No. 24-229

IN THE

Supreme Court of the United States

SANJAY TRIPATHY,

Petitioner,

v.

JEFF MCKOY, Deputy Commissioner, New York Department of Corrections and Community Supervision, et al.,

Respondents.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

The question presented here is the same question as that presented in the pending petition in *Landor v. Louisiana Department of Corrections & Public Safety*, No. 23-1197, in which the Court called for the views of the Solicitor General on October 7, 2024.

That question is:

Whether an individual may sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq.

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INTRODUCTION

Petitioner asks the Court to hold his petition for a writ of certiorari pending the disposition of the petition in *Landor v. Louisiana Department of Corrections and Public Safety*, No. 23-1197, and then to resolve this petition as appropriate in light of the decision in *Landor*. Petitioner calls the *Landor* petition—on which this Court called for the views of the Solicitor General on October 7, 2024—an "ideal opportunity" to resolve the Religious Land Use and Institutionalized Persons Act (RLUIPA) question presented (Pet. 20), and his petition reiterates the arguments made in the *Landor* petition, which was prepared by the same counsel of record as petitioner's counsel here. But while petitioner in this case alternatively requests that the Court grant review in this case in the event that it denies review in *Landor*, petitioner does not offer any argument as to why review is independently warranted in this case.

It is not. Unlike *Landor*, this case is a poor vehicle for resolving the question presented: whether individual-capacity suits for money damages are available under RLUIPA. In light of petitioner's particular allegations here, there is no reasonable likelihood that the resolution of the question presented would affect the ultimate disposition of his RLUIPA claim. Further, the lower court's decision in this case mirrors the lower court's decision in *Landor* and thus provides no opportunity for the Court to weigh in on any rationale that was not addressed in *Landor*. And while a lower court's invalidation of a federal statute on constitutional grounds may warrant review by this Court as a general matter, there was no such invalidation here, as petitioner contends. Finally, the lower court's decision is correct and consistent with decisions of this Court and

those of every other Circuit to have considered the same question.

Accordingly, the Court should deny this petition now, regardless of what it decides to do with the *Landor* petition. Alternatively, it should hold the petition pending a decision on the *Landor* petition. There is, however, no independent reason to grant review in this case, either alongside or instead of in *Landor*. Thus, if the Court denies the *Landor* petition, it should similarly deny this one. And if the Court grants the *Landor* petition but thereafter answers the question presented in the negative, it should deny this petition. The only scenario in which the Court should do anything other than deny this petition would be if the Court grants the *Landor* petition and answers the question presented in the affirmative; in that scenario, the Court should grant, vacate, and remand in this case so as to permit the lower court to apply the *Landor* decision in the first instance.

STATEMENT

A. Facts Alleged in the Complaint

Petitioner was convicted, after a jury trial, of engaging in a criminal sexual act in the first degree, assault in the second degree, sexual abuse in the first degree, strangulation in the second degree, and unlawful imprisonment in the second degree. He was sentenced to a seven-year term of incarceration and transferred to the custody of the New York Department of Corrections and Community Supervision (DOCCS).

As a sex offender, petitioner was assigned to DOCCS's Sex Offender Counseling and Treatment Program while in prison. Successful completion of the Program required him, among other things, to accept

responsibility for his offending behavior. Petitioner objected to that requirement and thus to his assignment to the Program. He alleged that he was innocent of his crimes of conviction, and also that he is an adherent of Hinduism—a core tenet of which is that one must not lie. He alleged that, by requiring him to accept responsibility for his crimes of conviction, the Program required him to lie, in violation of his religious beliefs. And he alleged that, if he failed to complete the Program, he would be subjected to more onerous sex-offender registration requirements and parole conditions upon his release from prison.

B. Procedural History

Petitioner commenced this action in the United States District Court for the Southern District of New York in June 2021, while still in the custody of DOCCS. As relevant here, the complaint asserted a claim under RLUIPA and sought money damages as well as declaratory and injunctive relief.[1] The complaint asserted that RLUIPA claim against two members of the Program's staff, as well as the commissioner and a deputy commissioner of DOCCS, in their individual capacities.

