No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR, PETITIONER

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

D. JOHN SAUER
Solicitor General
Counsel of Record
HARMEET K. DHILLON
Assistant Attorney General
YAAKOV M. ROTH
Acting Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
SOPAN JOSHI
Assistant to the Solicitor General
YAEL BORTNICK
MICHAEL S. RAAB
LOWELL V. STURGILL JR.
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the express remedies provision of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc-2(a), permits litigants, when appropriate, to obtain money damages against government officials in their individual capacities.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, and rule:

In the Supreme Court of the United States

No. 23-1197

DAMON LANDOR, PETITIONER

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

INTRODUCTION

Congress sought to protect individual religious exercise beyond the constitutional floor when it enacted the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (42 U.S.C. 2000bb *et seq.*), and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), Pub. L. No. 106-272, 114 Stat. 803 (42 U.S.C. 2000cc *et seq.*). Although relying on different sources of constitutional authority, those twin statutes use nearly identical language to impose nearly identical requirements for nearly identical

purposes. Unsurprisingly, this Court has repeatedly recognized that RFRA and RLUIPA should be interpreted in harmony.

In their respective domains, each of those sister statutes prohibits a government—generally the federal government under RFRA, state and local governments under RLUIPA—from imposing a substantial burden on religious exercise unless the imposition is the least restrictive means of furthering a compelling governmental interest. And each statute provides a private right of action against a government, including governmental officials, for "appropriate relief." 42 U.S.C. 2000bb-1(c), 2000cc-2(a).

The question in this case is whether "appropriate relief" under RLUIPA may include money damages in suits against governmental officials in their individual capacities. In *Tanzin* v. *Tanvir*, 592 U.S. 43 (2020), this Court held that "appropriate relief" under RFRA may include money damages in suits against governmental officials in their individual capacities. No sound basis exists to reach a different conclusion with respect to RLUIPA. Although the Court held in *Sossamon* v. *Texas*, 563 U.S. 277 (2011), that "appropriate relief" under RLUIPA does *not* include money damages in suits against a sovereign State, that holding was based on considerations of sovereign immunity inapplicable to suits against individual officials. Indeed, *Tanzin* found *Sossamon* inapposite precisely because of that "obvious difference." 592 U.S. at 52. At the same time, *Sossamon* approvingly cited lower-court cases holding that "appropriate relief" under RFRA likewise did not include money damages in suits against sovereigns.

Sossamon and *Tanzin* together are thus best understood to hold that money damages do not constitute "ap-

propriate relief" in suits against sovereigns, but may constitute appropriate relief in suits against individual governmental officials—under RFRA and RLUIPA alike. The court of appeals' decision conflicts with those precedents, and certiorari is warranted to review that important question of federal law.

STATEMENT

A. Statutory Background

1. In *Employment Division* v. *Smith*, 494 U.S. 872 (1990), this Court held that the First Amendment does not require religious exemptions from neutral laws of general applicability, even if those laws have the effect of burdening religious exercise. *Id.* at 876-882; see *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 533 (2021). At the same time, the Constitution does not forbid "nondiscriminatory religious-practice exemption[s]" from such laws. *Smith*, 494 U.S. at 890; see *Cutter* v. *Wilkinson*, 544 U.S. 709, 719-726 (2005).

Congress provided such an exemption in RFRA, which provides that a "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless it is the "least restrictive means of furthering" a "compelling governmental interest." 42 U.S.C. 2000bb-1(a) and (b). Although RFRA originally defined "'government'" to include "a State, or a subdivision of a State," 42 U.S.C. 2000bb-2(1) (Supp. V 1993), this Court held in *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), that applying RFRA to state and local governments exceeds Congress's power under Section 5 of the Fourteenth Amendment because RFRA "cannot be considered remedial, preventive legislation" to enforce the Fourteenth Amendment, but "appears, instead, to attempt a

substantive change in constitutional protections," *id.* at 532.

Congress responded by enacting RLUIPA, which—like RFRA—prohibits any "government," including a state or local government, from imposing a "substantial burden" on religious exercise unless it is the "least restrictive means of furthering" a "compelling governmental interest." 42 U.S.C. 2000cc(a), 2000cc-1(a); see 42 U.S.C. 2000cc-5(4). To comply with *City of Boerne*, however, Congress relied not on its authority under the Fourteenth Amendment, but on its authority to "provide for the * * * general Welfare" and to "regulate Commerce," U.S. Const. Art. I, § 8, Cls. 1, 3. Specifically, Congress made RLUIPA's prohibitions applicable only to land-use regulations and restrictions on persons residing in or confined to an institution—and even then only under certain conditions. 42 U.S.C. 2000cc(a), 2000cc-1(a). In the case of institutionalized persons, those conditions include that the religious burden be "imposed in a program or activity that receives Federal financial assistance" or affect "commerce with foreign nations, among the several States, or with Indian tribes." 42 U.S.C. 2000cc-1(b).

