No. 15-999

In the
Supreme Court of the United States

RICKY KNIGHT, ET AL.,
Petitioners,
v.
ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

Joseph D. Steadman
Deputy Ala. Att'y General
DODSON & STEADMAN, PC
4087 Cottage Hill Rd, Ste B
Mobile, AL 36609
(251) 661-0702
jds@dodsonsteadman.com

Bart G. Harmon
Ass't. Ala. Att'y General
ALA. DEPT. OF CORRECTIONS
Post Office Box 301501
Montgomery, AL 36130
(334) 353-3881
bart.harmon@doc.alabama.gov

Luther Strange
Ala. Attorney General
Andrew L. Brasher
Ala. Solicitor General
*Counsel of Record
OFFICE OF THE ALABAMA ATTORNEY GENERAL
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
abrasher@ago.state.al.us

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QUESTION PRESENTED

Whether Alabama's grooming policy violates RLUIPA, 42 U.S.C. § 2000cc, *et seq*., to the extent that it prohibits Petitioners from wearing unshorn hair in accordance with their sincerely held religious beliefs.

PARTIES TO THE PROCEEDING

The respondents do not agree with the petitioners' statement about the parties to the proceeding.

First, many of the named defendants no longer work at the Department of Corrections and are not proper parties. Most conspicuously, Leslie Thompson is no longer the Warden of Holman Prison, yet she is included in the petitioners' caption of the case.

Second, the petition lists Douglas Bailey as a petitioner. But he was released from prison in 2003. He can grow his hair to any length he wants. *See* Pet. App. 60a. He has not been a proper party for 13 years.

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INTRODUCTION

Neither Alabama nor the Eleventh Circuit ignored this Court's decision last year in *Holt v. Hobbs*, 135 S. Ct. 853 (2015). After *Holt*, Alabama's Department of Corrections modified its policies on grooming and religious practice to accommodate prisoners like Gregory Holt. And the Eleventh Circuit expressly addressed *Holt* in a supplement to its original opinion in this case. Pet. App. 1a–8a.

The petitioners' problem is not that Alabama and the Eleventh Circuit have ignored *Holt*. Their problem is that *Holt* did not hold—or even imply—that prisons must allow rapists and murderers to grow hair down to their waists. Unlike the petitioner in *Holt*, the petitioners here want to grow completely unshorn hair because of their participation in a Native American religion. No one doubts petitioners' sincerity. But the State developed an extensive record below that established the danger of granting petitioners' proposed exception in the unique context of Alabama's prisons. The lower courts had no choice but to reject the petitioners' claims.

There is no compelling reason for the Court to review this case. The Court is not a super-warden, charged with setting grooming policies for state prisons. Very few lower courts have had an opportunity to address *Holt* since it was decided last year. And there is no split of authority. Although the issue has been litigated in several circuits, no court of appeals has ever granted a high-security inmate an unlimited religious exception to a prison hair-length policy. The Court should deny the petition.

STATEMENT

In Alabama, neither male nor female inmates are allowed to grow their hair to any length they desire. For its male inmates, the Alabama Department of Corrections requires a "regular" hair cut defined as "off neck and ears." Doc. 471-DEX1. The Department restricts the hair-length of female inmates to "the collar of the shirt." Doc. 471-DEX36 at 6. Neither grooming policy would allow petitioners' preferred hairstyle.[1] *See* Pet. App. 80a (photograph of former Native American inmate with approximately three-foot-long hair).

The petitioners have been challenging the male grooming policy for roughly two decades. Following an evidentiary hearing in 1998, the district court rejected the petitioners' Free Exercise claim. Congress later enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) in 2000. On remand for consideration in light of the new statute, the petitioners amended their pleadings to add a RLUIPA claim, and the parties stipulated that a new evidentiary hearing was not necessary. The district court then ruled on cross-motions for summary judgment, rejecting petitioners' RLUIPA challenge to the hair-length policy. *See Limbaugh v. Thompson*, Nos. 2:93-cv-1404-WHA, 2:96-cv-554-WHA, 2006 WL 2642388 (M.D. Ala. Sept. 14, 2006). The Eleventh Circuit held that summary judgment was inappropriate and remanded a second time for a new evidentiary hearing on the RLUIPA claim. *Lathan v.*

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[1] These policies have changed since the trial of this case in 2009, but not in a way that would satisfy the petitioners.

