No. 22-2342

In the United States Court of Appeals
for the Seventh Circuit

THOMAS WALKER,

Plaintiff-Appellant,

v.

JOHN BALDWIN, JOHN VARGA, JOHN CRAFT, AND COLIN BRINKMEIER, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Western Division
Honorable Iain D. Johnston
(3:19-cv-50233)

BRIEF *AMICUS CURIAE* OF THE BRUDERHOF, CLEAR, MUSLIM ADVOCATES, AND THE SIKH COALITION IN SUPPORT OF APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, the Bruderhof, Creating Law Enforcement Accountability and Responsibility (CLEAR), Muslim Advocates, and the Sikh Coalition have no parent corporation and no stock. Counsel for *amici* are Francesca Matozzo and Stephanie Barclay of the Notre Dame Law School Religious Liberty Clinic, and Francesca Matozzo is the attorney appearing for *amici* in this Court. *Amici* did not participate in the district court.

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INTERESTS OF THE *AMICI*

The Bruderhof is a Christian community stemming from the Anabaptist tradition. The Bruderhof was founded in 1920 in Germany in the aftermath of World War I. During Hitler's reign, the community was targeted for its conscientious refusal to support Hitler's militaristic and genocidal policies. Eventually, the Bruderhof left their homes in Germany and fled to England before immigrating to Paraguay and later to the United States, attracted by this nation's founding principles of tolerance and liberty. The Bruderhof's interest in this case arises from its belief that freedom from government coercion is essential for people of all faiths in matters of sincere religious practice. From its own experience, the Bruderhof knows the value of court-enforced standards for religious freedom that offer protection from the vagaries of political majorities.

Creating Law Enforcement Accountability & Responsibility (CLEAR) is a project at City University of New York School of Law. CLEAR's mandate is to support Muslim and all other communities and movements in the New York City area and beyond that are targeted by local, state, or federal government agencies under the guise of national security and counterterrorism. CLEAR was founded in 2009 and is housed at the City University of New York School of Law, within Main Street Legal Services, Inc., the clinical arm of the law school. CLEAR represented the plaintiffs in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), at the heart of this litigation.

Muslim Advocates, a national legal advocacy and educational organization, works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. The issues at stake in this case directly relate to Muslim Advocates' work fighting

institutional and religious discrimination against Muslims and other marginalized communities.

The Sikh Coalition is a nonprofit and nonpartisan organization dedicated to ensuring that members of the Sikh community in America are able to practice their faith. The Sikh Coalition defends the civil rights and civil liberties of Sikhs by providing direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement amongst Sikh Americans. The organization also educates community members about their legally recognized free exercise rights and works with public agencies and officials to implement policies that accommodate their deeply held beliefs. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001.

These organizations have an interest in ensuring that religious minorities' exercise in prison is protected.[1]

SUMMARY OF THE ARGUMENT

The Seventh Circuit should re-examine its precedent to allow for monetary damages for individual capacity suits under the Religious Land Use and Institutionalized Persons Act (RLUIPA) for three reasons. First, RLUIPA's text follows the same

[1] *Amici* state that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person contributed money that was intended to fund preparing or submitting the brief.

approach as 42 U.S.C. § 1983 and should be interpreted to afford the same types of broad remedies. Before *Employment Division of Oregon v. Smith*, 494 U.S. 872 (1990), reduced the availability of free exercise claims, free exercise claims for monetary damages were frequently brought under § 1983. RLUIPA simply restored this way of vindicating rights violations to incarcerated religious claimants.

Second, monetary damages are important to protect against a prison's strategic mooting of a case and to ensure that prisons receive court guidance on the legality of their actions. Without damages, RLUIPA cases are often mooted before a plaintiff is able to receive relief.

Third, individual-capacity damages under RLUIPA are vital to protect religious minorities in prisons. When religious minorities are not able to bring claims for damages, prison officials often lack incentives to sufficiently protect these religious rights. In the prison context, religious minorities are therefore disproportionately at risk of having their religious freedoms infringed upon absent a damages remedy to safeguard those rights.

