EXHIBIT A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 27, 2026
Lyle W. Cayce
Clerk

No. 25-30478

VOICE OF THE EXPERIENCED, A MEMBERSHIP ORGANIZATION *on behalf of itself and its members*; MYRON SMITH, *Individually and on behalf of all others similarly situated*; DAMARIS JACKSON, *Individually and on behalf of all others similarly situated*; NATE WALKER, *Individually and on behalf of all others similarly situated*; DARRIUS WILLIAMS, *Individually and on behalf of all others similarly situated*; KEVIAS HICKS; JOSEPH GUILLORY; ALVIN WILLIAMS,

Plaintiffs—Appellees,

versus

JAMES M. LEBLANC, *Secretary, Department of Public Safety and Corrections*; TIM HOOPER, *Warden, Louisiana State Penitentiary*; LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,

Defendants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

No. 25-30478

ON PETITION FOR REHEARING EN BANC

Before DAVIS, STEWART, and RAMIREZ, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (FED. R. APP. P.40 and 5TH CIR. R.40).

In the en banc poll, six judges voted in favor of rehearing, JUDGES JONES, SMITH, HO, DUNCAN, ENGELHARDT, and OLDHAM, and eleven judges voted against rehearing, CHIEF JUDGE ELROD, and JUDGES STEWART, RICHMAN, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, WILLETT, WILSON, DOUGLAS, and RAMIREZ.

STEPHEN A. HIGGINSON, *Circuit Judge*, joined by STEWART, GRAVES, and DOUGLAS, *Circuit Judges*, concurring in denial of rehearing en banc:

It is a disservice to our branch for any inferior officer to speak of "rebuk[ing]" or "policing" another. In that spirit, we would all do well to remember our late colleague Judge Reavley's kind and gentle reminder that "[t]he trial judge is the key to the administration of justice. . . . [I]t is a function of the circuit judge to be an enabler of the trial judge, because the trial court is the point of delivery of justice." Thomas M. Reavley, *TMR's Judicial Philosophy*, *in* REAVLEY ON LAW, JUDGING, AND THE GOOD LIFE 7, 7, 9 (Bryan A. Garner ed., 2022); *see also* Alvin B. Rubin, *Views from the Lower Court*, 23 UCLA L. REV. 448, 452 (1976) ("In these endeavors, hyperbole and metaphor are more frequently a hindrance than a help.").

CORY T. WILSON, *Circuit Judge*, respecting the denial of rehearing en banc:

Under the Prison Litigation Reform Act (PLRA), preliminary injunctions automatically expire after 90 days unless the district court makes specific factual findings to support extending the injunction. *See* 18 U.S.C. § 3626(a)(2). Generally, once a preliminary injunction expires, it is moot and therefore unreviewable by our court. *Smith v. Edwards*, 88 F.4th 1119, 1124 (5th Cir. 2023). Yet in this appeal, our court faces a concerning conundrum: If a district court may simply enter a "new" preliminary injunction under the PLRA on day 91, after a prior one expires, that court can functionally evade the PLRA's express curbs on its injunctive power, seemingly insulated from appellate review.

This litigation, involving Louisiana prisoners' exposure to summer heat while working the penitentiary's farm line, starkly illustrates the problem. The injunctive relief fashioned by the district court was needed only in the summer growing season, *i.e.*, for about 90 days, give or take. So for two years now, as green shoots emerged in the spring, so did plaintiffs' requests for preliminary injunctive relief, after lying fallow during the cooler months. And as spring turned to summer, the district court entered "preliminary" relief, which lapsed per the PLRA's timeframe before our court could review the injunctions on substance. Like JUDGE JONES and my other dissenting colleagues, I am deeply skeptical that this pattern complies with the PLRA's statutory parameters.

But I voted against hearing this case en banc because it presents a poor vehicle to address the problems with the district court's approach. First, the mootness-exception issue—the concern driving JUDGE JONES's dissent—was not squarely put before our *VOTE* panel. As a result, in dismissing the second of these serial appeals, we did not have occasion to consider the issue

in any depth. *See Voice of the Experienced v. LeBlanc*, 2025 WL 2481382 (5th Cir. Aug. 28, 2025) (*VOTE II*); *see also Voice of the Experienced v. Westcott*, 2025 WL 2222990 (5th Cir. Aug. 5, 2025) (*VOTE I*); *Voice of the Experienced v. LeBlanc*, 2025 WL 3252638 (5th Cir. Nov. 21, 2025) (*VOTE III*). And even assuming the issue was properly raised by the State, I am not convinced that *Smith v. Edwards* is irreconcilable with the *VOTE* panels' holdings. Nor am I convinced that *Smith* was incorrect in its analysis of the capable-of-repetition-yet-evading-review exception to mootness. In other words, I am not ready to jettison the notion that meaningful review of a district court's preliminary injunction is feasible within the PLRA's express framework—even if it would, by definition, need to be expedited.

Regardless, these cases will also shortly be moot for another reason: Earlier this month, the district court conducted a five-day bench trial on the prisoners' claims for declaratory and permanent injunctive relief. Whichever way the district court's ruling goes, the perennial crop of preliminary injunctions will not be sown again during this year's growing season. Therefore, while I share many of the concerns sketched by JUDGE JONES about the "evergreen" preliminary relief at issue, the more judicious course is a patient one. At bottom, I "do not believe our en banc resources are warranted to review the mootness question" in the case at hand. *Sacramento Homeless Union v. City of Sacramento*, 115 F.4th 1149, 1154 (9th Cir. 2024) (Nelson, J., respecting the denial of rehearing en banc).

