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For The Eighth Circuit
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November 30, 2023

Mr. Adeel Abdullah Mangi
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RE: 23-1066 Dewey Barnett, II v. Brenda Short, et al

Dear Mr. Adeel Abdullah Mangi:

The amicus curiae brief of the amicus 26 Religious Organizations in support of the appellant has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

Michael E. Gans
Clerk of Court

BNW

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District Court/Agency Case Number(s): 4:22-cv-00708-SEP

23-1066

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

DEWEY AUSTIN BARNETT, II,

Plaintiff-Appellant,

—v.—

BRENDA SHORT; CHRISTOPHER RULO; JEFFERSON COUNTY JAIL,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF OF *AMICI CURIAE* 26 RELIGIOUS ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLANT AND SUPPORTING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* certify that none of *amici* have any parent corporations and that no publicly held company owns 10% or greater ownership in any of *amici*.

Date: November 20, 2023

/s/ Adeel A. Mangi
ADEEL A. MANGI

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INTEREST OF *AMICI CURIAE*[1]

Amici are American religious or religiously affiliated organizations representing a wide array of faiths and denominations. Led by the Muslim Bar Association of New York, *amici* include congregations and houses of worship, as well as professional groups that work with or represent faith communities ("Religious Organizations"). As such, *amici* have an interest in ensuring that the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") is properly interpreted to allow anyone whose religious freedom has been unlawfully burdened to seek the full range of remedies authorized by the statute, including money damages against individual officers.

As explained further below, absent such damages, RLUIPA violations in state and local institutions have gone entirely unremedied. *Amici* have a clear interest in ensuring that robust enforcement mechanisms are in place to prevent RLUIPA from becoming an empty promise.

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[1] Consistent with Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, has contributed money that was intended to fund preparing or submitting this brief.

Amici are identified here by name, with a fuller description of their identities and interests attached to this brief as Appendix A: American Association of Jewish Lawyers and Jurists; Campus Ministry of Roman Catholic Archdiocese of New York at Hostos and Bronx Community College of City University of New York; Capital Area Muslim Bar Association; Central Conference of American Rabbis; Council on American-Islamic Relations – Michigan Chapter; East End Temple; El Paso Monthly Meeting of the Religious Society of Friends; the Episcopal Diocese of Long Island; Islamic Society of Central Jersey; Men of Reform Judaism; Muslim Advocates; Muslim Bar Association of New York; Muslims for Progressive Values; Muslim Public Affairs Council; Muslim Urban Professionals; National Association of Muslim Lawyers; National Council of Jewish Women; Peace and Social Justice Committee of the Santa Fe Monthly Meeting of Friends; Sikh Coalition; Society for the Advancement of Judaism; T'ruah: The Rabbinic Call for Human Rights; Union Theological Seminary; Union for Reform Judaism; Unitarian Universalist Mass Action Network; Unitarian Universalist Service Committee; Women of Reform Judaism.

SUMMARY OF ARGUMENT

Amici, religious and religiously-affiliated organizations of numerous faiths and denominations, have a unique appreciation of the potential dangers posed to disfavored religious groups by government officials. This danger has been ever-present throughout American history, even as the identities of the disfavored religious groups have changed over time.

Congress has recognized the vulnerability of religious adherents to government hostility, and enshrined broad protections of religious liberty in two related statutes: the Religious Freedom Restoration Act of 1993 ("RFRA") and RLUIPA. RFRA, which was enacted in response to the Supreme Court's decision in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), prohibits the federal government from imposing any substantial burden on the free exercise of religion unless such burden furthers "a compelling governmental interest" and is "the least restrictive means" of doing so. RFRA further establishes a federal cause of action to obtain "appropriate relief" for any violation of the statute. In *Tanzin v. Tanvir*, 141 S. Ct. 486, 492 (2020),

the Supreme Court made clear that, for RFRA, such "appropriate relief" includes damages against federal officials in their individual capacities.

That reasoning applies equally to damages against officials in their individual capacities under RLUIPA, which includes the same "appropriate relief" language as RFRA. RLUIPA was enacted in 2000 after the Supreme Court invalidated RFRA in part, and provides the same protections to the religious exercise of institutionalized persons, as well as protecting individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws. For the same reasons that the Supreme Court recently found dispositive as to RFRA, RLUIPA should be interpreted to authorize suits for money damages against officials in their individual capacities.

Money damages are, in fact, essential to vindicating rights under statutes like RLUIPA. Money damages compensate the plaintiff for the injury incurred; they deter future wrongdoers; and they vindicate the legal rights of the plaintiff. That is why damages have long been considered appropriate relief against officials who violate individuals' rights, and RLUIPA is no different.

