

No. 25-615

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In the

## Supreme Court of the United States

SHANE VINALES, Individually and as Next Friend  
of L. V. and S. V., *et ux.*;  
*Petitioners,*

v.

TC II PRIVATIZED HOUSING, L.L.C., *et al.*,  
*Respondents.*

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

### BRIEF FOR AMICUS CURIAE CHANGE THE AIR FOUNDATION IN SUPPORT OF PETITIONERS

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## **STATEMENT OF INTEREST<sup>1</sup>**

Change the Air Foundation is a 501(c)(3) nonprofit organization dedicated to giving every person the knowledge, resources, and support to achieve better health by breathing safe indoor air. The organization focuses on public education, policy advocacy, and small-scale research aimed at addressing the nationwide crisis of poor indoor air quality as it affects both civilian and military families.

## **SUMMARY OF THE ARGUMENT**

The issues presented in this case reverberate far beyond the decision below and the Vinales family and Randolph Air Force Base outside San Antonio, Texas. The military housing system, which includes hundreds of thousands of units at dozens of installations, is at an inflection point – with widespread problems including mold and pest infestations, constructions defects, and substandard living conditions. Because of the issues raised in *Vinales*,<sup>2</sup> limited effective avenues are available for military service members to seek relief from those

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel of record for the parties were also given timely notice of intent to file this brief, as required by Supreme Court Rule 37.2.

<sup>2</sup> *Vinales v. AETC II Privatized Housing, L.L.C.*, 146 F.4th 434 (5th Cir. 2025).

responsible for the consequences of living conditions known to be dangerous. Moreover, while mold-related problems in military housing are most directly associated with the attendant biological hazards health, these problems are also likely to negatively impact our nation’s national security, the mission readiness of our armed forces, military retention, and the ability of our armed forces to recruit military members in the future.

For all these reasons, *amici* Change the Air Foundation respectfully requests the Court grant the writ of certiorari in this case.

## **ARGUMENT**

### **I. The Fifth Circuit’s Ruling in *Vinales* Creates a Barrier for Military Families Seeking Meaningful Relief for Sub-Standard Military Housing.**

In the decision below, the Fifth Circuit affirmed the trial court’s decision in which the *Vinales* plaintiffs prevailed on their breach of contract claim, but were barred from recovery on their DTPA claim or their claim for attorney fees. The *Vinales* court held that those remedies were not available to Plaintiffs because they were not available under pre-cession Texas law (*i.e.*, the state law in 1951, when Texas ceded the land that became Randolph AFB to the federal government). Not only is the Fifth Circuit’s ruling in *Vinales* at odds with federal enclave jurisprudence from several state supreme courts, it

reinforces the application of an inconsistent, archaic patchwork of laws that will vary – across states, within states, and even within the same military base<sup>3</sup> – and offer less legal protection to military families to seek redress for injuries caused by substandard and dangerous military housing units.

## **II. Mold-Related Problems in U.S. Military Housing Are Significant and Widespread.**

The cracks in the military housing system for U.S. service members has been growing for years. Prior to 1996, the maintenance of military housing largely fell under the purview of the Department of Defense (DoD). But through the Military Housing Privatization Initiative (MHPI), the DoD began conveying existing housing units and leasing land on military installations to private companies to construct, manage, and renovate military housing. Under this system, the DoD no longer directly manages the majority of on-base military family housing, leaving military servicemembers to seek relief for problems – ranging from regular maintenance to major issues such as infestation and mold contamination – from private contractors who are responsible for daily operations.

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<sup>3</sup> See, e.g., *Paul v. United States*, 371 U.S. 245, 269-70 (1963); *W. River Elec. Ass'n v. Black Hills Power & Light Co.*, 918 F.2d 713, 715 (8th Cir. 1990). At least two Texas federal courts have noted this intra-installation dichotomy. *Balderrama v. Pride Indus., Inc.*, 963 F.Supp.2d 646 (W.D. Tex. 2013) (relating to Fort Bliss); *Vincent v. Gen. Dynamics Corp.*, 427 F. Supp. 786 (former Carswell AFB).

In November 2025, Change the Air Foundation published the results of a landmark survey that examined the widespread problems present in military housing, particularly with regard to mold contamination.<sup>4</sup> The survey captured responses from over 3,400 individuals with real-life experience as either current or past residents of military housing. Importantly, through grass-roots efforts within the military community – *e.g.*, spousal networks, partner military associations, social media groups, etc. – Change the Air Foundation gleaned responses from service members<sup>5</sup> and their families from almost 60 military installations across 30 states and the District of Columbia. The largest groups of respondents were from California, Florida, North Carolina, Texas, and Virginia. Change the Air Foundation then contracted with an independent, outside research firm to analyze the findings for statistical significance and relevance.

