No. 25-

IN THE

Supreme Court of the United States

TAMI M. DIXON,

Petitioner,

v.

SCOTT BESSENT, UNITED STATES SECRETARY OF THE TREASURY, IN HIS OFFICIAL CAPACITY, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an employer's requirement that an employee undergo COVID-19 testing, based solely on the employee's unvaccinated status, constitutes regarding the employee as having a disability under the Americans with Disabilities Act or the Rehabilitation Act.

2. Whether an unvaccinated federal employee must be perceived to have a specific disability to be "regarded as" having a disability under the Americans with Disabilities Act and the Rehabilitation Act.

3. Whether, to state a viable claim of religious discrimination under Title VII, a plaintiff must plead specific details related to comparator employees at the pleading stage.

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. The petitioner is Tami M. Dixon, an individual with sincerely held religious beliefs. The respondent is the Scott Bessent, United States Secretary of the Treasury, in his official capacity.

RELATED PROCEEDINGS

Dixon v. Yellen, No. 22-cv-3496 (AMP), 2024 U.S. Dist. LEXIS 77051 (D.D.C. Mar 21, 2024).

Dixon v. Bessent, No. 24-5110, 2025 U.S. App. LEXIS 15296 (D.C. Cir. Jun 20, 2025) reh'g denied Jul 16, 2025, *sub nom. Dixon v. Yellen*, No. 22-cv-3496 (AMP), 2024 U.S. Dist. LEXIS 77051 (D.D.C. Mar 21, 2024).

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The court of appeal's decision is unpublished but is available at 2025 U.S. App. LEXIS 15296 and App. 1a. The district court's opinion and order granting respondent's motion to dismiss is not recorded in the Federal Supplement but is available at 2024 U.S. Dist. LEXIS 77051 and App. 9a.

JURISDICTION

The judgment of the court of appeals was entered on June 20, 2025. A timely petition for rehearing and rehearing en banc was denied on July 16, 2025 (App. *infra*, 26a and 28a). The ruling has not been published in the Federal Supplement but is available at App. 1a. This Court has Jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

This case arises under the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., which prohibits discrimination on the basis of disability in federal employment, including discrimination against employees "regarded as having" a disability, 29 U.S.C. § 791. The Act incorporates standards developed under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and defines "disability" to include a physical or mental impairment that substantially limits a major life activity, a record of such an impairment, or being regarded as having such an impairment, 42 U.S.C. § 12102(1)-(3). This case also arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., which prohibits employers from discriminating against employees on the basis of religion and requires

reasonable accommodation of employees' sincerely held religious beliefs, 42 U.S.C. § 2000e(j). These provisions are directly implicated by the petitioner's claims that her former employer, the Department of the Treasury, failed to accommodate her sincerely held religious beliefs regarding COVID-19 vaccination and remote work, and that she was regarded as disabled due to her unvaccinated status.

INTRODUCTION

This case presents the Court with an opportunity to clarify important questions at the intersection of federal-sector employment law, public health policy, and statutory protections under the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and Title VII of the Civil Rights Act of 1964.

The case arises in the unique context of the COVID-19 pandemic, but its implications extend well beyond that emergency. It calls on the Court to determine whether federal agencies may impose blanket workplace mandates—such as mandatory COVID-19 testing and return-to-office requirements—on unvaccinated employees without violating federal anti-discrimination laws, particularly when requests for religious and medical accommodations are pending.

Federal employees are guaranteed the right to work "free from any discrimination" based on religion or disability. *See* 42 U.S.C. § 2000e-16(a); 29 U.S.C. § 791. In this case, Petitioner—a federal employee—was required to return to in-person work and undergo regular COVID-19 testing solely because of her unvaccinated

status, even though she had submitted a religious exemption request that had not yet been adjudicated. Vaccinated employees were permitted to work remotely without similar intrusion. This policy resulted in tangible adverse treatment based on both her sincerely held religious beliefs and her perceived health status.

The courts below dismissed her claims at the pleading stage, holding that she failed to allege sufficient facts to support claims under the ADA, the Rehabilitation Act, or Title VII. In doing so, the lower courts adopted unduly restrictive interpretations of these statutes and imposed heightened pleading standards that have no basis in the text of the laws or in this Court's precedent. Furthermore, neither the Supreme Court nor the D.C. Circuit has articulated a clear legal framework for evaluating Title VII claims based on the failure to accommodate religious beliefs. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 67 (1986); *Lemmons v. Georgetown Univ. Hosp.*, 431 F. Supp. 2d 76, 95 n.22 (D.D.C. 2006).

Without clarification, federal employees will continue to face uncertainty and disparate outcomes depending on the jurisdiction in which they file suit. This case thus raises questions of exceptional importance that merit this Court's review.

STATEMENT OF THE CASE

A. Petitioner

Between October 2015 and July 2022, Petitioner, Tami M. Dixon worked for the Department of the Treasury, initially as a contractor and later as an employee under

Schedule A hiring authority, making the agency aware of her disability from the start. Ms. Dixon is a woman of faith whose religious beliefs are grounded in the Christian doctrine of *Imago Dei*, the belief that humans are created in God's image. Her faith includes the principle that each person has a God-given right to bodily integrity and to informed consent regarding any medical intervention.

In response to COVID-19, Executive Order 14043 mandated vaccination for federal employees by November 22, 2021. Ms. Dixon submitted a religious exemption request and requested continued remote work as an accommodation to accommodate both her medical conditions and religious beliefs. Her religious exemption request explained that vaccination and mandatory testing conflicted with her sincerely held religious beliefs and that compliance would violate her conscience and faith. While her exemption was pending, the agency-imposed COVID-19 mandatory testing, mask protocols, and return-to-office requirements for unvaccinated employees, while vaccinated employees and certain unvaccinated employees seeking non-religious accommodations were exempt.

Ms. Dixon repeatedly communicated her concerns to supervisors and the EEO office, explaining that she felt stigmatized and treated as diseased solely because of her unvaccinated status and sincerely held religious beliefs. She faced multiple communications warning of disciplinary action, peer pressure, and hostility from supervisors. Despite her religious exemption still being pending, her previously approved remote work arrangements were rescinded.

