No. _____

In the Supreme Court of the United States

HUNTER DOSTER, ET AL., *ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED*,

Petitioners,

v.

HON. TROY MEINK, In his official capacity as Secretary of the Air Force, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Religious Freedom Restoration Act ("RFRA") permits courts to award "appropriate relief" against the government. 42 U.S.C. § 2000bb-1. This includes the equitable relief of reinstatement of back pay and retirement benefits.

Here, the Air Force instituted a mandate for the COVID-19 vaccine ("Vaccine Mandate"), but then systemically denied religious exemption requests. Petitioners sued, a class was certified, and preliminary injunctive relief was ordered. In opposing more encompassing preliminary injunctive relief, Respondents argued that RFRA permitted reinstatement of back pay and retirement points in final judgment, which the district court accepted.

The Vaccine Mandate was rescinded by an act of Congress. Respondents then took an about face and claimed that restoration of back pay and retirement points could not be awarded under RFRA and, as such, the case was moot. The district court accepted this argument and dismissed for mootness and the Sixth Circuit affirmed. This petition follows.

The questions presented are:

1. Whether RFRA permits the equitable relief of reinstatement, to include back pay and retirement points.

2. Whether Respondents are judicially estopped from arguing that back pay and retirement points may not be awarded under RFRA when, a year earlier, they successfully argued the opposite position to prevent preliminary injunctive relief extending to reinstatement of reservists.

PARTIES TO THE PROCEEDING

The following individuals and entities were Plaintiffs before the trial court and Appellants in the Sixth Circuit: Hunter Doster, Jason Anderson, McKenna Colantanio, Paul Clement, Joe Dills, Benjamin Leiby, Brett Martin, Connor McCormick, Heidi Mosher, Peter Norris, Patrick Pottinger, Alex Ramsperger, Benjamin Rinaldi, Douglas Ruyle, Christopher Schuldes, Edward Stapanon III, Adam Theriault, Daniel Reineke, on behalf of themselves and others similarly situated.

The following individuals were Defendants before the trial court and Appellees in the Sixth Circuit Court of Appeals: Hon. Frank Kendall III, in his official capacity of Secretary of the Air Force, Lt. General Robert I. Miller, in his official capacity as Surgeon General of the Air Force, Lt. General Brian S. Robinson, in his official capacity as Commander of Air Education and Training Command, Lt. General John P. Healy, in his official capacity as Commander of Air Force Reserve Command, Lt. General Tony D. Bauernfeind, in his official capacity as Commander of Air Force Special Operations Command, and the United States of America. Secretary Kendall has been replaced by Secretary Troy Meink. General Miller has been replaced by Lt. General John J. DeGoes. Lt. General Michael Conley has replaced Lt. General Bauernfeind.

RELATED PROCEEDINGS

The proceedings directly related to this case are:

Doster v. Kendall, 54 F.4th 398 (6th Cir. 2022).

Kendall v. Doster, 144 S. Ct. 481 (2023).

Doster v. Kendall, 2024 WL 1156426 (S.D. Ohio, Mar. 18, 2024).

Doster v. Kendall, 2025 WL 1369378 (6th Cir. 2025).

Poffenbarger v. Kendall, 2024 WL 1155965 (S.D. Ohio, Mar. 18, 2024).

Poffenbarger v. Kendall, 137 F.4th 563 (6th Cir. 2025).

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INTRODUCTION

Respondents, the United States and Department of the Air Force officials, sued in their official capacities (hereinafter the "Government" or "Respondents"), implemented a Vaccine Mandate. Plaintiffs were active-duty service members and reservists of the Air Force, most of whom were stationed at Wright Patterson Air Force Base in Ohio. The Government illegally and systemically denied the vast majority of religious accommodation requests to its Vaccine Mandate, including Plaintiffs' requests. Two of the named Plaintiffs, Senior Airman Joseph Dills ("SRA Dills") and Senior Master Sergeant Chris Schuldes ("SMSgt. Schuldes"), and numerous members of the class, all of whom refused to compromise their well-founded religious beliefs by receiving the COVID-19 vaccine, were disciplined by the Government. This included reprimands in their files, being removed from active reserve service and being placed on a "no points, no pay" status effective January 2022. That meant Plaintiffs (and similarly situated class members) could not attend drills, receive pay for attending those drills, or receive points towards their military retirements.

In March 2022, Plaintiffs moved for a preliminary injunction and sought restoration to reserve duty and restoration of lost pay and lost retirement points. The district court issued a preliminary injunction in favor of the named Plaintiffs, but did not include a restoration to duty for Plaintiff reservists nor did it restore their lost pay or retirement points. *Doster v. Kendall*, 596 F. Supp. 3d

995 (S.D. Ohio 2022). This was because the Government argued, and the district court accepted, that in final judgment Plaintiffs could receive reinstatement relief including restoration of back pay and back retirement points. *Doster*, 596 F. Supp. 3d 995, 1019. Thus, the district court determined the absence of that relief did not constitute irreparable harm because subsequent final judgment could afford that relief. *Id.*

Later, a class was certified, and the injunctive relief was extended to restore reservist class members to a pay and points status as of July 2022. *Doster v. Kendall*, 342 F.R.D. 117 (S.D. Ohio 2022); *Doster v. Kendall*, 2022 U.S. Dist. LEXIS 137068 (S.D. Ohio 2022). *See Doster v. Kendall*, 48 F.4th 608 (6th Cir. 2022).

In December 2022, Congress enacted legislation directing the Department of Defense[1] and its component branches to repeal the Vaccine Mandate. In January and February of 2023, Respondents took steps to remedy *most* adverse actions relating to the Vaccine Mandate, such as removing reprimands from service records, but they declined to fully remedy the consequences of their illegal discrimination, to include refusing to restore reservist Plaintiffs' records to

[1] Pursuant to Executive Order signed by President Donald J. Trump on September 5, 2025, the Department of Defense is now titled the Department of War; however, this Petition refers to the Department by its former name which was in place during the actions underlying this Petition.

reflect continued reserve service from January to July of 2022, refusing to restore Plaintiffs' lost retirement points for that same period, and refusing to restore lost back pay for that same period.

Respondents then moved to dismiss on the basis of mootness and pulled a bait and switch, arguing, contrary to their argument at the preliminary injunction stage, that the district court was "without authority" to correct the back pay and back points issue. The district court erroneously concluded that RFRA's "appropriate relief" did not extend to equitable remedies such as reinstatement and restoration of back pay and retirement points, and thus the district court could not order relief for the remaining harm. The Sixth Circuit affirmed, erroneously believing the relief sought had not been requested in Plaintiffs' complaint (despite the fact that it had been requested from the outset of the case). *Doster*, 2025 U.S. App. LEXIS 11679. This petition follows.

The petition for a writ of certiorari should be granted, and the Sixth Circuit's holding should be reversed.

OPINIONS BELOW

The Sixth Circuit's opinion (App. 1a-5a) is reported at 2025 WL 1369378. The district court's opinion (App. 8a-20a) is reported at 2024 WL 1156426.

JURISDICTION

The Sixth Circuit entered judgment on May 12, 2025. (App.6a). Circuit Justice Kavanaugh granted an

extension of time to file this petition to October 9, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. 37 U.S.C. § 206

B. 42 U.S.C. §2000bb-42 U.S.C. §2000bb-4, Religious Freedom Restoration Act of 1993 ("RFRA")

C. 28 U.S.C. § 1346(a)(2), Tucker Act

STATEMENT

A. Factual Background

The Department of the Air Force ("DAF") had a Vaccine Mandate for COVID-19 imposed by the Secretary of the Air Force ("SECAF"). [District Court Appendix, Doc.11-1, PageID#327; Doc.11-2, PageID#328-329.] The DAF implemented a process for handling religious accommodation requests to the Vaccine Mandate, which included a process for determining sincerity of religious beliefs.[2]

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[2] *See* Air Force Instruction 52-201, https://static.e-publishing.af.mil/production/1/af_hc/publication/dafi52-201/dafi52-201.pdf (last accessed 8/22/2022); Department of Defense Instruction 1300.17, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf (last accessed 8/22/2022); https://www.af.mil/News/Article-Display/Article/2882742/daf-processes-religious-

Each of the eighteen original Plaintiffs underwent this process in pursuit of a temporary religious exemption to the Vaccine Mandate. All timely submitted their religious accommodation requests, and all had a DAF Chaplain confirm the sincerity of their beliefs and the substantial burdening of those beliefs by the Vaccine Mandate. [Compl., Doc.1, PageID#1-22; Appendix, Doc.11-1 through 11-21, PageID#324-573; Declarations of Plaintiffs, Doc.30-3 through 20, PageID#2091-2149.] All then received initial denials and took appeals, with all but four Plaintiffs receiving denials by the Surgeon General of their final appeal (Plaintiffs Anderson, Leiby, Norris and Ruyle were still awaiting a decision on final appeal when the Preliminary Injunction was entered). [Appendix, Doc.11-1 through 11-21, PageID#324-573; Doc.19-1, PageID#943-947; Notice, Doc.38-1 through 38-6, PageID#2631-2665; Notice, Doc.60-1, PageID#4281-4359.]