Nearly every survey respondent identified at least one significant, dangerous issue in their military housing, with mold, mildew, or microbial growth the most prevalent (74%). Other problems reported by the majority of respondents included: humidity or temperature (56%), water damage (54%), pest infestation (53%), or HVAC system issues (51%). The effects were substantial and varied, costing military service members time, money, health, and personal

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<sup>4</sup> Change the Air Found., *Unsafe and Unheard: Military Service Members and Their Families Sound Off on Dangerous Living Conditions* (Nov. 2025).

<sup>5</sup> The term “service member” is used generically to describe the survey respondent, regardless of whether it was the military member or a spouse who completed the survey.

belongings – particularly because 53% of the surveyed servicemembers reported that their requests (or pleas) to address these conditions go unresolved.<sup>6</sup>

While respondents in every state surveyed reported housing-related issues, Florida and Texas were by far the states with most issues across the board. With regard to mold, mildew, and microbial growth problems, respondents in Florida, North Carolina, and Virginia reported these issues at a higher rate, though Georgia, Hawaii, Oklahoma, and Texas also had higher reporting rates than other states.<sup>7</sup>

### **III. The Adverse Effects of Mold-Related Problems in Military Housing Extend Far Beyond the Physical Health of Military Families.**

#### **A. Health & Human Safety**

Before addressing the non-health-related effects of substandard military housing, it is first important to recognize the undeniable health risks posed by the presence of mold.

According to the National Institute of Environmental Health Sciences, the overwhelming scientific consensus confirms that “occupants of damp, moldy buildings have an increased chance of respiratory

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<sup>6</sup> Change the Air Found., *Unsafe and Unheard*, at 5.

<sup>7</sup> *Id.* at 10.

problems” and other ailments.<sup>8</sup> While the severity of symptoms depend on the type of mold, the duration and intensity of exposure, and individual characteristics of the victim, there is no question that mold exposure has been linked to asthma, allergies, cognitive issues, mental health issues, immunological responses, and even cancer.<sup>9</sup>

These health risks were readily apparent among military service members who responded to the Change the Air Foundation 2025 survey. More than three-quarters (76%) of service members reported a negative impact in their family’s health from housing-related issues; incredibly, for Marines this rate was even higher (85%).<sup>10</sup> And this was not merely self-reporting or speculation; those health concerns were confirmed with a doctor’s opinion linking their health issues with housing or environmental exposure in nearly half (48%) of the cases. While these environmental factors certainly cause physical ailments like headaches or migraines (37%), for many, it is the mental and cognitive health toll which weighs the heaviest, with many reporting anxiety or mood changes (42% and 67%, respectively), trouble sleeping (37%), and brain fog (32%) – often with higher incidence rates for the military spouse.<sup>11</sup>

The mental and physical effects of mold-related and substandard housing conditions also affect military

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<sup>8</sup> Nat’l Institute of Health, U.S. Dep’t of Health & Hum. Servs. (HHS), *Mold and Your Health*, March 2025, at 1.

<sup>9</sup> *Id.*

<sup>10</sup> Change the Air Found., *Unsafe and Unheard*, at 16.

<sup>11</sup> *Id.*

children. Compared to the effects on mood and anxiety, ailments in children tend to be more physical. For example, respiratory and skin issues are most common, from general irritation (40%) to rashes or eczema (35%), chronic sinus infections (31%) or difficulty breathing (29%) to asthma (26%).<sup>12</sup>

While the numbers themselves are staggering, the health impacts of mold on military families in military housing are seen even more clearly in the horror stories told by servicemembers across the country. As one active-duty Army service member from Texas stated:

My kids were regulars at the local urgent care. The staff recognized us every time because we were always there with breathing issues and chronic congestion. My kids always had sore throats, coughs, congestion, and occasional fevers. My younger son's eczema flared up. Once we moved everything cleared up. They haven't had any issues since we left that house.<sup>13</sup>

Similarly, an active-duty Air Force service member from Mississippi reported "allergies and respiratory illnesses," one daughter with seizures, and that another daughter [who] "had to have her adenoids/tonsils removed. ... The surgeon asked if we lived on base housing because he thought it might be

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

mold related.<sup>14</sup> There are countless other examples of service members describing the destructive effects of mold exposure on their own health, as well as the health and well-being of their spouses and children.

