

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DEWEY AUSTIN BARNETT, II,
Applicant,

v.

BRENDA SHORT, ET. AL.,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

Gregory Cui
Counsel of Record
Easha Anand
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, D.C. 20002
(202) 869-3434
gregory.cui@macarthurjustice.org
easha.anand@macarthurjustice.org

Counsel for Applicant

May 23, 2025

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DEWEY AUSTIN BARNETT, II,
Applicant,

v.

BRENDA SHORT, ET. AL.,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Brett M. Kavanaugh, Associate Justice of the United States and Circuit Justice for the Eighth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 22, applicant Dewey Austin Barnett, II, respectfully requests a 60-day extension, to and including August 1, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit issued its corrected judgment on March 4, 2025, and no party sought rehearing. Unless extended, the time to file a petition for a writ of certiorari will expire on June 2, 2025.

1. This case presents an important question that has divided the Circuit Courts about the scope of Congress' authority under the Spending Clause to impose liability for money damages on individual officials for violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). In the decision below, the Eighth

Circuit held that, although Congress clearly authorized such damages by the plain text of RLUIPA, doing so “exceeds its spending power” under the Spending Clause. Op. 9. As the Solicitor General has stated in a similar case before this Court, the Eighth Circuit’s view is wrong; it adds to a split by several other Circuits that are in conflict with the Sixth Circuit; and this Court’s review is warranted.

2. Mr. Barnett is a devout Christian who practices his religion by reading the Bible each day.

3. In 2021, Mr. Barnett was placed in solitary confinement while he was detained at the Jefferson County Jail in Hillsboro, Missouri. He was held there for about a month, from March 12, 2021 to April 11, 2021.

4. Throughout Mr. Barnett’s time in solitary, he was deprived of all access to the Bible. As a result, he was unable to practice his religion.

5. Mr. Barnett filed a handwritten “Prisoner Request/Grievance Form,” notifying prison officials of the violation of his religious rights and requesting relief.

6. But Defendants Jefferson County and Brenda Short refused to provide Mr. Barnett access to the Bible in any form. Instead, Defendant Short responded by stating that Mr. Barnett “could have nothing more and that his ‘behavior has taken away all privileges,’” apparently viewing the free exercise of religion as a “privilege.” Op. 2. She continued: “[F]eel free to quote the constitution all you want to—I don’t mind at all. You will not recieve [sic] anything more.” Op. 2.

7. As a result of being unable to practice his religion, Mr. Barnett suffered anxiety, stress and depression. In his words, he was forced “to sin and be a sinner.”

8. When Mr. Barnett was finally released from solitary confinement, he was transferred to a different facility before he could obtain any kind of relief against Defendants.

9. Mr. Barnett, acting *pro se*, sued Jefferson County and Short for violating RLUIPA and the First Amendment. *See* Op. 1.

10. During pre-service screening under the Prison Litigation Reform Act, the district court dismissed Mr. Barnett's claims. *See* Op. 3. As to the RLUIPA claims, the district court held that "RLUIPA does not permit plaintiffs to recover money damages, and his request for injunctive relief was moot since Barnett had been transferred to another facility." *Id.* As to the First Amendment claims, the district court concluded that Mr. Barnett had failed to allege Short's personal involvement in the deprivation or a substantial burden on his right to free exercise. *Id.*

11. On appeal, the Eighth Circuit reversed the district court in part and affirmed it in part.

12. Contrary to the district court, the Eighth Circuit held that Mr. Barnett had alleged a substantial burden on his right to free exercise, and that Short was personally involved. Op. 11-13. As the court explained, "[g]iven that Short allegedly deprived Barnett of a Bible for a whole month . . . we think Barnett has alleged a substantial, not a de minimis, burden on his religious exercise." *Id.* at 13.

