

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DEWEY AUSTIN BARNETT, II,

Plaintiff-Appellant,

v.

BRENDA SHORT, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Missouri, Hon. Sarah E. Pitlyk
No. 4:22-cv-00708

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF
PROFESSOR BYRON JOHNSON SUPPORTING REVERSAL**

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MOTION

Pursuant to Federal Rule of Appellate Procedure 29(a), Proposed *Amicus* Dr. Byron Johnson moves for leave to file a brief as *amicus curiae* in support of Plaintiff-Appellant Dewey Barnett's appeal and reversal. A copy of the proposed brief is attached to this motion. Plaintiff-Appellant consents to this motion. When asked for consent, counsel for Defendants-Appellees replied, "We may not actively object, however, I do not have authority to consent."

1. Dr. Byron Johnson is Distinguished Professor of the Social Sciences, founding director of the Institute for Studies of Religion, and director of the Program on Prosocial Behavior at Baylor University. He is also a faculty affiliate of the Human Flourishing Program at Harvard University, and currently serves as Distinguished Visiting Professor of Religious Studies and the Common Good at Pepperdine University's School of Public Policy. He is a leading authority on the scientific study of religion, the efficacy of faith-based organizations, and criminal justice. His recent publications have examined the impact of faith-based programs on recidivism reduction and prisoner reentry. Dr. Johnson has been the principal investigator on grants from private foundations as

well as the Department of Justice, Department of Labor, Department of Defense, National Institutes of Health, and the United States Institute for Peace. He is the author of more than 250 articles and a number of books including *More God, Less Crime: Why Faith Matters and How It Could Matter More* (2011) and *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (2016).

2. Dr. Johnson offers the attached *amicus* brief to assist the Court in deciding this appeal. Specifically, Proposed *Amicus* argues that unless RLUIPA is read to authorize damages in suits against prison officials, many prisoners whose religious rights have been violated will be left without a suitable remedy to vindicate their religious exercise. That result would harm prisoners and society at large and particularly disadvantage jail inmates like Mr. Barnett, as *amicus*' research affirms the many benefits of robust religious practice in prisons and even more so in jails. In light of these interests, Dr. Johnson filed *amicus* briefs in *Walker v. Baldwin*, No. 22-2342 (7th Cir.), *Michael Fuqua v. Raak, et al*, No. 21-15492 (9th Cir.), and *Landor v. La. Dep't of Corr.*, No. 22-30686 (5th Cir.).

3. Further, Dr. Johnson’s proposed brief “avoid[s] the repetition or restatement of arguments.” (CTA8 IOP J3). Among other things, Dr. Johnson’s proposed brief analyzes the large and mounting body of research and evidence that robust religious practice is crucial to inmate rehabilitation and to our carceral system and society at large. The proposed brief discusses why religious practice in prison promotes prisoner mental health and well-being, prison safety and operations, and society at large, including by reducing recidivism. It also highlights the even greater need for religious freedom rights among jail inmates, who suffer worse mental health outcomes than prisoners.

4. The filing of the proposed *amicus* brief will not prejudice Defendants-Appellees or delay briefing or argument in this appeal.

CONCLUSION

For the foregoing reasons, Dr. Johnson respectfully requests that the Court grant his motion for leave to file the proposed *amicus curiae* brief.

Dated: November 20, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned attorney certifies that this motion

(i) complies with the type-volume limitation in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 524 words, and

(ii) complies with the typeface requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because this motion has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook.