ARGUMENT

I. RLUIPA mirrors Section 1983's language, which routinely provided for damages remedies pre-*Smith*.

RLUIPA was enacted to establish broad protections for religious claimants, including prison inmates. Before *Employment Division v. Smith*, 494 U.S. 872 (1990), courts routinely permitted religious claimants to vindicate their free-exercise rights under 42 U.S.C. § 1983. *Employment Division v. Smith* stripped § 1983 of its protective force in holding that neutral laws of general applicability do not violate one's free-exercise rights.

In response, Congress enacted RLUIPA, adopting language that tracks § 1983's remedies language and restores the pre-*Smith* protections that were provided under the previous § 1983 constitutional regime. This regime of damages remedies under § 1983 provided an important safeguard against governments strategically mooting religious claimants' cases.

Under RLUIPA a court may award appropriate relief against "any other person acting under color of State law." 42 U.S.C. § 2000cc-5(4)(A)(iii). This language mirrors § 1983's language, which provides a cause of action against "every person who [acts] under color of any statute . . . of any State." 42 U.S.C. § 1983. As the Supreme Court recently held, "under color of law" "draws on one of the most well-known civil rights statutes: 42 U.S.C. § 1983." *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020).[2] Because it

[2] To be sure, *Tanzin* involves the Religious Freedom Restoration Act (RFRA), rather than RLUIPA. But, as Appellant argues, the statutes should be interpreted the same. *See* Appellant's Br. 14–28; *see, e.g.*, *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005); *Northcross v. Bd. of Ed. of Memphis City Schs.*, 412 U.S. 427, 428 (1973) (per curiam). The Supreme Court has described RLUIPA and RFRA as "sister statutes" and routinely used RFRA and RLUIPA's case law interchangeably in interpreting the two statutes. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014); *see, e.g.*, *Ramirez v. Collier*, 142 S. Ct. 1264, 1280 (2022) (citing RFRA case in interpreting RLUIPA); *Holt v. Hobbs*, 574 U.S. 352, 362 (2015) (same). This Circuit's own precedents have held that "RLUIPA employs a standard already contained in the RFRA," *Koger v. Bryan*, 523 F.3d 789, 802 (7th Cir. 2008), and admonished that "RLUIPA's legislative history indicates that it is to be interpreted by reference to RFRA." *Civ. Liberties for Urb. Believers v. City of Chi.*, 342 F.3d 752, 760 (7th Cir. 2003); *see also Korte v. Sebelius*, 735 F.3d 654, 673–74 (7th Cir. 2013) (interpreting a provision of RFRA through cross-reference to a definition of the same term in RLUIPA). *Nelson v. Miller* recognizes that RFRA contains "identical language" to RLUIPA authorizing individual-capacity liability. 570 F.3d 868, 886 (7th Cir. 2009). Indeed, many district courts in the Seventh Circuit have suggested that *Tanzin* may permit individual-capacity suits under RLUIPA as well. *See, e.g.*, *Hernandez-Smith v. O'Donnell*, No. 20-cv-1117-jdp, 2022 WL 3985648, at *5 n.3 (W.D.

"uses the same terminology as § 1983 in the very same field of civil rights law, it is reasonable to believe that the terminology bears a consistent meaning." *Id.* at 490–91 (internal quotation marks and citation omitted).

"The availability of damages under § 1983 is particularly salient" given RLUIPA's origins. *Id.* at 487. RLUIPA, like RFRA, "made clear that it was reinstating both the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim." *Id.* at 492 (emphasis in original). In discussing the text that ultimately became RLUIPA, the House Judiciary Committee stated that the language intended to "creat[e] a private cause of action for damages, injunction, and declaratory judgment, and creat[e] a defense to liability, and provid[e] for attorneys' fees." House Report No. 106-219, Religious Liberty Protection Act of 1999, at 29 (July 1, 1999). The Committee also clarified that "[i]n the case of violation by a state, the Act must be enforced by suits against state officials and employees." *Id.*

