No. 15-999

IN THE

Supreme Court of the United States

RICKY KNIGHT, ET AL.,

Petitioners,

v.

LESLIE THOMPSON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF OF *AMICUS CURIAE* THE SIKH COALITION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

"The truest wish of a true Sikh is to be able 'to preserve the hair on his head to his last breath.'" 2 *The Encyclopaedia of Sikhism* 466 (Harbans Singh ed., 2d ed. 2001). And after this Court's recent unanimous decision in *Holt v. Hobbs*, 135 S. Ct. 853 (2015), and corresponding GVR in the present case, the Sikh community rejoiced that this "truest wish" might be honored even in our nation's prisons. Sadly, its hopes have been dashed in the Eleventh Circuit, which refuses to enforce *Holt* against outright—and outlying—bans on unshorn hair. Thus the Sikh Coalition appears as amicus curiae in this Court for a second time in support of petitioners.

On the evening of September 11, 2001, a group of volunteers founded the Sikh Coalition in response to the immediate violence and injustice Sikhs began to suffer—and would continue to suffer—as a result of the terrorist attacks that terrible day. Just four days later, a gunman shot a Sikh man, Balbir Singh Sodhi, as he planted flowers in front of his gas station. Tamar Lewin, *Sikh Owner of Gas Station Is Fatally Shot in Rampage*, N.Y. Times (Sept. 17, 2001), http://nyti.ms/1KYLEeb.

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[1] Pursuant to Supreme Court Rule 37.2(a), counsel for the parties received notice of intent to file this brief at least 10 days before its due date. The parties have consented to the filing of this brief; their written consents are on file with the Clerk. Pursuant to Rule 37.6, no party's counsel authored this brief in whole or in part, and no one other than *amicus*, its members, or its counsel made any monetary contribution intended to fund its preparation or submission.

Attacks on Sikhs are often based on misunderstandings about their hair practices. Mr. Sodhi's killer, for example, said he planned to "go out and shoot some towel-heads"—an all-too-common false association in America of the turban with terrorism. *Sodhi Murder Trial Begins*, Rediff.com (Sept. 4, 2003), http://bit.ly/21wHGAE. For Sikhs, the turban protects a sacred religious practice required of them since 1699: maintaining unshorn hair, or *kesh*. W.H. McLeod, *Historical Dictionary of Sikhism* 81 (1995).

The Sikh Coalition supports the ability of Sikhs to maintain *kesh* wherever they are. With a presence in New York, California, and Washington, D.C., it provides direct legal services, advocates for legislative change, and educates communities about Sikh practices. And protecting Sikh inmates' ability to keep unshorn hair, free from prejudice and forced cutting, lies at the heart of that mission.

SUMMARY OF ARGUMENT

Fifteen years ago, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect religious minorities like Sikhs and Native Americans from arbitrary restrictions on religious liberty in prison. 146 Cong. Rec. 16698, 16699 (2000). The Act therefore forbids prisons from substantially burdening inmate religious practice unless the government can show its action furthers a compelling state interest by the least restrictive means. 42 U.S.C. § 2000cc-1 (2014).

In *Holt*, this Court held that Arkansas violated RLUIPA by imposing an absolute ban on inmates

wearing beards for religious reasons. And in striking down the Arkansas policy, the Court insisted any deference otherwise owed to prison officials cannot be based on speculation or generalized security concerns. In particular, where the federal prison system and those in many states have successfully accommodated the religious practice at issue, the Court emphasized that a prison must show unique circumstances to justify its refusal to accommodate. Otherwise, it cannot overcome the de facto presumption that its outlier policy fails RLUIPA's least-restrictive-means test.

Because this Court vacated and remanded the Eleventh Circuit's prior judgment in light of *Holt*, it naturally meant *Holt* to apply to the grooming policy at issue here. *Knight v. Thompson*, 135 S. Ct. 1173 (2015). But the appellate court flouted *Holt*'s warning about respecting other prison systems, by failing to require Alabama to justify itself in light of the more accommodating grooming practices in the federal system and 39 other states at that time. By allowing prison officials to ignore actual prison policies elsewhere, the appellate court also revived a split with other circuits many hoped *Holt* had settled.

