No. 22-30686

United States Court of Appeals for the Fifth Circuit

DAMON LANDOR,
Appellant,
v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY; JAMES M. LEBLANC, in his official capacity as Secretary thereof, and individually; RAYMOND LABORDE CORRECTIONAL CENTER; MARCUS MEYERS, in his official capacity as Warden thereof, and individually; JOHN DOES 1-10; ABC ENTITIES 1-10,
Appellees.

Appeal from the United States District Court for the Middle District of Louisiana, Case No. 3:21-cv-00733
The Honorable Judge Shelly D. Dick.

BRIEF OF *AMICUS CURIAE* THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA IN SUPPORT OF APPELLANT

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SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities have an interest in this amicus brief.

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Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*

The Union of Orthodox Jewish Congregations of America (Orthodox Union) submits this brief in support of appellant Damon Landor.[1] The Orthodox Union is the nation's largest Orthodox Jewish umbrella organization, representing nearly 1,000 congregations, and over 400 Jewish non-public K-12 schools across the United States. The Orthodox Union, through its OU Advocacy Center, has participated in many cases in federal courts throughout the country that, like this one, raise issues of importance to the Orthodox Jewish community. Those cases include disputes arising under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc, *et seq*., the statute at issue in this case. *See*, *e.g.*, *Congregation Rabbinical Coll. of Tartikov v. Vill. of Pomona*, 945 F.3d 83 (2d Cir. 2019); *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Westchester Day Sch. v. Vill. of Mamaroneck*, 386 F.3d 183 (2d

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No person, other than *amicus*, its members, or their counsel contributed money intended to fund the preparation or submission of this brief.

Cir. 2004); and *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002).

The Orthodox Union strongly and successfully advocated RLUIPA's passage in 2000. *See*, *e.g.*, *Religious Liberty: Hearing Before the S. Comm. on the Judiciary*, 106 Cong. 23 (1999) [hereinafter *Religious Liberty*] (testimony of Nathan Diament). Indeed, RLUIPA's two Senate cosponsors—Ted Kennedy and Orrin Hatch—acknowledged the Orthodox Union among a handful of organizations "deserving special recognition" for their "central role in crafting this legislation." 146 Cong Rec. 16702 (recognizing the Orthodox Union, along with the American Civil Liberties Union, the Baptist Joint Committee, People for the American Way, the American Jewish Committee, and the Christian Legal Society).

Since that time, the Orthodox Union has remained committed to vindicating RLUIPA's protections in the courts for members of the American Orthodox Jewish community along with other faiths. The Orthodox Union therefore has a powerful interest in ensuring that RLUIPA is interpreted consistently with its plain text and broad remedial scope.

SUMMARY OF ARGUMENT

This case is central to fulfilling Congress's intent to provide religious individuals and institutions with full redress against state and local actors who violate their religious liberties. In RLUIPA, Congress authorized plaintiffs who prove that a "person acting under color of State law" unlawfully burdened their free-exercise rights to recover *all* "appropriate relief." 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(iii). The question presented is whether such relief includes money damages against that person.

RLUIPA's plain text squarely demonstrates that it does, and RLUIPA's history and purpose confirm this interpretation. *Infra* at Part I. Congress enacted both RLUIPA and its predecessor, the Religious Freedom Restoration Act (RFRA), to achieve the same purpose—*i.e.*, to respond to the Supreme Court's decision in *Emp. Div. v. Smith*, 494 U.S. 872 (1990), and restore the substantive and procedural religious-liberty protections that prevailed before that decision. Substantively, courts prior to *Smith* applied strict scrutiny to governmental actions that burdened free exercise. *See Sherbert v. Verner*, 374 U.S. 398 (1963). Procedurally, those who were injured by

such actions could seek redress under 42 U.S.C. § 1983, which had "always" been interpreted to permit suits for money damages against state and local actors in their individual capacities. *Tanzin v. Tanvir*, 141 S. Ct. 486, 491–92 (2020); *Carlson v. Green*, 446 U.S. 14 (1980).