EDITH H. JONES, *Circuit Judge*, joined by SMITH, HO, DUNCAN, and OLDHAM, *Circuit Judges*, dissenting from denial of rehearing en banc:

I respectfully dissent from this court's failure to rehear this appeal en banc and forcefully rebuke the district court's gamesmanship that avoided the requirements of federal law. The authority of federal courts springs from our adherence to governing law, which derives from statutes enacted by Congress, Supreme Court rulings, and for Fifth Circuit district courts, rulings of this court. As Hamilton put it, Article III federal courts have "neither Force nor Will, but merely judgment." *The Federalist No. 78* (Alexander Hamilton). Judgment must be based soundly and impartially on the law. That governing law is inconvenient or personally unpalatable affords no basis for refusing to abide by it. It is up to the Article III courts to police judicial refusals to follow the law. This case, though by far not the only example of recent judicial disobedience, is emblematic.

Twice, the district court here disobeyed the Prison Litigation Reform Act, which mandates that all preliminary injunctions in institutional prison reform cases expire after 90 days if they are not made permanent. 18 U.S.C. § 3626(a)(2). *See Miller v. French,* 530 U.S. 327, 339, 120 S. Ct. 2246, 2254 (2000) (the purpose of the PLRA was to "curb[] the equitable discretion of district courts."). To avoid automatic expiration, the court must "make[] the findings required under subsection (a)(1) for the entry of prospective relief and make[] the order final *before* the expiration of the 90-day period." 18 U.S.C. § 3626(a)(2) (emphasis added). And the court must find that "such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." *Id.* § 3626(a)(1)(A).

When the court's two violations of the PLRA occurred, litigation in this case about prisoners' farming during the summer had already been

pending a year, and the district court's initial interim relief had been stayed in part by this court.[1] This court subsequently held the appeal moot because the preliminary injunction's 90-day term had expired under the PLRA.[2]

When the next farming season rolled around, a new motion was filed for injunctive relief. The district court issued a new preliminary order, and it was immediately appealed. *Voice of the Experienced v. LeBlanc (II),* No. 25-30322. Apparently seeking to avoid the PLRA's stringent substantive requirements, the district court let its preliminary injunction expire. This court declared the case moot and did not rule on the merits. The state sought rehearing en banc.

But *one day after* the 90-day deadline, the district court reimposed an identical injunction, also without the factfindings required by § 3626 (a)(1)(A). *Voice of the Experienced v. LeBlanc (III),* No. 25-30478. The state again (unsuccessfully) sought rehearing en banc. Yet again, this court has declared the case moot after the PLRA's 90-day deadline expired.[3] And this court has refused to entertain a petition for rehearing en banc. I respectfully dissent.

For two years, the state of Louisiana has been held hostage to serial interim-but-expiring injunctive decrees, but it has been unable to obtain appellate review. Even with expedited appellate schedules in this court, the preliminary injunctions expired, and the appeals were held moot. Obviously, mootness effectively prevents appellate consideration of the propriety of any PLRA-governed preliminary injunction. Even worse from a legal standpoint,

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[1] *Voice of the Experienced v. LeBlanc (I),* No. 24-30420. The district court's temporary restraining order was treated by this court functionally as a reviewable preliminary injunction.

[2] Given the vicissitudes of litigation, *perhaps* the court's failure to follow the PLRA in this initial skirmish was anomalous.

[3] Since the farming season closed in the fall, the district court finally commenced a full injunction hearing on the claimed violation of prisoners' rights during this winter.

the threat that a district court could commit serial violations of the PLRA with 90-day "preliminary" relief orders that escape appellate review is intolerable. Congress enacted the PLRA precisely to curb excessive and imprudent judicial management of state and local prison facilities. The Supreme Court has admonished that prison administration is among the most difficult but important tasks of government officials. *Turner v. Safley*, 482 U.S. 78, 84–85, 107 S. Ct. 2254, 2259 (1987). Federal courts' inappropriate interference with prison management undermines basic principles of Federalism. Congress very deliberately limited the grounds by which federal judges may impose liability and remedial measures on prison administrators. *Miller*, 530 U.S. at 339–340, 120 S. Ct. at 2254.

In this case, where the specter of serial preliminary injunctive orders by a noncompliant judge has become real, this court should have granted appellate review under the mootness exception for issues capable of repetition yet evading review. The exception requires that "(1) 'the challenged action [must be] in its duration too short to be fully litigated prior to cessation or expiration' and (2) 'there [must be] a reasonable expectation that the same complaining party will be subject to the same action again.'" *Shemwell v. City of McKinney*, 63 F.4th 480, 484 (5th Cir. 2023) (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170, 136 S. Ct. 1969, 1976 (2016)). The fact that three appeals have been dismissed as moot proves the first factor, and the fact that an identical injunction is at issue in at least two appeals proves the second factor.

The panels here were bound by our decision in *Smith v. Edwards*, which held that a preliminary injunction under the PLRA does not meet the capable of repetition exception to mootness. *Smith v. Edwards*, 88 F.4th 1119, 1125–26 (5th Cir. 2023). *Smith* held that the 90-day deadline in the PLRA is not "necessarily too short a time fully to litigate a challenge to a PLRA injunction." *Id.* at 1126. The instant proceedings refute that holding.

