

No. 26-261

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IN THE  
**Supreme Court of the United States**

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FRANK MORA,

*Petitioner,*

*v.*

NEW YORK STATE UNIFIED COURT SYSTEM, *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**BRIEF OF CHILDREN'S HEALTH  
DEFENSE AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONER**

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**IDENTITY AND INTEREST OF THE *AMICUS*<sup>1</sup>**

Children’s Health Defense (“CHD”) is a nonprofit organization whose mission is to end the childhood chronic disease epidemic by reducing the toxic environmental exposures that underlie it, especially where those exposures are involuntary. CHD seeks to hold responsible parties accountable and to establish safeguards to prevent future harm to children’s health and wellbeing, including, but not limited to, the prohibition of vaccine mandates that threaten the ability of parents to exercise fundamental religious liberties on behalf of their children.

CHD has a substantial interest in the standards governing religious exemptions from vaccination requirements. CHD has supported extensive litigation protecting the religious rights of students and their families and employees subject to vaccination requirements, including the litigation underlying *Kane v. de Blasio*, 19 F.4th 152 (2d Cir. 2021), and *New Yorkers for Religious Liberty, Inc. v. City of New York*, 125 F.4th 319 (2d Cir. 2025). That experience gives CHD a particular interest in ensuring that religious accommodations turn on constitutionally permissible criteria rather than governmental judgments about the acceptability of an applicant’s beliefs.

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1. Pursuant to Rule 37.6, CHD states that no counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person or entity other than CHD, its members, or its counsel made such a contribution. Pursuant to Rule 37.2, 10 days’ notice was given to all parties.

On September 18, 2026, undersigned counsel notified counsel of record for Petitioner and respondents by email of CHD's intention to file this brief in support of the petition for a writ of certiorari.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The decision below has grave implications for religious liberty because it permits the government to condition religious accommodation on whether an applicant sufficiently explains and defends the logic of his beliefs to its reviewers' satisfaction. That substitutes a judgment about the coherence of a belief for the limited inquiry into whether it is sincerely held. This Court has expressly rejected that substitution: religious beliefs need not be "acceptable, logical, consistent, or comprehensible to others" to warrant First Amendment protection. *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 714 (1981). Whether or not this Court agrees with the Second Circuit's decision to treat this line drawing as "neutral," the lower court's failure to apply strict scrutiny to a policy that allowed case-by-case review of the sufficiency of each applicant's description of their faith is an independent error urgently requiring correction.

Petitioner, a sitting New York state court judge, explained that his Catholic faith distinguishes prophylactic vaccination of a healthy body from consideration of treatment when the body is in crisis. Pet. App. 19a. Counsel for the Office of Court Administration ("OCA") later faulted his submissions for failing to articulate a "consistent reason" for that distinction and questioned what

religious prohibition existed apart from his “conscience.” *Id.* at 21a. The Second Circuit affirmed dismissal, relying on accommodations granted to other Catholics to reject an inference of hostility and attributing Petitioner’s denial instead to an “incomplete response” to the supplemental questionnaire. *Id.* at 9a–10a. But an assessment of the allegation reveals that the court conflated “complete” with sufficiently persuasive to the evaluators. That crosses the line into making government actors the arbiters of which faiths and beliefs merit protection and which do not. That cannot square with this Court’s free exercise precedent.

CHD addresses the second question presented in Petitioner’s petition for certiorari related to the dismissal of Petitioner’s constitutional claims against the individual respondents in their personal capacities. It does not address Title VII coverage, state sovereign immunity, or mootness of prospective relief on the other claims.

Three fundamental errors warrant this Court’s review.

