 2021), *report and recommendation adopted,* 2021 WL 4810627 (Oct. 14, 2021); *Porter* v. *Manchester*, No. 19-411, 2021 WL 389090, at *4-5 (M.D. La. Jan. 4, 2021), *report and recommendation adopted*, 2021 WL 388831 (Feb. 3, 2021); *Ceasar* v. *La. Dep't of Corr.*, No. 17-1691, 2019 WL 3980644, at *4 (M.D. La. July 26, 2019), *report and recommendation adopted*, 2019 WL 3859752 (Aug. 16, 2019); *Hadley* v. *River Bend Det. Ctr.*, No. 18-0529, 2018 WL 3342059, at *2-3 (W.D. La. May 22, 2018), *report and recommendation adopted*, 2018 WL 3341790 (July 6, 2018), *aff'd*, 771 F. App'x 560 (5th Cir. 2019).

Smith substantive protections of the First Amendment *and* the right to vindicate those protections by a claim." *Tanzin*, 592 U.S. at 50.

The compelling facts of this case also mean that qualified immunity will not apply on remand. The officials who assaulted Landor were on notice of *Ware*, but they still flagrantly violated its holding. See App., infra, 23a (Clement, J., concurring) ("Landor clearly suffered a grave legal wrong."); *Id.* at 27a (Oldham, J., dissenting) ("No one can reasonably debate that the prison officials violated Landor's rights under RLUIPA."). The damages question is thus presented with unusual clarity.

3. The time for review is now. In 2009, this Court called for the views of the Solicitor General in a petition raising this very question. See *Sossamon* v. *Texas*, 558 U.S. 987 (2009) (No. 08-1438). In response, the Solicitor General explained that the Fifth Circuit had held that "Congress lacks constitutional authority to impose liability on an entity other than the fund recipient," and urged that the Fifth Circuit's decision was "not correct." U.S. *Sossamon* Br. 10. The Solicitor General nonetheless recommended against review of the individual-capacity damages question "at th[at] time." *Id.* at 9.[5] The Solicitor General noted that the question remained "open and ripe" for decision in most circuits and recommended allowing the question to "percolate more fully among the courts of appeals." *Id.* at 10.

Fourteen years and ten courts of appeals is enough percolation. Those courts have all concluded that

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[5] This Court granted review limited to the question of whether RLUIPA provided a damages remedy against a State or a state official in his official capacity. *Sossamon* v. *Texas*, 560 U.S. 923 (2010).

RLUIPA does not provide an individual-capacity damages remedy, including three courts of appeals that hold that such a remedy is unconstitutional. See pp. 23-24, *supra*. Six courts of appeals have continued to apply the no-damages rule after *Tanzin*. The entrenched rule is therefore that RLUIPA—unlike RFRA and unlike Section 1983 before it—does not provide for individual-capacity damages.

The result is that Congress has been thwarted in its central goal of restoring pre-*Smith* rights and remedies. State officials can violate the pre-*Smith* compelling interest test, and victims are left with no relief in cases in which damages are the only form of effective relief. No relief is not "appropriate relief." 42 U.S.C. 2000cc-2(a). This Court should grant certiorari to decide whether to restore RLUIPA's pre-*Smith* protections nationwide.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed: September 14, 2023]

No. 22-30686

DAMON LANDOR,

Plaintiff—Appellant,

versus

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,

Defendants—Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:21-CV-733

Before CLEMENT, GRAVES, and HIGGINSON, *Circuit Judges*.

EDITH BROWN CLEMENT, *Circuit Judge*:

The question presented is whether the Religious Land Use and Institutionalized Persons Act ("RLUIPA") provides for money damages against officials sued in their individual capacities. Because we've already answered that question in the negative, we AFFIRM.

I.

Damon Landor is a devout Rastafarian who vowed to "let the locks of the hair of his head grow," a promise known as the Nazarite Vow. *See Numbers* 6:5.[1] Landor kept that promise—for almost two decades, he didn't cut his hair. But that changed when he arrived at the Raymond Laborde Correctional Center.

Stepping back, Landor was incarcerated in 2020. During his brief stint in prison, Landor was primarily housed at two facilities, St. Tammany Parish Detention Center and LaSalle Correctional Center. Both stays were relatively uneventful—each facility respected Landor's vow and allowed him to either wear his hair long or to keep it under a "rastacap." LaSalle even went as far as to *voluntarily* amend its grooming policy to allow Landor to keep his dreads. Then, after five peaceful months—and with only three weeks left in his sentence—Landor was transferred to RLCC.

Upon arrival, Landor was met by an intake guard. Acting preemptively, Landor explained that he was a practicing Rastafarian and provided proof of past religious accommodations. And, amazingly, Landor also handed the guard a copy of our decision in *Ware v. Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017), which held that Louisiana's policy of cutting the hair of Rastafarians violated RLUIPA. Unmoved by our caselaw, the guard threw Landor's papers in the trash and summoned RLCC's warden, Marcus Myers. When Myers arrived, he demanded Landor hand over documentation from his sentencing judge that corroborated his religious beliefs. When

[1] Because this arrives on appeal from a granted motion to dismiss, the facts in the complaint are taken as true. *See White v. U.S. Corr., L.L.C.*, 996 F.3d 302, 306–07 (5th Cir. 2021).

Landor couldn't instantly meet that demand, two guards carried him into another room, handcuffed him to a chair, held him down, and shaved his head.

After he served his time, Landor sued the Louisiana Department of Corrections, the prison, Myers, and the Department's Secretary, James LeBlanc, in their individual and official capacities. Landor brought claims under RLUIPA and § 1983 for violations of his First, Eighth, and Fourteenth Amendment rights. He also pleaded state law claims for negligence, intentional infliction of emotional distress, and violations of the Louisiana constitution. Below, the defendants moved to dismiss. As is relevant here, Myers and LeBlanc argued that Landor's RLUIPA claims against them in their individual capacities are barred under our precedent. The district court agreed and held that those claims were "moot as [RLUIPA] 'does not authorize a private cause of action for compensatory or punitive damages.'" Landor appeals.

II.

We review a district court's dismissal for failure to state a claim *de novo*. *Thurman v. Med. Trans. Mgmt., Inc.*, 982 F.3d 953, 955 (5th Cir. 2020). To survive a motion to dismiss, a complaint "must contain sufficient factual matter [] to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations and citation omitted). In reviewing a complaint, we "accept[] all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Thurman*, 982 F.3d at 955 (quotations and citation omitted).

On appeal, Landor maintains that RLUIPA allows litigants to recover money damages against officials in

their individual capacities.[2] That argument, however, runs squarely into one of our decisions, *Sossamon v. Lone Star State of Texas*, 560 F.3d 316 (5th Cir. 2009), *aff'd*, 563 U.S. 277 (2011) [hereinafter *Sossamon I* and *Sossamon II*, respectively]. In *Sossamon I*, we plainly held that RLUIPA does not permit suits against officers in their individual capacities, which, in turn, means claimants cannot recover monetary damages. *Sossamon I*, 560 F.3d at 329. That decision ends this case. Landor, however, advances two arguments in response: (1) a recent Supreme Court decision abrogated *Sossamon I*, and (2) alternatively, our reasoning in *Sossaman I* was flawed. We take those in turn.