After the district court transferred the action to the Western District of New York, where petitioner was then incarcerated, defendants moved to dismiss the complaint. By then, the state trial court had vacated petitioner's criminal convictions upon finding that petitioner had received ineffective assistance of counsel,

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[1] The complaint also asserted claims under the Free Exercise Clause, the Due Process Clause, and the Equal Protection Clause, as well as the False Claims Act and the Racketeer Influenced and Corrupt Organizations Act. Petitioner has abandoned those claims in his petition for a writ of certiorari.

and petitioner had been released on his own recognizance.

In light of petitioner's release, the district court dismissed the claims for declaratory and injunctive relief as moot. *See Tripathy v. Brotz*, No. 22-cv-06469, 2023 WL 4032831, at *2 (W.D.N.Y. June 15, 2023). The district court additionally dismissed petitioner's claim for money damages under RLUIPA, concluding that the claim was not cognizable because "RLUIPA does not authorize claims for monetary damages against state officers in either their official or individual capacities." *Id.* (quoting *Holland v. Goord*, 758 F.3d 215, 224 (2d Cir. 2014)).

The United States Court of Appeals for the Second Circuit affirmed in a unanimous opinion. The court held that petitioner's claim for money damages under RLUIPA was foreclosed by the court's precedent in *Washington v. Gonyea*, 731 F.3d 143 (2d Cir. 2013). (Pet. App. 8a.) In *Washington*, the Second Circuit considered whether RLUIPA's provision authorizing individuals to obtain "appropriate relief against a government," 42 U.S.C. § 2000cc-2(a), permitted an action for money damages against a state officer in his individual capacity. The court held, "as a matter of statutory interpretation," that "RLUIPA does not create a private right of action against state officials in their individual capacities," because "the legislation was enacted pursuant to Congress' spending power, which allows the imposition of conditions, such as individual liability, only on those parties actually receiving the state funds." *Washington*, 731 F.3d at 145-46 (citation omitted).

In its decision in this case, the Second Circuit acknowledged that, since *Washington*, this Court had more recently held, in *Tanzin v. Tanvir*, 592 U.S. 43

(2020), that individual-capacity suits are permissible under the Religious Freedom Restoration Act (or RFRA, which regulates federal officials, while RLUIPA regulates state and local officials). (Pet. App. 8a-9a.) The Second Circuit rejected petitioner's argument that *Tanzin* had abrogated *Washington*, however, "for the simple reason that RFRA and RLUIPA were enacted pursuant to different constitutional provisions."[2] (Pet. App. 9a.)

Specifically, the Second Circuit explained that because RLUIPA was enacted pursuant to the Spending Clause, and because RLUIPA funds are disbursed to state prisons, and not to individual officials, "those officials are not 'contracting parties' and thus cannot be held liable for violating the conditions—i.e., RLUIPA's provisions—that attach to the funds."[3] (Pet. App. 9a-10a.)

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[2] *Tanzin* was decided on a writ of certiorari to the Second Circuit. In *Tanzin*, the Second Circuit concluded (prior to review by this Court) that its decision to allow individual-capacity suits for damages under RFRA (a decision that this Court ultimately affirmed) did not conflict with its earlier holding in *Washington*, 731 F.3d at 146, that RLUIPA does not permit such individual-capacity suits, 894 F.3d 449, 465 (2d Cir. 2018).

[3] The court noted that an alternative source of congressional authority for enacting RLUIPA—the Commerce Clause—could permit an individual-capacity claim for money damages, but concluded that that authority did not save petitioner's RLUIPA claim, given the facts of his case. (Pet. App. 12a-13a n.6.) The Commerce Clause authorizes suits under RLUIPA to the extent that an alleged substantial burden on religious exercise "affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." 42 U.S.C. § 2000cc-1(b)(2). But while petitioner "alleged that his *incarceration* imposed financial costs on out-of-state and foreign family members, he nowhere alleged that [the Program] itself led to those costs." (Pet. App. 13a n.6.) The court therefore determined

(*continues on next page*)

RFRA, on the other hand, "is not Spending Clause legislation and has no such limits on who may be sued for violating its provisions." (Pet. App. 10a.) "Put differently," the court explained, "RFRA does not implicate the same concerns about nonrecipient liability as RLUIPA, since RFRA operates like a normal statute—not a contract—and can impose liability on whoever violates its provisions." (Pet. App. 10a (quotation marks omitted).) The court thus concluded that it is "entirely consistent for RFRA to permit the recovery of individual-capacity damages from federal officials while RLUIPA bars the same from those who serve a state." (Pet. App. 10a (quotation marks omitted).)