"There is no doubt that damages claims have always been available under § 1983 for clearly established violations of the First Amendment." *Tanzin*, 141 S. Ct. at 492

Wis. Sept. 1, 2022) (stating that *Tanzin* "suggests that RLUIPA plaintiffs might also be able to bring individual-capacity damages claims"); *Greene v. Teslik*, No. 18-cv-116-wmc, 2021 WL 1820788, at *6 (W.D. Wis. May 6, 2021) (noting that it "remains an open question" whether *Tanzin*'s holding effects RLUIPA precedent and that the answer to that question could "alter the remedies available under RLUIPA"); *Printup v. Knight*, No. 2:21-cv-280-JPH-MG, 2021 U.S. Dist. LEXIS 203118, at *5 (S.D. Ind. Oct. 21, 2021) (stating that *Tanzin* "open[s the] question [of] whether plaintiffs may sue individual government officials for damages under RLUIPA"); *Williams v. Redman*, No. 3:20-CV-196-JD-MGG, 2021 WL 1907224, at *3 (slip copy) (N.D. Ind. May 12, 2021) (recognizing that *Tanzin* "suggest[ed] that the phrase 'appropriate relief' in RLUIPA encompasses money damages when counties are sued").

(citing *Sause v. Bauer*, 138 S. Ct. 2561 (2018) (per curiam); *Murphy v. Mo. Dep't of Corr.*, 814 F.2d 1252, 1259 (8th Cir. 1987)). Before *Smith*, courts frequently entertained damages suits under § 1983 for claims similar to those vindicated by RLUIPA. This Circuit recognized the availability of damages for a Christian prisoner denied access to the Bible and the right to visit the prison chapel. *Crowder v. Lash*, 687 F.2d 996, 1001 (7th Cir. 1982). The Fourth Circuit recognized that § 1983 permitted damages if a Muslim prisoner was denied permission to distribute Arabic dictionaries to assist in the study of the Qur'an. *Brown v. Peyton*, 437 F.2d 1228, 1233 (4th Cir. 1971). Similarly, the Fifth and Ninth Circuits allowed for the possibility of damages for the forceable cutting of religious beards. *McFadden v. Lucas*, 713 F.2d 143, 148 (5th Cir. 1983) (Muslim prisoner); *Swift v. Lewis*, 901 F.2d 730, 733 (9th Cir. 1990) (Christian Nazarite prisoner). Suits for religious claims in prison were also ubiquitous in the district courts.[3] RLUIPA intended to restore this state of affairs after *Smith*'s weakening of free-exercise protections.

II. The possibility of damages is an important safeguard against mooting of meritorious religious claims.

Under § 1983, the possibility for, at the very least, nominal damages provided an important mechanism for free-exercise claims to proceed even if claims for injunctive

[3] *See*, *e.g.*, *Harris v. Lyons*, No. 89-cv-3131, 1989 WL 52521 (E.D. Pa. 1989) (permitting damages claims for denial of religious counseling and services); *Ross v. Coughlin*, 669 F. Supp. 1235, 1243 (S.D.N.Y. 1987) (allowing damages for Jewish prisoners who were denied a kosher diet and aspects of their religious garb); *Battle v. Anderson*, 376 F. Supp. 402, 420 (E.D. Okla. 1978) (acknowledging a right for Muslim inmates denied communal prayer to sue for damages despite finding contributing fault in that instance).

relief were rendered moot. A religious inmate denied access to prayer services, for instance, was able to seek damages after his claim for injunctive relief was mooted by his release. *Young v. Coughlin*, 866 F.2d 567, 568–70 (2d Cir. 1989); *see also Patrick v. LeFevre*, 745 F.2d 153, 156 n.2 (2d Cir. 1984) (damages claim for prison's refusal to recognize Nation of Islam as valid religion not mooted by prisoner's transfer). Similarly, a group of prisoners was able to pursue damages for being denied access to prison religious services after their request for injunctive relief was mooted by their transfers and releases. *Beck v. Lynaugh*, 842 F.2d 759, 762 (5th Cir. 1988); *see Kauffman v. Johnston*, 454 F.2d 264, 266 (3d Cir. 1972) (similar); *United States ex rel. Jones v. Rundle*, 453 F.2d 147, 150 (3d Cir. 1971) (similar). And a prisoner who adhered to the Nation of Islam could continue to pursue his claim for damages for a prison's failure to accommodate his December Ramadan observance even once he was transferred to another prison. *Diaab v. Green*, 794 F.2d 685 (11th Cir. 1986) (unpublished) (*appended to Saleem v. Evans*, 866 F.2d 1313, 1316 (11th Cir. 1989)).

