No. 21-1297

In the Supreme Court of the United States

CLARE THERESE GRADY, CARMEN TROTTA, AND MARTHA HENNESSY, PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly rejected petitioners' claim that the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*, entitles them to an exemption from criminal prosecution for trespassing and destroying property on highly sensitive areas of a United States naval base.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-34a) is reported at 18 F.4th 1275. The order of the district court (Pet. App. 35a-52a) is not published in the Federal Supplement but is available at 2019 WL 4017424. The report and recommendation of the magistrate judge (Pet. App. 53a-146a) is not published in the Federal Supplement but is available at 2019 WL 5077546.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 2021. On February 16, 2022, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including March 23, 2022, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Georgia, petitioners were each convicted on one count of destroying government property on a naval installation, in violation of 18 U.S.C. 1363; one count of depredating government property, in violation of 18 U.S.C. 1361; one count of trespassing on a naval installation, in violation of 18 U.S.C. 1382; and one count of conspiring to commit the above offenses, in violation of 18 U.S.C. 371. Pet. App. 8a-10a. Petitioner Grady was sentenced to 12 months and one day of imprisonment, to be followed by three years of supervised release; petitioner Hennessy was sentenced to ten months of imprisonment, to be followed by three years of supervised release; and petitioner Trotta was sentenced to 14 months of imprisonment, to be followed by three years of supervised release. *Id.* at 11a. The court of appeals affirmed. *Id.* at 1a-34a.

1. The United States Naval Submarine Base Kings Bay (Kings Bay) in St. Marys, Georgia, is home to the only strategic weapons facility on the Eastern Seaboard. Pet. App. 4a. Among other critical military assets, the base houses the Trident II ballistic missile system and serves as the home port for six submarines that can be armed with such missiles. *Id.* at 47a. Those capabilities are central components of the United States' nuclear-deterrence strategy. *Id.* at 47a-48a.

To protect its vital military functions, Kings Bay "is highly secured." Pet. App. 4a. The base is not open to the general public and is surrounded by 26 miles of perimeter fencing, with "only three authorized points of entry, which are manned at all times by armed guards." *Ibid.* Those "guards are authorized to exercise deadly

force against unauthorized entry or trespassers if necessary." *Ibid.*; see *id.* at 48a, 56a-57a.

Inside the perimeter fence, some areas of Kings Bay are relatively accessible. See Pet. App. 57a. Such areas include an engineering-services building and a "static missile display" that showcases decommissioned ballistic missiles. *Ibid.* "More sensitive areas, however, are protected by additional barriers and security protocols." *Ibid.* For example, the Limited Area—which houses nuclear-weapons storage bunkers—is separated from other areas of the base by double lines of fencing and "concertina" (coiled and barbed) wire. *Id.* at 4a; see *id.* at 5a, 57a. "Written warnings that deadly force may be used against intruders are posted along" that fencing, and a loudspeaker broadcasts that same warning every few minutes. *Id.* at 4a.

2. Petitioners are members of the Plowshares Movement, "a Christian protest and activism group opposed to nuclear weaponry." Pet. App. 55a. On April 4, 2018, "under the cover of darkness," petitioners and four other members of the Plowshares Movement cut a padlock on the Kings Bay perimeter fence and illegally entered the base. *Id.* at 5a. The intruders, who had devoted "approximately two years of secret planning" to the breach, were "equipped with spray paint, bolt cutters, hammers, [bottles of human] blood, banners, crime scene tape, [and] Go-Pro cameras." *Ibid.* Once inside Kings Bay, "the seven individuals split into groups and proceeded to different areas of the base" to engage in what they called "symbolic disarmament." *Ibid.*

Petitioners Grady and Hennessy first went to the engineering building, where they spray-painted anti-nuclear and religious messages on the sidewalk, poured blood on the door of the building and sidewalk, placed

crime-scene tape around the building, and taped an "indictment" of the government to the door. Pet. App. 5a-6a, 81a. They then went to the static missile display, where they hammered on the display, hung more crime-scene tape, and spray-painted messages at the base of the display. *Id.* at 7a-8a. Meanwhile, petitioner Trotta proceeded with other group members to the Limited Area. *Id.* at 8a. After cutting through protective fencing and concertina wire, they entered the area and displayed banners protesting nuclear weapons. *Ibid.* After several hours on the base, the intruders were apprehended by base security. *Ibid.*

