No. 23-1197

IN THE

Supreme Court of the United States

DAMON LANDOR,

Petitioner,

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, *et al.*,

Respondents.

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

BRIEF OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The National Police Accountability Project (NPAP) has over 575 attorney members practicing in every region of the United States. Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and correctional officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients. NPAP has recently filed *amicus* briefs at this Court in *Parrish v. United States*, 24-275, Brief amici curiae of Center for Constitutional Rights, et al., March 5, 2025, *Felix v. Barnes*, 23-1239, Brief amicus curiae of The National Police Accountability Project, Nov. 20, 2024, *Vega v. Tekoh*, No. 21-499, Brief amicus curiae of The National Police Accountability Project, April 6, 2022, *Egbert v. Boule*, No. 21-147, Brief amicus curiae of National Police Accountability Project, Jun. 26, 2022, *Thompson v. Clark*, No. 20-659, Brief amici curiae of National Police Accountability Project, et al., June 11, 2021, and *Reed v. Goetz*, No. 21-442, Brief amici curiae of The Law Enforcement Action

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[1] Pursuant to Rule 37.6 of this Court, no party or counsel representing a party has authored the brief in whole or in part, and no party or counsel representing a party has made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus*, *amicus* members, or counsel for *amicus*, have made a monetary contribution intended to fund the preparation or submission of this brief.

Partnership and the National Police Accountability Project, July 8, 2022.

SUMMARY OF ARGUMENT

This case serves as an egregious example of why Congress made monetary damages available under RLUIPA. Here, Petitioner Damon Landor physically provided on-point case law setting out his rights to corrections officials, but they threw it in the trash and violated those rights anyway. Pet. at 3. They could do so because, absent monetary damages, incarcerated people have little remedy against even the most egregious violations of rights.

The Circuits' treatment of institutionalized people's religious rights, however, fails to give effect to Congress's intent in enacting RLUIPA. The statute itself provides a private cause of action, and Congress passed it specifically because it regarded federal courts as wrongly hostile to First Amendment free exercise claims that would otherwise protect the same interests. Indeed, RLUIPA allows claims to proceed under an easier standard precisely because the First Amendment—with damages available under § 1983—did not provide enough protection of free exercise rights. Circuits that paradoxically treat RLUIPA as providing fewer remedies than those available in First Amendment suits under § 1983 miss the point of the statute. And in any event, as with all civil rights statutes, damages remedies play an important role in conferring practical protections upon people the statutes benefit.

Amicus would also assuage any concerns that RLUIPA damages suits would throw open the courthouse doors and bankrupt corrections defendants. For one thing, RLUIPA claims must still meet onerous substantive standards—and litigating them often

requires expert testimony not commonly available to the *pro se* prisoners who often seek relief under RLUIPA. In addition those *pro se* incarcerated litigants face numerous other barriers to successful suits. Ensuring that people who suffer egregious violations of their religious rights—like Mr. Landor—can recover damages provides an important deterrent to future violations, without opening the floodgates to non-meritorious claims. This Court should hold that plaintiffs may seek money damages for retrospective violations of RLUIPA.

ARGUMENT

I. DAMAGES REMEDIES PLAY AN IMPORTANT ROLE IN ENFORCING CIVIL RIGHTS STATUTES, AND CONGRESS INTENDED TO PROVIDE THEM UNDER RLUIPA.

Amicus makes two main observations in urging this Court to hold that RLUIPA provides a damages remedy. The first is that as with most civil rights statutes, RLUIPA empowers people to seek redress in court when government actors violate their rights—which typically involves pursuing money damages. The text itself does this, but the legislative history and the context of courts' contemporaneous treatment of First Amendment suits by incarcerated litigants confirm that Congress specifically intended to create a damages remedy in the law. The second is that money damages remedies serve important civil rights enforcement objectives in both redressing past violations and deterring future ones. And here, where incarcerated people who suffer violations of their religious rights do not have alternative remedies that would serve either of those objectives, money damages play an especially important role. This Court should ensure that people may seek them when warranted.

