No. 21-1405

In the
# Supreme Court of the United States

LESTER J. SMITH,

*Petitioner*,

v.

TIMOTHY WARD, COMMISSIONER OF GEORGIA DEPARTMENT OF CORRECTIONS IN HIS OFFICIAL CAPACITY,

*Respondent*.

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

## BRIEF OF *AMICUS CURIAE* RELIGIOUS FREEDOM INSTITUTE IN SUPPORT OF PETITIONER

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## INTEREST OF *AMICUS CURIAE*[1]

The Religious Freedom Institute (RFI) is committed to achieving broad acceptance of religious liberty as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. RFI works to make religious freedom a priority for government, civil society, religious communities, businesses, and the general public.

RFI envisions a world that respects religion as an indispensable societal good and which promises religious believers the freedom to live out their beliefs fully and openly. RFI thus seeks to ensure that governments do not inhibit the free exercise of religion and that religious believers are entitled to the full measure of protections afforded to religious practice under laws like the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1.

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[1] Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae*, its members, and its counsel made a monetary contribution to its preparation or submission.

Counsel of record for all parties received notice of *amicus curiae*'s intent to file this brief at least ten days prior to the due date. All parties have consented in writing to the filing of this brief. *See* Sup. Ct. R. 37.2(a).

## INTRODUCTION AND SUMMARY OF ARGUMENT

Lester Smith comes to this Court in unusual circumstances: the district court found that the Georgia Department of Corrections offered no rationale that could justify its prohibition on beards longer than half an inch under RLUIPA, and yet—without disputing that finding—the Eleventh Circuit ruled that the State may still enforce the half-inch limitation against Smith. The Eleventh Circuit's denial of any relief from what has been shown to be an unlawful burden on Smith's religious exercise defies the text of RLUIPA, contradicts this Court's precedents, conflicts with the approach of other federal circuits, and contravenes basic principles of judicial remedies.

As an initial matter, the Eleventh Circuit erred by denying Smith the full accommodation that his Muslim faith demands: the freedom to grow an untrimmed beard, exactly as thirty-nine other prison systems allow. As Smith demonstrates, that decision cannot be reconciled with this Court's opinion in *Holt v. Hobbs*, 574 U.S. 352 (2015), or the law in many other federal courts. *See* Pet. Parts I–II.

But even if it were assumed that Smith could be denied the right to grow a *full* beard, there can be no doubt that he is at least entitled to a *lesser* remedy. As the district court found (and the Eleventh Circuit did not dispute), the State "entirely failed to establish safety, security, or manageability concerns regarding three-inch beards" or shorter. Pet. App. 22 & n.10

(emphasis omitted). In the words of RLUIPA, the State's more severe half-inch limitation is not the "least restrictive means" of furthering its interests—and therefore Smith is entitled to "appropriate relief" from that policy. 42 U.S.C. §§ 2000cc-1(a), 2000cc-2(a). That is exactly what the district court gave Smith, ordering that he be allowed to grow a beard at least three inches long because the government could justify nothing shorter. Pet. App. 9.

Yet, instead of following RLUIPA's clear command, the Eleventh Circuit vacated that order and denied Smith *all* relief through an exception of its own invention. According to the Eleventh Circuit, when analyzing whether the government has shown that its policy is the least restrictive way to further a compelling interest, the only comparisons that matter are to "[the plaintiff's] proposed alternatives." Pet. App. 12a (quotation and emphasis omitted). Even if the record demonstrates that there *is* a less restrictive option available, the Eleventh Circuit said that a court must ignore that alternative unless the plaintiff specifically identified it himself. And because Smith's "final request for relief" was to fully vindicate his religious needs by growing an untrimmed beard, the Eleventh Circuit ruled that a court could not ask whether *any other* remedy might be less restrictive than the half-inch policy. Pet. App. 14 n.6. Thus, even though Georgia cannot justify any prohibition of beards shorter than three inches, it may continue to enforce its overly restrictive half-inch limitation against Smith.

This is not remotely how the least-restrictive-means test works and it defies RLUIPA's command that relief be awarded "*unless the government demonstrates* that imposition of the [challenged policy]" is "the least restrictive means of furthering" a compelling interest. 42 U.S.C. § 2000cc-1(a) (emphasis added). Even the Eleventh Circuit admitted that its new limitation upon RLUIPA "is not a rule that appears" in the statute, suggesting instead that this Court had manufactured it. Pet. App. 13 n.4.

