No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR,

Petitioner,

v.

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

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The petition for writ of certiorari asks "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]." Pet. i. As the petition recognizes, the answer to that question almost entirely depends on whether Congress constitutionally established (or could establish) such a damages claim through the Spending Clause of the United States Constitution. Although that question is fairly subsumed in Petitioner's question presented, out of an abundance of caution the State proposes the following question presented:

> Whether, consistent with the Spending Clause of the United States Constitution, 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

BRIEF IN OPPOSITION

The allegations in Petitioner's complaint are antithetical to religious freedom and fair treatment of state prisoners. Without equivocation, the State condemns them in the strongest possible terms. Although this case remains at the pleading stage, the State has amended its prison grooming policy to ensure that nothing like Petitioner's alleged experience can occur.

The question Petitioner presents, however, has nothing to do with the merits of his allegations. Instead, he asks whether the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) permits money damages against a state official sued in his individual capacity. He emphasizes that in *Tanzin v. Tanvir*, 592 U.S. 43 (2020), this Court held that the Religious Freedom Restoration Act of 1993 (RFRA) permits claims for money damages against federal officials in their individual capacities. And he concludes that, because RLUIPA bears similarities to RFRA, the Court should extend *Tanzin*'s holding to RLUIPA.

This issue is not cert-worthy. For one thing, there is no circuit split on the question. As Petitioner admits, "the unanimous rule in the circuits" is that money damages for individual-capacity claims under RLUIPA are unavailable. Pet. 5. The most recent decision came mere months ago, with Judge Sullivan writing for a unanimous and unequivocal Second Circuit panel and rejecting a similar *Tanzin* argument: "RLUIPA does not permit individual-capacity damages against state officers." *Tripathy v. McKoy*, 103 F.4th 106, 115 (2d Cir. 2024). For another thing, this

question is not exceedingly important. Just ask Congress, which has remained silent for nearly two decades during the nationwide bar on money damages for individual-capacity claims. Petitioner also suggests that this is a damages-or-nothing issue, but many States—including Louisiana—have state-law versions of RFRA and RLUIPA, which can fill any perceived gaps left open by the federal RLUIPA. Petitioner did not invoke Louisiana's law.

The Fifth Circuit's decision below also is right for at least two reasons. First, as Chief Judge Sutton has explained, RLUIPA does not unambiguously permit money damages for individual-capacity claims, as required by this Court's Spending Clause precedents. Petitioner protests that *Tanzin* now eliminates any ambiguity. But the RFRA issue in *Tanzin* was not subject to a clear-statement rule; the RLUIPA issue in this Spending Clause case is. And as this Court has said, the key statutory term—"appropriate relief"—is "open-ended and ambiguous." *Sossamon v. Texas*, 563 U.S. 277, 286 (2011). Second, as Judge Sullivan explained (and as numerous courts of appeals have emphasized), Congress cannot use its Spending Clause power to directly impose money-damages liability on state officials in their personal capacities who are not recipients of the federal funds. That is because the Spending Clause functions similar to a contract: The federal government extends money in exchange for a recipient State's promise. That recipient State is bound by the contract's unambiguous conditions, no doubt—but the Court has never held that Congress also may bind nonparties to the same conditions.

Finally, serious consequences would flow from Petitioner's view, if adopted. For example, the current staffing shortage in state prisons would only grow worse if current staff and potential job applicants learned that they would be personally liable for money damages. Moreover, there would be no principled way to limit a Spending Clause holding in this case to RLUIPA. It would necessarily cast doubt on other significant Spending Clause legislation, like Title IX, as to which numerous courts of appeals so far have rejected the idea of individual-capacity claims.

For all of these reasons, the Court should deny the petition.

STATEMENT OF THE CASE

A. Legal Background

1. The Spending Clause of the United States Constitution is a uniquely dangerous tool. It "grants Congress the power 'to pay the Debts and provide for the … general Welfare of the United States.'" *NFIB v. Sebelius*, 567 U.S. 519, 576 (2012) (plurality op.) (quoting U.S. Const. art. I, § 8, cl. 1). This Court has "long recognized that Congress may use this power to grant federal funds to the States, and may condition such a grant upon the States' 'taking certain actions that Congress could not require them to take.'" *Id.* (quoting *College Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686 (1999)). In that way, the Spending Clause permits Congress to accomplish objectives that Congress otherwise could not constitutionally accomplish. *See id.* (noting that the Spending Clause authorizes Congress to "encourage a

State to regulate in a particular way, [and] influenc[e] a State's policy choices" (citation omitted)).

