No. _____

In the Supreme Court of the United States

SANJAY TRIPATHY, PETITIONER

v.

JEFF MCKOY, DEPUTY COMMISSIONER, DOCCS, RYAN BROTZ, PSYCHOLOGIST, SOCTP, BRIAN MCALLISTER, DIRECTOR, SOCTP, ANTHONY ANNUCCI, COMMISSIONER, DOCCS

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress has enacted two "sister" statutes to protect religious exercise: the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq*. In *Tanzin* v. *Tanvir*, 592 U.S. 43 (2020), this Court held that an individual may sue a government official in his individual capacity for damages for violations of RFRA. RLUIPA's relevant language is identical.

The question presented is whether an individual may sue a government official in his individual capacity for damages for violations of RLUIPA.

RELATED PROCEEDINGS

United States District Court for the Western District of New York:

Tripathy v. *Brotz*, No. 22-cv-6469 (June 15, 2023)

United States Court of Appeals for the Second Circuit:

Tripathy v. *McKoy*, No. 23-cv-919 (May 29, 2024)

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Sanjay Tripathy respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-19a) is published at 103 F.4th 106. The opinion of the district court (App., *infra*, 20a-45a) is not published but available at 2023 WL 4032831.

JURISDICTION

The court of appeals entered judgment on May 29, 2024, App., *infra*, 3a. The Court has jurisdiction under 28 U.S.C. 1254(1). Because 28 U.S.C. 2403(a) may apply, this petition has been served on the United States.

The court of appeals did not make a certification under 28 U.S.C. 2403(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. 2000cc-2 provides in relevant part:

> (a) Cause of Action.
>
> A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

42 U.S.C. 2000cc-5(4)(A) provides that "[i]n this chapter," the term "government" means:

> (i) a State, county, municipality, or other governmental entity created under the authority of a State;
>
> (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
>
> (iii) any other person acting under color of State law.

Other pertinent statutory and constitutional provisions are reproduced in the appendix to this petition. App., *infra*, 46a-64a.

STATEMENT

In *Tanzin* v. *Tanvir*, 592 U.S. 43 (2020), this Court held that an individual may sue a government official in his individual capacity for damages for violations of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq*. This Court emphasized that RFRA's text was "clear," that Congress "made clear" that individual-capacity damages "must" be available, and are often the "*only*" relief for violations of RFRA's protections for religious exercise. 592 U.S. at 47, 50-51.

The question presented in this case is whether the same vital remedy is available against state officials under RFRA's "sister statute," the Religious Land Use and

Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq*. See *Holt* v. *Hobbs*, 574 U.S. 352, 356 (2015). In the decision below, the Second Circuit answered "no." It reaffirmed its rule that individual-capacity damages are not available under RLUIPA because that remedy violates the Spending Clause. App., *infra*, 8a-12a. The Second Circuit thus joined the Fifth Circuit (and several others) in denying a damages remedy on constitutional grounds.

This Court currently has pending before it another petition for a writ of certiorari on this exact issue. *Landor* v. *La. Dep't of Corr. & Pub. Safety*, petition for cert. pending, No. 23-1197 (filed May 3, 2024). In *Landor*, the Fifth Circuit similarly held that the plaintiff could not recover individual-capacity damages even for an egregious violation of RLUIPA's substantive provisions. *Landor* v. *La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 345 (5th Cir. 2023), *reh'g en banc denied*, 93 F.4th 259 (5th Cir. 2024). The Fifth Circuit held that, "although RLUIPA's text suggests a damages remedy, recognizing as much would run afoul of the Spending Clause." 82 F.4th at 344.

That decision prompted sharp division among the *en banc* court, leading fifteen judges to join opinions calling for this Court's review. See *Landor*, 93 F.4th at 260-61 (Clement, J., concurring in denial of reh'g en banc); *id.* at 261-62 (Ho, J., dissenting); *id.* at 262-67 (Oldham, J., dissenting). Judge Clement urged that the question was one that "only the Supreme Court can answer." *Id.* at 260. For the reasons set forth in the *Landor* petition, this Court should heed that call.

