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2. The State of Texas intends to execute Ms. Lucio on April 27, 2022, under conditions that violate the First Amendment's Free Exercise Clause and substantially burden the exercise of her religion in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.* Specifically, TDCJ has made it clear that it will enforce "No Speaking" and "No Contact" policies, banning spiritual advisors from praying aloud or touching inmates in the execution chamber.

3. On March 24, 2022, the Supreme Court held in *Ramirez v. Collier* that these TDCJ policies likely violated the religious rights of an inmate who, like Ms. Lucio, requested that his spiritual advisor be allowed to audibly pray with and physically touch him at the time of his execution. *Ramirez v. Collier*, No. 21-5592, slip op. at 22 (U.S. Mar. 24, 2022), https://www.supremecourt.gov/opinions/21pdf/21-5592_feah.pdf (holding that petitioner "is likely to prevail on the merits of his RLUIPA claims"). The Supreme Court concluded that respondents had not shown that these TDCJ policies were the least restrictive means of furthering their asserted interests. *Id.* at 12-18.

4. In line with the Supreme Court's ruling, and to ensure that the State does not, in the final moments of Ms. Lucio's life, substantially burden the exercise of her religious beliefs or violate her rights under the Free Exercise Clause or RLUIPA, Ms. Lucio seeks declaratory relief that the TDCJ policies violate her rights under the First Amendment and RLUIPA, and preliminary and permanent injunctive relief prohibiting Defendants from executing her without allowing her spiritual advisor to be present in the chamber with her, to pray audibly with her, and to have physical contact with her in order to confer a blessing upon her or administer a sacrament.

JURISDICTION

5. This Court has jurisdiction under 42 U.S.C. §§ 2000cc-1, 28 U.S.C. §§ 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983.

VENUE

6. Venue lies in this Court under 28 U.S.C. § 1391 because Defendants maintain offices in the Southern District of Texas. Venue is also proper because the execution will occur in this District.

PARTIES

Plaintiff

7. Plaintiff Melissa Elizabeth Lucio is incarcerated under a sentence of death at the Mountain View Unit of TDCJ in Gatesville, Texas. She is scheduled to be executed on April 27, 2022.

Defendants

8. Defendant Bryan Collier is the Executive Director of TDCJ. He is being sued in his official capacity.

9. Defendant Bobby Lumpkin is the Director of the Correctional Institutions Division of TDCJ. He is being sued in his official capacity. The state trial court has ordered Mr. Lumpkin to carry out Ms. Lucio's scheduled execution.

10. Defendant Dennis Crowley is the Senior Warden of the Huntsville Unit, where the State of Texas carries out executions. He is being sued in his official capacity. Because Mr.

Crowley is the warden of the Huntsville Unit, he is responsible for supervising the scheduled execution in this case.

PROCEDURAL HISTORY

11. Melissa Lucio was convicted and sentenced to death in 2008 for the 2007 killing of her daughter in Cameron County, Texas. *State v. Lucio*, No. 07-CR-885-B (2008 WL 8720643). The Texas Court of Criminal Appeals (“CCA”) affirmed her conviction and death sentence on direct appeal. *Lucio v. State*, 351 S.W.3d 878 (Tex. Crim. App. 2011).

12. In 2013, the CCA denied state post-conviction relief, without an evidentiary hearing, based upon the trial court’s findings and conclusions which were adopted verbatim from the State’s proposed findings and conclusions. *Ex parte Lucio*, No. 72,702-02 (2013 WL 105179 Tex. Crim. App. Jan. 9, 2013).

13. Ms. Lucio filed a petition for writ of habeas corpus in the federal district court. The district court denied relief and a certificate of appealability (“COA”). *Lucio v. Davis*, No. 13-cv-125 (S.D. Tex. Sept. 28, 2016) (Mem. and Order). On October 17, 2018, the Fifth Circuit issued a COA on the issue of “whether the exclusion of Lucio’s proffered experts on the credibility of her confession violated her constitutional right to present a complete defense.” *Lucio v. Davis*, 751 F. App’x 484 (5th Cir. 2018). A panel of the Fifth Circuit reversed the district court’s judgment and remanded for the district court to grant habeas corpus relief to Lucio. *Lucio v. Davis*, 783 F. App’x 313 (5th Cir. 2019). Subsequently, the *en banc* Fifth Circuit vacated the panel’s decision and denied relief in a fractured opinion, with seven judges dissenting. *Lucio v. Lumpkin*, 987 F.3d 451 at 493 (5th Cir. 2021) (*en banc*). The Supreme Court denied Ms. Lucio’s request for certiorari review. *Lucio v. Lumpkin*, 142 S. Ct. 404 (2021) (mem.)

14. Ms. Lucio is currently scheduled to be executed on April 27, 2022.

FACTUAL BACKGROUND

TDCJ's "No Speaking" and "No Contact" Policies

15. Until April 2019, TDCJ allowed TDCJ-approved chaplains in the execution chamber to guide persons being executed into the afterlife according to their religious beliefs. Between 1982 and March 2019, Texas conducted 560 executions pursuant to this policy.