13. The Eighth Circuit further held that RLUIPA clearly authorizes damages as a form of "appropriate relief" against Jefferson County. Op. 4-8. Citing this Court's decision in *Tanzin v. Tanvir*, 592 U.S. 43 (2020), which interpreted

identical language in RLUIPA’s sister statute the Religious Freedom Restoration Act, the Eighth Circuit concluded that RLUIPA’s authorization of “appropriate relief” against a “government,” including a “county,” constituted an unambiguous imposition of liability for damages under the Spending Clause. *Id.* at 5-8.

14. The Eighth Circuit recognized that Congress was equally clear in authorizing “appropriate relief,” including damages, against “any other person acting under color of State law.” Op. 9. That broad language, the Eighth Circuit acknowledged, “permits suits against individual defendants in both their official and individual capacities.” *Id.*

15. Nevertheless, the Eighth Circuit held that “Congress’s authorization of suits against non-recipients of federal money in their individual capacities exceeds its spending power.” Op. 9. In the court’s view, because “Short has not consented” personally “to any conditions of federal funding,” Congress may not impose any condition of federal funding “on her directly.” *Id.*

16. In doing so, the Eighth Circuit joined several Circuits that have held or suggested that authorizing such damages would exceed Congress’ authority under the Spending Clause. *See Fuqua v. Raak*, 120 F.4th 1346, 1359 (9th Cir. 2024) (relying “on the constitutional holding that the Spending Clause does not allow Congress to impose individual damages liability on state or local officials who are not themselves the recipients of federal funds”); *Washington v. Gonyea*, 731 F.3d 143, 146 (2d Cir. 2013) (citing “serious questions regarding whether Congress has exceeded its authority under the Spending Clause”); *Landor v. Louisiana Dep’t of Corr. & Pub.*

Safety, 82 F.4th 337, 341-42 (5th Cir. 2023) (interpreting RLUIPA to avoid “the constitutional concerns” that authorizing individual-capacity damages “would entail”).

17. These Circuits have split with the Sixth Circuit, which has recognized that Congress may impose liability for money damages against individual officials, as long as Congress speaks clearly. *See Haight v. Thompson*, 763 F.3d 554, 570 (6th Cir. 2014).

18. A petition for a writ of certiorari is pending in *Landor*, No. 23-1197, and the Solicitor General has expressed the view of the United States that money damages “constitute appropriate relief in suits against individual governmental officials—under RFRA and RLUIPA alike”—and “certiorari is warranted to review that important question of law.” SG Amicus 3.

19. Mr. Barnett intends to file a petition for a writ of certiorari, seeking this Court’s review of the Eighth Circuit’s decision.

20. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Mr. Barnett is represented by *pro bono* counsel from the MacArthur Justice Center. Counsel have a number of competing obligations in other cases and require additional time to adequately prepare the petition:

- Counsel is preparing an *amicus* brief in the United States Supreme Court in *Barrett v. United States*, No. 24-5774, which will be due on May 30, 2025;
- Counsel is presenting oral argument in the United States Court of Appeals for the Eighth Circuit in *Mick v. Gibbons*, No. 24-1610, on June 10, 2025;

- Counsel is participating in a Fourth Circuit mediation in *Smalls v. Bailey*, No. 24-7010, on June 25, 2025;
- Counsel is second-chair for an oral argument in the United States Court of Appeals for the Ninth Circuit in *Luster v. Reidy*, No. 24-6211, on July 14, 2025.

21. An extension of time would permit undersigned counsel to provide the necessary analysis to aid this Court in determining whether to grant certiorari.

22. Mr. Barnett has not previously sought an extension of time from this Court.

23. For the foregoing reasons, the application for a 60-day extension of time, to and including August 1, 2025, within which to file a petition for a writ of certiorari in this case should be granted.

Respectfully submitted,

Gregory Cui
Counsel of Record
 Easha Anand
 RODERICK & SOLANGE
 MACARTHUR JUSTICE CENTER
 501 H Street NE, Suite 275
 Washington, D.C.
 (202) 869-3434
gregory.cui@macarthurjustice.org
easha.anand@macarthurjustice.org

Counsel for Applicant

May 23, 2025