No. 23-1066

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DEWEY AUSTIN BARNETT, II,
Plaintiff-Appellant,

v.

BRENDA SHORT, et. al.,
Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Missouri, Hon. Sarah E. Pitlyk
No. 4:22-cv-00708

PLAINTIFF-APPELLANT'S REPLY BRIEF

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INTRODUCTION

Tanzin v. Tanvir, 592 U.S. 43 (2020), held that "appropriate relief" under RFRA "includes claims for money damages against Government officials in their individual capacities." *Id.* at 45. As six judges of the Fifth Circuit recently explained, *Tanzin* is "dispositive" here. *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 93 F.4th 259, 264 (5th Cir. 2024) (Oldham, J., dissenting from denial of reh'g en banc). "Over and over again, the Court has called RLUIPA and RFRA 'sister' or 'twin' statutes." *Id.* "The operative provisions of RFRA and RLUIPA are *in haec verba*, and both the Supreme Court and ours routinely interpret the statutes in parallel." *Id.* at 262. Thus, "[g]iven *Tanzin*, RLUIPA (like RFRA) authorizes damages suits." *Id.* at 264.

Contrary to *Tanzin*, Defendants argue that RLUIPA does not authorize damages against anyone—neither county officials like Brenda Short, nor Jefferson County itself. That view simply "cannot be squared" with the Supreme Court's binding interpretation of the phrase "appropriate relief" in this context. *Id.* at 262. This Court should follow *Tanzin* and reverse the decision below.

ARGUMENT

I. The District Court Erred In Dismissing Mr. Barnett's RLUIPA Claim By Applying A Categorical Bar On Damages.

As Mr. Barnett explained in the opening brief, the district court erred by dismissing his RLUIPA claim on the ground that, in the court's view, the statute categorically bars suits for damages. *See* Opening Br. 18-41. Defendants repeat that view, arguing that RLUIPA does not authorize money damages against either Jefferson County or county employees like Brenda Short in their individual capacity. *See* Response Br. 28-43. As RLUIPA's text makes clear, Defendants are wrong on both scores.

A. RLUIPA Authorizes "Appropriate Relief," Including Money Damages, Against A "County" Like Jefferson County.

RLUIPA's text expressly authorizes "appropriate relief" against any "government," defined to include a "county" like Jefferson County. *See* 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(i). Every Circuit that has interpreted RLUIPA's language of "appropriate relief" against a "county" has concluded that it authorizes money damages. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 290 (5th Cir. 2012); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1169

(9th Cir. 2011); Opening Br. 19 & n.2. These Circuits properly recognize that "[u]nder Supreme Court precedent, money damages are available against municipal entities unless Congress has given clear direction that it intends to *exclude* a damages remedy." *Opulent Life*, 697 F.3d at 290 (internal quotation marks omitted).

RLUIPA contains no direction excluding damages from the broad meaning of "appropriate relief." To the contrary, RLUIPA mandates that its terms "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) (emphasis added).[1] Thus, RLUIPA's plain text embraces the broad meaning of "appropriate relief" as including money damages.

Defendants' only response to RLUIPA's clear text and the uniform precedent interpreting it is to point to an inapposite set of cases

[1] In a single sentence, Defendants attempt to read RLUIPA's express canon of construction out of the statute by arguing that the "maximum extent" permitted by the Constitution precludes damages. *See* Response Br. 41. But Defendants cite no support for the proposition that the Constitution categorically bars damages as a remedy for violations of Spending Clause statutes, nor could they. *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 189 (2002) (noting "a recipient of federal funds" can be "subject to suit for compensatory damages" under Spending Clause legislation).

addressing the remedies available against states and state entities that enjoy sovereign immunity. *See* Response Br. 41-42. Based on those cases, Defendants incorrectly assert that RLUIPA authorizes money damages against counties only if Congress "has clearly *included*" money damages as an expressly enumerated remedy. *Id.* at 43 (citing *Sossamon v. Texas*, 563 U.S. 277 (2011)). In other words, Defendants attempt to flip the longstanding meaning of "appropriate relief" on its head, so that it presumptively excludes money damages unless Congress specifically mentions "damages" by name.

