No. 21-1405

In The Supreme Court of the United States

LESTER J. SMITH,

Petitioner,

v.

TIMOTHY C. WARD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner, a convicted murderer and maximum-security prisoner with an extensive prison disciplinary record—including violence against prison staff and inmates, possession of dangerous contraband, and violating grooming regulations—sued the Georgia Department of Corrections under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq.*, based on the Department's refusal to allow him a religious accommodation to grow an untrimmed beard.

The question presented is:

Whether the Eleventh Circuit correctly affirmed the district court's judgment that allowing Petitioner to grow an untrimmed beard presented unmanageable safety and security risks for the prison.

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INTRODUCTION

The Eleventh Circuit correctly ruled that Petitioner Lester Smith, a convicted murderer, is not entitled to grow an untrimmed beard while housed in Georgia's Department of Corrections. But even if there were some error below, it would be a matter of factual dispute, not legal disagreement. Smith tries to conjure circuit splits out of thin air by mischaracterizing both the Eleventh Circuit decision below—a garden-variety application of this Court's precedent—and the decisions of other courts. But there is no split of authority, unless by "split" one means that some courts have ruled for some prisoners based on certain facts, while other courts have ruled against other prisoners on different facts.

Applying the framework articulated in *Holt v. Hobbs*, 574 U.S. 352 (2015), the Eleventh Circuit here ruled that, based on the record evidence, the district court had not clearly erred in "conclud[ing] that allowing Smith to grow an untrimmed beard would be both unmanageable and dangerous." Pet.App.2a. That ruling was correct. Smith is a convicted murderer serving a life sentence in a maximum-security prison. He remains an acute security risk: he has been found guilty of attacking guards and other prisoners, hiding dangerous contraband including weapons, drugs, and cell phones, and consistently refusing to follow directions from prison staff. He has also repeatedly violated grooming policies. This evidence, combined with the evidence distinguishing Georgia's prison system from

others with looser grooming policies, was plainly sufficient to uphold the district court's judgment.

In the face of this factbound ruling, Smith is left to imagine legal questions where none exist. He posits that the Eleventh Circuit's decision not only creates a split on whether RLUIPA defendants must account for the contrary practices of other jurisdictions, but also deepens a supposed split on whether courts must defer to prison officials' "mere say-so" regarding the suitability of the proposed accommodation. Yet even a cursory review of the Eleventh Circuit's opinion shows that it expressly *rejected* the positions Smith attributes to it. *See*, *e.g.*, Pet.App.35a (applying *Holt*'s holding that the Department "must, at a minimum, offer persuasive reasons why it believes it must take a different course [from other jurisdictions]"); Pet.App.27a (declaring that, under *Holt*, "prisons officials' 'mere say-so'" is insufficient to carry their burden). Even the dissenting judge pointed to a differing view of the record evidence, not the law.

Lastly, the Eleventh Circuit's ruling does not so much as arguably conflict with this Court's decision in *Ramirez v. Collier*, 142 S. Ct. 1264 (2022). There, the Court explained that it was the government's burden to establish it could not provide an accommodation the prisoner *actually sought*. Here, the Department did just that. Smith has consistently made clear that an untrimmed beard is the *only* accommodation that would not substantially burden his religious practice, so the Department was obligated to address only that proposed accommodation. The Department was not

required to *also* disprove every imaginable alternative to its current policy, including even those alternatives that *would not satisfy the plaintiff*. Nothing in *Ramirez* suggests otherwise.

Courts uniformly apply *Holt* to RLUIPA challenges like this one, and the Eleventh Circuit did so correctly here. The Court should deny the petition.

STATEMENT

A. The Department and its Grooming Policy

1. The Georgia Department of Corrections houses approximately 53,000 inmates, making it the fourth largest prison system in the country. Pet.App.47a. Sixty-seven percent of the Department's inmates are considered violent or sexual offenders. *Smith v. Dozier*, No. 5:12-cv-26 (M.D. Ga. 2019), Doc. 243 at 2; Doc. 235 at 26; Doc. 232-2 at 15–17. In the Department's "close-security" prisons—facilities that house inmates, like Smith, who present a high risk of violence or escape—that number jumps to 81 percent, and it continues to increase due to criminal justice reforms. Pet.App.3a. The number of validated security-threat-group inmates also continues to increase. *Smith*, No. 5:12-cv-26, Doc. 235 at 26, 28, 29; Doc. 232-2 at 17.

The increase of gang-affiliated and gang-like inmates brings more violence, contraband, extortion, and a wide variety of other criminal activities into the Department's facilities. *Smith*, No. 5:12-cv-26, Doc. 235 at 28–36. In 2018, there were approximately 1700

incidents of inmate-on-inmate assaults and 260 incidents of inmate-on-staff assaults. *Id.* at 61, 64. The Department also had approximately 6000 incidents of contraband in 2018. *Id.* at 50. Common items of contraband in Department facilities include cell phones, drugs, weapons, razors, homemade handcuff keys, and other items that can be fashioned into weapons; the Department has found inmates hiding contraband in all these forms in sizes as small as an inch or two. *Id.* at 45, 49–50, 55–56.