This petition followed.

C. *Landor v. Louisiana Department of Corrections and Public Safety*

Petitioner asks the Court to hold this petition pending the Court's disposition of the petition for a writ of certiorari in another case—*Landor v. Louisiana Department of Corrections and Public Safety* (No. 23-1197)—and to resolve this petition as appropriate in light of the Court's decision in that case.

In *Landor*, the plaintiff Damon Landor was a "devout Rastafarian who vowed to 'let the locks of the hair of his head grow,' a promise known as the Nazarite

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that petitioner had not stated a RLUIPA claim that implicated the Commerce Clause. (Pet. App. 13a n.6.) Petitioner does not ask this Court to review that aspect of the lower court's decision.

In another RLUIPA suit brought by petitioner against individual DOCCS officials, where the district court found that the claim did have a plausible Commerce Clause basis and thus permitted it to proceed, trial recently began on April 28, 2025. *See Tripathy v. McClowski*, No. 21-cv-06584 (S.D.N.Y.).

Vow." 82 F.4th 337, 339 (5th Cir. 2023). Landor was incarcerated in Louisiana where, upon meeting the intake guard at a new facility, he explained that he was a practicing Rastafarian and provided proof of past religious accommodations. *Id.* at 340. He also took the unusual step of handing the guard a copy of the Fifth Circuit's decision in *Ware v. Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017), which held that Louisiana's policy of cutting the hair of Rastafarians violated RLUIPA. *Landor*, 82 F.4th at 340. The guard proceeded to throw the decision in the trash and have Landor's head shaved. *Id.*

Landor then brought an action against prison officials in their individual capacities, seeking money damages for an alleged RLUIPA violation. The district court dismissed the claim, and the Fifth Circuit affirmed. The Fifth Circuit held that Landor's claim was foreclosed by that court's precedent in *Sossamon v. Texas*, 560 F.3d 316 (5th Cir. 2009), *aff'd on other grounds*, 563 U.S. 277 (2011), which held that RLUIPA does not authorize individual-capacity suits against state officers for damages. The Fifth Circuit held further that *Sossamon* had not been abrogated by this Court's decision in *Tanzin*, 592 U.S. at 43. The court explained that *Sossamon* (dealing with RLUIPA) and *Tanzin* (dealing with RFRA) were consistent with one another because they dealt with two different statutes, each enacted pursuant to a distinct source of constitutional authority. *Landor*, 82 F.4th at 344. Unlike RFRA, RLUIPA was enacted pursuant to the Spending Clause, and "Spending Clause legislation does not impose *direct* liability on a non-party to the contract between the state and the federal government." *Id.* at 341 (quotation marks omitted). Thus, although the Fifth Circuit "*emphatically* condemn[ed] the treatment that Landor endured," it

found that it was "bound by our prior decision in *Sossamon I* that, under RLUIPA, he cannot seek money damages from officials in their individual capacities." *Id.* at 345. The full court denied en banc review. *See Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 93 F.4th 259 (5th Cir. 2024) (en banc).

Landor—represented by the same counsel of record who represents petitioner in this case—filed a petition for a writ of certiorari in this Court, asking the Court to decide "whether an individual may sue a government official in his individual capacity for damages for violations of RLUIPA." *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, No. 23-1197 (Pet. i). On October 7, 2024, this Court invited the Solicitor General to file a brief expressing the views of the United States. The Solicitor General has yet to file such a brief, and the *Landor* petition remains pending.

REASONS FOR DENYING THE PETITION

I. THIS CASE IS A PARTICULARLY POOR VEHICLE FOR REVIEWING THE QUESTION PRESENTED.

This case does not have anything that *Landor* lacks. As petitioner notes, the pending *Landor* petition presents the "exact issue" presented here. (Pet. 3.) This case, however, provides a poorer vehicle for considering the question presented because the answer to that question can have no impact on the ultimate disposition of petitioner's RLUIPA claim. Indeed, petitioner does not argue otherwise.

Moreover, perhaps unsurprisingly, given that petitioner and Landor are represented by the same counsel (who also represented them both in the appeals courts), the Second Circuit in this case addressed, and

rejected, all the same arguments that the Fifth Circuit rejected in *Landor*. Thus, granting certiorari in this case would not give the Court an opportunity to weigh in on any distinct arguments that were not presented in *Landor*.

