No. 22-321

# In the Supreme Court of the United States

HEREDITARY CHIEF WILBUR SLOCKISH, ET AL.

*Petitioners,*

*v.*

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL.

*Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

## BRIEF OF THE JEWISH COALITION FOR RELIGIOUS LIBERTY, THE SIKH COALITION, THE AMERICAN ISLAMIC CONGRESS, AND PROTECT THE FIRST FOUNDATION AS *AMICI CURIAE* SUPPORTING PETITIONERS


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## INTERESTS OF *AMICI CURIAE*[1]

*Amici* are organizations deeply committed to defending the rights of religious communities. *Amici* believe it is especially important to defend the religious liberty of minority faiths and religious communities—like the Yakama Nation and Grand Ronde tribes—because the religious liberties of all religious groups rise and fall together.

The Jewish Coalition for Religious Liberty is an association of American Jews concerned with the current state of religious liberty jurisprudence. It aims to protect the ability of all Americans to practice their faith freely and to foster cooperation between Jews and other faith communities. Its founders have joined amicus briefs in this Court and lower federal courts, submitted op-eds to prominent news outlets, and established an extensive volunteer network to promote religious liberty for all.

The Sikh Coalition works to defend civil rights and liberties for all people, promote community empowerment and civic engagement within the Sikh community, create an environment where Sikhs can lead a dignified life unhindered by bias and discrimination, and educate the broader community about Sikhism to promote cultural understanding and create bridges across communities. Ensuring religious liberty for all people is a cornerstone of the Sikh Coalition's work.

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person aside from *amici curiae* and their counsel made a monetary contribution toward its preparation. All parties were given 10 days' notice and have consented to this filing.

The American Islamic Congress, founded in the wake of the September 11, 2001 terrorist attacks, seeks to combat intolerance and facilitate understanding both among Muslims and through interfaith initiatives. To that end, the American Islamic Congress promotes coexistence, human rights, and religious liberty through programming and advocacy in the courts.

Protect the First Foundation (PT1) is a nonprofit, nonpartisan organization that advocates for First Amendment rights in all applicable arenas. PT1 thus advocates on behalf of people from across the ideological spectrum, people of all religions and no religion, and people who may not even agree with the organization's views.

As organizations committed to protecting the ability of all religious believers to vindicate their religious freedom rights in court, *amici* are troubled by the Ninth Circuit's decision dismissing claims of egregious religious freedom violations by holding there is nothing courts can do. *Amici* submit this brief to highlight errors in the Ninth Circuit's application of mootness doctrine as applied to religious free exercise claims and the far-reaching, harmful implications those errors have for minority religious groups.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Violating a string of federal protections designed to ensure religious liberty for minority religions, the government widened U.S. Highway 26 and destroyed Petitioners' 0.74-acre sacred site. See Pet. 5–13. Yet after more than a decade of litigation, the Ninth Circuit ruled it was powerless to grant any effectual relief and dismissed Petitioners' appeal as moot. App.5a. In fact, the Ninth Circuit thought, the case had been moot all along—ever since an easement holder had been dismissed from the case *eleven years earlier*. In so ruling, the Ninth Circuit parted ways with every previous judge to confront the issue, taking a position that even the government devoted only two pages of its 64-page brief to arguing. *Amici* agree with Petitioners that this Court should summarily reverse the Ninth Circuit's egregiously wrong decision, and they write to highlight three reasons the decision's error is particularly troubling in the religious freedom context.

*First*, the Ninth Circuit's our-hands-are-tied approach disregarded the broader scope of remedies available under the Religious Freedom Restoration Act. Under that Act, the government must rule out any possibility of remedying a religious freedom violation—including alternative remedies that might only partially satisfy the plaintiff's religious beliefs. Here, the Ninth Circuit not only failed to hold the government to that burden but shrugged off the possibility of relief by hastily concluding that any relief might "implicate" safety and thus conflict with an easement. Even if that were what the easement provided (it is not), and even if Petitioners' proffered remedies undermined safety (they do not), the Ninth Circuit did not

and could not rule out the possibility of *some* conceivable relief. That failure is especially troubling here, where the Ninth Circuit was deciding the rights of minority religious adherents. Especially in such cases, courts must thoroughly evaluate what sorts of accommodations believers of minority faiths might find acceptable to give proper effect to RFRA's protections.