On August 10, 2022, Ms. Dixon filed a formal EEO complaint detailing the denial of her religious accommodation and the disparate treatment she endured. She explained that her religion, morality, and oath of office were questioned and disregarded and that she was treated as if her objection were merely a personal preference to avoid returning to the office rather than sincerely held religious beliefs.

B. District Court

After exhausting her administrative remedies, Ms. Dixon filed suit in the D.C. District Court, alleging that the Department of the Treasury violated her right to freely exercise her religion under the Religious Freedom Restoration Act (RFRA); violated the Americans with Disabilities Act and Rehabilitation Act by subjecting her to discrimination because officials regarded her as disabled; and subjected her to discrimination in violation of Title VII of the Civil Rights Act.

The District Court dismissed Ms. Dixon's claims under the Rehabilitation Act and Title VII. As for the Rehabilitation Act claim, the court held that COVID-19 was not a disability as a matter of law and that petitioner failed to allege she was "regarded as" disabled due to her unvaccinated status. The court also imposed a heightened pleading requirement for her Title VII claim, requiring her to identify comparators who were "nearly identical" in all relevant respects. Specifically, the district court determined that the military spouses Dixon cited as receiving more favorable treatment with respect to remote-work accommodations did not satisfy this standard and could not support an inference of religious discrimination.

C. D.C. Circuit Decision

The D.C. Circuit affirmed the district court's dismissal in an unpublished opinion, available at 2025 U.S. App. LEXIS 15296 (Jun. 20, 2025). The Circuit held that petitioner had not plausibly alleged that her employer perceived her as having a disability under the Rehabilitation Act, emphasizing that COVID-19 infection, absent allegations of long-term or severe effects, is generally considered too "transitory and minor" to constitute a disability. The Court also held that Dixon "abandoned" her RFRA and hostile work environment claims by not raising them in her opening brief. With respect to the Title VII claim, the Circuit concluded that Dixon had not plausibly alleged an inference of religious discrimination because she did not identify similarly situated employees outside her protected class who were treated more favorably. The Court noted that the only employees granted remote-work accommodations were military spouses, a criterion that petitioner did not meet, undercutting any inference of discriminatory intent.

REASONS FOR GRANTING THE PETITION

I. Need for Court Clarification of "Regarded As" Disability under the ADA and Rehabilitation Act

Ms. Dixon's case raises a critical question about when federal employees are "regarded as" disabled under the ADA and the Rehabilitation Act. Under 42 U.S.C. § 12102(3)(A), an individual is regarded as disabled if subjected to adverse action due to an actual or perceived impairment, even if the impairment does not limit a major life activity. The lower courts' focus on whether COVID-19

constituted an actual disability overlooked the central purpose of the "regarded as" framework, which protects employees subjected to adverse treatment based on a perceived impairment. In *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), this Court held that a "regarded as" claim arises when an employer treats an employee as having a disability, regardless of whether the employee is actually impaired. Similarly, in *Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), the Court emphasized that the perceived impact of an impairment on work-related abilities may itself constitute a disability under federal law.

Congress expressly responded to the narrowing effect of *Sutton* and *Toyota* by enacting the ADA Amendments Act of 2008 ("ADAAA"). Pub. L. No. 110-325, § 2, 122 Stat. 3553, 3553–54. In its "Findings and Purposes" section of the Amendments, Congress observed that "the holdings of the Supreme Court in *Sutton* and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA," and that the Court's interpretation in *Toyota* had "created an inappropriately high level of limitation necessary to obtain coverage under the ADA." *Id.* To correct this trend, Congress declared its purpose was to "convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis," and to "reinstat[e] a broad scope of protection under the ADA." Id. § 2(b)(5); *see also Richardson v. Chi. Transit Auth.*, 926 F.3d 881 (7th Cir. 2019) (confirming that, in passing the ADAAA, Congress intended to expand the Act to cover conditions that did not significantly or severely restrict major life activities). Congress also made clear that the "regarded as" prong was intended to extend protection to individuals subjected

to discrimination "whether or not the impairment limits or is perceived to limit a major life activity." Id. § 2(b)(3).

Far from imposing a heightened pleading standard, Congress intended the "regarded as" framework to provide robust protection against discrimination rooted in stereotypes, assumptions, and fears about perceived health conditions. The lower courts' dismissal of Ms. Dixon's claim—based solely on whether COVID-19 constituted an actual disability—contradicts this express legislative mandate and underscores the need for this Court's review.

Federal courts have repeatedly recognized that employees can be regarded as disabled when employers act out of fear that they may spread a communicable disease. In *School Bd. of Nassau County v. Arline*, 480 U.S. 273 (1987), this Court held that an employee with a communicable disease could not be discharged based on the contagious nature of her disease alone. In this decision, the Court explained that Congress expanded the protections of the Rehabilitation Act in order to prevent such discrimination and explained that the Act applies even where the employee is regarded as being contagious. While patients diagnosed with communicable diseases are disabled under the Rehabilitation Act, the central focus of these cases is that they were treated disparately out of fear regarding their conditions rather than any impact on their work. This correlates to how Ms. Dixon and others are treated based on their unvaccinated status. Similar to those with communicable diseases, Ms. Dixon was subjected to discriminatory treatment based on a fear that she may spread illness due to her vaccination status. These cases demonstrate that disparate treatment based

on perceived risk of contagion is actionable under federal disability law under the "regarded as" framework. *See also*, *Southerland v. Peterson's Oil Serv.*, 126 F.4th 728 (1st Cir. 2025) (holding that under the ADA, a plaintiff need not prove that their impairment limits or is perceived to limit a major life activity to proceed on a "regarded as" disability claim).

In Dixon's case, the Department of the Treasury imposed mandatory COVID-19 testing, masking, and threatened disciplinary action solely because she remained unvaccinated, effectively treating her as a health threat. The lower courts dismissed her claim as a matter of law, concluding COVID-19 was "transitory and minor" without a developed factual record and while disregarding comments that demonstrated animus. This conflicts with the holdings in *Sutton* and *Southerland*, which underscore that perceived impairments must be assessed in context and with the facts of a case. Resolution by this Court would provide federal employees clarity on whether perceived vulnerability to infectious disease qualifies as a "regarded as" disability, and whether adverse employment actions premised on such perceptions violate the Rehabilitation Act.

