

No. 26-469
**SUPREME COURT OF THE UNITED
STATES**

SARA COOMBS MORENO, et al.,
Petitioners,

v.

**CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF HEALTH AND MENTAL HYGIENE, ASHWIN VASAN,
NEW YORK CITY DEPARTMENT OF EDUCATION, ERIC
L. ADAMS, AND DOES 1-20,**
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

**PETITIONER'S SUPPLEMENTAL BRIEF
PURSUANT TO RULE 15.8**

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QUESTION PRESENTED FOR CONSOLIDATION or SUPPLEMENTAL QUESTION PRESENTED

1. Whether under the statutory construction framework of *Loper Bright Enterprises v. Raimondo* (2024), the plain, unambiguous text of the Occupational Safety and Health Act of 1970 (OSH Act)—specifically the General Duty Clause (29 U.S.C. § 654, Section 5(a)(1)) and the absolute religious shield of 29 U.S.C. §669 Section 20(a)(5)—excludes the judiciary from permitting employers to substitute permanent pharmacological or biometric interventions in place of uniform, agency-designated environmental and engineering controls such as those verified by the OSHA November 2, 2018 Letter of Interpretation applying airborne standards to all atmospheric hazards.
2. Whether a federal court abdicates its Article III judicial duty and violates due process by mechanistically expanding the ruling from a temporary emergency order in *We The Patriots USA, Inc. v. Hochul* (2d Cir. 2021)—far beyond its original temporary emergency context to bar individual statutory claims under 29 U.S.C. § 660(c) (Section 11(c)), when neither *We The Patriots* nor its underlying reference points involved or adjudicated explicit OSH Act protections.
3. Whether a reviewing court misapplies this Court’s structural holding in *National Federation of Independent Business v. Department of Labor* (2022) by executing an asymmetric double standard: utilizing a public health emergency framework to categorize an airborne virus as a workplace-specific hazard within healthcare settings, while simultaneously utilizing that same categorization to strip healthcare employees of the statutory, non-delegable environmental protections and religious exemptions guaranteed by Congress under the OSH Act.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR CONSOLIDATION.....	i
TABLE OF AUTHORITIES.....	ii
I INTERVENING LOWER COURT DECISIONS	1
II THE INTERVENING DISMISSALS CONFIRM RADICAL ADMINISTRATIVE AND JUDICIAL OVERREACH	3
A. The General Duty Clause Regulates Environmental Risk, Not Biometric Intrusion.....	3
B. Blanket Reliance On Stare Decisis To Evade Statutory Analysis Creates A Due Process Crisis	5
C. The Lower Courts Sanctioned An Unlawful Administrative Amendment of Section 20(a)(5) In Violation of The Separation of Powers	6
III CONCLUSION	9
APPENDIX CONTENTS	i

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<i>Arlington Central School District Board of Education v. Murphy</i> , 548 U.S. 291 (2006)	11
<i>Gibson v. Berryhill</i> , 411 U.S. 564 (1973)	9
<i>Loper Bright Enterprises v. Raimondo</i> , 144 S. Ct. 2244 (2024).....	3, 7, 8
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)	9
<i>National Federation of Independent Business v. Department of Labor</i> , 595 U.S. 109 (2022)	3, 6, 8
<i>We The Patriots USA, Inc. v. Hochul</i> , 17 F.4th 368 (2d Cir. 2021)	3, 8
<i>West Virginia v. EPA</i> , 142 S. Ct. 2587 (2022)	11

Federal Statutes & Regulations:

United States Constitution	
Article I	11
Article III	3, 8
Due Process Clause	3, 9

Occupational Safety and Health Act of 1970

(29 U.S.C. § 651 et seq.) 29 U.S.C. § 654, Section 5(a)(1) (<i>General Duty Clause</i>)	3, 5, 6
--	---------

