RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT — PRISONERS' RIGHTS — FIFTH CIRCUIT BARS INDIVIDUAL-CAPACITY MONEY DAMAGES UNDER RLUIPA — *Landor v. Louisiana Department of Corrections & Public Safety*, 82 F.4th 337 (5th Cir. 2023).

In an era infamous for the religious capture of the federal judiciary,[1] one would expect courts to vociferously defend religious liberty. However, despite its present emphasis on religious freedom and free exercise, the Supreme Court has often prevented people from securing relief when their religious freedom is curtailed.[2] Recently, in *Landor v. Louisiana Department of Corrections & Public Safety*,[3] the Fifth Circuit invoked the Spending Clause to hold that Damon Landor lacked a cause of action to sue prison officials for damages after officers at the Raymond Laborde Correctional Center (RLCC) in Louisiana forcibly shaved his head in violation of his religion.[4] Although the courts may be unwilling to find causes of action for these violations in legislation passed under the Spending Clause, a recent Supreme Court decision in *Health & Hospital Corp. of Marion County v. Talevski*[5] highlights a potential path forward for enforcing rights created pursuant to the Spending Clause using 42 U.S.C. § 1983.[6]

On December 28, 2020, officers at RLCC shackled Damon Landor — a practicing Rastafarian who was three weeks away from his release date — to a chair and forcibly shaved his head.[7] Mr. Landor had been growing his hair for nearly twenty years in accordance with his religious Nazarite vow, which dictates that "[d]uring the entire period of [one's] Nazarite vow, no razor may be used on [one's] head."[8] By December of 2020, Mr. Landor had grown his hair down to his knees.[9]

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[1] *See, e.g.*, Lee Epstein & Eric A. Posner, *The Roberts Court and the Transformation of Constitutional Protections for Religion: A Statistical Portrait*, 2021 SUP. CT. REV. 315, 315–16 (2022); FREEDOM FROM RELIGION FOUND., RELIGIOUS LIBERTY UNDER THREAT: THE CHRISTIAN NATIONALIST CAPTURE OF THE FEDERAL JUDICIARY 1–11 (2020), https://ffrf.org/images/images/FFRF-Religious-Liberty-Under-Threat.pdf [https://perma.cc/5WFZ-PFT2]; Ian Prasad Philbrick, *A Pro-religion Court*, N.Y. TIMES (June 22, 2022), https://www.nytimes.com/2022/06/22/briefing/supreme-court-religion.html [https://perma.cc/LD34-5GWS]; Gregory A. Smith et al., *2. Religion and the Supreme Court*, PEW RSCH. CTR. (Oct. 27, 2022), https://www.pewresearch.org/religion/2022/10/27/religion-and-the-supreme-court [https://perma.cc/ZBK2-X6BZ] (mapping the growing public perception that the Court is "friendly" to religion).

[2] *See, e.g.*, Emp. Div. v. Smith, 494 U.S. 872, 890 (1990).

[3] 82 F.4th 337 (5th Cir. 2023).

[4] *Id.* at 339–40, 345.

[5] 143 S. Ct. 1444 (2023).

[6] *Id.* at 1450.

[7] Complaint and Jury Demand ¶¶ 32–42, Landor v. La. Dep't of Corr. & Pub. Safety, No. 21-733 (M.D. La. Sept. 29, 2022) [hereinafter Complaint].

[8] *Id.* at 6 (quoting *Numbers* 6:3–7).

[9] Brief for Appellant Damon Landor at 5, *Landor*, 82 F.4th 337 (No. 22-30686) [hereinafter Appellant Brief].

Before his transfer to RLCC, Mr. Landor had been incarcerated at two other facilities, both of which allowed him to live by his vow and keep his hair in a "rastacap."[10] Upon his transfer, Mr. Landor provided the intake officer at RLCC with state and federal forms outlining his religious accommodations and the Fifth Circuit's opinion[11] in *Ware v. Louisiana Department of Corrections*,[12] in which the court held that prohibiting locks[13] in a carceral facility violated the Religious Land Use and Institutionalized Persons Act[14] (RLUIPA). The intake officer threw away Mr. Landor's documents and summoned the warden, Marcus Myers, who questioned whether Mr. Landor had religious documentation from his sentencing judge.[15] Mr. Landor offered to request the documentation from his former lawyer.[16] Warden Myers told Mr. Landor it was "[t]oo late for that," and had Mr. Landor shackled to a chair and shaved bald.[17]