**First, the court substituted an inference about religious hostility for the independent inquiry into general applicability.** Petitioner alleged a system in which officials exercised broad discretion to assess individual religious explanations and decide which warranted exemption. Pet. 19. Under *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–36 (2021), such discretionary exemption authority defeats general applicability without an antecedent showing of animus. Indeed, *Fulton* required strict scrutiny even though the exemption authority had never been exercised and expressly declined to resolve the allegations of hostility. *See id.* at 533, 537. Here, the

panel acknowledged hundreds of exemptions granted to other religious objectors but did not address whether the alleged discretion to grant or deny exemptions independently required heightened scrutiny. Its inference about neutrality could not answer that separate question about general applicability. Under *Fulton*, the government had to justify withholding an exception from Petitioner—not merely demonstrate that it had accommodated others. *Id.* at 541–42.

That omission deepens a circuit conflict. The Third, Sixth, and Tenth Circuits recognize that discretion to grant individualized religious exemptions to a vaccine mandate defeats general applicability. *Spivack v. City of Philadelphia*, 109 F.4th 158, 171–72 & n.8 (3d Cir. 2024); *Dahl v. Board of Trustees of Western Michigan University*, 15 F.4th 728, 733–34 (6th Cir. 2021) (per curiam); *Does 1–11 v. Board of Regents of the University of Colorado*, 100 F.4th 1251, 1273 (10th Cir. 2024). The Second Circuit itself applied that rule in *Kane v. de Blasio*, 19 F.4th 152, 169 (2d Cir. 2021), holding that the religious accommodation policies were not generally applicable because they allowed evaluators discretion and the record evidenced that some Catholics were accepted while others denied. Here, the panel turned that standard on its head, holding that the fact that some Catholics were accommodated deprives Petitioner of strict scrutiny because it leads to an inference that animus was not guiding the decision. Even if that inference were credited, and it should not be, that does not refute that *Fulton* still requires strict scrutiny because the policy is not generally applicable. What matters is the authority to make individualized exceptions, not whether the claimant can first establish hostility in its exercise.

**Second, favorable treatment of other Catholics does not resolve Petitioner’s claim of theological discrimination.** The First Amendment prohibits governmental preference among religious beliefs, not merely hostility toward an entire denomination. *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238, 248–51 (2025), requires strict scrutiny of theological distinctions in exemption eligibility without an additional showing of invidious discrimination against all members of the faith. The panel’s description of approved applicants’ beliefs as “identical” to Petitioner’s does not establish that his application was judged by permissible criteria. Pet. App. 10a. It leaves unanswered why his explanation of that religious distinction was deemed insufficiently consistent. Applicants professing the same belief may differ in sincerity. But approval of one application does not establish that another was rejected because the applicant did not hold the belief, rather than because the reviewer found the belief itself unacceptable. This is especially true where there is wide variety of interpretations among adherents and a wide range of understanding amongst evaluators.

**Third, failure to persuade officials that a religious belief is internally consistent is not a failure to provide information.** Applying only rational basis review, the panel affirmed dismissal under Rule 12(b)(6) by crediting OCA’s assertion that Petitioner could be denied while others were accommodated because his responses contained “insufficient information” and were thus “incomplete.” Pet. App. 10a. Yet it identified neither a question Petitioner refused to answer nor a missing fact necessary to determine whether he sincerely held the belief he described. The district court’s own account

recounted his responses to all five supplemental questions. *Id.* at 18a–19a.

Petitioner’s response explained the very distinction OCA later found deficient. He corrected the questionnaire’s premise that his faith prohibited medicine generally and explained why vaccination of a healthy body presented a different religious question from considering treatment during a medical crisis. Pet. 5; Pet. App. 19a. OCA’s counsel nevertheless faulted him for failing to articulate a “consistent reason” for that distinction and questioned what religious prohibition existed apart from his “conscience.” Pet. App. 21a. That explanation identified no conduct inconsistent with Petitioner’s professed belief. It questioned the internal consistency of the belief itself. Petitioner thus alleged that officials rejected his religious answer—not that he withheld an answer.