Of course, this Court has imposed no such restriction. Its cases and the prevailing approaches in other circuits confirm what the statute suggests: the government bears the burden of refuting less-restrictive alternatives, whether they be proposed by the plaintiff or apparent on the face of the record. *See infra* Parts I–II. Indeed, this Court flatly rejected the Eleventh Circuit's approach less than three months ago, explaining that, "[o]nce a plaintiff has made out his initial case under RLUIPA, it is the government that must show its policy" is narrowly tailored—including by "rebut[ting] . . . obvious alternatives." *Ramirez v. Collier*, 142 S. Ct. 1264, 1281 (2022). Requiring the plaintiff to propose alternatives, as the Eleventh Circuit did, "gets things backward." *Id.*

The Eleventh Circuit's rule not only gets least-restrictive-means analysis backward, but it leads to absurd and inequitable results for religious-exercise claims. By barring courts from awarding partial relief under RLUIPA, the Eleventh Circuit strips courts of their inherent authority to craft appropriate remedies

in cases where a plaintiff might prove some but not all of his claim. This denial of partial relief will uniquely force RLUIPA plaintiffs to negotiate against themselves. Plaintiffs like Smith will have to choose between attempting to vindicate the full measure of their religious needs or undercutting that effort by naming all restrictions that would be less offensive than the government's current policy, even if those alternatives would still significantly curtail religious exercise. And this is especially absurd in cases, like here, where the partial relief is simply a less-permissive subset of the full relief the plaintiff seeks. Must Smith specify every beard length he would prefer to half an inch in the event that he cannot win a fully untrimmed beard?

Lester Smith's religious beliefs require him to grow an untrimmed beard and he should be given that right, like prisoners in so many other states. But if he is unable to win full relief, RLUIPA does not prohibit him from winning anything that falls short of total victory simply because he tried. Nor does it allow the government to enforce against him a policy that has been found to violate RLUIPA's demands merely because a court concludes that he sought a remedy that is too broad.

This Court should grant review to make clear that it meant what it said in *Holt*: if "a less restrictive means is available for the Government to achieve its goals, the Government *must use it*," whether it was the plaintiff's proposal or not. *Holt*, 574 U.S. at 365 (quotation omitted) (emphasis added).

## ARGUMENT

### I. The opinion below defies RLUIPA, which demands relief when the State fails to justify a substantial burden on religious exercise.

The Eleventh Circuit's decision to let the prison enforce a half-inch beard restriction that the prison failed to justify cannot be squared with the most basic text or design of RLUIPA.

As this Court has recognized, RLUIPA gives "expansive protection for religious liberty." *Holt*, 574 U.S. at 358. Under the statute, once a prisoner has shown that a particular policy substantially burdens his religious exercise, that policy may not be imposed against him "*unless the government demonstrates* that imposition of the [policy]" is both "in furtherance of a compelling governmental interest" and "the least restrictive means of furthering" that interest. 42 U.S.C. § 2000cc-1(a) (emphasis added). If the government fails to do so, the prisoner is entitled to "appropriate relief." *Id.* § 2000cc-2(a).

These basic principles lead to the straightforward conclusion that Lester Smith is entitled to relief from the half-inch beard policy here. The parties do not dispute that the policy requiring Smith to keep his beard no longer than half of an inch substantially burdens his religious exercise. Pet. App. 10. The district court found that the prison failed to show that this policy is the least restrictive means to further its interest in inmate health and security because such a rationale could not sustain any ban on beards shorter

than three inches (the same length of hair allowed on the top of a prisoner's head).[2] *See id.* at 6–9, 22–23. That should end any dispute about whether the prison can, consistent with RLUIPA, continue to force Smith to trim his beard to half of an inch—it cannot. Instead, as the district court awarded, it means that Smith must *at least* be allowed to grow a beard up to three inches long.[3]

The Eleventh Circuit denied Smith that relief by erecting a new hurdle for RLUIPA claimants that the Circuit acknowledged is nowhere to be found in the statute itself. According to the Eleventh Circuit, the government must adhere to a less-restrictive method of achieving its interests only if the plaintiff explicitly identified that alternative himself. *Id.* at 13–14. The lower court acknowledged that RLUIPA contains no such caveat but asserted that this Court carved one into the statute in *Holt v. Hobbs*. *Id.* at 13 n.4. Under this strained theory, the Eleventh Circuit concluded that, because Smith asked for an untrimmed beard in his "final request for relief," he could never be awarded

