No. 13-6827

In the Supreme Court of the United States

GREGORY HOUSTON HOLT a/k/a
ABDUL MAALIK MUHAMMAD,
Petitioner,

v.

RAY HOBBS, Director, Arkansas
Department of Correction, *et al.*,
Respondents.

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

BRIEF OF REFORMED PRISONERS JESSE WIESE, NICHOLAS ROBBINS, THOMAS C. COTTON III, ERNST FENELON JR. & SCOTT GREENBERG AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are formerly incarcerated individuals who developed a relationship with God while incarcerated and were able to practice the fundamental tenets of their faith during that time. Although *amici* have divergent beliefs, they agree that the religious freedoms they experienced while incarcerated enabled them to become grounded in a purpose higher than themselves, provided a rehabilitative experience, and prevented them from returning to prison.

Jesse Wiese is a Policy Analyst at Justice Fellowship, an arm of Prison Fellowship Ministries. In 2000, Wiese was sentenced to 15 years imprisonment. During his time in prison, Wiese developed a relationship with Jesus Christ.

Nicholas Robbins is a Reentry Specialist at Pathway to Freedom, a successor to The InnerChange Freedom Initiative, in Arkansas. During a ten-year sentence of imprisonment, Robbins developed a relationship with God and practiced the Christian faith.

Thomas C. Cotton, III, is the Executive Director of Redemption & Advancement Alliance, a non-profit organization he founded post-incarceration to aid reentry of former prisoners into society. Cotton

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[1] The written consents of counsel for both parties have been filed with the Court. No counsel for a party authored this brief in whole or in part, and neither a party nor counsel for a party made any monetary contribution intended to fund the brief's preparation or submission.

previously was sentenced to ten years in prison; during his time there he developed a relationship with Jesus Christ.

Ernst Fenelon is a Program Coordinator at the Prison Education Project. Fenelon previously served over 14 years in prison, during which time he became a devout Muslim and practiced the Islamic faith.

Scott Greenberg presently volunteers at a food bank and teaches computer courses through a Catholic charity. While serving six years in prison on a parole violation, Greenberg reconnected with the practices of his Jewish faith and credits his good conduct post-release to the prison Jewish program.

SUMMARY OF ARGUMENT

This brief tells the stories of five men. Each has served a long prison sentence. Combined, their crimes include armed robberies, drug offenses, sex offenses, aggravated assaults, and more. In prison, these men developed religious beliefs—Christian, Jewish, and Muslim. Through practicing their faiths and observing sacraments—including a Muslim beard and a Jewish yarmulke—these men became what they are today: upstanding members of society. Combined, they have helped hundreds of other current and former prisoners develop faith and rehabilitate their lives.

Sincere development and practice of religion in prison literally helps "convert" violent and dangerous men into upstanding citizens—a process that in modern prisons needs all the help it can get. These five men lived that story, Congress in passing RLUIPA understood it, and so do the forty-four States that would permit the Muslim beard at issue here. This Court should too.

ARGUMENT

I. SINCERELY PRACTICED RELIGION REDUCES RECIVIDISM

1. *Amici's* Lives Demonstrate that the Sincere Observance of Religious Practices is Rehabilitative.

A. Acts and Convictions

Amici are all felons. At the time they committed their crimes, none had a meaningful relationship with God. None practiced a religion.

1. At 21, Jesse Wiese was depressed. Growing up, Wiese was a smart and likeable student in private Christian schools. He was the paradigmatic "good kid" until his parents' marriage fell apart. As his family life fractured, teenager Wiese rebelled. His rebellion began as a quest to find the purpose and meaning of life. He soon developed a nihilistic view and decided to focus on doing whatever he felt. Wiese quickly became hopeless and depressed. Contemplating suicide, he purchased a .38 Smith & Wesson revolver. As he held the gun in his mouth, he decided to spare his father the grief of a bloodied white leather couch. He took the gun, stole a vehicle, and drove over 600 miles away.