Dated: November 20, 2023

s/ Noel J. Francisco
Noel J. Francisco

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 20, 2023

s/ Noel J. Francisco
Noel J. Francisco

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**BRIEF OF PROFESSOR BYRON JOHNSON
AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT**

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INTEREST OF THE *AMICUS CURIAE*

Dr. Byron Johnson is a Distinguished Professor of the Social Sciences, founding director of the Institute for Studies of Religion, and director of the Program on Prosocial Behavior at Baylor University. He is a faculty affiliate of the Human Flourishing Program at Harvard University and a Distinguished Visiting Professor of Religious Studies and the Common Good at Pepperdine University's School of Public Policy. He is a leading authority on the scientific study of religion and criminal justice. His recent publications have examined the impact of faith-based programs on recidivism reduction and prisoner reentry. Dr. Johnson has been the principal investigator on grants from private foundations as well as the Department of Justice, Department of Labor, Department of Defense, National Institutes of Health, and the United States Institute for Peace. He is the author of more than 250 articles and several books including *More God, Less Crime: Why Faith Matters and How It Could Matter More* (2011), *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (2016), and *The Restorative Prison: Essays on Inmate Peer Ministry and Prosocial Corrections* (2021).

This case is exceptionally important to *amicus* because unless the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) is read to authorize damages in suits against jail and prison officials, many prisoners whose religious rights have been violated will be left without a suitable remedy to vindicate their religious exercise. That result would harm prisoners and society at large, as illustrated by *amicus*’ research, which affirms the many benefits of robust religious practice in jails and prisons. And because this issue is cropping up around the country, *amicus* has filed briefs on the topic in the Fifth, Seventh, and Ninth Circuits. *See Walker v. Baldwin*, 74 F.4th 878 (7th Cir. 2023); *Fuqua v. Raak*, No. 21-15492 (9th Cir.); *Landor v. La. Dep’t of Corr.*, No. 22-30686 (5th Cir.).

INTRODUCTION

As the Appellant has explained, money damages are authorized by the plain text of RLUIPA. Indeed, any other reading of the statute would be inconsistent with the Supreme Court’s unanimous decision in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), which held that money damages are authorized by materially identical language in RLUIPA’s sister statute, the Religious Freedom Restoration Act (“RFRA”).

Amicus will not repeat that straightforward legal argument. Instead, *amicus* writes to emphasize the value of religious freedom in jails and prisons, based on a large and growing body of research demonstrating that religious practice benefits not only inmates as individuals, but also institutions and society as a whole. The research is clear and consistent: free religious exercise in jails and prisons supports mental health and human dignity for individual prisoners, improving behavior in the short term and ultimately reducing recidivism in the long term.

Further, and as particularly relevant to this appeal, the positive effects of religiosity are even more potent in the jail context (as opposed to prison), where mental health problems are more prevalent and the

need for religious freedom protections more acute. Yet, absent money damages, nothing stops jail officials from denying basic religious freedom rights to inmates because the short length of jail stays renders equitable relief inadequate. Indeed, without money damages, jail inmates are left helpless against illegal RLUIPA violations, which deprives them and the public of the benefits of religiosity and denies religious freedom to those who desperately need it.

Because equitable relief will often be inadequate to capture these benefits, this research offers yet another reason for this Court to recognize the availability of money damages under RLUIPA.

ARGUMENT

I. Religious Practice Promotes Prisoner Welfare and Dignity.

Imprisonment has a well-documented detrimental effect on inmates' mental health, as inmates face "a series of degradations of self . . . along with a sense of guilt, shame, and hopelessness," often leading to depression and anxiety. Sung Joon Jang et al., *Existential and Virtuous Effects of Religiosity on Mental Health and Aggressiveness Among Offenders*, 9 Religions 182, at 1 (2018). A 2006 report found that 56.2% of state prisoners, 44.8% of federal prisoners, and 64.2% of jail inmates suffered from a mental health problem. Doris J. James & Lauren

E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, U.S. Bureau of Just. Stat. (Dec. 14, 2006), <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>.

Religion offers a potentially potent antidote. Religious practice is one of the few avenues for prisoners to engage in healthy coping behaviors and positively reshape their self-identities, and studies reflect a direct benefit to prisoners' mental health from religious practice. Of particular importance for the question in this case, that benefit generally requires not just religious *belief*, but religious *practice*—meaning that interference with religious practices undermines the potentially profound benefits from religion in prison.