Both RFRA and RLUIPA provide private rights of action, and both permit plaintiffs to "obtain appropriate relief against a government" for violations of the applicable statutory prohibitions. 42 U.S.C. 2000bb-1(c) (RFRA); 42 U.S.C. 2000cc-2(a) (RLUIPA). Both statutes also define "'government'" to include any "official" of a governmental entity or any "other person acting under color" of law. 42 U.S.C. 2000bb-2(1) (RFRA); 42 U.S.C. 2000cc-5(4) (RLUIPA). In addition, RLUIPA authorizes the United States to bring enforcement ac-

tions seeking "injunctive or declaratory relief." 42 U.S.C. 2000cc-2(f).

2. a. In *Sossamon* v. *Texas*, 563 U.S. 277 (2011), this Court held that money damages are unavailable under RLUIPA in a private suit against a sovereign State premised on a religious burden "imposed in a program or activity that receives Federal financial assistance," 42 U.S.C. 2000cc-1(b). *Sossamon*, 563 U.S. at 285-291. The Court observed that when Congress acts pursuant to its constitutional spending power, the relevant "question" is "whether the States, by accepting federal funds," have "consent[ed] to waive their sovereign immunity to suits for money damages under [RLUIPA]." *Id.* at 280-281; see *id.* at 283. The Court acknowledged that a State "may choose to waive its immunity in federal court at its pleasure," but explained that a State's "consent to suit must be 'unequivocally expressed' in the text of the relevant statute" and the waiver "'must extend unambiguously to * * * monetary claims'" for money damages to be available in such suits. *Id.* at 284-285 (citations omitted).

Sossamon held that RLUIPA does not contain such clear and unequivocal language. The Court explained that the phrase "appropriate relief" "is open-ended and ambiguous about what types of relief it includes," and that "the word 'appropriate' is inherently context dependent." 563 U.S. at 286; see *ibid.* (explaining that "'appropriate remedies' ha[s] a flexible meaning"); *id.* at 285-289. The Court further explained that the "context here—where the defendant is a sovereign—suggests, if anything, that monetary damages are not 'suitable' or 'proper.'" *Id.* at 286. The Court distinguished cases like *Franklin* v. *Gwinnett County Public Schools*, 503 U.S. 60 (1992), and *Barnes* v. *Gorman*, 536 U.S. 181 (2002),

which had found monetary damages to be appropriate relief in private suits to enforce certain antidiscrimination statutes, in part on the ground that "[t]hose cases did not involve sovereign defendants." *Sossamon*, 563 U.S. 289 n.6; see *id.* at 288-289.

The Court in *Sossamon* rejected the argument that "the States were necessarily on notice that they would be liable for damages" under RLUIPA on the theory that "Spending Clause legislation operates as a contract and damages are always available relief for a breach of contract." 563 U.S. at 289. The Court explained that the "contract analogy" cannot "expand liability beyond what would exist under nonspending statutes," and that accepting the argument would effectively mean "that every Spending Clause enactment, no matter what its text, satisfies" the requisite clarity for waivers of sovereign immunity. *Id.* at 290. The Court further observed that the States would not have been "on notice" that "the phrase 'appropriate relief'" would render them liable for damages under RLUIPA in part because "the same phrase in RFRA had been interpreted [by lower courts] not to include damages relief against the Federal Government or the States." *Id.* at 289 n.6.

b. In *Tanzin* v. *Tanvir*, 592 U.S. 43 (2020), this Court held that RFRA permits suits for money damages against governmental officials sued in their individual capacities. See *id.* at 47-52. The Court first found it "clear" from "RFRA's text" that "injured parties can sue Government officials in their personal capacities" because RFRA defines "'government'" to include "'official,'" and "the term 'official' does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" *Id.* at 47 (citations omitted).