#### **B. National Security & Mission Readiness**

Despite the immense professionalism exhibited by our military as a general matter, there is no question that the significant disruptions caused by mold-related problems at home present an impediment to our national security as well as mission readiness.

The numbers tell the story: nearly one-half (47%) of servicemembers reported being at risk for compromised readiness because of mold or other significant problems with their military housing.<sup>15</sup> These tangible detriments to readiness include, but are not limited to: (1) mental health challenges; (2) negative impact to cognition or ability to focus; or (3) even basic ability to attend work or temporary duty assignments (“TDY”).<sup>16</sup> In addition, nearly two-thirds (66%); and over 75% of respondents in Hawaii and North Carolina) of those with mold issues report feeling demoralized as “stuck without options” due to the lack of responsiveness from those responsible for housing maintenance.<sup>17</sup>

Beyond the numbers, the real-life experiences of our military families speak volumes. The unfiltered

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 5, 12

comments of this active-duty Army service member, captured by our survey, exemplify the level of disruption caused by mold-related contamination:

We were told to be out of our home by Christmas Eve, with three small children. We were all very sick and it was incredibly difficult. We had to put all of our stuff into storage to be cleaned and we had to throw away or have professionally cleaned all of our linens. We had to find all new Christmas presents for our kids on Christmas Eve crammed into a hotel room with two dogs.<sup>18</sup>

Another Army service member from Texas described his family being displaced “five times in less than two years for a total of 400 days” due to mold-related issues in their family’s military housing.<sup>19</sup>

To be clear, service members and their families understand that a transitory lifestyle is par for the course in a military career – from one duty location to the next, overseas or remote deployments, temporary assignments, etc. It is part of what makes military service unique. At the same time, the inherent unpredictability of this lifestyle demands a stable home environment to provide an anchor. For military families whose lives are disrupted by mold, pest infestations and other substandard living conditions in their own homes, no such anchor exists.

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<sup>18</sup> *Id.* at 14.

<sup>19</sup> *Id.*

### C. Retention

Along with the negative health effects on military families and the adverse impact on mission readiness, the prevalence of mold-related problems in military housing also will likely impact the retention of current service members. Leaving aside the health and morale effects of substandard housing, there is no question that the presence of mold creates new financial burdens on military families. According to the survey, one half of service members reported paying an average of \$1,680 out of pocket to address problems associated with substandard or unsafe military housing conditions (e.g., pest control, mold inspection, hotel stays, medical expenses, along with equipment such as dehumidifiers, air purifiers, and filtration systems).<sup>20</sup>

This was the experience of one active duty Air Force service member in Alaska:

[We] paid for several mold test out of pocket (close to \$600) moved homes out of pocket, have had to replace contaminated items with a whole household to be replaced as financially able, [and] throw out home belongings because of contamination.<sup>21</sup>

An active-duty Navy service member described the crushing financial pressure placed on their family due

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<sup>20</sup> *Id.* at 11.

<sup>21</sup> *Id.* at 12.

to the problems caused by moisture, mold, and mildew in their military housing:

We need to put some money aside to purchase air purifiers (about \$500 each) and a dehumidifier (about \$300-400) and also water filter system (\$450) and their filters when we already live paycheck to paycheck.”<sup>22</sup>

Again, these are but two examples of the real-life financial toll borne by military families out of their own pockets, apart from the health, morale, and emotional consequences described above. As a result, there is every reason to believe that the cumulative effect of these pressures caused by mold contamination and other substandard military housing conditions have created – and will continue to create – significant barriers to retention of service members.

#### D. Future Force & Recruiting

Finally, the pervasive problems from mold, and other substandard living conditions, in military housing are likely to have a negative impact on future force and recruiting. According to a 2023 GAO Report, enlisted service members reported that “poor living conditions negatively affect work performance, training, and DOD’s ability to recruit qualified personnel.”<sup>23</sup> In fact,

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<sup>22</sup> *Id.* at 12.