This Court should hold this petition pending this Court's disposition of *Landor* and dispose of this petition as appropriate in light of the decision in that case. If the

Court does not grant the petition in *Landor*, it should grant the petition in this case.

A. RFRA And RLUIPA

In the wake of *Employment Division* v. *Smith*, 494 U.S. 872 (1990), Congress enacted two "sister" statutes to protect religious exercise—RFRA and RLUIPA. See *Holt*, 574 U.S. at 356. RFRA applies to the federal government, whereas RLUIPA "applies to the States and their subdivisions," protects institutionalized persons and land use, and "invokes congressional authority under the Spending and Commerce Clauses." *Id.* at 357.

The text of the two statutes "mirror[]" one another. *Ibid.* First, both statutes restore the pre-*Smith* compelling-interest test. See 42 U.S.C. 2000bb-1(a) (RFRA); 42 U.S.C. 2000cc-1(a) (RLUIPA).

Second, both statutes provide an express cause of action for an aggrieved person to "obtain appropriate relief against a government." 42 U.S.C. 2000bb-1(c) (RFRA); 42 U.S.C. 2000cc-2(a) (RLUIPA).

Third, both statutes define "government" to include an "official" or "other person acting under color" of "law." 42 U.S.C. 2000bb-2(1) (RFRA); 42 U.S.C. 2000cc-5(4)(A) (RLUIPA); compare 42 U.S.C. 1983.

B. This Court's Decision In *Tanzin*

In *Tanzin*, this Court unanimously held that RFRA provides for damages against individual officials. First, the Court concluded that the "text provides a clear answer" to whether "injured parties can sue Government officials in their personal capacities": "They can." *Tanzin*, 592 U.S. at 47.

Second, this Court held that the "plain meaning" of "appropriate relief" in individual-capacity suits includes damages. *Id.* at 48-49. "In the context of suits against

Government officials, damages have long been awarded as appropriate relief." *Id.* at 49. Before *Smith*, damages were available under Section 1983 in suits against "state and local government officials." *Id.* at 50. The Court found that history "particularly salient" because Congress "made clear" it was reinstating pre-*Smith* substantive and remedial protections. *Ibid.* This Court therefore concluded that RFRA plaintiffs "must have at least the same avenues for relief," including individual-capacity damages. *Id.* at 51.

The Court observed that damages are "not just 'appropriate'" relief, but also "the *only* form of relief that can remedy some RFRA violations." *Ibid.* For example, the "destruction of religious property" and an autopsy "that violated Hmong beliefs" are cases in which "effective relief consists of damages, not an injunction." *Ibid.*

C. Factual Background

Sanjay Tripathy is a devout Hindu who was wrongfully convicted of sexual abuse. App., *infra*, 5a-6a.[1] In 2018, he was sentenced to seven years' imprisonment for several offenses, including sexual abuse in the first degree. *Id.* at 4a. Tripathy consistently maintained his innocence. In 2022, the D.A. conceded that Tripathy was denied a fair trial because key exculpatory evidence had not been disclosed to him, and agreed to vacate his conviction. C.A. Br. 10. Following his release, the state dropped those charges and Tripathy pleaded guilty to assault in the second degree. He served his sentence of only one day nunc pro tunc. App., *infra*, 6a-7a.

During Tripathy's incarceration, due to his now-vacated conviction for sexual assault, he was assigned to

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[1] This case arises from a motion to dismiss, so the Second Circuit "accept[ed] as true all well-pleaded factual allegations." *Id.* at 7a.

the Sex Offender Counseling Treatment Program ("SOCTP").[2] *Id.* at 4a. Failure to complete the program would result in "harsher parole and registration conditions." *Id.* at 4a-5a. To complete the program, he was required, among other things, to "accept responsibility for [his] sexually offending behavior." *Ibid.* Tripathy objected "on religious grounds." *Id.* at 5a. Due to his innocence, "accepting responsibility" for a crime he did not commit would constitute "a false statement, in violation of the 'core' Hindu 'tenet[]' against lying"—and thus violate his sincerely held Hindu beliefs. *Ibid.*

D. Procedural History

Proceeding pro se, Tripathy sued respondent state prison officials. *Ibid.* He claimed that the officials unlawfully imposed a substantial burden on his sincerely held beliefs as a Hindu by forcing him to lie in violation of his religious beliefs. *Id.* at 8a. Tripathy sought injunctive relief, as well as individual-capacity damages. *Id.* at 5a-6a.

