25-3047

United States Court of Appeals for the Second Circuit

MARISOL ARROYO-CASTRO,

Plaintiff-Appellant,

v.

ANTHONY GASPER, in his individual and official capacity;
MARYELLEN MANNING, in her individual and official capacity;
DARIO SOTO, in his individual and official capacity;
ANDREW MAZZEI, in his individual and official capacity,

Defendants-Appellees.

On Appeal from the United States District Court
for The District of Connecticut
No. 3:25-cv-00153

BRIEF OF THE JEWISH COALITION FOR RELIGIOUS LIBERTY AND THE COALITION FOR JEWISH VALUES AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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CORPORATE-DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29, the Jewish Coalition for Religious Liberty and the Coalition for Jewish Values state that they do not have parent corporations and that no publicly held corporations own any part of them.

Dated: March 25, 2026

By: /s/ *Allyson N. Ho*
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INTEREST OF *AMICI CURIAE*[1]

The Jewish Coalition for Religious Liberty is a non-denominational organization of Jewish communal and lay leaders. JCRL aims to foster cooperation between Jewish and other faith communities in an American public square in which all are free to flourish. JCRL works to defend religious liberty by, among other things, filing *amicus curiae* briefs in key legal cases.

The Coalition for Jewish Values is the largest rabbinic public-policy organization in the United States, representing over 2,500 traditional Orthodox rabbis. CJV promotes religious liberty and classical Jewish principles in American public policy through education, mobilization, and advocacy. Like JCRL, CJV files *amicus curiae* briefs in support of religious institutions and individuals.

JCRL and CJV file this brief in support of Marisol Arroyo-Castro to offer the perspective of non-Catholics whose religious exercise is often outwardly visible. The district court's reasoning undermines the right not only of Castro but also of Jews and other non-Catholic Americans to enter the public square without having to conceal their religious identities. An opinion adopting the reasoning below would disproportionately burden religious minorities—like JCRL's and CJV's members—whose faith is expressed through visible symbols and outward practices.

[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel contributed money to fund preparing or submitting this brief.

SUMMARY OF THE ARGUMENT

In a recent landmark case, the Supreme Court firmly put to rest the "mistaken view" that public-school administrators have "a duty to ferret out and suppress religious observances" even as they allow "comparable secular speech." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543–44 (2022). That holding resolves this case and requires reversal. Just like the administrators in that case did to Coach Kennedy, the administrators here impermissibly punished Marisol Arroyo-Castro for engaging in "quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment." *Id.* at 543. So Castro is substantially likely to prevail on the merits of her First Amendment claims.

The district court reached the contrary conclusion, relying on the administrators' concerns about avoiding an Establishment Clause violation. But in blunt terms, the Supreme Court has already rejected that justification—"in no world may a government entity's concerns about phantom constitutional violations justify actual violations of an individual's First Amendment rights." *Kennedy*, 597 U.S. at 543. So the outcome of this case is determined by *Kennedy*.

An attack on one person's religious liberty is an attack on everyone's religious liberty. *Amici* respectfully submit this brief to underscore that Castro's desire to publicly exercise her faith and express her religious identity is one shared across the religious spectrum—including by observant Jews. For many Jews, that desire has

become even more fervent in the aftermath of the October 7, 2023, terror attacks in Israel. But regrettably, publicly identifying as Jewish carries risk. Government should be in the business of *protecting* the right of individuals to live out their faith in the public square—not *suppressing* it. Our First Freedom demands no less—and Castro is entitled to the preliminary injunction she seeks.

ARGUMENT

I. Preliminary injunctive relief is vital to protecting free-exercise rights.

A preliminary injunction is warranted when it serves the public interest. *Mid Vt. Christian Sch. v. Saunders*, 151 F.4th 86, 92 (2d Cir. 2025). And preventing constitutional violations always serves the public interest. *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 637 (2d Cir. 2020). The Free Exercise Clause protects the right of all Americans, including public-school teachers like Castro, not only "to harbor religious beliefs inwardly and secretly" but also "to live out their faiths in daily life." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022).