Because of the dangers inherent in that power, the Court's "cases have recognized limits on Congress's power … to secure state compliance with federal objectives." *Id.* Specifically, the Court has "repeatedly characterized … Spending Clause legislation as 'much in the nature of a *contract*.'" *Id.* at 576–77 (citation omitted); *see also Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999) ("When Congress acts pursuant to its spending power, it generates legislation 'much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions.'"). Under that characterization, "[t]he legitimacy of Congress's exercise of the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the contract." *NFIB*, 567 U.S. at 577 (plurality op.) (internal quotation marks omitted). "Respecting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *Id.*

In this vein, clarity—specifically, clarity regarding Congress's conditions—is key. *See Haight v. Thompson*, 763 F.3d 554, 568 (6th Cir. 2014) (Sutton, C.J.) ("Clarity is demanded *whenever* Congress legislates through the spending power …."); *see also South Dakota v. Dole*, 483 U.S. 203 (1987) ("if Congress desires to condition the States' receipt of federal funds, it must do so unambiguously" (cleaned up)).

2. As this Court has recounted, RFRA and RLUIPA stem from congressional "attempt[s] to accord heightened statutory protection to religious exercise in the

wake of this Court's decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990)." *Sossamon*, 563 U.S. at 281.

RFRA was Congress's first attempt, but it failed. Indeed, in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Court held that RFRA was unconstitutional as applied to state and local governments because it exceeded Congress's power under Section 5 of the Fourteenth Amendment.

So, Congress went back to the drawing board. It next "enact[ed] RLUIPA pursuant to its Spending Clause and Commerce Clause authority." *Sossamon*, 563 U.S. at 281.[1] "RLUIPA borrows important elements from RFRA—which continues to apply to the Federal Government—but RLUIPA is less sweeping in scope." *Id.* In particular, RLUIPA targets only land-use regulation and the religious exercise of prisoners. *Id.* Like RFRA, RLUIPA also generally prohibits recipient States from imposing a substantial burden on religious exercise unless the government satisfies strict scrutiny. *Id.* And like RFRA, RLUIPA provides that "[a] person may assert a violation of [RLUIPA] as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a).

3. Since then, this Court has issued two important decisions relevant here. *First*, in *Sossamon*, the Court held that "the States, by accepting federal funds, [did not] consent to waive their sovereign immunity to

[1] As in *Sossamon*, "[n]o party contends that the Commerce Clause permitted Congress to address the alleged burden on religious exercise at issue in this case." 563 U.S. at 282 n.1.

suits for money damages under [RLUIPA]." 563 U.S. at 280. In reaching that conclusion, the Court emphasized that "contracts with a sovereign are unique" in that "[t]hey do not traditionally confer a right of action for damages to enforce compliance." *Id.* at 290. The Court also characterized the statutory term "appropriate relief" as "open-ended," "ambiguous," and "inherently context dependent." *Id.* at 286. And the Court held that the term, in the sovereign-immunity context, did not unambiguously waive sovereign immunity by permitting private suits for damages against States. *Id.* at 285–86.

Second, the Court recently held in *Tanzin* that the term "appropriate relief" "includes claims for money damages against Government officials in their individual capacities" under RFRA. 592 U.S. at 45. The Court reiterated *Sossamon*'s statement that "this language is 'open-ended' on its face, [and] what relief is 'appropriate' is 'inherently context dependent.'" *Id.* at 49 (quotation marks omitted). The Court then conducted a historical analysis to "conclude that RFRA's express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities." *Id.* at 52.

B. Procedural Background

1. According to his allegations (taken as true for now), Petitioner Damon Landor is a devout Rastafarian who took the Nazarite Vow to refrain from cutting his hair. Pet. App. 2a. He served a prison sentence at a number of Louisiana facilities, most of which accommodated him and did not require him to cut his hair to comply with the general grooming policies. *Id.*

Petitioner was ultimately transferred to a facility, however, where he alleges those accommodations ceased. He alleges that he explained to the intake guard that he was a Rastafarian. *Id.* He alleges that he gave the guard a copy of a Fifth Circuit RLUIPA decision protecting his hair. *Id.* He alleges that the guard threw away the papers and called the warden, who allegedly demanded corroboration of Petitioner's beliefs. *Id.* Finally, he alleges that two guards took him into another room, handcuffed him to a chair, held him down, and shaved his head. Pet. App. 3a.

