

No. 26-15

In the Supreme Court of the United States

GARY PEREZ, ET AL.,

Petitioners,

v.

CITY OF SAN ANTONIO, TEXAS,

Respondent.

**On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF *AMICI CURIAE*
SEVERAL RELIGIOUS ORGANIZATIONS
SUPPORTING PETITIONERS**

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August 31, 2026

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities.....	ii
Interest of <i>Amici Curiae</i>	1
Summary of the Argument.....	3
Reasons for Granting the Writ.....	6
I. The decision below joins the wrong side of a circuit split by placing questions about religious doctrine in the hands of judges instead of practitioners.....	6
II. The decision below threatens religious freedom—especially for minority faiths.	12
CONCLUSION	16

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Apache Stronghold v. United States</i> , 145 S. Ct. 1480 (2025)	5
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014)	7, 12
<i>Eternal Word Television Network, Inc. v. Dep’t Health & Hum. Servs.</i> , 756 F.3d 1339 (CA11 2014)	9
<i>Haight v. Thompson</i> , 763 F.3d 554 (CA6 2014)	9, 10
<i>In re Young</i> , 82 F.3d 1407 (CA8 1996)	10
<i>Jordan v. Rubio</i> , 795 F. Supp. 3d 46 (D.D.C. 2025).....	8
<i>Priests for Life v. Dep’t Health & Hum. Servs.</i> , 772 F.3d 229 (CADC 2014).....	11
<i>Priests for Life v. Dep’t Health & Hum. Servs.</i> , 808 F.3d 1 (CADC 2015).....	11
<i>Ramos v. Louisiana</i> , 590 U.S. 83, 124 (2020)	12
<i>Real Alts., Inc. v. Sec’y Dep’t of Health & Hum. Servs.</i> , 867 F.3d 338 (CA3 2017)	10, 11

<i>Thomas v. Review Bd. of Ind. Emp't Sec. Div.</i> , 450 U.S. 707 (1981)	7, 8
<i>Univ. of Notre Dame v. Sebelius</i> , 743 F.3d 547 (CA7 2014)	9
<i>West v. Radtke</i> , 48 F.4th 836 (CA7 2022)	10
<i>W. Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943)	9
<i>Yellowbear v. Lampert</i> , 741 F.3d 48 (CA10 2014)	7, 8, 9, 13
<i>303 Creative LLC v. Elenis</i> , 741 F.3d 48 (CA10 2014)	5, 6
U.S. CONSTITUTION	
U.S. Const. Art. III, § 1	12
U.S. Const. Amend. 1	3
STATUTE	
Religious Freedom Restoration Act	3, 10, 11
OTHER AUTHORITIES	
S. Barclay & M. Steele, <i>Rethinking Protections for Indigenous Sacred Sites</i> , 134 Harv. L. Rev. 1294 (2021).....	13, 14
J. Edwards, <i>Yellow Snow on Sacred Sites: A Failed Application of the Religious Freedom Restoration Act</i> , 34 Am. Indian L. Rev. 151, 165 (2009)	13
FBI, Crime Data Explorer, http://cde.ucr.cjis.gov/ LATEST/webapp/#/pages/explorer/crime/hate- crime (last accessed Aug. 31, 2026)	15

R. Griffin, <i>Sacred Site Protection Against a Backdrop of Religious Intolerance</i> , 31 Tulsa L.J. 395, 397 (1995)	13
J. Locke, <i>A Letter Concerning Toleration</i> (1689) ...	9
J. Madison, Federalist No. 10	13
J. Madison, Federalist No. 51	8
<i>Memorial and Remonstrance Against Religious Assessments</i> , 2 Writings of James Madison 183 (G. Hunt ed. 1901).....	9
M. McConnell, <i>The Origins of Free Exercise</i> , 103 Harv. L. Rev. 1409 (1990).....	8, 9, 13
S. Rep. No. 411, 103d Cong., 2d Sess. (1994).....	13
I. Sheskin, <i>How Much Antisemitism Is There in the United States?</i> , 19 FIU L. Rev. 921 (2025).....	15

INTEREST OF *AMICI CURIAE*¹

Amici have diverse religious beliefs but are united in their view that all sincere religious beliefs should be protected under the First Amendment's Religion Clauses. The decision below ignored the substantial burden the City of San Antonio's actions will impose on the Lipan-Apache Native American Church's religion, and *amici* have a significant interest in ensuring that the Court gives religious exercise the full protection it is due. *Amici* include the following:

The **American Hindu Jewish Congress (AHJC)** is a national coalition representing shared interests and concerns of Hindu Americans and Jewish Americans. The AHJC unites two vibrant, millennia-old faith communities to advocate for religious liberty, mutual respect, and interfaith solidarity across all fifty States.