A grand jury charged each intruder with one count of destroying government property on a naval installation, in violation of 18 U.S.C. 1363; one count of depredating government property, in violation of 18 U.S.C. 1361; one count of trespassing on a naval installation, in violation of 18 U.S.C. 1382; and one count of conspiring to commit the above offenses, in violation of 18 U.S.C. 371. Pet. App. 8a-9a.

3. Petitioners moved to dismiss the indictment on the ground that prosecuting them for their conduct on the base violated the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.* RFRA provides that the government "shall not substantially burden a person's exercise of religion," unless the government demonstrates that application of that burden to the person "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(a) and (b).

Petitioners contended that their actions at Kings Bay were an exercise of a sincerely held religious belief that they must take action in opposition to the presence

of nuclear weapons. Pet. App. 43a-44a. They further contended that the government could not show that its decision to prosecute them for their crimes was the least restrictive means of furthering its compelling interests in the security of the base. *Id.* at 9a. Petitioners suggested that the government could have achieved its compelling interests through less-restrictive alternatives, including "(1) reducing the number and severity of the charges; (2) not prosecuting [petitioners] and offering instead civil injunctions, civil damages, community service, 'ban and bar' letters, or pretrial diversion; and (3) giving [petitioners] permission to practice symbolic disarmament in a designated area on the base." *Id.* at 9a-10a.

After holding an evidentiary hearing, a magistrate judge recommended denying the motion to dismiss. Pet. App. 55a-130a. The magistrate judge determined that petitioners' "sincerely held religious belief required" them to "engage in * * * acts of protest at the Kings Bay base," but that "the evidence does not demonstrate that [petitioners] had a sincere religious belief that required them to engage in those activities without permission or on portions of the facility behind the perimeter fence line." *Id.* at 117a. The judge accordingly reasoned that petitioners' "religious beliefs are not in conflict with general laws prohibiting trespass, injury to government property, or conspiracy, and those laws do not impose a substantial burden on [petitioners'] religious beliefs." *Id.* at 117a-118a. In any event, the judge determined, petitioners' defense failed because "the Government has shown that" prosecution under "the trespass and property laws * * * is the least restrictive means of furthering its compelling interests" in securing the base. *Id.* at 129a.

The district court adopted the magistrate judge's recommendation to deny petitioners' motion to dismiss. Pet. App. 35a-52a. The court concluded that the criminal charges had substantially burdened petitioners' sincere religious exercise. *Id.* at 44a-45a. The court agreed with the magistrate judge, however, that the government had met its burden of showing that application of the laws to petitioners was the least restrictive means of furthering the government's compelling interests in securing Kings Bay. *Id.* at 46a-52a. The court explained that "the majority of [petitioners'] suggested alternatives (such as forgoing prosecution, pre-trial diversion, or imposing only civil injunctions, fines, or ban and bar letters) reflect less *punitive*—but equally *restrictive*—government accommodations." *Id.* at 50a (citation omitted). Accordingly, "[n]one of these options would have permitted [petitioners] to trespass on Kings Bay and destroy and depredate government property." *Ibid.* The court noted that petitioners' "final proposed means, a permitted protest at Kings Bay, likewise fails because such a means would not have permitted [them] to have engaged in the religious exercises that they engaged in—namely, trespassing onto Kings Bay and destroying and depredating government property." *Ibid.*

Petitioners proceeded to a jury trial and were found guilty of all the charges against them. Pet. App. 10a. The district court sentenced them to between ten and 14 months of imprisonment. *Id.* at 11a.

4. The court of appeals affirmed. Pet. App. 1a-34a. The government did not dispute on appeal that petitioners' actions at Kings Bay constituted an exercise of their sincerely held religious beliefs or that the application of the criminal laws to them substantially burdened that exercise. *Id.* at 13a. Petitioners did not dispute

that the government had a compelling interest in the security of the base. *Ibid.* Accordingly, the court focused on "whether the government met its burden of demonstrating that criminal prosecution of [petitioners] was the least-restrictive means of furthering its significant compelling interests in the safety and security of the" base. *Id.* at 13a-14a.