2. Upon his release, Petitioner filed this lawsuit, seeking damages and asserting (as relevant here) RLUIPA claims against the Louisiana Department of Corrections and the prison, as well as James LeBlanc (the Secretary of Louisiana's Department of Corrections and Public Safety), Warden Myers, and the unnamed intake guards in their individual capacities. Pet. App. 3a. Petitioner did not sue under Louisiana's state-law equivalent of RFRA and RLUIPA.

Relying on Fifth Circuit precedent, the district court granted Respondents' motion to dismiss and held that RLUIPA does not provide for money damages against state officials in their personal capacities. *Id.* at 16a. The court also dismissed Petitioner's claims for injunctive relief as moot. *Id.*

The Fifth Circuit affirmed based on prior precedent, which "plainly held that RLUIPA does not permit suits against officers in their individual capacities, which, in turn, means claimants cannot recover monetary damages." Pet. App. 2a–13a (discussing *Sossamon v. Lone Star State of Texas*, 560 F.3d 316 (5th Cir.

2009), *aff'd sub nom. Sossamon*, 563 U.S. 277). Applying that precedent, the Fifth Circuit panel emphasized that Congress enacted RLUIPA pursuant to the Spending Clause, and thus it "operates like a contract" and only creates liability for "the grant recipient—the State." Pet. App. 6a (citation omitted). So "recognizing [a damages remedy against non-recipient officials in their personal capacities] would run afoul of the Spending Clause." *Id.* at 11a.

The Fifth Circuit thereafter denied Petitioner's petition for rehearing en banc. *Id.* at 21a (eleven judges voting against rehearing and six judges voting for rehearing). Judge Clement, the author of the original panel opinion, concurred in the denial of rehearing and was joined by eight other judges. *Id.* at 23a. She recognized that court could have overturned its own precedent, but she emphasized that "doing so would have required us to determine that the Spending Clause permits Congress to impose liability on the non-recipients of federal funds, not just the recipients (*i.e.*, the states) themselves when the Supreme Court … has never stretched the analogy that far." *Id.*

Judge Oldham, joined by five other judges, dissented. Pet. App. 25a. He believed the panel opinion was incorrect, as it could "not be squared with *Tanzin*" since RFRA and RLUIPA bear identical language and the statutes are "routinely interpret[ed]" "in parallel." *Id.* at 25a, 27a–34a. According to Judge Oldham, the Spending Clause does not prohibit regulating others beyond the recipient of the funds, and RLUIPA's "appropriate relief" provision is unambiguous after *Tanzin*. *Id.* at 30a–31a. Thus, *Tanzin* controls the outcome

in this case, and "the Spending Clause does nothing to change that." *Id.* at 32a.

Judge Ho, joined by one other judge, also dissented. *Id.* at 35a–36a. In his view, *Tanzin* already distinguished *Sossamon* on sovereign-immunity grounds, leaving it inapposite here—a "suit against individuals, who do not enjoy sovereign immunity." *Id.* at 36a.

REASONS FOR DENYING THE PETITION

The Court should deny the petition. It meets none of the Court's ordinary certiorari criteria, not least because virtually every federal court of appeals has rejected Petitioner's argument. The Fifth Circuit's decision below also is correct for numerous reasons, including those adopted by Chief Judge Sutton (in the Sixth Circuit) and Judge Sullivan (in the Second Circuit). Finally, Petitioner's view, if accepted, would lead to numerous unintended consequences, which underscores that denial is proper. Accordingly, the Court should deny the petition.

I. THE QUESTION PRESENTED DOES NOT MEET THE COURT'S CERTIORARI CRITERIA.

A. Virtually Every Court of Appeals Rejects Petitioner's View.

Start with Petitioner's acknowledgment that "the unanimous rule in the circuits is that RLUIPA does not provide an individual-damages remedy." Pet. 5; *see also id.* at 12 ("the unanimous view of the circuits is that RLUIPA does *not* provide that [] remedy").