By contrast, when injunctive relief is the only relief available to a plaintiff, prisons can evade a merits determination by strategically mooting out the case. For example, the Florida prison system for years refused to provide kosher diets to pro se litigants but then strategically attempted to moot the case when a prisoner was represented by counsel. *See Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 532 (11th Cir. 2013); *Gardner v. Riska*, 444 F. App'x 353, 354 (11th Cir. 2011); *Linehan v. Crosby*, No. 4:06-cv-225-MPWCS, 2008 WL 3889604, at *1 (N.D. Fla. Aug. 20, 2008). The Texas prison system did the same, litigating a pro se kosher diet case to judgment during the same time that it tried to

resolve a kosher diet case by a represented prisoner. *See Moussazadeh v. Texas Dep't of Criminal Justice*, 703 F.3d 781, 786 (5th Cir. 2012); *Baranowski v. Hart*, 486 F.3d 112, 116 (5th Cir. 2007).

And even if a prison does not intentionally moot a case, often it can escape liability for RLUIPA violations because the prisoner is released or transferred before a final merits determination is made. *See, e.g.*, *Chesser v. Director, Fed. Bureau of Prisons*, No. 15-cv-1939, 2016 WL 1170448, at *2–4 (D. Colo. Mar. 25, 2016) (deeming a case moot when a Muslim inmate had been transferred before he sued the prison for denying him the right to communal prayer). Examples abound. For instance, a Sikh prisoner who filed suit in 2005 challenging a prison's denial of a religiously appropriate turban did not receive a final ruling until 2010, after he was released from prison in 2009. *Singh v. Goord*, No. 05-cv-9680, 2010 WL 1875653, at *1 (S.D.N.Y. Mar. 9, 2010), *report and recommendation adopted*, No. 05-cv-9680, 2010 WL 1903997 (S.D.N.Y. May 10, 2010). The court earlier in the litigation agreed that the prison possibly violated RLUIPA. *Singh v. Goord*, 520 F. Supp. 2d 487, 508 (S.D.N.Y. 2007). But, by final judgment, his release rendered his claims moot. *Singh*, 2010 WL 1903997, at *3. And earlier this year, an inmate who was refused a kosher diet was released from prison in the course of litigation and so barred from making a RLUIPA claim. *Quarles v. Thole*, No. 20-cv-697, 2022 WL 425362 (S.D. Ill. Feb. 11, 2022). These cases would have remained live if damages claims were permitted.

On the other hand, the specter of liability for unlawful conduct incentivizes prison officials to "err on the side of protecting" rights. *See Owen v. City of Independence*, 445

U.S. 622, 651–52 (1980). Even nominal damages would provide redress for "not easily quantifiable, nonpecuniary rights" like hair-cutting by altering the relationship between the plaintiff and the defendant. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800, 801 (2021). And damages suits allow for more merits determinations and development of case law, providing clear guidance both to the violating prison itself and to other prisons in the same jurisdiction.

III. Individual-capacity damages under RLUIPA are vital to protect religious minorities in prisons.

Individual-capacity damages under RLUIPA are vital to protect incarcerated religious claimants, particularly religious minorities. Walker's case is but one vivid example of how injunctive relief is insufficient to achieve RLUIPA's intended effect in providing broad protections for incarcerated religious claimants.