A. RLUIPA was enacted to ensure incarcerated plaintiffs could seek remedies when correctional defendants burdened their free exercise rights.

RLUIPA's text creates a private cause of action for "appropriate relief" for violations of the statute. 42 U.S.C. §§ 2000cc-2000cc-5 (2000). To complement the Parties' textual arguments about what that "appropriate relief" might include, *Amicus* would point the Court to clear evidence of Congress's intent to make a money damages remedy available in the legislative history of RLUIPA. That history and the context of litigation over religious rights at the time make clear that Congress passed the statute to expand prisoners' access to remedies when state action burdened their free exercise of religion.

First, the text is clear that Congress intended people injured under RLUIPA to have a private cause of action to redress those violations. The Congressional Record describes one of the objectives of RLUIPA as ensuring individuals who had been denied the opportunity to practice their faith while incarcerated could pursue their claims in federal court. *See* H.R. Rep. No. 106-219 at 4-9 (1999).[2] The bill's primary sponsors—Senator Orrin Hatch and Senator Ted Kennedy—explained that the statute's purpose was to give prisoners "a remedy and a neutral forum" for their free exercise claims. 146 Cong. Rec. S7775 (July 27, 2000) (Jt. Statement of Sen. Hatch & Sen. Kennedy).[3]

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[2] Religious Land Use and Institutionalized Persons Act of 2000, https://www.govinfo.gov/content/pkg/CRPT-106hrpt219/pdf/CRPT-106hrpt219.pdf

[3] https://www.govinfo.gov/content/pkg/CREC-2000-07-27/pdf/CREC-2000-07-27-pt1-PgS7774.pdf

Second, Congress created this avenue to sue in federal courts because of how it viewed courts' treatment of religious liberty claims under the First Amendment. Congress passed RLUIPA against the backdrop of this Court's civil rights jurisprudence, which it viewed as insufficiently protective of those rights. Pre-passage discussions of RLUIPA focused on the substantive limitations on constitutional free exercise claims, and proponents presented the bill as a crucial pathway for prisoners to vindicate their rights. *Id.* at S7774; *see also* H.R. Rep. No. 106-219 at 9 (1999). Indeed, bipartisan concern over the increasingly hostile landscape of free exercise jurisprudence was the driving factor behind the bill's introduction. American Law Division, CONG. RSH. SERV., RS20638, The Religious Land Use and Institutionalized Persons Act of 2000 (Oct. 4, 200).[4] Senators Hatch and Kennedy's joint statement on the bill went so far as to cite specific federal court cases where plaintiffs could no longer sue for significant infringements on prisoners' religious rights after decisions of this Court that limited suits under the First Amendment and the Religious Freedom Restoration Act. 146 Cong. Rec. S7775 (2000).

Taken together, giving people a private cause of action to address the insufficiency of existing damages suits makes quite clear that Congress intended to create a damages remedy. Congress of course knew that plaintiffs could already—at least theoretically—seek money damages for First Amendment free exercise violations when it enacted RLUIPA. Congress also knew that civil rights plaintiffs generally need to seek retrospective compensatory damages rather than prospective injunctive relief. *See* Jennifer Hickey,

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[4] https://www.everycrsreport.com/files/20001004_RS20638_a8c6022275119915bf957bf1bc96dd9cf4be7aad.pdf.

From Apples to Orchards: A Vulnerability Approach to Police Misconduct, 26 Tex. J. on C.L. & C.R. 1, 5 (2020) (noting civil rights plaintiffs usually sue for compensatory and punitive damages rather than injunctive relief). This dynamic is even starker in prison, where courts face strict limits on awarding prospective injunctive relief to incarcerated litigants. *See, e.g.*, 18 U.S.C. § 3626(a)(2). So if a prisoner suing an individual officer for First Amendment violations under Section 1983 would be entitled to damages, *see, e.g.*, *Hoever v. Marks*, 993 F.3d 1353, 1364 (11th Cir. 2021), and Congress enacted RLUIPA to provide an alternative avenue to the First Amendment, only a comparable damages remedy to the one available under the First Amendment would give full effect to Congress's intent.