The Court then held that money damages were available in suits against governmental officials in their individual capacities because in that context, "damages have long been awarded as appropriate relief" and "remain an appropriate form of relief today." *Tanzin*, 592 U.S. at 49. The Court observed that damages are "commonly available against state and local government officials" in suits under 42 U.S.C. 1983, a fact the Court found "particularly salient" given that RFRA originally applied to state and local government officials. *Tanzin*, 592 U.S. at 50. The Court further observed that damages may be "the *only* form of relief that can remedy some RFRA violations." *Id.* at 51.

Finally, the Court in *Tanzin* explained that its "opinion in *Sossamon* does not change this analysis" because of an "obvious difference" between the two cases: "this case features a suit against individuals, who do not enjoy sovereign immunity." 592 U.S. at 51-52.

B. Proceedings Below

1. According to the complaint, petitioner is a devout Rastafarian who has taken a religious vow not to cut his dreadlocks. Pet. App. 2a. Petitioner alleges that in 2020 he was incarcerated in three Louisiana institutions; the first two accommodated his dreadlocks, but the third did not. *Ibid.* Petitioner alleges that he informed an intake guard at the third facility of his religious beliefs, "provided proof of past religious accommodations," and even "handed the guard a copy" of the Fifth Circuit's decision in *Ware* v. *Louisiana Department of Corrections*, 866 F.3d 263 (2017), cert. denied, 583 U.S. 1156 (2018), which held that cutting the dreadlocks of a Rastafari prisoner would violate RLUIPA. Pet. App. 2a. Petitioner alleges that prison officials threw those

materials in the garbage, handcuffed him to a chair, and shaved his head. *Id.* at 2a-3a.

After his release, petitioner brought this suit alleging violations of RLUIPA, various federal constitutional provisions, and state law. See Pet. App. 3a. As relevant here, petitioner sued respondents in their individual capacities under RLUIPA and sought compensatory and punitive damages. See *ibid.*; Compl. ¶¶ 43-81, Prayer for Relief ¶ 2. The district court dismissed the RLUIPA claims, explaining that under binding circuit precedent, RLUIPA "does not authorize a private cause of action for compensatory or punitive damages." Pet. App. 16a (citation omitted); see *id.* at 14a-20a.

2. The court of appeals affirmed. Pet. 1a-13a.

The court of appeals explained that it had previously "held that RLUIPA does not permit suits against officers in their individual capacities" at all, which necessarily means that "claimants cannot recover monetary damages." Pet. App. 4a. The court observed that its precedent had reasoned that "RLUIPA was 'enacted pursuant to Congress's Spending Clause power,'" and that because "Spending Clause legislation 'operates like a contract,'" "'only the grant recipient—the state—may be liable for its violation.'" *Id.* at 6a (citations omitted); see *id.* at 11a (describing its precedent as holding "that although RLUIPA's text suggests a damages remedy, recognizing as much would run afoul of the Spending Clause"). The court acknowledged *Tanzin*'s holding that "RFRA authorizes money damages against officials sued in their individual capacities," but explained that *Tanzin* did not abrogate its circuit precedent about RLUIPA because the two statutes "rely on different Congressional powers": RFRA on "the Fourteenth

Amendment" and RLUIPA on "the Spending and Commerce Clauses." *Id.* at 8a; see *id.* at 8a-11a.

The court of appeals rejected petitioner's reliance on *Sabri* v. *United States*, 541 U.S. 600 (2004), for the proposition that Congress may regulate non-recipients of federal funds under its spending power. Pet. App. 11a-13a. *Sabri* held that Congress could constitutionally criminalize bribery in relation to programs receiving federal funds without requiring proof of some connection between the bribe and the federal funds. 541 U.S. at 604-608. The court viewed *Sabri* as "inapposite" because Congress enacted the criminal statute at issue there "to protect its expenditures against local bribery and corruption," whereas "Congress did not enact RLUIPA to protect its own expenditures, but rather it enacted RLUIPA to protect the religious rights of institutionalized persons." Pet. App. 12a-13a (citation omitted).

The court of appeals "*emphatically* condemn[ed] the treatment that [petitioner] endured," but observed that the panel "remain[ed] bound by" circuit precedent. Pet. App. 13a.