Upon his release from prison, Mr. Landor filed suit against the Louisiana Department of Public Safety and Corrections (LDPS&C), LDPS&C Secretary James Le Blanc in his official and individual capacities, RLCC, Warden Myers in his official and individual capacities, ten unnamed individuals, and ten unnamed entities in the U.S. District Court for the Middle District of Louisiana.[18] Mr. Landor alleged that the forcible shaving of his head violated RLUIPA, denied him his rights secured by the First,[19] Eighth,[20] and Fourteenth Amendments,[21] and violated various state laws.[22] Mr. Landor, suing under 42 U.S.C. § 1983 for the constitutional violations and under RLUIPA, requested declaratory and injunctive relief, reasonable attorney's fees, and — as is most relevant here — general, compensatory, and punitive damages.[23]

The district court granted the defendants' motion to dismiss on September 29, 2022, dismissing the case with prejudice.[24] In her decision, Judge Dick agreed with the defendants that all RLUIPA claims for

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[10] Complaint, *supra* note 7, ¶ 28. One facility even changed its policies to permit Mr. Landor to continue abiding by his Nazarite vow. *Id.* ¶ 29.

[11] *Id.* ¶ 33.

[12] 866 F.3d 263 (5th Cir. 2017).

[13] "Locks" is the preferred term for the hairstyle commonly referred to as "dreadlocks." Mr. Landor's complaint explains that the term "dreadlocks" is now considered by some to be derogatory. *See* Complaint, *supra* note 7, at 6.

[14] 42 U.S.C. §§ 2000cc to 2000cc-5.

[15] Complaint, *supra* note 7, ¶¶ 34–35.

[16] *Id.* ¶ 36.

[17] *Id.* ¶ 37.

[18] *Id.* at 1.

[19] U.S. CONST. amend. I.

[20] *Id.* amend. VIII.

[21] *Id.* amend. XIV.

[22] Complaint, *supra* note 7, at 1–2.

[23] *Id.* at 2, 34.

[24] Landor v. La. Dep't of Corr. & Pub. Safety, No. 21-733, 2022 WL 4593085, at *3 (M.D. La. Sept. 29, 2022).

declaratory or injunctive relief became moot upon Mr. Landor's release from prison and that RLUIPA does not authorize "a private cause of action for compensatory or punitive damages."[25] Judge Dick further held that the claim was "governed by the First rather than the Eighth Amendment"[26] and that Mr. Landor's constitutional claims, filed under § 1983, failed because "a prison policy or practice will not be found unconstitutional [under the First Amendment] if it is reasonably related to a legitimate penological objective."[27]

Mr. Landor appealed the dismissal to the Fifth Circuit,[28] arguing that "RLUIPA authorizes money damages against state officials who violate prisoners' religious rights while acting in their individual capacities."[29] Mr. Landor acknowledged that Fifth Circuit precedent could be read to deny him relief.[30] But he argued that this contrary precedent was abrogated by the Supreme Court's 2020 decision in *Tanzin v. Tanvir*,[31] which held that the Religious Freedom Restoration Act[32] (RFRA), RLUIPA's sister statute with a nearly identical relief section,[33] authorizes money damages against officials in their individual capacities.[34]

The Fifth Circuit affirmed.[35] Writing for a unanimous panel, Judge Clement determined that RLUIPA does not create a cause of action for damages against officials in their individual capacities.[36] RLUIPA creates no such cause of action because Congress enacted it under the Spending Clause,[37] while RFRA draws from the more expansive congressional power under section 5 of the Fourteenth Amendment.[38] The panel drew heavily from Fifth Circuit precedent in *Sossamon v. Lone Star State of Texas*[39] (*Sossamon I*), in which the Fifth Circuit determined

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[25] *Id.* at *2 (quoting Coleman v. Lincoln Par. Det. Ctr., 858 F.3d 307, 309 (5th Cir. 2017)).

[26] *Id.* at *3 (citing County of Sacramento v. Lewis, 523 U.S. 833, 842 (1998)). When § 1983 actions arise "under multiple constitutional provisions, a court should analyze the claim under the most applicable constitutional provision." *Id.* (citing Graham v. Connor, 490 U.S. 386, 394–95 (1989)).

[27] *Id.* at *2 (citing Hay v. Waldron, 834 F.2d 481, 487 (5th Cir. 1987)).

[28] Notice of Appeal, *Landor*, 2022 WL 4593085 (No. 21-733).

[29] Appellant Brief, *supra* note 9, at 1.

[30] *Id.* at 10.

[31] 141 S. Ct. 486 (2020).

[32] 42 U.S.C. §§ 2000bb to 2000bb-4, *invalidated in part by* City of Boerne v. Flores, 521 U.S. 507 (1997).

