No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR,

Petitioner,

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.,

Respondents.

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

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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SUPPLEMENTAL BRIEF

The United States has now twice flipped its position on whether damages are available for individual-capacity claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA). In 2010, the United States represented that the Fifth Circuit was "incorrect" in holding that "RLUIPA does not authorize damages suits against State officials in their individual capacities." Br. for the United States as *Amicus Curiae* 11, *Sossamon v. Texas*, No. 08-1438 (U.S. Mar. 18, 2010) (capitalization altered). Then, in 2019 and 2020, the United States flipped, telling this Court that RLUIPA does not "authorize[] damages remedies against state ... officials sued in their personal capacities." Cert. Reply Br. 9, *Tanzin v. Tanvir*, No. 19-71 (U.S. Oct. 30, 2019); *accord* Merits Br. 37, 38, *Tanzin v. Tanvir*, No. 19-71 (U.S. Jan. 6, 2020). Now, five years later, the United States has flipped again, proclaiming that "RLUIPA authorizes damages suits against governmental officials in their individual capacities." U.S.Br.11 (capitalization altered).

The flip-flopping is troubling enough—but the absence of any real justification for it is worse. Nothing has changed in the wall of precedents holding that damages are unavailable. To the contrary, during the seven months the United States spent writing its CVSG brief, three unanimous appellate courts rendered decisions rejecting (again) damages on individual-capacity RLUIPA claims. *See Ali v. Adamson*, 132 F.4th 924 (6th Cir. 2025) (Sutton, Griffin, Mathis); *Barnett v. Short*, 129 F.4th 534 (8th Cir. 2025) (Loken, Arnold, Kelly); *Fuqua v. Raak*, 120 F.4th 1346 (9th Cir. 2024) (Collins, Forrest, Sung).

That cert-worthiness defect, moreover, says nothing of the merits. The United States' view of the issue (today) is that Congress, through RLUIPA, clearly and unambiguously told the States that—by accepting federal funds—they were exposing non-recipients (but not the States) to money-damages liability in their individual capacities. *Contra Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 220 (2022) (a particular remedy is "'appropriate relief' in a private Spending Clause action 'only if *the funding recipient* is on notice that, by accepting federal funding, it exposes *itself* to liability of that nature'" (citation omitted; emphases added and omitted)); *Moyle v. United States*, 603 U.S. 324, 357 (2024) (Alito, J., dissenting) (third parties "cannot be bound by terms that they never accepted"); *Health & Hosp. Corp. of Marion Cty. v. Talevski*, 599 U.S. 166, 224 (2023) (Thomas, J., dissenting) ("Congress' spending power cannot secure rights by law."). Disregard that virtually every court of appeals has rejected that view over the past 20 years. Disregard also that the United States itself has taken the opposite view in this Court. And disregard that "contracts with a sovereign ... do not traditionally confer a right of action for damages to enforce compliance[.]" *Sossamon v. Texas*, 563 U.S. 277, 290 (2011). Yet somehow RLUIPA is all of a sudden blindingly clear in permitting money damages on individual-capacity claims? Respectfully, no.

One final note: Like Petitioner and his amici, the United States frames this case as one about "religious liberty." U.S.Br.16. That blinkered view is mistaken. For its implication is that a merits ruling *against* Petitioner would be *anti*-religious liberty—notwithstanding that virtually every court of appeals and the

United States itself has held that supposedly "anti-religious liberty" position. That implication is deeply unfair. That is because this case is principally about the constraints on Congress' Spending Clause power, not the merits of Petitioner's untested allegations.[1] It thus would make little sense to grant certiorari and thereby engender a "pro-religious liberty" expectation, but issue an "anti-religious liberty" decision against Petitioner based on a straightforward Spending Clause analysis. Chief Judge Sutton and other judges already have uniformly asked and answered the question presented. Adding this Court's concurrence would not provide any material benefit to the bench, bar, or litigants, and would serve only to prompt unfair questions about this Court's commitment to religious liberty. The petition should be denied.