In both RLUIPA and RFRA, Congress created identical private rights of action that invoke the same language as § 1983. In so doing, Congress made clear that it intended to enable plaintiffs to obtain the same redress under RLUIPA and RFRA that was available under § 1983, including money damages in individual-capacity suits. *Tanzin*, 141 S. Ct. at 491–92.

The Supreme Court recently confirmed this in *Tanzin*, holding that RFRA's private right of action unambiguously permits "claims for money damages against Government officials in their individual capacities." *Id.* at 489. In RLUIPA's private right of action, Congress employed identical text, and *Tanzin* provides no reason to read the two statutes differently.

As a result, *Tanzin* casts serious doubt on an earlier precedent from this Court, which held that RLUIPA does *not* permit such relief. *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316 (5th Cir. 2009), *aff'd*

sub nom. on other grounds Sossamon v. Texas, 563 U.S. 277 (2011). *Tanzin* therefore provides this Court with an opportunity to reconsider that precedent. The Orthodox Union urges this Court to take that opportunity and to hold that RLUIPA's text and history authorize individual-capacity suits for money damages.

This outcome is essential to fully secure RLUIPA's fundamental remedial objectives for at least three reasons:

First, authorizing money damages in individual-capacity suits is vital to ensuring that meritorious RLUIPA claims are decided by the courts. Without such a remedy, state actors readily can evade suits that seek only declaratory and injunctive remedies by providing eleventh-hour relief or by taking other strategic steps to moot the case. Making monetary remedies available thwarts this procedural gamesmanship.

Second, as the Supreme Court has recognized, in many free-exercise cases, money damages are "the *only* form of relief" that can redress the plaintiff's injury. *Tanzin*, 141 S. Ct. at 492. The instant case is a classic example. Upon his transfer to a new correctional facility, Defendants handcuffed Appellant Damon Landor to a chair,

held him down, and forcibly shaved his head bald, despite the fact that he told them that cutting his hair violates his long-held Rastafarian religious beliefs. ROA.17–18. Once Defendants had shaved Landor's head, his injury was complete. While declaratory and injunctive relief may prevent defendants from violating Landor's religious liberties a second time by shaving his head again, only monetary remedies can effectively redress the past injury. *Infra* Part II.B.

Finally, monetary damages provide a key deterrent against the harassment of individuals with minority religious views, including members of the Orthodox Jewish community. This is an important tool that incentivizes governmental actors towards compliance and helps to prevent religious discrimination from occurring in the future. *Infra* Part II.C.

This Court therefore should hold that the Supreme Court's decision in *Tanzin* applies to RLUIPA with equal force, and should reverse the district court's decision.

ARGUMENT

I. RLUIPA UNAMBIGUOUSLY AUTHORIZES MONEY DAMAGES AGAINST STATE OFFICIALS IN THEIR INDIVIDUAL CAPACITY.

RLUIPA was Congress's second step in a multi-year effort to restore the religious-liberty protections that prevailed before *Smith*. As noted, prior to *Smith*, an individual whose free exercise rights were burdened by a state or local government could bring suit under § 1983 and the courts would apply strict scrutiny. *Sherbert*, 374 U.S. 398. In *Smith*, however, the Court held that strict scrutiny did not apply so long as the law was neutral and generally applicable. 494 U.S. at 878–79.

Congress responded by enacting RFRA, which reinstated strict scrutiny "in all cases where free exercise of religion is substantially burdened"—whether at the federal, state, or local level. 42 U.S.C. § 2000bb(b)(1).

After the Supreme Court held RFRA unconstitutional as applied to state and local governments because it exceeded Congress' power under Section 5 of the Fourteenth Amendment, *see City of Boerne v. Flores*, 521 U.S. 507 (1997), Congress enacted RLUIPA pursuant to its Spending Clause and Commerce Clause authority, targeting two areas where Congress found the record of state and local burdens on free exercise to be particularly compelling: "land-use regulation … and restrictions on the religious exercise of institutionalized persons."

Sossamon v. Texas, 563 U.S. 277, 281 (2011). In both settings, Congress provided plaintiffs with the same remedies that § 1983 previously had made available.