The label “insufficient information” cannot resolve that claim. Before treating the denial as procedural, the court had to examine what information was supposedly missing and whether the State was constitutionally entitled to demand it. Facts bearing on whether an applicant actually holds a belief are one thing; an explanation persuading officials that the belief is coherent is another. *Thomas* forbids making protection depend on the latter. 450 U.S. at 714–15. By accepting the disputed adequacy of Petitioner’s explanation as a neutral ground for dismissal, the panel assumed the lawfulness of the very standard he challenged. The government cannot demand a satisfactory defense of religious doctrine and then characterize the applicant’s failure to persuade as a refusal to cooperate. At the very least, the OCA’s approach should be deemed to defeat neutrality and strict scrutiny should apply on that basis as well.

## ARGUMENT

### **I. THE DECISION BELOW CONFLICTS WITH FULTON AND THREE CIRCUITS BY EXCUSING DISCRETIONARY RELIGIOUS EXEMPTION DECISIONS FROM STRICT SCRUTINY.**

The Second Circuit treated exemptions granted to other Catholics as a reason to dismiss Petitioner's Free Exercise claim. Under *Fulton*, however, the government's authority to make individualized exceptions is an independent reason to apply strict scrutiny. Even if accommodating other Catholics supported the panel's inference against religious hostility, it could not answer whether OCA's discretionary exemption process was generally applicable. The decision below bypassed that question altogether.

#### **A. *Fulton* requires strict scrutiny of discretionary exemption systems without an antecedent showing of religious hostility.**

This Court's rule is explicit: "A law is not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (citation modified). That rule concerns the government's authority to assess individual reasons for noncompliance. Its application does not depend on proof that officials harbor animus toward the claimant's faith.

*Fulton* itself resolved the case on general-applicability grounds without deciding the claimants' allegations

of religious hostility. *Id.* at 533. Nor did it matter that Philadelphia had never exercised its exemption authority: “The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given.” *Id.* at 537. The government therefore had to justify withholding an exception from the religious claimant under strict scrutiny regardless of any proof of animus. *Id.* at 541–42.

These safeguards address a danger that does not depend on conscious hostility: once officials decide which reasons warrant an exception, religious reasons may be discounted through unfamiliarity, misunderstanding, or unexamined preference. That danger is especially acute when officials decide which religious explanations qualify. In *Cantwell v. Connecticut*, this Court invalidated a licensing requirement that empowered an official to determine whether a cause was religious, condemning “[s]uch a censorship of religion” and rejecting the availability of judicial correction as an adequate safeguard. 310 U.S. 296, 305–06 (1940). More recently, *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission* applied strict scrutiny to theological distinctions governing exemption eligibility, rejecting the State’s argument that heightened scrutiny required “invidious discrimination.” 605 U.S. 238, 250–52 (2025). The fact that officials are administering a religious exemption thus heightens the concern about governmental judgments of religious sufficiency; it does not remove those judgments from constitutional scrutiny. As Parts II and III explain, OCA’s assessment of Petitioner’s religious reasoning implicates precisely that concern. At a minimum, those distinctions require strict scrutiny, not deferential rational-basis review.

Here, the panel relied on allegations that “more than 500 other judges and employees—including Catholics with beliefs identical to Mora’s—received exemptions.” Pet. App. 9a–10a. It reasoned that those allegations defeated an inference of hostility and therefore the denial warranted only rational basis review. Under that deferential standard, the panel attributed the denial instead to Petitioner’s allegedly “incomplete response” to OCA’s supplemental questionnaire. *Id.* at 10a. But the question whether officials were hostile to Petitioner’s beliefs was not the only constitutional question. The court also had to ask whether officials exercised discretion to determine which religious explanations warranted exemption.