Wiese wanted to live as an outcast, away from all family and free from the laws of man. He knew he needed money to live the lifestyle he wanted, and to him, the quickest way to obtain the funds he needed was to rob a bank. On May 5, 1999, Wiese arrived in Walford, Iowa, a small town near his grandmother's home. He chose this town believing it would be easier to rob a bank there. He laid in wait for a bank

employee to open the bank, then held the employee at gun-point, opened the bank vault, duct-taped the employee, and stole some money. Within minutes, a high-speed police chase ensued and he was apprehended. His grandmother learned of his arrest on the local news. Wiese was charged with six felonies and faced up to 75 years in prison; he ultimately pled guilty and received a sentence of 15 years. While Wiese was slightly remorseful, he did not take responsibility for his actions.

2. Nicholas Robbins accepted Christ at six years old. He thought his belief in Christ was all he needed so he did not pay much attention to practicing his religion. He separated his belief in God from the way he lived his life. At 12, he started smoking marijuana and using other drugs. At 16, Robbins was arrested for possession of marijuana.

Once released, Robbins ran away from home and moved in with friends who fostered his drug habits. Soon thereafter, he began to steal to sustain his drug lifestyle and pay his bills. One day Robbins went to cash a check but the store refused to do so because he was underage and lacked proper identification. Robbins was furious. He returned the next day and successfully robbed the store. A month later, he returned to rob the same store again. This time, the staff recognized Robbins and alerted the police. Soon after, Robbins was arrested and charged with the two armed robberies. He received two concurrent ten-year sentences. Robbins was 17 years old at the time and weighed about 135 pounds. He entered prison terrified but determined to be a fighter and make a name for himself.

3. Similarly, at age 15 Thomas Cotton began to sell drugs. Prior to this, Cotton had chosen to live with his father, who was then recovering from a stab wound. Cotton's father never fully recovered and could not provide the fatherly guidance Cotton needed. At 18, Cotton robbed a fast-food restaurant and was arrested but released on bail. Cotton lived in a bad neighborhood where the only successful people he had ever known were drug dealers. Cotton craved that kind of success. During the seven months he was out on bail, Cotton became a professional drug dealer. He was motivated to make enough money to hire a lawyer to defend him on his robbery charge. He eventually received a one-year sentence and served fewer than five months because it was his first conviction.

Within a week of his release, Cotton joined a multi-state drug conspiracy. Soon every member of the conspiracy except Cotton was apprehended. Cotton was on the run from the FBI for five months. On August 6, 1994, with no one else to turn to, Cotton called his estranged mother, who had disowned Cotton over 16 years prior when he was six years old. She told him about her relationship with Jesus and how Cotton could turn to him. Cotton was furious and blamed her for his situation. Two days later, the FBI arrested Cotton and he was charged with multiple drug offenses. He later received a 10-year sentence.

4. Ernst Fenelon Jr.'s father came from Haiti and served this country through the International Rescue Committee ("IRC"), doing tours in Tanzania, Africa and Vietnam. In 1978, when Fenelon was 13 years old, his father was diagnosed with cancer. Fenelon was raised in a Catholic home that instilled the idea that if one

prayed hard enough, the prayers would be answered. But his religious foundation was weakened by a lack of practice and further weakened when he prayed for his father who did not get well. Cancer killed his father and Fenelon turned to alcohol for solace. He then made a series of poor choices, resulting in a violent confrontation with his ex-girlfriend and the police. For multiple felonies, Fenelon received a 28-year sentence and served half of it in a California prison.

5. Scott Greenberg was raised in a middle-class Jewish family in New York, and attended a Yeshiva. After his parents divorced, Greenberg moved to Texas in his teens and developed a habit of stealing and using drugs. Greenberg used and sold marijuana, acids, methamphetamine, and cocaine. Describing his earlier life, Greenberg said, "Al Capone had nothing on me," and noted that the practice of his faith "took a back seat." Eventually Greenberg was convicted of aggravated robbery and committed an assault in prison; he served approximately 20 years. After his release, Greenberg committed a parole violation related to his monitoring device and returned to prison in 2006 for six more years.