Money damages are particularly important to remedying RLUIPA violations because in many RLUIPA cases injunctive relief is unavailable, leaving egregious violations unremedied absent monetary relief. Inmates suing under RLUIPA often are released or transferred by the time their claims are adjudicated and therefore have no injunctive claims. Or the government may stop its challenged conduct when faced with legal challenge and thereby evade judicial scrutiny by mooting any injunctive relief. These concerns are not idle fears. As demonstrated in this case and many others, inmates of a variety of faiths, including Christians, Rastafarians, Muslims, and Jews, have had their religious liberty violated in state and local institutions but, without money damages available, have received no "appropriate relief." Money damages are necessary to ensure compensation for the deprivation of legally guaranteed rights, deterrence of officials from engaging in unconstitutional behavior, and the vindication of rights that have played a central role in the history of the United States.

For the reasons set forth herein and in Appellant's and other *amici*'s briefs, *amici* urge the Court to reverse the decision of the District Court and remand the case for further proceedings.

ARGUMENT

I. CONGRESS ENACTED RLUIPA TO PROVIDE EXPANSIVE PROTECTIONS FOR THE EXERCISE OF RELIGIOUS FREEDOMS.

RLUIPA, like "its sister statute," RFRA, was enacted "to provide very broad protection for religious liberty." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). RLUIPA's expansive protection of the free exercise of religion is deeply rooted in American history, which shows why money damages must be available to vindicate its promises. *See Tanzin*, 141 S. Ct. at 492.

The right to freely practice one's faith—and to generally be free of governmental burdens on that right—can be traced to well before the founding of the country. In the "[c]enturies immediately before and contemporaneous with the colonization of America," government-supported persecution of religious minorities was rampant: "Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews." *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 8-9 (1947). Even in the new world, "many

of the old world practices and persecutions" remained. *Id.* at 10. Practitioners of minority faiths "were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated." *Id.* Indeed, Rhode Island's founder, the Protestant dissenter Roger Williams, had been banished from the Massachusetts Bay Colony for his religious views. *See* Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1424-25 (1990).

But eventually, by 1791, "[f]reedom of religion was universally said to be an unalienable right" among the states. *See* McConnell, *supra*, at 1456. With the ratification of the First Amendment's Free Exercise Clause, the government committed "itself to religious tolerance," such that "upon even slight suspicion that proposals for state intervention stem[med] from animosity to religion or distrust of its practices, all officials [would] pause to remember their own high duty to the Constitution and to the rights it secures." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993). For many years, the Supreme Court enforced the Free Exercise Clause through the "compelling interest" test—*i.e.* that government may not substantially

burden the exercise of unless "necessary to further a compelling state interest." *Holt*, 574 U.S. at 357.

However, in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), the Supreme Court drastically limited the scope of the First Amendment's Free Exercise Clause. Overturning longstanding precedent, the Supreme Court held that, under the First Amendment, "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." *See City of Boerne v. Flores*, 521 U.S. 507, 514 (1997) (citing *Smith*, 494 U.S. at 885).

In response, "Congress enacted RFRA in order to provide greater protection for religious exercise than is available under the First Amendment." *Holt*, 574 U.S. at 357. In doing so, Congress rejected *Smith* as incompatible with the nation's long history of safeguarding religious freedom. Congress restored, by statute, the longstanding "compelling interest test" that *Smith* largely overturned—*i.e.* that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the burden furthers "a compelling governmental interest" and "is

the least restrictive means of" doing so. 42 U.S.C. § 2000bb-1(a),(b). To fully protect a person's right to free exercise of religion, RFRA provided a right of action for any "person whose religious exercise has been burdened" to "obtain appropriate relief against a government." *Id.* § 2000bb-1(c). As the Supreme Court made clear in *Tanzin*, such relief includes money damages against officers in their individual capacities. *See* 141 S. Ct. at 493.

RFRA was subject to legal challenges and the Supreme Court ultimately held that RFRA is unconstitutional as applied to the States and its subdivisions, though it remained in force as to the federal government. *City of Boerne*, 521 U.S. at 532-36. Congress responded by enacting RLUIPA under the Spending and Commerce Clauses to restore and expand the pre-*Smith* protections for religious freedoms in two areas: (i) land-use regulation and (ii) the religious exercise of institutionalized persons. *See Holt*, 574 U.S at 357; *see also* 42 U.S.C. §§ 2000cc, 2000cc-1. RLUIPA, like RFRA, provides "expansive protection for religious liberty," and, for institutionalized persons, it "mirrors RFRA" by prohibiting the government from imposing a substantial burden on a prisoner's religious exercise unless the burden furthers "a compelling

governmental interest" and "is the least restrictive means of" doing so. *Holt*, 574 U.S. at 357-58; 42 U.S.C. § 2000cc-1(a). And like RFRA, RLUIPA expressly creates a federal cause of action that allows "[a] person [t]o assert a violation of [RLUIPA] as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." *Id.* § 2000cc-2(a).

Thus, like RFRA, RLUIPA "made clear that it was reinstating both the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim." *Tanzin*, 141 S. Ct. at 492. Accordingly, claims under RLUIPA, which contains the same "appropriate relief" language as RFRA, "must have at least the same avenues for relief against officials that they would have had before *Smith*," and "one [such] avenue for relief" includes "a right to seek damage against Government employees." *Id.*

II. MONEY DAMAGES UNDER RLUIPA ARE VITAL TO PROTECTING THE RIGHTS GUARANTEED BY RLUIPA.

It is not by accident that money damages are available under RLUIPA—such remedies are essential to vindicating rights, particularly when injunctive relief is unavailable.