I. THE FEDERAL GOVERNMENT'S CONFLICTING POSITIONS SPEAK FOR THEMSELVES.

It is only fair to begin with the United States' vacillating positions. Had this Court asked for the Solicitor General's views in 2010, the Court would have heard:

- "The court of appeals' conclusion that RLUIPA does not authorize damages suits

[1] The United States claims that "Respondents do not contest that their conduct toward [P]etitioner violated RLUIPA's substantive prohibitions." U.S.Br.21. That claim is misleading because—as the Fifth Circuit recognized—both the courts and Respondents are required to take Petitioner's well-pleaded, but untested, allegations as true at this motion-to-dismiss stage. Pet.7 n.1 (citing Pet.App.2a n.1). Respondents' adherence to this rule thus should not be misconstrued as agreement with the nature of Petitioner's allegations.

against state officials in their individual capacities is incorrect." Br. of the United States as *Amicus Curiae* 11, *Sossamon*, No. 08-1438 (capitalization altered).

- "[That conclusion] does not warrant further review because there is no division among the courts of appeals about the issue at this time." *Id.* at 7–8.

Had this Court asked for the Solicitor General's views in 2019 and 2020, the Court would have heard the opposite:

- "Every court of appeals to consider the question has similarly concluded that RLUIPA does not permit a damages remedy against a state employee sued in an individual capacity." Pet. for Writ of Cert. 16–17, *Tanzin*, No. 19-71.
- "[T]he statutory text and context make clear that ... [RLUIPA does not] authorize[] damages remedies against state ... officials sued in their personal capacities." Cert. Reply Br. 9, *Tanzin*, No. 19-71.
- "Consistent with *Sossamon*, no court of appeals that has analyzed the question has permitted damages awards against individual state officials in suits brought pursuant to RLUIPA." Merits Br. 37, *Tanzin*, No. 19-71.
- "[A] damages award is not 'appropriate relief' against ... a state official under ... RLUIPA[.]" *Id.* at 38.

Since the Court called for the Solicitor General's views in 2024, however, the Court now hears the opposite (again):

- "RLUIPA authorizes damages suits against governmental officials in their individual capacities." U.S.Br.11 (capitalization altered).

Perhaps worse than the fact of flip-flopping itself is its asterisk-footnote treatment. *See id.* n.*. There, the United States acknowledges having previously argued "that damages were not available ... under RLUIPA." *Id.* But, the United States continues, its position was that money damages should be unavailable for individual-capacity claims under the Religious Freedom Restoration Act (RFRA) just as they are under RLUIPA—and "[t]his Court's decision in *Tanzin* [*v. Tanvir*, 592 U.S. 43 (2020)] rejected that premise." *Id.*

With great respect for the United States, its subject-pronoun sleight of hand does not work. The "premise" the United States identifies is "damages [are] not available ... under RLUIPA." *Id.* But this Court in *Tanzin* of course did not "reject[] *that* premise." *Id.* (emphasis added). It rejected the idea that damages are unavailable *under RFRA*—not that damages are likewise unavailable for individual-capacity claims under RLUIPA. The asterisk footnote thus says exactly nothing justifying the United States' twice-flipped positions on money damages under RLUIPA.

II. THIS CASE IS NOT CERT-WORTHY.

In all events, the United States' decision again to switch positions underscores that this case does not warrant the Court's review.

A. Recall at the outset that there is no circuit split on the issue presented—virtually every federal court of appeals has rejected Petitioner's demand for damages on individual-capacity claims under RLUIPA. *Cf.* Sup. Ct. R. 10(a). While Petitioner owns that certiorari defect, Pet.23–24, the United States never acknowledges that "there is no division among the courts of appeals about the issue," Br. of the United States as *Amicus Curiae* 7–8, *Sossamon*, No. 08-1438. In fact, the United States takes the opposite approach, trying to find a circuit split that does not exist, to answer questions that are not presented.

For example, although the United States frames the question presented as whether RLUIPA plaintiffs may "obtain money damages against government officials in their individual capacities," U.S.Br.I, the United States shifts gears at the end of its brief to announce that there is a circuit split between the Sixth Circuit and the world on whether Congress may wield its Spending Clause authority "to regulate nonparties to the spending contract (including by permitting individual-capacity suits) under RLUIPA," *id.* at 20. Not even Petitioner asserted that alleged conflict. For good reason: As the United States admits, the Sixth Circuit likewise has foreclosed money damages because "RLUIPA is insufficiently clear that money damages are available as 'appropriate relief' in individual-capacity suits." *Id.*; *see Ali*, 132 F.4th at 933 ("Our sister circuits agree[.]"). Put otherwise, *why* virtually every federal court of appeals has rejected money damages for individual-capacity RLUIPA claims does not change the fact that virtually every federal court of appeals has done so.

