NO. 20-1237

In The
United States Court of Appeals
For The Tenth Circuit

TAJUDDIN ASHAHEED,

***Plaintiff – Appellant*,**

v.

THOMAS E. CURRINGTON,

***Defendant – Appellee*.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO – DENVER**

**The Honorable William J. Martinez, U.S. District Judge
District Court No. 1:17-cv-3002**

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF PLAINTIFF-APPELLANT

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RULE 29(a) STATEMENT OF CONSENT

Pursuant to Fed. R. App. P. 29(a), amicus curiae Institute for Justice states that all parties have consented to the filing of this brief.

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STATEMENT OF INTEREST

The Institute for Justice is a nonprofit public interest law center committed to defending the essential foundations of a free society by securing greater protection for individual liberty. Central to that mission is promoting judicial engagement, particularly in cases involving government's infringement on fundamental rights, including the free exercise of religion.[1]

BACKGROUND AND SUMMARY OF ARGUMENT

In addition to the reasons set forth in Appellant's Opening Brief, this Court should reverse the district court's grant of qualified immunity to Defendant-Appellee Thomas E. Currington on Plaintiff-Appellant Tajuddin Ashaheed's free exercise claim[2] on the grounds that:

(1) the district court applied the wrong legal standard by assessing qualified immunity based solely on a mechanical search for a published Tenth Circuit case with identical facts, and

(2) Currington's violation of a government policy that is obviously rooted in the very constitutional right at issue in this case evinces clear incompetence or a knowing violation of the law.

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[1] All parties have consented to the filing of this amicus curiae brief. No party's counsel authored this brief in whole or in part, and no person or entity other than the amicus made a monetary contribution toward the preparation and submission of this brief.

[2] Amicus focuses on Ashaheed's free exercise claim, but these arguments may also be relevant to and aid in the Court's analysis of his other claims.

***

Plaintiff-Appellant Tajuddin Ashaheed is a practicing Muslim. As part of his faith, he wears a beard. In 2016, he appeared for a prison intake process after being sentenced to 90 days of state incarceration for parole violations. During the intake process, he updated his intake file to reflect his Muslim faith. Aplt. App. 205–206.

Prison policy required prisoners to have their beards shaved during the intake process. But the policy provided an explicit religious exemption for those "who claim[] that a beard is a fundamental tenet of a sincerely held religious belief." Aplt. App. 70, 206.

Defendant-Appellee Thomas E. Currington conducted part of Ashaheed's intake process. After Ashaheed updated his file to indicate his Muslim faith, he also informed Currington that his religious beliefs required him to wear a beard. But upon threat of being "thrown in the hole," Currington forced Ashaheed to have his beard shaved, explaining only that Ashaheed must have a "full beard" to "qualify" for the religious exemption—which does not appear in the policy, and which Ashaheed explained he is physically unable to grow. Currington gave no other justification for his deliberate decision to force Ashaheed to shave his religiously-required beard upon threat of severe punishment. Aplt. App. 207.

Ashaheed sued Currington under 42 U.S.C. § 1983 for violating his constitutional rights. Among other claims, he alleged that Currington violated his First Amendment right to the free exercise of religion.

The district court granted Currington qualified immunity and dismissed Ashaheed's free exercise claim. Aplt. App. 279–283. As the district court acknowledged, this Court had already established that "prison guards may not take action against an individual prisoner which violates that prisoner's right to the free exercise of his or her religious beliefs." Aplt. App. 282.

But the district court refused to apply that specific First Amendment rule. Instead, it granted Currington qualified immunity simply because no case from the Supreme Court or this Court previously had occasion to apply the rule to the precise facts of this case—i.e., "requiring a Muslim inmate to shave his beard during the prison intake process." Aplt. App. 282–283. That search for a factually identical case was the entirety of the district court's qualified immunity analysis and its free exercise analysis.

This Court should reverse. It should make clear that the qualified immunity inquiry is not a rote, mechanical search for a case with identical facts. That is especially true outside of the Fourth Amendment excessive-force context, which the Supreme Court has indicated is different than situations—like Currington's here—that do not require split-second decision-making in potentially dangerous

circumstances. Rather (at least in situations like this one) the question is: whether, given the state of the law and the facts Currington knew or should have known, he had fair warning that he was violating Ashaheed's right to the free exercise of religion by forcing Ashaheed to shave his beard upon threat of punishment (without any safety or penological justification). This fair warning standard does not require Ashaheed to identify a factually identical case to overcome qualified immunity.