A. Unlike in *Landor*, the Answer to the Question Presented Is Academic in This Case.

There is no reasonable likelihood that resolution of the question presented in the petition would affect the ultimate disposition of petitioner's RLUIPA claim. That is so because, even if allowed to proceed, the RLUIPA claim would ultimately fail for at least three other reasons: (i) given the nature of petitioner's allegations, he would be unable to establish a substantial burden on his religious exercise, as required to prevail on the merits, (ii) qualified immunity would bar his claim, and (iii) the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, would independently bar his claim. Accordingly, answering the question presented here would ultimately prove academic.

1. Regardless of the answer to the question presented in this petition, petitioner's RLUIPA claim would fail on the merits because the complaint, and the documents attached thereto, establish that respondents did not in fact burden petitioner's religious exercise—substantially or otherwise. *See* 42 U.S.C. § 2000cc-1(a).

Petitioner alleged that he is innocent of his crimes of conviction, and that his Hindu religion prohibits him from lying. He further alleged that respondents substantially burdened his religious exercise by requiring him, as a prerequisite to completing the Program and receiving the benefits of successful Program completion, to falsely accept responsibility for his offending behavior.

However, petitioner also asserted that respondents did not succeed in forcing him to lie; to the contrary, petitioner continued to maintain his innocence and refused to admit guilt in his Program assignments. (*See, e.g.*, CA2 J.A., ECF No. 98 at p. 470; CA2 J.A., ECF No. 99 at p. 3.) And because his criminal convictions were vacated and he was released from prison, he never suffered any consequences from his refusal to participate in the Program.

Thus, unlike in *Landor*, 82 F.4th at 340, where the plaintiff was subjected to conduct that had already been held to constitute an "egregious violation" of RLUIPA (Pet. 3), petitioner here never suffered a burden—let alone a substantial one—on his religious exercise.

2. Even if the facts alleged in the complaint plausibly stated a RLUIPA claim—and they do not—that claim would be barred by qualified immunity, a defense that has been preserved throughout this litigation.

"The doctrine of qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quotation marks omitted). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (quotation marks omitted).

Here, a reasonable prison official would not have known that it was unlawful to enforce a generally applicable program requirement—that convicted sex offenders accept responsibility for their offending behavior—against an offender who maintains his innocence of offenses of which he has been convicted. The Second Circuit concluded as much with respect to petitioner's

claim under the Free Exercise Clause (Pet. App. 14a-15a), and the same analysis applies to his RLUIPA claim. As the Second Circuit recognized (Pet. App. 14a), the only appellate authority that has addressed a similar religious-exercise challenge concluded that a comparable program requiring individuals to accept responsibility for wrongdoing did *not* violate the plaintiff's religious freedom. *See Searcy v. Simmons*, 299 F.3d 1220, 1228 (10th Cir. 2002). Other decisions of this Court and federal courts of appeals have similarly upheld such programs against challenges premised on other constitutional rights, such as due process and free speech. *See McKune v. Lile*, 536 U.S. 24, 29 (2002) (rejecting claim based on Fifth Amendment right against self-incrimination); *Newman v. Beard*, 617 F.3d 775, 781 (3d Cir. 2010) (rejecting claim based on First Amendment right to free speech).

Because it is therefore not clearly established by this Court—or, for that matter, any federal court of appeals—that it is unlawful to enforce a generally applicable acceptance-of-responsibility requirement against individuals duly convicted of sex offenses (even those who maintain their innocence), petitioner's RLUIPA claim would be barred by qualified immunity. And the absence of clearly established law on this topic also distinguishes this case from *Landor*, where it *was* clearly established that requiring a Rastafarian inmate to have his hair cut against his will violates RLUIPA. *See Landor*, 82 F.4th at 340 (citing *Ware*, 866 F.3d at 263).

3. Petitioner's RLUIPA claim for damages would fail for the additional and independent reason that the PLRA bars litigants from recovering "for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual

act." 42 U.S.C. § 1997e(e). RLUIPA claims are not excepted from this rule. To the contrary, RLUIPA expressly provides that it shall not be construed "to amend or repeal the Prison Litigation Reform Act of 1995." *Id.* § 2000cc-2(e).