Petitioner is exactly right. The Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits all reject his view. *See id.* at 23–

24 (collecting cases). For its part, the First Circuit has kept the issue open. *See Kuperman v. Wrenn*, 645 F.3d 69, 79 (1st Cir. 2011) ("We [] reserve ruling on whether personal-capacity claims are available under RLUIPA ...."). And for obvious jurisdictional reasons, neither the D.C. Circuit nor the Federal Circuit appears to have addressed the issue.

Petitioner thus faces a wall of precedent from coast to coast foreclosing his view that RLUIPA permits money damages against state officials sued in their individual capacities. And—as Petitioner agrees, Pet. 24—this wall remains unbreached even after *Tanzin*.

In the proceedings below, for example, the Fifth Circuit panel heard Petitioner's "insist[ence] that because RLUIPA's and RFRA's texts are almost the same, we should read RLUIPA the same way the Supreme Court read RFRA" in *Tanzin*. Pet. 10a. But that panel rejected that argument because "Section 5 of the Fourteenth Amendment [which undergirds RFRA] and the Spending Clause [which undergirds RLUIPA] do not empower Congress to the same degree, and *Tanzin* does nothing to fill that gap." *Id.* at 11a. "[R]ecognizing [a damage remedy for individual-capacity claims under RLUIPA] would run afoul of the Spending Clause." *Id.* Moreover, "*Tanzin* doesn't change that—it addresses a different law that was enacted under a separate Congressional power with 'concerns not relevant to [RLUIPA].'" *Id.*

After Petitioner filed his petition in this Court, the Second Circuit issued yet another rejection of his claim—notable in part because it applies the underlying Second Circuit decision this Court affirmed in

Tanzin. In *Tripathy*, the plaintiff (represented by Petitioner's counsel here) made the same *Tanzin* arguments, and the Second Circuit squarely rejected them. Specifically, the Second Circuit emphasized "the simple reason" for distinguishing between RFRA and RLUIPA: "RFRA and RLUIPA were enacted pursuant to different constitutional provisions." 103 F.4th at 114. Accordingly, the Second Circuit found "no [] conflict between permitting individual damages under RFRA (as in *Tanzin*) on the one hand, and barring them under RLUIPA … on the other." *Id.* As the Second Circuit emphasized, "we addressed this very issue in *Tanvir v. Tanzin*—our panel decision that the Supreme Court affirmed in *Tanzin*." *Id.*

In sum, the Second Circuit got the money-damages question right in *Tanzin* for both RFRA and RLUIPA—and as in *Tanzin*, virtually every federal court of appeals agrees on these points.

B. The Issue Is Not Exceptionally Important.

Petitioner tries to downplay this wall of precedent by insisting that the question presented is nonetheless important in its own right. To that end, his petition frequently suggests that this is a "damages or nothing" situation (*e.g.*, Pet. 13) that warrants the Court's intervention.

At the outset, Petitioner's line of argument is backwards. Even if "nothing" (rather than damages) were available to Petitioner, that is not a reason to find a damages remedy, *cf. Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 410 (1971) (Harlan, J., concurring in the judgment); that

simply means that Congress could not, or did not, provide for money damages on individual-capacity claims under RLUIPA. More fundamentally, Petitioner's damages-or-nothing representation is misleading in ways that demonstrate the case is not sufficiently important for this Court's review.

1. To start, RLUIPA does not send an "empty" or "hollow" promise under the unanimous courts of appeals' rejection of Petitioner's view. Pet. 3, 13. It permits declaratory and injunctive relief, which is untouched by these decisions. *See, e.g.*, *Ramirez v. Collier*, 595 U.S. 411, 437 (2022) (ordering preliminary relief on RLUIPA claim for injunction). RLUIPA also plainly permits the United States itself to "bring an action for injunctive or declaratory relief to enforce compliance with this chapter," which is untouched by these decisions. 42 U.S.C. § 2000cc-2(f). The term "appropriate relief" in RLUIPA is thus not "empty" or "hollow" in any sense of those terms.

Congress's silence for the better part of two decades, moreover, is striking. If Congress were unhappy with the longstanding, uniform rejection of money damages for individual-capacity RLUIPA claims, nothing prevented Congress from amending RLUIPA "to authorize *official*-capacity damages against officers even if it is the state that accepts the funds, since in such cases the suit is effectively against the state itself." *Tripathy*, 103 F.4th at 115 n.4. That Congress has not done so suggests that RLUIPA's promise—as the courts of appeals have interpreted it—has been effectuated precisely as Congress intended.

