No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR, PETITIONER

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.

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

REPLY BRIEF FOR PETITIONER

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Respondents primarily contend that, for them to win, this Court needs to rewrite the statute and answer the wrong constitutional question. They assert (Br. 7-30) that RLUIPA's "color of law" clause would be unconstitutional if it were applied to "non-recipient nonofficials." They ask this Court to delete the "color of law" clause and then reinterpret the remaining text as if that were the statute. They even include a redline (Br. 37). They assert that, if modified, RLUIPA would no longer clearly authorize an individual-capacity action against state officials like them. Out of left field, respondents close the brief with a discussion of Medicaid funding.

Those arguments confirm that this Court should reverse. This Court cannot edit a statute, only Congress can. And it is irrelevant whether RLUIPA's "color of

law" clause could be validly applied in some hypothetical case because it does not apply to this actual case: RLUIPA's separate "officials" clause applies because respondents are all state officials and indirect recipients of federal funds. So respondents' bank-shot argument gets them nowhere. And the Medicaid argument is waived and far outside the question presented.

Respondents' brief also does not even have a statement of the case. That is proof positive they have no answer to the horrific facts, which show damages are essential to RLUIPA's effective protection of religious liberty. Respondents are law enforcement officers who threw the law into the trash before flagrantly violating it. That is utterly lawless, yet their position would allow such abuse with impunity. That is clearly wrong. Congress did not enact RLUIPA's individual-capacity action so that individual officers could treat RLUIPA like garbage.

By largely ignoring the question presented, respondents leave unrebutted simple points that warrant reversal. They concede the statute is clear by arguing that the text needs to be changed to make it unclear. They also do not dispute that RLUIPA is RFRA's twin in restoring pre-*Smith* rights and remedies, which included damages against individual state officials under 42 U.S.C. 1983. The original pre-*Boerne* version of RFRA "made clear" that damages "must" be available against individual state officials. *Tanzin* v. *Tanvir*, 592 U.S. 43, 47-51 (2020). So RLUIPA "must" provide damages against individual state officials. *Ibid.* RLUIPA cannot be understood any other way.

RLUIPA's damages remedy is also constitutional as applied to respondents. They admit (Br. 46) that, as state officers employed by a federally-funded program,

they "must" comply with RLUIPA's substantive condition. Congress has ample power to hold those same officers liable for violating that same condition. Indeed, there is "no serious doubt" that Congress can hold officers in a federally-funded prison liable for misconduct that threatens "the integrity and proper operation of the federal program." *Salinas* v. *United States*, 522 U.S. 52, 60-61 (1997). And respondents do not dispute that their assault interfered with the program's proper operation: Congress requires federally-funded prisons to respect religious exercise. They did the exact opposite.

This Court therefore can simply hold that RLUIPA authorizes individual-capacity damages, just like RFRA and Section 1983, and that RLUIPA's remedy is constitutional as applied to respondents under *Salinas*. That would keep RLUIPA in line with RFRA and avoid breaking any new constitutional ground.

By contrast, respondents' position would defeat RLUIPA's clear text and obvious purpose, rendering the statute largely unenforceable. Their position is foreclosed by *Tanzin*, *Salinas*, and a long line of this Court's decisions. Their position also lacks a limiting principle: It would invalidate numerous federal statutes and make Congress powerless to prevent individuals cloaked with state authority from terrorizing inmates in federally-funded custody. This Court should not go down that path. It should simply reverse and therefore restore pre-*Smith* rights and remedies to protect religious liberty.

I. RLUIPA Clearly Authorizes Damages Suits Against Officials In Their Individual Capacities

A. RLUIPA Clearly Provides The Same Remedies As RFRA

Respondents entirely disregard the fundamental point that RLUIPA is RFRA's clone: They share the "same genetic material." Christian Legal Soc'y Br. 13-14. Originally, RFRA applied to both federal *and* state officials. See *Tanzin*, 592 U.S. at 50. RFRA "made clear" that it reinstated "pre-*Smith* substantive protections … *and* the right to vindicate those protections by a claim"—including individual-capacity damages *against state officers specifically*. *Id.* at 50-51 (discussing *Emp. Div.* v. *Smith*, 494 U.S. 872 (1990)).

