No. 25-446

In the Supreme Court of the United States

HUNTER DOSTER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED AS A CLASS, ET AL., PETITIONERS

v.

TROY E. MEINK, SECRETARY OF THE AIR FORCE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Petitioners, service members in the Air Force and the Air Force Reserve, challenged the Air Force's COVID-19 vaccination requirement on the grounds that the Air Force's denial of their requests for an exemption from that requirement violated the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*, and the Free Exercise Clause of the First Amendment, U.S. Const. Amend. I. After the military rescinded the vaccination requirement at Congress's direction, this Court previously vacated the district court's class-wide preliminary injunction prohibiting enforcement of that requirement on mootness grounds. 144 S. Ct. 481. Although petitioners on remand argued that they retained live claims for back pay and retirement points, the district court held that petitioners' complaint did not seek such relief, and the Sixth Circuit affirmed. The question presented is whether the court of appeals properly concluded that petitioners' complaint did not seek back pay and retirement points.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is available at 2025 WL 1369378. The opinion of the district court (Pet. App. 8a-20a) is available at 2024 WL 1156426.

JURISDICTION

The judgment of the court of appeals (Pet. App. 6a-7a) was entered on May 12, 2025. On July 23, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including October 9, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In August 2021, the Secretary of Defense* directed the military departments to ensure that all service members were fully vaccinated against COVID-19. Pet. App. 2a. Service members could seek an exemption from this requirement for medical, administrative, or religious reasons. See *ibid.* If an exemption request was eventually denied, the service member could receive the vaccine, wait for the military to initiate separation proceedings, or retire (if eligible). See D. Ct. Doc. 27-8, at 2-3 (Mar. 9, 2022); D. Ct. Doc. 27-14, at 3-7 (Mar. 9, 2022); D. Ct. Doc. 27-15, at 3-5 (Mar. 9, 2022). As relevant here, members of the Air Force Reserve who did not comply with the vaccination requirement were reassigned to the Individual Ready Reserve in a "no pay/no points status," meaning that they would remain Air Force service members but would not drill with their units or earn pay or credit toward retirement. D. Ct. Doc. 27-15, at 4; see D. Ct. Doc. 27-18, at 2-4 (Mar. 9, 2022).

In December 2022, Congress passed, and the President signed into law, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (2023 NDAA), Pub. L. No. 117-263, 136 Stat. 2395. Section 525 of the 2023 NDAA required the Secretary of Defense to rescind the COVID-19 vaccination requirement. See 136 Stat. 2571-2572; see also Pet. App. 3a, 9a. The 2023 NDAA did not require the Department of Defense to award back pay, restore retirement points, or

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* By executive order, the Department of Defense is now called the Department of War. See Exec. Order No. 14,347, 90 Fed. Reg. 43,893 (Sept. 10, 2025). This brief refers to the Department and its officers by their names in effect during the litigation below.

provide any other type of retrospective relief for reservists.

On January 10, 2023, the Secretary of Defense rescinded the military's COVID-19 vaccination requirement. Pet. App. 3a, 9a-10a. The Secretary's Rescission Memorandum provided that service members in the Armed Forces shall not be "separated solely on the basis of their refusal to receive the COVID-19 vaccination" if they sought an exemption on medical, administrative, or religious grounds. D. Ct. Doc. 100-1, at 2 (Jan. 11, 2023). In addition, the memorandum directed the military departments to "update the records of such individuals to remove any adverse actions solely associated with denials of such requests." *Ibid.*

The Secretary of the Air Force and the Chief of the Air Force Reserve subsequently issued additional memoranda rescinding prior guidance implementing the COVID-19 vaccination requirement for the Air Force and Space Force and the Reserve's prior policies limiting participation by unvaccinated service members in drills and training. The Secretary of the Air Force's memorandum explained, among other things, that "[n]o individuals currently serving in the Department of the Air Force shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious" or other grounds and that "[t]he Department of the Air Force will update the records of such individuals to remove any adverse actions solely associated with denials of such requests." D. Ct. Doc. 101-1, at 2 (Jan. 31, 2023). And the Reserve Chief's memorandum explained that "COVID-19 vaccination status is no longer a barrier to service in the [Air Force Reserve]." D. Ct. Doc. 105-2, at 2 (Feb. 13, 2023).