After denial of their final appeals, every DAF member was subjected to an order from his or her commander to vaccinate or else. The order stated: "Failure to comply with this lawful order may result in administrative and/or punitive action for Failing to Obey an Order under Article 92, Uniform Code of Military Justice." [Doster Dec., Doc. 19-1, PageID#943-947.]

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accommodations-requests/ (last accessed 8/22/2022). The Court can take judicial notice of Government websites. *Twumasi-Ankrah v. Checkr, Inc.*, 954 F.3d 938, 947 n.3 (6th Cir. 2020).

Based on statistics it published on March 28, 2022, the DAF, as of that date, had granted 1,102 medical exemptions and 1,407 administrative exemptions to the Vaccine Mandate.[3] As of that same date, the DAF had only granted 25 religious accommodations and had denied 6,143 (a 99.6% disapproval rate).[4] *Id.* Not one single religious exemption had been granted without that member also being eligible for an administrative exemption (i.e., being at the end of his or her term of service). [Dec. Wiest, Doc.30-2, PageID#2084-2090, with transcript attached; Dec. Wiest, Doc.74-2, PageID#4527.]

All this evidence simply reconfirmed Plaintiffs' verified complaint, which pled that the DAF adopted a *de facto* systemic policy to deny religious exemption requests other than for members at the end of their term of service, while granting thousands of medical and administrative exemptions. [Ver. Compl. ¶¶ 51-52, 54, Doc.1, PageID#13-14.]

Respondents' own witnesses and documents provided the proof of the DAF's systemic religious

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[3] https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-2022/ (last accessed 9/17/2022).

[4] The Government cited data from July 2022, which was after the District Court entered its relief in this case, noting 135 religious accommodations were granted, all of which were within the end-of-service exception. Even with these 135 approvals, there was a 98.7% disapproval rate.

discrimination. For instance, Colonel James Poel's testimony documented the systemic denial of religious exemption requests due to a stated goal of accommodating even more medical exemptions. [Dec. Poel, Doc.25-17 ¶7, PageID#1430-1450.] Consequently, the DAF treated medical exemptions as a protected class at the expense of an actual protected class. *Id.* Just as damning to Respondents' claims, Colonel Poel also admitted that "both natural and vaccine immunity decrease the risk of infection," and that previous infection likely provides thirteen times greater protection against reinfection or breakthrough infection compared to vaccination alone. *Id.* ¶23 In short, the DAF's own evidence established that there was no compelling need to force vaccination on those with natural immunity (at a time when the CDC had advised that over 95% of Americans had immunity to COVID-19).

Further demonstrating systemic religious discrimination, Colonel Artemio Chapa testified that medical exemptions were granted for various conditions, including pregnancy, adverse reactions, allergies, and the like, yet the DAF granted almost no religious accommodation requests, and the few they did grant were no different than those granted for medical or administrative reasons alone. [Doc.25-12, PageID#1395-1403.] For instance, the DAF granted a "medical exemption for allergic reactions to the vaccine or components of the vaccine" to allow time for a new vaccine to become available that would not present these same risks, yet it was not willing to

similarly allow time for a morally unobjectionable COVID-19 vaccine to become available. *Id.*

Significantly, DAF policy allowed members who received medical exemptions to be considered medically fit for duty despite their unvaccinated status; yet those very few "lucky" members who received religious exemptions at the end of their careers, and the thousands of members either denied or still waiting for religious exemptions, were determined by the DAF to be unfit for duty. *Id.* ¶7. Further, those receiving medical exemptions would not necessarily lose their eligibility for deployment because such determinations were made on a case-by-case basis; yet every member with a religious exemption request was deemed automatically unfit for deployment. *Id.* ¶14.

Like medical exemptions, blanket administrative exemptions were granted for a variety of reasons. *Id.* ¶¶17-18. For example, administrative exemptions were granted to any member who was within six months of retirement. Given average terms of service, an estimated five percent of the entire DAF (which consists of the more senior and experienced members) were eligible for this exemption. Yet, while the DAF willingly accommodated approximately five percent of its members, it refused to accommodate the less than two percent of its members that it confirmed as having sincerely held religious beliefs against vaccination, claiming it was unable to accommodate those members.

The case of Major Andrea Corvi [Doc.53-1, PageID#3762-3789] brought Respondents' unlawful discriminatory practices into sharp focus. The DAF granted Major Corvi a temporary medical exemption for pregnancy. During her pregnancy and medical exemption, she kept her same job duties, assignments, and work interactions, including not in any way being limited in ongoing interactions with the over 75 members in her squadron. *Id.* However, after she delivered her child, and despite Respondents having confirmed the sincerity of her religious beliefs and the Vaccine Mandate's substantial burden on those beliefs, Respondents then denied her request for a temporary religious exemption after her pregnancy concluded. *Id.* The DAF admittedly was able to and did accommodate Major Corvi during her pregnancy, but it thereafter refused to temporarily continue that accommodation for her well-founded religious beliefs. This evidence was consistent with other record evidence from Respondents confirming a blanket policy by the DAF of granting medical exemptions for pregnant members—regardless of duty station, job assignment, or any other individual factor—despite the recommendation by the CDC for pregnant members to be vaccinated. [Dec. Cox, Doc.74-1, PageID#4519-4526.]

The DAF ordered its commanders to actively enforce the Vaccine Mandate. On December 7, 2021, Secretary Kendall issued a Memorandum to the DAF which stated, in pertinent part:

> Commanders will take appropriate administrative and disciplinary actions consistent with federal law and Department of the Air Force (OAF) policy in addressing service members who refuse to obey a lawful order to receive the COVID-19 vaccine and do not have a pending separation or retirement, or medical, religious or administrative exemption. Refusal to comply with the vaccination mandate without an exemption will result in the member being subject to initiation of administrative discharge proceedings.
>
> [Doc.25-8, PageID#1130-1135 (emphasis added).]

B. Procedural Background

A two-count Complaint was filed February 16, 2022, seeking relief under RFRA and the First Amendment. [Ver. Compl., Doc. 1, PageID#22]. The Complaint noted imminent transfer of reservists from duty to no-pay, no-retirement point status. *Id.* ¶47. It also sought broad injunctive relief to "remedy the violations at issue," *id.* ¶59, and to "halt the ongoing violations of law," *id.* ¶70.

Plaintiffs sought preliminary injunctive relief on February 22, 2022. [Motion, Doc. 13, at PageID#578-599.] Their motion for injunctive relief included a specific request, including in tendered orders, relating

to the loss of pay and points, specifically for SRA Dills and SMSgt Schuldes, and sought to prevent the ongoing loss of such pay and points. [Motion, Doc. 13, at PageID#579, 584.]

A proposed order was tendered with that, which requested the following relief:

> To the extent Defendants have taken punitive action against any airman from September 1, 2021 to the present, including but not limited to the named Plaintiffs, including discharges, both punitive or administrative, against any airmen who submitted a religious accommodation request from Defendants' vaccination requirements, and to whom the Defendants confirmed (or did not dispute) the sincerity of the belief at issue, to **provide full and complete relief to such persons, including restoration to active duty (or active reserve duty, as the case may be), record expungement, and restoration of pay and allowances**.

Id. at Doc. 13-6, PageID#814-816 (emphasis added).

Respondents opposed the requested injunctive relief and argued:

> Second, Plaintiffs appear to allege that involuntary reassignment to the Individual Ready Reserve and loss of retirement constitutes irreparable harm. See Pls.' Mem. 2, 4, Doc. No. 13,

> PageID 579, 584. But any such contention is meritless, as military administrative and disciplinary actions, including separation, are not irreparable injuries because the service member could later be reinstated **and provided back pay** if he prevailed on his claim. *See, e.g., Hartikka v. United States*, 754 F.2d 1516, 1518 (9th Cir. 1985); *Chilcott v. Orr*, 747 F.2d 29, 34 (1st Cir. 1984); *Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 742 (2d Cir. 1992); *Church*, 2021 WL 5179215, at *17.