**B. The Third, Sixth, and Tenth Circuits apply strict scrutiny to the discretion alleged here.**

The Tenth Circuit confronted the same distinction in *Does 1–11 v. Board of Regents of the University of Colorado*, 100 F.4th 1251 (10th Cir. 2024). There, the court held that because officials decided exemption requests from a government vaccine mandate “on a case-by-case basis” the policy was not generally applicable and strict scrutiny applied. *Id.*

The Third Circuit follows the same rule. In *Spivack v. City of Philadelphia*, 109 F.4th 158, 171–72 (3d Cir. 2024), the court separately examined general applicability of a religious accommodation process under a vaccine mandate. There, the circuit court held that a jury could find that the religious-exemption process authorized “individualized assessments” with “no apparent guidelines or guardrails,” in which event strict scrutiny would apply. *Id.* at 172 n.8. The court accordingly refused to let the

unresolved discretion issue disappear into the separate inquiry about animus.

The Sixth Circuit likewise applied *Fulton* in *Dahl v. Board of Trustees of Western Michigan University*, 15 F.4th 728, 733–34 (6th Cir. 2021) (per curiam). There too, the university considered religious exemptions from a vaccine mandate “on an individual basis” and retained discretion to grant them in whole or in part. *Id.* at 733. That authority defeated general applicability and required the university to justify its refusal to exempt the plaintiffs under strict scrutiny. *Id.* The court did not condition that requirement on a preliminary showing of religious hostility.

**C. The Second Circuit’s prior precedent confirms that discretionary religious accommodation policies trigger strict scrutiny.**

The Second Circuit itself previously applied this rule. In *Kane v. de Blasio*, 19 F.4th 152, 169 (2d Cir. 2021), it held that the religious exemption policy from a vaccine mandate was not generally applicable because the arbitrators reviewing religious-accommodation requests “had substantial discretion over whether to grant those requests.” The evidence showed that arbitrators sometimes followed the accommodation standards and sometimes disregarded them—including by granting an exemption to a Catholic applicant notwithstanding standards disfavoring requests from adherents whose religious leaders supported vaccination. *Id.*

Thus, *Kane* examined an exemption granted to a Catholic applicant as evidence of how discretionary

authority operated. Here, the panel relied on exemptions granted to Catholics to infer an absence of hostility, without examining whether OCA's authority was similarly discretionary. The same fact may bear on both questions, but an inference concerning one cannot dispose of the other.

This Court should grant review to enforce the rule *Fulton* established: when the government reserves authority to decide which individual reasons warrant an exception, it must justify denying an exception for religious exercise. It cannot discharge that obligation merely by showing that it granted exceptions to someone else.

## **II. ACCOMMODATING OTHER CATHOLICS DOES NOT ANSWER PETITIONER'S CLAIM THAT OCA DISCRIMINATED AGAINST HIS PARTICULAR RELIGIOUS BELIEFS.**

The panel's neutrality analysis presents an independent reason for review. Accommodating some Catholics does not defeat an allegation that OCA discriminated against particular beliefs within the Catholic faith. The First Amendment protects the religious convictions of individuals, including convictions that other members of their denomination do not share or explain in the same way. Petitioner's claim therefore does not depend on showing that OCA disfavored every Catholic or even every Catholic with similar reasons for seeking exemption. It depends on whether OCA can meet its burden of showing why Petitioner had to be denied.

**A. Catholic Charities requires strict scrutiny when exemption eligibility turns on theological distinctions.**

Strict scrutiny applies because this law was not generally applicable, but the panel’s reasoning for finding the law neutral is also insufficient. A jury could find that Petitioner was denied because state actors impermissibly assessed the sufficiency of his theological line drawing rather than limiting itself to a permissible sincerity analysis. That’s animus and separately should trigger strict scrutiny.

In *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, this Court held that “[a] law that differentiates between religions along theological lines is textbook denominational discrimination.” 605 U.S. 238, 248 (2025). Wisconsin had denied a religious tax exemption because the applicants neither proselytized nor restricted their charitable services to fellow Catholics. Those practices reflected their religious commitments, but the State treated them as reasons the organizations did not qualify. *Id.* at 249–50. The resulting theological distinctions required strict scrutiny.

The Court expressly rejected Wisconsin’s argument that religious-accommodation criteria should trigger strict scrutiny only upon a showing of “invidious discrimination.” *Id.* at 250–51. The constitutional defect lay in differentiating among religious practices through the exemption’s eligibility criteria. *Id.* at 251–52. A State cannot avoid that inquiry by presenting its theological judgments as ordinary administration of a religious exemption.