The district court abused its discretion in not affording Castro preliminary injunctive relief because the public interest in enforcing constitutional rights demands it. At stake are the rights not just of one teacher, but of all teachers—including Jewish teachers, at a particularly sensitive historical moment.

A. Visible, religiously motivated conduct is constitutionally protected.

The decision below is uniquely threatening to Jewish teachers. Because every aspect of an observant Jew's life is governed by the Torah's commandments, the

notion of leaving religion at home or in the synagogue is entirely alien to traditional Judaism. Even when an action that's motivated by—and reflective of—a Jew's faith isn't commanded by the religion, it can still carry deep religious significance to the individual. In addition to saying certain blessings and wearing yarmulkes and tzitzit, Jewish teachers may engage in religiously motivated activity and expression as varied as wearing a Star of David necklace or a lapel pin depicting the American and Israeli flags, placing a menorah on a desk or a mezuzah on a doorframe, or pinning to the wall a small Hebrew prayer or a diagram of the Holy Temple.

These religiously motivated acts easily come within the Free Exercise Clause's ambit even though few Jews would see them as religiously compelled. As then-Judge Sotomayor explained, "confin[ing] the protection of the First Amendment to only those religious practices that are mandatory would necessarily lead [this Court] down the unnavigable road of attempting to resolve intra-faith disputes over religious law and doctrine." *Ford v. McGinnis*, 352 F.3d 582, 593 (2d Cir. 2003). So this Court doesn't require a free-exercise claimant like Castro to show that she has "been prevented from doing something [her] religion says [she] must." *Id.* When it comes to religious exercise, religiously *motivated* conduct is protected just the same as religiously *compelled* conduct.

But under the decision below, public employers may—if not *must*—prohibit teachers from engaging in visible religious exercise. The district court embraced the

administrators' view that Castro's inclusion of a crucifix among other personal items on the wall close to her desk was "not legally permissible" because it "sen[t] the message that the school district (which is an arm of the government) [was] promoting [Catholicism]." *See* SPA49–50. But that's the same logic the Supreme Court rejected in no uncertain terms in *Kennedy*. 597 U.S. at 533–35.

If visibility to students were truly the relevant constitutional concern, then items *worn* by teachers would pose a "risk of Establishment Clause liability" similar to that purportedly posed by items teachers *display*. SPA37–38. Items like yarmulkes and crucifix necklaces that are worn by teachers—including "during instructional time," SPA2, 6–7, 21, 27, 34, 42, 51—are often more visible to students than personal items on or near teachers' desks. Yet the Supreme Court in *Kennedy* made clear that administrators can't punish a teacher for "wearing a yarmulke to school." 597 U.S. at 540. If the Constitution permits teachers to wear visible religious symbols in public-school classrooms—and we know from *Kennedy* that it does—it cannot be the case that the Constitution forbids them from keeping personal religious items in the same rooms.

B. Jews are all too familiar with being pressured to hide their religious identity in public.

Even though America has long been a safe, welcoming, and greatly loved home for Jewish people, experiencing disapproval of public religious exercise isn't an abstract concern for many Jews. It's all too real, as recent events regrettably

confirm. During the 2024–25 school year, for example, "[a]ntisemitic incidents on college campuses reached their highest levels ever."[2] That record high—totaling over 2,000 incidents—marked a nearly ten-fold increase from two years earlier.[3]

The rise of antisemitism hasn't been confined to college campuses, either. In Connecticut, for example, lawmakers recently noted that Jewish children are experiencing "a significant increase" in antisemitism in public schools.[4] That increase follows a rise in antisemitism years ago that Jewish students reported made them "feel [un]safe wearing Jewish symbols" to their Connecticut public school.[5]

Nor is the rise in antisemitism confined to schools. A recent survey found that antisemitic violence in 2025 made 91% of American Jews "feel less safe" being Jewish in the United States and that 41% of American Jews "have avoided publicly wearing or displaying things that might identify them" as Jewish.[6] Sadly, those

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[2] *Antisemitic Incidents on Campus at Record High in Past School Year*, Hillel Int'l (July 17, 2025), bit.ly/4cp0lrT.

