No. 13-6827

In the Supreme Court of the United States

GREGORY HOUSTON HOLT
A/K/A ABDUL MAALIK MUHAMMAD,
Petitioner,

v.

RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTION, *ET AL.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

MISCELLANEOUS

TABLE OF AUTHORITIES—continued

Page(s)

BRIEF OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICUS CURIAE*

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization based in Washington, D.C. Its mission is to protect the rights of individuals and religious communities to worship as they see fit, and to preserve the separation of church and state as a vital component of democratic governance. Americans United has more than 120,000 members and supporters nationwide.[1]

Since its founding in 1947, Americans United has participated as a party, as counsel, or as an *amicus curiae* in many of the leading church-state cases decided by this Court and the lower federal courts. Notably, Americans United advocated for passage by Congress of the Religious Land Use and Institutionalized Persons Act, Pub. L. No. 106-274, codified at 42 U.S.C. §§ 2000cc *et seq*., and filed an *amicus* brief in *Cutter* v. *Wilkinson*, 544 U.S. 709 (2005), arguing that the statute should be upheld against a facial challenge.

SUMMARY OF ARGUMENT

This case should have been easy. Petitioner seeks a modest exception to the prison's grooming policy

[1] *Amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* or its counsel made a monetary contribution to the brief's preparation or submission. The parties' letters consenting to the filing of *amicus* briefs are on file with the Clerk.

that imposes no meaningful burdens on any other inmate or anyone else and is materially indistinguishable from an exemption that is available to other inmates who request it for nonreligious reasons. And there is not so much as a hint in the record that petitioner's request is anything other than a sincere attempt to comply with a religious duty in a way that is consistent with the conditions and demands of confinement. Accordingly, the requested accommodation should have been granted.

But while the right outcome here should have been obvious—to respondents and to the court below—evaluating requests for accommodations under RLUIPA is not always so easy. As this Court has consistently recognized, preserving religious liberty for all Americans requires striking a careful balance between respect for individuals' rights to practice their religion, on the one hand, and official neutrality in matters of faith, on the other. When government wishes to ameliorate the burdens that it has placed on religious exercise, it must do so in a way that does not impinge on the rights, or otherwise harm the interests, of others.

Amicus writes, therefore, in order to underscore the importance of adhering to and reaffirming the Court's carefully wrought doctrine for navigating the boundary between permissible religious accommodation and impermissible governmental support for religion. Critical in this regard is the Court's admonition that proper application of RLUIPA must always involve "tak[ing] adequate account of the burdens a requested accommodation may impose on nonbeneficiaries." *Cutter*, 544 U.S. at 720. That requirement follows from the central Establishment Clause concern, and this Court's long-standing recognition,

that the right to practice one's faith freely is conditioned on the equal rights of others.

ARGUMENT

A. PETITIONER'S MODEST REQUEST FOR AN EXEMPTION FROM THE PRISON GROOMING POLICY SHOULD HAVE BEEN GRANTED.

1. The Establishment and Free Exercise Clauses "express complementary values" but also "exert conflicting pressures." *Cutter*, 544 U.S. at 719. The underlying values are, therefore, "frequently in tension." *Locke* v. *Davey*, 540 U.S. 712, 718 (2004). That is true even when an accommodation is "legislative" rather than constitutionally mandated. *Cutter*, 544 U.S. at 720.

Permissive accommodations—those that are neither forbidden by the Establishment Clause nor required by the Free Exercise Clause—may serve the salutary purpose of ensuring that religious adherents do not unjustifiably face substantial, government-imposed burdens on their religious exercise. Properly conceived and carefully administered, permissive accommodations lie at the "play in the joints" between the Establishment and Free Exercise Clauses. *Locke*, 540 U.S. at 719.

But because permissive accommodations go beyond what the Free Exercise Clause requires, they also pose a particular risk of violating the core Establishment Clause value of "neutral[ity] in matters of religious theory, doctrine, and practice." *Epperson* v. *Arkansas*, 393 U.S. 97, 103-104 (1968). Accordingly, government must "pursue a course of neutrality toward religion,' favoring neither one religion over others nor religious adherents collectively over nonadherents." *Board of Educ. of Kiyras Joel Vill. Sch.*

Dist. v. *Grumet*, 512 U.S. 687, 696 (1994) (citation omitted).