Although this court has not decided "how much judicial review is needed" before a matter has evaded review, *Empower Texans, Inc. v. Geren*, 977 F.3d 367, 370 (5th Cir. 2020), other circuits hold that sufficient judicial review means parties must have time to seek "'plenary review' by the Supreme Court," *In re Flint Water Cases*, 53 F.4th 176, 189 (6th Circ. 2022) (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 774, 98 S. Ct. 1407, 1414 (1978)).[4] Two circuits' decisions that involved appeals under the PLRA ruled primarily on the second test for the mootness exception: each confronted only a single injunction that had expired within 90 days, but the courts found that the likelihood of district court evasion was remote. *See United States v. Sec'y, Fla. Dep't of Cor.,* 778 F.3d 1223, 1229 (11th Cir. 2015) ("no basis . . . to predict that [the plaintiff will seek] a new preliminary injunction," nor that "the district court . . . will refrain from finalizing its order."); *Ahlman v. Barnes*, 20 F.4th 489, 491 (9th Cir. 2021) (because the COVID epidemic had subsided, "the chance that Plaintiffs successfully acquire another preliminary injunction . . . is remote."). *Ahlman* also held, however, that in many PLRA appeals, the preliminary injunction "will not be fully litigated before the injunction expires." *Ahlman*, 20 F.4th at 494. Therefore, the first criterion for the mootness exception was fulfilled. *Id.*

The Supreme Court itself "has held that periods of twelve months, *Turner v. Rogers*, 564 U.S. 431, 440 (2011), eighteen months, *First Nat'l Bank*, 435 U.S. at 774, and even two years, *Kingdomware Techs., Inc. v. United States*,

[4] *See also United Bhd. of Carpenters & Joiners of Am., AFL-CIO v. Operative Plasterers' & Cement Masons' Int'l Ass'n of U.S. & Canada, AFL-CIO*, 721 F.3d 678, 688 (D.C. Cir. 2013) ("To evade review, the challenged action must be incapable of surviving long enough to undergo Supreme Court review."); *Associated Energy Grp., LLC v. United States*, 131 F.4th 1312, 1318 (Fed. Cir. 2025) ("'[E]vading review' means that the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full consideration." (quoting *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 787 (9th Cir. 2012)); *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1287 (9th Cir. 2013) (holding that a case is only fully litigated if it has opportunity to be "reviewed by [a circuit court] and the Supreme Court.").

579 U.S. 162, 170 (2016), are too short to obtain complete review." *In re Flint Water Cases*, 53 F.4th at 189.

Ninety days is not enough time for a PLRA case to be fully resolved on appeal. This court should have found by at least the second injunctive order in question that the district court's noncompliance with the PLRA raised issues capable of repetition yet evading review. This court should have taken a stand against judicial failure to abide by the law. I dissent.

JAMES C. HO, *Circuit Judge*, dissenting from the denial of rehearing en banc:

I regret that we're not taking this case en banc. I get that this appeal may become moot—the district court may soon enter final judgment, and thus supplant the preliminary injunction. *See Koppula v. Jaddou*, 72 F.4th 83 (5th Cir. 2023). But even if so, this denial order serves two useful functions.

First, Judge Jones's important dissent details the troubling series of actions by the district court. I join her call to arms on the need for appellate courts to police insubordination in the district courts. *See also In re Westcott*, 135 F.4th 243, 250 & n.1, 251 (5th Cir. 2025) (Ho, J., concurring). One hopes that district courts in our circuit will heed her message.[1]

Second, the support for rehearing en banc today restores and reaffirms the proper standards that do (and do not) govern rehearing en banc.

In *United States v. Bell*, 130 F.4th 1053 (5th Cir. 2025), the support for en banc review reaffirmed that the lack of an en banc petition is *not* a good reason to deny en banc—a point that warranted clarification after *Neese v. Becerra*, 127 F.4th 601 (5th Cir. 2025).

Today's order likewise restores an en banc principle put into question in *Neese*. We reaffirm today that a suggestion of mootness (like the absence of an en banc petition) is *not* a good reason to deny rehearing en banc.

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[1] Our colleagues contend that it's wrong to comment on insubordination by federal judges. *See ante*, at 8 (Higginson, J., concurring in the denial of rehearing en banc).

But they did just that—indeed, just last week—in *Roake v. Brumley*, _ F.4th _, _ (5th Cir. 2026) (Dennis, J., dissenting) (accusing federal judges of "evad[ing]" precedent in a "calculated" "maneuver" to violate the "vertical fidelity that defines the role of an inferior court"). Their dissent in *Roake* demonstrates that they see nothing wrong with judges judging the work of other judges. Nor do I. Indeed, that's our job. The only question is whether a particular allegation of insubordination is true or false.

To begin with, a suggestion of mootness is just that—a suggestion. It may well be proven false.[2]

And even if the suggestion of mootness comes true, it's still worth granting en banc review, just to vacate the errant panel precedent. *See Neese*, 127 F.4th at 603 n.1 (Ho, J., dissenting from the denial of rehearing en banc).

Take *Spectrum WT v. Wendler*, 157 F.4th 673 (5th Cir. 2025). That appeal featured both elements from *Neese*—namely, (1) no en banc petition, and (2) a suggestion of mootness. In fact, it presented a much higher risk of mootness than *Neese* (*ante*, at n.1). Pending proceedings in the *Spectrum WT* district court, like here, strongly indicated that final judgment would soon supplant the preliminary injunction. We granted en banc review anyway—thus vacating errant panel precedent. And then we dismissed the appeal as moot. *See* Order, No. 23-10994 (5th Cir. Jan. 20, 2026).

The panel decision here was unpublished and thus non-precedential. So if rehearing en banc is warranted even here—and I agree that it is—then it was *a fortiori* warranted in both *Spectrum WT* and *Neese*.

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[2] *See Neese*, 127 F.4th at 603 n.1 (Ho, J., dissenting from the denial of rehearing en banc) (opposing misuse of "procedural stratagems to avoid judicial review," such as a suggestion of mootness because the government purports to have abandoned its views) (citing cases); *see also Tennessee v. Kennedy*, 2025 WL 2982069, *4 (S.D. Miss. 2025) (later ordering same relief that the district court granted in *Neese*, because "Defendants have not delineated any efforts they have made to comply with the President's directives").

Judge Jones believes the suggestion of mootness will prove false here, too. Taking this case en banc would have allowed us to explore her theory further. *See*, *e.g.*, *Independence Party of Richmond Cnty. v. Graham*, 413 F.3d 252, 256 (2nd Cir. 2005) ("To apply the 'capable of repetition yet evading review' exception to otherwise moot appeals of preliminary injunctions would, moreover, impermissibly evade the ordinary rule, pursuant to 28 U.S.C. § 1291, that appellate courts review only 'final decisions' of a lower court.").

