

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,

Appellee,

v.

Monifa J. STERLING,
Lance Corporal (E-3)
U.S. Marine Corps,

Appellant.

Motion of the Aleph Institute,
et al., for leave to file
Amici Curiae Brief in Support
of Appellant

USCA Dkt. No. 15-0510/MC

Crim. App. No. 201400150

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Pursuant to Rule 26(a)(3) of this Court, the Aleph Institute,
et al., respectfully move for leave to file a brief as *amici curiae*
in support of Appellant Lance Corporal Monifa Sterling.

The *amici curiae* are individuals and organizations with
extensive personal and professional experience concerning the free
exercise of religion in the U.S. military. All of the institutional
amici have an ongoing relationship with the military by serving as
faith groups responsible for certifying individual chaplains for
military service. Almost all of *amici's* chaplain certification
representatives—known as “endorsing agents” or “endorsers”—are
veteran military chaplains themselves, with decades of experience
providing for the religious needs of all service members at all

levels of command and in geographic regions worldwide. *Amici* consist of the follow (listed in alphabetical order):

- The Aleph Institute is a 35-year-old recognized Jewish endorsing agency that, among other things, supports Jewish service members' faith by providing religious materials on over 100 military bases and by providing thousands of copies of Jewish scriptures to service members.
- The Anglican Church in North America (ACNA) Jurisdiction of the Armed Forces and Chaplaincy is part of the Anglican Communion, the world's third largest Christian communion with over 85 million members. ACNA's endorser, Bishop Derek Jones, is a retired U.S. Air Force officer and decorated fighter pilot who served for 27 years and helped lead development of joint military religious affairs doctrine.
- The Assemblies of God is the world's largest Pentecostal denomination and the fourth largest Christian denomination, with over 3 million U.S. adherents and 67 million worldwide. The Church currently supports 172 military chaplains and 25 Veterans Administration chaplains. The Church's endorser is Chaplain (Colonel) Scott McChrystal, U.S. Army (Retired), who served 31 years as an infantry officer and chaplain.
- The Church of Jesus Christ of Latter-day Saints has over 15 million members, almost 6.5 million of whom are in the

U.S. Approximately 36,000 Church members, including 93 Church-endorsed chaplains, serve in the U.S. armed forces. The Church has long supported the free exercise of religion in the military, has endorsed military chaplains since the Spanish American War (1898), and was a strong proponent of the Religious Freedom Restoration Act ("RFRA").

- Major General Bentley B. Rayburn, USAF (Retired), served as an Air Force officer for 31 years, including as personal staff to the Secretary of the Air Force and as President of the Air War College. He is the Chairman of the Presbyterian and Reformed Commission on Chaplains and Military Personnel ("PRCC"), the endorsing agency for seven Presbyterian and Reformed denominations.
- Chaplain (Brigadier General) Douglas E. Lee, U.S. Army (Retired), served as a Reserve Component and Active Duty chaplain for 31 years, including as an Assistant Chief of Chaplains. He is the endorser for the PRCC.
- John L. Schlageter is General Counsel for the Archdiocese for Military Services, USA. The archdiocese was established by Pope Saint John Paul II to endorse priests serving as chaplains in the U.S. armed forces. These chaplains serve in 220 military installations and 154 VA medical centers to meet the spiritual and sacramental needs of 1.8 million Catholic men, women, and children worldwide.

- Major Kamal Singh Kalsi, D.O., U.S. Army Reserves, is a doctor who volunteered for active duty in Afghanistan, was awarded the Bronze Star, and in 2009 was the first Sikh service member in a generation to obtain an accommodation to maintain his religiously mandated turban and beard on active duty. Sikhism is the world's fifth largest religion.
- The Lutheran Church–Missouri Synod's congregations have over 2 million baptized members and thousands serving in the military. The LCMS supports 67 active duty chaplains and 71 Reserve and National Guard chaplains. Craig Muehler, CAPT, CHC, USN, (Ret.), a former deputy chaplain for the Marine Corps, is the LCMS endorser for all military branches. The LCMS has a keen interest in protecting military religious liberty.
- The National Association of Evangelicals connects and represents millions of evangelical Christians from 40 denominations, as well as churches, seminaries, universities charities, missions, and other ministries. The NAE Chaplain Commission endorses nearly 100 chaplains in all branches of the military and is led by Chaplain (Brigadier General) David Cyr, USAF (Retired), who served as Air Force Deputy Chief of Chaplains.
- The North American Mission Board Chaplaincy of the Southern Baptist Convention, which has 15.5 million members, over

200,000 members in the U.S. armed forces, and 1,400 endorsed chaplains—making it the military's largest endorser. The Chaplaincy is led by Chaplain (Major General) Douglas L. Carver, U.S. Army (Retired), a former U.S. Army Chief of Chaplains, and Chaplain (Colonel) Keith Travis, U.S. Army Reserve (Retired).

- The Rabbinical Council of America is the largest organization of Orthodox rabbis in America, with over 1000 members. It is an endorser of military chaplains for the U.S. armed forces, and provides guidance to its members through its Military Chaplaincy Committee. The RCA has publicly resolved to stand united with Americans of all faiths in supporting freedom of religion.
- Imam Talib M. Shareef is the Imam of the historic Nation's Mosque in Washington, DC, the co-founder of the military's first Islamic chaplain endorser, and the first military veteran imam to offer prayer at a Congressional opening session. He served 30 years in the U.S. Air Force, retiring as a Chief Master Sergeant.

Amici are represented by the Becket Fund for Religious Liberty, a nonprofit legal and educational institute that protects the free expression of all faiths and has substantial experience representing religious plaintiffs in cases that, like this one, concern RFRA. See, e.g., *Burwell v. Hobby Lobby Stores*, 134 S. Ct.

2751 (2014); see also *Holt v. Hobbs*, 135 S. Ct. 853 (2015) (applying RFRA's sister statute, the Religious Land Use and Institutionalized Persons Act). This experience includes RFRA cases concerning religious speech in the military. *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (applying RFRA to protect speech by Jewish, Catholic, and Muslim chaplains).

Amici contend that the lower court's interpretation of RFRA is flawed and dangerous. *Amici's* brief explains that Congress clearly intended RFRA to apply to the religious exercise at issue here, and shows how the exercise is exceedingly common (and even commanded) in their religious communities. Further, *amici* argue that the lower court incorrectly held that military commanders may preemptively censor religious expression just because it is religious and thus may be controversial. *Amici* show how this holding is inconsistent with both law and military history, and how it is particularly harmful for minority faiths.

Amici seek to file their brief to urge this Court to repudiate the lower court's ruling and protect the rights of religious service members afforded by RFRA, thereby preserving the military's legacy of mission accomplishment in a pluralistic religious environment.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 18, 2015, I caused the foregoing to be electronically delivered to this Court, and that a copy was electronically delivered to counsel listed below.

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