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 WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* RIGHTS BEHIND BARS, HUMAN RIGHTS DEFENSE CENTER, PENNSYLVANIA INSTITUTIONAL LAW PROJECT, AND SOUTHERN CENTER FOR HUMAN RIGHTS IN SUPPORT OF PETITIONER

Lauren A. Weber
ORRICK, HERRINGTON & SUTCLIFFE LLP
401 Union Street
Suite 3300
Seattle, WA 98101

Elizabeth A. Bixby
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 S. Grand Avenue
Suite 2700
Los Angeles, CA 90071

Elizabeth R. Moulton
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700
emoulton@orrick.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Rights Behind Bars (RBB) uses litigation to advocate for people in prisons and jails to live in humane conditions. RBB also contributes to a legal ecosystem in which such advocacy is more effective and seeks to create a world in which incarcerated people do not face large structural obstacles to advocating for themselves in the courts. RBB helps incarcerated people advocate for their own interests more effectively and through such advocacy pushes towards a world in which people in prisons and jails are treated humanely. Since its founding in 2019, RBB has acted as counsel to more than 100 incarcerated people in the courts of appeals and this Court. RBB's experience representing incarcerated plaintiffs gives it unique insight into the barriers such plaintiffs face for obtaining meaningful injunctive relief when prisons and jails violate their constitutional rights—even in plainly meritorious cases like Petitioner Damon Landor's.

The Human Rights Defense Center is a 501(c)(3) non-profit organization that advocates on behalf of the human rights of people held in U.S. detention facilities. This includes people in state and federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities, and military prisons. HRDC is one

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[1] No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

of the few national opponents to the private prison industry and is the foremost advocate on behalf of the free speech rights of publishers to communicate with prisoners and the right of prisoners to receive publications and communications from outside sources. HRDC also does significant work around government transparency and accountability issues, which includes public records litigation throughout the country. HRDC publishes and distributes self-help reference books for prisoners, and engages in litigation, media campaigns and outreach, public speaking and education, and testimony before legislative and regulatory bodies.

The Pennsylvania Institutional Law Project (PILP) is a civil legal aid organization that protects and advances the constitutional and civil rights of people incarcerated and detained in Pennsylvania through litigation, advocacy, and legal advice. PILP strives to ensure that the thousands of clients it serves every year are treated with dignity. PILP pursues humane conditions of confinement, safety from violence, adequate medical and mental health care, access to the courts, accommodations for disabilities, and religious liberty for all incarcerated people. As part of its commitment to ensuring that incarcerated people can observe their religion as they are entitled to under the law, PILP has litigated numerous religious liberty cases and provided legal help to countless incarcerated individuals from various religious faiths.

The Southern Center for Human Rights (SCHR) is a Georgia-based nonprofit law firm dedicated to advancing equality, dignity, and justice for people

impacted by the criminal legal system. Through litigation and advocacy, SCHR has worked for almost 50 years to defend the civil and human rights of incarcerated people, ensure humane conditions of confinement in jails and prisons, and end degrading law enforcement practices. In light of its experience, SCHR has a unique perspective on the issues raised in this case, including the constitutional rights of people in prisons and jails, and an interest in ensuring that those rights are protected in any context.

Amici submit this brief to explain the many barriers incarcerated plaintiffs face in obtaining injunctive relief. These barriers make monetary damages effectively the only meaningful relief available for many incarcerated plaintiffs to vindicate their rights to religious exercise through the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted RLUIPA "in order to provide very broad protection for religious liberty" for incarcerated people in the custody of "state or local government[s]." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). Congress ordered that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g). It protects all forms of "religious exercise," "includ[ing] any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Id.* § 2000cc-5(7)(A). RLUIPA's

text thus expressly "underscore[s] its expansive protection" for "religious exercise by institutionalized persons." *Holt,* 573 U.S. at 357-58.

Congress authorized courts to provide "appropriate relief against a government" for violations of RLUIPA. 42 U.S.C. § 2000cc-2(a). As this Court recognized in addressing the identical remedial provision in RLUIPA's "sister statute," the Religious Freedom Restoration Act of 1993 (RFRA), *Holt*, 574 U.S. at 356, monetary damages are "the *only* form of relief that can remedy some RFRA violations," *Tanzin v. Tanvir*, 592 U.S. 43, 51 (2020). But the courts of appeals, including the Fifth Circuit here, have held that RLUIPA's "appropriate relief" provision lacks a damages remedy. *See* Pet. 23-24 (collecting cases).