A. RLUIPA's text and history demonstrate Congress's intent to permit money damages in individual-capacity suits.

RLUIPA's plain text authorizes monetary relief in individual-capacity suits. RLUIPA prohibits state and local governments from imposing substantial burdens on religious exercise, absent a compelling interest pursued through the least restrictive means. 42 U.S.C. §§ 2000cc, 2000cc-1. RLUIPA provides an "express private cause of action" to enforce this prohibition, the text of which is "taken" directly from RFRA. *Sossamon*, 563 U.S. at 282. Both RLUIPA and RFRA authorize the plaintiff to "obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a).

RLUIPA broadly defines a "government" to include, *inter alia*, "a State, county, municipality, or other government entity created under the authority of a State" and "any other person acting under color of State law." *Id.* § 2000cc-5(4)(A). This statutory definition "extends" the "ordinary meaning of 'government'" to encompass both "'officials'" and

"'other person[s] acting under color of law.'" *Tanzin*, 141 S. Ct. at 490.

As the Supreme Court held in *Tanzin*, this text squarely authorizes individual-capacity suits against such governmental actors. The phrase "person[s] acting under color of State law" incorporates a term of art drawn from § 1983, "one of the most well-known civil rights statutes." *Tanzin*, 141 S. Ct. at 490. Section 1983 applies to "person[s]" acting under "color of any statute," and the Supreme Court has "long interpreted" § 1983 "to permit suits against officials in their individual capacities." *Id.* (citing, *e.g.*, *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305–306 (1986)). It is an elementary canon of construction that, when "judicial interpretations have settled the meaning of an existing statutory provision," Congress's "repetition of the same language in a new statute is presumed to incorporate that interpretation." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 330 (2015) (internal quotation marks omitted). Thus, as the Supreme Court concluded in *Tanzin*, Congress's decision to repeat § 1983's phrase "color of . . . law" in RFRA meant that Congress intended to authorize the same redress—namely, individual-capacity suits. *Tanzin*, 141 S. Ct. at 490–91 (citing Antonin Scalia & Bryan A. Garner, *Reading*

Law: The Interpretation of Legal Texts 323 (2012)).

Just six years after RFRA, Congress used identical language in RLUIPA. The unambiguous effect of that decision was to provide the same relief. Indeed, "when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to 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) (plurality opinion). Thus, just as in RFRA, the text of RLUIPA—which permits suits against "a person acting under color of law"—plainly authorizes suits against that person in his individual capacity. *Tanzin*, 141 S. Ct. at 491.

In such individual-capacity suits, RLUIPA—like RFRA—entitles the plaintiff to recover "all appropriate relief." While the term "appropriate relief" is "context dependent," *Sossamon*, 563 U.S. at 286, *Tanzin* held that, in the particular "context of suits against Government officials," this term necessarily includes "money damages," 141 S. Ct. at 491. The Court based this conclusion on history that dates back to "an array of writs" from the "early Republic" through the more recent Westfall Act of 1988. *Id.* (citing, *e.g.*, James E. Pfander & Jonathan L.

Hunt, *Public Wrongs and Private Bills: Indemnification and Govt Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1871–1875 & n.52 (2010)).

Crucial to the Supreme Court's historical analysis was § 1983. As the Court explained, "[t]here is no doubt that damages claims have always been available under § 1983," and Congress was well aware of this fact when it enacted RFRA in 1993. *Id.* at 491–92 ("By the time Congress enacted RFRA, this Court had interpreted the modern version of § 1983 to permit monetary recovery against officials who violated 'clearly established' federal law."). Legislating against this backdrop, Congress's decision in RFRA to "reinstat[e] both the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim" meant that "parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*"—namely, the "right to seek damages against Government employees." *Id.* at 492.

B. *Tanzin*'s interpretation of identical statutory text in RFRA applies to RLUIPA with equal force.

Tanzin's analysis of RFRA should guide this Court's interpretation of RLUIPA's identical text for at least four reasons.

First, nothing in the statutory language warrants different treatment. As in RFRA, Congress plainly gave RLUIPA plaintiffs a § 1983–style cause of action by specifically invoking § 1983's "color of law" language. *Supra* at 11.

