No. 21-1405

IN THE
Supreme Court of the United States

LESTER J. SMITH,

Petitioner,

v.

TIMOTHY WARD, COMMISSIONER OF GEORGIA DEPARTMENT OF CORRECTIONS, IN IN HIS OFFICIAL CAPACITY,

Respondent.

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

BRIEF OF *AMICI CURIAE* FORMER PRISON OFFICIALS IN SUPPORT OF PETITIONER

Jon Endean
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018

Kevin King
Counsel of Record
Elizabeth Ertle
COVINGTON & BURLING LLP
850 Tenth Street N.W.
Washington, DC 20001
(202) 662-6000
kking@cov.com

Counsel for Amici Curiae

JUNE 6, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici curiae are former prison officials who have personal experience with the unique challenges of balancing religious liberties and security considerations in the penal setting. As individuals who have worked on the front lines of prison administration, *amici* recognize that there are cases where certain religion-accommodating policies cannot be adopted without compromising an institution's commitment to safety. But in the view of *amici*, this case does not present such a mutually incompatible choice between inmates' religious exercise and institutional safety. Instead, the policy that the Georgia Department of Corrections ("Georgia") has refused to adopt in this case has been implemented in the majority of jurisdictions across the country.

Steve J. Martin is a career corrections professional with nearly 50 years of experience in confinement operations. He began his career as a correctional officer for the Texas Department of Criminal Justice and, after earning his juris doctor degree, eventually became General Counsel and Executive Assistant to the Director of the Texas Department of Criminal Justice. He is currently the Federal Court Monitor for the New York City Department of Corrections related to a remedial decree involving staff use of excessive force

---

[1] All parties were given timely notice of and consented to the filing of this brief. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici* or their counsel made a monetary contribution intended to fund the preparation of this brief.

and detainee violence. He has extensive experience over twenty years of service with the civil rights divisions of both the U.S. Department of Justice and Department of Homeland Security related to jails, prisons, and immigration facilities.

Dick Morgan is a veteran officer and administrator for the Washington State Department of Corrections. He served as Secretary of the Department (March 2016-January 2017), Director of Prisons (2008-2010), and Assistant Deputy Secretary of Prisons (2006-2008). He also served as Superintendent of three different prisons. He also was appointed to Washington State's Indeterminate Sentencing Review Board (Parole Board) and elected to the Walla Walla City Council, and he has served on the Board of the Washington State Coalition to Abolish the Death Penalty since 2012.

Dan Pacholke has a long tenure as an officer for the Washington State Department of Corrections. Among other positions, he has served as Secretary of the Department of Corrections (October 2015–March 2016), Deputy Secretary (April 2014–October 2015), Director of Prisons (July 2011–April 2014), and Deputy Director of Prisons (July 2008–July 2011). He also served as the Superintendent of a number of individual correction centers.

Dora Schriro is a former Director of two state correctional systems, the Missouri Department of Corrections and the Arizona Department of Corrections; the Commissioner of two city jail systems, the St. Louis City Division of Corrections and the New

York City Department of Correction; and the Warden of a St. Louis City jail. Dr. Schriro also served as a Senior Advisor to DHS Secretary Janet Napolitano on Detention and Removal and was the founding Director of the ICE Office of Detention Policy and Planning.

Phil Stanley is a corrections administrator who has served both the New Hampshire Department of Corrections and the Washington State Department of Corrections. In New Hampshire, he was Commissioner of Corrections (May 2000-November 2003). In Washington, his roles have included Director of a regional justice center (2007-2012), Probation Officer (2004-2017), Regional Administrator (1997-2000), and Superintendent (1992-1997).

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court's decision in *Holt v. Hobbs*, 574 U.S. 352 (2015), vindicated the right of prison inmates to grow beards as instructed by the tenets of their sincerely held religious beliefs. Nonetheless, in the wake of *Holt*, some prison institutions have continued to curtail the ability of inmates to follow the grooming dictates of their faiths. The Eleventh Circuit's decision in this case reflects that problematic trend: It upholds Georgia's outlier policy, thus depriving Mr. Smith of the right to practice his religion as he would be allowed to in the vast majority of jurisdictions nationwide.

