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

BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, ISLAM AND RELIGIOUS FREEDOM ACTION TEAM OF THE RELIGIOUS FREEDOM INSTITUTE, GENERAL CONFERENCE OF THE SEVENTH-DAY ADVENTISTS, INSTITUTIONAL RELIGIOUS FREEDOM ALLIANCE, NATIONAL ASSOCIATION OF EVANGELICALS, AND PRISON FELLOWSHIP MINISTRIES IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Amici agree with the petitioner's statement of the Question Presented:

Congress has enacted two "sister" statutes to protect religious exercise: the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb et seq., and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc et seq. In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), this Court held that an individual may sue a government official in his individual capacity for damages for violations of RFRA. RLUIPA's relevant language is identical.

The question presented is whether an individual may sue a government official in his individual capacity for damages for violations of RLUIPA.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases--Continued

Statutes & Rules

Other Authorities

INTERESTS OF *AMICI CURIAE*[1]

Christian Legal Society is an association of Christian attorneys, law students, and law professors. CLS was active in the drafting of and lobbying for both the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act. CLS believes that a free society prospers only when the free exercise of religion of all Americans is protected.

The **General Conference of the Seventh-day Adventists** is a worldwide denomination with over 22 million members. Since its founding, the church has been committed to religious freedom for all. It has a strong desire to see that the rights extended under RLUIPA are vindicated and have effective remedies when they are not.

The **Institutional Religious Freedom Alliance**, a division of the Center for Public Justice, works with a multi-faith and multi-sector network of faith-based organizations and associations, as well as with religious freedom advocates and First Amendment lawyers, to protect and advance the religious freedom that faith-based organizations need

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[1] Pursuant to Rule 37.2, all parties' counsel of record received timely notice of the intent to file this *amicus curiae* brief. In accordance with Rule 37.6, neither a party nor party's counsel authored this brief, in whole or in part, or contributed money that was intended to fund its preparation or submission. No person (other than the *amici*, their members, or their counsel) made a monetary contribution intended to fund its preparation or submission.

in order to make their distinctive and best contributions to the common good.

The **Islam and Religious Freedom Action Team of the Religious Freedom Institute** explores and supports religious freedom from within the traditions of Islam and also partners in advocacy with other action teams within the Religious Freedom Institute (RFI). RFI is committed to achieving broad acceptance of religious freedom as a fundamental human right. RFI Action Teams have a presence on the ground in each region to build coalitions and work toward making religious freedom a priority for governments, civil society, religious communities, businesses, and the general public.

The **National Association of Evangelicals** is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves forty member denominations, as well as numerous evangelical associations, missions, social-service charities, refugee and humanitarian aid agencies, colleges, seminaries, and independent churches.

Prison Fellowship Ministries® is the nation's largest Christian nonprofit equipping the church to serve currently and formerly incarcerated people and their families, and to advocate for justice and human dignity both inside and outside of prison. Since its founding, Prison Fellowship Ministries has played a prominent role in our nation's capital, helping to pass groundbreaking federal and state legislation that make the criminal justice system more restorative and protect the religious liberties of incarcerated people, including the Religious Freedom Restoration

Act and the Religious Land Use and Institutionalized Persons Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves a vital question concerning the availability of effective judicial relief to protect religious exercise in state prisons, which house the vast majority of the nation's prison inmates: 87 percent, totaling nearly 1.1 million persons. E. Ann Carson and Rich Kluckow, *Prisoners in 2022—Statistical Tables* 5 (Nov. 2023) (report of the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics), https://bjs.ojp.gov/document/p22st.pdf.

Effective relief is crucial because inmates' "right to practice their faith is at the mercy of those running the institution." *Cutter v. Wilkinson*, 544 U.S. 709, 721 (2005) (quotation omitted). The current case involves that important right—but it also involves a straightforward question of statutory interpretation on which the court of appeals' ruling clearly conflicts with previous decisions of this Court.