A. Religious minorities face particular challenges to their religious practice in prisons.

Religious minorities are particularly susceptible to infringements of their religious practice in prisons. Prison officials are less likely to be aware of the needs of religious minority groups, may be less motivated to dedicate resources to accommodate religious requests that come up less often, and may even be hostile to or skeptical of these beliefs and religious groups.

Religious minorities disproportionately suffer restrictions on their religious exercise. Indeed, an analysis published in 2018 showed that over half of all prisoner decisions involved religious minorities that were not Christian. Luke W. Goodrich & Rachel N. Busick, *Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal*

Religious Freedom Cases, 48 Seton Hall L. Rev. 353, 376 (2018). Moreover, a survey of federal cases from 2017–2019 showed that issues concerning dietary restrictions, prayer, and Ramadan observance particularly predominate for Muslim prisoners. *See* Muslim Advocates, *Fulfilling the Promise of Free Exercise for All: Muslim Prisoner Accommodation in State Prisons* 47–48 (July 2019).[4]

Prisons often fail to accommodate the religious practice of religious minorities because they are simply unfamiliar with minority faith requirements. Consider Walker's case here: "[a]s implausible and suspicious as it seems," the defendants "swore under penalty of perjury that they had never heard of Rastafarianism" even though "[c]ases involving Rastafarianism—in particular dreadlocks—in correctional settings have been litigated in the Seventh Circuit for nearly four decades." Op. 3, 5. Or consider the case of an Orthodox Jewish prisoner who was improperly denied kosher meals with rabbinical supervision, as mandated by his faith, because the prison official believed (mistakenly) that supervision was unnecessary to render the food kosher. *Estes v. Clarke*, No. 7:15-cv-155, 2018 WL 2709327, at *5–6 (W.D. Va. June 5, 2018).

Prisons also have less incentive to adjust policies or update trainings to address minority faiths because of how few prisoners are adherents. The failure to do so causes religious minorities to be subject to infringements that majority religions do not face. For example, while Muslim practices generally forbid autopsies and cremation, many states automatically conduct autopsies on prisoners and have policies that default to cremation

[4] Available at https://perma.cc/M8RX-BV97.

without a provision for religious beliefs. *See* Muslim Advocates, *supra*, at 23–24. And many state prison systems have explicit policies for more common religious diets and practices while failing to delineate policies for other minority faiths. *See* Brenda S. Riley, *Religious Accommodations in Prison: The States' Policies v. the Circuit Courts*, Appendix A (Aug. 2019) (Ph.D. dissertation, Sam Houston State University)[5] (detailing state policies on religious property, religious assembly, religious diet, religious grooming, and religious accommodation for pat and strip searches).

Such is the case in the Seventh Circuit. For example, the Wisconsin Department of Corrections has a religious property policy and chart that has categories of what is permitted for faiths like "Catholic" and "Islam," but has generic labels of "Eastern Religion" and "All Umbrella Religions" to cover religions like Sikhism and Buddhism. Wis. Dep't of Corr., Div. of Adult Insts., No. 309.61.02, Religious Property (effective date Feb. 22, 2015).[6] Meanwhile, Illinois's administrative code explicitly references rosaries, scapulas, prayer rugs, prayer shawls, talits, fezzes, kufis, and yarmulkes but does not mention by name any Sikh or Native American religious articles. *See* 20 Ill. Adm. Code § 425.90. And in Indiana, the intake system includes three different Christian categories (Catholic, Orthodox Christian, and General Christian), but uses "Buddhist/Eastern" to apparently encompass religions as diverse as Hinduism and

[5] Available at https://perma.cc/2R6U-9TMG.
[6] Available at https://perma.cc/UA3N-PV8R.