Furthermore, the lower courts' approach—linking a "regarded as" claim to an actual disability rather than focusing on the employer's perception—effectively imposes a heightened pleading burden that conflicts with the statutory purpose of the "regarded as" standard under the ADA and Rehabilitation Act.

II. Title VII Pleading Standards Require No Detailed Comparator Allegations

The Supreme Court has long held that Title VII plaintiffs are not required to plead detailed evidence at the motion-to-dismiss stage. In *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002), the Court clarified that a short and plain statement suffices to give defendants notice of the claim, relying on liberal discovery procedures to define disputed facts. Likewise, in *Conley v. Gibson*, 355 U.S. 41 (1957), the Court emphasized that complaints should not be dismissed for lack of detailed factual allegations unless it appears "beyond doubt" that they cannot prove any set of facts showing entitlement to relief.

While comparator evidence can establish an inference of discrimination, it is not the only method for doing so. Additionally, Circuit courts differ on the extent to which comparator specificity is required at the pleading stage. As noted by the district court in this case, the D.C. Circuit has required plaintiffs to establish comparators are nearly identical at the pleading stage. For example, in *Holbrook v. Reno*, 196 F.3d 255, 261 (D.C. Cir. 1999), clarified that while plaintiffs are not required to have access to full comparator information prior to discovery, they must show comparators are "nearly identical in all relevant respects."

By contrast, in *Smith v. Nev. Dep't of Motor Vehicle Off.*, 2025 U.S. App. LEXIS 12911 (May 28, 2025), the Ninth Circuit found the district court erred by dismissing the plaintiff's Title VII claim on the ground that he did not allege his named comparator was similarly situated. The court noted that the fact that the two individuals were different in one aspect, "does not conclusively establish"

that they are not comparators. *Id.* The court further noted that while the plaintiff may have to establish he is similarly situated at the summary judgment stage, he does not at the pleading stage. *Id.*

The Second and Eleventh Circuits have emphasized that plaintiffs need not identify detailed comparator information at the motion-to-dismiss stage. Instead, these courts hold that reasonable inferences of discrimination may be drawn from allegations of differential treatment. For example, in *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321 (11th Cir. 2011), the Eleventh Circuit explained that comparators need not always be nearly identical in all aspects of employment. The court explained that a failure to produce a viable comparator "does not necessarily doom the plaintiff's case." *Id.* The court noted that it is possible for a jury to infer discrimination based on circumstantial evidence, even where comparator evidence is lacking. *Id.* In *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079 (11th Cir. 2004), the Eleventh Circuit noted that even after discovery, cases cannot be disposed based only on the lack of comparator evidence. The court noted that where other evidence of discriminatory animus exists, summary disposition of a case is inappropriate, even where there is no comparator evidence. *Id.*

In *Littlejohn v. City of New York*, 795 F.3d 297 (2d Cir. 2015), the Second Circuit held that a plaintiff could plausibly allege disparate treatment based on membership in a protected class without naming specific comparators. The court also held that while a Title VII plaintiff will ultimately need evidence to prove discrimination, at the pleading stage, they benefit from the temporary

presumption of discriminatory intent and have a minimal burden. *Id.* (*citing Swierkiewicz*).

Taken together, these decisions establish that allegations showing differential treatment between the plaintiff and employees outside the protected class, even without exhaustive comparator details, are sufficient to survive a motion to dismiss. Applied here, Ms. Dixon like many plaintiffs, had limited comparator information at the pleading stage. What she did know is that other groups—such as military spouses—received remote work accommodations. As in *Smith*, the fact that the comparator group were military spouses does not conclusively determine that they did not submit religious exemption requests. 2025 U.S. App. LEXIS 12911, (*May 28*, 2025). That a secular group received the accommodations while religious requests were disregarded, should be sufficient under this Court's precedent to survive a motion to dismiss.

Requiring more specificity at the pleading stage—as the lower courts did—conflicts with *Swierkiewicz* and undermines the practical operation of Title VII protections for federal employees.

III. Failure to Accommodate Religion States a Plausible Title VII Claim Absent Specific Comparator Evidence

Under Title VII, religion encompasses all aspects of religious observance and practice, and failure to accommodate a sincerely held belief constitutes discrimination. In *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015), the Court held that an employer

may be liable if the need for accommodation is a motivating factor in an employment decision, even when the employer does not have actual knowledge of the belief. This principle affirms that religious discrimination claims need not await full discovery of internal deliberations.

In *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), the Court recognized that reasonable accommodations must be provided unless they impose undue hardship, establishing the framework for evaluating denial of religious exemptions. Similarly, *Chalmers v. Tulon Co.*, 101 F.3d 1012 (4th Cir. 1996), held that allegations of informing the employer and suffering adverse action are sufficient to state a claim at the pleading stage.

Ms. Dixon alleged that her religious exemption and remote work requests were denied while comparable non-religious requests were granted, and that agency officials acted with animus toward unvaccinated employees. These allegations, accepted as true, demonstrate a plausible claim that her religion was a motivating factor in adverse employment actions. Therefore, her claims should have survived dismissal despite lacking comparator evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 14, 2025

APPENDIX

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APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED JUNE 20, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5110

TAMI M. DIXON,

Appellant,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY, DEPARTMENT OF TREASURY, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia
(No. 1:22-cv-03496)

Before: PILLARD and WILKINS, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Filed June 20, 2025

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia

and on the briefs of the parties. *See* D.C. Cir. R. 34(j). The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is hereby

ORDERED AND ADJUDGED that the judgment of the district court be **AFFIRMED**.