A. Religion can improve prisoners' mental health and emotional well-being.

Freedom of religion is one of the few liberties that prison inmates retain. The sudden loss of previous liberties, including basic privacy and autonomy, can be dehumanizing and destructive to prisoners' sense of self. This “‘hitting rock bottom’ strain of imprisonment” can cause prisoners to jarringly “face the reality that their lives lack meaning.” Sung Joon Jang et al., *The Effect of Religion on Emotional Well-Being Among Offenders in Correctional Centers of South Africa: Explanations*

and Gender Differences, 38 Just. Q. 1154, 1158 (2021). Ideally, prisoners take that strain as an opportunity to construct a new self-identity and rewrite “their personal narrative.” Sung Joon Jang et al., *Religion and Misconduct in “Angola” Prison: Conversion, Congregational Participation, Religiosity, and Self-Identities*, 35 Just. Q. 412, 414 (2018). Because religion can play a central role in identity construction, prisoners who practice religion are more likely to remain resilient in prison, minimizing the risk of negative mental health outcomes and also offering the opportunity for personal growth.

A wide body of scientific research confirms this effect. Take, for example, a 2018 study based on a survey of inmates from three maximum-security prisons, which found that “religiosity was positively related to a sense of meaning and purpose in life and virtuous characteristics,” such as increased compassion and forgiveness, and “inversely associated with the offenders’ negative emotional states and intended aggression.” Jang et al., *Existential and Virtuous Effects of Religiosity*, *supra*, at 12. A 2022 study of 349 jail inmates in Virginia similarly found that participation in a faith-based trauma healing program which increased feelings of religiosity among the treatment

group corresponded to “a significant reduction in symptoms of PTSD, state depression, state anger, suicidal ideation, and intended aggression” compared to the control group. Sung Joon Jang et al., *Assessing a Faith-Based Program for Trauma Healing Among Jail Inmates: A Quasi-Experimental Study*, Int’l J. Offender Therapy & Compar. Criminology, at 14 (2022). Numerous studies and meta-analyses agree, confirming that “religiosity is inversely related to depression and suicidality” and “positively associated with emotional well-being.” Jang et al., *The Effect of Religion on Emotional Well-Being*, *supra*, at 1157; see also Jang et al., *Existential and Virtuous Effects of Religiosity*, *supra*, at 12–13.

These results are not surprising. Across faith traditions, religious involvement lessens distress, provides a system of social support, and helps believers cope and process emotions, thereby improving inmates’ mental well-being. In other words, by helping prisoners “find new meaning and purpose in life and become virtuous through spiritual transformation,” religiosity mediates the feelings of anxiety and depression that humans in extreme adversity, including imprisonment, are prone to suffer. Jang et al., *Existential and Virtuous Effects of*

Religiosity, supra, at 12–13. Supporting inmates’ freedom of religion is therefore closely related to broader efforts to support prisoner well-being.

B. Religious practice, not just religious belief, is key to the mental-health benefits of religion in prison.

Although religiosity is clearly beneficial to prisoners, those benefits cannot be achieved by honoring religious freedom in name only while interfering with prisoners’ ability to actually practice their religion. To the contrary, studies show that prisoners reporting religious affiliation without reporting religious *involvement* are “unlikely to reap the mental health benefit of religion that religiously involved inmates may experience.” Jang et al., *The Effect of Religion on Emotional Well-Being, supra*, at 1172. That outcome too is unsurprising, as religion likely benefits prisoners in large part because religion “allows them to exercise their agency in an arena that is fundamental to their identity,” where the prison context has otherwise stripped them of autonomy. *Id.*

Appellant Dewey Barnett, for instance, is a Christian for whom reading the Bible is an important religious practice. The Bible is replete with teachings about leaving behind the flawed ways of one’s past to adopt a new identity in Christ. “So if anyone is in Christ, there is a new creation: everything old has passed away; see everything has become

new!” *2 Corinthians* 5:17. Indeed, the Bible teaches that believers should see their conversion to Christianity as a “death” of their old selves, “in order that, so that as Christ was raised from the dead by the glory of the Father,” they “too might walk in newness of life.” *Romans* 6:4. Jail inmates like Mr. Dewey that are able to study Scripture and reflect on these teachings are given an opportunity to process the harms they have suffered and caused in their lives to this point, and to forge a new, positive identity to govern their lives going forward.