A.

First, abrogation. To overcome our decision in *Sossamon I*, Landor points us to *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020). There, the Supreme Court concluded that—under the Religious Freedom Restoration Act ("RFRA")—litigants can "obtain money damages against

[2] The defendants argue that Landor forfeited this argument by filing nothing below beyond his complaint. While we agree that not pressing an argument before the district court often means it is forfeited, we generally conclude otherwise when the issue "fairly appears in the record as having been raised *or decided*." *Lampton v. Diaz*, 639 F.3d 223, 227 n.14 (5th Cir. 2011) (emphasis added) (quotations and citation omitted); *see also Walker v. S. Cent. Bell Tel. Co.*, 904 F.2d 275, 276 n.1 (5th Cir. 1990) (per curiam) ("The arguments we are considering, however, were those made by the district court in dismissing the complaint. . . . [T]here is no rule which forbids [the appellant] from urging that the grounds given by the district court for dismissing her complaint are wrong."). The defendants below insisted—and the district court agreed—that RLUIPA did not allow a suit against officials in their individual capacities for money damages. Consequently, Landor is now free to argue to the contrary, and we may hear him out.

federal officials in their individual capacities." *Id.* at 493. But that's not enough for abrogation.

Generally speaking, "for a Supreme Court decision to change our Circuit's law, it must be more than merely illuminating with respect to the case before the court"—it "must unequivocally overrule prior precedent." *Tech. Automation Servs. Corp. v. Liberty Surplus Ins. Corp.*, 673 F.3d 399, 405 (5th Cir. 2012) (cleaned up). That requires more than merely a "flawed" "interpretation of the law" by a past panel. *Jacobs v. Nat'l Drug Intel. Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008) (quotations and citation omitted). Still, it is not necessary that the Court "explicitly overrule the circuit precedent at issue, or specifically address the precise question of law at issue." *In re Bonvillian Marine Service, Inc.*, 19 F.4th 787, 792 (5th Cir. 2021). Instead, the key focus is whether "a former panel's decision has fallen unequivocally out of step with some intervening change in the law." *Id.* That includes, for example, decisions that have been "implicitly overruled [by] a subsequent Supreme Court opinion establish[ing] a rule of law inconsistent with that precedent." *Gahagan v. USCIS*, 911 F.3d 298, 302 (5th Cir. 2018) (quotations and citation omitted).

Consider *Sossamon I*. In that case, an inmate sued under RLUIPA to recover compensatory and punitive damages from several prison officials in their individual capacities. *Sossamon I*, 560 F.3d at 321, 322 & n.2. On appeal, however, we held that "an action under RLUIPA does not exist for individual-capacity claims . . . ." *Id.* at 329. We found that although RLUIPA seems to contemplate "action[s] against defendants in their individual capacities," including money damages, doctrine dictated otherwise. *Id.* at 327 & n.26. Sure, RLUIPA's language—"any other person acting under color of state law"—"mirrors the 'under color of' language in

§ 1983, which . . . creates an individual-capacity cause of action for damage." *Id.* at 328 (quoting 42 U.S.C. § 2000cc-5). But RLUIPA has other considerations at play. Unlike § 1983 or its sister statute, RFRA, RLUIPA was "enacted pursuant to Congress's Spending Clause power, not pursuant to the Section 5 power of the Fourteenth Amendment." *Id.* Spending Clause legislation "operates like a contract," so "only the grant recipient—the state—may be liable for its violation." *Id.* In other words, Spending Clause legislation does not "impose *direct* liability on a non-party to the contract between the state and the federal government." *Id.* at 329. So, "as a matter of statutory interpretation and to avoid the constitutional concerns that an alternative reading would entail," we held that RLUIPA did not permit suits against defendants in their individual capacities. *Id.*[3]

But Landor insists that we've been freed from *Sossamon I*'s shackles by the Supreme Court's decision in *Tanzin*, 141 S. Ct. 486. In *Tanzin*, the Court held that RFRA authorizes money damages against officials sued in their individual capacities. *Id.* at 493. Starting with the text, the Court emphasized that RFRA says a plaintiff can sue "official[s] (or other person[s] acting under color of law)" broadly. *Id.* at 490 (quoting 42 U.S.C. § 2000bb-2(1)). Although that is not typically what a suit against the "government" means, the Court concluded that RFRA simply expanded the horizon to include officials. *Id.* Such a conclusion was apparent from context, too. RFRA employs almost the same

[3] The court also held that even if RLUIPA created a cause of action for damages against officials in their *official* capacities, such suits were nevertheless barred by a state's sovereign immunity. *Sossamon I*, 560 F.3d at 329–31. It is this conclusion that the Supreme Court affirmed. *See generally Sossamon II*, 563 U.S. 277.

language—"person[s] acting under color of law"—as § 1983, the latter of which the Court had "long interpreted . . . to permit suits against officials in their individual capacities." *Id.* (citation omitted). Because "RFRA uses the same terminology as § 1983 in the very same field of civil rights law, it is reasonable to believe that the terminology bears a consistent meaning." *Id.* at 490–91 (quotations and citation omitted). So, like under § 1983, the Supreme Court found that plaintiffs can proceed against officials in their individual capacities under RFRA.

What, then, is the proper remedy for litigants seeking to recover against officials in their individual capacities? Money, for one. *Id.* at 493. Generally, the Court read "appropriate relief" as "'open-ended' on its face," meaning "what relief is 'appropriate' is 'inherently context dependent.'" *Id.* at 491 (quoting *Sossamon II*, 563 U.S. at 286). And, in the context of suits against government officials in their individual capacities, the Court had long blessed monetary damages as appropriate. *Id.* That was doubly true for RFRA given that it was passed to "reinstat[e]" the Court's prior, more robust protections for the "First Amendment *and* the right to vindicate those protections by a claim." *Id.* As § 1983 had always permitted damages "for clearly established violations of the First Amendment," "parties suing under RFRA must have at least the same avenues for relief against officials that they would have had" in the past. *Id.* at 492. That, of course, includes money.[4]

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[4] Not to mention, for some violations of RFRA, damages are not just "appropriate," but the "*only* form of relief that can remedy" the harm. *Tanzin*, 141 S. Ct. at 492. For some injuries—like the inability to use plane tickets or the destruction of religious property—an injunction does not, and cannot, right the wrong. *Id.*

We held that RLUIPA does not permit suits for money damages against officers in their individual capacities. The Supreme Court then held that RFRA does. So, does the latter holding abrogate our former one? We find that it does not. Reaching that decision is straightforward enough because, after all, *Sossamon I* and *Tanzin* involve *different laws*. That alone is not necessarily dispositive—"[s]ometimes a Supreme Court decision involving one statute implicitly overrules our precedent involving another statute," and "[s]ometimes it does not." *Gahagan*, 911 F.3d at 302–03 (collecting cases). But the point is made when we look to "the similarity of the issues decided." *Id.* at 303. And, *Tanzin* doesn't address, directly or indirectly, our decision in *Sossamon I*. Instead, it tackled the existence of individual damages under RFRA. 141 S. Ct. at 490. Referring to RLUIPA only as a "related statute," the unanimous Court didn't extend the holding in *Tanzin*, much less its logic, to RLUIPA. The Court's sole mention of RLUIPA differentiates the case from a prior one, *Sossamon II*. *Id.* at 492–93. That relative silence makes sense, though: RLUIPA and RFRA rely on different Congressional powers. *See Holt P. Hobbs*, 574 U.S. 352, 357 (2015) (noting RFRA's basis in the Fourteenth Amendment and RLUIPA's in the Spending and Commerce Clauses).