Sikhism. *See* Ind. Dep't of Corr., Policy and Admin. Procedure, No. 01-03-101, The Development and Delivery of Religious Services, at 13 (effective date Sept. 1, 2020).[7]

The failure of many prison guidelines to incorporate religious minorities' practice leads to violations of their religious rights. For instance, because a prison only admitted a "Rastafarian exception" to dreadlocks, not other faiths, a member of the African Hebrew Israelites of Jerusalem was forced to cut his religiously worn dreadlocks. *See Grayson v. Schuler*, 666 F.3d 450, 452 (7th Cir. 2012). In this same vein, a prison policy did not list prayer oil as an approved item for Muslim inmates, so the prison wrongfully denied a Muslim prisoner's request for it. *Charles v. Verhagen*, 348 F.3d 601, 605 (7th Cir. 2003). And when state guidance did "not address the Sikh faith given the relatively low number of Sikhs incarcerated to date," the prison denied the Sikh prisoner a number of accommodations to which he was entitled. *Singh*, 520 F. Supp. 2d at 508.

Often prisons will fail to dedicate resources to accommodate religious minorities based on cost and other administrative concerns that more prevalent religious groups would not face. For example, an Orthodox Jewish prisoner was improperly denied kosher meals with rabbinical supervision because the prison argued that it would be cost-prohibitive. *Estes*, 2018 WL 2709327, at *6–7; *see United States v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1341, 1349 (11th Cir. 2016) (denial of kosher meals for cost-containment); *Cotton v. Cate*, 578 F. App'x 712, 713 (9th Cir. 2014) (denial of Kemetic diet to Shetaut Neter practitioner to maintain "simple meal service"). Similarly, a prison

[7] Available at https://perma.cc/NN5D-VSRH.

wrongfully denied a Muslim prisoner the ability to wear a kufi at all times, arguing without evidence in support that "every Muslim inmate will wear a kufi" if the prisoner was allowed one. *Ali v. Stephens*, 822 F.3d 776, 796 (5th Cir. 2016).

At worst, religious minorities may also face hostility, skepticism, or discrimination because their practices are less well-known than other religions. For example, this Court has twice rejected as prisons' justification for suppressing religious clothing based on the argument that the religious symbol could be mistaken for gang symbols. *See Knowles v. Pfister*, 829 F.3d 516, 518 (7th Cir. 2016) (Wiccan pentacle); *Schlemm v. Wall*, 784 F.3d 362, 366 (7th Cir. 2015) (Native American headband). Similarly, a Sikh inmate faced limitations on wearing the kara, a steel bracelet he believed he was required to wear all times, for fear it could be turned into a weapon. *Singh*, 520 F. Supp. 2d at 500. The prison's own captain of security testified that it posed "no more of a security risk than a metal crucifix, which is allowed by the prison." *Id.* The same inmate was denied a proper-sized cloth for making a traditional turban as required by his faith. *Id.* at 502. The prison claimed that the inmate could use the cloth to escape, even though prisoners were "allowed to possess bed sheets and scarves" and other religious items larger than what the prisoner sought. *Id*. A prison also wrongly denied a Native American prisoner's ability to possess locks of his deceased parents' hair for religious reasons out of fear that the "privilege of receiving something other inmates are not allowed" could "breed animosity" with other prisoners. *Chance v. Texas Dep't of Crim. Just.*, 730 F.3d 404, 418 (5th Cir. 2013). And an Odinist prisoner was denied the ability to personally study runestones because they "could be used to gamble, pass secret messages, and identify

gang members." *Mayfield v. Texas Dep't of Crim. Just.*, 529 F.3d 599, 616 (5th Cir. 2008).

Prisons are often unaware of minority religious practices, lack guidance that explicitly incorporates them, and may be hostile to religions with which they are less familiar. Hence, religious minorities are often uniquely subject to undue restrictions on their religious practice in prisons. To be sure, prisons are not expected to have comprehensive knowledge of every minority religious practice. But they must take seriously requests for religious accommodation rather than relying on ignorance to deny minorities their ability to practice.

B. Injunctive relief is insufficient to protect religious minorities' religious exercise.

Injunctive relief is insufficient to remedy the distinctive issues that religious minorities face, as they are less able to rely on class actions to avoid mootness and may suffer profound harms that happen too quickly to permit injunctive relief. Thus, courts are rarely able to provide binding guidance on what RLUIPA requires.