The district court granted a motion to dismiss. *Id.* at 20a-45a. By that time, Tripathy had been released. *Id.* at 23a. The court dismissed his claims for injunctive relief as moot. *Ibid.* Relying on circuit precedent, the district court further held that Tripathy's damages claims were "not cognizable" because "RLUIPA does not authorize claims for monetary damages against state officers in either their official or individual capacities." *Ibid.*; see *Washington* v. *Gonyea*, 731 F.3d 143 (2d Cir. 2013). That was the sole basis for the district court's decision dismissing his individual-capacity damages claim.

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[2] Tripathy's charge for assault in the second degree does not require participation in the SOCTP. *Id.* at 7a-8a.

The Second Circuit affirmed. App., *infra*, 1a-19a. As relevant, the court of appeals affirmed the dismissal of Tripathy's RLUIPA claim for individual damages. The court held that it was bound by *Gonyea*'s prior holding "that RLUIPA does not permit individual-capacity damages against state officers." *Id.* at 12a.

The court of appeals squarely rejected Tripathy's argument that *Tanzin* had abrogated *Gonyea*. The court did not identify a textual basis for distinguishing between RFRA and RLUIPA. Instead, the court relied on "constitutional" principles to hold that individual damages were not available under RLUIPA. *Id.* at 9a-12a. The court reasoned that "[b]ecause RLUIPA funds are disbursed to the 'state prison,' and not its officials, those officials are not 'contracting part[ies]' and thus cannot be held liable for violating the condition—*i.e.*, RLUIPA's provisions—that attach to the funds." *Id.* at 9a-10a. "[E]ven though Congress can punish nonrecipients who attempt to siphon away federal dollars, it cannot bind nonrecipients to the conditions attached to those funds." *Id.* at 11a-12a. The court thus invalidated RLUIPA's damages remedy on constitutional grounds.

REASONS FOR GRANTING THE PETITION

This petition raises the same question as the pending petition in *Landor*: whether RLUIPA provides for individual-capacity damages. For the reasons that certiorari is warranted in *Landor*, it is warranted here as well. This Court should hold this petition pending the outcome of *Landor* or, if *Landor* is denied, grant certiorari.

I. The Court of Appeals Struck Down RLUIPA's Damages Remedy As Unconstitutional

At the outset, certiorari is warranted here, as in *Landor*, because the court of appeals held that RLUIPA's

individual-capacity damages remedy is unconstitutional. App., *infra*, 9a-12a; see Brief in Opposition at 19-21, *Landor*, No. 23-1197 (Aug. 7, 2024) ("*Landor* Opp.") (agreeing that the Second Circuit invalidated the damages remedy on constitutional grounds). The Second Circuit is not alone: several other circuits have similarly held RLUIPA's damages remedy to be unconstitutional. See, *e.g.*, *Sharp* v. *Johnson*, 669 F.3d 144, 155 n.15 (3d Cir. 2012); *Landor*, 82 F.4th at 344-45; *Wood* v. *Yordy*, 753 F.3d 899, 904 (9th Cir. 2014); *Stewart* v. *Beach*, 701 F.3d 1322, 1335 (10th Cir. 2012).

The invalidation of a federal statute on constitutional grounds alone warrants review. This Court regularly grants certiorari—with or without a circuit conflict—when a circuit court has held a federal statute unconstitutional. See, *e.g.*, *United States* v. *Hansen*, 599 U.S. 762 (2023); *United States* v. *Vaello Madero*, 596 U.S. 159 (2022); *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019) ("As usual when a lower court has invalidated a federal statute, we granted certiorari."); *United States* v. *Kebodeaux*, 570 U.S. 387, 391 (2013) (collecting cases). After all, judging the constitutionality of a federal statute is "the gravest and most delicate duty that th[e] Court is called upon to perform." *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981) (quoting *Blodgett* v. *Holden*, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.)).

