

No. 21-5592

IN THE
Supreme Court of the United States

JOHN RAMIREZ,
Petitioner,

v.

BRYAN COLLIER, Executive Director,
Texas Department of Criminal Justice;
BOBBY LUMPKIN, Director, TDJC, Correctional
Institutions Division; DENNIS CROWLEY, Warden,
TDCJ, Huntsville, TX,
Respondents.

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

**BRIEF AS *AMICI CURIAE* OF THE UNITED
STATES CONFERENCE OF CATHOLIC
BISHOPS AND THE TEXAS CATHOLIC
CONFERENCE OF BISHOPS
IN SUPPORT OF PETITIONER**

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**STATEMENT OF INTEREST OF *AMICI*
*CURIAE*¹**

The Texas Catholic Conference of Bishops (“TCCB”) is an unincorporated association consisting of the bishops of the fifteen Catholic Dioceses in Texas and the Ordinariate of the Chair of St. Peter. Through this association, the various bishops speak with one voice on issues facing the Catholic Church in Texas and advocates for the protection of human life from conception to natural death. The United States Conference of Catholic Bishops (“USCCB”) is a nonprofit corporation whose members are the active Catholic Bishops of the United States. The USCCB advocates for and promotes the pastoral teaching of the Roman Catholic Church (the “Church”) on diverse issues, including the protection of human rights, and the sanctity and dignity of human life. It often files *amicus curiae* briefs in support of legal positions of importance to the Church.

The Catholic Church in Texas has a long history of ministering to the incarcerated, crime victims, and their families. The TCCB regularly advocates for both religious liberty and mercy and restorative justice for prisoners, especially those on death row, before public officials. And the broader Catholic community responds to the needs of the incarcerated in numerous ways, including through ex-inmate reintegration, family counseling, drug and alcohol recovery, and

¹ Pursuant to Supreme Court Rule 37.6, amici represents that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than amici, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

relevantly here, correctional ministry. The chaplaincy work of the Catholic Church is a key religious exercise by which it fulfills its religious obligations to care for prisoners' personal and spiritual well-being. *See* Texas Catholic Correctional Ministers: About Us, available at <https://txccm.org/about-us>.

The TCCB has previously advocated for legislation within Texas to ensure that volunteer and faith-based chaplains can provide pastoral care to inmates, including in the execution chamber. *See, e.g.*, H.B. 1579 and S.B. 654, 87th Tex. Leg. (2021). Such legislation has not been successful thus far, and as this case illustrates, TDCJ continues to prohibit basic aspects of chaplaincy—contact and vocal prayers—in the execution chamber.

The TCCB and USCCB's deep familiarity with the history of the policy and religious liberty matters at issue, and their unique perspective as leaders of a religious community whose ministers attend to the dying and the imprisoned, can assist the Court in resolving the important religious liberty issues “in the way that the claims require and deserve,” by giving attention to the community's right to minister interwoven with the individual's right to ministry. *Murphy v. Collier*, 139 S. Ct. 1475, 1485 (2019) (Alito, J., dissenting).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case addresses one of the oldest religious freedom rights known to history and the Christian tradition: the right of prisoners, including of those about to be executed, to the comfort of clergy: “I was ... in prison and you came to me” (Matthew 25:35-36); *See also* Joseph Delany, “*Preparation for Death*” The

Catholic Encyclopedia, Vol. 4, New York: Robert Appleton Company, available at <http://www.newadvent.org/cathen/04660c.htm>.

This brief explains how this religious freedom right is twofold. As highlighted by the briefing thus far, a prisoner retains the right under the Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) to spiritual guidance even in his incarceration—indeed, even at his death. But further, religious entities retain an independent First Amendment right to minister to their congregants. TDCJ’s policy infringes both rights, which should only be limited in rare circumstances.

Due regard for the rights of the church alongside the rights of Mr. Ramirez will lead to the correct result in this case. A substantial burden is imposed not only on Mr. Ramirez’s free exercise, but on the free exercise of his pastor—who is also exercising the freedom of the Church as an entity—when TDCJ prohibits key actions of ministry. And the blanket prohibitions here cannot satisfy strict scrutiny where so many spiritual advisors (priests, deacons, and others) – including many of the Church’s own Catholic chaplains —have regularly ministered in TDCJ and other facilities without incident, including in the execution chamber and in the specific manner requested by Ramirez.

