No. 23-1009

IN THE
Supreme Court of the United States

LEISL M. CARPENTER,

Petitioner,

v.

THOMAS J. VILSACK, in his official capacity as Secretary of the United States Department of Agriculture; ZACH DUCHENEAUX, in his official capacity as Administrator of the Farm Service Agency,

Respondents.

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

BRIEF OF CHIKE UZUEGBUNAM AS AMICUS CURIAE IN SUPPORT OF PETITIONER

JOHN J. BURSCH
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(616) 450-4235
jbursch@ADFlegal.org

CHRISTOPHER P. SCHANDEVEL
Counsel of Record
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
cschandevel@ADFlegal.org

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE[1]

"Chike Uzuegbunam is an evangelical Christian who believes that an important part of exercising his religion includes sharing his faith." *Uzuegbunam* v. *Preczewski*, 141 S. Ct. 792, 796 (2021). In 2016, while sharing his faith in an outdoor plaza at Georgia Gwinnett College—the public college where he was enrolled—Chike was confronted by a campus police officer who prohibited him from distributing religious materials in that location. *Ibid.*

A school official later told Chike he could share his faith in one of two "free speech expression areas" after securing a permit, which Chike did. *Id.* at 797. But 20 minutes after he started speaking on the day his permit allowed, "another campus police officer again told him to stop, this time saying that people had complained about his speech." *Ibid.* The officer threatened disciplinary action if Chike kept sharing his faith in that location. *Ibid.* So Chike "again complied with the order to stop speaking." *Ibid.*

When Chike later sued the college to vindicate his rights and end the unconstitutional policies the school had used to silence his religious speech, the school initially tried to defend the policy, claiming Chike's speech "arguably rose to the level of 'fighting words.'" *Ibid.* (quoting the record). The school later dropped that argument, changed its policies, and moved to dismiss, arguing Chike's nominal-damages claim was not enough to make his injury redressable. *Ibid.*

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[1] No counsel for a party authored this brief in whole or part, and no person other than amicus and his counsel made any monetary contribution to fund its preparation or submission. Counsel were timely notified of this brief as required by Rule 37.2.

The district court agreed, the Eleventh Circuit affirmed, and this Court "granted certiorari to consider whether a plaintiff who sues over a completed injury and establishes the first two elements of standing (injury and traceability) can establish the third by requesting only nominal damages." *Ibid.* This Court answered that question yes, holding that "nominal damages provide the necessary redress for a completed violation of a legal right." *Id.* at 802.[2]

Having been on the receiving end of religious persecution and discrimination, Chike has an interest in ensuring that such injuries remain redressable by nominal-damages claims—even after the government changes its laws or policies to avoid accountability. And because Petitioner pleaded a claim for nominal damages, this Court could hold that claim makes redressable any Article III injury that she suffered.[3]

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[2] The Court made clear that its holding concerned only redressability, and it remained "for the plaintiff to establish the other elements of standing (such as a particularized injury); plead a cognizable cause of action; and meet all other relevant requirements." *Uzuegbunam*, 141 S. Ct. at 802 (citation omitted). Like the Court in *Uzuegbunam*, amicus takes no position on any of the other issues beyond redressability that this case implicates.

[3] Amicus recognizes Petitioner sued Respondents in their official capacities, and Respondents asserted sovereign immunity below. Despite that assertion, the Tenth Circuit did not pass on the sovereign-immunity issue. So this Court can reserve it for resolution on remand in the court of appeals or in the district court—where Petitioner might be allowed to amend her complaint to sue the officials in their individual capacities. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 719 n.7 (2005) ("Because these defensive pleas were not addressed by the Court of Appeals, and mindful that we are a court of review, not of first view, we do not consider them here."); *Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 498 (1983).