The Department is currently unable to fill all of its correctional officer positions, particularly in its close-security prisons. *Smith*, No. 5:12-cv-26, Doc. 243 at 2; Doc. 235 at 39–40. These positions are dangerous and the pay is low, which, during fiscal year 2018, resulted in a 16.29 percent vacancy rate. *Id.* Doc. 232-2 at 10. Retention of officers is also difficult, with the annual turnover rate increasing from 27.23 to 34.86 percent from fiscal year 2017 to fiscal year 2018. *Id.*

2. As part of its security policy, the Department allows inmates to grow beards only up to one-half inch in length, which is the length the Department has determined is manageable, given its safety, security, and operational needs. Pet.App.2a; *Smith*, No. 5:12-cv-26, Doc. 243 at 1, 4; Doc. 235 at 136. Untrimmed beards make it easier to hide items of contraband, such as razors, shanks, nails, handcuff keys, money, drugs, and SIM cards for cell phones. Pet.App.17a–18a; *Smith*, No. 5:12-cv-26, Doc. 243 at 11; Doc. 235 at 23, 30–31, 42, 45,

49–56, 76–78, 111; Doc. 236 at 18, 21–24, 27–29, 41, 55–56, 62–63, 68.

All of these items can be, and have been, hidden in beards, including one particularly dangerous inmate in Department custody who was discovered hiding a handcuff key in his beard. Pet.App.16a–17a. Untrimmed beards also disguise an inmate's face and the Department has had incidents in which inmates altered them for the purpose of escaping and avoiding detection. Pet.App.18a. Conducting searches of untrimmed beards poses a special set of increased security risks, including harm to correctional officers during searches of beards, problems associated with the additional time to search beards, and the repercussions of slowing or delaying prison operations. *Smith*, No. 5:12-cv-26, Doc. 243 at 11, 13; Doc. 235 at 38, 41–42, 44, 59–60; Doc. 236 at 28–29, 39–41, 44. The Department's low staffing and high turnover rates make it especially difficult to monitor inmates and conduct searches of untrimmed beards. Pet.App.8a. And an untrimmed beards puts the wearer himself at risk of harm. For example, long beards can be grabbed and used to slam one's head into a wall; they can be the source of conflict between inmates and lead to physical altercations. Pet.App.16a; *Smith*, No. 5:12-cv-26, Doc. 243 at 11, 13, 15.

B. Smith's Disciplinary History

Petitioner Lester Smith is a convicted murderer serving a life sentence; he is housed in, and will remain

housed in, the Department's close-security prisons. Pet.App.3a; *Smith*, No. 5:12-cv-26, Doc. 243 at 2; Doc. 235 at 19–20. His disciplinary record shows him to be an extremely violent and dangerous inmate. At the time of trial (November 2017), he had been found guilty of seventy-two offenses, including four assaults on inmates or correctional officers; several threats to correctional officers; possession of cell phones, drugs, and weapons; bribery offenses; and countless offenses for failing to follow instructions or being insubordinate. Pet.App.3a–5a. Characteristic examples from the years preceding Smith's trial include:

> • On June 6, 2010, Smith verbally threatened a correctional officer. He told the officer that as "soon as he could get his hands on [the officer's] p*ssy *ss he was going to hurt [his] *ss."
>
> • That same day, Smith verbally threatened another correctional officer. He told the officer, "I wish you would take the restraints off of me, I will beat all of your *sses."
>
> • On January 8, 2012, Smith assaulted another inmate with a homemade weapon.
>
> • On February 23, 2012, Smith assaulted a correctional officer.
>
> • On June 30, 2013, Smith verbally threatened a correctional officer. He jammed his tray box slider open and, when an officer attempted to close it, said "I'll f*ck you up and I will beat your *ss."

- On October 20, 2014, Smith was found to be in possession of a cell phone, which prison administrators consider "one of the most dangerous items of contraband," because "they allow inmates to move other contraband, extort money from outside the prison, recruit gang members, put hits out on people, and plan escapes."

- On December 30, 2014, Smith was again found to be in possession of a cell phone, along with two weapons—"metal pieces sharpened to a point" that were hidden behind a sink.

Pet.App.4a–5a.[1]

C. Procedural History

In 2011, Smith filed a grievance with the Department requesting a religious accommodation to be able to grow an untrimmed beard, as he understands his Muslim faith to require. Pet.App.49a. The Department denied his request because its policy at the time prohibited beards absent a medical exemption. Pet.App.49a; *Smith*, No. 5:12-cv-26, Doc. 1; Doc. 114-1 at 2. Smith then filed this lawsuit alleging that the Department's grooming policy violates RLUIPA; he

[1] Smith is also a serial litigator. He has filed dozens of lawsuits in federal court, is a three-strikes offender under the Prison Litigation Reform Act, and has repeatedly had suits dismissed due to their frivolity. *See*, *e.g.*, *Smith v. Ward*, No. 1:19-cv-3871 (N.D. Ga. Sept. 4, 2021), Doc. 4 (denying Smith leave to file due to his three-strike status).

sought injunctive relief allowing him to grow an untrimmed beard. Pet.App.5a.

Smith alleged that the Department's grooming policy substantially burdens the exercise of his sincerely held religious beliefs because Islam prohibits him from shaving, trimming, or cutting his beard in any fashion. *Id.*; *Smith*, No. 5:12-cv-26, Doc. 1 at 4 (alleging that Islam prohibits "cutting of the beard" and that "being forced to shave his beard" infringed upon Smith's religious exercise).

