

No. 26-18

In the Supreme Court of the United States

GARY WESTCOTT, SECRETARY, LOUISIANA DEPARTMENT
OF PUBLIC SAFETY AND CORRECTIONS, ET AL.,
PETITIONERS

v.

VOICE OF THE EXPERIENCED, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Under the Prison Litigation Reform Act of 1995 (PLRA), a preliminary injunction entered in a civil action with respect to prison conditions automatically expires after 90 days unless the district court makes certain statutorily required findings and makes the order final before the 90-day period expires. 18 U.S.C. 3626(a)(2). The court of appeals below dismissed as moot two interlocutory appeals of preliminary injunctions entered in the underlying prison-conditions action after the injunctions expired under the PLRA's 90-day durational limit. The two preliminary injunctions imposed different conditions on petitioners and were based on different facts because petitioners changed the challenged policies multiple times during the course of the litigation. The district court has now entered final judgment for petitioners after a bench trial. The questions presented are:

1. Whether, independently of the expiration of the PLRA's 90-day duration limit, the district court's entry of final judgment mooted petitioners' interlocutory appeals of the preliminary injunctions.

2. Whether the court of appeals' orders dismissing petitioners' appeals as moot and declining to apply the capable-of-repetition-yet-evading-review exception should be summarily reversed where the issues on appeal did not satisfy the exception's capable-of-repetition element but petitioners claim that the court of appeals made two non-obvious legal errors in its analysis of the evading-review element.

3. Whether plenary review is warranted on the question whether, for purposes of the evading-review element of the capable-of-repetition exception, a preliminary injunction that expires after 90 days under the PLRA is of sufficient duration to be fully litigated on appeal.

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OPINIONS BELOW

The court of appeals' opinion in No. 25-30322 (*VOTE II*) (Pet. App. 32a-41a) is available at 2025 WL 2481382. The court of appeals' opinion in No. 25-30478 (*VOTE III*) (*Id.* at 18a-31a) is available at 2025 WL 3252638. The district court's opinion in *VOTE II* (*Id.* at 52a-93a) is available at 2025 WL 2501299. The district court's opinion in *VOTE III* (*Id.* at 42a-51a) is available at 2025 WL 2427692.

JURISDICTION

The judgment of the court of appeals in *VOTE II* was entered on August 28, 2025. A petition for rehearing in *VOTE II* was denied on March 5, 2026. The judgment of

the court of appeals in *VOTE III* was entered on November 21, 2025. A petition for rehearing in *VOTE III* was denied on February 27, 2026. On May 22, 2026, Justice Alito extended the time to file a petition for a writ of certiorari in both cases to and including June 29, 2026. The jurisdiction of this Court was invoked under 28 U.S.C. 1254(1). For the reasons explained below, the Court lacks Article III jurisdiction because petitioners’ appeals are moot. See pp. 12-14, *infra*; Pet. App. 18a-41a.

INTRODUCTION

Petitioners are seeking this Court’s intervention in a dispute over the propriety of preliminary injunctive relief that has automatically expired by operation of statute and has now merged into a final judgment entered in their favor. There is no compelling reason to grant certiorari here, much less to take the extraordinary step of summarily reversing the court of appeals’ decisions based on two purported errors that would not affect the outcome in any event.

In the proceedings below, respondents obtained three preliminary injunctions over the course of litigation concerning labor conditions for incarcerated men who perform outdoor manual labor on the “Farm Line” at the Louisiana State Penitentiary. Each of those injunctions was based on different facts because petitioners altered their heat policies and practices multiple times throughout the course of the litigation. Petitioners appealed each of those injunctions, but the injunctions expired after 90 days under the Prison Litigation Reform Act’s durational limit for preliminary relief in a prison-conditions case. The court of appeals accordingly vacated each of the preliminary injunctions and dismissed petitioners’ appeals as moot once the injunctions ceased to have any further effect.

Petitioners contend that the court of appeals made two errors sufficiently egregious to warrant summary reversal when it held that the capable-of-repetition-yet-evading-review exception to ordinary mootness principles did not apply. Specifically, petitioners argue that the court of appeals erred because 90 days is categorically insufficient for parties to fully litigate any dispute, and because the court of appeals erroneously focused its analysis on whether 90 days was long enough to obtain review by a court of appeals, as opposed to review by this Court.

Petitioners' request faces an obvious obstacle at the outset: petitioners have now obtained a final judgment in their favor. Even if the district court's orders granting preliminary relief had not expired after 90 days, those orders have now merged into the final judgment, mooting any challenge to them here.

Even setting that aside, neither summary reversal nor plenary review would be warranted. Petitioners cite no precedent from this Court applying the capable-of-repetition exception to a mooted *interlocutory ruling* by a district court, as opposed to an *underlying factual controversy* that dissipated before full litigation was possible. Accordingly, none of this Court's precedents demonstrate that 90 days is categorically insufficient to obtain appellate review of a district court's preliminary injunction—a claim belied by the speed with which courts often deal with emergency litigation. Separately, as one of the judges below recognized in her opinion dissenting from the denial of rehearing, the court of appeals below has not even taken a position on the question of which level of review a party must be able to obtain before a dispute is considered not to evade review.

