

No. 26-15

IN THE
Supreme Court of the United States

GARY PEREZ AND MATILDE TORRES,

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
THE SIKH COALITION, SOUTH ASIAN
AMERICAN JUSTICE COLLABORATIVE,
NATIONAL COUNCIL OF JEWISH WOMEN,
UNITED SIKHS, AND HINDUS FOR HUMAN
RIGHTS IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

The Sikh Coalition is a nonprofit and nonpartisan organization dedicated to ensuring that members of the Sikh community in America are able to practice their faith. It defends the civil rights and civil liberties of Sikhs by providing direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement amongst Sikh Americans. The organization also educates community members about their legally recognized free-exercise rights and works with public agencies and officials to implement policies that accommodate their deeply held beliefs. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001.

The South Asian American Justice Collaborative (SAAJCO) is a national nonprofit organization that fights for the civil and human rights of the South Asian diaspora in the United States through legal advocacy, community engagement, and narrative power. SAAJCO's communities encompass diverse faith traditions, including Sikhism, Hinduism, Islam, Christianity, Jainism, Buddhism, and Judaism. Because re-

¹ *Amici* certify that counsel of record for all parties were notified of their intention to file this amicus brief at least 10 days prior to the due date for this amicus brief. Sup. Ct. R. 37.2. *Amici* also certify that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than *Amici* or their counsel made such a monetary contribution. Sup. Ct. R. 37.6.

religious identity is often intertwined with the racialization and treatment of South Asians in the United States, SAAJCO has a strong interest in ensuring that federal civil-rights protections are interpreted consistently and effectively. That interest is especially significant in the land-use context, where unfamiliarity with minority faiths, their practices, and their houses of worship can contribute to discriminatory decision-making. SAAJCO joins this brief to underscore the importance of a clear and robust application of the Religious Land Use and Institutionalized Persons Act's protections to minority-faith communities.

UNITED SIKHS is an international non-profit United Nations civil society organization that advances civil and human rights through humanitarian aid, legal advocacy, and public education, with particular expertise in protecting the religious rights of Sikhs and other minority faith communities through its International Civil & Human Rights Advocacy (ICHRA) Justice Center. After decades of representing individuals whose sincerely held religious practices have been misunderstood or denied by government officials and courts, UNITED SIKHS has witnessed how religious practices are often dismissed and not recognized as essential acts of religious exercise. UNITED SIKHS has a strong interest in this case because the Fifth Circuit's conclusion that Petitioners suffered no substantial burden after the destruction of the specific trees and nesting cormorants essential to their ceremony reflects the same outsider judgment that has historically disadvantaged minority faiths by treating indispensable religious requirements as interchangeable with inadequate substitutes.

National Council of Jewish Women (NCJW) is a 133-year-old Jewish feminist civil rights organization working for equity and justice for women, children, and families in the United States and Israel. Through the efforts of its 250,000 grassroots advocates and 44 local sections, NCJW works to effect lasting social change at the local, state, and national level and focuses our advocacy efforts on demanding reproductive freedom, advancing economic opportunity, safeguarding civil rights, and fostering safer communities. NCJW approaches its work through the intersections of gender, economic, and racial justice to center those most impacted in a uniquely Jewish way.

Hindus for Human Rights (HfHR) is a national nonprofit that opposes Hindu nationalism and stands against all forms of oppression. As Hindus, we stand alongside our South Asian brothers and sisters to support members of the Lipan Native American Church in their right to protect their site of worship, and to their right to profess their faith as they always have. Institutionalized discrimination can cause unforgettable harm to communities. Hindus, Muslims, Sikhs, Jains, Christians, and other South Asians who have endured decades of racialization as minorities know this painfully well. We urge the courts to enforce a democratic and secular reading of the RLUIPA to strengthen the inclusive resolve of this country's democracy.

* * *

Amici work to educate officials and courts about religious practices that may be unfamiliar to them. A different practice, object, or location that looks adequate to an outsider may not be a real substitute for a challenged religious practice. Amici submit this brief to explain why a believer’s religious exercise is substantially burdened whenever that specific exercise is restricted. Allowing courts to determine when a substitute form of worship is sufficient is especially harmful to adherents of minority faiths, whose forms of religious exercise are less familiar to and less understood by judicial decisionmakers.