After the district court granted the Department's first motion for summary judgment in 2014, Smith appealed to the Eleventh Circuit, which vacated the grant of summary judgment and remanded the case, instructing the district court to analyze Smith's RLUIPA claim in the wake of *Holt*. *See Smith v. Owens*, 848 F.3d 975, 981 (11th Cir. 2015). The remand order instructed the district court to conduct "an individualized, context-specific inquiry that requires the [Department] to demonstrate that application of [its] grooming policy *to Smith* furthers its compelling interests." *Id.* Meanwhile, the Department modified its grooming policy to allow all inmates to grow beards one-half inch in length. *Id.* at 978.

On remand, and after discovery, Smith and the Department both filed motions for summary judgment. *Smith*, No. 5:12-cv-26, Doc. 177-1; Doc. 183-1. The district court denied both motions. *Id.* Doc. 209; Doc. 213. The case then proceeded to a two-day bench trial. Pet.App.7a.

The district court ultimately found that the Department had "offered logical and persuasive reasons why untrimmed beards would be unmanageable," due to their potential "to cause harm in the more violent male facilities" and "hide contraband more easily," along with "the added difficulty in searching an untrimmed beard, and its ability to disguise a face." Pet.App.62a. These issues were particularly problematic in light of the Department's "low staffing and high turnover rates." Pet.App.61a. The district court further found that allowing a dangerous, close-security inmate like Smith the ability to grow an untrimmed beard could be "dangerous for prison security." Pet.App.68a.

Nevertheless, the district court then went on to make findings regarding a "remedy" that Smith had never requested: the possibility of an accommodation allowing him to grow a *three-inch* beard, rather than an untrimmed beard. Pet.App.61a–67a. Throughout the course of the litigation, Smith has consistently made it clear that he must grow an *untrimmed* beard to satisfy his religious beliefs. Pet.App.11a, 13a–14a; *see also Smith*, No. 5:12-cv-26, Doc. 177-1 at 1–2 (explaining Smith's belief that Islam "requires him to grow an uncut beard," that "scriptures forbid cutting the beard," and that he wished to "grow his beard indefinitely"); *id.* Doc. 181 at 23–24 ("I just want to grow a beard indefinitely-wise"; "We're not allowed to cut the beard"), 29 (Q: "Is there a length you would be okay with?" A: "Indefinite"); Doc. 235 at 9 (urging the court to "find that Mr. Smith should be allowed to grow an untrimmed beard consistent with his faith"); Doc.

238-1 at 1 ("Plaintiff's Muslim faith, which requires him to grow an untrimmed beard, is burdened by Defendant's half-inch beard policy."). For that reason, the Department did not spend any time or effort explaining why a three-inch beard was unworkable. Pet.App.14a n.6. But the district court analyzed a three-inch accommodation anyway, and it concluded that the Department had not persuasively explained why it must prohibit three-inch beards. Pet.App.61a–67a. The district court ordered the Department to "modify its grooming policy to allow inmates qualifying for a religious exemption to grow a beard up to three inches in length, said exemption being subject to revocation based on the inmate's behavior and compliance with the revised grooming policy," and further ordered the Department to provide Smith with such an exemption. Pet.App.72a.

The Department appealed to the Eleventh Circuit to challenge this mandate. At the same time, Smith cross-appealed the portion of the ruling denying him an untrimmed beard. Pet.App.9a.

The court of appeals affirmed in part and vacated in part. The court first determined that the district court had erred by ordering a remedy—a three-inch, trimmed beard—that Smith had never requested. Pet.App.11a. The court cited *Holt*, noting that to satisfy the RLUIPA least-restrictive-means test, the Department was "required 'to prove that *petitioner's proposed alternatives* would not sufficiently serve its security interests,'" not to "refute every conceivable option." Pet.App.12a (quoting *Holt*, 574 U.S. at 367),

and *United States v. Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011)). And in contrast to the petitioner in *Holt*, who had specifically "'proposed a compromise'" under which he would grow a half-inch beard, Smith had consistently argued solely for an untrimmed beard. Pet.App.13a n.5 (quoting *Holt*, 574 U.S. at 359). In fact, he had cross-appealed precisely to challenge the three-inch compromise, calling it "an arbitrary compromise without actual record support." Pet.App.11a, 13a–14a.

Accordingly, the trial court was "required to determine only if the [Department] had met its burden in proving that the *untrimmed* beard option would not sufficiently serve its security interests." Pet.App.15a. The panel majority rejected the dissent's argument that the three-inch beard was "an available alternative remedy" of which both Smith and the Department were aware. It explained that "the parties were under no obligation to address a possible alternative remedy simply because there were some stray references to it in the record." Pet.App.13a. Thus, the court vacated that aspect of the district court's judgment. Pet.App.15a.

