No. 20-15642

In the United States Court of Appeals for the Ninth Circuit

EDWARD LEE JONES, JR.,

Plaintiff-Appellant,

v.

SHAWNA SLADE, *et al.*,

Defendants-Appellees.

On appeal from the United States District Court for the District of Arizona, No. 2:18-cv-02034
Hon. Michael T. Liburdi, District Judge

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), *amicus* Becket Fund for Religious Liberty states that it does not have a parent corporation and does not issue any stock.

Date: February 8, 2021

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INTEREST OF THE *AMICUS*[1]

The Becket Fund for Religious Liberty is a non-profit law firm dedicated to protecting the free exercise of all religious traditions. To that end, it has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in litigation, including in multiple cases at the United States Supreme Court. *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Holt v. Hobbs*, 574 U.S. 352 (2015); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC,* 565 U.S. 171 (2012).

Becket has also appeared frequently before this Court. *See, e.g.*, *California v. U.S. Dep't of Health & Hum. Servs.*, 977 F.3d 801 (9th Cir.), *vacated and remanded*, 141 S. Ct. 192 (2020); *Biel v. St. James Sch.*, 911 F.3d 603 (9th Cir. 2018), *rev'd and remanded*, 140 S. Ct. 2049 (2020); *Intermountain Fair Housing Council v. Boise Rescue Mission Ministries*, 657 F.3d 988 (9th Cir. 2011).

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[1] The parties have consented to the filing of this brief. As required by Rule 29(a)(4)(E), *Amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *Amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

For decades, Becket has advocated for the right of prisoners to engage in peaceful, sincere religious exercise. *E.g.*, *Murphy v. Collier*, 139 S. Ct. 1475 (2019) (amicus); *Holt*, 574 U.S. 352 (counsel); *Guzzi v. Thompson*, No. 07-1537, 2008 WL 2059321, at *1 (1st Cir. 2008) (*amicus* by invitation of the court); *Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525 (11th Cir. 2013) (counsel); *Moussazadeh v. Tex. Dep't of Crim. Just.*, 703 F.3d 781 (5th Cir. 2012), *as corrected* (Feb. 20, 2013) (counsel). In *Leonard v. Louisiana*, for example, Becket filed an *amicus* brief supporting a Muslim prisoner's right to access a religious publication. 449 F. App'x 386 (5th Cir. 2011). The Fifth Circuit adopted Becket's argument.

Becket submits this brief because it is concerned that legal errors made by the district court could, if left uncorrected, impair the religious liberty of prisoners across the Ninth Circuit. The Religious Land Use and Institutionalized Persons Act (RLUIPA) should instead be interpreted "in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

SUMMARY OF THE ARGUMENT

RLUIPA prisoner claims follow a now-familiar script. First, a RLUIPA plaintiff must show that the government's actions substantially burden a particular exercise of religion and that the prisoner's desire to engage in the practice is sincere. If the prisoner can make out his case (for example by showing that there is a complete ban on the particular practice at issue), then the burden of proof shifts to the prison system to satisfy strict scrutiny.

Here, however, the district court strayed far from this well-trod path. Instead of analyzing sincerity and burden, the district court assessed how well Jones could "articulate[]" the requirements of Islam, decided what Jones needed to do to "successfully observe Ramadan," and weighed how well Jones adhered to Islamic belief.

That was triple error. First, the district court was wrong to evaluate the ***validity*** of Jones' beliefs. When a plaintiff has shown that his beliefs are both religious and sincere (as Jones has), courts are not permitted to question the validity, accuracy, or reasonableness of those beliefs. But here, in determining whether Defendants' policy imposed a substantial

burden on Jones' religious exercise, the district court erroneously assessed the validity of Jones' professed beliefs and required Jones to *justify* his beliefs to the court.

Second, the district court erred in evaluating the ***centrality*** of Jones' religious exercise. RLUIPA protects all religious exercise, regardless of whether it is compelled by or central to a plaintiff's religious beliefs. And limiting protections to religious practices central to a plaintiff's beliefs invites the very line drawing that can entangle secular courts in religious affairs in violation of the First Amendment. Here, the district court was wrong to analyze whether reading Islamic texts was *necessary* for Jones to (according to the court's own lights) "successfully observe" Ramadan, and further erred in concluding that this supposed lack of centrality meant his religious practice was not protected by RLUIPA.