* * *

I'm grateful to Judge Jones for emphasizing the importance of policing district courts—and for reaffirming that a suggestion of mootness, like the absence of an en banc petition, is not a good reason to deny en banc review.

EXHIBIT B

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
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VOICE OF THE EXPERIENCED, A MEMBERSHIP ORGANIZATION *on behalf of itself and its members*; MYRON SMITH, *Individually and on behalf of all others similarly situated*; DAMARIS JACKSON, *Individually and on behalf of all others similarly situated*; NATE WALKER, *Individually and on behalf of all others similarly situated*; DARRIUS WILLIAMS, *Individually and on behalf of all others similarly situated*; KEVIAS HICKS; JOSEPH GUILLORY; ALVIN WILLIAMS,

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JAMES M. LEBLANC, *Secretary, Department of Public Safety and Corrections*; TIM HOOPER, *Warden, Louisiana State Penitentiary*; LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,

Defendants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

Before DAVIS, STEWART, and RAMIREZ, *Circuit Judges*.

PER CURIAM:[*]

This case involves the third issuance of preliminary relief requested by Voice of the Experienced and several Angola inmates (collectively, "VOTE") and granted by the district court in this matter, enjoining the Louisiana State Penitentiary (hereinafter "Angola") from certain practices on its Farm Line. Each of the first two temporary restraining orders ("TROs") were appealed by Louisiana's Department of Safety and Corrections ("DPSC"), the Secretary of DPSC, and the Warden of Angola (collectively, "Louisiana"). The first two TROs expired 90 days after entry under the Prison Reform Litigation Act ("PLRA") before the panels had an opportunity to rule on the merits. Accordingly, the first two panels dismissed their respective appeals as moot and vacated the underlying TROs under the *Munsingwear* doctrine.[1] *See Voice of the Experienced v. Westcott* ("*VOTE I*"), No. 24-30420, 2025 WL 2222990, at *1 (5th Cir. Aug. 5, 2025) (per curiam); *Voice of the Experienced v. LeBlanc* ("*VOTE II*"), No. 25-30322, 2025 WL 2481382, at *1–2 (5th Cir. Aug. 28, 2025) (per curiam).

Both parties agree that pursuant to the terms of the PLRA, the preliminary injunction underlying the instant appeal expired on November 20, 2025. Because November 20 has come and gone, the parties no longer have a legally cognizable interest in the instant appeal and there is no meaningful relief that this panel could order. Accordingly, we DISMISS the appeal as moot and VACATE the district court's August 2025 Order of preliminary relief.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

[1] *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

I[2]

A

The Farm Line is a practice through which Angola compels inmates incarcerated at its facility to perform hard labor. Incarcerated men assigned to the Farm Line pick vegetables by hand for hours under hot, strenuous conditions. In the high heat of the Louisiana summer, conditions on the Farm Line can become life threatening. So long as they do not have a medical exemption, any of the approximately 4,000 men incarcerated at Angola can potentially be assigned to the Farm Line for disciplinary reasons. In September 2023, VOTE filed a class action lawsuit challenging Angola's operation of the Farm Line as violating the Eighth Amendment's prohibition on cruel and unusual punishment. A five-day bench trial on the merits is scheduled to begin on February 3, 2026.

B

At the time VOTE's suit was filed, the procedure for heat alerts for work on the Farm Line was governed by a 2018 Policy promulgated by DPSC. The policy aimed to "establish provisions for the reduction of heat pathology and to reduce the exposure to inmates identified as more vulnerable to heat (the "2018 Policy"). The 2018 Policy directed DPSC to monitor the temperature every two hours and call "Heat Alerts" when "the apparent temperature (heat index) outdoors . . . exceeded 88 degrees Fahrenheit."[3] When a Heat Alert was announced at the 88-degree threshold,

[2] Portions of the facts and procedural history contained in subsections I.A and I.C are replicated from our previous opinion in *Voice of the Experienced v. LeBlanc*, No. 25-30322, 2025 WL 2481382 (5th Cir. Aug. 28, 2025).

[3] "The heat index, also known as the apparent temperature, is what the temperature feels like to the human body when relative humidity is combined with the air temperature." *What Is the Heat Index?*, NAT'L WEATHER SERV.,

DPSC was required to provide the following measures to inmates working outdoors: (1) water and ice at least every thirty minutes; and (2) a rest break of at least five minutes every thirty minutes. Additionally, when Heat Alerts were called, work hours could be adjusted to accommodate extreme temperatures. In 2019, Angola adopted Directive 13.067 (the "2019 Directive"), which was specific to Angola but required the same protections for Farm Line workers when the apparent temperature, measured every two hours, reached 88 degrees.

In May 2024, VOTE moved for a preliminary injunction and temporary restraining order. Attempting to get ahead of the ensuing summer months, VOTE requested that the district court immediately enjoin all agricultural labor performed by incarcerated persons on the Farm Line when the apparent temperature exceeded 88 degrees Fahrenheit. In July 2024, the district court granted VOTE's motion in part (the "2024 Order"). It declined to enjoin labor on the Farm Line altogether in 88-plus degree weather but entered a TRO requiring that Angola undertake the following measures to ensure prisoner safety:

> 1. Correct the deficiencies of [the 2019 Directive described in the court's order], including the lack of shade and adequate rest provided to incarcerated persons laboring on the Farm Line;
> 2. Correct the problems with [Angola's] equipment policies . . . , including the failure to provide sunscreen and other necessary protective clothing and equipment to those laboring on the Farm Line;
> 3. Submit a revised and expanded [] list [of medications exempting individuals from labor on the Farm Line];

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https://www.weather.gov/ama/heatindex. The terms "heat index" and "apparent temperature" are used interchangeably herein.