Congress enacted RLUIPA after *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), struck down RFRA's protection as to States. Pet. Br. 6. In RLUIPA, Congress copied RFRA's operative language verbatim and, within its narrower scope, restored those same protections. *Ibid.*

That choice can only be reasonably understood one way: By duplicating RFRA's language, Congress clearly meant that RLUIPA provides the same pre-*Boerne* rights and remedies that the original RFRA did—which included individual-capacity damages against state officers. *Tanzin*, 592 U.S. at 50.

RLUIPA therefore "must" provide individual-capacity damages against state officers as well. *Id.* at 50-51. They were available before *Smith* under Section 1983 *and* before *Boerne* under RFRA, so they must be available under RLUIPA. Leaving "RLUIPA prisoner plaintiffs worse off than their pre-*Smith* counterparts" is "the opposite of what RLUIPA demands." Religious Scholars Br. 7. That simple point is dispositive.

B. RLUIPA Clearly Creates An Individual-Capacity Action

Respondents also offer no argument against reading RLUIPA's actual text to provide an individual-capacity action. They admit (Br. 2) the text is "identical" to RFRA's and identify no basis to distinguish *Tanzin*'s finding that the text "clear[ly]" provides such an action. 592 U.S. at 47.

Respondents instead devote much of their brief (Br. 6-38) to arguing that this Court should change the text to make it unclear. First, respondents assert that RLUIPA's "color of … law" clause, 42 U.S.C. 2000cc-5(4)(A)(iii)—which does not apply in this case—would be unconstitutional as applied to "non-recipient nonofficials." Resp. Br. 3, 7-30. Second, they ask the Court (Br. 3) to "eliminat[e]"—that is, *delete*—that clause. The redline (Br. 37) vividly shows their proposal. Third, respondents contend that, if this Court interprets the edited text (Br. 38), it would be unclear whether the separate "officials" clause authorizes suits against officials in their individual capacity.

That is a non-starter. The argument that this Court must *rewrite the statute* to make it unclear admits that the statute is clear as written. It also means that most of respondents' brief is a confusing detour. This case does not present any question about application of the "color of law" clause or "non-recipient nonofficials." This case involves RLUIPA's separate clause covering "official[s]." 42 U.S.C. 2000cc-5(4)(A)(ii). It is undisputed that respondents are state officials employed by a federally-funded program, and thus indirect recipients of federal funds.

Respondents identify no precedent for reaching out to find an inapplicable provision of a statute unconstitutional, deleting it, and then reinterpreting the new text the Court itself created. This Court should not open up that brave new world of statutory reinterpretation. This Court interprets "the text, structure, context, history, and purpose." *Truck Ins. Exch.* v. *Kaiser Gypsum Co.*, 602 U.S. 268, 279 n.4 (2024). "[T]he text" is the text Congress enacted. *Ibid.* "Congress has put down its pen, and we can neither rewrite Congress' words nor call it back 'to cancel half a Line.' Our task is to interpret what Congress has said[.]" *Rodriguez* v. *Compass Shipping Co.*, 451 U.S. 596, 617 n.40 (1981) (citation omitted).

Respondents also misapprehend (Br. 29) what it means to "sever[]" provisions. "[A] federal declaration of unconstitutionality reflects the opinion of the federal court that the statute cannot be fully enforced," but it "cannot make even an unconstitutional statute disappear." *Steffel* v. *Thompson*, 415 U.S. 452, 469-70 (1974) (citation omitted). When this Court finds a provision unconstitutional, the provision remains part of the statute's text, context, and history. For example, after *Boerne* invalidated portions of the original RFRA, this Court *still* looked to the original RFRA in *Tanzin* to interpret the meaning of the current text—even though Congress had by that time deleted the text held to be unconstitutional. 592 U.S. at 50. This Court thus cannot change text—only Congress can. And neither this Court nor Congress can change the past.

Respondents invoke RLUIPA's severability provision (Br. 29), but it cuts squarely against them. It provides that, if any part of RLUIPA "is held to be unconstitutional, the remainder of this chapter … shall not be af-

fected." 42 U.S.C. 2000cc-3(i). But the point of respondents' bank-shot argument is to "affect[]" the "remainder of this chapter" by changing its meaning. *Ibid.* Congress foreclosed that radical effort to cause collateral damage to the statute.

C. Damages Are Clearly Appropriate Relief In An Individual-Capacity Suit

Because RLUIPA clearly includes an individual-capacity action, respondents' primary argument against damages fails. Respondents have little left to say about what constitutes "appropriate relief" in such an action.

