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 SEVEN RELIGIOUS-LIBERTY SCHOLARS AS AMICI CURIAE SUPPORTING PETITIONER

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Amici file this brief in their individual capacities as scholars. The universities with which they affiliate take no position on the issue presented by this case.

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[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amici curiae or their counsel contributed money intended to fund preparing or submitting this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question presented in this case is straightforward: does "appropriate relief" against government "official[s]" under the Religious Land Use and Institutionalized Persons Act include damages against officials in their individual capacities?

This Court already answered this question in the affirmative in the context of the Religious Freedom Restoration Act. *Tanzin* v. *Tanvir*, 592 U.S. 43, 45 (2020). Looking at the statute's text from every angle, the *Tanzin* Court held that RFRA clearly allows for individual-capacity damages. Nevertheless, the Fifth Circuit panel in this case held that RLUIPA's identical language means something completely different. *Landor* v. *La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 345 (5th Cir. 2023).

The court below appeared to believe that a Spending Clause statute attaching conditions to money granted to the state could not impose liability on a state official or employee. But this Court has already rejected that theory, in the more demanding context of criminal liability. *Sabri* v. *United States*, 541 U.S. 600, 608 (2004).

To make matters worse, the Fifth Circuit's flawed reasoning further cemented a troubling trend among lower courts. Many lower courts have construed RLUIPA narrowly to refuse any damages remedy—despite recognizing that "[t]he plain language of RLUIPA * * * seems to contemplate such relief." See, *e.g.*, *Sossamon* v. *Lone Star State of Texas*, 560 F.3d 316, 327 (5th Cir. 2009), aff'd on other grounds sub nom. *Sossamon* v. *Texas*, 563 U.S. 277 (2011). These

lower courts overrode the statutory text to avoid concerns that allowing individual-capacity damages claims under RLUIPA might exceed Congress's powers under the Spending Clause. *Id.* at 328–29. But those concerns were misplaced. As this Court's precedents confirm, it was well within Congress's powers to provide a damages remedy here.

At bottom, this case isn't just about whether claimants like Mr. Landor can recover damages. It's about whether they can receive any relief at all. Because the lower courts' erroneous interpretation of RLUIPA would deprive countless individuals of a remedy for even the most blatant religious-freedom violations, this Court should reverse.

ARGUMENT

I. The Fifth Circuit rejected RLUIPA's clear mandate.

Congress passed RLUIPA to expand prisoners' access to remedies for state actions burdening their free exercise of religion. In appropriate cases, those remedies include individual-capacity damages. Indeed, in many cases, damages are the only meaningful relief available. Yet, if allowed to stand, the Fifth Circuit's decision would foreclose that avenue of relief and make RLUIPA a dead letter for countless inmates.

A. RLUIPA's text, like RFRA's identical text, provides a damages remedy.

To start, RLUIPA's remedial language is identical to RFRA's. When, as here, "Congress uses the same language in two statutes having similar purposes," courts should "presume that Congress intended that text to have the same meaning in both statutes."

Smith v. *City of Jackson*, 544 U.S. 228, 233 (2005). Just like RFRA, RLUIPA allows plaintiffs to seek all "appropriate relief" against the "government," including any state "official." 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(ii); see also 42 U.S.C. §§ 2000bb-1(c), 2000bb-2(1). Because the statutes share language, purpose, and subject matter, the Court should presume they share the same meaning. Indeed, the two statutes share the same language in two ways that are relevant here.

First, in both RFRA and RLUIPA, Congress went out of its way to define "government" to ensure that individual-capacity damages were available. And as this Court has explained in the RFRA context, that definition's language is "clear." *Tanzin*, 592 U.S. at 47. Rather than limit claims against officials to acts in their official capacities, Congress "supplanted the ordinary meaning of 'government'" by defining it to include individual officials. *Ibid.* And it did so twice—reaching not only "official[s]" but "any other person acting under color of State law." 42 U.S.C. § 2000cc-5(4)(A)(ii)–(iii). The Fifth Circuit refused to apply *Tanzin*'s reasoning to RLUIPA's identical language, rending RFRA and RLUIPA apart.