SUMMARY OF ARGUMENT

When the government prevents a religious exercise altogether, it substantially burdens that exercise. “As Chief Judge Sutton has succinctly put it, ‘[t]he greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice).’” *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488 (2025) (Gorsuch, J., dissenting from denial of certiorari) (quoting *Haight v. Thompson*, 763 F.3d 554, 565 (6th Cir. 2014)). Nearly every court of appeals so holds, under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.*, or the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.* Although the Ninth Circuit departed from that consensus in *Apache Stronghold v. United States*, 101 F.4th 1036 (9th Cir. 2024) (en banc), Justice Gorsuch, joined by Justice Thomas, accurately described the Ninth Circuit’s view as an “outlier.” 145 S. Ct. at 1488 (dissenting from denial of certiorari).

Implicit in deciding whether a religious exercise has been completely prohibited (and therefore substantially burdened) is a judgment about the essentials of that exercise. In particular, a suggested alternative to a particular religious practice may be no alternative at all according to the believer's faith. In that circumstance, the exercise at issue is still completely prohibited, despite the existence of an inadequate substitute.

Here, the district court and the Fifth Circuit wrongly substituted their judgment about the essentials of Petitioners' worship. The Petitioners made clear that "certain religious ceremonies cannot be properly administered without specific trees present and cormorants nesting," Pet. App'x at 4a, and the sincerity of that belief is not in doubt. Yet the Fifth Circuit held that removing those trees and driving off those birds would impose no substantial burden on Petitioners' religion, because Petitioners "continue to have virtually unlimited access to the Park for religious and cultural purposes" and the cormorants may nest "nearby or elsewhere in the 343-acre Park." *Id.* at 18-19a.

What the court failed to recognize is that the City's suggested alternative is no alternative at all, and that its restrictions have the effect of prohibiting the Petitioners' religious exercise in its entirety. Its analysis changed the question from whether the particular exercise would survive to whether some religious activity could continue in roughly the same area.

The Fifth Circuit's substitution of its own judgment about the Petitioners' religious beliefs has particular risks for members of minority faiths. Courts are less likely to recognize the importance of a unique

form of religious exercise when it involves an unfamiliar faith. But the legal protection of an exercise cannot depend on how readily an outsider appreciates the significance of its elements.

This Court should grant review to make clear that a court cannot overlook the substantial burden that is imposed when a religious believer is entirely prevented from engaging in a specific form of religious practice, notwithstanding the availability of an inadequate substitute. When courts substitute their own judgment about a religious practice for that of the religion’s adherents, it undermines the law’s protection of religious exercise for those who need it most.

ARGUMENT

I. Nearly every court of appeals to consider the question holds that preventing a religious exercise substantially burdens that exercise.

Courts broadly recognize that completely barring a religious practice is the paradigmatic substantial burden.

When Kentucky denied Native American inmates access to traditional foods for a religious celebration, the Sixth Circuit reasoned without difficulty that “[t]he greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice).” *Haight*, 763 F.3d at 565. The Tenth Circuit holds that a burden is substantial when, among other things, the government “prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief”—there, denial of access to a sweat lodge. *Yellowbear v. Lampert*, 741 F.3d 48, 55–56 (10th Cir. 2014) (Gorsuch, J.). The Eleventh Circuit holds that religious exercise is “substantially

burdened’ if a regulation completely prevents the individual from engaging in religiously mandated activity.” *Thai Meditation Association of Alabama, Inc. v. City of Mobile*, 980 F.3d 821, 829–30 (11th Cir. 2020) (quoting *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004)). The Third Circuit agrees: “[t]here can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition.” *Davis v. Wigen*, 82 F.4th 204, 212 (3d Cir. 2023). So does the Ninth Circuit itself, outside the exception it carved out in *Apache Stronghold*. “[A]n outright ban on a particular religious exercise is a substantial burden on that religious exercise.” *Greene v. Solano County Jail*, 513 F.3d 982, 988 (9th Cir. 2008); accord *Spratt v. Rhode Island Department of Corrections*, 482 F.3d 33, 38 (1st Cir. 2007) (total ban on inmate preaching).