Petitioner did not allege that the Program's acceptance-of-responsibility requirement caused him any physical injury, or that it somehow involved the commission of a sexual act. To the contrary, he alleged only that respondent's actions generally subjected him to "harm, pain & suffering, [and] anguish." (CA2 J.A., ECF No. 98 at p. 88.) And although the PLRA does not preclude the award of nominal or punitive damages, *see Walker v. Schult*, 45 F.4th 598, 612-13 (2d Cir. 2022), petitioner's complaint did not plead such damages here, (*see* CA2 J.A., ECF No. 98 at p. 88). Nor did petitioner allege any facts that would plausibly support an award of punitive damages against any respondent, who, at most, implemented or oversaw the generally applicable Program requirement that convicted sex offenders accept responsibility for their offending behavior.

Landor's complaint, by contrast, expressly sought punitive damages.[4] *See* Compl. at 34, *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, No. 21-cv-00733 (M.D. La.), ECF No. 1. It also alleged facts plausibly supporting an award of punitive damages: It alleged that, even after Landor presented a prison guard with a copy of the Fifth Circuit's decision in *Ware*, 866 F.3d at 263—which conclusively held that Louisiana's policy of cutting the

[4] The Fifth Circuit, like the Second, has held that the PLRA does not bar an inmate's recovery of punitive damages even in the absence of physical injury. *See Hutchins v. McDaniels*, 512 F.3d 193, 198 (5th Cir. 2007).

hair of Rastafarians violated RLUIPA—the guard proceeded to *throw the decision away* and have Landor's head shaved anyway. Compl. at 8, *Landor*.

In this case, by contrast, petitioner did not seek to recover punitive damages, nor did he plausibly allege that he suffered any physical injury when he was subjected to the Program's acceptance-of-responsibility requirement. His attempt to recover damages for the alleged RLUIPA violation would therefore be precluded, regardless of the theoretical availability of money damages under RLUIPA.

B. The Second Circuit Provided No Rationale for Its Decision Distinct from That in *Landor*.

The Second Circuit's decision in this case followed the Fifth Circuit's template in *Landor*. There, the Fifth Circuit held that this Court's decision in *Tanzin*, 592 U.S. at 43, did not abrogate the Fifth Circuit's prior decision in *Sossamon*, 560 F.3d at 316, which held that RLUIPA does not permit individual-capacity suits for money damages. *See* 82 F.4th at 343. The Fifth Circuit reasoned that the different sources of constitutional authority for RFRA and RLUIPA justified a different interpretation of the term "appropriate relief" in the two statutes. *Id.* And the Fifth Circuit rejected the contention that this Court's decision in *Sabri v. United States*, 541 U.S. 600 (2004), regarding Congress's power under the Spending Clause, necessitated a different outcome. 82 F.4th at 344-45.

The Second Circuit similarly held that *Tanzin* did not abrogate that court's prior decision in *Washington*, 731 F.3d at 143; that the two decisions could be reconciled with one another based on the differing sources of constitutional authority for the two statutes' enactment;

and that *Sabri* did not require a different outcome. (Pet. App. 8a-12a.) Reviewing the Second Circuit's decision thus would not provide an opportunity for the Court to review any distinct rationale that was not relied upon in *Landor*.

II. THE SECOND CIRCUIT DID NOT INVALIDATE ANY PROVISION OF RLUIPA.

Petitioner insists that the Second Circuit mistakenly "held that RLUIPA's individual-capacity damages remedy is unconstitutional" and that "[t]he invalidation of a federal statute on constitutional grounds alone warrants review." (Pet. 7-8.) The problem with this argument is that the lower court did not in fact declare any provision of RLUIPA unconstitutional.

Rather, in adhering to its prior precedent in *Washington,* the Second Circuit rendered a decision that rested on statutory interpretation. In *Washington,* the court explained that, "as a matter of statutory interpretation and following the principle of constitutional avoidance," RLUIPA's cause of action for "appropriate relief against a government," 42 U.S.C. § 2000cc-2(a), does not encompass individual-capacity suits against state officers in the first instance, 731 F.3d at 146.