Without a path to enforce RLUIPA, religious individuals are denied access to the well-documented benefits of religious exercise in prison and jail—as occurred here, when jail officials denied Mr. Barnett access to his Bible despite other prisons and jails throughout the country being able to accommodate this peaceful practice. Perhaps for that reason, the law has long recognized that expressions of religiosity must be protected. *See, e.g., Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act*, U.S. Dep’t of Just., at 2 (Sept. 22, 2020), <https://www.justice.gov/crt/case-document/file/1319186/download> (noting that RLUIPA was constructed both to “protect[] *from* discrimination and violence,” and to provide “proactive protection *for*

religious exercise that conflicts with various requirements imposed by the government.”); *Holt v. Hobbs*, 574 U.S. 352 (2015) (finding that prison officials’ refusal to allow a Muslim prisoner to grow a half-inch beard in prison according to his religious beliefs violated RLUIPA). Effective protection in this case, and many others, requires money damages, which must be available under RLUIPA to ensure all prisoners are able to access the benefits of religious practice in prison.

II. Religious Practice in Prison Benefits Society.

Although the benefits to individual prisoners from religious practice are profound, the benefits do not end there. Indeed, helping individual prisoners is only the beginning. By improving mental health and well-being for individuals, religion reduces prison misconduct, improving prison safety and offering the potential for earlier release dates. Moreover, religious practice and connection with religious communities in prison ultimately lowers recidivism rates after prisoners are released, in part by easing prisoners’ reentry into society. For these reasons, too, society as a whole has a strong interest in protecting free religious exercise in prisons, including through the remedy of monetary damages when appropriate.

A. Religious practice improves behavior within prisons.

Studies show that religious practice in prison encourages “prosocial” behaviors, that is, “those generally intended to help others.” Byron Johnson, *How Religion Contributes to the Common Good, Positive Criminology, and Justice Reform*, 12 Religions 402, at 3 (2021). While many criminologists focus on the question of why prisoners engage in “antisocial” behaviors, such as choosing to break the law, recent work in the field of positive criminology examines how and why “offenders who previously exhibited antisocial patterns of behavior can undergo transformations that result in consistent patterns of positive behavior, accountability, and other-mindedness.” *Id.* Among the most important factors driving such positive transformations is religiosity, which promotes the development of prosocial behaviors in prisoners while deterring misconduct.

Social science research bears this out. “Quantitative studies tend to show that an inmate’s religion is inversely related to misconduct in prison,” and qualitative studies suggest that a driving force in this relationship is religion-based identity transformation. Jang et al., *Religion and Misconduct in “Angola” Prison*, *supra*, at 418.

On the quantitative front, for example, a 2015 study of whether a Bible college program impacted prison misconduct rates found that participation in the program “significantly improved offender behavior within the institution, lowering the risk of misconduct by 65% to 80% and reducing the total number of discipline convictions by more than one per participant.” Grant Duwe et al., *Bible College Participation and Prison Misconduct: A Preliminary Analysis*, 54 J. Offender Rehab. 371, 386 (2015). Because prisoner misconduct can lead to increased incarceration time as a punishment, reducing discipline convictions can reduce time served. *Id.* at 374. In addition to its benefits on prison safety and order, therefore, reducing prison misconduct can benefit prison systems in a concrete, financial way. That is, permitting religious exercise can save prisons money in the long run.