ARGUMENT

I. DENYING CLERGY ACCESS TO THEIR CONGREGANTS AT THE HOUR OF DEATH VIOLATES THE FREEDOM OF THE CHURCH.

Consistent with American constitutional law, discussed below, Catholic Social Teaching recognizes

an inherent duality in the rights of religious freedom, belonging in distinct nature to both individuals and institutions. The most prominent modern statement of these dual rights is in the Second Vatican Council (“Council”) Declaration on Religious Freedom, *Dignitatis Humanae* (“On the Dignity of the Human Person”), which emphasizes the personal and communal dimensions of religious freedom. With respect to the former, the Council Fathers state:

[T]he human person has a right to religious freedom ... that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.

Dignitatis Humanae 2 § 1 (1965).

With respect to the latter, *Dignitatis Humanae* explains, “The freedom of the Church is the fundamental principle in what concerns the relations between the Church and governments and the whole civil order.” *Id.*, 13 § 1. Furthermore, “a harmony exists between the freedom of the Church and the religious freedom which is to be recognized as the right of all men and communities and sanctioned by constitutional law.” *Id.* at § 4. To be sure, the Church also recognizes that religious freedom is not absolute but must be circumscribed within certain juridical limits in order to promote the common good and public order. *See* Catechism of the Catholic Church § 1738. But TDCJ’s restrictions challenged here exceed those limits.

This concept of the “freedom of the Church,” or *libertas ecclesiae*, has long been recognized in English common-law and part of our own constitutional traditions going back to the 13th century Magna Carta. Magna Carta, Article 1 (1215 Edition) (Latin translation from English) (available at <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation>). So strong was this respect for the Church that for many centuries extending up to the American Founding, there was a so-called legal fiction of certain exemptions granted to the church known as the “benefit of the clergy” (“*privilegium clericale*”). Under this privilege, later extended to laypersons, clerics and other ecclesiastical ministers could plead for leniency in secular courts and subject themselves to ecclesiastical jurisdiction. *See generally* Sir William Blackstone, 4 Commentaries on the Laws of England, Chapter 28.

In the modern constitutional regime, this Court has long recognized the right of the church to determine “free from state interference, matters of church government as well as those of faith and doctrine.” *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 186 (2012) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)). This Court has further recognized “[t]he church must be free to choose those who will guide it on its way” without intrusion from secular courts. *Id.* at 196. Such a protection has important practical import; for one thing, it ensures the “church’s independent authority” over matters such as “preaching, teaching, and counseling.” *Our Lady of*

Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060-61 (2020).

Respect for the role of spiritual guidance, and for the distinctive role of chaplains, pervades the decisions of this Court and the writings of its Justices. For example, the Court has recognized that legislative chaplaincy “accommodate[s] the spiritual needs of lawmakers and connect[s] them to a tradition dating to the time of the Framers.” *Town of Greece v. Galloway*, 572 U.S. 565, 587-88 (2015) (discussing *Marsh v. Chambers*, 463 U.S. 783 (1983)). And such a role is particularly crucial where free access to spiritual guidance is unavailable. “Since government has deprived [members of the Armed Forces and prisoners] of the opportunity to practice their faith at places of their choice . . . government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be.” *School District of Abington Township, Pennsylvania, et al. v. Schempp et al.*, 374 U.S. 203, 297-298 (1963) (Brennan, J., concurring). Justice Brennan further observed it would evince “hostility” toward religion if the state refused “draft exemptions for ministers and conscientious objectors” or to “provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion.” *Id.* at 299.

The key spiritual guidance provided by the church is of particularly grave importance at the moment of death, and the formation and communication of that guidance is constitutionally protected from government interference. The pre-eminent example of this is the Bible’s account of the repentant “Good Thief” who asked Christ for forgiveness on the Cross:

“Jesus, remember me when you come into your kingdom. He replied to him, ‘Amen, I say to you, today you will be with me in Paradise.’” (Luke 23:42-43).

