No. 16-814

IN THE
Supreme Court of the United States

MONIFA J. STERLING,
Lance Corporal (E-3), U.S. Marine Corps.,
Petitioner,
v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

BRIEF OF DR. S. SIMCHA GOLDMAN AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the existence of a forced choice between what religion and government command is necessary to establish a "substantial burden" under the Religious Freedom Restoration Act.

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BRIEF FOR *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*[*]

Amicus Dr. S. Simcha Goldman respectfully submits this *amicus curiae* brief in support of Petitioner. Dr. Goldman is a clinical psychologist and retired United States military member. He served in the United States Navy and Air Force from 1970 to 1986. He was the petitioner in *Goldman v. Weinberger*, 475 U.S. 503 (1986), in which this Court rejected his First Amendment challenge to a military policy forbidding Dr. Goldman, as an Orthodox Jew, from wearing his yarmulke while in uniform. Although decided over 30 years ago, Dr. Goldman's case represents this Court's most recent decision on a religious freedom issue arising in the military context.

Amicus offers additional reasons why this Court should grant review of *Sterling v. United States*. *Amicus* has a strong interest in apprising the Court of the substantial, adverse, and unnecessary consequences that religious adherents in the armed forces suffer and would continue to suffer unless the Court clarifies and affirms the proper application of the Religious Freedom Restoration Act ("RFRA"). As Peti-

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[*] Pursuant to Supreme Court Rule 37.6, *amicus* represents that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amicus* or his counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received notice of the filing of this brief compliant with Supreme Court Rule 37.2 and each has consented to the filing of this brief.

tioner explained, the United States Court of Appeals for the Armed Forces ("CAAF") adopted an impermissibly restrictive view of what constitutes a substantial burden under RFRA. That view contravenes Congress' commands and this Court's precedents.

Amicus hopes to explain to the Court that the decision below directly harms the men and women of faith who serve courageously in our armed forces and lay their lives on the line for our Nation. No one has experienced that harm more acutely than Dr. Goldman, who was himself put to the Hobson's choice of following his religious mandates or his superior officers' commands. If the CAAF's decision remains undisturbed, vulnerable religious believers will have no recourse for the common and burdensome affronts they face in a culture designed to demand uniformity, often at the expense of the free exercise of faith. And religious minorities will have no safeguard against the pressures of a majority-focused culture.

SUMMARY OF ARGUMENT

In 1986, this Court held that the United States Air Force did not offend the First Amendment when it prohibited Dr. Goldman from wearing his yarmulke while in uniform. An ordained rabbi and a devout adherent to Orthodox Jewish religious practice, Dr. Goldman wore a yarmulke for years during his service without incident or complaint. That changed when a superior officer, upset over Dr. Goldman's adverse testimony in an unrelated case, ordered him to remove the yarmulke, claiming that the religious practice violated Air Force regulations. Dr. Goldman subsequently sued, citing his First Amendment right to freely exercise the commands of his faith. This

Court ultimately rejected that claim, 5-4, in a decision that has been broadly denounced, and which in part prompted Congress to protect men and women of faith in the armed forces by enacting RFRA. That decision is this Court's most recent word on a free exercise claim arising in the military context.

Dr. Goldman's case thus illustrates the unique peril that our service members face when they wish to practice their sincerely held religious beliefs that depart from the military's culture of uniformity. To ensure that these vulnerable individuals receive the protections they are entitled to, courts must rigorously apply the analytical procedure RFRA lays out. Those procedures begin with an analysis of whether the military has placed a substantial burden on a service member's religious exercise. The CAAF below erred at that threshold step, and this Court's review is thus necessary to protect the thousands of men and women in the armed forces whose religious practices are imperiled by the CAAF's misguided analysis.

After all, RFRA was enacted largely to protect men and women like Dr. Goldman, whose case almost surely would be decided differently if this Court were to consider it today under RFRA. LCpl Sterling's religious observance deserves the protection that this Court wrongly denied to Dr. Goldman three decades ago and that Congress sought to ensure would not recur.