16. In March 2019, TDCJ refused inmate Patrick Murphy's request that his Buddhist spiritual advisor accompany him in the chamber during the scheduled execution. *See Murphy v. Collier*, 139 S. Ct. 1475 (2019). Patrick Murphy had sought access for his Buddhist priest in the chamber so that the priest could "chant[] while a lethal injection is administered" to assist him in "remaining focused on Buddha while dying." *Id.* at 1484 (Alito, J., dissenting). After TDCJ refused Murphy's request, he filed a request for a stay of execution in the Supreme Court challenging TDCJ's decision on equal protection and First Amendment grounds. *See id.*

17. On March 28, 2018, the Supreme Court granted a stay of execution and issued an order prohibiting TDCJ from carrying out the execution "pending the timely filing and disposition of a petition for a writ of certiorari unless the State permits Murphy's Buddhist spiritual advisor or another Buddhist reverend of the State's choosing to accompany Murphy in the execution chamber during the execution." *Murphy*, 139 S. Ct. at 1475. Justice Kavanaugh wrote a concurring opinion, in which he expressed his view that "the Constitution prohibits [the] denominational discrimination" of the then-existing TDCJ policy. *Id.* at 1475-76. Justice Kavanaugh observed that a potential remedy for this denominational discrimination would be to ban all spiritual advisors of any denomination from the chamber. *Id.*

18. On April 2, 2019, TDCJ revised its Execution Procedure to provide that “TDCJ Chaplains and Ministers/Spiritual Advisors designated by the offender may observe the execution only from the witness rooms. Ex. 1, Tex. Dep’t Crim. Just., Execution Procedure at 8 (Apr. 2019).

19. In June 2020, inmate Ruben Gutierrez brought a complaint under 42 U.S.C. § 1983 challenging TDCJ’s prohibition on the presence of any spiritual advisor in the chamber and noting that “communal prayer [is] a longstanding religious tradition worthy of First Amendment protection” and that “Texas has long recognized that a condemned prisoner’s prayer with a chaplain is integral in executions.” Pet. For Writ of Certiorari at 24, *Gutierrez v. Saenz*, No. 19-8594 (S. Ct.), *cert. granted*, 141 S. Ct. 1260 (2021). After the district court made findings that no security problems would result “if a prisoner facing execution is permitted to choose the spiritual adviser the prisoner wishes to have in his immediate presence during the execution,” *Gutierrez v. Saenz*, 141 S. Ct. 127, 127 (2020) (mem.), the Supreme Court granted certiorari, vacated the Fifth Circuit’ panel decision, and remanded the case for consideration on the merits. *Gutierrez*, 141 S. Ct. 1260, 1261 (2021) (mem.)

20. On April 21, 2021, TDCJ again revised its Execution Procedure. This time, the protocol provided that the condemned may be accompanied in the execution chamber by their personal religious advisor, who may minister to the condemned during the execution. Under the new policy, TDCJ requires that the spiritual advisors be verified and pass a background check. Ex. 2., Tex. Dep’t. Crim. Just., Execution Procedure at 8 (Apr. 2021).

21. In August 2021, John Henry Ramirez brought a complaint under 42 U.S.C. § 1983 alleging that TDCJ had informed Mr. Ramirez and his counsel that TDCJ policy forbid Mr. Ramirez’s spiritual advisor from laying hands upon him at the time of his death, “a long-held

and practiced tradition in Christianity in general and in the Protestant belief system Mr. Ramirez adheres to.” First Am. Compl. ¶ 3, *Ramirez v. Collier*, No 4:21-CV-02609 (S.D. Tex. Aug. 16, 2021), ECF No. 5. Mr. Ramirez’s complaint alleged that TDCJ’s “No Contact” policy violated his rights under the Free Exercise Clause of the First Amendment and RLUIPA, 42 U.S.C. § 2000cc *et. seq.* See generally *id.*

22. Specifically, Mr. Ramirez alleged that his spiritual advisor “needs to lay his hands on Mr. Ramirez” at the time of his death “in accordance with [the spiritual advisor’s] and Mr. Ramirez’s faith tradition.” *Id.* at ¶17. Mr. Ramirez further alleged that “[t]he laying on of hands is a symbolic act in which religious leaders place their hands on a person in order to confer a spiritual blessing.” *Id.* ¶18.

23. Mr. Ramirez attached as an exhibit to his first amended complaint an Offender Form I-127 complaining that the Director of Chaplaincy at TDCJ had told him that his spiritual advisor would not be allowed to have physical contact with him in the execution chamber. In response, on July 2, 2021, a representative of the TDCJ typed, “A spiritual advisor is not allowed to touch an inmate while in the execution chamber.” *Id.* at 38-39.