2. Petitioners—18 active-duty and active-reservist members of the Air Force—filed this putative class action in February 2022 in the United States District Court for the Southern District of Ohio. Pet. App. 2a, 9a. Petitioners asserted that the Air Force's failure to grant their requests for religious exemptions from the COVID-19 vaccination requirement violated the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, and the Free Exercise Clause of the First Amendment, U.S. Const. Amend. I. Pet. App. 2a. Petitioners sought declaratory and injunctive relief to prohibit enforcement of that requirement. *Id.* at 2a-3a, 9a. Specifically, petitioners requested that the district court enjoin enforcement of the vaccination requirement, direct the Air Force to grant petitioners' exemption requests, and declare that the vaccination requirement illegally burdened petitioners' religious exercise rights. *Id.* at 2a-3a. Unlike plaintiffs in some other cases challenging the military's vaccination requirement, see, *e.g.*, *Poffenbarger* v. *Meink*, petition for cert. pending, No. 25-448 (filed Oct. 9, 2025), petitioners did not seek back pay or retirement points for missed drills, see Compl. 17-19; Pet. App. 3a. Petitioners' complaint named as defendants the Secretary of the Air Force and other Air Force officials in their official capacities. See Compl. 1-2.

Petitioners sought preliminary relief that would require the Air Force to grant their religious-accommodation requests and prohibit the Air Force from taking punitive action against them. See Pet. App. 2a-3a; 596 F. Supp. 3d 995, 1021. The district court granted in part petitioners' motion for a preliminary injunction. The court determined that petitioners were likely to succeed on the merits of their First Amendment and RFRA

claims, 596 F. Supp. 3d at 1014-1019, and that petitioners satisfied the irreparable harm requirement because they alleged violations of the First Amendment and RFRA, *id.* at 1019-1020. The court issued a preliminary injunction prohibiting the Air Force from "taking any disciplinary or separation measures against the [named] [p]laintiffs * * * for their refusal to get vaccinated for COVID-19 due to their sincerely held religious beliefs." *Id.* at 1023.

The district court subsequently certified a class action, 342 F.R.D. 117, 129, and entered a class-wide preliminary injunction that prohibited the Air Force from "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," 2022 WL 2974733, at *1. The court of appeals affirmed. 54 F.4th 398, 442.

3. a. After the Air Force rescinded the vaccination requirement, the government sought rehearing in the court of appeals, requesting that the court vacate the panel opinion and the preliminary injunctions. Pet. App. 3a. The court denied that request. *Ibid.*; 65 F.4th 792, 793. The government then moved in the district court to dismiss petitioners' claims as moot, contending that petitioners were no longer subject to any injury from the since-rescinded vaccination requirement. D. Ct. Doc. 111, at 8 (May 2, 2023). In response, petitioners suggested for the first time that the relief they sought in their complaint included "restoration of lost points and good 'retirement' years for reservists," as well as "backpay" for when those reservists were placed in the Individual Ready Reserve. D. Ct. Doc. 112, at 13 (May 16, 2023).

While the government's motion to dismiss was pending in the district court, this Court vacated the court of appeals' prior judgment and remanded with instructions to direct the district court "to vacate as moot its preliminary injunctions." 144 S. Ct. 481, 481 (citing *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950)). The district court did so, 2024 WL 5402281, and then directed the parties to address "whether the entire case was moot," Pet. App. 4a. Petitioners agreed that "most of th[e] case" was moot, *id.* at 10a (citation omitted), but they repeated their assertion that the relief they sought included back pay and retirement points for reservists who were placed in the Individual Ready Reserve for failure to comply with the vaccination requirement, see *ibid.*; D. Ct. Doc. 125, at 3-4 (Feb. 9, 2024). That newly requested relief would have been applicable to only two of the named petitioners—Joe Dills and Christopher Schuldes—reservists who were transferred to the Individual Ready Reserve in early 2022 and thus not permitted to drill with their units, as well as to other similarly situated reservists. See Pet. App. 10a-11a; D. Ct. Doc. 125-1, at 1-2; D. Ct. Doc. 125-2, at 1-3.

b. The district court dismissed petitioners' claims, concluding that "[t]his case is moot in its entirety." Pet. App. 20a. The court explained that none of the relief sought in petitioners' complaint "remains available after the rescission" of the vaccination requirement. *Id.* at 13a. "Simply put, this case was framed as a suit for prospective relief," which the court found it could "no longer" grant. *Id.* at 13a-14a. The court further explained that petitioners could not "seek additional relief for past harms"—specifically, back pay and retirement points—"through the prospective injunctive and declar-

atory relief sought in the Complaint." *Id.* at 14a; see *id.* at 15a ("Plaintiffs did not seek back pay or retirement points in their Complaint.").

