No. 22-2342

United States Court of Appeals for the Seventh Circuit

THOMAS WALKER

Appellant,

v.

JOHN BALDWIN, ET AL.,

Appellees

Appeal from the United States District Court for the Northern District of Illinois, Western Division No. 3:19-cv-50233. The Honorable Iain D. Johnston, Judge Presiding.

BRIEF AND SHORT APPENDIX FOR APPELLANT THOMAS WALKER

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Thomas Walker

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Attorney's Signature: s/Eugene A. Schoon Date: August 9, 2022

Attorney's Printed Name: Eugene A. Schoon

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Attorney's Signature: s/ Dhaviella N. Harris Date: August 10, 2022

Attorney's Printed Name: Dhaviella N. Harris

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Seventh Circuit Rule 34(f), Appellant respectfully requests oral argument. This appeal raises an important and recurring question regarding the interpretation of a federal statute. Oral argument would aid the Court's decisional process.

JURISDICTIONAL STATEMENT

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 because Appellant, Thomas Walker, raised claims under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq*. The district court granted summary judgment on all claims against Walker and entered final judgment on June 30, 2022. A17-18. Walker timely filed a notice of appeal on July 29, 2022. *Notice of Appeal*, Dkt. 94. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

INTRODUCTION

This case raises the question of whether RLUIPA authorizes money damages against state officials who violate prisoners' religious rights while acting in their individual capacities. The answer is yes, damages are available in such suits. In particular, the Supreme Court's recent decision in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), confirms that damages are available in individual-capacity suits and abrogates this Court's contrary decision in *Nelson v. Miller*, 570 F.3d 868, 889 (7th Cir. 2009).

In *Tanzin*, the Supreme Court held that the clear text of RLUIPA's sister statute—the Religious Freedom Restoration Act (RFRA)—authorizes money damages against officers in their individual capacities. 141 S. Ct. at 489. Damages must be available here as well. The text of

RLUIPA's remedial provision is materially identical to RFRA's, as both use exactly the same reference to "appropriate relief" against a state official. Moreover, Congress enacted RFRA and RLUIPA for the same reason: To protect religious liberty by restoring the "compelling interest" test and remedial regime that existed before *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). And before *Smith*, a state prisoner whose religious rights were violated could have sought money damages in an individual-capacity suit under 42 U.S.C. § 1983 against the state official who perpetrated the violation. This Court thus should interpret RLUIPA the same way as RFRA and restore the key remedy a state prisoner would have had before *Smith*: money damages in an individual-capacity suit against a state official.

Tanzin's reasoning for holding that damages are "appropriate relief" under RFRA also applies *a fortiori* to RLUIPA. Not only do the text, history, context, and purpose of the statute all support that result, but also damages are "the *only* form of relief that can remedy some . . . violations" of religious freedoms. *Tanzin*, 141 S. Ct. at 492. Indeed, the facts of this case vividly illustrate the point.

The plaintiff, Thomas Walker, is a devout Rastafarian who had grown his hair in dreadlocks since 2013 as part of a religious vow. When he first entered the Illinois State prison system, Walker continued to keep his hair

in dreadlocks, in observance of his religious beliefs. However, in late May 2018, two of the defendants, corrections officers at Dixon Correctional Center ("Dixon"), demanded that Walker remove his dreadlocks, despite being informed of their religious significance. When Walker refused to violate his religious vow, Defendants placed him in segregation and eventually left him with no choice: A tactical unit would forcibly remove his dreadlocks if Walker did not relent, so he submitted to the threat. The prison barber removed his dreadlocks, violating Walker's sincerely held religious beliefs.

Notably, although Defendants cited security concerns and a supposed policy against dreadlocks as the basis for their actions, the record indicates those concerns were pretextual. Walker had his hair in dreadlocks for weeks before the incident, and he was allowed to grow them afterwards. Indeed, Walker kept his hair in dreadlocks for the rest of his prison sentence—*three years*—without further incident. Remarkably, at the time of his release, Walker had substantially similar dreadlocks to the ones he had when he first entered Dixon. Moreover, numerous other inmates were permitted to have dreadlocks, and the prison's practice showed a less-restrictive alternative of guards simply running their fingers through an inmates' hair. That powerfully undercuts Defendants' claimed security jus-

tification, and instead supports Walker's contention that the guards violated his religious beliefs and that their conduct cannot be justified under strict scrutiny.

Because of *Nelson*, however, Walker has obtained no remedy whatsoever because of the happenstance that he has been released from prison: Damages are unavailable under *Nelson*, and injunctive relief is now moot. Indeed, under *Nelson*, a prison could unilaterally avoid liability in many RLUIPA suits by strategically transferring a prisoner to a different facility, rendering an injunction moot. That would flout Congress's obvious intent in enacting not one but two statutes to restore the protections of religious exercise that existed before *Smith*. This Court should thus should follow *Tanzin* and hold that *Nelson* has been abrogated and is overruled.

STATEMENT OF ISSUES

1. Whether RLUIPA's express cause of action for "appropriate relief" against a state official who violates a prisoner's religious freedom authorizes an award of monetary relief against such an official acting in their individual capacity.

2. Whether Defendants violated Walker's rights under RLUIPA when they forced him to remove his dreadlocks in violation of his sincerely held religious beliefs.

STATEMENT OF THE CASE

A. Factual Background

1. Appellant Thomas Walker is a devout Rastafarian. *Pl.'s Statement of Additional Material Facts* (*"Pl. Statement"*), Dkt. 82, ¶ 4. In 2013, Walker took the Nazarite vow of separation, and thus committed himself to never drink alcohol, never eat meat or dairy, and never cut his hair. *Pl. Statement,* Ex. 1, Dkt. 82, ¶¶ 2-6. Walker holds the sincere religious belief that his hair serves as the "physical embodiment of his spiritual connection to Jah [(God)]," *id.* ¶ 6, and that cutting his hair "would sever [his] physical connection" to God, *id.* ¶¶ 25-26.

Walker's "Rastafarian dreadlock journey" began in 2013, when his longtime girlfriend, Haley Currie, inspired him to "live in Jah's (God) image." *Id.* ¶¶ 2, 4, 8. As Walker's hair grew out, Haley "began the process of 'locking' [it] into styled dreadlocks." *Id.* ¶ 2. In May 2019, Haley died a tragic and untimely death, and Walker's dreadlocks took on additional significance as a bridge to her memory, as well as to God. *Id.* ¶ 8.

2. In March 2018, Walker was incarcerated at Stateville Northern Reception Center. *Pl. Statement*, Dkt. 82, ¶ 8. He was permitted to keep his dreadlocks, consistent with his faith. *Id.* ¶¶ 8-9. In early April 2018, he was transferred to Dixon and registered in the prison system's online database as a practicing Rastafarian. *See Pl. Statement*, Ex. 1, Dkt. 82,

¶¶ 13-14. Walker was permitted to wear dreadlocks without incident during his first six weeks at Dixon. *Id.* ¶¶ 13-15; *Pl. Statement*, Dkt. 82, ¶ 10.

On May 25, 2018, a corrections officer—defendant Colin Brinkmeier—informed Walker at an intake interview that his dreadlocks had to be removed for "security" reasons. *Pl. Statement*, Ex. 1, Dkt. 82, ¶¶ 15-18. Walker refused. *Id.* ¶ 19. He told Officer Brinkmeier that he "had taken the Nazarite vow of separation" and that cutting his hair would violate his religious beliefs by "sever[ing] [his] physical connection to Jah [(God)]." *Id.* ¶¶ 25-26. Officer Brinkmeier was unmoved: "we'll see" is all he said. *Defs.' Statement of Undisputed Material Facts* (*"Defs. Statement"*), Ex. 1, Dkt. 75-1, at 9 (29:2-4). Later that day, Officer Brinkmeier returned with another corrections officer, Lieutenant John Craft, and ordered Walker to remove his dreadlocks. *Pl. Statement*, Ex. 1, Dkt. 82, ¶¶ 21, 27. Walker again refused, standing on his sincere religious beliefs. *Id.* ¶ 27.

Defendants disciplined Walker for his disobedience. They placed him in segregated housing (colloquially known as "the hole") in order to pressure him into violating his faith. *Id.* ¶¶ 28-30; *Defs. Statement*, Dkt. 75, ¶ 37. Rather than acquiesce, Walker submitted an emergency grievance, seeking an accommodation from the prison based on his sincere religious beliefs. *Pl. Statement*, Ex. 1, Dkt. 82, ¶ 29; *Compl.*, Dkt. 1, at 15. Defendant

John Varga, the prison warden at the time, denied Walker's request without explanation. *Compl.*, Dkt. 1, at 15-16. Walker spent several days in the hole, before Officer Brinkmeier and Lieutenant Craft ordered him once more to remove his dreadlocks. *Pl. Statement*, Ex. 1, Dkt. 82, ¶ 30. Again, Walker refused. *Id.*

On June 1, 2018, Officer Brinkmeier and Lieutenant Craft returned to the hole—except this time, they brought with them a tactical team and mace. *Pl. Statement*, Dkt. 82, ¶ 16; *Compl.*, Dkt. 1, at 8. Defendants ordered Walker for the last time to remove his dreadlocks and threatened that, if Walker failed to comply, the "Orange Crush" tactical unit would forcibly remove his dreadlocks. *Pl. Statement*, Dkt. 82, ¶ 16; *Pl. Statement*, Ex. 1, Dkt. 82, ¶ 31. This threat left Walker no choice. Fearing for his safety, and mindful of the "reputation of Orange Crush,"[1] Walker relented unwillingly and the prison barber severed his dreadlocks. *Pl. Statement*, Dkt. 82, ¶ 17; *Pl. Statement*, Ex. 1, Dkt. 82, ¶¶ 31-32.

After this incident, Walker immediately began to regrow his dreadlocks. *Pl. Statement*, Ex. 1, Dkt. 82, ¶ 35. Walker kept his dreadlocks for the duration of his stay at Dixon—three years without further incident.

[1] *See, e.g.*, *Ross v. Gossett*, 33 F.4th 433, 436 (7th Cir. 2022) (class action detailing the "demeaning," abusive, and unconstitutional practices of Orange Crush).

Pl. Statement, Dkt. 82, ¶¶ 19-20, 22. He regrew his dreadlocks to a "substantially similar" length but did not face additional discipline. *Pl. Statement*, Ex. 1, Dkt. 82, ¶¶ 35-36. Instead, "before and after visitations," prison officers would simply run their gloved hands through his thin dreadlocks. *Id.* ¶ 37. Walker's situation was hardly unique. During his time at Dixon, he noticed that many of the other inmates were similarly permitted to wear dreadlocks, *Pl. Statement*, Dkt. 82, ¶ 21, despite a supposedly blanket policy against the hairstyle.