One more note about RLUIPA's effect: As Petitioner's Complaint alleges—and this litigation bears

out—RLUIPA has far-reaching impacts even beyond its formal remedies. For example, Petitioner alleges that he was previously held at LaSalle Correctional Center, where he filed a grievance claiming that LaSalle's grooming policies violated his rights under RLUIPA. Dist. Ct. ECF No. 1 at 7, ¶ 30. LaSalle issued a response stating that, "even though LaSalle Correctional Center was not subject to RLUIPA given that it is a privately owned and operated prison, the facility would be amending its grooming standards so as to satisfy [Petitioner's] desired relief." *Id.* at 7–8, ¶ 30. In other words, the mere threat of RLUIPA liability resulted in an accommodation for Petitioner. And the same is true of this litigation: In response to Petitioner's allegations, the Louisiana Department of Corrections has amended its grooming policy to ensure that Petitioner's alleged experience cannot occur. RLUIPA is not meaningless.

2. The question presented is even less important in light of the numerous States that have adopted their own state-law versions of RFRA and RLUIPA that provide for money damages.[2] Louisiana is one such State.

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[2] For a few examples, *see* Ark. Code § 16-123-401, *et seq.* (Arkansas' Religious Freedom Restoration Act, which defines government to include a "person acting under color of state law or using any instrumentality of the state to enforce a law" and provides for "appropriate relief against a government, including … compensatory damages"); K.S.A. 60-5301, *et. seq.* (Kansas Preservation of Religious Freedom Act, which defines government to include "any person acting under color of law" and allows for a remedy of "actual damages"); Mont. Code § 27-33-101, *et. seq.* (Montana Religious Freedom Restoration Act, prohibiting state action,

Since 2010, Louisiana's Preservation of Religious Freedom Act has been the law in Louisiana. *See* La. R.S. § 13:5231, *et. seq*. The Act provides that the "Government shall not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability" unless the government demonstrates that the burden is: (1) "[i]n furtherance of a compelling governmental interest" and (2) "[t]he least restrictive means of furthering that compelling governmental interest." *Id.* § 13:5233. The term "Government" is broadly defined to include "[a]ny official or other person acting under color of law." *Id.* § 13:5234(6). Remedies for violations of the Act include injunctive relief and—notably—"[t]he actual damages, reasonable attorney fees, and costs." *Id.* § 13:5237(2).

The Act's damages remedy was available to Petitioner. Indeed, by emphasizing that the Act does not displace Louisiana's Corrections Administrative Remedy Procedure and Prison Litigation Reform Act, *id.* § 13:5240(C), the Louisiana Legislature made clear that prisoners may invoke the Act. So long as Petitioner complied with the Act's procedures, therefore, he could have sought damages under the Act. But he

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which includes actions by public officials, that substantially burdens the free exercise of religion, and defining "appropriate relief" as including compensatory damages); Okla. Stat. tit. 51, §§ 251 to 258 (Oklahoma Religious Freedom Act, defining governmental entity to include any "official or other person acting under color of state law" and allowing recovery of "declaratory relief or monetary damages"); Tenn. Code § 4-1-407 (allowing declaratory relief and monetary damages for violations of religious rights by the government, including any person acting under color of state law).

did not. Petitioner's "damages or nothing" refrain thus does not tell the whole story.

And that is true of virtually every prisoner in a State that has its own version of RLUIPA and allows money damages: If he believes the prison has abridged his religious freedom, RLUIPA does not present the only available remedy. That only further underscores that the availability of money damages for individual-capacity claims under RLUIPA necessarily is not a pressing issue in large parts of the country.

For all of these reasons, the question presented does not meet the Court's ordinary certiorari criteria, which warrants the denial of the petition.

II. THE FIFTH CIRCUIT'S DECISION IS CORRECT.

That the Fifth Circuit unquestionably reached the right result confirms that this Court's review is not necessary. At least two general points bear this out. *First*, as Chief Judge Sutton has reasoned, RLUIPA lacks the sort of clear notice required to establish damages for individual-capacity claims. And *second*, as Judge Sullivan recently reasoned, Congress cannot use its Spending Clause authority to directly subject non-recipients to money-damages liability in their individual capacities. Each point independently sustains the decision below—and at the least, they are mutually reinforcing reasons why the Court should deny the petition.