The court of appeals held that the government had met that burden. Pet. App. 11a-20a. The court first stated that, to meet its burden, "the government must refute the alternative schemes proposed by" petitioners. *Id.* at 14a. The court noted that petitioners' principal "less restrictive alternative" on appeal was "for the naval base to make arrangements for them to practice symbolic disarmament in a designated area." *Id.* at 15a. But that alternative, the court explained, did not "address the particular [religious] practice" for which petitioners were prosecuted—unauthorized entry followed by destruction and depredation of property. *Ibid.* (citation omitted; brackets in original). Because petitioners' proposed approach did not address "the religious exercise practiced in this case," the court determined that it could not constitute a less-restrictive alternative under RFRA. *Id.* at 16a; see *id.* at 16a-17a.

More generally, the court of appeals explained that "it would be impossible to achieve all of the government's compelling interests in the safety and security of the Kings Bay naval base * * * and also accommodate [petitioners'] destructive religious exercise in this case." Pet. App. 19a. The court thus determined that the "need for the uniform application of laws prohibiting unauthorized entry on naval base property, as well as the depredation and destruction of naval base assets, are the least-restrictive means of achieving the

government's compelling interest in national security—an interest of the highest order." *Ibid.* Accordingly, the court explained, RFRA does not require "recognition of the proposed exceptions to these criminal laws." *Ibid.* "Simply put, RFRA is not a 'get out of jail free card,' shielding from criminal liability individuals who break into secure naval installations and destroy government property, regardless of the sincerity of their religious beliefs." *Id.* at 17a.

ARGUMENT

Petitioners contend (Pet. 7-18) that RFRA entitles them to an exemption from criminal prosecution for trespassing and destroying property on highly sensitive areas of a United States naval base. The court of appeals correctly rejected that claim, holding that application of the criminal laws to petitioners' criminal conduct was the least restrictive way of furthering the government's compelling interest in military security. The court's decision does not conflict with any decision of this Court or another court of appeals, and this case would be a poor vehicle in which to consider the RFRA issues petitioners seek to raise even if those issues otherwise warranted consideration. The petition for a writ of certiorari should accordingly be denied.

1. RFRA provides that the federal government "shall not substantially burden a person's exercise of religion," unless the government "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." 42 U.S.C. 2000bb-1(a) and (b). "A person whose religious exercise has been burdened in violation of [RFRA] may assert that violation as a claim or defense in a judicial proceeding

and obtain appropriate relief against a government," including dismissal of criminal charges. 42 U.S.C. 2000bb-1(c); see, *e.g.*, *United States* v. *Christie*, 825 F.3d 1048, 1055 (9th Cir. 2016).

At the first stage of the RFRA analysis, the claimant bears the burden of establishing a substantial burden on his or her sincere religious exercise. See, *e.g.*, *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428 (2006); see also *Holt* v. *Hobbs*, 574 U.S. 352, 360-361 (2015) (describing the parallel provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.*). If the claimant makes that showing, the government must demonstrate that the burden is the "least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. 2000bb-1(b)(2); see, *e.g.*, *O Centro*, 546 U.S. at 428-429; see also *Holt*, 574 U.S. at 362.

Here, petitioners did not contest that the government has compelling interests in the safety and security of the Kings Bay naval base. Pet. App. 13a-14a. And the court of appeals correctly held that the government had demonstrated that prosecuting petitioners for their crimes on the base was the least restrictive means of furthering those compelling interests. *Id.* at 11a-20a. That conclusion follows directly from a straightforward and commonsense application of RFRA.