Third, the district court was wrong to require complete ***consistency*** in Jones' adherence to his religious beliefs. Numerous federal courts, including this court, have confirmed that perfect adherence to one's religious beliefs is not required for a successful RLUIPA claim. Ruling otherwise would punish prisoners who seek to grow in their faith, who desire to repent from past failings, or who adhere to religious traditions with

demanding or aspirational commands. The district court thus erred by placing determinative weight on its own assumptions regarding Jones' past religious practices.

Each of these legal errors separately warrants reversal.

ARGUMENT

I. The district court wrongly evaluated the validity of Jones' religious beliefs.

As the Supreme Court has made clear, "[t]he determination of what is a 'religious' belief or practice . . . is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). Put simply, "it is not within the judicial ken to question" the validity of a sincerely held religious belief. *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989); *see United States v. Ballard*, 322 U.S. 78, 86 (1944) ("Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.").

To permit such an inquiry would favor well-understood religious beliefs—beliefs that are more likely to be viewed as "reasonable" in the eyes

of a civil court—over minority beliefs that may appear unusual or unorthodox. *See Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) (Sotomayor, J.) ("Courts are not permitted to ask whether a particular belief is appropriate or true—however unusual or unfamiliar the belief may be. . . . We have no competence to examine whether plaintiff's belief has objective validity."). And it would turn judges into theologians, tasked with "evaluating the merits of a scriptural interpretation." *Callahan v. Woods*, 658 F.2d 679, 686 (9th Cir. 1981); *see also Shilling v. Crawford*, 377 F. App'x 702, 704 (9th Cir. 2010) ("The suggestion that the prison was permitted to deny Shilling a kosher diet because it determined that he was not a 'legitimate' Orthodox Jew . . . is plainly inconsistent with RLUIPA."); *Walker v. Beard*, 789 F.3d 1125, 1134 (9th Cir. 2015) ("Although Odinism is not a mainstream faith, RLUIPA does not, and constitutionally could not, pick favorites among religions.").

RLUIPA (and the Constitution) mandate a far narrower inquiry. As the Supreme Court has explained, "'the "truth" of a belief is not open to question'; rather, the question is whether the objector's beliefs are 'truly held.'" *Gillette v. United States*, 401 U.S. 437, 457 (1971) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)); *see also Naoko Ohno v. Yuko*

Yasuma, 723 F.3d 984, 1011 (9th Cir. 2013) ("The threshold requirement for a defense based on the Religion Clauses is to show that one sincerely holds beliefs as religious views."). Thus, instead of engaging with difficult theological questions—like what it means to successfully observe Ramadan or to be a good Muslim—it is "[t]he narrow function of a reviewing court" to assess whether the plaintiff's request is made for "religious reasons" and is based on an "honest conviction." *Thomas*, 450 U.S. at 716 ("[I]t is not for us to say that the line he drew was an unreasonable one.") (emphasis added). *See also Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005) (RLUIPA "does not preclude inquiry into the sincerity of a prisoner's professed religiosity."); *Shakur v. Schriro*, 514 F.3d 878, 885 (9th Cir. 2008) (similar); *Jolly v. Coughlin*, 76 F.3d 468, 476 (2d Cir. 1996) ("While it is a delicate task to evaluate religious *sincerity* without questioning religious *verity*, our free exercise doctrine is based upon the premise that courts are capable of distinguishing between these two questions."). Once it is determined that a plaintiff's beliefs are both sincere and religious, the court's inquiry into those beliefs must end.

Here, as the district court confirmed, Jones' beliefs are both sincerely held and religious in nature. 1-ER017. That should have ended the

court's inquiry into Jones' beliefs. But the district court went further, examining Jones' past religious practices and making the determination that Jones had not sufficiently explained why his religious beliefs make him "unable to successfully observe Ramadan *without* the books he requested." 1-ER018. This analysis (ostensibly part of the district court's substantial burden inquiry) put the court in the impermissible position of evaluating the validity of Jones' beliefs. Indeed, the court's conclusion confirmed as much: despite determining that Jones was sincere and his beliefs were religious, the court nonetheless held that he had failed to persuasively justify or "articulate[]" *why* his beliefs required him to read Islamic texts during Ramadan. 1-ER018. This was error. *See Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1297 (11th Cir. 2007) ("Watts is not on the hook for our inability to understand his religious system.").

II. The district court wrongly evaluated the centrality of possessing specific texts to Jones' religion.

The district court also erred by inserting a centrality test (looking to whether the religious exercise was *necessary*) into its analysis. This both violates the plain text of RLUIPA and raises First Amendment concerns.