24. Mr. Ramirez filed a second amended complaint in which he alleged that his spiritual advisor would also be prohibited from praying aloud while in the chamber. See generally, Second Am. Compl., *Ramirez v. Collier*, No. 4:21-CV-02609 (S.D. Tex. Aug. 22, 2021), ECF No. 12. Mr. Ramirez attached, as an exhibit, a letter from TDCJ’s general counsel informing Ramirez’s counsel that, “[a]t this time, TDCJ does not allow the spiritual advisor to pray out loud once inside the execution chamber.” Ex. 3, Letter from Kristen Worman, general counsel for TDCJ, to Eric Allen, counsel for Ramirez, August 19, 2021. The August 19 letter also

reiterated that the spiritual advisor would *not* be allowed physical contact with Mr. Ramirez once inside the execution chamber. *Id.*

25. Mr. Ramirez sought a stay of execution from this Court based on the likelihood that he would prevail on his § 1983 challenge to TDCJ’s “No Speaking” and “No Contact” policies. This Court denied his motion, and the Fifth Circuit affirmed this Court’s denial. Mr. Ramirez filed a motion for a stay of execution in the United States Supreme Court, along with a petition for writ of certiorari. Pet. For Writ of Certiorari, *Ramirez v. Collier*, No. 21-5592, *cert. granted*, 141 S. Ct. 50 (2021).

26. On September 8, 2021, the Supreme Court stayed Mr. Ramirez’s execution and granted a writ of certiorari to answer the questions presented in Mr. Ramirez’s petition about TDCJ’s “No Contact” and “No Speaking” policies forbidding spiritual advisors who are present in the execution chamber from vocal prayer and from having physical contact with condemned persons as they are about to be executed. *Ramirez v. Collier*, 142 S. Ct. 50 (2021).

27. On October 7, 2021, this Court stayed the execution of a death-sentenced individual because of the pending spiritual advisor litigation in *Ramirez*. Ex. 4, Order Staying Execution, *Barbee v. Collier*, No. 4:21-cv-3077 (S.D. Tex. Oct. 7, 2021), ECF No. 14. This Court’s order held that “the *Ramirez* proceedings may clarify what technical requirements an inmate must meet in filing such litigation, what burden he must satisfy in showing an imposition on his religious worship, whether TDCJ has sufficiently justified its limitation on its new policy, and what relief is available in similar situations.” *Id.* at 6.

28. The Order pointed to TDCJ’s “2021 execution protocol [which] is silent about a spiritual advisor’s role inside the execution chamber. The written policy does not say that a spiritual advisor will have any constraint placed on the spiritual assistance he or she may provide

the inmate as the execution proceeds.” *Id.* at 4. This anticipated the same concerns the Supreme Court outlined in remanding *Ramirez*. *Ramirez*, No. 21-5592, slip op. at 21.

29. In its Order staying Barbee’s execution, this Court also pointed to the fact-intensive questions in that case and in *Ramirez*, *Id.* at 6, n.3, noting *Moussazadeh v. Texas Dept. Of Criminal Justice*, 703 F.3d 781, 795 (5th Cir. 2012), which highlighted “the importance of a district court developing the rich factual record necessary to resolve an RLUIPA claim.” *Id.* The Barbee court also noted that “Barbee’s ‘claims are dependent on the resolution of fact-intensive questions that simply cannot be decided without adequate proceedings and findings at the trial level.’” Ex. 4 at 19, citing *Murphy*, 139 S. Ct. at 1484 (Alito, dissenting). This too anticipated the Supreme Court’s holding that “the resolution of RLUIPA claims in the prisoner context requires a case-specific consideration of the particular circumstances and claims.” *Ramirez*, slip op. at 21.

30. This Court’s approach in *Barbee* was then validated by the Supreme Court’s holding in *Ramirez*. On March 24, 2022, the Supreme Court reversed the Fifth Circuit, concluding that Mr. Ramirez was likely to succeed on his claim that TDCJ’s “No Contact” and “No Speaking” policies are inconsistent with his rights under RLUIPA. *Ramirez*, No. 21-5592, slip op. at 22.

Ms. Lucio’s Request for Audible Prayer and Touching in the Execution Chamber and Her Deep Religious Faith.

31. Ms. Lucio is a devout Roman Catholic. She has expressed her desire, as an integral part of her beliefs as a Roman Catholic, to have her designated spiritual advisor, Deacon Ronald Lastovica, present with her in the execution chamber to pray aloud for her and to physically touch her to administer the last rites of the Anointing of the Sick and Viaticum.

32. In Roman Catholicism, the careful performance of these sacraments is essential to the process of preparing for death. *See* Joseph Delany, “Preparation for Death,” *The Catholic Encyclopedia*, Vol. 4, New York: Robert Appleton Company, <http://www.newadvent.org/cathen/04660c.htm>.

33. Ms. Lucio has expeditiously attempted to follow the TDCJ grievance procedure to exhaust her administrative remedies from virtually the date her execution was set. On January 25, 2022, only days after receiving an execution date, Ms. Lucio submitted her Step One Grievance, asserting her faith as a Roman Catholic and requesting to know whether her designated spiritual advisor, Ronald Lastovica, would be allowed to pray out loud and also lay his hands on her while in the execution chamber: “It is important to my religious practice that Deacon Ronald W. Lastovica pray over me during/before my execution takes place.” *See* Ex. 5, Step One Grievance Offender Form submitted by Melissa Lucio on Jan. 25, 2022.