Recognizing as much, the United States then gestures at an alleged circuit split between the Sixth Circuit's *individual-capacity* holding in *Haight v. Thompson*, 763 F.3d 554 (6th Cir. 2014), and decisions by other circuits regarding *political subdivisions* of a State. U.S.Br.20–21. But the decision below does not say anything about the availability of damages against political subdivisions of a State—which *are* the State but, unlike a State, lack Eleventh Amendment immunity. *Cf. Sossamon*, 563 U.S. at 285–86. And even the United States' formulation of the question presented addresses individual-capacity claims, not claims against political subdivisions of a State. U.S.Br.I. In the end, therefore, the United States—like Petitioner—identifies no circuit split warranting this Court's review.

B. As a result, the United States devotes most of its attention to the merits—but gets the merits wrong. *See id.* at 11–19. Take two examples.

First, the United States misapplies the Spending Clause clear-statement rule. The United States rightly accepts that Congress must "unambiguously express" its intent in exercising Spending Clause authority. *Id.* at 15 (cleaned up). And the United States insists that "RLUIPA's language unambiguously provides for—and puts grant recipients on notice about—money damages liability in individual-capacity suits." *Id.* at 16. But there is something deeply ironic about the United States' proclamation today that RLUIPA clearly and unambiguously provides for money damages on individual-capacity claims when (a) virtually every court of appeals has rejected that view for decades and (b) the United States itself has told the Court

that RLUIPA's "text and context make clear" that it does not authorize "damages remedies against state ... officials sued in their personal capacities," Cert. Reply Br. 9, *Tanzin*, No. 19-71. Those undisputed facts alone confirm that RLUIPA "does not signal 'clearly,' 'expressly,' 'unequivocally,' and 'unambiguously' that Congress imposed money-damages remedies" for individual-capacity claims. *Ali*, 132 F.4th at 933–34 (Sutton, C.J.).

Yet the United States persists, claiming that "*Tanzin* ... resolves that ambiguity" "[b]y holding that RFRA's materially identical language 'clear[ly]' authorizes individual-capacity suits." U.S.Br.20 (quoting *Tanzin*, 592 U.S. at 47). By acknowledging "*that ambiguity*," however, the United States admits that on its view—at least until *Tanzin*—RLUIPA did not unambiguously provide for damages on individual-capacity claims. *Id.* (emphasis added). *Tanzin* cannot somehow retroactively fix Congress' failure to speak clearly, which existed for the two decades between RLUIPA's enactment and *Tanzin* (and still exists today).

Moreover, the United States is mistaken in suggesting that *Tanzin* deems the phrase "appropriate relief" sufficiently clear (for clear-statement-rule purposes) to permit damages on individual-capacity RLUIPA claims. *See* U.S.Br.17 ("[T]he 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.'" (quoting *Tanzin*, 592 U.S. at 47, 52)). This Court did not use the word "clear" to describe the phrase "appropriate relief." (It used that term only in

Section II.A of the opinion to describe the word "government.") To the contrary, *Tanzin* reiterated that "appropriate relief" is "'open-ended' on its face" and "'inherently context dependent.'" 592 U.S. at 49 (quoting *Sossamon*, 563 U.S. at 286). And the Spending Clause context here (unlike in *Tanzin*) is critical because, as Chief Judge Sutton has said, "RLUIPA's remedies demand clarity and RFRA's do not." *Ali*, 132 F.4th at 933. Or, as this Court has said, "contracts with a sovereign ... do not traditionally confer a right of action for damages to enforce compliance[.]" *Sossamon*, 563 U.S. at 290. Consequently, "[c]asually grafting *Tanzin*'s RFRA holding as to federal officials onto RLUIPA and its application to state officials would violate, not vindicate, the 'inherently context dependent' nature of 'appropriate relief.'" *Ali*, 132 F.4th at 932 (citation omitted); *accord Fuqua*, 120 F.4th at 1360 ("[S]ustaining a damages remedy under RFRA against federal officials in their personal capacities says nothing whatsoever about Congress's power under the Spending Clause to impose such liability against individual state and local officials.").

All this goes to show that Congress did not clearly "authorize damages against officials sued in ... their individual capacity." *Ali*, 132 F.4th at 930.