More still, petitioners' arguments would not entitle them to summary *reversal* as they request. Even if petitioners were correct about the two purported errors they

identify, the capable-of-repetition exception would still not have applied because there was no reasonable likelihood that petitioners would have been subject again to a preliminary injunction in this case that suffered from the same underlying errors that petitioners raised in their appeals. That is all the more true now that petitioners have revised their policies and practices and final judgment has been entered. At most, therefore, petitioners could obtain summary *vacatur*—only for the court of appeals to once again dismiss petitioners’ appeals as moot. That is no compelling case for extraordinary relief.

Plenary review is likewise unwarranted. The court of appeals’ decisions implicate no conflict among the courts of appeals worthy of the Court’s review. And again, resolution of the questions presented would not change the outcome, particularly after the entry of final judgment.

Petitioners express concern about their ability to seek review of preliminary injunctions issued in prison-conditions cases in light of the court of appeals’ precedents. But if petitioners are correct that those precedents pose a “recurring danger” to them, Pet. 27, other, cleaner opportunities will surely arise to address them.

In sum, petitioners have not demonstrated a compelling need for this Court’s intervention in these now doubly moot disputes over expired preliminary injunctive relief. The petition for a writ of certiorari should be denied.

STATEMENT

A. Background

1. Article III of the Constitution restricts the power of the federal courts to resolving “Cases” and “Controversies.” U.S. Const. Art. III, § 2, Cl. 1. That requires a plaintiff to have a “personal stake” in the case, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021), that per-

sists “through all stages of the litigation,” including on appeal, *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation modified). A case becomes moot—and thus “no longer a ‘Case’ or ‘Controversy’ for purposes of Article III”—when the dispute “is no longer embedded in any actual controversy about the plaintiff[’s] particular legal rights,” and “the parties lack a legally cognizable interest in the outcome.” *Id.* (citation modified).

One example of mootness is where an appeal of a preliminary injunction is pending when the litigation in the district court reaches final judgment. See, e.g., *Harper ex rel. Harper v. Poway Unified School District*, 549 U.S. 1262, 1262 (2007); *Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587, 588-589 (1926); *Shaffer v. Carter*, 252 U.S. 37, 44 (1920). In that circumstance, the denial of the application for preliminary relief is “merged in the final decree.” *Shaffer*, 252 U.S. at 44.

This Court’s precedents have recognized a narrow “exception” to ordinary mootness principles for cases that are “capable of repetition, yet evading review.” *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). The capable-of-repetition doctrine applies only in “exceptional situations” where the “challenged action” is “too short” in duration “to be fully litigated prior to cessation or expiration,” and there is a “reasonable expectation” that the “same complaining party” will be subject to the “same action again.” *Ibid.*

2. As relevant here, the Prison Litigation Reform Act of 1995 (PLRA) establishes standards for the entry and termination of prospective relief in actions challenging prison conditions on federal grounds. See 18 U.S.C. 3626(a); *Miller v. French*, 530 U.S. 327, 339 (2000). Under 18 U.S.C. 3626(a)(2), any preliminary injunctive relief awarded by a district court “must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least

intrusive means necessary to correct that harm.” Preliminary injunctive relief “automatically expire[s]” 90 days after its entry unless the district court makes the findings required for the entry of permanent relief and makes the preliminary order final before the 90-day period expires. *Ibid.* Under Section 3626(a)(1), permanent prospective relief must be “narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [be] the least intrusive means necessary to correct the violation of the Federal right.”

B. Facts And Procedural History

1. Petitioners are the Louisiana Department of Public Safety and Corrections, the Secretary of the Department, and the Warden of the Louisiana State Penitentiary (LSP). LSP is the largest maximum-security prison in the United States. It sits atop the grounds of a former slave plantation that the State of Louisiana acquired in 1901; today, LSP remains commonly known as “Angola,” after the African region from which many enslaved people were taken. D. Ct. Dkt. 419, at 131-132; D. Ct. Dkt. 420, at 113.

LSP uses a practice known as the “Farm Line” through which it compels incarcerated men to perform agricultural labor. Pet. App. 20a. Men assigned to the Farm Line are often required to “pick vegetables by hand for hours under hot, strenuous conditions” and, at the time this action was filed, without “shade and adequate rest,” “sunscreen,” or “protective clothing.” *Id.* at 20a-23a. “In the high heat of the Louisiana summer, conditions on the Farm Line can become life threatening.” *Id.* at 20a.