B. Procedural History

In late 2019, while still incarcerated at Dixon and after exhausting administrative remedies, Walker filed a *pro se* complaint in the U.S. District Court for Northern District of Illinois, asserting violations of his rights under the Free Exercise Clause and RLUIPA. *See Compl.*, Dkt. 1, at 15-22. He sought injunctive, declaratory, and monetary relief against Defendants in their official and individual capacities. *Id.* at 1, 13-14.

Walker's *pro se* complaint was reviewed pursuant to 28 U.S.C. § 1915(e)(2)(B). Then-district court Judge Lee held that Walker had a "viable claim" under RLUIPA and authorized him to proceed with his claim for injunctive relief. A5. But applying *Nelson*, the court held that Walker "cannot secure monetary damages." *Id.* (citing *Nelson*, 570 F.3d at 889).

On July 30, 2020, Walker was released from Dixon. *Pl. Statement*, Dkt. 82, ¶ 22. In September 2021, Defendants moved for summary judgment on all claims. *Defs.' Mot. for Summ. J.*, Dkt. 74. Citing *Nelson*, Defendants reiterated that "RLUIPA does not allow for damages against prison officials in their individual capacity." *Defs' Mem. of Law in Supp. of Summ. J.*, Dkt. 76, at 8. They also argued that Walker's release mooted his request for injunctive relief. *Id.*

The district court (Johnston, J.) granted summary judgment on all claims. A17. The court found "stunning" Defendants' representations that they were not familiar with Rastafarianism, A11, and was "troubled by [their] purported justification for the de facto policy of cutting off Walker's dreadlocks." A12. The district court also listed extensive record evidence that badly undermined Defendants' security justification: among other things, (1) Walker was permitted to have dreadlocks for the first few months he was incarcerated; (2) Walker was then permitted "to regrow [his] dreadlocks for the remainder of his time at Dixon"; (3) "numerous correctional centers have and continue to allow inmates to wear dreadlocks"; (4) prior to October 2017, Dixon permitted its inmates to have dreadlocks "without catastrophic chaos ensuring"; and (5) many other inmates at Dixon were permitted to keep their dreadlocks, even after Walker was forced to remove his. A8, A12. Given these inconsistencies, the district

court came "close" to dismissing Defendants' allegations as nothing more than "bald, contradictory, and implausible representations." A12-13.

In the end, however, the court felt compelled to dismiss Walker's RLUIPA claim under *Nelson*. Bound by "[c]ontrolling Seventh Circuit law," the court explained that Walker's "RLUIPA claim fails because he has already been released" and the statute does not authorize damages against officers in their individual capacities. A13-14 & A13 n.4 (citing *Nelson*, 570 F.3d at 884, 888). The court also dismissed his parallel First Amendment claim based on qualified immunity. A13-17.

Walker timely appealed. *Notice of Appeal*, Dkt. 94.

SUMMARY OF THE ARGUMENT

I. RLUIPA authorizes a state prisoner to obtain money damages against a state official who, acting in his or her individual capacity, violates the prisoner's religious rights. The Supreme Court's decision in *Tanzin* abrogates this Court's prior precedent in *Nelson* and in turn forecloses the district court's holding barring monetary relief.

Tanzin relied on RFRA's text, context, history, and purpose to hold that it provides a damages remedy against state prison officials acting in their individual capacities. The Court explained that damages are "appropriate relief" under RFRA because: (1) RFRA was enacted to restore the

pre-*Smith* remedial regime, under which it was well established that damages could be awarded in individual-capacity suits against officers; (2) damages are often the "*only* form of relief that can remedy some RFRA violations"; and (3) unlike other statutes, Congress did not explicitly foreclose damages as an available remedy. *Tanzin*, 141 S. Ct. at 491-92.

The text, context, history, and purpose of RLUIPA are materially identical, and all three textual reasons for why the Supreme Court held that damages were "appropriate" under RFRA apply with equal force to RLUIPA. If anything, the case for damages under RLUIPA is even stronger: RLUIPA mandates that it be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by . . . the Constitution," 42 U.S.C. § 2000cc-3(g), and the committee report supporting RLUIPA expressly states that RLUIPA's private cause of action would include a damages remedy, H.R. Rep. 106-219, at 2, 29 (1999). As the Supreme Court has consistently "given" both RLUIPA and RFRA "the same broad meaning," *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 696 n.5 (2014), this Court thus should construe RLUIPA's materially identical remedial provision in line with *Tanzin* to permit damages suits against state officers in their individual capacities.

This Court's prior decision to the contrary in *Nelson* in turn should be overruled, as *Tanzin* abrogates its reasoning. Among other things, *Nelson*

did not grapple with the statutory text; rather, it invoked constitutional avoidance over concerns that RLUIPA's remedial provision would exceed Congress's power under the Spending Clause if it was construed to impose individual damages liability on state officers, who are not direct recipients of federal funds. 570 F.3d at 886-89. In *Tanzin*, however, the Court found that RFRA's text "clear[ly]" allows for individual-capacity suits. 141 S. Ct. at 490. And in the absence of an alternative, plausible construction, constitutional avoidance is inapplicable. *See Clark v. Martinez*, 543 U.S. 371, 381 (2005); *Jennings v. Rodriguez*, 138 S. Ct. 830, 836, 842 (2018). Relying on avoidance to narrow the scope of RLUIPA's protection further conflicts with the statutory text, as Congress specified that RLUIPA "shall be construed . . . to the maximum extent permitted by . . . the Constitution." 42 U.S.C. § 2000cc-3(g).

In any event, *Nelson*'s constitutional concerns are misplaced. The Court expressed concern that Congress could not use Spending Clause legislation to impose liability on a non-recipient of federal funds. *Nelson*, 570 F.3d at 886-89. But the Supreme Court has previously upheld Congress's authority under the Spending Clause, coupled with the Necessary and Proper Clause, to do just that. *See Sabri v. United States*, 541 U.S. 600, 602-08 (2004). Under *Sabri*, the imposition of individual liability under RLUIPA is constitutional as well. Otherwise, Congress's express condition

attached to the receipt of federal funds would be largely toothless, as the officers and agents of a grant recipient could simply ignore Congress's command and, in many cases, no remedy would be available to the victim.

This Court accordingly should follow *Tanzin*, abrogate *Nelson*, and hold that RLUIPA provides a damages remedy in individual-capacity suits against state officers who violate an inmate's religious rights.

II. At a minimum, this Court therefore should vacate and remand so that the district court can analyze Walker's claims under RLUIPA's strict-scrutiny framework. Given the state of the record, however, this Court could also reverse the grant of summary judgment and remand for a trial on the merits of Walker's RLUIPA claim.

RLUIPA provides that once Walker meets his initial burden of showing Defendants' anti-dreadlocks policy imposed a "substantial burden on [his] religious exercise," the burden then shifts to Defendants to prove their policy passes muster under heightened scrutiny. *See* 42 U.S.C. § 2000cc-1(a). There are triable issues of fact on both prongs. First, Defendants' policy substantially burden Walker's religious exercise because he faced a Hobbesian choice: violate his religion or suffer disciplinary consequences. Second, the district court's decision detailed the various aspects of Defendants' policy that are both under and over-inclusive, meaning the policy would likely fall under heightened scrutiny. Prior to October 2017,

Dixon, as many other prisons still do, allowed prisoners to have dreadlocked hair, and even during Walker's incarceration, Dixon inconsistently applied its supposedly blanket policy—permitting other prisoners to have dreadlocks and Walker to regrow his dreadlocks after June 2018. A8, A12. As such, this Court should reverse and remand for trial or, at a minimum, vacate and remand.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment *de novo*, viewing the evidence in the light most favorable to the non-movant, Walker, and drawing all reasonable inferences in his favor. *FTC v. Credit Bureau Ctr., LLC*, 937 F.3d 764, 768 (7th Cir. 2019).

ARGUMENT

I. RLUIPA Authorizes Monetary Relief Against Prison Officials in Their Individual Capacity

The district court erred in following this Court's decision in *Nelson*, which held that "RLUIPA does not allow for personal capacity claims against individual defendants" for money damages. A5 (citing *Nelson*, 570 F.3d at 889); A13-14 & A13 n.4. *Nelson* was decided more than a decade ago and without the benefit of the Supreme Court's intervening decision in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020). *Tanzin* held that RFRA's identically worded remedial provision authorizes money damages against officers in their individual capacities. *Id.* at 489. This Court "may overturn

circuit precedent for compelling reasons," and "[a]n intervening Supreme Court decision that displaces the rationale of [prior] precedent is one such reason." *See Credit Bureau Ctr.*, 937 F.3d at 776 (citations omitted). Indeed, "[e]ven in the realm of statutory interpretation, a Supreme Court decision 'on an analogous issue that compels [the Court] to reconsider [its prior] position' counts as a compelling reason to overturn precedent." *Id.* at 786 (citation and quotation marks omitted). Because *Tanzin* abrogates *Nelson*, this Court should reverse.[2]

A. The Supreme Court's Decision in *Tanzin* Confirms That Damages Constitute "Appropriate Relief" in Individual Capacity Suits Under RLUIPA

1. Congress Enacted Both RFRA and RLUIPA to Reinstate the Remedial Landscape That Existed Prior to the Supreme Court's Decision in *Employment Division v. Smith*

Congress enacted both RFRA and RLUIPA in reaction to the Supreme Court's decision in *Employment Division v. Smith*, 494 U.S. at 885-90. In *Smith*, the Court held for the first time that "the First Amendment tolerates neutral, generally applicable laws that burden or prohibit religious acts even when the laws are unsupported by a narrowly tailored,

[2] A panel of this Court has the authority to overrule prior circuit precedent if it complies with the procedures of Seventh Circuit Rule 40(e). *See, e.g.*, *Rubin v. Islamic Republic of Iran*, 830 F.3d 470, 487 & n.6 (7th Cir. 2016), *aff'd*, 138 S. Ct. 816 (2018); *Lee v. Clinton*, 209 F.3d 1025, 1027 (7th Cir. 2000).

compelling governmental interest." *Tanzin*, 141 S. Ct. at 489. *Smith* effected a significant shift in the Supreme Court's free exercise jurisprudence. In prior cases, such as *Wisconsin v. Yoder*, 406 U.S. 205, 215, 220-21 (1972), the Supreme Court had recognized that the Free Exercise Clause may sometimes compel individualized exemptions from a neutral and generally applicable law, whenever necessary to alleviate a "substantial burden" on religion.