This Court should further hold that the fair warning standard is met here because Currington knew or should have known that (1) this Court already established the right to free exercise in the prison context, (2) Ashaheed's religious beliefs required him to wear a beard, and (3) the prison intake beard policy's clear and explicit exemption was, on its face, rooted in the First Amendment's protection for the free exercise of religion in the form of religiously-required beards. In light of these facts, the only reasonable inference is that Currington's violation of Ashaheed's right to free exercise was based on incompetence or a knowing violation of the law—either of which precludes granting him qualified immunity.

ARGUMENT

I. A constitutional violation is clearly established if the officer has "fair warning" that his conduct is unconstitutional.

The district court erred by treating the qualified immunity analysis as nothing but the rote search for a published Tenth Circuit case with identical facts.

A. The Supreme Court's "fair warning" standard governs this case.

Qualified immunity is a judge-made doctrine designed to shield government officers from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). But the doctrine does not provide a "license to lawless conduct." *Id.* at 819. Rather, "[w]here an official *could be expected to know* that certain conduct would violate statutory or constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action." *Id.* (emphasis added).

In other words, a government defendant is entitled to nothing more than "'fair warning' that his conduct deprived his victim of a constitutional right" before civil liability may attach. *Hope v. Pelzer*, 536 U.S. 730, 740 (2002). In *Hope*, the Court was asked to determine whether prison guards violated a prisoner's clearly established Eighth Amendment rights when they knowingly and deliberately chained him to a hitching post for seven hours. As here, the prison guards in *Hope* consciously acted and inflicted the punishment at issue "[d]espite

the clear lack of an emergency situation" and in the absence of "[a]ny safety concerns." *Id.* at 738. And, as here, the prison guards argued that the prisoner's rights were not clearly established in the absence of factually identical precedent. Rejecting such a "danger[ously] . . . rigid[] overreliance on factual similarity," *id.* at 742, the Supreme Court held that although similar prior cases can provide strong support for the conclusion that a right is clearly established, "they are not necessary to such a finding" because "the salient question . . . is whether the state of the law . . . gave respondents fair warning that their alleged treatment of Hope was unconstitutional." *Id.* at 741.

Hope illustrates the difference between the level of factual similarity with past cases the Supreme Court has required for the qualified immunity analysis in (1) Fourth Amendment excessive-force cases involving split-second decision-making in potentially dangerous circumstances versus (2) other contexts (like Currington's), in which officials are not potentially in danger. *See also Kisela v. Hughes*, 138 S. Ct. 1148, 1152–53 (2018).

Indeed, in *Sause v. Bauer*, 138 S. Ct. 2561, 2562–63 (2018), the Supreme Court reversed this Court's grant of qualified immunity on a free exercise claim despite "the absence of a prior case involving the unusual situation alleged to have occurred." Clearly, in situations of the sort presented here—in which Currington faced no emergent danger and acted deliberately—there is no danger in an officer

"be[ing] made to hesitate" before violating a person's rights. *Harlow*, 457 U.S. at 819. Rather, such hesitation is crucial to constitutional governance and policing.

B. The district court misconstrued the applicable legal standard.

The district court did not analyze, pursuant to the Supreme Court's "fair warning" standard, whether the totality of circumstances—including the facts and the law that Currington should have known—could put a reasonable officer in Currington's shoes on notice that forcing Ashaheed to shave his religiously-required beard would violate Ashaheed's right to the free exercise of his religion. Instead, the district court simply asked whether this Court had published a case with facts identical to this one. That was reversible error.

The district court acknowledged, citing *Tennyson v. Carpenter*, 558 F. App'x 813 (10th Cir. 2014), that "prison guards may not take action against an individual prisoner which violates that prisoner's right to the free exercise of his or her religious beliefs." Aplt. App. 282. But it went on to (1) give *Tennyson* short shrift merely because it is an unpublished decision of this Court and (2) in any event, reject *Tennyson* as clearly establishing the law of free exercise in the prison context merely because that case involved the denial of a Christian prisoner's participation in a religious choir instead of a Muslim prisoner's wearing of a religiously-required beard. This Court should make clear that the district court

erred in both regards, and that its analysis has the added infirmity of consciously disadvantaging adherents of minority religions.