The Eleventh Circuit's rule simultaneously places too much weight on what prison officials say, and too little weight on what prison institutions actually do. For decades, prisons throughout the country have safely permitted their inmates to grow beards – most without any restriction regarding beard length. The successful implementation of these policies creates a presumption that Georgia has failed to institute the least restrictive means to accomplishing its safety goals, as mandated by federal law. Georgia has not overcome that presumption here. Specifically, Georgia has failed to provide a permissible explanation for why its prison system is so different from other institutions that it cannot accommodate the religious rights of the inmates in its care. Indeed, as the District Court found, Georgia's Department of

Corrections is *not* meaningfully different in either administration or prison population compared to other prison systems throughout the country.

Instead of scrutinizing whether Georgia truly differs from other jurisdictions, the Eleventh Circuit deferred to Respondent's claim that Georgia would be burdened by a policy permitting inmates to grow beards more than one-half inch long. Although *amici* agree with the Eleventh Circuit that prison officials' expertise should be afforded weight when considering the feasibility of certain prison policies, no level of deference warrants a court abdicating its responsibility to consider whether there is a less restrictive means for an institution to accomplish its goal. Particularly given that prisons in dozens of other jurisdictions have implemented safe ways to avoid substantially burdening inmates' religious rights, the Eleventh Circuit's deference to Respondent's professed (but unsubstantiated) concerns was impermissible under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc.

ARGUMENT

I. OTHER PRISON SYSTEMS HAVE LENGTHY HISTORIES OF SAFELY PERMITTING UNTRIMMED BEARDS.

Prison policies permitting inmates to grow beards are neither novel nor uncommon. As both the District Court and Eleventh Circuit acknowledged, 37 states, the District of Columbia, and the federal Bureau of

Prisons all "allow inmates, either by their standard policy or through an exemption, to grow a beard without any length restrictions." *Smith v. Owens*, 13 F.4th 1319, 1332 (11th Cir. 2021) (cleaned up). These policies are not recent developments. Even before this Court's decision in *Holt*, 39 states, the District of Columbia, and the Bureau of Prisons all permitted beards without restrictions as to length. *See* Dawinder S. Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. Miami L. Rev. 923, 964-72 (2012).

That broad consensus reflects institutions' ability to implement these policies in a way that does not compromise institutional security. Long-standing experience with policies permitting "religiously motivated grooming choices" has revealed a "low level of security risk… when [the practice is] reasonably regulated." American Bar Association, *Standards for Criminal Justice: Treatment of Prisoners* 216 (3d ed. 2011); *see also id.* at 209; American Correctional Association, *Standards for Adult Correctional Institutions* 77 (4th ed. 2003). *Amici* have familiarity with policies permitting beards among inmates, and none of us has observed significant security concerns related to these policies when implemented in a reasonable manner.

Although the vast majority of inmates in the Unites States are permitted to grow beards, the policies that govern that issue are not "monolithic." Sidhu, 66 U. Miami L. Rev. at 955. Instead, prisons

throughout the country maintain institutional security through varying implementation strategies: "some [policies] expressly note, without qualification, that inmates may grow their hair in accordance with their personal preferences; some expressly entitle inmates to grow their hair in accordance with their religious beliefs; and others do not have appearance restrictions but mention the prison interests, such as security and hygiene, that facilities nonetheless reserve in the event of a breach." *Id.*

To ensure safety, many prisons implement specific policies governing inmate conduct with respect to beard growth. As noted by the District Court in this case, the federal Bureau of Prisons and several state prison systems use a "a self-search method where inmates are required to vigorously frisk, twist, and move their own beards." *Smith v. Dozier*, No. 5:12-CV-26 (WLS), 2019 WL 3719400, at *2 (M.D. Ga. Aug. 7, 2019); *see also Smith v. Owens*, 13 F.4th 1319, 1336 (11th Cir. 2021) (Martin, J., dissenting). Some jurisdictions also provide for revocation of inmates' privilege to maintain their desired hair or beard length if they fail "to promptly follow staff directions with regard to a search of their hair or beard." Sidhu, 66 U. Miami L. Rev. at 950 n.161 (citing *State Grooming Standards* 10 (Rev. Ulli Klemm, Adm'r, Religion & Volunteer Services, Bureau of Inmate Services, Pa. Dep't of Corr., ed.) (Dec. 17, 2009)). *Holt* recognized this approach, noting that "an institution might be entitled to withdraw an accommodation if the claimant abuses the exemption in a manner that undermines the prison's compelling interests." 574 U.S. at 369.