But the requirement of specific inclusion of a damages remedy applies only when Congress must effectuate a "knowing waiver of state sovereign immunity." *Van Wyhe v. Reisch*, 581 F.3d 639, 653-54 (8th Cir. 2009). As the Supreme Court explained in *Sossamon*, "contracts with a sovereign are unique" because "a waiver of sovereign immunity must be expressly and unequivocally stated in the text of the relevant statute." 563 U.S. at 290. Thus, the Court distinguished cases that did "not involve sovereign defendants," and thus did not implicate the special requirements for a waiver of sovereign immunity. *Id.* at 289 n.6; *see Wood v. Yordy*, 753 F.3d 899, 902 (9th Cir. 2014) ("The Court [in *Sossamon*]

held the statutory language was not sufficiently specific to abrogate state sovereign immunity."). Similarly, in *Tanzin*, the Supreme Court reiterated that there is an "obvious difference" between suits against states and suits against non-sovereign defendants, like Jefferson County. *Tanzin*, 592 U.S. at 52; *see also Opulent Life*, 697 F.3d at 289-90 (recognizing the difference between states and counties); *Landor*, 93 F.4th at 261 (Ho, J., dissenting from denial of reh'g en banc) (explaining *Sossamon* has "no bearing" on defendants who "do not enjoy sovereign immunity").

When no waiver of sovereign immunity is required, as here, there is a longstanding presumption that "federal courts have the power to award any *appropriate relief*," including damages. *Sossamon*, 563 U.S. at 288. Congress enacted RLUIPA against the backdrop of that presumption and gave no "clear direction" to depart from the traditional meaning of "appropriate relief." *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 70-71 (1992). Thus, as multiple Circuits have held, RLUIPA authorizes damages against counties like Jefferson County.

B. RLUIPA Authorizes "Appropriate Relief," Including Money Damages, Against A "Person Acting Under Color Of State Law" Like Brenda Short.

In *Tanzin*, the Supreme Court interpreted "identical" language in RFRA to authorize damages against officials in their individual capacity. *Landor*, 93 F.4th at 264 (Oldham, J., dissenting from denial of reh'g en banc). As six judges of the Fifth Circuit recently explained, because "[t]he operative provisions of RFRA and RLUIPA are *in haec verba*," RLUIPA authorizes individual-capacity damages just as RFRA does. *Id.* at 262.

Contrary to *Tanzin* and basic rules of statutory interpretation, Defendants argue that the same language in RLUIPA should be construed to exclude individual-capacity damages because of the Spending Clause. Defendants claim that the Spending Clause requires this contradictory result for two reasons: (1) the Clause renders RLUIPA's otherwise clear language ambiguous, and (2) it creates a constitutional limit on Congress's authority to impose conditions of federal funding that implicates the canon of constitutional avoidance. *See* Response Br. 28-40. Neither reason holds water.

1. *The Spending Clause Does Not Render RLUIPA's Clear Text Ambiguous.*

As the Fifth Circuit recognized even prior to *Tanzin*, "[t]he plain language of RLUIPA" authorizes damages against defendants in their individual capacities. *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 327 (5th Cir. 2009), *aff'd sub nom. Sossamon v. Texas*, 563 U.S. 277 (2011). Following *Tanzin*, there can be no doubt that RLUIPA authorizes such damages.

Defendants do not dispute that RFRA and RLUIPA are "sister statutes" enacted for the same purpose and using the same broad remedial language. *See Holt v. Hobbs*, 574 U.S. 352, 356 (2015). Nevertheless, Defendants argue that the Supreme Court's binding construction of the phrase "appropriate relief" in *Tanzin* does not apply to RLUIPA because the phrase is "open-ended, ambiguous, and subject to interpretation." Response Br. 29. That ambiguity, Defendants claim, arises from the fact that RLUIPA was enacted under Congress's Spending Clause and Commerce Clause authority, whereas RFRA was enacted under the Fourteenth Amendment. *See id.* at 30.

As the Supreme Court recognized in *Tanzin*, the language "appropriate relief" is not ambiguous. "In the context of suits against

Government officials, damages have long been awarded as appropriate relief." *Tanzin*, 592 U.S. at 49. By deliberately using the broad language "appropriate relief" in both RFRA and RLUIPA, Congress clearly authorized "money damages against federal officials in their individual capacities." *Id.* at 52. It did so because a "damages remedy is not just 'appropriate' relief," but often "the *only* form of relief" for violations of religious liberty—as is the case here. *Id.* at 51; Opening Br. 28-29.

