

No. 26-15

IN THE
Supreme Court of the United States

GARY PEREZ; MATILDE TORRES,
Petitioners,

v.

CITY OF SAN ANTONIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

**BRIEF FOR THE JEWISH COALITION FOR
RELIGIOUS LIBERTY AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE

The Jewish Coalition for Religious Liberty—an association of Jewish communal and lay leaders—is concerned with the current state of religious-liberty jurisprudence. The Coalition seeks to protect the ability of all Americans to practice their faith freely. To that end, it has joined amicus briefs in this Court and lower federal courts, submitted op-eds to prominent news outlets, and established an extensive volunteer network to foster cooperation between faith communities and promote religious liberty for all.

Amicus urges this Court to grant review in this case and hold that, under the First Amendment, courts cannot make theological judgments disguised as substantial burden analysis. By doing so, this Court will bring circuits into alignment with *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), and resolve a question left open in *Zubik v. Burwell*, 578 U.S. 403 (2016), and *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020). Clarifying this important question of religious exercise will affirm First Amendment protections for members of all faiths, especially minority faiths vulnerable to misunderstanding.¹

INTRODUCTION

The plight of members of the Lipan-Apache Native American Church in losing sacred worship grounds is

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received notice of amicus’s intent to file this brief at least 10 days prior to its due date.

not a niche issue relegated to a particular set of facts. The issues in this appeal speak to challenges faced by citizens of all faiths and particularly by adherents of minority faiths. Believers of minority faiths are uniquely vulnerable to court misinterpretation of religious burdens, as the petitioners were here. Allowing judges to step into the role of theological arbiter curtails the religious liberties of all and poses a heightened risk to citizens of minority faiths.

This Court’s review is necessary to protect against judges erroneously using an “objective” approach to second-guess and reject a religious claimant’s sincere theological judgment of what the claimant’s religion requires or when it has been burdened. Particularly when the religion in question is little-known and little-understood, courts can too easily diminish or deny religious exercise.

Indeed, members of minority faiths face real, concrete deprivations of religious liberty if judges may substitute their own judgment in place of the actual practitioner’s judgment. Past cases have revealed these risks in relation to faith-based diet, sartorial, and grooming requirements, as well as clashes with government land use. If the “objective” test applied in this case to members of the Lipan-Apache Native American Church is allowed to stand, further harm will follow to other religious communities. *Cf. Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488 (2025) (Gorsuch, J., dissenting from denial of certiorari).

Judges should not be permitted to question claimants’ sincerely held religious beliefs when deciding whether a government action burdens religious exercise. Rather, a court should only inquire into the sincerity and religiosity of those beliefs. This limitation has been repeatedly recognized in this Court’s case law, both

on its own merits and because of the unique dangers to minority faiths. And Congress codified this boundary on judicial inquiry into the merits of theological beliefs via the Religious Freedom Restoration Act (RFRA) and Religious Land Use and Institutionalized Persons Act (RLUIPA).

This Court should take this opportunity to reiterate this established limitation. Doing so will be consistent with this Court’s precedent, Congressional mandates, and the First Amendment’s Free Exercise Clause. And it will protect religious liberties for all faiths. *See, e.g.*, Pet. App. 56a (Oldham, J., and Ho, J., dissenting from denial of rehearing en banc) (explaining that “the panel majority’s faulty substantial burden analysis poses a particularly acute risk to minority faiths” and that “the better approach is to apply the same standards to all people”).

Granting certiorari and ruling for the petitioners will ensure that minority religions receive equal treatment. The robust protections for religious liberty in our Constitution should not be limited by the knowledge, esoteric preferences, or value judgments of the judiciary. If courts do not defer to an individual’s own interpretation of his or her religious beliefs and practices, courts in effect tell a religious adherent—even of a minority faith—that “he misunderstands his own religion.” *Ben-Levi v. Brown*, 577 U.S. 1169, 1174 (2016) (Alito, J., dissenting from denial of certiorari).

ARGUMENT

I. MEMBERS OF MINORITY RELIGIONS ARE ESPECIALLY VULNERABLE TO DEPRIVATION OF RELIGIOUS LIBERTIES, AS THEIR BELIEFS AND PRACTICES MAY BE LESS KNOWN OR UNDERSTOOD.