The Eleventh Circuit's intransigence threatens inmates of minority faiths in particular, as it allows prisons to persist in ignorance of unfamiliar religious practices when crafting their rules. Like petitioners, Sikhs hold an uncommon religious belief that treats hair as a gift from the divine. Indeed, failure to maintain *kesh* can strip a Sikh of his identity and render him an apostate. But in the Eleventh Circuit, prisons can inflict that injury by subjecting Sikhs to

forced hair cutting without considering the less restrictive policies actually in place in other prisons.

The Sikh Coalition therefore asks this Court to finish what it started in *Holt*, and grant review here. Indeed, summary reversal might be all it would take.

ARGUMENT

I. ABSENT REVIEW, SIKHS WILL CONTINUE TO FACE THE PROSPECT OF DEVASTATING HARM IN OUR PRISONS.

A. Cutting Hair Is Apostasy For A Sikh.

Like the Native American petitioners, forcing Sikhs "to cut their long hair would amount to an 'assault on their sacredness.'" *Knight v. Thompson* (*Knight II*), 797 F.3d 934, 944 (11th Cir. 2015).

Sikhism began as a group of learners (*sikhs*) devoted to their teacher (*guru*). 2 *Encyclopaedia*, *supra*, at 196-97. In 1499, Guru Nanak experienced a vision of God while bathing in a stream, and emerged to declare the equality of all: there was no Hindu and no Muslim—only mankind. Eleanor Nesbitt, *Sikhism: A Very Short Introduction* 21-22 (2005). Rejecting the caste system and gender inequality, Nanak taught that anyone—whether carpenter or priest, woman or man—could access divine truth by meditating on God's reality (*nam*), making an honest living, and giving to others. *Id.* at 18-19; Patwant Singh, *The Sikhs* 27 (1999); 1 *The Encyclopaedia of Sikhism* 129 (Harbans Singh ed., 2d ed. 1995).

Over the course of two centuries, nine gurus succeeded Nanak as Sikhs became a target of

unfathomable oppression. In 1606, the fifth Guru, Arjan, was roasted alive on a griddle. Nesbitt, *supra*, at 59. Seventy years later the ninth Guru, Tegh Bahadar, was beheaded while his companions were sawed in half, boiled to death, and roasted alive soaked in oil. *Id.* at 60. Against this persecution, the tenth Guru, Gobind Singh, asserted a distinctive Sikh identity capable of enduring unthinkable suffering and denoting the entire community of faithful Sikhs as the *khalsa*. Singh, *supra*, at 53-54; 2 *Encyclopaedia*, *supra*, at 474.

The *khalsa* were required to maintain or wear five articles of faith, the Five Ks: (1) *kesh* (unshorn hair), (2) *kanga* (comb), (3) *kara* (metal bracelet), (4) *kachha* (under-shorts), and (5) *kirpan* (ceremonial knife). Singh, *supra*, at 54. And while some Sikhs do not maintain every one of the Five Ks, "[a]ll codes and manuals defining Sikh conduct are unanimous in saying that uncut hair is obligatory." 2 *Encyclopaedia*, *supra*, at 466. Indeed, of the Five Ks, only failing to maintain *kesh* is counted among Sikhism's "cardinal prohibitions." W.H. McLeod, *The A to Z of Sikhism* 119 (2005). Cutting the hair remains "the direst apostasy" for a Sikh. 2 *Encyclopaedia*, *supra*, at 466.

Sikhism's holy text, the *Sri Guru Granth Sahib*, is replete with references to hair, which explain the singular importance of maintaining unshorn *kesh*. For instance, the hair is where mankind encounters divine forces for both good and evil.[2] Hair is a focal

[2] *See, e.g.*, *Sri Guru Granth Sahib* 524:1 ("Grabbing them by the hair on their heads, the Lord throws them down."); *id.* at

attribute of the Lord God.[3] It is also a symbol of holiness and devotion,[4] and is holy in itself.[5] "[O]n each and every hair, the Lord abides." *Sri Guru Granth Sahib* 344:6. This is why Guru Ram Das writes: "Each and every hair on my head . . . suffers the pains of separation; without seeing my God, I cannot sleep." *Id.* at 836:16.