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[2] Specifically, the prison argued that beards present hygiene concerns, that they can be used to conceal contraband, that longer beards can be grabbed during inmate fights, and that, in the event of an escape, inmates with beards could obscure their identities by shaving. *See* Pet. App. 6–9. The district court found that these concerns were "underinclusive" and did not justify a half-inch limitation for beards while the prison allowed hair up to three-inches long on the head, which presents the same risks. *See id.* For its part, the Eleventh Circuit did not reevaluate these findings. *See id.* at 22 n.10.

[3] Of course, as Smith demonstrates, he is entitled to more than that. *See generally* Pet.

anything less. *See id.* at 14 n.6. Thus, the State has been allowed to enforce a half-inch beard limitation against Smith even though it has offered no rationale that can justify that substantial burden on his free-exercise rights.

That is not how RLUIPA or least-restrictive-means analysis works—and it is not what this Court said in *Holt* or anywhere else. This Court has repeatedly made clear that "the least-restrictive-means standard is exceptionally demanding, and it requires *the government to show* that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion." *Holt*, 574 U.S. at 364 (quotation & alterations omitted) (emphasis added); *accord Tandon v. Newsom*, 141 S. Ct. 1294, 1296–97 (2021). If "a less restrictive means is available for the Government to achieve its goals, the Government *must use it*." *Holt*, 574 U.S. at 365 (quotation omitted) (emphasis added). The government may not adhere to a challenged policy where there is "an alternative that achieves all of the Government's aims while providing greater respect for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 688 (2014); *see also Holt*, 574 U.S. at 369 ("Courts must hold prisons to their statutory burden, and they must not assume a plausible, less restrictive alternative would be ineffective." (quotation

omitted)).[4] As this Court observed in *Holt*, one consequence of the government's burden is that it must refute any less-restrictive alternatives that are proposed by the plaintiff. *Holt*, 574 U.S. at 367. But *Holt* did not suggest that this is *all* the government must do to show that its policy is the least-restrictive means available.[5] And it certainly did not suggest that a federal court must turn a blind eye to an obvious less-restrictive alternative simply because the plaintiff did not explicitly identify it himself or hoped to win even more.

Indeed, less than three months ago, this Court flatly rejected the Eleventh Circuit's approach. In *Ramirez v. Collier*, the Court held that Texas had failed to show that prohibiting a pastor from speaking or touching a prisoner in the execution chamber was

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[4] *Hobby Lobby* is a RFRA case but "RLUIPA . . . allows prisoners to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Holt*, 574 U.S. at 358 (quotation omitted).

[5] The lower court's gross misreading of *Holt* rests on a single phrase from the opinion, quoted in part and turned on its head. Pet. App. 12. The supposedly critical sentence from *Holt* reads: "In addition to its *failure to prove that petitioner's proposed alternatives would not sufficiently serve its security interests*, the Department has not provided an adequate response to two additional arguments that implicate the RLUIPA analysis." *Holt*, 574 U.S. at 367 (emphasis added). In other words, the Court faulted the government for failing to refute less-restrictive alternatives that the plaintiff had proposed, an obligation no one disputes. But it does not follow that the government is free to ignore all other apparent alternatives simply because the plaintiff didn't propose them.

the least-restrictive way to satisfy the State's interest in promoting security and preventing suffering during an execution. 142 S. Ct. at 1281. The Court suggested many less-restrictive alternatives to Texas's total ban and faulted the State for failing to refute them. *Id.* In response, Texas argued exactly what the Eleventh Circuit held here: that it was not required to address these potential alternatives because it was the prisoner's "burden to identify any less restrictive means." *Id.* (quotation omitted). This Court rejected that argument, explaining that it "gets things backward." *Id.* Rather, "[o]nce a plaintiff has made out his initial case under RLUIPA, it is the government that must show its policy" is narrowly tailored—including by "rebut[ting] . . . obvious alternatives." *Id.* If for no other reason, review is needed here to resolve this direct conflict with *Ramirez*.