	<u>Page</u>
29 U.S.C. § 655, Section 6.....	10
29 U.S.C. § 657, Section 8	10
29 U.S.C. § 658, Section 9	10
29 U.S.C. § 660(c), Section 11(c)	3, 8
29 U.S.C. § 669(a)(5), Section 20(a)(5) <i>(Religious Shield)</i>	3, 8, 10, 11
Code of Federal Regulations 29 C.F.R. § 1910.134(a)(1)	7
State Statutes & Regulations:	
New York Compilation of Codes, Rules and Regulations 10 N.Y.C.R.R. § 2.61 (<i>Section 2.61</i>)	4, 8
Other Authorities:	
OSHA Directorate of Enforcement Programs Memorandum, <i>Enforcement Policy for Respiratory Hazards Not Covered by OSHA Permissible Exposure Limits</i> (Nov. 2, 2018).....	3, 7, 10

I. INTERVENING LOWER COURT DECISIONS

Pursuant to Supreme Court Rule 15.8, Petitioners respectfully submit this Supplemental Brief to call the Court's attention to two critical, intervening final judgments issued by federal district courts within the Second Circuit after the filing deadline of July 15, 2026 for the initial Petition:

- *Toussaint, et al. v. One Brooklyn Health System, et al.*, No. 1:24-cv-07573 (E.D.N.Y. Sept. 14, 2026) — The District Court dismissed with prejudice the claims of front-line healthcare workers terminated under New York's vaccine framework, relying entirely on the undocketed and un-reviewed Second Circuit summary orders challenged in the pending Petition. App. A, Page App. 1-10
- *Cratsley v. Guthrie Healthcare System, et al.*, No. 6:24-cv-06701 (W.D.N.Y. Aug. 5, 2026) — The District Court dismissed a 41-year veteran technical assistant's parallel OSH Act and Free Exercise claims, similarly holding that lower court *stare decisis* systematically bars individual judicial remedies under the OSH Act. App. B, Page App. 11-18

These cases are currently entering expedited appellate tracks in the Second Circuit. Because they involve the exact same core legal issues, the same statutory provisions, and identical uncontroverted expert evidence, but applied in a different industrial context, these subsequent dismissals underscore the profound national importance and recurring nature of the questions presented in the pending Petition.

Consequently, the final judgments in *Toussaint* and *Cratsley* do not merely mirror the pending controversy; they crystalize distinct, antecedent statutory and constitutional issues that have developed since the filing of the Petition. These intervening decisions squarely raise three additional, structural legal questions regarding: 1) the strict application of the General Duty Clause of the Occupational Safety and Health Act (OSH Act) at 29 U.S.C. §654 et. sec, 2) the systemic due process trap of lower courts automatically applying emergency summary orders without statutory analysis; and 3) the due process trap caused by the lower court's incorrect interpretation of this Court's prior ruling in *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, 595 U.S. 109, 142 S. Ct. 661, 211 L. Ed. 2d 448 (2022) (NFIB) perceived to have expanded the authority of the Secretary of Labor in violation of the separation of powers doctrine and 3) . Review and consolidation of these parallel tracks are urgently required so that this Court can comprehensively address these newly matured questions alongside the core issues presented in the initial Petition.

Specifically, these intervening decisions demonstrate how lower courts are actively utilizing procedural insulation to evade independent statutory analysis, creating an unconstitutional expansion of judicial power over clear legislative boundaries. By applying blanket holdings and perceived nonbinding commentary to dismiss these matters, the lower courts have raised a vital constitutional question: whether the judiciary can bypass explicit statutory text to enforce an ad-hoc policy and a ruling from a temporary emergency order under the guise of judicial deference. Review and consolidation are urgently required to resolve this systemic conflict across the circuit.