In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), this Court held unanimously that suits for damages against government officials in their individual capacity are "appropriate relief" within the terms of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(c) ("RFRA"). *Tanzin*'s holding should easily govern the identical phrase, "appropriate relief," in the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-2(a) ("RLUIPA")—a statute, derived directly from RFRA, that this Court has called RFRA's "sister." *Ramirez v. Collier*, 595 U.S. 411, 424 (2022);

Holt v. Hobbs, 574 U.S. 352, 356 (2015). Yet in this case, the *en banc* court of appeals, adhering to its circuit precedent, held that individual-capacity damages suits were unavailable under RLUIPA.

The court of appeals' ruling violates *Tanzin* and other decisions of this Court and cries out for review. In this brief, *amici* show that the denial of individual-capacity damages suits conflicts clearly with every conclusion and every step of reasoning in *Tanzin*. In the *en banc* proceeding, nine judges of the court of appeals explained that they denied rehearing—that is, they denied individual-capacity damages suits—because there was a question whether "RLUIPA's 'appropriate relief' language [is] sufficiently clear to put the state and/or its employees on notice that the employees can personally be held liable for monetary damages." App. 24a (Clement, J., concurring in denial of rehearing en banc). This brief shows that RLUIPA's authorization of personal damages suits is clear, by simple reference to the blueprint of *Tanzin*.[2]

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[2] The court of appeals panel and the *en banc* concurrence gave other reasons for rejecting individual-capacity damages suits under RLUIPA, but *amici* agree with petitioner that those reasons are meritless. The *en banc* concurrence suggested that recognizing individual-capacity damages suits would create tension with this Court's holding in *Sossamon v. Texas*, 563 U.S. 277, 285–86 (2011), that "RLUIPA did *not* clearly allow for monetary damages" against "state employees sued in their *official* capacities." App. 24a (Clement, J., concurring in denial of rehearing en banc) (emphases in original). But as petitioner points out, this is meritless because—in this Court's words in *Tanzin*—there is an "'obvious difference'" between suits against the state (including official-capacity suits) and "'suit[s] against individuals, who do not enjoy sovereign immunity.'" Pet. 18 (brackets in original) (quoting *Tanzin*, 592 U.S. at 52). Likewise, the panel majority's argument that Congress may not use the

I. To hold that damages suits against officials in their individual capacity are unavailable under RLUIPA conflicts with this Court's decisions, in particular with *Tanzin*. Every step in *Tanzin*'s reasoning that RFRA authorizes individual-capacity damages suits means, likewise, that RLUIPA authorizes such suits.

A. To begin with, RFRA and RLUIPA have consistently received parallel interpretations from this Court. The Court has repeatedly called them "sister statutes": they use parallel language and were passed for the same purpose of providing broad protection for religious freedom.

B. Both RFRA and RLUIPA use identical language—"appropriate relief against a government"—for defining what relief is available and against whom. *Tanzin* read that language to authorize individual-capacity damages suits under RFRA. Accordingly, the same result follows under RLUIPA.

C. *Tanzin* also reasoned that individual-capacity damages suits were justified in light of RFRA's origins and purposes. RFRA reinstated both the substantive and remedial law that existed before *Emp't Div. v. Smith*, 494 U.S. 872 (1990)—and that law, *Tanzin* found, authorized damages suits against individual officials under 42 U.S.C. § 1983. RLUIPA likewise reinstates pre-*Smith* law; by the same reasoning, RLUIPA authorizes such suits.

Spending Power to impose liability on anyone other than the grant recipient—the state—is meritless because it "conflicts with this Court's Spending Clause precedents." Pet. 19. That serious error likewise is "worthy of this Court's review." *Id.*

D. Finally, *Tanzin* reasoned that damages suits against officials are the only effective relief for some RFRA violations—in particular, the Court noted, for some burdens imposed on prisoners, such as destruction of their religious property. That reasoning applies equally to prisoners' claims under RLUIPA. Just as in RFRA cases, damages may be crucial in RLUIPA cases because the prisoner has suffered consummated harm or because prospective issues have become moot. If anything, the availability of effective relief for prisoners is more consequential under RLUIPA because the vast majority of the nation's inmates are in state prisons.

II. The court of appeals here issued an unusually clear, united call for this Court to resolve the question whether RLUIPA authorizes damages suits against individual officials. The six judges who dissented below recognized that only this Court can correct their colleagues' erroneous rejection of such suits. And the nine concurring judges asserted that there is a tension between *Tanzin* and other decisions of this Court that only this Court can resolve. Either way, the *en banc* court's near unanimous call for review is striking; this Court should heed it.