Similarly, a variety of policies exist to ensure that institutions are able to easily identify inmates, regardless of whether they grow facial hair. Many prisons require updated photographs from inmates whenever their appearance is substantially altered, including when an inmate's facial hair changes.[2] Some prisons that require updated photos based on changes in appearances also charge inmates a nominal fee if their changed appearance requires the administration to maintain multiple photographs.[3]

---

[2] *See, e.g.*, Indiana Dept. of Correction, *Manual of Policies and Procedures* § 02-01-104.X, https://www.in.gov/idoc/files/02-01-104-Offender-Grooming-5-1-2019-.pdf ("When a significant change occurs in an offender's appearance, a new identification picture shall be made."); N.Y. Comp. Codes R. & Regs. tit. 7, § 270.2(B)(11)(v) (Rule 100.31) ("An inmate shall pay the cost of a replacement ID card whenever the inmate's appearance is changed as a result of a beard, mustache, or change in hair length or color."); Ohio Admin. Code 5120-9-25(G) ("A new photo shall be taken whenever in the judgment of the managing officer or designee any significant change in physical appearance has taken place. Rephotographing shall be at the inmate's expense if the change in appearance is occasioned by grooming changes."); Va. Dept. of Corrections, Operating Procedure 864.1, § III.F.1 (2019), *available at* https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-864-1.pdf ("To ensure a current likeness, identification photographs for inclusion in permanent records and on offender identification cards will be updated whenever an offender's appearance changes.").

[3] *See* Sidhu, 66 U. Miami L. Rev. at 950 n.161 (citing State Grooming Standards 1 (Rev. Ulli Klemm, Administrator, Religion & Volunteer Services, Bureau of Inmate Services, Pa. Dep't of Corr., ed.) (Dec. 17, 2009) ("If a prisoner drastically changes

Other institutions specifically require that all inmates who have beards also provide clean-shaven photographs to the prison administration.[4] The bottom line is that there are multiple methods of addressing the consequences that flow from allowing inmates to maintain beards, and in *amici*'s experience, those methods are effective in practice.

II. RLUIPA Requires Consideration of External Evidence and Practices to Ensure That the Government's Policy Incorporates the Least Restrictive Means Available.

In *Holt*, this Court found it significant that, although the Arkansas Department of Corrections argued that it could not safely permit inmates to grow

---

his or her appearance, e.g., changing hair length or color, shaving, or growing a beard or mustache, the individual shall be rephotographed for purposes of identification."); Cal. Code Regs. tit. 15, § 3019 ("An inmate may also be charged for replacement of [an identity] card if a physical change in the inmate's appearance is a matter of his or her own choice and the change occurs within six months of the issue of a new or replacement card."); Ill. Admin. Code tit. 20, § 502.110(b) ("If the growth, elimination, or color change of hair, mustache, sideburns, or beard significantly changes the individual's appearance, a new identification photograph shall be taken.").

[4] *See, e.g.*, Va. Dept. of Corrections, Operating Procedure 864.1 § III.F.3 (2019) ("Whenever available, separate identification photos should be maintained in VACORIS showing the offender as received into the DOC, actual or simulated clean-shaven/short-hair, and current appearance.").

beards, "so many prisons" from other jurisdictions allowed that practice. 574 U.S. at 369. Based on that observation, this Court adopted a new rule: when a prison's restriction substantially burdens religious exercise but is not applied by other institutions, the prison with the restriction "must, at a minimum, offer persuasive reasons why it believes that it must take a different course." *Id.*

The test recited in *Holt* reflected long-established precedent holding that the practices of other prisons are relevant to determining whether an individual institution's policies are lawful. *See Procunier v. Martinez*, 416 U.S. 396, 414 n.14 (1974) ("While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction."); *Turner v. Safley*, 482 U.S. 78, 97–98 (1987) (finding that federal Bureau of Prisons' general practice of permitting inmates' marriages suggested that there were alternatives to state prison's refusal to allow inmates to marry). Importantly, under this test, it is insufficient for an institution to show *that* it would experience a relatively different outcome compared to other facilities if it were to adopt alternative policies; an institution must also show *why* it would experience those different results. *Holt*, 574 U.S. at 866; *see also Ramirez v. Collier*, 142 S. Ct. 1264, 1279 (2022) ("Respondents do not explain why. Nor do they explore any relevant differences between Texas's execution chamber or process and those of other jurisdictions.").