The Supreme Court recently rejected a similar attempt to manufacture ambiguity using the Spending Clause. In *Health & Hospital Corporation of Marion County v. Talevski*, 599 U.S. 166 (2023), the defendants asked the Court to interpret Section 1983 to contain "an implicit carveout for laws that Congress enacts via its spending power," based on the defendants' view of contract law principles. *Id.* at 171. The Supreme Court refused to "impose a categorical font-of-power condition" that "Congress did not." *Id.* at 192. Instead, the Court interpreted Section 1983 according to its plain meaning, and thus allowed the plaintiffs to enforce a Spending Clause statute. *Id.* at 180 ("We have no doubt that HHC wishes § 1983 said something else. But that is an appeal better directed to Congress." (internal quotation marks omitted)); *see Landor*,

93 F.4th at 267 (Oldham, J., dissenting from denial of reh'g en banc) (noting the Court rejected "Spending Clause exceptionalism").

Talevski makes clear that the Spending Clause does not distort ordinary rules of statutory interpretation; it simply requires that "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst State School & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). When a statute's language is unambiguous, as here, the Spending Clause requirement is satisfied. *See South Dakota v. Dole*, 483 U.S. 203, 208 (1987).

Defendants' "font-of-power" interpretation would mean that the same statutory phrase—"appropriate relief" under 42 U.S.C. § 2000cc-2(a)—would have different meanings depending on the jurisdictional hook used in each case. *See* Opening Br. 34-35; *see also Tripathy v. McKoy*, No. 23-919, ___ F.4th ___, 2024 WL 2742344, at *5 n.6 (2d Cir. May 29, 2024) (acknowledging that "individual-capacity damages against nonrecipients" could be available under RLUIPA's Commerce Clause provision). To avoid this contradictory result, Defendants attempt to inject a similar presumption against damages into the Commerce Clause. *See* Response Br. 35-36. But damages have long been recognized as

"appropriate relief" under Commerce Clause statutes. *See, e.g.*, *Ditullio v. Boehm*, 662 F.3d 1091, 1098 (9th Cir. 2011). The only support Defendants cite for their presumption are cases applying a clear-statement rule to federal laws that intruded directly on traditional state powers. *See Bond v. United States*, 572 U.S. 844, 860 (2014) (interpreting federal criminal statute narrowly to avoid reaching "purely local crimes"); *Gregory v. Ashcroft*, 501 U.S. 452, 456-57 (1991) (declining to preempt state mandatory retirement age for judges). RLUIPA does not coopt a traditional state function or affect the structure of state government; it simply prohibits officials from substantially burdening religious exercise. For such violations, damages are appropriate relief.

Finally, Defendants argue that RLUIPA must be interpreted in light of "the authority by which Congress has enacted the statute" based on *Cummings v. Premier Rehab Keller, PLLC*, 596 U.S. 212 (2022), and *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006). *See* Response Br. 33. Neither case supports Defendants' interpretation. *Arlington Central* did not concern damages at all: It addressed whether the statutory phrase "costs" included expert fees. 548 U.S. at 297. *Cummings* also did not address the type of ordinary

compensatory damages at issue in this case. *See Cummings*, 596 U.S. at 221 (concluding that damages for emotional distress were not traditionally awarded in contract suits). *Cummings*, moreover, did not address what remedies are appropriate for an express cause of action like the one provided by RLUIPA. *See Cummings*, 596 U.S. at 230-31 (Kavanaugh, J., concurring) (cautioning against "expand[ing] available remedies" for "implied causes of actions").

In this case, Congress created an express cause of action and authorized all "appropriate relief" for it. 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(iii). Under *Tanzin*, that statutory language authorizes damages against Short in her official capacity. *See Landor*, 93 F.4th at 263 (Oldham, J., dissenting from denial of reh'g en banc) ("The *Tanzin* Court held 8-0 that 'appropriate relief against a government' includes damages actions against government officials in their individual capacities."). Defendants cannot undo clear statutory text by pointing to the Spending Clause, especially when RLUIPA's language dovetails with Supreme Court decisions "finding a damages remedy available in private suits under Spending Clause legislation." *Barnes v. Gorman*, 536 U.S. 181, 187 (2002).