[33] RFRA's relief section reads: "A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." *Id.* § 2000bb-1(c). RLUIPA's relief section reads: "A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." *Id.* § 2000cc-2(a).

[34] Appellant Brief, *supra* note 9, at 1, 16–27.

[35] *Landor*, 82 F.4th at 337.

[36] *See id.* at 339.

[37] U.S. CONST. art. I, § 8, cl. 1.

[38] *Id.* amend. XIV, § 5; *see Landor*, 82 F.4th at 341.

[39] 560 F.3d 316 (5th Cir. 2009).

that RLUIPA does not authorize money damages against officials in their individual capacities,[40] and *Sossamon v. Texas*[41] (*Sossamon II*), in which the Supreme Court held the same for official capacity suits.[42]

Judge Clement treated the distinct fonts of congressional power used to pass RFRA and RLUIPA as dispositive.[43] *Tanzin* could not abrogate the circuit's precedent in *Sossamon I* because "Spending Clause legislation [such as RLUIPA]," unlike Fourteenth Amendment legislation such as RFRA, "'operates like a contract,' . . . [and] does not 'impose *direct* liability on a non-party to the contract between the state and the federal government.'"[44] Under this reasoning, when Louisiana accepted federal funding and agreed to be bound by RLUIPA, Le Blanc and Myers in their individual capacities were not parties to the agreement and thus could not be held individually liable for violating the rights established under RLUIPA. Though the court "*emphatically* condemn[ed] the treatment that [Mr.] Landor endured," it held that Mr. Landor was barred from seeking relief in the form of damages.[45]

The decision in *Landor* is unremarkable compared to decisions from other circuits, most of which also conclude that Spending Clause legislation does not authorize damages suits against parties other than the recipient state or institution.[46] However, neither the court nor the parties in *Landor* raised an alternative path through which Mr. Landor could pursue relief. The Supreme Court's recent decision in *Talevski* points toward an alternative means of enforcing RLUIPA and vindicating the rights of individuals like Mr. Landor: through § 1983 enforcement.[47]

In *Talevski*, nearly three months before the Fifth Circuit's decision in *Landor*, the Court determined that Spending Clause legislation can create § 1983–enforceable rights.[48] Section 1983 provides a private cause of action for deprivations of rights by "[e]very person who, under

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[40] *Id.* at 331.

[41] 563 U.S. 277 (2011).

[42] *Id.* at 282, 293.

[43] *Landor*, 82 F.4th at 341.

[44] *Id.* (quoting *Sossamon I*, 560 F.3d at 328–29).

[45] *Id.* at 345.

[46] *See, e.g.*, Kinman v. Omaha Pub. Sch. Dist., 171 F.3d 607, 611 (8th Cir. 1999). Although some district courts have held that RLUIPA authorizes money damages against officials in their individual capacities, courts have not applied this interpretation since the Eleventh Circuit ruled on the matter in 2007 in *Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007), in which the court held that "Congress cannot use its Spending Power to subject a non-recipient of federal funds, including a state official acting [in] his or her individual capacity, to private liability for monetary damages." *Id.* at 1273.

[47] Neither the court nor the parties contended with the potential impact of *Talevski* on RLUIPA and other Spending Clause laws. Because RLUIPA contains an individual cause of action, litigants usually focus on testing the boundaries of that cause of action rather than vindicating RLUIPA rights through § 1983 enforcement. *See, e.g.*, *Sossamon I*, 560 F.3d at 322. There do not appear to be any cases in which a litigant has pursued a RLUIPA claim under § 1983.

[48] Health & Hosp. Corp. of Marion Cnty. v. Talevski, 143 S. Ct. 1444, 1450 (2023).

color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution *and laws*."[49] So even if a statute does not itself create a specific cause of action — as *Landor* held of RLUIPA — it can still be a "law" that creates rights that plaintiffs can enforce under § 1983. Crucially, *Talevski* held that § 1983's reference to "laws" can include laws passed under the Spending Clause.[50] This application of § 1983 enforcement to Spending Clause rights is significant, as § 1983 permits suits against officials in their individual capacities for money damages.[51]

Though not all federal statutes create rights that are § 1983 enforceable, RLUIPA may. The Court determines whether a law creates a § 1983–enforceable right using the two-prong test established in *Gonzaga University v. Doe*.[52] For a law to be enforceable under § 1983, (1) it must "*unambiguously* confer individual federal rights,"[53] and (2) the remedial scheme devised by Congress must be compatible with § 1983 enforcement.[54] RLUIPA could pass this test.