A. The Exacting Inquiry Imposed by RLUIPA Is Not Satisfied by Complete Deference to Testimony of Prison Officials.

Amici agree with Georgia that the security of prisons constitutes a compelling governmental interest. And *amici* further agree, based on their own first-hand experience, that testimony from prison officials can assist courts in determining whether challenged policies are compatible with the security concerns inherent in prison operation. After all, "[p]rison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise." *Holt*, 574 U.S. at 364.

However, no amount of expertise "can justify the abdication of the responsibility, conferred by Congress, to apply RLUIPA's rigorous standard." *Id.* Deference to prison officials at a particular institution cannot, on its own, defeat the presumption that a widespread practice of other institutions can be safely employed. In other words, a prison cannot carry its burden under RLUIPA merely by invoking the expertise of its officials, and a court cannot rubber stamp prison policies merely by deferring to such expertise. Indeed, one of *Holt*'s central tenets is that RLUIPA "demands much more" than deference to prison officials' "mere say-so that they could not accommodate petitioner's request." 574 U.S. at 369. To establish that a challenged policy is the least restrictive means of achieving a compelling governmental interest, Georgia bears the burden of reconciling its policies with more permissive beard policies employed by most

other prison systems. *Id.* at 357–58; *see also Ware v. Louisiana Dep't of Corr.*, 866 F.3d 263, 274 (5th Cir. 2017) ("Because Ware offered evidence that the vast majority of jurisdictions have a more lenient policy with regard to dreadlocks than DOC, *Holt* requires that DOC offer persuasive reasons for the disparity").

Holt's prohibition on "mere say-so" rationales means that courts may not defer to a prison official's claim about feasibility where the official did not even *consider* whether they might have adopted the practices of other institutions. Instead, in order to show that a prison policy is the least restrictive means, Georgia was required to evaluate how it might have implemented the procedures adopted by other prison systems, and to conduct a reasoned analysis regarding the fit between those procedures and the needs of Georgia prisons. On this crucial point, the Eleventh Circuit erred. Rather than following *Holt*'s directive, the Eleventh Circuit accepted Georgia's representation that it was uniquely unable to permit inmate beards without "requir[ing Georgia] to detail other jurisdictions' successes and failures with their grooming policies." *Owens*, 13 F.4th at 1332.

To the extent that there was any lack of clarity on this issue before, *Ramirez* resolved the issue. There, the Court concluded that Texas had done "nothing to rebut … obvious alternatives, instead suggesting that it is [the inmate's] burden to identify any less restrictive means. That gets things backward. Once a plaintiff has made out his initial case under RLUIPA, it is the government that must show its policy is the

least restrictive means of furthering a compelling governmental interest." 142 S. Ct. at 1264 (cleaned up).

Holt implicitly addressed the same point in faulting the prison system for failing to engage with the alternative policies employed by other prison systems. Specifically, the Court observed that "the Department ha[d] failed to prove that it could not adopt the less restrictive alternative of having the prisoner run a comb through his beard." *Holt*, 547 U.S. at 365. Indeed, "as petitioner has argued, the Department could largely solve this problem by requiring that all inmates be photographed without beards when first admitted to the facility and, if necessary, periodically thereafter." *Id.* at 366.

As a result, surprise or lack of notice cannot serve as a basis to excuse Georgia from analyzing the workability of these policies and, if necessary, explaining why circumstances in Georgia prisons require a different approach. *See Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33, 41 n.11 (1st Cir. 2007) ("to meet the least restrictive means test, prison administrators generally ought to explore at least some alternatives, and their rejection should generally be accompanied by some measure of explanation"); *Smith v. Comm'r, Ala. Dep't of Corr.*, 844 F. App'x 286, 293 (11th Cir. 2021) (granting injunctive relief where the Alabama Department of Corrections had "conceded that an alternative policy existed," that the "alternative is the precise policy the BOP has followed without any problems," and that "the ADOC provided no evidence that adopting this

alternative… would undermine its compelling interest in security").