2. As this Court observed in *Cutter*, in prisons "the government exerts a degree of control unparalleled in civilian society and severely disabling to private religious exercise." 544 U.S. at 720-21. "Institutional residents' right to practice their faith is at the mercy of those running the institution." *Id.* at 721 (internal quotation marks omitted). As a result, "'frivolous or arbitrary' barriers" frequently "impede[] institutionalized persons' religious exercise." *Id.* at 716 (quoting 146 Cong. Rec. S7774, S7775 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy on RLUIPA)).

For nontraditional faiths, the burdens tend to be particularly onerous because inmates must "depend on government to facilitate their religious exercise by providing chaplains, worship space and time, and other aspects of religious life." Ira C. Lupu & Robert W. Tuttle, *The Forms and Limits of Religious Accommodation: The Case of RLUIPA*, 32 Cardozo L. Rev. 1907, 1933 (2011). Prison officials must make critical decisions about "the quantity, quality, [and] timing of the services provided." *Id.* at 1934. And when they make "substantive assessment[s] of the religious reasons for the request[ed]" accommodations (*id.* at 1933), their relative lack of familiarity with minority faiths and practices may lead them to deny accommodations reflexively: They may view central tenets of an inmate's belief system and critical components of worship or religious study as insubstantial or even frivolous. See *Cutter*, 544 U.S. at 716 n.5 (recounting congressional hearings that revealed accommodations being granted to some reli-

gions while identical accommodations were denied to other religions).

That risk may increase when prison officials rely on chaplains to evaluate and advise on accommodation requests. Prison chaplains regularly "express frustration over requests that they view as bogus or extreme"; and Protestant chaplains are more likely than Catholic or Muslim chaplains to view accommodation requests from minority or nontraditional faiths as being extremist. Pew Forum on Religion & Public Life, *Religion in Prisons—A 50-State Survey of Prison Chaplains* 16, 19 (Mar. 22 2012), http://goo.gl/cp3vUO. Thus, requests for accommodations by members of minority and nontraditional faiths may face additional obstacles, especially when the reviewing chaplain is a member of the majority faith.

3. RLUIPA was Congress's attempt to alleviate the special burdens that prison life may place on inmates' freedom of conscience. *See Cutter*, 544 U.S. at 714-715. The statute provides that, for prisons that receive federal funds, "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, * * * unless the government demonstrates that imposition of the burden on that person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). This approach "was not required as a matter of constitutional law under the Free Exercise Clause"; rather, it was an additional statutory protection. *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 439 (2006). Accordingly, RLUIPA's reach is

necessarily circumscribed by the prohibitions of the Establishment Clause.

Given these parameters, prison officials must walk a careful line in considering requested accommodations under RLUIPA. They must generally permit worship and religious study and practice while ensuring that their institutions do not engage in religious favoritism, foster pressure to conform in matters of faith, or otherwise burden the rights of others.

4. In *Cutter*, the Court outlined the test for determining whether an inmate's request crosses that line. The inmate plaintiffs in *Cutter* sued the State of Ohio for failing to accommodate their exercise of "nonmainstream" religious beliefs, thus implicating their rights under RLUIPA. 544 U.S. at 712. Ohio responded by contending that RLUIPA is facially incompatible with the Establishment Clause. See *id.* at 713. But the Court flatly rejected the State's argument, reasoning that "§ 3 of RLUIPA fits within the corridor between the Religion Clauses." *Id.* at 720. In so holding, the Court explained that RLUIPA does not "elevate accommodation of religious observances over an institution's need to maintain order and safety" but instead requires that "an accommodation must be measured so that it does not override other significant interests." *Id.* at 722. The Court recognized that RLUIPA must be applied "with 'due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.'" *Id.* at 723 (citations omitted). But, the Court held, religious accommodations that do not "significantly compromis[e] prison security or

the levels of service provided to other inmates" fall squarely within the permissible zone; those are the ones that RLUIPA mandates. *Cutter*, 544 U.S. at 720. *Id.* at 725 (internal quotation marks omitted).

5. Petitioner seeks a modest exception to the prison's grooming policy to allow him to grow a half-inch beard in accordance with a tenet of his faith. Respondents have never argued that permitting him to do so would result in state-supported religion or religious favoritism, and there is no reason to think that it might.