That precedent leaves most incarcerated plaintiffs seeking to vindicate their religious rights with only the possibility of injunctive relief, because RFRA protects only federal prisoners, *see Holt*, 574 U.S. at 357, and not the much larger population of people in the custody of state or local facilities. Meaningful injunctive relief is all but impossible for incarcerated plaintiffs to obtain under RLUIPA, however, largely because of the Prison Litigation Reform Act of 1995 (PLRA) and the application of mootness doctrines to incarcerated plaintiffs' claims. The PLRA applies to prisoner-filed litigations in federal court, and nearly all RLUIPA cases are filed in or removed to federal court. As *amici* explain below, incarcerated plaintiffs face a variety of barriers that make it exceedingly difficult to obtain effective injunctive relief for violations of their religious rights. Among other things, the PLRA requires incarcerated plaintiffs to exhaust

byzantine grievance procedures before suing over their conditions of confinement, prisons possess a unique ability to moot out the availability of injunctive relief by transferring prisoners, and preliminary injunctions under the PLRA automatically expire after 90 days rather than lasting through a trial on the merits. Thus, by interpreting RLUIPA to lack a damages remedy, the courts of appeals have contravened Congress's dictate to provide "appropriate relief" for violations of incarcerated people's religious liberties by cabining its remedial provision.

The courts of appeals have gone astray with that interpretation, including because courts must "presume that 'Congress is aware of existing law when it passes legislation.'" *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 170 (2014) (quoting *Hall v. United States*, 566 U.S. 506, 516 (2012)). Here, the PLRA forms part of RLUIPA's legislative backdrop. Indeed, RLUIPA expressly mentions the PLRA. *See* 42 U.S.C. § 2000cc-2(e). And Congress must have meant more than merely authorizing the occasional grant of injunctive relief when it said that plaintiffs could "obtain appropriate relief" for violations of RLUIPA—especially given that RLUIPA's protections are intended to be "very broad" and "expansive." *Holt*, 574 U.S. at 356, 358 (quoting *Burwell,* 573 U.S. at 693). So RLUIPA's remedial provision must "permit[] litigants, when appropriate, to obtain money damages." *Tanzin*, 592 U.S. at 52. This Court should reverse the Fifth Circuit's contrary decision.

ARGUMENT

I. The PLRA's Exhaustion Requirement Makes Obtaining Injunctive Relief For Many Religious Practices—Which Are Often Seasonal Or Short-Term In Nature—Difficult Or Impossible.

One significant hurdle facing incarcerated plaintiffs who seek injunctive relief for even the most blatant of RLUIPA violations is the PLRA's exhaustion requirement. The PLRA dictates that an incarcerated plaintiff challenging their conditions of confinement (including violations of their rights under RLUIPA) cannot bring a lawsuit "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). In practice, this requirement makes obtaining injunctive relief for many religious practices—which are often seasonal or short-term—essentially impossible, thus diminishing RLUIPA's express protections for religious liberty.

This Court has observed the "mandatory" nature of the PLRA's exhaustion requirement, strictly enforcing it and "rejecting every attempt to deviate … from its textual mandate." *Ross v. Blake*, 578 U.S. 632, 639-40 (2016). And this Court has held that satisfying the exhaustion requirement requires steadfast adherence to the grievance procedure of the particular facility: A prisoner must complete "'all steps'" in the grievance process to exhaust their claims. *Woodford v. Ngo*, 548 U.S. 81, 90 (2006).