(citing examples). Since RFRA permits "appropriate relief," "it would be odd to construe [it] in a manner that prevents courts from awarding such relief" (especially since, noted the Court, Congress *had* restricted remedies to those in equity elsewhere). *Id.* (citing 29 U.S.C. §1132(a)(3), 42 U.S.C. § 2000e-5(g)(1), and 15 U.S.C. § 78u(d)(5)).

That distinction wasn't lost on other circuits.[5] For example, in *Mack P. Warden Loretto FCI*, the Third Circuit grappled with this distinction, too. 839 F.3d 286, 303 (3d Cir. 2016). In recognizing individual damages under RFRA, the court distinguished its prior prohibition on such a remedy under RLUIPA. *Id.* The court, in other words, was "unmoved . . . by the similarities in the text of RFRA and its sister statute, RLUIPA." *Id.*

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[5] Most other circuits' reasoning tracks ours in *Sossamon I* (*i.e.*, that because RLUIPA is Spending Clause legislation, non-recipients of funds cannot be liable). *See, e.g.*, *Washington P. Gonyea*, 731 F.3d 143, 145 (2d Cir. 2013) ("RLUIPA does not provide a cause of action against state officials in their individual capacities because the legislation was enacted pursuant to Congress' spending power . . . which allows the imposition of conditions . . . only on those parties actually receiving the state funds."); *Sharp P. Johnson*, 669 F.3d 144, 154–55 (3d Cir. 2012) ("Pennsylvania, not Defendants, was the direct recipient of any federal funds. Thus, RLUIPA cannot impose direct liability on Defendants, who were not parties to the contract created between Pennsylvania and the federal government."); *Nelson P. Miller*, 570 F.3d 868, 887–89 (7th Cir. 2009) (same); *Wood P. Yordy*, 753 F.3d 899, 904 (9th Cir. 2014) ("The statute does not authorize suits against a person in anything other than an official or governmental capacity, for it is only in that capacity that the funds are received."); *Stewart P. Beach*, 701 F.3d 1322, 1335 (10th Cir. 2012) (agreeing with *Sossamon I*); *Smith P. Allen*, 502 F.3d 1255, 1269–76 (11th Cir. 2007) (same). A couple of the other circuits advance a slightly different, but still related, line of reasoning. *Rendelman P. Rouse*, 569 F.3d 182, 187–89 (4th Cir. 2009), declined to answer whether Spending Clause legislation can impose liability on non-recipients, holding instead that either way, RLUIPA did not provide clear notice that it was doing so. *Haight P. Thompson*, 763 F.3d 554, 567–70 (6th Cir. 2014), also held that RLUIPA did not clearly impose any such liability as a condition of accepting funds, but explicitly denounced the third-party liability rational as "prov[ing] too much."

> Although the judicial relief provision in RLUIPA mirrors that in RFRA, RLUIPA was enacted pursuant to Congress's powers under the Spending Clause, thereby allowing Congress to impose certain conditions, such as civil liability, on the recipients of federal funds, such as state prison institutions. Because state officials are not direct recipients of the federal funds, and thus would have no notice of the conditions imposed on them, they cannot be held individually liable under RLUIPA. RFRA, by contrast, was enacted pursuant to Congress's powers under the [Fourteenth Amendment] and thus *does not implicate the same concerns*.

Id. at 303–04 (emphasis added).

In response, Landor insists that because RLUIPA's and RFRA's texts are almost the same, we should read RLUIPA the same way the Supreme Court read RFRA. After all, the two laws are often treated similarly. *See e.g., Burwell P. Hobby Lobby*, 573 U.S. 682, 696 n.5 (2014). But "[i]n law as in life, . . . the same words, placed in different contexts, sometimes mean different things." *Yates P. United States*, 574 U.S. 528, 537 (2015). The Supreme Court has often held "that identical language may convey varying content when used in different statutes, [and] sometimes even in different provisions of the same statute." *Id.* (collecting cases). Where "the scope of the legislative power exercised in one case is broader than that exercised in another, the meaning [of identical words] well may vary to meet the purposes of the law . . . and of the circumstances under which the language was employed." *Atlantic Cleaners & Dyers P. United States*, 286 U.S. 427, 433 (1932) (citations omitted). That's the case here. Section 5 of

the Fourteenth Amendment and the Spending Clause do not empower Congress to the same degree, and *Tanzin* does nothing to fill that gap.

In sum, we concluded in *Sossamon I* that although RLUIPA's text suggests a damages remedy, recognizing as much would run afoul of the Spending Clause. *Tanzin* doesn't change that—it addresses a different law that was enacted under a separate Congressional power with "concerns not relevant to [RLUIPA]." *Tanvir v. Tanzin*, 894 F.3d 449, 467 n.12 (2d Cir. 2018), *aff'd*, 141 S. Ct. 486 (2020). Because *Sossamon I* remains the law, Landor cannot recover monetary damages against the defendant-officials in their individual capacities under RLUIPA.

B.

Landor raises one final argument. He contends that our Spending Clause analysis in *Sossamon I* was flawed from the outset. Landor suggests that, per *Sabri v. United States*, 541 U.S. 600 (2004), "Congress has the power under the Spending Clause . . . to impose liability on officials who work" for a recipient of federal funds. But Landor's reading of *Sabri* is flawed.

In *Sabri*, a real estate developer tried to bribe a Minneapolis official to get preferential treatment in his dealings with the municipality. *Id.* at 602. When Sabri was caught, he was charged under 18 U.S.C. § 666(a)(2), or "Theft or bribery concerning receiving federal funds." *Id.* On appeal, the Supreme Court found § 666(a)(2) to be a valid exercise of Congressional authority under the Spending Clause. *Id.* at 608. Now, Landor contends that Sabri's conviction is proof positive that Congress can "bring federal power to bear directly on individuals," namely third parties who aren't privy

to a funding agreement, under the spending power. But that's an oversimplistic, expansive reading.