Throughout history, Sikhs have chosen death rather than cut their hair. *See generally* Louis E. Fenech, *Martyrdom in the Sikh Tradition* (2000). When the Mughal governor ordered Bhai Taru Singh to convert from Sikhism in 1743, for example, he replied: "May my faith endure until my last hair." 2 *Encyclopaedia*, *supra*, at 466. And it did. After his torturers used sharp blades to rip Bhai Taru Singh's

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408:6; *id.* at 481:19; *id.* at 631:14; *id.* at 721:5; *id.* at 906:12; *id.* at 1104:6; *id.* at 1106:8; *id.* at 1179:13; *id.* at 1224:10.

[3] *See, e.g.*, *id.* at 1105:13 ("[T]he beautiful-haired Lord is in the power of His devotees."); *id.* at 203:10; *id.* at 822:11; *id.* at 829:12; *id.* at 1082:15; *id.* at 1167:14; *id.* at 1355:18; *id.* at 1376:11. *Keshava*, God's epithet, means "one who carries long tresses." 2 *Encyclopaedia*, *supra*, at 37.

[4] *See, e.g.*, *Sri Guru Granth Sahib* 98:10 ("He does not need to eat; His Hair is Wondrous and Beautiful; He is free of hate."); *id.* at 443: 7 ("With each and every hair, with each and every hair, as Gurmukh, I meditate on the Lord."); *id.* at 387:12; *id.* at 500:2; *id.* at 810:18; *id.* at 923:16; *id.* at 941:5; *id.* at 1217:8; *id.* at 1247:8.

[5] *See, e.g.*, *id.* at 1144:3 ("The Lord's Name permeates each and every hair of mine."); *id.* at 533:15; *id.* at 761:11; *id.* at 966:9; *id.* at 1209:18.

scalp from his skull, he "rejoiced that the hair of his head was still intact." *Id.*

Today, unshorn hair remains central to the Sikh community, faith, and identity. Indeed, maintaining *kesh* is how Sikhs are known by others, by their God, and by themselves. McLeod, *Historical Dictionary*, *supra*, at 120. Even in prison, the Sikh who "suffers the pains of separation" from his hair is separated from his community, his God, and himself.

B. But Sikh Grooming Practices Are At Risk In American Prisons Because Of Widespread Cultural Ignorance.

Despite the central importance of keeping unshorn hair, many prisons lack familiarity with Sikh religious practices. Prisons that remain ignorant of those practices and available methods of accommodating them will thus put Sikh inmates to the ultimate test: renounce the faith or "suffer the consequences." *Holt*, 135 S. Ct. at 861 (quoting Arkansas prison officials in Muslim beard context).

Today, 90% of the world's 25 million Sikhs still reside in India. Pew Research Ctr., *The Future of World Religions: Population Growth Projections, 2010-2050* at 124 (Apr. 2, 2015), http://pewrsr.ch/1yKp4du. Only 500,000 live here in the United States. S. Con. Res. 74, 107th Cong. (2001) (enacted).

Thus, Sikhs comprise a small percentage of the U.S. prison population. Less than 100 inmates in the federal system identify as Sikhs. Letter from Wanda M. Hunt, FOIA/PA Chief, Fed. Bureau of Prisons, to Hemant Mehta, Chair, Found. Beyond Belief (July 5,

2013), *available at* http://bit.ly/1ORsmCb. And a recent study suggests that Sikhs, Baha'is, Rastafarians, Santeríans, and members of certain other non-Christian religions together comprise just 1.5% of state prison populations. Pew Research Ctr., *Religion in Prisons: A 50-State Survey of Prison Chaplains* 48 (Mar. 22, 2012), http://pewrsr.ch/1T4pVDW. These figures indicate most prisons would have little to no familiarity with the Sikh faith. At best, this limited familiarity means prisons may not design their policies with Sikhs in mind. At worst, it means Sikh inmates may be targets of prejudice and persecution.

After September 11, 2001, misunderstanding of Sikhs and the practice of keeping unshorn hair has also been the source of persistent violence and harassment. *See History of Hate: Crimes Against Sikhs Since 9/11*, Huffington Post (Aug. 7, 2012), http://huff.to/1KoMfTY. Most recently, Balwinder Jit Singh, a city bus driver, was hospitalized after being pummeled by a passenger who called him a "terrorist" and "suicide bomber." Brittany Mejia, *Attack on L.A. Metro Driver Sparks Fear in the Sikh Community*, L.A. Times (Jan. 14, 2016), http://lat.ms/1OlgCuO. A judge in Mississippi even refused to admit a Sikh man to his courtroom because of his hair and turban. Bear Atwood, *Judge to Sikh Man: Remove "That Rag"*, ACLU (Sept. 25, 2013), http://bit.ly/1Qh5HDD.