3. The court of appeals denied rehearing en banc by an 11-6 vote. Pet. App. 21a-36a.

a. Judge Clement, joined by eight judges, concurred in the denial of rehearing. Pet. App. 23a-24a. She observed that *Sossamon* held that "RLUIPA did *not* clearly allow for monetary damages" against "state employees sued in their *official* capacities," whereas *Tanzin* held that RFRA does authorize suits for "monetary damages against federal officials in their individual capacities." *Id.* at 23a-24a. Judge Clement voted against rehearing on the ground that "threading the needle" be-

tween *Sossamon* and *Tanzin* "is a task best reserved for the court that wrote those opinions." *Id.* at 24a.

b. Judge Oldham, joined by four judges in full and by Judge Ho in part, dissented from the denial of rehearing. Pet. App. 25a-34a. He explained that this Court's "interpretation of RFRA in *Tanzin* should be dispositive" because "not only is the relevant text in RLUIPA identical to that in RFRA, but [this Court's] precedent also commands us to interpret the two statutes in tandem." *Id.* at 28a-29a.

Judge Oldham also rejected reliance on RLUIPA's having been enacted pursuant to Congress's spending power, explaining that "Congress *can* regulate 'individuals who aren't party to the contract' "—as evidenced in part by *Sabri*, *supra*—and that "RLUIPA's provision for individual official liability complies with" the limits on "Congress's spending power" set forth in *South Dakota* v. *Dole*, 483 U.S. 203 (1987). Pet. App. 30a-31a (citation omitted). Judge Oldham distinguished decisions from other circuits rejecting damages liability under RLUIPA on the ground that those decisions predated *Tanzin*. *Id.* at 33a.

c. Judge Ho, joined by Judge Elrod, also dissented from the denial of rehearing. Pet. App. 35a-36a. He explained that because officials sued in their individual capacities "do not enjoy sovereign immunity," "*Sossamon* should have no bearing" on the question presented here. *Id.* at 36a.

DISCUSSION

The petition for a writ of certiorari should be granted. This Court has repeatedly made clear that RLUIPA and RFRA are to be interpreted in harmony, and the Court's decisions in *Sossamon* v. *Texas*, 563 U.S. 277 (2011), and *Tanzin* v. *Tanvir*, 592 U.S. 43

(2020), together stand for the straightforward principle that the phrase "appropriate relief against a government" in this context does not include money damages in suits against sovereigns, but may include money damages in suits against governmental officials in their individual capacities. The court of appeals' decision conflicts with that important principle of federal law.* To the extent the conflict may be avoided on the ground that a money-damages remedy against individual officials would exceed Congress's constitutional spending power—or that constitutional avoidance provides a basis to read RLUIPA as not creating such a remedy—that rationale itself implicates a circuit conflict that warrants this Court's review.

A. RLUIPA Authorizes Damages Suits Against Governmental Officials In Their Individual Capacities

This Court's decision in *Tanzin* makes clear that RLUIPA—which has the same operative text as RFRA—authorizes suits for money damages against

---

* In *Tanzin*, the government argued that money damages are not "appropriate relief" under RFRA in suits against federal officials in their individual capacities, based in part on the premise that damages were not available in parallel circumstances under RLUIPA: "[G]iven that RFRA and RLUIPA attack the same wrong, in the same way, in the same words, it is implausible that 'appropriate relief against a government' means something different in RFRA." Pet. Br. at 37, *Tanzin*, *supra* (No. 19-71) (citation omitted); see Cert. Reply Br. at 9, *Tanzin*, *supra* (No. 19-71) ("Here, the statutory text and context make clear that RFRA and RLUIPA should be read in parallel and that neither authorizes damages remedies against state or federal government officials sued in their personal capacities."). This Court's decision in *Tanzin* rejected that premise, and the position set forth in this brief is consistent with the government's longstanding view that RFRA and RLUIPA should be interpreted harmoniously.

governmental officials in their individual capacities. That the application of RLUIPA in this case reflects an exercise of Congress's spending power provides no basis to depart from that straightforward conclusion. The court of appeals erred in holding otherwise.

1. This Court's decision in *Tanzin* all but compels the conclusion that RLUIPA authorizes suits against governmental officials in their individual capacities. RLUIPA provides a private cause of action "against a government," 42 U.S.C. 2000cc-2(a), and expressly defines "'government'" to include a governmental "official" as well as any "other person acting under color" of law, 42 U.S.C. 2000cc-5(4)(A). In *Tanzin*, this Court found materially identical language in RFRA to "clear[ly]" authorize individual-capacity suits. 592 U.S. at 47. The Court explained that "the term 'official' does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" *Ibid.* (citation omitted). The Court further explained that "[t]he right to obtain relief against 'a person' cannot be squared with" a limitation to official-capacity suits, and emphasized that "the use of the phrase 'official (*or other* person)' underscores that 'officials' are treated like 'persons.'" *Id.* at 48 (brackets, citation, and ellipsis omitted). RFRA shares all of those textual features with RLUIPA—save for the immaterial difference that while RFRA places the "other person" language in a parenthetical, 42 U.S.C. 2000bb-2(1), RLUIPA places it in a separately numbered subparagraph, 42 U.S.C. 2000cc-5(4)(A)(iii).