*Second,* the Ninth Circuit erred by ignoring courts' equitable authority to cure religious freedom violations. In so doing, the panel undermined RFRA's ability to protect the very people it was designed to help—religious minorities like the Yakama Nation and Grand Ronde tribes.

*Third*, the Ninth Circuit's decision deferred to the government's bare claim that proposed remedies were not feasible. But this Court's RFRA and RLUIPA decisions foreclose such unquestioning deference. If left standing, the Ninth Circuit's decision would gut RFRA, permitting government actors to simply claim "infeasibility" whenever they find accommodating religious practice inconvenient.

This Court should step in to ensure that Petitioners have a remedy for the government's unnecessary destruction of their sacred site. The Ninth Circuit's contrary ruling should be summarily reversed.

## ARGUMENT

### I. The Ninth Circuit's failure to craft a case-specific remedy undercuts RFRA's purpose of protecting religious minorities.

*Amici* agree with Petitioners that the Ninth Circuit erred in dismissing the case as moot without even purporting to hold the government to its heavy burden of proving the impossibility of *any* relief, however "partial" it might be. See Pet. 22 (quoting *Church of Scientology of Cal.* v. *United States*, 506 U.S. 9, 13 (1992). When addressing weighty religious claims like those here, courts have an important obligation to fully consider—and sometimes creatively resolve—the various religious accommodations and remedies that might be available. See, *e.g.*, *Zubik* v. *Burwell*, 578 U.S. 403, 407–09 (2016) (per curiam) (remanding RFRA case for parties and lower courts to explore an accommodation proposed by the Court where, after oral argument, both parties had clarified that the potential accommodation, though perhaps difficult to implement, might be "feasible").

Before it could dismiss this case as moot, then, the Ninth Circuit would have had to find that *all* possible remedies—even alternative remedies that might not have been at first requested—were impossible. See *Nw. Env't Def. Ctr.* v. *Gordon*, 849 F.2d 1241, 1245 (9th Cir. 1988) ("The plaintiffs are not required . . . to have asked for the precise form of relief that the district court may ultimately grant."); see, *e.g.*, *Zubik*, 578 U.S. at 407–09 (remanding for parties to have the "opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise" and noting

that "[t]his Court has taken similar action in other cases in the past").

But, as Petitioners explain, Pet. 22–25, the Ninth Circuit's short, unpublished opinion gave little thought to whether alternative remedies might coexist with ODOT's easement. It simply took the government at its word, concluding that any relief would "implicate" safety and thus could not be awarded. The court did not explore whether (as the easement requires) any of Petitioners' proffered remedies "*impair*[*ed*]" highway safety. App.202a (emphasis added). And even if the remedies Petitioners first sought were unavailable, the court did not (and could not) say there was no other way of restoring—at least in part—Petitioners' ability to worship at their sacred site. Without developing a record on what remedies could satisfy Petitioners' religious beliefs, the Ninth Circuit could not find that all forms of relief were impossible.

The Ninth Circuit's approach to remedies is especially ill-suited for a religious liberty case. In many faith traditions, religious commandments and practices are not always all or nothing. For example, Muslims ideally gather for weekly prayers at mosque, but when many mosques were shuttered due to COVID-19, some imams led group prayers in homes.[2] Other faith groups held drive-in worship services with sermons preached over the radio.[3]

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[2] See Hannan Adely, *Can't go to mosque during Ramadan during COVID? Families make 'mini-mosques' at home*, USA TODAY (May 20, 2020, 2:30 PM), https://perma.cc/R59N-3CJQ.

[3] See Andrew R. Chow, *'Come As You Are in the Family Car.' Drive-In Church Services Are Taking Off During the Coronavirus*

Here, too, if rebuilding the sacred site alongside the highway really impairs highway safety (as implausible as that seems), a court must then ask whether Petitioners' beliefs could be satisfied by some other action that wouldn't impair highway safety, like planting trees or medicinal herbs in the surrounding area. Or even more simply, the Court should ask whether any part of the sacred site could be rebuilt *outside* the narrow strip of land covered by the easement.