The insult to these very real injuries is that persecution is often rooted in a misunderstanding of who Sikhs even are, and is commonly based on their hair practices. A recent study found that a majority of Americans associate maintaining *kesh* with

Osama Bin Laden and cannot identify a Sikh man as a Sikh. SALDEF & Stan. Univ., *Turban Myths* 16-17 (Dec. 12, 2014), http://bit.ly/216aef0.

Just like the American public, prison personnel with practically no exposure to Sikhs are ignorant of, and often insensitive to, their religious practices. For example, while jailed in Jacksonville, Florida for a misdemeanor offense, Jagmohan Singh Ahuja was strapped to a chair and shaved by guards. *See* Br. of *Amicus Curiae* the Sikh Coalition in Supp. of Pet'rs at 9-10, *Knight v. Thompson*, 135 S. Ct. 1173 (2015) (No. 13-955), 2014 WL 1048631. He had fled from religious persecution in Afghanistan; but he found himself rendered an apostate in America. The outside world learned of Ahuja's despair only after his mother received a letter from her son, saying he could not recognize the man in the mirror. Sarah Netter, *Sikh Activists Upset Over Inmate's Haircut*, ABC News (Oct. 6, 2008), http://abcn.ws/1WSqRJY. The guards had stripped him of his identity.

Worse yet, such degradation was unnecessary. Prisons can, and have, accommodated Sikh inmates without compromising security.[6] And that includes prisons in the Eleventh Circuit itself. Just two years

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[6] *See, e.g.*, *Legal Victory: Sikh Prisoners Can Maintain Kesh*, Sikh Coalition (June 10, 2011), http://bit.ly/1QH7kHM; *Guru Granth Sahib Added to Special Handling List By Washington Prison*, Sikh Coalition, http://bit.ly/1oJXAWI (last visited Mar. 2, 2016); *see also* Br. of *Amici Curiae* the Sikh Coalition and Muslim Public Affairs Council in Supp. of Pet'r at 23-28, *Holt v. Hobbs*, 135 S. Ct. 853 (2015) (No. 13-6827), 2014 WL 2465970.

before guards shaved Ahuja, Florida transferred a Sikh inmate to Vermont to prevent his hair from being cut. *Victory! Satnam Singh's Hair Will Remain Uncut Crowned By His Dastaar*, Sikh Coalition (Apr. 6, 2006), http://bit.ly/1QH7rmJ. Unfortunately, and as described below, the Eleventh Circuit would continue to subject Sikh inmates to an arbitrary fate by allowing prisons to ignore accommodations in other circuits and even within their own set of states.

II. THE ELEVENTH CIRCUIT'S APPROACH DEFIES THIS COURT'S RULING IN *HOLT*.

A. *Holt* Bolstered Protections For Sikh Inmates By Insisting Restrictive Prisons Justify Their Divergence From Workable Policies Elsewhere.

Holt's requirement that prisons look to other states' workable accommodations promised to ensure that prisons account for Sikh inmates' unique needs. The Eleventh Circuit, however, misconstrued *Holt*'s command that courts conduct a "more focused inquiry" by suggesting *Holt* should be limited to its facts. *Knight v. Thompson*, 796 F.3d 1289, 1291 (11th Cir. 2015). It emphasized that "Holt sought to grow a ½-inch beard" while petitioners here want unshorn hair. *Id.* at 1292. But when presented with the question of whether prisons could enforce a complete ban on facial hair in *Holt*, this Court did not limit its ruling to beards. *See* 135 S. Ct. at 866 (discussing, without qualification, what a prison must do "when so many prisons offer an accommodation"). Indeed, if *Holt* applied only to half-inch beards, there would have been little reason for this Court to vacate and

remand here in light of *Holt*. *Knight v. Thompson*, 135 S. Ct. 1173 (2015).