1. Respondents do not dispute overwhelming evidence that damages are appropriate

Respondents assert that the phrase "appropriate relief" is ambiguous in isolation. Resp. Br. 38-39. But this Court always reviews text in context. *E.g.*, *Tanzin*, 592 U.S. at 49-52. And respondents do not dispute overwhelming contextual evidence that damages are clearly appropriate in individual-capacity actions.

Respondents do not dispute Congress made clear that RLUIPA restored pre-*Smith* and pre-*Boerne* rights and remedies, which included damages against individual state officers. See p. 4, *supra*.

Respondents do not dispute that, without damages, RLUIPA's individual-capacity action would be meaningless. The whole point of individual-capacity actions is to award damages against the individual officer. See *Lewis* v. *Clarke*, 581 U.S. 155, 162 (2017). As officers, respondents are already subject to official-capacity injunctions. Resp. Br. 46. So without damages, the individual-capacity action would be pointless.

Respondents do not deny that damages are more than just "appropriate" and indeed essential as the

"*only*" effective relief for some violations. *Tanzin*, 592 U.S. at 51. They note (Br. 44) that injunctions can help some plaintiffs, but injunctions provide no relief for one-time assaults, for victims who have been released or transferred, or otherwise when it is damages or nothing. See Pet. Br. 21-22. The amicus briefs are full of ugly examples. *E.g.*, Becket Fund Br. 13-16; 44 Religious Orgs. Br. 15-17; Prof. Johnson Br. 7-8. So RLUIPA might not be *entirely* meaningless, but RLUIPA would be *often* meaningless. Congress does not ordinarily draft statutes that are meaningless in a large category of their applications. *E.g.*, *Quarles* v. *United States*, 587 U.S. 645, 653-54 (2019). And RLUIPA's express cause of action confirms Congress meant RLUIPA to have teeth.

Respondents cavalierly ignore the facts, which show that, without damages, RLUIPA would often be an empty promise. Respondents admit (Br. 46) they "must" comply with RLUIPA's substantive protections for religious liberty. Yet they threw the law into the trash, flouted its command, and stripped Landor of decades of religious practice and a defining feature of his identity. See Dr. Autrey Br. 2-3 (before and after pictures); J.A. 38-39. That is outrageous. RLUIPA is a law, not a gentle suggestion. No relief is obviously not "appropriate relief" in a suit against an individual officer for such a blatantly illegal assault.

Respondents also do not dispute that multiple layers of additional protections help ensure that any damages award is indeed appropriate. Individual damages are the norm for state officers under Section 1983. See Former Corr. Offs. Br. 13-14. Qualified immunity applies, just like under Section 1983. See Pet. Br. 36. States can (and Louisiana does) indemnify individual officers. *Id.* at 35. And the Prison Litigation Reform Act, 42 U.S.C.

1997e, includes multiple additional protections against unwarranted claims. Becket Fund Br. 18-19.

2. There is no "supercharged clear-statement rule"

Respondents urge this Court to apply a "supercharged clear-statement rule." Resp. Br. 30-36, 38. Again, that tacitly recognizes respondents cannot prevail under this Court's existing standards, which require only clear notice. This Court should not "supercharge" anything.

This Court has never required a "supercharged clear-statement" (Br. 38) for spending legislation. This Court has found sufficiently clear notice provided by an implied cause of action, without an express statement. *Franklin* v. *Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 66-68, 70-71 (1992). Respondents also fail to identify any difference between their rule and a "magic words" requirement, which this Court rejects even in the sovereign immunity context. *E.g.*, *Dep't of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 48 (2024) (citation omitted). Indeed, substantive clear-statement requirements are disfavored because they impose a "clarity tax." *Biden* v. *Nebraska*, 600 U.S. 477, 509-10 (2023) (Barrett, J., concurring). A "supercharged clear-statement rule" would make the tax especially harsh: It would thwart Congress's intent even where, as here, it is already clear.

Respondents invoke federalism concerns (Br. 30-31), but *Dole* and the ordinary clear-notice requirement already accommodate those concerns. See *South Dakota* v. *Dole*, 483 U.S. 203, 207-08, 211 (1987). There is no basis for double counting.