Second, the United States has no answer to Congress' independent failure to speak clearly about damages liability for *non-recipients* of federal funding. The United States argues that "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.'" U.S.Br.16 (quoting *Cummings*, 596 U.S. at 220). But consider what the United States just wrote and what *Cummings* says: "A particular remedy is [] 'appropriate relief' in a private Spending Clause action only if *the funding recipient*" is on notice that it is "expos[ing] *itself* to liability of that nature." 596 U.S. at 220 (emphases added). This Court has never suggested that Congress holds Spending Clause authority to assign damages liability to a *non-recipient*. And that is unsurprising because recipients and non-recipients alike "cannot be bound by terms that they never accepted." *Moyle*, 603 U.S. at 357 (Alito, J., dissenting).

Tellingly, the United States cites no case holding otherwise. The best it offers (U.S.Br.18) is *Sabri v. United States*, 541 U.S. 600 (2004)—reliance on which virtually every court of appeals, including Chief Judge Sutton writing for the Sixth Circuit, has rejected. For so many reasons. Among others, *Sabri* is best understood as a Necessary and Proper Clause case, not a Spending Clause case. *See id.* at 605 (the Eighth Circuit held "that the statute was constitutional under the Necessary and Proper Clause"); *id.* (invoking *McCulloch v. Maryland*, 4 Wheat. 316 (1819)); *id.* at 607 (Congress "was acting within the ambit of the Necessary and Proper Clause"); *id.* at 611 (Thomas, J., concurring in the judgment) ("[T]he Court appears to hold that the Necessary and Proper Clause authorizes the exercise of any power that is no more than a 'rational means' to effectuate one of Congress' enumerated powers."); *see also Tripathy v. McKoy*, 103 F.4th 106, 114–15 (2d Cir. 2024) (describing *Sabri* as up-

holding a bribery statute "as a lawful exercise of Congress's spending power which, pursuant to the Necessary and Proper Clause, inherently includes the ability to ensure that congressional grants are not diverted through bribery and graft"). Neither the opinions below nor Petitioner (nor the United States) raise any Necessary and Proper Clause argument. And that *Sabri* depended upon the Necessary and Proper Clause to extend any sort of liability beyond funding recipients underscores that *the Spending Clause* itself does not win the day for Petitioner.

More fundamentally, "RLUIPA is nothing like the *Sabri* statute," which "unambiguously extended criminal liability to government officials who accept bribes and to individuals who give them." *Haight*, 763 F.3d at 570. No such clear statement appears in RLUIPA. Accordingly, "Congress's failure to speak so clearly here renders any putative individual-capacity, money-damages condition in RLUIPA *in*appropriate." *Id.*; *see id.* ("The clear-statement rule also brushes aside the inmates' arguments under the Necessary and Proper Clause."); *see also* BIO.22 (outlining other problems with Petitioner's invocation of *Sabri*).

* * *

There are numerous reasons why virtually every court of appeals holds the United States' former position: that, "[c]onsistent with *Sossamon*," damages are not "appropriate relief" on individual-capacity claims. Merits Br. 37, 38, *Tanzin*, No. 19-71. That position is correct and does not require this Court's review.

III. Certiorari Would Be Unproductive.

Given the foregoing, what benefit, if any, would this Court's review provide to the bench, bar, or litigants? Little to none. Because virtually every federal circuit bars damages on individual-capacity RLUIPA claims—and has done so for some two decades and counting—this Court's concurrence would not affect the legal landscape. But granting review and then affirming the judgment below *would* affect the Court. For the United States, Petitioner, and his amici have gone out of their way to insist that a merits judgment *for* Petitioner is pro-religious liberty, Pet.4, implying that a judgment *against* him would be anti-religious liberty. But, as the discussion above reflects, that public framing of this case is deeply unfair. This case turns on basic Spending Clause principles—not the merits of Petitioner's untested allegations.

It would thus be extraordinarily wrong to place pressure on this Court to reach a "pro-religious liberty" result, notwithstanding that virtually every court of appeals and the United States itself have rejected the notion of damages for individual-capacity RLUIPA claims. It also would be extraordinarily wrong to question this Court's commitment to religious liberty if, like every court of appeals, this Court held that RLUIPA does not permit damages on individual-capacity claims. Chief Judge Sutton and other judges across the Nation already have asked and answered the question presented. There is no need for this Court's intervention, especially to simply affirm.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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