Tanzin likewise all but compels the conclusion that RLUIPA permits money damages as "appropriate relief" in such suits. As the Court recognized in *Sossamon*, the phrase "appropriate relief" is "flexible" and

"inherently context dependent." 563 U.S. at 286. And "[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief." *Tanzin*, 592 U.S. at 49. In particular, money damages are "commonly available against state and local government officials," *id.* at 50, and—to an even greater degree than RFRA as originally enacted—RLUIPA principally governs state and local officials, see 42 U.S.C. 2000cc-5(4)(A); cf. 42 U.S.C. 2000cc-5(4)(B). "A damages remedy * * * is also the *only* form of relief that can remedy some RFRA violations," *Tanzin*, 592 U.S. at 51, and the same is true of RLUIPA—as the facts of this very case illustrate.

Nor is there any other relevant contextual difference between RFRA and RLUIPA; the two statutes "attack the same wrong, in the same way, in the same words." Pet. Br. at 37, *Tanzin*, *supra* (No. 19-71) (citation omitted). Indeed, this Court has long referred to RFRA and RLUIPA as "sister" statutes and interpreted the two harmoniously. *Ramirez* v. *Collier*, 595 U.S. 411, 424 (2022); *Holt* v. *Hobbs*, 574 U.S. 352, 356 (2015); *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014); see *Tanzin*, 592 U.S. at 51; *Sossamon*, 563 U.S. at 281-282; see also Pet. App. 28a (Oldham, J., dissenting from the denial of rehearing en banc) (explaining that this Court "has repeatedly interpreted one statute by looking to its precedent interpreting the other," and citing cases). Given *Tanzin*'s holding that money damages are available in individual-capacity suits under RFRA, they likewise must be available in such suits under RLUIPA.

2. The Court in *Sossamon* held that RLUIPA does not authorize a damages remedy in suits against a sovereign State—not because RLUIPA's text precludes such a remedy, but instead because the text was not suf-

ficiently clear to abrogate sovereign immunity with respect to such relief. See 563 U.S. at 286-288. The Court emphasized that "the word 'appropriate' is inherently context dependent," and "[t]he context here—where the defendant is a sovereign—suggests, if anything, that monetary damages are not 'suitable' or 'proper.'" *Id.* at 286. The Court also favorably cited lower-court rulings interpreting "the same phrase in RFRA * * * not to include damages relief against the Federal Government or the States." *Id.* at 289 n.6.

Concerns about sovereign immunity are inapplicable to suits against governmental officials in their individual capacities. *Tanzin* thus distinguished *Sossamon* in a single sentence: "The obvious difference is that this case features a suit against individuals, who do not enjoy sovereign immunity." 592 U.S. at 52. That is equally true in this case under RLUIPA. *Sossamon* itself made clear that cases like *Franklin* v. *Gwinnett County Public Schools*, 503 U.S. 60 (1992), and *Barnes* v. *Gorman*, 536 U.S. 181 (2002), in which this Court used the phrase "appropriate relief" to describe money damages, were distinguishable because they "did not involve sovereign defendants," but instead were suits "against municipal entities." 563 U.S. at 288, 289 n.6. The Court acknowledged that in such suits, there may be a presumption in favor of compensatory damages absent a "clear direction that [Congress] intends to *exclude* a damages remedy." *Id.* at 289. That same presumption would apply to individual-capacity suits against governmental officials, as *Tanzin* confirms.

Nor is it incongruous for the same statutory phrase ("appropriate relief") to apply differently to sovereign and non-sovereign defendants. What is "appropriate" for one class of defendants might not be "appropriate"

for another, and "[t]he essence of sovereign immunity * * * is that remedies against the government differ from 'general remedies principles' applicable to private litigants," *Sossamon*, 563 U.S. at 291 n.8. Congress might well have chosen a term like "appropriate" precisely because of its "context dependent" and "flexible meaning." *Id.* at 286.