Thompson, 251 Fed. Appx. 665, 667 (11th Cir. 2007) (per curiam).

The district court held a bench trial over three days in January 2009. The petitioners presented the testimony of a security consultant, George Sullivan, who had neither worked in nor administered a prison in Alabama, and had done nothing since the 1998 hearing to gain an understanding of conditions in Alabama prisons. TR., Third Day of Trial at 30. Sullivan's only contribution to the trial was to opine that some other prison systems either have no hair-length policy or allow certain exemptions to their hair-length policies. But he recognized that such policies do not make sense for all prisons: "I couldn't say that, Counselor, without knowing more about the inmate, the circumstances of the prison, the design of the prison, the operations of the prison." *Id.* at 42. The expert expressly agreed that "there are some design and capacity scenarios in which [he] would not testify that a state prison system should be required to have a policy allowing long hair." *Id.*

The defendants presented numerous exhibits and the testimony of four witnesses, including experts, concerning the necessity of hair-length restriction in the current context of Alabama prisons. Those witnesses and exhibits explained that restricting hair length furthers the prison's interest in "security and safety" by "maintaining order and discipline, preventing violence, hindering the introduction of contraband into the prisons, and enabling the accurate identification of inmates." Pet. App. 67a. "[L]ong hair is a danger because it can be used in a fight," Pet. App. 65a, and because "long hair can be

used as a means of hiding weapons or other contraband," Pet. App. 63a. Restrictions on hair length also "promote the health, hygiene and sanitation" of the prisons. Pet. App. 67a.

Both parties also presented evidence about facts unique to Alabama that heighten these concerns. ADOC Institutional Coordinator Gwendolyn Mosley testified that ADOC's inmate-to-officer ratio is over nine to one, which is almost twice the national average. TR., Second Day of Trial at 31. For his part, the petitioners' expert witness testified that, when he was warden at a seriously overcrowded prison in Oregon with a ratio of only 7 to 1, he was on the verge of losing control. TR., Third Day of Trial at 38–39.

The defendants' witnesses also rebutted the petitioners' various proposals to satisfy security and hygiene concerns while also allowing long hair. With regard to the petitioners' argument that exempt inmates could be searched more frequently or search their own hair, numerous Alabama prison officials and the defense's expert testified that searching long hair is more difficult, time consuming, and places corrections staff at risk. TR., First Day of Trial at 165, TR., Second Day of Trial at 36, 59.

The petitioners argued that Photo Shop would eliminate security and identification concerns because officers could create photo-shopped pictures of inmates with different lengths of hair. The magistrate judge remarked from the bench that this is "the most absurd argument that I have ever seen." TR., Second Day of Trial at 146. Nonetheless, defense witnesses also explained that corrections

officials must readily identify inmates on a daily basis; Photo Shop does nothing to serve this need. TR., First Day of Trial at 162; TR., Second Day of Trial at 27.

Finally, the petitioners argued that exempt inmates could be housed in a single institution. But Warden Culliver testified this would not be feasible "because of different custody levels" and other restraints. TR., First Day of Trial at 168–69.

The district court found as a matter of fact that "the ADOC's restriction on inmate hair length is the least restrictive means of furthering its compelling governmental interests in prison safety and security." Pet. App. 47a. The district court based its fact-findings on the testimony presented in this case and the unique difficulties of administering prisons in Alabama. Specifically, the district court explained that Alabama's inmate population is "younger, bolder, and meaner" and that, at the same time, Alabama's prisons are "understaffed and overcrowded." Pet. App. 65a. These unique circumstances "increase the difficulties prison guards face daily in controlling inmates and securing order" in Alabama's prisons. Pet. App. 70a. In light of the unique facts of this case, the district court found that Sullivan's testimony about other prisons' policies "is insufficient by itself to demonstrate that the ADOC's grooming policies are not the least restrictive means of furthering compelling government interests in this state." Pet. App. 73a.