Respondents assert (Br. 34) that "Congress apparently has never otherwise attempted to wield its spending power to create a private right of action against non-

recipients." See *id.* at 25 (describing the "cause of action against non-recipients" as "a class of one in our Nation's history"). But that is misleading and irrelevant. No defendant is a "non-recipient" or a "nonofficial"; respondents are state officials in a federally-funded program and thus indirect recipients. The contention that a different provision would be novel if applied in a different context provides no basis to raise the bar here.[1]

The relevant tradition—for state officials and indirect recipients—instead weighs heavily against respondents. Respondents do not dispute that damages have been available in private suits against individual officers from "the early Republic" to today, were available in private suits against individual state officers in federally-funded prisons from the Founding, and were available in private suits against state officers under Section 1983 before *Smith* and under RFRA before *Boerne*. See *Tanzin*, 592 U.S. at 49-51; Pet. Br. 18-20, 44-46. Damages are presumptively available against non-sovereigns, including under spending legislation. *Franklin*, 503 U.S. at 70-71. And this Court has long rejected any "perceived distinction between direct and indirect aid." *Grove City Coll.* v. *Bell*, 465 U.S. 555, 564 (1984); *e.g.*, *Dixson* v. *United States*, 465 U.S. 482 (1984). Respondents have no answer.

Respondents point (Br. 34-35) to Congress's silence in response to courts of appeals' decisions denying a damages remedy. But silence does not trump clear text. *E.g.*, *Rodriguez*, 451 U.S. at 614-17; *Johnson* v. *Transp.*

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[1] Congress has also previously created a private right of action against individuals acting under color of law that can be used to enforce spending legislation: Section 1983. See *Health & Hosp. Corp. of Marion Cnty.* v. *Talevski*, 599 U.S. 166, 178-80 (2023).

Agency, 480 U.S. 616, 671-72 (1987) (Scalia, J., dissenting) ("[V]indication by congressional inaction is a canard."). Moreover, "Congress is generally unaware of circuit-level statutory interpretations." Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. 317, 331-32 (2005). Congress has not amended RLUIPA since enacting it. And in the subsequent years, although the courts of appeals unanimously agreed damages were unavailable, they did not speak with "one voice" (Br. 35) about RLUIPA's meaning. Some courts found that RLUIPA authorized damages but denied them on (erroneous) constitutional grounds. *E.g.*, Pet. App. 11a (following circuit precedent holding that, "although RLUIPA's text suggests a damages remedy, recognizing as much would run afoul of the Spending Clause"); CVSG Br. 20. Congress thus did not demand greater clarity by doing nothing.

3. Respondents' remaining arguments lack merit

Respondents make only a handful of other arguments (Br. 38-45) about "appropriate relief." They lack merit and regardless would not change RLUIPA's clear meaning.

Respondents argue that "contracts with a sovereign" "do not traditionally confer a right of action for damages." *Id.* at 39 (quoting *Sossamon* v. *Texas*, 563 U.S. 277, 290 (2011)). But that rule applies only to suits against sovereigns, and respondents admit Landor "is right," *ibid.*, that this is a suit against individuals. Respondents resort to demanding Congress speak clearly. *Ibid.* Congress did.

Respondents argue that Congress's choice to limit the United States—but not private victims—to obtaining "injunctive or declaratory relief," 42 U.S.C. 2000cc-2(f), does not necessarily mean that private victims can

also obtain damages. Resp. Br. 39-40. But this Court "generally" interprets such differences as intentional. *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 78 (2023) (citation omitted). "Context counts," *ibid.*, and all the context above confirms that the ordinary inference is correct: Damages are available. Landor's position also does not depend on this textual difference. RFRA lacks it, yet RFRA still "made clear" damages "must" be available. *Tanzin*, 592 U.S. at 50-51.

Respondents assert (Br. 43) that RLUIPA's rule of construction applies only to RLUIPA's substantive provisions. Not so. It provides that "[t]his chapter 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). "This chapter," *ibid.*, means the chapter "as a whole," including its remedies. See *Rubin* v. *Islamic Republic of Iran*, 583 U.S. 202, 212 (2018). And this Court's recognition in *Holt* v. *Hobbs*, 574 U.S. 352, 358 (2015), that RLUIPA's substance is construed broadly does not suggest its remedies are not also construed broadly. Cf. Resp. Br. 43. In any event, unlike respondents, Landor does not need to put a thumb on the scale.