II. THE INTERVENING DISMISSALS CONFIRM RADICAL ADMINISTRATIVE AND JUDICIAL OVERREACH

A. THE GENERAL DUTY CLAUSE REGULATES ENVIRONMENTAL RISK, NOT BIOMETRIC INTRUSION

The two intervening district court decisions sharply raise the question of whether a court may rewrite clear statutory limits by expanding an environmental workplace safety clause into a license for bodily intrusion. By mechanistically dismissing these cases for lack of a private right of action, the lower courts completely evaded the threshold statutory mandate of the Occupational Safety and Health Act (OSH Act). Under the plain text of the General Duty Clause at 29 U.S.C. §654 Section 5(a)(1), an employer's compliance obligations are triggered solely when a hazard is "recognized" inside the place of employment, completely irrespective of the hazard's point of origin, entry vector, or external social prevalence. Once an atmospheric hazard is recognized in the workplace air, the employer bears an absolute, non-delegable statutory duty to either eliminate the hazard from the environment or shield the employee from atmospheric exposure using exclusively OSHA-approved engineering and administrative controls. (General Duty Clause, Petition Page 3-4)

This Court observed in *National Federation of Independent Business v. Department of Labor (NFIB)*, 595 U.S. 109 (2022) that COVID-19 presents a universal risk across everyday life. However, the core statutory design of the OSH Act dictates that the General Duty Clause, 29 U.S.C. § 654 Section 5(a)(1), governs any recognized hazard inside the workplace, irrespective of how that hazard enters the environment or whether the hazard presents a universal risk.

As established by the uncontroverted record expert affidavits of epidemiologist Dr. Peter McCullough, MD, MPH, (App. H to the Petition) and Certified Industrial Hygienist Bruce Miller, M.S., an airborne pathogen behaves identically to any other un-enumerated atmospheric or chemical contaminant, such as chlorine gas fumes. Once a hazard is present in the workplace air, the employer's non-delegable statutory obligation under 29 C.F.R. § 1910.134(a)(1) (Petition Page 6). is strictly to control the environment—not to mandate internal pharmacological alterations to the employees' cellular immune systems.

This precise environmental boundary is explicitly confirmed by OSHA's own permanent enforcement policy contained in the OSHA Memorandum, Nov. 2, 2018, reproduced herein at App. E, Page App. 21), which mandates that the General Duty Clause corrective measures remain strictly limited to engineering, administrative, and work-practice controls.

While the text of the General Duty Clause is elastic and broad to encompass novel, emerging airborne vectors, the lower courts have fundamentally misapplied this Court's NFIB observation regarding Covid's universal existence. Under the modern statutory framework established in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), a reviewing court's duty is to enforce the unambiguous text of congressional acts. The lower courts utilized NFIB's fact-specific public health distinction regarding healthcare environments as a sweeping license ignored textually fixed

parameters. *Loper Bright* mandates that judicial review remain anchored to uniform statutory controls.

By using a procedural dismissal to completely eliminate the OSH Act's environmental safety boundaries and the absolute religious shield of 29 U.S.C. § 669 Section 20(a)(5), the lower courts did not follow *NFIB*; they expanded it into a permanent, unconstitutional system of judicial deference to localized biometric directives. See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024); *Nat'l Fed'n of Indep. Bus. v. Dep't of Labor*, 595 U.S. 109, 117 (2022) (per curiam).

B. BLANKET RELIANCE ON STARE DECISIS TO EVADE STATUTORY ANALYSIS CREATES A DUE PROCESS CRISIS

The mechanical dismissal of *Toussaint* and *Cratsley* also exposes a systemic "stare decisis trap" operating within the Second Circuit. Instead of performing independent statutory interpretation of the OSH Act, the district courts stretched the Second Circuit's prior public health decisions as absolute, unassailable holdings to deny plaintiffs their day in court. By mechanistically transposing the framework of *We The Patriots USA, Inc. v. Hochul*, 17 F. 4th 368 (2d Cir. 2021)—which explicitly and exclusively litigated the state-level healthcare facility vaccine mandate under New York State Public Health Law § 2.61—the lower courts created a blanket bar against individual federal statutory claims. Appendix A, Page App. 7-8 and Appendix B, Page App. 15-16