34. That initial grievance was returned to Ms. Lucio the same day, with only a “no action” notation, without explanation as to why it was not resolved. *Id.*

35. Ms. Lucio then promptly re-submitted her Step One Grievance on January 31, 2022. Ex. 6, Step One Offender Grievance Form submitted by Melissa Lucio on Jan. 31, 2022. In that grievance, she again stated that she needed to know “whether my Spiritual Advisor will be allowed to be in the execution chamber with me, and pray aloud for me, and whether or not he will be allowed to lay his hands or touch me, to bless me in my final moments.” *Id.*

36. TDCJ replied to this grievance over three weeks later, on February 23, 2022, stating that “[a]t this time, the spiritual advisor is not allowed to touch the inmate or speak out loud once inside the execution chamber. No further action is warranted by this office.” *Id.*

37. Ms. Lucio then promptly appealed this decision by submitting her Step 2 Grievance on March 2, 2022. Ex. 7, Step 2 Grievance Form submitted by Melissa Lucio on Mar. 2, 2022. She reiterated her desire, as part of her Roman Catholic beliefs, to have her spiritual advisor pray for her and administer the last rites and sacraments.

38. In addition, on March 1, 2022, undersigned counsel e-mailed an inquiry to TDCJ General Counsel Kristen Worman and Ms. Amy Lee to inquire whether the current policies forbade Ms. Lucio's designated spiritual advisor from being able to pray aloud and touch her in the execution chamber and whether the restrictions imposed on Mr. Ramirez's spiritual advisor were still in effect. *See* Ex. 8, e-mailed letter from A. Richard Ellis, counsel for Ms. Lucio, to Kristen Worman, general counsel for TDCJ, and Amy Lee, project coordinator for the Office of General Counsel for TDCJ, Mar. 1, 2022. On March 2, 2022, Ms. Worman replied that "[y]our client must exhaust these claims through the normal grievance process. It is not sufficient for you to bring these claims to myself or Mr. Lumpkin outside of the normal grievance process." Ex. 9, e-mail from Kristen Worman, general counsel for TDCJ, to A. Richard Ellis, counsel for Ms. Lucio, Mar. 2, 2022.

39. On March 24, 2022, the day of the Supreme Court's decision in Ramirez, several news outlets relayed a statement from unnamed "Texas prison officials" stating, "We respect the court's decision [in *Ramirez v. Collier*] and will be making appropriate modifications to our practice to align with today's ruling." *See, e.g.,* Jolie McCullough, *U.S. Supreme Court tells Texas to let a condemned man's pastor touch him and pray aloud during execution*, The Texas Tribune, (Mar. 24, 2022), <https://www.texastribune.org/2022/03/24/supreme-court-john-ramirez/> (noting that "[s]ince the justices opted to hear Ramirez's case last September, one man has been executed in Texas, but

several other executions have been rescheduled or taken off the calendar while waiting for the court to resolve the religious rights question.”)

40. As of the date of this Complaint, however, the State has not revised its policy forbidding audible prayer and the laying-on of hands, nor has it revised its determination that it will not permit Ms. Lucio to have Deacon Lastovica audibly pray with and lay hands on her at her execution.

41. Ms. Lucio is a deeply spiritual person. She explains: “I am a Christian and practicing Roman Catholic...since I have been on death row, I have turned to God for support, direction, and guidance, and I have found great comfort in finding faith and the spiritual strength the Catholic faith has given me to deal with my situation.” Ex. 10, Declaration of Melissa E. Lucio. Ms. Lucio’s turn to spirituality began in 2014, when she was facing difficult times on death row and “[b]egan to think about how [she] wanted to live [her] life.” *Id.* As Ms. Lucio explains, “God reached out to me, and I realized I was being called. I got on my knees and asked God to accept me.” *Id.* Ms. Lucio this “began [her] walk with God and [her] practice of the Catholic faith.” *Id.*

42. Ms. Lucio’s faith pervades her daily life. She meets with her spiritual advisor, Deacon Lastovica, weekly on an individual basis, and since receiving an execution date, has met with him for an additional two hours every week. *Id.* Ms. Lucio reads the Bible every day on her own, and other death row inmates note that they “can sometimes hear her pray in her cell.” Ex. 11, Declaration of Erica Yvonne Sheppard.

43. Ms. Lucio writes that “[i]t is important for me to have my Spiritual Advisor, Deacon Ronnie, pray aloud for me in the execution chamber, because this is part of my Catholic faith and practice. We pray aloud and I want that support and consolation in my last moments. I also

want Deacon Ronnie to lay his hands on me during my last moments and have him anoint me with holy water or blessed oils.” Ex. 10, Declaration of Melissa E. Lucio.