In *Holt*, this Court reminded prisons everywhere that RLUIPA's least-restrictive-means test is an "exceptionally demanding" one. 135 S. Ct. at 864. That requirement forces the government to "show[] that it lacks other means of achieving its desired goal." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2780 (2014). More to the point, if a less restrictive means is available, the Government "must use it." *Holt*, 135 S. Ct. at 864 (quoting *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 815 (2000)). Full stop.

With blinders on, the field of vision is small. But in satisfying RLUIPA's "exceptionally demanding" least-restrictive-means requirement, prison officials cannot cover their eyes; or, in this case, blame their inaction on the unlikely defense that their inmates are just "younger, bolder and meaner." *Knight II*, 797 F.3d at 941 (quoting the District Court). Otherwise, prisons could show they "lack[] other means" by looking only at their chosen policy. If nothing else, the least-restrictive-means standard requires prisons to assess and rebut other available means that are made known in the course of litigation. *Holt*, 135 S. Ct. at 865-66. In the grooming context, this includes looking to the attendant practices of other prisons.

Holt made this clear, for example, when it found Arkansas' policy was not the least restrictive means of detecting contraband and identifying inmates. Instead of an outright ban, Arkansas prison officials could have "simply search[ed] petitioner's beard" or directed the petitioner to search it for them, as so

many other prisons do. *Id.* at 864; Br. of Former Prison Wardens *Amici Curiae* in Supp. of Pet'r at 16-17, *Holt v. Hobbs*, 135 S. Ct. 853 (2015) (No. 13-6827), 2014 WL 2361904. With respect to identification, Arkansas similarly failed to show how "its prison system [was] so different from the many institutions" that utilize the dual-photo method to identify bearded inmates. *Holt*, 135 S. Ct. at 865.[7]

In short, the fact that many other prisons permit a practice creates what amounts to a presumption that the government's action is not the *least* restrictive: "That so many other prisons allow [the conduct at issue] suggests that the [government] could satisfy its security concerns through a means less restrictive." *Id.* at 866. And deference cannot overcome that presumption. *Id.* at 864, 866. RLUIPA "demands much more." *Id.* at 866. "[W]hen so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course." *Id.* at 866.

B. Defying *Holt*, However, The Eleventh Circuit Defers To Prisons That Ignore Less Restrictive Practices.

Contrary to RLUIPA's text as elucidated in *Holt*, the Eleventh Circuit would make it nearly

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[7] A policy that requires a Sikh inmate to remove his turban, shave his hair, or shave his beard as part of a dual-photo method would violate Sikh religious beliefs and is not supported by the Sikh Coalition. But as this Court noted in *Holt*, that method would certainly be *less* restrictive than Alabama's outright ban requiring repeat forced hair cutting.

impossible for Sikh inmates to avail themselves of RLUIPA. Although petitioners satisfied their burden of proving that Alabama's policy substantially burdens their religious exercise, the Eleventh Circuit deferred to Alabama's hypothetical or ill-informed concerns in justification. *Knight II*, 797 F.3d at 945-47. But RLUIPA could not be clearer: prisons cannot substantially burden religious exercise unless they can show the burden imposed is in fact the least restrictive means of furthering a compelling interest. 42 U.S.C. § 2000cc-1(a) (2014). Alabama has not done this because the Eleventh Circuit has not asked it to.

The Eleventh Circuit suggests "RLUIPA asks only whether efficacious less restrictive measures actually exist, not whether the defendant considered alternatives." *Knight II*, 797 F.3d at 946. Perhaps. But the court then extends this to mean RLUIPA asks only whether less restrictive measures exist in the purview of the *defendant's experience*. For example, even if 49 states provided kosher meals to inmates, Alabama could refuse them by stating it knows nothing about those other states but fears it could not offer such meals without imperiling its own interests. "[E]fficacious less restrictive measures" may exist everywhere else, but not in Alabama, they would say. *See id.* at 947 (asserting "that no efficacious less restrictive measures exist" despite the practice of 39 states). Indeed, according to the Eleventh Circuit, prison officials need not look elsewhere because "what happens in other prison systems is beside the point." *Id.* at 941 (quoting the District Court).

Even if *Holt* had never been decided, this interpretation of RLUIPA could never have been

sound. The plain meaning of least restrictive means denotes a comparative test. *See Playboy Entm't*, 529 U.S. at 815-16 ("[I]f a less restrictive means is available . . . the Government must use it."). While that test may not require prisons to know the unknowable, it must require prisons to address known alternatives that would allow them to say that their chosen method is comparatively the *least* restrictive. *Holt*, 135 S. Ct. at 866.

