

No. 25-6517

IN THE
Supreme Court of the United States

AMMON RA SUMRALL,

Petitioner,

v.

GEORGIA DEPT. OF CORRECTIONS, ET AL.,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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ARGUMENT

MR. SUMRALL IS ELIGIBLE FOR REMAND IF *LANDOR* IS REVERSED.

The State's argument that Mr. Sumrall is "not entitled to benefit from a potential ruling for the petitioner in *Landor*" is wrong because it misunderstands both the context in which this issue arose and discretionary exceptions to excuse forfeitures. To be sure, Mr. Sumrall is not necessarily *entitled* to relief in the Eleventh Circuit if the petitioner in *Landor* prevails. But because there is an open issue about whether Mr. Sumrall merits discretionary consideration of this issue for the Eleventh Circuit to decide in such an event, the Court should hold this petition pending disposition in *Landor*.

1. Mr. Sumrall requested RLUIPA damages from the individual defendants in his original complaint. (App. 59a, 62a). Eleventh Circuit precedent, then and now, squarely foreclosed any claim for RLUIPA damages. (Pet. 6 n.1). The magistrate judge therefore disposed of Mr. Sumrall's claim in a footnote, stating that "RLUIPA claims cannot proceed against any of the individual Defendants." (App. 38a n.2).

2. Although Mr. Sumrall did not challenge that footnote in his objections to the magistrate judge's report, any such failure to do so may

be excusable in the “interests of justice.” *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *see Arakas v. Comm’n, Soc. Sec. Admin.*, 983 F.3d 83, 104 (4th Cir. 2020) (joining decisions in nine circuit courts recognizing exceptions to the waiver rule). This is particularly so because whether RLUIPA authorizes damages claims is a purely legal issue that needs no factual development. *Arakas*, 983 F.3d at 105. If this Court decides *Landor* in petitioner’s favor, moreover, that intervening change in law would render the magistrate judge’s ruling plain error that would result in injustice from the failure to consider this issue. 11th Cir. R. 3-1 (providing for review “for plain error if necessary in the interests of justice”).

3. Nor did the State raise forfeiture before the Eleventh Circuit. Mr. Sumrall raised in his opening brief before the Eleventh Circuit that his request for RLIUPA damages prevented his RLUIPA claim from being moot. (Supp. App. 188a-190a). He argued that although Eleventh Circuit precedent foreclosed that argument, that precedent was inconsistent with this Court’s decision in *Tanzin v. Tanvir*, 592 U.S. 43 (2020). (Supp. App. 189a). Because the State neither responded to that argument nor raised forfeiture in its response brief, the Eleventh Circuit did not have briefing on that issue. It was on that record that the

Eleventh Circuit concluded that it saw no “‘exceptional’ reason to address the issue for the first time on appeal.” (App. 20a). Without the benefit of any ruling this Court might make in *Landor*, the Eleventh Circuit could not properly determine whether the interests of justice require consideration of the issue.

4. Because the State forfeited any argument on the waiver issue in the Eleventh Circuit, this Court should hold this petition pending the Court’s disposition of *Landor*, and, depending on the ruling in that case, either grant, vacate, and remand the petition or deny it.

Respectfully submitted,

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