Qualitative studies show *how* religious practice offers these benefits. For example, a 2018 study conducted a survey of 2,249 inmates at Louisiana State Penitentiary, the largest maximum-security prison in America. The study found that religious conversion and religiosity “positively related to existential and cognitive transformations as well as a ‘crystallization of discontent,’” which is the cognitive process by which

prisoners begin to link their criminal identities with harm, failure, and dissatisfaction. Jang et al., *Religion and Misconduct in “Angola” Prison*, *supra*, at 413. This in turn “weakens their attachment to the criminal identity and provides offenders with the initial motivation to break from crime and engage in a deliberate act of intentional self-change.” *Id.* at 416. Religious conversion and religiosity may “lead prisoners to rehabilitate themselves by helping transform their old, antisocial self into a new, prosocial one.” *Id.* at 432. Other studies show similar effects. See Jang et al., *Existential and Virtuous Effects of Religiosity*, *supra*, at 1 (religiosity had inverse effect on negative emotions and aggressiveness, which often contribute to infractions and violence); see also Jang et al., *The Effect of Religion on Emotional Well-Being*, *supra*, at 1154 (similar).

In short, religious practice can promote prosocial behavior among prisoners by giving them a healthy means of coping with the difficult emotions resulting from their situation. Such coping mechanisms decrease the likelihood that prisoners will let feelings of anger or aggressiveness lead to confrontations with prison officials or other prisoners. In this way, robust religious practice in prisons not only

benefits the mental health and well-being of individuals but ripples out to promote the safe and peaceful operation of prisons overall.

B. Religious practice in prison improves behavior after release.

The benefits of religious exercise in prison continue to build even after release. Immediately following release from prison, individuals face a critical transition period known as reentry. Unfortunately, a majority of released prisoners will relapse into criminal behavior during the reentry period. Leonardo Antenangeli & Matthew R. Durose, *Recidivism of Prisoners Released in 24 States in 2008: A 10-Year Follow-Up Period (2008–2018)*, U.S. Bureau of Just. Stat., at 1 (Sept. 2021), <https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-24-states-2008-10-year-follow-period-2008-2018>. Levels of recidivism, or the tendency of prisoners to reoffend after release, are higher in the United States than almost anywhere else in the world: The Bureau of Justice Statistics found that 43% of individuals who left state prisons were arrested at least once in their first year after release. *Id.* Within three years of their release, two out of three former prisoners will be rearrested. *Id.* And by 10 years following release, that number has grown to 82%. *Id.*

By promoting rehabilitation in prison, religious exercise can smooth reentry and dramatically reduce recidivism. Moreover, religious practice allows prisoners to connect with broader faith-based communities, and those connections can ease the transition to life outside of prison in concrete ways. Each of these mechanisms benefits society as a whole by allowing former offenders to reintegrate into society in a meaningful way.

1. As discussed above, religious practice in prison affects prisoners' mental health, emotional well-being, and sense of identity. These are the cornerstones of rehabilitation, or the idea that the life of even the worst prisoner can be transformed. Byron Johnson, *More God, Less Crime: Why Faith Matters and How It Could Matter More* 99 (2011).

Rehabilitation is not a new idea. Early American prisons shared the belief that prisoners were capable of reform through moral and spiritual rehabilitation; in fact, the term penitentiary is ultimately derived from the Latin *paenitentia*, meaning “repentance.” *Penitentiary*, Cornell Law School Legal Information Institute (Apr. 2022), <https://www.law.cornell.edu/wex/penitentiary>. Reform stemmed from repentance and the pursuit of a new identity. Historically, inmates were considered agents worthy and capable of rehabilitation. Jalila Jefferson-

Bullock, *How Much Punishment Is Enough?: Embracing Uncertainty in Modern Sentencing Reform*, 24 J. L. & Pol’y 345, 355 (2016). Prisons were regarded as curative institutions, qualified to teach inmates how to coexist lawfully with others. *Id.* (citing *United States v. Scroggins*, 880 F.2d 1204, 1207 (11th Cir. 1989)).