And, in any event, Congress enacted RLUIPA with full knowledge of this Court's then-recent precedent about the scope of remedies available to plaintiffs suing under statutes making "appropriate relief" available. Not long before RLUIPA's passage, this Court interpreted a different statute's "appropriate relief" to include money damages, because "appropriate relief" swept broadly to include forms of relief not barred in the statute. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 66, 75-76 (1992) (discussing "the availability of all appropriate remedies unless Congress has expressly indicated otherwise"). Experts contemporaneously explained this to Congress during the drafting process, too. In hearings during consideration of RLUIPA, one defined "appropriate relief" as including monetary damages. *See* Religious Liberty, Hearing Before the S. Comm. on the Judiciary, 106th Cong., 1st

Sess. (Sept. 9, 1999), S. Hrg. 106-689 at 91;[5] Religious Liberty Protection Act of 1998: Hearing Before the Subcomm. on the Constitution of the H. Comm. of the Judiciary, 105th Cong., 2d Sess. (June 16, 1998) (statement of Prof. Douglas Laycock) at 14;[6] *see also* Congress' Constitutional Role in Protecting Religious Liberty, Hearing Before the S. Comm. on the Judiciary, 106th Cong., 1st Sess. (Oct. 1, 1997), S. Hrg. 105-405 (testimony of Prof. Michael Stokes Paulsen) at 19. In a prepared statement to the Senate Judiciary Committee, constitutional law scholar and witness Professor Douglas Laycock outlined the remedies available under the bill's text, explaining that the statute's language "should be read against a large body of federal law on remedies and immunities under other civil rights legislation" and that "appropriate relief includes declaratory judgments, injunctions, and damages." S. Hrg. 106-689 at 91. The version enacted contains the very same "appropriate relief" language that Professor Laycock discussed during consideration of a prior version of the bill, and that tracks with its use in other statutes that this Court has held allow for money damages.

Debate on the version of RLUIPA that ultimately passed also demonstrates that Congress intended to permit prisoners to seek money damages relief against defendants. Pre-passage in 2000, the Senate specifically researched and debated the possible fiscal impact of expanded access to courts under RLUIPA. For instance, Senators Hatch and Reid requested the General Accounting Office to investigate the impact that

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[5] https://www.justice.gov/sites/default/files/jmd/legacy/2014/07/07/hear-j-106-35-1999.pdf

[6] https://www.justice.gov/sites/default/files/jmd/legacy/2014/01/13/hear-134-1998.pdf

RFRA's protections had imposed on the federal prison system in an attempt to forecast the burden that inmate litigation under RLUIPA would have on state prisons. 106 Cong. Rec. 7779.[7] Many senators were concerned about the costs associated with a potential influx of frivolous litigation under the Act, and others explicitly pointed to the financial impact of successful suits. Senator Strom Thurmond stressed his concern about the impacts that successful lawsuits would have on state prison systems, because prisoners "winning lawsuits" would "greatly increas[e] the diversion of time and resources" from other correctional priorities. 146 Cong. Rec. S7991.[8] But people understood that, given the importance of the rights RLUIPA protected and other limits in the law, money damages would not bankrupt prisons. Even Senator Thurmond acknowledged that the PLRA had effectively limited frivolous claims, and would still apply to RLUIPA claims. *Id.*; *see also* Section II, *infra*. Assistant Attorney General Robert Raben submitted a letter to the Senate detailing the impact that RFRA had imposed on federal prisons, reassuring Senators that "very few, if any," cases against correctional defendants had proceeded to trial. 146 Cong. Rec. S7775.[9] And what cases did proceed were hardly frivolous; as data showed, when prisoners did bring RFRA claims, those claims "were more meritorious than most prisoner claims" on average. *Id*. (citing Lee Boothby & Nicholas

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[7] https://www.justice.gov/sites/default/files/jmd/legacy/2013/10/19/cr-s7774-81-2000.pdf

[8] https://www.govinfo.gov/content/pkg/CREC-2000-09-05/pdf/CREC-2000-09-05-pt1-PgS7991-2.pdf

[9] https://www.govinfo.gov/content/pkg/CREC-2000-07-27/pdf/CREC-2000-07-27-pt1-PgS7774.pdf

P. Miller, *Prisoner Claims for Religious Freedom and State RFRAs*, 32 U.C. Davis L. Rev. 573 (1999)).

In this context, Congress understood that it would be making monetary damages available to plaintiffs who sued under RLUIPA when it provided for "appropriate relief" for private litigants—and it chose to do so despite any countervailing concerns.