4. Create a procedure to ensure that all incarcerated persons suffering from health conditions that significantly inhibit thermoregulation are assessed by medical personnel and are granted heat precaution duty status; and
5. Develop an additional heat-related policy to protect those laboring outdoors when heat index values reach or exceed 113 degrees Fahrenheit, the temperature at which the National Weather Service issues excessive heat warnings.

Louisiana petitioned the Fifth Circuit for a stay of the 2024 Order pending appeal. Hearing that petition, another panel of this court denied the stay of the 2024 Order's first two provisions, but granted a stay for the last three provisions. It reasoned that the last three provisions were overbroad because they appeared to reach beyond Angola to cover the entire Louisiana DPSC, rather than just inmates working on Angola's Farm Line. However, VOTE's proposed class consists only of Angola inmates who could be forced to perform agricultural labor, not all Louisiana inmates. By contrast, the motions panel noted that the first two provisions of the 2024 Order were targeted specifically at Angola's Farm Line, and thus held that those two provisions were not overbroad.

Both parties agreed that the district court's 2024 Order expired under the PLRA on September 30, 2024. *See* 18 U.S.C. § 3626(a)(2). Nevertheless, another panel of this court heard oral argument on the 2024 Order's propriety on April 30, 2025. On August 5, 2025, that panel issued a per curiam opinion finding the appeal moot and vacating the 2024 Order. *VOTE I*, 2025 WL 2222990, at *1.

C

Meanwhile, in the wake of the 2024 Order, DPSC revised its heat policies in October of 2024 (the "2024 Policy"). Notably, it *raised* the threshold for issuance of a Heat Alert from 88 to 91 degrees Fahrenheit.

However, the 2024 Policy also provided for some of the mitigation measures contemplated by the 2024 Order. Specifically, it stated that "water and ice," "shaded areas for breaks" and "sunscreen" would be available to outdoor laborers at all times, regardless of the issuance of a Heat Alert. Although the 2024 Policy provided for monitoring of the temperature every two hours, a later Angola-specific Directive (the "2025 Directive") required hourly monitoring.[4]

In March 2025, VOTE moved for a TRO to require Angola to (1) issue a Heat Alert on the Farm Line whenever the heat index meets or exceeds 88 degrees and (2) monitor the heat index every 30 minutes. VOTE argued that it was likely to succeed on the merits of its Eighth Amendment claim regarding the Farm Line practices, and Appellants were deliberately indifferent to the alleged Eighth Amendment violations. VOTE argued that preliminary injunctive relief was necessary to "protect [inmates] on the Farm Line from heat-related injury." Among the evidence Appellees introduced in support of their motion were declarations from their own expert, Dr. Susi Vassallo ("Dr. Vassallo") and deposition testimony from DPSC's Chief Medical Officer, Dr. Randy Lavespere ("Dr. Lavespere").

Appellants opposed the motion, arguing that any preliminary injunction would be improper under the PLRA. Appellants also argued that even if an injunction would be proper under the PLRA, VOTE could not show a likelihood of success on the merits or that Appellants' actions rose to the level of deliberate indifference.

[4] The 2025 Directive also added a requirement for field staff to document any Heat Alert on the daily line count sheets and ensure that all rest breaks are clearly documented on the daily line count sheet.

The district court held a hearing on VOTE's motion for a TRO, which it granted in full on May 23, 2025 (the "May 2025 Order").[5] The May 2025 Order determined that it was substantially likely that Angola's current Heat Alert and heat-index monitoring practices posed a substantial risk of serious harm to inmates on the Farm Line. The court also determined Appellants were likely deliberately indifferent based on their decision to *raise* the Heat Alert threshold from 88 to 91 degrees Fahrenheit despite having been ordered by the court to improve heat policies. It stated that Appellants "simply ignored" the "compelling medical findings" set forth in the findings of previous court orders, which credited Dr. Vassallo's opinion that the risks of heat-related injury and death increase sharply at 88 degrees. Regarding the dangers of the Angola's heat monitoring practices, the district court cited Dr. Lavespere's deposition testimony, concluding that it showed that Appellants were "well aware of the significant temperature swings that may occur."

Appellants timely appealed the May 2025 Order. They also moved to expedite the appeal, which a separate motions panel of this court granted. At oral argument, both parties acknowledged that under the PLRA's 90-day limit for preliminary injunctive relief, the May 2025 Order would automatically expire on August 21, 2025—90 days after its entry. *See* 18 U.S.C. § 3626(a)(2). On August 28, 2025, the *VOTE II* panel deemed the appeal moot and vacated the May 2025 Order under the *Munsingwear* doctrine. *VOTE II*, 2025 WL 2481382, at *4.[6]

[5] The district court clarified in a later order that it had granted the TRO under its authority pursuant to the PLRA and that it would expire on August 21, 2025—90 days after its entry—unless extended or converted to permanent relief before then.

[6] A petition for rehearing en banc remains pending in *VOTE II*.

D

Meanwhile, on July 28, 2025, VOTE moved for a "renewed, successive preliminary injunction granting the same relief" issued in the May 2025 Order. On August 22, 2025, the district court granted that motion in part (the "August 2025 Order"), explaining:

> The [c]ourt [previously] issued a lengthy [r]uling describing the factual and legal bases as to why the issuance of an Order requiring Defendants to maintain a Heat Alert threshold of 88 degrees Fahrenheit was necessary to preserve human health and safety. . . . Because there have been no intervening changes in fact or law, the [c]ourt finds that a successive preliminary injunction is warranted to once again preserve human health and safety. . . . Defendants' arguments opposing the issuance of this successive preliminary injunction do not persuade otherwise.