B. In-Prison Transformation and Post-Prison Life

1. Looking back, Wiese believes that before he accepted Christ, the outward dejected appearance of prison reflected his inner condition. Following his transfer to a faith-based prison, Wiese encountered and accepted Christ. Accepting Christ gave him a new perspective, purpose, and something to live for—it was a "cognitive and spiritual shift that was more than an emotional experience." He maintained his relationship

with God by regularly participating in Christian community and fellowship, studying his Bible daily and praying. The fellowship and community kept Wiese accountable. The personal Bible studies and prayers transformed him from the inside and Wiese believed he was redeemed—that his prior actions were forgiven and do not dictate his future.

Driven by his newfound faith, Wiese determined to "use every ounce of his being to help other people." He became a mentor to other inmates and helped them develop a relationship with God. Wiese also completed a bachelor's degree while incarcerated, and attended and graduated *magna cum laude* from law school after his release. Wiese is now a Policy Analyst with the Justice Fellowship. It has been about eight years since his release.

Robbins and Cotton, both previously involved with drugs and robberies, had similar transformative experiences. They recall reading their Bibles every morning at 5:00 a.m., participating in Bible studies and devotionals, engaging in weekly Christian fellowship, including attending weekly Friday night revivals.

2. Robbins had made a name for himself fighting other inmates, but when he honestly encountered God, he was humbled to mercy and forgiveness. Robbins believes the Bible was written for him as a prisoner, because numerous individuals in the Bible were prisoners—Joseph, the Israelites, Paul, and most importantly Jesus Christ himself. Robbins applied Christian principles he learned to his daily life and found purpose in answering to a higher power. While incarcerated, he also helped mentor other inmates and led them to develop a relationship with God. Post-

incarceration, Robbins has shared his experience with many, including speaking at the White House. Robbins is now a Reentry Specialist at Pathways to Freedom. He stresses that "faith is what keeps people out [of prison] because there is no amount of punishment that would change the way you live your life." It has been seven years since Robbins' release.

3. Likewise, Cotton encountered God in a moment of silent prayer in prison. That moment of prayer and other Christian practices keep him grounded. Pre-release, Cotton assisted with developing religious-based reentry programs for prisoners. Following his incarceration, Cotton mentored several young men and was called to serve as a Youth Pastor at a large church in California. He has since moved to Atlanta, Georgia, and founded Redemption & Advancement Alliance, an organization geared toward assisting former prisoners with reentry into society. Over 100 former prisoners have completed Cotton's faith-based training program and to date, not one has returned to prison. Cotton notes that he sees his life as a "gift"— "because of my experience, I am able to teach others, and see life from a different perspective. My life is God's story and I get to live it out." It has been 14 years since Cotton's release.

4. A fellow prisoner shared the Qur'an with Fenelon during their incarceration. He studied it for months and initially resisted it because of his Catholic background. After much study and soul searching, he converted to Islam. He freely participated in the five daily prayers, including Jumu'ah (Friday prayer), fasting, wearing a beard, wearing a "Kufi," and observing the religious holidays. While he was

incarcerated in California, a supervisor at the California Medical Facility ("CMF") of the California Department of Corrections issued a memorandum forbidding staff from releasing Muslims for Friday Jumu'ah. Fenelon filed a complaint in the U.S. District Court for the Eastern District of California, which granted him summary judgment on the grounds that the CMF's policy violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc *et seq.* *See Fenelon v. Riddle*, No. 2:95-CV-0954 (E.D. Cal. filed Apr. 29, 2003). Fenelon's case led to *Mayweathers v. Terhune*, 328 F. Supp. 2d 1086 (E.D. Cal. 2004), a class action in which the U.S. District Court held that California's policy of disciplining prisoners who missed work assignments to attend Friday Jumu'ah violated RLUIPA.

According to Fenelon, "Islam is my rock, my center, my foundation. If I had not been able to fully practice it in the prison environment . . . [I] could have succumbed to all the challenges and pressures inside of prison." Fenelon states that "in challenging the challenges to my faith while incarcerated, I focused on why these practices were important, and it helped my transformation." He says "Islam helped me to transform in my behavior, my thoughts, and my actions."