RLUIPA passed Congress by unanimous consent in both houses. See Religious Land Use and Institutionalized Persons Act of 2000, S. 2869, 106th Cong. (2000), https://www.congress.gov/bill/106th-congress/senate-bill/2869/all-actions. To vindicate the statutory text, and to ensure effective enforcement of Congress's unanimous consensus, this Court should grant review in this case.

ARGUMENT

I. To Hold that Individual-Capacity Damages Suits Are Unavailable Under RLUIPA Conflicts with this Court's Ruling that Such Suits Are Available Under RFRA, the Statute that RLUIPA Parallels.

To hold that damages suits against officials in their individual capacity are unavailable under RLUIPA conflicts with this Court's decisions, in particular with *Tanzin v. Tanvir*, 592 U.S. 43 (2020). Every step in *Tanzin*'s reasoning that RFRA authorizes individual-capacity damages suits means, likewise, that RLUIPA authorizes such suits.

A. RFRA and RLUIPA Are "Sister Statutes" and Should Be Read Harmoniously.

As this Court has repeatedly said, RLUIPA and RFRA are "sister statute[s]." *Ramirez v.* Collier, 595 U.S. 411, 424 (2022); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015). "Congress enacted [both statutes] 'in order to provide very broad protection for religious liberty.'" *Holt*, 574 U.S. at 356 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). As *Holt* noted, RFRA was enacted to reinstate protection for religious exercise after this Court held in *Emp't Div. v. Smith*, 494 U.S. 872 (1990), "that "neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment." *Holt*, 574 U.S. at 356–57. After this Court invalidated RFRA as applied to states and their subdivisions (*City of Boerne v. Flores*, 521 U.S. 507 (1997)), Congress in turn enacted RLUIPA to reinstate RFRA's protections against states and their subdivisions with respect to land-use

regulations and institutionalized persons' (including prisoners') religious exercise. *Holt*, 574 U.S. at 357. RLUIPA "mirrors RFRA" in providing that government actions that substantially burden religion must further a compelling government interest and must be the least restrictive means of furthering that interest. *Id.* at 357–58. It "allows prisoners 'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'" *Id.* at 358 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006)).

Because RFRA and RLUIPA are "sister statutes" designed to provide the same "broad protection" for religious freedom under "the same standard," similar terms in the two statutes should be interpreted the same. Indeed, this Court regularly cites RFRA decisions to interpret RLUIPA. For instance, *Holt v. Hobbs*, in interpreting RLUIPA's "compelling interest" test, quoted and followed principles from decisions interpreting that test under RFRA. *Holt*, 574 U.S. at 362–63 (quoting *Hobby Lobby*, 573 U.S. at 726–27; *O Centro*, 546 U.S. at 431). In turn, *O Centro*, 546 U.S. at 436, quoted and followed principles from a decision under RLUIPA, *Cutter v. Wilkinson*, 544 U.S. 709, 722–23 (2005).

The court of appeals' rejection of individual-capacity damages suits under RLUIPA, after *Tanzin* approved them under RFRA, violates this Court's well-established teaching that the two statutes should be read harmoniously. Review is necessary to correct that basic error.

B. *Tanzin* Read the Identical Text Found in RLUIPA—"Appropriate Relief Against a Government"—To Authorize Individual-Capacity Damages Suits Under RFRA.

In *Tanzin*, this Court held that RFRA's phrase authorizing claimants to "obtain appropriate relief against a government," 42 U.S.C. § 2000bb-1(c), authorizes "claims for money damages against Government officials in their individual capacities." *Tanzin*, 592 U.S. at 45. First, the Court concluded, "RFRA's text provides a clear answer" that suits against "government" include suits against officials in their personal capacities. *Id.* at 47. The statutory definition of "government," found in 42 U.S.C. § 2000bb-2(1), includes an "official," which "does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" *Id.* at 47 (quoting 10 *Oxford English Dictionary* 733 (2d ed. 1989)). Second, the Court concluded, damages were "appropriate relief" because "[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief," and "damages against federal officials remain an appropriate form of relief today." *Id.* at 49 (citations omitted).