Minority religions risk having an innate disadvantage in the free exercise of religion. *See, e.g., Byrd v. Haas*, 17 F.4th 692, 700 (6th Cir. 2021) (“it is ‘the minority view ... that most often needs protection under the First Amendment.’”) (quoting *Bible Believers v. Wayne County*, 805 F.3d 228, 243 (6th Cir. 2015)). “Although traditional religious beliefs are not formally entitled to greater protection than many non-traditional dogmas,” well-understood religious beliefs more easily could—but should not—become the “standard by which other beliefs are measured for First Amendment protection.” *Callahan v. Woods*, 658 F.2d 679, 685 (9th Cir. 1981) (cautioning that courts risk favoring familiar, mainstream faiths over sincerely held but less conventional beliefs).

This temptation to favor majority religions is explainable. Like adherents of many faiths, members of minority religions often follow religious requirements unfamiliar to those outside the faith. But for minority religions, a vast swath of faith-based practices—sometimes even *all* of a religion’s practices—may be unfamiliar to nonbelievers. To someone of no faith or a different faith, many idiosyncratic religious observations of a minority religion might seem inconsequential—for example, Jewish religious requirements like turning on a light switch on a Saturday or wearing a certain kind of fabric. Yet for some observant Jews, these are scriptural mandates essential to religious life.

Understandably, courts have frequently demonstrated an ignorance of religious practices, and particularly minority ones. These issues have arisen, for example, in prison, public school, and employment settings, where some uniformity of behavior or appearance is mandated. And they frequently occur in government land use contexts, where the practices of minority religions sometimes collide with the government's regulation of its land. Understandable ignorance of minority religious exercise is problematic, however, when such ignorance impacts a determination of whether a government activity imposes a substantial burden. The fact that a group's "history and religious practices may be unfamiliar to many ... should make no difference" in protecting their religious liberty. *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1489 (Gorsuch, J., dissenting from denial of certiorari). "A critical function of the Religion Clauses of the First Amendment is to protect the rights of members of minority religions against quiet erosion by majoritarian social institutions that dismiss minority beliefs and practices as unimportant, because unfamiliar." *Goldman v. Weinberger*, 475 U.S. 503, 524 (1986) (Brennan, J. dissenting).

Courts play a crucial role in ensuring the protection of minority religions. Examples abound. In *Byrd*, for instance, an adherent of the Ifa faith—one of only three faiths the Michigan Department of Corrections recognized yet denied group worship—waited over six years without any response to his requests for sixteen cowry shells, consecrated beads, and a picture of the Orisha central to his religious practice. 17 F.4th at 694, 696. The district court and prison officials treated the deprivation of these small religious items as insignificant given their unfamiliarity with the faith and its minimal size. *Id.* at 699. The Sixth Circuit held that the district court went

beyond permissive boundaries to make a judgment on a religious belief. Making such a judgment, no matter how unreasonable or unfamiliar a belief may seem, “miss[es] the entire point of our religious-liberty jurisprudence.” *Id.* at 700. Protecting religious liberty, even and especially for minority religions, has been a “bedrock principle of our ordered liberty” from our Founding. *Id.* Thus, it must be that courts are “especially solicitous of religious claimants who run against fashionable trends.” *Id.* It is a “constitutional duty” for courts to “protect the religious freedom of minority adherents.” *Id.*

Prison practices have particularly affected Jewish prisoners. For instance, a prison once tried to meet its religious liberty requirements by providing “vegetarian” and “nonpork” meals to Orthodox Jewish inmates instead of kosher meals. *Ashelman v. Wawrzaszek*, 111 F.3d 674, 675 (9th Cir. 1997). But kosher requirements go beyond mere ingredients and extend to every step in food preparation, too. *Mitzvahs & Traditions: Kosher*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/113424/jewish/Kosher.htm (last visited Aug. 28, 2026). A non-pork meal might seem *close enough* to kosher to an unfamiliar judge, but kosher it is not. As another example, Orthodox Jews consider it a sin to wear clothing made of both wool and linen. Even the tiniest mixture is a transgression, and clothing is often checked by specialists to ensure compliance. *Mitzvahs & Traditions: Shatnez-Free Clothing*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/679436/jewish/Shatnez-Free-Clothing.htm (last visited Aug. 28, 2026). An unfamiliar judge could easily rule that a school or prison uniform is *close enough* to meet this standard, but even the tiniest amount of one material mixed with the other would violate a scriptural commandment that

many Jews go to considerable effort and expense to follow.

