No. 21-5592

In the Supreme Court of the United States

JOHN HENRY 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 *AMICI CURIAE* ARIZONA, ALABAMA, ARKANSAS, IDAHO, INDIANA, LOUISIANA, MONTANA, SOUTH DAKOTA, AND UTAH IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE

Amici curiae are the States of Arizona, Alabama, Arkansas, Idaho, Indiana, Louisiana, Montana, South Dakota, and Utah,[1] and have a substantial interest in the safe and timely conduct of state executions and other prison policies. The potential burdens federal courts may impose in the form of religious accommodations under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) impact the states' compelling interests in a safe and effective mechanism to carry out lawfully imposed lethal-injection executions.

SUMMARY OF ARGUMENT

The Fifth Circuit appropriately denied Ramirez's motion to stay his execution based on his desire for his chosen spiritual advisor to have physical contact with him and audibly pray during his execution. The safety and security of state execution protocols should not be subject to federal court micromanagement, through use of RLUIPA or otherwise, given the always compelling state interest in the safety and security of prison execution protocols. Moreover, any attempt at such federal court micromanagement under RLUIPA will inevitably lead to further frustration of exhaustion requirements and an unmanageable profusion of prisoner accommodation requests during executions and other non-capital prison circumstances. Additionally, such federal court micromanagement compromises bedrock principles of federalism,

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[1] No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission. The parties consent to the filing of this brief.

comity, and finality, as well as federal and state victims' rights.

ARGUMENT

I. This Court should not use RLUIPA to micromanage state executions.

Following this Court's decision in *Employment Div. Dept. of Human Resources of Or. v. Smith,* 494 U.S. 872 (1990), Congress sought to "provide very broad protection for religious liberty" by enacting RLUIPA and "its sister statute, the Religious Freedom Restoration Act of 1993 (RFRA)." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). Congress designed RFRA "to provide greater protection for religious exercise than is available under the First Amendment." *Id.* at 357. Congress enacted RFRA, making it applicable to the States and their subdivisions by citing Section 5 of the Fourteenth Amendment; however, this Court held that Congress exceeded its authority in so doing. *Id.*; *City of Boerne v. Flores*, 521 U.S. 507, 532–36 (1997).

In the wake of *City of Boerne*, Congress enacted RLUIPA, this time applying its provisions to the States and their subdivisions by employing its power under the Spending and Commerce Clauses. *Holt*, 574 U.S. at 357; 42 U.S.C. § 2000cc–1(b). Section 3 of RLUIPA governs religious exercise by institutionalized persons and provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution … even if the burden results from a rule of general applicability, 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." *Holt*, 574 U.S. at 357–58; § 2000bb–1(a), (b).

A. The States' compelling interest in carrying out safe executions weighs heavily in RLUIPA's balancing test.

Petitioner John Ramirez, convicted, sentenced to death, and facing imminent execution for the first-degree multiple-stabbing murder of Pablo Castro, seeks to have his chosen spiritual advisor make physical contact and pray aloud with him during his execution by lethal injection. He alleges that RLUIPA requires Texas to accommodate this request.

Members of this Court have repeatedly acknowledged that "prison security is, of course, a compelling state interest," *Dunn v. Smith*, 141 S. Ct. 725, 725–26 (2021) (Kagan, J., concurring in denial of application to vacate injunction), as is the "safety, security, and solemnity of the execution room," *id.* at 726 *(*Kavanaugh, J., dissenting from denial of application to vacate injunction). *See also Murphy v. Collier*, 139 S. Ct. 1475, 1475–76 (2019) ("States … have a strong interest in tightly controlling access to an execution room in order to ensure that the execution occurs without any complications, distractions, or disruptions."). RLUIPA must be applied "with particular sensitivity to security concerns" because "'context matters'" when assessing a compelling state interest. *Cutter v. Wilkinson*, 544 U.S. 709, 722–23 (2005) "Things can go wrong and sometimes do go wrong in executions, as they can go wrong and sometimes do go wrong in medical

procedures." *Murphy*, 139 S. Ct. at 1475 (Kavanaugh, J., concurring in grant of application for stay). The States thus have a recognized compelling interest in adhering to strict protocols in the execution chamber.