In its “outlier” opinion, the Ninth Circuit has held that even the permanent destruction of a religious site, and the prevention of worship at that site, is not a substantial burden. *Apache Stronghold* involved the planned transfer of Oak Flat, an ancient Apache sacred site, to a mining company whose operations will leave “a crater perhaps 1,000 feet deep and nearly two miles wide” where ceremonies that can occur nowhere else have been performed for centuries. 145 S. Ct. at 1480 (Gorsuch, J., dissenting from denial of certiorari).

The Ninth Circuit acknowledged the general rule that “preventing access to religious exercise is an example of substantial burden.” *Apache Stronghold v. United States*, 101 F.4th 1036, 1043 (9th Cir. 2024). Yet a six-to-five majority carved out an exception for “disposition[s]” of government real property, reason-

ing from *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), that only coercion or discrimination constitutes a substantial burden in that setting. *Id.* at 1044. Of course, *Lyng* is distinguishable from cases like this one in that it involved land used by the government for its internal purposes, rather than land specifically designed and intended for public use where the government’s modifications to that land will directly affect the public that uses it.

This Court denied review of the Ninth Circuit’s decision over Justice Gorsuch’s dissent, which explained that “one court after another has held that preventing a religious exercise is, necessarily, a ‘substantial burden’ on that religious exercise,” and that the Ninth Circuit’s contrary rule “stands as an outlier.” 145 S. Ct. at 1488. The consequences of the Ninth Circuit’s outlier rule are not hypothetical. After *Apache Stronghold*, the National Park Service invoked the Ninth Circuit’s reasoning to deny the Knights of Columbus permission for a Memorial Day Mass they had celebrated for sixty years, arguing that the Knights suffered “no burden” from the denial. 145 S. Ct. at 1488–89.

As described below, the Fifth Circuit in this case is also on the wrong side of judicial consensus, having effectively determined that the complete prohibition of a specific religious exercise is not a substantial burden. It did so by mistakenly relying on proffered alternatives to the practice at issue. As Petitioners explain, the Court should accept review to make clear that the substantial burden inquiry must be directed to the specific practice at issue.

II. Specific religious practice may be completely prohibited despite an inadequate substitute.

A. Specific forms of religious exercise are not interchangeable.

As this case illustrates, it is not enough to acknowledge that prohibiting religious practice constitutes a substantial burden. Determining whether a religious practice has been prohibited requires defining what that practice is. If the practice is defined too broadly, then a prohibition on that practice may be masked by a proffered alternative that, from the perspective of the believer, is no substitute at all.

RFRA, RLUIPA, and their state analogs protect a believer's right to engage in the particular practices that are important to their faith, not just to be religious in some more general sense. Both RFRA and RLUIPA define "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A); *see also Cutter v. Wilkinson*, 544 U.S. 709, 714–15 (2005) (describing RLUIPA as Congress's narrower successor to RFRA, employing the same strict-scrutiny test).

Accordingly, the relevant exercise is not the claimant's "ability to practice his religion as a whole," but the particular practice the government has burdened. *Greene*, 513 F.3d at 987. For instance, a person who is allowed to pray may still be burdened when forbidden to observe a holy day. A congregation allowed to gather may still be burdened when prevented from performing the rite for which it gathers. And, as here, a believer allowed to enter a park may still be burdened when government eliminates the conditions the

believer sincerely identifies as necessary for a service. The forms of religious practice within a particular religion are not fungible.

This Court made that clear in *Holt v. Hobbs*, 574 U.S. 352 (2015). Arkansas argued that its grooming policy, which forbade a Muslim prisoner from maintaining a beard, was not a substantial burden because he retained other ways to practice his religion. This Court unanimously rejected that argument. Instead, the proper inquiry in the RLUIPA context is whether government substantially burdened the religious exercise at issue, “not whether the RLUIPA claimant is able to engage in other forms of religious exercise.” *Id.* at 361–62.