Second, nothing in Supreme Court precedent warrants treating RLUIPA's cause of action differently than RFRA's. *Tanzin* drew no distinction between the two. Nor does the Supreme Court's decision in *Sossamon* change the analysis. *Sossamon* was a sovereign immunity case in which the plaintiff sued a state for damages under RLUIPA. The Court held that the suit was barred by the Eleventh Amendment, concluding that the "State's acceptance of federal funding did not waive sovereign immunity to suits for damages" under RLUIPA. *Tanzin*, 141 S. Ct. at 492 (citing *Sossamon*, 563 U.S. at 280). Nothing in the Court's decision addressed individual-capacity suits or suggested sovereign immunity applies in such cases. Indeed, *Tanzin* confirmed that "individuals . . . do *not* enjoy sovereign immunity," and that this "obvious difference" renders *Sossamon* inapplicable to individual-capacity suits for money damages. *Id.* at 493.

Third, RLUIPA's history demonstrates that Congress intended to

provide plaintiffs with valid RLUIPA claims against state and local actors with the same remedies than plaintiffs with valid RFRA claims against federal actors enjoy. Congress's objective in RLUIPA was simply to restore the pre-*Smith* status quo in the states—as it had earlier attempted to do in RFRA at both the state and federal level—not to narrow the available remedies. *See Tucker v. Collier*, 906 F.3d 295, 301 (5th Cir. 2018) ("Congress passed RFRA and RLUIPA to reclaim the compelling-interest test of *Yoder* and *Sherbert* that was lost in *Smith*."); *Longoria v. Dretke*, 507 F.3d 898, 902 (5th Cir. 2007) (per curiam) (calling RLUIPA "fundamentally the same as RFRA"). The legislative history corroborates this understanding. As House Reports explained at the time, RLUIPA's remedies "track RFRA, creating a private cause of action for *damages*, injunction, and declaratory judgment," which can be "enforced by suits against state officials and employees." H.R. Rep. 106-219, at 29 (1999) (emphasis added).

Finally, in case there was any doubt that RLUIPA's authorization of "appropriate relief" includes money damages in individual-capacity actions, Congress included a rule of construction in RLUIPA specifically requiring that the Act to 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). Given this clear congressional mandate for maximalist protection, courts consistently have held that RLUIPA and RFRA must be construed broadly in favor of protecting religious liberty. *See*, *e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). That rule of construction supports reading RLUIPA's private cause of action to mean what it says: when a person acting under "color of State law" violates religious liberties, "all appropriate relief"—including money damages—is available.

II. RLUIPA REQUIRES THE AVAILABILITY OF MONETARY DAMAGES IN INDIVIDUAL-CAPACITY SUITS TO ADEQUATELY PROTECT FREE EXERCISE.

This Court should interpret RLUIPA to authorize monetary relief in individual-capacity suits because the statute's text and history require that result. The Orthodox Union's experience litigating RLUIPA cases demonstrates the wisdom of Congress's decision to make this relief available. Like other religious minorities, Orthodox Jews all-too-often have to seek RLUIPA's protection from religious discrimination in both land-use and institutionalized-persons cases.

Without making such redress available in appropriate cases in these two settings, RLUIPA simply cannot fully achieve the broad remedial purposes Congress intended.

In the land-use context, discriminatory actions impacting the Orthodox Jewish community often arise in two ways. First, Orthodox Jewish families usually live in "geographically concentrated communities," because a central tenet of the faith (the prohibition on driving to synagogue on Shabbat) "makes living within walking distance of a synagogue a religious necessity." *Religious Liberty*, at 22, 24 (testimony of Nathan Diament). When these communities seek to construct or renovate schools or synagogues, they must often request "permits, variances, or waivers from local zoning boards," which creates the opportunity for discrimination in some cases. *Id.* at 22; *see, e.g.*, *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183 (2d Cir. 2014); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004). Second, Orthodox Jewish communities, with the cooperation of the local city, often use a barely noticeable wire to create an enclosure around their neighborhood, called an *eruv,* which typically incorporates existing utility wires and natural

boundaries. This enclosure is necessary to enable members of the community to participate in communal life to the full extent permitted by their faith, which prohibits activities such as carrying house keys or pushing strollers outside of such enclosed spaces on Shabbat. Local zoning boards sometimes have attempted to prohibit the use of these enclosures on capricious and pretextual grounds, forcing members of the Orthodox Jewish community to seek RLUIPA's protections. *See, e.g.*, *Tenafly Eruv Ass'n*, 309 F.3d 144.