[3] *Id.*

[4] Natasha Sokoloff, *CT lawmakers pass massive education legislation, bundling numerous changes to schools despite some pushback*, CT Insider (Feb. 26, 2026), bit.ly/3N9jfsB.

[5] *Jewish students tell school board in Connecticut that they don't feel safe*, Jewish Telegraphic Agency (Nov. 15, 2018), bit.ly/4aZUuqv.

[6] *AJC Report: After Violent Antisemitic Attacks, 91% of American Jews Feel Less Safe*, Am. Jewish Comm. (Feb. 10, 2025), bit.ly/3Npumh0.

feelings and actions are grounded in reality: 31% of American Jews were "the target of antisemitism at least once" during 2025.[7]

In New York City—"home to the largest Jewish community outside of Israel"—the number of antisemitic incidents "nearly tripled" from January 2025 to January 2026, even as other categories of crime "hit record lows."[8] Orthodox Jews are disproportionately targeted for antisemitic violence because they "often wear visible markers of their Judaism" in public.[9]

Against this backdrop, the district court's decision denying Castro preliminary injunctive relief sends the chilling message that public schools may—if not *must*—force Jewish teachers to hide their religious identity. But "[t]he Constitution neither mandates nor tolerates that kind of discrimination." *Kennedy*, 597 U.S. at 544. The Free Exercise Clause "protects the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of religious acts." *Mahmoud v. Taylor*, 606 U.S. 522, 546 (2025). There is "***no conflict***" between a

[7] *Id.*

[8] *Mayor's Office to Combat Antisemitism: 2025 Report*, NYC Mayor's Off. to Combat Antisemitism (Dec. 30, 2025), bit.ly/4r7GQrs (first quote); Stephen Sorace, *NYC antisemitic incidents nearly triple despite other crimes reaching record lows*, Fox News (Feb. 4, 2026), bit.ly/4rW4DMj.

[9] *Brazen, Intensified Antisemitic Incidents in NYC Continue in 2025*, Anti-Defamation League (Oct. 22, 2025), bit.ly/3OJZh8e.

teacher's free-exercise rights and a school district's "Establishment Clause duties." *Kennedy*, 597 U.S. at 542–43 (emphasis added).

Especially at a time when many Jews already feel pressure to conceal visible signs of their faith, Jewish teachers deserve defense, not discrimination. Teachers of all faiths—including Catholic teachers like Castro—deserve no less. The administrators' punishment of Castro—singling out her religious expression for eradication while tolerating comparable secular displays—is precisely the sort of discrimination that the Constitution forbids.

II. Castro is substantially likely to succeed on the merits because the administrators' singling out of her religious exercise for disfavored treatment can't survive strict scrutiny.

Supreme Court precedent imposes reciprocal obligations on the people and their government when it comes to religious exercise. The people must comply with "valid and neutral law[s] of general applicability." *Employment Div., Dep't of Hum. Res. of Ore. v. Smith*, 494 U.S. 872, 879 (1990). And the government must exercise its power in a manner that's "neutral toward and tolerant of [particular] religious beliefs." *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 638 (2018). When the government "targets religious conduct for distinctive treatment," it breaches its obligation to the people. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993).

Government action triggers strict scrutiny when it "treat[s] *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). In making that determination, courts must assess the two activities in light of the government interest that purportedly justifies the challenged action. *Id.* Where (as here) strict scrutiny applies, the government bears the burden of establishing that its challenged action *both* advances "interests of the highest order" *and* does so by "narrowly tailored" means. *Lukumi*, 508 U.S. at 546. The administrators' singling out of Castro's religious exercise for punishment can't survive that scrutiny. For that reason, Castro is substantially likely to succeed on the merits of her claims and is entitled to a preliminary injunction.