Congress overwhelmingly preferred that pre-*Smith* regime, and it quickly "sought to counter" *Smith*'s practical effects with bipartisan legislation. *Tanzin*, 141 S. Ct. at 489. First through RFRA, and later through RLUIPA, Congress restored the pre-*Smith* standard by "provid[ing] a claim . . . to persons whose religious exercise is substantially burdened by government." *Id.* (alteration and omission in original) (quoting 42 U.S.C. §§ 2000bb(b)(1)-(2)). As originally enacted, RFRA covered both state and federal government officials. 42 U.S.C. § 2000bb-2(1) (1993). In *City of Boerne v. Flores*, 521 U.S. 507, 532 (1997), however, the Supreme Court invalidated RFRA's state applications as exceeding Congress's powers under the Fourteenth Amendment.

Congress responded "by enacting RLUIPA, which applies to the States and their subdivisions and invokes congressional authority under the Spending and Commerce Clauses." *Holt v. Hobbs*, 574 U.S. 352, 357

(2015). After RFRA, "RLUIPA is Congress' *second attempt* to accord heightened statutory protection to religious exercise in the wake of this Court's decision in [*Smith*]." *Sossamon v. Texas*, 563 U.S. 277, 281 (2011) (emphasis added). Both provisions were designed to restore all of the "protections and rights" that were previously available to free-exercise plaintiffs under the pre-*Smith* regime—including money damages for individual-capacity suits, which had previously been available under 42 U.S.C. § 1983. *Tanzin*, 141 S. Ct. at 492. Though RLUIPA has a "less sweeping" scope than RFRA (*i.e.*, it applies only to land issues and institutionalized persons), *Sossamon*, 563 U.S. at 281, its rights-creating language still "mirrors RFRA" in all relevant respects, *Holt*, 574 U.S. at 357-58, and the substantive provisions of the two statutes have always been "given the same broad meaning," *Hobby Lobby*, 573 U.S. at 696 n.5.

Most significant here, the remedial clauses of the two statutes are materially identical: a person may "obtain appropriate relief against a government," 42 U.S.C. § 2000bb-1(c); *id.* § 2000cc-2(a), and "government" is defined to include an "official" and any "other person acting under color of State law," *id.* § 2000bb-2(1); *id.* § 2000cc-5(4); *compare* 42 U.S.C. § 1983. The question in this case is whether that language authorizes damages in individual-capacity suits under RLUIPA. It does.

2. *Tanzin* Held That Damages Are Appropriate in Individual Capacity Suits Under RFRA

In *Tanzin*, the Supreme Court interpreted the phrase "appropriate relief against a government," as it appears in RFRA, to authorize claims for money damages against federal officials acting in their individual capacities. The Court held, first, that RFRA's text "clear[ly]" allows for individual-capacity suits. *Tanzin*, 141 S. Ct. at 490. The phrase "persons acting under color of law," the Court explained, "draws on one of the most well-known civil rights statutes: 42 U.S.C. § 1983," which had long been understood "to permit suits against officials in their individual capacities" for money damages. *Id.* "Because RFRA uses the same terminology as § 1983 in the very same field of civil rights law," the Court interpreted the two statutes to "'bear[] a consistent meaning'" in authorizing individual capacity suits. *Id.* at 490-91 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012)).

Next, *Tanzin* turned to the question of whether damages constitute "appropriate relief" in such suits. The Court answered that question in the affirmative, and solely by reference to the "phrase's plain meaning at the time of enactment." *Id.* at 491. The Court, in its analysis, made three textual points that bear heavily on this appeal:

First, though the meaning of the phrase "appropriate relief" is "inherently context dependent," the Court stressed that "damages have long

been awarded as appropriate relief" "[i]n the context of suits against Government officials" in their individual capacities. *Id.* (citation and internal quotation marks omitted). As *Tanzin* explains, damages were "commonly available against state and local government officials" under Section 1983 when RFRA was enacted. *Id.* at 491-92. Hence, prior to the Supreme Court's decision in *Smith*, free-exercise plaintiffs could sue state officials for damages under Section 1983 whenever their religious exercise was substantially burdened. *Id.* Because Congress enacted RFRA to reverse the effects of *Smith* and restore that full remedial landscape, *Tanzin* explains, Congress "at the time of [the statute's] enactment" would have understood money damages to constitute "appropriate relief" in individual capacity suits. *Id.* "Given that RFRA reinstated pre-*Smith* protections and rights, parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*. That means RFRA provides, as one avenue for relief, a right to seek damages against Government employees." *Id.* at 492.

Second, Tanzin stressed that damages must be "appropriate" because, in certain circumstances, they are the "*only* form of relief that can remedy some RFRA violations." *Id.* at 492. To illustrate the problem, the Supreme Court cited the infamous case of *Yang v. Sturner*, in which a medical examiner performed an autopsy on a young Hmong man without

notice to his family and in violation of their religious beliefs. 728 F. Supp. 845, 846, 856 (D.R.I. 1990). The Yang family sued for damages—because an injunction would have done nothing to remedy the past harm to the body. *See id.* at 847, 850-51. The district court in that case originally held, under the pre-*Smith* free-exercise standard, that the family's damages case against the examiner could proceed. *Id.* at 855-57. Then, the Supreme Court decided *Smith*, leading the district judge to reverse himself because the statute authorizing the autopsy was a generally applicable law. *Yang v. Sturner*, 750 F. Supp. 558, 559-60 (D.R.I. 1990).

Congress enacted RFRA specifically in response to cases like *Yang*, in which *Smith* left free-exercise plaintiffs without a remedy. *City of Boerne*, 521 U.S. at 530-31 ("Much of the discussion" about the need for RFRA "centered upon anecdotal evidence of autopsies performed on Jewish individuals and Hmong immigrants in violation of their religious beliefs."); *Tanzin*, 141 S. Ct. at 492. In cases like those, where the body had already been defiled, damages offered the "*only* form of relief" available to remediate the violation. *Tanzin*, 141 S. Ct. at 492. *Tanzin* thus teaches that it would be "odd to construe" the phrase "appropriate relief" to preclude all meaningful relief for plaintiffs like the Yangs, given that RFRA was specifically enacted to undo *Smith's* practical effects in precisely those sorts of cases. *Id.*

Third, and finally, *Tanzin* explained that Congress "knew how to" foreclose damages for plaintiffs like the Yangs (or Walker), if that was indeed Congress's intention. *Id.* Congress, for example, could have restricted RFRA's remedial language to provide only "appropriate *equitable* relief," 29 U.S.C. § 1132(a)(3) (emphasis added), or "any *equitable* relief that may be appropriate or necessary," 15 U.S.C. § 78u(d)(5) (emphasis added), or "*equitable* relief as the court deems appropriate," 42 U.S.C. § 2000e-5(g)(1) (emphasis added). But Congress declined to limit available remedies in that way. Instead, Congress chose the broader formulation "appropriate relief," with the stated aim of restoring the pre-*Smith* remedial scheme that had developed under Section 1983—including damages. *Tanzin*, 141 S. Ct. at 491-93.

Tanzin was thus a straightforward case of statutory interpretation: A unanimous Supreme Court concluded, based on the statutory context and all of the relevant "textual cues," that RFRA's "plain meaning at the time of enactment" authorized individual-capacity suits for money damages. *Id.* at 491-92.

3. *Tanzin* Confirms That Damages Are Clearly Appropriate in Individual Capacity Suits Under RLUIPA

This Court should interpret the same remedial language in RLUIPA the same way as in RFRA: to provide for money damages against officers

acting in their individual capacities. The two statutes use the same language to achieve an identical end and have consistently been "given the same broad meaning." *Hobby Lobby*, 573 U.S. at 696 n.5; *compare Sossamon*, 563 U.S. at 289 n.6. "[W]hen Congress uses the same language in two statutes having similar purposes," as is the case here, "it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005). Hence, if damages are "appropriate relief" for individual capacity suits under RFRA, then the same must be true under RLUIPA's identically worded remedies clause.

Moreover, each of *Tanzin*'s three textual arguments apply with equal, if not greater, force to RLUIPA, making the textual case for damages under RLUIPA even stronger than under RFRA:

First, consider the textual link between RLUIPA and Section 1983. Like RFRA, RLUIPA uses Section 1983's central phrase "persons acting under color of law." *Tanzin*, 141 S. Ct. at 490. And also like RFRA, RLUIPA was enacted to "reinstate[] pre-*Smith* protections and rights" available to plaintiffs bringing suit under Section 1983. *Id.* at 492. But Congress amended RFRA in 2000 so that it would apply *only* to the federal government, and not to state officials. Pub. L. No. 106-274, § 7, 114 Stat.

803, 806 (2000). By contrast, RLUIPA granted rights specifically and exclusively against *state and local officials* who substantially burden religion—exactly as Section 1983 would have done in the pre-*Smith* world.

That airtight connection between RLUIPA and Section 1983 means that damages must also be available in individual capacity suits. If Section 1983 establishes a baseline of "appropriate relief" against federal officials under RFRA, then *a fortiori* it must do the same for suits against state officials under RLUIPA's identically worded remedial provision, which is specifically trained at state officers. *Tanzin*, 141 S. Ct. at 491-92.

Second, damages must be "appropriate" relief under RLUIPA because they are often the "*only* form of relief that can remedy some [RLUIPA] violations." *Id*. at 492; *see Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 73, 75-76 (1992) (explaining that "appropriate relief" extends beyond equitable remedies whenever "prospective relief accords [the victim] no remedy at all"). For institutionalized persons in particular, it will often be damages or nothing, because a prisoner's release or transfer (or even death) will typically moot out a claim for injunctive relief before it ever becomes ripe for judicial decision. *See* Becket Fund Amicus Br. 12-14, *Tanzin v. Tanvir* (No. 19-71 Feb. 12, 2020) (problem of "strategic mootness" by defendants is "particularly true in the prison context"). Moreover, injunc-

tive relief is further unavailable if a past deprivation of religious freedoms—no matter how egregious or harmful—is insufficiently likely to recur. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105-11 (1983).