The court thus properly applied the canon of constitutional avoidance, which "permits a court to choose between plausible interpretations of a statutory text." *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018) (emphasis and quotation marks omitted). As this Court has recognized, the term "appropriate relief" in RLUIPA is "open-ended and ambiguous about what types of relief it includes." *Sossamon v. Texas*, 563 U.S. 277, 286 (2011). Thus, while the term can plausibly be read to extend to individual suits for money damages, it can also plausibly

be read *not* to extend to such suits, based on "the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts" about the scope of Congress's power under the Spending Clause. *Clark v. Martinez*, 543 U.S. 371, 381 (2005). By selecting the latter interpretation to avoid constitutional concerns, the court did not transform its statutory holding into a constitutional one. *See, e.g.*, *Harris v. Quinn*, 573 U.S. 616, 635 (2014) (calling earlier decision that employed constitutional-avoidance canon "not a constitutional decision at all"); *Clark*, 543 U.S. at 381 ("The canon is not a method of adjudicating constitutional questions by other means.").

III. THE SECOND CIRCUIT'S DECISION IS CORRECT AND DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR THAT OF ANY OTHER CIRCUIT.

The Second Circuit correctly answered in the negative the question presented here: whether RLUIPA permits individual-capacity suits for money damages. That conclusion is consistent with this Court's precedent and aligns with the conclusion of every other Circuit to have considered the issue.

1. As the Second Circuit reasoned, "RLUIPA was enacted pursuant to the Spending Clause, which means that, like a contract, RLUIPA can impose individual liability only on those parties actually receiving state funds." (Pet. App. 9a (quotation marks omitted).) So, "[b]ecause RLUIPA funds are disbursed to the state prison, and not its officials, those officials are not contracting parties and thus cannot be held liable for violating the conditions—i.e., RLUIPA's provisions—that attach to the funds." (Pet. App. 9a-10a (quotation marks omitted).)

That conclusion accords with this Court's precedent. As the Court has explained, "legislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). It is thus well settled that "the legitimacy of Congress' power to enact Spending Clause legislation rests not on its sovereign authority to enact binding laws, but on whether the recipient voluntarily and knowingly accepts the terms of that contract." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022) (quotation marks omitted).

Moreover, the Court has repeatedly applied this contract-law analogy to limit "'the scope of available remedies' in actions brought to enforce Spending Clause statutes." *Id.* (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998)). In *Barnes v. Gorman*, for example, the Court held that punitive damages are unavailable in private suits brought under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and the Rehabilitation Act, 29 U.S.C. § 701 et seq., because punitive damages are not a form of relief "traditionally available in suits for breach of contract." 536 U.S. 181, 187 (2002). Two decades later, the Court held in *Cummings* that emotional-distress damages are likewise unavailable in private actions to enforce the antidiscrimination provisions of the Rehabilitation Act and the Affordable Care Act, 42 U.S.C. § 18001 et seq., based on "hornbook law that emotional distress is generally not compensable in contract," 596 U.S. at 221 (quotation marks omitted).

Against this backdrop, the Second Circuit correctly concluded that Congress's spending powers are limited to imposing conditions on "those parties actually receiv-

ing state funds." (Pet. App. 9a (quotation marks omitted).) This limitation follows directly from the Court's contract-law analogy: it "goes without saying that a contract cannot bind a nonparty." *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002). Here, DOCCS employees do not receive, administer, or choose whether to accept federal funds in their individual capacities. *See Sossamon*, 560 F.3d at 328 ("[I]ndividual RLUIPA defendants are not parties to the contract in their individual capacities."). Construing RLUIPA to authorize a private cause of action against these employees in their individual capacities would thus exceed Congress's power to "condition[] receipt of federal moneys upon compliance by *the recipient* with federal statutory and administrative directives." *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (quotation marks omitted) (emphasis added).

As the Fifth Circuit explained in *Sossamon*, this limitation on Congress's spending power also safeguards important federalism principles. 560 F.3d at 328-29. While States may impose liability directly on individuals under their broad police powers, Congress may validly do so under only its limited powers enumerated in Article I. And although Congress may use the Spending Clause to achieve objectives outside of Article I's enumerated fields, *see Dole*, 483 U.S. at 206-07, it may validly do so not through direct regulation but rather through mutual exchange: the recipient of federal funds consents to clearly and unambiguously stated conditions in exchange for the funds, *see Cummings*, 596 U.S. at 219-20.