First, RLUIPA's text specifically forbids inquiries into centrality. RLUIPA defines "religious exercise" to include "any exercise of religion,

whether or not compelled by, *or central to*, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A) (emphasis added). Congress took this language from Supreme Court precedent, which has also long rejected this inquiry. *Haight v. Thompson*, 763 F.3d 554, 566-67 (6th Cir. 2014) ("Well before the passage of RFRA and RLUIPA, the [Supreme] Court acknowledged that the Constitution prohibited, and judges lacked the capacity to undertake, assessments of the centrality of faith-based practices to this or that religion.") (Sutton, J.). *See also* 146 Cong. Rec. E1563-01, 2000 WL 1369378 (Sept. 22, 2000) (Statement of Representative Charles T. Canady of Florida) (RLUIPA's definition "relies on the meaning of religious exercise in existing case law"); *Hernandez*, 490 U.S. at 699 ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith.").

Courts have also universally read RLUIPA to reach all sincerely held religious exercise, regardless of "whether a particular belief or practice is 'central' to a prisoner's religion." *Cutter*, 544 U.S. at 725 n.13; *Holt v. Hobbs*, 574 U.S. 352, 360-61 (2015) (same). This Court has also confirmed—in light of "the Supreme Court's disapproval of the centrality test"—that only the "sincerity test . . . applies." *Shakur*, 514 F.3d at 885;

id. ("Here the district court impermissibly focused on whether 'consuming Halal meat is required of Muslims as a central tenet of Islam,' rather than on whether Shakur sincerely believes eating kosher meat is consistent with his faith."). *See also Greene v. Solano Cnty. Jail*, 513 F.3d 982, 986 (9th Cir. 2008).

And this Court is in good company: every other Court of Appeals except the Federal Circuit has also confirmed that RLUIPA bars inquiry into the centrality of a religious belief or practice. *See, e.g., Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 93 (1st Cir. 2013); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007); *Washington v. Klem*, 497 F.3d 272, 277 (3d Cir. 2007); *Lovelace v. Lee*, 472 F.3d 174, 187 n.2 (4th Cir. 2006); *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004); *Haight*, 763 F.3d at 566; *Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015); *Van Wyhe v. Reisch*, 581 F.3d 639, 656 (8th Cir. 2009); *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014); *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 829 (11th Cir. 2020); *Kaemmerling v. Lappin*, 553 F.3d 669, 677-78 (D.C. Cir. 2008).

Second, evaluating the relative weight of different religious practices would run afoul of the First Amendment by entangling courts in religious questions. An "inquiry into [a plaintiff's] religious views . . . is not only unnecessary but also offensive." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion). "It is well established . . . that courts should refrain from trolling through a person's . . . religious beliefs." *Id.*

Indeed, attempting to assess whether a particular religious exercise is central to a religion by "litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977). Put simply, "the First Amendment forbids civil courts" from "determin[ing] matters at the very core of a religion" by assessing a religious tenet's "relative significance." *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969).

Benning v. Georgia, 391 F.3d 1299, 1313 (11th Cir. 2004), and *Madison v. Riter*, 355 F.3d 310, 320 (4th Cir. 2003), are instructive. After RLUIPA was enacted, several states challenged the statute's constitutionality under the Establishment Clause. *Benning*, 391 F.3d at 1303; *Madison*, 355

F.3d at 314. These states argued that "RLUIPA excessively entangle[d] the government with religion by requiring state prisons to . . . question the centrality of particular beliefs or practices to a faith." *Benning*, 391 F.3d at 1313 (internal quotation marks omitted); *see also Madison*, 355 F.3d at 319-20.

Both the Eleventh Circuit and the Fourth Circuit rejected this argument, concluding instead that RLUIPA's capacious definition of "religious exercise" demonstrated that it did not contravene the First Amendment. Relying on RLUIPA's express disavowal of any centrality inquiry, the courts concluded that RLUIPA did not excessively entangle the government in religious affairs. *Benning*, 391 F.3d at 1313; *Madison*, 355 F.3d at 320. In fact, the opposite was true: RLUIPA's broad definition of "religious exercise" "mitigate[d] any dangers that entanglement may result from administrative review of good-faith religious belief." *Benning*, 391 F.3d at 1313 (quotation marks omitted); *see also Madison*, 355 F.3d at 320 ("RLUIPA itself minimizes the likelihood of entanglement through . . . the statute's broad definition of 'religious exercise[.]'").