Accordingly, if RLUIPA were to authorize only injunctive relief, then many RLUIPA plaintiffs would be denied *any* opportunity for relief, and the officers and agents of a state or local prison that accepts federal funding could easily evade RLUIPA's central command of religious accommodation that is attached as an express condition to receiving that funding. *See* Scalia & Garner, *Reading Law*, at 64 (explaining that constructions that would "render[] the law in a great measure nugatory, and enable offenders to elude its provisions in the most easy manner" are disfavored (quoting *The Emily & the Caroline*, 22 U.S. 381, 389 (1824)).

That is exactly what happened here. Defendants cut Walker's dreadlocks in clear violation of his sincere religious beliefs. The district court was "troubled" by Defendants' egregious conduct and "stun[ned]" by their "implausible and suspicious" excuses. A9, A11-12. And yet, the district court felt compelled to dismiss the RLUIPA claim based on its understanding that damages were unavailable. That narrow construction defeats RLUIPA's unambiguous objectives, absolving Defendants of any real accountability to Walker based solely on the happenstance of his release.

That cannot be right. For Walker, like the Yang family before him, damages must be "appropriate relief" because they are literally the "*only* form of relief" that can ever possibly vindicate his free-exercise rights. *Tanzin*, 141 S. Ct. at 492.

Third, Congress could have drafted RLUIPA to foreclose damages—the only colorable form of relief in such cases—by limiting available remedies to include only "appropriate *equitable* relief." *Supra* p. 21; *see also Whitfield v. United States*, 543 U.S. 209, 216 (2005). Indeed, Congress did so elsewhere in RLUIPA itself: Congress specifically authorized the United States to "bring an action for injunctive or declaratory relief," *but not damages*, "to enforce compliance with [RLUIPA]." 42 U.S.C. § 2000cc-2(f). Congress's choice to limit the United States' remedy, but not the prisoner's remedy, must be taken as deliberate. "[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (citation omitted). "[D]ifferent words mean different things," especially in the same statute. *Med. Coll. of Wis. Affiliated Hosps., Inc. v. United States*, 854 F.3d 930, 933 (7th Cir. 2017) (Easterbrook, J.). Congress's use of the broader formulation "appropriate relief" is thus properly understood to authorize money damages as they existed under the pre-*Smith* remedial landscape.

4. The Case for Damages Under RLUIPA Is Even Stronger Than Under RFRA

The case for damages under RLUIPA is even stronger than it was in *Tanzin* because Congress embedded in RLUIPA's text and history additional cues confirming that damages are "appropriate relief" in individual capacity suits.

First, Congress added a new provision into RLUIPA that makes it unmistakably clear that plaintiffs must be afforded the opportunity to secure meaningful relief. Specifically, unlike RFRA, RLUIPA provides that it "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g). Congress's inclusion of this maximalist mandate eliminates any doubt as to the scope of RLUIPA's protections, and confirms that Congress intended to make the same remedies that were available before *Smith*—including money damages—available once again under RLUIPA.

Second, before RLUIPA's enactment, the House Committee on the Judiciary was unequivocal that the text would "creat[e] a private cause of action for damages" in "suits against state officials and employees," without also "abrogat[ing] the Eleventh Amendment immunity of states." H.R. Rep. 106-219, at 2, 29 (1999). The section-by-section analysis of RLUIPA was in accord. 146 Cong. Rec. 19123 (2000). In addition, Professor Douglas

Laycock—a leading scholar on remedies and religious liberty—testified to Congress that "[a]ppropriate relief includes declaratory judgments, injunctions, *and damages*" against officials in their individual capacity. *Religious Liberty Protection Act of 1999: Hearing on H.R. 1691 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 106th Cong. 111 (1999) (statement of Douglas Laycock, Professor, University of Texas Law School) (emphasis added).[3]

While all of this history *postdates* RFRA by at least six years, it *predates* RLUIPA and thus provides yet more support for interpreting RLUIPA to allow for a damages remedy against state officials.

* * *

The Supreme Court thus held in *Tanzin* that RFRA's identically worded remedial provision authorizes damages. And all of *Tanzin*'s arguments apply with equal, if not greater, force to RLUIPA. What is more, Congress in RLUIPA included additional textual cues that confirm that damages may be awarded in individual capacity suits.

[3] *See also Religious Liberty: Hearing Before the S. Comm. On the Judiciary*, 106th Cong. 91 (1999) (statement of Douglas Laycock, Professor, University of Texas Law School).

B. *Tanzin* Abrogates This Court's Contrary Decision in *Nelson*

This Court in *Nelson*, 570 F.3d at 886-89, held that RLUIPA does not authorize damages against state officials in their individual capacities.[4] But *Nelson* was decided over a decade before *Tanzin*, and "[s]tare decisis cannot justify adherence to an approach that Supreme Court precedent forecloses." *Credit Bureau Ctr.*, 937 F.3d at 767; *United States v. Reyes-Hernandez*, 624 F.3d 405, 412 (7th Cir. 2010). *Nelson* did not analyze the original public meaning of "appropriate relief" in its full statutory and historical context—as the Supreme Court did in *Tanzin*. Instead, the *Nelson* Court *assumed* the statute was "ambiguous" with respect to damages, and "decline[d] to read RLUIPA as allowing damages against defendants in their individual capacities" entirely for reasons of "constitutional avoidance." 570 F.3d at 889 & n.13. Because *Tanzin*'s plain-text analysis under-

[4] Before *Tanzin*, other circuits had reached the same result. *See Washington v. Gonyea*, 731 F.3d 143, 145-46 (2d Cir. 2013); *Sharp v. Johnson*, 669 F.3d 144, 153-55 (3d Cir. 2012); *Rendelman v. Rouse*, 569 F.3d 182, 187-89 (4th Cir. 2009); *Sossamon v. Texas*, 560 F.3d 316, 326-29 (5th Cir. 2009), *aff'd*, 563 U.S. 277 (2011); *Haight v. Thompson*, 763 F.3d 554, 567-70 (6th Cir. 2014); *Wood v. Yordy*, 753 F.3d 899, 902-04 (9th Cir. 2014); *Stewart v. Beach*, 701 F.3d 1322, 1333-35 (10th Cir. 2012); *Smith v. Allen*, 502 F.3d 1255, 1271-75 (11th Cir. 2007), *overruled on other grounds by*, *Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021); see also *Heikkila v. Kelley*, 776 F. App'x 927, 928 (8th Cir. 2019).

mines *Nelson's* atextual premise that the statute is ambiguous, and because *Nelson*'s constitutional concerns were misplaced in any event, this Court should now declare *Nelson* overruled.

1. *Tanzin* Eliminates the Supposed Textual Ambiguity upon Which *Nelson* Relied for Its Application of Constitutional Avoidance

This Court in *Nelson* held that RLUIPA does not authorize damages against officials in their individual capacities. 570 F.3d at 889. *Nelson* recognized that RLUIPA's text "appears to authorize suit against [an official] in his individual capacity." *Id.* at 886. Still, *Nelson* worried that "[c]onstruing RLUIPA to provide for damages actions against officials in their individual capacities would raise serious questions regarding whether Congress had exceeded its authority under the Spending Clause" in allowing for a cause of action against non-recipients of the granted funds. *Id.* at 889. Proceeding on the assumption that the statute was "ambiguous," *id.* at 889 n.13, *Nelson* "decline[d] to read RLUIPA as allowing damages against defendants in their individual capacities" in order "to avoid [its] constitutional concerns." *Id.* at 889.

Nelson's atextual approach cannot survive the Supreme Court's intervening decision in *Tanzin*. Constitutional avoidance is "a tool for choosing between competing *plausible* interpretations of a statutory text." *Clark*, 543 U.S. at 381 (emphasis added). Hence, "[i]n the absence of more

than one plausible construction, the canon simply 'has no application.'" *Jennings*, 138 S. Ct. at 842 (citation omitted). In this case, "ordinary textual analysis" precludes application of constitutional avoidance in at least two respects. *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827, 1833 (2022).

First, Congress directed courts to "construe[] [RLUIPA] . . . to the *maximum extent permitted by . . . the Constitution*." 42 U.S.C. § 2000cc-3(g) (emphasis added). *Nelson* ignored that maximalist mandate; but, by definition, it forecloses reliance on constitutional avoidance to *minimize* RLUIPA's remedial protections.

Second, *Tanzin* confirms that there is no ambiguity as to whether money damages are available against officers in their individual capacity. In the Supreme Court's words, the text provides a "clear answer" on individual-capacity suits, and its "plain meaning at the time of enactment" allows for money damages as "appropriate relief." *Tanzin*, 141 S. Ct. at 490-93. The Court never once suggested the statute was "ambiguous." Instead, the unanimous Court stressed that all of the relevant "textual cues" support damages, and that it would be quite "odd" to construe RFRA to foreclose the only meaningful form of relief, particularly when it was commonly available at the statute's enactment. *Id.* at 492. Because the text is clear, avoidance has no work to do.

The Supreme Court's sovereign immunity decision in *Sossamon v. Texas*, 563 U.S. 277 (2011), "does not change this analysis"—because it says nothing about the meaning of "appropriate relief" with respect to *individual-capacity* suits. *Tanzin*, 141 S. Ct. at 492-93. In *Sossamon*, the Supreme Court held that RLUIPA is not "so free from ambiguity" with respect to *official-capacity suits* such that it would effect a waiver of the states' sovereign immunity. 563 U.S. at 288. That holding fits perfectly with *Tanzin*'s plain-text methodology because the pre-*Smith* remedial landscape did *not* include damages for official-capacity suits. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 & n.10 (1989) (explaining that Section 1983 does not waive sovereign immunity). For cases involving *individual-capacity* suits, by comparison, the analysis from *Tanzin* confirms that the plain text is clear: "appropriate relief" has always included an action for damages against officials in their individual capacities. Damages were available under Section 1983 before *Smith*, and RLUIPA accordingly restores that remedy after *Smith*.

Because *Nelson*'s animating assumption cannot survive *Tanzin*'s succinct, unanimous, and textualist analysis, this Court should declare it overruled.