In fact, when applying RLUIPA, Congress expected federal courts to accord "due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." *Cutter*, 544 U.S. at 723 (quoting 46 CONG. REC. 16698, 16699). "It bears repetition … that prison security is a compelling state interest, and that deference is due to institutional officials' expertise in this area." *Id.* at 725 n.13.

B. The statutory questions of sincerity and exhaustion are intended to guard against inevitable prisoner litigation gamesmanship.

In general, courts should not unnecessarily inquire into the sincerity of religious beliefs when construing religious liberty laws. However, this Court has acknowledged that, while centrality of an asserted religious belief is beyond a court's inquiry in the analysis of a RLUIPA claim,[2] "prison officials may appropriately question whether a prisoner's religiosity, asserted as the basis for a requested accommodation, is authentic." *Cutter*, 544 U.S. at 725 n.13 (noting that RLUIPA "does not preclude inquiry into the sincerity of a prisoner's professed

[2] RLUIPA defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *See* § 2000cc–5(7)(A).

religiosity"), citing *Gillette v. United States*, 401 U.S. 437, 457 (1971) ("The 'truth' of a belief is not open to question; rather, the question is whether the objector's beliefs are 'truly held.'" (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)) (cleaned up)).

One safeguard to manipulative prisoner religiosity claims is the Prison Litigation Reform Act of 1995 (PLRA), which this Court hoped would provide adequate deterrence: "We see no reason to anticipate that abusive prisoner litigation will overburden the operations of state and local institutions" because the PLRA is "designed to inhibit frivolous filings." *Cutter*, 544 U.S. at 726. This Court has observed that "[s]hould inmate requests for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition." *Id.*

The PLRA exhaustion requirement is mandatory and serves as an important check on a potentially endless cycle of inmate RLUIPA accommodation requests. *See Woodford v. Ngo*, 548 U.S. 81, 85, 87–88 (2006) (PLRA requires "exhaustion of available administrative remedies … for any suit challenging prison conditions"). Among other purposes—such as efficiency and permitting an agency the opportunity to address its own policies and potential mistakes—exhaustion "requirements are designed to deal with parties who do not want to exhaust." *Id.* at 89–90.

The Court has recognized that inmates, in particular, have an incentive to "avoid creating an administrative record with someone that he or she

views as a hostile factfinder, filing a lawsuit primarily as a method of making some corrections official's life difficult, or perhaps even speculating that a suit will mean a welcome—if temporary—respite from his or her cell." *Id.* at 90 n.1. It is not a stretch to include delaying an execution date in that list.

This is why deference to (and exhaustion of) internal state prison grievance procedures is essential both to serve the preservation of inmates' free exercise of sincerely held religious beliefs and to form a backstop against an endless parade of last-minute RLUIPA execution challenges. Similar to Texas, Arizona's Department of Corrections, Rehabilitation and Reentry (ADCRR) provides an internal grievance process with appropriate time limits and a designation of what constitutes exhaustion of those remedies within the Department. *See generally*, ADCRR Order Manual, Chapter 800, Order 802 (2.0–4.0) (detailing informal, formal, and appeals processes for non-medical grievances). Congress' inclusion of an exhaustion requirement in PLRA acknowledges that internal prison remedies protect both the state and the prisoner by ensuring that prisoners timely communicate sincerely held religious accommodation requests so that the state is not only clear about what is requested, but is permitted adequate time to safely accommodate them (if possible) in light of the compelling interests involved—especially surrounding an execution. In other words, the exhaustion requirement ultimately protects sincerely held religious beliefs because those that are sincerely held are more likely to have been clearly and timely requested for accommodation.