The Sixth Circuit likewise rejected the argument that a prison’s refusal to provide a kosher meal including meat and dairy on certain days imposed no substantial burden because of the availability of a vegan diet. As the court explained, “[i]n the religious-food context, precedent is clear that barring access to the practice of eating specific ceremonial foods substantially burdens the practice. And it is just as clear that allowing the inmates access to other religious foods does not make a difference.” *Ackerman v. Washington*, 16 F.4th 170, 184 (6th Cir. 2021) (cleaned up). The court explained that “RLUIPA’s use of ‘religious exercise’ (as opposed to ‘religion’) tells us that the substantial-burden inquiry is practice specific.” *Id.* at 184 (citing *Holt*, 574 U.S. at 361-62). In determining whether a substantial burden existed, the court “cannot look to” “second-best option[s].” *Id.* at 185 (quoting *Cavin v. Mich. Dep’t of Corr.*, 927 F.3d 455, 459 (6th Cir. 2021)).

The Fifth Circuit’s reasoning in *Merced v. Kasson* illustrates the same principle in a different context. A

city ordinance barred a Santeria priest from performing animal sacrifices that were essential to certain ceremonies. The priest stopped those ceremonies but continued other rituals. 577 F.3d 578, 582-83 (5th Cir. 2009). The Fifth Circuit held that the prohibition was, “at a minimum,” a substantial burden. *Id.* at 590. The court explained that the claimant’s “ability to perform some ceremonies does not mean the city’s ordinances do not burden other Santeria practices.” *Id.* at 591. Accordingly, the continued practice of Santeria in general did not dilute the burden on the ceremonies the ordinance actually prevented.

Texas law, which governs Petitioners’ TRFRA claim, is in accord. In *Barr v. City of Sinton*, a town enacted an ordinance that effectively precluded a religious halfway house from operating in its borders. The City argued that it imposed no substantial burden because the pastor operating the facilities could have restructured his ministry. *See* 295 S.W.3d 287, 302-03 (Tex. 2009). The Texas Supreme Court rejected that argument, explaining that “a burden on a person’s religious exercise is not insubstantial simply because he could always choose to do something else.” *Id.* at 303; *see also Merced*, 577 F.3d at 591 (quoting *Barr*, 295 S.W.3d at 303).

Nevertheless, some courts substitute their own judgment of a religion’s requirements for the claimant’s sincere theological judgment. *See* Pet. at 21-22 (describing some courts’ “objective” judgment of a claimant’s burden). But the reasoning of those cases illustrates the unworkability of that standard and its failure to protect religious liberty. For example, as the Petition describes, in *Real Alternatives, Inc. v. Sec’y Dept’ of Health & Hum. Servs.*, 867 F.3d 338, 359-61 (3d Cir. 2017), the Third Circuit found that employees

claiming a religious objection to abortifacients were not substantially burdened by subscribing to an insurance program that covered them, because of what that court judged to be the “attenuated” connection between that activity and their beliefs.

One problem with the objective approach to judging a claimant’s religion is that it runs afoul of this Court’s teachings. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), this Court rejected an argument that “the connection between what the objecting parties must do . . . and the end that they find to be morally wrong . . . is simply too attenuated.” *Id.* at 723-24. In so doing, it recognized that the substantial burden question had to be answered with respect to the particular petitioners’ religious beliefs, and that the reasonableness of those asserted beliefs was a “question that the federal courts have no business addressing.” *Id.* at 724. It follows that it is not for a federal court to decide whether some alternative is an adequate substitute for the particular challenged religious exercise.

But the objective approach to judging a claimant’s religious practice necessarily invites courts to make improper theological judgments about minority faiths. For instance, a Pennsylvania state appellate court relied on *Real Alternatives* in deciding whether a Pennsylvania Department of Human Services regulation infringed on a benefit recipient’s rights under the Free Exercise Clause and under RFRA. At issue was the number of hours for which a relative could be compensated for providing home care to the Petitioner. There, the Pennsylvania Commonwealth Court took it upon itself to interpret the requirements of Islamic law, concluding that “substantial record evidence supports that Islamic law allows an unrelated, non-Islamic

male aide to assist Petitioner outside Mother’s presence . . . before and after which Mother could provide Petitioner’s necessary intimate personal care.” *Alsyrawan v. Dep’t of Human Services*, 316 A.3d 1076, 1094 (Pa. Commw. Ct. 2024). That is precisely the type of judgment about doctrine and religious practice that courts should not be making, and that they are particularly ill-equipped to make in the context of less-familiar minority faiths.