This routine reliance on an emergency public health milestone to bar completely distinct statutory remedies creates a profound procedural crisis. Crucially, neither *We The Patriots* nor its underlying reference points involved,

raised, or adjudicated individual statutory claims under OSH Act Section 11(c) (29 U.S.C. § 660(c)) or the absolute religious objection wall of Section 20(a)(5). When a district court abdicates its Article III duty to evaluate the plain, unambiguous text of a federal statute and chooses instead to apply a prior state-mandate holding to an entirely separate federal safety scheme, it executes an insular loop that permanently insulates municipal and administrative overreach from meaningful appellate scrutiny. Such an expansion of stare decisis to unlitigated statutory parameters violates fundamental guarantees of due process. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *cf. Gibson v. Berryhill*, 411 U.S. 564, 575 (1973).

This mechanistic shortcut systematically immunizes explicit statutory violations from ever reaching this Court. Certiorari is urgently necessary to break this insular circuit loop, clarify that public health emergency precedents cannot be weaponized to retroactively cancel unlitigated federal rights, and compel the lower courts to perform their core constitutional duty of rigorous textual and statutory analysis under the OSH Act.

**C. THE JUNE 2021 EMERGENCY TEMPORARY
STANDARD UNILATERALLY IMPORTED
TITLE VII BALANCING TESTS IN AN
UNLAWFUL ULTRA VIRES ACTION IN
VIOLATION OF THE SEPARATION OF
POWERS**

Finally, the intervening dismissals in *Toussaint* and *Cratsley* bring into sharp focus a distinct, unresolved question of administrative law that goes directly to the core of the separation of powers: whether a reviewing court may permit an executive agency's regulatory guidance to effectively rewrite a textually absolute congressional statute. While the original Petition addresses how state and municipal employers misapplied Title VII frameworks to override

employee rights, these new records reveal that the root of this statutory distortion stems from the lower courts' uncritical adoption of an administrative error. Specifically, the lower courts treated the Occupational Safety and Health Administration's (OSHA) June 2021 Emergency Temporary Standard (ETS) (86 Fed. Reg. 32376, App. C. Page App. 19) as a license for employers to import Title VII's "undue hardship" balancing framework into an explicit statutory domain where Congress had erected an absolute barrier. App. C, Page App. 20 (*citing 86 Fed. Reg. 32622*). See also App. D, Page App. 20

Congress strictly restricted the regulatory authority of the Secretary of Labor under Sections 6, 8, and 9 of the OSH Act to promulgating practical workplace standards, inspecting environments, issuing citations, and enforcing workplace regulations. The Executive Branch is nowhere granted the legislative power to modify, amend, or dilute the substantive text of the OSH Act itself. Yet, by mechanistically adopting the text of the June 2021 ETS—which observed that:

“accommodations may also need to be made for religious beliefs consistent with Title VII”

the lower courts permitted private and municipal employers to apply a flexible balancing test where Congress explicitly mandated an unconditional shield.

This administrative insertion directly conflicts with the absolute statutory boundaries set by the Legislative Branch. Congress explicitly spoke to this precise question by enacting Section 20(a)(5) of the OSH Act (29 U.S.C. § 669(a)(5)), which uses sweeping, mandatory terms:

“Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds...”

By using the sweeping, mandatory phrase "*nothing in this or any other provision of this Act*," Congress erected an absolute statutory wall prohibiting both public and private sector employers from utilizing workplace safety frameworks to compel immunizations or medical treatments approved by a different agency - the FDA - for personal internal use only over a religious objection. Congress left no room for agency discretion, built in no balancing defenses, and completely omitted any reference to an employer "undue hardship" exception. Section 20(a)(5) establishes an unconditioned, inalienable statutory right to refuse compulsory medical treatment interventions enacted under the guise of environmental safety.