The court of appeals then turned to Smith's entitlement to an untrimmed beard. It first examined the evidence relating to the Department's ability to accommodate untrimmed beards generally. Pet.App.16a. The court noted the district court's findings that such beards "could be used to cause harm in the more violent male facilities"; that there is "added difficulty in searching an untrimmed beard"; and that conducting those searches would be "'unmanageable for [the

Department]' given the [Department]'s low staffing and high turnover rates"; and that long beards make it easier for inmates to hide contraband or disguise their face. Pet.App.20a. These concerns, the court noted, were "not theoretical": the district court had credited testimony that the Department had previously discovered dangerous items, "such as shanks and cell phones" and even homemade handcuff keys—which create a major risk of escape or assault of an officer—in inmate beards. Pet.App.17a–18a. Additionally, a Department official testified at trial about past incidents where inmates with beards had escaped and then shaved their faces, hindering law enforcement's ability to identify and capture them. *Id.*

The court next addressed Smith's circumstances, specifically. Pet.App.18a. The court explained that he is "a convicted murderer and maximum-security inmate who has had dozens of disciplinary infractions while incarcerated." Pet.App.16a. Those infractions, the court noted, included "assaulting correctional officers and other inmates; threatening correctional officers; possessing weapons, cell phones, and contraband; and disobeying the [Department's] grooming policy." Pet.App.18a. In light of this evidence, the court of appeals concluded that "the district court did not clearly err in finding . . . that allowing any inmate, including Smith, to grow an untrimmed beard presents safety and security risks." Pet.App.17a.

The court also addressed Smith's argument that "37 states, the District of Columbia, and the BOP" allow untrimmed beards either by standard policy or

through exemptions. Pet.App.24a. The court explained that "the policies at other well-run institutions would be relevant to a determination of the need for a particular type of restriction." *Id.* (citing *Holt*, 547 U.S. at 368). In particular, the court of appeals observed *Holt*'s instruction that "when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course. . . ." *Id.* (citing 547 U.S. at 369).

The court concluded that the Department satisfied this burden. Unlike the defendants in *Holt*, who "offered only their 'mere say-so' that they could not accommodate the plaintiff's request," the Department had offered "two persuasive reasons" for its departure from the practices of other jurisdictions. Pet.App.25a–26a (quoting *Holt*, 547 U.S. at 369). First, the Department had demonstrated a history of "specific issues with inmates hiding contraband in beards and altering their appearance to avoid identification." Pet.App.25a (contrasting with *Holt*, where defendants could point to no concrete examples of contraband being hidden in half-inch beards). Second, the Department's low staffing and high turnover rates "play a significant part in its ability to monitor inmates and conduct searches," and allowing untrimmed beards would thus be "unmanageable for [the Department]." Pet.App.25a–26a.

The court of appeals also noted that it was unclear whether Smith himself would actually be allowed to grow an untrimmed beard in any of the jurisdictions that generally allow them. Pet.App.26a. Many of those

policies allow untrimmed beards *unless* the inmate's appearance "violates the prison's requirements for safety, security, identification, and hygiene," which made it "no stretch" that Smith, with his record of "infractions involving assault and hiding weapons and contraband," might be denied an unlimited beard under those jurisdictions' "safety" and "security" exceptions. *Id.*

Based on this analysis, the court of appeals affirmed the portion of the district court's ruling rejecting an untrimmed beard as a feasible accommodation. Pet.App.27a–28a.

Judge Martin dissented. In her view, the "testimony and evidence . . . fail[ed] to support [the Department]'s argument that it cannot accommodate untrimmed beards." Pet.App.33a.

REASONS FOR DENYING THE PETITION

There is no reason to further review the Eleventh Circuit's decision in this case. It is a fact-intensive ruling that implicates no split of authority nor, for that matter, any error. And even if there would otherwise have been some value in review here, Smith's unique characteristics would make this case a poor vehicle.

Smith contends that this case is suitable for review because the court of appeals supposedly created or deepened splits of authority, but that is only true if one grossly misreads the Eleventh Circuit's opinion. Smith first asserts that the decision created a 7-1 split

on whether RLUIPA defendants must offer persuasive reasons for departing from the practices of other jurisdictions, Pet. at 13–19, but that is not true. The court of appeals *specifically addressed* that question, applied the correct legal standard from *Holt v. Hobbs*, and held that the district court's findings were sufficient to distinguish Georgia's prison system from others. Smith disagrees with that conclusion, but there is no split of authority.

Likewise, Smith stretches to concoct a supposed 4-3 split on whether courts may defer to "prison officials' mere say-so" in a least-restrictive-means analysis. Pet. at 25–29. But the decision here—and the various decisions Smith cites—do no such thing. Indeed, the Eleventh Circuit here specifically *rejected* the notion that "mere say-so" was sufficient. Pet.App.27a (quoting *Holt*, 574 U.S. at 368) (stating that "'prison officials' mere say-so' is not enough to distinguish a prison system's practices from those of other, more permissive jurisdictions."). Some courts rule for the prisoner, some do not, but all apply the same standard. Smith cannot conjure a circuit split out of courts applying the same test to different facts and coming to different conclusions.

Even if the court of appeals erred—which it did not—this Court does not regularly review factual disputes for simple error. And even if the Court determined that the case *did* present questions of interest, those questions would have no impact on the outcome. Smith's extensive and undisputed disciplinary record, including violence against guards and inmates, as well

as hiding contraband such as weapons or cellphones, make him a particularly unsuitable candidate for the accommodation he requests.