Another area where conflict arises is religious practices implicated by grooming and shaving requirements, especially in the prison and employment context. *See, e.g., Holt v. Hobbs*, 574 U.S. 352 (2015) (grooming policy substantially burdened prisoner’s exercise of religion); *Landor v. Louisiana Dep’t. of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1957 (2026) (“There is no dispute that Louisiana prison officials must comply with RLUIPA’s substantive protections” in case involving shaving prisoner’s hair in violation of his religious beliefs) (Jackson, J., dissenting); *Litzman v. NYPD*, 2013 WL 6049066 (S.D.N.Y. Nov. 15, 2013) (exempting an Orthodox Jewish police officer from the New York Police Department’s shaving policy). And tension can arise between employment requirements and religious observances. Sacred-day observance, for example, falls on different days for different faiths. And some believers adhere to certain Sabbath-day prohibitions on performing otherwise common everyday activities, such as flipping light switches, operating vehicles, and carrying objects in some circumstances. All of these can affect religious adherents in the workplace.

Protected religious exercise also may intersect with the use of public land. For example, virtually all Orthodox Jewish communities erect *eruv*s—ceremonial wires—around their communities. These are usually strings attached to telephone poles, which are often on government-owned land. Mere strings might seem insignificant to an outsider, but *eruv*s are critical for Orthodox Jews to be able to live in an area while also fulfilling their religious obligations; *eruv*s enable them to carry things within the enclosed space on the Sabbath. This allows, for example, a mother to carry her baby

supplies and even her child to synagogue. *See, e.g., Tenaflly Eruv Ass'n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, 152 (3d Cir. 2002). Allowing the prohibition of an *eruv* because it only bars the hanging of a seemingly insignificant small wire is tantamount to prohibiting Orthodox Jews from moving into the jurisdiction. Similarly, some Jewish communities' religious beliefs require particular orientations of headstones and grave markers. *See, e.g., Warner v. City of Boca Raton*, 64 F. Supp. 2d 1272, 1279 (S.D. Fla. 1999), *aff'd*, 420 F.3d 1308 (11th Cir. 2005). If a court could prohibit these orientations on the theory that these land uses are insubstantial religious tenets, these religious adherents would have no options and no recourse.

II. COURTS SHOULD NOT QUESTION SINCERELY HELD RELIGIOUS BELIEFS WHEN DECIDING WHETHER A GOVERNMENT ACTION SUBSTANTIALLY BURDENS RELIGIOUS EXERCISE.

When assessing a Free Exercise claim, courts perform two distinct analyses. First, the court considers whether a claimant's beliefs are sincere and religious in nature; second, the court takes those beliefs as given and examines whether the government's action imposes a substantial burden on them. Congress affirmed in law these protections for religious exercise.

Keeping these inquiries distinct protects religious belief and exercise, and particularly those of minority religions.

A. Courts May Only Inquire Into The Religiosity And Sincerity Of A Claimant's Religious Beliefs.

The first step in analyzing a Free Exercise claim is whether the belief or practice is religious and sincerely

held. *Kent v. Johnson*, 821 F.2d 1220, 1224-1225 (6th Cir. 1987). But the court’s scrutiny “extends only to whether a claimant sincerely holds a particular belief and whether the belief is religious in nature.” *Jolly v. Coughlin*, 76 F.3d 468, 476 (2d Cir. 1996);² *see also DeHart v. Horn*, 227 F.3d 47, 50 (3d Cir. 2000) (en banc) (“[T]he district court could properly determine only whether [claimant] sincerely held his religious beliefs.”) (reversing summary judgment against a Buddhist inmate seeking a vegetarian diet, holding that prison officials could not deny the accommodation merely because they doubted vegetarianism was doctrinally “mandated” by Buddhism, so long as the inmate’s belief was sincere)). Courts do not engage in the “unacceptable business of evaluating relative merits of differing religious claims.” *Watts v. Florida Int’l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (holding a student need only show a sincerely held belief to state a free-exercise claim, since courts do not measure a belief’s importance within the claimant’s religion) (quoting *Employment Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 887 (1990)).

In other words, the court is “limited to asking whether the claimant is (in essence) seeking to perpetuate a fraud on the court.” *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014) (Gorsuch, J.). Any inquiry into the “truth, validity, or reasonableness of religious doctrine” would go beyond the “judicial function and judicial competence” of the courts. *Callahan*, 658 F.2d at 685-685 (quoting *Thomas v. Review Bd. of Ind. Emp.*

² While *Jolly* was decided in the RFRA context before *City of Boerne v. Flores*, 521 U.S. 507 (1997), the test for religiosity and sincerity is the same in First Amendment contexts and RFRA contexts. *See United States v. Ali*, 682 F.3d 705 (8th Cir. 2012) (holding that the RFRA also analyzes substantial burden once the practice is established to be sincerely held and rooted in religious belief).