By allowing Title VII's balancing mechanics to govern Section 20(a)(5) rights, the lower courts effectively sanctioned an *ultra vires* usurpation of the legislative function under Article I. Executive agencies cannot regulatory overwrite unambiguous acts of Congress, nor can courts defer to such distortions. See *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). The lower courts' reliance on these flawed administrative guidelines to dismiss *Toussaint* and *Cratsley* underscores the urgent need for this Court to step in, grant review, and vindicate the structural separation of powers.

This procedural evasion is further exposed by the courts' treatment of the evidentiary record below. In both intervening matters, the Plaintiffs filed Motions for Summary Judgment seeking to establish the baseline physical metrics of the airborne hazard under Rule 56. See Appendix F, Page App. 26 and Appendix G, Page App. 27 attached hereto

In the *Cratsley* matter, the employer provided no expert testimony or evidence to oppose the fact that COVID-19 constitutes an environmental airborne hazard governed

exclusively by OSHA's uniform respiratory containment standards. Rather than evaluating the admitted, uncontroverted expert affidavits of Dr. Peter McCullough and Certified Industrial Hygienist Bruce Miller under the proper standard of review, the district courts summarily disregarded the factual record, concluding that the generalized lack of a private cause of action rendered the entire congressional scheme moot and disregarded the Proposed Order provided by the Plaintiff that provided for the uncontroverted fact that Covid-19 virus was an airborne hazard. App. B, Page App. 17

Certiorari is urgently required to establish that a procedural dismissal cannot be weaponized to retroactively immunize an employer's total bypass of an absolute statutory wall.

III. CONCLUSION

The intervening judgments in *Toussaint* and *Cratsley* prove that the lower courts are locked in a pattern of avoiding independent statutory construction by mechanistically misapplying *stare decisis*. Review is urgently needed to restore the separation of powers, enforce the explicit text of Section 20(a)(5), and vindicate the statutory rights of healthcare workers and all personnel including military personnel who continue to suffer deprivations of their rights or ongoing exclusion from their occupations.

The petition for a writ of certiorari should be granted, and the Court should consider addressing these parallel lower court actions concurrently to ensure a uniform national rule.

Respectfully submitted,

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October 20, 2026

APPENDIX – CONTENT

Appendix A: <i>Toussaint v. One Brooklyn Health System, et al.</i> , No. 1:24-cv-07573 (E.D.N.Y. Sept. 14, 2026) Order of Dismissal	App. 1
Appendix B: <i>Cratsley v. Guthrie Healthcare System, et al.</i> , No. 6:24-cv-06701 (W.D.N.Y. Aug. 5, 2026) Order of Dismissal.	App. 11
Appendix C: Occupational Exposure to COVID–19; Emergency Temporary Standard, 86 Fed. Reg. 32376 (OSHA, June 21, 2021) — Excerpts of Interim Final Rule	App.19
Appendix D: Title VII of the Civil Rights Act (excerpt).....	App. 20
Appendix E: OSHA Memorandum, <i>Enforcement Policy for Respiratory Hazards Not Covered by OSHA Permissible Exposure Limits</i> (Directorate of Enforcement Programs, Nov. 2, 2018)	App. 21
Appendix F <i>Cratsley v. Guthrie Healthcare System, et al.</i> , No. 6:24-cv-06701 (W.D.N.Y. May 1, 2026) Order Setting Hearing on Motion to Dismiss and Plaintiffs cross motion for summary judgment	App. 26
Appendix G: Plaintiff’s Motion for The Court To Adopt Plaintiff’s Proposed Memorandum of Decision and Order	App. 27

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RACHAEL TOUSSAINT, et al.,

Plaintiffs,

v.

ONE BROOKLYN HEALTH
SYSTEM/BROOKDALE HOSPITAL
MEDICAL CENTER, et al.,
Defendants.

1

MEMORANDUM AND ORDER

1:24-CV-07573 (RPK) (LKE)

RACHEL P. KOVNER, United States District Judge:

Plaintiffs, former hospital employees who had religious objections to being vaccinated against COVID-19, bring this action against their former employers for wrongfully ending their employment for failing to comply with a vaccine mandate. They raise claims under the Occupational Safety and Hazards Act (“OSHA”), 42 U.S.C. § 1983, and state law. For the reasons set forth below, defendants’ motions to dismiss are granted.