Petitioner Tami Dixon claims that she was constructively discharged from her position as an enforcement officer for the Office of Foreign Assets Control (OFAC or Office) in the Department of the Treasury (Treasury) after her requests for religious and medical exemptions from the Office's COVID-19 prevention policies were denied. Like other federal employees, Dixon worked remotely during the COVID-19 pandemic. However, in the spring of 2022 the Office directed Dixon to begin working in-office for a few days per pay period. Per OFAC policy, employees like Dixon who had decided not to receive a COVID-19 vaccine were required to comply with masking/social distancing rules and regularly test for COVID-19 before entering agency buildings. First Amended Complaint (Compl.) ¶¶ 52-53, 58 (J.A. 116, 118). Dixon sought religious and medical exemptions from the return-to-work policy (and associated COVID-19 safety policies) that would allow her to continue to work from home, citing primarily a religious belief in the right to informed medical consent rooted in Christian doctrine. The Department denied her requests, explaining that Dixon had not "specifically state[d] that [her] religious beliefs prohibit [her] from complying with the safety precautions required to return to the office," that it was unclear whether she had a

religious belief incompatible with the safety precautions or only a "personal preference or desire to avoid returning to the workplace," and that there was no "identified . . . medical condition or limitations that preclude[d] [her] from working in-office or taking the precautions mandated." Compl. ¶¶ 58-59 (J.A. 118-19). Dixon left her position at OFAC and took a lower-paid position at another agency.

After pursuing administrative remedies, Dixon filed this suit in the district court against the Secretary of the Treasury and several individual Treasury employees (Appellees). In addition to claims under the Religious Freedom Restoration Act and allegations of a hostile work environment, both of which Dixon has abandoned on appeal by not raising in her opening brief, *see U.S. ex rel. Kasowitz Benson Torres LLP v. BASF Corp.*, 929 F.3d 721, 728, 442 U.S. App. D.C. 205 (D.C. Cir. 2019), Dixon alleged discrimination on the basis of disability in violation of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, and on the basis of religion in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq. See* Compl. ¶¶ 102-29 (J.A. 127-30).

The district court granted Appellees' motion to dismiss, and Dixon appealed to this court. We have jurisdiction under 28 U.S.C. § 1291. We review *de novo* the dismissal for failure to state a claim, accepting Dixon's allegations as true and drawing all reasonable inferences in her favor. *Menoken v. Dhillon*, 975 F.3d 1, 5, 449 U.S. App. D.C. 381 (D.C. Cir. 2020).

Appendix A

I.

Dixon first contests the dismissal of her Rehabilitation Act claim. The Rehabilitation Act, which was a model for and incorporates relevant precedent under the Americans with Disabilities Act (ADA), protects federal employees from discrimination on the basis of "disability." *Doak v. Johnson*, 798 F.3d 1096, 1098, 418 U.S. App. D.C. 375 (D.C. Cir. 2015); *see* 29 U.S.C. § 791(f); 42 U.S.C. § 12102(1). An individual qualifies as having a disability if they have a "physical or mental impairment that substantially limits one or more major life activities," a "record of such an impairment," or is "regarded as having such an impairment." 42 U.S.C. § 12102(1). To make out a "regarded-as" claim, the individual need not show that the impairment "limits or is perceived to limit a major life activity," but the perceived impairment may not be "transitory and minor."[1] *Id.* § 12102(3).

The precise nature of Dixon's Rehabilitation Act claim is somewhat difficult to discern. Dixon's complaint captions the claim as resting "on [a] perceived disability" and alleges that she was regarded as being medically unable to use a COVID-19 test that required inserting "a Q-Tip like device" into her nostrils. Compl. ¶¶ 102-106

1. The District Court suggested that Dixon had to demonstrate that she was regarded as having an impairment that substantially limited a major life activity, *Dixon v. Yellen*, No. 22-03496, 2024 U.S. Dist. LEXIS 77051, 2024 WL 1831967, at *2 (D.D.C. Mar. 21, 2024), but that requirement for "regarded-as" disability claims was dropped by Congress in the 2008 amendments to the ADA, *see* Dixon Br. 20-21.

(J.A. 127-28). However, Dixon never explicitly alleges that OFAC personnel had any such perception, nor any specifics of the respiratory disability she implies they ascribed to her. Nor does she challenge on appeal the district court's holding that she had failed to administratively exhaust any claim "based on the theory that [Dixon] has a disability that prevents her from using a nasal swab for testing." *Dixon*, 2024 U.S. Dist. LEXIS 77051, 2024 WL 1831967, at *2 n.4. She has thus forfeited any claim of discrimination based on an alleged inability—or perceived inability—to use a COVID-19 test. *See BASF Corp.*, 929 F.3d at 728.

Instead, Dixon principally argues that she is covered by the Rehabilitation Act because Treasury "regarded [her] as having a communicable disease unless and until she provided proof of vaccination or negative test results." Dixon Br. 22. It is uncontested that Dixon was treated differently from vaccinated colleagues based on her unvaccinated status. But Dixon has failed to plausibly allege that OFAC's policy or treatment of her was based on any perceived "impairment" within the meaning of the Rehabilitation Act. The fact that an employer in the midst of a global pandemic treats employees who refuse public-health precautions against contagion as posing elevated health risks to others in the workplace does not mean the employer perceives those employees as disabled.

Even if we accept that Dixon has plausibly alleged that her employer treated her as presumptively infected with COVID-19, federal courts have generally treated COVID-19 infection as too "transitory and minor" to qualify as an impairment under the ADA. *See Lundstrom*

v. Contra Costa Health Servs., No. 22-cv-06227, 2022 U.S. Dist. LEXIS 214812, 2022 WL 17330842, at *5 (N.D. Cal. Nov. 29, 2022) (collecting cases); 42 U.S.C. § 12102(3). A perception that an employee is infected with COVID-19 may well qualify as a disability in some circumstances, but a plaintiff bringing such a claim must allege that her imputed infection was sufficiently serious and lengthy to meet the ADA's disability definition. Dixon has not done so here. Dixon references federal guidance spelling out how certain forms of "Long COVID" may meet the ADA definition of a disability, but she has not alleged that she was regarded as having Long COVID. *See* Dixon Br. 22-23 (citing *Guidance on "Long COVID" as a Disability Under the ADA, Section 504, and Section 1557*, Dep't of Health & Hum. Servs. & Dep't of Just. (July 26, 2021), https://perma.cc/LT6H-5UTS.).

In her reply brief, Dixon abandons her opening brief's theory that "[COVID-19] infection is her specific [perceived] disability." Reply Br. 7. She instead relies on "disabilities, including, but not limited to, respiratory disabilities, sleep disorder, [and] anxiety" that she asserts should have been accommodated by allowing her to work from home and avoid getting vaccinated or submitting to COVID-19 testing. Dixon Reply Br. 6-7. Her failure to preserve that claim provides further justification for affirming the dismissal of Dixon's Rehabilitation Act claim.