44. Ms. Lucio has found—and built—community and connection through her faith. In describing her current religious practice, Ms. Lucio recounts: “In 2015, myself and other women on Death Row began Bible study groups amongst ourselves. We would read aloud passages and then discuss them as a group.” *Id.* She attends Catholic Mass every week, and she stresses the importance of the audible prayer component of the Mass to her devotions. *Id.* “Our Catholic Mass includes praying out loud, and what Catholics call, ‘passing the peace,’ where we shake hands and tell one another, ‘Peace be with you.’” *Id.*

45. As a result of her faith, Ms. Lucio has garnered strong support in her religious community. The Most Reverend Joe S. Vásquez of the Diocese of Austin writes “Melissa’s spiritual advisor, Deacon Ronnie Lastovica of the Diocese of Austin, is accompanying Melissa on her journey. He has seen how her heart is centered on Christ and how she has been helping bring others to the Lord.” Ex. 12, Statement in Support of Melissa Lucio by Bishop Joe S. Vásquez.

46. Ms. Lucio’s spiritual advisor, Deacon Lastovica, attests to the sincerity of Ms. Lucio’s strong faith. Ex. 13, Declaration of Ronald Wayne Lastovica, Deacon. Ms. Lucio requested classes on the Catholic faith and in November of 2015 she received the fundamental sacraments of Baptism, Communion and Confirmation. *Id.* She has met weekly with Deacon Lastovica “on matters of Spiritual life for the past seven years. Deacon Lastovica writes that “I have never had a conversation with Melissa that she has not trusted in His providence and care. Melissa has never failed to direct others to Christ in dealing with everyday life matters, especially her family.” *Id.*

47. Deacon Lastovica describes Ms. Lucio's faith as follows:

[a]s a Catholic Christian, Melissa has a deep love for the Rites of the Roman Catholic Church. Each week she serves as a Lector, reading aloud God's most Holy Word. As incarnational people, Melissa draws much strength in hearing the audible prayers of the Sacred Liturgy. The practice of praying aloud the Intercessory prayers in the community gives her great joy. The sign of peace during the Communion Rite weekly completes Melissa's need to be touched and reconciled to God and each other.

Id.

48. Given that religion has become such an important part of Ms. Lucio's life, it is unsurprising that her faith has also become an important part of her relationship with her children. Ms. Lucio has relied on her deep faith both to come to terms with her past mistakes, and also to minister to her own children and encourage them to lead lives of faith. In a letter written to Pope Francis, Ms. Lucio acknowledged her past mistakes and explained how faith has helped her face them:

Your Holiness, for many years, I've sat here feeling nothing but emptiness, and loss. So very hopeless and alone. I've made many mistakes in my life, and have carried a great deal of guilt for the choices I've made. A part of me felt like I didn't deserve to live.

My children are everything to me, but I also know that my past mistakes and wrong choices had caused all of my children a great deal of pain & hurt. I felt the weight of all that guilt bearing down on me, to the point where I felt no hope at all.

Ex. 14, Letter from Melissa Lucio to Pope Francis. Out of this guilt and despair, though Ms. Lucio did not feel she was worthy of God's love, she "begged for forgiveness, and for his mercy. For direction and for strength, I knew that there was no way I could do this on my own."

Id. Then Ms. Lucio explained, "the Lord sent someone into my life that would begin to show me the power of forgiveness and mercy...The power of God's grace for all of his children." *Id.* That

person was Deacon Lastovica, who “has not only shown [Ms. Lucio] the true love of Christ, but he has nurtured [her] sorrows, and shown [her] the way to [her] salvation.” *Id.*

49. Ms. Lucio’s spiritual turn is not only about her own salvation—indeed, she relies on her faith to strengthen her relationship with her children, and to encourage them to develop their own personal relationships with God. Ms. Lucio considers “[e]ach” of her children “a gift from God”—she “pray[s] for them constantly,” and while she knows “[m]any of them are still hurting because of the choices that [she] made,” Ms. Lucio “will never lose hope[] that one day [their] relationship will be restored through the power of the Lord.” *Id.* As Ms. Lucio wrote to Pope Francis, “[a]lthough the road has not always been easy, I have found strength in the Lord[] to reach out and begin ministering to my own children.” *Id.*

50. The fruits of Ms. Lucio’s spiritual efforts are clear. For example, her eldest son, John Vincent Lucio, attests to how Ms. Lucio’s turn to faith led him away from a path of crime. Ex. 15, Declaration of John Vincent Lucio. John recalls receiving a letter from his mother early on in her incarceration, telling John that God was “calling her name,” “speaking to her,” telling her to “come out and eat.” *Id.* John explains that his mother later realized that “God was not telling her to eat food, but to eat the bread of life, receive the word of God. That made a huge impression on [him.]” *Id.* John visits his mother about once a week now that she has an execution date, and “[e]very visit we set aside some time at the beginning to pray aloud. The first 30 minutes of our visits are devoted to this. She brings sermons to read aloud to me and we discuss them.” *Id.* John notes echoes of his mother’s interactions with him in her interactions with others: “Melissa has told me that she prays aloud with other inmates in the Mountain View death row. They pray together in a group for about an hour, reading Bible passages aloud and discussing them.” *Id.* When Ms. Lucio writes to John, “there is almost always a religious

reference in the letter. I know her beliefs are genuine, strong, and long-lasting. They are a source of great strength to her.” *Id.*

