No. 21-5592

In the
Supreme Court of the United States

JOHN H. RAMIREZ,
Petitioner,
v.

BRYAN COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF FIRST LIBERTY INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

First Liberty Institute is a nonprofit, public interest law firm dedicated to defending religious liberty for all Americans. First Liberty provides pro bono legal representation to individuals and institutions of all faiths—Catholic, Islamic, Jewish, Native American, Protestant, the Falun Gong, and others. Over the past 20 years, First Liberty has represented multiple individuals whose rights under the Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") have been violated. Accordingly, First Liberty has a strong interest in the outcome of this litigation. Government failure to allow for the exercise of an individual's sincerely held religious beliefs threatens religious individuals' fundamental rights as protected by the Constitution and as intended by Congress. Because First Liberty represents a broader range of religious perspectives than those of the particular petitioner in this case, its interest in free religious exercise reaches beyond this particular dispute. Precedent that impinges on the sincerely held religious beliefs of one individual of one faith impacts all others.

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[1] The parties have consented to the filing of this brief, either by blanket consent filed with the Clerk or individual consent. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than amicus curiae, its members, or its counsel made a monetary contribution to this brief's preparation or submission.

INTRODUCTION

John H. Ramirez ("Petitioner") seeks to have his minister lay his hands on his body while that minister vocalizes prayers and scriptures as Petitioner is executed by the state of Texas. Respondents, employees of the Texas Department of Criminal Justice ("TDCJ") have sought to deny Petitioner his request in violation of RLUIPA. Per TDCJ policy, outside spiritual advisers are allowed in the execution chamber, but are not allowed to touch the prisoner or pray out loud. When Respondents refused to make an exception for Petitioner to exercise his sincerely held religious beliefs as required by RLUIPA, Petitioner sought a stay of execution to allow time to remedy this violation from the U.S. District Court for the Southern District of Texas (the "District Court"), but it was denied and the denial was upheld by the Fifth Circuit. In affirming the District Court, the Fifth Circuit held that Respondents met their burden of establishing that the current TDCJ policy regarding spiritual advisers was the "least restrictive means of furthering [Respondents'] compelling government interest 'in maintaining an orderly, safe, and effective process when carrying out an irrevocable, and emotionally charged, procedure.'" Cir. Op. at 4 (Owens, J., concurring). The Fifth Circuit seemed highly persuaded by Respondents' argument that TDCJ's policies mirrored that of the Federal Bureau of Prisons. *Id.* at 3.

Petitioner then turned to this Court for relief. In opposition to Mr. Ramirez's Petition for Certiorari, Respondents argued—echoing the rationale of the District Court as affirmed by the Fifth Circuit—that

Respondents' refusal to accommodate Petitioner's requests does not substantially burden his religious exercise and that Respondents' policy satisfies the "least restrictive means test" for fulfilling a compelling government interest.

This brief addresses the errors in the government's compelling interest argument. Because Respondents' fail to tailor their compelling interest argument to the particular facts and circumstances at issue here, Respondents' arguments fail and Petitioner's stay of execution should be granted.

SUMMARY OF ARGUMENT

Enacted by Congress in 2000, the Religious Land Use and Institutionalized Persons Act ("RLUIPA") provides "expansive protection" for prisoners' religious liberty. *See* 42 U.S.C. § 2000cc; *Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (holding prison policy violated RLUIPA). Per RLUIPA, "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means." 42 U.S.C. § 2000cc-1(a)(1)–(2); *see also Holt*, 574 U.S. at 357–58. The prohibition on substantial burden is true "even if the burden results from a rule of general applicability." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424 (2006) (holding that the court below did not err in finding that the government failed to demonstrate a compelling government interest at the preliminary injunction stage).

However, RLUIPA's expansive protections could be rendered meaningless if the statute is analyzed incorrectly, which is what transpired here. The question to be asked by the reviewing court is not whether Respondents have a compelling *generalized* interest in safety or security, but rather whether Respondents' have a compelling interest in failing to provide *this particular* petitioner an exception to the TDCJ's policies, at *this particular* time, under *these particular* facts. When framed correctly, Respondents have not met their burden under RLUIPA because they have failed to produce sufficient evidence of a particularized compelling interest.

ARGUMENT

I. RLUIPA Requires That Respondents Articulate a Compelling Interest Prohibiting Them From Granting This Particular Petitioner an Exception to Their Policies, at This Particular Time, Under This Particular Set of Facts.

RLUIPA requires "the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *O Centro*, 546 U.S. at 430–31 (quoting 42 U.S.C. § 2000bb-1(b)); *see Yellowbear v. Lampert*, 741 F.3d 48, 57 (10th Cir. 2014) (Gorsuch, J.) (noting the court "must examine both sides of the ledger on [a] case-specific level of generality: asking whether the government's particular interest in burdening this [petitioner's] particular

religious exercise is justified in light of the record in this case").

In *O Centro*, the Court rejected the government's argument that generalized concerns about the Controlled Substances Act "preclude[d] any consideration of individualized exceptions such as that sought by the [respondent church]." 546 U.S. at 430. Here, Respondents have made equally generalized statements about the interest prisons have in security and minimizing risk and maintaining order during the execution procedure in terms of adhering without exception to the TDCJ's policies. *See* Br. in Opp. at 25–26; D. Ct. Op. at 6. Just as in *O Centro*, Respondents' "mere invocation" of a generalized security interest "cannot carry the day." 546 U.S. at 432; *see also Holt*, 574 U.S. at 362–63 (rejecting the governments' argument that it had a compelling interest in prison safety and security and noting that "RLUIPA, like RFRA, contemplates 'a more focused' inquiry" as stated in *O Centro*).