First, this Court should decidedly reject the notion that its unpublished decisions do not constitute clearly established law. *Cf. Morris v. Noe*, 672 F.3d 1185, 1197 n.5 (10th Cir. 2012) (leaving the question open). There is simply no reason to expect that government officials are attuned to the difference between published and unpublished decisions of this Court, or that they calibrate their decision-making with an eye toward that technical distinction. This is true even if the lower courts must accept at face value *Harlow*'s invented "legal fiction" that government officials are aware of and read with precision the facts of every appellate decision handed down throughout the country and calibrate their conduct accordingly.[3] *See Lawrence v. Reed*, 406 F.3d 1224, 1237 (10th Cir. 2005) (Hartz, J., dissenting). At the very least, this Court should make clear that its unpublished decisions "may be used to illustrate clearly established law." *Delaughter v. Woodall*, 909 F.3d 130, 140 (5th Cir. 2018) (citing *Cooper v. Brown*, 844 F.3d 517, 525 n.8 (5th Cir. 2016)).

Second, this Court should reject the district court's decision to require Ashaheed to produce a published case from this Court declaring unconstitutional

[3] This characterization of the legal fiction is not an exaggeration, given that officials can be on notice of clearly established law on the basis of a "consensus of cases of persuasive authority" around the country. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

precisely the conduct at issue in this case. Aplt. App. 282–283. The district court's "rigid gloss on the qualified immunity standard . . . is not consistent with [Supreme Court] cases." *Hope*, 536 U.S. at 739. Especially in cases like this one—where the official faced no dangerous split-second decision—Ashaheed is not required to present a prior case with "materially similar" facts to demonstrate that Currington had fair warning that his treatment of Ashaheed was unconstitutional. *Id.*

This Court routinely reaffirms that the qualified-immunity analysis is not "a scavenger hunt for prior cases with precisely the same facts." *Kalbaugh v. Jones*, 807 F. App'x 826, 830 (10th Cir. 2020) (quoting *Perea v. Baca*, 817 F.3d 1198, 1204 (10th Cir. 2016)). The "more relevant inquiry [is] whether the law put officials on fair notice that the described conduct was unconstitutional." *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1284 (10th Cir. 2007) (citations omitted). Indeed, even "novel factual circumstances" can give rise to officer liability if the officer had fair warning. *Hope*, 536 U.S. at 741; *see also Cortez v. McCauley*, 478 F.3d 1108, 1122 (10th Cir. 2007) (majority opinion) (rejecting the need to identify "a case on all fours"); *id.* at 1144 n.11 (Gorsuch, J., concurring in part and dissenting in part) (same).

Under these well-established standards, the district court erred by limiting its analysis to the mechanical search for a published Tenth Circuit case involving a Muslim man's religiously-required beard. Moreover, by treating this Court's

pronouncement in *Tennyson* that "prison guards [like Currington] may not take action against an individual prisoner which violates that prisoner's right to the free exercise of his or her religious beliefs" as "too expansive," Aplt. App. 282, the district court failed to "reach the proper level of concreteness without overly limiting the factual context." *Melton v. Oklahoma City*, 879 F.2d 706, 729 (10th Cir. 1989), *overruled on other grounds*, 928 F.2d 920, 922 (10th Cir. 1991).

A sensible application of the qualified immunity inquiry would define the right at issue here in terms of *the free exercise of religion in the prison context in the absence of an emergent safety threat or other penological justification*. That would reach the proper level of concreteness, as required by this Court. Instead, the district court overly limited the factual context by defining the right at issue here in the hyper-narrow terms of *a religiously-required beard*. The district court's failure to take the sensible approach and instead mechanically search for a case precisely on all fours with Ashaheed's circumstances risks "transform[ing] . . . qualified immunity into an absolute shield." *Cox v. Wilson*, 971 F.3d 1159, 1165 (10th Cir. 2020) (Lucero, J., dissenting from denial of rehearing en banc).

