No. 08-56423

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SOUHAIR KHATIB,

Plaintiff-Appellant

v.

COUNTY OF ORANGE, a political subdivision; MICHAEL CARONA, an individual; BRIAN COISSART, an individual,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING APPELLANT ON REHEARING EN BANC AND URGING REVERSAL

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STATEMENT OF THE ISSUE

The United States will address the following issue:

Whether the courthouse holding facility at Orange County's Santa Ana Courthouse is an "institution" for purposes of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc *et seq*.

IDENTITY AND INTEREST OF THE *AMICUS CURIAE* AND THE SOURCE OF ITS AUTHORITY TO FILE THIS BRIEF

The United States files this brief pursuant to Federal Rule of Appellate Procedure 29(a) and Ninth Circuit Rule 29-2(a).

This case concerns the coverage of RLUIPA and the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 *et seq*. RLUIPA prohibits state and local governmental entities from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in [42 U.S.C. 1997], even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person * * * (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). Section 1997, which is part of CRIPA, defines "institution" to mean, among other things, "any [state or local] facility or institution" that is "a pretrial detention facility" or "a jail, prison, or other correctional facility." 42 U.S.C. 1997(1). The Attorney General has enforcement authority under both RLUIPA and CRIPA, 42 U.S.C. 2000cc-2(f); 42 U.S.C. 1997a, and thus has an interest in how the two statutes are interpreted.

The United States has filed *amicus* briefs addressing the interpretation of RLUIPA in a number of other appeals, including *Centro Familiar Cristiano Buenas Nuevas* v. *City of Yuma*, No. 09-15422 (9th Cir.) (decision pending); *Nelson* v. *Miller*, 570 F.3d 868 (7th Cir. 2009) (RLUIPA in prison context) *Lighthouse Inst. for Evangelism, Inc*. v. *City of Long Branch*, 510 F.3d 253 (3d Cir.), cert. denied, 128 S. Ct. 2503 (2007); *Digrugilliers* v. *Consolidated City of*

Indianapolis, 506 F.3d 612 (7th Cir. 2007); and *Midrash Sephardi, Inc.* v. *Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), cert. denied, 543 U.S. 1146 (2005).

STATEMENT OF THE CASE

1. The Orange County Sheriff's Department operates a "holding facility" in the County's main courthouse in Santa Ana, California (courthouse holding facility). ER 95, 98[1] (Report of the 2006-2007 Orange County Grand Jury, "The State of Orange County Jails and Programs" (2007)).[2] This courthouse holding facility is "a secure detention facility located within a court building used for the confinement of persons solely for the purpose of a court appearance for a period not exceeding 12 hours." ER 95. Each day "approximately 600 inmates" are brought from the "county's five justice centers by secure bus or van" to the courthouse holding facility "for judicial appointments." ER 98. When the inmates arrive, they are "segregated by race, gang affiliation, criminal level of intensity, and other characteristics to prevent trouble." ER 98. Twenty sheriff's deputies staff the courthouse holding facility each day. ER 98; *Khatib* v. *County of Orange*,

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[1] "ER __ " refers to Appellant's Excerpts of Record filed with this Court.

[2] The district court, the panel, and the parties used this report for background information. State law mandates that the Orange County Grand Jury annually examine the County's correctional facilities and programs and prepare a report. See Cal. Penal Code 919(b) (1997). The 2007 report can be found at ER 95-112.

603 F.3d 713, 718 (9th Cir.) (Kozinski, C.J., dissenting), vacated on grant of reh'g en banc, __F.3d__, 2010 WL 3611503 (9th Cir. Sept. 13, 2010).

2. Appellant Souhair Khatib is a Muslim woman whose religious faith dictates that she wear a headscarf known as a hijab. *Khatib* v. *County of Orange*, No. 07-1012, 2008 WL 822562, at *1 (C.D. Cal. Mar. 26, 2008). It is a serious violation of Khatib's faith to be seen in public without her hijab, especially by males who are not members of her family. *Ibid.* Khatib considers being seen without her hijab a "deeply humiliating and defiling experience." *Ibid.*

In June 2006, Khatib and her husband pleaded guilty to a misdemeanor violation of California welfare law. *Khatib*, 2008 WL 822562, at *1. They were sentenced to three years' probation and 30 days of community service to be completed by November 3, 2006. *Ibid*.