Instead, respondents have defended their denial of petitioner's request by, among other things, citing concerns about contraband being hidden in facial hair. But the magistrate judge rightly rejected as "almost preposterous" the suggestion that there is any material difference for that purpose between the half-inch beard that petitioner wishes to grow and the quarter-inch ones that respondents allow for inmates with dermatological conditions. See J.A. 155, 164 (Administrative Directive 98-04.D of Arkansas Department of Correction). Facial-hair density may vary, but even the most hirsute would find it difficult to conceal even something as small as a cell-phone SIM card (see Pet. Br. 32; J.A. 128-129)—much less a knife or other weapon—in a half-inch beard.

Respondents also assert that beards might facilitate escapes because inmates could change their appearance quickly by shaving. But at least 44 jurisdictions accommodate inmates' requests to grow a half-inch beard for religious reasons. Pet. Br. 24-26; see also Dawinder S. Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. Miami L. Rev. 923, 964-72 (2012). If neatly trimmed beards genuinely "compromis[ed] prison security or the levels of ser-

vice provided to other inmates" (*Cutter*, 544 U.S. at 720 (internal quotation marks omitted))—whether by facilitating prison breaks or the smuggling of contraband or by putting inmates, guards, or anyone else at risk in any way—respondents would have had some evidence to offer on that score. That they came forward with nothing but fanciful speculation should end the matter.

6. Of course, the existence of a nonreligious exemption to an otherwise generally applicable, religiously neutral policy—such as the grooming regulation here—does not automatically justify a religious accommodation. In some cases, existing exemptions differ materially in scope, duration, or justification; courts should therefore carefully consider the context of the particular regulatory scheme at issue. Moreover, the Establishment Clause always requires special care to ensure that third parties would not be harmed by requested accommodations (see Part B, *infra*)—even if government is preferentially allocating costs, burdens, and benefits among inmates for reasons unrelated to religion. But here, respondents have offered no compelling—or even minimally plausible—concern for safety, security, or discipline that might justify denying petitioner's request. Nor have they shown that allowing petitioner to grow a short, neatly trimmed beard would result in state-supported religion or an official preference for religion over nonreligion or that it would adversely affect anyone else.

In sum, the Establishment Clause presents no obstacle to accommodation, and respondents do not and cannot meet their burden to show the compelling interest and narrow tailoring required for denying the accommodation under RLUIPA. Petitioner's re-

quest should therefore have been granted, and the Eighth Circuit erred in concluding otherwise.

B. THE ESTABLISHMENT CLAUSE FORBIDS ACCOMMODATIONS THAT WOULD MEANINGFULLY BURDEN THIRD PARTIES.

But not every request for an accommodation is so easily resolved. It is therefore critically important that, in deciding this case, the Court remain mindful of the considerations that must always inform decisions under RLUIPA, lest the Court's opinion inadvertently erode the constitutional limitations on permissive accommodation. Were that to happen, the rights and well-being of some inmates might in many instances be sacrificed in order to advance the religious practice of others. That is not what Congress intended in enacting RLUIPA, and it is not a result that the Establishment Clause allows.

1. Accommodation may sometimes lead to impermissible governmental favoritism toward religion.

As this Court has warned, "[a]t some point, accommodation may devolve into 'an unlawful fostering of religion.'" *Cutter*, 544 U.S. at 714 (quoting *Corp. of Presiding Bishop* v. *Amos*, 483 U.S. 327, 334-335 (1987)). That risk may be present whenever a special privilege is afforded to religious adherents, because of the possibility that it will be perceived as favoring religion over nonreligion. But the danger is especially pronounced when the granting of an exception, exemption, or privilege to one group imposes costs or burdens on others. Thus, this Court admonished in *Cutter* that proper application of RLUIPA must always involve "tak[ing] adequate account of the bur-

dens a requested accommodation may impose on nonbeneficiaries." *Id.* at 720.