Following his release, Fenelon has continued in the practice of his faith. He is involved with numerous philanthropic activities and volunteers with several organizations such as Outreach Nation. He works with the Prison Education Project in California, where he provides educational tools to reintegrate prisoners back

into society. He is also married and has a 1½ year-old son. It has been about nine years since his release.

5. Greenberg reconnected with his Jewish faith during his last six-year stretch in prison. Having spent more than half his life incarcerated, Greenberg saw a pilot program for Jewish prisoners as his second chance to practice his faith and be truly transformed. From his first day in the program, Greenberg was permitted to wear his yarmulke and tefillin, and pray with his tallis. He met weekly with a rabbi and ate meals from the facility's kosher kitchen. He was able to spend time studying the Torah and observed all the Jewish holidays. Greenberg spent over four years in the program. While in a pre-release facility, he faced and overcame administrative opposition to his religious practices.

It has now been more than a year since Greenberg's release. Greenberg reports that "this is the first time I was released from prison and did not get high on the same day. Till today, I have not gotten high and I credit it to the time I spent [practicing my faith] in the Jewish program at the Mac facility." He now volunteers, serving at a food bank facilitated by a Christian organization, and he teaches computer courses in a program facilitated by a Catholic charity. He is currently applying to college to obtain a bachelor's degree.

2. Objective Studies and Statistics Support *Amici*'s Experiences

Amici's stories support the Government's own finding that "a growing body of empirical evidence indicate[s] that religious beliefs reduce crime and

recidivism among adult prisoners." U.S. Dep't of Health & Human Servs., Prisoner Reentry, Religion and Reason 4, https://peerta.acf.hhs.gov/pdf/prisoner _reentry.pdf (last visited May 27, 2014) [hereinafter Prisoner Reentry]. The "literature is consistent with . . . the claim that religious beliefs are inversely related to delinquency, crime and recidivism." *Id.*

In its report, DHHS recounts that individuals who participate in and complete a faith-based prisoner program are "50 percent less likely to be rearrested and 60 percent less likely to be re-incarcerated during a two-year follow-up period." *Id.* Another study found that federal inmates who participated in a religious program had a 40 percent rate of recidivism for up to fourteen years after release, compared to 51 percent for those who did not participate in such programs. Thomas P. O'Connor, Terry L. Brooks, and Michael W. Sprauer, Oregon Dep't of Corrections, *Spirituality, Religion and What Works: Religious Outcomes This Side of Heaven*, 1999,http://www.oregon.gov/doc/OMR/ pages/religious _services/rs_article2.aspx (last visited May 27, 2014).

Many scholars also agree that "religious involvement can reduce prisoner misconduct and is a viable correctional intervention." SpearIt, *Religion As Rehabilitation? Reflections on Islam in the Correctional Setting*, 34 Whittier L. Rev. 29, 34 (2012) (citing Todd R. Clear and Melvina T. Sumter, *Prisoners, Prison, and Religion: Religion and Adjustment to Prison*, 35 J. Offender Rehabilitation 127, 146 (2002); Kent R. Kerley et al., *Religiosity, Religious Participation, and Negative Prison Behaviors*, 44 J. for Sci. Study Religion 443, 453 (2005); Thomas P. O'Connor, *What Works,*

Religion as a Correctional Intervention: Part II, 14 J. Community Corrections 4, 4 (2004–05)). For example, with respect to Christianity, "inmates who were most active in Bible studies were significantly less likely to be rearrested during the follow-up period." Prisoner Reentry at 4. Other studies showed that "alcoholic and drug-addicted inmates were able to cope more effectively after converting to Islam" *Religion As Rehabilitation?* at 34 (citing C. Eric Lincoln, The Black Muslims in America 77–78 (3d ed. 1994)).