3. The court of appeals' ruling that monetary damages are not available in this case rested on the fact that RLUIPA's application here reflects an exercise of Congress's constitutional spending power. Observing that legislation enacted under that power "operates like a contract," the court reasoned that Congress lacks authority to "impose *direct* liability on a non-party to the contract." Pet. App. 6a (citations omitted). That reasoning, which implicates a circuit conflict, lacks merit.

a. "Congress has broad power to set the terms on which it disburses federal money to the States." *Arlington Central School District Board of Education* v. *Murphy*, 548 U.S. 291, 296 (2006). In *South Dakota* v. *Dole*, 483 U.S. 203 (1987), this Court reiterated four "general restrictions" on Congress's power to attain objectives "not thought to be within Article I's 'enumerated legislative fields'" "through the use of the spending power and the conditional grant of federal funds." *Id.* at 207 (citation omitted). Specifically, conditions on the grant of funds must be (1) "in pursuit of 'the general welfare'"; (2) "'unambiguously'" expressed; (3) related "'to the federal interest in particular national projects or programs'"; and (4) not in violation of "other constitutional provisions." *Id.* at 207-208 (citations omitted).

The second factor often is the focal point. Because "legislation enacted pursuant to the spending power is much in the nature of a contract," "Congress must ex-

press clearly its intent to impose conditions on the grant of federal funds so that the States can knowingly decide whether or not to accept those funds." *Pennhurst State School and Hospital* v. *Halderman*, 451 U.S. 1, 17, 24 (1981). Accordingly, Congress may authorize private rights of action, including for money damages, to enforce the conditions it has imposed on the receipt of federal funds, as long as the "funding recipient is *on notice* that, by accepting federal funding, it exposes itself to liability of that nature." *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 220 (2022) (citation omitted). Notice of a condition on the receipt of federal funds may be provided not just by the statutory text, but also by its context, relevant regulatory provisions, and background common-law rules. See, *e.g.*, *Biden* v. *Missouri*, 595 U.S. 87, 94 (2022); *Davis* v. *Monroe County Board of Education*, 526 U.S. 629, 643-644 (1999); *Bennett* v. *Kentucky Department of Education*, 470 U.S. 656, 670 (1985); *Pennhurst*, 451 U.S. at 25.

b. RLUIPA's substantive prohibitions and provision of a damages remedy in individual-capacity suits fall well within Congress's spending power. The first and third *Dole* factors are easily met. Nobody has questioned Congress's judgment that "the general Welfare," U.S. Const. Art. I, § 8, Cl. 1, benefits from a solicitude for religious liberty. Cf. *Cutter*, 544 U.S. at 720-723. And there is plainly a federal interest in ensuring that prisons or other institutions receiving federal funds do not substantially burden religious exercise, and damages liability is closely connected to that interest.

As to the second factor, RLUIPA's language unambiguously provides for—and puts grant recipients on notice about—money damages liability in individual-capacity suits. Interpreting materially identical lan-

guage in RFRA, the Court in *Tanzin* found it "clear" that individual-capacity suits were authorized and explained that money damages have been appropriate relief in such suits "since the dawn of the Republic." 592 U.S. at 47, 52. And given RLUIPA's enactment history and borrowing of language from RFRA, States were on notice that the two statutes should and would be interpreted harmoniously. Cf. *Sossamon*, 563 U.S. at 289 n.6. Even the court of appeals here has recognized the clarity on this point, having held that "municipalities and counties may be held liable for money damages under RLUIPA." *Opulent Life Church* v. *City of Holly Springs*, 697 F.3d 279, 290 (5th Cir. 2012).

Respondents contend (Br. in Opp. 16-18) that if RLUIPA's language is not clear enough to have constituted a waiver or abrogation of sovereign immunity in *Sossamon*, it cannot be clear enough to satisfy the requirements for imposing liability under the spending power. But the language here is sufficiently clear to impose liability. Although the phrase "appropriate relief" might *in isolation* be "open-ended and ambiguous about what types of relief it includes," *Sossamon*, 563 U.S. at 286, statutory context and background legal principles can resolve ambiguities as to certain forms of relief, as *Tanzin* confirms with respect to money damages in individual-capacity suits, 592 U.S. at 48-52. Indeed, *Sossamon* itself recognized that even under legislation enacted pursuant to Congress's spending power, compensatory damages presumptively constitute "'appropriate relief'" (absent a "clear direction" to the contrary) where the defendant does not enjoy sovereign immunity. 563 U.S. at 289; see *id.* at 288-289; *Barnes*, 536 U.S. at 187.