Taking after this act of charity, from Christianity’s beginning, priests have been present at the time of death to hear confessions, offer the Eucharist and administer last rites. *See, e.g.*, Catechism of the Catholic Church §§ 1524-1525 (concerning *viaticum* administered to those “at th[e] moment of ‘passing over’ to the Father”). The Catholic Catechism teaches over 1 billion Catholics, consistent with historic Christian tradition, that the final moments of life offer a unique final chance to prepare for “our heavenly homeland” and for pardon and redemption. *See* Catechism §§ 1525; 1501-1502 (effect of expected death on discernment); § 1013 (moment of death “decides [man’s] ultimate destiny”). The familiar Hail Mary prayer seeks the Blessed Virgin Mary’s intercession for “us sinners, now and at the hour of our death.” Saint Catherine of Siena is remembered as converting Niccolo di Toldo in prison and accompanying him on the execution block as the blade fell (as depicted in her monument by Castel Sant’Angelo), and Saint Teresa of Calcutta (“Mother Teresa”) dedicated her ministry to the principle that “no one should die alone.” These are but a few examples of how Catholics honor the church’s precept that “the dying should be given attention and care to help them live their last moments in dignity and peace.” *See* Catechism § 2299.

In addition to the Church’s general obligation to minister to the souls of the dying, the *Compendium of the Social Doctrine of the Church* also recognizes the unique obligation of attending to the dignity and souls

of the incarcerated, and the important role that chaplains play in their restoration and rehabilitation:

In this regard, the activity that prison chaplains are called to undertake is important, not only in the specifically religious dimension of this activity but also in defence of the dignity of those detained. Unfortunately, the conditions under which prisoners serve their time do not always foster respect for their dignity; and often, prisons become places where new crimes are committed. Nonetheless, the environment of penal institutions offers a privileged forum for bearing witness once more to Christian concern for social issues: “I was ... in prison and you came to me” (*Mt 25:35-36*).

Compendium § 403 (emphasis added).

Finally, for both incarcerated and non-incarcerated believers, the Code of Canon Law of the Catholic Church treats attending to the dying as both a “duty and [a] right” for “[a]ll priests to whom the care of souls has been entrusted.” It is especially entrusted to those who hold the office of pastor. 1983 Code c.1003 § 2 (anointing of the sick); *cf.* 1983 Code c.921-22 (discussing Viaticum for “[t]he Christian faithful who are in danger of death from any cause”), *cf.* 1983 Code c.530, 3° (identifying particular prerogatives of a parish pastor). And as discussed above, the ministry has often persisted, supported by sound theology, to the “hour of our death.”

While not all religious traditions have as formal a structure or as well-developed a body of church law as the Catholic Church, it is unsurprising that the broader Christian tradition to which Mr. Ramirez’s pastor belongs shares a commitment to attending to

the prisoner and the dying alike, and particularly when they are paired. The guidance from the Gospel of Matthew discussed above, and exhortations found elsewhere in Holy Scripture, is common to these traditions. *See* James 5:14-15 (“Is any among you sick? Let him call for the presbyters of the Church, and let them pray over him, anointing him with oil in the name of the Lord; and the prayer of faith will save the sick man, and the Lord will raise him up; and if he has committed sins, he will be forgiven.”)

In short, this case implicates neither just the personal religious exercise of Mr. Ramirez or others in his position, nor just the personal religious exercise of Pastor Moore. Rather, this case implicates a core and obligatory ministry of the Catholic Church and (at least) many other Christian churches, as well as people of other faith traditions. By denying chaplains the ability to personally and effectively minister to their death-row church members in their final moments—including through the laying on of hands and the vocalization of prayers in the execution chamber – they impermissibly infringe upon the First Amendment freedoms of religious organizations and their ministers.

II. UNDER RLUIPA AND THE FREE EXERCISE CLAUSE, TDCJ MUST PROVIDE PETITIONER WITH ACCESS TO CLERGY IN THE DEATH CHAMBER.

As Mr. Ramirez and other *amici* have elaborated, extensive history and case law demonstrate that the First Amendment and RLUIPA protect the practices at issue here, and underscore why strict scrutiny should apply. The TCCB and USCCB add only that

just as the rights here are twofold, the substantial burden is as well.