In the institutionalized setting, members of the Orthodox Jewish community can face unlawful restrictions on their ability to obtain a kosher diet. The Orthodox Union is especially familiar with these issues; its Kosher Division is the largest kosher certification agency in the world. *See Why Go Kosher*, OU Kosher, https://oukosher.org/kosher-overview/why-go-kosher/ (last visited Oct. 24, 2022) (noting that about 70% of American kosher food has the Orthodox Union's "OU" *hekhsher*, or certification symbol). For example, when drafting RLUIPA, Congress heard testimony about multiple states that either denied Jewish inmates the opportunity to obtain kosher food or provided them with grossly insubstantial kosher meals. *See Protecting Religious Freedom*

After Boerne v. Flores (Part III): Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary, 105 Cong. 38 (1998) [hereinafter *Protecting Religious Freedom*] (statement of Isaac Jaroslawicz) (discussing practices in Florida, Michigan, Ohio, and Pennsylvania). Since then, institutionalized members of the Orthodox Jewish faith have relied on RLUIPA to obtain judicial decisions confirming that their free exercise rights include ethe ability to receive appropriate kosher food. *E.g.*, *Ackerman v. Washington*, 16 F.4th 170 (6th Cir. 2021) (holding that vegan meals were an insufficient accommodation of prisoners who keep kosher); *Moussazadeh v. Tex. Dep't of Crim. Justice*, 703 F.3d 781 (5th Cir. 2012) (holding that Texas cannot require Jewish prisoner to purchase from the commissary all the kosher meals he eats).

In addition, religious discrimination against Orthodox Jews in institutional settings often involve refusals to accommodate religious prayer services or the observance of Shabbat and other days of worship. *Protecting Religious Freedom*, at 38–39 (statement of Jaroslawicz).

As such experiences of the Orthodox Jewish community demonstrate, Congress's decision to provide a remedial right to

damages is essential to RLUIPA's guarantee to protect the religious exercise of all Americans for at least the following three reasons. 42 U.S.C. § 2000cc-3(g).

A. Money damages are necessary to ensure that meritorious RLUIPA claims remain justiciable.

Monetary relief prevents procedural gamesmanship that otherwise would keep meritorious religious liberty claims out of court. State actors use two kinds of procedural maneuvers to escape accountability for violations of RLUIPA, both of which money damages effectively thwart.

First, monetary damages stop state actors from using strategic inmate transfers to moot meritorious RLUIPA claims brought by institutionalized persons. State prison systems have broad discretion to transfer an inmate to another facility for any reason. *See United States v. Henderson*, 526 F.2d 889, 894 (5th Cir. 1976) ("Courts have traditionally been extremely hesitant to place restraints on prison authorities in matters of internal prison administration, including the administrative transfer of prison inmates.") (citations omitted). States therefore have an unfettered ability to moot RLUIPA claims that seek only declaratory and/or injunctive relief. *E.g.*, *Coleman v. Lincoln Par.*

Det. Ctr., 858 F.3d 307, 309 (5th Cir. 2017) (per curiam). As this Court has long held, a state's transfer of the plaintiff to another prison moots claims for "declaratory or injunctive relief" against the conduct of that first prison. *Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001) (citing *Cooper v. Sheriff, Lubbock Cnty.*, 929 F.2d 1078, 1084 (5th Cir. 1991)). That is because once the state transfers the inmate to a new facility, there is "no reasonable expectation that the wrong will be repeated" at the new facility and "any suggestion of relief based on the possibility of transfer back to the [first facility] is too speculative to warrant relief." *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975); *Herman*, 238 F.3d at 665.