Those grievance processes are often lengthy. Some prison grievance procedures do not set a time

limit at all for the prison to respond. Even for those that do set time limits, completing the full process can take months. For example, in Texas—the state with the largest prison population—the multi-step grievance process takes, at best, several months to complete, and can easily take more than five months. As an initial step in the process, the prisoner must document an informal attempt to resolve their grievance with a staff member. *See* Tex. Dep't of Crim. Justice, *Inmate Grievance Program* (Oct. 2023), https://tinyurl.com/2j6rdk8w. Then, once the prisoner files a formal grievance, the unit grievance investigator has 40 days to respond to an initial grievance filing involving religious liberties, and can request another 40 days beyond that. *Id.* After receiving a response from the unit grievance investigator, a prisoner must then file a Step 2 grievance. *Id.* The agency has 40 days to respond to a Step 2 grievance involving religious liberties, and can extend that timeline by another 40 days. *Id.* Only once the prisoner receives a response to their Step 2 grievance is their claim considered fully exhausted. *Woodford*, 548 U.S. at 88 (to properly exhaust administrative remedies, prisoners must "complete the administrative review process in accordance with the applicable procedural rules").

California—the state with the second-largest prison population—employs a similarly lengthy grievance process. At the first step in the process, officials have 60 days to provide an initial response to a grievance (unless the grievance involves sexual abuse or an imminent danger to personal safety or institutional security—neither of which would typically apply in a RLUIPA case). 15 C.C.R. § 3483(g). Then, the prisoner must appeal their grievance, and the Office

of Appeals is allowed another 60 days to respond. 15 C.C.R. § 3485(g). So, as in Texas, a prisoner in California faces a span of *at least* several months before they can fully exhaust their claims.

These months-long delays pose a nearly insurmountable hurdle to obtaining timely, effective injunctive relief for RLUIPA violations. Many religious practices are short-term or seasonal. Consider a Muslim pretrial detainee who discovers just before the first day of Ramadan that the jail refuses to alter mealtimes so that he may—as per the Ramadan fasting requirements—receive breakfast before sunup and dinner after sundown. Ramadan only lasts 29 or 30 days (depending on the lunar calendar that year). By the time the detainee has fully exhausted his grievance, Ramadan will have long since ended; he has no hope of obtaining injunctive relief in time to protect his religious liberties for this year's Ramadan period. And as a pretrial detainee, he is unlikely to be able to seek injunctive relief for Ramadan in future years, either: it is only speculative that he will remain in the jail (rather than be transferred to prison post-conviction or released through bail, plea bargaining, or acquittal) through the following year's Ramadan period. The combination of mootness and ripeness will thus likely doom any claim for injunctive relief. In short, without damages, the detainee will be unable to obtain any relief *at all*—despite a blatant violation of his rights under RLUIPA.

This is no mere hypothetical example: Prison officials routinely violate Muslim prisoners' religious liberties when it comes to Ramadan. Take the case of *Heyward v. Cooper*, involving a Muslim man

incarcerated in Ohio. 88 F.4th 648, 652 (6th Cir. 2023). Prison officials burdened Mr. Heyward's sincerely held religious beliefs during Ramadan in a multitude of ways. They prevented him from communally breaking his fast, denied him dates with which to break his fast, served him food prepared by non-Muslims, and fed him a calorically inadequate diet. *Id.* Yet due to the slowness of the exhaustion and requisite pre-screening processes, *see infra* § III—especially when combined with the general slowness of federal litigation—Mr. Heyward's RLUIPA claim about violations during Ramadan in 2018 did not reach the Sixth Circuit until 2023. *Heyward*, 88 F.4th at 656. By that point, his RLUIPA claim was moot: "Without a time machine, we cannot go back and fix alleged wrongs during Ramadan in 2018," and Mr. Heyward had also been transferred in the interim. *Id.* at 656 (cleaned up); *see infra* § II (discussing the impact of prison transfers on claims for injunctive relief). With no claim ripe for review, Mr. Heyward's religious rights were left violated without remedy.

Similar seasonal or short-term religious practices abound across religions. For example, Passover—during which Jewish people must follow particular dietary requirements, such as avoiding food made from leavened grains or agents—lasts a mere eight days. Hindus observe the festival of Navratri, which requires observers to follow certain dietary restrictions during a partial fast, lasts just nine days. And during the 40-day Lent period, Roman Catholics must abstain from meat on all Fridays and Ash Wednesday. Given the seasonal nature of these practices and the delay imposed by the exhaustion requirement, obtaining injunctive relief for their denial becomes all but

impossible. So without the availability of damages, there can be no "appropriate relief" under RLUIPA at all for these types of practices.