Religion's emphasis on redemption and rehabilitation is the impetus for the transformation that reduces recidivism**.** George Walters-Sleyon, *Studies on Religion and Recidivism: Focus on Roxbury, Dorchester, and Mattapan*, 21 Trotter Rev. 1, 43 (2013). "[R]eligion's concept of rehabilitation pursues the revitalization of the inherent worth of the offender as a human being." *Id.* Revitalizing inherent worth establishes the grounds for rationality, individuality, subjectivity and personhood, which are essential elements to restoring an offender, in contrast to solidifying the idea that the offender is beyond redemption. *Id.* at 43–44.

That the sincere observation of religious practices reduces recidivism is thus both anecdotally and empirically true. "[R]eligiously involved inmates, especially those who are involved at a substantial level, seem to have . . . lower rates of recidivism than non-religiously involved inmates." O'Connor, *Spirituality, Religion and What Works*.

II. STATES WITH AN INTEREST IN REDUCING RECIDIVISM SHOULD FOSTER SINCERELY PRACTICED RELIGION

America's first prison was founded in 1790 by the Quakers who envisioned "a true *penitentiary*—a peaceful (if compulsory) sanctum where offenders could study the scriptures, repent, and reenter society as rescued, reformed, and pious citizens." Thomas Cahill, *A Brief History of America's Penal Philosophy*, Public Broad. Serv., Dec. 28, 2007, http://www.pbs.org/moyers/journal/12282007/penalphilosophy.html (last visited May 27, 2014). "[T]he hallmark of determining success in rehabilitation is the recidivism rate, or the rate at which formerly incarcerated individuals return to prison." *Religion As Rehabilitation?* at 32. The current recidivism rate in the American justice system "indicates a massive failure of the penal system to return [previously incarcerated] citizens to society." *Confronting Recidivism: Prisoner Re-entry Programs and a Just Future for All Americans*: Hearing before the Committee on Government Reform, House of Representatives, 119th Cong. 2 (2005) (statement of Representative Mark E. Souder).

Disturbing recidivism statistics have prompted every state and the federal government to express interest in enhancing rehabilitation and reducing recidivism. For example, several states enacted statutes stating a policy of rehabilitation. *See e.g.* Minn. Stat. Ann. § 364.01 (West 2014) ("The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship."). Other states

have allocated substantial resources to studying and enacting recidivism reduction programs. *See, e.g.,* O.R.S. §§182.525 & 182.515 (2014) (requiring that Oregon's Department of Corrections spend "at least 75 percent of state moneys" that it receives on evidence-based programs, such as "a treatment or intervention program that is intended to . . . [r]educe the propensity of a person to commit crimes."). And currently pending before the U.S. Senate is the Recidivism Reduction and Public Safety Act of 2014, S. 1675, 113th Cong. (2014), which attempts "[t]o reduce recidivism and increase public safety, and for other purposes."

Particularly relevant, Arkansas has expressed an interest in reducing recidivism and promoting spirituality. *See* Ark. Act 570, The Public Safety Improvement Act, § 1 (2011) ("The intent of this act is to implement comprehensive measures designed to *reduce recidivism*, hold offenders accountable, and contain correction costs." (emphasis added) (statement of legislative intent not codified)). The Arkansas Department of Corrections expends significant resources in studying and tracking recidivism rates of prisoners in its facilities. *See* Ark. Dep't of Corr., *Reports and Forms*, http://adc.arkansas.gov/resources/Pages/Reports.aspx (last visited May 27, 2014) (listing and providing links to recidivism reports from 2001 to 2010). Further, the Arkansas Department of Corrections' stated mission in part is to "provide opportunities for staff and inmates to improve *spiritually* . . . ." Ark. Dep't of Corr., *Goals and Objectives*, http://adc.arkansas.gov/about/Pages/goalsobjectives.aspx (last visited May 27, 2014) (emphasis added).

The sincere development and practice of religious faith in prison helps literally "convert" violent and dangerous men into upstanding citizens—a process that needs all the help it can get. RLUIPA recognizes this, and this Court should as well.

CONCLUSION

Amici respectfully request that this Court reverse the judgment of the Eight Circuit.

Respectfully submitted,

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May 29, 2014