A. Money Damages Are An Essential Mechanism of Vindicating Critical Rights.

Money damages are "the traditional form of relief offered in the courts of law." *Curtis v. Loether,* 415 U.S. 189, 196 (1974). They are "commonly available against state and local government officials," *Tanzin*, 141 S. Ct. at 491, and they serve at least three central purposes. First, "damages [are] an instrument of corrective justice, an effort to put plaintiff in his or her rightful position." Dan B. Dobbs & Caprice L. Roberts, *Law of Remedies: Damages—Equity— Restitution* § 3.1 at 215 (3d. ed. 2017) (hereinafter, "Law of Remedies"). Where a person violates the legal rights of another and causes injury, a factfinder awards damages to right the wrong done to the plaintiff by the defendant. *See* Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 11 at 19-20 (2d ed. 2011); *see also* 4 Fowler Harper, Fleming James, Jr., & Oscar S. Gray, *Harper, James and Gray on Torts* § 25.1 at 1299 (2007) ("The cardinal principle of damages in Anglo-American law is that of *compensation* for the injury caused to the plaintiff by defendant's breach of duty." (emphasis in original)).

Second, damages deter future violations. *See Law of Remedies* § 3.1 at 216 (a "damages judgment can provide an appropriate incentive to

meet the appropriate standard of behavior"). Damages, a cost to the liable defendant, raise the price of unlawful conduct and make it less attractive to potential wrongdoers. *See Owen v. City of Indep., Mo.*, 445 U.S. 622, 651-52 (1980) ("The knowledge that a municipality will be liable for all of its injurious conduct [in a Section 1983 suit], whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights."); *cf.* Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* at 26 (1970).

Third, damages vindicate the legal rights of the plaintiff. This rationale has a deep historical basis; many writs "[i]n the early Republic" enabled "individuals to test the legality of government conduct" through suits against officers for money damages. *Tanzin*, 141 S. Ct. at 491 (quoting James E. Pfander & Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification and Gov't Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1871-75 (2010)). In this way, damages are a "vital component of any scheme for vindicating cherished constitutional guarantees." *Owen*, 445 U.S. at 651.

For these reasons, particularly "[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief." *Tanzin*, 141 S. Ct. at 491. This is true of claims under § 1983, as well as its precursor. *See id.* at 491-92 (citing cases). It is also true of RFRA, which, as the Supreme Court made clear in *Tanzin*, provides "at least the same avenues for relief against officials" as available pre-*Smith* under § 1983. *See id.* at 492. As *Tanzin* further explained, RFRA "uses the same terminology as § 1983 in the very same field of civil rights law," and it thus followed that RFRA authorizes the same remedies, including suits against individual officers for money damages. *See id.* at 490, 492. Because RLUIPA—RFRA's "sister statute," *Holt*, 574 U.S. at 356—was enacted to "allow prisoners to seek religious accommodations pursuant to the same standard as set forth in RFRA," it should be interpreted no differently. *Id.* at 358 (quoting *Gonzales v. O Centro Espírita Beneficente Uniõ do Vegetal*, 546 U.S. 418, 436 (2006)).

B. Injunctive Relief Alone Is Insufficient to Vindicate the Rights Guaranteed by RLUIPA.

As with RFRA, damages are sometimes "the *only* form of relief that can remedy" RLUIPA violations, because "[f]or certain injuries . . . effective relief consists of damages, not an injunction." *Tanzin*, 141 S. Ct.

at 492 (emphasis in original). This has been true in many cases where religious inmates have had their RLUIPA rights egregiously violated.

Often, inmates are transferred or released before their RLUIPA claims are adjudicated, mooting any injunctive relief. Consider the facts of this very case. Mr. Barnett, a Christian, alleges that officials at the Jefferson County Jail deprived him of his Bible when they put him in administrative segregation. App. 10; R. Doc. 6, at 3. When Mr. Barnett complained, a jail administrator responded with callous disregard for his rights: "Feel free to quote the constitution all you want to—I don't mind at all. You will not receive anything more." App. 23; R. Doc. 6-1, at 5. Separated from his Bible for a month, Mr. Barnett experienced anxiety, stress, and depression. App. 11; R. Doc. 6, at 4. As Mr. Barnett put it in his Amended Complaint, prison officials had forced him "to sin and be a sinner, causing guilt and shame." *Id.*

Mr. Barnett thus alleged a clear violation of his religious liberty, and RLUIPA was enacted precisely to vindicate the rights of religious individuals like him. *See Cutter v. Wilkinson*, 544 U.S. 709, 716-17 (2005) ("To secure redress for inmates who encountered undue barriers to their religious observances, Congress carried over from RFRA the 'compelling

governmental interest'/'least restrictive means' standard."). But because Mr. Barnett has been transferred to a new facility, he can no longer seek injunctive relief. App. 27; R. Doc. 7, at 4. Money damages are therefore the only "effective relief" for the violation of Mr. Barnett's religious liberty. *See Tanzin*, 141 S. Ct. at 492.