BACKGROUND

The following facts are taken from plaintiffs’ third amended complaint (“TAC”) and are assumed to be true for purposes of this order.¹

Plaintiffs are healthcare professionals with religious objections to being vaccinated against COVID-19. TAC at 6–53 ¶¶ 15–328; 71 ¶ 425 (Dkt. #80).² Each worked for one of the defendant hospitals during the COVID-19 pandemic. See *ibid.* During that time, the State of New York required hospitals to “continuously require personnel to be fully vaccinated against COVID-19.” 10 N.Y.C.R.R. § 2.61(a)(1), (c) (repealed 2023) (“Section 2.61”). While hospitals were permitted to grant medical exemptions, they were not permitted to grant exemptions based on religious objections. *Ibid.* § 2.61(d).

In 2021, all of the plaintiffs were advised by their employers that they were required to obtain the COVID vaccine. TAC at 71 ¶ 421. All sought exemptions based on their religious beliefs, but their requests were denied, and their employment was subsequently terminated for failing to comply with New York’s COVID-19 vaccine mandate for hospital personnel. See *id.* at 71–72 ¶¶ 425–26.

Plaintiffs later filed this lawsuit. The operative complaint asserts a claim for wrongful discharge and discrimination under OSHA; claims under Section 1983 premised on defendants’ deprivation of plaintiffs’ rights under OSHA, the First Amendment, and the Fourteenth Amendment; and a common-law fraudulent concealment claim. *Id.* at 72–88 ¶¶ 421–44. Plaintiffs seek

¹ The Clerk of Court is directed to amend the caption on the Court’s docket to conform to the caption on this order.

App.

² The TAC is cited with page and paragraph numbers because its paragraph numbering is not entirely sequential. See, e.g., TAC at 72 (jumping from ¶ 429 to ¶ 421); 73 (jumping from ¶ 427 to ¶ 436); 75 (jumping from ¶ 443 to ¶ 428).

reinstatement, back pay and benefits, damages, and attorney fees. *Id.* at 90–91.

Defendants have moved to dismiss the TAC with prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). See New York Health & Hospitals’ Mem. of L. in Supp. of Mot. to Dismiss (Dkt. #109-1); Cons. Mem. of L. in Supp. of Mot. to Dismiss (Dkt. #107-3).

LEGAL STANDARD

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ibid.* (citing *Twombly*, 550 U.S. at 556). This means, for example, that a complaint is properly dismissed when, as a matter of law, “the allegations in a complaint, however true, could not raise a claim of entitlement to relief.” *Twombly*, 550 U.S. at 558. A complaint is also properly dismissed “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Iqbal*, 556 U.S. at 679.

“[T]he court’s task is to assess the legal feasibility of the complaint; it is not to assess the weight of the evidence that might be offered on either side.” *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020). Determining whether a complaint states a claim is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. The Court must accept the well-pleaded factual allegations set forth in the complaint as true and draw all reasonable inferences in favor of the plaintiff; however, the court

need not “credit conclusory allegations or legal conclusions couched as factual allegations.” *Rothstein v. UBS AG*, 708 F.3d 82, 94 (2d Cir. 2013).