II.

Dixon also appeals the dismissal of her religious discrimination claim. To state a claim that OFAC violated

Title VII by rejecting Dixon's request to work remotely, Dixon must allege facts that "raise an inference" that the denial was based on her religion. *Brown v. Sessoms*, 774 F.3d 1016, 1022, 413 U.S. App. D.C. 328 (D.C. Cir. 2014). The only way Dixon claims to have done so is by identifying "similarly situated" employees, not part of the protected class, who had their remote-work requests approved. But she makes no plausible allegations that employees who were permitted to work remotely were situated similarly to her. *See generally Breiterman v. U.S. Capitol Police*, 15 F.4th 1166, 1174-75, 454 U.S. App. D.C. 369 (D.C. Cir. 2021); *cf. Wheeler v. Georgetown Univ. Hosp.*, 812 F.3d 1109, 1115-16, 421 U.S. App. D.C. 165 (D.C. Cir. 2016). Dixon only generally alleges that "Remote Work Arrangements were in fact being approved for other staff," with "[a]t least two persons" already receiving approval, and that she was told "the only remote work assignments that were being approved were for military spouses." Compl. ¶¶ 43, 55, 65, 124 (J.A. 113, 117, 121, 130). Dixon's acknowledgement that the agency was apparently granting remote work solely to employees with military spouses—a criterion she does not claim applies to her—undercuts the inference she would have us draw. Nothing in the complaint suggests any staff members who received remote-work approval were situated similarly to Dixon, or even that they did not share her faith.

* * *

For the foregoing reasons, the District Court's dismissal is **AFFIRMED**. This disposition is unpublished.

See D.C. CIR. R. 36(d). The Clerk is directed to withhold issuance of the mandate until seven days after the resolution of a timely petition for rehearing or rehearing *en banc. See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED MARCH 21, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 22-cv-3496 (APM)

TAMI M. DIXON,

Plaintiff,

v.

JANET L. YELLEN, *et. al.*,

Defendants.

Filed March 21, 2024

MEMORANDUM OPINION

I.

Plaintiff Tami M. Dixon began working for the Office of Foreign Asset Control at the United States Department of Treasury in March 2020. That same month, the COVID-19 pandemic forced the Treasury Department to institute a maximum telework policy, under which Dixon transitioned to full-time remote work. Starting in late 2021, the Department began planning for a return to in-person work. At first, a federal mandate required all

Treasury Department employees, unless exempted for medical or religious reasons, to receive the COVID-19 vaccine. Then, after a federal court enjoined the mandate, the Department required employees to provide either proof of vaccination or a negative COVID-19 test before entering an agency facility. Dixon sought exemptions from these requirements, seeking a continuation of her telework schedule to accommodate her religious beliefs. The Treasury Department denied her exemption requests.

Dixon brings suit against (1) Defendant Janet Yellen, in her official capacity as Secretary of Treasury ("Secretary"), alleging claims under the Rehabilitation Act and Title VII, and (2) against her former colleagues Defendants Michael Liberman, Christa Pennifill, and Jacqueline Brewer, in their individual capacities under the Religious Freedom Restoration Act (collectively, "Individual Defendants"). *See* Am. Compl., ECF No. 12 [hereinafter Compl.]. Before the court are Defendants' motions to dismiss. *See* Mem. in Supp. of the Sec. of Treasury's Mot. to Dismiss, ECF No. 15-1 [hereinafter Sec.'s Mot.]; Mem. of L. in Supp. of Individual Defs.' Mot. to Dismiss, ECF No. 23-1 [hereinafter Individual Defs.' Mot.].[1] For the reasons that follow, the motions are granted.

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1. The Secretary notes that although the caption of the Amended Complaint indicates that the Individual Defendants are sued in their individual and official capacities, Dixon's counsel communicated that the "intent is for Defendants Lieberman, Pennifill, and Brewer to be [sued] in their individual capacities only." Sec.'s Mot. at 1 n.1. Dixon does not dispute this representation. The court therefore treats the Individual Defendants as sued only in their individual capacities.

Appendix B

II.

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A claim is facially plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

When evaluating a Rule 12(b)(6) motion, the court must accept a plaintiff's factual allegations as true and "construe the complaint 'in favor of the plaintiff, who must be granted the benefit of all inferences that can be derived from the facts alleged.'" *Hettinga v. United States*, 677 F.3d 471, 476, 400 U.S. App. D.C. 218 (D.C. Cir. 2012) (quoting *Schuler v. United States*, 617 F.2d 605, 608, 199 U.S. App. D.C. 23 (D.C. Cir. 1979)); Fed. R. Civ. P. 12(b)(6).

III.

The court first considers Dixon's Title VII and Rehabilitation Act claims against the Secretary, before turning to her claim against the Individual Defendants.[2]

2. Although Dixon brings her Title VII and Rehabilitation Act claims against "all defendants," neither statute creates a private right of action against a government official in their individual capacity. *See Smith v. Janey*, 664 F. Supp. 2d 1, 8 (D.D.C. 2009),

Appendix B

A.

1.

The court begins with Dixon's Rehabilitation Act claim, which alleges discrimination based on a perceived disability (Count Two). Compl. ¶¶ 102-115. A person is disabled under the Rehabilitation Act if he "has a physical or mental impairment which substantially limits one or more of such person's major life activities; has a record of such an impairment; or is regarded as having such an impairment." *Nurriddin v. Bolden*, 674 F. Supp. 2d 64, 82 (D.D.C. 2009) (citing 29 U.S.C. § 705(20)(B)). Dixon relies on the third statutory definition. An individual "is regarded as disabled if her employer mistakenly believes that the person has a physical impairment that substantially limits one or more major life activities" or "mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities." *Thompson v. Rice*, 422 F. Supp. 2d 158, 175 (D.D.C. 2006) (cleaned up).