2. *The Spending Clause Does Not Prohibit Congress From Creating Conditions Of Federal Funding That Affect Employees Of The Funding Recipient.*

Unable to overcome RLUIPA's clear text and the Supreme Court's decision in *Tanzin*, Defendants argue that RLUIPA cannot be interpreted according to its plain meaning because the Spending Clause creates a constitutional limit on Congress's ability to impose conditions on federal funds that affect non-recipients—even if the non-recipients are employees of a funding recipient. *See* Response Br. 36-40. As the Sixth Circuit has recognized, Defendants' argument "proves too much": Refusing to apply "even an eminently clear statute" based on the notion that "spending-clause legislation is in the nature of a contract" would flout the very Supreme Court decisions that used the contract analogy in the first place. *Haight v. Thompson*, 763 F.3d 554, 570 (6th Cir. 2014).

Defendants advance three reasons for their restrictive constitutional rule. None survives scrutiny.

First, Defendants argue that Spending Clause legislation, "while not strictly contractual, partakes in the character of a contract," and contract liability generally does not apply to employees of the contractual parties. Response Br. 29, 37-38. But as Defendants concede,

congressional legislation is not a literal contract subject to all common-law contract rules. *See id.* at 29; *Cummings*, 596 U.S. at 225 ("[O]ur cases do not treat suits under Spending Clause legislation as literal 'suits in contract.'"). Rather, the Supreme Court analogized Spending Clause legislation to contracts in one specific sense: "The legitimacy of Congress' power to legislate under the spending power . . . rests on whether the [funding recipient] voluntarily and knowingly accepts the terms of the 'contract.'" *Pennhurst*, 451 U.S. at 17. From this analogy, the Court required that any condition of federal funding be expressed clearly, because "[b]y insisting that Congress speak with a clear voice, we enable the [recipients] to exercise their choice knowingly." *Id.*

As explained above, Congress did speak clearly when it used the language "appropriate relief" against "person[s] acting under color of state law." 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(iii). Jefferson County thus had ample notice of the conditions of the federal funds it accepted. By accepting those funds "knowingly, cognizant of the consequences of their participation," Jefferson County legitimated Congress' "power to legislate under the spending power." *Pennhurst*, 451 U.S. at 17. RLUIPA thus satisfies the requirements of the Spending Clause, including that

Congress "speak with a clear voice." *Id.* Nothing more is required. *See Van Wyhe*, 581 F.3d at 649-52 (finding RLUIPA meets all of the *Dole* requirements, including "sufficient clarity").

Second, Defendants argue that, even if Jefferson County had adequate notice, its employees did not. *See* Response Br. 32. But the Supreme Court has never required notice to and consent from every person affected by a condition of federal funding. It has only required that the recipients of federal funding "exercise their choice knowingly." *Dole*, 483 U.S. at 207. For example, in *Dole*, South Dakota accepted federal funds on the condition that the State's minimum drinking age be raised to twenty-one years old. That condition affected thousands of private citizens in South Dakota, but the Court never required each of them to receive specific notice and provide individual consent to the condition. *Id.* at 205; *see Landor*, 93 F.4th at 265 (Oldham, J., dissenting from denial of reh'g en banc) ("South Dakotan 19-year-olds weren't parties to the Spending Clause contract in *Dole*."). Similarly, in *Sabri v. United States*, 541 U.S. 600 (2004), Congress subjected anyone who bribed an official involved in a federally funded program to criminal liability. *Id.* at 605.

There again, individual consent from each defendant was not required for Congress to legislate.

Defendants do not discuss *Dole*, and their only response to *Sabri* is to claim that it is limited to "the regulation of specifically economic conduct impacting directly upon congressional spending power." Response Br. 40. But *Sabri* contains no such limitation; it recognized that Congress may use its Spending Clause power to "see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare, and not frittered away" by "untrustworthy stewards of federal funds." *Sabri*, 541 U.S. at 605-06. Thus, the Court upheld Congress's authority to punish non-recipients of federal funds regardless of "any connection between a bribe or kickback and some federal money." *Id.* at 604.

This Court has already recognized that "the protection of the religious exercise of prisoners and their rehabilitation are rational goals of Congress, and those goals are related to the use of federal funds for state prisons." *Van Wyhe*, 581 F.3d at 651. Nothing in the Spending Clause forces Congress to stand by while recipients of federal funds undermine Congress's interests through "untrustworthy stewards" like

Short. *Sabri*, 541 U.S. at 606; *see also* Opening Br. 40 (collecting Spending Clause statutes that impose requirements on non-recipients); *Landor*, 93 F.4th at 266 (Oldham, J., dissenting from denial of reh'g en banc) (noting there "are no constitutional concerns with the correct reading of RLUIPA").