The 4,000 men incarcerated at LSP are assigned to the Farm Line upon arrival and are often reassigned there for disciplinary reasons. *Id.* at 34a; D. Ct. Dkt. 424, at 61-62. Among those individuals are men whom LSP has identified as heat sensitive and requiring additional protection

from the heat. D. Ct. Dkt. 440, at 24, 40. Petitioners are not required to “bring[] heat sensitive persons indoors, provid[e] water and ice, and give work breaks at specified intervals,” or to provide other remedial measures until the heat index reaches 88°F and triggers a “Heat Alert.” Pet. App. 89a. A Heat Alert results in certain heightened protections, including bringing indoors men with heightened heat vulnerability and providing water, ice, and work breaks to men continuing to work outdoors. *Id.* at 21a.

2. Respondents are men incarcerated at LSP who are assigned to, or at risk of assignment to, the Farm Line, and a nonprofit membership organization comprising currently and formerly incarcerated people. Pet. App. 53a-54a.

In September 2023, respondents filed this class action against petitioners in the Middle District of Louisiana. D. Ct. Dkt. 1. As relevant here, respondents alleged that the Farm Line exposes incarcerated men to a substantial risk of serious physical harm from extreme heat and inflicts dignitary harm in violation of the Eighth Amendment, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. D. Ct. Dkt. 21, at 3. Respondents sought injunctive and declaratory relief. *Id.* at 51-52.

Respondents filed an application for a preliminary injunction and a temporary restraining order, asking the district court to order petitioners to stop work on the Farm Line whenever the heat index reaches or exceeds 88°F. Pet. App. 57a. On July 2, 2024, after receiving briefing and oral argument, the district court granted the application in part, determining that respondents were likely to succeed on the merits and had satisfied the other preliminary-relief factors. D. Ct. Dkt. 70, at 66-73. The district court denied respondents’ request to stop operation of the Farm Line whenever the heat index reaches

88°F but ordered petitioners to provide more adequate remedial measures at that heat level, including shade, rest breaks, drinking water, and additional accommodations for men with heightened heat sensitivity. Pet. App. 22a-23a.

3. Petitioners appealed and sought a stay pending appeal, which the court of appeals granted in part. Pet. App. 59a. The parties have referred to that appeal as *VOTE I*. Petitioners sought two consecutive briefing extensions, which extended the deadline for their opening brief past the date when the district court’s order would automatically expire under the PLRA. See 24-30420 C.A. Dkt. 56, 58. On September 30, 2024, the preliminary injunction expired by operation of law. Pet. App. 23a. Petitioners acknowledged that the appeal should be dismissed as moot, 24-30420 C.A. Dkt. 65, at 12-21, and the court of appeals agreed, see 24-30420 C.A. Dkt. 123, at 2.

In its order vacating the injunction and dismissing the appeal, the court of appeals cited its earlier decision in *Smith v. Edwards*, 88 F.4th 1119 (2023). There, the court dismissed an appeal from a preliminary injunction that had expired under the PLRA. See *id.* at 1127. The court also rejected application of the capable-of-repetition doctrine. See *id.* at 1125-1126. In the court’s view, the duration of the preliminary injunction was not too short to be reviewed because, “[h]ad the parties raised the PLRA mootness issue” early in the appeal process, the court “could have set a more expedited briefing schedule and perhaps adjudicated the appeal before the preliminary injunction expired.” *Id.* at 1126. The court also held that the preliminary injunction was not “capable of repetition” because “any new injunctive relief would be based on different facts and potentially different law, and any challenge to such a ruling would constitute a new controversy.” *Ibid.*

4. While the appeal of the district court's first order was pending, petitioners amended their policies to, among other things, raise the heat index threshold for issuing a Heat Alert from 88°F to 91°F. D. Ct. Dkt. 253, at 3. Respondents applied for a new temporary restraining order and preliminary injunction, asking the district court to restore the previous 88°F heat index threshold and to require heat index monitoring every 30 minutes, instead of every two hours. Pet. App. 24a.

On May 23, 2025, the district court granted the application. Pet. App. 24a-25a. The court did not reimpose the first order's requirements but instead required petitioners only to monitor the heat index every 30 minutes and issue a Heat Alert at a heat index of 88°F. *Id.* at 25a.

5. Petitioners appealed the next day; they filed a motion to expedite the appeal but did not seek a stay of the preliminary injunction. Pet. App. 26a; D. Ct. Dkt. 254. The parties have referred to that appeal as *VOTE II*. The court of appeals granted the motion to expedite and heard argument on August 4, 2025. 25-30322 C.A. Dkt. 49, 82. The district court's order expired on August 21, however, before the court of appeals issued its decision. See Pet. App. 26a.

On August 22, 2025, the district court entered a new preliminary injunction. Pet. App. 26a. In its order, the court reimposed the requirement for petitioners to issue a Heat Alert at a heat index of 88°F but declined to reimpose the 30-minute monitoring requirement from its previous order because petitioners had changed their policy to require monitoring every hour. See *id.* at 26a-27a. Petitioners appealed that order and filed motions to expedite the appeal and for a stay pending appeal. *Id.* at 27a-28a. The parties have referred to that appeal as *VOTE III*.