Of course, the slowness of the mandatory exhaustion process is not *only* a problem for seasonal religious practices; it precludes incarcerated plaintiffs from obtaining injunctive relief for even routine or daily religious practices. Take, for example, the case of *Muhammad v. King*. Officials at a Michigan prison forbade Mr. Muhammad, a practicing Muslim, from wearing a kufi head covering as per his religious beliefs—even though Jewish prisoners were allowed to wear yarmulkes. *Muhammad v. King*, No. 1:23-cv-1306, 2024 WL 1340548, at *1 (W.D. Mich. Mar. 29, 2024). Mr. Muhammad began the grievance process the day after his kufi was confiscated. *Id.* at *1-2. Despite Mr. Muhammad's diligence, the grievance process did not come to a close for more than three months. *See* Exhibit B in Support of Motion for Summary Judgment, *Muhammad*, No. 1:23-cv-1306, at 11 (W.D. Mich. May 9, 2025), Dkt. 35-3. By the time he could file suit, he had already been transferred—thus mooting his claims under RLUIPA. 2024 WL 1340548, at *1; *see Complaint*, *Muhammad*, No. 1:23-cv-1306, at 1 (W.D. Mich. Dec. 15, 2023), Dkt. 1.

Injunctive relief is even less of an answer for religious practices that follow one-off events or are unpredictable in nature—as this Court recognized in *Tanzin*. 592 U.S. at 51 ("For certain injuries … effective relief consists of damages, not an injunction."). That may look like prison officials unexpectedly seizing and destroying religious books. *See DeMarco v. Davis*, 914 F.3d 383, 390 (5th Cir. 2019) (plaintiff's

Bible and religious materials "were allegedly destroyed, leaving damages as his only recourse"). Or it may look like jail officials refusing to provide an unmonitored line to a newly incarcerated Christian seeking to make confession—but by the time a court considers the merits of his RLUIPA claim, he cannot seek injunctive relief because he has been transferred to prison. *Merrick v. Inmate Legal Servs.*, No. cv-13-01094, 2018 WL 10344753, at *2, 4 (D. Ariz. Mar. 15, 2018).

This issue becomes particularly acute when it comes to religious practices around death. Consider the recent case of an indigenous person incarcerated at Mount Olive Correctional Complex in West Virginia. *See* Letter from Rights Behind Bars, to Governor Jim Justice, et al. 7 (Nov. 1, 2023), https://tinyurl.com/mrwef2w4. Upon the death of a loved one, this prisoner's religion requires that he "cut and bury his own hair." *Id.* Yet when his beloved grandmother passed away, Mount Olive barred him from engaging in this practice—for no other reason than prison officials' view that it was "just not right." *Id.* By barring him from burying his hair, the prison rendered him unable to properly grieve according to the tenets of his religion—in clear violation of RLUIPA.

But injunctive relief—again, with the delay imposed by the exhaustion requirement—could do nothing to remedy this impingement on the prisoner's religious practices. Even if he had immediately filed a grievance, by the time the grievance process came to a close, the religiously-required time to bury his hair would have long since passed. And because the death

of future loved ones is too speculative to predict, the doctrines of standing and ripeness likely foreclose him from obtaining future injunctive relief, too. More to the point, though, is that getting to properly grieve a hypothetical future death does not remedy his past inability to properly grieve his beloved grandmother in accordance with his religious beliefs. Only damages can come close to appropriately recognizing that loss—damages that Congress authorized by empowering courts to provide "appropriate relief."

II. Prison Officials Possess A Unique Power To Moot Out Cases Involving Incarcerated Plaintiffs When Relief Is Limited To Injunctions.

Further compounding the difficulty of obtaining injunctive relief for RLUIPA violations is the unique power of prison officials to moot out claims for injunctive relief by transferring incarcerated plaintiffs mid-litigation. Because defendants facing only prospective injunctive relief can moot these cases at any time, RLUIPA rarely provides the broad protections that Congress promised for religious liberty.