Sure, *Sabri* recognized that Congress has the "prerogative to protect spending objects" by targeting individuals who aren't a party to the contract. *Id.* at 608. That decision rested on a common-sense extension of the spending power—Congress can safeguard its allocated dollars from bribery, embezzlement, and "local administrators on the take." *Id.* Criminal punishments are simply a "rational means" for securing the valid use of federal funds. *Id.* at 605. From that it doesn't necessarily follow that Congress has the power to hold third-party, non-recipients (*e.g.*, employees) responsible for violating RLUIPA. As the Court said itself, Congress may impose criminal liability on those "who convert public spending into unearned private gain." *Id.* at 608. Landor's situation, both legally and factually, simply isn't comparable. *Sabri* involved criminal liability for a person who directly threatened the "object" of a spending agreement, namely federal dollars, while Landor is a civil case that's based on conduct unrelated to the federal purse. The Third Circuit similarly recognized the limits of *Sabri* in an RLUIPA case.

> Sharp's reliance on [*Sabri*] for the proposition that Congress may regulate the actions of third parties under the Spending Clause, is misplaced. In *Sabri*, Congress enacted the statute at issue, 18 U.S.C. § 666(a)(2), pursuant to its powers under the Spending and the Necessary and Proper Clauses to protect its expenditures against local bribery and corruption. Here, however, Congress did not enact RLUIPA to protect its own expenditures, but rather it enacted RLUIPA to

> protect the religious rights of institutionalized persons. Thus, *Sabri* is inapposite.

Sharp P. Johnson, 669 F.3d 144, 155 n.15 (3d Cir. 2012) (citation omitted).

The Ninth Circuit, too, has employed likeminded reasoning. In *Wood P. Yordy*, the plaintiff argued that *Sabri* "means defendants in a civil damage action under RLUIPA need not be recipients of federal funds." 753 F.3d at 903. The Ninth Circuit—emphasizing the need to monitor monetary disbursements under the spending power—found that wasn't "a sensible conclusion." *Id.* In sum, as the Sixth Circuit found, "RLUIPA is nothing like the *Sabri* statute." *Haight*, 763 F.3d at 570. We agree.

III.

We *emphatically* condemn the treatment that Landor endured. Still, we remain bound by our prior decision in *Sossamon I* that, under RLUIPA, he cannot seek money damages from officials in their individual capacities. *In re Bonvillian*, 19 F.4th at 792 (the rule of orderliness). Because the district court correctly held so, we AFFIRM.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION NO. 21-733-SDD-SDJ

DAMON LANDOR

versus

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, *et al.*

RULING

Before the Court is the Motion to Dismiss filed on behalf of defendants James LeBlanc, Louisiana Department of Corrections & Public Safety, and Marcus Meyers (R. Doc. 19). The Motion is not opposed.

Pro se plaintiff, an inmate formerly confined at the Raymond Laborde Correctional Center ("RLCC"), filed this action pursuant to 42 U.S.C. § 1983 against the moving defendants, RLCC, John Does 1-10, and ABC Entities 1-10 complaining that his constitutional rights were violated when his hair was forcibly cut in violation of his religious beliefs. He seeks monetary, declaratory, and injunctive relief.

The defendants assert, *inter alia*, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, that the plaintiff has failed to state a claim upon which relief may be granted. In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court clarified the standard of pleading that a plaintiff must meet in

order to survive a motion to dismiss pursuant to Rule 12(b)(6). Specifically, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, *supra*, at 555. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, *supra*, 556 U.S. at 678, *quoting Bell Atlantic Corp. v. Twombly*, *supra*. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. It follows that, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id*. at 679. "Where a Complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id*. at 678 (internal quotation marks omitted).

On a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court "must accept as true all of the factual allegations contained in the Complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The court need not accept "a legal conclusion couched as a factual allegation," *Papasan v. Allain*, 478 U.S. 265, 286 (1986), or "naked assertions [of unlawful conduct] devoid of further factual enhancement." *Ashcroft v. Iqbal*, *supra*, 556 U.S. at 678 (internal quotation marks omitted).

In his Complaint, the plaintiff alleges that he is a practicing Rastafarian, and in accordance with his religion he does not cut his hair. As a result, his hair grew into long locks over a period of 20 years. Upon transfer to the Raymond Laborde Correctional Center,

on December 28, 2020, the plaintiff informed a guard and Warden Marcus Meyers that he was a practicing Rastafarian and that he maintained long hair in accordance with his religious beliefs. Warden Meyers instructed officers to escort the plaintiff into a room where he was placed in a chair, handcuffed, and held down by two officers while his head was shaved bald. The plaintiff was released on January 20, 2021 and has started to regrow his locks.

RLUIPA

As an initial matter, upon his release from confinement on January 20, 2021, the plaintiff's claims for declaratory and injunctive relief became moot. *See Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001). Likewise, the plaintiff's claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA), are moot as that statute "does not authorize a private cause of action for compensatory or punitive damages." *Coleman v. Lincoln Par. Det. Ctr.*, 858 F.3d 307, 309 (5th Cir. 2017). As such, any claims that the plaintiff seeks to raise under it are rendered moot by his release. *See Hoffman v. Thaler*, 539 F. App'x. 507 (5th Cir. 2013) and *Morgan v. Patterson*, 772 F. App'x. 117 (5th Cir. 2019) (affirming dismissal of RLUIPA claims rendered moot by release from custody).

First Amendment

With regards to the plaintiff's First Amendment claims, a prison policy or practice will not be found unconstitutional if it is reasonably related to a legitimate penological objective of the facility. *Hay v. Waldron*, 834 F.2d 481, 487–87 (5th Cir. 1987). This general statement of the law has been upheld when a regulation prevented a group of Muslim inmates from attending Jumu'ah, the central religious ceremony of

the Muslim faith, similar to Christian Sunday services or Saturday services of the Jewish faith. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 360 (1987). This rule has also been applied to regulations that required Rastafarians to cut their hair, even though keeping one's hair unshorn and unwashed is a tenet of the Rastafari religion. *See Scott v. Mississippi Dept. of Corrections*, 961 F.2d 77 (5th Cir. 1992), and *Hicks v. Garner*, 69 F.3d 22, 25 (5th Cir. 1995). As to the plaintiff's First Amendment claims, *Scott* and *Hicks* are controlling. *See also Hadley v. River Bend Detention Center,* 771 F. App'x. 560 (5th Cir. 2019) (affirming dismissal of plaintiff's First Amendment claim for the forced cutting of his hair in violation of his religious beliefs). Accordingly, the plaintiff's allegations in this regard fail to state a claim.

Failure to Train or Supervise

With regards to the plaintiff's claims of supervisory liability, the Fifth Circuit has instructed that to hold a defendant supervisor liable on a theory of failure to train or supervise, the plaintiff must show that (1) the supervisor either failed to supervise or train the subordinate official, (2) a causal link exists between the failure to train or supervise and the violation of the plaintiffs rights; and (3) the failure to train or supervise amounts to deliberate indifference. *Brauner v. Coody*, 793 F.3d 493, 501 (5th Cir. 2015). Conclusory allegations of failure to train or supervise are insufficient to set out a constitutional claim. *Roberts v. City of Shreveport*, 397 F.3d 287, 292 (5th Cir. 2005). "Proof of more than a single instance of the lack of training or supervision causing a violation of constitutional rights is normally required before such lack of training or supervision constitutes deliberate indifference."