B. Location and space are integral to many forms of religious exercise.

Worship at a sacred site carries particular meaning that is not necessarily replicated in a government-mandated alternative. Moreover, mere access to a sacred site does not protect the worship that occurs there. A person may be physically permitted to enter a place yet unable to conduct the ceremony for which the place is sacred. The ceremony may be formally permitted yet made impossible by the destruction of a required feature. Ignoring differences between access, use, and preservation obscures the burden imposed on a religious practice. That is problematic not only for Indigenous religions but also for other faiths that ascribe meaning to environment and place.

Federal land-management policy has long recognized these distinctions. Executive Order 13,007 directs federal agencies, as practicable and permitted by law, to accommodate both “access to and ceremonial use of” Native American sacred sites and additionally to “avoid adversely affecting” their “physical integrity.” Exec. Order No. 13,007 § 1(a), 61 Fed. Reg. 26,771 (May 29, 1996). The policy recognizes that al-

lowing a worshipper to stand on the land is not necessarily allowing the service, and allowing the service in theory is not preserving the conditions that make it possible.

Current work from the Congressional Research Service likewise explains that physical integrity of a sacred site cannot be reduced to access. Indigenous sacred sites may incorporate water, plants, animals, sound, light, viewsheds, and other living or intangible features. Mark K. DeSantis, Mariel J. Murray & Whitney K. Novak, Congressional Research Service, *Indigenous Sacred Sites: Overview and Issues for Congress*, R48452, at 2–3, 20–21 (Mar. 14, 2025). However, defining sacred sites is complicated by “perceived differences between Indigenous spirituality and the dominant non-Indigenous religions in the United States.” *See id.* at 3.

An extensive USDA and Forest Service consultation record documents the same point. More than fifty listening sessions involving more than 500 American Indian and Alaska Native participants described ceremonies and rites linked to specific places. U.S. Department of Agriculture, Office of Tribal Relations & U.S. Forest Service, *USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites* 1–2, 8 (Dec. 2012). Participants described some sacred sites as “cultural landscapes” that “include plants, animals, sound, light, and other sometimes intangible features.” *Id.* at app. D-7.

Academic scholarship likewise explains that “religion can have a profound influence on people’s relations to place,” that “place can be an integral part of religion,” and that religious ties to place can be formed through ritual, story, experience, and pilgrimage. *See* Shampa Mazumdar & Sanjoy Mazumdar, *Religion*

and Place Attachment: A Study of Sacred Places, 24 J. Env't Psych. 385, 386–87, 394–95 (2004). The importance of place is not limited to Native American religious practice. For instance, the Sikh faith recognizes Amritsar as a sacred city, the Golden Temple and gurdwaras as sacred structures, and the connection between place, Sikh identity, and religious community. *Id.* at 387-88, 393–95. When place is part of the exercise, moving worship is not merely a change of physical location. It changes the religious experience that the place helps constitute.

In other words, where a sacred site has religious significance, it is a substantial burden to say that the practice must take place somewhere else, because that is tantamount to prohibiting the practice as it is properly understood. Judge Oldham recognized this in his dissenting opinion, explaining that “[t]o put it quite simply, plaintiffs 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.” Pet. App’x at 56a (Oldham, J., dissenting from denial of rehearing en banc).

III. Minority faiths are particularly vulnerable to a rule that allows judicial interpretation of their beliefs.

A. Courts are less likely to appreciate the significance of minority religious practice.

A court is not in a position to evaluate the reasonableness of a believer’s interpretation of faith. As described above, whether an asserted religious belief is reasonable is a “question that the federal courts have no business addressing.” *Burwell*, 573 U.S. at 724. The believer draws the line, “and it is not for us to say

that the line he drew was an unreasonable one.” *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 715 (1981). But that is necessarily what happens when a court substitutes its understanding of a practice’s significance for the believer’s account in determining whether a restriction imposes a restrictive burden. Minority religions are particularly susceptible to misunderstanding by courts and government officials, who may not appreciate the significance of conducting a practice in a specific way, at a specific time, or in a specific place.