Prisoners have no constitutional right to be housed in any particular prison. Prison officials may transfer prisoners between prisons within the same state or even out-of-state for any reason, at any time. *Meachum v. Fano*, 427 U.S. 215, 224-25, 228-29 (1976) (no constitutional right to be held within a particular state prison); *Olim v. Wakinekona*, 461 U.S. 238, 247-48 (1983) (no constitutional right to be held in prison in the same state as conviction, even if an interstate transfer "involves long distances and an

ocean crossing"). Nearly all states—empowered by various interstate corrections compacts—either export or import (or both) prisoners out-of-state. Emma Kaufman, *The Prisoner Trade*, 133 Harv. L. Rev. 1815, 1839-54 (2020); *see, e.g.*, Cal. Pen. Code. § 11189 *et seq.* (codifying national Interstate Corrections Compact); Wash. Rev. Code § 72.70.010 (codifying Western Corrections Compact); Conn. Gen. Stat. § 18-102 (codifying New England Interstate Corrections Compact). Though most states only export a small percentage of their total prison population, *see* Kaufman, *supra*, at 1819, this unfettered ability to move prisoners between prisons or even between states creates serious problems for incarcerated plaintiffs seeking injunctive relief.

Of course, government officials possess the theoretical ability to moot out cases in many other contexts by suspending challenged conduct after being sued. But in other contexts, government officials face a "formidable burden" in overcoming the "voluntary cessation" exception to mootness. *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189-90 (2000)). Thus, in most cases, the government "must prove no reasonable expectation that it will return to its old ways" in order to "show that a case is truly moot." *Id.* (cleaned up) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). Otherwise, "a federal court's constitutional authority" could be "readily manipulated." *Id.*

Not so when it comes to prison transfers, however. In contrast to the "heavy burden" the government

normally faces in "making [it] 'absolutely clear'" that it will not resume its unlawful ways, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017), the courts of appeals have unanimously held that an incarcerated plaintiff's transfer to another facility moots their claims for injunctive and declaratory relief (subject to a few narrow exceptions)—no demonstration of true mootness from the government necessary. As a result, a transfer that is wholly within the discretion of the defendants will moot a plaintiff's claims under RLUIPA entirely—even if the plaintiff might well be transferred back to their original facility after their suit gets dismissed. *See, e.g.*, *Heyward*, 88 F.4th at 656-57 (plaintiff's "RLUIPA claim is moot because [he] has transferred facilities"); *Firewalker-Fields v. Lee*, 58 F.4th 104, 113-14 (4th Cir. 2023) ("Because Firewalker-Fields was transferred out of Middle River … any injunctive relief and therefore any claim under RLUIPA is moot."); *Booker v. Graham*, 974 F.3d 101, 107 (2d Cir. 2020) ("Booker's RLUIPA claims are moot because he was transferred out of Auburn."); *Harris v. Escamilla*, 736 F. App'x 618, 621 (9th Cir. 2018) ("Harris has been moved to a new prison facility … [his] claims under RLUIPA are therefore moot."); *Zajrael v. Harmon*, 677 F.3d 353, 355 (8th Cir. 2012) (claim for relief under RLUIPA was moot because plaintiff was transferred mid-litigation).

Such transfers can happen remarkably quickly, further obliviating the prospect of injunctive relief. That was true in *Ali v. Knight*, where a Muslim prisoner who brought a RLUIPA claim for forcing him to work with haram food as part of his prison job was transferred within *weeks* of filing suit—before the

district court could even screen his complaint. No. 1:22-cv-287, 2024 WL 5497922, at *1, *6 (W.D. Mich. Dec. 9, 2024); Change of Address, *Ali v. Knight*, No. 1:22-cv-287 (W.D. Mich. May 20, 2022), Dkt. 8. As a result, his RLUIPA claims were dismissed as moot. 2024 WL 5497922, at *1, *6. Likewise, in *Cardinal v. Metrish*, the plaintiff sued under RLUIPA after the warden transferred him to a prison that "d[id] not serve kosher meals," where he "refused to eat" because of his religious beliefs. 564 F.3d 794, 797 (6th Cir. 2009). But because the warden transferred the plaintiff to yet another facility roughly a week after the first transfer, his RLUIPA claim became moot. *Id.* at 798-99.