Petitioners' unlawful entry onto the Kings Bay naval base—accomplished by cutting a padlock "under the cover of darkness" following "approximately two years of secret planning"—was a serious crime. Pet. App. 5a. Petitioners' further criminal conduct on the base—particularly their cutting of fencing and concertina wire to enter the Limited Area—created even more significant security risks. *Id.* at 8a; see *id.* at 50a-51a (district court

finding that petitioners' conduct "could have easily led to deadly consequences and did in fact interrupt operations at the base"). Congress, in enacting RFRA, did not create a religious exemption to prosecution for such brazen and damaging criminal conduct; to the contrary, "nothing in RFRA supports destructive, national-security-compromising conduct as a means of religious exercise." *Id.* at 17a. Indeed, courts have long recognized that "no plausible argument can be advanced why the Government must accommodate the religious beliefs of those who would destroy government property." *United States* v. *Allen*, 760 F.2d 447, 453 (2d Cir. 1985); cf. *Mahoney* v. *Doe*, 642 F.3d 1112, 1122 (D.C. Cir. 2011) (Kavanaugh, J., concurring) (emphasizing, in the free-speech context, that "[n]o one has a First Amendment right to deface government property").

Petitioners' principal contention below was that the government could have furthered its compelling interests in base security by "reducing the number and severity of the charges" against them, or by "offering instead civil injunctions, civil damages, community service, 'ban and bar' letters, or pretrial diversion." Pet. App. 9a-10a. As the district court recognized, those proposals are "less *punitive*," but they do not qualify as less-restrictive alternatives under RFRA because they are "equally *restrictive*" of petitioners' desired religious exercise. *Id.* at 50a (citation omitted).

In any event, as both courts below correctly held, failing to apply criminal sanctions for a severe breach like petitioners' would not adequately protect the government's compelling interests in securing the base. Pet. App. 17a, 51a. Petitioners' approach would also create separation-of-powers concerns, "plung[ing] courts far too deep into the business of reviewing the most

basic exercises of prosecutorial discretion." *Christie*, 825 F.3d at 1062. "Simply put, RFRA is not a 'get out of jail free card,' shielding from criminal liability individuals who break into secure naval installations and destroy government property, regardless of the sincerity of their religious beliefs." Pet. App. 17a.

Petitioners separately contended below that the government could have made "arrangements for them to practice symbolic disarmament in a designated area" at some future date. Pet. App. 15a. But petitioners did not give the government that option: Rather than requesting such an accommodation, petitioners took matters into their own hands by breaking into the base "under the cover of darkness"—and then engaged in destructive vandalism, not mere "symbolic disarmament." *Id.* at 5a. As the court of appeals explained, the question under RFRA is not whether the government could have allowed petitioners to engage in some *other* religiously motivated conduct without undermining its compelling interests; the question is whether forbidding the specific "religious exercise practiced in this case" is the least restrictive means of furthering the government's compelling interests. *Id.* at 16a. It is.

2. Petitioners now principally contend (Pet. 10) that the court of appeals erred by stating in a footnote that "[t]he government does not bear the burden of proffering less restrictive alternatives or demonstrating that it actually considered and rejected those alternatives." Pet. App. 15a n.12. Petitioners assert (Pet. 9) that the court's statement derives from *United States* v. *Wilgus*, 638 F.3d 1274 (10th Cir. 2011), which held that RFRA does not require the government "to do the impossible —refute each and every conceivable alternative regulation scheme." *Id.* at 1289. According to petitioners

(Pet. 8, 11), application of that "*Wilgus* principle" violates the "plain statutory language of RFRA."

Petitioners' contention lacks merit. RFRA's text requires the government to "demonstrate[]," 42 U.S.C. 2000bb-1(b), that it used the least restrictive means of furthering its compelling interest. The court of appeals expressly recognized "the government's burden" to do that in this case, Pet. App. 14a, and explained in detail why the government had met that burden, see *id.* at 14a-20a. The court naturally focused on the purportedly less-restrictive alternatives that petitioners had identified as the strongest bases for resolving the case in their favor. *Id.* at 14a-15a (collecting cases adopting the same approach); see, *e.g.*, *Holt*, 574 U.S. at 367 (similar). But the court also separately determined that "it would be impossible to achieve all of the government's compelling interests in the safety and security of the Kings Bay naval base, its base personnel, and its base assets and also accommodate [petitioners'] destructive religious exercise in this case." Pet. App. 19a; see *ibid.* ("The need for the uniform application of laws prohibiting unauthorized entry on naval base property, as well as the depredation and destruction of naval base assets, are the least-restrictive means of achieving the government's compelling interest in national security."). The court thus fully complied with RFRA's text.