SUMMARY OF THE ARGUMENT

For decades courts have almost universally recognized that a nominal-damages claim is justiciable when a plaintiff seeks vindication for a completed constitutional injury—even after government officials have changed their unconstitutional policies or conduct. *E.g.*, 13C Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Fed. Practice & Procedure* § 3533.3 n.47 (4th ed. 2020). "By making the deprivation of such rights actionable for nominal damages," courts have long recognized the societal importance "that those rights be scrupulously observed." *Carey* v. *Piphus*, 435 U.S. 247, 266 (1978).

In its decision three years ago in *Uzuegbunam*, this Court decisively reaffirmed that constitutional rights are worth protecting even when the alleged injury cannot be quantified in dollars and cents. 141 S. Ct. at 800. Nominal damages ensure this principle applies in practice—that courts treat the rights of those who cannot measure their losses monetarily as being just as important as the rights of those who can. Nominal damages also hold government officials accountable for such violations and make certain that courts scrupulously enforce constitutional rights.

Because nominal-damages claims relate to past injuries—not merely declarations of future rights—this Court should grant review in this case to reaffirm that such claims present justiciable controversies. To do otherwise runs the risk that government officials will escape accountability for discrimination based on protected classifications like race and religion—discrimination that is presumptively invidious and necessarily causes redressable harm.

ARGUMENT

I. As this Court recognized in *Uzuegbunam*, nominal damages reflect the reality that every legal injury necessarily causes harm.

To establish Article III standing, a plaintiff must show she has suffered an "injury in fact" traceable to the defendant's conduct that is likely to be redressed by a favorable court ruling. *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Here, Petitioner alleged that she had been "denied the equal protection of the laws and [had] therefore suffered harm" when she had been "ineligible to receive loan forgiveness solely due to her race." Compl. at 10, *Carpenter* v. *Vilsack*, No. 2:21-cv-00103 (May 24, 2021).

History, tradition, and this Court's precedents all teach that a nominal-damages award is an appropriate remedy for constitutional injuries of this sort that do not result in easily quantifiable damages. *Uzuegbunam*, 141 S. Ct. at 798–802; *Carey*, 435 U.S. at 266. Not surprisingly, then, in addition to her other requests for relief, Petitioner requested "an award for nominal damages of $1.00." Compl. at 14, *Carpenter* v. *Vilsack*, No. 2:21-cv-00103 (May 24, 2021). As the common law has recognized for centuries—and as this Court reaffirmed in *Uzuegbunam*—that was enough.

It has long been the "general and indisputable rule, that where there is a legal right, there is also a legal remedy." *Franklin* v. *Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 66 (1992) (quoting 3 WILLIAM BLACKSTONE, COMMENTARIES *23). The "very essence of civil liberty" includes the citizen's right to claim the law's protection "whenever he receives an injury." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

It is this protection that allows our government to be "emphatically termed a government of laws." *Marbury*, 5 U.S. at 163. Yet it will "cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Ibid.*

Nominal damages serve this important purpose. Courts have long awarded them when there has been an "infraction of a legal right" but "the extent of loss is not shown" or the right itself is "not dependent upon loss or damage." Charles T. McCormick, *Handbook on the Law of Damages* § 20 at 85 (1935). From the English common law through today, courts have turned to nominal damages to vindicate deprivations of rights that did not cause compensable harm. *Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 308 n.11 (1986) (citing *Carey*, 435 U.S. at 266). Accord, *e.g.*, *Robinson* v. *Lord Byron*, 2 Cox 4, 30 Eng. Rep. 3, 3 (1788) (awarding nominal damages when plaintiff showed a riparian-rights invasion but offered no proof of damages); *Webb* v. *Portland Mfg. Co.*, 29 F. Cas. 506, 508 (Story, Circuit Justice, C.C.D. Me. 1838) (when a right is violated, "the party injured is entitled to maintain his action for nominal damages, *in vindication of his right*, if no other damages are fit and proper to remunerate him") (emphasis added); *Whipple* v. *Cumberland Mfg. Co.*, 29 F. Cas. 934, 936 (Story, Circuit Justice, C.C.D. Me. 1843) ("[I]n the absence of any other proof of substantial damage, nominal damages will be given in support of the right."); 1 J.G. Sutherland, *A Treatise on the Law of Damages* §§ 9–10 (John R. Berryman ed., 4th ed. 1916) (collecting hundreds of cases awarding nominal damages in response to a violation of rights).

