

No. 21-15492

In the
United States Court of Appeals for the Ninth Circuit

MICHAEL RAY FUQUA AKA Michael Fuqua,

Plaintiff-Appellant,

v.

RAAK, Psychologist; et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
District of Arizona, No. 2:18-cv-02337-DJH
The Honorable Diane J. Humetewa

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

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INTEREST OF THE *AMICUS CURIAE*¹

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¹ No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae* or his counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

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).

This case is important to *amicus* because 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, as *amicus*' research affirms the many benefits of robust religious practice in prisons.

INTRODUCTION

As the Appellant has explained, money damages are authorized by the plain text of the Religious Land Use and Institutionalized Persons Act of 2000 (“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 prison, based on a large and growing body of research demonstrating that religious practice benefits not only prisoners as individuals, but also prisons as institutions and society as a whole. The research is clear and consistent: free religious exercise in prison supports mental health and human dignity for individual prisoners, improving behavior in prison in the short term and ultimately reducing recidivism in the long term. 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.*

This case offers an example of the direct link between religious practice and its identity-affirming aspects. Appellant Michael Ray Fuqua seeks to practice his religion, in part, by following a religious diet. Such practices are common to many religions, and are often tied to a deeper belief about believers’ role in the world that guides believers’ sense of agency and identity. *See, e.g., Ford v. McGinnis*, 352 F.3d 582, 588 (2d Cir. 2003) (describing Muslim prisoner’s religious diet as “critical to his observance as a practicing Muslim”); *United States v. Kahane*, 396 F. Supp. 687, 691 (E.D.N.Y.), (quoting rabbinical testimony discussing Jewish prisoner’s religious diet as fulfilling a “critical need . . . to relate with his God”); *Koger v. Bryan*, 523 F.3d 789, (7th Cir. 2008) (describing adherent of Ordo Templi Orientis religion as implementing dietary restrictions as a “personal regimen of spiritual discipline”).

Without protection for this form of religious practice, prisoners are denied access to the well-documented benefits of religious exercise in prison. Perhaps for that reason, the law has long recognized that physical 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); *Shakur v. Schrivo*, 514 F.3d 878, 885 (9th Cir. 2008) (finding that prisoner stated valid RLUIPA and Free Exercise claims based on denial of religious dietary accommodation). 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.

CONCLUSION

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

May 25, 2023

Respectfully submitted,

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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) and Circuit Rule 32(c) because it contains 3,378 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) and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook.

Dated: May 25, 2023

s/ Noel J. Francisco
Noel J. Francisco