The invalidation of RLUIPA's individual-capacity damages remedy is particularly significant because it defeats Congress's goal of restoring "pre-*Smith* substantive protections … *and* the right to vindicate those protections by a claim." *Tanzin*, 592 U.S. at 50. Before *Smith*, individual-capacity damages were available under Section 1983 against state officials under the compelling-interest test. See *id.* at 50-51. Under the Second

Circuit's holding, however, Congress can *never* achieve its basic goal of restoring pre-*Smith* rights and remedies, even against state officials who administer federally-funded programs.

II. This Question Is Exceptionally Important

1. The underlying RLUIPA issue is also exceptionally important. This Court granted certiorari in *Tanzin* to review the question of individual-capacity damages under RFRA when "no circuit conflict exist[ed]." Petition for a Writ of Certiorari at 11, *Tanzin*, 592 U.S. 43 (2020) (No. 19-71). The parallel RLUIPA question is no less important. Moreover, this Court granted certiorari in *Tanzin* at a time when the courts of appeals unanimously held—correctly—that RFRA provides an individual-capacity damages remedy, thus providing effective relief for violations of the pre-*Smith* compelling-interest test. *E.g.*, *Tanvir* v. *Tanzin*, 894 F.3d 449, 453 (2d Cir. 2018). The Court *affirmed* the rule already applied unanimously by courts of appeals at the time.

By contrast, the courts of appeals now unanimously hold—incorrectly—that RLUIPA lacks a damages remedy. See Petition for a Writ of Certiorari at 23-24, *Landor*, No. 23-1197 (May 7, 2024) ("*Landor* Pet.") (collecting cases). Several of these circuits, including the Second Circuit and Fifth Circuit, have held that RLUIPA's damages remedy is unconstitutional. See *supra* p. 8. Every circuit to face an individual-capacity damages claim since *Tanzin* has reaffirmed its prior position. See *Landor* Pet. 24 (collecting cases). This rule, now entrenched nationwide, is thus the opposite of the rule this Court adopted in *Tanzin* and the rule that existed before *Smith*.

2. Fifteen judges on the Fifth Circuit joined opinions calling for this Court's review of this question. Nine

judges urged that "only the Supreme Court" can decide "whether a damages remedy is available." *Landor*, 93 F.4th at 260 (Clement, J., concurring). They urged that "[t]hreading the needle between *Sossamon* [] and *Tanzin* is a task best reserved for the court that wrote those opinions." *Id.* at 261. Six dissenting judges further called for review, emphasizing that the decision conflicts with this Court's precedents. *Id.* at 262-66 (Oldham, J., dissenting); *id.* at 261-62 (Ho, J., dissenting).

3. The Solicitor General has also taken the position that RLUIPA's damages remedy is constitutional, and that a contrary determination is incorrect. In 2009, this Court called for the views of the Solicitor General on this question. See *Sossamon* v. *Texas*, 558 U.S. 987 (2009). In response, the Solicitor General stated that the Fifth Circuit's holding that "Congress lacks constitutional authority to impose liability on an entity other than the fund recipient" was "not correct." Brief for the United States as Amicus Curiae at 7, 12, *Sossamon* v. *Texas*, 563 U.S. 277 (2011) (No. 08-1438) ("U.S. *Sossamon* Br."). The Solicitor General nonetheless recommended against review "at th[at] time," *id.* at 9, because the question was still "open and ripe" for decision in most circuits and should be allowed to "percolate more fully," *id.* at 10.

Fourteen years and ten courts of appeals is enough percolation. The question is no longer "open" or "ripe" for decision in the courts of appeals. The circuits have uniformly concluded—incorrectly—that RLUIPA does not provide an individual-capacity damages remedy, including now four courts of appeals that hold that such a remedy is unconstitutional. See *supra* p. 9. Every court of appeals to address the question post-*Tanzin* has re-

fused to follow this Court's interpretation of the identical language in RFRA. See *Landor* Pet. 24. In particular, the Second Circuit has joined the Fifth Circuit and several other circuits in holding that a damages remedy is unconstitutional. App., *infra*, 8a-12a; *Landor*, 82 F.4th at 344-45. The issue is now ripe for this Court's review.