The district court's approach also disproportionately burdens those belonging to minority religions, like Ashaheed, whose beliefs are statistically less likely to generate factually on-point case law. That approach unjustifiably leaves adherents of minority religions more susceptible to unredressed free exercise

violations than members of the majority religion. *See* Pew Research Center, "U.S. Muslims Concerned About their Place in Society, but Continue to Believe in the American Dream" (July 26, 2017), https://pewrsr.ch/31EM7xK (Muslims constitute only 1.1% of U.S. population).

For all of these reasons, this Court should apply the proper qualified immunity test and ask whether, *based on the facts known (or knowable) to Currington at the time of his actions*, he had fair warning that forcing Ashaheed to shave his beard in contravention of his religious beliefs would violate his right to the free exercise of his religion. *See White v. Pauly*, 137 S. Ct. 548, 550 (2017) (qualified immunity analysis is based on "the facts that were knowable to the defendant officer[]" at the time of his actions).

As explained in Part II, Currington had ample notice and fair warning that Ashaheed's religious conduct was protected by the First Amendment. By forcing Ashaheed to shave his beard, Currington was "plainly incompetent or . . . knowingly violate[d]" the Constitution's guarantee against unjustified restrictions on the free exercise of religion. *al-Kidd*, 563 U.S. at 743.

II. Based on the facts that Currington knew or should have known—including the prison's own religious beard intake policy—Currington had fair warning that forcing Ashaheed to shave his beard violated Ashaheed's right to the free exercise of his religion.

The absurdity of the district court limiting its legal analysis to the rote search for a case with identical facts is exacerbated by that approach's conscious disregard for the actual facts of the case before the court. The qualified immunity inquiry cannot ignore what a reasonable officer would do based on the actual circumstances presented. Therefore, as the Supreme Court and this Court have explained, the law and the facts that Currington knew or should have known are an important aspect of the qualified immunity analysis.[4]

Based on the state of the law and the facts that Currington knew or should have known at the time of his actions, he clearly had fair warning that forcing Ashaheed to shave his religiously-required beard would violate Ashaheed's First Amendment right to the free exercise of his religion. Currington knew or should have known that:

- this Court had clearly established that the First Amendment prohibits prison guards from depriving prisoners of their religious exercise, per *Tennyson*; *see also* Appellant's Opening Brief at 18–20 (explaining

[4] This does not risk transgressing the Supreme Court's explanation that the qualified immunity inquiry is an "objective" one. *See Hope*, 536 U.S. at 747. The question remains whether, objectively speaking, a reasonable officer *with the knowledge at hand* would have fair warning of the unconstitutionality of their conduct.

unconstitutionality of restricting religious exercise in prison context without valid penological purpose);

- Ashaheed was a practicing Muslim (as shown in his intake file), Aplt. App. 206;
- Ashaheed wore a beard for religious reasons, and shaving it would violate a core tenet of his Muslim faith (as Ashaheed explained to Currington directly), Aplt. App. 207;
- pursuant to the prison's own "Initial Intake" policy, "[a]n offender who claims that a beard is a fundamental tenet of a sincerely held religious belief will not be required to shave as long as the offender obtains documentation from the Office of Faith and Citizen Program's coordinator," Aplt. App. 70[5]; and
- this "Initial Intake" policy regarding religious beards was intended to safeguard prisoners' First Amendment right to the free exercise of religion (for the reasons explained below).

In these circumstances, it beggars belief that Currington did not have fair warning that he was violating the First Amendment by threatening to punish Ashaheed for exercising a fundamental religious tenet without any safety

[5] It is unclear from the record whether Ashaheed had documentation from the coordinator, but the record shows that Currington did not base his actions on that requirement, or even inquire about it. *See* Aplt. App. 206–209.

justification (let alone a split-second assessment of danger) and in violation of the prison's own intake beard policy.

As an initial mater, the district court was wrong to hold that *Tennyson*'s establishment that prison guards violate the Constitution by prohibiting the free exercise of religion "is far too expansive to clearly inform a reasonable officer in [Currington's] shoes that the particular conduct at issue [here] would violate" the First Amendment. Aplt. App. 282–83. But even if the caselaw left any doubt (which it did not, *see* Appellant's Opening Brief at 12–30), that doubt was erased when combined with Currington's actual knowledge of Ashaheed's religious beard requirement and of the prison's own intake policy permitting religious beards.