A. RLUIPA Does Not Provide Clear Notice Of Individual-Capacity Damages.

1. The first point is a simple one: By using the term "appropriate relief" in RLUIPA, Congress did not "unambiguously" provide for money damages on individual-capacity claims. *Haight*, 763 F.3d at 569 (quotation marks omitted). That is true for a number of reasons.

First, this Court emphasized in *Sossamon* that "contracts with a sovereign are unique" in that "[t]hey do not traditionally confer a right of action for damages to enforce compliance." 563 U.S. at 290. Moreover, the Court criticized the term "appropriate relief" as "open-ended," "ambiguous," and "inherently context dependent." *Id.* at 286.

Any fair interpretation of RLUIPA, therefore, must start from the premise that it would not "traditionally confer a right of action for damages." *Id.* at 290. A fair interpretation of RLUIPA, moreover, must accept that the "ambiguous" term "appropriate relief" also is fatally ambiguous *in the Spending Clause context—i.e.*, where Congress's words are subject to a "clear-statement rule," just as they were in *Sossamon*. *Haight*, 763 F.3d at 568.

Second, as Petitioner admits, virtually every federal court of appeals has held that RLUIPA does not provide for money damages on individual-capacity claims. *See supra* Section I.A. How, then, could RLUIPA be understood to *unambiguously* state the exact opposite?

Third, Petitioner's view would render the RLUIPA "contract" that Louisiana supposedly signed with the

federal government nonsensical. By his telling, Louisiana refused to waive its sovereign immunity for the State itself and for its officers in their official capacities (that's *Sossamon*). But, also by his telling, Louisiana at the same time opted—*sub silentio*—to foist all money-damages liability on its officers in their personal capacities, through the same statutory term ("appropriate relief") that is "open-ended" and "ambiguous." *Sossamon*, 563 U.S. at 286. That is an utterly bizarre contract, and there is no textual evidence—let alone a clear statement—showing that any State would have thought it was entering into such an oddly gerrymandered contract.

2. Petitioner's chief response is equally simple: This Court in *Tanzin* held that "appropriate relief" includes money damages on individual-capacity claims under RFRA, and so the same must be true for RLUIPA.

Respectfully, that misses the key distinction: This Court's RFRA analysis in *Tanzin* was not governed by a clear-statement rule. Nor was the Court in *Tanzin* required to start from the premise that "contracts with a sovereign are unique" because "[t]hey do not traditionally confer a right of action for damages to enforce compliance." *Sossamon*, 563 U.S. at 290. Nor was the Court required to place the "open-ended" and "ambiguous" term "appropriate relief" within the unique "context" of the Spending Clause. *Id.* at 286. Nor was the Court asked to adopt Petitioner's whiplash proposal: "appropriate relief" both is hopelessly ambiguous (*Sossamon*) and satisfies the Spending Clause clear-statement rule (Petitioner's view). On that score, Petitioner repeats (at 10, 17, 22) Judge Clement's

statement that this Court would have to "thread[] the needle" among these decisions—but if that type of needle-threading is required, then that is a dead giveaway that Congress did not unambiguously provide for money damages on individual-capacity claims under RLUIPA.

Recognizing the difficulty *Sossamon* poses for his position, Petitioner tries to distinguish that decision on sovereign-immunity grounds. Pet. 18. But Chief Judge Sutton and others have rejected that attempt because the same kind of clear-statement rule is in play here—in *Sossamon* that rule came from the sovereign-immunity issue, while here that rule comes from the Spending Clause analysis. *See Haight*, 763 F.3d at 568 ("Clarity is demanded *whenever* Congress legislates through the spending power, whether related to waivers of sovereign immunity or not."); *id.* at 569 ("Because the imperative of clarity applies in all of these settings and because *Sossamon* establishes that the phrase 'appropriate relief' does not clearly entitle a claimant to money damages, the claimants' request for money damages must fail."); *see also Sharp v. Johnson*, 669 F.3d 144, 155 (3d Cir. 2012) (assessing *Sossamon* and concluding that, "[s]imilarly here, it cannot be said that RLUIPA's 'appropriate relief' language unambiguously signaled Congress's intent to impose a condition of individual liability").

As numerous courts have recognized, Petitioner simply has no way around *Sossamon*—and that confirms that "the unanimous rule in the circuits" (Pet. 5) is correct.

