

No. 22-30686

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DAMON LANDOR,

Plaintiff-Appellant,

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY; JAMES M.
LEBLANC, IN HIS OFFICIAL CAPACITY AS SECRETARY THEREFORE, AND
INDIVIDUALLY; RAYMOND LABORDE CORRECTIONAL CENTER; MARCUS
MYERS, IN HIS OFFICIAL CAPACITY AS WARDEN THEREOF, AND
INDIVIDUALLY; JOHN DOES 1-10; ABC ENTITIES 1-10,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana, No. 3:21-cv-00733
The Honorable Shelly D. Dick, Chief Judge

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

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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 Damon Landor's petition for rehearing en banc. A copy of the proposed brief is attached to this motion. Plaintiff-Appellant consents to the filing of the *amicus* brief, and Defendants-Appellees do not object.

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 whether to grant rehearing en banc. Specifically, Dr. Johnson argues that this is an issue of exceptional importance 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 illustrated by *amicus*' research, which affirms the many benefits of robust religious practice in prisons. In light of these interests, Dr. Johnson filed an *amicus* brief in this case at the panel stage, with this Court's leave Dkt. Nos. 44, 48. He also filed an *amicus* brief in *Walker v. Baldwin*, No. 22-2342 (7th Cir.) and *Michael Fuqua v. Raak, et al*, No. 21-15492 (9th Cir.), similar cases currently pending before the Seventh and Ninth Circuits. Dr.

Johnson also anticipates filing next month an *amicus* brief addressing the importance of damages under RLUIPA in *Barnett v. Short*, No. 13-1066 (8th Cir.).

3. This Circuit “welcome[s] amicus briefs,” and will generally “grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted.” *Lefebure v. D’Aquila*, 15 F.4th 670, 676 (5th Cir. 2021). Consistent with Fifth Circuit Rule 29.2, Dr. Johnson’s proposed brief “avoid[s] the repetition of facts or legal arguments contained in the principal brief and . . . focus[es] on points . . . not adequately discussed” therein. 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 prisoner 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.

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: October 19, 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 605 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: October 19, 2023

s/ Noel J. Francisco
Noel J. Francisco

CERTIFICATE OF SERVICE

In accordance with Circuit Rule 25(a), I hereby certify that on October 19, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth 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: October 19, 2023

s/ Noel J. Francisco
Noel J. Francisco

EXHIBIT

No. 22-30686

UNITED STATES COURT OF APPEALS
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Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana, No. 3:21-cv-00733,
The Honorable Shelly D. Dick, Chief Judge

**BRIEF OF PROFESSOR BYRON JOHNSON
AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT'S
PETITION FOR REHEARING**

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CERTIFICATE OF INTERESTED PERSONS

The case number for this amicus curiae brief is No. 22-30686, *Landor v. Louisiana Department of Corrections and Public Safety; James M. LeBlanc, in his official capacity as Secretary thereof, and individually; Raymond Laborde Correctional Center; Marcus Myers, in his official capacity as Warden thereof, and individually; John Does 1-10; ABC Entities 1-10*. Undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1) Plaintiff-Appellant:

Damon Landor

2) Defendants-Appellees:

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Marcus Myers

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s/ Noel J. Francisco
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INTEREST OF *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) and *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation* (2016).

This case is exceptionally important to *amicus*—and should be to the en banc Court as well—because unless the Religious Land Use and Institutionalized Persons Act of 2000 (“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 illustrated by *amicus*’ research, which affirms the many benefits of robust religious practice in prisons. And because this issue is cropping up around the country, *amicus* has filed briefs on the topic in the Ninth and Seventh Circuits and anticipates filing another in the Eighth Circuit next month in addition to filings in this Court. *See Walker v. Baldwin*, 74 F.4th 878 (7th Cir. 2023); *Fuqua v. Raak*, No. 21-15492. (9th Cir.); *Barnett v. Short*, No. 23-1066 (8th Cir.).

INTRODUCTION

As Appellant has explained, the plain text of RLUIPA authorizes money damages. Any other reading of the statute is 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 why the availability of money damages under RLUIPA is an issue of exceptional importance warranting en banc review. Fed. R. App. P. 35(a)(2). A large and growing body of research demonstrates that free religious exercise in prison supports mental health and human dignity for individual prisoners, both improving behavior in prison in the short term and reducing recidivism in the long term. Because equitable relief is often inadequate to capture these benefits, this research offers yet another reason why this Court should correct the panel’s misconstruction of RLUIPA. Moreover, the exceptional importance of the RLUIPA damages issue is evident from the

many Courts of Appeals currently addressing it. *Supra* at 2. Supreme Court review may not be far behind.

ARGUMENT

I. Religious Practice Promotes Prisoner Welfare and Dignity.

Imprisonment has a well-documented detrimental effect on inmates' mental health. 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. BJS (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. Critically, 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 prison inmates retain. The sudden loss of previous liberties 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 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 practicing religion are more likely to remain resilient, reducing the risk of negative mental-health outcomes and enabling personal growth.

A wide body of scientific research confirms this effect. For example, a 2018 study based on a survey of inmates from three maximum-security prisons found that “religiosity was positively related to a sense of meaning and purpose in life and virtuous characteristics,” such as 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 Virginia jail inmates 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. They confirm 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. Supporting inmates’ freedom of religion is thus a powerful catalyst for prisoner well-being.