It has been clear since the invention of qualified immunity that the doctrine does not "allow the official who *actually knows* that he was violating the law to escape liability for his actions." *Harlow*, 457 U.S. at 821 (Brennan, J., concurring); *see also Pleasant v. Lovell*, 876 F.2d 787, 798 (10th Cir. 1989) (explaining that the "government official who actually knows that he is violating the law is not entitled to qualified immunity").

To be sure, "[o]fficials sued for constitutional violations do not lose their qualified immunity *merely* because their conduct violates some . . . administrative provision," such as the prison's intake policy regarding religious beards. *Davis v. Scherer*, 468 U.S. 183, 194 (1984) (emphasis added). But a pertinent "regulation

promulgated by" the government is "[r]elevant to the question whether [the state of the law] provided fair warning . . . that [his] conduct violated the Constitution." *Hope*, 536 U.S. at 743–44. Therefore, this Court should reaffirm and make clear that the violation of a government policy is a relevant consideration in determining whether the offending official was on notice or had fair warning that he was violating the constitutional right at issue.

As then-Judge Gorsuch wrote for this Court, if a prison official violates an internal policy that evinces a rationale to protect a particular right, then that violation of policy can support an inference that the official was subjectively aware of the unconstitutionality of his conduct. *Hostetler v. Green*, 323 F. App'x 653, 657–58 (10th Cir. 2009) (Gorsuch, J.). In other words, if the prison's intake beard policy was designed to prevent the sort of constitutional violation alleged in this case, Currington's violation of the policy strongly supports—and helps establish—the conclusion that his violation of Ashaheed's free exercise right was based on incompetence or a knowing violation of the First Amendment.

And there is no doubt that the prison's intake beard policy evinces—on its face—a rationale to protect prisoners' free exercise right in the form of religious beards. The language of the policy precisely tracks that of relevant First Amendment caselaw—of which Currington is presumed to be intimately aware for purposes of the qualified immunity analysis. *Compare* CDOC Policy, Aplt. App.

96 ("An offender who claims that a beard is a *fundamental tenet* of a *sincerely held religious belief* will not be required to shave . . . .") (emphases added), *with, e.g.*, *Tennyson v. Carpenter*, 558 F. App'x 813, 818 (10th Cir. 2014) ("To assert a *free-exercise claim under the First Amendment* . . . , a prisoner must allege a substantial burden on his or her *sincerely held religious beliefs*.") (emphases added) (collecting cases); *Grissom v. Werholtz*, 524 F. App'x 467, 473 (10th Cir. 2013) (free exercise claim requires showing that prison "substantially burdened [a] *sincerely-held religious belief*") (emphasis added); *Boles v. Neet*, 486 F.3d 1177, 1182 (10th Cir. 2007) (free exercise violation by prison official requires showing substantial burden on "*sincerely-held religious beliefs*") (emphasis added); *LaFevers v. Saffle*, 936 F.2d 1117, 1119 (10th Cir. 1991) ("if plaintiff's religious beliefs are *sincerely held*, he is *entitled to First Amendment protection*") (emphases added).

Indeed, this Court has held in a similar context that a prisoner's "deep religious conviction against cutting his hair . . . , so long as it is sincere, entitle[s] him to invoke the protection *of the First Amendment*." *Binsz v. Cody*, 38 F.3d 1220 (Table), at *4 (10th Cir. 1994) (collecting cases) (emphasis added); *see also Longstreth v. Maynard*, 961 F.2d 895, 903 n.7 (10th Cir. 1992) (explaining "courts have consistently held that" free exercise challenges to prison grooming regulations "raise significant claims which require full evidentiary development").

And Ashaheed made clear to Currington directly that the beard was a "core tenet of his [Muslim] faith." Aplt. App. 207.