The Fifth Circuit's decision makes that same language in RLUIPA entirely superfluous. If RLUIPA excludes individual-capacity damages, plaintiffs are left with only injunctive or declaratory relief—relief they could have obtained against officials in their official capacities. See *Ex parte Young*, 209 U.S. 123, 161 (1908). There would have been no point to Congress' departure from the ordinary meaning of "government" if that departure added nothing to the relief that would have been available without it. The expanded

definition of "government" makes sense only if RLUIPA permits individual-capacity-damages claims, just as RFRA does.

Second, the term "appropriate relief" itself confirms that both RFRA and RLUIPA make individual-capacity damages available. That term "is 'open-ended' on its face," *Tanzin*, 592 U.S. at 49, and nothing in the text suggests that Congress meant to further limit remedies. Instead, "appropriate relief" in the context of remedies for civil-rights or civil-liberties violations most naturally refers to the large body of remedies law under 42 U.S.C. § 1983. See *infra* I.B.

RLUIPA's legislative history supports this reading. In the House Report for RLUIPA's predecessor bill, which also authorized "appropriate relief," Congress explained that it sought to "track RFRA, [by] creating a private cause of action for *damages*, injunction, and declaratory judgment." H.R. Rep. No. 106-219, at 29 (1999) (emphasis added). Because sovereign immunity precludes damages against the state, see, *e.g.*, *Sossamon*, 563 U.S. at 280, the Report can only have meant damages against individual officials or persons acting under color of law. This statement also confirms what would otherwise be left to inference—RLUIPA's copying of RFRA's remedies provisions was entirely deliberate, further supporting an interpretation that reads these identical provisions to mean the same thing.

The Fifth Circuit's reading contradicts RLUIPA's text, its legislative history, and this Court's precedent, and it drives an unjustified wedge between RFRA and RLUIPA's identical remedial provisions.

B. Historical context confirms that damages are "appropriate relief" under RLUIPA.

To make matters worse, cutting RLUIPA plaintiffs off from monetary relief ignores the statute's historical context. In determining what "appropriate relief" includes in RFRA, *Tanzin* looked not only to the statute's text but to the broader "context of suits against Government officials." *Tanzin*, 592 U.S. at 49. And allowing individual-capacity damages is not only "appropriate," but in line with decades of civil-rights law. See *ibid.* Because "RFRA reinstated pre-[*Employment Division* v.]*Smith* protections and rights," this Court explained, "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 (discussing *Emp. Div., Dep't of Hum. Res.* v. *Smith*, 494 U.S. 872 (1990)).

Looking to that context, *Tanzin* noted that damages against government officials had "long been awarded as appropriate relief," both at common law in the early Republic and when statutes later displaced the common law. *Id.* at 49. Of particular importance, damages were "commonly available against state and local government officials" under 42 U.S.C. § 1983, including for religious-freedom violations. *Id.* at 50 (citing cases allowing individual-capacity damages under § 1983).

Like RFRA, RLUIPA reinstated and strengthened pre-*Smith* protections and rights in the zoning and prison contexts. Thus, *Tanzin*'s logic applies with full force: prisoners suing under RLUIPA should have at least the same avenues for relief that pre-*Smith* free-exercise plaintiffs had.

Those avenues were broad. Under § 1983, prisoners have long sought damages, including damages against prison officials for violating their religious-freedom rights. See, *e.g.*, *Sockwell* v. *Phelps*, 20 F.3d 187, 192–93 (5th Cir. 1994); *Bryant* v. *McGinnis*, 463 F. Supp. 373, 388 (W.D.N.Y. 1978); *Vanscoy* v. *Hicks*, 691 F. Supp. 1336, 1337–38 (M.D. Ala. 1988); *Campbell* v. *Thornton*, 644 F. Supp. 103, 105 (W.D. Mo. 1986); *Stovall* v. *Bennett*, 471 F. Supp. 1286, 1292 (M.D. Ala. 1979); *Masjid Muhammad-D.C.C.* v. *Keve*, 479 F. Supp. 1311, 1327–28 (D. Del. 1979). That history confirms that damages are a perfectly "appropriate" remedy under RLUIPA, just as they are under RFRA and under § 1983. See *Tanzin*, 592 U.S. at 51. The Fifth Circuit's contrary holding leaves RLUIPA prisoner plaintiffs worse off than their pre-*Smith* counterparts—the opposite of what RLUIPA demands.