If the Court denies certiorari in this case, it will not have another opportunity to correct the CAAF's error. Service members do not have an appeal of right to the CAAF, and there is no reason to think the CAAF will voluntarily revisit the erroneous hold-

ing below. This Petition is thus the Court's *only* chance to ensure the men and women of faith in our armed forces enjoy the full protections RFRA guarantees.

ARGUMENT

I. DR. GOLDMAN'S CASE ILLUSTRATES THE VULNERABILITY OF RELIGIOUS ADHERENTS IN THE ARMED FORCES, AND THE PROTECTIONS THEY NEED.

Dr. Goldman was the petitioner in the landmark case of *Goldman v. Weinberger*, 475 U.S. 503 (1986). Decided in 1986—several years before Congress enacted RFRA—this Court held, by a vote of 5-4, that Air Force regulations prohibiting Dr. Goldman from wearing a yarmulke while in uniform did not violate his First Amendment right to the free exercise of his religion. *Id.* at 509–10. The Court's majority opinion accepted the government's assertion that allowing Dr. Goldman to wear a yarmulke would unduly upset the military's interest in uniformity. *Id.* at 507–08. In a forceful dissent, Justice William Brennan characterized the majority's position as no less than an "eva[sion of] its responsibility" and an "abdicat[ion of] its role as principal expositor of the Constitution and protector of individual liberties in favor of credulous deference to unsupported assertion of military necessity." *Id.* at 514–15.

Dr. Goldman's case illustrates for today's Court two specific dangers that the men and women of faith who serve in our military face today. First, as was true in Dr. Goldman's case, these service members often are victims of hostility to religious exercise. Second, the federal courts represent the only

bulwark to vindicate their rights to practice their faiths in a culture of rigid uniformity.

A. Dr. Goldman's commanding officers tolerated his yarmulke for years before suddenly reversing course.

This Court's *Goldman* decision told only part of the story. We recount the full factual background here to demonstrate how pernicious religious animus can be when it arises in the armed forces, and why the proper application of RFRA is so crucial to the liberty of service members.

As this Court noted, Dr. Goldman served in the military in a variety of capacities, wearing his yarmulke while in uniform *for years* without incident or complaint. *Id.* at 505. As an ordained rabbi who observed Orthodox Jewish religious practice, he complied with the religious obligation to keep his head covered at all times. *Goldman v. Sec'y of Def.*, 734 F.2d 1531, 1532 (D.C. Cir. 1984). On May 8, 1981, Dr. Goldman was called before Colonel Joseph Gregory, the commanding officer who oversaw the hospital to which Dr. Goldman was assigned. Colonel Gregory informed Dr. Goldman that wearing a yarmulke while on duty violated Air Force rules regulating headgear. *Id.* at 1533. Colonel Gregory ordered Dr. Goldman not to wear his yarmulke outside the hospital, and he later amended the order to prohibit him from wearing his yarmulke inside the hospital as well. *Id.*

But this Court's opinion omitted some important details. Prior to the incident underlying the case, Dr. Goldman's superiors had made disrespectful comments about Dr. Goldman's religious obedience.

Samuel J. Levine, *Untold Stories of* Goldman v. Weinberger*: Religious Freedom Confronts Military Uniformity*, 66 A.F. L. REV. 205 (2010). For example, during his years as a chaplain in the Navy, Dr. Goldman's commander had asked a superior, "Who is the hippie walking around my command with the beanie on his head?"—referring to Dr. Goldman. *Id.* at 209.