Lastly, Smith tacks on a contention that the decision below conflicts with *Ramirez v. Collier*, 142 S. Ct. 1264 (2022), by not considering potential modifications to the Department's policy other than the one Smith actually requested (an untrimmed beard). Pet. at 29–31. Nonsense. *Ramirez* held that it was the State's burden to establish it could not provide the accommodation the prisoner *actually sought*. That case certainly did not hold—nor could it have—that the State must disprove every possible alternative to its policy, including alternatives that *do not satisfy* the prisoner's religious beliefs. Smith consistently made clear that an untrimmed beard was the only accommodation that would not substantially burden his religious practice. So why would the State have to even think about, much less prove, that a three-inch beard was unworkable, when a three-inch beard does not comport with Smith's religious beliefs? It does not need to do so, and *Ramirez* does not remotely suggest otherwise.

The petition should be denied.

I. There is no split in authority on the issues Smith identifies.

A. There is no split on whether RLUIPA defendants must account for their departure from the practices of other jurisdictions.

Smith contends that the decision below "deepens a longstanding split over the relevance and weight of evidence of religious accommodations granted to prisoners in other prison systems." Pet. at 13. On one side, he claims, are seven circuits that "require prison officials to consider accommodations granted in other prison systems and explain why they cannot provide them." *Id.* And on the other is the Eleventh Circuit, which, according to Smith, does not require such a showing. Smith argues that this split began in *Knight v. Thompson*, 723 F.3d 1275 (11th Cir. 2013) (*Knight I*), and was rendered "intractable" by the decision below. Pet. at 16. That is, at best, a mischaracterization of the Eleventh Circuit's holdings. The Eleventh Circuit correctly follows *Holt* in requiring prison officials to explain why they cannot provide accommodations provided elsewhere. Nothing in *Knight* or this case is to the contrary.

1. *Knight* involved a challenge by Native American prisoners to the Alabama Department of Corrections' short-hair policy; the plaintiffs argued that their religion required them to wear their hair unshorn. *Knight I*, 723 F.3d at 1276. Based on the "detailed record" developed at trial, the Eleventh Circuit ruled that

the policy served a compelling governmental interest by "address[ing] genuine security, discipline, hygiene, and safety concerns." *Id.* at 1284. The court also ruled that the short-hair policy was the least restrictive means of furthering the prison system's interest. *Id.* The *Knight* plaintiffs, like Smith, relied heavily on the purported difference between Alabama's policy and those of less-restrictive jurisdictions. *Id.* at 1285–86. The court did not reject those concerns: it simply held that the practices of other institutions are not *always* determinative. "[W]hile the practices of other institutions are relevant to the RLUIPA analysis, they are not controlling—the RLUIPA does not pit institutions against one another in a race to the top of the risk-tolerance or cost-absorption ladder." *Id.* at 1286. In other words, the court explained, RLUIPA "does not force institutions to follow the practices of their less risk-averse neighbors." *Id.* The court concluded that Alabama's departure from other institutional practices "stem[med] not from a stubborn refusal to accept a workable alternative, but rather from a calculated decision not to absorb the added risks that its fellow institutions have chosen to tolerate." *Id.*

This Court vacated and remanded *Knight* for reconsideration in light of *Holt*. *See Knight v. Thompson*, 574 U.S. 1133 (2015). On remand, the court of appeals specifically acknowledged this Court's instruction that "'when so many [other] prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course. . . .'" *Knight v. Thompson*, 796 F.3d 1289, 1293

(11th Cir. 2015) (*Knight* per curiam) (quoting *Holt*, 574 U.S. at 369). Applying that standard, the court of appeals observed that the district court had not deferred to ADOC's "mere say-so" that it could not provide the requested accommodation where other prison systems did. *Id.* (quoting *Holt*, 574 U.S. at 369). To the contrary, the court ruled that the ADOC had satisfied its burden under RLUIPA because the "detailed record" showed that the plaintiffs' proposed exemption "pose[d] actual security, discipline, hygiene, and safety risks," and that neither the court nor the plaintiffs could "point to a less restrictive alternative that accomplishes the ADOC's compelling goals." *Id.* (citation omitted). The court of appeals thus reinstated its prior opinion with minor revisions, again affirming the district court. *Knight v. Thompson*, 797 F.3d 934, 946 (11th Cir. 2015) (*Knight II*).[2] This Court declined to review *Knight II*. *Knight v. Thompson*, 578 U.S. 959 (2016).

The Eleventh Circuit most certainly did not, as Smith asserts, "consider[] and reject[] the holdings of 'some of our sister courts,'" Pet. at 15, that "the 'efficacy of less restrictive measures' already in use must be considered," Pet. at 5 (quoting *Knight II*, 797 F.3d at 946). To the contrary, the *Knight* court explicitly determined that the State had established persuasive reasons distinguishing its system from others, and it

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[2] Smith asserts that, after *Holt*, the "Eleventh Circuit reinstated its opinion [in *Knight*] and changed only two sentences not relevant here." Pet. at 15. But he conspicuously fails to note that the Eleventh Circuit also wrote a separate per curiam opinion explaining its post-*Holt* analysis.

applied the controlling *Holt* test. *See Knight* per curiam, 796 F.3d at 1293 ("[T]he 'detailed record developed' below distinguishes this case from *Holt*, where the lower courts gave 'unquestioning deference' to prison officials' conclusory and speculative assertions.").