Mr. Barnett's plight has in fact been shared by other prisoners both within the Eighth Circuit and throughout the country. In *Brown El v. Skeen*, for instance, a Muslim plaintiff alleged that officials at the Eastern Reception, Diagnostic and Correctional Center in Missouri prevented him from practicing Ramadan properly and wearing his religious garb in the facility's chapel. 2016 WL 299127, at *1 (E.D. Mo. Jan. 25, 2016). But because the plaintiff had been transferred to another facility, the court ruled that injunctive relief under RLUIPA was moot. *Id.* Money damages was therefore the only appropriate relief, but because the court ruled that money damages are unavailable under RLUIPA, it dismissed the plaintiff's RLUIPA claim, denying him all relief entirely. *Id.*

Similarly, in *Banks v. Dougherty*, Larry Banks and Walter Carlos, two practicing Muslims who had been involuntarily committed at

Chicagoland's Elgin Mental Health Center in Illinois, were denied "the right to attend Jumu'ah services," and Banks, in particular, was denied "a halal diet and sufficient food to fast during Ramadan." *See* 2010 WL 747870, at *1-2 (N.D. Ill. Feb. 26, 2010). Because they were no longer committed at Elgin, only money damages could have vindicated their rights under RLUIPA. Yet the court dismissed their claims for money damages, leaving them with no appropriate relief despite RLUIPA's provision to the contrary. *Id.* at *5; *see also Robbins v. Robertson,* 782 F. App'x 794, 799, 801-03 (11th Cir. 2019) (dismissing RLUIPA claim brought by a Muslim prisoner as moot despite holding that he adequately alleged a "substantial burden" on his religious exercise when forced to choose between observing a Halal diet or suffering malnutrition could not bring a claim for violation of religious freedom under RLUIPA since he was transferred to a different prison facility); *Banks v. Sec'y Pennsylvania Dep't of Corr.*, 601 F. App'x 101, 103 (3d Cir. 2015) (holding that Muslim inmate who had been transferred to a new facility within the Pennsylvania prison system could not assert a RLUIPA claim against prior-facility's officials who had restricted his use of prayer oils during services and his participation in the feasts of Eid al-Fitr and Eid al-

Adha); *Al Saud v. Lamb*, 2020 WL 1904619, at *5 (D. Ariz. Apr. 17, 2020) (dismissing claims under RLUIPA brought by a practicing Muslim who was not provided a halal diet in prison and whose claim for injunctive relief was mooted by his transfer from the facility).

The same result befell Scott Rendelman, an Orthodox Jew who, while incarcerated in a Maryland prison, lost 30 pounds after prison officials categorically refused to accommodate his request for a kosher diet. *See Rendelman v. Rouse*, 569 F.3d 182, 184-85 (4th Cir. 2009). Mr. Rendelman, too, was left with "no appropriate relief," because he had been transferred from the Maryland prison system to federal custody—mooting injunctive relief—and the court interpreted RLUIPA as not permitting claims for money damages. *See id.* at 187-88; *see also Mitchell v. Denton Cnty. Sheriff's Off.*, 2021 WL 4025800, at *8 (E.D. Tex. Aug. 6, 2021), *report and recommendation adopted*, 2021 WL 3931116 (E.D. Tex. Sept. 1, 2021) (denying monetary relief under RLUIPA to Jewish inmate deprived of kosher food and no longer in the facility); *Harris v. Schriro*, 652 F. Supp. 2d 1024, 1029 (D. Ariz. 2009) (same); *Yisrayl v. Saint Genevieve Cnty. Jail*, 2017 WL 4150859, at *2 (E.D. Mo. Sept. 19, 2017) (same).

Prison officials have also mooted injunctive relief by simply changing their practices and thereby mooting any requested injunctive relief. Consider the case of Alphonse Porter, who had been confined at the Louisiana State Penitentiary. *See Porter v. Manchester*, 2021 WL 389090, at *1 (M.D. La. Jan. 4, 2021), *report and recommendation adopted*, 2021 WL 388831 (M.D. La. Feb. 3, 2021). Mr. Porter, a Rastafarian, alleged in his verified complaint that prison leadership ordered officers "to use a chemical agent and other malicious and sadistic tactics if [Mr. Porter] did not renounce his religious beliefs." *Id.* at *2. Mr. Porter further alleged that the officers escorted him to a lobby and "threatened to harm [him] if he did not cut his hair and shave his beard and surrounded [him] in a threatening manner." *Id.* After Mr. Porter kneeled and began praying, an officer (Major Voorhies) "hit [Mr. Porter] in his side twice with a chair[,] . . . stood over [Mr. Porter], threatened to kill him, jerked [Mr. Porter] up from the floor, grabbed [Mr. Porter] by the throat and slammed him against a concrete wall." *Id.* A second officer (Damon Turner) "then grabbed [Mr. Porter] and slammed him to the floor causing [Mr. Porter] to hit his head and become dizzy." *Id.* Major Voorhies, straddling Mr. Porter, then struck Mr. Porter in the

mouth with clippers, "causing [Mr. Porter's] mouth to bleed and resulted in two chipped and loose teeth." *Id.* And it only got worse:

> Voorhies then pushed the blades of the clippers into [Mr. Porter's] face causing him to bleed while Voorhies shaved one patch of facial hair on each side of [Mr. Porter's] face. [Mr. Porter] was again hit with the clippers by Voohries on the side of the head, then Voohries forcefully cut a large patch of hair on both sides of [Mr. Porter's] head.
>
> While [Mr. Porter's] hair and beard were being shaved, defendant Turner stood on [Mr. Porter's] wrist and waist chain cuffs causing [Mr. Porter] to scream out in pain. Defendant [Captain Juan] Manchester stood by watching and laughing. Defendant [Col. Trent] Barton looked in from the disciplinary court room and stated, "There is a lot more of that to come" if [Mr. Porter] "didn't believe in the defendants as Gods."

Id. And ten days later, after "notic[ing] that [Mr. Porter] still had patches shaven out of his hair and beard," the defendants "sprayed [Mr. Porter] with an excessive amount of chemical agent and was not allowed to decontaminate." *Id.*

Despite this extraordinary record, Mr. Porter was denied all recourse under RLUIPA. The district court found that injunctive relief was moot because Louisiana had subsequently changed its policy to allow religious exemptions to prison grooming standards. *Id.* at *5. As for money damages, the district court held that RLUIPA does not authorize

such damages against officers in either their official or individual capacities. *Id.* at *4. That is a perversion of RLUIPA's guarantee of all "appropriate relief" to those whose religious liberty has been violated. But that is the result under the rule that the District Court applied here.

Mr. Porter's case is not a one-off. In *Haight v. Thompson*, a Kentucky prison denied Randy Haight and Gregory Wilson access to visiting clergy members. 763 F.3d 554, 560 (6th Cir. 2014). But, because the court held that money damages were unavailable under RLUIPA, the prison successfully evaded Mr. Haight's and Mr. Wilson's RLUIPA claim just "by altering its policy" with respect to clergy visits. *Id.* at 568; *see also Pilgrim v. New York State Dep't of Corr. Servs.*, 2011 WL 6031929, at *4 (N.D.N.Y. Sept. 1, 2011), *report and recommendation adopted*, 2011 WL 6030121 (N.D.N.Y. Dec. 5, 2011) (RLUIPA claim by Rastafarian who was disciplined for his dreadlocks dismissed as moot because of prison system's later change in policy regarding dreadlocks).

Such cases are all too common and fly in the face of RLUIPA's "very broad protection for religious liberty," *Holt*, 574 U.S. at 356, and its express provision of "appropriate relief" for *any* violation of it, 42 U.S.C. § 2000cc-2(a). Absent the availability of money damages, prison officials

will only continue to evade accountability for violations of inmates' religious liberty. That is why the Supreme Court in *Tanzin* held "that RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities." 141 S. Ct. at 493. Pointing to "RFRA's origins" and the statute's "reinstate[ment] [of] pre-*Smith* protections and rights," *Tanzin* recognized that "it would be odd to construe RFRA in a manner that prevents courts from awarding [effective] relief" when such relief "consists of damages, not an injunction." *Id.* at 492. RLUIPA—which "mirrors RFRA," and contains the same, broad remedial language, *compare* 42 U.S.C. § 2000bb-1(c) (RFRA), *with id.* § 2000cc-2(a) (RLUIPA)—should be interpreted likewise. *See also id.* § 2000cc-3(g) (RLUIPA "shall be construed in favor of a broad protection of religious exercise"). This Court should overrule its pre-*Tanzin* decisions to the contrary.

CONCLUSION

For these reasons, *amici* urge the Court to reverse the District Court's decision and remand for further proceedings.

Date: November 20, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because it contains 4,110 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a) because it was prepared using Microsoft Word in Century Schoolbook 14-point font, a proportionally spaced serif typeface. This brief also complies with Local Rule 28A(h) because the electronic version of this brief has been scanned for viruses and the brief is virus-free.

/s/ Adeel A. Mangi
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, I electronically filed the foregoing Brief of *Amici Curiae* of 26 Religious Organizations using the CM/ECF system, which will send notification of such filing to all parties of record. All participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Adeel A. Mangi
Attorney for *Amici Curiae*

APPENDIX A

IDENTITY AND INTERESTS OF *AMICI*

1. American Association of Jewish Lawyers and Jurists

The American Association of Jewish Lawyers and Jurists ("AAJLJ") is an association of lawyers and jurists open to all members of the professions regardless of religion. It is an affiliate of the International Association of Jewish Lawyers and Jurists. The AAJLJ's mission includes advocating the human rights interests of the American Jewish community in regard to legal issues and controversies that implicate the interests of that community, such as the issues of religious freedom and access to justice presented by this case. As a result, the AAJLJ has previously filed briefs on issues ranging from Holocaust survivors' right to pursue justice in American courts to the prohibition on unnecessarily cruel methods of execution in Jewish law.