Contrary to petitioners' contentions, no court has held that, to "demonstrate[]" that it used the least restrictive means within the meaning of RFRA, 42 U.S.C. 2000bb-1(b), the government must (1) "'proffer less restrictive alternatives'" in addition to those proffered by the claimants; (2) show that it "considered and rejected" each of those alternatives, Pet. 10 (emphasis omitted) (quoting Pet. App. 15a n.12); and (3) "refute each and

every conceivable alternative regulation scheme," Pet. 9 (quoting *Wilgus*, 638 F.3d at 1289). That approach has no footing in the statutory text or pre-RFRA case law. It is also impractical and illogical, as it would require the government to "do the impossible," which cannot be what Congress required in RFRA. *Holt*, 574 U.S. at 372 (Sotomayor, J., concurring) (citation omitted).

Petitioners point (Pet. 11-12) to cases stating that, under RLUIPA, a "prison 'cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.'" *Spratt* v. *Rhode Island Dep't of Corr.*, 482 F.3d 33, 41 (1st Cir. 2007) (quoting *Warsoldier* v. *Woodford*, 418 F.3d 989, 999 (9th Cir. 2005)). But such statements are not inconsistent with the decision below. Indeed, the First Circuit decision cited by petitioners expressly stated that RLUIPA does not "require prison administrators to refute every conceivable option in order to satisfy the least restrictive means prong of RFRA." *Id.* at 41 n.11 (citation omitted). The cases cited by petitioners thus stand for the uncontroversial proposition that government entities and courts cannot "assume a plausible, less restrictive alternative would be ineffective." *Warsoldier*, 418 F.3d at 999 (citation omitted).

It is unclear, moreover, what additional alternatives the government could have considered under the circumstances here. Unlike the plaintiffs in the prison cases on which they rely, petitioners did not request a religious accommodation or raise their RFRA claim as a pre-enforcement challenge to the government's policy on protests at Kings Bay. See, *e.g.*, *Spratt*, 482 F.3d at 35-36 (challenge to prison's prohibition on preaching by

inmates); *Warsoldier*, 418 F.3d at 991-992 (challenge to prison's grooming policy). Petitioners instead asserted their RFRA claim only after engaging in the criminal conduct and facing prosecution. At that point, the government had limited options: It could either apply the criminal laws at issue to petitioners, or it could allow their crimes to go unpunished. See Pet. App. 51a. The courts below addressed the latter alternative and found that it would "not permit the government to achieve its compelling interest." *Ibid.*; see *id.* at 16a-17a. Thus, even if petitioners were correct that the government must "refute each and every conceivable alternative regulation scheme," Pet. 9 (citation omitted), the government did so here.

3. Contrary to petitioners' contentions (Pet. 10-14), the decision below does not implicate any conflict of authority among the courts of appeals. Petitioners contend that the Eighth, Tenth, and Eleventh Circuits apply the "principle outlined" in *Wilgus*, which requires the government to "'refute the alternative schemes offered by the challenger,'" but not to "'refute each and every conceivable alternative regulation scheme.'" Pet. 9 (citation and emphasis omitted). In contrast, they assert, the First, Third, and Ninth Circuits have rejected the "*Wilgus* principle" and require the government to demonstrate "'that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.'" Pet. 11-13 (citation and emphases omitted).