RLUIPA satisfies the first prong because it creates an individual federal right. The Court determines whether an act confers such rights by looking to the language of the statute for "explicit rights-creating terms"[55] and an individual, rather than aggregate, focus.[56] RLUIPA includes both rights-creating terms and an individual focus. The relevant provisions of the Act forbid the government from imposing "a substantial burden on the religious exercise of a *person* residing in or confined to an institution."[57] Furthermore, while the Act does not explicitly use the word "rights," the very essence of the Act, freedom of religious exercise, evokes fundamental rights. This legislation was designed to impose a broader understanding of the First Amendment's Free Exercise Clause in the context of land-use regulation and policies impacting people confined in government-run institutions by creating a

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[49] 42 U.S.C. § 1983 (emphasis added). The Supreme Court established that § 1983 can be used to enforce rights created through federal statutes, not just the Constitution, in *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980).

[50] *Talevski*, 143 S. Ct. at 1450, 1453.

[51] Hafer v. Melo, 502 U.S. 21, 31 (1991) ("We hold that state officials, sued in their individual capacities, are 'persons' within the meaning of § 1983. . . . [S]tate officers [are not] immune from personal liability under § 1983.").

[52] 536 U.S. 273 (2002).

[53] *Talevski*, 143 S. Ct. at 1455 (citing *Gonzaga*, 536 U.S. at 280).

[54] *Id.* at 1459 (quoting City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 120 (2005)).

[55] *Gonzaga*, 536 U.S. at 284.

[56] *Id.* at 290.

[57] 42 U.S.C. § 2000cc-1(a) (emphasis added).

right to be free from substantial burdens on religious exercise.[58] Therefore, RLUIPA passes the first prong of the *Gonzaga* test.

The analysis becomes more complicated at the second prong of the *Gonzaga* test, which requires compatible remedial schemes. However, RLUIPA may fulfill the second prong because the text of the law neither implicitly nor explicitly precludes concurrent enforcement.[59] RLUIPA does not explicitly prohibit § 1983 enforcement, so one must instead look to see if the Act implicitly precludes § 1983 enforcement through a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983."[60] Courts use "traditional tools of statutory construction" to uncover "what Congress intended,"[61] and they recognize a general presumption against preclusion.[62]

The strongest indication against congressional intent to create a § 1983–enforceable right is RLUIPA's private cause of action.[63] The judiciary has held that RLUIPA's private cause of action entitles plaintiffs to less relief than is available under § 1983.[64] The Court has, in the past, found that "the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which [it has] held that an action would lie under § 1983 and those in which [it has] held that it would not."[65] A more restrictive private cause of action alone, though, may not be sufficient to foreclose § 1983 enforcement absent further evidence that the statute leaves "no room for additional private remedies under § 1983."[66]

The Court, in the past, has looked for something more than an express private cause of action to overcome the presumption against preclusion. The Supreme Court has found a statutory enforcement scheme to implicitly preclude § 1983 enforcement only three times: in *Middlesex County Sewerage Authority v. National Sea Clammers Ass'n*,[67] *Smith v.*

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[58] *See generally* PEW F. ON RELIGION & PUB. LIFE, PEW RSCH. CTR., A DELICATE BALANCE: THE FREE EXERCISE CLAUSE AND THE SUPREME COURT 15 (2007), https://www.pewresearch.org/religion/2007/10/24/a-delicate-balance [https://perma.cc/Y94P-DFLR].

[59] 42 U.S.C. §§ 2000cc to 2000cc-5.

[60] Blessing v. Freestone, 520 U.S. 329, 341 (1997).

[61] Health & Hosp. Corp. of Marion Cnty. v. Talevski, 143 S. Ct. 1444, 1459 (2023).

[62] *See* Wilder v. Va. Hosp. Ass'n, 496 U.S. 498, 520 (1990) ("We do not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy." (quoting Wright v. City of Roanoke Redevelopment & Hous. Auth., 479 U.S. 418, 423–24 (1987))).

[63] The Court considers the existence of "an express private judicial right of action," *Talevski*, 143 S. Ct. at 1460, "offer[ing] fewer benefits than those available under § 1983," *id.* at 1461 (citing Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 254 & n.1 (2009)), when engaging with the second prong of the *Gonzaga* test.

[64] For example, § 1983 actions may entitle a plaintiff to money damages against defendants in their individual capacities, whereas RLUIPA — according to the courts — does not. *See, e.g.*, Smith v. Allen, 502 F.3d 1255, 1275 (11th Cir. 2007).