II. The Spending Clause does not limit individual-capacity damages under RLUIPA.

The Fifth Circuit's decision invokes the Spending Clause and pre-*Tanzin* precedent to gut RLUIPA's protections for prisoner plaintiffs. Many circuits have similarly hesitated to impose liability under RLUIPA because many applications of the statute depend on Congress's Spending Clause power. Though these lower courts haven't agreed on *why* the Spending Clause precluded recovery, they have all either concluded that it did or invoked the canon of constitutional avoidance to reach the same result. See, *e.g.*, *Barnett* v. *Short*, 129 F.4th 534, 542–44 (8th Cir. 2025); *Haight* v. *Thompson*, 763 F.3d 554, 568–70 (6th Cir. 2014); *Wood* v. *Yordy*, 753 F.3d 899, 902–04 (9th Cir. 2014); *Washington* v. *Gonyea*, 731 F.3d 143, 145–46 (2d Cir. 2013); *Sharp* v. *Johnson*, 669 F.3d 144,

154–55 (3d Cir. 2012); *Stewart* v. *Beach*, 701 F.3d 1322, 1334–35 (10th Cir. 2012); *Rendelman* v. *Rouse*, 569 F.3d 182, 188–89 (4th Cir. 2009); *Nelson* v. *Miller*, 570 F.3d 868, 886–88 (7th Cir. 2009); *Sossamon*, 560 F.3d at 328–29; *Smith* v. *Allen*, 502 F.3d 1255, 1272–73 (11th Cir. 2007).

But these constitutional concerns are misplaced because RLUIPA's language is straightforward, as this Court recognized in *Tanzin*. This Court should reverse and clear away these misconceptions.

First, some lower courts have reasoned that Spending Clause statutes must speak "unambiguously" when imposing liability. See *Haight*, 763 F.3d at 568–70; *Wood*, 753 F.3d at 902–04; *Sharp*, 669 F.3d at 154–55; *Rendelman*, 569 F.3d at 188–89; see also *South Dakota* v. *Dole*, 483 U.S. 203, 207 (1987) (citing *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981)). Yet RLUIPA easily clears this clear-statement hurdle. RLUIPA's text clearly contemplates an individual-capacity-damages remedy; key provisions make no sense otherwise. See *supra* I.A.

Indeed, if monetary relief didn't satisfy the Spending Clause's clear-statement requirement, it's unclear what other form of relief would. Damages are a traditional remedy, especially in suits against individuals, so they fall squarely within the ambit of "appropriate relief." *Tanzin*, 592 U.S. at 50–51 (highlighting the availability of damages at common law and under § 1983). Conversely, equitable relief against state officers "is the creation of courts of equity" and "is subject to express and implied statutory limitations." *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). So if, as these courts posit, "appropriate relief" doesn't "unambiguously" include damages,

surely it doesn't "unambiguously" include equitable relief either. Under this version of the clear-statement rule, then, RLUIPA would authorize no remedies at all. Far from "giv[ing] effect, if possible, to every clause and word of a statute," *Williams* v. *Taylor*, 529 U.S. 362, 404 (2000) (quoting *United States* v. *Menasche*, 348 U.S. 528, 538–39 (1955)), that approach would deprive the whole statute of effect.

Further, if any doubt existed before *Tanzin*, that decision confirms that RLUIPA's and RFRA's shared text is "clear" that the statutes provide for individual-capacity damages. *Tanzin*, 592 U.S. at 47. If anything, Congress's intent to include an individual-capacity-damages remedy comes through even more clearly in RLUIPA, where Congress expressly directed that the text 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). So the constitutional-avoidance canon does not apply here—and it would not change the result if it did.

Second, other lower courts, like the Fifth Circuit below, have precluded individual-capacity damages based on the misconception that Spending Clause legislation must operate "like a contract," barring all liability except state- and local-government liability. See *Barnett*, 129 F.4th at 542–44; *Sossamon*, 560 F.3d at 328; *Gonyea*, 731 F.3d at 145–46; *Sharp*, 669 F.3d at 155; *Stewart*, 701 F.3d at 1334–35; *Nelson*, 570 F.3d at 886–88; *Smith*, 502 F.3d at 1272–73; *Wood*, 753 F.3d at 902–04.