Sikh experience illustrates this. For instance, in *Tagore v. United States*, a Sikh federal employee presented evidence that her faith required her to wear a kirpan² and faced a choice between doing so and keeping her job, with possible criminal exposure if she entered the federal building wearing it. 735 F.3d 324, 326-27 (5th Cir. 2013). The Fifth Circuit corrected the district court’s determination that there was no factual question whether the employee’s “sincere religious beliefs require[d] her to wear a kirpan with a 3-inch, rather than the statutorily permitted 2.5-inch, blade.” *Id.* at 328. The district court’s second-guessing of the claimant’s beliefs is typical of the type of misunderstanding often faced by adherents of minority religions. If a court may replace an identified exercise with what it determines to be a functionally similar alternative, religious protection would turn on an outsider’s understanding of the plaintiff’s faith.

By contrast, courts are much more likely to appreciate the importance of specific religious practice in

² As the court described it, a kirpan is “a Sikh article that ‘resembles a knife or sword but, unlike those objects, often has an edge that is curved or blunted.’” *Id.* at 326.

the context of majority faiths. For instance, in *McCurry v. Tesch*, officers entered a Christian church during a Monday-morning prayer vigil, removed about eighty-five worshippers, and padlocked the building. 738 F.2d 271, 273 (8th Cir. 1984). The court rejected the argument that the congregation’s rights of free exercise and freedom of expression were not burdened “because the plaintiffs would be free to congregate and worship elsewhere.” *Id.* at 275. Church buildings, it explained, have “a special spiritual significance to the persons who wish to worship there.” *Id.* Religious equality requires the same care when the place and form of worship are less familiar.

B. Judicial confusion mirrors community misunderstanding, especially in land use decisions.

The potential for judicial misunderstanding is especially problematic given biases against minority faiths that make them more likely to be the target of enforcement or regulatory action. For instance, a 2024 study showed that “the most important predictor of resistance” to a zoning application for a new house of worship was not “the facility’s expected level of nuisance” but rather “the religion of the house of worship.” Eliska Schnabel, *Public Resistance to New Houses of Worship*, 9 J. Race, Ethnicity & Politics 642, 642 (2024). That is, “[p]eople are more likely to oppose facilities associated with minority religious groups irrespective of other factors such as the building’s size, location, or architecture.” *Id.* at 644. Although “[o]pponents of new houses of worship often invoke property rights . . . this research suggests that residents are motivated more by bias[.]” *Id.*

Actual land-use conflicts illustrate the same problem. A 2020 study of 116 zoning conflicts involving religious buildings in the New York City metropolitan region found that Muslim groups “encountered opposition at over three times their proportion in the region’s population” and conservative “Jewish groups experienced opposition . . . at a rate over four times higher than their presence in the region.” Brian J. Miller, *Religious Freedom and Local Conflict: Religious Buildings and Zoning Issues in the New York City Region, 1992–2017*, 81 *Sociology of Religion* 462, 472, 475 (2020). Resistance was motivated by opposition to those minority faiths alongside ordinary traffic, parking, and neighborhood objections. *See id.* at 43. The study documents a recurring pattern in which minority worship reaches public decisionmakers through conflict shaped by outsiders who may not understand the exercise.

Federal enforcement data confirm the national scope of this problem. Since RLUIPA’s enactment through mid-2020, DOJ opened 485 RLUIPA land-use investigations, filed 25 lawsuits, and submitted 29 amicus briefs concerning the land-use provisions of RLUIPA. U.S. Dep’t of Justice, *Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act* at 12 (Sept. 22, 2020). Muslim and Jewish groups together account for approximately 3% of the U.S. population but 49% of all DOJ RLUIPA land-use investigations from September 2010 through July 2016. U.S. Dep’t of Justice, *Update on the Justice Department’s Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010–2016*, at 5-6 (July 2016).

The Sikh community has faced similar opposition to its use of specific places for worship.