Thus, whatever test the Court adopts must be cognizant of the gamesmanship that is present in death penalty litigation, especially such litigation on the eve of executions. Here, where Ramirez previously said he was not seeking physical touch, but after he was accommodated by Texas, changed his position to seeking physical touch, the objective circumstantial evidence raises serious questions about the sincerity of the asserted religious belief. *See Cutter*, 544 U.S. at n.13. The presence of serial litigation by a prisoner should be a factor in this unique RLUIPA context. Also, this Court must adopt a workable test that ensures the reason for the accommodation is honest religious belief and not some other purpose such as dilatory conduct. *See Hobby Lobby,* 573 U.S. at 725 (not for federal courts to decide whether religious beliefs are mistaken or insubstantial, but only the reflection of an honest conviction) (cleaned up). Surely, the timing, frequency, and context of religious accommodation requests by prisoners in the lead-up to an execution are factors in that assessment.

Ramirez requests physical touch and audible prayer. Even assuming that both requests have met mandatory exhaustion requirements and that accommodating this religious belief does not compromise Texas's compelling interest in the safety of lethal injection executions as reflected in its protocols, the Court should be wary of the slippery slope. The next request from a different religiously affiliated capital defendant—or even from Ramirez himself—may be for an embrace during execution, or for music to be played, or for a family member to be present in the chamber, or to wear certain religious

clothing, or to deploy ceremonial incense, or to face in a specific direction.

Further, what end can be imagined to proving a least restrictive means? Must state correctional departments reconfigure, enlarge, or otherwise rebuild execution chambers to accommodate physical touch and audible prayer (and the deluge of sincerely held religious beliefs to follow) while protecting prison personnel, ensuring safe and still effective execution procedures, and otherwise timely enforcing lawful convictions and sentences? The potential for abuse is rife. And what of alternative execution methods? Ramirez's request for physical contact could conceivably be permissible under RLUIPA for some methods, but not others. Would this then implicate a State's choice of execution method under a least restrictive means analysis? A state that executes by firing squad must accommodate this sincerely held religious belief by employing lethal injection—only then to face the inevitable lawsuits regarding lethal injection drugs?[3]

This Court has observed that "[s]hould inmate requests for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition. In that event,

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[3] Of course, manipulation of RLUIPA is by no means limited to capital defendants. *See Cutter*, 544 U.S. at 723 n.11 (acknowledging potential of irreligious prisoners challenging confiscation of white supremacist literature as a violation of RLUIPA and whether excluding racist literature was least restrictive means of furthering compelling state interest in preventing prison violence).

adjudication in as-applied challenges would be in order." *Cutter*, 544 U.S. at 726.

The problem is that even frivolous last-minute adjudication of "as-applied challenges" in capital execution protocols results in delay. And delay is the goal of capital defendants. *See Murphy*, 139 S. Ct. at 1477 (Kavanaugh, J., commenting on grant of application to stay) ("[C]ounsel for inmates facing execution would be well advised to raise any potentially meritorious claims in a timely manner, as this Court has repeatedly emphasized."); *see also Gomez v. United States Dist. Court for Northern Dist. of California*, 503 U.S. 653, 654 (1992) (per curiam) (no good reason for capital defendant's failure to bring equitable claim more than a decade previously was "abusive delay … compounded by last-minute attempts to manipulate the judicial process.").

In his dissent from this Court's grant of a stay of execution in *Murphy*, Justice Alito explained why unreasonable delay in bringing claims invokes a "strong equitable presumption" against granting the relief of a stay: (1) it honors States' strong interest in the timely enforcement of valid judgments of their courts and sufficient time to consider legitimate RLUIPA claims for acceptable accommodation; (2) last minute stay requests may impair valid interests of federal courts without adequate time to consider claims while disrupting other important work; (3) interests of applicants with potentially meritorious claims may suffer from hasty decision making; and (4) cancellation of scheduled executions may inflict additional emotional suffering on a murder victim's family, friends, and affected community. *Murphy*, 139 S. Ct. at 1480–81. Failure to enforce exhaustion requirements, which permit prison officials to make

the first judgment about whether to provide an accommodation, frustrates RLUIPA and invites abuse.