Certainly, *amici* do not assume that every mid-litigation prison transfer takes place because the prison wishes to moot out the incarcerated plaintiff's lawsuit. But in some cases, prison officials *do* use their unfettered transfer ability to strategically moot out prisoner claims, and though some circuits have indicated that intentional mooting-through-transfer might provide an exception to mootness, it is exceedingly difficult for prisoners to prove that their transfer was motivated by litigation strategy. *See generally* Tamika D. Temple, *Mooted and Booted: How the Mootness Doctrine Has Been Used to Silence Violations of Prisoners' Constitutional Rights*, 45 T. Marshall L. Rev. 117, 128-38 (2021). And even assuming a class action were otherwise appropriate—which may not be true for many RLUIPA claims, especially those brought by religious minorities who would not be able to satisfy the numerosity requirement—those are no cure to this problem; prison and jail officials still have many options available to strategically moot

out claims even in the class action context. *See* Michele C. Nielsen, *Mute and Moot: How Class Action Mootness Procedure Silences Inmates*, 63 UCLA L. Rev 760, 771-91 (2016) (describing prison officials' use of transfers, temporary policy revisions, delays, Rule 68 offers, and targeting of named plaintiffs to moot out named plaintiffs' claims and undercut the ability to obtain class certification).

Moreover, the looming prospect of mootness ensures that incarcerated plaintiffs almost always lack the legal representation necessary to vindicate their rights. For other civil-rights actions, Congress authorized fee-shifting "to ensure that federal rights are adequately enforced." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550 (2010). 42 U.S.C. § 1988 provides that the prevailing party may recover "a reasonable attorney's fee as part of the costs" in actions to enforce certain laws, including the Civil Rights Act of 1964, RFRA, and RLUIPA. Under § 1988, courts calculate such fees using the lodestar method, where a prevailing attorney receives an award that "approximates the fee" the attorney "would have received if he or she had been representing a paying client who was billed by the hour in a comparable case." *Perdue*, 559 U.S. at 551. Thus, attorneys who dedicate the time to achieve victories for their clients in civil-rights cases receive fees sufficient to justify the risk of taking on such cases.

But attorneys have almost no financial incentives to take meritorious civil-rights cases on behalf of incarcerated plaintiffs given the ease with which prisons can moot the cases. An attorney could spend more than a year litigating a strong RLUIPA claim only to

have the defendant prison transfer the plaintiff and moot the case, preventing any award of fees to the attorney. Unsurprisingly then, "an overwhelming share of incarcerated people" proceed pro se. Andrea Fenster & Margo Schlanger, *Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act* (Apr. 26, 2021), https://tinyurl.com/y8fv4r8h. In 2020, for instance, just 7.6% of incarcerated civil-rights plaintiffs had lawyers, versus 89.8% of non-incarcerated plaintiffs. *Id.*

If this Court gives effect to the "appropriate relief" provision by reading it to allow damages, however, the threat of mootness—and the consequent inability to enforce the broad protection Congress granted via RLUIPA—all but disappears.

III. Mandatory Pre-Service Screening Under The PLRA Significantly Extends The Time Before Incarcerated Plaintiffs Can Seek Relief, Making Injunctive Relief Less Meaningful.

Beyond the exhaustion requirement, the PLRA "also departed in a fundamental way from the usual procedural ground rules by requiring judicial screening to filter out nonmeritorious claims." *Jones v. Bock*, 549 U.S. 199, 213 (2007). District courts must "screen inmate complaints 'before docketing, if feasible, or, … as soon as practicable after docketing,' and dismiss the complaint if it is 'frivolous, malicious, … fails to state a claim upon which relief may be granted, or … seeks monetary relief from a defendant who is immune from such relief.'" *Id.* (quoting 28 U.S.C. § 1915A). This extra procedural step causes

significant delays in PLRA cases. Incarcerated plaintiffs cannot serve defendants until the court completes screening, *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc), and courts cannot grant preliminary injunctions without notice to defendants, Fed. R. Civ. P. 65(a)(1). Thus, mandatory screening makes it harder for incarcerated plaintiffs to obtain meaningful injunctive relief—especially for violations of their exercise of seasonal religious practices—and weakens RLUIPA's protections in the absence of any potential damages remedy.