4. The availability of damages under RLUIPA has broad practical importance. See *Landor* Pet. 24-26; Reply Brief for Petitioner at 4, *Landor*, No. 23-1197 (Aug. 20, 2024). RLUIPA specifically protects more than 1 million people in state prisons and local jails across the country that accept federal funds. 42 U.S.C. 2000cc-1(a); *Cutter* v. *Wilkinson*, 544 U.S. 709, 716 n.4 (2005) ("Every State … accepts federal funding for its prisons."); *Landor* Pet. 5. Without a damages remedy, those individuals are often left without meaningful protection for their religious exercise. See, *e.g.*, Brief for the Tayba Foundation as Amicus Curiae at 4-10, *Landor*, No. 23-1197 (June 6, 2024); Brief for 33 Religious Organizations as Amici Curiae at 9-16, *Landor*, No. 23-1197 (June 6, 2024) ("33 Religious Organizations Br."); Brief for the Bruderhof *et al.* as Amici Curiae at 9-22, *Landor*, No. 23-1197 (June 6, 2024).

Dozens of religious organizations and scholars have weighed in to emphasize the importance of damages for vindicating RLUIPA's substantive protections, urging this Court to grant certiorari in *Landor*. They have explained, for instance, that (1) "[r]eading RLUIPA to withhold damages … would frustrate Congress's persistent efforts to protect religious freedom," Brief for Seven Religious Liberty Scholars as Amici Curiae at 11, *Landor*, No. 23-1197 (June 6, 2024); (2) without "robust en-

forcement mechanisms," RLUIPA threatens to "becom[e] an empty promise," 33 Religious Organizations Br. 2; (3) in passing RLUIPA, Congress recognized that "institutional residents' right to practice their faith is at the mercy of those running the institution," Brief for Christian Legal Society *et al.* as Amici Curiae at 13, *Landor*, No. 23-1197 (June 6, 2024); and (4) damages are not just "a crucial remedy" under RLUIPA, but in fact the only effective remedy, *ibid.*

5. The "stark and egregious" facts in *Landor* lay bare why damages are often necessary for RLUIPA to provide meaningful protection for religious liberty. *Landor*, 93 F.4th at 260 (Clement, J., concurring). When Landor, "a faithful Rastafarian," was incarcerated on a five-month sentence, he had kept the Nazarite Vow not to cut his hair for "almost two decades," with locks that fell "nearly to his knees." *Id.* at 262 (Oldham, J., dissenting). The Fifth Circuit had squarely held that Louisiana's policy of forbidding dreadlocks violated Rastafarians' rights under RLUIPA. *Ibid.* (citing *Ware* v. *La. Dep't of Corr.*, 866 F.3d 263 (5th Cir. 2017)). Landor handed prison officials a copy of *Ware* when he arrived at their facility. *Id.* at 262-63. In response, the officials threw the opinion into the trash, strapped Landor down, and shaved him bald. *Id.* at 263. Nonetheless, the Fifth Circuit held that Landor had no remedy.

Congress did not enact two statutes—RFRA and then RLUIPA—so that courts would be powerless to remedy egregious violations of religious liberty and state officials could avoid being held accountable for actions "antithetical to religious freedom and fair treatment of state prisoners." *Landor* Opp. 1. Contrary to Congress's clear goals, the rule adopted by the Second Circuit means that state officials can violate religious

rights under the pre-*Smith* compelling interest test, and victims are left with no relief in the many cases in which damages are the only form of effective relief. *Tanzin*, 592 U.S. at 51. No relief is not "appropriate relief." 42 U.S.C. 2000cc-2(a). This Court should grant certiorari and restore RLUIPA's pre-*Smith* protections nationwide.

III. The Court of Appeals' Decision Conflicts With This Court's Precedents

The Second Circuit's holding that individual-damages are not available under RLUIPA further warrants review because it is wrong and conflicts with *Tanzin*, *Sabri* v. *United States*, 541 U.S. 600 (2004), and *South Dakota* v. *Dole*, 483 U.S. 203 (1987).