The Eleventh Circuit affirmed the district court's judgment. The court of appeals noted that the district court resolved the case by weighing

conflicting testimony and may have "chosen to discredit" plaintiffs' expert witness "because he has testified in many prisoner religious rights cases, but never on behalf of a prison system, and because he admitted a lack of familiarity with the ADOC's prisons." Pet. App. 29a at n.8. Nonetheless, the court of appeals considered testimony about the practices of other prison systems to be "relevant" but "not controlling." Pet. App. 33a. Ultimately, the court of appeals held that the ADOC had "shown that its departure from the practices of other jurisdictions stems not from a stubborn refusal to accept a workable alternative, but rather from a calculated decision not to absorb the added risks that its fellow institutions have chosen to tolerate." Pet. App. 34a.

After this Court vacated and remanded in light of *Holt*, the Eleventh Circuit supplemented its original opinion, which it also reinstated. The Eleventh Circuit noted that, unlike in *Holt*, "the Plaintiffs here request a complete exemption of long, unshorn hair." Pet. App. 4a. The Eleventh Circuit explained that *Holt* requires courts to "look to the marginal interest in enforcing the short-hair policy" in light of the requested religious accommodation, which "is exactly the focused inquiry that this Court and the district court applied." Pet. App. 4a–5a. Moreover, in contrast to the conclusory statements of prison administrators in *Holt*, the district court's factfindings here were based on "expert opinions, lay testimony, and anecdotal evidence" developed in a "detailed record." Pet. App. 6a. For these reasons, the court of appeals held that *Holt* did not require it to rewrite the original opinion.

REASONS THE WRIT SHOULD BE DENIED

Each of the petitioners was convicted of a serious violent crime: one of murder, two of robbery, and three of rape. DEX 38-43 (inmate summaries). No court of appeals has ever required any prison system to allow violent prisoners like petitioners to grow indefinitely long hair. This Court's opinion in *Holt* does not require that result either.

The court of appeals' decision in this case is hardly "impossible to understand or defend," as the petitioners claim. Pet. 17. Instead, the court of appeals' decision is consistent with this Court's case law and the decisions of other courts. The facts of this case are very unlike the facts of *Holt*. And the petitioners' arguments disregard the core holding of *Cutter v. Wilkinson* that a religious "accommodation must be *measured* so that it does not override other significant interests." 544 U.S. 709, 722 (2005) (emphasis added). *See also Holt*, 135 S. Ct. at 867 (Sotomayor, J., concurring). The petition should be denied.

I. The court of appeals' decision is consistent with the law of other circuits.

The petitioners cannot seriously maintain that RLUIPA's application to Native American inmates' hair-length "var[ies] by Circuit and geographical location." Pet. 27. The petition does not cite, and we have not found, any RLUIPA case holding in a final decision on the merits that a prison must allow a complete exemption to hair-length restrictions for

violent long-term incarcerated prisoners. Instead, the Fourth,[2] Fifth,[3] Sixth,[4] and Eighth Circuits[5] have all rejected this kind of claim. The Eleventh Circuit's decision is consistent with this body of law.

The only circuit that has even arguably ruled to the contrary was the Ninth Circuit in *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005). But that decision was not a final adjudication on the merits and involved a non-violent trustee-level inmate who was scheduled to be released shortly after the preliminary injunction hearing. As the United States explained in another prison grooming case, *Warsoldier* does not reflect "any general disagreement among the courts of appeals" but instead that "[d]ifferent prison systems, and different facilities within a single prison system, hold different types of inmate populations and are subject to different types and degrees of logistical constraints." Brief for United States as Amicus Curiae at 18, *Iron Thunderhorse v. Pierce*, No. 09-1353 (Dec. 2010).