Smith misleadingly quotes a portion of *Knight I* that dealt with a separate issue, one not relevant here: whether prison administrators must affirmatively demonstrate that they "actually considered and rejected the efficacy of less restrictive measures *before* adopting the challenged practice." 723 F.3d at 1285 (emphasis added) (internal quotation marks omitted) (quoting *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005)). In other words, the Eleventh Circuit acknowledged a split of authority on *when* administrators must analyze whether there are less restrictive alternatives to their chosen policy—must they do it at the time they issue the policy, or can they do so later down the line? To the extent the Eleventh Circuit persists in a split of authority on *that* issue, it is not presented here.

2. In any event, Smith's fascination with *Knight* is irrelevant, because *Knight* is not at issue. Even if *Knight* did split from other circuits on the relevant question (and it did not), the Eleventh Circuit did not do so *here*. Instead, the court of appeals explicitly applied *Holt*'s instruction that when many other jurisdictions offer the requested accommodation, a RLUIPA defendant " 'must, at a minimum, offer persuasive reasons why it believes that it must take a different

course.'" Pet.App.24a (quoting *Holt*, 574 U.S. at 369). The court simply affirmed the factual findings of the district court that the Department had "met this burden." Pet.App.25a. It noted the evidence of the Department's specific issues with beards, including inmates hiding contraband in beards and escaped inmates shaving their beards to avoid detection. *Id.* The court of appeals also explained that the Department's particular staffing issues would significantly undercut its "ability to monitor inmates and conduct searches" of beards. Pet.App.25a–26a. And it made clear that Smith, himself, is a particularly extreme security risk with a history of violence and hiding contraband. Pet.App.26a.

Even a cursory review of the decisions constituting the other side of Smith's alleged "split" confirms that none have broken with the Eleventh Circuit's understanding. In *Warsoldier*, for instance, the Ninth Circuit explained that "comparisons between institutions [can be] analytically useful when considering whether the government is employing the least restrictive means," and explained that the defendant prison system had offered "no explanation" regarding their policy approach vis-à-vis other jurisdictions. 418 F.3d at 1000. Similarly, the First Circuit held in *Spratt v. Rhode Island Department of Corrections*, 482 F.3d 33, 42 (1st Cir. 2007), that although "evidence of policies at one prison is not conclusive proof that the same policies would work at another institution," the "absence of any explanation" by the defendant regarding the difference between its facilities and the federal system

"suggest[ed]" that some form of accommodation could be permissible without disturbing prison security. The Eleventh Circuit would agree with these decisions—the difference is that here, the Department *did* offer persuasive reasons why it chose not to follow the practices of some other institutions.

Likewise, Smith's post-*Holt* decisions show courts doing just what the Eleventh Circuit did here: requiring defendants to offer a persuasive explanation why their approach differs from other institutions that offer the proposed accommodation. *See Ware v. La. Dep't of Corr.*, 866 F.3d 263, 273–74 (5th Cir. 2017) (citing *Holt* and concluding that defendant failed to offer persuasive reasons for departing from practices of 39 other jurisdictions regarding dreadlocks); *Crawford v. Clarke*, 578 F.3d 39, 44 (1st Cir. 2009) ("The Commissioner put nothing in the record to differentiate facilities other than Ten Block on the issues of compelling governmental interest or least restrictive means."). Again, in other cases, prison administrators pointed to *nothing* to differentiate their choices and were correctly rebuked. Here, the Department *did* point to distinguishing factors, the district court explicitly *found* that they were sufficient, and the court of appeals affirmed as much.

Moreover, a number of the cases Smith cites as part of the "split" did not actually rule on the issue of comparisons with other jurisdictions' practices at all. In *Jova v. Smith*, 582 F.3d 410, 416–17 (2d Cir. 2009), the Second Circuit quoted *Warsoldier* for the

proposition that practices of other institutions could be relevant to a least-restrictive-means analysis, but made no mention of other jurisdictions in its actual analysis. In *Ackerman v. Washington*, 16 F.4th 170, 191 (6th Cir. 2021), "there [was not] evidence of other prison systems allowing outside parties to provide free kosher goods to prisoners; there [was] evidence of *this* prison system allowing that very practice." And in *Yellowbear v. Lampert*, 741 F.3d 48, 58 (10th Cir. 2014), it was the defendant *prison* that (unsuccessfully) pointed to decisions upholding other jurisdictions' denial of the requested accommodation.

This is not the stuff of which circuit splits are made. The Eleventh Circuit, along with the other circuits Smith cites, all follow *Holt*'s rule that a defendant must offer "persuasive reasons" for why it cannot apply the same policy as other institutions. Smith does not like how the panel below and the district court understood the facts. But that is a garden-variety disagreement, not a split of legal authority worthy of this Court's review.

B. No circuit, including the Eleventh, defers to prison officials' "mere say-so" in their RLUIPA analyses.

Smith also contends that "[c]ourts of appeal are split 4-3 over the correct legal standard to apply when analyzing the government's burden under RLUIPA"—specifically, the degree of deference due to prison administrators. Pet. at 19. According to Smith, this confusion stems from language in *Cutter v. Wilkinson*, 544

U.S. 709, 710 (2005), stating that courts should extend "due deference to prison administrators' experience and expertise" in applying RLUIPA's strict-scrutiny standard. Pet. at 19. The result, Smith argues, is that four circuits "apply strict scrutiny while respecting prison officials' relevant expertise," Pet. at 21, while three circuits, including the court below, "inappropriately defer to prison officials' 'mere say-so' " in applying RLUIPA—even though doing so would expressly contradict *Holt*, Pet. at 25.