To be sure, a court need not attempt to conjure up every conceivable way that a policy might be less restrictive. *See, e.g.*, *United States v. Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011) (requiring the inquiry to be "tether[ed] . . . to the evidence in the record"). But here the Eleventh Circuit did the opposite: it demanded that the district court ignore a *known and obvious* less-restrictive alternative merely because Smith did not pursue a compromise position in his litigation. No amount of imagination was needed to consider the possibility of a three-inch beard. *See* Pet. App. 30 (Martin, J., dissenting) ("[T]he parties were aware that the relief of a three-inch beard was being considered, presented testimony about it, and the

District Court was well within its authority to grant it."). That is simply a less-permissive subset of the full relief that Smith sought, and three inches was tied specifically to the length of hair already allowed on a prisoner's head. And Smith testified that, while not fully satisfactory, a fist-length beard (which the district court found to be approximately three inches) would be religiously preferable to the current half-inch limitation. Pet. App. 49, 70. The district court was correct to require the government "to rebut these obvious alternatives." *Ramirez*, 142 S. Ct. at 1281. Indeed, this Court has often faulted governments for failing to refute less-restrictive options that were apparent in the record. *See, e.g.*, *id.*; *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (listing possible "less restrictive rules that could be adopted to minimize the risk" of COVID-19 spread); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 718 (2021) (statement of Gorsuch, J.) (same); *see also Hobby Lobby*, 573 U.S. at 767 n.27 (Ginsburg, J., dissenting) (criticizing majority opinion for awarding relief "on the ground that [the government] could make an accommodation never suggested in the parties' presentations").

The Eleventh Circuit's opinion renders meaningless RLUIPA's demand that prisons conduct their affairs in the way *least* restrictive to religious exercise. This is not a case where there is any doubt over whether a less restrictive approach might allow the government to satisfy its interests. This is a case where the *record demonstrates* and the *court found* that such an alternative exists. RLUIPA dictates that the government "must use" that alternative. *Holt*, 574

U.S. at 365. Review is needed to correct the Eleventh Circuit's drastic error.

## II. The Eleventh Circuit's rule contradicts the approach of other federal circuits.

The Eleventh Circuit's dilution of least-restrictive-means analysis not only contradicts a litany of this Court's precedents but also splits with the approach in other federal circuits.

Several circuits have made clear that least-restrictive means analysis requires the government to "provide actual evidence, not just conjecture, demonstrating that the [policy] in question is, in fact, the least restrictive means." *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 476 (5th Cir. 2014) (emphasis omitted). Indeed, many circuits require the government to show that it actually considered and rejected less-restrictive alternatives before settling on the challenged policy. *See, e.g.*, *Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33, 40–41 (1st Cir. 2007); *Washington v. Klem*, 497 F.3d 272, 284 (3d Cir. 2007); *Couch v. Jabe*, 679 F.3d 197, 203 (4th Cir. 2012); *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005). In the words of the First Circuit, "to meet the least restrictive means test, prison administrators generally ought to explore at least some alternatives, and their rejection should generally be accompanied by some measure of explanation." *Spratt*, 482 F.3d at 41 n.11; *see also Faver v. Clarke*, 24 F.4th 954, 960 (4th Cir. 2022) ("Because 'least restrictive means' is a relative term that implies a comparison with other means, the government must acknowledge and give some

consideration to less restrictive alternatives to determine whether an alternative might be equally as successful." (quotation and emphasis omitted)).

Even before *Holt* and *Ramirez*, the Third Circuit criticized a district court for doing exactly what the Eleventh Circuit did here: shifting this burden to the plaintiff to show "there were other less restrictive means available" for a prison to satisfy its interests in limiting prisoners' storage of religious books in their cells. *Klem*, 497 F.3d at 285. Although the prisoner had "not suggested[] any way in which the Defendants can better keep inmates' cells safe," the court faulted the government for failing to meet *its* "burden to prove that its policy is the least restrictive means" in the face of other options the court suggested. *Id.* (quotation omitted). The Ninth Circuit has similarly observed that "figuring out that there are a number of obvious alternatives is the first step in any 'narrow tailoring' analysis." *Kuba v. 1-A Agr. Ass'n*, 387 F.3d 850, 862 n.12 (9th Cir. 2004). Thus, to satisfy the least-restrictive-means test, "*[a]t a minimum*, the government must address those alternatives of which it has become aware during the course of . . . litigation." *United States v. Christie*, 825 F.3d 1048, 1061 (9th Cir. 2016) (emphasis added); *see also Faver*, 24 F.4th at 960 (government must "demonstrate that it considered and rejected the

alternatives brought to the government's attention" (quotation omitted)).[6]