For a variety of reasons, sentencing today often focuses more on deterrence and retribution as the goals of imprisonment, rather than rehabilitation. See *Mistretta v. United States*, 488 U.S. 361, 367 (1989) (“reject[ing] imprisonment as a means of promoting rehabilitation”); *Tapia v. United States*, 564 U.S. 319, 327 (2011) (confirming that “imprisonment is not suitable for the purpose of promoting rehabilitation”). Indeed, courts at times have concluded that rehabilitation is an “unattainable goal for most cases” and that historically “the efforts of the criminal justice system to achieve rehabilitation of offenders had failed.” *Mistretta*, 488 U.S. at 365–67.

But empirical research does not support abandoning rehabilitation as a goal for the millions of individuals serving prison sentences based on deterrent or retributive sentencing goals. Far from it. Current research suggests that rehabilitation remains possible—and that voluntary

religious practice in prison can reduce recidivism for years following release. A five-year Louisiana Department of Corrections study, for example, revealed that of those inmates who received faith-based education before their release, only 30% returned to prison. Roy L. Bergeron Jr., *Faith on the Farm: An Analysis of Angola Prison's Moral Rehabilitation Program Under the Establishment Clause*, 71 La. L. Rev. 1221, 1222 n.6 (2011). This was well below the statewide recidivism rate at the time of 46.6%, and far below the national recidivism rate of 65%. *Id.*

Similarly, a 2006 study found that offenders who participated in faith-based prison programs were more likely to make successful transitions back to society. Byron Johnson & David B. Larson, *The InnerChange Freedom Initiative: A Preliminary Evaluation of a Faith-Based Prison Program*, Baylor Inst. for Religious Studies (2008), <https://www.baylor.edu/content/services/document.php/25903.pdf>. As the study found, religious conversion leads prisoners to develop a self-narrative that: (1) “creates a new social identity to replace the label of prisoner or criminal”; (2) “imbues the experience of imprisonment with purpose and meaning”; (3) “empowers the largely powerless prisoner by

turning him into an agent of God”; (4) “provides the prisoner with a language and framework for forgiveness”; and (5) “allows a sense of control over an unknown future.” Shadd Maruna et al., *Why God Is Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative*, 3 *Rsch. in Hum. Dev.* 161, 161 (2006). These internal changes, in turn, drive meaningful changes in behavior—and decrease the odds of re-offending upon release.

2. Practicing religion in prison can also reduce recidivism through the tangible mechanism of connecting prisoners to concrete sources of support after their release. In particular, religious exercise fosters integration into faith-based communities. Those communities can help former prisoners overcome barriers to successful reentry, which often include difficulty obtaining gainful employment, housing, education, and prosocial support networks.

Indeed, faith-based volunteers and networks of support are often uniquely well-placed to address barriers to reentry. Faith-based organizations often provide assistance to former prisoners in obtaining housing and employment. These connections also provide those at risk for recidivism with positive role models who can offer crucial mentoring

and life skills. For example, participation in volunteer-led Bible study groups in prison significantly lowered rates of recidivism even three years post-release. Byron Johnson, *Religious Programs and Recidivism Among Former Inmates in Prison Fellow Programs: A Long-term Follow-up Study*, 21 Just. Q. 329, 329 (2004). The difference can be dramatic—one study showed that only 14% of active Bible study participants were arrested during the one-year follow-up period, compared to 41% of those in the study who did not participate in Bible study. *Id.* at 334.

Prisoners who are not permitted to practice their religion while in prison, by contrast, may struggle to connect (or reconnect) with faith-based communities following their release from prison. Any barriers to religious exercise in prison thus have the potential to increase recidivism—imposing heavy costs on society as a whole. Such barriers should be eliminated where possible. Recognizing the availability of money damages under existing religious liberty law is an easy step to facilitate religious exercise and, ultimately, to reduce recidivism.