B. Damages both redress past violations and deter future ones.

Damages matter here particularly because in their absence, RLUIPA's free exercise protections would have little practical effect. Money damages, in general, both redress past violations and deter officials from violating people's rights going forward—and here, unlike in some other contexts, incarcerated people have few, if any, alternative mechanisms to serve either of those purposes.

First, as this Court has explained in other contexts, money damages provide redress for serious harms. Indeed, money damages provide retrospective compensation for harms, like missing important religious ceremonies, with no possible prospective remedy. This reflects the remedial purpose of civil rights laws, and recognizes the seriousness of the harms in question.

In addition to compensating people for gross abuses and violations of their civil rights, money damages "serve as a deterrent against future constitutional deprivations[.]" *Owen v. City of Independence*, 445 U.S. 622, 651 (1980). These dual purposes of money damages actions work together—the deterrent effect comes from monetary payouts encouraging governments to train officers and employees on constitutional and statutory rights to avoid future liability, and

officers "err[ing] on the side of protecting citizens' constitutional rights" as a result. *Id*. at 652. Indeed, there is no future "deterrent more formidable than that inherent in the award of compensatory damages." *Carey v. Piphus*, 435 U.S. 247, 256-57 (1978).

Damages liability works to deter misconduct even in some of the most intractable situations, in no small part because it brings public attention and political will to bear from outside the government. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 254 (1981) (noting payments of damage awards "focus taxpayer and voter attention upon the entity's malicious conduct," which can "promote accountability at the next election"). Indeed, the political consequences of civil liability impose a deterrent effect on future violations even where the people causing the violations remain insulated from direct monetary sanction—insurance companies often "demand changes in personnel and policies as a condition of continued coverage" even where a government entity need not touch its budget and officers have indemnification agreements. Alex Reinert, et al., *New Federalism & Civil Rights Enforcement*, 116 Nw. U. L. Rev. 737, 765 (2021). The cumulative effect of multiple judgments makes suits for money damages "particularly beneficial in preventing those 'systemic' injuries that result not so much from the conduct of any single individual, but from the interactive behavior of several[.]" *Owen*, 445 U.S. at 652. And the availability of a money damages remedy for violations gives strength and life to the rights protected by RLUIPA. "[W]here there is a legal right, there is also a legal remedy." 3 William Blackstone, *Commentaries on the Laws of England* (1st ed. 1765) *23. Such remedies are vital because "a large part of a right's effectiveness rides on the remedies available for its violation." Paulo C. Alves,

'Taking the Fifth' Beyond Trial: § 1983 Claims for Pre-Trial Use of Coerced Statements Affirms One's Right Against Self-Incrimination, 26 J. Civ. Rts. & Econ. Dev. 253, 276 (2012).

Second, violations of RLUIPA specifically and free exercise rights generally, even among other sorts of violations, lack other effective remedies. Other rights in the Bill of Rights or other statutes have potential remedies that protect the right separate from the availability of money damages. For example, some constitutional violations allow for criminal defendants to seek suppression of unlawfully-obtained evidence or to invoke the right as a defense to prosecution. *See, e.g.*, *Bram v. United States*, 168 U.S. 532 (1897) (involving exclusion of coerced confession violating Fifth Amendment); *Weeks v. United States*, 232 U.S. 383 (1914) (involving suppression of physical evidence violating Fourth Amendment); *see also United States v. Rahimi*, 602 U.S. 680 (2024) (involving defendant attacking criminal indictment based on Second Amendment right). Others allow for a person to retrospectively seek invalidation of a criminal conviction. *Strickland v. Washington*, 466 U.S. 668 (1983) (addressing remedies for violation of Sixth Amendment right to counsel). To be sure, even the exclusionary rule has its shortcomings, and it does not provide as much protection as it ought; no remedies protect people from, for example, compelled production of blood for testing, or compelled DNA swabs—or indeed, anything non-testimonial. *See Schmerber v. California*, 384 U.S. 757 (1966); *see also Maryland v. King*, 569 U.S. 435 (2013). But violations of free exercise rights, absent money damages under the First Amendment or statutes like RLUIPA, have no real remedy at all.