The **Arizona Poor People's Campaign** is a state chapter of the Poor People's Campaign: A National Call for A Moral Revival. The Arizona Poor People's Campaign advocates for an evolving paradigm in which individuals, groups, and nations

¹ Under Rule 37.2, *amici* timely provided notice of their intention to file this brief. Under Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety, that no party or their counsel authored the brief in whole or in part, and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

are cooperatively building systems of sustainable just peace through nonviolent means.

Bartimaeus Cooperative Ministries is an ecumenical experiment that incubates collaborative work around liberation, nonviolence, and mutual aid.

The **Christian Church (Disciples of Christ) in Arizona** is one of thirty-one geographic areas of the Christian Church (Disciples of Christ)—a movement for wholeness in a fragmented world.

SUMMARY OF THE ARGUMENT

The first question presented is “[w]hether the Religion Clauses of the First Amendment permit courts, when deciding whether government action burdens religious exercise, to override a claimant’s sincere theological judgment of what the religious exercise requires.” See Pet. at i. The Court should grant certiorari and answer with a resounding “No.”

The First Amendment’s Religion Clauses prohibit the government from infringing on the free exercise of religion. See U.S. Const. Amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”). Congress also enshrined that right in the Religious Freedom Restoration Act (RFRA), and many States have passed similar state-specific laws. Those statutes prohibit the government from substantially burdening a person’s religious exercise absent (1) a compelling government interest and (2) proof that the burden imposed is the least restrictive possible means of furthering the compelling government interest. To comply with the First Amendment in applying those statutes, courts must analyze the burden on religious exercise from the religious adherent’s perspective, not from the court’s perspective. Any other approach would require a court to do what the First Amendment prohibits: decide what a religion demands of its adherents.

Petitioners Gary Perez and Matilde Torres belong to the Lipan-Apache Native American Church, whose members and ancestors have

assembled “[f]or centuries . . . at a specific bend along the [San Antonio River] to meditate, worship, and pray.” App. 54a (Oldham, J., dissenting from denial of rehearing en banc) (cleaned up). They have done so because faith members believe that “the trees and cormorants that occupy a twenty-foot by thirty-foot area near the River to be the ‘axis mundi,’ a bridge between this world and the after-life.” *Ibid.* And ceremonies that are indisputably central to the Church members’ faith “cannot be properly administered without specific trees present and cormorants nesting.” *Ibid.*

Four years ago, the City announced “reformation efforts” that would eliminate the Church’s religious practice. App. 55a–56a. The riverbend reformation efforts include uprooting most trees and deploying “pyrotechnics, clappers, spotlights, lasers, distress calls, effigies, balloons, explosives, and drones” to scare away the cormorants—forever. *Id.* at 56a. If the City’s plans proceed, Petitioners and their fellow believers can never again practice their faith. Destroying the conditions required for the Church’s practice will have a significant, real impact because it will make it *impossible* to perform the ceremonies at Yanaguana riverbend. If that’s not a “substantial burden” on the free exercise of religion, nothing is.

But the district court held that the City’s planned deforestation and explosions to destroy the Church’s ancient sacred site would not substantially burden Petitioners’ religion—and the Fifth Circuit agreed. In doing so, the courts below imposed their own views of what *should* matter to the Church members’ exercise of faith rather than accepting the

Church's actual views. Those decisions crossed the constitutional line, violating the Religion Clauses.

The Fifth Circuit's decision is the latest in a troubling series: The D.C. Circuit and the Third Circuit have also taken it upon themselves to decide what matters to a religious adherent's faith. But this Court has long recognized that the judiciary has no role in deciding those religious questions.

The wrong side of that circuit split poses risks to Americans of all faiths and creates particular concerns for minority-faith members. The district court's invocation of Disney's *The Lion King* to characterize the Church's beliefs underscores the risks to minority religions when courts take it upon themselves to decide what matters to a specific faith.

Minority-faith members possess equal constitutional rights, even though they "may live far from Washington, D.C., and their history and religious practices may be unfamiliar to many." *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1489 (2025) (Gorsuch, J., dissenting from denial of certiorari). That the Church's ceremonies may seem strange to many Americans does not diminish their constitutionally protected status. Nor does it entitle them to less respect than more familiar religious exercises like Catholics taking the Eucharist or Muslims performing the Salah. The First Amendment applies to all faiths equally: The "First Amendment's protections" do not "belong only to" those "whose motives the government finds worthy;

its protections belong to all.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 595 (2023).