III. Jail Inmates Have a Heightened Need for Religious Exercise Rights

Jail inmates, like Mr. Barnett, are in even more need of protection for religious exercise than other prisoners. Scholarship shows that

although jail inmates suffer the worst mental health outcomes, jails often lack mental health resources. Increasing religiosity through short-term intervention would improve individual and social outcomes by reducing post-traumatic stress disorder (PTSD) symptoms, aggression, and suicidal ideation.

Congress intended for RLUIPA to cover jails. RLUIPA protects “the religious exercise of a person residing in or confined to an institution.” 42 U.S.C. § 2000cc-1(a). An “institution” is specifically defined to include “a jail.” *Id.* § 1997(1)(B)(ii). And where RLUIPA applies, Congress directed that it “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” *Id.* § 2000cc-3(g). Congress thus clearly expected that RLUIPA would provide a muscular and meaningful protection for religious liberty in jails. Given the unique circumstances of jail confinement, that is possible only if the remedy of money damages is available.

A. In the jail context, the benefits of religious practice are even more potent than in prisons.

The need for religious practice is particularly acute in jails. The incarcerated suffer greater levels of mental health problems than the

general population. See Sung Joon Jang et al., *Assessing a Faith-Based Program for Trauma Healing Among Jail Inmates: A Quasi-Experimental Study*, Int'l. J. of Offender Therapy and Compar. Criminology 1, 2 (2020). More than an estimated 75% percent of all inmates have experienced severe trauma, and PTSD often results. Clare S. Allely & Bob Allely *Post Traumatic Stress Disorder in Incarcerated Populations: Current Clinical Considerations and Recommendations*, 10 J. of Crim. Psych. 30, 30–42 (2020). And the mental health problems for such inmates do not end with PTSD. Rather, PTSD has a high rate of comorbidity with other psychiatric disorders like major depressive disorder and antisocial personality disorder. Allely & Allely, *Post Traumatic Stress Disorder in Incarcerated Populations*, *supra*. PTSD also correlates highly with depression and anger, which in turn positively correlates with suicidal ideation and aggression. *Id.*

Jails generally present an even more stressful environment for inmates than prisons. Jails are intended to house inmates for much shorter periods of time than prisons. The longest time an inmate can spend in a jail is typically twelve months. *What is the Difference Between Jail and Prison?* Prison Fellowship (Nov. 12, 2023, 8:54pm),

<https://www.prisonfellowship.org/resources/training-resources/in-prison/faq-jail-prison/>. And the average jail stay is only 25 days. Zhen Zeng, *Jail Inmates in 2018*, U.S. DOJ. 1, 1–18 (2020) <https://bjs.ojp.gov/library/publications/jail-inmates-2018>. As a result, less care and resources are generally put into making jail conditions tolerable. Jails are more likely to be overcrowded and to simply leave inmates in their cells, and they are less likely to provide recreation and other constructive activities and programs. *Id.*

Consequently, jail inmates generally experience even worse mental health outcomes than prisoners. See Sung Joon Jang et al., *Assessing a Faith-Based Program for Trauma Healing Among Jail Inmates: A Quasi-Experimental Study*, *supra* at 2. One study shows, for instance, that 15.9% of jail inmates experience lifetime PTSD, compared to just 12.5% among inmates at state and federal prisons. Ronald C. Kessler et al., *Posttraumatic Stress Disorder in the National Comorbidity Survey*, 52 *Archives of Gen. Psychiatry* 1048, 1048–1060 (1995).

Religiosity offers a potent remedy for the mental health crisis in jails. For example, recent study of a faith-based program, the Correctional Trauma Healing Program, for jail inmates in Virginia

showed that even a modest intervention (ten hours total) could “significantly reduce PTSD symptoms, negative emotional states, suicidal ideation, and the risk of aggression toward another inmate.” Sung Joon Jang et al., *Assessing a Faith-Based Program for Trauma Healing Among Jail Inmates: A Quasi-Experimental Study*, *supra*, at 18. By increasing religiosity, the program promoted forgiveness of others and directly reduced inmate vengefulness. *Id.* Further, by directly and indirectly improving inmate perception of God’s forgiveness, gratitude to God, and by reaping the positive impact of the Bible, the program contributed to “reduction of PTSD symptoms, state depression, state anger, suicidal ideation, and the risk of interpersonal aggression.” *Id.* And these positive healing effects lasted even beyond incarceration, “remaining significant up to 3 months after completion of the program.” *Id.* Thus, religious practice through trauma healing programs can improve mental health for jail inmates, who need it most.