The district court also determined that, even assuming petitioners had sought back pay and retirement points, it could not grant that "recently requested relief." Pet. App. 16a. The court explained that reservists cannot "recover back pay" or "receive [retirement] credit" for drills and training that they did not attend, even if they were "wrongfully prevented from attending" those activities. *Id.* at 16a-19a (citing *Palmer* v. *United States*, 168 F.3d 1310, 1314 (Fed. Cir. 1999)). The court further explained that, in the alternative, sovereign immunity barred petitioners from recovering retirement points because such an award "has the effect of increasing [their] retirement pay," amounting to "monetary damages." *Id.* at 19a. The court thus rejected petitioners' contention that RFRA waives the United States' sovereign immunity for damages based on claims like petitioners' against federal officials sued "in their official capacities." *Ibid.*

4. The court of appeals unanimously affirmed in an unpublished opinion. Pet. App. 1a-5a.

Like the district court, the court of appeals noted that petitioners "concede" that the Air Force's rescission of the vaccination requirement "'moots most of the case.'" Pet. App. 4a. And the court recognized that petitioners "did not seek" back pay or retirement points "in their complaint" but instead sought that relief "for the first time in supplemental briefing on the mootness issue—two years after they filed suit." *Id.* at 5a. Petitioners' complaint had asked the district court only to "enjoin" the Air Force from enforcing the vaccination requirement "against them" and "declare" that the re-

quirement "violated RFRA and the First Amendment." *Ibid.* Because "[n]one of this relief would have any practical effect on the plaintiffs' rights now that the Air Force has rescinded" the vaccination requirement, the court of appeals held that "the case is moot." *Ibid.*

ARGUMENT

Petitioners' claims seeking declaratory and injunctive relief are moot because a court cannot award prospective relief as to a policy that no longer exists—as petitioners tacitly concede. But petitioners renew their argument (Pet. 16-27) that their case is not moot because petitioners Dills and Schuldes could obtain back pay and retirement points. That argument is both incorrect and unworthy of this Court's review, as the government has explained in its brief in opposition in *Poffenbarger* v. *Meink*, No. 25-448 (filed Jan. 14, 2026). More importantly, in this case, the lower courts correctly determined that petitioners never properly sought back pay and retirement points. The lower courts' factbound decision does not conflict with any decision of this Court or any other court of appeals. Further review is unwarranted.

1. The court of appeals properly rejected petitioners' attempt to keep their case alive by suggesting that two petitioners can seek back pay and retirement points that were not included in the complaint. Petitioners raised the possibility of this relief for the first time in response to the government's motion to dismiss as moot. See pp. 5-6, *supra*; Pet. App. 5a. Unlike the petitioners in a companion case pending before this Court, *Poffenbarger* v. *Meink*, petition for cert. pending, No. 25-448 (filed Oct. 9, 2025), petitioners never filed an amended complaint seeking back pay or retirement points.

The district court and the court of appeals both found that petitioners' complaint was solely forward-looking. As the district court put it, "this case was framed as a suit for prospective relief, and such prospective relief may no longer be given." Pet. App. 13a-14a; see *id.* at 16a ("the Complaint contemplates only prospective relief"). The court of appeals affirmed that finding, explaining that petitioners "did not seek [back pay and retirement points] in their complaint." *Id.* at 5a. The lower courts' factbound determination that petitioners did not seek back pay and retirement points does not warrant this Court's review.

Petitioners are thus wrong (Pet. 25) that "it is clear from the record" that they sought back pay and retirement points "from the outset." The portions of the complaint they cite (*ibid.*) for support merely explain who the plaintiffs are, see Compl. ¶¶ 17, 20, and that one plaintiff faced the prospect of "imminent" alleged harms, Compl. ¶ 47—a telltale sign of allegations supporting prospective relief. Moreover, the relief that petitioners sought was—as petitioners themselves describe it—"broad *injunctive* relief" in order to halt the alleged ongoing violations of law. Pet. 25 (citing Compl. ¶¶ 59, 70) (emphasis added); see, *e.g.*, Compl. ¶¶ 70, 75 (seeking "to halt the ongoing violations of law and to obtain compliance by the Defendants with same" and to obtain "declaratory and injunctive relief" for "First Amendment violations"); cf. *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 71 (1997) (claim for retrospective relief, "extracted late in the day" from plaintiff's "general prayer for relief and asserted solely to avoid otherwise certain mootness * * * could not genuinely revive the case").

Nor does Federal Rule of Civil Procedure 54(c) support petitioners' position. See Pet. 26-27. Rule 54(c) states that a "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). That rule might in some circumstances permit a court to award relief outside the pleadings if plaintiffs prevailed on the merits, but see *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 424 (1975) (explaining that a party "may not be 'entitled' to relief" under Rule 54(c) if it tardily sought that relief), but it does not undercut the lower courts' determination that the gravamen of petitioners' case was to prevent future harms, not remedy past ones. Indeed, petitioners sought injunctive relief to prohibit the Air Force from prospectively enforcing the vaccination requirement against them, which the district court granted. See 596 F. Supp. 3d 995, 1023, vacated as moot, 2024 WL 5402281. Petitioners did not raise the possibility of any form of retrospective, compensatory relief until years later, when the parties briefed the question of mootness.