Finally, the Supreme Court had already held, under the Religious Land Use and Institutionalized Persons Act (RLUIPA), that forcing a Muslim prisoner to shave his beard substantially burdens his free exercise of religion. *See Holt v. Hobbs*, 574 U.S. 352, 361–62 (2015). That case was not decided on First Amendment grounds, but it made clear that RLUIPA and the First Amendment protect similar interests, even if RLUIPA provides greater protection. *Id.*

In these circumstances, Currington's violation of the prison's intake beard policy is a relevant and crucial consideration in the qualified immunity analysis, because the policy was clearly designed to guard against the very constitutional violation at issue here: the shaving of religiously-required beards during the prison intake process. *See Hostetler*, 323 F. App'x 653, 657–58 (collecting cases); *see also Hope*, 536 U.S. at 743–44 (violation of regulation is relevant to the qualified immunity inquiry); *Weigel v. Broad*, 544 F.3d 1143, 1155 (10th Cir. 2008) ("the reasonableness of an officer's actions must be assessed in light of the officer's training," which is relevant to determining whether the officer violated clearly established law); *Frasier v. Evans*, Civil Action No. 15-cv-01759-REB-KLM, 2018 WL 6102828, at *3 (D. Colo. Nov. 21, 2018) (when government policy is not

a "quirk" but rather is "consistent with [a] constitutional imperative," it bears on the qualified immunity inquiry).[6]

This Court should take these factors into account in its qualified immunity analysis. It should reject the district court's mechanical search for a case with identical facts and make clear that the actual circumstances of a constitutional violation matter in determining whether a government official is entitled to qualified immunity, or whether his misconduct was the product of incompetence or a knowing violation of the law.

[6] In a different context that did not involve qualified immunity—but the high bar of showing "egregious" Fourth Amendment violations in the immigration enforcement context—the Ninth Circuit explained that the constitutional egregiousness inquiry should take into account a government official's violation of a "regulation . . . intended to reflect constitutional restrictions" if the regulation is "rooted in the Fourth Amendment" and "for the benefit of" the people. *Sanchez v. Sessions*, 904 F.3d 643, 651–52 (9th Cir. 2018). Similarly here, the prison intake beard policy was obviously rooted in and intended to protect the First Amendment's protection for prisoners' free exercise of religion in the form of religiously-required beards.

CONCLUSION

This Court should reverse the district court's grant of qualified immunity because Currington was on notice and had fair warning that he was violating Ashaheed's First Amendment right to the free exercise of his religion by forcing him to shave his religiously-required beard.

Dated: October 30, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,168 words, excluding the parts of the brief exempt by Fed. R. App. P. 32(f).

2. This document 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 Word for Office 365, in 14 point Times New Roman font.

Dated: October 30, 2020

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Webroot SecureAnywhere Endpoint Protection, version 9.0.28.48, updated May 18, 2020, and according to the program are free of viruses.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2020, I electronically filed a copy of the foregoing brief with the Clerk of the United States Court of Appeals for the Tenth Circuit using the Court's appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users who will be served by the appellate CM/ECF system.

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Date: Monday, October 26, 2020 11:38:59 AM

Hi Mr. Tsitsuashvili,

We do not oppose you filing an amicus brief. Thank you for reaching out.

Best,
Josh

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Dear Counsel – I write on behalf of the Institute for Justice regarding the above-captioned case, currently on appeal at the Tenth Circuit. Pursuant to FRAP 29(a)(2), we respectfully request your consent for us to file an amicus brief in the case. Our brief would be in support of Plaintiff-Appellant Tajuddin Ashaheed, and it would be on the Institute for Justice's own behalf. Ashaheed's counsel has already consented.

The Institute for Justice is a nationwide non-profit public interest law firm. We litigate First Amendment and government accountability cases around the country—hence our interest in this case.

Please let me know by Monday October 26 whether your client consents to our filing of an amicus brief, or whether we will need to seek leave of the Court.

Thank you,

Jaba Tsitsuashvili
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Appellant consents.

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To: David M Shapiro <david.shapiro@law.northwestern.edu>
Cc: Casey Nasca <cnasca@ij.org>
Subject: RE: Consent to file amicus brief in Ashaheed v. Currington

Just following up on this, because the rules require us to attach the parties' consent. Thanks, David.

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From: Jaba Tsitsuashvili <jtsitsuashvili@ij.org>
Sent: Wednesday, October 28, 2020 11:23 AM
To: David M Shapiro <david.shapiro@law.northwestern.edu>
Cc: Casey Nasca <cnasca@ij.org>
Subject: Consent to file amicus brief in Ashaheed v. Currington

Dear David – Can you please confirm in writing Appellant's consent for the Institute for Justice to file an amicus brief in support of Appellant in Ashaheed v. Currington, 10th Cir. No. 20-1237.

Thank you,

Jaba Tsitsuashvili
Attorney

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