Allowing Congress to use the Spending Clause to impose liability on state employees in their individual capacities, when those employees did not participate in that capacity in the requisite mutual exchange with

Congress, would create an "end-run around the limited powers of Congress to directly affect individual rights." *Sossamon*, 560 F.3d at 329.

2. This Court's decision in *Tanzin v. Tanvir*, 592 U.S. 43 (2020), does not require a different conclusion. *Tanzin* held that a different federal statute—RFRA—enacted pursuant to a different source of constitutional authority—section 5 of the Fourteenth Amendment—permits individual-capacity suits against federal officials for money damages, because it allows plaintiffs to sue to obtain "appropriate relief against a government," 42 U.S.C. § 2000bb-1(c). 592 U.S. at 52. Contrary to petitioner's assertion (Pet. 4), however, the fact that RLUIPA also contains that phrase does not necessarily mean that RLUIPA, like RFRA, also permits individual-capacity suits for money damages. After all, as the Sixth Circuit recently observed in rejecting the same argument that petitioner makes here, "[t]he same words, placed in different contexts, sometimes mean different things." *Ali v. Adamson*, 132 F.4th 924, 931 (6th Cir. 2025) (quoting *Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality op.)). *Tanzin* itself recognized that "what relief is 'appropriate' is inherently context dependent." 592 U.S. at 49 (quotation marks omitted).

RLUIPA's discrete context makes all the difference. "When two statutes have distinct constitutional sources, they may, sometimes they must, have distinct meanings," *Ali*, 132 F.4th at 932, and here, the phrase "appropriate relief" under RLUIPA has a meaning distinct from its meaning under RFRA. The Second Circuit rightly concluded that "RFRA does not implicate the same concerns about nonrecipient liability as RLUIPA, since RFRA operates like a normal statute—not a contract—and can impose liability on whoever violates its provisions." (Pet. App. 10a (quotation marks omitted).) "It is

therefore entirely consistent for RFRA to permit the recovery of individual-capacity damages from federal officials while RLUIPA bars the same from those who serve a state." (Pet. App. 10a (quotation marks omitted).)

3. Every Circuit to have considered the question presented here has reached the same conclusion. As noted, both the Second Circuit (in this case) and the Fifth Circuit (in *Landor*) have concluded that this Court "didn't extend the holding in *Tanzin*, much less its logic, to RLUIPA." *Landor*, 82 F.4th at 343. (*See also* Pet. App. 10a.) And since the filing of the petition in this case, three more Circuits have issued similar rulings.

In *Ali*, the Sixth Circuit reasoned that "[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.'" 132 F.4th at 932 (quoting *Tanzin*, 592 U.S. at 49).

In *Barnett v. Short*, the Eighth Circuit held that, notwithstanding *Tanzin*, RLUIPA does not constitutionally "impose liability on those who fail to satisfy a condition of federal funding when they did not agree to (or perhaps weren't even aware of) the condition in the first place." 129 F.4th 534, 543 (8th Cir. 2025).

And in *Fuqua v. Raak*, the Ninth Circuit observed that "*Tanzin*'s constitutional holding sustaining 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." 120 F.4th 1346, 1360 (9th Cir. 2024). The Ninth Circuit thus adhered to its pre-*Tanzin* precedent holding that RLUIPA does not provide a valid damages remedy

against prison officials in their individual capacities.[5] *Id.*

4. Contrary to petitioner's argument (Pet. 13, 15-20), the Second Circuit's decision is consistent with this Court's Spending Clause decisions in *Sabri v. United States*, 541 U.S. 600 (2004), and *South Dakota v. Dole*, 483 U.S. 203 (1987).

Sabri upheld a federal statute that imposes criminal penalties on individuals who bribe officials of state and local entities receiving federal funds. 541 U.S. at 602. The Court held that the statute constitutes a lawful exercise of Congress's spending power, which, pursuant to the Necessary and Proper Clause, inherently includes the ability to ensure that federal funds are not diverted through bribery and graft. *Id.* at 605.