Amici acknowledge that determining the "least restrictive means" of accomplishing a state objective can be challenging, particularly in the absence of an understanding of what has worked in similar situations. Indeed, while *amici* sought to implement best practices in the prison systems they oversaw, those practices have not always been identical and occasionally required updating in light of new evidence.

As a consequence of this principle, when other jurisdictions have demonstrated a less restrictive means of accomplishing the same compelling governmental interest, the burden must be on the prison official defendants to demonstrate why their circumstances are distinguishable. Thus, it is not enough for the lower courts to have extended deference to testimony regarding security concerns with unshaven beards—Georgia was required to prove, and the court was required to consider, *why* policies permitting but regulating unshaven beards are insufficient to accomplish Georgia's safety objectives. Indeed, if the requirement of reasoned decisionmaking governs under the Administrative Procedure Act's flexible framework, *see FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 520 (2009), then it surely applies when applying the rigorous scrutiny mandated by RLUIPA.

The Eleventh Circuit did not require Georgia to engage in any analysis of this type. Accordingly, while numerous jurisdictions—including those with which

amici have been affiliated—have demonstrated the capacity of a prison system to achieve the same compelling governmental interests sought by Georgia, but with less restrictive means, the success of those efforts has been rendered inapposite by the Eleventh Circuit's decision.

The net effect of the Eleventh Circuit's decision is to limit the protection afforded by RLUIPA, and to upset the careful balance struck by Congress and the President in enacting that statute. Accordingly, the breadth of the deference afforded to prison officials is fundamentally inconsistent with this Court's holding in *Holt*, and risks "render[ing] [this] Court's command in *Holt* meaningless." *Owens*, 13 F.4th at 1339 (Martin, J., dissenting).

B. Georgia Has Not Offered "Persuasive Reasons" Why It Is Uniquely Unable to Allow Beards Permitted by Other Jurisdictions.

The Eleventh Circuit acknowledged that, in light of other jurisdictions' policies governing inmates' beards, Georgia was required to differentiate its circumstances from those of other prison systems. In upholding Georgia's beard restriction, the Eleventh Circuit credited two of Georgia's proffered explanations on that issue: (1) personnel challenges related to low staffing and high turnover rates and (2) a relatively high number of inmates incarcerated for violent offenses. *Owens*, 13 F.4th at 1330. However, the Eleventh Circuit's uncritical acceptance of these rationales amounted to little more than approval of

prison officials' "mere say-so"—an approach this Court rejected in *Holt*. 574 U.S. at 369. Both of Georgia's rationales for "why it believes that it must take a different course" from other jurisdictions are inconsistent with *Holt*'s emphasis on the import of other prison systems' practices, for several reasons. *Id.*

First, Georgia did not establish, and the courts below did not find, that Georgia faces more severe understaffing challenges or prison populations than other jurisdictions that permit inmates to grow beards. The furthest the District Court went was to say that the Georgia had "shown that its low staffing and high turnover rates play a significant part in its ability to monitor inmates and conduct searches." *Dozier*, 2019 WL 3719400, at *6. But the District Court did *not* conclude that personnel challenges were different compared to other institutions in a way that rendered Georgia uniquely unable to accommodate inmates who have a sincere religious interest in maintaining a beard.

To the contrary, the District Court expressed skepticism that either of Georgia's rationales made it different from other jurisdictions throughout the country. *Id.* at *7 (discussing testimony that Georgia is "in the middle [of the pack] for prison systems in the United States" with respect to staffing and noting that Georgia had failed to provide statistics on "violent inmates in other prison systems, gang membership in other prison systems, or inmates serving a life sentence in other prison systems"). Here, the Eleventh Circuit not only accepted Respondent's "mere say-so,"

it went one step further by crediting prison officials' claims even where the District Court did not.