51. Ms. Lucio ministers to all of her children, and her faith is apparent in her communications with them. Deacon Lastovica writes that “[Ms. Lucio] has never failed to direct others to Christ in dealing with everyday life matters, especially her family.” Ex. 13, Declaration of Ronald Wayne Lastovica, Deacon. When Ms. Lucio exchanges letters with her son Bobby Alvarez, who was eight years old when his mother was sentenced to death, he says that “she is always talking about her faith and what she has done over the years to become a better person with the grace of God.” Ex. 16, Declaration of Bobby Alvarez. Bobby emphasizes that his mother “has become a very religious person,” that “she belongs to the Roman Catholic faith,” and “when [he] had problems she would always refer to God and tell [Bobby] to pray.” *Id.* He hopes that his mother will be able to observe her faith at the end of her life: “She has given her fate to God and I want her last moments to be peaceful praying out loud in harmony with a priest or bishop and find refuge in there. I hope he will hold her had [*sic*] and give her the last sacraments.” *Id.*

52. Ms. Lucio’s daughter, Melissa Lucio Jr., who was 18 at the time Ms. Lucio was arrested, also attests to her mother’s faith and religious orientation:

I noticed the last time that I visited her that she has great faith in God, it made me super happy because she is a changed person, she is a different soul. She wasn’t a believer when we were young and now she is. I think that her believing in God is helping her while she is in prison and I want her to have a priest by her side to comfort her and pray with her until the last second if she was to be executed.

Ex. 17, Declaration of Melissa Lucio (Jr.).

53. Ms. Lucio’s spirituality is well known among other family members. For example, Ms. Lucio’s sisters also attest to her strong religious faith. Diane Cerda, Ms. Lucio’s younger

sister, writes that “Melissa is very religious ... in her letters she tells me about her faith and how God talks to her. The day she is executed it will be very important for her to have audible prayer with the priest that will be standing next to her and to get the last sacraments from him.” Ex. 18, Declaration of Diane Cerda.

54. Sonya Valencia, also a younger sister of Ms. Lucio, writes:

Melissa has a strong faith in God. I know that she found God while being incarcerated and always writes to me about her faith. She meets with the deacon every week ... She is a completely changed person due to her faith in Him. I am told that the day of her execution she won't be allowed to have the priest pray out loud with her or touch her. Please this is an important part of her faith and she needs that audible last prayer if that time comes.

Ex. 19, Declaration of Sonya Valencia.

55. Ms. Lucio's niece, Vanessa Escamilla, is also well aware of her aunt's turn to religion since she has been on death row:

I have been writing my aunt for a while now and I was amazed to find out how religious she has become. Her faith in God is incredible. We come from a very religious family and belong to the Roman Catholic Church. It would be very important for her to have her spiritual advisor pray out loud next to her and hold her hands if she were to have an execution date.

Ex. 20, Declaration of Vanessa Escamilla.

56. Ms. Lucio's friends and fellow inmates on death row at the Mountain View Unit testify to her strong Roman Catholic faith and religious beliefs. These are people who have spent the most time with Ms. Lucio since her turn to religion. They explain that she “hold[s] strongly to her faith,” Ex. 21, Unsworn Declaration of Linda Anita Carty, noting that she “speaks openly and often about her love of God and her desire to serve God in everything she does,” Ex. 22, Declaration of Darlie Lynn Routier.

57. Darlie Routier has known Ms. Lucio for about ten years on death row, since 2012. *Id.* Because they both participate in the prison's daily work program, they have become close: "we work near each other, we take recreation together, and our cells are located close together." *Id.* Ms. Routier describes Ms. Lucio as a "devout Roman Catholic" who "speaks openly and often about her love of God and her desire to serve God in everything she does." *Id.* In 2018, Ms. Routier joined Ms. Lucio in attending Catholic Mass and Bible study classes. "Melissa had already attended those classes and those services for some time. Deacon Ronald "Ronnie" Lastovica leads those classes and services." *Id.* Ms. Routier knows that "Melissa attends Mass and Bible study sessions weekly, and that she also meets with Deacon Ronnie for spiritual guidance." *Id.* Ms. Routier states:

With Deacon Ronnie, we practice intimate rituals unique to the Catholic faith. We pray out loud holding hands. We "pass the Peace," which is when we shake each other's hands and tell each other, "Peace be with you." We take Holy Communion. When we take Holy Communion, we believe that, through touch and prayer, the body of Jesus Christ is imbued [*sic*] in the food and drink that we consume.

Id.