The same principle requires scrutiny here. OCA allegedly conditioned exemption on Petitioner's ability to articulate a sufficiently consistent religious objection to vaccination while remaining open to other treatment, and to identify a religious prohibition apart from his conscience. Pet. App. 21a. Whether that condition discriminated against his religious convictions cannot be resolved by counting exemptions granted to other Catholics.

**B. Thomas and Frazee foreclose measuring an individual's religious convictions against those of other adherents.**

The protection against governmental theological judgments extends within a denomination. In *Thomas v. Review Board of Indiana Employment Security Division*, the state court relied in part on the fact that another Jehovah's Witness did not share the claimant's objection to producing tank turrets. 450 U.S. 707, 715 (1981). This Court rejected that reasoning: "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *Id.* at 715–16. Government could not decide which adherent more correctly understood their common faith. *Id.* at 716.

*Thomas* also rejected the supposed inconsistency in the claimant's willingness to produce steel that might ultimately be used in weapons while refusing to manufacture weapons directly. The Court explained: "Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one." *Id.* at 715. The claimant's entitlement to protection did not depend on persuading officials that his religious distinction followed the logic they would have chosen.

*Frazee v. Illinois Department of Employment Security* confirms that a personal religious conviction needs no additional command from an organized faith to qualify for protection. 489 U.S. 829, 833–34 (1989). The Court rejected the premise that an individual’s sincere religious objection becomes a mere personal preference unless his denomination formally prohibits the disputed conduct. *Id.* Thus, OCA’s demand for a religious prohibition apart from Petitioner’s “conscience,” Pet. App. 21a, cannot be defended merely by labeling the inquiry one of religious eligibility. A conscience informed by sincerely held religious conviction is itself protected; the Constitution does not require a separate institutional prohibition.

**C. The panel’s reliance on “identical” beliefs leaves the alleged constitutional violation unanswered.**

The panel discounted the animus by referencing accommodation of others with “identical beliefs,” affording an inference that this meant that Petitioner could not have been denied based on the sufficiency of his beliefs but for some other reason.

That inference is improper on a motion to dismiss and is unwarranted in any event. Petitioner explained that his religious beliefs distinguish preventive vaccination of a healthy body from consideration of treatment when the body is in crisis. Pet. App. 19a. OCA’s counsel responded that his submissions “do not articulate a consistent reason” for that distinction and questioned what religious prohibition existed apart from his “conscience.” *Id.* at 21a. That explanation plausibly identifies the defect condemned in *Thomas*: officials rejected the religious line Petitioner

drew because they found the line itself unsatisfactory. It identified no conduct violating his professed religious rule or any other basis for a sincerity attack; it challenged his reason for drawing that line.

The panel did not confront that explanation. Instead, it emphasized that other Catholics with beliefs it described as “identical to Mora’s” received exemptions and concluded that their approvals undermined his allegation of religious hostility. Pet. App. 10a. But accepting the panel’s premise exposes the gap in its reasoning. If OCA had granted exemptions based on the same religious distinction, those approvals hardly explain its asserted inability to discern a religious basis for Petitioner’s objection. They show that the distinction could be recognized and accepted as religious. They do not explain why Petitioner’s invocation of it was rejected as insufficiently consistent.

Recognition of that belief in another applicant would not establish Petitioner’s sincerity. But the stated objection here was to the consistency of the religious reasoning—not to identified evidence that Petitioner did not hold the belief. Pet. App. 21a. The possibility that applicants professing the same belief may differ in sincerity cannot establish that sincerity explains their different treatment. That requires examination of the reason actually given for the denial. The panel instead treated the other approvals as resolving the very question they left open: whether Petitioner’s reviewers assessed his sincerity or rejected his religious understanding.