That leaves the fourth factor: whether Congress's exercise of the spending power to create a damages remedy in individual-capacity suits violates some other constitutional provision. This Court already has held that RLUIPA's substantive prohibitions do not violate the Establishment Clause. *Cutter*, 544 U.S. at 719-726. And as Judge Oldham observed, a damages remedy "is not unduly coercive, nor is it the kind of 'economic dragooning that leaves the States with no real option but to acquiesce.'" Pet. App. 32a (citation omitted).

Nevertheless, the court of appeals held that directly regulating governmental officials in their individual capacities would violate the Constitution because Congress may not directly regulate nonparties to the contract for federal funds. That holding is incorrect. Most obviously, the bribery statute at issue in *Sabri* v. *United States*, 541 U.S. 600 (2004), directly imposes criminal liability on nonparties to the federal contract. See 18 U.S.C. 666(a)(2). Yet this Court unanimously affirmed its constitutionality. *Sabri*, 541 U.S. at 604-608; *id.* at 610-611 (Thomas, J., concurring in the judgment); see Pet. App. 30a & n.2 (Oldham, J., dissenting from the denial of rehearing) (describing other examples).

The court of appeals sought to distinguish the statute in *Sabri* on the ground that Congress there was "safeguard[ing] its allocated dollars" by imposing "[c]riminal punishments" on those "who directly threatened the 'object' of a spending agreement, namely federal dollars," whereas RLUIPA is a "civil" statute regulating "conduct unrelated to the federal purse." Pet. App. 12a. But the Court in *Sabri* affirmed the bribery statute's constitutionality even though the statute did not require any connection at all between the bribe and the

federal funds, much less require that the bribe directly threaten those funds. See 541 U.S. at 604-608.

If anything, the bribery statute in *Sabri* reflects an even more expansive exercise of Congress's spending power than does RLUIPA's damages remedy. Criminal punishment is a far greater intrusion on liberty than civil compensatory damages. And while the bribery statute regulates the conduct of the entire public, RLUIPA's damages remedy applies only to governmental officials and persons acting under color of law who (by hypothesis) have voluntarily undertaken to execute the State's obligations under the federal spending contract, and who therefore may fairly be held to account for compliance with the terms of that contract. *Sabri* is thus an *a fortiori* case.

B. The Question Presented Warrants This Court's Review

Whether RLUIPA authorizes money damages in actions against governmental officials in their individual capacities warrants this Court's review.

1. As explained above, the decision below is in serious tension with the body of this Court's precedent addressing RLUIPA and RFRA, including the decisions in *Tanzin*, *Sossamon*, and *Sabri*. See Sup. Ct. R. 10(c).

In addition, the court of appeals' reasoning arguably holds an Act of Congress unconstitutional, which itself would warrant this Court's review. Cf. *United States* v. *Hansen*, 599 U.S. 762 (2023); *United States* v. *Windsor*, 570 U.S. 744 (2013); *Gonzales* v. *Raich*, 545 U.S. 1 (2005). The court below applied circuit precedent that is ambiguous about whether it holds that Congress lacks authority under its constitutional spending power to regulate nonparties to the spending contract—and thus to authorize individual-capacity suits—or instead simply holds that constitutional avoidance requires reading

RLUIPA not to permit such suits. See Pet. App. 11a. *Tanzin*, however, resolves that ambiguity. By holding that RFRA's materially identical language "clear[ly]" authorizes individual-capacity suits, 592 U.S. at 47, *Tanzin* forecloses the constitutional-avoidance rationale. See *Warger* v. *Shauers*, 574 U.S. 40, 50 (2014) ("[T]he canon of constitutional avoidance has no role to play * * * 'in the absence of ambiguity.'") (citation and ellipsis omitted). The court of appeals' reasoning in this post-*Tanzin* case thus necessarily implies that even though RLUIPA clearly authorizes individual-capacity suits, that application of RLUIPA is unconstitutional.

Indeed, that reasoning itself implicates a circuit conflict warranting review. The Eighth Circuit recently adopted the same reasoning, see *Barnett* v. *Short*, 129 F.4th 534, 542-543 (2025), and other circuits have ruled similarly in both pre- and post-*Tanzin* cases, see, *e.g.*, *Tripathy* v. *McKoy*, 103 F.4th 106, 114-115 (2d Cir. 2024), petition for cert. pending, No. 24-229 (filed Aug. 27, 2024); Pet. 23-24 (listing additional cases). But those decisions conflict with the Sixth Circuit's holding in *Haight* v. *Thompson*, 763 F.3d 554 (2014), that Congress *does* have constitutional authority under its spending power to regulate nonparties to the spending contract (including by permitting individual-capacity suits) under RLUIPA. *Id.* at 570.