Second, even if Georgia's prisons are understaffed, that would not be a constitutionally permissible rationale for substantially burdening the rights of inmates housed in those facilities. Indeed, understaffing concerns for prisons are so widespread that, if permitted to justify restrictive policies, they would become the exception that swallows the rule. All fifty states have reported prison understaffing, and it is an acknowledged "serious problem at the Bureau of Prisons." Luis Trautman, *Addressing Staffing Challenges in Federal Prisons*, Texas Public Policy Foundation (Feb. 2022), *available at* https://www.texaspolicy.com/wp-content/uploads/2022/03/2022-02-ROC-StaffingFederalPrisons-LarsTrautman.pdf (quoting remarks by United States Attorney General Merrick Garland); Brian Sonenstein, *All 50 States Report Prison Understaffing*, Prison Legal News (Apr. 1, 2020), *available at* https://www.prisonlegalnews.org/news/2020/apr/1/all-50-states-report-prison-understaffing/ (reporting that all fifty states had "reported prison staffing shortages since 2017"). *Amici* are familiar with the challenges involved with adequately staffing prisons, and we are sensitive to the security risks that inhere such difficulties. Nonetheless, personnel challenges, without something more, cannot constitute a persuasive reason why an institution is *different* in a way that prevents it from implementing policies commonly accepted in other jurisdictions. *See Ware*, 866 F.3d at 273 (rejecting

argument that the Louisiana Department of Corrections was unable to permit dreadlocks in part because the Department "offered no evidence that it was unique amongst other jurisdictions" with respect to "budget and staffing cuts").

Third, the Eleventh Circuit functionally excused Georgia from considering how other prisons' policies could be implemented in a way that would enable it to both permit inmates to exercise their religious liberties *and* ensure institutional safety. Instead, as discussed above, the Eleventh Circuit concluded that *Holt* "does not require [Georgia] to detail other jurisdictions' successes and failures with their grooming policies to satisfy a RLUIPA inquiry." *Owens*, 13 F.4th at 1331. As the District Court observed, Respondent "has not even attempted to determine how other states manage inmates with beards." *Dozier*, 2019 WL 3719400, at *7. To the contrary, the District Court's findings establish that, notwithstanding Georgia's staffing situation and prison population, it is "manageable" for Georgia to safely implement a policy allowing inmates to grow beards of up to three inches. *Id.* at *6. As for contraband concerns, the District Court credited expert testimony that the prison could have employed a self-search method used in other prisons. The Eleventh Circuit did not offer a valid reason to disturb that finding, wholly declining to consider whether such an approach might prove effective in Georgia. Similarly, with respect to prisoner identification concerns, the District Court acknowledged that other jurisdictions follow a practice of

keeping photographs of inmates both with and without facial hair—and in fact, Georgia has a policy of maintaining updated photos whenever an inmate's appearance appreciably changes. *Id.* at *7.

* * *

The Eleventh Circuit's reasoning artificially divorces consideration of institutional challenges from already-developed institutional solutions. Indeed, the Eleventh Circuit's rationale excuses—and even endorses—institutional decisions *not* to review the practices and procedures of other jurisdictions. That approach defies RLUIPA's narrow tailoring requirement as well as best practices in prison administration.

In the experience of *amici*, Georgia's head-in-the-sand approach is the opposite of good prison management. Georgia—and other similarly situated jurisdictions— can "avoid" the need to "reinven[t] the wheel" with respect to inmate-beard policies by "identify[ing] … established programs whose effectiveness has been documented and may be used to guide the creation of a best practice."[5] *Holt* and *Ramirez* correctly call for a similar, comparative approach. The

---

[5] Dr. Reginald A. Wilkinson, Correctional Best Practices: *What Does It Mean In Times of Perpetual Transition?* 4, Keynote Speech Before the Fifth Annual Conference, International Corrections and Prisons Association, Miami, Florida (Oct. 27, 2003);

Eleventh Circuit's decision undermines those precedents by allowing superficial, speculative grounds to stand in for hard evidence and reasoned analysis. The net result is a hollow regime in which prison administrators may substantially burden inmates' religious-exercise rights even when other jurisdictions have identified simple, workable ways of accommodating those rights.

CONCLUSION

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

---

see also Lonnie Lemons, *Developing Effective Policies and Procedures* 10, The Criterion (2010), *available at* http://www.mycama.org/uploads/7/7/6/3/7763402/the_criterion____august_20101.pdf.

Respectfully submitted,

Jon Endean
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018

Kevin King
Counsel of Record
Elizabeth Ertle
COVINGTON & BURLING LLP
850 Tenth Street N.W.,
Washington, DC 20001
(202) 662-6000
kking@cov.com

Counsel for Amicus Curiae

JUNE 6, 2022