Third, Defendants rely on cases interpreting a different Spending Clause statute, Title IX, to permit enforcement "against the funding recipient" only. *See* Response Br. 38-39. But unlike RLUIPA, which expressly authorizes suits by private plaintiffs, "[t]here is no express authorization for private law suits in Title IX." *NCAA v. Smith*, 525 U.S. 459, 467 n.5 (1999). Instead, Title IX authorizes the federal government to enforce the law through an administrative "termination of or refusal to grant or to continue assistance under such program or activity to any recipient." 20 U.S.C. § 1682. This remedy operates against the recipient of federal funding, and requires notice to the funding recipient and an "opportunity for hearing." *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288 (1998). The Court has interpreted Title IX's remedies—including remedies available in an implied private right of action—in light of this "*express* system of enforcement." *Id.* at 289-90; *Smith*,

525 U.S. at 467 n.5 (rejecting argument that the implied private right of action under Title IX is "broader than the Government's enforcement authority provided by § 1682"). Thus, in *Davis Next Friend LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629 (1999), the Supreme Court explained that "[t]he *Government's* enforcement power may only be exercised against the funding recipient, see § 1682, and we have not extended damages liability under Title IX to parties outside the scope of this power." *Id.* at 641 (emphasis added).

RLUIPA does not channel enforcement through a federal administrative action against the funding recipient; like RFRA, RLUIPA expressly authorizes private plaintiffs to obtain "appropriate relief" from persons "acting under color of state law" like Short. *See* 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(iii). Under *Tanzin*, Congress's intent was clear: to authorize suits for damages, including against officials in their individual capacity.

II. Defendants' Other Arguments Regarding RLUIPA Fail.

In an effort to avoid the substantive question of whether RLUIPA authorizes individual-capacity damages in light of *Tanzin*, Defendants

raise several new arguments not considered or relied on by the district court. *See* Response Br. 22-28, 43-46. None is correct.

First, Defendants argue that Mr. Barnett's *pro se* complaint failed to identify RLUIPA specifically as a cause of action. *See id.* at 23. But the form complaint Mr. Barnett used instructed him to provide "a short and plain statement of the **FACTS**" supporting his claim, and *not* to "make legal arguments, or *cite court cases or statutes*." App. 10 (emphasis added); R. Doc. 6, at 3. Mr. Barnett followed these instructions by providing a short and plain statement of his claim by asserting that he "was denied religion (Holy Bible)" during his time in solitary confinement. *Id.* As instructed, he did not "cite . . . statutes" such as RLUIPA. *Id.*

When, as here, the "essence of an allegation is discernable, even though it is not pleaded with legal nicety," courts should "construe the complaint in a way that permits the layperson's claim to be considered within the proper legal framework." *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 849 (8th Cir. 2014). Based on Mr. Barnett's factual allegations, the district court recognized Mr. Barnett's RLUIPA claim and addressed it on the merits, providing Defendants ample notice of the

claim. Defendants' "rigid insistence that RLUIPA claims must be specifically pled in the plaintiff's complaint is without support . . . and frankly puzzling in view of the lenience traditionally afforded *pro se* pleadings." *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008).

Second, Defendants claim that Mr. Barnett failed to plead that Jefferson County received federal financial assistance under RLUIPA's jurisdictional hook, 42 U.S.C. § 2000cc-1(b). *See* Response Br. 26-28. But a complaint "need not plead law or the 'elements' of a legal claim." *Tompkins v. Women's Comty., Inc.*, 203 F. App'x 743, 744-45 (7th Cir. 2006) (holding that a plaintiff did not need to plead whether the defendant was "a recipient of federal funds (and thus covered by Title VI)"); *see also Gentry v. Robinson*, 837 F. App'x 952, 957 (4th Cir. 2020) (assuming, while reviewing a *pro se* complaint, that the Virginia Department of Corrections receives federal funding). Defendants do not appear to dispute that Jefferson County received federal funds, and they cite no decision from this Court requiring a *pro se* plaintiff to plead facts to support RLUIPA's jurisdictional requirement. In fact, the case they cite, *Gorman v. Bartch*, 152 F.3d 907 (8th Cir. 1998), noted at summary judgment that the parties did not dispute the receipt of federal funds,

and the plaintiff had been given an opportunity to develop evidence confirming the jurisdictional hook. *Id.* at 911 n.6. To the extent there is any dispute about the jurisdictional provision here, Mr. Barnett should be given the same opportunity. *See* Opening Br. 32 (citing publicly available records of Jefferson County accepting federal funds).