Nominal damages play a critical role in keeping federal courts open to litigants, especially in civil-rights cases like this one. Without the availability of nominal damages, victims of constitutional and civil-rights violations who cannot prove compensatory damages could be denied access to the justice system altogether. This Court recognized as much in *Carey*, holding that plaintiff students pursuing a § 1983 action after a school suspension could recover nominal damages for the deprivation of their constitutional rights "even if [plaintiffs] did not suffer" additional injury beyond the invasion of those rights. 435 U.S. at 266–67.

"By making the deprivation of [constitutional] rights actionable for nominal damages" without requiring compensable harm, the law "recognizes the importance to organized society that those rights be scrupulously observed." *Id.* at 266. Accord, *e.g.*, *City of Riverside* v. *Rivera*, 477 U.S. 561, 574 (1986) (plurality opinion) ("Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms."); *Amato* v. *City of Saratoga Springs*, 170 F.3d 311, 317 (2d Cir. 1999) ("[W]hile the monetary value of a nominal damage award must, by definition, be negligible, its value can be of great significance to the litigant and to society.").

The Court reaffirmed these principles in Chike's case. By allowing "plaintiffs to pursue nominal damages whenever they suffered a personal legal injury, the common law avoided the oddity of privileging small-dollar economic rights over important, but not easily quantifiable, nonpecuniary rights." *Uzuegbunam*, 141 S. Ct. at 800.

All of that remains true today. "Nominal damages are not a consolation prize for the plaintiff who pleads, but fails to prove, compensatory damages." *Ibid.* They are not "purely symbolic, a mere judicial token that provides no actual benefit to the plaintiff." *Id.* at 801. "Despite being small, nominal damages are certainly concrete." *Ibid.* And because they "are in fact damages paid to the plaintiff, they affect the behavior of the defendant towards the plaintiff and thus independently provide redress." *Ibid.* (cleaned up). Indeed, a plaintiff "who is awarded nominal damages receives 'relief on the merits of his claim' and 'may demand payment for nominal damages no less than he may demand payment for millions of dollars in compensatory damages.'" *Ibid.* (quoting *Farrar* v. *Hobby*, 506 U.S. 103, 111 (1992)). And while "a single dollar often cannot provide full redress," the ability to provide even a partial remedy "satisfies the redressability requirement." *Ibid.*

Importantly, none of that is affected by the apparent absence of ongoing or threatened future harm. As this Court recounted in Chike's case, courts have long "reasoned that *every* legal injury necessarily causes damage," and so they have long "awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages)," and they have done so even "where there was no apparent continuing or threatened injury for nominal damages to redress." *Id.* at 798 (collecting cases).

Likewise, the government's decision to change or repeal the challenged law or policy does not moot a claim for nominal damages. A case becomes moot "only when it is *impossible* for a court to grant any effectual relief whatever." *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (emphasis added) (cleaned up).

Stated differently, "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Ibid.* (cleaned up). And the availability of nominal damages clears that threshold. In Chike's case, he "still would have satisfied redressability if instead of one dollar in nominal damages" he would have "sought one dollar in compensation for a wasted bus fare to travel to the free speech zone." *Uzuegbunam*, 141 S. Ct. at 802.

And that's equally true here. If Petitioner had sought one dollar as compensation for printing costs associated with an application that turned out to be for naught due to the color of her skin, her claim would be redressable. Allowing her to pursue nominal damages for any constitutional injury she suffered avoids "the oddity of privileging small-dollar economic rights over important, but not easily quantifiable, nonpecuniary rights." *Id.* at 800.

II. Like discrimination based on race, religious discrimination is presumptively invidious and necessarily causes redressable harm.