On November 1, 2006, Khatib and her husband appeared in Orange County Superior Court to seek an extension of time to complete their community service requirement. *Khatib*, 2008 WL 822562, at *1. The court revoked their probation and ordered Khatib and her husband to be taken into custody immediately. Khatib was taken to the courthouse holding facility. *Ibid*.

At the facility's booking counter, Khatib was ordered to remove her hijab. Khatib explained numerous times that her religious beliefs prohibited her from removing her hijab. *Khatib*, 2008 WL 822562, at *1; *Khatib*, 603 F.3d at 715; ER

207. Eventually, after being told that male officers would be required to remove her hijab, Khatib relented and removed the headscarf. *Khatib*, 2008 WL 822562, at *1. Officers then locked her in a women's holding cell. *Ibid.* While Khatib was in the holding cell, several male officers and inmates saw her without her headscarf. *Ibid*.; ER 208-209.

Khatib was removed from the cell in the afternoon and returned to the courtroom for another hearing. *Khatib*, 2008 WL 822562, at *2; ER 209. At the hearing, the superior court ordered Khatib to complete her 30 days of community service by the end of January 2007 and gave Khatib one-day "[c]redit for time served" in the "Orange County Jail" for her day spent in the courthouse holding facility. ER 93; *Khatib*, 2008 WL 822562, at *2.

After the hearing, Khatib was returned to the courthouse holding facility, where she was again prohibited from wearing the hijab. *Khatib*, 2008 WL 822562, at *2. She remained there until she was released late that afternoon. *Ibid*.

3. Khatib filed a complaint in the United States District Court for the Central District of California alleging, among other things, that Orange County and its officials violated RLUIPA by requiring her to remove her hijab during her detention on November 1, 2006. The district court dismissed Khatib's claim, holding that the courthouse holding facility was not an "institution" for purposes of RLUIPA. Because of the "temporary and transitory" nature of a prisoner's stay in

a courthouse holding facility, the district court concluded that Congress had not "intended * * * RLUIPA to apply to courthouse facilities." *Khatib*, 2008 WL 822562, at *8.

4. A divided panel of this Court affirmed, concluding that the courthouse holding facility was neither a "pretrial detention facility" nor a "jail, prison, or other correctional facility," and hence was not an "institution" covered by RLUIPA. *Khatib*, 603 F.3d at 715-717. The panel majority stated that the "term 'pretrial detention facility' is not ambiguous; it is a facility where people ordered held in custody pending future court proceedings are sent to reside and to which they are confined in the interim." *Id*. at 716. By contrast, according to the majority, a "courthouse holding cell is a place where prisoners are temporarily held *during* proceedings." *Ibid*. In concluding that a courthouse holding facility was not a jail, prison or other correctional facility, the panel majority stated that a "courthouse holding cell is designed to support a courtroom during courthouse daytime hours" and "is not a place where persons in custody either reside or are institutionalized." *Ibid*. In addition, the majority asserted that the legislative history demonstrated that RLUIPA and CRIPA were designed to cover *residents* of facilities, which Khatib decidedly was not. *Id.* at 717.

Another factor that the panel majority found significant was the interplay between RLUIPA and the exhaustion requirement of the Prison Litigation Reform

Act (PLRA), codified in relevant part at 42 U.S.C. 1997e. Relying on Senator Edward Kennedy's floor statement that the PLRA would "limit frivolous prisoner litigation" under RLUIPA, *Khatib*, 603 F.3d at 717 (quoting 146 Cong. Rec. S 6689 (daily ed. July 13, 2000)), the panel majority suggested that Congress intended the PLRA's exhaustion requirements to apply to all RLUIPA claims brought by prisoners and detainees. *Ibid.* According to the panel majority, "[f]rivolous prisoner litigation would be a real threat if RLUIPA's protections were applied to courthouse holding facilities, because stays at those facilities are never longer than twelve hours and so officials would not be afforded the time to address grievances internally prior to the initiation of litigation." *Ibid*. Thus, the panel majority concluded, Congress's decision to apply the PLRA to RLUIPA claims indicates that "Congress did not intend that the phrase 'pretrial detention facility' apply to courthouse holding facilities." *Ibid*.