58. Another friend and fellow inmate, Erica Sheppard, also knows Ms. Lucio well from her participation in the Mountain View "Work Capable" program. Ex. 11, Declaration of Erica Yvonne Sheppard. Ms. Sheppard explains that the death row unit "has designated days for religious services that include church services like mass, but also bible study classes and one-on-one devotional time with volunteers from the community who come and lead these services." *Id.* Ms. Sheppard

knows for at least the past several years Melissa has attended Catholic service opportunities every week. That includes Monday Catholic services with Bible study and services with Deacon Ronnie. Melissa also attends weekly visits with Deacon Ronnie on Thursdays. Melissa attends Mass every Sunday.

Id.

59. Ms. Sheppard is a Muslim, but still attends Bible study services with Ms. Lucio, at which they “pray together, and everyone holds hands.” *Id.* “I know that Melissa has a prayer life. She prays regularly and although we currently don’t live in cells next to each other, I can sometimes hear her pray in her cell. For the last several years, I have observed Melissa read her Bible every day.” *Id.*

60. Linda Carty is another friend and death row inmate well aware of Ms. Lucio’s strong religious faith and spirituality. Ex. 21, Unsworn Declaration of Linda Anita Carty. Ms. Carty has known Ms. Lucio for fourteen years and “[d]uring this time, Melissa Lucio has been a devoted Catholic and [she has] observed her hold strongly to her faith.” *Id.* Ms. Carty knows that

Melissa Lucio generally attends church with me twice a week. Monday’s services are a mass and we receive the Eucharist. Thursday’s services include going to confession and the Eucharist. During church services we pray aloud and shake hands during the sign of peace.

Id.

61. Ms. Carty has “also seen Melissa attend the religious groups of volunteers who come to the facility and have seen her participate in Bible study. We discuss our faith together.” *Id.* In another example of how Ms. Lucio’s spirituality affects not just her own personal salvation, Ms. Carty writes that “Melissa has also shared with me her role in her son’s faith journey which brings tears to Melissa’s eyes. Over the years, she has shared her faith with her son.” *Id.*

62. Those outside Ms. Lucio’s family and prison community are also aware of her strong and abiding faith and spirituality. Sandra Jonas of Tucson, Arizona began corresponding with Ms. Lucio last year. Ex. 23, Declaration of Sandra L. Jonas. She has also visited Ms. Lucio at the Mountain View Unit twice. *Id.* Ms. Jonas states that Ms. Lucio has sent her prayer cards

and shared her religious beliefs; that Ms. Lucio is very religious and is devoted to her Catholic religion; that “Ms. Lucio has expressed to me that her relationship with God is extremely important to her; that she prays and trusts in God to protect her and trusts in God. *Id.* Ms. Jonas also writes:

Ms. Lucio believes in the necessity of the end-of-life ceremony performed by a Catholic priest. I have no doubt that, during the execution, Ms. Lucio will need to have her spiritual advisor present with her to pray and have an unrestricted ability to perform the end-of-life ceremony in accordance with the teachings of Catholicism. I have no doubt that Ms. Lucio’s devotion to her religion is genuine.

Id.

63. Another person who has knowledge of Ms. Lucio’s spiritual orientation is Rae Gaither, a registered nurse in Indiana, who has written frequently to Ms. Lucio, two to four times per month, for the past eight years. Ex. 24, Declaration of Rae Gaither. Ms. Gaither writes that Ms. Lucio’s “main worry heading toward execution is for the kids and grandkids,” and explains how, at Mountain View, Ms. Lucio “began in earnest to pray several times a day and work toward building better relationships with other death row inmates and relatives.” *Id.* Ms. Gaither “ha[s] witnessed her grow by leaps and bounds,” noting that “She shows compassion and love for others. She has even given me spiritual encouragement when I needed it the most.”

Id.

64. Lewis McCall Bowden, of San Marcos, Texas, is another person who knows about Ms. Lucio’s religious turn, as he has been visiting and writing her for over two years. Ex. 25, Declaration of Lewis McCall Bowden. Mr. Bowden relates:

In our conversations, Melissa has spoken to me of her faith and the journey through the teachings of the catholic church. She seems to have found a spiritual home there, and in my observations, it has given her comfort. I realize that

everyone takes a different path, but I am glad that Melissa has found a faith journey that continues to give her comfort in such dark times.

Id.

65. Shannon FitzPatrick of San Marcos, Texas, an ex-prosecutor, has also been visiting and corresponding with Ms. Lucio for over two years. Ex. 26, Declaration of Shannon FitzPatrick. Ms. FitzPatrick writes that “[a]s a former prosecutor I am appalled we have gotten to this—I see no justice here.” *Id.* Regarding Ms. Lucio’s faith, Ms. FitzPatrick writes:

Having spent many hours with Melissa having sometimes deep, sometimes irreverent discussions, I feel I have gotten to know her better than most. I know that she has found a faith in God that she never had the chance to express in her pain-filled life prior to her arrest. I have seen her talk to other death row inmates and try to persuade them that there is a better path, and it was clear to me that her faith as a Roman Catholic is real. Her savior Jesus Christ was also wrongfully executed and she has told me that she feels he is by her side through this terrible journey.

Id.