The district court determined that successive injunctions are not barred by the PLRA nor by any order of this court. It then recounted the extensive evidence it considered in issuing the May 2025 Order, described *supra*. The court credited Dr. Vassallo's testimony regarding the risk of harm, which was supported by data from the Occupational Health and Safety Administration, the National Weather Service, and scientific literature. Therefore, the court enjoined the use of the 91 degrees Fahrenheit threshold for Heat Alerts, and imposed an 88 degrees Fahrenheit threshold "[f]or the same compelling reasons described" in the May 2025 Order.

However, the court declined to re-issue relief regarding the frequency of heat index monitoring. The court observed that pursuant to the 2025 Directive, Louisiana was monitoring the heat index at one-hour intervals. VOTE requested monitoring at half-hour intervals. Because the difference between these frequencies was minimal, relief on that issue was not warranted.

Louisiana immediately appealed the August 2025 Injunction and sought to consolidate that appeal with its appeal of the May 2025 Injunction. However, because the *VOTE II* panel determined that the May 2025 Injunction was moot, that panel denied the motion to consolidate and denied the motion to stay without prejudice to refiling. *VOTE II*, 2025 WL 2481382, at *4. Louisiana refiled its motion for a stay pending appeal, which was granted by a separate motions panel of this court. Louisiana also filed an unopposed motion to expedite this appeal, which was granted. Oral argument was heard by the panel on November 5, 2025, just fifteen days before the preliminary injunction was set to expire.

II

The August 2025 Order "had the 'practical effect' of a preliminary injunction." *VOTE I*, 2025 WL 2222990, at *2; *see also VOTE II*, 2025 WL 2481382, at *2. Therefore, regardless of the label given to the order by the district court, we have jurisdiction over this appeal under 28 U.S.C. § 1292(a)(1).

III

The circumstances presented to this panel are strikingly similar to those presented to the *VOTE I* and *VOTE II* panels. Accordingly, like those panels, we hold that this appeal is moot and that the August 2025 Order must be vacated.

A

It is well established that for this court to retain Article III judicial authority over a case, the case must remain a case or controversy "through 'all stages of the litigation,'" including on appeal. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Alvarez v. Smith*, 558 U.S. 87, 92 (2009)). Therefore, "[i]f an event occurs while a case is pending on appeal that makes

it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed." *VOTE II*, 2025 WL 2481382, at *2 (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992)).

Here, an event has occurred that has made it impossible for this panel to grant effectual relief to the parties. On November 20, 2025, the August 2025 Order expired by matter of law under the PLRA, 90 days after its entry. When the injunction expired, it ceased to have any legal effect on the parties and the parties ceased to have any legally cognizable interest in the review of that injunction. *See VOTE I*, 2025 WL 2222990, at *2 ("Generally, when an injunction expires by its own terms, it is moot and there is nothing to review." (quoting *Yates v. Collier*, 677 F. App'x 915, 917 (5th Cir. 2017) (per curiam))). In short, "[b]ecause the preliminary injunction has expired, there is no remedy we can provide [Appellants] at this point." *See Smith v. Edwards*, 88 F.4th 1119, 1126 (5th Cir. 2023).

We recognize that this is the third time these parties have appeared before our court on appeal of preliminary relief in the same underlying dispute. This case was set for expedited appeal on an expedited, contemporaneous briefing schedule, with argument heard as soon as practicable—which was still just fifteen days before the injunction was set to expire as a matter of law. But the PLRA's 90-day limit does not provide for any exceptions. We note that at oral argument, VOTE averred that it does not intend to seek additional preliminary relief during the winter months where temperatures are not reasonably expected to exceed 88 degrees. The panel fully anticipates that this case will be tried on the merits as scheduled in February 2026, before temperatures increase again in the spring.

B

Finally, for the same reasons articulated by the first two *VOTE* panels, we hold that vacatur of the August 2025 Order is appropriate under the *Munsingwear* doctrine.

The *Munsingwear* doctrine dictates that vacatur of an underlying order is appropriate where review of the order was "prevented through happenstance," that is, where mootness was "due to circumstances unattributable to any of the parties." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 22–23 (1994) (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950), and *Karcher v. May*, 484 U.S. 72, 82–83 (1987)). The purpose of this doctrine "is to prevent an unreviewable decision from spawning any legal consequences, so that no party is harmed by what we have called a 'preliminary' adjudication." *VOTE I*, 2025 WL 2222990, at *3 (internal quotation marks omitted) (quoting *Camreta v. Greene*, 563 U.S. 692, 713 (2011)). Our court has previously vacated PLRA preliminary injunctions that expired under the statute's 90-day limit. *See VOTE II*, 2025 WL 2481382, at *4; *VOTE I*, 2025 WL 2222990, at *4; *Yates*, 677 F. App'x at 918; *Smith*, 88 F.4th at 1127.

The August 2025 Order expired on November 20, 2025, by operation of law—not by circumstances attributable to the parties. When this appeal became moot, Louisiana was "actively pursuing [its] right to appeal." *VOTE II*, 2025 WL 2481382, at *3. Therefore, vacatur of the August 2025 Order is appropriate.

IV

For the foregoing reasons, Louisiana's appeal is DISMISSED as moot and the August 2025 Order is VACATED.[7]

[7] Because the August 2025 Order is vacated, the motion panel's stay of that order is without substantive effect and is thus LIFTED.