Avoiding centrality inquiries also ensures courts treat all religious traditions equally. Evaluating religious centrality would "dignify[] some [religious beliefs]" but "disapprov[e] others," *Haight*, 763 F.3d at 566, and "risk . . . not only many mistakes—given [courts'] lack of any comparative expertise when it comes to religious teachings, perhaps especially the teachings of less familiar religions—but also favoritism for religions found to possess a greater number of 'central' and 'compelled' tenets," *Yellowbear*, 741 F.3d at 54 (Gorsuch, J.). And confining protection "to only those religious practices that are mandatory would necessarily lead [courts] down the unnavigable road of attempting to resolve intra-faith disputes over religious law and doctrine." *Ford*, 352 F.3d at 593.

The district court, however, broke from this strong consensus. Adopting Defendants' argument below that reading Elijah Muhammad's "books are not *required* to observe Ramadan," Defs. Mot. for Summ. J. at 14, ECF 55 (emphasis added), the district court concluded that reading Jones' religious texts wasn't sufficiently important or central to his ability to "successfully observe Ramadan." 1-ER018. This weighing of the relative *importance* of Jones' different religious practices contravened

RLUIPA's clear text and entangled the district court in religious questions it was not competent to answer.

III. The district court wrongly required Jones to demonstrate perfect consistency in adherence to his religious beliefs.

Finally, the district court erred by placing determinative weight on Jones' alleged past failure to request Islamic religious texts during prior Ramadan services.[2] The Supreme Court, this Court, and numerous other courts have long rejected the notion that failing to strictly adhere to religious tenets forecloses an otherwise successful religious accommodation claim. And adopting such a rule would punish prisoners who seek to repent, to grow in their faith, or who adhere to religions with strict or aspirational goals—goals to which adherents often fall short.

First, there is broad consensus that perfect or consistent past adherence to a religious belief is not a prerequisite for bringing a successful religious accommodation claim. "The Supreme Court has indicated . . . that religious claims that have developed over time are protected to

[2] This brief puts to the side the question of whether Jones in fact previously read his religious texts during Ramadan and focuses solely on the district court's legal analysis, which put determinative weight on the court's own assumptions about Jones' past religious practice. *See* Appellant's Br. 46-47.

the same extent as those that occur in a moment." *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994). Thus, "[s]o long as one's faith is religiously based at the time it is asserted, it should not matter . . . whether that faith derived from revelation, . . . gradual evolution, or some source that appears entirely incomprehensible." *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144 n.9 (1987) (quoting *Callahan*, 658 F.2d at 687). This is why the Supreme Court has been willing to protect religious objectors whose beliefs were "late in crystallizing," even though this meant they sometimes appeared inconsistent in their beliefs. *Ehlert v. United States*, 402 U.S. 99, 103-04 (1970) ("It would be wholly arbitrary to deny the late crystallizer a full opportunity to obtain a determination on the merits of his claim to exemption from combatant training and service just because his conscientious scruples took shape during a brief period in legal limbo.").

This Court has also long recognized that neither a recent conversion nor imperfect adherence to one's existing religious beliefs defeats a reli-

gious accommodation claim as a matter of law. In *United States v. Zimmerman*, a defendant invoking RFRA[3] objected to giving a DNA sample on the grounds that his religious beliefs prevented him from giving blood or providing any biological fluid. 514 F.3d 851, 853 (9th Cir. 2007). This Court explained that although a claimant may have inconsistently practiced his religious belief in the past, this did not render his claim invalid. *Id.* at 854. As this Court noted, "it [was] possible that [the claimant's] beliefs ha[d] changed over time." *Id.* at 854.

Other cases from this Court analyzing similar claims confirm as much. In *Malik v. Brown*, a prisoner sued after he was subjected to disciplinary action for using his Muslim religious name years after his conversion to Islam. 16 F.3d 330 (9th Cir. 1994). The district court held that his claim should be dismissed because he had failed to use his Muslim name for ten years after his conversion and never legally changed his name. But this Court reversed, holding that "[a] 'use it or lose it' approach to religious exercise does not square with the Constitution." *Id.* at 332.

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[3] This analysis applies equally to RLUIPA claims. *See Holt*, 574 U.S. at 358 (RLUIPA "allows prisoners 'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'" (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006))).