Some of the animus against Dr. Goldman arose from an unrelated court-martial proceeding in which Dr. Goldman testified as to the defendant's psychological evaluation. *Id.* at 210. In that proceeding, Dr. Goldman indicated on the witness stand that the military prosecutor, Captain Bouchard, misunderstood the nature of Dr. Goldman's evaluation methods. *Id.* at 210–11. He delivered that testimony while wearing his yarmulke—as he had done before in previous court proceedings, without any objections or complaints. But Captain Bouchard, upset over Dr. Goldman's testimony, filed a complaint over Dr. Goldman's yarmulke.[1] Colonel Gregory subsequent-

[1] This was not the first time Captain Bouchard had been upset over Dr. Goldman's courtroom testimony, but it was the first time he chose to attack Dr. Goldman's religious observance. *Id.* at 210. The year before Captain Bouchard filed his complaint, Dr. Goldman had testified in another case as a defense witness, providing a psychological evaluation of the defendant. *Id.* Dr. Goldman—while wearing his uniform and yarmulke—was cross-examined by Captain Bouchard, who asked questions that were critical of Dr. Goldman's use of the Minnesota Multiphase Personality Inventory (MMPI) test. *Id.* Then, in the proceeding which led to the order to comply with AFR 35-10, Captain Bouchard asked questions of Dr. Goldman critical of Dr. Goldman's decision not to use the MMPI test. *Id.* Dr. Goldman's response included a comment on the irrelevance of Captain Bouchard's

ly informed Dr. Goldman that wearing a yarmulke while on duty did indeed violate AFR 35-10, and ordered him not to violate this regulation outside the hospital. *Id.* Not mentioned in the Supreme Court opinion, the Air Force officers undertook dubious steps to ascertain the significance of the yarmulke to Dr. Goldman's religious faith by asking others, not Dr. Goldman. *Id.* at 212. Whether these officers acted out of retaliation, or bigotry, or something else is unclear.[2]

This Court's analysis in *Goldman*, 475 U.S. at 507–08, overlooked those details and instead focused almost entirely on the military's interest in uniformity. The Court failed to recount the hostility to an ancient Jewish tradition that underscored the military's behavior towards Dr. Goldman. Dr. Goldman's case thus illustrates the vulnerabilities that men and women of the armed forces face when they choose to adhere to their religious commands.

[Footnote continued from previous page]

question. *Id.* at 210–11. That response evidently upset Captain Bouchard, but he did not at the time make any issue of Dr. Goldman's yarmulke. *Id.* at 211.

[2] Colonel Gregory also undertook a personal inquiry to determine to his own satisfaction whether it was indeed true that the Orthodox Jewish faith requires adherents to wear yarmulkes. *Id.* at 212. Rather than ask Dr. Goldman—an ordained rabbi—Colonel Gregory instead asked a Christian base chaplain. *Id.* That Christian base chaplain apparently told Colonel Gregory that yarmulkes are not necessary, and Colonel Gregory evidently accepted that representation as true. *Id.*

B. This Court's *Goldman* decision misapplied the First Amendment.

Dr. Goldman sued respondent Secretary of Defense and others, claiming that the application of AFR 35-10 to prevent him from wearing his yarmulke infringed upon his First Amendment freedom to exercise his religious beliefs. *Goldman*, 475 U.S. at 506. The United States District Court for the District of Columbia preliminarily enjoined the enforcement of the regulation—*Goldman v. Sec'y of Def.*, 530 F. Supp. 12, 16–17 (D.D.C. 1981)—and then, after a full hearing, permanently enjoined the Air Force from prohibiting Dr. Goldman from wearing a yarmulke while in uniform. *Goldman v. Sec'y of Def.*, Civ. A. No. 81-3197, 1982 WL 311 (D.D.C. 1982).

The government appealed to the Court of Appeals for the District of Columbia Circuit, which reversed the district court's judgment. *Goldman*, 734 F.2d at 1540–41. As an initial matter, the Court of Appeals determined that a military regulation must be examined to determine whether "legitimate military ends are sought to be achieved," and whether it is "designed to accommodate the individual right to an appropriate degree." *Id.* at 1536. Applying this test, the court concluded that "the Air Force's interest in uniformity renders the strict enforcement of its regulation permissible." *Id.* at 1540. The full Court of Appeals denied a petition for rehearing en banc, with three judges dissenting. *Goldman v. Sec'y of Def.*, 739 F.2d 657 (D.C. Cir. 1984) (en banc).