<sup>23</sup> “Military Barracks: Poor Living Conditions Undermine Quality of Life and Readiness,” U.S. Gen. Accountability Office, GAO-23-105797 (Sept. 2023), at 41.

at all 10 installations included in the GAO Report, senior enlisted service members pointed to a causal link between poor living conditions and reduced work productivity and negative perceptions “about serving in the military.”<sup>24</sup>

Moreover, there is strong reason to believe that negative experiences in military housing will disrupt the crucial pipeline of “legacy” recruiting, *i.e.*, drawing new recruits into military service who either grew up in military families themselves or who had close family members who served. For example, historical Pentagon data shows as many as 86% of U.S. Air Force recruits had a close relative (e.g., grandparent, parent, sibling, aunt/uncle, or cousin) who served, while the each of the other major branches had well over 75% legacy recruiting rates (82% for the Navy, 79% for the Army, and 77% for the Marine Corps).<sup>25</sup>

As more military families experience negative health and morale impacts from substandard and unsafe military housing, compounded with the frustration from the lack of effective remedies to address the problems – it is likely that these issues will have a corrosive effect on military recruitment among “legacy” recruits who would otherwise be the most receptive population for recruitment.

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<sup>24</sup> *Id.*

<sup>25</sup> TIME, Thompson, M., “Here’s Why the U.S. Military is a Family Business,” Mar. 10, 2016 (available at <https://time.com/4254696/military-family-business/>)(last visited Dec. 21, 2025). More recent data from the U.S. Army shows its legacy recruitment rate is as high as 83%.

Perhaps more disturbingly, there is no question that thousands of military dependents are being exposed to mold and other harmful toxins when living in substandard military housing. Given the known risks associated with mold exposure, including asthma, severe allergies, and various mental health and immunological problems (*see Section III.A., supra*) – it is an unescapable fact that a consequential number of these current military dependents will be medically disqualified from military service in the future, regardless of their desire to do so.

#### **IV. Too Many Service Members Currently Have Inadequate Remedies to Improve Substandard Military Housing Conditions.**

Through its ruling in *Vinales*, the Fifth Circuit effectively eliminated the use of the judicial system for countless service members to hold accountable the private contractors responsible for operating and maintaining safe, on-base living conditions for our military members. Instead, military service members can be left without meaningful recourse compared to their off-base civilian counterparts, or even fellow service members on the same installation who happen to live on a portion of the federal enclave with a more favorable cessation date.

As the survey of service members showed, the lack of accountability through current state law remedies often leaves military families with no meaningful recourse against private contractors. Nearly 9 out of

10 (86%) of respondents had to report the same issue multiple times in their home before receiving any maintenance support. Even then, nearly two-thirds (66%) reported that the issue was reported as “resolved” despite no satisfactory action taken, and more than half (53%) of the time, the issue was not resolved at all.<sup>26</sup> Specifically with regard to problems related to mold, mildew, and microbial growth, nearly one-fourth of respondents (23%) had to wait over six months before resolution; others were not so lucky – 39% moved from their homes entirely before the problem was resolved.<sup>27</sup>

The comments reflect an ongoing, systemic problem in the industry. For example, according to an active-duty Army service member in North Carolina:

I was 9 months pregnant when I discovered mold in our kitchen cabinets, it was making me sick. Beginning of August, we had to go to temporary housing because the mold was so bad they had to take the cabinets out. Instead of replacing the cabinets they put the same ones back in and ever since mold keeps appearing. They just wipe it off and call it a day.<sup>28</sup>

An active-duty Air Force service member from Florida shared a similar story of substandard maintenance

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<sup>26</sup> Change the Air Found., *Unsafe and Unheard*, at 11.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 14 (emphasis added).

and no accountability; this time related to pest and rodent infestation rather than mold:

I had put in a request for pest control, carpenter ants and vermin infestation (rat/mice in attic/ceiling). They took well over a month to call and schedule pest control. They did not show up when I was told they were, the pest control tech showed up unannounced the following Monday and only sprayed for ants. They did nothing about the rats/mice, even though I was told that the tech would also look into/help with the vermin. Roughly an hour later, I received a text informing me that the request was marked as completed.<sup>29</sup>

Again, these anecdotes represent a fraction of complaints lodged by military members arising from the lack of adequate responsiveness from the entities responsible for maintenance and upkeep of military housing. The underlying theme is the same – substandard or unsafe military housing, particularly due to mold-related problems, is far too common, and the complaints of service members are not taken seriously or with the requisite urgency.

Given this factual backdrop, it is essential that service members have adequate state law remedies to hold companies accountable, but *Vinales* – if left undisturbed – would further embolden private

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<sup>29</sup> Id. at 12 (emphasis added).

contractors to the detriment of the military families they are meant to serve.

## CONCLUSION

For the foregoing reasons, as well as the reasons set for by Petitioners, this Court should grant the petition for certiorari.

Respectfully submitted,

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