To be sure, RFRA typically demands a remedy that fully satisfies a plaintiff's beliefs. See, *e.g.*, *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 423 (2006) (RFRA requires accommodation for religious use of sacramental hoasca); *McAllen Grace Brethren Church* v. *Salazar*, 764 F.3d 465, 479–80 (5th Cir. 2014) (RFRA requires accommodation for religious use of eagle feathers by members of non-federally recognized tribes); *Comanche Nation* v. *United States*, No. CIV-08-849-D, 2008 WL 4426621, *20 (W.D. Okla. Sept. 23, 2008) (RFRA requires enjoining the disruption of religious practices at a Native American sacred site). But when a religious claimant's ideal remedy or accommodation is off the table—whether because the request is infeasible or because it would conflict with a compelling government interest—the government and courts must explore all other suitable alternatives. See *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728–31 (2014) (requiring the government to consider "viable alternative[s]," such as "expend[ing] additional funds" on "new" or "existing program[s]" "to accommodate citizens' religious beliefs").

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*Pandemic*, TIME (Mar. 28, 2020, 9:30 AM), https://perma.cc/HSS9-FTQ2.

In those cases, courts must consider whether *any* remedy could still satisfy (even partially) the claimant's religious beliefs.

In doing so, courts should defer to a religious claimant when determining whether some remedy could provide meaningful relief. Courts must be careful not to second-guess what a plaintiff's beliefs allow or don't allow. Because "[c]ourts are not arbiters of scriptural interpretation," they are ill-equipped to question whether a plaintiff's understanding of his religious obligations is correct. *Thomas* v. *Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). Nor should a court question to what extent a partial remedy satisfies those same faith obligations. Wherever a plaintiff draws the line, it is not "within the judicial function" for courts "to say that the line . . . [is] an unreasonable one." *Id.* at 715–16.

For example, suppose a Muslim prison inmate wishes to grow a beard for religious reasons, but the government asserts a compelling safety and security interest in requiring prison inmates to shave. Under the Ninth Circuit's approach, if the court concludes prisons have a compelling interest in not allowing full-length beards, its analysis might end there. But, as this Court has recognized, courts applying the compelling interest test must then ask whether some other remedy—such as growing a beard of a limited length—can at least partially meet the prisoner's religious needs. See *Holt* v. *Hobbs*, 574 U.S. 352, 359, 369 (2015) (holding that RLUIPA requires the government to accommodate a prisoner who proposed a half-inch beard even though his faith forbade him from trimming his beard at all); see also Defs.' Notice of Army's Action, *Singh* v. *Carter*, No. 1:16-cv-00399-BAH (D.D.C. Mar.

31, 2016), ECF No. 26, https://perma.cc/T2JN-YUWR (Defendant Army proposing to settle action by allowing Sikh Army officer to tie or roll his beard).

Or consider a Native American prisoner who seeks game meat for a religious feast but, if that is unavailable, would settle for ground beef. As the Seventh Circuit recognized, that alternative remedy would "not scuttle his claim, any more than Holt's proposed compromise (a short beard) did." *Schlemm* v. *Wall*, 784 F.3d 362, 365 (7th Cir. 2015).

Or suppose a Jewish prison inmate wishes to celebrate the weekly Sabbath and annual Passover rituals by drinking red wine, but the prison claims to have a compelling security interest in not providing alcohol to prisoners. Rather than simply deny the religious practice outright, the court must consider whether some other accommodation—perhaps grape juice or nonalcoholic wine—could at least partially meet the prisoner's religious needs. See *Sample* v. *Lappin*, 479 F. Supp. 2d 120, 125 (D.D.C. 2007) (holding that the Bureau of Prisons would need to prove that its denial of any accommodation was the least restrictive means); *BOP Agrees to Provide Wine to Prisoner for Religious Rituals*, Prison Legal News (Feb. 15, 2009), https://perma.cc/A8KX-VXHD (noting that the government in *Sample* agreed to settle the case by providing nonalcoholic red wine).