[Opposition to PI, Doc. 25, PageID#1025 (emphasis added).]

On March 25, 2022, the District Court held an evidentiary hearing in this matter. [Tr., Doc.45, 48, PageID#3064-3101, 3206-3348.] Certain Plaintiffs testified including SRA Dills.

SRA Dills testified that he is a member of the Air Force reserves, stationed at Wright Patterson Air Force Base in Dayton, Ohio. [Transcript, Doc. 48 at PageID#3253-3254.]

He then testified how the DAF punished him for his non-compliance:

> Q. And what happened in January of this year?
>
> A. We -- they gave us a -- an LOR, a Letter of Reprimand, and then you had a chance to appeal

> it. And then basically we were told that we were now on what's called no point, no pay status for six months, so I believe that ends in July, and then right after that we're going to be put on IRR, which is Individual Ready Reserve, for the remainder of our contract. So basically it's a way of kicking us out without kicking us out.

[*Id.* at PageID#3262-3263].

In March of 2022, a preliminary injunction issued in favor of the named Plaintiffs, but this relief did not extend to the requested restoration of reservist pay and points. *Doster v. Kendall*, 596 F. Supp. 3d 995 (S.D. Ohio 2022). This is because Respondents argued, and the district court accepted, that Plaintiffs could receive restitution of back pay and back retirement points in a subsequent final judgment and, thus, that sort of harm, although recoverable, was not irreparable. *Doster*, 596 F. Supp. 3d 995, 1019.

Congress ends the Vaccine Mandate, and the Department of Defense and the DAF act to remedy most, but not all, of the harm.

In December of 2022, Congress enacted legislation directing the Department of Defense, and its component branches, to repeal the Vaccine Mandate. In January and February of 2023, the Government took steps to remedy most adverse actions from service member's files, such as removing reprimands, but the Government declined to fully remedy its illegal

discrimination in total or to remove its effects root and branch, including refusing to restore SRA Dills' and SMSgt. Schuldes' (and similarly situated class members') (i) records to reflect continued reserve service from January to July 2022, (ii) lost retirement points, and (iii) lost back pay.

On January 30, 2024, the district court ordered, via a notation order, simultaneous briefing by the parties as follows: "The parties are ORDERED to provide this Court with supplemental briefing concerning the mootness of this case in its entirety following the Supreme Court's order (Doc. 121). All briefing shall be submitted by February 9, 2024." Notably, the district court did not permit Plaintiffs to respond to the Government's filing.

In arguing that the case was moot, the Government pulled a bait and switch, taking a contrary position from the position it took in the preliminary injunction proceedings, now arguing that the district court was without authority to restore lost pay and lost points. [Memo, Doc. 124, PageID#5951-5958.]

Plaintiffs demonstrated that neither the named Plaintiffs, nor the class, were made whole—and that the relief they still sought, consisting of lost pay and lost points, had not been restored. Plaintiffs substantiated the lost pay and lost points allegations through declarations of SRA Dills and SMSgt

Schuldes. [Memo and Declarations in Support, Doc. 125, PageID#5966-5984.]

The Government denied SMSgt. Schuldes $3,436.64 in lost drill pay (i.e., back pay) for the drill weekends he missed from January to August 2022. [Dec. Schuldes, Doc. 125-1, PageID#5980-5981.]

SMSgt. Schuldes has never had that lost drill pay restored to him and, without an order of this Court, will never have that lost drill pay restored to him. *Id.*

The Government also denied SRA Dills $2,972.56 in lost drill pay (i.e., back pay) for the drill weekends he missed from January to September 2022. [Dec. Dills, Doc. 125-2, PageID#5982-5984.] SRA Dills has never had that lost drill pay restored to him and, without an order of this Court, will never have that lost drill pay restored to him. *Id.*

The Government also refused to restore SRA Dills' and SMSgt. Schuldes' lost thirty-two retirement points, effectively causing them to lose credit for participation in reserve status, which is calculated towards retirement. [Dec. Schuldes, Doc. 125-1, PageID#5980-5981; Dec. Dills, Doc. 125-2, PageID#5982-5984.] Even worse, SMSgt. Schuldes was denied a "good year" of service counting towards retirement, which will require him to serve an additional year to be eligible to retire. [Dec. Schuldes, Doc. 125-1, PageID#5980-5981.]

These lost reserve retirement points are detrimental in other ways as a member's reserve retirement points (to include prior active-duty periods) are used to calculate retirement pay. [Dec. Schuldes, Doc. 125-1, PageID#5980-5981; Dec. Dills, Doc. 125-2, PageID#5982-5984.] As a result, unless corrected by order of the Court, Reservist Plaintiffs ultimately will draw less retirement pay when they retire because of the illegal discipline/actions taken against them for not compromising their sincere religious beliefs against taking the COVID-19 vaccine. *Id.*

On March 18, 2024, the district court held that the Government's failure to remedy this undisputed harm did not matter, that the court was without authority to afford this requested relief, and that the case was moot. [Order, Doc. 127, PageID#5987-5998.]

On May 12, 2025, the Sixth Circuit entered an opinion that is the subject of this petition for a writ of certiorari and which is reported at *Doster v. Kendall,* 2025 U.S. App. LEXIS 11679 (6th Cir. 2025).

REASONS FOR GRANTING THE PETITION

I. This Court should grant *certiorari* because the decisions below undermine RFRA and conflict with binding precedent from this Court

The "heavy burden of persua[ding]" the Court that this matter is moot lies with the Government, not with Plaintiffs. *Friends of the Earth, Inc. v. Laidlaw Envtl.*

Servs. (TOC), Inc., 528 U.S. 167, 189 (2000) (quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)). And "a case becomes moot only when it is **impossible** for a court to grant **any** effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added) (citation modified). "As long as the parties have a concrete interest, **however small**, in the outcome of the litigation, the case is not moot." *Id.* (emphasis added). Thus, **if there is any additional relief that can be awarded**, however small, a case is not moot. *See Knox v. SEIU, Local 1000*, 567 U.S. 298, 307-308 (2012); *Chafin*, 568 U.S. 165, 172. (emphasis added).

It is well-settled that new legislation does not *ipso facto* eliminate the discriminatory intent behind older legislation, nor does it moot a dispute regarding the violation of law. *See Hunter v. Underwood*, 471 U.S. 222, 232-33 (1985) (holding that actions taken in the succeeding 80 years to change the terms of a law did not eliminate its original discriminatory intent); *Miss. State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 408-09 (5th Cir. 1991); *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016).

Under the "collateral consequences" exception to mootness, even when the plaintiff's primary injury has ceased, the case is not moot if there remains other harm the court is capable of remedying. *See Sibron v. New York*, 392 U.S. 40, 53-59 (1968). And a continuing

collateral consequence is one that provides the plaintiff with a "concrete interest" in the case and for which "effective relief" is available. *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 571 (1984).

Only the act of fully remedying harm can moot a case, and it is undisputed that full relief has not occurred here. *See Wooten v. Housing Authority of Dallas*, 723 F.2d 390, 392 (5th Cir. 1983) (explaining that only receipt of "all of the relief sought" will moot the case); *see also Chen v. Allstate Ins. Co.*, 819 F.3d 1136, 1138 (9th Cir. 2016) (noting that a claim becomes moot when a plaintiff actually receives complete relief).

Petitioner SRA Dills is in the Air Force serving as an active reservist. [Dills Declaration, Doc. 125-2, PageID# 5982]. Due to his refusal to take the COVID-19 vaccine, he was transferred to a no-points, no-pay status. (*Id.*) From January through September of 2022, he did not receive $2,972.56 in drill pay nor did he receive thirty-two reserve retirement points. [*Id.*, at PageID# 5983].

Petitioner SMSgt Schuldes lost $3,436.64 in drill pay and thirty-two retirement points for the same reason. [*Id.*, at PageID#5981]. These lost points and backpay can be remedied by equitable relief which was sought by Petitioners.

In *Schelske v. Austin*, a separated soldier who applied for and was denied a religious accommodation

to the COVID-19 vaccine mandate sued and sought equitable relief to include reinstatement and back pay. 2023 U.S. Dist. LEXIS 163101 (N.D. Tex. 2023). After the Vaccine Mandate was repealed, and despite corrective actions taken by the Secretaries of the Army and Defense materially like those taken by the Secretary of the Air Force here, the soldier still did not receive the equitable relief he sought.