5. Chief Judge Kozinski dissented. He argued that the Orange County courthouse holding facility met RLUIPA's definition of "institution." *Khatib*, 603 F.3d at 718 (Kozinski, C.J., dissenting). He reasoned that "a facility used for holding prisoners prior to trial is a pretrial detention facility," and that "Khatib was held in a facility where prisoners are routinely detained awaiting trial and other court appearances." *Ibid*. "She was therefore held in a facility covered by RLUIPA and is entitled to its protections," according to Chief Judge Kozinski.

Ibid. He noted that, in defining the term "institution," Congress had "divided the universe of institutions holding adults caught up in the criminal justice system into two parts: those whose inmates are incarcerated after they've been found guilty; and those whose inmates are incarcerated while awaiting an adjudication of guilt." *Id*. at 719. He stated that "Congress chose to define facilities in terms of the kinds of inmate they would hold rather than in terms of their physical characteristics such as whether they have beds or bars on the windows." *Ibid*. Chief Judge Kozinski also rejected the majority's suggestion that the term "pretrial detention facility" included only those facilities in which persons resided. *Id.* at 720. If that were the case, he argued, Congress would have had no "point in adding 'or confined to'" to RLUIPA's language. *Ibid.*

SUMMARY OF ARGUMENT

This Court should reverse the district court's decision and remand for further proceedings.

The courthouse holding facility at Orange County's Santa Ana Courthouse is an "institution" under RLUIPA and CRIPA. RLUIPA applies to persons "residing in or confined to an institution, as defined in [CRIPA]." 42 U.S.C. 2000cc-1(a). Under CRIPA, an institution is, among other things, a "jail" or a "pretrial detention facility" operated by a state or local government. 42 U.S.C. 1997(1)(B)(ii) & (iii). The ordinary, common meaning of "jail" is a facility or place used to confine

persons being held in lawful custody. In ordinary usage, "pretrial detention" simply means the holding of a defendant in custody before trial. The courthouse holding facility in which Khatib was held easily falls within the ordinary, common meanings of both "jail" and "pretrial detention facility." It is, therefore, an "institution" for purposes of RLUIPA.

CRIPA's legislative history confirms this reading of the statutory text. The legislative history shows that Congress intended the term "institution" to have a broad and expansive meaning that easily encompasses the courthouse holding facility at issue in this case.

The various counterarguments raised by the appellees and the panel majority are unpersuasive. For example, the panel majority reasoned that the exhaustion requirement of the PLRA indicated that Congress intended RLUIPA to cover only those facilities in which detainees are housed for a relatively lengthy period of time. In fact, the PLRA's exhaustion requirement does not undermine the conclusion that the courthouse holding facility is an "institution" under RLUIPA and CRIPA. The exhaustion requirement applies only to those imprisoned or incarcerated at the time they file their claims. Those who are not incarcerated at the time of their claims need not exhaust an institution's administrative grievance procedures before filing suit under RLUIPA. Therefore, the PLRA does not justify

reading into RLUIPA or CRIPA a limitation that is absent from the plain language of those two statutes.

Further, contrary to the suggestions of appellees and the panel majority, RLUIPA does not limit an "institution" to a place where a person resides or is held for an indefinite or relatively lengthy period of time. On its face, RLUIPA covers persons "residing in *or confined to* an institution." 42 U.S.C. 2000cc-1(a) (emphasis added). If Congress had intended RLUIPA to apply only to facilities in which individuals reside, it would not have included the phrase "confined to" in the statute. Moreover, the statute does not require a person to be confined to a facility indefinitely or for any particular length of time. Clearly, Khatib was confined to the courthouse holding facility on November 1, 2006.

ARGUMENT

THE SANTA ANA COURTHOUSE HOLDING FACILITY IS AN "INSTITUTION" FOR PURPOSES OF RLUIPA

A. The District Court's Decision Conflicts With The Plain Language Of RLUIPA And CRIPA

Orange County's courthouse holding facility falls within the ordinary, common meaning of the terms "jail" and "pretrial detention facility." Thus, it is an "institution" for purposes of RLUIPA (and hence also CRIPA, whose definition of "institution" is incorporated into RLUIPA).

