No. 14-1394

In the Supreme Court of the United States

ANTHONY DAVILA, PETITIONER

v.

ANTHONY HAYNES, WARDEN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The Religious Freedom Restoration Act of 1993 (RFRA or Act), 42 U.S.C. 2000bb *et seq.*, allows a person "whose religious exercise has been burdened" in violation of the Act to obtain "appropriate relief" against the United States. 42 U.S.C. 2000bb-1(c). The question presented is whether RFRA waives the federal government's sovereign immunity with respect to claims for money damages against individual federal defendants acting in their official capacities.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution and statutes:

Miscellaneous:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-31) is reported at 777 F.3d 1198. The three orders of the district court (Pet. App. 32-34, 51-56, 69-70) and the two recommendations of the magistrate judge (Pet. App. 35-50, 57-68) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 9, 2015. On March 31, 2015, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including May 25, 2015. The petition was filed on May 22, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Religious Freedom Restoration Act of 1993 (RFRA or Act), 42 U.S.C. 2000bb *et seq.*, provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless "it demonstrates that application of the burden to the person * * * is in furtherance of a compelling governmental interest; and * * * is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(a) and (b). RFRA creates a private right of action permitting a person whose "religious exercise has been burdened" in violation of the Act to "obtain appropriate relief against a government." 42 U.S.C. 2000bb-1(c). The statute defines the term "government" to include an "official (or other person acting under color of law) of the United States." 42 U.S.C. 2000bb-2(1). RFRA does not, however, define the term "appropriate relief."

2. Petitioner is a federal prisoner and practitioner of the Santeria faith. Pet. App. 3-4. As a Santeria priest, petitioner wears beads and shells infused with "Ache," which he believes is the spiritual presence of an "orisha," or spirit. *Id.* at 3. Ache is infused into the beads and shells during a Santeria ceremony by immersing beads and shells in animal blood, then rinsing them with an "elixir" containing plant and mineral products. *Ibid.* According to petitioner, beads and shells not infused with Ache fail to satisfy his religious needs. *Ibid.*

In June 2011, petitioner made a request under federal regulations to have his personal Ache-infused beads and shells delivered to him in prison by his goddaughter. Pet. App. 4. Dr. Bruce Cox, the pris-

on's supervising chaplain, denied the request. He stated that religious items could be received only from "approved vendors" listed in the prison catalog. *Ibid.*

Petitioner appealed to the prison warden, Anthony Haynes, who also denied his request. Pet. App. 4. Petitioner then appealed to the regional director of the Federal Bureau of Prisons (BOP), again without success. *Ibid.* The regional director cited BOP policy requiring religious items to be "purchased either from commissary stock or through an approved catalog[] source." *Ibid.* (brackets in original). The catalog offered beads and shells that were not infused with Ache. *Ibid.*

3. On January 9, 2012, petitioner sued Dr. Cox, Warden Haynes, and other officials in the United States District Court for the Southern District of Georgia.[1] Pet. App. 4. He alleged in pertinent part that respondents' actions violated the First Amendment and RFRA. *Id.* at 4-5. Petitioner sought money damages and injunctive relief against respondents in both their individual and official capacities. *Id.* at 5. He also sought a preliminary injunction (1) directing respondents to permit delivery of petitioner's beads and shells and (2) prohibiting respondents from transferring him to another facility or retaliating against him in any way. *Id.* at 69. The district court denied petitioner's motion for a preliminary injunction. *Id.* at 70.

Respondents moved to dismiss petitioner's action. On August 31, 2012, after reviewing the recommendations of the magistrate judge and the parties' objections thereto, the district court dismissed petitioner's

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[1] Petitioner prosecuted his appeal only against respondents Cox and Haynes. Pet. App. 2 n.1.

claims for money damages under RFRA. Pet. App. 55. The court observed that "several courts have addressed this question and have determined that the RFRA does not allow for the recovery of monetary damages." *Id.* at 53-54 (citing cases). The court noted that, although the Eleventh Circuit had not yet addressed the question, this Court had held in *Sossamon* v. *Texas*, 131 S. Ct. 1651 (2011), that a materially identical provision in the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.*, does not provide for money damages against state governments. Pet. App. 54. The court stated that it had "no reason to believe that the Eleventh Circuit's reasoning in a case pertaining to the RFRA would be any different" than under RLUIPA, "which is a statute of very similar construct as the RFRA." *Id.* at 55.

The district court declined to dismiss petitioner's First Amendment claims and claims for injunctive relief under RFRA at that time. Pet. App. 55-56. However, on February 6, 2013, again reviewing the recommendations of a magistrate judge, *id.* at 35-50, the district court granted summary judgment to respondents on the remaining First Amendment and RFRA claims. *Id.* at 323-34.