This requirement follows from the central Establishment Clause concern, and this Court's longstanding recognition, that the right to practice one's faith freely is conditioned by the equal rights of others. The requirement governs not just accommodations that would play favorites among religious denominations, but also those that would impose even purely secular burdens on others. When government discounts or ignores the secular harms that a requested accommodation might inflict on third parties, it may end up infringing the rights and interests of those third parties in order to advance religious practices in which they do not wish to partake. Subordinating the rights of some to the religious choices of others also risks fomenting the religious strife that the Establishment Clause was designed to forestall. Cf. *Van Orden* v. *Perry*, 545 U.S. 677, 698 (2005) (Breyer, J., concurring) (Religion Clauses "seek to avoid that divisiveness based upon religion that promotes social conflict, sapping the strength of government and religion alike.").

Enforced underwriting of another's religious exercise is a kind of compelled support or conformity that has no place in our constitutional order. As James Madison put it, our plan of government provides for "the immunity of Religion from civil jurisdiction, *in every case where it does not trespass on private rights* or the public peace." Letter from James Madison to Edward Livingston (July 10, 1822), *reprinted in* 9 The Writings of James Madison 1819-1836, at 98, 100 (Galliard Hunt ed., 1910) (emphasis added).

Thus, this Court has consistently declined to grant exemptions or special privileges to enable religious practice when doing so would impose meaningful burdens on some other identifiable individual. In *Estate of Thornton* v. *Caldor, Inc.*, 472 U.S. 703 (1985), for example, the Court struck down a statute requiring employers to accommodate sabbatarians in all instances, because "the statute [took] no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath." *Id.* at 709. Because the statute favored religious over nonreligious reasons for taking time off, it impermissibly forced coworkers to "take a back seat to the Sabbath observer" instead of maintaining strict governmental neutrality in matters of religion. *Id.* at 710 n.9; cf. *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 66, 80 (1977) (Title VII's reasonable-accommodation provision does not authorize shifting to unionized coworkers with greater seniority the burden of covering for religious observer's requested day off).

Similarly, in *Braunfeld* v. *Brown*, 366 U.S. 599 (1961), the Court denied an exemption from Pennsylvania's Sunday-closing law to orthodox Jews, who were already closing their businesses on Saturday. The plurality reasoned that allowing the shopkeepers "to keep their businesses open on [Sunday] might well provide [them] with an economic advantage over their competitors who must remain closed on that day." *Id.* at 608-609 (plurality op.). In doing so, the plurality noted that the requested exemption might distort religious practice by creating incentives for some business owners to claim religious reasons for closing on "their least profitable day" rather than on their sabbath, and that it might also encourage reli-

gious discrimination in hiring by the exempted businesses. *Id.* at 609.

And in *United States* v. *Lee*, 455 U.S. 252 (1982), the Court refused to exempt an Amish employer from paying his employees' share of social-security taxes because granting that exception would "operate[] to impose the employer's religious faith on the employees" by forcing them to participate in his religiously based dissent. *Id.* at 254 n.1, 261.

To be sure, the Court has occasionally permitted accommodations that might have hypothetical spillover effects—but only when the potential consequences for third parties would be so diffuse and amorphous as to have no meaningful effect on any particular individual. Thus, the Court held that government may exempt houses of worship from property taxes as part of a broad exemption for nonprofit entities (*Walz* v. *Tax Comm'n*, 397 U.S. 664, 673 (1970)), because the public as a whole bore the incidence of the forgone tax revenues—and did so only in the most abstract way—while also sharing in the social benefits of a system that encouraged all nonprofits to flourish. The Court similarly upheld a conscientious-objector exemption from the draft. *Gillette* v. *United States*, 401 U.S. 437, 454-460 (1971). Although in principle the exemption exposed other registrants to an "increased chance of being drafted and forced to risk one's life in battle" (*Kiryas Joel*, 512 U.S. at 725 (Kennedy, J., concurring)), the theoretical burden created by the exemption was general and immeasurably small, given the size of the draft pool and the random selection process employed (see Random Selection for Military Service, Proclamation No. 3945, 34 Fed. Reg. 19,017 (Nov. 29, 1969)).

The only other arguable exception that the Court has recognized to the rule against accommodating religion in ways that burden third parties is in the context of laws affecting church autonomy (which give rise to entirely different concerns). *See Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 132 S. Ct. 694 (2012); *Amos*, 483 U.S. at 327.