Petitioners' mischaracterize those decisions. The First, Third, and Ninth Circuits have not, as petitioners contend, rejected the principles articulated by the Tenth Circuit in *Wilgus*. To the contrary, each of those circuits has in fact adopted *Wilgus*'s holding that the

government is not required to "refute each and every conceivable alternative regulation scheme," to meet its burden under RFRA's least-restrictive-means analysis. 638 F.3d at 1289. As noted above, the First Circuit in *Spratt* stated that RLUIPA does not "require prison administrators to refute every conceivable option in order to satisfy the least restrictive means prong of RFRA." 482 F.3d at 41 n.11 (citation omitted). The Third Circuit has similarly stated (albeit in an unpublished decision) that "courts have not required prisons to identify and evaluate 'every conceivable option in order to satisfy the least restrictive means prong of RFRA.'" *Watson* v. *Christo*, 837 Fed. Appx. 877, 880 n.7 (2020) (citation omitted); cf. *Washington* v. *Klem*, 497 F.3d 272, 284 (3d Cir. 2007) (stating more generally that the government must "must consider and reject other means before it can conclude that the policy chosen is the least restrictive means"). And the Ninth Circuit has stated that, "[a]lthough the government bears the burden of proof to show its practice is the least-restrictive means, it is under no obligation to dream up alternatives that the plaintiff himself has not proposed." *Walker* v. *Beard*, 789 F.3d 1125, 1137, cert. denied, 577 U.S. 1015 (2015).

There is accordingly no conflict between the least-restrictive-means analysis applied by the First, Third, and Ninth Circuits, and the "*Wilgus* principle" that petitioners challenge here. And in any event, even if petitioners were correct that some circuits have in some circumstances required prison administrators to show that they actually considered and rejected less-restrictive alternatives before refusing to grant religious accommodations to prison policies (cf. Pet. 11-12), this case arises in a starkly different context: Petitioners' own

conduct deprived the government of any opportunity to consider less-restrictive alternatives in advance. And petitioners point to nothing suggesting that other circuits—or any other court—would accept the remarkable proposition that RFRA entitles them to an exemption from criminal prosecution for trespassing on and defacing government property at sensitive locations on a military base.

4. Finally, even if the proper application of RFRA's least-restrictive-means analysis otherwise warranted this Court's review, this unusual case would not be an appropriate vehicle in which to consider it. In the court of appeals, this case was litigated on the assumption that the federal laws prohibiting petitioners from trespassing and destroying property on a naval base substantially burdened their exercise of religion within the meaning of RFRA. Pet. App. 13a-14a. But RFRA, including its substantial-burden standard, was enacted to "restore" the standard "set forth in [*Sherbert* v. *Verner*, 374 U.S. 398 (1963),] and [*Wisconsin* v. *Yoder*, 406 U.S. 205 (1972)]." 42 U.S.C. 2000bb(b)(1); see *O Centro*, 546 U.S. at 424. Congress thus intended for courts to "look to free exercise cases decided prior to [*Employment Division* v. *Smith*, 494 U.S. 872 (1990),] for guidance in determining whether the exercise of religion has been substantially burdened." S. Rep. No. 111, 103d Cong., 1st Sess. 8 (1993) (Senate Report); see H.R. Rep. No. 88, 103d Cong., 1st Sess. 6-7 (1993) (same). And those pre-*Smith* decisions made "clear" that "strict scrutiny does not apply" where, as here, the challenged government action concerns "the use of the Government's own property or resources." Senate Report 9.

For example, in *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), the Court rejected

three Indian tribes' challenge to plans to permit timber harvesting in, and construction of a road through, a portion of a national forest traditionally used for tribal religious practice. *Id.* at 441-442. The Court acknowledged that the project would have "devastating effects on traditional Indian religious practices." *Id.* at 451. But the Court held that those harms were not a cognizable burden under the Free Exercise Clause of the First Amendment, explaining that some citizens will inevitably find "[a] broad range of government activities" to be inconsistent with the "tenets of their religion," and that the "government simply could not operate if it were required to satisfy every citizen's religious needs and desires" in matters such as the administration of public property. *Id.* at 452.

That logic applies with even greater force where the public property at issue is a sensitive military base. The free exercise of religion protected by RFRA creates a sphere of religious liberty and autonomy that is to be free of governmental interference unless that interference is necessary to serve a compelling governmental interest. But it does not give religious adherents the right to dictate the government's use of its own land or resources. The government's maintenance of military facilities—including protecting them from trespass and destruction—thus does not impose the sort of substantial burden on religious exercise that is cognizable under RFRA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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