Nor would differences among the applicants’ religious explanations cure the problem. Common Catholic affiliation does not require common religious conclusions.

*Thomas*, 450 U.S. at 715–16. A sincere religious conviction does not require an additional prohibition imposed by an organized faith. *Frazee*, 489 U.S. at 833–34. And exemption criteria that distinguish among religious practices along theological lines do not escape strict scrutiny merely because the State characterizes them as ordinary eligibility requirements. *Catholic Charities*, 605 U.S. at 248–51. Whether other applicants drew the same religious line or a different one, their approvals could not establish that the criteria applied to Petitioner were permissible.

Petitioner’s claim therefore did not depend on proving hostility toward every Catholic or rejection of every application invoking his beliefs. It depended on the allegation, supported by OCA’s stated explanation, that his application was denied because officials found his religious distinction insufficiently coherent or insufficiently grounded in religion apart from his conscience. The approvals supplied no answer to that allegation. They called for examination of the basis for the different treatment. OCA did not supply that basis.

At a minimum, OCA’s stated demand for a consistent religious justification apart from Petitioner’s conscience plausibly alleges a failure of neutrality requiring strict scrutiny. The Court should grant review to reaffirm that governmental acceptance of some religious convictions cannot excuse impermissible judgments about others.

**III. THE COURT SHOULD DEFINE THE LIMITS OF  
SINCERITY REVIEW SO THAT THEOLOGICAL  
JUDGMENTS CANNOT BE INSULATED AS  
PROCEDURAL DEFAULTS.**

The panel's reliance on procedural noncompliance twists Petitioner's constitutional claim and sets dangerous precedent. It assumes the legitimacy of the very requirement he challenges. Before accepting an asserted failure to provide information as a neutral explanation, a court must determine what information was required, what the applicant supplied, and whether the alleged deficiency concerns sincerity or the perceived inadequacy of the applicant's theology. The decision below bypassed those questions and simply offered a conclusory statement that the application was "incomplete" because it contained "insufficient information" for evaluators to understand why the vaccination was prohibited but not other medications. Pet. App. 10a. This Court should clarify that a demand for information cannot become a demand that the believer defend his religious distinctions to the government's satisfaction.

**A. The alleged deficiency concerned the content of  
Petitioner's answer, not his refusal to answer.**

The panel invoked a policy requiring compliance with the vaccination mandate when an applicant "refuses to provide" information necessary to evaluate a religious-exemption request. Pet. App. 10a. But the district court's own account recounted Petitioner's responses to every supplemental question. He explained his religious objection, identified when he began abstaining from vaccination, incorporated his original religious

statement, and denied receiving other adult vaccines. Having identified no adult vaccination, he marked the conditional request to explain acceptance of such vaccines inapplicable. *Id.* at 18a–19a.

More importantly, Petitioner answered the substantive question the reviewers purportedly could not resolve. The questionnaire attributed to him a religious obligation to abstain from “medicines and vaccines” generally. *Id.* at 17a. Petitioner corrected that premise and explained that vaccination of a healthy body presented a different religious question from treatment of a body in crisis. In the latter circumstance, he would consider available treatments, consult his physician, Scripture, and the Catechism, and pray for guidance. *Id.* at 19a. Correcting the government’s description of his belief was not refusing to explain it.

OCA’s later explanation confirms why the nature of the alleged deficiency matters. Counsel stated that Petitioner had failed to articulate a “consistent reason” for distinguishing vaccination from other medical treatment and questioned what religious prohibition existed apart from his “conscience.” Pet. App. 21a. That explanation identified no occasion on which Petitioner had violated the religious rule he professed. Nor did it identify an undisclosed vaccination, conflicting account of his practice, or other missing fact bearing on whether he actually held that rule. It challenged the internal logic and consistency of the religious distinction itself.

Those allegations describe more than an unsuccessful application. They identify a particular criterion allegedly used to deny it: whether the reviewers considered

Petitioner's distinction between preventive vaccination and crisis treatment religiously coherent. The State could not cure that alleged defect by describing the explanation as insufficient. The constitutional limits on what officials may demand necessarily govern whether an applicant's response may be deemed deficient.