Thompson v. Upshur County, 245 F.3d 447, 459 (5th Cir. 2010).

A supervisory official is deliberately indifferent only when the inadequate training is so obvious that a constitutional violation would almost always result. *Sewell v. LeBlanc*, No. 11-780, 2012 WL 528217, at *3 (M.D. La. Jan. 26, 2012), *report and recommendation adopted*, 2012 WL 528197 (M.D. La. Feb. 16, 2012). Indeed, a plaintiff alleging a failure to train must show a pattern of similar violations. *Thompson*, 245 F.3d at 459; *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005). In the instant matter, the plaintiff has not alleged a viable violation of his constitutional rights, nor has the plaintiff alleged with specificity a pattern of similar violations such that the alleged inadequate training was so obvious that a constitutional violation would almost always result. As such, the plaintiff has failed to state a claim for supervisory liability for failure to train or supervise.

Eighth Amendment

Conditions of Confinement

Turning to the plaintiff's claims asserted under the Eighth Amendment, the prohibition against cruel and unusual punishment mandates that prisoners be afforded humane conditions of confinement and that they receive adequate food, shelter, clothing, and medical care. *Herman v. Holiday*, 238 F.3d 660, 664 (5th Cir. 2001). However, a constitutional violation occurs only when two requirements are met. First, there is the objective requirement that the condition "must be so serious as to 'deprive prisoners of the minimal civilized measure of life's necessities,' as when it denies the prisoner some basic human need."

Harris v. Angelina County, Texas, 31 F.3d 331, 334 (5th Cir. 1994)(citing *Wilson v. Seiter*, *supra,* 501 U.S. at 304). Second, under a subjective standard, the Court must determine that the prison officials responsible for the deprivation have been "deliberately indifferent to inmate health or safety." *Farmer v. Brennan,* 511 U.S. 825, 837 (1994); *Woods v. Edwards*, 51 F.3d 577, 581 (5th Cir. 1995).

The plaintiff's claim is governed by the First rather than the Eighth Amendment. *See Cnty. of Sacramento v. Lewis,* 523 U.S. 833, 842 (1998). Even if the plaintiff's allegations stated viable Eighth Amendment claims, the claims would not be separate from his First Amendment claims. In a federal civil rights action under § 1983, when a claim arises under multiple constitutional provisions, a court should analyze the claim under the most applicable constitutional provision. *See Graham v. Connor,* 490 U.S. 386, 394–95 (1989). As Plaintiff's claims concern his right to exercise his religious beliefs, the First Amendment standard is the appropriate standard. *See Pittman-Bey v. Celum*, 557 F. App'x 310 (5th Cir. 2014) (finding that the First Amendment is appropriate standard to analyze plaintiff's claim for failure to provide religious diet and concluding that the Magistrate Judge did not err in dismissing the plaintiff's Eighth Amendment claims).

Moreover, the inability to participate in a religious practice does not constitute the deprivation of a basic human need or life necessity. *See Rhodes v. Chapman*, 452 U.S. at 347 (1981) (To satisfy the objective component of an Eighth Amendment claim, a prisoner must demonstrate that his or her conditions of confinement alone or in combination resulted in "unquestioned and serious deprivations of basic human needs" or "deprive[d] [him or her] of the minimal civilized measures of life's

necessities."). There is no indication that Defendants' conduct and/or policies, as they impacted Plaintiff's exercise of his religious beliefs, resulted in a sufficiently serious deprivation of a basic human need such that an Eighth Amendment violation is implicated.

State Law Claims

Finally, with regards to the plaintiff's allegations seeking to invoke the supplemental jurisdiction of this Court over potential state law claims, a district court is authorized to decline the exercise of supplemental jurisdiction if a plaintiff's state law claims raise novel or complex issues of state law, if the claims would substantially predominate over the claims over which the Court has original jurisdiction, if the Court has dismissed all claims over which it had original jurisdiction, or for other compelling reasons. 28 U.S.C. § 1367. In the instant case, having recommended dismissal of the plaintiff's federal claims, the Court declines supplemental jurisdiction over plaintiff's potential state law claims. Accordingly, having found that the plaintiff has failed to state a claim upon which relief may be granted,

IT IS ORDERED that the Motion to Dismiss (R. Doc. 19) is GRANTED.

IT IS FURTHER ORDERED that this matter is DISMISSED, with prejudice. Judgment shall be entered accordingly.

Signed in Baton Rouge, Louisiana, on September 29, 2022.

/s/ Shelly D. Dick
CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-30686

DAMON LANDOR,

Plaintiff—Appellant,

versus

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,

Defendants—Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:21-CV-733

ON PETITION FOR REHEARING EN BANC

Before CLEMENT, GRAVES, and HIGGINSON, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and

a majority did not vote in favor of rehearing (FED. R. APP. P. 35 and 5TH CIR. R. 35).

In the en banc poll, six judges voted in favor of rehearing (SMITH, ELROD, WILLETT, HO, DUNCAN, and OLDHAM), and eleven voted against rehearing (RICHMAN, JONES, STEWART, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, ENGELHARDT, WILSON, DOUGLAS, and RAMIREZ).

EDITH BROWN CLEMENT, *Circuit Judge*, joined by JONES, STEWART, GRAVES, HIGGINSON, ENGELHARDT, WILSON, DOUGLAS, and RAMIREZ, *Circuit Judges*, concurring in the denial of rehearing en banc.

Officials at the Raymond Laborde Correctional Center knowingly violated Damon Landor's rights in a stark and egregious manner, literally throwing in the trash our opinion holding that Louisiana's policy of cutting Rastafarians' hair violated the Religious Land Use and Institutionalized Persons Act before pinning Landor down and shaving his head. Landor clearly suffered a grave legal wrong. The question is whether a damages remedy is available to him under RLUIPA. That is a question only the Supreme Court can answer.

* * *

In determining whether RLUIPA permits Landor to recover money damages against state government officials in their individual capacities, the panel was bound to follow *Sossamon v. Lone Star State of Texas*, which answered that question in the negative. 560 F.3d 316, 328–29 (5th Cir. 2009) (*Sossamon I*). The en banc court, of course, would have been free to overrule that opinion.[1] But overruling *Sossamon I* was only a

[1] Although doing so would have required us to determine that the Spending Clause permits Congress to impose liability on the non-recipients of federal funds, not just the recipients (*i.e.*, the states) themselves when the Supreme Court—which often analyzes Spending Clause legislation using a contract law analogy—has never stretched the analogy that far. *See Barnes v. Gorman*, 536 U.S. 181, 187 (2002) (holding that a *direct recipient* of federal funds may be held liable for intentional conduct that violates the clear terms of a Spending Clause statute); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022) ("[W]e employ the contract analogy only as a potential limitation on liability

necessary, not sufficient, condition for affording Landor a cause of action.