Respondents assert (Br. 40) that this Court should defer to the courts of appeals. But this Court is Supreme and does not defer to any court's interpretation of federal law. This Court must "say what the law is." *Marbury* v. *Madison*, 5 U.S. 137, 177 (1803). "[O]nce the Court has spoken, it is the duty of other courts to respect that understanding[.]" *Nitro-Lift Techs., L.L.C.* v. *Howard*, 568 U.S. 17, 21 (2012) (per curiam) (citation omitted). It is "not at all … rare" for this Court to disagree with a "'clear majority'" of the circuits. *Buckhannon Bd. & Care Home, Inc.* v. *W. Va. Dep't of Health & Hum.*

Res., 532 U.S. 598, 621 (2001) (Scalia, J., concurring) (citation omitted).

Respondents' brief (Br. 11-18) also shows that the courts of appeals' reasoning is thoroughly unpersuasive. The drift from interpreting Title IX's implied right of action to a bright-line constitutional rule that Congress can *never* impose liability on the officer or agent of a federally-funded program shows "how a hint becomes a suggestion, is loosely turned into dictum and finally elevated to a decision." *United States* v. *Rabinowitz*, 339 U.S. 56, 75 (1950) (Frankfurter, J., dissenting). Such thin reasoning is no basis to bind this Court. Quite simply, RLUIPA clearly authorizes individual-capacity damages, just like RFRA and Section 1983.

II. RLUIPA Is Constitutional As Applied To Respondents

RLUIPA's individual-capacity action is also constitutional as applied to respondents. By working as state officers for a federally-funded program, respondents are bound by RLUIPA's substantive condition: "Louisiana prison officials must comply with RLUIPA's substantive protections for religious exercise—and may be forced to do so through injunctive relief when sued in their official capacities." Resp. Br. 46. Respondents provide no justification for their puzzling rule that Congress can impose a condition on officers of a federally-funded program but is powerless hold them individually accountable for violating that same condition. There is none.

A. *Salinas* Is Controlling

1. At the outset, in *Salinas*, *Dixson*, and a long line of cases, this Court has upheld the imposition of liability on people in respondents' position: officers, agents, or subcontractors of a federally-funded program who violate clear conditions attached to the funds. See Pet. Br.

38-43; U.S. Br. 21-34;[2] *Dixson*, 465 U.S. at 496 (upholding conviction of private individuals administering federal grants); see also *Sabri* v. *United States*, 541 U.S. 600 (2004) (upholding liability on a member of the general public for paying bribes to official in federally-funded program).

Respondents complain (Br. 24) that Landor relies on *Salinas* "loudly." That is because *Salinas* is controlling. The defendant in *Salinas* was in the identical position as respondents: He was an officer in a local jail that accepted federal funds. 522 U.S. at 54-55. This Court found "no serious doubt about the constitutionality" of holding him liable for giving preferential treatment to a prisoner in exchange for bribes, because his misconduct posed "a threat to the integrity and proper operation of the federal program." *Id.* at 60-61. And respondents do not dispute that their abuse of Landor likewise "threat[ened] … the integrity and proper operation of the federal program." *Ibid.* This Court's analysis can stop there.

Respondents ignore *Dixson* and emphasize that *Salinas* involved the Necessary and Proper Clause. See Resp. Br. 24-25. That is no distinction. Congress can use the Necessary and Proper Clause together with the Spending Clause here as well.

Respondents try to gerrymander a rule that, although Congress generally cannot hold such officials liable, criminal prosecutions for "bribery, theft, and fraud" are different because those acts "'convert public spending into [private] gain.'" *Id.* at 24, 26 (citation omitted); see *id.* at 25 (referring to "embezzlement, false claims,

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[2] Respondents do not ask to overrule any of this Court's cases and do not dispute that Congress can use the Necessary and Proper Clause to enforce spending legislation. See Pet. Br. 36-43.

kickbacks, and the like"). But that is not the rule *Salinas* applied: *Salinas* upheld imposition of liability on an official whose misconduct posed "a threat to the integrity and proper operation of the federal program." 522 U.S. at 61. That rule is dispositive.

Respondents also paper over the facts of *Salinas*, which do not fit their rule. In *Salinas*, no public funds changed hands. The officer pocketed *private* gifts from an inmate in exchange for conjugal visits. 522 U.S. at 54-55, 61. This Court explained that it was the "preferential treatment accorded to" the inmate—maladministration of the program—that threatened the program's proper operation. *Id.* at 60-61. So too here.