Respondents attempt to bolster their conclusorily articulated compelling interest by noting that "courts below properly recognized that prisons have a compelling interest 'in maintaining an orderly, safe, and effective process when carrying out an irrevocable, and emotionally charged, procedure,'" and that courts have found permissible the Bureau of Prisons' execution policy, which Respondents' policy mirrors. Br. in Opp. at 26 (quoting D. Ct. Op. at 6). That does not pass muster under RLUIPA. Even if other prisons have a compelling interest in denying a spiritual adviser from engaging in the acts Petitioner requests

take place in the execution room in order to exercise his religion, this does not "necessarily prove, without more" that *all* prisons, including this one, have that same compelling interest. *See Yellowbear*, 741 F.3d at 58 (noting it was the court's "statutory duty to decide whether the prison's claimed safety and cost interests qualif[ied] as compelling in the context of particular cases, not in the abstract"). Under RLUIPA, Respondents must show why *this prison* has a compelling interest in denying *this petitioner* an exception to *this policy* at *this time* under *this set of facts*. Neither Respondents nor the courts below have done so. They ignore the fact that RLUIPA requires Respondent to consider this Petitioner's request for an *exception* to the operative policy based on facts unique to Petitioner, as otherwise "strict scrutiny's "fundamental purpose,"—to "take 'relevant differences' into account,"— would be negated. *O Centro*, 546 U.S. at 432.

Thus, the Fifth Circuit erred in affirming the District Court's finding that Respondents sufficiently established the existence of a particularized compelling governmental interest under RLUIPA.

II. Respondents Fail to Meet Their Burden Under RLUIPA Because They Fail to Provide Particularized Evidence of a Compelling Interest.

RLUIPA requires that Respondents put forth evidence to prove their particularized compelling interest. *See Holt*, 574 U.S at 371 (Sotomayor, J., concurring) (stating RLUIPA "requires more" than the government's "unsupported assertions in defense of its

refusal of petitioner's requested religious accommodation"); *Yellowbear*, 741 F.3d at 59 (stating RLUIPA's compelling interest test cannot be satisfied by "the government's bare say-so"). In *Dunn v. Smith*, the state refused to allow an inmate to have his pastor with him before he died on the ground that access to the execution chamber must be limited to those the "warden [] found 'trustworthy.'" 141 S. Ct. 725, 726 (2021) (Kagan, J., concurring). The court found that the state failed to recognize that "RLUIPA places a heightened duty on prison officials: to *demonstrate*, not just 'assume[,] that a plausible, less restrictive alternative would be ineffective' when their preferred approach burdens religion." *Id.* (alteration in original) (emphasis added) (quoting *Holt*, 574 U.S. at 369). Additionally, "'[t]he least restrictive means standard is exceptionally demanding,' and it requires the government to 'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" *Holt*, 574 U.S. at 364–65 (alterations in original) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)).

Here, Respondents have offered no evidence to show that they have a compelling interest in the wholesale prohibition on Petitioner's request. Instead, Respondents essentially argue that their generalized articulation of a compelling general interest in safety and security in prisons should be accepted at face value. However, "RLUIPA [] does not permit such unquestioning deference" and "'makes clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by

Congress,'" which "requires [Respondents] not merely to explain why [they] denied the exemption but to prove that denying the exemption is the least restrictive means of furthering a compelling government interest."[2] *Holt*, 574 U.S. at 364 (noting "respect [to prison officials] does not justify the abdication of the responsibility, conferred by Congress, to apply RLUIPA's rigorous standard") (quoting *O Centro*, 546 U.S. at 434). In *Yellowbear*, the court found it was "problematic" in the government's compelling interest assertions that the record in the case lacked any evidence to support the government's contentions, where the government did not even "attempt to quantify the costs it face[d], let alone try to explain how th[o]se costs impinge on prison budgets or administration." 741 F.3d at 58–59. The record in this case is similarly bare. The lower courts' acceptance of the dearth of Respondents' proof of a compelling interest is exactly the kind of impermissible abdication of responsibility articulated in *Holt*.

Thus, the Fifth Circuit erred in affirming the District Court's finding that Respondents had met their burden of proving a compelling governmental interest.

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[2] In fact, Respondents incorrectly place the burden of showing no less restrictive means is possible on Petitioner, when in fact RLUIPA plainly states that burden is on Respondents. 42 U.S.C. § 2000cc-1(a) ("No government shall impose a substantial burden on the religious exercise of a person . . . unless the ***government demonstrates*** that imposition of the burden on that person—(1) is in furtherance of a compelling governmental interest; and (2) ***is the least restrictive means of furthering that compelling governmental interest***.") (emphasis added).

CONCLUSION

Respondent's burden under RLUIPA is to establish a compelling governmental interest particular to Petitioner in his particular circumstances at hand, and to put forth evidence to support the existence of that particularized compelling interest. Respondents have failed to do either and therefore Respondents' position and the lower courts' holdings are inconsistent with RLUIPA as enacted. Only by vacating and remanding the Fifth Circuit's decision can RLUIPA be protected, and along with it, the freedom of this Petitioner and all others to exercise their religion.

Respectfully submitted,

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