2. RLUIPA's Authorization of Money Damages Does Not Violate the Spending Clause

Because the text is clear, this Court can leave for another day *Nelson*'s constitutional concerns. *Compare Jennings*, 138 S. Ct. at 843-47 (resolving statutory question, despite constitutional-avoidance objections), *with Johnson*, 142 S. Ct. at 1832-33 (resolving the constitutional question left open in *Jennings*). But this Court also could conclude that RLUIPA's money-damages remedy is constitutional. Under Supreme Court precedent, Congress has the power under the Spending Clause in conjunction with the Necessary and Proper Clause to impose liability on officials who work for a state entity that has accepted federal funding subject to conditions, in order to ensure that Congress's conditions on the receipt of that funding are actually followed. *See Sabri*, 541 U.S. at 604-08.

a. The Constitution authorizes Congress to spend for the general welfare. U.S. Const., Art. I, § 8, cl. 1. That Spending Power allows Congress to "attach conditions on the receipt of federal funds" in order "to further broad policy objectives." *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). But Congress's Spending Power is not restricted merely to conditions operating directly on fund recipients. Congress also has the power to "make all Laws which shall be necessary and proper for carrying into execution" the Spending Power. U.S. Const., Art. I, § 8, cl. 18. As the Supreme Court explained in *Sabri*, "Congress has authority under the Spending Clause to

appropriate federal moneys to promote the general welfare, and it has corresponding authority under the Necessary and Proper Clause to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare." *Sabri*, 541 U.S. at 605 (citations omitted).

In particular, *Sabri* upheld a criminal law that prohibited bribing any official of a state or local government that received more than $10,000 annually in federal funds. *Id.* at 602-03 (upholding 18 U.S.C. § 666(a)(2)).[5] That federal law mirrored RLUIPA's damages provision, in that it reached beyond the state recipients of the federal spending, and "br[ought] federal power to bear directly on individuals" who had not received any federal funds—*i.e.,* imposed individual criminal liability on non-recipients of federal funds. *Id.* at 608.

The Supreme Court upheld that exercise of Congressional authority under the Spending Clause and Necessary and Proper Clause, explaining

[5] That statute in *Sabri* "impose[d] federal criminal penalties on anyone who 'corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more.'" 541 U.S. at 603 (quoting 18 U.S.C. § 666(a)(2)). Liability attached if "the organization, government, or agency receiv[es], in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance." *Id.* (quoting 18 U.S.C. § 666(b)).

that third-party culpability was a rational means of promoting a legitimate Congressional objective. Specifically, the Court reasoned that such liability "addresses the problem at the sources of bribes, by rational means, to safeguard the integrity of the state, local, and tribal recipients of federal dollars." *Id.* at 605. The Court explained that Congress, acting under the Spending Clause, could utilize "necessary and proper legislation" to "fill[] [in] the regulatory gaps" left by prior federal anti-bribery law, which did not reach "bribes directed at state and local officials." *Id.* at 606-07. *Sabri* thus teaches that Congress has the power to impose individual liability on non-recipients, so long as that liability is a "rational means" to promote Congress's valid purposes under the Spending Clause, which includes "safeguard[ing] the integrity of the state, local, and tribal recipients of federal dollars." *Id.* at 605.

That holding follows inexorably from the Supreme Court's settled interpretation of the Necessary and Proper Clause. Under longstanding precedents, the Necessary and Proper Clause endows Congress with "broad power to enact laws that are 'convenient, or useful' or 'conducive' to the [principal] authority's 'beneficial exercise.'" *United States v. Comstock*, 560 U.S. 126, 133-34 (2010) (quoting *McCulloch v. Maryland*, 17 U.S. 316, 413, 418 (1819)). Put another way, Congress can enact a law so long as it

is "rationally related to the implementation of a constitutionally enumerated power." *Id.* at 134.

RLUIPA's damages provision satisfies that test. This Court has already explained, in upholding RLUIPA under the Spending Clause, that "Congress has an interest in allocating federal funds to institutions that do not engage in discriminatory behavior or in conduct that infringes impermissibly upon individual liberties." *Charles v. Verhagen*, 348 F.3d 601, 608 (7th Cir. 2003). Because state entities like a prison "can act only through agents," *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 688 (1949), it was reasonable for Congress to deter religious hostility in the prison systems that it subsidizes by requiring, as a condition for federal funding, that a prison's agents and officials be held personally liable for their misconduct.[6] After all, damages provide one of the most effective, if not the only, means to ensure that prison officials actually respect prisoners' religious freedom and exercise. *Supra* pp. 19-20, 23-25. *See Carlson v. Green*, 446 U.S. 14, 21 (1980) ("It is almost axiomatic that the threat of damages has a deterrent effect, . . . particularly so when the individual official faces personal financial liability." (citation omitted)). In particular,

[6] *See Barbour v. Wash. Metro. Area Transit Auth.*, 374 F.3d 1161, 1168-69 (D.C. Cir. 2004) (upholding the Rehabilitation Act on the theory that Congress "did not want *any* federal funds to be used to facilitate disability discrimination" and "threat of federal damage actions was an effective deterrent").

in the context of civil suits and specifically prison civil rights suits, damages are often the "*only* form of relief" that can provide any remedy and thus are a critical means for ensuring that Congress's conditions are actually followed by the officers and agents of the grant recipient. *Tanzin*, 141 S. Ct. at 492.

More broadly, Congress has a particular interest in subsidizing—albeit indirectly—the salaries of those prison officials ready to honor religious diversity; and, on the flipside, Congress has an equal interest in *not* subsidizing the employment of those who run roughshod on the free exercise of religion. *See Madison v. Virginia*, 474 F.3d 118, 126 (4th Cir. 2006). And a state prison that does not wish to respect the religious exercise of its prisoners can simply decline federal funding for its operations and in turn entirely avoid exposure to RLUIPA. RLUIPA's damages remedy is therefore constitutional under the Spending Clause and the Necessary and Proper Clause because it helps to safeguard Congress's effort to ensure that federally-funded state prisons—and the agents through which they operate—actually respect religious freedom. *See Sabri*, 541 U.S. at 605-08.

b. This Court in *Nelson* did not grapple with or even cite *Sabri*. Instead, the Court relied upon generalized "federalism and accountability concerns" to conclude that Spending Clause legislation can only bind the

recipient of grant funding. *Nelson*, 570 F.3d at 888-89. That was error, as *Sabri* establishes that Congress can use the Necessary and Proper Clause, in conjunction with the Spending Clause, to impose individual liability upon non-recipients. Indeed, *Nelson*'s federalism concerns would apply with greater force to the *criminal* statute that the Supreme Court upheld in *Sabri*. *See United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995) ("States possess primary authority for defining and enforcing the criminal law." (citation omitted)). And in *Sabri*, the defendant was a private real estate developer. 541 U.S. at 602-03. Here, each defendant is an officer or agent of the grant recipient.

Sabri is also not alone, as the Supreme Court has elsewhere rejected a federalism challenge to Spending Clause legislation that imposed constraints on non-recipients. *See Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 260-70 (1985) (upholding, over a federalism challenge, a Spending Clause statute that granted money directly to municipalities and prohibited State non-recipients from dictating how the money be spent). Between *Lawrence County* and *Sabri*, the Supreme Court has made clear that Congress can impose conditions on federal funds that run against non-recipients—including civil liability—without raising intractable federalism problems.

Nelson derived its contrary view from out-of-circuit cases and a prior decision from this Circuit's precedent on the scope of the implied cause of action under Title IX. *See Nelson*, 570 F.3d at 887-88 & 887 n.12. But the out-of-circuit cases similarly failed to grapple with the Supreme Court's controlling decisions in *Sabri* and *Lawrence County*. *See Sossamon v. Texas*, 560 F.3d 316 (5th Cir. 2009); *Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007). And *Smith v. Metropolitan School District Perry Township*, 128 F.3d 1014, 1018-20 (7th Cir. 1997), which concerned an *implied* cause of action under Title IX, never suggested it would be *unconstitutional* for Congress to impose liability on third parties—which Congress has done *explicitly* in RLUIPA. Instead, this Court in *Smith v. Metropolitan School District Perry Township* narrowed an implied right, consistent with Supreme Court precedents "constraining courts to imply only those remedies 'that [are] normally available for contract actions.'" *See Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1574 (2022) (citation omitted and alteration in original).

* * *

RLUIPA in turn satisfies the Supreme Court's precedents for discerning the proper remedies under Spending Clause legislation. *See Cummings*, 142 S. Ct. at 1570. Specifically, the Court has "characterized . . . Spending Clause legislation as 'much in the nature of a contract,'" *Barnes*

v. Gorman, 536 U.S. 181, 186 (2002) (citation and emphasis omitted), and has thus "construe[d] the reach of Spending Clause conditions with an eye toward 'ensuring that the receiving entity of federal funds [had] notice that it will be liable,'" *Cummings*, 142 S. Ct. at 1570 (citation omitted and second alteration in original). But as already explained (*supra* pp. 15-27), RLUIPA's text provides the requisite clear notice to States that their officials and agents may be held personally accountable for religious discrimination, should the states accept federal funding for their prison operations. That notice is particularly clear because RLUIPA does not purport to create some new and novel remedy against a sovereign defendant; instead, it *restores* a remedial landscape under which the states had operated for over a century and to which their employees were well adjusted to possible liability.

Congress thus made clear, in more ways than one, through RLUIPA's plain text that it was restoring the pre-*Smith* landscape, including damages against officers in their individual capacities. *Supra* pp. 15-27. And contrary to *Nelson*, that form of relief does not exceed Congress's enumerated powers under the Spending Clause in conjunction with Necessary and Proper Clauses. For that reason, the Court should declare *Nelson* overruled.

II. There Is at Least a Triable Question Whether Walker's RLUIPA Rights Were Violated

If this Court follows *Tanzin* and overrules *Nelson*, it should at a minimum vacate the grant of summary judgment and remand for the district court to evaluate Walker's RLUIPA claims on the merits. This Court could, however, simply reverse and remand to send the case to trial, as the evidence is more than sufficient to survive summary judgment under RLUIPA's standard.

"RLUIPA provides greater protection" for prisoners than the Free Exercise Clause, *Holt*, 574 U.S. at 361, and "robustly supports inmate religious practice," *Jones v. Carter*, 915 F.3d 1147, 1150 (7th Cir. 2019); *e.g.*, *Njie v. Dorethy*, 766 F. App'x 387, 391-92 (7th Cir. 2019) (defendants entitled to summary judgment on Free Exercise claim, but not claim that prison's anti-dreadlocks policy violated RLUIPA). Under RLUIPA, a plaintiff bears the initial burden of showing that the challenged action or policy places a "substantial burden on the[ir] religious exercise." 42 U.S.C. § 2000cc-1(a). Unlike in the Free Exercise context, "a substantial burden can exist even if alternatives to enduring it are available." *Njie*, 766 F. App'x at 391.