Again, this supposed "split" illustrates nothing more than courts applying the same *Holt* standard to the (differing) facts before them. The Eleventh Circuit did not break new ground, nor is there any "split" to resolve.

To start, the Eleventh Circuit did not rely on defendants' "mere say-so." The court held *the precise opposite*: "This case is not one of 'officials' mere say-so' like in *Holt*." Pet.App.26a. While the court explained that RLUIPA should "be applied in an appropriately balanced way, with particular sensitivity to security concerns," it emphasized that such deference was *not* "unquestioning." Pet.App.19a, 27a. In the court of appeals' own words: "In *Holt*, the Court said that 'prison officials' mere say-so' is not enough to distinguish a prison system's practices from those of other, more permissive jurisdictions." Pet.App.27a. "Thus," the court continued, " 'mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet RLUIPA's requirements.' " *Id.* (quoting *Knight II*, 797 F.3d at 944).

Of course, the court of appeals affirmed the findings and ruling of the district court that the Department's evidence, including "expert opinions, lay testimony, and anecdotal evidence based on . . . decades of combined experience as corrections officers" was sufficient to carry its burden under RLUIPA. Pet.App.19a; *see also* Pet.App.26a–27a (explaining that the Department "*did* offer evidence supporting the particular reasons for its decision to continue with its half-inch beard-length policy" through "fact and expert witness testimony"). There is no "mere say-so" to be found in the decision below, except for an express rejection of that concept.

And though it should not matter, neither do the Third and Fourth Circuits "defer to prison officials' 'mere say-so.'" Pet. at 25. In *Watson v. Christo*, 837 F. App'x 877, 879 (3d Cir. 2020), the court of appeals held that a prison was not required to provide a Jewish plaintiff with tefillin, "a set of small boxes containing parchment with verses from scripture that are attached to thick leather straps several feet long." But the court specifically held that the prison had satisfied the RLUIPA standard, as articulated in *Holt*. *See id.* at 880–83.

Likewise, in *Faver v. Clarke*, 24 F.4th 954, 956 (4th Cir. 2022), the Fourth Circuit ruled against a prisoner who sought an exemption from the prison's single-commissary-vendor policy because he was required to purchase "perfumed oils for prayer" from a company that also happens to sell "swine and idols" to other inmates. The court reached its result after a lengthy

examination of the "many security and operational problems from the ordering and delivery of products from multiple sources." *Id.* at 958 (alteration adopted). There was, again, no "mere say-so" in sight.

In other words, those circuits—along with the Eleventh Circuit in this case—have applied the *Holt* RLUIPA standard to the facts presented, the same approach taken by the circuits on the other side of Smith's imaginary split. The only "split" Smith has identified is between some cases where prisoners win and some where they lose.

II. This case is a poor vehicle to address the issues raised in the petition, as the court of appeals correctly decided a fact-intensive dispute.

Even if there were some disputed legal question at issue in this case—and there is not—this would be a poor vehicle for reaching such a question. The court of appeals' decision was based on a careful examination of an extensive record including evidence from a two-day bench trial. Its ruling on whether Smith was entitled to an untrimmed beard derived from its application of a clear-error standard to the district court's factual findings. Pet.App.16a. Even the dissent made clear that its contrary conclusion was a matter of how to read the district court's findings and the record as a whole: "I do not read the District Court Order to have made any . . . finding" that "allow[ing]" an "untrimmed beard" would "be unmanageable." Pet.App.30a. Put

another way, Judge Martin disagreed as to what "the testimony and evidence" showed. Pet.App.33a.

That is, even if there are important, disputed legal questions lurking in this case (so well-hidden that Smith cannot actually find them), this Court would first have to opine on factual disputes before reaching any such issues. The question whether Smith is entitled to an accommodation comes down to how one understands the record and the district court's findings. If the Court were to grant review, the critical question would not be the correct standard for RLUIPA claims, it would be what the district court *found* and whether there was evidence to support those findings.

Regardless, the court of appeals was also correct in affirming the district court on the key issue. The record shows that the Department had experienced specific problems related to contraband that had been or could be hidden in beards and that the Department's low staffing and high turnover would make searching untrimmed beards "unmanageable." Pet.App.25a–26a. Long beards could also be used to cause harm in more violent facilities, Pet.App.8a, and they have been used by inmates to dramatically change their appearance after an escape, Pet.App.7a (describing incident in which a bearded Georgia inmate escaped, killed two officers, and then shaved his face, making identification more difficult). It is hardly a surprise that the district court found that the Department had satisfied its burden, Pet.App.61a, 68a, and that the panel majority affirmed that finding, Pet.App.16a.

Most significantly, the record showed that *Smith himself* is unsuitable for an untrimmed beard due to his extensive history of violence and contraband violations. Pet.App.18a, 26a. That is the core of the *Holt* analysis: has the Department justified its policy with respect to *this inmate*. *Holt*, 574 U.S. at 363 ("RLUIPA requires us to scrutinize[e] the asserted harm of granting specific exemptions to *particular religious claimants*.") (emphasis added) (cleaned up). And on that score, the record is overwhelming.

