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 UNITED STATES SENATORS TED CRUZ AND TED BUDD AS AMICI CURIAE SUPPORTING PETITIONER

CONOR R. HARVEY
Counsel of Record
EVA M. GUZMAN
ERIC B. BOETTCHER
WRIGHT CLOSE BARGER & GUZMAN, LLP
One Riverway, Ste. 2200
Houston, TX 77056
(713) 572-4321
harvey@wrightclosebarger.com

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE[1]

United States Senators Ted Cruz of Texas and Ted Budd of North Carolina join this brief as Members of Congress with a strong interest in safeguarding religious liberty. Senator Cruz was first elected to the Senate in 2012 after serving at the Department of Justice, the Federal Trade Commission, and as Solicitor General of Texas. He has long been active on the Senate Committee on the Judiciary and now chairs the Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights. Senator Budd was first elected to the House of Representatives in 2016 and later to the Senate in 2022, where he now serves on the Armed Services, Commerce, Intelligence, Joint Economic and Small Business Committees.

Both Senators believe that every American possesses the natural and indefeasible right to worship according to the dictates of conscience, as protected by the Constitution and federal law. As legislators, they offer the Court the perspective of those engaged in the lawmaking process—laws often crafted with this Court's decisions in mind and sometimes in direct response to them. This case resonates personally with Senator Cruz, as it arises from the Fifth Circuit, the appellate court with jurisdiction over Texas, and with Senator Budd, who represents North Carolina, a state with a deep heritage of religious devotion and protection for rights of conscience.

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[1] Per Rule 37.6, counsel for amici curiae affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than amici, their staff, or counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

After *Employment Division v. Smith*, 494 U.S. 872 (1990), eliminated strict scrutiny for free-exercise claims, Congress enacted the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.*, to restore that standard. When this Court held much of RFRA unenforceable in *City of Boerne v. Flores*, 521 U.S. 507 (1997), Congress responded with the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.*, again seeking to preserve robust protection for religious exercise. As part of its remedial scheme, RLUIPA authorizes suits for money damages against government officials in their individual capacities.

RLUIPA's plain text and the context in which it arose confirm that the statute's provision for "appropriate relief," 42 U.S.C. § 2000cc-2(a) against a State official or "any other person acting under color of State law," *id.* § 2000cc-5(4)(A)(iii), authorizes individual-capacity damages suits. Substantially identical language appears in RFRA, RLUIPA's "sister" statute. And, in interpreting that language in RFRA, this Court has held that individual-capacity damages suits are available. *Tanzin v. Tanvir*, 592 U.S. 43 (2020). Using the same language and arising from the same statutory lineage, RLUIPA likewise permits such suits. The Fifth Circuit erred in holding otherwise.

Favoring uniformity and robust protection for the fundamental free-exercise right, Senators Cruz and Budd offer their perspective as Members of Congress engaged in lawmaking and often considering issues like those before the Court on the front end, rather than when they reach the Judicial Department on the back end.

ARGUMENT

The right to freely practice one's religion is central to our national identity. The Founders recognized that this right predates civil society. *See, e.g.*, James Madison, *Memorial and Remonstrance Against Religious Assessments* § 1 (June 20, 1785). Founding-era constitutions and declarations of rights guaranteed that right. *E.g.*, DEL. CONST. OF 1776 arts. 25 & 30 (citing DEL. DECL. OF RIGHTS & FUNDAMENTAL RULES § 2 (1776)); MD. DECL. OF RIGHTS art. XXXIII (1776); PA. CONST. OF 1776, DECL. OF RIGHTS OF THE INHABITANTS OF ST. OF PA. art. II; N.J. CONST. OF 1776 art. XVIII; N.C. DECL. OF RIGHTS § 19 (1776); VA. DECL. OF RIGHTS § 16 (1776); GA. CONST. OF 1777 art. LVI; N.Y. CONST. OF 1777 art. XXXVIII; VT. CONST. OF 1777 ch. 1, § 3; MASS. CONST. OF 1780 art. II; N.H. CONST. OF 1784 art. V; S.C. CONST. OF 1790 art. VIII, § 1. And by the Free Exercise Clause, our Constitution protects the right. U.S. CONST. amend. I.

I. Congress has repeatedly enacted statutes broadly protecting free exercise of religion.

For many years, religious liberty depended primarily on the Free Exercise Clause and this Court's precedents. The Court first examined the clause in *Reynolds v. United States*, 98 U.S. 145 (1878), upholding the conviction of a member of the Church of Jesus Christ of Latter-day Saints for practicing polygamy. The Court explained: "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." *Id.* at 166.