But the contract analogy was never meant to be an answer key for all Spending Clause questions. Just two years ago, this Court rejected an "invitation to

reimagine Congress's [Spending Clause] handiwork" through the lens of contract theory. *Health & Hosp. Corp. of Marion Cnty.* v. *Talevski*, 599 U.S. 166, 178 (2023); see also *id.* at 193 (Barrett, J., concurring). And in *Barnes* v. *Gorman*, 536 U.S. 181, 188 n.2 (2002), the Court warned against thinking that "suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise." Congress's Spending Clause powers leave room for Congress to design necessary and proper remedies that reach non-funding recipients so long as the conditions and consequences are made clear to the funding recipient.

Most important, this Court has squarely held that Congress can use its Spending Clause power to "bring federal power to bear directly on individuals" who do not themselves receive federal funds. *Sabri* v. *United States*, 541 U.S. 600, 608 (2004). And several Spending Clause laws do just that.

Take, for example, the False Claims Act (31 U.S.C. § 3729 *et seq.*), which imposes civil monetary liability (including treble damages) on *any* person who submits false claims to obtain federal funds. Under the FCA, penalties can be imposed on non-recipients including those who merely apply but don't receive funds, those who cause someone else to submit false claims, or those who apply for someone else. See, *e.g.*, *United States* v. *Bornstein*, 423 U.S. 303 (1976) (holding subcontractor liable for supplying falsely branded radio tubes to a prime contractor, thereby causing the prime contractor to submit false claims); *United States* ex rel. *Marcus* v. *Hess*, 317 U.S. 537 (1943) (electrical contractors liable for collusive bidding that led municipalities to submit inflated claims to the federal government,

even though the contractors didn't directly receive federal funds); *United States* v. *Mackby*, 261 F.3d 821 (9th Cir. 2001) (clinic manager personally liable for using another physician's provider number even though he wasn't the intended recipient of the Medicare reimbursements).

Similarly, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, like the anti-bribery statute at issue in *Sabri*, imposes criminal liability on anyone who causes false statements to be made in connection with federal health-care payments. And a number of federal agencies have authority to impose hefty civil penalties on private parties that deal fraudulently with federal funding programs. See, *e.g.*, 12 U.S.C. § 1735f-14 (federal housing programs); 42 U.S.C. § 1320a-7a (federal health-care programs).

The contract analogy is particularly inapt here, where the statutory language most naturally refers to the large body of remedies law under § 1983. "There is no doubt" that the cause of action created by § 1983 "is, and was always regarded as, a tort claim." *Talevski*, 599 U.S. at 179 (quoting *City of Monterey* v. *Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 727 (1999) (Scalia, J., concurring in part and concurring in judgment)). Thus, the extension of contract-law principles to bar all government-employee liability under RLUIPA is similarly "perplexing." *Ibid.*

In short, the widespread confusion in the lower courts over the relationship between RLUIPA and the Spending Clause badly needs correction. RLUIPA clearly articulates an individual-capacity-damages remedy, as this Court confirmed in *Tanzin*. Barring individual-capacity damages outright stretches the contract-law analogy of the Spending Clause too far. This

case presents a clear opportunity to correct the lower courts' confusion.

III. RLUIPA's remedial aims require damages.

If left uncorrected, the Fifth Circuit's decision will perpetuate an error that makes RLUIPA useless for many of the very plaintiffs it was designed to protect. RLUIPA is the culmination of Congress's repeated efforts to ensure that states respect free-exercise rights. And providing a damages remedy was a critical part of Congress's goal. As *Tanzin* explained, a "damages remedy is not just 'appropriate' relief" but is often "the *only* form of relief that can remedy" a religious claimant's harm. 592 U.S. at 51 (emphasis in original). Reading RLUIPA to withhold damages for violations of the Act would frustrate Congress's persistent efforts to protect religious freedom.