There is no deadline for screening. In practice, mandatory pre-service screening often takes months or even years. *See, e.g.*, *Pearson v. Woznak*, No. 3:21-cv-206, 2024 WL 2136048, at *1 (W.D. Penn. Feb. 7, 2024) (screening took more than 16 months); *Moore v. Calderon*, No. 1:20-cv-00397, Dkts. 1, 19 (E.D. Cal.) (screening took more than 12 months); *Williams v. Hall*, No. 1:20-cv-01171, Dkts. 1, 7 (W.D. Tenn.) (screening took more than eight months); *Fattah v. Doe*, No. 3:10-cv-1607, Dkts. 1, 17 (M.D. Penn.) (screening took more than four months). Delays can become even more acute when district judges refer the initial screening to magistrate judges, who prepare reports and recommendations that district judges must then review. In *Pearson*, for instance, it took more than a year for the district judge to accept the magistrate judge's report and recommendation. *See* No. 3:21-cv-206, Dkts. 9, 25 (W.D. Penn.).

By the time a district court completes pre-service screening, the relevant religious season likely has long since passed, particularly given the hurdles that incarcerated plaintiffs must first navigate while

exhausting their administrative remedies, *supra* § I. And defendants need not even respond to a complaint until after the court finishes the screening process. *See Jones*, 549 U.S. at 213. The combination of the PLRA's mandatory-screening and exhaustion requirements thus ensures that incarcerated plaintiffs almost always have to wait months or even years between taking the first step in the litigation process—filing a grievance with the prison—and getting the opportunity to address the merits of their claims in court. Such delays make injunctive relief less meaningful even when incarcerated plaintiffs can obtain it, whereas plaintiffs could be compensated with interest for delays in obtaining monetary damages.

IV. The PLRA Imposes Unusual Restrictions On Injunctive Relief, And Many States Also Have Analogs For Those Rules.

Finally, incarcerated plaintiffs seeking injunctive relief also must contend with PLRA-specific rules that restrict the availability and reach of such relief. As with the other barriers to relief discussed above, the PLRA's idiosyncratic rules for injunctive relief contribute to vitiating RLUIPA's protections for religious liberty when incarcerated plaintiffs cannot seek damages.

To start, in "any civil action with respect to prison conditions," injunctive relief must be narrowly tailored under 18 U.S.C. § 3626. Section 3626(a)(1)(A) requires that "[p]rospective relief … shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief

unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." Moreover, courts must "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief," *id.*—a thumb on the scale that plaintiffs in other contexts do not have to contend with. And under the PLRA, courts "shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a)." *Id.* § 3626(c)(1).

The latter provision proved most consequential to incarcerated plaintiffs. Before the PLRA's enactment, "consent decrees to remedy constitutional violations and inhumane conditions had dominated the prison landscape." Alison Brill, *Rights Without Remedy: The Myth of State Court Accessibility After the Prison Litigation Reform Act*, 30 Cardozo L. Rev. 645, 660-61 (2008). Now, however, the PLRA "*expressly* restrict[s] the prospective relief which may be afforded by a consent decree to the same extent and in the same manner as it restricts the prospective relief which may be afforded by a judgment entered pursuant to adversarial litigation without agreement." *Ruiz v. Estelle*, 161 F.3d 814, 825 (5th Cir. 1998).

The PLRA thus "curb[s] courts' most powerful remedial tool" and "make[s] it more difficult for courts to approve settlement agreements that call for the court to retain jurisdiction for enforcement purposes." Allison M. Freedman, *Rethinking the PLRA: The Resiliency of Injunctive Practice and Why It's Not Enough*, 32 Stan. L. & Pol'y Rev. 317, 319 (2021). For

a court to maintain jurisdiction, the court cannot simply "endorse the forms of relief that the parties propose"; instead, "[e]very civil action requires a detailed court finding or is subject to dismissal." Brill, *supra*, at 659. Indeed, § 3626(b)(2) provides for "[i]mmediate termination of prospective relief" if the relief was granted "in the absence of" the requisite findings by the court under (a)(1)(A). Some states have also enacted their own versions of § 3626(a)(1)(A) or other statutes similar to the PLRA, thus extending barriers to relief for incarcerated plaintiffs. *See, e.g.*, Alaska Stat. § 09.19.200(a) (mirroring § 3626(a)(1)(A)); Mich. Comp. Laws § 600.5517(1) (same); 42 Pa. Cons. Stat. §§ 6601, 6604(a) (same); *see also* Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1635 n.272 (2003) (identifying more than 40 states with statutes "that specially regulate[] inmate access to state court").[2]