The same was true in *May v. Baldwin*, 109 F.3d 557 (9th Cir. 1997). There, the plaintiff challenged a prison requirement that he unbraid his dreadlocks for medical appointments, in violation of his Rastafarian religious beliefs. *Id.* at 559-60. The prisoner "complied with the command to loosen his dreadlocks" in some instances, but invoked his Rastafarian religious beliefs at other times as the basis for his noncompliance. *Id.* at 560. This Court rejected the argument that his inconsistent practice was determinative, concluding instead that the plaintiff's "compliance on a few occasions with the command to undo his dreadlocks d[id] not undermine his description of the burden imposed." *Id.* at 563. This also squares with common experience. Beliefs can evolve over time, and even the most consistent believer—especially in the prison context—may determine that the discrimination he will face at times outweighs perfect adherence to his beliefs.

The Ninth Circuit's approach is in line with that of other Courts of Appeals. Numerous other Circuits have held that "backsliding" or failing to strictly comply with one's religious beliefs does not alone defeat a religious accommodation claim. As the Seventh Circuit explained, "a sincere religious believer doesn't forfeit his religious rights merely because he is

not scrupulous in his observance; for where would religion be without its backsliders, penitents, and prodigal sons?" *Grayson v. Schuler*, 666 F.3d 450, 454 (7th Cir. 2012). *See also Moussazadeh v. Tex. Dep't of Crim. Just.*, 703 F.3d 781, 791 (5th Cir. 2012), *as corrected* (Feb. 20, 2013) ("Even the most sincere practitioner may stray from time to time" from "perfect adherence to beliefs."); *United States v. Ali*, 682 F.3d 705, 710 (8th Cir. 2012) (similar).

"'[C]ourts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position[.]'" *Love v. Reed,* 216 F.3d 682, 688 (8th Cir. 2000) (quoting *Thomas,* 450 U.S. at 715). Indeed, requiring perfect adherence could raise constitutional concerns by forcing "prisons . . . in effect to promote strict orthodoxy, by forfeiting the religious rights of any inmate observed backsliding, thus placing guards and fellow inmates in the role of religious police." *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988) (Posner, J.).

Second, demanding perfect adherence contradicts real-world religious experience and creates perverse incentives for both prisons and inmates. Failure, sin, repentance, and growth are all central to many major religions. *See, e.g.*, *Psalm* 51:10 ("Create in me a clean heart, O God, and

renew a right spirit within me."); *Luke* 15:7 ("Just so, I tell you, there will be more joy in heaven over one sinner who repents than over ninety-nine righteous persons who need no repentance."); *Surah al-Baqara* 2:222 ("Surely Allah loves those who turn unto him in repentance and loves those who purify themselves."); *Sri Guru Granth Sahib* at 70 ("[I]f you have committed the four great sins and other mistakes . . . if you then come to remember the Supreme Lord God, and contemplate Him, even for a moment, you shall be saved.").[4] Further, a requirement of perfect adherence would tend to favor less "demanding" religious traditions over those that impose heavy burdens on their adherence. Indeed, "[s]ome religions place unrealistic demands on their adherents; others cater especially to the weak of will. It would be bizarre for prisons to . . . in effect . . . promote strict orthodoxy[] by forfeiting the religious rights of any inmate observed backsliding." *Reed*, 842 F.2d at 963.

The district court therefore erred by placing dispositive weight—and focusing the entire substantial burden analysis—on Jones' alleged failure to request Islamic texts for the first 10 years of his confinement. 1-ER017-018 (rejecting Jones' RLUIPA claim because he failed to articulate why

[4] http://www.srigurugranth.org/0070.html

his faith required reading Islamic texts for Ramadan *now*, when he did not request those same texts previously). The decision to look solely to Jones' alleged *past* conduct in order to reject his *current* request for a religious accommodation was thus legal error. *See Hobbie*, 480 U.S. at 144 n.9. Even assuming the district court was right on the facts—a contested issue—its analysis left no room for Jones to grow or develop in his devotion—or repent for past shortcomings.

* * *

RLUIPA was intended to provide broad protection for all sincere religious beliefs and practice. The district court contravened this Congressional mandate. By weighing the validity of Jones' beliefs, the district court made it easier for other courts to reject religious accommodation claims from minority faiths with unfamiliar beliefs and practices. By assessing centrality, the district court inserted the federal judiciary into countless potential religious conflicts and further narrowed RLUIPA's scope. And, by demanding evidence of consistent religious practice, the district court drastically limited the number of prisoners able to obtain a religious accommodation. Each of these errors separately requires reversal.

CONCLUSION

The decision below should be reversed.

Date: February 8, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this *amicus* brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Cir. R. 32-1 because it contains 4,067 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief 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 it has been prepared in a 14-point proportionally spaced typeface using Microsoft Word 2019.

February 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2021, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

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