No. 24-1327

IN THE

Supreme Court of the United States

SPIRIT OF ALOHA TEMPLE, A HAWAIʻI NONPROFIT CORPORATION, AND FREDRICK R. HONIG,

Petitioners,

v.

COUNTY OF MAUI, HAWAIʻI AND STATE OF HAWAIʻI,

Respondents.

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

REPLY BRIEF FOR THE PETITONERS

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October 28, 2025

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REPLY BRIEF FOR THE PETITIONERS

Respondents strive to portray the Petitioners' activities as "commercial" rather than religious, accusing Petitioners of seeking "religious protection for what very clearly was a commercial and profit seeking enterprise." Br. in Opp. 1. While, like other churches and religious institutions on Maui, Spirit of Aloha Temple (the "Temple") sought to obtain revenue from out-of-state weddings, see Resp. App. 55a, as Respondents' own 30(b)(6) witness acknowledged, "some [of Plaintiffs' proposed uses for the land we]re religious in nature." Pet. App. 61a. And the district court observed that Respondents did not question the sincerity of Petitioners' religious beliefs. *Id.* at 62a.

As the district court noted, Petitioner Honig formed the "Spirit of Aloha Temple, a nonprofit organization that is a branch of the Integral Yoga movement." Pet. App. 27a. Integral Yoga "is a modern branch of the ancient Hindu yogic tradition." *Id.* Petitioners used the property to "hold[ ] customary religious services such as weekly meetings and sacred events such as baptisms and weddings, offering classes on spiritual beliefs, and holding communal meals." Pet. App. 216a ¶ 32. Petitioners maintain six botanical gardens on the property, each dedicated to religious values they hold sacred. *Id.* ¶ 37. These gardens are maintained by members of the Temple who choose a "holistic lifestyle that is free of drugs, alcohol, tobacco, caffeine, fish, meat, eggs, dairy, genetically modified and processed foods." *Id.* at 217a. Growing food in these gardens is an important practice in furtherance of their "spiritual vision" to make the world "more environmentally sustainable, healthy, peaceful and harmonious." *Id.* at 217a.

While an advisory jury in 2019 did not decide that Petitioners had proven that the Temple was a religious assembly or institution, the same jury held that Respondents likewise had not proven that the temple was *not* a religious assembly. *Id.* at 25a ¶ 3. Moreover, the district court held that under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq*. ("RLUIPA"), not only an entity deemed to be a "religious assembly or institution," but rather *any* "person," including natural persons like Petitioner Honig, and entities like the Temple (even if such an entity would not best be classified as a religious assembly or institution), may have a cause of action if their religious exercise is substantially burdened. Pet. App. 216a at 49a.

Respondents also make much of the fact that the court of appeals stated that it was applying a totality of the circumstances test. Br. in Opp. 1, 20-21. But the Petition, and the amicus brief supporting the Petition, also highlighted that this is only what the court of appeals *said*. Pet. for Cert. at 16; Brief for Jewish Coalition for Religious Liberty as Amicus Curiae Supporting Petitioners, at 11. The central point of the Petition, and the conflict in the circuits that Petitioners believes merits granting certiorari, is that what the court of appeals *did* was to focus solely on the lack of proof that there were no viable alternative properties and no bias shown by the Respondents.

As the Petition recounts, *id.* at 17-19, three other circuits have not only stated but have in fact applied the totality of the circumstances approach, looking at all of the surrounding facts to determine if the government's actions have in fact imposed a substantial burden on their religious exercise. For example, the Eleventh Circuit stated that a court

should look at, among other considerations, the need of a plaintiff for space to carry out its activities; the degree to which the government's actions "effectively deprive[ ] the plaintiffs of any viable means" to engage in their religious exercise; the nexus between the government restriction and the burden; any bias against or lack of evenhanded treatment of the applicant; whether the denial was final, or if the government would approve it with modifications; and whether the applicant had a reasonable expectation of approval of its proposed land use. *See id.* at 18-19 (quoting *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 832 (11th Cir. 2020)). In addition to these three circuits, three other circuits have applied the totality test with varying degrees of explicitness. *See* Pet. at 19-22.

Had the Ninth Circuit applied the totality test, it would have needed to consider, among other factors, the extensive evidence of the importance of having the Temple in a peaceful location on agricultural land where adherents could engage in a variety of meditation and other sacred activities, instruction in the Integral Yoga tradition, and cultivating food gardens, *see supra*; that the action of the county in denying approval completely prevented these activities from continuing on the site, creating "actual, tangible burdens" on Petitioners' religious exercise, *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 99 (1st Cir. 2013); that there was a clear nexus between the county's actions denying approval of the special use permit and the inability of the Petitioners to carry on their religious exercise at the property; that Petitioners were reasonable in seeking special use approval since the zoning code allowed "unusual" but "reasonable" land uses, Pet. App. 6a, and, moreover that the "Maui

Planning Department recommended that the [County] Commission approve the second application" subject to conditions, Pet. App. 8; and that the decision of the County denying the permit was final and did not instead propose conditions to address the County's concerns which, if met, would lead to approval. Instead, the court of appeals focused solely on two factors: that Petitioners did not prove that they had no other alternatives, and that the County had acted in a "significantly oppressive" and arbitrary manner. Pet. App. 18a-19a.

Most fundamentally, the court of appeals' focus on these two specific factors of arbitrariness and proof of no alternative location, rather than on whether–looking at the overall circumstances–these particular religious claimants have had their religious exercise substantially burdened, is inconsistent with this Court's decisions under RLUIPA's Institutionalized Persons provision and RLUIPA's sister statute, the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb, *et seq*. As described more fully in the Petition at pages 15 to 16, this Court has focused not on what alternatives may be available, or the intent of the government, but the actual, tangible impact on the particular plaintiffs as the Court found them. The same should be true for land use cases under RLUIPA, as other courts of appeals have held.

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For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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