This matters particularly because, as this Court has recognized, violations of religious rights impose serious harms. "Respect for religious expressions is indispensable to life in a free and diverse Republic[.]" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). For that reason, this Court has explained in other free exercise contexts that burdens on free exercise must "withstand the strictest scrutiny." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017). Just last term, the Court characterized laws that "coerce individuals into acting contrary to their religious beliefs" as a "chilling vision of the power of the state," *Mahmoud v. Taylor*, 606 U.S. __, 145 S. Ct. 2332, 2357-58 (2025)—exactly the sort of harms that befall prisoners wrongly coerced into eating food their religion prohibits or barred from engaging in religious celebrations they believe have life (or afterlife) and death stakes. Burdens on free exercise may result, as the Court observed, "in stigma or isolation" and other considerable mental and emotional burdens, *id.* at 2363, and they warrant injunctive relief prior to imposition precisely because the loss of religious rights "for even minimal periods of time" can cause "irreparable injury." *Id*. at 2364. For prisoners who, for numerous reasons, cannot obtain injunctive relief, money damages are the only possible way to acknowledge and redress those extremely serious harms.

II. PRISONERS ALREADY HAVE NUMEROUS OBSTACLES TO PURSUING RLUIPA CLAIMS.

While these damages are important to redress serious harms, they are nevertheless still difficult to obtain in practice for many prisoners. RLUIPA's rigorous substantive requirements and the constraints imposed by the PLRA act as a strong obstacle to

successful lawsuits under the statute. To whatever extent the Court worries about financial exposure for prisons and jails, it need not; the availability of money damages under RLUIPA will not open the proverbial floodgates to numerous successful high-dollar lawsuits.

A. RLUIPA's onerous substantive standards foreclose successful lawsuits in most cases, regardless.

RLUIPA's substantive elements considerably limit the availability of claims for all but the most egregious cases, especially given countervailing security concerns in carceral settings. To state a RLUIPA claim, plaintiffs must show a substantial burden on their religious exercise, and then rebut any defendant's assertion that it has used the least restrictive means possible to serve a compelling government interest. The substantial burden prong is often demanding, 42 U.S.C. § 2000cc(a); *Holt v. Hobbs*, 574 U.S. 352, 352-53 (2015), and many claims fail there. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 725–26 (2005) (noting courts evaluate burdens to prisoners with sensitivity to institutional context); *Koger v. Bryan*, 523 F.3d 789, 799 (7th Cir. 2008) (observing that a "substantial burden" is one that "necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable"). A study of RLUIPA cases from 2001-2006 found that most "were dismissed because the court believed the prisoner failed to show that the facility where they were housed substantially burdened their sincerely held religious beliefs." U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prisons* 134-35 (Apr. 2025).[10] A

[10] https://www.usccr.gov/files/2025-04/enforcing-religious-freedoms-in-prison.pdf

similar study of cases after 2015 found that 47% of cases were dismissed on the grounds of not finding a substantial burden. *Id.* at 135. Whether money damages are available or not, prisoners' need to show a "substantial burden" will continue to limit the number of cases in which defendants might owe them in practice.

And courts give greater leeway to prison defendants than other types of defendants when assessing compelling interest and least restrictive means. While prisons do not receive "unquestioning deference," this Court has repeatedly explained that "[p]rison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise." *Holt*, 574 U.S. at 364; *see also Turner v. Safley*, 482 U.S. 78, 89-90 (1987) (discussing reasonableness of prison restrictions). That deference to prison defendants poses an independent and substantial barrier to plaintiffs pursuing relief under RLUIPA; a study of cases following *Holt* found that courts ruled for prisoners just 28% of the time. U.S. Commission on Civil Rights, *supra*, at 135. Other research has found that some circuits have offered even more deference post-*Holt*. Barrick Bollman, Note, *Deference and Prisoner Accommodations Post-*Holt*: Moving RLUIPA Toward "Strict in Theory, Strict in Fact,"* 112 Nw. Univ. L. Rev. 839, 867 (2018).