1. At the outset, any holding that RLUIPA's text does not provide for individual-capacity damages "cannot be squared with *Tanzin*" or this Court's "routine[]" practice of interpreting RFRA and RLUIPA "in parallel." *Landor*, 93 F.4th at 262 (Oldham, J., dissenting); see *Holt*, 574 U.S. at 362-64 (relying on RFRA precedents to construe RLUIPA's narrow-tailoring provision); *Landor* Pet. 14-15 (collecting cases). This Court has repeatedly described RFRA and RLUIPA as "sister" statutes with "mirror[ing]" text. *Holt*, 574 U.S. at 356-57; *Landor* Pet. 14 (collecting cases). Both were enacted "to provide very broad protection for religious liberty" in the wake of *Smith*. *Holt*, 574 U.S. at 356 (citation omitted). Indeed, this Court's reasoning in *Tanzin* applies equally—if not more strongly—to RLUIPA. See *Landor* Pet. 15-16. *Tanzin* thus compels the conclusion that RLUIPA, like RFRA, authorizes individual-capacity damages suits against government officials. See *Landor* Pet. 14-16.

2. As Judge Oldham has explained, *Tanzin* "obviates any argument" that RLUIPA's text fails to provide the requisite clear notice under the Spending Clause. *Landor*, 93 F.4th at 266-67 (Oldham, J., dissenting). Congress provides clear notice when its intent "is 'clearly discernible' from the sum total of its work." *Dep't of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 54-55 (2024) (citation omitted). In *Tanzin*, this Court already reviewed the "sum total" of Congress's work when closely analyzing RFRA's text and context—which RLUIPA shares. This Court found (1) the text is "clear" plaintiffs may bring individual-capacity suits; and (2) the "plain meaning" of "appropriate relief" in such a suit against an "official" or "other person acting under color of law" includes damages. *Tanzin*, 592 U.S. at 47-51. This Court emphasized that damages "must" be available because Congress "made clear" it was restoring pre-*Smith* protections "and the right to vindicate those protections by a claim," which included individual damages under Section 1983—and Congress borrowed the "under color of law" phrase from Section 1983. *Ibid.* The "clear" and "plain" meaning that Congress "must" have meant, *ibid.*, is "clearly discernible," *Kirtz*, 601 U.S. at 54-55.

Tanzin similarly forecloses application of the canon of constitutional avoidance. Avoidance "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Jennings* v. *Rodriguez*, 583 U.S. 281, 296 (2018) (citation omitted); see *Landor* Pet. 16-17. *Tanzin*'s holding that RFRA's text is "clear" and "must" provide for damages leaves only one possible construction: RLUIPA's text provides for damages.

RLUIPA further confirms that avoidance has no role to play. Congress provided that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. 2000cc-3(g). Constitutional avoidance is thus foreclosed by both *Tanzin* and the express statutory text.

3. As Judge Oldham and the Solicitor General have explained, RLUIPA's individual-capacity damages remedy is constitutional under *Dole* and *Sabri*. *Landor*, 93 F.4th at 264-66 (Oldham, J., dissenting); U.S. *Sossamon* Br. 10.

First, the Second Circuit did not dispute that RLUIPA satisfies the familiar *Dole* test: (1) RLUIPA promotes the general welfare by "protect[ing] prisoners' religious exercise rights," *Landor*, 93 F.4th at 265 (Oldham, J., dissenting); (2) RLUIPA's text provides "clear notice," that violations will result in individual-capacity liability, as established by *Tanzin*'s interpretation of the identical text, see *ibid.*; *supra* pp. 14-15; (3) a damages remedy is "reasonably related to … protect[ing] free exercise in prison" because "monetary liability for state officials should deter government misconduct and protect religious exercise," *Landor*, 93 F.4th at 265-66; and (4) imposing individual liability on state officials does not violate any other constitutional principle, *id.* at 266.

Dole does not impose an additional requirement that the defendant be the immediate grant recipient. See *id.* at 265-66; *Haight* v. *Thompson*, 763 F.3d 554, 570 (6th Cir. 2014) (explaining the non-recipient rule "proves too much" and is "not consistent with *Dole*").