From *Reynolds* until the early 1960s, the Court permitted generally applicable laws regulating conduct that "pose[s] some substantial threat to public

safety, peace or order" to burden religious exercise. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 569 (1993) (Souter, J., concurring in part) (quoting *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)) (alteration in original). In *Sherbert v. Verner*, however, the Court refined the protection of the Free Exercise Clause and applied a strict-scrutiny test, holding that no "compelling state interest" justified the "incidental burden on the free exercise of [Sherbert's] religion." *Id.* at 403 (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)). The Court reaffirmed this standard in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), explaining that although a regulation may be "neutral on its face," its "application" may "nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Id.* at 220.

Content with the protections afforded by *Sherbert* and *Yoder*, Congress had no need to enact statutory free-exercise protections until this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). There, the Court largely repudiated the established method of analyzing free-exercise claims, declaring that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring)). Put simply, the Free Exercise Clause offered no protection when religious exercise conflicted with a neutral law of general applicability.

Neither Members of Congress nor the public widely agreed with *Smith*. *See, e.g.*, Linda Greenhouse, *Court Is Urged To Rehear Case On Ritual Drugs*, N.Y. Times

(May 11, 1990) (noting fifty-five constitutional scholars and various religious groups petitioned the Court to rehear *Smith*); 139 CONG. REC. H2357 (daily ed. May 11, 1993) (Statement of Rep. Edwards) (stating *Smith* has "put religious freedom in jeopardy in our country"); 139 CONG. REC. H2359 (daily ed. May 11, 1993) (Statement of Rep. Nadler) ("This landmark legislation [RFRA] will overturn the Supreme Court's disastrous decision, Employment Division versus Smith, which virtually eliminated the first amendment's protection of the free exercise of religion."); 139 CONG. REC. H2360 (daily ed. May 11, 1993) (Statement of Rep. Schumer) (stating "that decision rubbed against totally the American grain of allowing maximum religious freedom"); 139 CONG. REC. S14465 (daily ed. Oct. 27, 1993) (Statement of Sen. Hatch) ("The Smith case is wrong. It ought to be overruled.").

Rejecting the decision, Congress in 1993 enacted RFRA to restore the free-exercise protections eroded by *Smith*. *See* 42 U.S.C. §§ 2000bb *et seq.* The statute itself identifies its impetus and affirms its purposes. Regarding its impetus:

> The Congress finds that . . . in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion . . . .

42 U.S.C. § 2000bb(a)(4). And its purposes:

> (1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all

> cases where free exercise of religion is substantially burdened; and
>
> (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

Id. §§ 2000bb(b)(1)–(2); *accord Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694 (2014). Congress could not have been clearer.

Under RFRA, the strict-scrutiny standard once again governed government-imposed burdens on religious exercise. Yet RFRA's protections proved short-lived. As *Smith* had eroded the protections of *Sherbert* and *Yoder*, *City of Boerne v. Flores*, 521 U.S. 507 (1997), drastically curtailed RFRA by holding it constitutionally deficient when applied to the States. Consulting legislative history, the Court concluded that "Congress relied on its Fourteenth Amendment enforcement power in enacting the most far-reaching and substantial of RFRA's provisions, those which impose its requirements on the States." *Id.* at 516. The Court further held that, in enacting RFRA, Congress exceeded its authority under section five of the Fourteenth Amendment by attempting to bring about a substantive—rather than remedial—change to a constitutional right. *Id.* at 519. The result was to invalidate RFRA's application to state and local governments, leaving the statute operative only in the federal sphere. *See Burwell*, 573 U.S. at 695.

Congress again responded to this Court's narrowing of free-exercise protections—this time by enacting RFRA's "sister" statute, RLUIPA. 42 U.S.C. §§ 2000cc *et seq.*; *see also Landor v. La. Dep't of Corr. & Pub. Safety*, 93 F.4th 259, 264 (5th Cir. 2024) (Oldham, J., dissenting from denial of rehearing en banc)

(collecting decisions from this Court describing RFRA and RLUIPA as "sister" or "twin" statutes); *Adkins v. Kaspar*, 393 F.3d 559, 566 (5th Cir. 2004) ("RLUIPA was adopted by Congress in response to" both "*Smith*" and *"Flores*."). Unlike RFRA, RLUIPA relied on "congressional authority under the Spending and Commerce Clauses" rather than the Fourteenth Amendment. *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). Although "RLUIPA is largely a reprisal of the provisions of the RFRA," it operates with a narrower scope. *Adkins*, 393 F.3d at 567. Congress gave it "nowhere near the 'universal coverage'" of RFRA, specifying that it applies only "to regulations affecting land use and prison conditions." *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 995 (9th Cir. 2006). And while RFRA post-*Flores* applies only to the federal government, RLUIPA "applies to the States and their subdivisions." *Holt*, 574 U.S. at 357.