Smith is a convicted murderer who has remained a threat to staff and other inmates during his entire incarceration. His book-length record of disciplinary infractions includes multiple assaults on correctional officers, an assault on another offender, possession of weapons, possession of a cell phone, bribery, failure to follow instructions, insubordination, and numerous threats to correctional officers. Pet.App.4a; *see also supra* pp. 6–7, 12.

This "extensive disciplinary record" more than justifies the panel's conclusion that "permitting Smith in particular to grow an untrimmed beard would harm [the Department's] interests in safety and security." Pet.App.18a. Indeed, the dissent never even addressed this point regarding Smith's specific suitability for his requested accommodation, nor, tellingly, does Smith do so in his cert petition.[3] This Court should not be the first to do so.

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[3] Smith's disciplinary history also makes it highly doubtful that Smith would be allowed to grow an untrimmed beard in *any*

III. The court of appeals' decision does not conflict with *Ramirez*.

Without a real split to point to, Smith tosses in an argument that the court of appeals erred by rejecting the district court's *sua sponte*, invented-from-nothing, three-inch "compromise" accommodation. Smith asserts that that the Eleventh Circuit's holding "directly conflicts" with *Ramirez v. Collier*, 142 S. Ct. 1264 (2022), Pet. at 29, but that case has nothing to do with Smith's.

Smith conflates two wholly separate questions. In *Ramirez*, the Court held that it was the State's burden to establish it could not accommodate the relief that the inmate *actually sought*. *Ramirez*, 142 S. Ct. at 1280. In that case, the inmate sought to have a minister pray and make physical contact with him during the execution process. *Id.* at 1274–75. This Court held that it was the State's burden to establish why it needed to *categorically* ban those activities. *Id.* at 1280. That made sense, because the inmate had requested

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other prison system. As the court of appeals noted, many other jurisdictions that allow untrimmed beards do so subject to exceptions for "safety, security, identification, and hygiene." Pet.App.26a. And Smith's record, "including infractions involving assault and hiding weapons and contraband" as well as defying grooming rules, strongly suggest that Smith would "qualify for the 'safety' and 'security' exceptions in many or all of the jurisdictions that have them." *Id.*; *cf. Warsoldier*, 418 F.3d at 998–99 (noting that plaintiff, a minimum-security inmate, posed minimal security or escape threat, but that the analysis could change for riskier inmates).

that the State *not* categorically ban those activities. *See id.*

But here, the Department responded to the only religious accommodation Smith requested. Smith did not seek to grow a beard of "three inches" or even "any length." He sought an *untrimmed* beard. *See*, *e.g.*, *Smith*, No. 12-cv-26, Doc. 181 at 29 (Q: "Is there a length you would be okay with?" A: "Indefinite"); Doc. 235 at 9 (urging the court to "find that Mr. Smith should be allowed to grow an untrimmed beard consistent with his faith"); Doc. 238-1 at 1 ("Plaintiff's faith . . . requires him to grow an untrimmed beard."); *see also supra* pp. 9–10. So the Department's burden was to show why it could not accommodate that request.

The Department certainly cannot be on the hook for responding to any conceivable alternative to its policy: it has to respond to the option(s) that the plaintiff actually requests. How could it do otherwise? Why would the Department respond to alternatives that do *not* satisfy the plaintiff's religious beliefs? It would be pointless, not to mention impossible, to respond to the infinite number of alternative policies that will have no effect on the plaintiff's religious beliefs. Was the Department also supposed to justify its decision not to allow one-inch beards, six-inch beards, beards that are dyed blonde, beards that have braids, and every other conceivable alternative to its policy? Of course not. To require as much would fly in the face of not only common sense, but also this Court's holding that the State must "prove that *petitioner's proposed alternatives*

would not sufficiently serve its security interests." *Holt*, 574 U.S. at 367 (emphasis added).

Smith consistently made clear that one, and only one, remedy was suitable for him: an untrimmed beard. "'[T]hroughout the course of this litigation, Smith [has] consistently expressed his belief that cutting his beard (without qualification as to length) contravenes the teachings of Islam.'" Pet.App.11a (quoting *Smith v. Owens*, 848 F.3d 975, 978 (11th Cir. 2017)). Although Smith points to a few "stray references" to a "fist-length" beard during his deposition, the Eleventh Circuit correctly understood that Smith never asked for such an accommodation or put the Department on notice it had to justify the absence of such an accommodation. Pet.App.13a, 44a. And if Smith could not have otherwise made it clearer, he *cross-appealed* from the district court's three-inch ruling, calling it "an arbitrary compromise without actual record support." Pet.App.11a. The court of appeals thus did not err by rejecting a policy accommodation that Smith clearly and consistently deemed unacceptable. And even if there were some debate, it is, again, a purely factual, record-based debate, not one that *Ramirez* could conceivably affect or that involves any deeper legal question.

Smith desperately seeks to make *Ramirez* somehow relevant in hopes of prolonging this litigation, but *Ramirez* has no applicability here. Smith sought a particular accommodation, the Department proved it need not provide that accommodation, and that should be the end of the matter.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

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