If anything, respondents' egregious misconduct more directly interferes with the operation of the program. Congress expressly required that federally-funded state prisons provide pre-*Smith* accommodations for religious liberty, and it is undisputed that is a valid condition under *Dole*: Respondents are officers working in that program who admit (Br. 46) they were required to obey RLUIPA. Nonetheless, they deliberately did the exact opposite. In "unnecessarily burden[ing]" Landor's religious liberty, respondents thus "divert[ed] the federal subsidy from a prison in which religious freedom is protected to one in which it is not." Christian Legal Soc'y Br. 30; see Pet. Br. 43.

There is no basis for enabling Congress to hold an individual official in a federally-funded program liable for violating conditions that apply to that official's conduct if, but only if, the laws relate to bribery, fraud, or kickbacks. Congress is empowered to enact "all" laws that are Necessary and Proper for carrying out its powers, U.S. Const. art. I, § 8, cl. 18, not just laws relating to bribery, fraud, or kickbacks.

There is also no basis for the suggestion (Br. 25) that Congress can impose criminal but not civil liability. Private civil suits are a traditional method of enforcing the law against individual state officials. *E.g.*, *Tanzin*, 592 U.S. at 49-51. Congress's power to select remedies is broad. See *McCulloch* v. *Maryland*, 17 U.S. 316, 409-10 (1819). And civil liability is less intrusive than criminal punishment. Pet. Br. 43.

Sabri makes RLUIPA's constitutionality even clearer because *Sabri* goes considerably farther: It affirms Congress's power to hold a member of the general public liable for bribing an official in a federally-funded program, because of bribery's likelihood to interfere with Congress's effort to obtain value for its money. See 541 U.S. at 605-06. By reaching a member of the general public, *Sabri* shows that a strict contract analogy does not define the outer limit of Congress's power under the Necessary and Proper Clause. Pet. Br. 40-41. RLUIPA does not approach those limits because it *never* reaches the general public: It reaches the State, its "official[s]," and "any other person acting under color of State law." 42 U.S.C. 2000cc-5(4)(A). And the nexus to federal funding is more direct: Congress cannot obtain value for its money in funding prisons that respect religious liberty if officials working in those prisons flagrantly disrespect religious liberty. In any event, because *Salinas* is controlling, this Court need not rely on *Sabri*.

2. More broadly, respondents offer no coherent theory for why Congress can require them to "comply with RLUIPA's substantive protections for religious exercise" (Br. 46), yet is powerless to hold them individually accountable for violating that condition. None exists.

Respondents do not dispute that this Court's test for Necessary and Proper legislation is satisfied. Holding

an officer accountable for violating a law that applies to that same officer is obviously a "necessary and proper" means for "carrying into Execution" the application of that law to that person. U.S. Const. art. I, § 8, cl. 18. Since the Founding, individual-capacity damages have been a traditional means for enforcing the law against individual officers, deterring abuse, and providing relief to victims. Pet. Br. 19.

Respondents' theory would also have sweeping repercussions. In addition to rendering RLUIPA largely unenforceable, Congress would apparently lose the power to impose liability on an employee of a federally-funded program who coerces another to undergo an abortion, to hold liable an employee of a federally-funded hospital who violates requirements relating to adequate patient treatment, or to grant a civil right of action to employees who blow the whistle on government subcontractors engaging in illegal activity. *Id.* at 44-46 (collecting citations).

Many other laws reach farther to punish members of the general public (not officers, agents, or indirect recipients) who engage in conduct that threatens the integrity or proper operation of federally-funded programs. *E.g.*, 18 U.S.C. 844(f) (arson of institution receiving federal funding); 18 U.S.C. 2242, 2243(a)-(b), 2244 (sexual abuse of persons in institutions that have a contract or agreement with the federal government to hold people in custody); 18 U.S.C. 245(b)(1)(E) (interference with any person's participation in a program receiving federal financial assistance). And Congress has provided private causes of action. *E.g.*, 18 U.S.C. 2255(a) (right of action for minor victim of sexual abuse in federally-funded institution).

Respondents' suggestion of a floodgates problem (Br. 22-23) is thus backward. Respondents' arbitrary and atextual limitation on Congress's Necessary and Proper authority would conflict with the *Salinas*, *Dixson*, and *Sabri* line of cases and would threaten numerous important and longstanding federal statutes.

By contrast, this Court can uphold RLUIPA's application to respondents by applying the same rule *Salinas* articulated—without breaking new ground and without expressing any opinion on Congress's power to reach members of the general public.