II. Reflecting the historical backdrop in which it was enacted, RLUIPA authorizes individual-capacity damages suits.

The availability of damages under RLUIPA follows directly from the statute's text. RLUIPA shares RFRA's operative language and was enacted against the same historical backdrop. In *Tanzin v. Tanvir*, 592 U.S. 43, 47–48 (2020), this Court held that RFRA authorizes individual-capacity damages suits. Nothing in RLUIPA's text or history suggests that Congress departed from RFRA's core design when enacting it. To the contrary, because RLUIPA was modeled on RFRA, RLUIPA's use of the same language creates the same remedial scheme.

A. RLUIPA's text authorizes individual-capacity damages suits.

Under RFRA, the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless "it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)–(b). "Government," as used in the statute, "includes a[n] . . . official (or other person acting under color of law) of the United States, or of a covered entity." *Id.* § 2000bb-2(1); *see also id.* § 2000bb-2(2) (defining "covered entity"). One whose "religious exercise has been burdened" can "assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." *Id.* § 2000bb-1(c).

RFRA's reach turns on two textual anchors: Congress's decision to extend liability to any "other person acting under color of law" and its authorization of "appropriate relief" against such a defendant. Construing the "explicit definition" of "government" first, the Court noted the term expressly "includes both individuals who are officials acting under color of law *and* other, additional individuals who are nonofficials acting under color of law." *Tanzin*, 592 U.S. at 47–48. To bolster this conclusion, the Court looked to 42 U.S.C. section 1983, which "applies to 'person[s] . . . under color of any statute'" and which the Court has interpreted "to permit suits against officials in their individual capacities." *Id.* at 48 (quoting 42 U.S.C. § 1983) (alterations in original). An "'official' does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" *Tanzin*, 592 U.S. at 47.

And because relief in an official-capacity suit "must always run against the United States," a "right to obtain relief against 'a person'" must run against the individual. *Id.* Using that "same terminology . . . in the very same field of civil rights law," the Court determined that "it is reasonable to believe that the terminology bears a consistent meaning." *Id.* at 48 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012)). Because "[a] suit against an official in his personal capacity is a suit against a person acting under color of law," the Court reasoned it is, in turn, "a suit against 'a government,' as defined under RFRA." *Id.*

Turning to "appropriate relief," the Court examined "the phrase's plain meaning at the time of enactment," noting that the term lacked "a statutory definition." *Id.* After consulting dictionaries, the Court concluded that this "context dependent" phrase authorizes damages against individuals. *Id.* at 49. From "the early Republic," to late-twentieth-century congressional acts, such damages, the Court reasoned, "have long been awarded as appropriate relief" against government officials and "remain an appropriate form of relief today" against "state and local government officials." *Id.* at 49–50.

The Court did not stop there; it also interpreted "government" and "appropriate relief" "in light of RFRA's origins." *Id.* at 50. "Given that RFRA reinstated pre-*Smith* protections and rights, parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*." *Id.* at 51. Such relief under RFRA includes the right to seek damages from government employees and, in some cases, damages are the only remedy capable of addressing a violation. *See id.*

As this Court and others have recognized, RLUIPA "mirrors RFRA." *Holt*, 574 U.S. at 357; *see also Tucker v. Collier*, 906 F.3d 295, 301 (5th Cir. 2018) ("RLUIPA's text mirrors that of RFRA."). RLUIPA provides:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a). The statute defines "government" to include both "any . . . official" and "other person acting under color of State law." *Id.* § 2000cc-5(4)(A). One "may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." *Id.* § 2000cc-2(a).