There is no split among the circuits about whether RLUIPA requires state prisons to accommodate the requests of Native American

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[2]*Maxwell v. Clarke*, 540 Fed. Appx. 196 (4th Cir. 2013) (Rastafarian); *Ragland v. Angelone*, 420 F. Supp. 2d 507 (W.D. Va. 2006), a*ff'd sub nom. Ragland v. Powell*, 193 Fed. Appx. 218 (4th Cir. 2006), *cert. denied*, 549 U.S. 1306 (2007)

[3]*Longoria v. Dretke*, 507 F.3d 898 (5th Cir. 2007) (Native American).

[4] *Hoevenaar v. Lazaroff*, 422 F.3d 366, 369–372 (6th Cir. 2005) *cert. denied,* 549 U.S. 875 (2006) (Native American).

[5] *Hamilton v. Schriro*, 74 F.3d 1545, 1548 (8th Cir. 1996) (Native American).

inmates to grow indefinitely long hair. At least eleven state prison systems restrict inmate hair length and recognize no exemptions. But, unlike the petitioners here, inmates are increasingly asking for narrow accommodations to these grooming policies instead of complete exemptions.[6] There is no reason for this Court to address a claim for a complete exemption when there is no confusion among the circuits on that specific claim or about RLUIPA more generally.

II. The court of appeals' decision is consistent with *Holt v. Hobbs*.

The petitioners and their amici pretend like the court of appeals failed to consider *Holt* at all. But the court of appeals did not act with "intransigence," as the petitioners maintain. Pet. 26. Nor did it just "reissue[] and republish[] its pre-*Holt* opinion with no mention of *Holt* or the explicit directives provided by this Court." Br. of National Congress of American Indians and Huy at 3.

Instead, the court of appeals thoroughly explained in a supplemental opinion why *Holt* did

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[6] *Compare Bogard v. Perkins*, No. 4:11-CV-97-M-V, 2013 WL 4829267 *2 (N.D. Miss. Sept. 10, 2013) (complete exemption RLUIPA claim challenging hair-length policy fails to state claim) *with Legate v. Stephens*, No. 2:13-CV-00148, 2013 WL 4479033 *4 (S.D. Tex. April 19, 2013) (request for narrow strip of long hair raises colorable RLUIPA claim). *See also Benning v. Georgia*, 864 F. Supp. 2d 1358, 1370 (M.D. Ga. 2012) (shaving exemption limited to the "area between his forehead and the bottom of his earlobes").

not alter the bottom-line conclusion of its original opinion. The original opinion had already "scrutinize[d] the asserted harm of granting that specific exemption of long, unshorn hair" against the government's "marginal interest in enforcing the short-hair policy in that particular context." Pet. App. 4a. And the original opinion had already recognized that the policies of other systems were "relevant to the RLUIPA analysis." Pet. App. 33a. These are the main legal principles established by *Holt*, and the court of appeals directly addressed them. The petitioners and their *amici* act as if this supplemental opinion does not exist.

The petitioners make much of the fact that the parties and *amici* in *Holt* cited the Eleventh Circuit's original opinion in this case. *See* Pet. 11–13. But they omit that the Court's opinion in *Holt* adopted many aspects of that opinion. For example, the multi-state amicus brief in *Holt* cited the Eleventh Circuit's original opinion for the proposition that, as a general matter, grooming policies "serve compelling interests in security, order, hygiene, and discipline." Br. of Alabama et al. at 2, *Holt v. Hobbs*, No. 13-6827 (July 30, 2014). The Court accepted this position in *Holt*.[7] Similarly, the respondent in *Holt*

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[7] *See Holt*, 135 S. Ct. at 863 ("We readily agree that the Department has a compelling interest in staunching the flow of contraband into and within its facilities"); *id.* at 864–65 ("We agree that prisons have a compelling interest in the quick and reliable identification of prisoners, and we acknowledge that any alteration in a prisoner's appearance, such as by shaving a beard, might, in the absence of effective countermeasures, have

cited the Eleventh Circuit's original opinion for the proposition that a "practice permitted at one penal institution" does not necessarily need to be "permitted at all institutions." Br. of Respondent at 42, *Holt v. Hobbs*, No. 13-6827 (July 23, 2014). The Court also adopted this proposition.[8] The court of appeals' decision is perfectly consistent with *Holt*.