Had we overruled *Sossamon I* en banc, we would have then needed to address the question that *Sossamon I* declined to answer—is RLUIPA's "appropriate relief" language sufficiently clear to put the state and/or its employees on notice that the employees can personally be held liable for monetary damages? There, we would have run into the Supreme Court's decision in *Sossamon II,* which held that, at least in the context of state employees sued in their *official* capacities, RLUIPA did *not* clearly allow for monetary damages. *Sossamon v. Texas*, 563 U.S. 277, 285–86 (2011). To be sure, the Supreme Court has now made clear that, at least in the RFRA context, "appropriate relief" includes monetary damages against federal officials in their individual capacities. *Tanzin v. Tanvir*, 592 U.S. 43, 45 (2020). But threading the needle between *Sossamon II* and *Tanzin* is a task best reserved for the court that wrote those opinions. *Cf. Lefebure v. D'Aquilla*, 15 F.4th 650, 660 (5th Cir. 2021) ("[T]he only court that can overturn a Supreme Court precedent is the Supreme Court itself.").

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compared to that which would exist under nonspending statutes." (internal quotation marks, citation, and emphasis omitted)).

ANDREW S. OLDHAM, *Circuit Judge*, joined by SMITH, ELROD, WILLETT, HO[*], and DUNCAN, *Circuit Judges*, dissenting from the denial of rehearing en banc:

This case concerns remedies against state prison officials who intentionally ignore federal protections for the free exercise of religion. In *Ware v. Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017), we held the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") prevented Louisiana from forcing Rastafarians to cut their dreadlocks. Damon Landor, a faithful Rastafarian, handed a copy of our *Ware* decision to Louisiana state prison officials—who threw the opinion in the trash and forcibly shaved Landor's head. An injunction obviously would not help the then-bald Landor. So he sued his abusers for money damages under RLUIPA. Inexplicably, he lost. And doubly inexplicably, our en banc court cannot be moved to rehear the case. The panel held RLUIPA does not allow prisoners to sue state prison officials in their individual capacities for money damages. With all due respect to my esteemed and learned colleagues, that result cannot be squared with *Tanzin v. Tanvir*, 592 U.S. 43 (2020). *Tanzin* held that individuals can sue for money damages under the Religious Freedom Restoration Act of 1993 ("RFRA"). The operative provisions of RFRA and RLUIPA are *in haec verba*, and both the Supreme Court and ours routinely interpret the statutes in parallel. Today, unfortunately for Landor, our court pits the statutes against one another. I respectfully dissent.

I.

Damon Landor is a faithful Rastafarian. In adherence to his religious beliefs, he abides by the Nazarite Vow

[*] Judge Ho concurs only in Parts I and II of this opinion.

(the biblical oath also taken by Samson in the book of Judges). A man who takes the Nazarite Vow must abstain from wine and other alcohol. *See Numbers* 6:2–4. He must also not cut his hair. *See Numbers* 6:5. Landor did not cut his hair for almost two decades. At its longest, Landor's locks fell nearly to his knees.

Beginning in August 2020, Landor was incarcerated for five months in three different Louisiana state prisons. State officials at the first two prisons accommodated Landor's religious beliefs, allowing him to wear a rastacap over his long hair.

But on December 28, 2020, three weeks before his ultimate release from prison, Landor was transferred to Raymond Laborde Correctional Center ("RLCC"). Landor informed the intake guard that he was a practicing Rastafarian and presented the guard with various legal materials regarding his religious accommodations. Of note, Landor included in his materials a copy of our RLUIPA decision in *Ware*.

The intake guard threw Landor's materials, including the *Ware* decision, in the trash. The guard then summoned the RLCC warden, who asked Landor if he had documentation about his religious beliefs from his sentencing judge. Landor lacked that specific documentation but offered to contact his lawyer to obtain those materials. In response, the warden glibly quipped that it was "[t]oo late for that." The warden instructed prison guards to escort Landor to another room, where Landor was forcibly handcuffed to a chair. As two guards held Landor down, another individual shaved his head to the scalp.

Upon release from prison, Landor sued several defendants, including the Louisiana Department of Public Safety and Corrections, the Department's

Secretary, RLCC, and the RLCC warden. As relevant to this appeal, Landor brought claims under RLUIPA for money damages against several Louisiana state officials in their individual capacities. The district court rejected his RLUIPA claims for money damages at the motion to dismiss stage, *Landor v. La. Dep't of Corrs. & Pub. Safety*, 2022 WL 4593085, at *2 (M.D. La. Sept. 29, 2022), and a panel of this court affirmed that decision, *Landor P. La. Dep't of Corrs. & Pub. Safety*, 82 F.4th 337 (5th Cir. 2023).

II.

No one can reasonably debate that the prison officials violated Landor's rights under RLUIPA. We so held in *Ware*, and no one has suggested we should revisit that decision. The only divide is over the scope of remedies. In my view, (A) RLUIPA provides a cause of action for money damages against state officials in their individual capacities. And (B) the panel's contrary arguments are unpersuasive.

A.

RLUIPA authorizes a person to "assert a violation of this chapter as a claim . . . in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). A "violation of this chapter" refers to RLUIPA's prohibition against the government's imposition of a substantial burden on "the religious exercise of a person residing in or confined to an institution," unless the government demonstrates that the burden is the least restrictive means of furthering a compelling state interest. *See ibid.*; *see also id.* § 1997(1) (defining institution to include jails, prisons, pretrial detention facilities, and government nursing homes). RLUIPA itself defines the term "government" to include state officials. *See id.* § 2000cc-5(4)(A)(ii).

As for obtaining "appropriate relief against a government," the Supreme Court recently clarified the meaning of that phrase. In *Tanzin*, the Court interpreted the exact same phrase as it appears in RFRA. *See* 42 U.S.C. § 2000bb-1(c). The *Tanzin* Court held 8–0 that "appropriate relief against a government" includes damages actions against government officials in their individual capacities. 592 U.S. at 52.

The Supreme Court's interpretation of RFRA in *Tanzin* should be dispositive of our interpretation of RLUIPA in this case. Over and over again, the Court has called RLUIPA and RFRA "sister" or "twin" statutes. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014) ("sister"); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) ("sister"); *Ramirez v. Collier*, 595 U.S. 411, 424 (2022) ("sister"); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2396 n.13 (2020) (Alito, J., joined by Gorsuch, J., concurring) ("twin"). And the Court has repeatedly interpreted one statute by looking to its precedent interpreting the other. *See Hobby Lobby*, 573 U.S. at 718, 730 (looking to RLUIPA to interpret RFRA); *Holt*, 574 U.S. at 362–63, 364 (looking to RFRA precedents to interpret RLUIPA); *Ramirez*, 595 U.S. at 425, 427 (looking to RFRA precedents to interpret RLUIPA); *see also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (looking to RLUIPA's application to predict RFRA's); *Sossamon v. Texas ("Sossamon II")*, 563 U.S. 277, 286 n.5, 289 n.6 (2011) (weighing the lower courts' interpretation of a parallel RFRA phrase to assess notice of monetary liability in an RLUIPA case).