In all other circumstances, the Court has approved accommodations—including statutory ones such as those authorized by the Religious Freedom Restoration Act, Pub. L. No. 103-141, codified at 42 U.S.C. §§ 2000bb *et seq*., and RLUIPA—only when they did not risk "abridg[ing] any other person's religious liberties" or otherwise implicate Establishment Clause concerns in any meaningful way. *Sherbert* v. *Verner*, 374 U.S. 398, 409-410 (1963) (recognizing exemption for Seventh-Day Adventist from unemployment-benefits law that required her to accept work on her Sabbath, where there was no risk that providing the benefits would make her "a nonproductive member of society")*;* see also, *e.g.*, *Gonzales*, 546 U.S. at 426-427, 435-437 (recognizing exemption from federal drug laws for religious group's ritual use of hallucinogenic tea because, among other things, government failed to show harmful third-party effects of accommodation); *Wisconsin* v. *Yoder*, 406 U.S. 205, 230 (1972) (exempting Amish from truancy laws after eighth grade because accommodation would cause no "harm to the physical or mental health of the child[ren] or to the public safety, peace, order, or welfare"). To do otherwise would be to cross the line from permissible accommodation to impermissible favoritism toward religion.

2. When evaluating inmates' requests for accommodations, courts should consider both the burdens on free exercise and the burdens that accommodation may place on other inmates.

Prisons are home to an amazing diversity of religious beliefs and practices, yet prison officials tightly regulate all aspects of inmates' lives, including access to clergy, religious texts, worship services, and other means and modes of practicing one's faith. See, *e.g.*, *Cutter*, 544 U.S. at 720-721. As explained above (at 4-5, *supra*), inmates face far more intrusive limitations on free exercise than the civilian population experiences. Thus, in many cases, there will appropriately be a greater demand for exemptions inside prison than outside. Indeed, Congress passed RLUIPA specifically to address the substantially greater intrusions on free exercise that occur within the prison walls. See *Cutter*, 544 U.S. at 714-715. Yet the concern for not burdening third parties is no less critical in the prison context.

a. Prisons in the United States are home to unprecedented religious diversity. Although reliable statistics about the religious affiliations of inmates are hard to come by, "in part because the government does not track religion on Census surveys and because state prisons typically fail to track inmates' religious affiliation" (SpearIt, *Religion as Rehabilitation? Reflections on Islam in the Correctional Setting*, 34 Whittier L. Rev. 29, 35 (2012)), the available estimates consistently show greater representation of minority faiths in prison populations than in civilian society. See U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison* 14 (2008), http://goo.gl/dDlBTX ("[D]ata from federal and state

prisons suggest that the percentage of those professing non-Christian faiths is higher in prisons than in the non-incarcerated adult population overall.").[2] And the religious diversity is only increasing. See, *e.g.*, Pew Forum, *Religion in Prisons* 50-51 (survey of prison chaplains shows that numbers of practitioners of pagan and earth-based religions, Native American spirituality, Judaism, Islam, and Christianity are all increasing).

b. While that diversity produces many different sorts of requests for religious exemptions from generally applicable prison rules, the conditions of confinement mean that granting an exception for one inmate or group of inmates would sometimes have pronounced negative effects on others. Yet facilitating religious exercise by shifting the costs or burdens onto nonadherents would impermissibly place the State's "power, prestige, and financial support" behind the religious exercise while imposing "coercive pressure" on other inmates to conform in order to enjoy the benefits or avoid the burdens. *Engel v. Vitale*, 370 U.S. 421, 431 (1962). These impermissible effects might occur in a variety of circumstances.

First, the danger is particularly great when the accommodation would afford special privileges to religious observers that would also be highly desirable to other inmates for secular reasons. In *Americans*

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[2] See also *ibid.* (comparing representation of specific minority faiths in prison to that in civilian society); Pew Forum on Religion & Public Life, *U.S. Religious Landscape Survey, Religious Affiliation: Diverse and Dynamic* 10 (Feb. 2008), http://goo.gl/ftJqc0; SpearIt, 34 Whittier L. Rev. at 36-37; Barry A. Kosmin & Ariela Keysar, *American Religious Identification Survey* 9 (Mar. 2009), http://goo.gl/wPdPIk; Pew Forum, *Religion in Prisons*, at 48-49.