C. Abuse of RLUIPA through last-minute challenges to execution protocols frustrates federalism as well as federal and state victims' rights.

Both this Court and Congress have recognized that States have a substantial interest in the ability to define criminal conduct, proscribe punishments for those crimes, and ultimately carry out those punishments not just in a safe and orderly manner, but in a timely one as well. Thus, federal review of state court convictions and sentences is limited to federal constitutional guarantees, generally conducted through the federal habeas process, governed by the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA).

Chief among Congress's goals in enacting AEDPA was the protection and preservation of federalism, comity, and the finality of state court convictions by limiting federal court control and power of review over them. *See Davila v. Davis*, 137 S. Ct. 2058, 2070 (2017) (federal habeas review necessarily causes a harm to federalism); *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (federal habeas review intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority, disturbs state interest of repose in concluded litigation, and denies society the right to punish offenders); *Calderon v. Thompson*, 523 U.S. 538, 555–56 (1998) (federal habeas review frustrates the sovereign power of states to punish offenders); *Engle v. Isaac*, 456 U.S. 107, 127 (1982) (federal habeas review

degrades prominence of the state criminal trial). In so doing, AEDPA helps promote the "important interest" that "[b]oth the State and the victims of crime" have "in the timely enforcement of a sentence." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019).

The Court thus should keep these interests in mind when applying RLUIPA. Through AEDPA, Congress has already recognized States' interests in carrying out lawfully imposed death sentences in a timely fashion. The law prevents the exploitation of federal courts to wreak harm on federalism, comity, and finality. These interests will be undermined if RLUIPA is turned into a tool for micromanaging state execution protocols and delaying the timely enforcement of lawful sentences. *Cf.*, *Branch v. Smith*, 538 U.S. 254, 281 (2003) ("And it is, of course, the most rudimentary rule of statutory construction . . . that courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes."); *Watt v. Alaska*, 451 U.S. 259, 267 (1981) ("We must read the statutes to give effect to each if we can do so while preserving their sense and purpose."). Already, "months or years of litigation delays" are expected from current RLUIPA claims. *Smith*, 141 S. Ct. at 726–27 (Kavanaugh, J., dissenting from the denial of application to vacate injunction). Through this case, the Court should make clear that RLUIPA does not require States to accommodate future requests that would unduly delay an execution and thus thwart the States' interest in timely executions.

After all, the interest in timely justice is shared not just by the States, but by the victims of crimes.

Congress recognized this important interest in the Crime Victims' Rights Act (CVRA). *See* 18 U.S.C. § 3771(a)(7) (includes the right to "proceedings free from unreasonable delay.") The federal victims' rights include protecting state crime victims during federal habeas review, specifically guaranteeing this freedom from unreasonable delay. *See* 18 U.S.C. § 3771(b)(2)(A). This guarantee protects "victims' interest in fairness, respect, and dignity." *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D.N.Y. 2005). And the CVRA exists alongside numerous other victims' rights laws, such as those granted by the States. *See United States v. Monzel*, 641 F.3d 528, 543 (D.C. Cir. 2011) ("'It is not the intent of [the CVRA] to limit any laws in favor of crime victims that may currently exist, whether these laws are statutory, regulatory, or found in case law.'") (quoting 150 CONG. REC. 7301 (statement of Sen. Jon Kyl)); *id.* ("'[I]t is not our intent to restrict victims' rights or accommodations found in other laws.'") (quoting 150 CONG. REC. 7301 (statement on Sen. Diane Feinstein)). As with concerns of federalism, comity, and finality, this Court should not permit RLUIPA to eclipse important victims' rights simply because the federal review here is not technically part of a habeas proceeding. Because it concerns a state execution procedure, it is closely akin to habeas proceedings. Accordingly, when weighing a RLUIPA claim in this case and others, this Court should remember that "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 139 S. Ct. at 1133.

CONCLUSION

This Court should affirm the Fifth Circuit's denial of a stay of Ramirez's execution.

October 15, 2021

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