In addressing the mootness issue in that case, the *Schelske* Court determined that claims for back pay and retirement points were appropriate merely to restore that plaintiff to the position he held prior to the Army defendants' illegal actions, thus those claims were equitable and justiciable. *Id*. at *105-*111. This was true regardless of the fact the plaintiff in *Schelske* was not on any duty status after being involuntary separated, and he did not perform any military duties after his involuntary separation. *Schelske* is on all fours with this case.

The district court and Sixth Circuit chose not to follow precedent that classifies restorative relief—like restoration of back pay or retirement points—as equitable, not legal, relief. *Kolstad v. ADA*, 527 U.S. 526 (1999); *West v. Gibson*, 527 U.S. 212 (1999). Yet, this Court held, in *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020), that the "appropriate relief" under RFRA was "open ended." This Court also held that "parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*" under § 1983. Of course, this Court previously

held that such relief is equitable relief and is available in § 1983 matters. *See Rankin v. McPherson*, 483 U.S. 378, 382 (1987) (explaining back pay and related relief is equitable under 1983).

As noted, it is undisputed this matter involves claims for back pay and retirement points. Those claims are justiciable as a matter of equitable relief and are within the authority of federal courts to award. *See U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336 (5th Cir. 2021); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014); *Schelske v. Austin*, 2023 U.S. Dist. LEXIS 163101 (N.D. Tex. 2023).

Once again, courts, including this Court, hold that relief, such as the restoration of lost drill pay and lost retirement points withheld here in 2022, is purely restitutionary in nature. *Id.* (citing *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994) and *Chauffeurs, Teamsters & Helpers, Loc. No. 391 v. Terry*, 494 U.S. 558, 570 (1990)). In other words, the "equitable" remedy is limited to "restoring the *status quo* and ordering the return of that which rightfully belongs" to a plaintiff. *Id.* (citing *Tull v. United States*, 481 U.S. 412, 424 (1987)); *Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946). *See also Harkless v. Sweeny Independent School Dist.*, 427 F.2d 319 (5th Cir. 1979).

Because back pay is equitable rather than legal relief, this Court can order such relief. *See Kolstad v.*

ADA, 527 U.S. 526 (1999); *West v. Gibson*, 527 U.S. 212, 119 S. Ct. 1906 (1999); *Schelske*, 2023 U.S. Dist. LEXIS 163101.

And, the equitable remedy of restoration of back pay and retirement points runs to the official capacity of Respondents who improperly placed all Reservist Plaintiffs in a no pay and no points status, and it is entirely within the authority of this Court to grant. *See Crugher v. Prelesnik*, 761 F.3d 610 (6th Cir. 2014); *Cimerman v. Cook*, 561 Fed. App'x 447 (6th Cir. 2014); *Turker v. Ohio Dep't of Rehaabilitation & Corrections*, 157 F.3d 453, 459 (6th Cir. 1998) ("reinstatement [is] … prospective equitable relief").

"[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell v. Hood*, 327 U.S. 678, 684 (1946). And back pay is an equitable remedy distinct from damages. *See Albemarle Co. v. Moody*, 422 U.S. 405 (1975); *Howe v. City of Akron*, 801 F.3d 718, 744 (6th Cir. 2015) (explaining that back pay is an equitable remedy, part and parcel with eradicating the effects of discrimination); *CONRAIL v. Darrone*, 465 U.S. 624 (1984) (back pay is appropriately awarded as an equitable remedy under Title VI); *Tull*, 481 U.S. 412, 424 (1987) (restitution "traditionally considered an equitable remedy"); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993) (restitution is a "remedy traditionally viewed as 'equitable'"); *Teamsters v. Terry*, 494 U.S. 558, 570 (1990) ("We have

characterized [money] damages as equitable where they are restitutionary."); *United States v. Burke*, 504 U.S. 229 (1992) (back pay is equitable relief, not money damages).

Regardless, even *if* back pay cannot be awarded (as noted above, it can), retirement credit and points plainly can be awarded as a matter of equity because RFRA affords "appropriate relief." 42 U.S.C. § 2000bb-1(c). Retirement credit has long been determined by courts to be equitable relief. *See Downie v. Independent Drivers Ass'n Pension Plan*, 934 F.2d 1168 (10th Cir. 1991); *Oppenheim v. Campbell*, 571 F.2d 660, 661-63 (D.C. Cir. 1978) (retirement credit is equitable relief); *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011) (explaining wide-ranging equitable relief available for similar "appropriate" remedy statute).

And this equitable relief, under the constructive service doctrine, should "return successful plaintiffs to the position that they would have occupied 'but for' their illegal release from duty." *Barnick v. United States*, 591 F.3d 1372, 1379 (Fed. Cir. 2010) (quoting *Dilley v. Alexander*, 627 F.2d 407, 413, 200 U.S. App. D.C. 354 (D.C. Cir. 1980)).

Moreover, "the court's power to grant injunctive relief survives discontinuance of the illegal conduct." *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953).

In response to the district court's request for briefing on mootness, and despite not raising it in their Answer and thus waiving the defense, Respondents argued that the requested equitable relief was foreclosed due to sovereign immunity. Respondents are wrong as a matter of law. The Tucker Act, 28 U.S.C. § 1346(a)(2), applies here because Plaintiffs' back pay claims are, individually, all under the $10,000 threshold, thus conferring jurisdiction on the district court. In a like manner, the Reservists Pay Mandating Statute, 37 U.S.C. § 206, also applies and conferred jurisdiction on the district court.

As the court in *Schelske* explained, Congress waived sovereign immunity for equitable claims, which extend to back pay. *See Schelske*, 2023 U.S. Dist. LEXIS 163101 at *105-*106 (citing *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994), *Chauffeurs, Teamsters & Helpers, Loc. No. 391 v. Terry*, 494 U.S. 558, 570 (1990), and *Tull v. United States*, 481 U.S. 412, 424 (1987)). The *Schelske* Court also explained that, because of the nature of a RFRA claim, with "appropriate relief," equitable relief could be had that included back pay. 2023 U.S. Dist. LEXIS 163101. So too, here.

Other federal courts are in accord that sovereign immunity does not apply to claims for back pay, whether under RFRA or any other applicable statutory scheme, because the nature of back pay claims is equitable relief. *See Hubbard v. Administrator*, EPA, 982 F.2d 531, 547-48 (D.C. Cir.

1992). The *Hubbard* Court explained that where a plaintiff is illegally denied a job or its emoluments, restitutionary relief applies and thus an "award of instatement and back pay gives [plaintiff] the precise thing to which he was entitled and therefore constitutes specific restitution." *Id.* "Although such an award involves money, that alone does not take it outside equity." *Id.*

Hubbard, in turn, cited *Bowen v. Massachusetts*, 487 U.S. 879, 893 (1998), for the proposition that, in certain circumstances, sovereign immunity does not bar claims that involve money. In *Bowen,* this Court explained that it was "an equitable action for specific relief" when a government employee sought "an order providing for the reinstatement of an employee with backpay, or for 'the recovery of specific property or monies, ejectment from land, or injunction either directing or restraining the defendant officer's actions.'" *Id; see also Ulmet v. United States*, 888 F.2d 1028, 1030-31 (4th Cir. 1989) (finding jurisdiction in the district court to award back pay, although sanctioning its decision to defer to the Claims Court); *DeVargas v. Mason & Hanger-Silas Mason Co.*, 911 F.2d 1377, 1381 (10th Cir. 1990) (dicta), *cert. denied*, 111 S. Ct. 799 (1991); *Gleason v. Malcom*, 718 F.2d 1044, 1048 (11th Cir. 1983) (in rejecting a First Amendment damages claim, the court wrote: "As a federal employee, she could have sought equitable relief, i.e., reinstatement and back pay, pursuant to the Administrative Procedure Act"); *Nixon v. United States*, 290 U.S. App. D.C. 420, 938 F.2d 239, 251 n.4

(D.C. Cir. 1991). Other Courts are in agreement. *See Wenrich v. Empowered Mgmt. Sols. LLC*, 2019 U.S. Dist. LEXIS 130041 (D. Colo. 2019) (explaining back pay claims were equitable in claim against Army, and not barred by sovereign immunity).