Religious minorities are particularly susceptible to mooting gamesmanship because few coreligionists may be incarcerated in the prison at the same time, rendering infeasible a class action, which in the normal course can keep prison litigation live even when all the named plaintiffs' claims have become moot. *See, e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 523, 526 n.5 (1979) (holding that a conditions-of-confinement class action remained live notwithstanding that all the named plaintiffs were transferred or released). Because class actions are permitted only "when the class is so numerous that joinder of

all members is impracticable," the more in the minority a religion is, the less likely that its adherents will be able to avail themselves of class actions to vindicate their legal rights. Fed. R. Civ. P. 23(a)(1).

Moreover, minority religious prisoners may suffer a violation that is profoundly harmful to them but happens so quickly it cannot be halted by an injunction. For example, prison officials forcibly restrained a Sikh prisoner and shaved his beard over his objection. *See* Sikh Coalition, Complaint to the U.S. Department of Justice, Civil Rights Division re: Surjit Singh (May 24, 2021).[8] He never before had cut his beard in any way, and the forced shaving "caused him deep shame and mental trauma, including severe depression." *Id.* at 2. Sikh prisoners routinely face these harms.[9] Similarly, a prison warden refused to accommodate an Orthodox Jewish prisoner who needed to leave the prison premises to go to surgery. *See Boles v. Neet*, 486 F.3d 1177, 1184 (10th Cir. 2007). The inmate requested that he be allowed to bring his yarmulke and tallit katan, without which the inmate believed he could not walk more than four cubits. *Id.* at 1179 n.2. The official denied the request, and the inmate forwent surgery rather than violate his beliefs. *Id.* at 1179. Without damages, there is often no redress for these fleeting but serious injuries.

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[8]Available at https://perma.cc/KNR9-9KLK.

[9] *See*, *e.g.*, Sikh Coalition, *Urgent Action Requested: Save Satnam Singh's Hair from Being Forcibly Cut* (Apr. 1, 2006), https://perma.cc/W3AP-GDNS (Sikh prisoner with no disciplinary record forced to cut beard); Sikh Coalition, Legal Victory: Sikh Prisoners Can Maintain Kesh (June 10, 2011), https://perma.cc/F89B-E2HA (Sikh inmate received multiple sanctions for keeping beard); Sarah Netter, Sikh Activists Upset over Inmate's Haircut, ABC News (Oct. 6, 2008), https://perma.cc/3QE7-A938 (Sikh prisoner repeatedly forced to cut beard).

Walker's case here provides a clear example of why damages are needed to remedy violations of minorities' religious rights. The district court in no uncertain terms made clear that the prison had acted unreasonably. It was stunned by defendants' alleged lack of familiarity with Rastafarianism, stating that it is "hard to image [sic] an even moderately well-read person or even a person with just ordinary life experiences not knowing about Rastafarianism." Op. 5. The district court emphasized that Walker was "allowed to not only keep his dreadlocks during the first few months of his incarceration at IDOC but also allowed to regrow the dreadlocks for the remainder of his time at Dixon." Op. 6. Thus, because he was able to wear dreadlocks before and after without incident, the district court found the prison's safety justifications "implausible." Op. 6. Despite all this, the court held that Walker was already out of prison, and so the prison was not held responsible for its egregious violation. Op. 7.

Damages remedies would protect religious minorities like Walker, who lack the numbers of adherents to avoid mootness issues through class actions and who may suffer deeply violative harms without recourse to an injunction.

CONCLUSION

This Court should recognize that RLUIPA restores § 1983's prior protections to provide robust relief for vulnerable religious minorities in prison.[10]

[10]The Religious Liberty Clinic thanks students Daisy An, Joseph E. Graziano, Huan Nguyen, and Andrew Scarafile for their contributions to this brief.

Dated: October 26, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief complies with Federal Rule of Appellate Procedure 29(a)(5) and Seventh Circuit Rule 29 as it contains 4,496 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). The brief's typesize and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in 13-point Times New Roman, a proportionally spaced font.

Dated: October 26, 2022

/s/ Francesca Matozzo
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Seventh Circuit by using the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

Dated: October 26, 2022

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