4. The court of appeals affirmed in part and reversed in part. Pet. App. 1-31. The court held that genuine disputes of material fact precluded summary judgment in respondents' favor under RFRA and remanded the case for further proceedings on petitioner's RFRA claim for injunctive relief. *Id.* at 6-16.[2]

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[2] The court of appeals issued its decision on January 9, 2015. Pet. App. 1. This Office has been informed that, four days before the court's decision, a prison chaplain had authorized petitioner to

The court of appeals affirmed the remainder of the district court's judgment. As relevant here, the court of appeals agreed with the district court that RFRA does not authorize suits for money damages against government officers sued in their official capacities. Pet. App. 22.[3] The court of appeals explained that, "to authorize official-capacity suits, Congress must clearly waive the government's sovereign immunity." *Id.* at 19. But RFRA's reference to "appropriate relief," the court concluded, was not an unequivocal waiver of immunity against money damages. Quoting this Court's decision in *Sossamon*, the court observed that "appropriate relief" is "a 'context-dependent'" phrase and that, in a suit against a sovereign, context suggests that money damages "are not suitable or proper." *Id.* at 20 (quoting *Sossamon*, 131 S. Ct. at 1658). The court noted that the two other courts of appeals to address whether RFRA waived the government's sovereign immunity for money damages had "held that it did not," and the court decided to "follow the

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receive shells, beads, and other religious items directly from his goddaughter. On January 16, 2015, petitioner confirmed his receipt of those items by signing a BOP form entitled "Authorization to Receive Package or Property."

[3] Respondents had argued that the availability of money damages under RFRA was not properly before the court of appeals because petitioner had failed to reference the order dismissing his damages claim in his notice of appeal. Gov't C.A. Br. 38-40. The court of appeals rejected that argument, concluding that "the issues that were dismissed at the motion-to-dismiss phase are 'inextricably intertwined' with those the District Court denied at the summary judgment stage." Pet. App. 18 n.5 (quoting *Hill* v. *BellSouth Telecomm., Inc.*, 364 F.3d 1308, 1313 (11th Cir. 2004)). The court therefore asserted jurisdiction over all claims involving petitioner's "religious rights under the same set of facts." *Ibid.*

lead" of those courts. *Id.* at 20-21 (citing *Oklevueha Native Am. Church of Haw., Inc.* v. *Holder*, 676 F.3d 829, 841 (9th Cir. 2012); *Webman* v. *Federal Bureau of Prisons*, 441 F.3d 1022, 1026 (D.C. Cir. 2006)).

In reaching that conclusion, the court of appeals rejected petitioner's argument that it could infer Congress's intent to waive sovereign immunity because RFRA was enacted against a backdrop of existing law that recognized a claim for damages against the United States for violations of a constitutional right. Pet. App. 21. The court recognized the general interpretive principle that Congress is aware of existing law when it passes legislation, but the court rejected petitioner's view that that principle "overrides the specific rule governing a waiver of sovereign immunity." *Ibid.* The court also found petitioner's argument "difficult to square with this Court's reasoning in *Sossamon*." *Id. at* 22. The court explained that, while *Sossamon* had addressed the sovereign immunity of the States, its analysis "applies equally to issues of federal sovereign immunity." *Ibid.* Because "Congress did not unequivocally waive its sovereign immunity in passing RFRA," the court concluded, the statute does not "authorize suits for money damages against officers in their official capacities." *Ibid.*[4]

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[4] The court of appeals separately affirmed the district court's ruling that qualified immunity precluded an award of money damages under RFRA against the officers in their individual capacities, Pet. App. 26, and affirmed summary judgment for respondents on petitioner's First Amendment claims, *id.* at 31. Petitioner does not seek review of those rulings in this Court. Pet. 8 n.6, 15 n.15.

ARGUMENT

The court of appeals held that the provision of the Religious Freedom Restoration Act permitting an injured party to obtain "appropriate relief" against the United States does not authorize money damages against federal government officials acting in their official capacities. That conclusion is correct and follows directly from this Court's decision in *Sossamon* v. *Texas*, 131 S. Ct. 1651 (2011), which construed the same language in a related statute, the Religious Land Use and Institutionalized Persons Act. The court of appeals' decision also does not conflict with the decision of any other court of appeals. Further review is therefore unwarranted.

1. The court of appeals correctly held (Pet. 19-22) that petitioner's RFRA damages claim is barred by the doctrine of sovereign immunity.

a. This Court has stated that "a waiver of sovereign immunity must be unequivocally expressed in statutory text." *FAA* v. *Cooper*, 132 S. Ct. 1441, 1448 (2012) (quotation marks omitted). "Any ambiguities in the statutory language are to be construed in favor of immunity, so that the Government's consent to be sued is never enlarged beyond what a fair reading of the text requires." *Ibid.* (citations omitted). "Ambiguity exists if there is a plausible interpretation of the statute that would not authorize money damages against the Government." *Ibid.* (citation omitted).