What's more, for any incarcerated plaintiff who succeeds in running the legal gauntlet necessary to

[2] Some states have enacted laws that impose even more onerous restrictions on injunctive relief than the PLRA does. Pennsylvania, for example, forbids "the entry of a consent decree in any action against the Commonwealth or any agency without the approval of the Governor and notice to the General Assembly." 71 Pa. Cons. Stat. § 732-204(e); *see also id.* § 732-301 (forbidding Pennsylvania's General Counsel from agreeing to consent decrees "without the approval of the Governor and the Attorney General and notice to the General Assembly"). In *amici*'s experience, these statutes guarantee that Pennsylvania will never enter into court-enforceable settlement agreements involving injunctive relief for individual incarcerated plaintiffs, no matter how meritorious their claims.

obtain preliminary injunctive relief under the PLRA, the injunction "shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period." § 3626(a)(2). In most other cases, by contrast, preliminary injunctions typically remain "effective until a decision has been reached at a trial on the merits." 11A Charles A. Wright & Arthur Miller, Federal Practice and Procedure § 2941 (3d ed. 2020).

The circuits do not agree on the import of § 3626(a)(2). At best for incarcerated plaintiffs, § 3626(a)(2) requires them "to continue to prove that preliminary relief is warranted" every 90 days. *Mayweathers v. Newland*, 258 F.3d 930, 936 (9th Cir. 2001); *see also Alloway v. Hodge*, 72 F. App'x 812, 817 (10th Cir. 2003) (following *Mayweathers* in a nonprecedential decision). In other words, under the more favorable interpretation of subsection (a)(2), incarcerated plaintiffs must justify and obtain "successive preliminary injunctions" to maintain the status quo as litigation proceeds. Catherine T. Struve, *Allowing the Courts to Step in Where Needed: Applying the PLRA's 90-Day Limit on Preliminary Relief*, 19 U. St. Thomas L. J. 407, 426 (2023).

On the other hand, the Eleventh Circuit drew the "startling" conclusion that "if a [PLRA] plaintiff needs preliminary relief to last all the way to final judgment, the plaintiff must litigate the case through a trial on the merits and all the way to its conclusion *before* Day 90." *Id.* at 409 (emphasis added). *Georgia Advocacy Office v. Jackson* held that § 3626(a)(2)

creates "a 90-day test period during which the necessity of permanent injunctive relief can be evaluated." 4 F.4th 1200, 1210 (11th Cir. 2021). Thus, "the entry of a permanent injunction [after a trial on the merits] is necessary to prevent a preliminary injunction from expiring by operation of law after 90 days under the PLRA's 'unless' clause." *Id.* at 1211.

The prospect of needing to conduct a full trial on the merits within 90 days of the entry of a preliminary injunction (presumably at an early stage of the case) presents serious concerns for incarcerated plaintiffs, which *Jackson* did not address. Although the Eleventh Circuit later vacated the *Jackson* opinion because the parties settled before the mandate issued, 33 F.4th 1325, 1326 (11th Cir. 2022), the case illustrates some of the pitfalls that incarcerated plaintiffs must navigate in seeking injunctive relief.

CONCLUSION

Because of the numerous barriers to injunctive relief detailed above, money damages are effectively the only way to vindicate religious liberties for incarcerated plaintiffs. Holding that money damages are not available would thwart the text of RLUIPA, which authorizes courts to provide meaningful relief to plaintiffs. This Court should reverse the decision below.

Respectfully submitted,

Lauren A. Weber
ORRICK, HERRINGTON & SUTCLIFFE LLP
401 Union Street
Suite 3300
Seattle, WA 98101

Elizabeth A. Bixby
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 S. Grand Avenue
Suite 2700
Los Angeles, CA 90071

Elizabeth R. Moulton
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
(415) 773-5700
emoulton@orrick.com

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