In the circuits that have held that RLUIPA provides *only* declaratory and injunctive relief in individual-capacity cases—without the opportunity for money damages—prison officials routinely have used those precedents to their strategic advantage by engineering mootness through interprison transfers.

For example in *Berryman v. Granholm*, 343 F. App'x 1 (6th Cir. 2009), the plaintiff, a Jewish prisoner, alleged that prison officials violated RLUIPA by excluding him from the kosher meal program, but

the prison transferred the plaintiff to a new facility before the litigation was completed, rending his claim moot. *Id.* at 4–5.

Similarly, in *Ben-Levi v. Brown*, No. 5:12-CT-3193-F, 2014 WL 7239858, at *3 (E.D.N.C. Dec. 18, 2014), *aff'd,* 600 F. App'x 899 (4th Cir. 2015), the plaintiff alleged that prison officials violated RLUIPA by denying his request for a weekly Torah study with two other Jewish prisoners, on the grounds that the prison required a quorum of ten adult Jews or a volunteer Rabbi to permit such group Bible studies. *Id.* Once again, the prison transferred the plaintiff to a new facility before the plaintiff had the opportunity to complete the litigation. *See Ben-Levi v. Brown*, 136 S. Ct. 930, 932 (2016) (Alito, J., dissenting from denial of certiorari).

The same story has occurred with unfortunate frequency in this Circuit. For example, in *Palacio v. Grasty*, No. 6:20CV40, 2020 WL 8102056 (E.D. Tex. June 11, 2020), *report and recommendation adopted*, No. 6:20-CV-40-JDK-KNM, 2021 WL 111502 (E.D. Tex. Jan. 12, 2021), when the plaintiff, an Orthodox Jew, submitted a claim for kosher meals, the prison chaplain told him to "[a]sk for pork-free diet" instead—which does not qualify as kosher. *Id* at *1. But the prison has

since transferred him to a new facility. *Id.* This had the consequence of depriving him of all relief: First, citing circuit precedent, the court rejected his claims for monetary damages "because RLUIPA authorizes only injunctive relief." *Id.* at *4. Second, the court denied the claim for injunctive relief as moot because the prison had transferred the plaintiff to a new facility. *Id.* at *4 ("The removal of an inmate from a prison facility, whether by transfer or release, generally renders the inmate's claims for injunctive relief for the conditions at that facility moot."). *See also, e.g.*, *Fluker v. King*, 679 F. App'x 325, 328 (5th Cir. 2017) (per curiam) (transfer moots RLUIPA claim); *Mitchell v. Quarterman*, 515 F. App'x 244, 248 (5th Cir. 2012) (per curiam) (same).

Nothing whatsoever in RLUIPA's text or history indicates that Congress intended this result. In light of *Tanzin*, this Court should remove this unwarranted roadblock to relief in meritorious free-exercise cases.

Second, monetary damages are necessary to prevent state actors from evading RLUIPA liability through another procedural maneuver: granting eleventh-hour relief to duck an imminent adverse ruling. Ordinarily, a defendant's "voluntary cessation" of challenged conduct

does not render a case moot unless it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 n.10 (1982) (quoting *United States* v. *Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203 (1968)). But, as this Court consistently has maintained, government actors face a "lighter burden." *Sossamon*, 560 F.3d at 325. "[G]overnment actors in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties." *Id.* Thus, "when a government entity assures a court of continued compliance, and the court has no reason to doubt that assurance, then the voluntary cessation doctrine does not apply." *Miraglia v. Bd. of Supervisors of La. State Museum*, 901 F.3d 565, 572 (5th Cir. 2018).

This allows state and local actors in RLUIPA suits to make last-minute changes to their policies that render meritorious claims moot, depriving lower courts, government officials, and free exercise plaintiffs of much-needed decisions. *See* Joseph C. Davis & Nicholas R. Reaves, *The Point Isn't Moot: How Lower Courts Have Blessed Government Abuse of the Voluntary-Cessation Doctrine*, 129 Yale L.J.F. 325 (2019).