The Fifth Circuit’s decision below allows courts to interpret the significance of religious practices in place of the voice of the religious adherents themselves. At best, that risks mistaken interpretations of various religious practices. At worst, it invites courts to distort or disparage the beliefs of all religions—particularly those of minority faiths.

The Court should review that decision and return questions about the contours of faith to America’s churches, temples, synagogues, mosques, and other places of worship.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW JOINS THE WRONG SIDE OF A CIRCUIT SPLIT BY PLACING QUESTIONS ABOUT RELIGIOUS DOCTRINE IN THE HANDS OF JUDGES INSTEAD OF PRACTITIONERS.

The Court’s review is necessary to correct the Fifth Circuit’s and district court’s legal error: Each took the question of what mattered to the Church’s religion out of the hands of its practitioners.

The district court rejected Petitioners’ position that “minimizing tree removal” and “allowing cormorants to nest” merited religious-exercise protections. App. 301a, 303a–305a. In doing so, the district court ignored Petitioners’ explanation of their own beliefs and concluded that the “most important

part” of the Petitioners’ “spiritual ecology is the confluence of the shape of the Mother Waters at the bend of the San Antonio River with the shape of the Eridanus constellation of stars.” App. 304a. Because it found that Petitioners “still have access to over 300 acres of Brackenridge Park for meditation in nature,” the district court concluded that the deforestation and explosions would not substantially burden Petitioners’ religious exercise. App. 301a, 303a–305a, 374a–375a.

The Fifth Circuit compounded that error, holding that “the record does not support [Petitioners’] argument that the plan constitutes a substantial burden on their religious exercise” because “[Petitioners] continue to have virtually unlimited access to the Park for religious and cultural purposes” and “cormorants are not specifically targeted nor dissuaded from nesting nearby or elsewhere in the 343-acre Park.” App. 18a–19a.

Those holdings violated the First Amendment. Courts serve a “narrow function” in free-exercise cases. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (cleaned up). While courts must “determine whether the line drawn reflects an honest conviction,” *ibid.*, “it is not for [the judiciary] to say that the line [a claimant] drew was an unreasonable one,” *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715 (1981). “[I]t isn’t for judges to decide whether a claimant who seeks to pursue a particular religious exercise has ‘correctly perceived the commands of his faith’ or to become ‘arbiters of scriptural interpretation.’” *Yellowbear v. Lampert*, 741 F.3d 48, 54–55 (CA10

2014) (Gorsuch, J.) (quoting *Thomas*, 450 U.S. at 716).

That narrow function is deeply rooted in our nation’s history and tradition of protecting religious freedom. See M. McConnell, *The Origins of Free Exercise*, 103 Harv. L. Rev. 1409, 1449 (1990) (“The growing popular support for broad religious freedom within the newly formed American states helped to shape the views of the framers of the Constitution and the free exercise clause.”); see also J. Madison, Federalist No. 51 (“In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government.”).

Under that history and tradition, a federal court must “credit” a religious adherent’s beliefs and “may not tell [her] that she is mistaken about the dictates of her own faith.” *Jordan v. Rubio*, 795 F. Supp. 3d 46, 58 (D.D.C. 2025) (McFadden, J.) (collecting authorities). Accordingly, “the right of free exercise is defined in the first instance not by the nature and scope of the laws, but by the nature and scope of religious duty.” McConnell, *supra*, at 1512; accord J. Locke, *A Letter Concerning Toleration* 7 (1689) (“[T]he care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind.”); *Memorial*

and Remonstrance Against Religious Assessments, 2 Writings of J. Madison 183, 184 (G. Hunt ed. 1901) (“The Religion then of every man must be left to conviction and conscience of every man . . . [T]he opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men.”).

Judges are not “moral philosophers or theologians” and do not handle questions “of religious faith.” *Univ. of Notre Dame v. Sebelius*, 743 F.3d 547, 566 (CA7 2014) (Flaum, J., dissenting), *cert. granted, judgment vacated sub nom. Univ. of Notre Dame v. Burwell*, 575 U.S. 901 (2015). Where the “beliefs are undisputed, it is not [the courts’] role to second guess [a] difficult and important question of religion and moral philosophy[.]” *Eternal Word Television Network, Inc. v. Dep’t Health & Hum. Servs.*, 756 F.3d 1339, 1347 (CA11 2014) (W. Pryor, J., specially concurring) (cleaned up). After all, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Several circuits agree that courts must “focus[] only on the coercive impact of the government’s actions,” not “the merit of [a] plaintiff’s religious beliefs or the relative importance of the religious exercise.” *Yellowbear*, 741 F.3d at 55; see also *Haight v. Thompson*, 763 F.3d 554, 559–60 (CA6 2014) (only “showing” required is that “the practice