The district court erroneously determined that it could not reach the issues here because "retroactive" equitable relief was not sought in the Complaint. [Order, Doc. 127, PageID#5991-5994]. For SRA Dills and SMSgt Schuldes, the Complaint unequivocally stated that each faced imminent transfer to the Individual Ready Reserve, loss of pay, and loss of retirement benefits. [Ver. Compl., Doc. 1 ¶¶ 17, 20, 47; PageID#5, 6, 12.] The Sixth Circuit affirmed on that same erroneous basis.

Yet, the Complaint also sought broad injunctive relief to "remedy the violations at issue," *id.* ¶59, and to "halt the ongoing violations of law," *id.* ¶70. And as noted above, the relief of reinstatement and restoration of back pay and points is prospective injunctive relief, not "retroactive" relief.

Once again, it is clear from the record that this type of equitable relief was sought from the outset in this matter, including by way of Plaintiffs' preliminary injunction motion, and the fact that it was substantively addressed by Respondents in their Opposition to Plaintiffs' motion, thus constituting judicial estoppel (*see* Part IV below). Without question, Respondents explicitly argued that such relief was

available, though not in a preliminary injunction order, but rather **in a final remedy**. [Motion, Doc. 13, at PageID#579, 584; Opposition to PI, Doc. 25, PageID#1025.]

Moreover, the district court and Sixth Circuit's erroneous legal conclusion fundamentally misapplies the law and ignores the significance of notice pleading. Federal Rule Civil Procedure 54(c) states that, except in default judgment cases, every "final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." Fed. R. Civ. P. 54(c); *see also* 10 C. Wright, A. Miller, & M. Kane, Federal Practice & Procedure §§2662, 2664 (4th ed. 2014) (Wright & Miller). Courts have refused to award relief outside the pleadings only when that would somehow prejudice the defendant, such as when the defendant did not have an opportunity to contest the basis for that relief. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405, 424 (1975); *United States v. Marin*, 651 F.2d 24, 30 (1st Cir. 1981); 10 Wright & Miller §2664. Otherwise, "a party should experience little difficulty in securing a remedy other than that demanded in the pleadings as long as the party shows a right to it." *Id.*, §2662; *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 584 (2016).

In fact, this rule has been invoked by the Government to permit relief that was not explicitly plead, namely restitutionary relief, the very relief for which Plaintiffs pleaded and continue to seek here.

See United States v. Universal Mgmt. Servs., 191 F.3d 750, 759 n.7 (6th Cir. 1999).

The decisions below have the effect of stripping RFRA of an incredibly important equitable relief—restitutionary relief—such as reinstatement, back pay, or other remedial relief. They run contrary to the text of RFRA and to the historical tradition in place when RFRA was passed. This Court should grant *certiorari*.

II. Judicial Estoppel forecloses Respondents' arguments against back pay and restitutionary relief

This case was dismissed, and dismissal was affirmed, under Respondent's claim that equitable back pay and restitutionary relief was unavailable to Petitioners. However, Respondents previously argued—in opposing more wide-ranging preliminary injunctive relief—that back pay and restitutionary relief would be a remedy that could be awarded in final injunctive relief. And the district court withheld such relief on that very basis.

"Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895). This rule,

known as judicial estoppel, "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Pegram v. Herdrich*, 530 U.S. 211, 227 n. 8 (2000); *see* 18 Moore's Federal Practice § 134.30, p. 134-62 (3d ed. 2000) ("The doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding"); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4477, p. 782 (1981) ("absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory"); *see also New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) ("This rule, known as judicial estoppel, 'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'" (quoting *Pegram v. Herdrich*, 530 U.S. 211, 227 n.8 (2000))).

The factors this Court applies to assertions of judicial estoppel are: (i) whether a party's later position is "clearly inconsistent" with its earlier position; (ii) whether a "party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled'"; and (iii) "whether the party seeking to assert an inconsistent

position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Maine*, 532 U.S. 742, 750-51.

Every single one of those elements is met here.

Respondents, in opposing preliminary injunctive relief, argued below as follows:

> Second, Plaintiffs **appear to allege that involuntary reassignment to the Individual Ready Reserve and loss of retirement constitutes irreparable harm**. See Pls.' Mem. 2, 4, Doc. No. 13, PageID 579, 584. But any such contention is meritless, **as military administrative and disciplinary actions, including separation, are not irreparable injuries because the service member could later be reinstated and provided back pay if he prevailed on his claim**. *See, e.g., Hartikka v. United States*, 754 F.2d 1516, 1518 (9th Cir. 1985); *Chilcott v. Orr*, 747 F.2d 29, 34 (1st Cir. 1984); *Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 742 (2d Cir. 1992); *Church*, 2021 WL 5179215, at *17.
>
> [*See* Govt. Opposition to Preliminary Injunction, at Doc. 25, PageID#1025) (emphasis added).]

Of course, if such final relief were not in fact available, as the Government later argued (and the

district court and Sixth Circuit ultimately held), then the transfers to no-pay, no-points status would constitute irreparable harm as there would be no way to remedy such harm, and preliminary injunctive relief should have appropriately extended to halt such actions. *See Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 765 (2021).

In March of 2022, a preliminary injunction then issued in favor of Plaintiffs that prevented any further adverse actions by Respondents. *Doster v. Kendall*, 596 F. Supp. 3d 995 (S.D. Ohio 2022). However, *because* Respondents argued, and the district court accepted, that Plaintiffs were able to receive restitution in the form of back pay and back retirement points **in a final judgment**, and thus those harms were not irreparable, the preliminary injunction relief did not include restoration of lost pay and lost points. *Id.* at 1019-20; Govt. [Opposition to Preliminary Injunction, at Doc. 25, PageID#1025.]

And as *Maine* makes clear, estoppel is not foreclosed just because the Government is one of the parties. *Id.* at 755. When dealing with estoppel against the Government, courts must ask whether the law itself is being enjoined, as there are public policy reasons not to enjoin enforcement of the law. *Id.* Here, of course, we have a case involving Government violations of the law, and ultimately the Government engaging in Janus-faced arguments that suited it at the time, but resulting in depriving service-members

of important statutory relief and protections enacted by Congress in RFRA.

III. This case is important and is an ideal vehicle

Declining to grant review here results in traditional restorative equitable relief being rendered unavailable to claimants under RFRA—at least in the Sixth Circuit, where the panel below published the companion case. *See Poffenbarger v. Kendall*, 137 F.4th 563 (6th Cir. 2025). This Court should not wait for other circuits to follow that erroneous path.

Correctly interpreting matters pertaining to religious liberty "is a question of great importance." *Fulton v. City of Philadelphia*, 593 U.S. 522, 553 (2021) (Alito, J., concurring); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014) ("HHS's view that RFRA can never require the Government to spend even a small amount reflects a judgment about the importance of religious liberty that was not shared by the Congress that enacted that law."). Granting review here is thus critical to maintaining the full protection afforded under RFRA.

The ongoing deprivation of back pay and retirement points to thousands of conscience bound military reservists, after a pattern of illegal religious discrimination, still needs to be remedied. This Court is Petitioners' last hope. And here, the Government comes to this Court with unclean hands, having succeeded in a bait-and-switch maneuver with respect

to preliminary injunctive relief. Review is thus warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 9, 2025

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MAY 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-3404

HUNTER DOSTER; JASON ANDERSON; MCKENNA COLANTANIO; PAUL CLEMENT; JOE DILLS; BENJAMIN LEIBY; BRETT MARTIN; CONNOR MCCORMICK; HEIDI MOSHER; PETER NORRIS; PATRICK POTTINGER; ALEX RAMSPERGER; BENJAMIN RINALDI; DOUGLAS RUYLE; CHRISTOPHER SCHULDES; EDWARD STAPANON, III; ADAM THERIAULT; DANIEL REINEKE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellants,

v.

HON. FRANK KENDALL, III, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE AIR FORCE; LT. GENERAL BRIAN S. ROBINSON, IN HIS OFFICIAL CAPACITY AS COMMANDER, AIR EDUCATION AND TRAINING COMMAND; LT. GENERAL JOHN P. HEALY, IN HIS OFFICIAL CAPACITY AS COMMANDER, AIR FORCE RESERVE COMMAND; UNITED STATES OF AMERICA; MAJOR GENERAL JOHN D. DEGOES, IN HIS OFFICIAL CAPACITY AS SURGEON GENERAL OF THE AIR FORCE; LT. GENERAL MICHAEL E. CONLEY, IN HIS OFFICIAL CAPACITY AS COMMANDER, AIR FORCE SPECIAL OPERATIONS COMMAND,

Defendants-Appellees.

Appendix A

Before: KETHLEDGE, BUSH, and MURPHY, Circuit Judges.