A. The administrators' singling out of Castro's religious exercise is subject to strict scrutiny.

Government actions are subject to strict scrutiny if they "target[] religious conduct for distinctive treatment" or "restrict[] practices because of their religious nature." *Lukumi*, 508 U.S. at 546 (first quote); *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Yet that's exactly what the administrators did in this case.

Most teachers at Castro's school keep personal expressive items on or near their desks. JA59–60 (¶ 25). Those items include sports pennants, university decals, inspirational quotes, photos of family members and pets, images from movies and cartoons, and more. JA58–60 (¶¶ 18, 25). Castro kept a Yankees pennant by her desk, for example. JA58 (¶ 17). Nothing in the record suggests that administrators

ever punished teachers for displaying such secular items on or near their desks. *See* JA65 (¶ 55).

Castro, however, was abruptly ordered to remove the crucifix she'd kept near her desk for ten years—and she was punished for not doing so. JA65 (¶¶ 55–56). The administrators couldn't have been clearer about why they ordered Castro to remove her crucifix—because it's religious in nature. *See* JA82–83, 85–86. There's nothing remotely neutral or generally applicable about that. Secular items—like Castro's Yankees pennant—were all permitted, but Castro's crucifix wasn't.

That differential treatment matters greatly for purposes of the free-exercise analysis. Courts assess comparability by judging the activities in question against the government's asserted interest. *Tandon*, 593 U.S. at 62. The administrators here expressed concerned that students might have thought the school was endorsing Catholicism if it allowed Castro to keep her crucifix near her desk. The Supreme Court in *Kennedy* debunked that "mistaken view." 597 U.S. at 543–44; *supra* pp. 2, 4–5. So it cannot justify the administrators' actions.

Here, the items teachers display near their desks *all* convey personal messages. Sports pennants signal team loyalty, university decals reflect school allegiance, and inspirational quotes convey personal values. If a reasonable observer would attribute Castro's Catholicism to the government—as administrators claimed to fear—then presumably the same reasonable observer would have concluded that

the official MLB team and college of the school were the Yankees and Connecticut State University. Yet the administrators voiced no concern about *those* commitments, and no reasonable person would make such dubious assumptions. The administrators' hackles were raised only because of the crucifix's "religious nature." *Fulton*, 593 U.S. at 533. So strict scrutiny applies.

B. The administrators' actions can't survive strict scrutiny.

Because the administrators burdened Castro's religious exercise with actions that were neither "neutral" nor "generally applicable," their actions were justified only if they (1) furthered a "compelling state interest" and (2) were "narrowly tailored in pursuit of that interest." *Kennedy*, 597 U.S. at 525. Neither requirement is satisfied.

1. No Compelling Interest. The administrators repeatedly insisted that, to avoid violating the Establishment Clause, they had to make Castro remove her crucifix. *See* JA82–83, 85–86. But Castro was exactly right when she told them that their understanding of the Establishment Clause was contrary to *Kennedy*. JA64 (¶ 47). The Court need go no further to resolve this case in Castro's favor.

The administrators justified their actions by resorting to the Establishment Clause theory of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), "and its endorsement test offshoot"—both of which the Supreme Court "long ago abandoned." *Kennedy*, 597 U.S. at 534. In the administrators' mistaken view, a reasonable observer could think

that the school was promoting Catholicism by allowing Castro's crucifix to remain near her desk. JA83, 85. What they failed to appreciate, however, is that the government can't create "its own vise between the Establishment Clause on one side and the Free Speech and Free Exercise Clauses on the other, place[] itself in the middle, and then [choose] its preferred way out of its self-imposed trap." *Kennedy*, 597 U.S. at 533.

But that's exactly what the administrators did here. Castro kept her crucifix near her desk for ten years. JA58 (¶ 16). All those years, its presence provided her "peace and strength" and facilitated her silent prayer. JA59 (¶¶ 20–21). By all accounts, no one—except the administrators—ever took issue with her crucifix. The only interest asserted by the administrators and accepted by the district court was the same "misguided" excuse based on *Lemon*'s "long ago abandoned" endorsement test. *Kennedy*, 597 U.S.at 514, 534. That's no compelling interest; it's a mistake of law.