United for Separation of Church & State v. *Prison Fellowship Ministries, Inc.*, 509 F.3d 406 (8th Cir. 2007), for example, Iowa had converted a prison's "honor unit" into a unit designated for practicing Christians. This special facility provided "greater privacy than the typical cell" and allowed "more visits from family members and * * * greater access to computers" and other recreational items. *Id.* at 424. Because eligibility for the unit (and hence also the special privileges that it afforded) was based on willingness "to productively participate in a program that is Christian-based," the Eighth Circuit held that the program created unlawful incentives for inmates to convert to Christianity. *Id.* (internal quotation marks omitted).

Second, an accommodation might be inappropriate if granting it would cause dignitary harms to other inmates. Approving an inmate's request to limit contact with other inmates to coreligionists only, for example, or to be segregated from persons of a certain belief system that the inmate dislikes or disagrees with, would constitute official favoritism toward religiously motivated association over other associational interests. See, *e.g.*, *Hamilton* v. *Hernandez*, 500 F. App'x 592, 594 (9th Cir. 2012) (inmate not entitled under RLUIPA to reject cellmates who did not share his practice of House of Yahweh faith). This type of favoritism would also put the state's stamp of approval on discrimination.

Finally, granting a requested accommodation may pose unacceptable risks to the physical safety or well-being of other inmates or guards. Permitting a particular religious practice might, for example, be an unreasonable "drain on prison security's manpower" to oversee the inmates, especially if "unrest

arises in one part of the prison while a * * * ceremony [requiring supervision by guards] is ongoing elsewhere." *Fowler* v. *Crawford*, 534 F.3d 931, 939 (8th Cir. 2008) (noting safety concerns from sweat-lodge ceremony, which would provide inmates with "ready access" to embers, coals, wood, rocks, and shovels in "an enclosed area inaccessible to outside view"); *Indreland* v. *Yellowstone Cnty. Bd. of Commr's*, 693 F. Supp. 2d 1230, 1234 (D. Mont. 2010) (state had legitimate interest in denying inmate's request for Satanic medallion on chain that "could be used to strangle another inmate or officer"). Prison life is marked by the ever-present risk of violence, even without exacerbating that danger by forcing some individuals to sacrifice their freedom of conscience, safety, or quality of life to the religious choices of their fellow inmates.

c. Although prison life may present particular challenges in balancing the accommodation of religious exercise against the harms and burdens to others, the governing principles, and the attendant need for careful evaluation of requests, are no different from those in civilian life.

The Establishment Clause no more licenses accommodations outside prison that impose burdens on others than it does within the prison walls. Indeed, accommodations are more likely to be appropriate in prison than outside because the point of accommodation is to ameliorate government-imposed burdens, not to encourage religious practice. And as the Court explained in *Cutter*, 544 U.S. at 720-721, the sorts of government-imposed burdens on religious exercise that exist in prison are orders of magnitude greater than anything that normally exists elsewhere. See pages 4-5, *supra*. In civilian life, where government-

imposed burdens on religion are the exception rather than the rule, special privileges for religion are far more likely to favor and encourage religion over non-religion or one faith over others. Thus, although accommodations are more likely to be permissible in prison than in civilian life, care must be taken in both contexts to consider the limitations that the Establishment Clause places on accommodations that might adversely affect third parties. An exemption should not subject certain classes of people to the stigma of invidious discrimination, deny them access to public accommodations and services, or impose financial burdens on or strip benefits from them. If it would, "an accommodation may impose a burden on nonadherents so great that it becomes an establishment." *Kiryas Joel*, 512 U.S. at 725 (Kennedy, J., concurring).

* * *

Requests for religious accommodations come in different shapes and sizes. The simplicity of this case should not obscure the fact that the requests must always be evaluated with care to ensure that the Establishment Clause's boundaries are respected, and that fulfilling one inmate's desire for enhanced opportunities to practice his or her faith never becomes a tool for restricting the quality of life of other inmates. Nor should RLUIPA ever become a license to put inmates or guards at risk of physical injury or death, or to strip inmates of rights and privileges in the name of supporting religious beliefs and practices to which they do not subscribe. As the Court observed in *Cutter*, "[s]hould inmate requests * * * impose unjustified burdens on other institutionalized persons," "the facility would be free to resist the im-

position." 544 U.S. at 726. And the Establishment Clause may require it to do so.

CONCLUSION

For the foregoing reasons as well as those stated by petitioner, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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