The Eleventh Circuit relied heavily on the fact that some circuits have warned that least-restrictive-means analysis is "not an open-ended invitation to the judicial imagination," *Wilgus*, 638 F.3d at 1289, and that it "would be a herculean burden to require prison administrators to refute every conceivable option," *Hamilton v. Schriro*, 74 F.3d 1545, 1556 (8th Cir. 1996). But while these courts have cautioned that there must be some limits on the inquiry, they have not reduced the government's burden to simply "refut[ing] the alternative schemes offered by the challenger," as the Eleventh Circuit suggests. *Wilgus*, 638 F.3d at 1289. Rather, even under this approach, the government must still "support its choice of regulation"—and the court must "ensure that the record supports the conclusion that the government's

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[6] Guided by this Court, lower courts regularly consider obvious alternatives even when conducting tailoring analyses that are *less* demanding than the least-restrictive-means standard. *See, e.g.*, *Mo. Broadcasters Ass'n v. Schmitt*, 946 F.3d 453, 461–62 (8th Cir. 2020) (presence of "obvious less-burdensome alternatives to the restriction on commercial speech . . . is certainly a relevant consideration in determining whether the fit between ends and means is reasonable" (quoting *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13 (1993))); *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 523 (6th Cir. 2012) (same); *Kemp v. Liebel*, 877 F.3d 346, 352 n.5 (7th Cir. 2017) ("[A]lthough the regulation need not satisfy a least restrictive alternative test, the existence of obvious alternatives may be evidence that the regulation is not reasonable." (quotation omitted) (citing *Turner v. Safley*, 482 U.S. 78, 89–90 (1987))); *Shakur v. Selsky*, 391 F.3d 106, 114 (2d Cir. 2004) (same).

chosen method of regulation is least restrictive." *Id.*; *see also Hamilton*, 74 F.3d at 1556 ("Although RFRA places the burden of production and persuasion on the prison officials [to show least-restrictive means], *once the government provides this evidence*, the prisoner must demonstrate what, if any, less restrictive means *remain unexplored*." (emphasis added)). Here, the district court effectively found that Georgia failed this test and that its proffered rationales did not actually justify its choice to limit beards to anything shorter than three inches. Where a less-restrictive alternative is so clear in the record, even these cases do not hold that a court should simply ignore it.

The Eleventh Circuit's opposite rule *barring* courts from considering apparent and obvious alternatives supported in the record is out of step with these prevailing approaches to least-restrictive-means analysis. Review by this Court is needed to correct the Eleventh Circuit's errant rule and to make clear for all courts the nature of the government's obligation under RLUIPA to justify the burden it has imposed.

## III. The Eleventh Circuit's rule forces religious believers to either accept an all-or-nothing approach to RLUIPA relief or negotiate against themselves.

The Eleventh Circuit's mistaken approach results in a bizarre remedial rule: a court may never award partial relief on a RLUIPA claim unless the plaintiff explicitly requests it. That rule disregards the text of RLUIPA and basic principles of federal remedies. And it forces religious claimants into the uniquely precarious position of either seeking the full relief that

their religious exercise demands or undercutting their claims by specifying every partial compromise they might be willing to accept if complete relief cannot be won.

Federal courts do not require plaintiffs in other contexts to negotiate against themselves in this way, and nothing in RLUIPA suggests it should be done here. RLUIPA expressly entitles claimants to "obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). As this Court has explained, the phrase "appropriate relief" is "open-ended" and broad. *Tanzin v. Tanvir*, 141 S. Ct. 486, 491–92 (2020) (interpreting "identical language" under RFRA). And federal courts generally retain wide latitude to fashion remedies for prevailing plaintiffs. Indeed, courts are expected to "grant the relief to which each party is entitled, *even if the party has not demanded that relief* in its pleadings." Fed. R. Civ. P. 54(c) (emphasis added). In the normal course, "[t]he question is not whether plaintiff has asked for the proper remedy but whether plaintiff is entitled to any remedy." Charles Wright et al., 10 Fed. Prac. & Proc. Civ. § 2664 (4th ed. 2022); *see also Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 65 (1978) ("[A] federal court should not dismiss a meritorious constitutional claim because the complaint seeks one remedy rather than another plainly appropriate one."). District courts thus routinely award relief that is less than the full amount sought by the plaintiff.