"Statutory interpretation begins with the plain language of the statute. If the text of the statute is clear, [the] court looks no further in determining the statute's meaning." *K & N Eng'g, Inc.* v. *Bulat*, 510 F.3d 1079, 1081 (9th Cir. 2007) (citations and internal quotation marks omitted). Departure from the plain language is only justified where that language leads to "absurd or glaringly unjust" results. *Cumbie* v. *Woody Woo, Inc.*, 596 F.3d 577, 582 (9th Cir. 2010). "When a statute does not define a term, a court should construe that term in accordance with its ordinary, contemporary, common meaning. To determine the plain meaning of a term undefined by a statute, resort to a dictionary is permissible." *Cleveland* v. *City of Los Angeles*, 420 F.3d 981, 989 (9th Cir. 2005) (citations and internal quotation marks omitted), cert. denied, 546 U.S. 1176 (2006).

RLUIPA covers persons "residing in or confined to an institution, as defined in [42 U.S.C. 1997]." 42 U.S.C. 2000cc-1(a). Section 1997, which is part of CRIPA, defines "institution" to include, among other things, a "jail" or "pretrial detention facility" operated by a state or local government. 42 U.S.C. 1997(1)(B)(ii) & (iii). The courthouse holding facility in which Khatib was detained is a "jail" or "pretrial detention facility" under the ordinary and common usage of those terms.

A "jail" is a "building for the confinement of persons held in lawful custody (as for minor offenses or some future judicial proceeding)." *Webster's Third New*

International Dictionary, Unabridged 1208 (1993); see also *Black's Law Dictionary* 910 (9th ed. 2009) ("A local government's detention center where persons *awaiting* trial or those convicted of misdemeanors are *confined*") (emphasis added). Common synonyms for jail include "holding cell" and "lockup." *Ibid*.; see also *Webster's, supra*, at 1208 (describing jail as "lockup"). A "lockup" is defined as a "jail," especially "a local jail where persons are detained prior to [a] court hearing." *Id.* at 1328.

Orange County's courthouse holding facility qualifies as a jail because it is a place where persons being held in lawful custody are confined or detained *before* a court hearing. Additionally, the courthouse holding facility consists of "holding cell[s]," *Khatib* v. *County of Orange*, 603 F.3d 713, 716 (9th Cir.), vacated on grant of reh'g en banc, __F.3d__, 2010 WL 3611503 (9th Cir. Sept. 13, 2010), a synonym for "jail."

"Pretrial detention" is the "holding of a defendant before trial on criminal charges." *Black's, supra*, at 514. "Detention" is the act of "holding in custody," or "a period of temporary custody prior to disposition by a court." *Webster's, supra*, at 616; see also *Black's, supra*, at 514 ("The act or fact of holding a person in custody; confinement or compulsory delay."). There can be no dispute that persons held in the Santa Ana courthouse holding facility are in detention. Among

these detainees are persons confined "solely for the purpose of a court appearance," ER 95, which necessarily includes those awaiting trial.

Thus, the courthouse holding facility is a "pretrial detention facility" under the common, ordinary meaning of that term. It is not disputed that pretrial detainees are among those held in the facility. That Khatib herself was not a pretrial detainee is of no import. The question is whether Khatib was confined to a facility that meets the definition of "jail" or "pretrial detention facility." She was.

B. CRIPA's Legislative History Supports The Conclusion That The Courthouse Holding Facility Is An "Institution"

RLUIPA incorporates, by reference, CRIPA's definition of the term "institution." CRIPA's legislative history confirms that Congress intended "institution" to have a broad meaning. The Conference Report on CRIPA described "pretrial detention facility" as a "generic term * * * intended to cover *any* institution or facility which confines detainees who are awaiting or *participating in criminal trials*." H.R. Rep. No. 897, 96th Cong., 2d Sess. 10 (1980) (Conf. Rep.) (emphasis added); accord H.R. Rep. No. 80, 96th Cong., 1st Sess. 18 (1979). Likewise, in the same report, the Conference Committee stated that it had chosen to use the term "jail or prison or other correctional facility" to include "those institutions in which persons are wholly or partially confined or

housed as part of a criminal sanction or *process*." H.R. Rep. No. 897, *supra*, at 10 (emphasis added); accord H.R. Rep. No. 80, *supra*, at 18.