On top of the difficult substance, courts impose a high evidentiary burden on prisoners who seek to prove their RLUIPA claims. This Court itself has demanded evidence tailored to the asserted risks and alternatives, rather than generalized assertions. *See Holt*, 574 U.S. at 364-67 (rejecting conclusory assertions and requiring evidence about feasible alternatives). Correctional defendants often put in evidence and

declarations about safety and prison security needs, and plaintiffs who hope to rebut such evidence often need countervailing testimony or a report from an individual with similar qualifications and experience to address alternatives and feasibility—in other words, an expert. *See, e.g., Haight v. Thompson*, 763 F.3d 554, 562–66 (6th Cir. 2014) (discussing accommodations and comparators); *Knight v. Thompson*, 796 F.3d 1289, 1292 (11th Cir. 2015) (noting, in light of *Holt*, that the defendants relied on expert opinions as well as lay testimony and anecdotal evidence to create a detailed record as to the least restrictive means); *Fegans v. Norris*, 537 F.3d 897, 905 (8th Cir. 2008) (finding the record included "no data to refute [defendant's] expert testimony about the relative security risks" and that the lower court correctly credited this unrebutted testimony). Courts often even require experts in religion to determine whether a substantial burden on sincere religious practice exists in the first place. Abdeel Mohammadi, Note, *Sincerity, Religious Questions, and the Accommodation Claims of Muslim Prisoners*, 129 Yale L.J. 1836, 1868-69 (2020). *See, e.g., Borzych v. Frank*, 439 F.3d 388, 390 (7th Cir. 2006) (relying on a professor with expertise in folklore and Old Norse language and literature to conclude that keeping certain books out of prison was not a substantial burden on a plaintiff's asserted practice of the Odinism religion); *Native Am. Council of Tribes v. Weber*, 750 F.3d 742, 749-50 (8th Cir. 2014) (relying in part on testimony from a traditional Lakota healer about the centrality of tobacco in religious ceremonies to determine a ban substantially burdened religious exercise).

This sort of expert-driven litigation is expensive and difficult to pursue from confinement, particularly where *pro se* litigants usually must file their own

cases. Incarcerated litigants face numerous burdens by virtue of their status even compared to other *pro se* plaintiffs. Prisoners cannot easily investigate their claims prior to filing because their facility has a monopoly on information about defendants' identities and most relevant facts. *See, e.g.*, *Billman v. Ind. Dep't of Corr.*, 56 F.3d 785, 789 (7th Cir. 1995) ("Billman is a prison inmate. His opportunities for conducting a precomplaint inquiry are, we assume, virtually nil."). When prisoners *do* file, they cannot get those facts in discovery, either. They are not entitled to initial disclosures, Fed. R. Civ. P. 26(a)(1)(B)(iv), and are often barred from receiving information because of security concerns. *E.g. Naranjo v. Thompson*, 809 F.3d 793, 798 (5th Cir. 2015) (explaining that plaintiff "was barred from viewing and responding to discovery that defendants had filed under seal"). For incarcerated *pro se* plaintiffs who make it that far, "[r]esource restrictions make valuable discovery tools like depositions and expert reports inaccessible to imprisoned litigants" even more so than they are to other *pro se* civil rights litigants. James Stone, *The Prison Discovery Crisis*, 134 Yale L.J. 2751, 2765 (2025). Information asymmetries, lack of litigation experience, court rules and precedents, difficulty communicating outside of the carceral facility, and especially financial restraints, impose huge burdens. *Id.* at 2780-2789. Ultimately, a 2012-2018 study found that most RLUIPA claims dismissed on "non-merit" grounds were filed by *pro se* plaintiffs, "indicating that the civil procedure process is challenging for non-lawyers to successfully navigate." U.S. Commission on Civil Rights, *supra*, at 135.