In *Sossamon*, *supra*, the Court applied these principles and held that the private cause of action in RLUIPA did not waive States' sovereign immunity to suits for money damages. 131 S. Ct. 1655. The provision at issue allowed "[a] person [to] assert a violation of [RLUIPA] as a claim or a defense in a judicial pro-

ceeding and obtain *appropriate relief* against a government." 42 U.S.C. 2000cc-2(a) (emphasis added). This Court held that the term "appropriate relief" did not "clearly and unambiguously waive sovereign immunity to private suits for damages." *Sossamon*, 131 S. Ct. at 1658. The Court explained that "'[a]ppropriate relief' is open-ended and ambiguous about what types of relief it includes." *Id.* at 1659. "Far from clearly identifying money damages, the word 'appropriate' is inherently context-dependent." *Ibid.* Furthermore, "the context here—where the defendant is a sovereign—suggests, if anything, that monetary damages are not 'suitable' or 'proper.'" *Ibid.* (quoting definition of "appropriate" in *Webster's Third New International Dictionary* 106 (1993)).

The court of appeals correctly held (Pet. App. 21-22) that the same conclusion follows as to the private cause of action in RFRA, which contains the same "open-ended and ambiguous" language that *Sossamon*, 131 S. Ct. at 1659, deemed insufficient to waive States' sovereign immunity to suits for damages. Compare 42 U.S.C. 2000bb-1(c) (RFRA), with 42 U.S.C. 2000cc-2(a) (RLUIPA). This Court generally construes "the same language in similar statutes to have the same meaning," *Cooper*, 132 S. Ct. at 1454; see generally *Northcross* v. *Board of Educ. of Memphis City Sch.*, 412 U.S. 427, 428 (1973) (per curiam), and nothing about the statutory context supports deviating from that principle here. Indeed, this Court has characterized RFRA and RLUIPA as "sister statute[s]," *Holt* v. *Hobbs*, 135 S. Ct. 853, 859 (2015), and explained that Congress enacted RLUIPA to "allow[] prisoners 'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'"

Id. at 860 (quoting *Gonzales* v. *O Centro Espírita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006)).

b. Petitioner's contrary arguments are unavailing. Petitioner briefly suggests (Pet. 10, 19 n.18) that *Sossamon* is distinguishable because it involved state, rather than federal, sovereign immunity. But the Court in *Sossamon* cited federal sovereign immunity precedents and made clear that it was relying on a principle—that waivers of immunity are construed strictly in favor of the sovereign—that applies equally to federal and state governments. 131 S. Ct. at 1658 & n.4 (citing *Lane* v. *Peña*, 518 U.S. 187, 192 (1996)). In any event, as the court of appeals explained (Pet. App. 22), *Sossamon's* analysis of the phrase "appropriate relief" did not turn on the relationship between the federal government and the States.

Petitioner's principal contention (Pet. 15-19) is that other indicia of Congress's intent in enacting RFRA overcome the canon of strict construction governing waivers of sovereign immunity. Specifically, petitioner argues that Congress enacted RFRA in 1993 "to restore religious freedoms to the condition as they existed" before this Court's decision in *Employment Division, Department of Human Resources* v. *Smith*, 494 U.S. 872 (1990), and that Congress is presumed to have been aware of the state of the law at the time it enacted RFRA. Pet. 16-17. Because "several pre-1990s cases * * * recognized a money damages claim * * * against the United States and/or its officials for violation of a constitutional right," Pet. 17, petitioner concludes that "Congress did in fact intend to waive the federal government's sovereign immunity when it authorized claims for 'appropriate relief.'" Pet. 16.

Yet petitioner fails to identify any pre-*Smith* (or pre-RFRA) case—indeed, he fails to identify any case at all—awarding damages against the government for violating the First Amendment's Free Exercise Clause. Cf. *Webman* v. *Federal Bureau of Prisons*, 441 F.3d 1022, 1028 (D.C. Cir. 2006) (Tatel, J., concurring) ("Appellants point to no pre-*Smith* waiver of sovereign immunity that authorized damages against the government in Free Exercise cases, nor am I aware of one.").

Petitioner does cite (Pet. 18 & n.17) five free-exercise decisions in which prisoners sued prison officials in their individual capacities. But the possibility that money damages may be awarded in *individual* capacity cases under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), is not relevant to determining the scope of relief available in an *official* capacity suit, which is the type of suit that implicates principles of sovereign immunity. See *Kentucky* v. *Graham*, 473 U.S. 159, 165-167 (1985) (explaining that "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity," and for that reason and others, that there is a need for "careful adherence to the distinction between personal- and official-capacity action suits"). The cited cases therefore have no bearing on the question of whether RFRA waives the sovereign immunity of the United States so as to permit a claim for money damages against federal officials sued in their official capacity. See *Cooper*, 132 S. Ct. at 1454-1455 (rejecting respondent's reliance on lower court cases construing statutes other than the Privacy Act, because none of those cases "involves the sovereign immunity canon").