For example, in Oyster Bay, Long Island, the local Sikh congregation was forced to sue the municipality, which had issued a stop work order preventing it from completing a new temple. See Chris Fuchs, *Sikh Congregation, Town Settle Lawsuit over Stopped Temple Construction*, nbcnews.com (Nov. 17, 2016); see also Complaint, *Guru Gobind Singh Sikh Center, Inc. v. Town of Oyster Bay, N.Y.*, No. 2:16-cv-03600 (E.D.N.Y. June 29, 2016). The case, which ended in a consent decree, was brought even though the congregation had agreed to mitigation measures to address community concerns.

Likewise, in San Jose, California, opponents of a proposed gurdwara asserted five categories of objection, each of which the city's own experts dismissed as "baseless, because of the numerous special precautions that the Sikh community had taken to accommodate their neighbors." Jaideep Singh, "No Sikh Jose": *Sikh American Community Mobilization and Interracial Coalition Building in the Construction of a Sacred Site*, 8 Asian Pac. Am. L.J. 173, 181-82 (2002). No other house of worship in San Jose faced the attendance limits or operating-hour restrictions imposed on the gurdwara. *Id.* As one gurdwara official observed, opponents "constantly shift[ed]" their objections, first attacking the noise the temple would generate, then claiming it would be an ugly building, then warning that it would attract too many visitors. *Id.* at 183.

Similarly, in *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006), the county denied a Sikh temple's conditional use permit twice, invoking broad and shifting rationales, first citing noise and traffic, then objecting to "leapfrog development," even though the temple agreed to every mitigation measure and another Sikh temple already existed on

similarly zoned land nearby. The Ninth Circuit rejected the county’s attempt to leverage these shifting rationales as tools for site selection. “RLUIPA does not contemplate that local governments can use broad and discretionary land use rationales as leverage to select the precise parcel of land where a religious group can worship.” *Id.* at 992 n.20.

Recent disputes involving Hindu communities illustrate the same pattern. In Henderson, Nevada, the American Hindu Association sought approval to construct a temple on a five-acre parcel in a rural neighborhood. See Victoria Saha, *Religious Leaders Accuse Henderson Officials of Discrimination, Blocking Hindu Temple*, fox5vegas.com (May 6, 2024). Many neighbors appeared at a city planning meeting to object to the project. *Id.* The municipality issued a conditional use permit, but shortly before it expired amended its code to limit religious assemblies and schools to certain streets, none of which fronted the proposed site. The Association filed a complaint to the Department of Justice, alleging a violation of the community’s religious rights. Victoria Saha, *Hindu Leaders Using Henderson Land for Worship Despite Ordinance Blocking Temple*, fox5vegas.com (Nov. 19, 2024).

Similarly, in Orange County, Florida, a Hindu community sought a special exception to build a temple. The congregation modified its plan to accommodate those concerns, but the municipality nevertheless upheld its denial of approval after dozens of residents participated in a public hearing. See Daryl Matthews, *Orange County Commissioners Vote Down “Temple on Hempel,”* WFTV.com (Jan. 24, 2024). One member of the Hindu community attributed commu-

nity objections largely to “the unknowns” of how Hindus “practice [their] faith.” Michelle Meredith, *Orange County’s Rejection of Temple Construction Causes Disappointment Among Hindu Members*, WESH.com (Jan. 24, 2024). Despite the community’s disappointment, a member noted that “[o]ur spiritual leader says we should always look for the good in people and always look for the positive in situations.” *Id.*

* * *

Community opposition to minority faiths is often grounded in outsiders’ unfamiliarity and misunderstanding. Here, the district court and Fifth Circuit decisions illustrate a similar misunderstanding of a minority religious practice. By shifting to a higher level of generality in evaluating whether the Petitioners were substantially burdened, the Fifth Circuit implicitly substituted its own understanding of the Petitioners’ religious beliefs, even though the sincerity of the Petitioners’ beliefs is not in question. In so doing, those courts failed to recognize that Petitioners’ ceremony is not the same exercise unless it is performed at a particular place with particular natural features. All minority religions risk the same misunderstanding when their beliefs are subject to interpretation by an outsider judicial decisionmaker. This Court should accept review to avoid that result.

* * *

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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