Third, Defendants argue that Mr. Barnett failed to allege a substantial burden on his religious exercise. *See* Response Br. 44-46. But the district court never suggested Mr. Barnett's RLUIPA claim failed on this ground. *See* App. 26-27; R. Doc. 7, at 3-4. Nor could it: RLUIPA's "substantial burden" standard easily encompasses the denial of access to the Bible for a month while Mr. Barnett was detained in solitary confinement. *See Blankenship v. Setzer*, 681 F. App'x 274, 277 (4th Cir. 2017) (finding a substantial burden based on the deprivation of a Bible for 10 days); *Robertson v. Biby*, 647 F. App'x 893, 897-98 (10th Cir. 2016) (finding substantial burden based on the deprivation of means to hear the Bible read aloud).[2]

[2] Like the district court, Defendants improperly construe Mr. Barnett's allegations by asserting that they only deprived Mr. Barnett of access to the Bible "for one day." *See* Response Br. 45. As Mr. Barnett explained in the opening brief, his allegations support a reasonable inference that he

Finally, in a single paragraph, Defendants make the novel argument that RLUIPA incorporates the defense of qualified immunity. *See* Response Br. 43-44. But qualified immunity is a doctrine developed specifically in the context of 42 U.S.C. § 1983, based on the Supreme Court's understanding of the nineteenth-century tort-law backdrop against which Section 1983 was passed. *See Imbler v. Pachtman*, 424 U.S. 409, 417-18 (1976). Defendants cite no case holding that the same doctrine should be implied in RLUIPA, and Defendants fail to provide any argument for why it should, especially given RLUIPA's command that the statute "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). This Court should reject Defendants' unbriefed and unsupported argument.[3]

Even if any of Defendants' arguments had merit, they simply point to additional allegations that Mr. Barnett should have the opportunity to

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was deprived of the Bible not just on the first day of solitary confinement, but the entire time he was detained there. *See* Opening Br. 44-45.

[3] To the extent this Court wishes to decide whether RLUIPA incorporates qualified immunity, Mr. Barnett requests the opportunity to submit supplemental briefing on that question.

add to his complaint on remand. Leave to amend should be granted under Rule 15(a)'s liberal standard, especially given that the district court never faulted Mr. Barnett's complaint based on Defendants' arguments, and Mr. Barnett's pleadings were *pro se*. *See Becker v. Univ. of Nebraska at Omaha*, 191 F.3d 904, 907-08 (8th Cir. 1999). Such leave should only be denied in exceptional circumstances—where the defendants have established "undue delay, bad faith, or dilatory motive," for instance. *Id.* Defendants fail to demonstrate that any of those exceptional circumstances applies here. Accordingly, none of Defendants' new arguments supports dismissal.

III. The District Court Erred By Dismissing Mr. Barnett's First Amendment Claim.

Defendants also attempt to defend the district court's erroneous dismissal of Mr. Barnett's claim that depriving him of access to the Bible during his month in solitary confinement violated the First Amendment. *See* Response Br. 45-54. None of Defendants' arguments succeeds.

A. Depriving Mr. Barnett Of Access To The Bible For One Month Substantially Burdened His Religious Exercise.

As Mr. Barnett explained in the opening brief, under the First Amendment, "denying prisoners access to their holy text" for a month "is

a substantial burden on free-exercise rights."[4] *Garner v. Muenchow*, 715 F. App'x 533, 536 (7th Cir. 2017); *see* Opening Br. 42-46. Courts have repeatedly recognized that the Bible is essential to practicing the Christian faith. *See Sutton v. Rasheed*, 323 F.3d 236, 257 (3d Cir. 2003) (recognizing that a Christian cannot "practice his religion if deprived of access to the Bible"); *see also Weir v. Nix*, 114 F.3d 817, 821-22 (8th Cir. 1997) (upholding prison restrictions because plaintiff had access to the Bible in his cell, at a minimum); *Tarpley v. Allen Cnty.*, 312 F.3d 895, 899 (7th Cir. 2002) ("We therefore have no occasion to decide *what beyond the Bible* the prison officials had to provide to him." (emphasis added)). Thus, depriving someone of the Bible completely, as here, substantially burdens his ability to practice his faith.