Second, this Court has upheld the imposition of liability beyond the immediate grant recipient. For exam-

ple, in *Sabri*, this Court upheld the imposition of criminal liability under spending legislation (18 U.S.C. 666(a)(2)) against a private party who bribed an official employee of a municipal agency that received more than $10,000 in federal funds. 541 U.S. at 604-07. The private party who paid the bribe was not a state official and did not receive federal funds, directly or indirectly. But this Court explained that the Spending Clause, in conjunction with the Necessary and Proper Clause, empowers Congress "to see to it that taxpayer dollars appropriated under [the spending] power are in fact spent for the general welfare, and not frittered away" toward other ends. *Id.* at 605.

Sabri thus forecloses a strict contract analogy by upholding Congress's imposition of liability on somebody other than the immediate grant recipient. *Sabri* also upholds imposition of an individual remedy (criminal punishment) that is not available in contract.

As the United States has explained, RLUIPA's individual-damages remedy is constitutional under *Sabri*. "Just as Congress may attach conditions to its disbursement of federal funds, so it is empowered to prevent third parties from interfering with a fund recipient's compliance with those conditions." U.S. *Sossamon* Br. 13. "Congress's power to prevent such interference is 'bound up with congressional authority to spend in the first place.'" *Ibid.* (quoting *Sabri*, 541 U.S. at 608). "Attaching civil liability to an individual official's interference with a state agency's compliance with RLUIPA is a straightforward and 'plainly adapted' means of ensuring that federal funds are not spent contrary to the purposes of the statute." *Ibid.* (quoting *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819)).

4. The Second Circuit tried to distinguish *Sabri* on the ground that, unlike RLUIPA, the federal-funds bribery provision "does not impose the *conditions* of the federal funds on nonrecipients." See App., *infra*, 11a; *id.* at 12a ("Congress … cannot bind nonrecipients to the conditions attached to [federal] funds."). That distinction fails for several reasons.

First, it is imprecise to describe respondents as "nonrecipients" of federal funds. Respondents are state officials. They are agents of the grant recipient who administer a federally-funded program, and are indirect recipients of federal funding through their wages. See *Landor* Pet. 21; *Sabri*, 541 U.S. at 606 (observing that "[m]oney is fungible"). This Court has found "no support" for a "perceived distinction between direct and indirect aid." *Grove City Coll.* v. *Bell*, 465 U.S. 555, 564 (1984).

Because respondents are state officials, Congress could provide individual-capacity damages against them even if a strict contract analogy were required. Ordinarily, "the parties to a contract—including the government, in a contract between the government and a private party—are presumed or deemed to have contracted with reference to existing principles of law." 11 Williston on Contracts § 30:19 (4th ed. updated May 2024) (footnotes omitted). RLUIPA is an "existing principle[] of law." *Ibid.* RLUIPA's individual-capacity damages remedy is thus analogous to requiring state officials' contracts with the direct funding recipient to incorporate RLUIPA's substantive protections, and then to make individual prisoners third-party beneficiaries with the ability to enforce RLUIPA "in an action for damages." Restatement (Second) of Contracts § 307 cmt. a (1981).

Second, the Second Circuit's purported distinction of the federal-funds bribery statute does not hold. RLUIPA is closely analogous to the federal-funds bribery provision that a state official or agent of a grant recipient is individually liable if they accept a bribe. See 18 U.S.C. 666(a)(1). In both RLUIPA and Section 666(a)(1), Congress attached a condition to federal spending to support the general welfare (not to undermine public projects by accepting bribes or disrespecting religious liberty). The state's agents and officials are bound to follow that condition as agents of the recipient. See *Ex parte Young*, 209 U.S. 123, 161 (1908). And in both laws, Congress added the additional remedy of holding the state's agents individually liable if they violate the condition.