KETHLEDGE, Circuit Judge. Eighteen members of the United States Air Force sued the government alleging that the Air Force's requirement to take the COVID-19 vaccine violated the Religious Freedom Restoration Act (RFRA) and the First Amendment. The district court dismissed the action as moot after the Air Force rescinded the requirement. We affirm.

The FDA approved the first COVID-19 vaccine in August 2021. At President Biden's request, the Secretary of Defense directed all Armed Forces to take the vaccine. Frank Kendall, the Secretary of the Air Force, ordered active-duty members of the Air Force to be vaccinated by November 2, 2021, and reservists by December 2, 2021. In a memorandum attached to the order, Kendall outlined the steps to request medical, administrative, and religious exemptions. The named plaintiffs—14 active-duty members of the Air Force and four active reservists—all requested religious exemptions to the mandate, and the Air Force granted none of their requests.

In February 2022, the plaintiffs filed a class-action complaint for declaratory and injunctive relief against the United States, Secretary Kendall, and four other officers of the Air Force, all in their official capacities. The plaintiffs asked the court to enjoin the defendants from enforcing the mandate against the plaintiffs or others similarly situated; to direct the defendants to grant the plaintiffs' exemption requests; and to declare that

the mandate illegally burdened the plaintiffs' religious exercise in violation of RFRA and the First Amendment. They also asked the court to certify the class and to award costs, including attorney fees, and other appropriate relief. They did not request damages, back pay, or retirement points for missed drills.

The district court certified the class and issued preliminary injunctions, enjoining the defendants from, among other things, disciplining or separating class members or placing active reservists on "no-points, no-pay status" for refusing to take the COVID-19 vaccine "due to their sincerely held religious beliefs." This court affirmed those injunctions in November 2022. *Doster v. Kendall*, 54 F.4th 398 (6th Cir. 2022).

Then, in December 2022, Congress enacted the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, which ordered the Secretary of Defense to rescind the military's COVID-19 vaccine mandate. Pub. L. No. 117-263, § 525. The Secretary rescinded the mandate on January 10, 2023, and the Air Force soon did the same.

The defendants then filed a petition for a panel rehearing and for rehearing en banc, requesting to vacate the panel opinion and the preliminary injunctions, which this court denied. *Doster v. Kendall*, 65 F.4th 792 (6th Cir. 2023) (order). Soon after, the defendants filed a petition for certiorari in the U.S. Supreme Court and moved in the district court to dismiss the entire case as moot because the court could no longer grant any of the plaintiffs' requested relief.

Appendix A

In December 2023, the Supreme Court granted certiorari, vacated the judgment, and remanded the case to this court with instructions to direct the district court to vacate its preliminary injunctions as moot. *Kendall v. Doster*, 144 S. Ct. 481, 217 L. Ed. 2d 248 (2023) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S. Ct. 104, 95 L. Ed. 36 (1950)). The district court then vacated the preliminary injunctions and ordered supplemental briefing on whether the entire case was moot. After reviewing that briefing, the court granted the defendants' renewed motion to dismiss the case. The plaintiffs now appeal.

We review de novo a district court's decision to dismiss a case as moot. *Hanrahan v. Mohr*, 905 F.3d 947, 960 (6th Cir. 2018). Article III, Section 2 of the U.S. Constitution grants federal courts the "judicial Power" to adjudicate only "Cases" or "Controversies." If a court can no longer grant any "effectual relief" to the plaintiff, there is no longer a "true dispute" between the parties, and the case becomes moot. *Jarrett v. United States*, 79 F.4th 675, 677-78 (6th Cir. 2023) (citation omitted). "The test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties." *Hanrahan*, 905 F.3d at 960 (citation omitted). A case is moot, then, when a plaintiff has received all the relief he sought. *See Jarrett*, 79 F.4th at 678.

The plaintiffs concede that Kendall's recission of the vaccine mandate "moots most of the case for many of the named plaintiffs and much of the class." But they argue that two of the named plaintiffs, Joe Dills and Christopher

Schuldes, still have a live case even after the Air Force rescinded the mandate. Dills and Schuldes are active reservists whom the Air Force placed on "no-points, no-pay" status after they refused to take the vaccine. That status meant they were no longer allowed to attend drill weekends, where they would have earned drill pay and retirement points. They asserted for the first time in supplemental briefing on the mootness issue—two years after they filed suit—that the court could award them back pay and retirement points for the drill weekends the reservists missed.

But the plaintiffs did not seek this relief in their complaint. They asked the court to enjoin the defendants from enforcing the vaccine mandate against them, to grant their religious-exemption requests, and to declare that the mandate violated RFRA and the First Amendment. None of this relief would have any practical effect on the plaintiffs' rights now that the Air Force has rescinded the mandate. Hence the case is moot.

The district court's judgment is affirmed.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MAY 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-3404

HUNTER DOSTER; JASON ANDERSON; MCKENNA COLANTANIO; PAUL CLEMENT; JOE DILLS; BENJAMIN LEIBY; BRETT MARTIN; CONNOR MCCORMICK; HEIDI MOSHER; PETER NORRIS; PATRICK POTTINGER; ALEX RAMSPERGER; BENJAMIN RINALDI; DOUGLAS RUYLE; CHRISTOPHER SCHULDES; EDWARD STAPANON, III; ADAM THERIAULT; DANIEL REINEKE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellants,

v.

HON. FRANK KENDALL, III, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE AIR FORCE; LT. GENERAL BRIAN S. ROBINSON, IN HIS OFFICIAL CAPACITY AS COMMANDER, AIR EDUCATION AND TRAINING COMMAND; LT.GENERAL JOHN P. HEALY, IN HIS OFFICIAL CAPACITY AS COMMANDER, AIR FORCE RESERVE COMMAND; UNITED STATES OF AMERICA; MAJOR GENERAL JOHN D. DEGOES, IN HIS OFFICIAL CAPACITY AS SURGEON GENERAL OF THE AIR FORCE; LT. GENERAL MICHAEL E. CONLEY, IN HIS OFFICIAL CAPACITY AS COMMANDER, AIR FORCE SPECIAL OPERATIONS COMMAND,

Defendants-Appellees.

Appendix B

Before: KETHLEDGE, BUSH, and MURPHY, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Southern District of Ohio at Cincinnati.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION – CINCINNATI, FILED MARCH 18, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION – CINCINNATI

Case No. 1:22-cv-84
Judge Matthew W. McFarland

HUNTER DOSTER, *et al.*,

Plaintiffs,

v.

HON. FRANK KENDALL, *et al.*,

Defendants.

ORDER GRANTING DEFENDANTS' RENEWED MOTION TO DISMISS (DOC. 111)

This matter is before the Court on Defendants' Renewed Motion to Dismiss (Doc. 111). Plaintiffs filed a Response in Opposition (Doc. 112), to which Defendants filed a Reply in Support (Doc. 113). Both parties filed supplemental briefing on this issue (*see* Docs. 124, 125) pursuant to the Court's order, so the matter is now ripe for review. For the following reasons, the Court **GRANTS** Defendants' Renewed Motion to Dismiss.

Appendix C

FACTS & PROCEDURAL BACKGROUND

On February 16, 2022, Plaintiffs filed a Class Action Complaint for Declaratory Judgment and Injunctive Relief. (*See* Compl., Doc 1.) The named Plaintiffs—18 servicemembers in the United States Air Force—alleged that the Department of Defense's COVID-19 vaccination requirement violated the Religious Freedom Restoration Act ("RFRA") and the First Amendment. (*Id.*)

In the following months, the Court certified a class and entered preliminary injunctions. (*See* Docs. 47, 72, 77, 86.) This relief included, among other things, enjoining Defendants from (1) "taking, furthering, or continuing any disciplinary or separation measures against the members of the Class for their refusal to receive the COVID-19 vaccine" and (2) "plac[ing] or continu[ing] active reservists on no points, no pay status for their refusal to get vaccinated for COVID-19 due to their sincerely held religious beliefs." (Modified Preliminary Injunction, Doc. 86, Pg. ID 5012-13.) On November 29, 2022, the Sixth Circuit affirmed the injunctions. *Doster v. Kendall*, 54 F.4th 398 (6th Cir. 2022), *vacated* by *Kendall v. Doster*, 144 S. Ct. 481, 217 L. Ed. 2d 248 (2023).