EXHIBIT C

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 5, 2026
Lyle W. Cayce
Clerk

No. 25-30322

VOICE OF THE EXPERIENCED, A MEMBERSHIP ORGANIZATION *on behalf of itself and its members*; MYRON SMITH, *Individually and on behalf of all others similarly situated*; DAMARIS JACKSON, *Individually and on behalf of all others similarly situated*; NATE WALKER, *Individually and on behalf of all others similarly situated*; DARRIUS WILLIAMS, *Individually and on behalf of all others similarly situated*; KEVIAS HICKS; JOSEPH GUILLORY; ALVIN WILLIAMS,

Plaintiffs—Appellees,

versus

JAMES M. LEBLANC, *Secretary, Department of Public Safety and Corrections*; TIM HOOPER, *Warden, Louisiana State Penitentiary*; LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,

Defendants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

ON PETITION FOR REHEARING EN BANC

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

EXHIBIT D

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 28, 2025
Lyle W. Cayce
Clerk

No. 25-30322

VOICE OF THE EXPERIENCED, A MEMBERSHIP ORGANIZATION *on behalf of itself and its members*; MYRON SMITH, *Individually and on behalf of all others similarly situated*; DAMARIS JACKSON, *Individually and on behalf of all others similarly situated*; NATE WALKER, *Individually and on behalf of all others similarly situated*; DARRIUS WILLIAMS, *Individually and on behalf of all others similarly situated*; KEVIAS HICKS; JOSEPH GUILLORY; ALVIN WILLIAMS,

Plaintiffs—Appellees,

versus

JAMES M. LEBLANC, *Secretary, Department of Public Safety and Corrections*; TIM HOOPER, *Warden, Louisiana State Penitentiary*; LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,

Defendants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:[*]

This case involves a temporary restraining order ("TRO") issued by the district court on May 23, 2025, enjoining the Louisiana State Penitentiary (hereinafter "Angola") from certain practices on its "Farm Line." This is the second TRO requested by Appellees, Voice of the Experienced ("VOTE")[1] and several Angola inmates. It is also the second TRO appealed to this court by Appellants, the Secretary of the Louisiana Department of Public Safety and Corrections, the Warden of Angola, Prison Enterprises, Inc. and its Director, and Louisiana's Department of Safety and Corrections ("DPSC"). Recently, another panel of this court held that the appeal of the first TRO was moot and vacated the underlying order under the *Munsingwear* doctrine.[2] *See Voice of the Experienced v. Westcott*, No. 24-30420, 2025 WL 2222990 (5th Cir. Aug. 5, 2025) (per curiam). Because the TRO that is the subject of this appeal has now expired as well, we do the same.

I

The Farm Line is a practice through which Angola compels inmates incarcerated at its facility to hard labor. Incarcerated men assigned to the Farm Line pick vegetables by hand for hours under hot, strenuous conditions. In the high heat of the Louisiana summer, conditions on the Farm Line can become life threatening. So long as they do not have a medical exemption, any of the approximately 4,000 men incarcerated at Angola can potentially be assigned to the Farm Line for disciplinary reasons. In September 2023,

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[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

[1] VOTE is a nonprofit organization that "advocate[s] for the civil, constitutional and human rights" of Louisiana inmates.

[2] *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

VOTE filed a class action lawsuit challenging Angola's operation of the Farm Line as violating the Eighth Amendment's prohibition on cruel and unusual punishment.

In March 2025, VOTE moved for a TRO to require Angola to (1) issue a Heat Alert on the Farm Line whenever the heat index meets or exceeds 88 degrees and (2) monitor the heat index every 30 minutes. VOTE argued that it was likely to succeed on the merits of its Eighth Amendment claim regarding the Farm Line practices, and Appellants were deliberately indifferent to the alleged Eighth Amendment violations. VOTE argued that preliminary injunctive relief was necessary to "protect [inmates] on the Farm Line from heat-related injury." Among the evidence Appellees introduced in support of their motion were declarations from their own expert, Dr. Susi Vassallo ("Vassallo") and deposition testimony from DPSC's Chief Medical Officer, Dr. Randy Lavespere ("Dr. Lavespere").

Appellants opposed the motion, arguing that any preliminary injunction would be improper under the Prison Litigation Reform Act ("PLRA"). Appellants also argued that even if an injunction would be proper under the PLRA, VOTE could not show a likelihood of success on the merits or that Appellants' actions rose to the level of deliberate indifference.

In April 2025, six months after discovery closed, Angola adopted a new policy (the "2025 Directive"), which required temperature checks every hour—more frequent than the 2024 Policy's two-hour window but less frequent than VOTE's requested 30-minute window.[3]

[3] The 2025 Directive also added a requirement for field staff to document any Heat Alert on the daily line count sheets and ensure that all rest breaks are clearly documented on the daily line count sheet.

The district court held a hearing on VOTE's motion for a TRO, which it granted it in full on May 23, 2025 (the "May 2025 Order").[4] The May 2025 Order determined that it was substantially likely that Angola's current Heat Alert and heat-index monitoring practices pose a substantial risk of serious harm to inmates on the Farm Line. The court also determined that Appellees' argument that Appellants were deliberately indifferent had merit. It stated that Appellants "simply ignored" the "compelling medical findings" set forth in the findings of previous court orders, which credited Dr. Vassallo's opinion that the risks of heat-related injury and death increase sharply at 88 degrees. Regarding the dangers of the Angola's heat monitoring practices, the district court cited Dr. Lavespere's deposition testimony, concluding that it showed that Appellants were "well aware of the significant temperature swings that may occur."

Appellants timely appealed the May 2025 Order. They also moved to expedite the appeal, which a separate motions panel of this court granted. At oral argument, both parties acknowledged that under the PLRA's ninety-day limit for preliminary injunctive relief, the May 2025 Order would automatically expire on August 21, 2025—ninety days after its entry. *See* 18 U.S.C. § 3626(a)(2).

II

Like the previous panel to consider the first TRO issued in this matter, "we conclude that the district court's order had the 'practical effect' of a preliminary injunction and is therefore reviewable under 28 U.S.C. § 1292(a)(1)." *Westcott*, 2025 WL 2222990, at *2. However, because the May

[4] The district court clarified in a later order that it had granted the TRO under its authority pursuant to the PLRA and that it would expire on August 21, 2025—90 days after its entry—unless extended or converted to permanent relief before then.