66. At bottom, Ms. Lucio’s deep faith is immediately obvious to all she meets. Sabrina Van Tassel, the director of a documentary on Ms. Lucio’s life, “*The State of Texas v. Melissa*,” came to know Ms. Lucio’s strong faith since they first met in 2017. Ms. Van Tassel explains:

Since the very first day I met her, I have known of Melissa’s deep faith in God. She is a devout Catholic. She found God in 2010 and was baptized again. The deacon and the spiritual advisor come to see her every week and they do a special mass for her. If she were to be executed it would be of most significant importance to have a priest pray vocally at her side and with her as this is a very important component of the Roman Catholic faith. I also believe it would be very important for Melissa to have her spiritual advisor give her consolation in the form of the laying on of hands and the anointing with holy water or administering the last sacrament, “the anointing of the sick,” with holy oils.

Ex. 27, Declaration of Sabrina Van Tassel.

67. Ms. Lucio’s turn toward religion and her requests to have her designated spiritual advisor Deacon Lastovica audibly pray with and physically touch her at the time of her

execution reflects a deep part of her identity. It would be profoundly unjust for a person who has undergone such a fundamental transformation, and who has brought the light of religion to others in her family and community even while incarcerated on death row, to be executed in a manner that disregards their religious beliefs and imposes a substantial burden on their religious exercise in their final moments of life.

CLAIMS FOR RELIEF

COUNT I **(Violation of Free Exercise Clause)**

68. Ms. Lucio re-alleges and incorporates by reference the allegations contained in the previous paragraphs of this Complaint.

69. The First Amendment also requires that “Congress shall make no law . . . prohibiting the free exercise of” religion. U.S. Const., amend. I.

70. TDCJ’s “No Speaking” and “No Contact” policies are not neutral or of general applicability; they “target[] religious conduct for distinctive treatment.” *Church of the Lukumi Babulu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). These policies are directed solely at religious practices, and are thus by definition not neutral.

71. Both the “No Speaking” and “No Contact” policies that TDCJ has adopted constitute a substantial burden on Ms. Lucio’s religious exercise that are not justified by any compelling government interest and are not the least restrictive means of furthering any such interest.

72. By forbidding spiritual advisors who are present in the execution chamber from audible prayer and from having physical contact with condemned persons as they are about to be

executed, TDCJ’s “No Speaking” and “No Contact” policies substantially burden the exercise of Ms. Lucio’s religious beliefs and violate her rights under the Free Exercise Clause of the First Amendment to the U.S. Constitution.

COUNT II

(Violation of RLUIPA)

73. Ms. Lucio re-alleges and incorporates by reference the allegations contained in the previous paragraphs of this Complaint.

74. Congress enacted RLUIPA “to provide very broad protection for religious liberty”—even greater protection than is available under the First Amendment.” *Holt v. Hobbs*, 574 U.S. 352, 356-57 (2015). RLUIPA provides that the government shall not “impose a substantial burden” on an inmate’s “religious exercise,” unless the government shows that imposing such a burden can withstand strict scrutiny, meaning the policy “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a).

75. Ms. Lucio’s request to have a designated spiritual advisor to audibly pray with and physically touch her at the time of her execution constitutes “religious exercise” under RLUIPA.

76. Both the “No Speaking” and “No Contact” policies that TDCJ has adopted constitute a substantial burden on Ms. Lucio’s religious exercise that are not justified by any compelling government interest and are not the least restrictive means of furthering any such interest.

77. By forbidding spiritual advisors who are present in the execution chamber from audible prayer and from having physical contact with condemned persons as they are about to be executed, TDCJ’s “No Speaking” and “No Contact” policies substantially burden the exercise of Ms. Lucio’s religious beliefs and violate her rights under RLUIPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court provide relief as follows:

78. A declaratory judgment that TDCJ's "No Speaking" and "No Contact" policies violate Ms. Lucio's rights under the Free Exercise Clause of the First Amendment to the U.S. Constitution;

79. A declaratory judgment that TDCJ's "No Speaking" and "No Contact" policies violate Ms. Lucio's rights under RLUIPA;

80. A preliminary and permanent injunction prohibiting Defendants from executing Ms. Lucio until they allow her spiritual advisor to be present with her in the chamber, to pray audibly with her, and to have physical contact with her in order to confer a blessing upon her;

81. Award Ms. Lucio her attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

82. Grant such other relief as this Court deems just and proper.

DATED: March 28, 2022.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC SERVICE

I, A. Richard Ellis, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court for the United States District Court for the Southern District of Texas, using the electronic case filing system of the Court on March 28, 2022. I have also served Defendants' counsel of record, Ms. Jennifer Wren of the Office of the Attorney General, State of Texas, via e-mail at jennifer.wren@oag.texas.gov; Ms. Leah O'Leary of the Office of the Attorney General, State of Texas, via e-mail at leah.oleary@oag.texas.gov; and Ms. Kristen Worman, attorney for the Texas Department of Criminal Justice, via e-mail at kristen.worman@tdcj.texas.gov.

/s/ A. Richard Ellis

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