Then, in December 2022, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 was enacted. Pub. L. No. 117-263, § 525. Pursuant to this legislation, on January 10, 2023, the Secretary of Defense rescinded the vaccine mandate and specific adverse actions for those servicemembers who sought exemptions

on religious grounds. (*See* Notice of Recission, Doc. 100-1.) Subsequently, Defendants filed a petition for rehearing with the Sixth Circuit and requested that the preliminary injunctions be vacated as moot. (Petition for Rehearing, Case. No. 22-3702, Doc. 60-1.) The Sixth Circuit denied rehearing, *see Doster v. Kendall*, 65 F.4th 792, 793 (6th Cir. 2023), and Defendants filed a writ of certiorari with the Supreme Court. On December 11, 2023, the Supreme Court granted certiorari, vacated the Sixth Circuit's judgment, and ordered the Sixth Circuit to instruct this Court to vacate its preliminary injunctions as moot. *Kendall v. Doster*, 144 S. Ct. 481, 217 L. Ed. 2d 248 (2023).

On January 18, 2024, after the Sixth Circuit remanded this matter to the Court with instructions, the Court vacated its preliminary injunctions as moot. (Vacating Preliminary Injunctions, Doc. 123.) The Court then lifted the stay and ordered the parties to provide supplemental briefing concerning the mootness of this case in its entirety. (1/30/2024 Notation Order.)

Plaintiffs concede that the mandate's recission "moots most of this case for many of the named Plaintiffs and much of the class." (Plaintiffs' Supp., Doc. 125, Pg. ID 5968.) Yet, Plaintiffs maintain that a live case or controversy remains for two Plaintiffs — Joe Dills and Christopher Schuldes. (*Id.* at Pg. ID 5967-68.) As for relief, Plaintiffs assert that the Court may grant back pay and retirement points to these two reservists who were placed on no-points, no-pay status due to vaccine refusal. *Id.*

Appendix C

Dills is a Staff Sergeant in the Air Force serving as an active reservist. (Dills Decl., Doc. 125-2, Pg. ID 5982.) Dills received a letter of reprimand concerning the vaccine mandate and was transferred to no-points, no-pay status. (*Id.*) He consequently missed drill weekends from January through September 2022, so he did not receive $2,972.56 in drill pay and 32 reserve retirement points. (*Id.* at Pg. ID 5983.) These lost retirement points "will require [Dills] to serve for another year longer than [he] would otherwise have, to be eligible for retirement," and Dills expects to retire with less retirement pay as a result. (*Id.*)

Schuldes, a Senior Master Sergeant in the Air Force serving as an active reservist, is in a similar situation. (Schuldes Decl., Doc. 125-1, Pg. ID 5980.) As a result of being transferred to no-points, no-pay status, Schuldes missed drill weekends from January through August 2022. (*Id.* at Pg. ID 5980-81.) This translated to a loss of $3,436.64 in drill pay and 32 retirement points. (*Id.* at Pg. ID 5981.) These lost retirement points "will require [Schuldes] to serve for another year longer than [he] would otherwise have, to be eligible for retirement," and Schuldes expects to retire with less retirement pay as a result. (*Id.*)

LAW

The question before the Court is whether the case as a whole is moot. After all, a moot preliminary injunction does not necessarily render a case moot in its entirety. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 394-95, 101 S.

Ct. 1830, 68 L. Ed. 2d 175 (1981). Because federal courts may only adjudicate "actual, ongoing controversies," a case becomes moot if "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Honig v. Doe*, 484 U.S. 305, 317, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988); *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 59 L. Ed. 2d 642 (1978) (quotation omitted). "The test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties." *Hanrahan v. Mohr*, 905 F.3d 947, 960 (6th Cir. 2018) (cleaned up). In other words, a court must be able to grant "effectual" relief. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653, 16 S. Ct. 132, 40 L. Ed. 293 (1985)).

ANALYSIS

To begin, Plaintiffs concede that the mandate's recission "moots most of this case for many of the named Plaintiffs and much of the class." (Plaintiffs' Supp., Doc. 125, Pg. ID 5968.) Plaintiffs argue that the Court may still remedy back pay and retirement points that were improperly withheld from Dills and Schuldes due to vaccine refusal. (*Id.*) However, Plaintiffs did not seek such relief in their Complaint. And, even if they had, the Court is unable to render back pay and retirement points to reservists who did not attend trainings.

Appendix C

I. Plaintiffs Did Not Seek Retrospective Relief in Their Complaint

Defendants argue that this case is moot because—as reflected in the Complaint—Plaintiffs only sought prospective relief, not remedies for back pay and retirement points. (Renewed Motion to Dismiss, Doc. 111, Pg. ID 5405-09.) "The test for mootness is whether the *relief sought* would, if granted, make a difference to the legal interests of the parties." *Hanrahan*, 905 F.3d at 960 (cleaned up) (emphasis added). So, the Court must consider the relief Plaintiffs first sought in this case.

In their Complaint, Plaintiffs seek: (1) a preliminary injunction to preclude Defendants from taking enforcement or punitive action against Plaintiffs during the pendency of this matter "or until or unless Defendants[] rescind their current no-religious accommodation policy," (2) a declaration that the challenged orders are unconstitutional and illegal, (3) injunctive relief ordering the good faith processing of accommodations, (4) injunctive relief ordering Defendants to grant Plaintiffs' accommodation requests, (5) costs and reasonable attorney fees, and (6) other such relief that the Court deems just and proper. (Compl., Doc. 1, Pg. ID 18-19.)

None of this relief remains available after the recission of the mandate and the Supreme Court's decision instructing this Court to vacate its preliminary injunctions as moot. Simply put, this case was framed as a suit for prospective relief, and such prospective relief may

no longer be given by this Court. "Where, as a tactical matter, the complaint confined its requested relief to an injunction, courts are reluctant to permit an eleventh-hour change to avoid mootness." *Alexander v. Miller*, No. 320-CV-44, 2023 U.S. Dist. LEXIS 174709, 2023 WL 6439887, at *11 (E.D. Ky. Sept. 29, 2023) (citing *Youngstown Publ'g Co. v. McKelvey*, 189 F. App'x 402, 407 (6th Cir. 2006)). So, Plaintiffs cannot now seek additional relief for past harms through the prospective injunctive and declaratory relief sought in the Complaint. *See Kanuszewski v. Mich. HHS*, 927 F.3d 396, 406 (6th Cir. 2019) ("The distinction between past and ongoing or future harms is significant because the type of harm affects the type of relief available.").

District courts throughout the nation have applied similar reasoning when confronted with the post-recission mootness question at the heart of this case. *See, e.g., Jackson v. Mayorkas*, No. 4:22-CV-0825, 2023 U.S. Dist. LEXIS 144078, 2023 WL 5311482, at *4 (N.D. Tex. Aug. 17, 2023) (concluding that missing training because of vaccine status cannot prevent mootness when plaintiff sought only prospective relief); *Bongiovanni v. Austin*, No. 3:22-CV-580, 2023 U.S. Dist. LEXIS 115143, 2023 WL 4352445, at *6 (M.D. Fla. July 5, 2023) (dismissing case as moot after finding, among other things, that plaintiffs never sought a declaration that they were entitled to back pay or any monetary benefits in the Complaint); *Bazzrea v. Mayorkas*, No. 3:22-CV-265, 677 F. Supp. 3d 651, 2023 U.S. Dist. LEXIS 101876, 2023 WL 3958912, at *6 (S.D. Tex. June 12, 2023) (rejecting late-in-the-day damages request because "declaratory and injunctive relief are the only

types of relief requested in connection with [Plaintiffs'] RFRA claim"). The Court finds this reasoning persuasive.

Plaintiffs' citation to *Schelske v. Austin*, No. 6:22-CV-049, 2023 U.S. Dist. LEXIS 163101, 2023 WL 5986462 (N.D. Tex. Sept. 14, 2023), is distinguishable on a number of fronts. As an initial matter, those servicemembers sought "back pay" in their amended complaint. 2023 U.S. Dist. LEXIS 163101, [WL] at *31. And, although the district court permitted the back pay claims to proceed, it specifically recognized a distinction: "unlike cases where a claim for reinstatement had been previously dismissed, the claim for reinstatement here remains" since plaintiffs *remain* separated from the Army. 2023 U.S. Dist. LEXIS 163101, [WL] at 32. The same cannot be said for the case at bar. Plaintiffs did not seek back pay or retirement points in their Complaint and have since been removed from no-pay, no-points status.