Religion is American law's first suspect classification. Article VI, Clause 3 of the U.S. Constitution bans religious tests for any federal office or position of public trust, and the First Amendment to the U.S. Constitution protects the free exercise of religion. Indeed, ratification of the U.S. Constitution depended on the promise of the Free Exercise Clause and the other provisions contained in the Bill of Rights. *W. Va. State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 636–37 (1943). The idea that citizens should receive equal treatment under the law regardless of their religious affiliation and beliefs is part of the groundwork on which our democracy was built.

As a result, this Court has recognized for at least 80 years that religious classifications are constitutionally suspect. *E.g.*, *United States* v. *Armstrong*, 517 U.S. 456, 464 (1996) (a decision not to prosecute may not be based on race or religion); *Wade* v. *United States*, 504 U.S. 181, 186 (1992) (the government cannot refuse to file a substantial-assistance motion based on race or religion); *Burlington N. R.R. Co.* v. *Ford*, 504 U.S. 648, 651 (1992) (recognizing that race and religion are suspect classifications under the Fourteenth Amendment); *Friedman* v. *Rogers*, 440 U.S. 1, 17 (1979) (listing race, religion, and alienage as suspect distinctions under the Equal Protection Clause); *United States* v. *Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (explaining that religious classifications require a more searching inquiry).

Because they disadvantage members of a suspect class and intrude on the exercise of a fundamental right, religious classifications—like classifications based on race—are presumptively invalid. *E.g.*, *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (strict scrutiny applies to laws that impinge on personal rights); *Kadrmas* v. *Dickinson Pub. Schs.*, 487 U.S. 450, 457 (1988) (strict scrutiny applies to laws that interfere with a fundamental right or discriminate against a suspect class); *Plyler* v. *Doe*, 457 U.S. 202, 216 (1982) (classifications that disadvantage a suspect class or impinge on a fundamental right are presumptively invidious).

The general rule under the First and Fourteenth Amendments is that religious choices should not impact citizens' rights, duties, benefits, or participation in public life. *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist.* v. *Grumet*, 512 U.S. 687, 715 (1994) (O'Connor, J., concurring in part and concurring in judgment).

When the state deems it necessary to directly intrude on free exercise or other First Amendment liberties, it must do so on individualized bases, *not* on broad classifications and invidious stereotypes. Cf. *Police Dep't of Chi.* v. *Mosley*, 408 U.S. 92, 101 (1972).

This Court reaffirmed all of that in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449 (2017). There, this Court invalidated Missouri's ban on allowing preschools affiliated with religious organizations to compete for government funds to install rubber playground surfaces made from recycled tires. *Id.* at 455–56, 466. The Court reached that result because the "Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" *Id.* at 458 (quoting *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U.S. 520, 533, 542 (1993)). The challenged "policy expressly discriminate[d] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character." *Id.* at 462. And this Court's survey of its past cases made "one thing clear," namely "that such a policy imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Ibid.*

Assuming the complaint in *Trinity Lutheran* included a request for nominal damages, the case would not have been moot even if Missouri had passed a law or amended its constitution to make clear that religious schools were equally eligible to compete for funding under the challenged program. And that would be true regardless of whether the petitioner had included a claim for compensatory damages.

Even under those circumstances, the petitioner would have been entitled to nominal damages for the constitutional harm of having been prevented "from competing on an equal footing in its quest for a benefit" based on a presumptively invidious classification. *Ne. Fla. Chapter of Associated Gen. Contractors of Am.* v. *City of Jacksonville*, 508 U.S. 656, 667 (1993). In such cases, the "aggrieved party need not allege that [it] would have obtained the benefit but for the barrier in order to establish standing." *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 211 (1995) (cleaned up). "True, a single dollar often cannot provide full redress," and that's especially true for cases involving invidious discrimination, "but the ability to effectuate a partial remedy satisfies the redressability requirement." *Uzuegbunam*, 141 S. Ct. at 801 (cleaned up).

And the same is equally true here.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

JOHN J. BURSCH
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(616) 450-4235
jbursch@ADFlegal.org

CHRISTOPHER P. SCHANDEVEL
Counsel of Record
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
cschandevel@ADFlegal.org

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