RLUIPA's text is equally clear because it uses identical language. Just like RFRA, RLUIPA allows a claimant to "obtain appropriate relief against a government." 42 U.S.C. §§ 2000cc-2(a), 2000bb-1(c). Just like RFRA, RLUIPA defines "government" to include a "branch, department, agency, instrumentality," or "official" or "other person acting under color of . . . law." 42 U.S.C. §§ 2000cc-5(4), 2000bb-2(1).

Likewise, just as damages are "appropriate" against individual federal officials under *Tanzin*, they are "appropriate" against individual state and local officials under RLUIPA. *Tanzin* not only stated that "damages have long been awarded as appropriate relief" in "suits against Government officials," it added specifically that damages are "commonly available against state and local government officials." 592 U.S. at 49, 50. The Court observed that it had interpreted 42 U.S.C. § 1983, by the time of RFRA's enactment, "to permit monetary recovery against officials who violated 'clearly established' federal law." *Id.* at 50 (citing *Procunier v. Navarette*, 434 U.S. 555, 561–62 (1978); *Siegert v. Gilley*, 500 U.S. 226, 231 (1991)).

Identical phrases in closely related statutes clearly call for identical meanings. In its interpretation of RFRA, *Tanzin* relied upon the principle that when two statutes "use[ ] the same terminology . . . in the very same field of civil rights law, 'it is reasonable to believe that the terminology bears a consistent meaning.'" *Id.* at 48 (noting the same term present in RFRA and § 1983) (quoting Antonin Scalia and Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012)). The same principle demands a consistent meaning between RFRA and RLUIPA.

It is particularly perplexing to read RLUIPA more narrowly than RFRA when the two are "sister statutes" enacted by Congress to extend the same rights and analyzed using the "same standard." See *supra* section I-A. As this Court has repeatedly made clear, RLUIPA allows prisoners "'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'" *Holt*, 574 U.S. at 358 (quoting *O*

Centro, 546 U.S. at 436). In that light, whether effective relief is available for identical wrongs should not depend on whether the prisoner suffered the wrong in a federal or state prison.

C. Just as with RFRA, RLUIPA Reinstated the Pre-*Employment Division v. Smith* Law, Which Allowed Damages Suits Against Individual Officials.

Tanzin reasoned that damages suits against individual officers were justified not only by RFRA's text, but also "in light of RFRA's origins." 592 U.S. at 50. Those origins, particularly for RFRA's remedial provision, involve 42 U.S.C. § 1983, which provides civil remedies for violations of rights "under color of" law—the same phrase that both RFRA and RLUIPA adopt to define actions by "government" (see 42 U.S.C. § 2000bb-2(1); 42 U.S.C. § 2000cc-5(4)). Moreover, *Tanzin* said, "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." 592 U.S. at 50 (emphasis in original). Then the Court stated:

> There is no doubt that damages claims have always been available under § 1983 for clearly established violations of the First Amendment. See, e. g., *Sause v. Bauer*, 585 U. S. ___ (2018); (per curiam) (reversing grant of qualified immunity in a case seeking damages under § 1983 based on alleged violations of free exercise rights and Fourth Amendment rights); *Murphy v. Missouri Dept. of Corrections*, 814 F. 2d 1252, 1259 (CA8 1987) (remanding to enter judgment for plaintiffs on [ ] § 1983 free speech and free exercise claims and to determine and order

> "appropriate relief, which . . . may, if appropriate, include an award" of damages)."

592 U.S. at 50–51. The Court reasoned: "Given that RFRA reinstated pre-*Smith* protections and rights, parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*"—including "a right to seek damages against Government employees." *Id.* at 51.