B. RLUIPA Is Also Constitutional Based On Consent

Respondents emphasize (Br. 9) the "consent-based understanding of Spending Clause legislation." But respondents do not dispute that (1) RLUIPA's substantive condition satisfies *Dole*; (2) the State consented to RLUIPA;[3] and (3) RLUIPA's substantive condition binds them as officers working in the federally-funded state prison. The Necessary and Proper Clause does not require further consent to impose a remedy on respondents to enforce that same condition. See pp. 13-18, *supra*.

In any event, RLUIPA's individual-capacity damages remedy would be constitutional under the Spending Clause alone, without added authority from the Necessary and Proper Clause, because respondents have consented to RLUIPA. "Individuals who are voluntarily employed for a [federally funded] project must perform their duties in accordance with [Congress's] restrictions[.]" *Rust* v. *Sullivan*, 500 U.S. 173, 198-99 (1991).

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[3] As set forth p. 23, *infra*, respondents' argument relating to Medicaid funding is waived for multiple reasons.

Respondents admit they consented to RLUIPA's "substantive protections for religious exercise," but try to distinguish *Rust* (Br. 46) on the ground that it does not involve remedies. That is no distinction. By accepting state employment subject to RLUIPA, respondents consented to all of RLUIPA. Respondents are equally bound by RLUIPA's rights *and* its remedies.

Respondents also do not dispute that, because of the chain of privity between Congress, the State, and them, Congress could have imposed the same remedies purely as a matter of contract. Pet. Br. 31-33, 46-49; see Const. Accountability Ctr. Br. 5. They assert that an agent who enters into a contract on a principal's behalf is ordinarily not personally bound. Resp. Br. 45-46 & n.5. But they each have their own contracts with the State—and each took oaths to uphold federal law. Pet. Br. 46-49. In voluntarily working as officers in a federally-funded state program subject to RLUIPA, they therefore each consented to be bound by RLUIPA. And it is well settled that third-party beneficiaries can sue for damages. See *Talevski*, 599 U.S. at 178-80.

Respondents suggest (Br. 32) "two layers of clear notice" are required. But clear notice to the State satisfies *Dole*, without another layer. See *Sabri*, 541 U.S. at 608. Regardless, respondents agree they had clear notice that RLUIPA applied, individual damages are the norm for state officials under Section 1983, and Congress "made clear" RLUIPA restored pre-*Smith* rights and remedies, including individual damages. See *Tanzin*, 592 U.S. at 50-51. There was ample notice.

Respondents suggest (Br. 20-21) the State must pass a law to exercise its own power to bind them, referencing *Dole*. But *Salinas*, *Dixson*, and *Sabri* all involved federal

laws that used the Necessary and Proper Clause to enforce Spending Clause legislation, without added state legislation. RLUIPA is valid under those decisions. RLUIPA is also valid under the Spending Clause alone: The chain of privity between Congress, the State, and respondents—where the State consented and respondents consented to work subject to RLUIPA—means that the Spending Clause is sufficient, without the Necessary and Proper Clause or state legislation. In any event, the State also has its own power to bind respondents to civil remedies without legislation. They are not members of the general public like in *Dole*. They are state officers. And as respondents elsewhere recognize, a sovereign has "inherent prerogative" as an employer "to regulate [its] officials." Resp. Br. 43 (citation omitted). RLUIPA is constitutional under any of these three approaches.

Respondents' concerns about political accountability (Br. 20-21) are misguided. The accountability is clear. Landor sued in federal court under a federal statute. See J.A. 1-2. It applies to respondents because Louisiana accepted federal funds for its prisons and respondents are officers in those programs. Instead, it would create a glaring accountability problem if respondents were *not* accountable for assaulting Landor when he was at their mercy in federally-funded custody.

Finally, respondents argue that even if RLUIPA's damages remedy is constitutional, it cannot be applied in this case because Louisiana accepted federal funds at a time when the courts of appeals had held that damages were unavailable. Resp. Br. 46-47. But decisions of the courts of appeals on questions of federal law are always subject to review by this Court, and this Court's decisions apply to all pending cases, regardless of any

"reliance on an old rule." *Harper* v. *Va. Dep't of Tax'n*, 509 U.S. 86, 97 (1993). "[J]udicial construction … is an authoritative statement of what the [law] meant before as well as after the decision of the case giving rise to that construction." *United States* v. *Palomar-Santiago*, 593 U.S. 321, 325 (2021) (citation omitted).