Plaintiffs also contend that the collateral consequences doctrine keeps this case alive. (*See* Response, Doc. 112, Pg. ID 5832-34.) Under this doctrine, a case is not considered moot when "a 'collateral' injury survives that can be remedied by [the] court even though the primary injury may have been resolved." *EEOC v. Fed. Express Corp.*, 558 F.3d 842, 847 (6th Cir. 2009); *see also Sibron v. New York*, 392 U.S. 40, 53-59, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968). But, even if the case is viewed through the lens of the collateral consequences doctrine, Plaintiffs face two obstacles that prevent this matter from remaining a live case or controversy.

First, as discussed above, there is a mismatch between the relief sought in the Complaint and what Plaintiffs now seek. Although Dills and Schuldes missed drill weekends beginning in January of 2022 and the Complaint was later filed on February 16, 2022, Plaintiffs did not seek retrospective relief, back pay, or retirement points. (*See* Dills Decl., Doc. 125-2, Pg. ID 5983; Schuldes Decl., Doc. 125-1, Pg. ID 5981; Compl., Doc. 1.) Instead, as described above, the Complaint contemplates only prospective relief.

Second, even if the Court considers these claims, they nevertheless fail to save this matter from mootness. As noted above, the question of mootness turns on whether the Court can offer any "effectual" relief. *Church of Scientology of Cal.*, 506 U.S. at 12. And, for the following reasons, the Court cannot grant the Plaintiffs' recently requested relief of back pay and retirement points.

II. The Court Cannot Grant Back Pay as Relief

Plaintiffs' claims for back pay do not create a live case or controversy. The United States pays its military servicemembers in one of two ways: members serving in full-time active duty are paid because of their professional status, and members serving part-time in the reserves are paid for drills and training they attended. *See Kuntz v. United States*, 141 Fed. Cl. 713, 716 (2019); 37 U.S.C. §§ 204(a)(1), (2), and 206(a)(1). Under this scheme, reservists cannot recover back pay for drills or training they did not attend. *Palmer v. United States*, 168 F.3d 1310, 1314 (Fed. Cir. 1999); *see also Radziewicz v. United States*, 167 Fed. Cl. 62, 67 (2023) (collecting cases). This is

true even if reservists were wrongfully prevented from attending the training or drill. *Palmer*, 168 F.3d at 1314.

In response, Plaintiffs point to *Schelske v. Austin*, 2023 U.S. Dist. LEXIS 163101, 2023 WL 5986462 (N.D. Tex. Sept. 14, 2023). There, the district court held that RFRA permitted claims for back pay in connection with claims for reinstatement to active duty because back pay was "integral" to restoring prospective class members to their former status before separation from the military. 2023 U.S. Dist. LEXIS 163101, [WL] at *31-32. But, the Court finds that holding unpersuasive here. The issue in *Schelske* involved active-duty servicemembers who were entitled to pay they would have earned but for their unlawful separation. *Id.* Plaintiffs, in contrast, were unable to attend drills while serving as reservists. (Dills Decl., Doc. 125-2, Pg. ID 5982; Schuldes Decl., Doc. 125-1, Pg. ID 5980.) Reservists can only receive pay for drills they attended. 37 U.S.C. § 206(a)(1). As a result, "military reservists can find themselves 'without recourse' for wrongful treatment, 'when a service member on regular active duty would have such recourse if similarly treated." *Radziewicz*, 167 Fed. Cl. at 67 (quoting *Palmer*, 168 F.3d at 1314-15).

Next, although Plaintiffs reference the constructive service doctrine cited in *Barnick v. United States*, 591 F.3d 1372 (Fed. Cir. 2010), the Court does not find this reasoning to be on point. Under the constructive service doctrine, "military personnel who have been illegally or improperly separated from service are deemed to have continued in active service until their legal separation."

Christian v. United States, 337 F.3d 1338, 1347 (Fed. Cir. 2003). But, the court in *Barnick* declined to extend the constructive service doctrine to the plaintiff, in part, because he was a reservist not on extended active duty. *Barnick*, 591 F.3d at 1379. In other words, constructive service applies to servicemembers on active duty. *Reilly v. United States*, 93 Fed. Cl. 643, 648-49 (2010). Plaintiffs have not alleged that Dills or Schuldes was on active duty. (Compl., Doc. 1, ¶¶ 17, 20; Dills Decl., Doc. 125-2, Pg. ID 5982; Schuldes Decl., Doc. 125-1, Pg. ID 5980.)

Plaintiffs further contend that the Court can grant back pay because it is equitable relief. (Plaintiffs' Supp., Doc. 125, Pg. ID 5971.) But, even assuming that RFRA allows servicemembers to secure equitable relief against the military for wrongful conduct, Dills and Schuldes still cannot receive back pay for the drills because they did not participate in them. *See Palmer*, 168 F.3d at 1314. Accordingly, because the Court cannot grant relief on this issue, requested back pay does not save this matter from moo tness. *See Church of Scientology of Cal.*, 506 U.S. at 12.

III. The Court Cannot Grant Retirement Points as Relief

The reasoning pertaining to back pay also applies to Plaintiffs' claim for retirement points. Plaintiffs now seek retirement points they did not receive while on no-pay, no-points status. (Plaintiffs' Supp., Doc. 125, Pg. ID 5967-68.) Reservists receive retirement pay based on the points they accrue throughout their service. *See* 10 U.S.C. § 12733. Similar to pay, reservists can accrue

points, in part, by attending drill sessions. *See* 10 U.S.C. § 12732(a)(2)(B). The Court concludes that the statutory structure—paired with the Federal Circuit's reasoning in *Palmer*—forecloses Plaintiffs' desired relief. Plaintiffs did not attend drill sessions while on no-pay, no-points status, so they cannot receive credit for participating.

Alternatively, sovereign immunity bars the recovery of retirement points in this case. Awarding these points has the effect of increasing Plaintiffs' retirement pay, which amounts to monetary damages. *See DeGroat v. Townsend*, 495 F. Supp. 2d 845, 852 (S.D. Ohio 2007); *Sosa v. Seciy, Dep't of Def.*, 47 F.App'x 350, 351-52 (6th Cir. 2002). Congress may only waive sovereign immunity through clear statutory language. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 144 S. Ct. 457, 465-66, 217 L. Ed. 2d 361 (2024). Although Plaintiffs argue that the Supreme Court's decision in *Tanzin v. Tanvir* recognized that RFRA waives sovereign immunity, this holding was limited to damages against officials in their *individual* capacities. 592 U.S. 43, 141 S. Ct. 486, 208 L. Ed. 2d 295 (2020). In this case, Plaintiffs only brought suit against Defendants in their official capacities. (Compl., Doc. 1.) Thus, Plaintiffs have not provided authority that sovereign immunity was waived for this matter.

Accordingly, because the Court cannot grant relief on this issue, the requested retirement points do not save this matter from mootness. *See Church of Scientology of Cal.*, 506 U.S. at 12.

* * *

Appendix C

This case is moot in its entirety. Plaintiffs brought this class action to seek prospective injunctive and declaratory relief from the military's vaccine mandate. Throughout the course of this litigation, the Court granted much of the requested relief by way of preliminary injunctions. The mandate was ultimately rescinded, and the Court received instructions from the Supreme Court to vacate its preliminary injunctions as moot. Although such a decision may not necessarily moot a case in its totality, it does here. Plaintiffs sought only prospective relief in their Complaint, and the retrospective relief of back pay and retirement points now sought cannot be given.

CONCLUSION

Accordingly, the Court hereby **GRANTS** Defendants' Renewed Motion to Dismiss (Doc. 111). This case is **DISMISSED WITHOUT PREJUDICE** and the matter is **TERMINATED** from the Court's docket.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: /s/ Matthew W. McFarland
JUDGE MATTHEW W. McFARLAND

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION – CINCINNATI, FILED MARCH 18, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION – CINCINNATI

Case No. 1:22-cv-84
Judge Matthew W. McFarland

HUNTER DOSTER, *et al.*,

Plaintiffs,

v.

SECRETARY OF THE AIRFORCE, *et al.*,

Defendants.

JUDGMENT IN A CIVIL CASE

	Jury Verdict.	This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
X	**Decision by Court.**	This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Appendix D

IT IS ORDERED AND ADJUDGED that the Court hereby GRANTS Defendants' Renewed Motion to Dismiss (Doc. 111). This case is DISMISSED WITHOUT PREJUDICE and the matter is TERMINATED from the Court's docket.

Dated: March 18, 2024.

Richard W. Nagel, Clerk of Court

By: */s/ Kellie A. Fields*
Deputy Clerk