Defendants' anti-dreadlocks policy imposed a substantial burden on Walker's religious exercise because it put him to a choice: either cut off his dreadlocks in violation of his sincere religious beliefs, or face disciplinary

action. *Supra* pp. 6-7. The threat of discipline is the paragon example of a substantial burden. *Holt*, 574 U.S. at 361; *Njie*, 766 F. App'x at 391.

Since Walker has clearly met his initial burden, "the burden shift[s] to the [Defendants] to show that [their] refusal to allow [Walker] to grow [and keep dreadlocks] '(1) [was] in furtherance of a compelling governmental interest; and (2) [was] the least restrictive means of furthering that compelling governmental interest.'" *Holt*, 574 U.S. at 362 (quoting 42 U.S.C. § 2000cc-1(a)) (last two alterations in original). Satisfying that heavy burden requires more than generalized claims about "prison . . . security." *Id.* 362-63. RLUIPA "contemplates a 'more focused' inquiry and 'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" *Id.* at 363 (quoting *Hobby Lobby*, 573 U.S. at 726). Hence, the Court must "scrutiniz[e] the asserted harm of granting specific exemptions to *particular religious claimants*" and weigh those harms that against "the marginal interest" to the state defendants "in enforcing the challenged government action in that particular context." *Id.* (quoting *Hobby Lobby*, 573 U.S. at 726-27) (alteration in original and emphasis added).

As the decision below illustrates, a triable question exists as to whether Defendants have met that heavy burden. Defendants promulgated their anti-dreadlocks policy on the theory that "contraband can be hidden in the hair undetected" and that dreadlocks constitute a categorically "unsearchable hair style[]." A8. "[T]roubled by [that] purported justification," the district court offered at least four ways in which the policy was woefully over- and under-inclusive, in both theory and practice. A12. *First,* if dreadlocks truly posed an unreasonable threat to security in all cases, including Walker's, "then why was Walker allowed to not only keep his dreadlocks during the first few months of his incarceration at IDOC but also allowed to regrow the dreadlocks for the remainder of his time at Dixon?" A12. *Second*, why were other inmates at Dixon permitted to wear dreadlocks and "not forced to have them removed"? *Id. Third*, if dreadlocks posed a categorical security threat, why were dreadlocks "allowed at Dixon for some time" before the anti-dreadlocks policy was enacted in October 27, 2017? A8, A12. And, *fourth*, why would "numerous correctional centers have and continue to allow inmates to wear dreadlocks" in the Seventh Circuit and throughout the country? A12. *Pl.'s Summ. J. Br.*, Dkt. 81, at 15-17 (collecting examples).

Those glaring inconsistencies are sufficient, at a minimum, to raise fact questions for a jury. As this Court explained in *Njie*, a "warden's general testimony that dreadlocks 'may' prevent a thorough search or pose a safety risk to the guards who search inmates' hair does not entitle the defendants to summary judgment; it leaves us with a jury question." 766 F. App'x at 392; *Ware v. Louisiana Dep't of Corr.*, 866 F.3d 263, 270-74 (5th Cir. 2017). So too here. Walker's RLUIPA claims are therefore fit for trial.

CONCLUSION

For the foregoing reasons, this Court should either vacate and remand, or reverse the judgment of the district court outright and remand for a trial.

Respectfully submitted,

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October 19, 2022

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies pursuant to Fed. R. App. P. 32(g) that the Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) and Cir. R. 32(c) because, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f), this document contains 9328 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because this document has been prepared in a proportionally spaced type-face using Century Schoolbook font in 14 point size.

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CIRCUIT RULE 30(D) STATEMENT

Pursuant to Circuit Rule 30(d), I certify that all materials required by Circuit Rule 30(a)-(b) are included in the Appendix.

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2022, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF participants.

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October 19, 2022

APPENDIX

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Thomas Walker (M-03114),	)	
	)	
Plaintiff,	)	
	)	Case No. 19 C 50233
v.	)	
	)	Hon. John Z. Lee
John Baldwin, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff has filed a complaint [1] and a revised application for leave to proceed *in forma pauperis* ("IFP") [10]. Plaintiff's IFP application demonstrates that he cannot prepay the filing fee, and the application is thus granted. The Court orders the trust fund officer at Plaintiff's place of incarceration to immediately deduct $33.04 from Plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee and to continue making monthly deductions in accordance with this order. Additionally, the Court has conducted an initial review of Plaintiff's complaint and determined that it satisfies the requirements of 28 U.S.C. § 1915(e)(2)(B).

For that reason, the Clerk of Court is directed to: (1) send a copy of this order to the trust fund officer of the facility having custody of Plaintiff and to the Court's Fiscal Department; (2) file Plaintiff's complaint; (3) issue summonses for service of the complaint on Defendants by the U.S. Marshal; and (4) send Plaintiff four blank USM-285 (Marshals service) forms, a magistrate judge consent form, filing instructions, and a copy of this order. Plaintiff must complete and return a USM-285 form for service on each Defendant. Failure to return the USM-285 forms by January 10, 2020, may result in dismissal of any unserved Defendant, as well as dismissal of this case in its entirety. Plaintiff also must promptly submit a change-of-address notification if he is

transferred to another facility or released. If Plaintiff fails to keep the Court informed of his address, this action will be subject to dismissal for failure to comply with a Court order and for failure to prosecute.

STATEMENT

Plaintiff Thomas Walker, an inmate at Dixon Correctional Center, brought this *pro se* action under 42 U.S.C. § 1983, alleging that the Defendants interfered with his religious practices by forcing him to cut his dreadlocks. Before the Court are Plaintiff's complaint and revised IFP application for initial review.

I. IFP Application

Plaintiff has demonstrated that he cannot prepay the filing fee, and thus, his IFP application is granted. In keeping with 28 U.S.C. § 1915(b), the Court orders: (1) Plaintiff to immediately pay (and the facility having custody of him to automatically remit) $33.04 to the Clerk of Court for payment of the initial partial filing fee and (2) Plaintiff to pay (and the facility having custody of him to automatically remit) to the Clerk of Court twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $350 filing fee is paid in full. The Court directs the trust fund officer to ensure that a copy of this order is mailed to each facility where Plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and should clearly identify Plaintiff's name and the case number assigned to this case.

II. Initial Screening

Where a *pro se* prisoner files a civil action seeking redress from a governmental entity or officer or employee of a governmental entity, the Court is required to conduct an initial review of the complaint to determine whether the claims are frivolous or malicious, fail to state a claim on which relief can be granted, or seek monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A; *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013).

Courts screen prisoner litigation claims under the same standard that is used to review Federal Rule of Civil Procedure 12(b)(6) motions to dismiss. *See Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011). A motion under Rule 12(b)(6) challenges the sufficiency of the complaint. *See Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Under federal notice pleading standards, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* Put differently, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true." *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665–66 (7th Cir. 2013). Courts also construe *pro se* complaints liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam).

Consistent with the principles set forth above, the following factual summary assumes Plaintiff's allegations to be true. Here, Plaintiff practices the Rastafarian faith. Compl. at 9, ECF No. 1. One of that faith's central tenets is that adherents must refrain from cutting their hair. *Id*. Not long after Plaintiff arrived at Dixon, however, members of the internal affairs department told him that the facility's grooming policy required him to shear his dreadlocks. *Id*. at 7. Soon after, two internal affairs employees—Officer Brinkmeier and Lieutenant Craft—ordered Plaintiff to cut his hair. *Id*. at 7–8. Explaining that his religion prevented him from complying, Plaintiff declined. *Id*. In response, Brinkmeier and Craft confined him to a segregation cell. *Id*. Even then, Plaintiff continued to rebuff their efforts to remove his dreadlocks. *Id*. After Plaintiff refused for a third time, the "orange crush tact[ical] team" arrived at Plaintiff's cell with mace, handcuffs, and a camcorder. *Id*. at 8–9. Fearing for his safety, Plaintiff allowed his hair to be cut. *Id*. Convinced that Dixon's grooming policy substantially interfered with his religious practices, Plaintiff filed this lawsuit. *Id*. at 9.

Taking Plaintiff's factual allegations as true, the Court finds that his complaint states a federal claim. Under the First Amendment, inmates enjoy a "reasonable opportunity" to practice their religion. *Cruz v. Beto*, 405 U.S. 319, 322 (1972); *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988) (recognizing that the First Amendment's free exercise clause applies to Rastafarian inmates). Together with the tactical team, the defendant officers coerced Plaintiff into cutting his dreadlocks, a serious interference with his religious practices. At this stage, those allegations suffice to state a plausible § 1983 claim against Brinkmeier and Craft. As to Baldwin and Varga, Plaintiff says that Baldwin enforced a no-dreadlocks policy across IDOC facilities and that Varga implemented that policy. Compl. at 10–12**.** For now, that is enough to plausibly allege their

personal involvement in the claimed First Amendment violation. *See Gregory v. Pfister*, No. 18 C 387, 2019 WL 3287873, *4 (N.D. Ill. July 22, 2019). And, although the Seventh Circuit has recognized that similar grooming policies sometimes withstand First Amendment scrutiny, the record is not sufficiently developed for the Court to assess that possibility. *See, e.g.*, *Williams v. Snyder*, 367 Fed. App'x 679, 682–83 (7th Cir. 2010) (affirming a district court's grant of judgment as a matter of law because a prison's no-dreadlocks policy served important penological purposes).

For similar reasons, Plaintiff also has a viable claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), see 42 U.S.C. § 2000cc-1. That Act prohibits institutions that receive federal funding from imposing a "substantial burden" on an inmate's religious exercise unless the disputed measure is the least restrictive way to advance a compelling state interest. *Borzych v. Frank*, 439 F.3d 388, 390 (7th Cir. 2006). Here, the same allegations that support Plaintiff's First Amendment claim also support his RLUIPA claim. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012) (recognizing that RLUIPA "confers greater religious rights on [inmates] than the free exercise clause has been interpreted to do"). That said, RLUIPA does not allow for personal capacity claims against individual defendants because they are not the recipients of federal funds. *See Nelson v. Miller*, 570 F.3d 868, 889 (7th Cir. 2009). So, while Plaintiff may seek injunctive relief under RLUIPA, he cannot secure monetary damages. The bottom line is that Plaintiff's complaint states plausible claims under the First Amendment and RLUIPA.