These examples highlight the flexibility courts routinely employ when addressing religious claims. See *Ramirez* v. *Collier*, 142 S. Ct. 1264, 1280–81 (2022) (discussing alternative remedies that could both meet the government's interest in an orderly execution and accommodate the plaintiff's religious beliefs). Here, however, the Ninth Circuit was unbending—rejecting

the possibility of relief without seriously considering any alternative remedies.

If perpetuated in other cases, the Ninth Circuit's failure to explore alternative remedies would be especially harmful to non-Western and Indigenous faiths. Unlike mainstream religions, which "already enjoy de facto protection" through their ability to influence the political sphere, Thomas C. Berg, *Minority Religions and the Religion Clauses*, 82 Wash. U. L.Q. 919, 925 (2004), many minority faiths must turn to the courts for protection. Because many Indigenous sacred sites sit on federal land, these groups must seek out affirmative accommodation from the government just to practice their religion. Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 Harv. L. Rev. 1294, 1333 (2021). In doing so, minority religious groups often find it difficult to explain the nature of their beliefs and injuries to an audience mostly drawn from mainstream faith communities.

All too often, the judiciary has failed to grasp the extent of infringements on Indigenous and other minority faiths' free exercise rights and the ways courts can provide redress. See Barclay & Steele, *supra*; Allison M. Dussias, *Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases*, 49 Stan. L. Rev. 773, 773 (1997) (chronicling "a continuing failure by legal institutions to understand and respect Native American religious beliefs and practices"). Indeed, a court that "misunderstands the nature of [Indigenous] religious belief and practice" will be unable to grasp the extent of the alleged injury. *Navajo Nation* v. *U.S. Forest Serv.*, 535 F.3d 1058,

1096 (9th Cir. 2008) (Fletcher, J., dissenting). So, too, does such misunderstanding prevent courts from perceiving alternative remedies to cure the injury.

The Court should summarily reverse and remand to prevent that error from repeating itself.

## II. The Ninth Circuit's decision ignores RFRA's broad grant of authority to redress government interference with religious practice.

Summary reversal is especially appropriate here because the Ninth Circuit's decision ignores the power of federal courts to craft case-specific remedies when faced with clear violations of RFRA. Indeed, the Ninth Circuit's decision contravenes Congress's purposeful and express grant of judicial authority to protect people of faith. Thus, if allowed to stand, the Ninth Circuit's decision would harm the very people RFRA sought to protect.

Congress enacted RFRA to ensure broad protection of religious believers' right to exercise their faith. Recognizing that many believers were "largely . . . without recourse" after the Supreme Court's decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), Congress sought to restore (and even expand) the rights and remedies that predated *Smith*. Religious Freedom Restoration Act of 1993, 139 Cong. Rec. H2356-03 (1993) (statement of Rep. Hamilton Fish); see *Burwell*, 573 U.S. at 695 n.3 (noting that RFRA "provide[s] even broader protection for religious liberty than was available" before *Smith*). In the words of then-Representative Chuck Schumer, RFRA's lead sponsor in the House, RFRA was designed to ensure "maximum religious freedom." 139 Cong. Rec. H2356-03 (statement of Rep. Chuck Schumer).

The statute's text confirms as much. RFRA requires the federal government to make the "exceptionally demanding" showing that its action is the least restrictive means of furthering a compelling interest whenever it substantially burdens religious belief. *Burwell*, 573 U.S. at 728; see 42 U.S.C. § 2000bb-1(b). If the government cannot satisfy that demanding test, RFRA ensures robust remedies.