In response, Defendants cite an unpublished decision holding that a "two-week delay" in returning personal effects, including religious items, after they were seized by prison officials did not violate the First Amendment. *McCroy v. Douglas Cnty. Corr. Ctr.*, 394 F. App'x 325, 326

[4] A growing number of Circuits have rejected the "substantial burden" requirement altogether. *See Kravitz v. Purcell*, 87 F.4th 111, 125-126 & n.11 (2d Cir. 2023) (collecting cases). This Court need not decide whether to join those Circuits in this case if the Court recognizes that Mr. Barnett's pleadings satisfy the "substantial burden" standard.

(8th Cir. 2010). In that case, however, the items were seized during a prison shakedown, and prison officials returned the items "and apologized for the inconvenience." *McCroy v. Douglas Cnty. Corr. Ctr.*, No. 10-cv-69, 2010 WL 1610945, at *1 (D. Neb. Apr. 20, 2010). Given the "legitimate penological interests" behind the shakedown and the relatively limited length of the deprivation, the Court concluded that the incident did not rise "to the level of a constitutional violation." *McCroy*, 394 F. App'x at 326.

Here, Mr. Barnett's allegations show that prison officials deprived Mr. Barnett of access to the Bible not in service of any legitimate penological purpose, but because they believed they had the power to do so with impunity. Defendants did not provide any security justification for the deprivation, and they failed to offer any alternative means for Mr. Barnett to practice his faith. *See, e.g.*, App. 23; R. Doc. 6-1, at 5 (grievance form explaining Mr. Barnett also requested pastoral visits that he had participated in for two years). Instead, officials treated his religious exercise as a "privilege[]" and taunted Mr. Barnett to "[f]eel free to quote the constitution all you want." *Id.* Such blatant disregard for Mr. Barnett's rights violated the First Amendment.

Prison officials also deprived Mr. Barnett of the Bible for far longer than the two-week period at issue in *McCroy*. Throughout a month-long period in solitary confinement, Mr. Barnett was "denied religion" completely, and was unable to practice his faith. App. 10; R. Doc. 6, at 3.; *see Jones v. Slade*, 23 F.4th 1124, 1145 (9th Cir. 2022) (recognizing the plaintiff's right to practice his religion by "reading Elijah Muhammad's texts" during Ramadan, a month-long holiday). This extensive deprivation imposed a substantial burden on the right to free exercise.

Finally, in a single sentence, Defendants assert that they are entitled to qualified immunity because "it cannot be said that the law in this respect is clearly established." Response Br. 46. But since well before 2021, when the deprivation in this case occurred, it was clearly established that "prison officials may not deny an inmate 'a reasonable opportunity of pursuing his faith.'" *Thomas v. Gunter*, 32 F.3d 1258, 1261 (8th Cir. 1994) (denying qualified immunity to officials who deprived a prisoner of access to the prison sweat lodge for prayer); *see Hayes v. Long*, 72 F.3d 70, 74 (8th Cir. 1995) (denying qualified immunity to officials who prevented a Muslim prisoner from abstaining from contact with pork). Nothing is more central to a person's ability to practice the

Christian faith than the Bible. *See Sutton*, 323 F.3d at 257; *Blankenship*, 681 F. App'x at 277 (finding substantial burden "[g]iven the importance of the Bible to Christianity" and the plaintiff's "religious practice"). It was clear, therefore, that depriving Mr. Barnett of access to the Bible in all forms for the month he was detained in solitary confinement violated his constitutional rights.

That is especially true because restrictions on religious exercise must be reasonably related to a legitimate penological interest. *Thomas*, 32 F.3d at 1260. "Unless such a logical relationship is shown," judgment as a matter of law "for the prison officials is improper." *Id.* at 1260-61. Here, Mr. Barnett alleges that he was "depriv[ed] of religion" throughout his time in solitary confinement without any legitimate penological justification. App. 10; R. Doc. 6, at 3. To the contrary, prison officials openly flouted Mr. Barnett's right to a reasonable opportunity to practice his religion. *See* App. 23; R. Doc. 6-1, at 5. ("Feel free to quote the constitution all you want to – I don't mind at all."). Every reasonable official would know that depriving someone of the ability to practice his faith for no reason violates the First Amendment. *See Thomas*, 32 F.3d at 1261 ("In the absence of such a justification, the appellees would not

be entitled to qualified immunity."). Accordingly, qualified immunity must be denied.