6. On August 28, 2025, the court of appeals dismissed *VOTE II* as moot and vacated the district court's second

order, relying in part on *Smith*. Pet. App. 26a. Petitioners sought rehearing en banc, asking for *Smith* to be overruled. See 25-30322 C.A. Dkt. 99, at 8-12.

Meanwhile, in *VOTE III*, the court granted petitioners' motions for a stay pending appeal and to expedite the appeal. Pet. App. 28a. The panel heard oral argument on November 5, 2025, but the district court's third order expired on November 20, 2025. *Id.* at 28a, 29a. The following day, the panel dismissed the *VOTE III* appeal as moot and vacated the district court's third order. 25-30478 C.A. Dkt. 96-1, at 2. The panel again relied in part on *Smith*, and petitioners again filed a petition for rehearing en banc asking for its reversal. 25-30478 C.A. Dkt. 99.

7. While the petitions for rehearing were pending, the district court held a five-day bench trial. D. Ct. Dkt. 404-411. In the lead-up to trial, petitioners again revised their heat policies to make them more protective. In particular, they reverted to an 88°F heat index threshold for Heat Alerts and elected to source the information for the Heat Alert from an on-site monitoring system. D. Ct. Dkt. 440, at 49. They also announced the completed construction of 25 shade pavilions for use by men on the Farm Line. *Id.* at 50.

After trial, petitioners again changed their heat policies to require year-round heat protections when the heat index exceeds 88°F and certain new protections for people with heightened vulnerability to heat. See D. Ct. Dkt. 440, at 50, 53.

8. After the trial but before the entry of final judgment, the court of appeals denied rehearing en banc in both *VOTE II* and *VOTE III*. Pet. App. 2a, 4a.

Judge Jones, joined by Judges Smith, Ho, Duncan, and Oldham, dissented from the denial of rehearing in *VOTE III*. See Pet. App. 5a-10a. In Judge Jones's view, the capable-of-repetition exception applied because the

consecutive appeals had been dismissed as moot and there was a reasonable expectation that petitioners would be subject to materially similar preliminary injunctive relief again. See *id.* at 8a.

Judge Ho also dissented from the denial of rehearing in *VOTE III*. See Pet. App. 12a-14a. He “regret[ed]” that the court was not rehearing the appeal, but he acknowledged that the appeal “may become moot” because “the district court may soon enter final judgment, and thus supplant the preliminary injunction.” *Id.* at 12a.

Judge Wilson—the author of *Smith*—wrote separately respecting the denial of rehearing in *VOTE III*. Pet. App. 15a-17a. In his view, the case “present[ed] a poor vehicle to address the problems with the district court’s approach” because he was “not convinced” that *Smith* was erroneous or “irreconcilable with the VOTE panels’ holdings.” *Id.* at 16a. Judge Wilson further observed that the bench trial had already taken place and that the case might become moot for that independent reason. *Ibid.*

Judge Higginson, joined by Judges Stewart, Graves, and Douglas, also wrote separately concurring in the denial of rehearing in *VOTE III*, but he did not address the merits of the petition. Pet. App. 11a.

9. On May 26, 2026, the district court entered judgment for petitioners and dismissed respondents’ claims with prejudice. D. Ct. Dkt. 440. The court found that the steps petitioners had taken during the course of the litigation precluded a finding of deliberate indifference. *Id.* at 43. Respondents subsequently filed a motion for post-judgment relief, which remains pending. See D. Ct. Dkt. 446; Fed. R. Civ. P. 52(b), 59(e).

ARGUMENT

Petitioners ask the Court to summarily reverse the decisions in *VOTE II* and *VOTE III* or, in the alternative, to grant plenary review, based on two questions related to the capable-of-repetition-yet-evading-review exception to ordinary mootness principles. The principal question is whether a 90-day period is categorically insufficient to fully litigate a dispute for purposes of the exception. Embedded within that question is the subsidiary question whether the requisite level of appellate review required for a dispute to be fully litigated for purposes of the exception is review by this Court or a court of appeals.

Neither summary reversal nor plenary review is appropriate. Since the court of appeals issued the decisions concerning the preliminary relief ordered in this case, the district court has entered final judgment for petitioners. That independently mooted petitioners' appeals, because the final judgment has superseded the earlier orders granting preliminary relief. In addition to that threshold problem, petitioners come nowhere close to satisfying the stringent standard for summary reversal. Nor is plenary review warranted: this case implicates no conflict among the courts of appeals and is an exceedingly poor vehicle for addressing the questions raised in the petition. The petition should be denied.