Sabri thus at most teaches that Congress may—pursuant to the Necessary and Proper Clause—protect the financial integrity of disbursements made under the Spending Clause by imposing direct penalties on individuals who interfere with the administration of those federal disbursements. But *Sabri* does not support petitioner's contention that the Necessary and Proper Clause goes so far as to empower Congress to authorize a private cause of action against employees of grant recipients *in*

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[5] Five other Circuits—all of the remaining Circuits to have addressed the question—have similarly held that RLUIPA does not provide a valid damages remedy in individual-capacity suits, though have not reconsidered those holdings post-*Tanzin*. *See Stewart v. Beach*, 701 F.3d 1322, 1334-35 (10th Cir. 2012); *Sharp v. Johnson*, 669 F.3d 144, 154 (3d Cir. 2012); *Nelson v. Miller*, 570 F.3d 868, 887-89 (7th Cir. 2009), *abrogated on other grounds by Jones v. Carter*, 915 F.3d 1147 (7th Cir. 2019); *Rendelman v. Rouse*, 569 F.3d 182, 188-89 (4th Cir. 2009); *Smith v. Allen*, 502 F.3d 1255, 1272-75 (11th Cir. 2007), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021).

the employees' individual capacities when the employee has not interfered with the integrity of federal funds issued under the Spending Clause. As the Second Circuit observed in distinguishing *Sabri*, while the Spending Clause "gives Congress the power to offer conditional funding to state and private actors, which necessarily includes the power to ensure that others do not interfere with the disbursement of those funds," it "does not follow that Congress can impose the *conditions* attached to those funds on anyone it wishes."[6] (Pet. App. 11a.)

Dole does not help petitioner, either. *Dole* upheld as a permissible exercise of Congress's spending power a federal statute directing the withholding of a small percentage of federal highway funds from those States that permitted the purchase or public possession of alcoholic beverages by a person under the age of 21. 483 U.S. at 211-12.

Petitioner relies (Pet. 15) on Judge Oldham's dissent from the Fifth Circuit's denial of rehearing en banc in *Landor*, in which Judge Oldham invoked *Dole* to wonder, "If South Dakota can agree to criminalize the behavior of its 19-year-old bourbon enthusiasts, it's unclear why Louisiana cannot agree to make its prison officials liable" for RLUIPA violations, consistent with the Spending Clause. 93 F.4th at 265. But that criticism is misplaced. Contrary to Judge Oldham's musing, respondents' position here does not prevent States from making its officials liable for failing to adequately respect religious liberty. The problem with Judge Oldham's (and petitioner's) own theory is that RLUIPA

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[6] *See also Barnett*, 129 F.4th at 543 (distinguishing *Sabri*); *Landor*, 82 F.4th at 344-45 (same); *Wood v. Yordy*, 753 F.3d 899, 903 (9th Cir. 2014) (same); *Sharp*, 669 F.3d at 155 n.15 (same).

would not simply encourage States to pass their own laws holding their officials accountable, but would instead directly regulate nonrecipients of federal money. None of petitioner's precedents support that result. To the contrary, this Court's precedents establish that RLUIPA, like other federal statutes enacted pursuant to the Spending Clause, operates like a contract; accordingly, it does not impose direct consequences on nonparties to the contract.

IV. IF THE COURT HOLDS THE PETITION, GRANTS REVIEW IN *LANDOR*, AND ANSWERS THE QUESTION PRESENTED IN THE AFFIRMATIVE, IT SHOULD GRANT, VACATE, AND REMAND IN THIS CASE.

For all these reasons, the Court should deny this petition now, regardless of what it decides to do with the *Landor* petition. Alternatively, it should hold the petition pending a decision on the *Landor* petition. As explained above, however, there is no independent reason to grant review in this case, either alongside or instead of in *Landor*. Accordingly, the only scenario in which the Court should do anything other than deny this petition would be if the Court grants review in *Landor* and answers the question presented in the affirmative.

In that scenario, the Court should grant, vacate, and remand (GVR) in this case so as to permit the Second Circuit to apply the *Landor* decision in the first instance. A GVR order would "conserve[] the scarce resources of this Court that might otherwise be expended on plenary consideration" and "serv[e] as a cautious and deferential alternative to summary reversal in cases," like this one, "whose precedential significance does not merit [this Court's] plenary review." *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167-68 (1996).

CONCLUSION

The Court should deny the petition for a writ of certiorari. In the alternative, if the Court grants review in *Landor* and answers the question presented in the affirmative, it should grant, vacate, and remand this case to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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April 2025

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