This reasoning as to RFRA applies even more strongly as to RLUIPA. The § 1983 damages suits that this Court cited (*Sause* and *Murphy*) were against state actors. RLUIPA's purpose was to reenact RFRA's standard—and RFRA's "reinstate[ment of] pre-*Smith* protections and rights"—against state action in the two contexts of land-use regulations and institutionalized persons' claims. *Tanzin*, 592 U.S. at 51. Accordingly, just as with RFRA, "parties suing under [RLUIPA] must have at least the same avenues for relief" that they had before *Smith*, including "a right to seek damages against [state and local] Government employees." *Id.*[3]

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[3] Although it is sufficient that RLUIPA's plain language and context authorize individual-capacity damages suits, the legislative history bolsters that conclusion. The House committee report on the bill that became RLUIPA explains that the bill's sections on relief "track RFRA, creating a private cause of action for damages, injunction, and declaratory judgment, and creating a defense to liability, and providing for attorneys' fees." H. Rep. No. 106-219, *Religious Liberty Protection Act of 1999*, at 29 (July 1, 1999). It adds that "[i]n the case of violation by a state," sovereign immunity means that "the Act must be enforced by suits against state officials and employees." *Id.* This explanation was repeated, nearly verbatim, in the section-by-section analysis of the final bill. 146 Cong. Rec. 19123–24 (Sept. 22, 2000).

D. Just as with RFRA, Damages Are the Only Effective Relief for Prisoners in Key RLUIPA Cases.

As its final argument in *Tanzin* for recognizing individual-capacity damages suits under RFRA, this Court stated that

> [a] damages remedy is not just "appropriate" relief as viewed through the lens of suits against Government employees. It is also the *only* form of relief that can remedy some RFRA violations. For certain injuries, . . . effective relief consists of damages, not an injunction.

592 U.S. at 51 (emphasis in original). As an example, the Court highlighted the case of "destruction of [an inmate's] religious property" by prison guards. *Id.* (citing *DeMarco v. Davis*, 914 F.3d 383, 390 (5th Cir. 2019)).

The same reasoning holds under RLUIPA, which applies the same standard as RFRA to religious exercise in state prisons. RLUIPA provides remedies to prisoners based on the recognition that a prison's control over prisoners can be "severely disabling to private religious exercise"; "'institutional residents' right to practice their faith is at the mercy of those running the institution.'" *Cutter*, 544 U.S. at 720-21 (quoting 146 Cong. Rec. 16698, 16699 (2000) (joint statement of Sen. Hatch and Sen. Kennedy)). *Tanzin* recognized that damages are a crucial remedy for some prisoner claims under RFRA (592 U.S. at 51); the same reasons render them crucial under RLUIPA.

Indeed, the question whether prisoners can obtain effective judicial relief is, if anything, more consequential under RLUIPA than under RFRA. The

vast majority of prisoners are in state prisons: "At yearend 2022, state departments of corrections (DOCs) had jurisdiction over 87% of all prisoners in the United States, while the [federal Bureau of Prisons] had legal authority over 13% of the prison population." E. Ann Carson and Rich Kluckow, *Prisoners in 2022—Statistical Tables* 5 (Nov. 2023) (report of the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics), https://bjs.ojp.gov/document/p22st.pdf. Of the nation's 1.23 million prison inmates, 1.07 million are in state prisons. *Id.*

Damages against prison officials are the only effective form of relief in two key categories of cases: (1) when a prison official has caused consummated harm that could not have been anticipated in time to get an injunction or (2) when a prisoner has suffered a harm but claims for injunctive relief have become moot.

1. Damages are the only effective relief for cases of consummated but unanticipated harm, such as the destruction of religious property.

For some prison inmates, the burden on religion is the destruction or seizure of religious property. In such cases, there is a tangible, consummated harm for which compensatory relief is clearly "appropriate." Injunctive relief is likely to be impractical because the victim is generally unaware of the impending harm before it happens. Thus, damages are important when prison guards damage, seize, or destroy an inmate's religious books—as in *DeMarco*, the very case cited by this Court in *Tanzin*, 592 U.S. at 51. See *DeMarco*, 914 F.3d at 390 (inmate's Bible and other religious books

"were allegedly destroyed, leaving damages as his only recourse"). See also, e.g., *Harris v. Escamilla*, 736 Fed. Appx. 618 (9th Cir. 2018) (prison guard allegedly threw down inmate's Qur'an and stomped on it, rendering it unusable); *Rasul v. Myers*, 512 F.3d 644 (D.C. Cir. 2008) (flushing Qur'ans down toilet), *vacated on other grounds and remanded,* 555 U.S. 1083 (2008); *Jama v. United States Immigr. and Naturalization Serv.,* 343 F. Supp. 2d 338, 378 (D.N.J. 2004) (refugees detained at a facility operated by an INS contractor alleged that personnel had seized their Qur'ans and Bibles).