Sec. Div., 450 U.S. 707, 716 (1981)). Measure matters because “free exercise claims often test the boundaries of the judiciary’s competence.” *Ford v. McGinnis*, 352 F.3d 582, 588 (2d Cir. 2003) (Sotomayor, J.) (“[C]ourts are ‘singularly ill-equipped to sit in judgment on the verity of an adherent’s religious beliefs.’”); *see also Barr v. City of Sinton*, 295 S.W.3d 287, 301 (Tex. 2009) (An inquiry into the merits of a religious belief may “require a court to do what it cannot do: assess the demands of religion on its adherents and the importance of particular conduct to the religion.”).³

These limits particularly protect minority beliefs. Courts “are not permitted to ask whether a particular belief is appropriate or true—however unusual or unfamiliar the belief may be.” *Jolly*, 76 F.3d at 476 (protecting a Rastafarian inmate’s minority religious objection to a mandatory tuberculosis test even though Rastafarianism’s tenets were unfamiliar to prison medical staff and administrators). To do otherwise would be “inconsistent with our nation’s fundamental commitment to individual religious freedom.” *Id.*

B. The Substantial Burden Inquiry Should Not Assess The Merits of Religious Beliefs.

Once sincere religious belief is established, the court considers whether government action imposes a

³ Objectivity is not a consideration: “it is precisely in objective analysis that one loses the infinite personal and passionate concern that is the requisite condition for faith, its ubiquitous ingredient, wherein faith comes into existence.” *Watts v. Florida Int’l Univ.*, 495 F.3d 1289, 1296 (11th Cir. 2007) (quoting Kierkegaard, *Concluding Unscientific Postscript* (1844), in *2 Classics of Philosophy: Modern & Contemporary* 907 (Louis P. Pojman ed. & trans., Oxford Univ. Press 1998)).

substantial burden on adherence to or exercise of that sincere religious belief.⁴

The court’s “inquiry focuses *only* on the coercive impact of the government’s actions.” *Yellowbear*, 741 F.3d at 55 (emphasis added). In assessing a burden on a religious exercise, the court takes “religious claimants as we find them, assessing the coercive impact of the government’s actions on the individual claimant’s ability to engage in a religious exercise, as he understands that exercise and the terms of his faith.” *Id.*; *see also Korte v. Sebelius*, 735 F.3d 654, 682-683 (7th Cir. 2013) (“[T]he substantial-burden inquiry evaluates the coercive effect of the governmental pressure on the adherent’s religious practice and steers well clear of deciding religious questions.”).

There is a fine, but significant, line between “the duty to analyze whether a burden is substantial” and the court’s “obligation to accept the validity of a claimant’s religious belief.” *Real Alternatives, Inc. v. Secretary Dep’t of Health & Hum. Servs.*, 867 F.3d 338, 383-384 (3d Cir. 2017) (Jordan, J., concurring in part) (“caution is needed because an evaluation of the substantiality of a burden can easily cross into the forbidden territory of opining on the merits of a claimant’s beliefs”) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 685-686 (2014)). Courts cannot, for example, examine the reasonableness of a person’s belief, “under the guise of conducting a substantial burden analysis.” *Brush & Nib Studio, LC v. City of Phoenix*, 448 P.3d 890, 912-913 (Ariz. 2019) (holding that a city human-relations ordinance requiring calligraphers to create custom wedding

⁴ RLUIPA and RFRA incorporate the same substantial-burden test as used in First Amendment inquiries. *See Lovelace v. Lee*, 472 F.3d 174, 198 n.8 (4th Cir. 2006).

invitations for same-sex weddings substantially burdened the calligraphers' sincere religious beliefs under Arizona's RFRFA, without performing a reasonableness analysis). The "interpretation of particular church doctrines and the importance of those doctrines to the religion" is "[p]lainly ... forbid[den]" by the First Amendment. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969).

Minority religions would be at particular risk if courts were permitted to do so. If a judge were able to decide that there was no substantial burden on religion because, for example, a non-pork meal was close enough to kosher, or a mostly-linen uniform shirt with a tiny bit of wool was close enough to a pure fabric, it would greatly diminish religious liberty. The oral argument in *East Texas Baptist University v. Burwell* highlights precisely this danger. When discussing an "objective test" for the substantial-burden analysis, the court contrasted a hypothetical requirement to "turn on a light switch every day in a room in the building" with a "\$400 gazillion" fine. Oral Arg. Recording at 1:00:03-1:01:13 (5th Cir. Apr. 7, 2015) (No. 14-20112), https://www.ca5.uscourts.gov/OralArgRecordings/14/14-20112_4-7-2015.MP3; 793 F.3d 449 (5th Cir. 2015), *vacated*, 578 U.S. 403 (2016) (vacating in view of new developments without deciding merits). Yet to an Orthodox Jew, turning on a light bulb on the Sabbath could constitute a violation of Exodus 35:3, which explains that lighting a flame violates the injunction in the Ten Commandments to keep the Sabbath. "[T]rying to separate the sacred from the secular can be a tricky business—perhaps especially for a civil court whose warrant does not extend to matters divine." *Yellowbear*, 741 F.3d at 54.