Accordingly, the Clerk of Court is directed to issue summonses for service of the complaint on Baldwin, Varga, Brinkmeier, and Craft. Plaintiff has submitted U.S.M.-285 forms for Defendants. The Court appoints the U.S. Marshals to serve Defendants. With respect to any

former employee of the Illinois Department of Corrections ("IDOC") who can no longer be found at the work address provided by Plaintiff, IDOC officials must furnish the Marshal with that Defendant's last-known address. The Marshal will use the information only for purposes of effectuating service or to show proof of service, and any documentation of the address shall be retained only by the Marshals Service. Address information will not be maintained in the Court file nor disclosed by the Marshal, except as necessary to serve Defendants. The Court authorizes the Marshal to send a request for waiver of service consistent with Federal Rule of Civil Procedure 4(d) before attempting personal service.

The Court instructs Plaintiff to file all future papers concerning this action with the Clerk of this Court in care of the Prisoner Correspondent. Every document submitted by Plaintiff must include a certificate of service indicating the date on which Plaintiff gave the document to prison authorities for mailing. Any letters or other documents sent directly to a judge or that otherwise fail to comply with these instructions may be disregarded by the Court or returned to Plaintiff. Plaintiff is advised that he must promptly submit a change-of-address notification if he is transferred to another facility or released. Failure to do so may lead to dismissal of this action for failure to comply with a Court order and for want of prosecution.

Date: 12/18/19 /s/ John Z. Lee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

Thomas Walker, Plaintiff, v. John Baldwin, John Varga, John Craft, and Colin Brinkmeier, *in their official and individual capacities*, Defendants.	)	No. 3:19-cv-50233 Judge Iain D. Johnston

MEMORANDUM OPINION AND ORDER

Dixon Correctional Center is a medium-security prison, operated by the Illinois Department of Corrections (IDOC). Thomas Walker is a Rastafarian, so he wears dreadlocks. Walker was initially housed at Stateville Correctional Center, during which time he was never told that his dreadlocks violated any policy or that they needed to be cut. Several weeks after arriving at Dixon, Walker was told by staff at Dixon that he needed to cut his dreadlocks because they were unsearchable. Walker initially refused because cutting hair was against his religious beliefs as a Rastafarian. He ultimately submitted to having his dreadlocks cut. He then regrew his dreadlocks during his remaining time at Dixon without being forced to cut the dreadlocks. Photographs of Walker when he arrived at IDOC and when he was released show that his dreadlocks were basically the same at both times.

He brings this suit under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that Dixon (Defendants Varga, Craft, and Brinkmeier) and IDOC staff (Defendant Baldwin) violated his

right to free exercise of his Rastafarian religion. For the reasons that follow, Defendants' motion for summary judgment [74] is granted.

Facts

The Illinois Administrative Code permits individuals in custody to have any length of hair as long as it does not create a security risk.[1] Any individual in custody who creates a security risk may be asked to abide by an individual grooming policy. IDOC Administrative Directive (AD) 05.03.160 gives the Chief Administrative Officer discretion to determine if an individual grooming policy is necessary in that situation. Specifically, the AD explains that a security risk arises if an individual's hairstyle impedes or prevents staff from conducting a thorough search of the hair for contraband, if contraband can be hidden in the hair undetected, or if hidden contraband can injure staff as they attempt to search the hair. The purpose of the grooming policy is to ensure the safety and security of the prison. On October 27, 2017, Warden Varga issued a bulletin stating, in relevant part, "Offenders with unsearchable hair styles will NO longer be allowed to keep such hair style due to security concerns. Offenders with this style will be required to cut their hair." (Explicit in this bulletin is that before October 27, 2017, "unsearchable hair styles" were permitted.) As a result of the AD and Warden Varga's bulletin, it appears that Dixon staff simply shorthanded these directives into an across-the-board policy that prohibited dreadlocks, on the belief that all dreadlocks were "unsearchable." So, at Dixon, all dreadlocks needed to be cut off—at least in theory. The purported purpose of this de facto policy was to ensure safety and security. At Dixon, inmates are advised as to whether his hairstyle is a security risk at their intake interviews, which can happen at any time. This policy

[1] The facts are drawn primarily from the parties' LR 56.1 statements and responses. Dkts. 75, 82, 83, 91.

applies to all individuals in custody, and, after Warden Varga's bulletin, it was typical procedure to force incoming inmates with dreadlocks to cut their hair.

Thomas Walker is a Rastafarian. He began growing his dreadlocks in 2013. Walker initially arrived at IDOC (Stateville) in March of 2018. He was then transferred to Dixon on April 13, 2018. During these weeks, no IDOC employee informed Walker that his dreadlocks were a safety or security threat or that they were unsearchable.

As implausible and suspicious as it seems, Varga, Brinkmeier, and Baldwin swore under penalty of perjury that they had never heard of Rastafarianism, and they were unfamiliar with Rastafarian beliefs and practices, which forbid cutting of hair.

On May 25, 2018—over a month after Walker's arrival at Dixon—Colin Brinkmeier conducted Walker's intake interview and told him that he would need to cut his hair. Walker protested, stating that he was a Rastafarian. Later that day, John Craft called Walker to internal affairs and gave him a direct order to cut his hair. He was placed in segregation on May 25, 2018. In the next few days, Walker filed a grievance, explaining that his Rastafarian beliefs prohibited him from cutting his hair. The grievance was denied on August 15, 2018.

On May 30, 2018, Craft gave Walker a second direct order to cut his hair. Again, Walker refused. On June 1, 2018, Craft gave Walker a third and final order to cut his hair.[2] Based on his fear that physical force would be used, Walker reluctantly allowed his dreadlocks to be removed by the prison barber. He was not asked to cut his hair again, so he began the process of regrowing his hair in dreadlocks. During his incarceration at Dixon, Walker saw other inmates with dreadlocks. While incarcerated at Dixon, Walker sued. On July 30, 2021, Walker was

[2] Walker alleges that Dixon's "Orange Crush" tactical team was present. Defendants dispute this insofar as the citation provided does not support the fact. Dkt. 91, ¶ 16. However, Defendants do not cite to any other material disputing this—in fact, Defendant Craft's own deposition testimony, attached to his LR 56.1 statement supports this. Dkt. 75-3, at 42:16-43:23.

released from Dixon. At the time, his hair was dreadlocked. Indeed, photographs show that Walker's dreadlocked hair and beard were substantially the same when he arrived at IDOC and when he was released from Dixon.

Despite being forced to have his dreadlocks cut off in June of 2018, Walker was able to practice his Rastafarianism. He complains of no other acts that infringed on his religion, such as dietary restrictions. Indeed, as just stated, he immediately began regrowing his dreadlocks and they were never removed before he left.

Summary Judgment Standard

A successful motion for summary judgment demonstrates that there is no genuine dispute of material fact and judgment is proper as a matter of law. A party opposing summary judgment must proffer specific evidence to show a genuine dispute of fact for trial. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A genuine dispute of material fact exists if a reasonable jury could return a verdict for the non-movant when viewing the record and all reasonable inferences drawn from it in the light most favorable to the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party opposing summary judgment "is entitled to the benefit of all favorable inferences that can reasonably be drawn from the underlying facts, but not every conceivable inference." *De Valk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 329 (7th Cir. 1987). The court must construe the "evidence and all *reasonable* inferences in favor of the party against whom the motion under consideration is made." *Rickher v. Home Depot, Inc.*, 535 F.3d 661, 664 (7th Cir. 2008) (emphasis added). Summary judgment is appropriate only when the court determines that "no jury could reasonably find in the nonmoving party's favor." *Blasius v. Angel Auto, Inc.*, 839 F.3d 639, 644 (7th Cir. 2016).

Analysis

Preliminary Issues

The Court is compelled to address four preliminary factual and legal issues. First, factually, on summary judgment, the Court is not permitted to make credibility determinations. But the sworn representations, particularly from the Director and Warden, about being unfamiliar with Rastafarianism—in year 2021—is stunning. It is hard to image an even moderately well-read person or even a person with just ordinary life experiences not knowing about Rastafarianism. Have they never listened to the radio? Have they never seen *Cool Runnings*? Did they not understand the Bob Marley reference in *Caddyshack*?[3] Did these people really live such isolated and sheltered existences? The claimed ignorance of Rastafarianism is particularly incredible when claimed by individuals in the corrections field. Cases involving Rastafarianism—in particular, dreadlocks—in correctional settings have been litigated in the Seventh Circuit for nearly four decades. *See, e.g., Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988). Indeed, these cases are routinely litigated throughout the country. And, sometimes, Rastafarians have successfully litigated RLUIPA cases challenging the removal of their dreadlocks. *See, e.g., Ware v. Louisiana Dep't of Corr.*, 866 F.3d 263 (5th Cir. 2017). Further, law enforcement has written about issues relating to accommodations for Rastafarians for years. *See, e.g., Rights of Rastafarian Employees and Inmates*, 2015 (8) AELE Mo. L. J. 201, https://nicic.gov/rights-rastafarian-employees-and-inmates. And for twenty years the United States Department of Justice has recognized Rastafarianism as a bona fide religion. *See* U.S. Dep't of Justice, Fed. Bureau of Prisons, Inmate Religious Beliefs and Practices Guide, 274

[3] No doubt Bob Marley gets much of the well-deserved credit for introducing reggae and Rastafarianism to the world. But there were many others, including, but not limited to, Lee "Scratch" Perry, and Toots and the Maytals—music legends in their own rights.

(2002). But, because Walker never contests these claims and presents no evidence to contradict these claims and the Court cannot make credibility determinations on summary judgment, the Court is bound to accept them as true.

Second, again as to factual representations, the Court is troubled by the Defendants' purported justification for the de facto policy of cutting off Walker's dreadlocks. Defendants have introduced a parade of horribles as to the dangers and security concerns caused by dreadlocks. All manner of weapons, tools, and escape devices apparently can be hidden in dreadlocks, according to their testimony. Of course, if all that is true, then why was Walker allowed to not only keep his dreadlocks during the first few months of his incarceration at IDOC but also allowed to regrow the dreadlocks for the remainder of his time at Dixon? Moreover, as Walker's counsel voluminously demonstrated in his brief, numerous correctional centers have and continue to allow inmates to wear dreadlocks. Furthermore, as Varga's bulletin notes, the policy was new, so dreadlocks were apparently allowed at Dixon for some time without catastrophic chaos ensuing. Moreover, in this case, as in other cases involving the removal of dreadlocks, Walker states that other inmates wore dreadlocks and were not forced to have them removed. But the Supreme Court has made clear that correctional professionals are to be given deference in making security decisions. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987); *Lewis v. Sternes*, 712 F.3d 1083, 1086 (7th Cir. 2013) ("But we give considerable weight to the defendants' uncontradicted testimony that the thickness and density of the plaintiff's dreadlocks made it difficult to search."). And the Seventh Circuit has stated that correctional officers need not act immediately or with perfect, consistent regularity. *Lewis*, 712 F.3d at 1085; *Williams v. Snyder*, 367 Fed. App'x 679, 682 (7th Cir. 2010). At some point, however, bald, contradictory, and implausible representations from IDOC cannot be blindly accepted. *See*

Tucker v. Dickey, 613 F. Supp. 1124, 1128 (W.D. Wisc. 1985) ("Thus, the rule of deference does not preclude all judicial review of prison procedures."); *see generally Mudge Rose Guthrie Alexander & Ferdon v. U.S. Int'l Trade Comm'n*, 846 F.2d 1527, 1532 (D.C. Cir. 1988) (deference does not mean blind acceptance). This case is close but does not reach that level.