B. RLUIPA's historical backdrop confirms that, like RFRA, it authorizes damages against individuals.

Just as "[t]he legal 'backdrop against which Congress enacted' RFRA confirms the propriety of individual-capacity suits," that same backdrop confirms Congress authorized such suits under RLUIPA. *Tanzin*, 592 U.S. at 48 (quoting *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487 (2005)). Congress favored the free-exercise protections recognized in *Sherbert* and *Yoder*, as evidenced by how forcefully the body rejected *Smith* by enacting RFRA. *See* 42 U.S.C. §§ 2000bb(a)(4), (b)(1)–(2); *see also Tennessee v. Lane*, 541 U.S. 509, 520 (2004)

("[RFRA] could be understood only as an attempt to work a 'substantive change in constitutional protections.' Indeed, that was the very purpose of the law." (quoting *Flores*, 521 U.S. at 532)). When *Flores* curtailed RFRA, Congress responded by enacting RLUIPA. *Cutter v. Wilkinson*, 544 U.S. 709, 715 (2005); *Fowler v. Crawford*, 534 F.3d 931, 936 (8th Cir. 2008). Because RLUIPA is of RFRA's lineage, RFRA's history and context inform RLUIPA's meaning.

Viewed against this backdrop, RLUIPA reflects Congress's effort to preserve—rather than diminish—the remedial force of RFRA. Its provisions must therefore be interpreted in light of RFRA's context. Because RLUIPA mirrors RFRA in both structure and text, ordinary interpretive principles presume that Congress carried forward the settled meaning of the same terms deliberately incorporated into a descendant statute. *See Lorillard v. Pons*, 434 U.S. 575, 581 (1978) (When "Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute."). This presumption confirms that "government" and "appropriate relief" under RLUIPA retain the same meanings they carry in RFRA.

The Fifth Circuit lost sight of this historical backdrop and instead focused on the Spending Clause. Relying on *Sossamon v. Texas*, 563 U.S. 277 (2011), the Court concluded that "RLUIPA d[oes] *not* clearly allow for monetary damages." *Landor*, 93 F.4th at 261 (Clement, J., concurring in denial of rehearing en banc). But the critical difference in *Sossamon* was that the prisoner sued a *State* for damages, thus implicating sovereign immunity. *See* 563 U.S. at 280. The phrase "appropriate relief against a government," the Court

concluded, "does not so clearly and unambiguously waive sovereign immunity to private suits for damages that we can 'be certain that the State in fact consents' to such a suit." *Id.* at 285–86 (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 680 (1999)) (alteration removed).

Sossamon is inapposite: the Court's holding "that 'appropriate relief' does not include actions for money damages under RLUIPA" applies only "to suits against a *State*." *Landor*, 93 F.4th at 261 (Ho, J., dissenting from denial of rehearing en banc). "Individuals," however, "do not enjoy sovereign immunity," so "*Sossamon* should have no bearing on suits against individual officers in their individual capacities." *Id.*; *see also Tanzin*, 592 U.S. at 52 ("The obvious difference [from *Sossamon*] is that this case features a suit against individuals, who do not enjoy sovereign immunity."). By choosing the word "appropriate," Congress invited tailoring of the available relief to different circumstances and different defendants. Sensibly, money damages are appropriate in individual-capacity suits even if they are inappropriate in official-capacity suits against defendants who presumptively enjoy sovereign immunity.

Congress's reliance on the Spending and Commerce Clauses when enacting RLUIPA—rather than the Fourteenth Amendment as in RFRA—reflects a shift in constitutional authority, not in substantive scope. Nothing in RLUIPA's text suggests that Congress intended to narrow the remedial scheme by shifting constitutional bases. Instead, in response to *Flores*, Congress enacted RLUIPA using different powers to ensure it would avoid the same fate as RFRA.

That Congress relied on the Spending Clause in enacting RLUIPA does not diminish the import of the

statute's plain text or the context in which the statute arose. In *Sossamon*, this Court observed: "We have acknowledged the contract-law analogy, but we have been clear 'not [to] imply . . . that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise." 563 U.S. at 290 (alterations in original). Below, the Fifth Circuit took the contract analogy too far. Despite recognizing that RLUIPA's language derives from "§ 1983" and "its sister statute, RFRA," the court effectively imposed a strict privity requirement. *Landor v. La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 341 (5th Cir. 2023). It justified this approach by noting *Tanzin* "[r]eferr[ed] to RLUIPA only as a 'related statute,'" and that "the unanimous Court didn't extend the holding in *Tanzin*, much less its logic, to RLUIPA." *Id.* at 343 (quoting *Tanzin*, 592 U.S. at 52). But there was no reason for *Tanzin* to go further. This Court referenced RLUIPA once when stating:

> Our opinion in *Sossamon* does not change this analysis. *Sossamon* held that a State's acceptance of federal funding did not waive sovereign immunity to suits for damages under a related statute—the Religious Land Use and Institutionalized Persons Act of 2000—which also permits 'appropriate relief.' The obvious difference is that this case features a suit against individuals, who do not enjoy sovereign immunity.