is traceable to a sincerely held religious belief”); *West v. Radtke*, 48 F.4th 836, 847 (CA7 2022) (“The substantial-burden inquiry does not ask whether West’s understanding of his faith obligations is correct. Courts are not arbiters of scriptural interpretation[.]” (quotations omitted)); *In re Young*, 82 F.3d 1407, 1418–19 (CA8 1996) (where adherents “consider[ed] tithing to be an important expression of their sincerely held religious beliefs,” “other ways in which the [adherents] can express their religious beliefs” were not “relevant”), *cert. granted, judgment vacated sub nom. Christians v. Crystal Evangelical Free Church*, 521 U.S. 1114 (1997).

But with the Fifth Circuit’s decision below, three circuits have now crossed that constitutional line.

In *Real Alternatives, Inc. v. Secretary of the Department of Health & Human Services*, the Third Circuit held that “the very essence of a RFRA claim” is “whether the alleged burden is ‘meaningful[.]’” 867 F.3d 338, 358 (CA3 2017). In its view, the “meaningful[ness]” assessment is “the threshold inquiry posed to any individual attempting to bring a successful RFRA claim, and it is undoubtedly for the court to answer whether it has been satisfied.” *Ibid.*

Judge Jordan dissented from that decision, explaining that his “colleagues reach th[eir] conclusion by a route that amounts to questioning the validity of th[e plaintiffs’] beliefs—an indulgence that [courts] are forbidden.” *Id.* at 370 (Jordan, J., dissenting). Relying on this Court’s decision in *Hobby Lobby*, he explained that

“[i]nstead of weighing the reasonableness of deeply-held religious convictions (and inevitably passing judgment on their value), [the courts] have a ‘narrow function’” and that the majority had wrongly taken on a greater role. *Id.* at 371, 373.

The D.C. Circuit has also insisted on “independently determin[ing] . . . whether [a regulatory framework] impose[s] a substantial burden on plaintiffs’ exercise of religion.” *Priests for Life v. Dep’t Health & Hum. Servs.*, 772 F.3d 229, 247 (CADC 2014) (cleaned up), *vacated & remanded sub nom. Zubik v. Burwell*, 578 U.S. 403 (2016). In its view, “[a]ccepting the sincerity of Plaintiffs’ beliefs” does “not relieve” the panel’s purported “responsibility to evaluate the substantiality of any burden” because “[w]hether a law substantially burdens religious exercise under RFRA is a question of law for courts to decide, not a question of fact.” *Ibid.*

As then-Judge Kavanaugh explained in his dissent from denial of en banc rehearing of that decision, the D.C. Circuit inverted the analysis. “Religious freedom—the freedom to believe and to practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society. That bedrock principle means that [courts] may not question the wisdom or reasonableness . . . of plaintiffs’ religious beliefs[.]” *Priests for Life v. Dep’t Health & Hum. Servs.*, 808 F.3d 1, 18 (CADC 2015) (Kavanaugh, J., dissenting from denial of rehearing en banc) (cleaned up). “Judicially second-guessing the correctness or reasonableness . . . of plaintiffs’ religious beliefs is

exactly what the Supreme Court [has] told [the lower courts] not to do.” *Id.* at 19 (citing *Hobby Lobby*, 573 U.S. at 724).

Unfortunately, the Fifth Circuit has joined the Third and D.C. Circuits in failing to heed this Court’s warning “that courts must not presume to determine . . . the plausibility of a religious claim.” *Hobby Lobby*, 573 U.S. at 724 (citations omitted). When judges decide what matters to a particular faith, religious liberty will suffer. As Judge Oldham explained, “[t]o put it quite simply, [Petitioners] will be unable to practice their faith if the City’s plans go forward. If that is not a substantial burden, I do not know what is.” App. 56a (Oldham, J., dissenting from denial of rehearing en banc).

Three circuits have now disregarded the Court’s instruction that judges must not theologize about what matters to a particular religion. That’s a problem because “vertical *stare decisis* is absolute, as it must be in a hierarchical system with ‘one supreme Court.’” *Ramos v. Louisiana*, 590 U.S. 83, 124 n.5 (2020) (Kavanaugh, J., concurring in part) (quoting U.S. Const. Art. III, § 1). Those departures from the Court’s precedent illustrate why its review is necessary.