If damages remain unavailable, many plaintiffs, particularly prisoners, will be left without any relief at all. Inmates often cannot vindicate their rights until a violation is long past. Their suits are delayed by administrative barriers. They are moved among prisons as violations of their rights begin and end and begin again. And, of course, they eventually complete their sentences. Because injunctions cannot redress violations that have abated, it is often damages or nothing for victims of past harms. See *ibid.*

Many inmates spend a short time in the correctional system and are frequently moved among facilities within it. Inmates released in 2018 had spent an average of only 2.7 years in prison and just 26 days in jail. U.S. Bureau of Justice Statistics, NCJ 255662, *Time Served in State Prison, 2018* at 1 (2021); Jake Horowitz & Tracy Velazquez, *Why Hasn't the Number*

of People in U.S. Jails Dropped?, Pew Trusts (March 27, 2020), https://perma.cc/922N-CBX5. A prisoner's assignments in state correctional systems are often transitory, with inmates spending time in multiple jails, prisons, and other detention facilities. Jailers transfer inmates due to overcrowding, to provide healthcare, and for administrative reasons. And each time they do, the transfer moots any request for injunctive relief against an earlier prison. *Preiser* v. *Newkirk*, 422 U.S. 395, 403 (1975). Jailers may transfer prisoners for the very purpose of mooting their claims.

These inmates often lack the time to secure judicial relief from violations of their free-exercise rights before their claims become moot. Before they can even sue, the Prison Litigation Reform Act requires them to first exhaust all available prison grievance procedures. 42 U.S.C. § 1997e(a); see *Ross* v. *Blake*, 578 U.S. 632, 639 (2016) (holding that prisoners must exhaust all available grievance procedures—"irrespective of any 'special circumstances'"). That process alone can take months.

Practical matters also slow inmate claims. Over 90 percent of prisoner petitions are filed pro se, meaning inexperienced inmates must learn the necessary information to draft their complaint, file it, and then engage in the legal process, all while serving their sentences. *Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019*, U.S. Courts (Feb. 11, 2021), https://perma.cc/KK5R-4V4B. Together, these PLRA requirements and practical obstacles make it less likely that an inmate's rights will be vindicated before their injunctive claims become moot.

Apart from those hurdles, prison officials can at any point during litigation seek to avoid liability by transferring the prisoner, changing their policies, or granting a requested accommodation. So without damages available, states can strategically moot claims before courts can award relief, thwarting RLUIPA's protections.

What's more, denying damages under RLUIPA would result in unequal outcomes depending on *where* a prisoner is held. Despite RLUIPA's and RFRA's identical language and purpose in the prison context, federal prisoners would have a damages remedy while state prisoners would not. Given the identical language in both statutes, and RLUIPA's intent to reapply RFRA's protection to state prisons, damages should be available under RLUIPA as they are under RFRA. See *Tanzin*, 592 U.S. at 45.

This case illustrates that point. This Court has held that RLUIPA protects prisoners' physical expressions of faith. *Holt* v. *Hobbs*, 574 U.S. 352, 356 (2015). And all agree that in this case, the prison officials that tossed a squarely on-point appellate decision in the trash, strapped Mr. Landor down, and shaved his religious dreadlocks violated that right. See *Ware* v. *La. Dep't of Corr.*, 866 F.3d 263, 274 (5th Cir. 2017). If Mr. Landor were a federal prisoner, he would have a right to money damages under RFRA. *Tanzin*, 592 U.S. at 45. And no one doubts that if he were still in prison being denied his free-exercise rights, he could bring suit under RLUIPA and § 1983 for injunctive relief. See *Holt*, 574 U.S. at 356. Yet the Fifth Circuit has now announced that state prison officials can ignore appellate opinions and flout prisoner's rights with impunity as often as they choose, so long as their actions

aren't ongoing, because neither the state, nor its officials, nor its employees can be sued for damages. In other words, under the Fifth Circuit's flawed construction of RLUIPA, Mr. Landor has no claim whatsoever. That is the opposite of "appropriate relief."

CONCLUSION

In short, the Fifth Circuit's decision in this case, along with the similar decisions of other circuits, bucks RLUIPA's text and history, ignores this Court's caselaw, and leaves a large swath of RLUIPA plaintiffs with no recourse to protect their religious exercise. This Court should reverse and restore the protections RLUIPA requires.

Respectfully submitted,

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