For example, in *Guzzi v. Thompson*, state prison officials denied an inmate kosher food because he was not certified as Jewish. 470 F. Supp. 2d 17, 19–20 (D. Mass. 2007), *vacated and remanded by* No. 07-1537, 2008 WL 2059321 (1st Cir. May 14, 2008). The prison adhered to this policy for years; it relented only after the inmate secured representation and appealed an adverse judgment to the First Circuit. *Guzzi v. Thompson*, No. 07-1537, 2008 WL 2059321, at *1 (1st Cir. May 14, 2008) (per curiam). Even then, prison officials made a kosher-food accommodation for the plaintiff only; they made no changes to the prison's general policy. *Id.* Despite the lack of a general policy change, the First Circuit dismissed the case, making no inquiry as to whether culpable conduct beyond a "mutual misunderstanding" had occurred. *Id.*

Such last-minute gamesmanship is regrettably common in the land-use context too. For example, in *Church of Our Savior v. City of Jacksonville Beach*, 69 F. Supp. 3d 1299 (M.D. Fla. 2014), a local church group seeking to build a new facility challenged the governing zoning ordinance, which treated "religious organizations" less favorably than "recreational facilities." *Id.* at 1306–07. The city continued to enforce the zoning ordinance through years of litigation, precluding the

plaintiffs from starting construction on their new facility. Just two days before trial, however, the city amended the zoning code. *Id.* at 1310–11. While the court acknowledged that the amendment "smacks of strategy" it nonetheless held that the change to the zoning code mooted the Church's claims for declaratory and injunctive relief. *Id.* at 1318. Because pre-*Tanzin* precedent in that Circuit did not permit money damages claims in individual-capacity suits, this mooted the case in its entirety.

In sum, eliminating money damages from the "appropriate relief" available under RLUIPA unnecessarily and unreasonably empowers state and local actors to selectively "avoid creating adverse precedents that will preclude desired policy ends." *The Point Isn't Moot*, 129 Yale L.J.F. at 332. Congress did not intend to allow state actors to evade responsibility so easily. Rather, RLUIPA's plain text permits monetary relief in individual-capacity suits, which frustrates such attempts to manipulate the courts' jurisdiction. This Court should restore that proper interpretation of RLUIPA's remedial sweep.

B. Monetary relief is necessary to redress injuries in the institutionalized persons and land-use contexts that often cannot be remedied through other means.

Money damages in individual-capacity suits are also necessary because, in many cases, they are "the *only* form of relief" that can redress the plaintiff's injury. *Tanzin*, 141 S. Ct. at 492. Indeed, the Supreme Court repeatedly has recognized that "[w]hen government officials abuse their offices, action[s] for damages may offer the only realistic avenue for vindication of constitutional guarantees." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982)).

This case provides a ready example. Appellant Damon Landor's Rastafarian beliefs forbid the cutting of his hair. ROA.15. Prison officials' decision to forcibly shave his head squarely infringed on that First Amendment freedom. ROA.18. Once Defendants took that step, Landor's injury was complete, and could not adequately be redressed through declaratory or injunctive relief.

It is immaterial whether Landor's dreadlocks—which he had grown for almost 20 years—may eventually grow back. ROA.19. Landor's claim is that his religious beliefs preclude the dreadlocks from

being cut at all—and Defendants' forcible cutting of his hair violated those beliefs. Such a past injury cannot be remedied through injunctive relief; monetary damages provide the only practicable redress. *See*, *e.g.*, *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 (1986); *Brown v. Bryan Cnty.*, 219 F.3d 450, 467–68 (5th Cir. 2000).

The fact that the plaintiff's recovery may be limited to nominal damages in many such cases does not diminish their importance. To the contrary, "nominal damages remain an appropriate means of vindicating rights whose deprivation is difficult to quantify." *Church of Our Lord & Savior Jesus Christ v. City of Markham*, 913 F.3d 670, 680 (7th Cir. 2019). Indeed, as the Supreme Court recently held in *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021), "an award of nominal damages by itself can redress a past injury," including a "constitutional violation." *Id.* 796–97; *id.* at 800–01 (rejecting the "flawed premise that nominal damages are purely symbolic"). That is because nominal damages are "concrete" and provide redress because they involve an actual payment from the defendant and also have the potential to "'affec[t] the behavior of the defendant towards the plaintiff,'" deterring

future misconduct. *Id.* at 801 (quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1992)).