B. Congress Cannot Use Its Spending Clause Power To Impose Damages Liability On Non-Recipients.

1. Separately, Petitioner's position depends on a vision of the Spending Clause power that has no precedent in this Court's cases. The Court has never held that Congress may directly impose money-damages liability on non-recipient state officials in their individual capacities. As numerous courts of appeals have held, that makes sense given the traditional contract understanding of the Spending Clause—and for present purposes, that warrants the denial of the petition.

Judge Sullivan's recent writing for the Second Circuit aptly articulates the point. "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." *Tripathy*, 103 F.4th at 114 (cleaned up). "Because 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." *Id.* (cleaned up).

The Fifth Circuit's own decision in *Sossamon*, 560 F.3d 316, expressly agrees: "Spending Clause legislation is not legislation in its operation; instead, it operates like a contract, and individual RLUIPA defendants are not parties to the contract in their individual capacities." *Id.* at 328. Accordingly, "only the grant recipient—the state—may be liable for its violation." *Id.* And the Fifth Circuit went further to underscore the serious federalism concerns at issue:

> [I]f a congressional enactment could provide the basis for an individual's liability based only on the agreement of (but not corresponding enactment of legislation by) a state, then important representation interests protected by federalism would be undermined. After passively acquiescing in the regulation of its citizens under a federal standard to receive needed funding from Congress, a state legislature could point its finger at the federal government for tying needed funds to an undesired liability—the regulation or law responsible for such liability not having been enacted by the state. Congress could reciprocate by pointing its finger at the state legislature for accepting the funds and visiting liability on its citizens by the state's own choice, even though the state itself did not enact the law or regulation in question. Such an approach blurs the lines of decisional responsibility; that, in turn, undermines the popular check on both state and federal legislatures.

Id. at 329. This Court's Spending Clause cases, the Fifth Circuit reasoned, are "clearly intended to prevent … this type of end-run around the limited powers of Congress to directly affect individual rights." *Id.* Indeed, "[t]o decide otherwise"—*i.e.*, to adopt Petitioner's view—"would create liability on the basis of a law never *enacted* by a sovereign with the power to affect the individual rights at issue." *Id.*

The Second and Fifth Circuit's view, moreover, is shared by courts across the country. *See, e.g.*, *Sharp*, 669 F.3d at 154–55 ("Pennsylvania, not Defendants, was the direct recipient of any federal funds. Thus,

RLUIPA cannot impose direct liability on Defendants, who were not parties to the contract created between Pennsylvania and the federal government."); *Smith v. Allen*, 502 F.3d 1255, 1273 (11th Cir. 2007) ("Congress cannot use its Spending Power to subject a non-recipient of federal funds, including a state official acting his or her individual capacity, to private liability for monetary damages."); *Wood v. Yordy*, 753 F.3d 899, 901 (9th Cir. 2014) (individual-capacity claim for damages "may not be maintained" "principally because RLUIPA was enacted pursuant to Congress's constitutional powers under the Spending Clause, and the individual defendants are not recipients of any federal funds").

2. Both Petitioner (Pet. 20–21) and Judge Oldham (Pet. App. 30a) invoke this Court's decision in *Sabri v. United States*, 541 U.S. 600 (2004), to suggest that Congress constitutionally can using its Spending Clause power to regulate non-recipients. But the Ninth Circuit has rejected that reliance as "not [] sensible," *Wood*, 753 F.3d at 903; the Second Circuit has said *Sabri* is "easily distinguishable," *Tripathy*, 103 F.4th at 115; the Third Circuit has said that *Sabri* is "inapposite," *Sharp*, 669 F.3d at 155 n.15; Chief Judge Sutton has said that "RLUIPA is nothing like the *Sabri* statute," *Haight*, 763 F.3d at 570; and the Fifth Circuit below said that "Landor's reading of *Sabri* is flawed," Pet. App. 11a.

All for good reason. "In *Sabri*, Congress enacted the [criminal] statute at issue pursuant to its powers under the Spending and the Necessary and Proper Clauses to protect its expenditures against local bribery and corruption." *Sharp*, 669 F.3d at 155 n.15.