B. Mr. Barnett Alleged That Short Directly Participated In The Deprivation Of His Access To A Bible.

As Mr. Barnett explained in the opening brief, his allegations support a reasonable inference that Short directly participated in depriving him of access to the Bible, as required for liability under Section 1983 and the First Amendment. Opening Br. 46-49; *see Jackson v. Nixon*, 747 F.3d 537, 545 (8th Cir. 2014).

Someone responded to Mr. Barnett's grievance by taunting him, "Feel free to quote the constitution all you want to – I don't mind at all," App. 23; R. Doc. 6-1, at 5, and Mr. Barnett's allegations support a reasonable inference that the person was Brenda Short. In the operative complaint, Mr. Barnett alleged that "[e]verything goes through Brenda Short," and that she was the one responsible for responding to grievances and appeals from grievance denials. App. 21; R. Doc. 6-1, at 3; App. 14; R. Doc. 6, at 7 ("I Appealed Grievance but Jail Administrator Brenda Short *also* answers Appeals and didn't reply.") (emphasis added).[5] He

[5] Defendants argue that some allegations were included in Mr. Barnett's original complaint, but not his amended complaint. *See* Response Br. 47-

also alleged that Short exercises complete authority over the jail as "Judge Jury and Execution[er]." App. 21; R. Doc. 6-1, at 3. These allegations raise a reasonable inference that Short was personally involved in the decision to deprive Mr. Barnett of access to the Bible while he was in solitary confinement. *See Lomholt v. Holder*, 287 F.3d 683, 684 (8th Cir. 2002) (per curiam) (holding a *pro se* plaintiff plausibly stated free-exercise claim against prison officials based on allegations "that he was placed 'in the hole for religious fasting,' where he was deprived of his bible").

Defendants never explain why the facts Mr. Barnett alleged do not support a reasonable inference that Short was personally involved; they simply insist that Mr. Barnett's *pro se* allegations failed to "specifically state that Brenda Short herself denied him a Bible, or that she authored a response to his grievance." Response Br. 47. Defendants' rigid construction of Mr. Barnett's allegations is inconsistent with the liberal standard for *pro se* pleadings. *See Jackson*, 747 F.3d at 540-41, 545

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48. Any differences do not affect this appeal because the allegations in the amended complaint alone are sufficient to state a claim against Short. To the extent that additional allegations from the original complaint are required, leave to amend should be granted, especially in light of Mr. Barnett's *pro se* status. *See* Opening Br. 48-49.

("Affording Jackson reasonable inferences from the facts in his complaint, we find that he has plausibly alleged Salsbury's personal involvement."). Mr. Barnett's pleadings are sufficient to establish Short's personal involvement.

C. Jefferson County Is Liable For The Month-Long Deprivation of Access To The Bible.

Finally, Mr. Barnett sufficiently alleged that Jefferson County is liable under Section 1983 and the First Amendment because Short exercised final policymaking authority on behalf of the County. *See* Opening Br. 49-51. Mr. Barnett's observation that Short was the "Judge Jury and Execution[er]" at the jail, App. 21; R. Doc. 6-1, at 3, and that "[e]verything goes through Brenda Short," *id.*, is consistent with Jefferson County's own organizational chart, which listed the "Jail Administrator" as the supervisor for jail officials. *See* Opening Br. 50. At this stage, this suffices to establish the County's involvement. *See Chatham v. Adcock*, 334 F. App'x 281, 286-87 (11th Cir. 2009).

Defendants respond that Mr. Barnett's allegations are "vague," and the information from the organizational chart that corroborates his allegations are un-pleaded. Response Br. 52-53. But Mr. Barnett's *pro se* allegations sufficiently describe the level of control that Short exercised

at the jail, including with respect to grievances. And as Defendants concede, determining Short's policymaking authority is "a matter of law," not a question of fact. *Id.* at 51. Accordingly, this Court may consider publicly available information about Short's authority to conclude that she exercises final policymaking authority with respect to decisions at the jail, like the decision to deprive Mr. Barnett of access to the Bible in solitary confinement.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision dismissing Mr. Barnett's claims and remand for further proceedings. In the alternative, this Court should vacate the decision below and remand with instructions to grant Mr. Barnett leave to amend.

Date: June 5, 2024

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a) because this brief contains 5,886 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Century Schoolbook 14-point font.

Pursuant to Circuit Rule 28A(h)(2), this brief has been scanned for viruses and is virus-free.

/s/ Gregory Cui
Gregory Cui

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2024, I caused the foregoing *Plaintiff-Appellant's Reply Brief* to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Gregory Cui
Gregory Cui