A. Different facts led to a different result.

The petitioners erroneously contend that this case and *Holt* raise the same issue and, therefore, warrant the same result. But there are obvious factual differences between this case and *Holt* that support the court of appeals' decision to reach a different result here. In fact, Holt's counsel, Prof. Douglas Laycock, conceded at oral argument in *Holt* that a court might properly rule in favor of a prison in a case like this one.[9]

First, unlike Holt, the petitioners are seeking a complete exemption with no limits. Just as the petitioners here believe that their faith requires

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at least some effect on the ability of guards or others to make a quick identification.").

[8] *See Holt* 135 S. Ct. at 866 ("We do not suggest that RLUIPA requires a prison to grant a particular religious exemption as soon as a few other jurisdictions do so.").

[9] Oral Argument Trans. at 11:5–10, *Holt v. Hobbs*, No. 13-6827 (Oct. 7, 2014) ("Yeah, that may be. I don't know what the evidence would show about Sikh hair wrapped in a turban. But that's clearly a much more serious issue than what's presented in this case. You know, Sikh hair wrapped in a turban may well be different").

them not to cut the hair on their heads, Holt believed "that his faith requires him not to trim his beard at all." *Holt*, 135 S. Ct. at 861. But, unlike the petitioners, Holt sought a one-half-inch beard as a compromise.

Holt emphasized the limited nature of his claim again-and-again. In his brief, Holt took the express position that his case was different from cases, like this one, in which prisoners seek a complete exemption to grow "shoulder-length hair." Pet. Br. at 54, *Holt v. Hobbs*, 13-6827 (May 22, 2014). And this Court, in granting the petition in *Holt*, expressly limited the question presented to: "Whether the Arkansas Department of Corrections grooming policy violates the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq., to the extent that it prohibits petitioner from growing *a one-half-inch beard* in accordance with his religious beliefs." Order, *Holt v. Hobbs*, 13-6827 (March 3, 2014) (emphasis added). Holt's counsel reiterated the point at oral argument as well.[10]

The kind of exemption at issue here obviously poses a greater risk to safety and hygiene than the one-half-inch beard at issue in *Holt*. The petitioners here, like Native American inmates in similar cases,

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[10] Oral Argument Trans. at 6:21–24, *Holt v. Hobbs*, No. 13-6827 (Oct. 7, 2014) ("[T]his case, he made a pro se decision to limit his request. The Court expressly limited the question presented. So this case is only about half an inch"); *id.* at 5:19–20 ("He offered an extremely conservative compromise to the prison"); *id.* at 14:20–22 ("We think, you know, reversal here would establish a right to a 1/2-inch beard for all prisoners on this record").

are seeking to grow hair that could be "four-feet long." *Hamilton*, 74 F.3d at 1548. Unlike a one-half-inch beard, it is self-evident that this length of hair can be pulled in fights, used to hide contraband, and manipulated to alter an inmate's appearance. That is why the courts of appeal have universally rejected claims like the petitioners are making here. *See supra* 7–9.