In the decision below, the Fifth Circuit committed the same error. It suggested that members of the Lipan-Apache Native American Church could worship anywhere in the park—*maybe* with the critical cormorants nesting nearby—and thus there was no substantial burden on members’ religious exercise. *See* Pet. App. 18a-19a (“Appellants continue to have virtually unlimited access to the Park for religious and cultural purposes. ... Further, cormorants are not specifically targeted nor dissuaded from nesting nearby or elsewhere in the 343-acre Park.”). This is precisely the kind of theological judgment that this Court has held is improper for courts to make.

C. Congress Prohibited Courts From Considering The Merits Of A Theological Belief Through RFRA And RLUIPA.

In the aftermath of *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), Congress enacted RFRA—and later RLUIPA—to ensure “greater protection for religious exercise than is available under the First Amendment.” *Holt*, 574 U.S. at 356-358 (discussing this history). Congress defined “religious exercise” as including “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A).⁵ In short, “Congress ... directed courts to protect ‘any exercise of religion.’” *Yellowbear*, 741 F.3d at 54. In RLUIPA, “Congress made plain that [the courts] lack any license to decide the relative value of a particular exercise of religion.” *Id.* Moreover, “the substantial-burden inquiry does *not* invite the court to determine

⁵ RFRA and RLUIPA share the same definition of what constitutes religious exercise.

the centrality of the religious practice to the adherent’s faith; RFRA is explicit about that.” *Korte*, 735 F.3d at 683. Nor may courts decide whether a claimant has “correctly perceived the commands of his faith[,]” lest courts become “arbiters of scriptural interpretation.” *Yellowbear*, 741 F.3d at 54-55 (quoting *Thomas*, 450 U.S. at 716); *see also Korte*, 735 F.3d at 683 (“free-exercise doctrine makes it clear that the test for substantial burden does not ask whether the claimant has correctly interpreted his religious obligations.”).

Congress also reiterated its commitment to protecting minority religions: “RLUIPA protects not only practices deemed orthodox by some recognized religious organization, but also idiosyncratic practices—practices ‘not compelled by, or central, to a given system of religious belief.’” *Jones v. Slade*, 23 F.4th 1124, 1141 (9th Cir. 2022) (finding genuine issue of fact as to whether denying a Muslim prisoner access to religious texts under prison mail policies was a substantial burden on his religious exercise). Because RFRA and RLUIPA protect “any exercise of religion”—agnostic to its popularity—the line is clear: courts may only judge a claimant’s sincerity and religiosity; they cannot determine the *merits* of sincere religious belief.

D. Courts’ Lack Of Institutional Specialization Justifies This Explicit Boundary.

Judges are trained to adjudicate facts and law, not scripture, and any attempt to weigh the doctrinal importance of a practice inevitably requires the court to render a theological judgment it has no warrant to make. It is “beyond the competence of the courts to determine the centrality of a particular religious belief or practice[,]” a limitation that flows directly from the

institutional-competence rationale articulated in *Thomas*, *Yellowbear*, and *Ford* alike. See *Watts*, 495 F.3d at 1295.

Courts that attempt to “objectively” evaluate whether a burden is substantial are unavoidably weighing the *merits, reasonableness, or centrality* of those beliefs. The Constitution draws a clear line: courts may assess sincerity and religiosity, but not theological correctness. “Judges are not oracles of theological verity, and the Founders did not intend for them to be declarants of religious orthodoxy.” *Africa v. Pennsylvania*, 662 F.2d 1025, 1030 (3d Cir. 1981). To have courts decide theological merits beyond religiosity and sincerity would especially be prone to error when applied to minority faiths, as courts do not have any “comparative expertise when it comes to religious teachings, perhaps especially the teachings of less familiar religions.” *Yellowbear*, 741 F.3d at 54.

By contrast, deferring to a claimant’s own theological judgment—as some courts correctly do, and as all courts should—ensures equal treatment for minority faiths and maintains the appropriate role of the judiciary. Because judges are unlikely to share or even be fully aware of the beliefs of many religions, it is unreasonable to expect courts to judge the merits or reasonableness of sincere religious beliefs.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse.

Respectfully submitted.

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