While the Correctional Trauma Healing Program offers a straightforward path toward improving mental health among jail inmates, many inmates, like Mr. Barnett, experience the opposite. While perceived forgiveness from God, gratitude to God, and perceived positive

impact of being able to read the Bible reduce severe mental health problems like suicidal ideation, interpersonal aggression, and PTSD symptoms, the Jefferson County Jail offered no such program and refused to make even modest accommodations for Mr. Barnett to engage in self-directed religious exercise. Rather, in clear violation of RLUIPA, officials denied Mr. Barnett his Bible for an entire month. R. Doc. 6 at 3-4; R. Doc. 6-1 at 3, 5. These actions made Mr. Barnett feel like “a sinner, causing guilt and shame.” R. Doc. 6 at 3–4. Rather than reaping the positive benefits of religiosity, Jefferson County Jail exacerbated negative mental health problems and denied Mr. Barnett his right to religious freedom.

B. Without money damages, jail inmates lack meaningful protections for their religious exercise.

The transitory nature of jails not only contributes to the lack of mental health resources; it emboldens jail officials to be callous toward inmates’ religious exercise rights. Because the duration of RLUIPA litigation extends far beyond the length of time inmates spend in jails, forward-looking remedies cannot effectively secure inmates’ religious exercise rights. Even the most flagrant violations of the law cannot be remedied. Reflecting this reality, Jefferson County officials’ response to

Mr. Barnett's protests to being denied his Bible was to tell him, "feel free to quote the Constitution all you want." R. Doc. 6-1 at 5. Without money damages, RLUIPA is nothing more than a parchment barrier against abuse in jails.

Congress clearly meant for RLUIPA to protect religious exercise in jails. 42 U.S.C. §§ 1997(1)(B)(ii), 2000cc-1(a); *supra* at 20. Yet, for petitioners such as Mr. Barnett, it does not, so long as money damages are unavailable. Injunctions and other prospective relief are not a practical solution when inmates are housed in jails no longer than a year and, on average, no more than 25 days. *Supra* at 22. Federal court litigation, of course, takes far longer than that; "civil cases in the U.S. district courts have a median length of 27 months from filing to trial, and close to 10% of cases have been pending for over three years[.]" *Lawsuits Against the Federal Government: Basic Federal Court Procedure and Timelines*, Congressional Research Service (Nov. 12, 2023, 8:58pm), <https://sgp.fas.org/crs/misc/IF11349.pdf>.

That leaves money damages as the only realistic remedy to guarantee the religious exercise rights of jail inmates. Monetary damages can compensate inmates after they have experienced violations, and the

threat of liability can serve as a deterrent to jail officials who otherwise act with impunity. A prison official is unlikely to dismiss a prisoner's grievance with the statement, "You can have nothing more . . . Feel free to quote the constitution all you want to," if he knows that statement will later be quoted to a civil jury. R. Doc. 6-1 at 5.

In RLUIPA, Congress set out to protect religious liberty in jails "to the maximum extent permitted by . . . the Constitution." 42 U.S.C. § 2000cc-3(g). Yet without money damages, RLUIPA's protections in that context are effectively nil. To respect Congress's judgment—and to safeguard the many benefits for inmates and society that religious exercise offers—this Court must hold that RLUIPA authorizes money damages.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below and recognize that money damages are available under RLUIPA.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 20, 2023

s/ Noel J. Francisco
Noel J. Francisco

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned attorney for Appellant certifies that the foregoing brief

(i) complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B) because it contains 4,801 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook.

Dated: November 20, 2023

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