Second, the State's evidentiary showing in the trial court was much stronger than the evidentiary showing in *Holt*. Here, the State presented expert testimony from several prison employees about unique problems in Alabama's prisons. The State also presented the expert testimony of Ronald Angelone, the former director of Virginia's prison system. TR., Second Day of Trial at 46–49. Angelone designed and defended the prison grooming policy that the Fourth Circuit upheld against a RLUIPA challenge in 2006. *See Ragland v. Angelone*, 420 F. Supp. 2d 507 (W.D. Va. 2006), *aff'd sub nom. Ragland v. Powell*, 193 Fed. Appx. 218 (4th Cir. 2006), *cert. denied*, 549 U.S. 1306 (2007). As the court of appeals explained, these witnesses "described specific incidents in which male inmates had used long hair to conceal weapons and contraband, as well as a situation in which a male inmate had cut his long hair to significantly change his appearance after a successful escape." Pet. App. 28a. There was no such testimony in *Holt*. *See Holt*, 135 S. Ct. at 866.

For their part, the petitioners presented a single non-credible expert witness who advocated for the policies of other systems without any information

about how those systems compare to Alabama's system. The expert had visited only four Alabama prisons prior to the first 1998 trial, and had not stepped foot in any Alabama prison since then nor done anything else to gain an understanding of current conditions before the 2009 evidentiary hearing. TR., Third Day of Trial at 30. When pressed by the magistrate judge to respond to the testimony of ADOC officials, the expert candidly acknowledged "I do not know that much about Alabama's prisons . . .." *Id.* at 17–18. But the expert also conceded that such prison-specific knowledge is essential because "there are some design and capacity scenarios in which [he] would not testify that a state prison system should be required to have a policy allowing long hair." TR., Third Day of Trial at 30. The court of appeals expressly noted that this expert—petitioners' only witness on this point—was not credible. *See* Pet. 29a, n.8.

Third, in *Holt*, the Court found it important that the prison allowed *medical* exceptions to its no-beard policy, but not *religious* exceptions. *Holt*, 135 S. Ct. at 866. There is no similar fact here. Although the petitioners wrongly imply that female inmates are allowed to grow indefinitely long hair, (Pet. 22), that is simply not true. Alabama's grooming policy for female inmates, although different than the policy for males, still limits the length of inmates' hair in a way that would not satisfy the petitioners. Moreover, the evidence at trial established that female and male prisoners have markedly different misconduct rates in frequency and severity, Dkt. 475 at 50, and those different rates have led Alabama to institute

an inmate security classification system that treats female inmates more liberally than male inmates in many respects. *Id.* at 12 and Dkt. 471 – DEX 17.

B. The State sufficiently explained why the policies of other prisons are inadequate.

The main thrust of the petition, and petitioners' main argument below, is that Alabama must necessarily adopt the same policies as other states. There are two main problems with this argument.

First, the petitioners never proved that other states would actually allow the specific religious practice that petitioners want. As the court of appeals explained, petitioners point to prison policies that rely on general standards, instead of specific limitations. Although the policies of several other states "indicate that inmates generally have freedom in choosing their hair length," they also "make clear that the chosen hair length cannot pose risks for health, safety, hygiene, order, or security." Pet. App. 7a. There is no evidence that these policies would allow completely unshorn hair in practice. In fact, some of them expressly suggest otherwise.[11]

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[11] For example, New Mexico's grooming policy provides: "Short hair makes it more difficult for inmates to conceal weapons, drugs and other contraband. Long hair requires correctional officers to touch inmates' hair in order to conduct proper searches. Short hair makes it more difficult for inmates to alter their appearance in the event of an escape or in an effort to conceal identity within the institution. Short hair is more difficult for other inmates to grab during a fight. Short hair is

Second, even if the petitioners had established that other prisons would allow them to grow completely unshorn hair, Alabama "offer[ed] persuasive reasons why it believes that it must take a different course." *Holt*, 135 S. Ct. at 866. Alabama presented detailed evidence of the conditions prevailing in its prisons that distinguish the Alabama prison system from others with more permissive hair-length policies. Based on essentially undisputed evidence, the district court found that the inmate population had increased by twenty-three percent over the ten-year period between the first and second evidentiary hearings, 1997 to 2007, and that "almost fifty percent of inmates were incarcerated for felonies against persons." Dkt. 530 at 15. The district court also found based upon undisputed evidence that the ADOC is seriously overcrowded with a population of two-hundred percent of design capacity, and that disciplinary actions against male inmates for conduct while incarcerated increased by sixty-two percent in 2007. *Id.* at 18–19. Presaging *Holt*, the court of appeals' original opinion expressly concluded that Alabama had "shown that its departure from the practices of other jurisdictions stems not from a stubborn refusal to accept a workable alternative, but rather from a calculated decision not to absorb the added risks that