2. Campus Ministry of Roman Catholic Archdiocese of New York at Hostos and Bronx Community College of City University of New York

The Catholic Campus Ministry has been funded by the Roman Catholic Archdiocese of New York since the 1940's. We strongly believe that prisoners and other incarcerated persons should be free to exercise their religious freedoms according to their beliefs. It would cause great harm if prisoners were left with no recourse for egregious violations of their religious freedoms.

3. Capital Area Muslim Bar Association ("CAMBA")

CAMBA is a voluntary bar association in the Washington, DC metro area with a diverse membership. CAMBA's mission includes fostering a sense of fellowship amongst diverse Muslim legal professionals and amplifying our collective voice to impact legal issues affecting the Muslim community. CAMBA's objectives include addressing legal issues affecting the community at large and their related impact on the Muslim American community, and educating and advocating for constitutional, civil, and human rights for all persons. We support strong protections for the religious freedoms of prisoners and

other incarcerated persons, and we believe that recognizing money damages under RLUIPA is essential to ensuring that prisoners from religious minorities are treated with respect and dignity.

4. Central Conference of American Rabbis ("CCAR")

The Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis, comes to this issue out of a commitment to religious freedom. The Court must affirm our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faiths must be free to follow the dictates of their conscience.

5. Council on American-Islamic Relations – Michigan Chapter

The Council on American-Islamic Relations Michigan Chapter ("CAIR-MI") is a nonprofit 501(c)(3) grassroots civil rights and advocacy group. The organization is affiliated with America's largest Islamic civil liberties group, CAIR, whose headquarters is located in Washington D.C. CAIR-MI's mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims and build coalitions that promote justice and mutual understanding through education, mediation, media and the law. CAIR-MI has been serving the entire state of Michigan since 2000 with an emphasis on Metro Detroit, Flint/Saginaw, Ann Arbor/Jackson, Lansing, Kalamazoo/Battle Creek, and Grand Rapids/Muskegon. Through media and government relations, education and advocacy, CAIR-MI puts forth an Islamic perspective to ensure the Muslim voice is represented. In offering this perspective, CAIR seeks to empower the American Muslim community and encourage their participation in political and social activism. CAIR-MI serves as a credible voice for Michigan Muslims, and has been present in most, if not all, forms of local media and multiple international media outlets. CAIRMI provides a more accurate image of Islam and Muslims and well-informed dissemination of American Muslim views to public audiences. We add our voice to those asking the court to recognize money damages for violations of the religious freedoms of prisoners and other incarcerated persons.

6. East End Temple

The East End Temple is a Reform Jewish congregation located in lower Manhattan in New York City that is dedicated to protecting the most vulnerable in our society. The congregation is committed to ensuring that the rights all individuals—including and especially the right to freely practice their faiths—is adequately protected.

7. El Paso Monthly Meeting of the Religious Society of Friends

The El Paso (Texas) Monthly Meeting of the Religious Society of Friends is a Quaker religious group. Early members of our denomination were subject to legal punishment in Britain and New England, including imprisonment, harsh physical punishments, and even state sanctioned death. Out of these early experiences, we have developed an abiding interest in just and humane treatment of those imprisoned and in freedom of religion.

8. The Episcopal Diocese of Long Island

The Episcopal Diocese of Long Island consists of 140 parish churches from the Brooklyn Bridge to the end of Suffolk County. We have joined numerous amicus briefs across the country advocating greater protections for religious freedom. We believe that having a damages remedy against officials in their individual capacity under RLUIPA would better protect the rights of prisoners and incarcerated persons

9. Islamic Society of Central Jersey

The Islamic Society of Central Jersey ("ISCJ") is an organization of Muslim Americans that was formed in 1975 that provides religious, educational and social services to its members, as well as to the community at large. The ISCJ established a place of worship in South Brunswick, NJ in the early 1980s. The ISCJ aspires to be the anchor of a model community of practicing Muslims of diverse backgrounds, democratically governed, efficiently served, relating to one another with inclusiveness and tolerance, and interacting with neighbors and the community at large in an Islamic exemplary fashion. The ISCJ is very concerned about the issues raised in this matter as it believes that

incarcerated persons should have strong legal protections to exercise their religious beliefs freely.

10. Men of Reform Judaism

The Men of Reform Judaism comes to this issue out of a commitment to religious freedom. The Court must affirm our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faiths must be free to follow the dictates of their conscience.

11. Muslim Advocates

Muslim Advocates, a national legal advocacy and educational organization, works on the frontlines of social justice with and for Muslim and other historically marginalized communities to build community power, fight systemic oppression, and demand shared well-being. The spectrum of Muslim Advocates' work includes fighting the institutional and religious discrimination that imprisoned Muslims face. In 2019, Muslim Advocates published a report on religious accommodations available to incarcerated Muslims. *See* Muslim Advocates, Fulfilling the Promise of Free Exercise for All: Muslim Prisoner Accommodation in State Prisons 47–48 (July 2019).[2] This month, Muslim Advocates launched "Keeping the Faith," an online database of state prison policies that govern accommodations requests pertaining to common Islamic religious practices.[3] It is a tool intended both to facilitate challenges by Muslim prisoners to denials of religious accommodations and to support grassroots organizing. The issues at stake in this case directly relate to Muslim Advocates' work for and with imprisoned Muslims.