Then-Judge Ruth Bader Ginsburg, joined by then-Judge Antonin Scalia, filed a brief dissenting opinion, emphasizing Dr. Goldman's years of honor-

able service and referring to the military's position as "[a]t the least, . . . 'callous indifference'" and "counter to 'the best of our traditions' to 'accommodate[] the public service to the[] spiritual needs [of our people].'" *Id.* at 660 (Ginsburg, J., dissenting) (citations omitted). Thus, Judge Ginsburg reasoned, the court "should measure the command suddenly and lately championed by the military against the restraint imposed even on an armed forces commander by the Free Exercise Clause of the First Amendment." *Id.*

The case then reached this Court, which concluded that "[o]ur review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society." 475 U.S. at 507. In response to Dr. Goldman's assertion that a religious apparel exception would actually increase morale rather than undermine discipline, the Court deferred to the "considered professional judgment" of "the appropriate military officials" regarding the "desirability of dress regulations in the military." *Id.* at 508–09. Although the Court conceded that not allowing such exceptions would likely render military life more "objectionable" to some religious adherents, the Court ruled that the First Amendment did not require these accommodations. *Id.* at 509.

The Court ultimately deferred to the military's need for "a sense of hierarchical unity by tending to eliminate outward individual distinctions except for those of rank," finding that the uniform requirement directly supported "[t]he inescapable demands of military discipline and obedience to orders." *Id.* at 508 (citations omitted). Even Justice Stevens' sympa-

thetic concurrence recognized that uniformity requires subordination of all religious beliefs to military needs and that neither the Court nor the military should be making distinctions among which religious exemptions are acceptable within military parameters. *Id.* at 510–13 (Stevens, J., concurring).

Justice Brennan, joined by Justice Marshall, filed a well-reasoned dissenting opinion, explaining that the Court "abdicate[d] its role as principal expositor of the Constitution and protector of individual liberties in favor of a credulous deference to unsupported assertions of military necessity." *Id.* at 514 (Brennan, J., dissenting). Indeed, Justice Brennan accused the Court of "overlook[ing] the sincere and serious nature of [Dr. Goldman's] constitutional claim" and "attempt[ing], unsuccessfully, to minimize the burden that was placed on Dr. Goldman's rights." *Id.* Noting the majority's characterization of the Air Force regulation as merely "objectionable" to Dr. Goldman, Justice Brennan emphasized that, in fact, Dr. Goldman "was asked to violate the tenets of his faith virtually every minute of every work-day." *Id.* He observed, all too presciently, that the military's "strong ethic of conformity and unquestioning obedience" is "particularly impervious to minority needs and values." *Id.* at 524.

Not surprisingly, the *Goldman* decision has been roundly denounced by prominent scholars of religious liberty. Professor Michael W. McConnell has criticized the harm to religious minorities that the *Goldman* Court wrongly tolerated. *See* Michael W. McConnell, *Free Exercise Revisionism and the* Smith *Decision*, 57 U. CHI. L. REV. 1109, 1148 (1990) ("The degree of protection for religious minorities should be

no less than that which our society would provide for the majority. . . . Who can doubt that unobtrusive exceptions to military uniform regulations would be made if Christians, like Orthodox Jews, had to wear yarmulkes at all times?"). And Professor Michael Stokes Paulsen has argued that, in passing RFRA, "Congress apparently did not in fact view the interest in rigid uniformity to be one of compelling necessity to military discipline." Michael Stoke Paulsen, *A RFRA Runs Through It: Religious Freedom and the U.S. Code*, 56 MONT. L. REV. 249, 269 n.65 (1995).[3]

II. RFRA MANDATES A PRECISE ANALYTICAL PROCESS THAT PROVIDES SERVICE MEMBERS WITH THE PROTECTION THIS COURT DENIED IN *GOLDMAN*.