Accordingly, federal courts do not expect plaintiffs to undercut their demands by suggesting all the lesser remedies that would be better than nothing. But now the Eleventh Circuit requires exactly that of

individuals seeking to vindicate their fundamental religious freedoms. If a prisoner is unsure whether he will win full relief on his RLUIPA claim, the upshot of the Eleventh Circuit's opinion is a clear: suggest a possible compromise or you may get nothing at all. Religious claimants must essentially negotiate against themselves by naming all restrictions that would be less odious than the government's current policy, even if those restrictions would still substantially curtail their religious exercise.

Requiring religious claimants to come forward with compromise options will make it significantly more difficult for them to vindicate the full measure of their rights. Such suggestions of partial relief could easily be seen to as a sign that a fuller remedy is unnecessary, harming their chances of winning complete relief from a court and diminishing their bargaining power in settlement. This is especially troublesome to free-exercise claims, where religious practices may not be well understood by a court. Making a believer suggest ways that his religious exercise might be partially improved undermines his ability to convince a court of what his religion fully demands. *See, e.g.*, *Oklevueha Native Am. Church of Haw., Inc. v. Lynch*, 828 F.3d 1012, 1017 (9th Cir. 2016) ("[Plaintiffs] have produced no evidence that denying them cannabis [substantially burdens their religious exercise], since they have stated . . . that many other substances . . . are capable of serving the exact same religious function . . . ."); *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1213 (10th Cir. 1999) ("[T]he fact that a spiritual exercise was only diminished rather than denied may factor into the

strength of the penological interests necessary to justify the infringement."); *Green v. Tudor*, 685 F. Supp. 2d 678, 703 (W.D. Mich. 2010) (prison policies did not substantially burden religious exercise because, among other things, "Plaintiff possesses alternative means of practicing his Muslim faith").[7] In no normal case would a court require the plaintiff to hamstring his own claim in this way.

The Eleventh Circuit's approach yields especially strange results in cases like this one, where the partial accommodation is simply a less permissive subset of the full relief the plaintiff seeks. Smith's religious exercise demands that he never trim his beard, so he has sought permission to grow a beard without limitation on length. Smith did not ask for only a three-inch beard because that would not fulfill his religious needs. But he did testify that such a remedy would at least be *less* burdensome to his religious practices than a half-inch beard. *See* Pet. App. 49, 70. Yet, in the Eleventh Circuit's view, he is stuck winning all or nothing because he did not delineate every beard length he would prefer to half an inch. How specific must he be? And what is gained by doing so? If it is offensive to be forced to cut one's beard, surely it is no surprise to learn that is *less* offensive to be forced to

[7] This may be a problem especially for individuals with minority religious beliefs, where courts may be less aware and more skeptical of what actions those beliefs demand.

cut it less.[8] If a prisoner seeks permission to pray in a particular way every day, must he specify that, barring full relief, he would prefer praying twice a week to none? And what in RLUIPA imposes that demand?

These questions are left unanswered by the Eleventh Circuit because there is no answer. Smith's religious exercise demands more than he was awarded by the district court, and he continues in his effort to vindicate those full demands. But if Smith does not fully succeed in that effort, he is surely entitled to whatever partial relief that a court finds *is* due. The Eleventh Circuit's denial of that relief, as a matter of law, puts religious claimants in a uniquely precarious position and will severely impair courts' ability to remedy burdens on religious freedom in the way that RLUIPA and RFRA demand.

## CONCLUSION

For the foregoing reasons, *amicus curiae* urges the Court to grant certiorari and reverse.

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[8] Smith explained that the offense to his religious beliefs is reduced not simply because he will be forced to cut his beard fewer times as it grows longer, but indeed because a fist-length beard helps satisfy his religious exercise in a way that shorter beards do not. Pet. App. 49, 70. In any event, this is not a case where there is any doubt that the partial remedy would provide at least *some* improvement to the plaintiff's religious exercise. Nothing in RLUIPA prevents a court from awarding that partial relief, even if it finds that the full measure of relief requested is unjustified. *Cf. Yellowbear v. Lampert*, 741 F.3d 48, 64 (10th Cir. 2014) (Gorsuch, J.) (discussing how to address "questions of degree" in RLUIPA analysis).

Respectfully submitted,

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