Ironically, Alabama itself knows this is not an impossible task. Prison officials frequently consult with each other, informally and through professional associations. Br. of Former Prison Wardens *Amici Curiae* in Supp. of Pet'r at 10-13, *Holt v. Hobbs*, 135 S. Ct. 853 (2015) (No. 13-6827), 2014 WL 2361904. And just two years ago, Alabama asked the Association of State Correctional Administrators to compile a survey of the grooming policies of other states. *See* Ass'n of State Corr. Adm'rs, *Summary: Inmate Grooming Standards* (2014), http://bit.ly/1T4u4I3.

If Alabama chose to look at the survey it requested, it would have seen that a clear majority of responding states allow inmates to maintain hair in compliance with their religious beliefs. *See* Ass'n of State Corr. Adm'rs, *Survey: Inmate Grooming Standards* (Nov. 11, 2014), http://bit.ly/1T4UcCS (showing that 21 of 32 states impose no restriction on hair length). The Eleventh Circuit quibbled over how many states would actually allow unshorn hair. *Knight*, 796 F.3d at 1293. But a comprehensive look at prison policies across the country today shows at least 40 states, the District of Columbia, and the

Federal Bureau of Prisons do so, either generally[8] or as a religious accommodation.[9]

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[8] *See* 28 C.F.R. § 551.4(a) (2016); Alaska Admin. Code tit. 22, § 05.180(c) (2015); Ariz. Dep't of Corr., Department Order No. 704.01 (2013); Cal. Code Regs. tit. 15, § 3062(e) (2016); Colo. Dep't of Corr., Administrative Regulation No. 850-11 § IV(J) (2015); Conn. Dep't of Corr., Administrative Directive No. 6.10 § 36(B) (2008); D.C. Dep't of Corr., Policy No. 4010.2F §§ 9, 10(d) (2014); Idaho Dep't of Corr., Policy No. 306.02.01.001 § 5 (2010); Ill. Admin. Code tit. 20, § 502.110(a) (2011); Ind. Dep't of Corr., Policy No. 02-01-104 § X (2010); Iowa Admin. Code r. 201-50.14(3c) (2016); Kan. Admin. Regs. § 44-12-106(a) (2016); Ky. Dep't Corr., Policy No. 15.1 § II(A)(1) (2010); Me. Dep't of Corr., Policy No. 17.3 § IV(C)(3) (2013); Minn. Dep't of Corr., Division Directive No. 303.020 § B(4) (2015); Neb. Dep't of Corr. Servs., Administrative Regulation No. 116.01 § III(E) (2015); Nev. Dep't of Corr., Administrative Regulation No. 705.01 § 1 (2014); N.H. Dep't of Corr., *Manual for the Guidance of Inmates* § II(B)(4)(c) (2011); N.J. Admin. Code § 10A:14-2.5(a) (2016); N.C. Dep't of Pub. Safety Prisons, *Policy & Procedures* ch. E, § .2107 (2014); Ohio Admin. Code 5120-9-25(A), (D) (2016); Okla. Dep't of Corr., Operations Memorandum No. OP-030501 § III (2015); Or. Admin. R. 291-123-0015(2) (2016); S.D. Dep't of Corr., *Inmate Living Guide* (2013); Tenn. Dep't of Corr., Policy No. 502.03 § V (2015); Utah Dep't of Corr., *Inmate Orientation Handbook* (2013); Wash. Dep't of Corr., Policy No. DOC 440.080 (2015); Wis. Admin. Code DOC § 309-24(3) (2016). Hawaii, Maine, Missouri, Rhode Island, and Vermont do not have express policies, but generally permit inmates to choose their own hairstyles. *See* Dawinder S. Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. Miami L. Rev. 923, 964-72 (2012).