As Dr. Goldman knows only too personally, religious minorities are especially vulnerable in a military culture that demands uniformity. And when a religious minority faces an impingement on his or her religious exercise, courts must use the proper analytical process to evaluate whether that impingement is tolerable. *See*, *e.g.*, *Goldman*, 739 F.2d at 660 (Ginsburg, J., dissenting) (arguing the court misapplied the proper First Amendment analytical process—that is, the court "should measure the

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[3] *See also* Steven D. Smith, *Religious Freedom and Its Enemies, or Why the* Smith *Decision May Be a Greater Loss Now Than It Was Then*, 32 CARDOZO L. REV. 2033, 2041 (2011) (noting "in the *Goldman* case Congress acted to protect religious freedom after the Supreme Court refused to do so"); Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 128 n.70 (1992) (the *Goldman* Court applied the wrong standard).

command suddenly and lately championed by the military against the restraint imposed even on an armed forces commander by the Free Exercise Clause of the First Amendment").

RFRA provides that process. Its requirements are clear: the claimant must show a substantial burden, and upon doing so, the government must satisfy strict scrutiny. Misapplying the first prong thus wrongly relieves the government of a heavy burden.

A. RFRA's threshold inquiry determines whether the claimant has established that the government's actions substantially burden her religious exercise.

Before the court can consider the government's interest in proscribing religious practice, it must first determine whether the claimant has established that the government's actions (1) substantially burdened (2) her sincere (3) religious exercise. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428 (2006). That is the starting point for any RFRA analysis, and this Court thus must police its correct application.

The "exercise of religion" under RFRA is broad. It includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000bb-2(4) (incorporating 42 U.S.C. § 2000cc-5(7)(A)). Congress also mandated that this concept "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g); *see also Holt v. Hobbs*, 135 S. Ct. 853, 860 (2015). RLUIPA's al-

teration clarifies that courts should not question the rationality or centrality of a person's religious beliefs. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2778 (2014) ("[F]ederal courts have no business addressing . . . whether the religious belief asserted in a RFRA case is reasonable."); *id.* at 2792 (Ginsburg, J., dissenting) ("RLUIPA's alteration clarifies that courts should not question the centrality of a particular religious exercise.").

A claimant's exercise of religion further must be "grounded in a sincerely held religious belief," and "not some other motivation." *Holt*, 135 S. Ct. at 862. The court's "narrow function," however, is to determine whether the asserted belief reflects "'an honest conviction'" by the person asserting it. *Hobby Lobby*, 134 S. Ct. at 2779 (quoting *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981)); *see also id.* at 2798 (Ginsburg, J., dissenting) ("[C]ourt[s] must accept as true" "factual allegations that [plaintiffs'] beliefs are sincere and of a religious nature.") (citations omitted); *id.* ("[C]ourts are not to question where an individual 'dr[aws] the line' in defining which practices run afoul of her religious beliefs.") (quoting *Thomas*, 450 U.S. at 715).

Finally, the government's actions must "substantially burden" the claimant's religious exercise. RFRA does not define "substantial burden." This Court has found a substantial burden when the government forces a person to choose between what her religion compels/forbids and what the government forbids/compels. *See Thomas*, 450 U.S. at 717–18 (substantial burden exists when the government "conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it de-

nies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs"). But the Court has never decided whether this "dilemma scenario" is merely one example of a substantial burden or whether it constitutes the outer bounds of this term. Put another way, the Court has never said whether this "dilemma scenario" is necessary or sufficient for demonstrating a substantial burden.

Confusion surrounding what is required to establish a substantial burden has led lower courts to follow different, and often contradictory, substantial burden standards. A minority of courts of appeals have adopted a restrictive view, concluding that the "dilemma scenario" is the *only* way to establish a substantial burden. *See* Cert. Pet. 14–17 (citing cases). A majority of courts of appeals have adopted a more expansive view, finding that the "dilemma scenario" is merely *one* way—not the *only* way—to establish a substantial burden. *See id.* at 17–22 (citing cases). Under these courts' views, direct prohibitions on religious exercise also can impose substantial burdens. *See id.*

As the Petition ably demonstrates, that confusion merits this Court's intervention.

B. Once the claimant meets her burden, RFRA mandates the government justify its actions under strict scrutiny.

Once a claimant meets her burden, the burden shifts to the government to justify its actions under strict scrutiny. *See Holt*, 135 S. Ct. at 863; *O Centro*, 546 U.S. at 428–29. This is "the most demanding

test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). The government must establish that its actions were "in furtherance of a compelling governmental interest" and were "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b).