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[2] https://muslimadvocates.org/wp-content/uploads/2019/07/FULFILLING-THE-PROMISE-OF-FREE-EXERCISE-FOR-ALL-Muslim-Prisoner-Accommodation-In-State-Prisons-for-distribution-7_23-1.pdf.

[3] https://muslimadvocates.org/keepingthefaith/.

12. Muslim Bar Association of New York ("MuBANY")

MuBANY is one of the nation's largest and most active professional associations for Muslim lawyers. MuBANY provides a range of services for the legal and larger Muslim community. One of MuBANY's missions is to improve the position of the Muslim community in American society. MuBANY seeks to support the Muslim community by educating the community, advancing and protecting the rights of Muslims in America, and creating an environment that helps guarantee the full, fair and equal representation of Muslims in American society. We believe that prisoners and other incarcerated persons should be able to exercise their religious beliefs freely. Prisoners from all faiths and communities have unfortunately had their religious freedoms violated egregiously by state prison personnel who have refused, for no compelling reason, to accommodate their religiously prescribed diets, clothes, and other important aspects of their faith. Too often, prison officials are able to escape any liability by transferring the affected prisoners or by changing their practices at the last minute. In the past, we urged courts to recognize a damages remedy against officials in their individual capacity under RFRA, including before the U.S. Supreme Court in *Tanzin v. Tanvir*. We urge this Court to do the same for RLUIPA and vindicate Mr. Barnett's right to religious freedom.

13. Muslims for Progressive Values

Muslims for Progressive Values is the oldest and only progressive Muslim faith-based human rights organization in the U.S. founded in 2007. We embody and advocate for the traditional Quranic values of social justice, an understanding that informs our positions on women's rights, LGBT inclusion, freedom of expression and freedom of and from belief. As an organization that promotes social justice, we support strong legal protections for prisoners and incarcerated persons to exercise their religious beliefs freely.

14. Muslim Public Affairs Council ("MPAC")

MPAC is a national public affairs nonprofit organization working to promote and strengthen American pluralism by increasing understanding and improving policies that impact American Muslims. Over the past 30 years, MPAC has built a reputation for being a dynamic and trusted American Muslim voice for policymakers, opinion shapers, and community organizers across the country. We design and execute innovative and effective legislative, strategic messaging, and issue advocacy campaigns. MPAC leverages relationships with legislators, government agencies, executive departments, and thought leaders to improve policies on national security, civil liberties, immigration, public safety and religious freedom for all Americans. Over the past 15 years, we have participated as *amicus curiae* in cases concerning civil liberties (*Boumediene v. Bush & al-Odah v. U.S.*); immigration (*Department of Homeland Security v. Regents of the University of California*, *Donald Trump v. IRAP*, and *Arizona v. U.S.*); and religious liberties (*Tanzin v. Tanvir*, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, and *Holt v. Arkansas Dept. of Correction*). We strongly support the rights of prisoners and other incarcerated persons to exercise their sincerely-held religious beliefs freely. In far too many instances, Muslims prisoners are denied access to their religiously mandated diet; Muslim women are required to remove their hijabs; and Muslim men are forced to shave their beards. Officials frequently evade any legal responsibility for their actions by transferring impacted prisoners to other correctional facilities. Since this is a pervasive problem, which affects members of all faiths and communities, we believe that the remedy of money damages against officials in their individual capacity under RLUIPA is essential for protecting the religious freedoms of all inmates and detainees.

15. Muslim Urban Professionals ("Muppies")

Muppies is a nonprofit, charitable organization dedicated to empowering and advancing Muslim business professionals to be leaders in their careers and communities. Muppies consists of over 3,300

members in 33 countries and 11 active local city committees across the globe. Our desire is to live in a society that understands, respects, and includes Muslims in mainstream culture by aiding in efforts that improve the representation and inclusion of Muslims. Our mission is to create a global community of diverse individuals who will support, challenge, and inspire one another by providing a platform for networking, mentorship, and career development. We have advocated for the rights of immigrants, DACA recipients, and the LGBTQI community by joining amicus briefs filed in various courts across the country. We support protecting the religious freedoms of prisoners and other incarcerated persons.

16. National Association of Muslim Lawyers ("NAML")

The National Association of Muslim Lawyers ("NAML") is an association of Muslim lawyers, Muslim Law students, and legal professionals in the United States. NAML provides networking and mentorship services, organizes educational programs on current legal topics of interest, supports regional Muslim bar associations, and serves the law-related needs of the general public through community service efforts. NAML has an interest in issues that affect the Muslim American community, and it seeks to ensure that the law fully and adequately protects the rights of religious minorities.

17. National Council of Jewish Women

The National Council of Jewish Women ("NCJW") is a grassroots organization of 210,000 advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Principles state that: "Religious liberty and the separation of religion and state are constitutional principles that must be protected and preserved in order to maintain our democratic society." Consistent with its Principles and Resolutions and its longstanding commitment to religious liberty, NCJW joins this brief.