In contrast with the Ninth Circuit's cramped understanding of federal courts' equitable authority, RFRA's text requires courts to make full use of their broad remedial powers. The Act authorizes courts to award any "appropriate relief." *Id.* § 2000bb-1(c). As this Court recently made clear, that language is "'open-ended' on its face." *Tanzin* v. *Tanvir*, 141 S. Ct. 486, 491 (2020). Although what relief is "appropriate" may depend on context, it has always been understood to include federal courts' traditional authority to issue injunctions and provide other equitable remedies. Whether by blocking federal enforcement of criminal drug laws, *Gonzales*, 546 U.S. at 432, or requiring a state prison system to spend hundreds of thousands of dollars providing kosher meals to prisoners, *United States* v. *Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1341, 1345 (11th Cir. 2016), the broad authority to craft appropriate relief has been a hallmark of cases applying RFRA and its twin statute RLUIPA. While federal courts' equity powers are not unlimited, the Ninth Circuit's holding below makes short shrift of remedies that are clearly within bounds.

By providing for equitable remedies in RFRA, Congress invoked a longstanding body of law on federal courts' equitable powers. Those powers are "characterized by a practical flexibility in shaping . . . remedies

and . . . adjusting and reconciling public and private needs." *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 12 (1971) (quoting *Brown* v. *Bd. of Educ.*, 349 U.S. 249, 299–300 (1955)). Courts can thus enjoin governmental actors not only to prevent future violations but to "undo the effects of past violations." Douglas Laycock, *Modern American Remedies: Cases and Materials* 238–39 (1st ed. 1985).

What's more, federal courts' equitable powers assume an "even broader and more flexible character" in cases implicating the public interest. *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946). "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Va. Ry. Co.* v. *Sys. Fed'n*, 300 U.S. 515, 552 (1937). And the public interest, of course, is always implicated in cases like this one alleging harms to religious liberty. See *California* v. *Azar*, 911 F.3d 558, 582 (9th Cir. 2018) ("Protecting religious liberty and conscience is obviously in the public interest."). Indeed, religious liberty implicates some of the most fundamental public interests. See James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785) ("It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.")

Given this storied history of courts around the country crafting appropriate remedies, the Ninth Circuit's conclusion that the district court lacked the authority to order the government to replace a one-and-a-half-foot stone altar, replant trees, or remove an

embankment is puzzling. Limited remedies of that nature pale in comparison with the more sweeping remedies that have been awarded elsewhere with no suggestion that those remedies were beyond the federal courts' equitable authority.[4]

The Ninth Circuit decision here thus flouts RFRA's text and this Court's precedent. In holding that courts are powerless to redress statutory and constitutional violations because some remedies might (in the government's view) implicate a state agency's right-of-way, the Ninth Circuit got things exactly backwards. When, as here, federal courts confront government activity that so clearly burdens religious rights—and thus the public interest—the federal equity power should be at its apex.

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[4] Indeed, invoking federal courts' broad equitable powers, the Ninth Circuit itself has gone to great lengths to uphold secular claims against mootness challenges. See, *e.g.*, *West* v. *Sec'y of Dep't of Transp.*, 206 F.3d 920, 925–26 & n.5 (9th Cir. 2000) (holding a challenge to a completed highway construction project was not moot because potential structural changes, or even tearing down the highway altogether, were "well within the range of available remedies * * * however cumbersome or costly it might be"); *Cantrell* v. *City of Long Beach*, 241 F.3d 674, 678–79 (9th Cir. 2001) (holding that a bird watcher's case was not moot after destruction of a naval base because the court *could* order new nesting or foraging areas on the land); *Neighbors of Cuddy Mountain* v. *Alexander*, 303 F.3d 1059, 1066 (9th Cir. 2002) (finding that an environmental case was not moot even though timber was already logged, because the court could order the creation of an artificial wildlife habitat).

## III. The Ninth Circuit's decision violates this Court's decisions and misapplies RFRA by deferring to the government's untested assertions.

Summary reversal is warranted for another reason: the Ninth Circuit's unquestioning deference to the government's assertion of highway safety conflicts with RFRA and RLUIPA, echoing the lower courts' error that was reversed in *Holt*, 574 U.S. at 364.