In short, not only is the relevant text in RLUIPA identical to that in RFRA, but Supreme Court precedent also commands us to interpret the two

statutes in tandem. Given *Tanzin*, RLUIPA (like RFRA) authorizes damages suits against state officials.

B.

Against this straightforward application of Supreme Court precedent, the panel offered three counterarguments: (1) RLUIPA and RFRA are different statutes with different constitutional justifications; (2) constitutional avoidance; and (3) precedent from our sister circuits. All three are unpersuasive.

1.

First, the panel distinguished *Tanzin* by pointing to the different constitutional justifications for RLUIPA and RFRA. *See Landor*, 82 F.4th at 342–43 ("[A]fter all, [*Sossamon P. Lone Star State of Texas ("Sossamon I")*, 560 F.3d 316 (5th Cir. 2009),] and *Tanzin* involve *different laws*."). RFRA applies to the federal government pursuant to Congress's various enumerated powers,[1] whereas RLUIPA applies to the States under

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[1] The Supreme Court has never been clear about the justification for RFRA as applied to the federal government. But Michael Stokes Paulsen provides this explanation:

> Congress possesses the same power to pass RFRA, as RFRA concerns federal statutes, as it had to pass those other federal statutes in the first place. If Congress had power to pass a statute to begin with, Congress has power to modify it by enacting RFRA . . . . RFRA operates as a sweeping "super-statute," cutting across all other federal statutes (now and future, unless specifically exempted) and modifying their reach. RFRA qualifies Congress' regulations of commerce, of defense, of the post office, of immigration, of bankruptcy, of federal lands, and so on.

Michael Stokes Paulsen, *A RFRA Runs Through It: Religious Freedom and the U.S. Code*, 56 MONT. L. REV. 249, 253 (1995) (internal citations omitted).

Congress's Spending and Commerce powers. The panel then focused on the Spending Clause. "Spending Clause legislation 'operates like a contract,' so 'only the grant recipient—the state—may be liable for its violation.'" *Landor*, 82 F.4th at 341 (quoting *Sossamon I*, 560 F.3d at 328). Thus, the panel held, RLUIPA cannot be used to hold non-grant-recipient state officials personally liable for free-exercise violations.

This is incorrect for two reasons. First, it is true that Spending Clause legislation is in a sense contractual: Congress agrees to pay if the recipient performs. But it is not true that the Spending Clause prohibits regulating anyone beyond the recipient. That is presumably why the panel recognized that Congress *can* regulate "individuals who aren't party to the contract." *Landor*, 82 F.4th at 344 (citing *Sabri P. United States*, 541 U.S. 600, 608 (2004)). Otherwise, how could Congress have required the States receiving federal highway funds to pass criminal laws regulating the behavior of underage individuals? *See South Dakota P. Dole*, 483 U.S. 203 (1987). South Dakotan 19-year-olds weren't parties to the Spending Clause contract in *Dole*. *See* 23 U.S.C. § 158 (1982 ed., Supp. III). If South Dakota can agree to criminalize the behavior of its 19-year-old bourbon enthusiasts, it's unclear why Louisiana cannot agree to make its prison officials liable for forcibly shaving Damon Landor's head.[2]

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[2] Nor would this provision of RLUIPA be unique in submitting such individuals to liability. For example, the Emergency Medical Treatment and Active Labor Act of 1986 regulates activities in hospitals that accept federal funds. Doctors in those hospitals who violate certain provisions related to patient treatment are subject to a civil penalty of not more than $50,000, even though they did not agree to the Spending Clause "contract." *See* 42 U.S.C. § 1395dd(d)(1)(B).

Second, as best outlined in *Dole*, Congress's spending power is subject to four general restrictions: Spending Clause legislation must (1) be in pursuit of the general welfare, (2) impose unambiguous conditions on the grant of federal money, which (3) are related to the federal interest in particular national projects or programs, and (4) do not violate other provisions of the Constitution. *See Dole*, 483 U.S. at 207–08. RLUIPA's provision for individual official liability complies with these restrictions.

Courts generally defer to Congress on whether (1) a "particular expenditure is intended to serve general public purposes." *Id.* at 207 (citation omitted). RLUIPA was broadly intended to protect prisoners' religious exercise rights. *See Cutter P. Wilkinson*, 544 U.S. 709, 716–17 (2005). And it cannot be seriously disputed that making individual officials liable for violating religious exercise rights serves the same general public purpose. With respect to (2) unambiguous conditions, the States had "clear notice" of this Spending Clause condition. *Cf. Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 295–96 (2006). Note that this is not a case where the "statutes at issue are silent to available remedies." *Cf. Cummings v. Premier Rehab Keller, PLLC*, 596 U.S. 212, 220 (2022). The remedies are discussed in RLUIPA's text, which (again) is materially identical to RFRA's. As applied to suits against individual officials and as understood by an ordinary person at the time of RFRA's enactment, the remedy of "appropriate relief" plainly encompassed money damages, as the Supreme Court unanimously held. *See Tanzin*, 592 U.S. at 50–52. The condition of personal liability is (3) reasonably related to the purpose of the expenditure. *Cf. New York v. United States*, 505 U.S. 144, 172 (1992). If RLUIPA aims to protect free exercise in prison, then monetary liability

for state officials should deter government misconduct and protect religious exercise.[3] Finally, RLUIPA's provision for state official liability does not (4) violate other provisions of the Constitution. The provision is not unduly coercive, nor is it the kind of "economic dragooning that leaves the States with no real option but to acquiesce." *See NFIB v. Sebelius*, 567 U.S. 519, 582 (2012). Thus, as a condition on Spending Clause legislation, this provision of RLUIPA is constitutional.

The import of *Tanzin* in this case is undeniable. And RLUIPA's authorization under the Spending Clause does nothing to change that.

2.

But what about constitutional avoidance? In *Sossamon I*, the panel chose a narrow reading of RLUIPA's remedial provision to "avoid the constitutional concerns that an alternative reading would entail." 560 F.3d at 329.

Whatever its merits back in 2009, that choice is now foreclosed. *Tanzin* unanimously held that "appropriate relief against a government" includes money damages against individual officials. *See* 592 U.S. at 50–52. This interpretation of RFRA was supported by the text, *see id.* at 48–49, the historical context, *see id.* at 49–50,

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[3] As multiple amici discuss, money damages are often necessary to vindicate rights under RLUIPA. Money damages "raise the price of unlawful conduct and make it less attractive to potential wrongdoers," *see* Brief of Amici Curiae 19 Religious Organizations in Support of Appellant's Petition for Rehearing En Banc at 6, and are particularly important where prisons can moot claims for injunctive or declaratory relief through release or transfer. *See* Brief of Amici Curiae Bruderhof, Clear, the Jewish Coalition for Religious Liberty, and the Sikh Coalition in Support of Appellant's Petition for Rehearing En Banc at 4–6.

and policy reasons, *see id.* at 51. *Tanzin* thus compels us to reject the argument that the relevant portion of RLUIPA (a "sister" or "twin" statute to RFRA) is ambiguous. And while constitutional avoidance is a powerful substantive canon, *see, e.g.*, *Bond P. United States*, 572 U.S. 844 (2014), it cannot be invoked where there is no ambiguity. This is especially true where, as shown above, there are no constitutional concerns with the correct reading of RLUIPA.