The courthouse holding facility easily falls within these definitions: It is a facility for confining detainees who are participating in criminal trials, as well as a facility where persons are confined as part of a criminal process. Thus, CRIPA's legislative history supports the conclusion that the courthouse holding facility is an "institution" as defined by CRIPA and incorporated into RLUIPA.

C. Counterarguments Raised By The Panel Majority And Appellees Are Unpersuasive

1. The panel majority based its holding, in part, on an assumption that the PLRA's administrative exhaustion requirements apply to all RLUIPA claims involving challenges to conditions in detention facilities. See *Khatib*, 603 F.3d at 717.[3] Reasoning that individuals would never be detained in courthouse holding facilities long enough to pursue RLUIPA claims through those facilities' internal grievance procedures, the majority concluded that Congress did not intend RLUIPA to apply to such facilities.

But a significant class of prisoner cases – including RLUIPA cases – already is exempt from the PLRA's exhaustion requirements. These requirements apply

[3] The panel majority stated that RLUIPA incorporates the PLRA's definition of institution. *Khatib*, 603 F.3d at 715. In fact, RLUIPA incorporates CRIPA's definition of institution. See pp. 2, 10-11, *supra*.

only to federal claims brought by prisoners who are incarcerated *at the time* they file their claims. The PLRA provides that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. 1983] or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a). Thus, the PLRA's exhaustion requirements do not apply to federal claims brought by *former* prisoners or detainees. See, *e.g.*, *Page* v. *Torrey*, 201 F.3d 1136, 1140 (9th Cir. 2000) (holding that PLRA's exhaustion requirement did not apply to former prisoner who filed action after release); *Norton* v. *City of Marietta*, 432 F.3d 1145, 1150 (10th Cir. 2005) (holding that "it is the plaintiff's status at the time he files suit that determines whether § 1997e(a)'s exhaustion provision applies"); *Greig* v. *Goord*, 169 F.3d 165, 167 (2d Cir. 1999) (same). Even if RLUIPA did *not* apply to lockups, its coverage would still not be congruent with the coverage of the PLRA's exhaustion requirements. The PLRA thus does not undermine the conclusion that RLUIPA applies to courthouse holding facilities.

2. Appellees argue that RLUIPA's definition of institution is limited to "places where a person may be made to reside, or similarly to be held for materially significant and indefinite periods of time." Appellees' Br. 12;[4] see also

[4] "Appellees' Br. __" refers to the Appellees' Answering Brief, which was filed with this Court on April 13, 2009.

Appellees' Br. 18. The panel majority similarly suggested that an institution could only be a place in which a person resided or remained for a relatively lengthy period of time. See *Khatib*, 603 F.3d at 716 ("A courthouse holding cell * * * is not a place where persons in custody either reside or are institutionalized."); *ibid*. ("pretrial detention facility" is "a facility where people ordered held in custody pending future court proceedings are sent to reside and to which they are confined in the interim"); *id*. at 717 ("No one can persuasively argue that a person in a courthouse holding cell is a resident of that facility. We find nothing in the legislative history to suggest otherwise, or that this law was intended to cover persons temporarily in transitional facilities.").

But this interpretation of RLUIPA cannot be squared with its plain language. RLUIPA covers persons "residing in *or confined to* an institution." 42 U.S.C. 2000cc-1(a) (emphasis added). Interpreting RLUIPA to include a residency requirement effectively reads "confined to" out of the statute and violates "a fundamental canon of statutory construction that a statute should not be construed so as to render any of its provisions mere surplusage." *United States* v. *Wenner*, 351 F.3d 969, 975 (9th Cir. 2003). As Chief Judge Kozinski correctly recognized, "[i]f Congress had meant to include only institutions with beds, there would have been no point in adding 'or confined to' following 'residing in.'" *Khatib*, 603 F.3d at 720 (Kozinski, C.J., dissenting). Nor does the statute say that it only protects

persons who are confined to a facility indefinitely or for a relatively lengthy period. Interpreting RLUIPA to include such a requirement would impose a limitation that does not appear in the plain language of the statute.