In *Holt*, the lower courts thought themselves "bound to defer to the Department's assertion that allowing [the] petitioner to grow [a 1/2-inch] beard" would undermine the government's interest in "suppressing contraband." *Ibid.* But "RLUIPA, like RFRA," does "not permit such unquestioning deference." *Ibid.*; see also *id.* at 357–58 (noting that RLUIPA "mirrors" RFRA with "'the same standard'" (quoting *Gonzales*, 546 U.S. at 436)); *Davila* v. *Gladden*, 777 F.3d 1198, 1206 (11th Cir. 2015) (holding that federal "prison officials cannot simply utter the magic words 'security and costs' and as a result receive unlimited deference from those of us charged with resolving these disputes"). Even in the deferential prison context, this Court explained, it was wrong to defer to government officials' "mere say-so" that "they could not accommodate petitioner's request." *Holt*, 574 U.S. at 369. Rather, "it is the obligation *of the courts* to consider whether exceptions are required under the test set forth by Congress." *Gonzales*, 546 U.S. at 434 (emphasis added). Just as with RLUIPA, "conjecture" alone fails to satisfy "the sort of case-by-case analysis that [RFRA] requires." *Ramirez*, 142 S. Ct. at 1280. It is not enough for an agency to merely assert that a

particular accommodation "is not feasible." *Id.* at 1279 (citations omitted).

The Ninth Circuit repeated that error here. By summarily concluding that any remedy would "implicate" safety and bring into play ODOT's easement, the Ninth Circuit disregarded this Court's decisions directing lower courts to scrutinize the government's unbacked assertions. *Cf. Holt*, 574 U.S. at 369. By contrast, other lower courts have consistently followed this Court's lead by questioning the government's assertions even when dealing with institutions like the military or prison systems, which have historically been given much greater deference than government agencies like DOT.[5]

Indeed, unlike *Holt*, where the lower courts deferred to the government's "mere say-so," 574 U.S. at 369, here the government did not even "say so." The government has never asserted that *all* possible remedies would implicate safety. It pointed to "remov[ing]

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[5] See, *e.g.*, *Singh* v. *McHugh*, 185 F.Supp.3d 201, 221 (D.D.C. 2016) (recognizing, in the context of a military case, that courts are "bound to follow the guidance of *Holt* when seeking to harmonize the necessary respect for military judgment with dictates of the statutory regime"); *Ackerman* v. *Washington*, 16 F.4th 170, 190 (6th Cir. 2021) (declining to give "blind deference" to prison officials' estimation of the cost of religious meal accommodations); *Williams* v. *Annucci*, 895 F.3d 180, 190–91 (2d Cir. 2018) (rejecting prison official's assessment because instead of "voluminous affidavits and exhibits" it "include[d] only one declaration that claims, in a conclusory manner," that kosher food could not be provided to prisoners (citation omitted)); *Ware* v. *La. Dep't of Corr.*, 866 F.3d 263, 274 (5th Cir. 2017) (holding that a state correctional department had to "offer persuasive reasons for the disparity" between its level of accommodation for religious hairstyles and that of other similarly situated departments).

the embankment or the guardrail" as an accommodation over which it would "lack authority" because "it would 'impair the full use and safety of the highway.'" Gov't 9th Cir. Br. 20. Even putting aside the lack of proof to support that claim, the Ninth Circuit jumped from there to holding that "[*a*]*ll* of the relief sought by [Petitioners] implicates highway safety." App.4a (emphasis added). But that logical leap ignores other forms of possible relief such as restoring the altar, requiring commemorative signage, or even ordering the government to coordinate with ODOT for permission to remediate the harm done. Those options have little or nothing to do with the presence of the embankment or the guardrail, and there has been no factual inquiry into whether such options would be feasible.

In short, the Ninth Circuit's reasoning is miles apart from the sort of "detailed record" addressing specific proposed accommodations that lower courts have found to satisfy *Holt*'s imperative. *Knight* v. *Thompson*, 796 F.3d 1289, 1292 (11th Cir. 2015). RFRA "demands much more." *Holt*, 574 U.S. at 369. Because the Ninth Circuit's decision strays from established precedents and provides an easy out for government action that blatantly violates Indigenous peoples' religious rights, this Court should summarily reverse.

## CONCLUSION

By holding that RFRA provides no remedy for the government's egregious destruction of an Indigenous sacred site, the Ninth Circuit misapplied both mootness doctrine and established religious freedom precedents. This Court should summarily reverse.

Respectfully submitted,

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