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

Although religiosity benefits prisoners, those benefits cannot be achieved without religious *practice*. 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. This is likely because religion allows prisoners “to exercise their agency in an arena that is fundamental to their identity” in a context that has otherwise stripped them of autonomy. *Id.*

This case offers a perfect example of the direct link between religious practice and its identity-affirming aspects. As a practicing Rastafarian, Appellant Damon Landor must allow his hair “to grow naturally into long matted strands or ‘locks,’” which carry “great spiritual and physical power.” Michael Barnett & Adwoa Ntozake Onuora, *Rastafari as an Afrocentrically Based Discourse and Spiritual Expression*, in *Rastafari in the New Millenium: A Rastafari Reader* 159,

165 (Michael Barnett ed., 2012). These locks symbolize “resistance against all forms of social, economic, racial, political, and spiritual oppression.” *Id.* The practice, then, is tied to a deeper belief about believers’ role in the world, and it underlies an ethos that guides Rastafarians’ sense of agency and identity.

Without protection for this religious practice, Rastafarians lack access to the well-documented benefits of religious exercise in prison. Perhaps for that reason, the law has long protected physical expressions of religiosity. *See, e.g., Holt v. Hobbs*, 574 U.S. 352 (2015) (finding that prison officials’ refusal to allow a Muslim prisoner to grow a beard in prison for religious reasons violated RLUIPA). Effective protection in this case, and many others, requires money damages to ensure all prisoners can access the benefits of religious practice in prison.

II. Religious Practice in Prison Benefits Society.

Although religious practice profoundly benefits individual prisoners, society as a whole also has a strong interest in protecting free religious exercise in prisons, including through the remedy of monetary damages. Religious practice reduces prison misconduct, improving prison safety and offering the potential for earlier release dates. And religious

practice and connection with religious communities in prison ultimately lower recidivism rates after prisoners are released, in part by easing prisoners' reentry into society.

A. Religious practice improves behavior within prisons.

Studies show that religious practice in prison encourages “prosocial” behaviors, that is, behaviors “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). Indeed, religiosity is one of the chief factors causing “offenders who previously exhibited antisocial patterns of behavior” to “undergo transformations that result in consistent patterns of positive behavior, accountability, and other-mindedness.” *Id.*

Social science research bears this out in both quantitative and qualitative studies. For example, a 2015 quantitative study found that participation in a prison Bible college 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). On top of other benefits, reducing prison misconduct reduces total time served, benefitting prisons in a concrete, financial way. *Id.* at 374.

Qualitative studies show *how* religious practice offers these benefits. A 2018 study based on a survey of 2,249 Louisiana inmates 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. Thus, religious conversion and religiosity may “lead prisoners to rehabilitate themselves.” *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); *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 imprisonment. Such coping mechanisms decrease the likelihood that prisoners will let feelings of anger or aggressiveness lead to violent confrontations with others. 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 even after release. Immediately following release from prison, individuals face a critical transition period known as reentry. Unfortunately, most released prisoners will relapse into criminal behavior during this period. Leonardo Antenangeli & Matthew Durose, *Recidivism of Prisoners Released in 24 States in 2008: A 10-Year Follow-Up Period (2008–2018)*, U.S. BJS, at 1 (2021), <https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-24-states-2008-10-year-follow-period-2008-2018>. Specifically, the Bureau of Justice Statistics found that 43% of state prisoners are

arrested within one year of release, 66% within three years, and 82% within ten years. *Id.*

Religious exercise, however, can smooth reentry and dramatically reduce recidivism. 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 more meaningful and lasting 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, 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). Although courts have at times pessimistically concluded that rehabilitation is an "unattainable goal for most cases," *Mistretta v. United States*, 488 U.S. 361, 366 (1989), empirical research shows that voluntary religious practice in prison can transform prisoners' lives and reduce recidivism for years following release.

A five-year Louisiana study, for example, revealed that only 30% of inmates who received faith-based education before their release, returned to prison, far below the 46.6% statewide and 65% national recidivism rates. 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).

Similarly, a 2006 study found that offenders who participated in faith-based prison programs were more likely to make successful transitions back to society. Specifically, 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, decreasing the odds of re-offending upon release.

2. Religious practice can also reduce recidivism by 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, such as difficulty obtaining gainful employment, housing, education, and prosocial support networks.

In fact, 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). 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 who did not participate in a 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 after their release. Any barriers to religious exercise in prison thus could increase recidivism—imposing heavy costs on society at large. Such barriers should be eliminated where possible. Recognizing the availability of money damages under RLUIPA would facilitate religious exercise and, ultimately, reduce recidivism. *See, e.g., Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008) (“[A] liability award can be, indeed is designed to be, a potent method of governing conduct and controlling policy.”).

CONCLUSION

This Court should grant rehearing and hold that money damages are available under RLUIPA.

Dated: October 19, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Circuit Rule 25(a), I hereby certify that on October 19, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth 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: October 19, 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 contents, form, and length limitations in Fed. R. App. P. 29(b)(4) and Circuit Rule 32(c) because it contains 2,600 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: October 19, 2023

s/ Noel J. Francisco
Noel J. Francisco