Dixon argues that, because the Secretary's policy required unvaccinated employees to be tested, "there is a presumption that the [employee], although asymptomatic,

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aff'd sub nom. Smith v. Rhee, No. 09-7100, 2010 U.S. App. LEXIS 7360, 2010 WL 1633177 (D.C. Cir. Apr. 6, 2010) ("The defendants are correct that there is no individual liability under Title VII[.]"); *Richardson v. Yellen*, 167 F. Supp. 3d 105, 118 (D.D.C. 2016) (finding that "only the heads of federal agencies in their official capacity may be sued, not their individual employees," under the Rehabilitation Act). The court therefore dismisses the Title VII and Rehabilitation Act claims against the Individual Defendants.

has COVID[.]" Mem. in Supp. of Opp'n to Sec.'s Mot., ECF No. 16 [hereinafter Pl.'s Opp'n to Sec.'s Mot.], at 7.[3] But "[t]his theory of liability has been rejected by multiple courts." *Schneider v. Cnty. of Fairfax*, No. 22-cv-871 (LMB/WEF), 2023 U.S. Dist. LEXIS 35469, 2023 WL 2333305, at *4 (E.D. Va. Mar. 2, 2023), *aff'd*, No. 23-1303, 2023 U.S. App. LEXIS 22638, 2023 WL 5524752 (4th Cir. Aug. 28, 2023) (collecting cases); *cf. Gallo v. Wash. Nat'ls. Baseball Club, LLC*, No. 22-cv-01092 (APM), 2023 U.S. Dist. LEXIS 40184, 2023 WL 2455678, at *4 (D.D.C. Mar. 10, 2023) (holding that a perceived disability "does not cover a case where an employer perceives a person to be presently healthy with only a potential to become ill and disabled in the future") (internal quotation marks and citations omitted). Nothing in Dixon's complaint plausibly suggests that the Secretary believed that, because Dixon declined vaccination against COVID-19, she had a substantially limiting physical or mental impairment. Moreover, even if there were such an allegation, "[f]ederal courts generally agree that a COVID-19 infection is not a disability." *Lundstrom v. Contra Costa Health Servs.*, No. 22-cv-06227 (CRB), 2022 U.S. Dist. LEXIS 214812, 2022 WL 17330842, at *5 (N.D. Cal. Nov. 29, 2022), *aff'd*, No. 22-16946, 2023 U.S. App. LEXIS 24887, 2023 WL 6140588 (9th Cir. Sept. 20, 2023) (collecting cases under the ADA). The court therefore dismisses Dixon's Rehabilitation Act claim.[4]

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3. References to Pl.'s Opp'n to Sec.'s Mot. are to the CM/ECF page number.

4. To the extent that Dixon asserts Rehabilitation Act claims based on the theory that she has a disability that prevents her from

2.

Dixon alleges that the Secretary's denial of her requests to continue remote work constituted religious discrimination under Title VII. She asserts claims of substantive discrimination, hostile work environment, and failure-to-accommodate (Count Three). Compl. ¶¶ 116-29. The court considers each claim in turn.

a.

First, Dixon alleges that the Secretary discriminated against her by denying her application for remote work as a religious exemption to the vaccination and testing requirements. Compl. ¶¶ 116-121. "[T]he two essential elements of a discrimination claim are that (i) the plaintiff suffered an adverse employment action (ii) because of the plaintiff's race, color, religion, sex, national origin, age, or disability." *Baloch v. Kempthorne*, 550 F.3d 1191, 1196, 384 U.S. App. D.C. 85 (D.C. Cir. 2008). Defendants do not dispute that the denial of a remote work schedule

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using a nasal swab for testing, Compl. ¶¶ 104-107, and that the Secretary failed to accommodate this disability, Pl's Opp'n to Sec.'s Mot at 7, the court agrees with the Secretary that such claims were not properly exhausted. *See* Sec.'s Mot. at 11; Reply in Supp. of Sec.'s Mot., ECF No. 19, at 2; *Spinelli v. Goss*, 446 F.3d 159, 162, 371 U.S. App. D.C. 20 (D.C. Cir. 2006) (finding that "[t]he district court . . . should have dismissed [the plaintiff's] Rehabilitation Act claim for lack of jurisdiction on the ground that he failed to exhaust his administrative remedy" because "[s]uch jurisdictional exhaustion, as we have called it, may not be excused") (internal quotation marks and citation omitted).

constitutes an adverse employment decision. *See* Sec.'s Mot. at 15-16. The question therefore is whether the Secretary's denial gives rise to "an inference of discrimination." *Stella v. Mineta*, 284 F.3d 135, 145, 350 U.S. App. D.C. 300 (D.C. Cir. 2002). It does not.

Dixon argues that she has adequately pleaded "an inference of discrimination" because her request to work remotely as a religious accommodation was denied, but "others . . . who were requesting [it] . . . for family circumstance were approved." Pl.'s Opp'n to Sec.'s Mot. at 9. A plaintiff can show an inference of discrimination by "demonstrating that she was treated differently from similarly situated employees who are not part of the protected class," *George v. Leavitt*, 407 F.3d 405, 412, 366 U.S. App. D.C. 11 (D.C. Cir. 2005), but such method of proof requires that "all of the relevant aspects of [the plaintiff's] employment situation were *nearly identical* to those" of her comparators, *Holbrook v. Reno*, 196 F.3d 255, 261, 339 U.S. App. D.C. 4 (D.C. Cir. 1999) (emphasis added). Dixon's Complaint contains no details that would permit an inference of religious animus. The Complaint only states that employees who were granted leave to telework were individuals with military families. Pl.'s Opp'n to Sec.'s Mot. at 4. Without any allegations showing that Dixon and these other employees performed "nearly identical" duties, *see Holbrook*, 196 F.3d at 261, or any other evidence to show that her requests to work remotely were denied due to her religious beliefs, the Title VII discrimination claim must be dismissed. *See Black v. Guzman*, No. 22-cv-1873 (BAH), 2023 U.S. Dist. LEXIS 71145, 2023 WL 3055427, at *9 (D.D.C. Apr. 24, 2023) ("Failure to show that

a similarly situated employee outside the same protected class was treated differently generally warrants dismissal of a Title VII disparate treatment discrimination claim.") (citing cases).

b.