I. THE DISTRICT COURT'S ENTRY OF FINAL JUDGMENT INDEPENDENTLY MOOTED PETITIONERS' APPEALS

When a trial court enters final judgment dismissing the plaintiff's claims, any order granting preliminary relief to the plaintiff merges into the final judgment, which governs the parties' rights going forward. See *Harper ex rel. Harper v. Poway Unified School District*, 549 U.S. 1262, 1262 (2007); *Smith v. Illinois Bell Telephone Co.*,

270 U.S. 587, 588-589 (1926); *Shaffer v. Carter*, 252 U.S. 37, 44 (1920). That is what happened here. After a bench trial, the district court entered final judgment for petitioners. D. Ct. Dkt. 440. That judgment now exclusively governs the parties' rights and obligations. See *Shaffer*, 252 U.S. at 44; *Smith*, 270 U.S. at 588-589. The expired preliminary orders that are the subject of the petition have been superseded and no longer have any implication for the parties' rights. See *Shaffer*, 252 U.S. at 44.

Both Judge Ho and Judge Wilson foreshadowed that possibility in their opinions respecting the denial of rehearing in *VOTE III*. As Judge Ho noted, "the district court may soon enter final judgment, and thus supplant the preliminary injunction" the panel had reviewed. Pet. App. 12a. And Judge Wilson explained that *VOTE II* and *VOTE III* would "shortly be moot" for the independent reason that the district court had "conducted a five-day bench trial on the prisoners' claims for declaratory and permanent injunctive relief." *Id.* at 16a. "Whichever way the district court's ruling goes," Judge Wilson explained, "the perennial crop of preliminary injunctions will not be sown again during this year's growing season." *Ibid.* Judge Wilson thus saw this case as a "poor vehicle" for en banc review. *Ibid.*

Petitioners barely mention the district court's entry of final judgment. See Pet. 18, 28-29. In the last paragraph of their petition, they state that the final judgment did not independently moot their appeals because it had "nothing to do or say about the PLRA preliminary-relief issues [they] seek[] to litigate" in the court of appeals. Pet. 28-29. That is both incorrect and irrelevant. It is incorrect because petitioners challenged the merits of the district court's Eighth Amendment analysis in both the *VOTE II* and *VOTE III* appeals, and the final judgment directly addressed respondents' Eighth Amendment claim. 25-

30322 C.A. Dkt. 32, at 21-30; 25-30478 C.A. Dkt. 75, at 36-43. It is also irrelevant because, even if the final judgment did not address petitioners' other legal challenges to the orders granting preliminary relief, the fact remains that the final judgment superseded those orders and rendered them without ongoing effect.¹

II. NEITHER SUMMARY REVERSAL NOR PLENARY REVIEW OF THE COURT OF APPEALS' DECISIONS IS WARRANTED

Even setting aside petitioners' independent mootness problem, there is no compelling reason for the Court to grant certiorari—much less to summarily reverse. The court of appeals' decisions do not obviously contravene this Court's precedents; the decisions do not present any conflict worthy of the Court's review; and this case is an exceedingly poor vehicle for addressing the questions presented in any event.

¹ The independent mootness problem remains even though respondents filed a motion for reconsideration of the final judgment. Although the filing of that motion tolled the time for appealing the final judgment, see Fed. R. App. P. 4(a)(4)(A), petitioners still hold a final judgment in their favor, which still supersedes all earlier orders granting preliminary relief to respondents. See, e.g., *Harper*, 549 U.S. at 1262. Nor could the capable-of-repetition exception solve petitioners' final-judgment problem: after the entry of final judgment, petitioners cannot show a "reasonable expectation," *Spencer v. Kemna*, 523 U.S. 1, 17 (1998), that they will again be subject to any injunction imposing the same obligations that any of the district court's earlier orders imposed. That is particularly true because petitioners changed their heat policies twice and adopted new practices since the last order granting preliminary relief. See D. Ct. Dkt. 440, at 49-50. It is thus exceedingly unlikely that the issues petitioners sought to raise in the *VOTE II* and *VOTE III* appeals will recur.

A. The Court Of Appeals Committed No Obvious Error Warranting Summary Reversal

Summary reversal is a “rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error.” *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). Because summary reversal is “bitter medicine,” *Spears v. United States*, 555 U.S. 261, 268 (2009) (Roberts, C.J., dissenting), it is usually exercised only where the court of appeals’ decision was “not just wrong,” but involved “fundamental errors that this Court has repeatedly admonished courts to avoid.” *Sexton v. Beaudreaux*, 585 U.S. 961, 967 (2018) (per curiam); see, e.g., *McCarthy v. Hernandez*, 608 U.S. 809 (2026) (per curiam) (AEDPA); *Margolin v. National Ass’n of Immigration Judges*, 608 U.S. 339 (2026) (per curiam) (party-presentation principles); *Zorn v. Linton*, 607 U.S. 568 (2026) (per curiam) (qualified immunity).

Petitioners come nowhere close to demonstrating the kind of “obvious” error that would warrant summary reversal. See *Gonzales v. Thomas*, 547 U.S. 183, 185 (2006). And even if they could, the court of appeals still would have been correct to dismiss petitioners’ appeals as moot, because petitioners could never have demonstrated that the parties’ dispute concerning the district court’s preliminary relief is capable of repetition.