II. THE DECISION BELOW THREATENS RELIGIOUS FREEDOM—ESPECIALLY FOR MINORITY FAITHS.

The Fifth Circuit’s approach to assessing substantial burdens threatens the free exercise rights of all faithful Americans—especially

minority-faith members. Proper application of the substantial-burden test is crucial for minority faiths that lack the political leverage to prevent the erosion—or eradication—of their religious practices. See McConnell, *supra*, at 1516 (“[T]he Court should extend its protection to religious groups that, because of their inability to win accommodation in the political process, are in danger of forced assimilation[.]”); J. Madison, Federalist No. 10 (listing “[a] zeal for different opinions concerning religion” as the first kind of “faction” that the Constitution is designed to guard against). As then-Judge Gorsuch observed, judicial assessment of “the relative value of a particular exercise to a religion” risks “many mistakes”—“perhaps especially [for] the teachings of less familiar religions.” *Yellowbear*, 741 F.3d at 54.

Native Americans know those issues all too well. The federal government’s centuries-long “divestiture of land” from Native Americans has resulted in “their most sacred sites [being] completely within the government’s control.” S. Barclay & M. Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 Harv. L. Rev. 1294, 1313 (2021). But just as Jews go to synagogues and Hindus go to mandirs, Native American practitioners visit natural sacred sites to engage in their traditional religious practices. See R. Griffin, *Sacred Site Protection Against a Backdrop of Religious Intolerance*, 31 Tulsa L.J. 395, 397 (1995) (Native American sacred sites are the “equivalent of churches, temples or synagogues” (quoting S. Rep. No. 411, 103d Cong., 2d Sess. 2 (1994))).

Natural sacred sites are central to the religious beliefs of many Native Americans. See J. Edwards, *Yellow Snow on Sacred Sites: A Failed Application of the Religious Freedom Restoration Act*, 34 Am. Indian L. Rev. 151, 165 (2009). Those natural sacred sites are unique in the truest sense of the word, so their destruction leaves traditional Native American worshippers without any alternative to engage in their religious exercises. The City's attempted destruction of this sacred site would be akin to Jerusalem attempting to destroy the Western Wall or Mecca attempting to destroy the Kaaba: Those sites could never be replicated once destroyed. "Without access to particular sites, essential practice of native religion may not be merely burdened, but effectively prohibited altogether." Barclay & Steele, *supra*, at 1305.

That type of prohibition is a particular concern for minority religions, which risk being misunderstood by judges who find their beliefs and practices odd. The district court proceedings below are an unfortunate example. The court's comparison of Petitioners' creation narrative to that of the "Circle of Life" from Disney's *The Lion King* is the kind of condescension toward unfamiliar religions that has no place in First Amendment analysis. Pop culture abounds with religious stereotypes. But no one would take seriously that Disney's *The Hunchback of Notre Dame* accurately depicts Roman Catholic theology. Nor that Native American beliefs should be understood through the lens of "Just Around the Riverbend" from Disney's *Pocahontas*. And the "Circle of Life" from Disney's *The Lion King*

(a film about African animals, based on Shakespeare’s *Hamlet*) has no bearing on the Lipan-Apache Church’s religion. Reasoning by analogy to cartoons is no way to apply the First Amendment.

And that kind of reasoning poses particular concerns to members of minority faiths, including those of the Hindu and Jewish traditions. Those traditions depend upon even-handed forum access to practice and preserve their distinctive religious identities—especially in an era of escalating vandalism, violence, and social hostility. See I. Sheskin, *How Much Antisemitism Is There in the United States?*, 19 FIU L. Rev. 921, 924 (2025) (addressing “significant” increase in antisemitic incidents over the past decade—particularly since October 7, 2023). Indeed, 2023 marked the greatest number of anti-Jewish incidents recorded by the FBI since it began collecting such data on anti-Jewish incidents in 1991. See FBI, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime> (last accessed Aug. 31, 2026).

To combat unfounded stereotypes, minority-faith adherents must often rely on public events—like interfaith vigils, cultural festivals, or school assemblies—to communicate their beliefs and foster understanding. That’s hard enough. But it’s even more complicated when courts start picking favorites or deciding what should count for religious protection. These communities shouldn’t need to worry that courts will apply a watered-down First Amendment when assessing their rights. Our Constitution demands more.

* * * *

The First Amendment's guarantee of the free exercise of religion safeguards America's pluralistic tradition. Courts have no role to play in interpreting the relative importance of different components of a religion's practices. But the Fifth Circuit has joined the minority of circuits who see fit to decide for themselves what matters to a particular faith. And that assumption of power poses acute risks to religious Americans, particularly those of minority faiths. The Court should grant certiorari, resolve the circuit split, and reaffirm the right of all Americans to freely exercise their religion.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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August 31, 2026