There is no "Spending Clause exceptionalism" where the courts of appeals bind this Court, rather than the other way around. See Pet. App. 34a (Oldham, J., dissenting from the denial of rehearing en banc). For example, when *Franklin* reversed longstanding appellate precedent and held that damages were available under Title IX, it applied that rule to the pending case and reversed. 503 U.S. at 64, 76; cf. *McGirt* v. *Oklahoma*, 591 U.S. 894, 938 (2020) (interpretation involving treaties). And here, RLUIPA's meaning is clear: It restores pre-*Smith* rights and remedies. The courts of appeals' error is thus a reason to reverse, not to affirm.

C. This Court Should Not Address Respondents' Novel Arguments Outside The Question Presented

1. This Court should not wade into the application of RLUIPA's "color of law" clause to "non-recipient nonofficials," or into questions about Medicaid funding. Those questions are outside the question presented, which is limited to RLUIPA's application to "a government official in his individual capacity." Pet. i; Br. in Opp. i. Respondents never pressed those arguments before, even in the brief in opposition. They were not passed upon below and have not been decided by any court. Those arguments are thus waived, forfeited, and barred for numerous reasons. See, *e.g.*, *Leatherman* v. *Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 165 n.* (1993).

2. Deciding the constitutionality of the "color of law" clause would also require an advisory opinion because the separate "officials" clause applies to respondents. Respondents also raise a disfavored facial challenge, inviting "speculation" about hypothetical applications of the statute to non-parties. *Wash. State Grange* v. *Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Respondents assert (Br. 45) those constitutional issues are the same as those presented here. But they would not have devoted most of their brief to "non-recipient nonofficials" if those arguments applied equally to officials and indirect recipients. They do not. Among other things, *Salinas* and *Dixson* involved officials and indirect recipients, not "non-recipient nonofficials," so the arguments and analysis would be different.

Respondents also do not contend that the "color of law" clause "is unconstitutional in all of its applications," as a facial challenge requires. *Wash. State Grange*, 552 U.S. at 449. "Color of law" encompasses acts "made possible … because the wrongdoer is clothed with the authority of state law." See *West* v. *Atkins*, 487 U.S. 42, 49 (1988) (citation omitted). For example, paid private contractors working for a state prison may act under color of law. See *id.* at 54. Respondents have nothing to say about RLUIPA's constitutionality as applied to such contractors, so this Court has no need to address RLUIPA's application to "non-recipient nonofficials."

Respondents' position regarding "non-recipient nonofficials" should also give this Court serious pause. That position would allow unpaid private parties "clothed with the authority of state law" to come into a federally-funded prison to shave the heads of prisoners—or worse—with impunity. *Id.* at 49, 56 & n.14. Congress enacted Section 1983's "color of law" language more

than 150 years ago to stamp out that kind of state-endorsed lawlessness. There is no basis for this Court to reach out to decide whether Congress can create a remedy against individuals who, while acting under color of state law, gravely violate the religious liberties of people in federally-funded custody.

3. Finally, this Court should not address respondents' Hail Mary contention (Br. 47-52) that RLUIPA "appears" coercive because of a potential link to Medicaid. This Court clearly did not grant certiorari to decide a question about Medicaid. Not only is the argument forfeited for the reasons above, but also respondents waived it by specifically challenging only RLUIPA's damages remedy, without disputing that RLUIPA is generally valid. *E.g.*, Br. in Opp. i; Resp. C.A. Br. 15.

Respondents' cursory briefing also fails to take a firm position. Resp. Br. 48, 51 ("problem may exist"; "appears" to exist). The report they rely upon indicates such Medicaid reimbursements for prison health services are entirely voluntary.[4] Respondents do not even say whether Louisiana receives any Medicaid funding for such services. Regardless, Louisiana does not dispute that it has long accepted federal grants for prison programming, that it did so voluntarily, and that those grants triggered RLUIPA's application to this case. See Pet. 24-25; J.A. 12. Respondents' observations about Medicaid are thus entirely academic.

This Court should not engage with these arguments and instead see them for what they are: an effort to distract this Court from the question presented because respondents have no answer.

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[4] U.S. Gov't Accountability Off., GAO-14-752R, Medicaid: Information on Inmate Eligibility and Federal Costs for Allowable Services (2014), https://www.gao.gov/assets/gao-14-752r.pdf

RLUIPA clearly restores pre-*Smith* rights and remedies, including individual-capacity damages. RLUIPA's application to respondents is constitutional under *Salinas*. Landor's complaint therefore should not have been dismissed.

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

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