1. Petitioners first contend (Pet. 19-21) that the court of appeals obviously erred by holding that 90 days is a sufficient period of time to fully litigate a dispute for purposes of the capable-of-repetition exception’s evading-review element. The court of appeals, however, did not reach any categorical holding of that nature in either the decisions below or *Smith v. Edwards*, 88 F.4th 1119 (2023). See Pet. App. 18a-41a. Instead, the court of appeals held only that, through the availability of immediate

and expedited interlocutory appellate review, 90 days may be sufficient to fully litigate the propriety of an order granting a preliminary injunction. See *Smith*, 88 F.4th at 1125-1126.

It is true that, in this particular case, 90 days has not been sufficient for petitioners to obtain plenary appellate review of the district court's orders granting preliminary relief. But in each of this Court's precedents cited by petitioners, the Court held that the evading-review element was satisfied because the *underlying factual controversy* necessarily dissipated before the dispute could be fully litigated. See *FCC v. Consumers' Research*, 606 U.S. 656, 671 & n.1 (2025); *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 170 (2016); *Turner v. Rogers*, 564 U.S. 431, 440 (2011); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 774 (1978). Petitioners, however, are not arguing that the underlying factual controversy between the parties—the permissibility of petitioners' heat policies and practices for the Farm Line—is too short in duration to fully litigate. Instead, petitioners are arguing that they do not have enough time to seek appellate review of an *interlocutory ruling in litigation* over that controversy.

Petitioners cite no precedent from this Court applying the capable-of-repetition exception to an interlocutory litigation ruling. And it is far from clear that the exception should apply in the same way. After all, interlocutory rulings routinely become moot and insulated from appellate review. For example, as already discussed, a challenge to a preliminary injunction becomes moot once final judgment is entered. See pp. 12-14, *supra*. So too, once a case has proceeded through trial, does a challenge to an order denying summary judgment due to the presence of a fact dispute. See *Ortiz v. Jordan*, 562 U.S. 180, 184 (2011). Many discovery rulings also become moot as litigation

proceeds. See, e.g., *Pizzuto v. Tewalt*, 136 F.4th 855, 870 (9th Cir. 2025); *Burns v. Levy*, 873 F.3d 289, 297 (D.C. Cir. 2017). There is no basis for summary reversal in the absence of clear precedent from this Court applying the capable-of-repetition exception to a party’s ability to appeal an interlocutory ruling in a case where the underlying factual controversy is not itself too short to fully litigate.

Nor are petitioners obviously correct that 90 days is categorically insufficient to litigate an appeal of a preliminary injunction. As the Court is well aware, review of orders involving preliminary relief can proceed rapidly. See, e.g., *Chen v. Mamdani*, No. 26A407 (Sept. 28, 2026) (69 days from the district court’s denial of preliminary relief to this Court’s denial of relief); *Ronan v. LaRose*, No. 25A1096 (Apr. 9, 2026) (7 days from the district court’s denial of preliminary relief to this Court’s denial of relief); *AARP v. Trump*, No. 24A1007 (May 16, 2025) (29 days from the district court’s denial of preliminary relief to this Court’s grant of relief). Petitioners have thus not made the case for summary reversal on this ground.

2. Petitioners separately argue (Pet. 22-24) that the court of appeals obviously erred by holding that the level of appellate review relevant to the capable-of-repetition exception is review by a court of appeals instead of by this Court. But the court of appeals never so held. The panels in *VOTE II* and *VOTE III* did not address that issue at all. See Pet. App. 28a-30a, 37a-38a. And in *Smith*, the court of appeals said only that it “could have set a more expedited briefing schedule and perhaps adjudicated the appeal before the preliminary injunction expired” if the appellants had “raised the PLRA mootness issue” earlier. 88 F.4th at 1126. The court did not squarely grapple with the level-of-review question because, as petitioners have admitted, no party raised it. See 25-30322 C.A. Dkt. 99, at 11; 25-30478 C.A. Dkt. 99, at iv.

A decision by a court of appeals cannot “obvious[ly]” contravene this Court’s precedents on a particular issue, see *Gonzales*, 547 U.S. at 185, when the court does not address that issue. Summary reversal is thus not warranted on this basis either.

3. In addition, petitioners have not shown that they would be entitled to the specific relief they have requested—summary *reversal*, see Pet. 29—even if the court of appeals had egregiously erred as they say. The capable-of-repetition exception applies where a dispute is too short to be fully litigated prior to its expiration (“evading review”) *and* there is a reasonable expectation that the same complaining parties will face the same action again (“capable of repetition”). See *Spencer v. Kemna*, 523 U.S. 1, 17-18 (1998). But petitioners’ arguments address only the first requirement. At most, therefore, petitioners could obtain summary *vacatur* and a remand for the court of appeals to consider whether petitioners satisfy the exception’s capable-of-repetition element. But even that would serve no good purpose in this case, because petitioners plainly cannot satisfy that second element.