Petitioner's cited cases from outside the free-exercise context (Pet. 17 n.16) are inapposite for similar reasons. Those cases address not issues of sovereign immunity, but whether to recognize *Bivens* actions against government officials sued in their individual capacities. See *Davis* v. *Passman*, 442 U.S. 228, 231-234 (1979) (recognizing action for sex discrimination against a congressman under the equal protection component of the Fifth Amendment); *Scott* v. *Rosenberg*, 702 F.2d 1263, 1271 (9th Cir. 1983) (assuming without deciding that plaintiff suing federal agency officials "is entitled to recover damages if his first amendment rights have been unjustifiably violated," but affirming judgment for officials on other grounds), cert. denied, 465 U.S. 1078 (1984); *Paton* v. *La Prade*, 524 F.2d 862, 869-870 (3d Cir. 1975) (explaining that *Bivens* would support a cause of action for damages if the plaintiff could prove that a federal employee violated her First Amendment rights).

In any event, as the court of appeals observed, petitioner has identified no case holding that the general presumption that Congress legislates against the backdrop of existing law "overrides the specific rule" that waivers of sovereign immunity must be unambiguously stated in the statutory text. Pet. App. 21.[5]

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[5] Contrary to petitioner's suggestion (Pet. 15-16), *Cooper* itself is not such a case. While petitioner emphasizes the Court's statement that the sovereign immunity canon "does not 'displac[e] the other traditional tools of statutory construction,'" 132 S. Ct. at 1448 (citations omitted), the Court added that "the scope of Congress' waiver [must] be clearly discernable from the statutory text in light of traditional interpretive tools. If it is not, then we take the interpretation most favorable to the Government." *Ibid.* And the Court ultimately found the arguments using traditional inter-

Therefore, RFRA would not waive sovereign immunity even if some pre-1993 decisions had allowed damages against the government for violations of the First Amendment's Free Exercise Clause.

2. Contrary to petitioner's contention (Pet. 13-14), the decision of the court of appeals does not conflict with the decision of any other court of appeals. The court below joined the two other courts of appeals to have addressed the issue in holding that RFRA does not waive the federal government's sovereign immunity against suits for money damages. Pet. App. 21-22; *Oklevueha Native Am. Church of Haw., Inc.* v. *Holder*, 676 F.3d 829, 841 (9th Cir. 2012) ("Just like the identical language in RLUIPA, RFRA's authorization of 'appropriate relief' is not an 'unequivocal expression' of the waiver of sovereign immunity to monetary claims.") (citation omitted); *Webman*, 441 F.3d at 1026 (D.C. Cir.) ("We cannot find an unambiguous waiver in language this open-ended and equivocal.").

Petitioner asserts (Pet. 13-14) that, prior to this Court's decision in *Sossamon*, the Third Circuit had recognized the availability of money damages against the federal government in *Jama* v. *Esmor Correctional Services, Inc.*, 577 F.3d 169 (2009). That is incorrect. The only issue on appeal in *Jama* was whether the district court properly awarded attorney's fees to a plaintiff who had prevailed at a jury trial on both RFRA and state-law claims. *Id.* at 171.

Petitioner argues (Pet. 13) that, by allowing the jury's award of nominal damages on the RFRA claim to "stand unchallenged," the Third Circuit recognized "by implication * * * the ability to recover money

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pretive tools insufficient "to overcome the sovereign immunity canon" in that case. *Id.* at 1453.

damages under RFRA." But the only RFRA claim to reach the jury in *Jama* was not against government officials sued in their official capacity; it was against a government contractor and its employees.[6] 577 F.3d at 171 & n.2; see *Jama* v. *INS*, 343 F. Supp. 2d 338, 373-374 (D. N.J. 2004) (district court's conclusion that sovereign immunity barred RFRA damages claims against the federal government, and that plaintiffs could thus "bring their RFRA claims seeking money damages from defendants in their *individual* capacities only"). To the extent that the Third Circuit's decision could be read as implicitly accepting the validity of a $1 damages award under RFRA against the remaining defendants (Pet. 13), that decision does not bear on the sovereign-immunity question presented in this case.

In sum, because the court of appeals' decision is correct and aligns with the decisions of every other court of appeals to consider whether RFRA waives sovereign immunity for money damages against federal officials sued in their official capacity, this Court's review is not warranted.

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[6] The plaintiffs' RFRA claims against the federal government had been settled in 2001, long before the Third Circuit's decision. *Jama*, 343 F. Supp. 2d at 350.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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