As the Solicitor General has explained, the additional remedy of money damages is "plainly adapted" to the goal of ensuring that individual agents and officials obey—and do not interfere with—conditions that Congress has validly imposed on the administration of federally-funded programs. U.S. *Sossamon* Br. 13 (quoting *McCulloch*, 17 U.S. (4 Wheat.) at 421). Indeed, in *Salinas* v. *United States*, 522 U.S. 52, 60-61 (1997), this Court found "no serious doubt about the constitutionality" of Section 666(a)(1) as applied to a state official in a "jail managed pursuant to a series of agreements with the Federal Government."

Sabri upheld 18 U.S.C. 666(a)(2), a different provision that goes a step farther than RLUIPA: Section 666(a)(2) imposes criminal liability on a private citizen who is not the agent or official of a grant recipient, but who bribes or offers to bribe such a person. See 541 U.S. at 602. RLUIPA is narrower: It does not similarly impose liability on a private citizen who solicits a state official to violate an inmate's religious liberty. Individual

liability attaches only to the state's own agents: "official[s]" and others "acting under color of State law." 42 U.S.C. 2000cc-5(4)(A). RLUIPA's constitutionality thus follows a fortiori from *Sabri*.

Third, the Second Circuit's analysis overlooks that RLUIPA's remedies prevent interference with Congress's underlying goals in funding programs for state and local prisons in the first place. "RLUIPA's religious liberty protections" play "an important part" in advancing Congress's underlying interest in "prisoner rehabilitation." *Madison* v. *Virginia*, 474 F.3d 118, 126 (4th Cir. 2006); 146 Cong. Rec. S6678, S6689 (daily ed. July 13, 2000) (statement of Sen. Kennedy) ("Sincere faith and worship can be an indispensable part of rehabilitation."). Amici in *Landor* emphasized well-documented links between religious exercise, rehabilitation, and reduced recidivism. See Brief for Professor Byron R. Johnson as Amicus Curiae at 4-18, *Landor*, No. 23-1197 (June 6, 2024); Brief for Dr. Denny Autrey as Amicus Curiae at 13-15, *Landor*, No. 23-1197 (June 6, 2024). Holding state prison officials accountable if they interfere with prisoners' religious exercise thus further advances Congress's goals in funding prison administration, and ensuring that those funds are indeed spent in a way that advances prisoner rehabilitation. See U.S. *Sossamon* Br. 13.

Quite simply, respondents are state officials and agents. Under this Court's precedents, Congress has ample authority to hold them liable if they interfere with conditions Congress has validly imposed on the administration of federally-funded programs. *E.g.*, *Sabri*, 541 U.S. at 605-08; *Salinas*, 522 U.S. at 60-61. In particular, Congress can hold state officials liable for inter-

fering with religious exercise that itself plays "an important part" in promoting "prisoner rehabilitation." *Madison*, 474 F.3d at 126. The Second Circuit's constitutional holding is incorrect and warrants this Court's review.

IV. This Is An Ideal Vehicle

The question of whether individual-capacity damages are available under RLUIPA is squarely presented in this case and outcome dispositive. The district court dismissed Tripathy's RLUIPA damages claim solely on the ground that individual-capacity damages are not available. App., *infra*, 23a. The court of appeals affirmed on that same ground. *Id.* at 12a. If this Court holds that RLUIPA provides individual-capacity damages, the court of appeals' judgment must be reversed, the dismissal of his complaint must be vacated, and the case must move forward on the merits.

* * * * *

For the reasons set forth in this petition and in the *Landor* petition, reply, and amicus briefs, this Court should grant review of the RLUIPA question. In particular, the *Landor* petition presents an ideal opportunity to take up this issue. This Court should hold this petition pending the outcome of *Landor*, and then dispose of this case as appropriate in light of that decision, as this Court has done previously to ensure similar treatment in similar cases. See, *e.g.*, *Lawrence ex rel. Lawrence* v. *Chater*, 516 U.S. 163, 166 (1996). If this Court grants review and holds in *Landor* that RLUIPA provides individual-capacity damages, the court of appeals' judgment in this case must be reversed. In the alternative, if the

Court denies review in *Landor*, it should grant this petition and hold that individual-capacity damages are available under RLUIPA.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari in *Landor* and dispose of this petition in accordance with the decision in that case. In the alternative, the Court should grant this petition.

Respectfully submitted.

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