The same is true in the land-use context. In many RLUIPA land-use cases, monetary damages are the "only form of relief that can remedy" the harm. *Tanzin*, 141 S. Ct. at 492. For example, when discriminatory local ordinances render a religious institution's property effectively unusable, this often forces the institution to abandon the property before litigation is complete. In such circumstances, prospective relief is unavailable because the congregation has moved on; only retrospective, monetary relief can hold the city accountable.

For instance, in *Church of Our Lord & Savior Jesus Christ*, the Seventh Circuit held that a church could recover damages in a RLUIPA action on the grounds that the city's attempts to block the church from operating without a conditional use permit "distracted the church's leadership from its religious objectives and placed stress on the congregation." 913 F.3d at 680. Similarly, in *Praise Christian Ctr. v. City of Huntington Beach*, 352 F. App'x 196 (9th Cir. 2009), the Ninth Circuit held that nominal damages were available to a small church that abandoned the warehouse in which it met after the city required

the church to install a prohibitively expensive sprinkler system. Both cases involved local governments—against which money damages are available under Circuit precedent. Nothing in RLUIPA purports to deny religious plaintiffs such a remedy in individual-capacity suits, and this Court should restore that proper textual reading of RLUIPA's remedies.

C. Monetary relief is necessary to deter harassment of religious minorities.

Finally, monetary damages are essential to deter state and local officials from harassing religious minorities. Indeed, Congress enacted RLUIPA not merely to give recourse to the victims of religious discrimination, but also to deter religious discrimination before it occurs. RLUIPA's land-use protections are designed both to redress injuries and to "protect . . . new, small, or unfamiliar churches" from future discrimination in "land use regulation." *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore Cnty.*, 915 F.3d 256, 264 (4th Cir. 2019) (quoting 146 Cong. Rec. S7774 (July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy) (alterations omitted)). Similarly, RLUIPA's institutionalized-persons protections both redress past harm and "protect[] institutionalized persons" from future discrimination,

which is especially important because such persons "depend[] on the government's permission and accommodation for exercise of their religion." *Cutter v. Wilkinson*, 544 U.S. 709, 721 (2005) (emphasis added).

In this respect, RLUIPA, which restores the pre-1990 operation of § 1983 in the religious land-use and prison contexts, serves the same functions that § 1983 serves for all constitutional torts. The Supreme Court has long extolled the dual function of § 1983. For instance, the Court in *Wyatt v. Cole* noted that § 1983's "purpose . . . is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." 504 U.S. 158, 161 (1992). Similarly, in *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), the Court recognized that the "deterrence of future abuses of power by persons acting under color of state law is an important purpose of § 1983." *Id.* at 268. *See also Robertson v. Wegman*, 436 U.S. 584, 590–91 (1978) ("The policies underlying § 1983 include compensation of persons injured by deprivation of federal rights and prevention of abuses of power by those acting under color of state law.").

RLUIPA cannot fulfill these dual purposes without imposing monetary damages against officials in their personal capacities in appropriate cases. "It is almost axiomatic that the threat of damages has a deterrent effect, surely particularly so when the individual official faces personal financial liability." *Carlson*, 446 U.S. at 21 (citation omitted). In fact, "a damages remedy recoverable against individuals is more effective as a deterrent than the threat of damages against a government employer" because it holds the individual responsible for carrying out government policy personally responsible for violations of constitutional rights. *Newport*, 453 U.S. at 270. Congress enacted nothing less when it reinstated § 1983's protections for religious liberty claims through RLUIPA, and this Court should give full effect to Congress's decision.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be REVERSED.

November 21, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and 5th Circuit Rule 29.3 because it contains 5675 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

/s/ Gordon D. Todd

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2022, I caused the foregoing to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Gordon D. Todd