Next, Dixon alleges that Secretary's actions between September 2021 and July 2022 "created a hostile work environment." Compl. ¶ 20. To state a hostile work environment claim under Title VII, a plaintiff must allege that her employer "subjected h[er] to discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment." *Baloch*, 550 F.3d at 1201 (internal quotation marks and citation omitted). A hostile work environment is one "permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993) (internal quotation marks and citation omitted)

Dixon's hostile work environment claim centers on allegations that (1) the Secretary sent frequent communications urging staff to get vaccinated, some of which "emphasized the use of discipline" for unvaccinated employees; (2) her supervisor, Defendant Lieberman, "peer pressure[d]" staff to get vaccinated and "was not shy about making [known] his belief that vaccinated people were good and unvaccinated people were bad"; and (3) when Lieberman denied her religious accommodation

request, he questioned the nature and tenets of her religious beliefs and suggested that her request was based on her personal preference to telecommute. Compl. ¶¶ 25-26, 39-40, 61, 128-29. Accepted as true, these alleged acts are insufficient to create a workplace "permeated with discriminatory intimidation, ridicule, and insult" that is so "severe or pervasive" such that it altered the conditions of her work. *Harris*, 510 U.S. at 21 (internal quotation marks and citation omitted); *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118 S. Ct. 2275, 141 L. Ed. 2d 662, (1998) ("'[S]imple teasing', offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'"). Nor do these allegations sufficiently establish that any alleged hostile work environment was based on her religion.

Numerous courts have rejected similar claims of hostile work environment based on COVID-19-related workplace requirements, which in some instances included isolated commentary on an employee's religious beliefs. *See, e.g., Grimes v. N. Y. & Presbyterian Hosp.*, No. 1:23-cv-652-MKV, 2024 U.S. Dist. LEXIS 32964, 2024 WL 816208, at *11 (S.D.N.Y. Feb. 26, 2024) (dismissing hostile work environment claims predicated on reminders of consequences of noncompliance with employer's vaccine mandate); *Swanson v. Lilly USA, LLC*, No. 23-cv-00831-TWP/TAB, 2024 U.S. Dist. LEXIS 5861, 2024 WL 125978, at *9 (S.D. Ind. Jan. 10, 2024) (rejecting Title VII hostile work environment claim based on employer's vaccine mandate); *Est. of Caviness v. Atlas Air, Inc.*, No. 22-cv-23519-KMM, 693 F. Supp. 3d 1271, 2023 U.S. Dist. LEXIS

167370, 2023 WL 6802950, at *6 (S.D. Fla. Sept. 20, 2023) (rejecting hostile work environment claim where a plaintiff claimed to having been once "ridiculed and mocked" for his religious beliefs and removed from "flight status" due to his religious beliefs); *Anderson v. United Airlines, Inc.*, No. 23-cv-989, 2023 U.S. Dist. LEXIS 155985, 2023 WL 5721594, at *7 (N.D. Ill. Sept. 5, 2023) (rejecting hostile work environment claim based on employer's requirement to wear a face mask or carry a vaccine card); *Leake v. Raytheon Techs. Corp.*, No. 22-cv-00436-TUC/RM, 2023 U.S. Dist. LEXIS 32177, 2023 WL 2242857, at *5 (D. Ariz. Feb. 27, 2023) ("Plaintiffs' allegation that a hostile work environment was created through the requirement that vaccination-exempt employees wear facial protection and submit to weekly COVID-19 testing for a virus that has claimed the lives of over one million Americans, and counting, is shocking to the Court."). Like the plaintiffs in these cases, Dixon has not made out a plausible claim of hostile work environment.

Dixon cannot save her hostile work environment claim based on how she subjectively experienced the agency's actions. She contends that because of the agency's "mob mentality" towards COVID-19 vaccinations she became "depressed and felt isolated," Pl.'s Opp'n to Sec.'s Mot. at 13, and that "she experienced anxiety related to her concern that she would not be able to continue her job without the Remote Work Agreement," Compl. ¶ 126. To be actionable, however, the alleged conduct must be "objectively hostile," such that "a reasonable person would find the environment hostile or abusive." *Harris*, 510 U.S. at 21. Plaintiff's retelling of how she felt therefore

is irrelevant. Plaintiff's hostile work environment claim is dismissed.

c.

Last, Dixon brings a failure-to-accommodate claim. Title VII contains a provision prohibiting an employer from discriminating based on an individual's religion "unless [the] employer demonstrates that he is unable to reasonably accommodate to an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j) (2000). Neither the Supreme Court nor the D.C. Circuit have articulated a framework under Title VII for an alleged failure to accommodate an employee's religious beliefs. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 67, 107 S. Ct. 367, 93 L. Ed. 2d 305 (1986) (declining petitioner's request "to establish for religious accommodation claims a proof scheme analogous to that developed in other Title VII contexts, delineating the plaintiff's prima facie case and shifting production burdens"); *Lemmons v. Georgetown Univ. Hosp.*, 431 F. Supp. 2d 76, 95 n.22 (D.D.C. 2006) (citing *Taub v. FDIC*, No. 96-5139, 1997 U.S. App. LEXIS 41401, 1997 WL 195521, at *1 (D.C. Cir. Mar. 31, 1997)). Defendant urges the court to evaluate Dixon's claim under a three-element standard used by various federal courts, including ones in this District. Those elements are that the plaintiff: (1) held a bona fide religious belief conflicting with an employment requirement; (2) informed her employers of this belief; and (3) was disciplined for failure to comply with the conflicting

employment requirement. Sec.'s Mot. at 19; *see Rashad v. Wash. Metro. Area Transit Auth.*, 945 F. Supp. 2d 152, 161 (D.D.C. 2013); *Isse v. Am. Univ.*, 540 F. Supp. 2d 9, 29 (D.D.C. 2008); *Lemmons*, 431 F. Supp. 2d at 95 (collecting cases). Because Dixon does not object to this framework, the court will apply it.