[65] City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 121 (2005).

[66] *Wright*, 479 U.S. at 423.

[67] 453 U.S. 1 (1981).

Robinson,[68] and *City of Rancho Palos Verdes v. Abrams*.[69] In each case, the statute at issue included "statute-specific rights of action" that "required plaintiffs to 'comply with particular procedures and/or to exhaust particular administrative remedies' under the statute's enforcement scheme before suing under its dedicated right of action."[70] This is not the case under RLUIPA. Finding that RLUIPA permits § 1983 enforcement will not allow individuals to "'circumvent[]' the statute['s] presuit procedures," as was the case in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*.[71]

The text of RLUIPA also supports § 1983 enforcement. In *Tanzin*, the Supreme Court analyzed RFRA's relief section, which is nearly identical to RLUIPA's,[72] holding that RFRA's use of the term "appropriate relief" includes "claims for money damages" and that the term "against a government" encompasses claims "against [g]overnment officials in their individual capacities."[73] RLUIPA also uses these terms.[74] While the similar language may not indicate that RLUIPA itself creates a cause of action, it does indicate a congressional desire for expansive, robust individual enforcement of RLUIPA rights. This militates against a finding that RLUIPA implicitly precludes § 1983 enforcement.

While the Court does not currently prioritize purposive arguments, it is worth noting that both RLUIPA and RFRA were passed in congressional attempts to circumvent the Supreme Court's decision in *Employment Division v. Smith*,[75] which ended the practice of applying strict scrutiny to laws of general applicability that substantially burden religious exercise.[76] This purposive evidence also indicates congressional desire for robust enforcement. The expansive enforcement envisioned by Congress in passing RFRA and, later, RLUIPA, as evidenced by the text, is consistent with and complementary to § 1983 enforcement. Permitting incarcerated people to sue municipalities for money damages and declaratory or injunctive relief under RLUIPA and to sue government officials for money damages under § 1983 is consistent with, and necessary to, the congressional goal of reinstating firmer protections of religious freedom against laws of general applicability.[77]

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[68] 468 U.S. 992 (1984).

[69] 544 U.S. 113.

[70] Health & Hosp. Corp. of Marion Cnty. v. Talevski, 143 S. Ct. 1444, 1461 (2023) (quoting Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 254 (2009)).

[71] *Id.* (quoting *Fitzgerald*, 555 U.S. at 254).

[72] *See supra* note 33.

[73] *See* Tanzin v. Tanvir, 141 S. Ct. 486, 489 (2020).

[74] *See* 42 U.S.C. § 2000cc-2(a) ("A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.").

[75] 494 U.S. 872 (1990).

[76] *See id.* at 885.

[77] For a detailed account of Congress's goal in passing RLUIPA, see generally Jason Z. Pesick, Note, *RLUIPA: What's the Use?*, 17 MICH. J. RACE & L. 359 (2012).

Current interpretations of RLUIPA have left people like Mr. Landor without a remedy when their rights are violated. However, both *Tanzin* and *Talevski* point toward a potential remedy for RLUIPA violations through § 1983 enforcement. RLUIPA's remedial scheme is compatible with § 1983 enforcement and the text of the Act itself supports this conclusion. While the courts may be disinclined to grant a private cause of action for money damages against officials in their individual capacities through Spending Clause legislation, plaintiffs like Mr. Landor should consider an alternate path to relief through § 1983 enforcement of RLUIPA–created rights.

No one could have known how the Court would rule in *Talevski* ahead of time; however, attorneys moving forward know now. Section 1983 enforcement of RLUIPA is an untested legal strategy, but the development of a new, creative strategy opens the door to progress in prisoners' rights and civil rights in an area where the Court has consistently hindered progress.[78] Legal development and social change require creative lawyering,[79] and § 1983 enforcement of incarcerated people's right to religious exercise is a promising new frontier.

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[78] *See generally* Pierson v. Ray, 386 U.S. 547 (1967) (establishing qualified immunity as a defense to § 1983 suits against police officers); Egbert v. Boule, 142 S. Ct. 1793 (2022) (narrowing the scope of implied causes of action for damages available under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)); Alexander v. Sandoval, 532 U.S. 275 (2001) (holding that Title VI of the Civil Rights Act of 1964 does not create a private cause of action for disparate impact suits); Jones v. Hendrix, 143 S. Ct. 1857 (2023) (limiting postconviction habeas).

[79] *See generally* Raymond H. Brescia, *Creative Lawyering for Social Change*, 35 GA. ST. U. L. REV. 529 (2019).