[9] Del. Dep't of Corr., Policy No. 5.3 (2009); Md. Comm'n on Corr. Standards, *Standards, Compliance Criteria, and Compliance Explanations for Adult Correctional Institutions* § .05(K) (2012); Mich. Dep't of Corr., Policy Directive No. 03.03.130 § D (2009); Mont. Dep't of Corr., Policy No. 4.4.1

Because so many prisons have permissive grooming policies, Alabama needed to provide "persuasive" justifications for why its prisons are different. *Holt*, 135 S. Ct. at 866. And to avoid deferring to Alabama's "mere say-so," its reasons must be more than hypothetical or conclusory. *Id.* But, as the Department of Justice noted on remand, Alabama has "offered only speculation." Suppl. Br. for the United States as *Amicus Curiae* Supporting Pls.-Appellants and Urging Reversal at 7, *Knight v. Thompson*, 797 F.3d 934 (11th Cir. 2015) (No. 12-11926). Alabama officials, for example, expressed concerns about how longer hair *could* affect safety, security, and discipline, but were unable to point to a single incident in their prisons implicating those concerns. *See Knight II*, 797 F.3d at 939-40.

In its follow-up opinion, the Eleventh Circuit tries to give cover to Alabama by alluding to "various factual findings." *Knight*, 796 F.3d at 1292. But, on closer inspection, such "findings" are nothing more than hypotheticals or out-of-state anecdotes. *See id.* If these were enough, defendants could win "simply by calling an expert to testify that the accommodation could not work, even if the expert has never heard of religious exemptions to grooming

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§ III(H)(3) (2013); N.M. Corr. Dep't, Policy No. CD-151100 §§ H, J (2015); N.Y. Corr. & Comty. Supervision, Directive No. 4914 § III(A)(4)-(5) (2015); N.D. Dep't of Corr. & Rehab., *North Dakota Correctional Facility Rules* r. 69 (2016); Pa. Dep't of Corr., Policy No. DC-ADM 807 § 1(A)(2)(d) (2011); Wyo. Dep't of Corr., Policy No. 4.201 § IV(D)(4)-(5) (2015).

requirements." Pet. for Writ of Cert. at 18, *Knight v. Thompson*, No. 15-999 (U.S. Feb. 2, 2016).

Under *Holt*, courts cannot "assume a plausible, less restrictive alternative would be ineffective." 135 S. Ct. at 866 (quoting *Playboy Entm't*, 529 U.S. at 824). But that's what the Eleventh Circuit did when it credited what even it called "conclusory testimony" that Alabama's understaffed prisons faced greater risks due to a "younger, bolder and meaner" inmate population. *Knight II*, 797 F.3d at 941 (quoting the District Court). At bottom, the Eleventh Circuit abdicated its duty "to apply RLUIPA's rigorous standard." *Holt*, 135 S. Ct. at 864. Deference to prison officials "does not justify [such] abdication." *Id.*

Finally, the Eleventh Circuit's refusal to hold prison officials to *Holt*'s standard unnecessarily clashes with the law of other circuits. In its follow-up opinion, the Eleventh Circuit acknowledged its break from its sister courts in refusing to require prisons to rebut known alternatives. *Knight II*, 797 F.3d at 946 (citing *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005), *Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33 (1st Cir. 2007), and *Washington v. Klem*, 497 F.3d 272 (3d Cir. 2007)). Yet those other courts at least recognized what *Holt* made explicit but the Eleventh Circuit ignores: rebutting the flexible practices adopted by many jurisdictions is a prerequisite to satisfying the least-restrictive-means standard.

Anything less will invariably harm religious minorities like petitioners and Sikhs. If the Eleventh Circuit is right—and this Court, other circuits, and the Department of Justice are wrong—prison

officials may circumvent RLUIPA through continued ignorance. That is what the Eleventh Circuit allowed here: Alabama's witnesses, for example, "conceded that they had never worked in—or reviewed the policies of—prison systems that allow long hair." *Knight II*, 797 F.3d at 940. This is not the sort of informed expertise worthy of deference. *See Holt*, 135 S. Ct. at 867 (Sotomayor, J., concurring).

CONCLUSION

The Court should grant the petition here in light of the Eleventh Circuit's contumacy and the piecemeal approach it encourages. As Justice Scalia urged at oral argument in *Holt*, these cases should not be decided "half inch by half inch." Tr. of Oral Arg. at 7, *Holt v. Hobbs*, 135 S. Ct. 853 (2015) (No. 13-6827). Only in granting this petition will *Holt* give meaningful protection to religious minorities like Sikhs by holding prison officials to RLUIPA's requirements.

Respectfully submitted,

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