Here, it is helpful to consider this Court's elaboration of substantial burdens in the RLUIPA context. In *Cutter v. Wilkinson*, this Court recognized that, because prisons exercise "control" that is "severely disabling to private religious exercise," denying permission for a practice produces "government-created burdens on private religious exercise." 544 U.S. 709, 720 (2005); see *Holt v. Hobbs*, 574 U.S. 352, 361-62 (2015) (because exercise was "grounded in a sincerely held religious belief," the enforced prohibition "substantially burden[ed] his religious exercise"); *Yellowbear v. Lampert*, 741 F.3d 48, 56 (10th Cir. 2014) (Gorsuch, J.) ("flatly prohibiting" religious exercise creates a substantial burden).

This same principle extends to correctional ministry. If Mr. Ramirez were dying in a home or a hospital, there would be no impediment to his pastor praying aloud over him or holding his hand as he dies. As this Court has previously recognized, "[T]he 'exercise of religion' often involves not only belief and profession but the performance of ... physical acts [such as] assembling with others for a worship service [or] participating in sacramental use of bread and wine" *Wilkinson*, 544 U.S., at 720 (citations omitted). Even apart from liturgical-sacramental acts in a church or a pastoral care setting, Congress determined that RLUIPA's protections applies to "any" exercise of religion - regardless of whether it is compelled by, or central to, a system of religious beliefs and "not just to those ... which are shared by all the members of a religious sect." §2000cc-5(7)(A); *Thomas*

v. *Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707, 715–716 (1981). But the “control” exercised by TDCJ here—including actions to enforce that control or punish deviations from its rule—is “severely disabling to [the] private religious exercise” of the minister and the religious community that minister represents. *Wilkinson*, *supra*, at 721. The First Amendment protects this corresponding right of the church to minister to incarcerated persons.

Additionally, even if security and operational concerns are asserted by the State, that deference is not determinative. TDCJ’s practice does not satisfy strict scrutiny, given the lengthy history of chaplains ministering in the death chamber, including with audible prayer and touch, without incident or disruption. Catholic chaplains and other clergy have contributed honorably to that solace and should be permitted to continue to do so. RLUIPA still “makes clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by Congress” and apply its rigorous standard in order to not impose a substantial burden without using the least restrictive means. *Hobbs*, 574 U.S., at ___ (slip op., at 10) (citing *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U. S. 418, 434 (2006)).

Further, even if the Court were to apply the lesser standard from *Turner v. Safley*, this same history would favor the rights of Mr. Ramirez and like prisoners, and the corresponding rights of the church. *Cf. Holt*, 574 U.S. at 361-62 (comparing the “greater protection” of RLUIPA with the *Turner* factors for assessing burdens on “practicing religion”). History strongly undercuts both the prohibition’s connection to

the government’s concerns for safety, and the likelihood that the requested exercise would have any negative impact on prison resources or officials. And unlike in *Overton v. Bazzetta*, there are no “alternatives” “of sufficient utility” for addressing the specific concern here—personal, meaningful spiritual guidance at the very moment life ends. 539 U.S. 126, 135 (2003).

To be clear, permitting Ramirez’s pastor to provide the spiritual assistance that Ramirez has requested would not render his execution a just act. The Bishops of the United States, including the Texas Bishops, have long abhorred the practice of state-sanctioned executions of human beings.² Representing a final, irrevocable termination of a gift from God – human life – the bishops of the TCCB and USCCB view the death penalty as a grave violation of human dignity. It represents a judgment by fallible human beings that a person is beyond redemption. That is a judgment the Catholic Church rejects. The state should act with justice by sparing Ramirez’s life. If it will not, it should allow him to seek the mercy of God at the moment of his death.

CONCLUSION

For the foregoing reasons, the decision below should be reversed, with instructions to grant the stay of execution, or alternatively, order TDCJ to provide

² See, e.g., Brief for the United States Conference of Catholic Bishops, et al. as Amici Curiae Supporting Petitioner, *Dailey v. Fla.*, 141 S. Ct. 689 (2020) (No. 19-7309); Brief for the Texas Catholic Conference of Bishops as Amicus Curiae Supporting Petitioner, *Gutierrez v. Luis V. Saenz, et al.*, 590 U.S. ____ (2020) (No. 19-8695/19A1052).

Ramirez with personal access to his pastor within the execution chamber.

Respectfully submitted,

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