Prisoners have trouble obtaining lawyers to litigate these cases, too. Lawyers face fewer of those obstacles, and greatly improve any litigant's chance of success.

Mitchell Levy, Comment, *Empirical Patterns of Pro Se Litigation in Federal District Courts*, 85 U. Chi. L. Rev. 1819, 1842 (2019). But in *Amicus*'s observation and experience, the cost of experts combined with PLRA limitations on attorney fee recovery relative to damages awards deters the private bar from taking these cases, *see also* Section II.b., *infra*. Plaintiffs' firms must bear out-of-pocket litigation expenses, including expert costs, often with no hope of recovering those outlays. As a result, private lawyers rarely take prison civil rights cases in which they know or suspect that they will need to hire experts to succeed, like RLUIPA claims. This matters particularly here, where RLUIPA's safe harbor provision—which allows a government defendant to avoid liability by eliminating the burden, 42 U.S.C. § 2000cc-3(e)—could allow prison defendants to moot cases where they view their liability as increasing because of the involvement of lawyers, while continuing to impose a burden on (and litigate against) *pro se* prisoners.

B. RLUIPA claims brought by prisoners still fall under the PLRA, which limits even meritorious suits for money damages.

As with all suits filed by incarcerated persons, the PLRA applies to suits filed under RLUIPA. 42 U.S.C. § 2000cc-2. As this Court has recognized, Congress enacted the PLRA "to reduce the quantity" of prisoner suits. *Porter v. Nussle*, 534 U.S. 516, 524 (2002). And it has certainly succeeded in that goal; as this Court has explained in a different RLUIPA case, "[w]e see no reason to anticipate that abusive prisoner litigation will overburden the operations of state and local institutions. The procedures mandated by the Prison Litigation Reform Act of 1995, we note, are designed to

inhibit frivolous filings." *Cutter*, 544 U.S. at 726. *Amicus* will not belabor the point that the PLRA has reduced successful prison civil rights litigation even in situations involving egregious violations, but briefly reminds the Court of some of the PLRA provisions that would inhibit money damages recovery under RLUIPA in the same way that they inhibit money damages recovery for prisoners in other claim contexts.

First, as with other prison suits, to file a RLUIPA claim, a plaintiff would need to exhaust the grievance process at their facility. Facilities may set their own grievance process because under 42 U.S.C. § 1997e(a), prisoners must exhaust "such administrative remedies as are available" before suit. Prison officials have wide discretion in designing and implementing a grievance procedure so long as it is not "so opaque that it becomes, practically speaking, incapable of use" or "operates as a simple dead end." *Ross v. Blake*, 578 U.S. 632, 643-44 (2016); *see Jones v. Bock*, 549 U.S. 199, 218 (2007) (holding that the requirements of a specific prison's own grievance system, rather than the PLRA, "define the boundaries of proper exhaustion"). This exhaustion requirement routinely will frustrate otherwise colorable claims. *See* Tiffany Yang, *The Prison Pleading Trap*, 63 B.C. L. Rev. 1146, 1149-53 (2023) (describing the difficulties posed to prisoners in the grievance system characterized by short deadlines, complicated and multi-layered processes, and arbitrary procedural rules). Prisons may even create multiple grievance processes, making it difficult to figure out how to properly exhaust. *See Muhammad v. Mayfield*, 933 F.3d 993, 1001 (8th Cir. 2019) (requiring prisoner to seek redress from both grievance process and prison chaplain, independently); *Prater v. Pa. Dep't. of Corrs.*, 76 F.4th 184, 204 (3d Cir. 2023) (finding that although the prison had two grievance processes that "work[ed]

in tandem," only one was the "exclusive means of exhaustion"). This deters litigation even of serious violations.