2. Damages are the only effective relief when prospective claims become moot.

Even when claims by prisoners or detainees involve continuing rather than one-time harms, prospective relief may be unavailable because the plaintiff has been released or transferred—perhaps even transferred for the very purpose of mooting the claim. See, e.g., *Harris*, 736 Fed. Appx. at 621 (dismissing claims for prospective relief as moot because inmate "has been moved to another prison facility" and "does not allege any statewide policy impacting his religious activities"); *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012) (prisoner's release in third year of litigation mooted claim for injunctive relief); *Moussazadeh v. Texas Dep't of Crim. Just.,* 2009 WL 819497, at *9–11 (S.D. Tex. 2009) (holding Jewish prisoner's case moot, after years of litigation and attempted settlement, because state transferred him to another facility offering kosher food), *rev'd on other grounds*, 364 Fed. Appx. 110 (5th Cir. 2010) (per curiam); *Jama*, 343 F. Supp. 2d at 376 n.30 (stating that because "none of the Plaintiffs remain in custody

. . ., injunctive and declaratory relief clearly would be inadequate" and damages "would be the only appropriate relief").

II. This Court Needs to Resolve this Issue, as Virtually the Entire *En Banc* Court of Appeals Recognized.

The judges of the *en banc* court, despite diverging on the question whether individual-capacity damages are available under RLUIPA, spoke in virtual unison on one point: This Court alone can resolve the question, and it ought to do so. Seventeen judges participated in the *en banc* consideration, and fifteen explicitly invited this Court to take up the issue. The Court should heed this clear call from the court below.

The six judges who dissented from the denial of *en banc* rehearing concluded that "[t]he Supreme Court's interpretation of RFRA in *Tanzin* should be dispositive of our interpretation of RLUIPA in this case." App. 28a (Oldham, J., dissenting from denial of rehearing en banc). "Given *Tanzin*," they said, "RLUIPA (like RFRA) authorizes damages suits against state officials." *Id.* 29a. At the same time as the dissenters expressed "regret" that the court had not reversed its circuit precedent in the light of *Tanzin*, they also identified the remaining remedy: review by this Court. *Id.* 34a ("It is certainly true that the Supreme Court could fix the mistake we made today.").

The *en banc* court majority, which denied rehearing, also called on this Court to grant review. The nine concurring judges who wrote to explain their denial also acknowledged that *Tanzin* casts serious doubt on the circuit's rejection of individual-capacity

damages suits under RLUIPA. The circuit precedent, as the concurrence explained, rests on uncertainty whether "RLUIPA's 'appropriate relief' language [is] sufficiently clear to put the state and/or its employees on notice that the employees can personally be held liable for monetary damages." App. 24a (Clement, J., concurring in denial of rehearing en banc). As this *amicus* brief has shown, RLUIPA's language is perfectly clear in the light of *Tanzin*. But the concurrence asserted that there is a tension between *Tanzin*'s acceptance of *individual*-capacity suits and this Court's decision in *Sossamon v. Texas*, 563 U.S. 277 (2011), rejecting suits against state officials "in their *official* capacities." App. 24a (emphasis in original) (citing *Sossamon*, 563 U.S. at 285–86, and referring to it as *Sossamon II*). As a result, the concurring judges ultimately concluded that "threading the needle between *Sossamon II* and *Tanzin* is a task best reserved for the court that wrote those opinions." *Id.* 24a.[4]

Judge Oldham's observation below is apt: the concurring judges simply said, "[I]f we're wrong, the Supreme Court can tell us." *Id.* 34a (Oldham, J., dissenting). The nine concurring judges, like the six dissenters, beckoned this Court to resolve the issue.

The *en banc* court of appeals has provided an unusually explicit, unified suggestion, from judges of

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[4] As we have noted above, and petitioner has shown, there is in fact no tension between authorizing individual-capacity damages suits and rejecting official-capacity damages suits. See *supra* pp. 4-5 n.2; Pet. 18. But the key point is that the concurring judges said the resolution of the asserted tension is "best reserved for" this Court. App. 24a.

differing views, that this Court's review is needed. The Court should take up that suggestion.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

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JUNE 6, 2024