Dixon's claim falters on the third element because she never alleges that her non-compliance resulted in discipline or even a threat of discipline.[5] Dixon's complaint baldly states that "[t]he Treasury Department retaliated against [her] when it threatened to bring disciplinary action against her for working remotely," Compl. ¶ 67, and that "she [was] harmed by Defendant's threat of increasing discipline," *id.* ¶ 111. She has not, however, alleged who made these threats, the substance of the alleged threats, when and how these threats were made, or any other circumstances that would plausibly support a threat of discipline. Moreover, paragraph 67 of the Complaint merely references the charges she raised administratively, *see id.* ¶ 67.e, which likewise provide no factual support for

5. Federal courts have reached opposing conclusions as to whether a "threat of discipline" is sufficient to state a failure-to-accommodate claim. *Compare Isse v. Am. Univ.*, 540 F. Supp. 2d 9, 29 n.24 (D.D.C. 2008) (noting the lack of precedent indicating that an employee need only show "threatened adverse treatment") *with Khan v. Fed. Rsrv. Bank of New York*, No. 02-cv-8893-JCF, 2005 U.S. Dist. LEXIS 1543, 2005 WL 273027, at *7 (S.D.N.Y. Feb. 2, 2005) ("[A]n instance of actual discipline is not necessary to establish an adverse employment action: the threat of a sanction is enough."). But the court need not resolve the issue, as Dixon has failed to allege a threat of discipline.

any alleged threat of discipline, *see* Ex. 16 to Sec.'s Mot., ECF No. 15-17 (administrative complaint, dated August 10, 2022). Accordingly, Dixon's failure-to-accommodate claim is dismissed.

B.

Having dismissed both of her claims against the Secretary, the court turns to Dixon's Religious Freedom Restoration Act ("RFRA") claims against the Individual Defendants. The RFRA, 42 U.S.C. § 2000bb *et seq.*, authorizes individual-capacity suits against government officials. *Tanzin v. Tanvir*, 592 U.S. 43, 47 (2020). Defendants contend that "qualified immunity shields [them] from [RFRA] liability because the complaint fails to plausibly state a claim of violation of clearly established law." Individual Defs.' Mot. at 2 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985)). The court agrees.

Qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (internal quotation marks omitted). "Because qualified immunity provides an immunity from suit rather than a mere defense to liability, the viability of a duly asserted qualified immunity defense should be resolved at the earliest possible stage in litigation." *Bernier v. Allen*,

38 F.4th 1145, 1152, 457 U.S. App. D.C. 317 (D.C. Cir. 2022) (cleaned up). A defendant's "conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011) (internal quotation marks omitted). Applying these principles to the present case, the Individual Defendants cannot be held liable unless Dixon can point to "clearly established law" that would have put them on notice that their denial of her telework request imposed a substantial burden on her exercise of religion.

Dixon attempts to locate a violation of "clearly established law" in two places. First, she points to the RFRA and Title VII. Pl.'s Opp'n to Individual Defs.' Mot., ECF No. 25, at 5-6. According to her, since the RFRA was enacted in 1997, "federal employees in supervisory positions were on notice of the potential violation of religious rights." *Id.* at 5. But such a right is far too abstract to rebut an assertion of qualified immunity. The Supreme Court has "repeatedly stressed that courts may not define clearly established law at a high level of generality," as doing so "avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced." *District of Columbia v. Wesby*, 583 U.S. 48, 63-64, 138 S. Ct. 577, 199 L. Ed. 2d 453 (2018) (internal quotation marks omitted). Simply pointing to federal statutes in this case "is of little help in determining whether the violative nature of particular

conduct is clearly established." *See al-Kidd*, 563 U.S. at 742.

Second, Dixon contends that the Individual Defendants were on notice from Executive Branch guidance on "religious exercise and expression in the federal workplace," issued by both Presidents Clinton and Trump. Pl.'s Opp'n to Individual Defs.' Mot. at 5; *see* Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, § l(A), Aug. 14, 1997; Off. Att'y Gen., Mem. for Exec. Dep'ts & Agencies, Federal Law Protections for Religious Liberty (Oct. 6, 2017). But these are not proper sources of "clearly established law." "To be sufficiently clearly established, a right need not rest on controlling authority directly on point, 'but existing precedent must have placed the statutory or constitutional question beyond debate.'" *Bernier*, 38 F.4th at 1152 (quoting *al-Kidd*, 563 U.S. at 741). "Qualified immunity may be unavailable when plaintiffs identify 'cases of controlling authority in their jurisdiction at the time of the incident' or 'a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful.'" *Id.* (quoting *Wilson v. Layne*, 526 U.S. 603, 617, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999)). Plaintiff cites to no such law that would have put these Individual Defendants on notice that enforcing a vaccine mandate or a testing requirement, or rejecting her telework application, violated the RFRA. Thus, qualified immunity shields the Individual Defendants from liability.

Appendix B

IV.

For the foregoing reasons, Defendants' Motions to Dismiss, ECF Nos. 15, 23, are granted. A final, appealable order accompanies this Memorandum Opinion.

/s/ Amit P. Mehta
Amit P. Mehta
United States District
Court Judge

Dated: March 21, 2024

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED MARCH 21, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 22-cv-3496 (APM)

TAMI M. DIXON,

Plaintiff,

v.

JANET L. YELLEN, *et. al.*,

Defendants.

Filed March 21, 2024

ORDER

For the reasons set forth in the court's Memorandum Opinion, ECF No. 28, Defendants' Motions to Dismiss, ECF Nos. 15, 23, are granted as to all claims against all Defendants. This action is hereby dismissed.

This is a final, appealable order.

/s/ Amit P. Mehta
Amit P. Mehta
United States District
Court Judge

Dated: March 21, 2024

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED JULY 16, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5110
1:22-cv-03496-APM
September Term, 2024

TAMI M. DIXON,

Appellant,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY, DEPARTMENT OF TREASURY, *et al.*,

Appellees.

BEFORE: Pillard and Wilkins, Circuit Judges; Edwards, Senior Circuit Judge.

Filed July 16, 2025

ORDER

Upon consideration of appellant's petition for panel rehearing filed on July 7, 2025, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Lillian R. Wright
Deputy Clerk

APPENDIX E — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED JULY 16, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5110
1:22-cv-03496-APM
September Term, 2024

TAMI M. DIXON,

Appellant,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY, DEPARTMENT OF TREASURY, *et al.*,

Appellees.

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges; Edwards, Senior Circuit Judge

Filed July 16, 2025

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Lillian R. Wright
Deputy Clerk