At the same time, *Haight* held that RLUIPA is insufficiently clear that money damages are available as "appropriate relief" in individual-capacity suits. 763 F.3d at 568-570. The Fourth Circuit has held similarly. *Rendelman* v. *Rouse*, 569 F.3d 182, 188 (2009). That reasoning is in serious tension with *Tanzin* and conflicts with precedent from the court of appeals below, see *Opulent Life Church*, 697 F.3d at 290, among other

cases. And the tension and conflict are unlikely to resolve themselves; the Sixth Circuit recently held that *Tanzin* did not abrogate its holding in *Haight*, reasoning that the Court's interpretation of "appropriate relief" in RFRA does not necessarily dictate the interpretation of that phrase in RLUIPA. *Ali* v. *Adamson*, 132 F.4th 924, 931-933 (2025).

2. This case presents a pure question of statutory interpretation that recurs with some frequency. And the question presented is undeniably important. Congress provided that RLUIPA should be broadly interpreted to protect religious exercise to the fullest extent allowed by law. See 42 U.S.C. 2000cc-3(g). The denial of a damages remedy to vindicate RLUIPA's substantive protections would undermine that important purpose. And the circumstances precluding relief here are not unique. In addition to cases like this one in which the plaintiff has been released from confinement, courts also hold that "an inmate's transfer from a prison facility generally moots claims for declaratory and injunctive relief against officials of that facility." *Booker* v. *Graham*, 974 F.3d 101, 107 (2d Cir. 2020) (citation omitted). The unavailability of monetary damages under RLUIPA thus could preclude relief for even the most egregious violations. Although the United States may itself bring actions for injunctive or declaratory relief to enforce RLUIPA, see 42 U.S.C. 2000cc-2(f), resource constraints invariably mean that private suits are a critically important supplement to the government's enforcement efforts.

3. This case is a suitable vehicle in which to address the question presented. Respondents do not contest that their conduct toward petitioner violated RLUIPA's substantive prohibitions. They likewise do not contest

that the violation was clearly established under circuit precedent—namely, *Ware* v. *Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017), cert. denied, 583 U.S. 1156 (2018)—and respondents therefore would not be entitled to qualified immunity. At the same time, petitioner does not contend that he has any viable claim for prospective relief; he has been released from incarceration and Louisiana represents that it has changed its policies to avoid similar conduct in the future. See Br. in Opp. 13. Accordingly, whether retrospective money damages are available will dictate the outcome in this case.

4. We note one final issue. The district court's judgment in this case indicates that the dismissal of petitioner's complaint was *without* prejudice, which some circuits have held can in certain circumstances preclude appellate jurisdiction to review the merits of the plaintiff's claim. D. Ct. Doc. 44, at 1 (Sept. 29, 2022) (ordering that "the above-captioned proceeding be and is hereby DISMISSED, WITHOUT PREJUDICE") (emphasis omitted); see Bryan Lammon, *There Is No Helpful General Rule About Appealing Dismissals Without Prejudice*, 123 Mich. L. Rev. Online 16 (2024) (discussing various approaches in the lower courts); cf. *Waetzig* v. *Halliburton Energy Services, Inc.*, 145 S. Ct. 690, 697-698 (2025).

But the district court's *opinion* in this case indicates that the dismissal was to be "with prejudice," Pet. App. 20a, suggesting that the contradictory language in the judgment might have been a scrivener's error. And even if that is not the case, a dismissal without prejudice "does not make the cause unappealable" when—as seems to be true here—"denial of relief and dismissal of the case ended th[e] suit so far as the District Court was

concerned." *United States* v. *Wallace & Tiernan Co.*, 336 U.S. 793, 795 n.1 (1949). Either way, the nature of the underlying dismissal would not present a barrier to this Court's review of the question presented in the petition. And if the Court is in doubt, it could simply direct the parties to address the additional question of appellate jurisdiction in their briefs on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
HARMEET K. DHILLON
Assistant Attorney General
YAAKOV M. ROTH
Acting Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
SOPAN JOSHI
Assistant to the Solicitor General
YAEL BORTNICK
MICHAEL S. RAAB
LOWELL V. STURGILL JR.
Attorneys

MAY 2025