Even before the entry of final judgment, petitioners were not likely to face another preliminary injunction by the district court. When the injunction at issue in *VOTE III* expired in November 2025, there was no pending motion for preliminary relief. Nor did respondents seek any form of preliminary relief after that injunction expired. Respondents had also “averred that [they did] not intend to seek additional preliminary relief during the winter months where temperatures are not reasonably expected to exceed 88 degrees.” Pet. App. 30a. And the case was set “[to] be tried on the merits . . . in February 2026, before temperatures increase[d] again in the spring.” *Ibid.*

What is more, the three preliminary injunctions entered by the district court were not identical. Each imposed different obligations, responding to the policies and practices that petitioners had in place at the time the relief was entered. See Pet. App. 22a-27a. The first injunction followed findings that petitioners had failed to provide shade, rest breaks, drinking water, and accommodations for heat-sensitive individuals, and it ordered relief across those categories. See *id.* at 22a-23a. The second injunction, at issue in *VOTE II*, followed petitioners' decision to raise the Heat Alert threshold from 88°F to 91°F after the first injunction lapsed, and it addressed that more discrete issue. *Id.* at 24a. The court ordered only two responses: heat monitoring every 30 minutes and issuance of a Heat Alert at 88°F. *Id.* at 25a. The third injunction, at issue in *VOTE III*, was narrower still: the district court reimposed the requirement for petitioners to issue a Heat Alert at 88°F but declined to reimpose the monitoring requirement it had imposed three months earlier, in light of evidence that LSP's newest heat policy required monitoring every hour. *Id.* at 26a-27a. The scope of each order thus turned on the policies and practices petitioners had adopted in the interim.

The conditions on the Farm Line today are different still. After the expiration of the third injunction and shortly before trial, petitioners adopted a revised policy that lowered the Heat Alert threshold to 88°F; implemented an on-site, real-time monitoring system; and announced the completed construction of 25 shade pavilions. D. Ct. Dkt. 440, at 29, 49-50. Then, between the end of trial and the entry of final judgment, petitioners announced additional policies and practices to improve heat protections on the Farm Line. See D. Ct. Dkt. 440, at 50; p. 10, *supra*. Thus, even before final judgment was entered, it was entirely speculative whether petitioners

would again be subject to any form of preliminary relief in this case. The entry of final judgment makes it even less likely.

Petitioners’ request for summary reversal is thus inappropriate. At most, summary vacatur would be warranted—but even then, it would only lead to the court of appeals dismissing petitioners’ appeals as moot for a second time. This Court is not a “court of error correction,” *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 621 (2015) (Scalia, J., concurring in part and dissenting in part), and this case is not the kind that merits the rare exception to that rule.

B. The Court’s Plenary Review Is Not Warranted

In the alternative, petitioners request (Pet. 29) that the Court grant plenary review. But the decisions below do not implicate any conflict among the courts of appeals worthy of the Court’s attention, and this case would be an exceedingly poor vehicle for resolving the asserted conflicts in any event.

1. As a preliminary matter, every court of appeals to have addressed in a published opinion whether the expiration of a preliminary injunction under the PLRA moots an appeal of the injunction has answered yes. See *Smith*, 88 F.4th at 1125-1126; *Ahlman v. Barnes*, 20 F.4th 489, 493-495 (9th Cir. 2021); *United States v. Secretary, Florida Department of Corrections*, 778 F.3d 1223, 1226-1230 (11th Cir. 2015); *Banks v. Booth*, 3 F.4th 445, 447-449 (D.C. Cir. 2021); see also *Victory v. Berks County*, 789 F. App’x 328, 332-333 & n.5 (3d Cir. 2019); *Cano v. South Carolina Department of Corrections*, No. 24-6200, 2024 WL 4501805, at *2 (4th Cir. Oct. 16, 2024).

Petitioners’ only contrary citation is an unpublished disposition from the Ninth Circuit, and that court has separately held in a published opinion that the expiration of a

preliminary injunction under the PLRA moots an appeal of the injunction. Compare *Dohner v. Depweg*, 178 F. App'x 656, 658 (2006), with *Ahlman*, 20 F.4th at 493-495. There is thus no genuine conflict on the broader question whether the expiration of a preliminary injunction under the PLRA moots an appeal of the injunction.

2. Petitioners contend (Pet. 19-23) that plenary review is nevertheless warranted because the decisions below implicate two conflicts that extend beyond the PLRA context. Petitioners' arguments lack merit.

Petitioners first argue (Pet. 19-21) that the "vast majority" of the courts of appeals have held that periods from 90 days to two years are too short to fully litigate an issue for purposes of the capable-of-repetition exception. The court of appeals below, petitioners argue, "stands virtually alone." Pet. 21. Petitioners are overreaching.