18. Peace and Social Justice Committee of the Santa Fe Monthly Meeting of Friends ("Quakers")

Our historic testimonies of Equality, Integrity, Community, and Peace each prompt us to this witness: All are equal in the countenance of the Divine; All of us owe a consistency between what we profess and how we behave; All of us are interdependent through our common humanity; All of us seek a world free from struggle with outward weapons and with a dedication to our common wellbeing. We support strong legal protections for prisoners and incarcerated persons to exercise their religious beliefs freely.

19. Sikh Coalition

The Sikh Coalition is a nonprofit and nonpartisan organization dedicated to ensuring that members of the Sikh community in America are able to practice their faith. The Sikh Coalition defends the civil rights and civil liberties of Sikhs by providing direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement amongst Sikh Americans. The organization also educates community members about their legally recognized free exercise rights and works with public agencies and officials to implement policies that accommodate their deeply held beliefs. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001.

20. Society for the Advancement of Judaism

The Society for the Advancement of Judaism is a synagogue in New York City. Founded by Rabbi Mordecai Kaplan in 1922, the Society stands for all who are oppressed and those seeking freedom and justice, whether or not they are Jewish, of another faith or of no faith. The synagogue recognizes our shared humanity and the basic equality, dignity and uniqueness of each soul, and actively works to prevent the destruction of human life. Consistent with these principles, in 2020 we joined an amicus brief in this litigation urging the U.S. Supreme Court

to recognize money damages for RFRA claims against federal officials in their individual capacity.

21. T'ruah: The Rabbinic Call for Human Rights

T'ruah: The Rabbinic Call for Human Rights brings the Torah's ideals of human dignity, equality, and justice to life by empowering our network of 2,300 rabbis and cantors to be moral voices and to lead Jewish communities in advancing democracy and human rights for all people in the United States, Canada, Israel, and the occupied Palestinian territories. We support strong protections for the religious freedoms of prisoners and other incarcerated persons, and we believe that recognizing money damages under RLUIPA is essential to ensuring that prisoners from religious minorities are treated with respect and dignity.

22. Union Theological Seminary ("UTS")

UTS, founded in 1836 in New York City, is a globally recognized seminary and graduate school of theology where faith and scholarship meet to reimagine the work of justice. A beacon for social justice and progressive change, Union Theological Seminary is led by a diverse group of theologians and activist leaders. Drawing on both Christian traditions and the insights of other faiths, the institution is focused on educating leaders who can address critical issues like racial equity, criminal justice reform, income inequality, and protecting the environment. Union is led by Rev. Dr. Serene Jones, the sixteenth President and the first woman to head the 187-year-old seminary. Consistent with the education we provide, UTS believes that religious freedom and civil rights are complementary values and legal principles necessary to sustain and advance equality for all.

23. Union for Reform Judaism

The Union for Reform Judaism, whose nearly 850 congregations across North America includes 1.3 million Reform Jews, comes to this issue out of a commitment to religious freedom. The Court must affirm our nation's founding promise to protect the rights of religious expression

from undue state interference. Americans of all faiths must be free to follow the dictates of their conscience.

24. Unitarian Universalist Mass Action Network

The Unitarian Universalist Mass Action Network is a state action network that works in coalition with frontline partners and organizations led by those who are directly affected by injustice. Our mission is to organize and mobilize Unitarian Universalists to confront oppression. It is through our social justice work that we live our values and principles that define our faith. We believe that those within the criminal law system must be afforded basic rights and that those who violated those rights must be held accountable.

25. Unitarian Universalist Service Committee ("UUSC")

The UUSC is a non-sectarian human-rights organization powered by grassroots collaboration. Currently based in Cambridge, Mass., UUSC began its work in 1939 when Rev. Waitstill and Martha Sharp took the extraordinary risk of traveling to Europe to help refugees escape Nazi persecution. We focus our work on intersecting roots of injustice to defend rights at risk due to criminalization and systemic oppression of people based on their identity. We collaborate closely with grassroots organizations and movements that are advancing our shared human rights goals on the ground. One of UUSC's primary human rights objectives is to end criminalization on the basis of identity. We fund organizations around the United States working to end federal immigration detention, and to document and eliminate discriminatory abuse and maltreatment in federal immigration custody. UUSC has also advocated for the humanitarian release of people held in federal prisons during the COVID-19 pandemic, and for the elimination of private prison contracts in the federal prison and immigration detention systems. We have also lobbied at the national level for a reduction in funding for federal detention facilities. UUSC strongly believes that prison officials who violate incarcerated people's rights must be held accountable.

26. Women of Reform Judaism

The Women of Reform Judaism, which represents tens of thousands women in hundreds of Women of Reform Judaism-affiliated women's groups and many individual members, come to this issue out of a commitment to religious freedom. The Court must affirm our nation's founding promise to protect the rights of religious expression from undue state interference. Americans of all faiths must be free to follow the dictates of their conscience.