To satisfy the compelling-interest standard, the government cannot rely on abstract or generalized interests. Rather, it must justify its "application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *O Centro*, 546 U.S. at 430–31 (quoting 42 U.S.C. § 2000bb-1(b)). The least-restrictive-means standard "requires the government to 'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" *Holt*, 135 S. Ct. at 864 (quoting *Hobby Lobby*, 134 S. Ct. at 2780).

Additionally, courts applying strict scrutiny under RFRA "'must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries.'" *Hobby Lobby*, 134 S. Ct. at 2781 n.37 (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *id.* at 2801 (Ginsburg, J., dissenting); *see also Holt*, 135 S. Ct. at 867 (Ginsburg, J., concurring) (joining the Court's opinion because "accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief").

III. THE CAAF DENIED LCPL STERLING THE PROPER ANALYTICAL PROCEDURE, AND THIS COURT SHOULD INTERVENE TO PROTECT THE PEOPLE OF FAITH IN OUR ARMED FORCES.

As set out above, RFRA mandates a specific process designed to protect men and women of faith who serve in the military. As the Petition ably demonstrates, the CAAF misapplied that process at the first step. Dr. Goldman has experienced first-hand the harm that comes when courts disregard protections for people of faith. This Court should intervene to protect LCpl Sterling—and all other religious observers in the military—from the same harm.

The RFRA process is especially crucial here because any minority group in the military is inherently vulnerable to pressure to conform. In Dr. Goldman's case, he faced overt pressure to set aside his religious practice when Captain Bouchard filed a complaint against him. But he also faced subtle pressure outside the legal process. For example, while Dr. Goldman had traditionally enjoyed a work schedule that accommodated his observance of the Jewish Sabbath, his superiors threatened to terminate that accommodation after Dr. Goldman challenged AFR 35-10. Ending that accommodation would have prevented Dr. Goldman from observing the Sabbath with his family. The military has ways of pressuring people without leaving bruises. Only the proper application of RFRA can protect minorities.[4]

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[4] *See Speiser v. Randall*, 357 U.S. 513, 520–21 (1958) ("[T]he more important the rights at stake the more important must be

And the number of religious minorities in the military will only rise in the coming years. Currently, thousands of armed service personnel adhere to minority religions that decree religious exercises distinct from western tradition and foreign to many of our military's leaders.[5] As the United States increases in its population of minority religions such as Islam, Sikh, and Hindu, so will the population of those believers increase in the military. Those American heroes—and all religious adherents—deserve the rigorous protections that Congress set out for them in RFRA.

The statutory framework for military appeals ensures that unless the Court intervenes now, the intolerable decision below will effectively become permanent. As the Petition demonstrates, service members have no appeal of right to the CAAF. *See* 10 U.S.C. § 867. By statute, this Court can review only decisions of the CAAF, not cases in which the CAAF has declined discretionary review. 28 U.S.C. § 1259. So unless the CAAF were to take the unusual step of revisiting its own decision, this Court will *never* have another opportunity to review the CAAF's unjustifiable interpretation of RFRA.

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the procedural safeguards surrounding those rights."); Major Adam E. Frey, *Serving Two Masters: A Scheme for Analyzing Religious Accommodation Requests in the Military*, 74 A.F. L. REV. 47, 49 (2015).

[5] DEP'T MANPOWER DATA CENTER, *Active Duty Personnel Inventory File, DRS24012 – Religion of Active Duty Personnel by Service as of June 30, 2014*, DEP'T OF DEF., Aug. 6, 2014, *available at* http://www.dod.mil/pubs/foi/Reading_Room/Statistical_Data/14-F-0928_ADMP_Religion_Jun-30-14.xlsx.

As a result, the stakes could not be higher. LCpl Sterling's religious observance deserves the protection that this Court denied Dr. Goldman three decades ago. This Court should intervene.

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted.

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