Tanzin, 592 U.S. at 51–52. So of course "*Tanzin* doesn't address, directly or indirectly, [the Fifth Circuit's RLUIPA] decision in *Sossamon I*." *Landor*, 82 F.4th at 343. There was no need to do so. *Sossamon* involved RLUIPA—not RFRA, as in *Tanzin*. And State

sovereign immunity was at issue in *Sossamon*—not individual-capacity damages suits. In short, the Fifth Circuit faulted this Court for not addressing issues not before it in *Tanzin*.

Although RLUIPA shares both text and context with RFRA and bears the same legal lineage, the Fifth Circuit nonetheless concluded that their shared terms necessarily carry unrelated meanings. That conclusion cannot be reconciled with either text or context. Like RFRA, RLUIPA authorizes individual-capacity damages suits.

III. Consistent federal remedies for free-exercise violations provide uniformity.

The right to free exercise does not originate in a legislative act—or even in the Constitution. *See, e.g.*, Madison, *supra* § 1. Congress has repeatedly legislated to safeguard this right from State encroachment. Building on the Constitution, Congress responded to *Smith* with RFRA. When RFRA faltered, Congress enacted RLUIPA. That is among the principal tasks of government: to protect our inalienable rights.

Leaving religious liberty to a patchwork of state statutes will not suffice. Today, only about half the States have enacted RFRA- or RLUIPA-style protections. That disparity undermines the very uniformity Congress provided when it acted in response to *Smith* and *Flores*. Religious liberty cannot hinge on geography; the right of conscience belongs equally to all people, in every jurisdiction. A prisoner confined in one state, for example, should not have a greater or lesser free-exercise right than one confined in another. By enacting RLUIPA, Congress ensured that this bedrock liberty would be uniformly protected.

Individual-capacity damages suits are one more tool by which victims of free-exercise violations may

vindicate their rights. This Court has recognized that "[a] damages remedy is not just 'appropriate' relief as viewed through the lens of suits against Government employees," but sometimes "the *only* form of relief" able to remedy free-exercise violations. *Tanzin*, 592 U.S. at 51; *see also, e.g.*, *DeMarco v. Davis*, 914 F.3d 383, 390 (5th Cir. 2019) (stating damages were the "only recourse" for destruction of religious texts); *Harris v. Escamilla*, 736 F. App'x 618, 620 (9th Cir. 2018) (desecration of religious text "render[ed] it unusable"). Certain injuries cannot be redressed by injunctive relief, which operates only prospectively. There may also be little incentive or motivation for the individual bad actors themselves trampling free-exercise rights to abide by injunctive orders. In this case, for example, a prison guard threw in the trash Landor's copy of *Ware v. Louisiana Department of Corrections*, 866 F.3d 265 (5th Cir. 2017), which held that Louisiana's policy of cutting Rastafarians hair violated RLUIPA. *Landor*, 82 F.4th at 340. People who disrespect controlling court opinions or other papers handed directly to them may likewise choose to ignore written injunctive orders. Interpreting RLUIPA to permit such suits ensures that violators of religious liberty can be held personally accountable.

Moreover, permitting individual-capacity damages will not result in a flood of new RLUIPA litigation. Prisoners already may file claims against government officials in their official capacity, and the substantive scope of conduct covered under RLUIPA will remain the same. And even if the Court's interpretation were to somehow substantially affect the nature or number of prisoner claims, Congress could respond—just as it has before to this Court's actions.

As for the prisoners themselves, they are often "those members of our society in greatest need of moral guidance and healing." 139 CONG. REC. S14461 (daily ed. Oct. 27, 1993) (Statement of Sen. Lieberman). Religious practice "is often the only moral structure that permeates prison cells." *Id.*

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

CONOR R. HARVEY
Counsel of Record
EVA M. GUZMAN
ERIC B. BOETTCHER
WRIGHT CLOSE BARGER
& GUZMAN, LLP
One Riverway, Ste. 2200
Houston, TX 77056
(713) 572-4321
harvey@wrightclosebarger.com

Counsel for Amici Curiae

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