2025 Order has now expired, there is no live controversy before us and we lack subject matter over this appeal. Accordingly, we dismiss this appeal as moot and vacate the district court's May 2025 Order.

A

Article III limits this court's judicial authority to "Cases" and "Controversies." U.S. CONST. art. III, §§ 1–2. Actual controversy must exist "through 'all stages of the litigation,'" including on appeal. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 92 (2013) (quoting *Alvarez v. Smith*, 558 U.S. 87, 92 (2009)). "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Id.* (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982)). Thus, a change of circumstances that eliminates the controversy moots the case. *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 142 F.4th 819, 824 (5th Cir. 2025). "[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

"Generally, when an injunction expires by its own terms, it is moot and there is nothing to review." *Westcott*, 2025 WL 2222990, at *2 (quoting *Yates v. Collier*, 677 F. App'x 915, 917 (5th Cir. 2017) (per curiam)); *see also Wickes Corp. v. Indus. Fin. Corp.*, 493 F.2d 1173, 1176 (5th Cir. 1974) ("[B]y its own terms, the preliminary injunction is dissolved, and the appeal of this order is now moot.").

The parties agree that the August 2025 Order expired by its own terms on August 21, 2025. That date has come and passed. Thus, under the plain language of the PLRA, the order has ceased to have any legal effect; Appellants are no longer enjoined by its terms. "Because the preliminary

injunction has expired, there is no remedy we can provide [Appellants] at this point." *See Smith v. Edwards*, 88 F.4th 1119, 1126 (5th Cir. 2023). Consequentially, the parties have no continued, legally cognizable interest in the appeal of the now-expired order. Accordingly, we hold that this appeal is moot and we lack subject matter jurisdiction over it.

B

Like the panel that considered the first TRO in this matter, we next consider whether vacatur of the district court's May 23, 2025 Order is appropriate under the *Munsingwear* doctrine. *Westcott*, 2025 WL 2222990, at *2 (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)). We hold that it is.

"*Munsingwear* practice is well settled." *Id.* (quoting *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5 (2023)). *Munsingwear* vacatur "clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 22–23 (1994) ("*Bancorp*") (quoting *Munsingwear*, 340 U.S. at 40). "The point of vacatur is to prevent an unreviewable decision from spawning any legal consequences, so that no party is harmed by what we have called a 'preliminary' injunction." *Westcott*, 2025 WL 2222990, at *3 (internal quotation marks omitted) (quoting *Camreta v. Greene*, 563 U.S. 692, 713 (2011)).

On at least three other occasions, panels of this court have vacated a preliminary injunction where it automatically expired under the PLRA. In *Westcott*—the appeal of the earlier TRO issued in this case—the panel determined that vacatur was appropriate on similar grounds discussed herein. 2025 WL 2222990. In *Yates*, another panel reasoned that because the prisoner plaintiffs "allowed" their preliminary injunction to expire, vacatur

of that injunction was warranted. 677 F. App'x at 918. Finally, in *Smith*, the panel held that because the preliminary injunction was mooted by automatic expiration under the PLRA rather than by defendant's conduct, defendant was "frustrated by the vagaries of circumstance, . . . [and] ought not in fairness be forced to acquiesce in the judgment." 88 F.4th at 1127 (quoting *Staley v. Harris Cnty.*, 485 F.3d 305, 310 (5th Cir. 2007)).

As explained *supra*, this appeal became moot when the May 2025 Order automatically expired under the PLRA's clear ninety-day limit. Regardless of whether the appeal expired because of the parties' actions, or by "happenstance," vacatur is warranted here because "[v]acatur must be granted where an appeal has 'become moot due to circumstances unattributable to any of the parties.'" *See Westcott*, 2025 WL 2222990, at *3–4 (quoting *Bancorp*. 513 U.S. at 23). The ninety-day "expiration clock" for preliminary injunctions under the PLRA is one of those circumstances. *Id.* at *4.

Vacatur here does not violate the principles set forth in *Bancorp*. 513 U.S. 18. In *Bancorp*, "[t]he Court concluded that the logic of *Munsingwear* did not extend to mootness by settlement because, in that situation, the party who lost below 'has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari.'" *Westcott*, 2025 WL 2222990, at *4 (quoting *Bancorp*, 513 U.S. at 25). In such a situation, the district court's "judgment is not unreviewable, but simply unreviewed by [that party's] own choice." *Id.* (alteration in original) (quoting *Bancorp*, 513 U.S. at 25). When this appeal was mooted, Appellants were actively pursuing their right to appeal. In light of its mootness, *Munsingwear* vacatur of the district court's May 2025 Order is appropriate.

Like the previous panel to address these issues, we find that vacatur is particularly appropriate given the procedural posture of this case. *Westcott*,

2025 WL 2222990, at *4. "By vacating the preliminary injunction, we 'clear[] the path for future relitigation' . . . between the parties on issues such as class certification, other preliminary relief, and ultimately a full bench trial on the merits and permanent relief." *Id.* (alteration in original) (citation omitted) (quoting *Munsingwear*, 340 U.S. at 40).

III

On August 22, 2025, the district court entered a new preliminary injunction under the PLRA. Appellants immediately filed a separate notice of appeal of that preliminary injunction. *See* No. 25-30478, *Voice of the Experienced, et al. v. LeBlanc, et al.* Appellants have also filed motions to consolidate that appeal with this one and to stay the district court's new injunction pending appeal.

IV

For the foregoing reasons, this appeal is DISMISSED as moot and the district court's May 23, 2025 order is VACATED. Because this appeal is moot, Appellants' motion to consolidate this appeal with Case No. 25-30478 is DENIED and their motion for a stay pending appeal is DENIED without prejudice to Appellants' refiling another motion for a stay in Case No. 25-30478.