Second, even without the costs of experts, the PLRA makes prison suits financially unviable for many private counsel. The PLRA prevents the recovery of monetary damages for mental or emotional injury. 42 U.S.C. § 1997e(e). And the Act contains a strict cap on attorneys' fees, limiting fee awards to 150% of the damages recovered, *id.* § 1997e(d)(2), disincentivizing attorneys from litigating large-scale or complicated violations of law on behalf of people who are indigent and incarcerated. Private counsel also know that for incarcerated clients who may have restitution orders from their criminal cases, settlements or verdict awards may be intercepted and garnished, even prior to the attorney's own contingency or fee recovery allowed under the cap. *See* 18 U.S.C. § 3613(a) (authorizing the United States to enforce a restitution order in accordance with the practices and procedures for the enforcement of civil judgments under Federal or State law, subject to limited exceptions). The complicated and time-intensive nature of these cases makes the prospect of expending dozens or even hundreds of hours at far below market rate unviable for many lawyers, even in meritorious cases. *See* Eleanor Umphres, *150% Wrong: The Prison Litigation Reform Act and Attorney's Fees*, 56 Am. Crim. L. Rev. 261, 274 (2019).

Third, the PLRA imposes other structural barriers to plaintiffs filing prison suits under RLUIPA who seek to proceed *in forma pauperis*. Typically, indigent individuals may seek leave to file IFP, which allows them to file suit without paying the multi-hundred dollar filing fee typically applicable in civil cases. 28

U.S.C. § 1915. An incarcerated individual, however—even if they are granted IFP status—must still pay the full filing fee in installments over time, *see id.* § 1915(b), which is a particularly heavy burden and deterrent for prisoners who may earn wages averaging 86 cents per hour. *See* Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, Prison Pol'y Initiative (Apr. 10, 2017).[11]

Further, prisoners are subject to a "three strikes" rule that poses an obstacle to filing. After litigating three suits that are "dismissed on the grounds that it is frivolous, malicious," or—importantly—"fails to state a claim upon which relief may be granted," 28 U.S.C. § 1915(g), prisoners may not file further suits or appeal judgments in civil actions IFP again unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Because § 1915(g) counts dismissals even without prejudice as strikes, *see Lomax v. Ortiz-Marquez*, 590 U.S. 595 (2020), prisoners can accrue strikes even for good-faith litigation. As any civil litigator knows, motions to dismiss can be granted for failures to state a claim in a host of non-frivolous situations, including in cases that present close questions, rely on incomplete or asymmetric information, or are missing a technical pleading requirement that could be resolved after a dismissal without prejudice. And district courts often fail to distinguish between which dismissals constitute "strikes" for purposes of the PLRA, resulting in considerable additional litigation regarding whether a previous dismissal constitutes a strike. *See, e.g., Talley v. Wetzel, et al.*, Third Cir. No. 21-1855, Order, Sept. 16, 2022

[11] https://perma.cc/V3LK-946M

(discussing stay of nine appeals pending resolution of a three-strikes issue in pending case).

The upshot of all of these obstacles is that the PLRA has considerably limited litigation over violations in prisons and jails. Leading empirical work shows that the PLRA precipitated a sharp, lasting decline in prisoner civil rights filings. *See* Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 U. Cal. Irvine L. Rev. 153, 155–61 (2015). The PLRA not only reduced the number of cases filed, it also made them harder to win. *Id.* at 162-63. *See also* Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1632-39 (2003). That dynamic will persist even if money damages are available to incarcerated RLUIPA plaintiffs.

So, permitting plaintiffs to seek damages under RLUIPA will not open the floodgates to prisoner litigation. Plaintiffs would still need to properly exhaust complex grievance processes; plead and prove a substantial burden; overcome prison-security showings by the defendants, often using costly experts; and pay full filing fees to litigate, usually without counsel, subject to limits on attorneys' fees even when they do find lawyers. Empirical data confirm that these features, not the lack of availability of money damages, keep prisoner litigation rare and difficult.

CONCLUSION

Money damages play a critical role in deterring correctional defendants' violations of prisoners' free exercise rights. The religious injuries here are immune to other types of relief, but no less worthy of redress for that. Congress intended to make money damages available as a remedy, and no countervailing policy concerns counsel against that. This Court should hold that those remedies are available, and reverse.

Respectfully submitted,

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