Regrettably, this case isn't an outlier. Government officials routinely misread the Establishment Clause as a mandate to exclude religion from public life. And Jewish communities have often borne the consequences. Take menorahs, for example. Municipalities have denied requests to display menorahs on public property out of concern that allowing them could be perceived as government endorsement of Judaism. *See*, *e.g.*, *Grossbaum v. Indianapolis-Marion Cnty. Bldg.*

Auth., 63 F.3d 581, 583 (7th Cir. 1995). Fortunately, courts have rejected that notion, recognizing that menorahs can be present on public property without posing an Establishment Clause problem. *Id.* at 595.

The same thing is true of *eruvs*—symbolic boundaries that allow Orthodox Jews to carry or push items outside their homes on Shabbat. Orthodox Jews may build *eruvs* "by attaching *lechis*—thin black strips made of the same hard plastic material as . . . the coverings on ordinary ground wires—vertically along utility poles." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 152 (3d Cir. 2002). Though it's "absolutely impossible" to distinguish between *lechis* and utility wires, government officials have selectively applied local ordinances to prohibit Jews from building *eruvs*. *Id.* at 152, 154. Courts have rightly rejected their purported motivation—"avoiding the *appearance* of an Establishment Clause concern." *Id.* at 156, 176.

For years, FEMA categorically excluded synagogues and other houses of worship from receiving disaster-relief funding that was available to similarly situated non-profits. *See Harvest Family Church v. FEMA*, 2017 WL 6060107, at *1–2 (S.D. Tex. Dec. 7, 2017). Some believed the "interest in avoiding an establishment of religion" justified FEMA's discrimination. *See id.* at *4. Fortunately, the policy was revised in 2018 so that "private nonprofit houses of worship [would] not be singled out for disfavored treatment" any longer. *Revisions*

to the Public Assistance Program and Policy Guide, 83 Fed. Reg. 472, 473 (Jan. 4, 2018).

So the pattern is all too familiar. Officials invoke imagined Establishment Clause problems to justify imposing real burdens on religious exercise. Courts have corrected that mistake before. This Court should do the same now.

2. Not Narrowly Tailored. The administrators mistakenly feared the school would be perceived as unconstitutionally endorsing Catholicism if it tolerated Castro's crucifix. That misguided view isn't a government interest capable of justifying their actions. But even if it were, the administrators' actions weren't narrowly tailored to advance that interest.

Actions are narrowly tailored when they're the "least restrictive means" of achieving the stated objective. *Agudath Israel*, 983 F.3d at 633. The analysis is straightforward—if the administrators could've achieved their objective using "alternative measures imposing lesser burdens on religious liberty," their actions weren't narrowly tailored. *Id.*

Several less restrictive alternatives were available here. As just one example, the administrators could've issued a disclaimer clarifying that teachers' personal displays are just that—*personal*. Yet administrators chose the *most* burdensome route—banning *only* Castro's crucifix. That choice can't survive strict scrutiny.

* * *

Neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). And the Constitution certainly doesn't require teachers to hide their faith at work. The Constitution protects the right of Americans of all faiths to participate fully in public life without relinquishing their religious identity. Preliminary injunctive relief is amply warranted in this case to vindicate that vital right.

CONCLUSION

This Court should reverse the district court's denial of Castro's motion for a preliminary injunction.

Dated: March 25, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In compliance with Federal Rules of Appellate Procedure 29 and 32, I hereby certify that this brief contains 3,322 words and complies with the typeface requirements and length limits of Fed. R. App. P. 32(a) and Local Rule 29.1(c).

/s/ Allyson N. Ho
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CERTIFICATE OF SERVICE

I hereby certify that, on March 25, 2026, a true and correct copy of the foregoing Brief of the Jewish Coalition for Religious Liberty and the Coalition for Jewish Values as *Amici Curiae* in Support of Plaintiff-Appellant and Reversal was served via electronic service on all counsel of record in this appeal.

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