"Here, however, Congress did not enact RLUIPA to protect its own expenditures, but rather it enacted RLUIPA to protect the religious rights of institutionalized persons"—and "[t]hus, *Sabri* is inapposite." *Id.* Or, as the Second Circuit put it, "unlike RLUIPA, the federal funds bribery provision [in *Sabri*] does not impose the *conditions* of the federal funds on nonrecipients." *Tripathy*, 103 F.4th at 115. And that makes a difference: "[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.*[3]

In short, *Sabri* does not save Petitioner's novel position in this case—and for that additional reason, the Fifth Circuit correctly rejected his view.

III. PETITIONER'S VIEW, IF ADOPTED, THREATENS SERIOUS UNINTENDED CONSEQUENCES.

Finally, it bears noting that the practical consequences of Petitioner's view warrant the denial of his petition, notwithstanding the serious nature of his allegations. *Cf., e.g.*, *Tharpe v. Sellers*, 583 U.S. 33, 35 (2018) (Thomas, J., dissenting) ("If bad facts make bad

[3] At the risk of piling on, Chief Judge Sutton added yet another reason why *Sabri* is irrelevant here: "The law in *Sabri* unambiguously extended criminal liability to government officials who accept bribes and to individuals who give them. Congress's failure to speak so clearly here renders any putative individual-capacity, money-damages condition in RLUIPA *in*appropriate." *Haight*, 763 F.3d at 570. And, of course, there are far more safeguards in criminal prosecutions of non-recipients than civil suits against non-recipients with the potential for money damages—including the vetting process that proceeds a federal prosecution and the higher burden of proof.

law, then 'unusual facts' inspire unusual decisions."). At least two consequences are obvious.

First, adopting Petitioner's view would overwhelmingly exacerbate a crushing workforce problem for States around the country. Specifically, while "state prison populations are rising," States face a "particularly dire" situation in "struggl[ing] to recruit and retain staff." Heffernan & Li, *As Prison Populations Rise, States Face a Stubborn Staffing Crisis*, USA Today (Jan. 10, 2024), https://tinyurl.com/42cy6eew; *see also* White, *The Federal Prison System Is In Crisis. Here Are the Top 3 Reasons Why.*, The Hill (Feb. 9, 2024), https://tinyurl.com/44f5kxwe. Although the reasons why this problem exists vary from State to State and institution to institution, the existence of the problem is an undisputed fact.

If the Court held—as Petitioner requests—that state prison officials may be held personally liable for money damages under RLUIPA, that announcement would almost certainly deepen the problem by driving down staffing levels and dissuading job applicants. That, in turn, inevitably would lead to worse prison conditions and perhaps lessened protections for religious liberty, as understaffed prisons attempt to survive the growing prison populations. No one wins in that situation.

Second, adopting Petitioner's view would throw all current and future Spending Clause legislation into chaos and a flurry of litigation. Just take one of the most well-known examples—Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally funded educational programs. The federal courts of appeals have long "placed limits on

[Title IX's] scope, [by] holding that the statute does not go so far as to allow a private cause of action against a defendant in his individual capacity, since an individual defendant is not the 'recipient' of the federal funds." *Smith*, 502 F.3d at 1273 (collecting cases). As the Eleventh Circuit explained in *Smith*, "the federal circuits are in agreement that Title IX, because of its nature as Spending Power legislation, does not authorize suits against public officials in their individual capacities." *Id.*

Under that prevailing rule in the Title IX context, teachers and other school administrators cannot be sued, let alone be held liable, in their individual capacities for money damages. But Petitioner's view, if adopted, would uproot that settled precedent. Courts would have to reassess their longstanding rejections of individual-capacity claims. And teachers and school administrators would need to assess whether the risk of personal liability is worth a school job. As with the prison-staffing problem, moreover, schools would be harder pressed to attract top talent and deliver the best possible education to our children.

This problem would not be unique to RLUIPA or Title IX—it extends to all current Spending Clause legislation. So, too, the problem would extend to all future Spending Clause legislation that Congress may contemplate. Armed with a Supreme Court decision green-lighting money damages for individual-capacity claims, Congress may well seek to leverage its Spending Clause authority in entirely new and uncharted waters. The possibilities are endless.

In short, the courts of appeals' unanimous rejection of Petitioner's view has kept these unwanted consequences at bay. But that would change if the Court were to rule in Petitioner's favor. The Court should stay its hand, particularly in a case such this where troubling allegations at the Rule 12(b)(6) stage may prompt a decision that has unintended and sweeping consequences.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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