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safer than long hair because it is less likely to become caught in machinery or a door or to catch fire. Short hair is more hygienic than long hair because it is easier to keep clean and free from lice." Dkt. 471-New Mexico Grooming Policy-PEX 44 at 1.

its fellow institutions have chosen to tolerate." Pet. App. 34a.

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The petitioners and their *amici* ignore the court of appeals' supplemental opinion and the important differences between *Holt* and this case. Because "[d]ifferent prison systems . . . hold different types of inmate populations and are subject to different types and degrees of logistical constraints," we should expect different cases to be resolved differently. Brief for United States as Amicus Curiae at 18, *Iron Thunderhorse v. Pierce*, No. 09-1353 (Dec. 2010). The court of appeals' decision here and similar decisions in the Fourth, Fifth, Sixth, and Eighth Circuits are perfectly consistent with *Holt*.

III. This case is a bad vehicle to address the question presented.

Given the important factual differences between this case and *Holt*, this case is not a candidate for a summary disposition. But this case is also a bad vehicle for plenary review. Even if the Court wanted to provide guidance to lower courts about the meaning of *Holt*, this would not be the case in which to do it. This is so for three reasons.

First, the petitioners have not requested the accommodation that observers of Native American religions most commonly request to hair-length restrictions—the kouplock, which is a narrow strip of hair. *See* Pet. App. 11a, n.1, ("[T]he District Court did not consider the kouplock ..., Plaintiffs have waived the issue."). Instead, the petitioners sought

an absolute, complete exemption that would allow them to grow indefinitely long hair. The petitioners' all-or-nothing approach presents a substantial vehicle problem. If this Court wants to address a Native American inmate's claim for a hair-length accommodation, it should wait for a vehicle where all possible accommodations are at issue, not just the most extreme.

Second, some of the petitioners have already abused their existing privileges in a way that suggests they will abuse their proposed exception as well. Petitioner Michael Clem has been convicted of escape and has been disciplined by ADOC officials for possessing pieces of razors. Dkt. 474 at 49–50; Dkt. 471-DEX 38. And petitioner Thomas Adams has been disciplined for threatening other inmates *on the ceremonial ground where the group conducts its Native American religious services.* Dkt. 474 at 48–49. These are alternative grounds for denying their request for a religious exemption to the State's grooming policy. *See Holt*, 135 S. Ct. at 867.

Finally, this case is uniquely unsuited for nationwide rulemaking. At the time of this litigation, at least eleven state prison systems strictly restricted inmate hair length and recognized no exemptions. But the lower courts relied extensively on unchallenged, case-specific testimony about the unique problems engendered by the violent inmates and crowded conditions in Alabama's prison system. *See, e.g.,* Pet. App. 33a–34a, 60a–62a, 65a. Those uncontested facts about Alabama's system make this a poor vehicle to create a rule that could apply in other contexts.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

Joseph D. Steadman
Deputy Ala. Att'y General
DODSON & STEADMAN, PC
4087 Cottage Hill Rd, Ste B
Mobile, AL 36609
(251) 661-0702
jds@dodsonsteadman.com

Bart G. Harmon
Ass't. Ala. Att'y General
ALA. DEPT. OF CORRECTIONS
Post Office Box 301501
Montgomery, AL 36130
(334) 353-3881
bart.harmon@doc.alabama.gov

Luther Strange
Ala. Attorney General
Andrew L. Brasher
Ala. Solicitor General
*Counsel of Record
OFFICE OF THE ALABAMA
ATTORNEY GENERAL
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
abrasher@ago.state.al.us