The panel majority noted, however, that the statute covers persons "confined to an institution," and reasoned that, although Khatib may have been "confined *in* a holding cell," she was "not confined *to* it." *Khatib*, 603 F.3d at 716. The panel majority suggested that the latter phrase denotes long-term holding or residency, while the former means a more temporary detention.

In fact, Khatib was "confined to" the courthouse holding facility under the ordinary, common meaning of that term. "Confine" means "to hold within bounds" or "to keep to a certain place or to a limited area." *Webster's*, *supra*, at 476. Sheriff's deputies held Khatib within bounds and kept her in a certain place or to a limited area for much of November 1, 2006. She could not leave the cell unless the deputies on duty released her.

Nor is there any relevant difference between being "confined to" or "confined in" a holding facility. Indeed, Congress used the terms interchangeably in the portion of the PLRA that amended CRIPA. Compare 42 U.S.C. 1997e(a) ("confined in any jail, prison, or other correctional facility") with 42 U.S.C. 1997e(d) ("confined to any jail, prison, or other correctional facility"). And this Court has used the terms interchangeably in another context. See *Gomez-Lopez* v.

Ashcroft, 393 F.3d 882, 885 (9th Cir. 2005) (citing *Rivera-Zurita* v. *INS*, 946 F.2d 118, 121 nn. 3-4 (10th Cir. 1991), for proposition "that the petitioner's placement in the custody of the county sheriff, as well as his thirty-day *confinement in* jail, counted as *confinement to* a penal institution") (emphasis added).

Even if the term "confined to" were ambiguous, that ambiguity should be resolved in Khatib's favor. RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." 42 U.S.C. 2000cc-3(g).[5] A broad reading of the statutory language strongly supports the conclusion that Khatib was "confined to" the courthouse holding facility for much of the day on November 1, 2006.

3. Finally, appellees argue that Congress's use of the word "institutionalized" in the titles of RLUIPA and CRIPA supports the panel majority's narrow reading of the term "institution." Appellees' Answer to Pet. For

[5] The United States relies on Section 2000cc-3(g) for the limited purpose of interpreting the term "confined to," which appears in RLUIPA and is not defined by reference to CRIPA or any other statute. RLUIPA's rule of construction cannot be used to interpret "institution" in RLUIPA more expansively than the same term in CRIPA, which contains no provision comparable to Section 2000cc-3(g). The plain language of RLUIPA mandates that the term "institution" have the same meaning in both statutes.

Reh'g. 1-2, 5;[6] see also *Khatib*, 603 F.3d at 716 (panel majority's statement that the courthouse holding facility "is not a place where persons in custody * * * are institutionalized"). Appellees' reasoning is flawed. "Institutionalize" means to "place (a person) in an institution." *Black's*, *supra*, at 869. Thus, an "institutionalized" person is simply one who has been placed in an "institution." The word "institutionalized" does not shed light on what an "institution" is and certainly does not override the broad definition of "institution" that Congress adopted in CRIPA and incorporated into RLUIPA.

At any rate, titles do not trump clear statutory language and the statutory language is clear here. See *Pennsylvania Dep't of Corrs.* v. *Yeskey*, 524 U.S. 206, 212 (1998) ("[T]he title of a statute . . . cannot limit the plain meaning of the text. For interpretive purposes, [it is] of use only when [it] shed[s] light on some ambiguous word or phrase.") (citation and internal quotation marks omitted). Accordingly, the use of the word "institutionalized" in the titles of the statutes does not negate the plain meaning of RLUIPA's and CRIPA's text.

[6] "Appellees' Answer to Pet. for Reh'g __" refers to the Appellees' Answer to Petition for Rehearing and Rehearing En Banc, which was filed with this Court on June 10, 2010.

CONCLUSION

The Court should reverse the district court's ruling that Orange County's courthouse holding facility is not an "institution" for purposes of RLUIPA and should remand for further proceedings consistent with this Court's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief does not exceed the type-volume limitation imposed by Federal Rules of Appellate Procedure 32(a)(7)(B) and 29(d) and Ninth Circuit Rule 29-2(c)(3). The brief was prepared using Microsoft Word 2007 and contains 4,364 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

s/ Conor B. Dugan
CONOR B. DUGAN
Attorney

Dated: October 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2010, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case will be served by the appellate CM/ECF system.

s/ Conor B. Dugan
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