3.

But what about the reasoning of our sister circuits? The panel noted that the approach in *Sossamon I* was consistent with other circuits' decisions. *See Landor*, 82 F.4th at 343 n.5 (listing authorities). But again, I am not sure that works after *Tanzin*.

Few of these decisions applied the *Dole* four-part framework, relying instead on constitutional avoidance (off the table after *Tanzin*), *see, e.g.*, *Washington P. Gonyea*, 731 F.3d 143, 146 (2d Cir. 2013); *Nelson P. Miller*, 570 F.3d 868, 889 (7th Cir. 2009), or holding (incorrectly) that Congress cannot use the Spending Power to regulate individuals who were not party to the imagined contract, *see, e.g.*, *Wood v. Yordy*, 753 F.3d 899, 903–04 (9th Cir. 2014); *Stewart v. Beach*, 701 F.3d 1322, 1335 (10th Cir. 2012). The circuits that actually analyzed this RLUIPA provision under *Dole* held that there was insufficiently clear notice of the condition. *See Haight v. Thompson*, 763 F.3d 554, 568–70 (6th Cir. 2014); *Rendelman v. Rouse*, 569 F.3d 182, 188–89 (4th Cir. 2009). But those decisions came before *Tanzin*, which obviates any argument about clear notice and the phrase "appropriate relief against a government." All of this is to say that no circuit has squarely considered the impact of *Tanzin* within a comprehensive analysis of the Spending Clause and *Dole*.

* * *

Last term, the Supreme Court decided a case about § 1983 and Spending Clause legislation. *See Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166 (2023). The petitioners urged the Court to adopt a kind of Spending Clause exceptionalism and to carve out statutes passed under that Clause for disfavored treatment under § 1983. *See id.* at 177–78. The Court rejected that argument, *see id.* at 178–80, choosing instead to follow the traditional principles announced in *Gonzaga v. Doe*, 536 U.S. 273 (2002). *See Talevski*, 599 U.S. at 180–92.

Here too, the panel and the state officers advocate a kind of Spending Clause exceptionalism. No matter that *Tanzin* interpreted the exact same phrase in RFRA, the reasoning goes, because RLUIPA is a Spending Clause statute, and Spending Clause statutes are somehow second-class laws. Moreover, the thinking appears to be, we need not do the work required by *Dole* because our sister circuits haven't. And because if we're wrong, the Supreme Court can tell us.

It is certainly true that the Supreme Court could fix the mistake we made today. But the Court could also fix every mistake we attempt to fix under Federal Rule of Appellate Procedure 35. We have the en banc process to fix errors like the one we made in *Sossamon I*. I regret we chose not to do so.

JAMES C. HO, *Circuit Judge*, joined by ELROD, *Circuit Judge*, dissenting from denial of rehearing en banc:

Like the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act of 2000 authorizes courts to grant "appropriate relief against a government." 42 U.S.C. § 2000cc–2(a). *See also* 42 U.S.C. § 2000bb–1(c) (same).

Does "appropriate relief" mean that a person can sue under RLUIPA for money damages against government officials? Before we can answer this question, there are two Supreme Court precedents we must consider.

In *Sossamon P. Texas*, 563 U.S. 277 (2011), the Supreme Court held that "appropriate relief" does not include actions for money damages under RLUIPA—at least when it comes to suits against a *State*.

But the Court's analysis made clear that that's only because States enjoy sovereign immunity.

As *Sossamon* explained, "RLUIPA's authorization of 'appropriate relief against a government' is not the unequivocal expression of state consent that our precedents require. 'Appropriate relief' does not so clearly and unambiguously waive sovereign immunity to private suits for damages that we can be certain that the State in fact consents to such a suit." *Id.* at 285–86 (cleaned up). "The requirement of a clear statement in the text of the statute ensures that Congress has specifically considered state sovereign immunity and has intentionally legislated on the matter. Without such a clear statement from Congress and notice to the States, federal courts may not step in and abrogate state sovereign immunity." *Id.* at 290–91 (citation omitted).

Individuals, by contrast, do not enjoy sovereign immunity. So *Sossamon* should have no bearing on suits against individual officers in their individual capacities.

Indeed, that's precisely what the Court held in *Tanzin v. Tanvir*, 592 U.S. 43 (2020). In *Tanzin*, the Court concluded that "appropriate relief against a government" includes actions for money damages under RFRA against government officials in their individual capacities. *See id.* at 45 ("The Religious Freedom Restoration Act of 1993 (RFRA) . . . gives a person whose religious exercise has been unlawfully burdened the right to seek 'appropriate relief.' The question here is whether 'appropriate relief' includes claims for money damages against Government officials in their individual capacities. We hold that it does."); *see also id.* at 52 ("RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities.").

In reaching this conclusion, the Court expressly distinguished *Sossamon*. It held that *Sossamon* does not apply to suits against individuals, because unlike States, individuals "do not enjoy sovereign immunity." *Id*. at 52. As *Tanzin* explained, "*Sossamon* held that a State's acceptance of federal funding did not waive sovereign immunity to suits for damages under [RLUIPA] which also permits 'appropriate relief.' *The obvious difference is that this case features a suit against individuals, who do not enjoy sovereign immunity.*" *Id*. at 51–52 (citation omitted, emphasis added).

Accordingly, I agree with Judge Oldham's typically thoughtful dissent that we should've reheard this case en banc.

APPENDIX D

Constitutional and statutory provisions

U.S. Const. Art. I § 8, cl. 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

U.S. Const. Art. I § 8, cl. 18

The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

42 U.S.C. 2000cc

Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the govern-

ment to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C. 2000cc-1

Protection of religious exercise of institutionalized persons

(a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application

This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

42 U.S.C. 2000cc-2

Judicial relief

(a) Cause of action

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.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

42 U.S.C. 2000cc-3

Rules of construction

(a) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected

Nothing in this chapter shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

This chapter 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.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

42 U.S.C. 2000cc-4

Establishment Clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

42 U.S.C. 2000cc-5

Definitions

In this chapter:

(1) Claimant

The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term "government"—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or

official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

42 U.S.C. 2000bb

Congressional findings and declaration of purposes

(a) Findings

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

42 U.S.C. 2000bb-1

Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

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-2

Definitions

As used in this chapter—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term "covered entity" means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means religious exercise, as defined in section 2000cc-5 of this title.

42 U.S.C. 2000bb-3

Applicability

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

42 U.S.C. 2000bb-4

Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

42 U.S.C. 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.