It was particularly proper for the lower courts not to construe the complaint as requesting retirement points and back pay, or invoke Rule 54(c), because this case is a certified class action. Had the lower courts interpreted petitioners' complaint as requesting monetary relief, that would have introduced individualized issues like whether a plaintiff was even entitled to back pay that, at a minimum, were not considered at the class-certification stage. See 342 F.R.D. 117. Indeed, those individualized issues may have defeated class certification. See *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 360 (2011) ("claims for *individualized* relief" like "backpay" "do not satisfy" Federal Rule of Civil Proce-

dure 23(b)(2)); see also *Shook* v. *Board of County Comm'rs of El Paso*, 543 F.3d 597, 604 (10th Cir. 2008) ("under Rule 23(b)(2) the class members' injuries must be sufficiently similar that they can be addressed in a[] single injunction that need not differentiate between class members").

In all events, petitioners have not sought certiorari on whether the lower courts properly construed their complaint, nor have they argued that such an issue would be worthy of this Court's review. Instead, petitioners ask (Pet. i) the Court to consider the same questions presented in *Poffenbarger*—whether RFRA permits a court to award back pay and retirement points, and whether the government is judicially estopped from arguing that such relief is not available under RFRA. See Pet. i, *Poffenbarger*, *supra*, petition for cert. pending, No. 25-448 (filed Oct. 9, 2025). Petitioners' omission of any argument on the certworthiness of the actual issue that the court of appeals decided should be fatal to this petition, regardless whether the issues presented in *Poffenbarger* are certworthy (which they are not, as summarized below). See pp. 11-13, *infra.*

Finally, petitioners' passing reliance (Pet. 17-18) on the "collateral consequences" mootness exception is also mistaken. Under that exception, a case is not moot if a court may remedy a plaintiff's "collateral" injury, even if the plaintiff's principal injury has been resolved. See, *e.g.*, *Sibron* v. *New York*, 392 U.S. 40, 53-59 (1968). But again, the district court correctly explained that petitioners "did not seek" the assertedly collateral relief of back pay and retirement points on which they rely to avoid mootness. Pet. App. 15a-16a; see *id.* at 5a.

2. Even setting aside the threshold flaw that petitioners' complaint did not seek back pay and retirement

points, such relief is not available against the federal government under RFRA—as the court of appeals held in *Poffenbarger*—and that question does not warrant this Court's review.

As explained more fully in the government's brief in opposition in *Poffenbarger*, court-ordered back pay and retirement points are barred by sovereign immunity, absent a waiver. See Br. in Opp. at 12-18, *Poffenbarger* v. *Meink*, No. 25-448 (filed Jan. 14, 2026). While petitioners seek to frame back pay and retirement points as "restitutionary" "equitable relief," Pet. 20, they are mistaken. Back pay and retirement points are quintessential "retroactive compensation for a previous legal wrong"; that is, "money damages." *Poffenbarger* Br. in Opp. at 15 (citation omitted). RFRA does not waive the federal government's sovereign immunity from such monetary remedies. See *id.* at 12-13. Nor do the military pay statutes entitle petitioners to the payments they seek. See *id.* at 15-16. Petitioners Dills and Schuldes are reservists who were assigned to the Individual Ready Reserve and thus did not participate in drills or training. See p. 6, *supra*. And reservists are not entitled to any compensation or credit for activities that they did not actually perform. See *Poffenbarger* Br. in Opp. at 15-16. While some petitioners are active-duty service members rather than reservists, see Compl. 3-5, the requested relief only relates to reservist petitioners Dills and Schuldes, see Pet. App. 4a-5a, 10a.

Petitioners also err in asserting (Pet. 27-31) that the government should be estopped from arguing that petitioners are not entitled to back pay and retirement points. 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." *New Hampshire* v. *Maine*, 532 U.S. 742, 749 (2001) (citation omitted).

Judicial estoppel does not apply here. In opposing petitioners' motion for a preliminary injunction, the government contended that "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." D. Ct. Doc. 27, at 43 (Mar. 9, 2022) (emphasis omitted). The district court, however, concluded that, even *assuming* that premise, petitioner still suffered irreparable injury due to the violation of the First Amendment and RFRA. 596 F. Supp. 3d at 1020. Thus, the court rejected the government's prior argument about irreparable harm that petitioners say conflicts with its argument now—so judicial estoppel does not apply. See *id.* at 1019-1020; cf. *Poffenbarger* v. *Kendall*, 137 F.4th 563, 569 (6th Cir. 2025) (judicial estoppel does not apply where the "district court rejected the government's prior argument" that purportedly conflicts with the government's current argument), petition for cert. pending, No. 25-488 (filed Oct. 9, 2025). And the court's injunction did not contemplate ordering back pay or retirement points for the simple reason that petitioners did not seek that relief. Contra Pet. 30. In any event, petitioners' factbound contention—which the court of appeals did not address—does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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