*Thomas* addresses this problem directly. Beyond rejecting governmental assessment of the reasonableness of a believer's religious line, this Court cautioned against dissecting beliefs because they are "not articulated with the clarity and precision that a more sophisticated person might employ." 450 U.S. at 715. Protection does not depend on theological eloquence. An applicant must identify the religious conflict; he need not persuade officials that the religious reasoning producing it is sound.

**B. An enforceable boundary must distinguish a request for relevant facts from a demand for theological persuasion.**

This case demonstrates why an abstract distinction between sincerity and religious correctness is insufficient. Unless courts examine the substance of informational demands, officials may require applicants to defend their theology and then characterize an unsatisfactory defense as noncooperation. The prohibition on theological judgment cannot depend on whether the government calls its objection substantive or procedural.

The EEOC's guidance supplies a practical model. Because religious beliefs may be unfamiliar to an employer, the employer should ordinarily assume sincerity. Additional supporting inquiry requires an objective basis

for questioning sincerity or religious nature and must remain limited to relevant facts and circumstances. The guidance also recognizes that imperfect observance does not necessarily negate belief. EEOC, *Compliance Manual § 12: Religious Discrimination*, §§ 12-I.A.2–3, 12-IV.A.2 (2021). CHD invokes that guidance as an administrable model for constitutional safeguards, not as a basis for resolving Petitioner’s separate Title VII coverage question.

CHD urges this Court to clarify that, once an applicant identifies a religious belief and its conflict with the challenged requirement, sincerity should be presumed. Further inquiry should require objective grounds for doubt and remain directed to whether the asserted belief is actually held. Government relying on insincerity should bear the burden of establishing it, rather than requiring applicants to demonstrate theological coherence or conformity with denominational teaching.

An asserted informational deficiency should likewise identify the information requested, what remained unanswered, and why the missing information mattered to that limited inquiry. Prior conduct may bear on sincerity, but it must be considered in relation to the belief the applicant actually professes—not a broader prohibition constructed by the reviewer. Nor should imperfect observance, an unfamiliar religious distinction, or an inability to predict every future application of one’s faith become an automatic disqualification.

These safeguards do not foreclose legitimate requests for clarification. They distinguish clarification of an asserted religious conflict from adjudication of its

theological merits. And they preserve the independent scrutiny required by *Fulton*: when broad discretionary exemption authority defeats general applicability, an unsupported claim of procedural noncompliance cannot substitute for justification of the particular denial. 593 U.S. at 541–42.

The Court should require examination of the actual reason for withholding an accommodation, not deference to the label attached to it. Authority to reject an incomplete application is not authority to reject a religious belief because officials find it incomprehensible.

### CONCLUSION

When government reserves broad discretion to grant individual exemptions, it must justify withholding an accommodation for religious exercise under strict scrutiny. A perceived absence of hostility does not discharge that obligation. *Fulton*, 593 U.S. at 533–37, 541–42. Nor does accommodating other believers excuse the use of theological criteria against the claimant before the court. *Thomas*, 450 U.S. at 714–16; *Catholic Charities*, 605 U.S. at 248–51.

These protections cannot be circumvented by characterizing an applicant’s failure to persuade as a failure to provide information. Courts must examine what officials found deficient concerning evidence that the applicant actually holds the belief, or a justification for the religious distinction itself. Without that inquiry, the government’s theological judgment becomes both the reason for denying accommodation and the means of insulating that denial from scrutiny. The Court should

resolve the circuit conflict and establish enforceable limits that preserve sincerity review without authorizing religious adjudication.

The petition for a writ of certiorari should be granted. Alternatively, the Court should vacate the judgment insofar as it dismisses Petitioner’s as-applied Free Exercise claim against the individual respondents and remand for reconsideration in light of *Fulton* and *Catholic Charities*.

Respectfully submitted,

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