Most of the decisions cited by petitioners involve the mooting of appeals from the final disposition of a case where the parties' underlying factual controversy dissipated before appellate review was complete. See *J.T. v. District of Columbia*, 983 F.3d 516, 521-522, 524 (D.C. Cir. 2020); *Steelworkers v. Virgin Islands*, 842 F.3d 201, 208 (3d Cir. 2016); *Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1343 (11th Cir. 2014); *Libertarian Party of Michigan v. Johnson*, 714 F.3d 929, 932 (6th Cir. 2013); *Karuk Tribe v. United States Forest Service*, 681 F.3d 1006, 1018 (9th Cir. 2012); *Bourgeois v. Peters*, 387 F.3d 1303, 1308-1309 (11th Cir. 2004); *United States v. Seminole Nation*, 321 F.3d 939, 943-944 (10th Cir. 2002); *Burlington Northern Railroad Co. v. Surface Transportation Board*, 75 F.3d 685, 690 (D.C. Cir. 1996); see also *Lighthouse Fellowship Church v. Northam*, 20 F.4th 157, 165 (4th Cir. 2021) ("assum[ing] without deciding" that a state executive order in effect for only 30 days would evade review).

This case, by contrast, involves a party's ability to obtain appellate review of a district court's *interlocutory ruling* for which an immediate appeal as of right is available. See 28 U.S.C. 1292(a)(1). Even if some courts have held that 90 days is insufficient to litigate an entire cause of action through appeal, it does not necessarily follow that they would hold that 90 days is insufficient to obtain interlocutory appellate review of a preliminary injunction. See *Bourgeois*, 387 F.3d at 1308-1309.

The First Circuit's decision in *In re Grand Jury Proceedings*, 814 F.2d 61 (1987), likewise does not contribute to any conflict implicated here. In that case, the First Circuit held that a letter requiring a subpoena recipient not to disclose the existence or contents of the subpoena for 90 days evaded review. *Id.* at 68. But there, the challenging party would first have needed to ask the district court for relief before proceeding on appeal. See *ibid.*

That leaves two decisions in which courts of appeals have held that an order granting or denying preliminary relief for a limited period of time evades appellate review for purposes of the capable-of-repetition exception. See *Where Do We Go Berkeley v. California Department of Transportation*, 32 F.4th 852, 857-858 (9th Cir. 2022) (six-month preliminary injunction); *Praxis Properties, Inc. v. Colonial Savings Bank, S.L.A.*, 947 F.2d 49, 62 (3d Cir. 1991) (90-day stay). But both of those cases arose outside of the PLRA context. And at most, they demonstrate the existence of a shallow conflict that has arisen over a period of 35 years. Further percolation and a far better vehicle would be warranted before the Court grants review to resolve it.

3. Petitioners separately argue that the court of appeals below “stands virtually alone” in holding that the relevant level of appellate review for purposes of the ca-

pable-of-repetition exception is review by a court of appeals and not by this Court. See Pet. 23. But as already explained, the court of appeals has not decided that issue. See p. 18, *supra*. There is thus no reason for the Court to grant review to decide it here.

4. This case is also an exceedingly poor vehicle for resolving the legal issues that petitioners are raising. Even if petitioners were correct on both the duration issue and the level-of-review issue, petitioners have never been able to establish a reasonable expectation that they would be subject to another injunction similar to the ones that they appealed. See pp. 18-19, *supra*. That is all the more true now that petitioners have obtained a final judgment in their favor and changed the policies and practices that were at issue in the earlier injunctions. See pp. 12-14, 19-20, *supra*. Any relief granted by the Court would thus have no effect in this case.

Petitioners maintain that this Court’s intervention is needed because the court of appeals’ mootness precedents “reduce[] the PLRA to an honor system” under which a district court’s “refusal to comply” with the statute is “effectively unreviewable.” Pet. 25. It is unfair to the Nation’s district courts to assume that they would simply refuse to comply with the PLRA. And if a particular district court were to repeatedly violate the PLRA in a case, a State might be able to obtain relief by supervisory writ even after a preliminary injunction expires. *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-260 (1957); see *Will v. United States*, 389 U.S. 90, 107 (1967).²

² Notably, multiple courts of appeals have held that “[n]othing in the [PLRA] limits the number of times a court may enter preliminary relief.” *Mayweathers v. Newland*, 258 F.3d 930, 936 (9th Cir. 2001); see *Monroe v. Bowman*, 122 F.4th 688, 697 (7th Cir. 2024); *Alloway v. Hodge*, 72 F. App’x 812, 817 (10th Cir. 2003).

Petitioners argue that “this mootness problem naturally and frequently arises within states that endure extensive prison litigation,” Pet. 27, but that cuts against them. If petitioners are right on that score, an opportunity for review of the mootness questions they raise here will surely arise again—and earlier in the course of litigation, when the district court’s entry of final judgment does not provide an obstacle to review. There is thus no urgent need for the Court’s review here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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