Third, insufficient evidence exists to establish Director Baldwin's personal involvement. He did not create the AD or Warden Varga's bulletin, and there is no evidence he even knew about it. And, unsurprisingly, he was not involved in the removal of Walker's dreadlocks. Baldwin did not even review or sign the denial of Walker's grievance. There is simply insufficient evidence—none, really—that Baldwin was personally involved in any of Walker's claims. *Delapz v. Richardson*, 634 F.3d 893, 899 (7th Cir. 2011); *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996). This entitles Baldwin to summary judgment.

Fourth, legally, Walker's RLUIPA claim fails because he has already been released.[4] A claim under RLUIPA may only be brought by an institutionalized person, and because Walker is no longer in custody at Dixon or anywhere else in the IDOC, he may not pursue a claim under the statute. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012). Further, the only relief available under RLUIPA is injunctive, which, for the same reasons, is moot. *Nelson v. Miller*,

[4] In a footnote in his response, Walker states, "Defendants also violated the [RLUIPA], but that act does not include a damages remedy and so the RLUIPA claim is not being pursued." Dkt. 81, at 6 n.1. Yet, throughout his memorandum, he analyzes his claim under the RLUIPA standard. *See, e.g.*, Dkt. 81, at 11, 14, 17 ("RLUIPA provides that government prison officials are prohibited from imposing a substantial burden on a prisoner's religious exercise unless that burden (1) furthers a compelling interest, and (2) is the least restrictive means of furthering the interest.") (citing 42 U.S.C. § 2000cc-1(a)). Walker uses this standard in the sections of his memorandum arguing free exercise, and even includes section headings expressly referencing the RLUIPA standard, such as "Defendants Fail to Conduct an Individualized Inquiry as Required under RLUIPA." Dkt. 81, at 14. Defendants call attention to this throughout their memorandum in reply, Dkt. 90 (although they rely on the RLUIPA standard in their opening memorandum). Indeed, the Court is confused as to why all parties argued the merits of the RLUIPA claim throughout the briefing, including issues relating to substantial burden, compelling government interest and whether the de facto policy was the least restrictive means available. The Court takes Walker at his word that he is no longer pursing the RLUIPA claim. Controlling Seventh Circuit law holds that he has no claim upon his release. *Nelson*, 570 F.3d at 888.

570 F.3d 868, 884, 888 (7th Cir. 2009) (declining to recognize a claim for damages against in their individuals acting under color of law in RLUIPA). Walker's release entitles Defendants to summary judgment on the RLUIPA claim, to the extent Walker did not abandon it.

Defendants Are Entitled to Summary Judgment on the Free Exercise Claim

Defendants argue that they are entitled to summary judgment based on qualified immunity. Dkt. 76, at 12. Qualified immunity shields government employees from liability unless a plaintiff shows (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011); *Ewell v. Toney*, 853 F.3d 911, 919 (7th Cir. 2017) (explaining that "qualified immunity shields from liability [defendants] who act in ways they reasonably believe to be lawful"). If either is answered in the negative, the defendant official is protected by qualified immunity. *Gibbs v. Lomas*, 755 F.3d 529, 537 (7th Cir. 2014). The right claimed to be violated must be defined at the appropriate level of specificity under the particularized facts. *Reed v. Palmer*, 906 F.3d 540, 547-48 (7th Cir. 2018). Plaintiffs bear the burden to demonstrate the alleged violation of their rights was clearly established. *Id.* at 546. To show that the law was clearly established, plaintiffs can take one of three routes: (1) they can identify existing precedent that placed the constitutional question beyond debate; (2) they can demonstrate through a broad survey of relevant case law that there was such a clear trend that the recognition of the right was merely a question of time; or (3) their case involves a constitutional violation that is so patently obvious that they not need present any analogous case law. *Id.* at 547.

Walker has failed to establish any constitutional right was violated, let alone one that was clearly established. As a general principle of constitutional law, he has no claim. That fact alone dooms Walker's claim. Regardless, even applying the relevant test results in the same

conclusion. The appropriate test is found in the Supreme Court's decision in *O'Lone v. Shabazz*, 482 U.S. 342, 348-50 (1987). *See, e.g., Holmes v. Engleson*, Case No. 16 C 5234, 2017 U.S. Dist. LEXIS 126228, at *14 (N.D. Ill. Aug. 9, 2017).

A First Amendment Free Exercise claim in the prison context is analyzed under a reasonableness test to "afford appropriate deference to prison officials." *O'Lone*, 482 U.S. at 349. "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987); *O'Lone*, 482 U.S. at 349. The Supreme Court uses three factors in this analysis: (1) whether there is a valid, rational connection to the legitimate governmental interest invoked to justify it; (2) whether there are alternative means available for inmates to exercise their beliefs; and (3) the impact an accommodation would have on other prisoners, staff, and prison resources generally. *Turner*, 482 U.S. at 89-90; *O'Lone*, 482 U.S. at 350-53.

As to the first factor, "the governmental objective must be a legitimate and neutral one" that operates "without regard to the content of the expression." *Turner*, 482 U.S. at 90. Initially, there is no evidence that the AD or Varga's bulletin are arbitrary or irrational. Defendants have presented evidence that dreadlocks can and have been used to conceal contraband. *Holmes*, 2017 U.S. Dist. LEXIS 126228, at *17-20. Obviously, prison security is a legitimate and rational objective. Further, the AD and Varga's bulletin are regulations of general applicability. They apply to all inmates regardless of their religions. And regulations of general applicability, not intended to discriminate against a religion or a particular religious sect, do not violate the free exercise clause. *Grayson*, 666 F.3d at 452-53.

As to the second factor, courts look to "whether the inmates were deprived of 'all means of expression.'" *O'Lone*, 482 U.S. at 352 (quoting *Turner*, 482 U.S. at 92). In *O'Lone*, this

factor weighed in favor of prison administrators because the inmates were able to participate in other ceremonies as proscribed by their religion; that they could not exercise one specific aspect of their religion was not a denial of free exercise.[5] *Id.* As to this factor, Walker admitted that he was able to practice Rastafarianism. The only imposition on his free exercise was the single incident when his dreadlocks were removed. But other than that, he was free to practice his chosen religion. In fact, apparently, he was free to regrow his dreadlocks.

As to the last factor, the Court acknowledged that accommodations would likely have a "ripple effect" on a prison's "limited resources" and therefore, "courts should be particularly deferential to the informed discretion of corrections officials." *Id.* at 90. Defendants have presented sufficient evidence supporting this factor. There are simply insufficient resources to adequately and constantly search each inmate's individual dreadlocks. *Holmes*, 2017 U.S. Dist. LEXIS 126228, at *21-22.

The Court finds that Defendants' actions were reasonably related to a legitimate penological interest. And "even if other methods were available, the First Amendment does not require that the prison adopt the least restrictive means of achieving its security goals, just a reasonable one." *Goetting*, 854 Fed. App'x 47, 50 (7th Cir. 2021) (citing *Holt*, 574 U.S. at 357-58). So, no constitutional right, let alone a clearly established one, was violated.

Furthermore, Walker has failed to show a clearly established right under these particularized facts through any route. Walker has not presented a closely analogous case establishing a constitutional right to wear dreadlocks. (Again, Walker cannot proceed on his

[5] In *Holt v. Hobbs*, on a Muslim inmate's RLUIPA challenge to a prison's beard grooming policy, the Court held that the existence of alternative means of practicing religion was a relevant consideration under a Free Exercise analysis but not under RLUIPA. 574 U.S. 352, 361-62 (2015) (distinguishing the Free Exercise tests in *Turner* and *O'Lone* from the "substantial burden" inquiry under RLUIPA). Here, that Walker admitted he had other means of practicing his Rastafarianism in Dixon is particularly relevant to this Court's analysis.

RLUIPA claim now.) Additionally, Walker has not presented the Court with a clear trend in case law showing that the establishment of the right is an eventuality. Finally, the removal of an inmate's dreadlocks is not patently unconstitutional. Walker's attempt to show a clearly established right by detailing the numerous other jurisdictions that do not prohibit dreadlocks is unavailing. That different executive branch officials make different policy choices does not establish a constitutional right.

On the contrary, the overwhelming case law negates his assertion that a clearly established right was violated. A decade ago, the Seventh Circuit stated, "The case law indicates that a ban on long hair, including dreadlocks, even when motivated by sincere religious belief, would pass constitutional muster." *Grayson v. Schuler*, 666 F.3d 450, 452 (7th Cir. 2012). Again, it is Walker's burden to show that his right was clearly established. Not only is his claimed right not clearly established, but also the case law is overwhelming contrary to his claim. *See, e.g., Lewis*, 712 F.3d at 1087; *Williams*, 367 Fed. App'x at 681-82; *Holmes*, 2017 U.S. Dist. LEXIS 126228, at *23. Indeed, because of this overwhelming case law, courts have granted qualified immunity to prison officials in similar cases. *Holmes*, 2017 U.S. Dist. LEXIS 126228, at *23-26.

Conclusion

For the above reasons, the Court grants Defendants' motion for summary judgment on all counts. Judgment shall enter. Civil case terminated.

Date: June 30, 2022

By: 
IAIN D. JOHNSTON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Thomas Walker,

Plaintiff(s),

v.

John Baldwin, et al,

Defendant(s).

Case No. 3:19 CV 50233
Judge Iain D. Johnston

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) John Baldwin, John Varga, John Craft and Colin Brinkmeier
and against plaintiff(s) Thomas Walker

.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Iain D. Johnston on a motion for summary judgment.

Date: 6/30/2022

Thomas G. Bruton, Clerk of Court

Yvonne Pedroza , Deputy Clerk