DISCUSSION

Plaintiffs bring federal claims asserting (1) wrongful discharge and discrimination under OSHA; (2) that “[d]efendants conspired . . . to deprive [p]laintiffs of their OSHA [r]ights,” in violation of Section 1983; and (3) that defendants conspired to violate plaintiffs’ free exercise and substantive due process rights in violation of Section 1983.³ TAC at 72–73 ¶¶ 421–25, 74 ¶ 440; 80 ¶ 443. These claims are materially similar to the claims that plaintiffs’ counsel brought on behalf of other plaintiffs challenging New York City’s COVID-19 vaccine mandate in *Coombs-Moreno v. City of New York*. Judge Komitee granted defendants’ motion to dismiss plaintiffs’ OSHA and Section 1983 claims in that lawsuit, see *Coombs-Moreno v. City of New York*, No. 22-CV-2234 (EK) (LB), 2024 WL 4287247 (E.D.N.Y. Sept. 25, 2024), and after the parties’ motion-to-dismiss briefing in this case concluded, the Second Circuit affirmed that decision, see *Ioio v. City of New York*, No. 24-3252, 2026 WL 731089 (2d Cir. Mar. 16, 2026). As elaborated on below, plaintiffs’ OSHA and Section 1983 claims here are dismissed for substantially the reasons set forth in *Coombs-Moreno* and *Ioio*. The Court declines to exercise jurisdiction over plaintiffs’ remaining state-law claim.

³ There are two exceptions to this rule, which apply when employees “challenge the period of abatement noted in a citation” or “bring a mandamus action against the Secretary for his failure to enjoin an imminent danger at their workplace.” *Donovan*, 713 F.2d at 926–27. Neither applies here.

I. Plaintiffs’ OSHA claim is dismissed because OSHA does not create a private right of action.

Plaintiffs assert that they had “a right pursuant to [OSHA] to object to the . . . Covid-19 vaccine on religious grounds,” and that they are now “entitled to punitive damages pursuant to” OSHA. *See* TAC 72–73 ¶¶ 422, 425 (citing 29 U.S.C. §§ 660, 669). This claim fails because, as the Second Circuit explained in *Ioio*, “it is settled law that ‘[u]nder OSHA, employees do not have a private right of action.’” 2026 WL 731089, at *3 (quoting *Donovan v. Occupational Safety & Health Rev. Comm’n*, 713 F.2d 918, 926 (2d Cir. 1983)).³ Plaintiffs acknowledge as much, observing that there are “approximately 200 cases . . . [that] have held explicitly or implicitly that there is no private right of action under [OSHA]”—before arguing that these cases “should be ignored because [they] are inconsistent with the rules of statutory construction.” Pls.’ Mem. in Opp. to Cons. Mot. to Dismiss 31 (Dkt. #107-4) (“Pls.’ Cons. Opp.”). Like the Second Circuit in *Ioio*—which was confronted with an identical concession and argument—I “decline to ignore these cases, and hold consistent with well-established precedent that [plaintiffs] cannot bring claims under OSHA.” 2026 WL 731089, at *3.

Plaintiffs’ argument in their brief that OSHA preempts New York’s vaccine mandate does not change this calculus. *See* Pls.’ Cons. Opp. 18–25. Even if OSHA preempted the vaccine

mandate, plaintiffs would need a private right of action to pursue their claims under OSHA against their employers based on the theory that their employers’ action in discharging them violated the statute.

II. Plaintiffs' Section 1983 claim based on OSHA violations is dismissed because OSHA is not enforceable through Section 1983.

Plaintiffs also cannot seek redress for OSHA violations under Section 1983. Section 1983 “does not provide an avenue for relief every time a state action violates a federal law.” *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 119 (2005). Rather, to sustain a Section 1983 claim based on a federal statutory violation, plaintiffs need to show that the statute “creates an individually enforceable right in the class of beneficiaries to which [they] belong[].” *Id.* at 120. And if they succeed in doing so, Section 1983 still does not cover the statutory violation if defendants show that Congress did not intend for the statute to create a right, *e.g.*, if the statute “creat[es] a ‘comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.’” *Ibid.* (quoting *Blessing v. Freestone*, 520 U.S. 329, 341 (1997)).

Here, OSHA created a “detailed statutory scheme” and made enforcement of OSHA violations the “sole responsibility of the Secretary [of Labor].” *Donovan*, 713 F.2d at 927. I thus agree with Judge Komitee’s conclusion that “[g]iven [OSHA’s] detailed scheme—as well as the Second Circuit’s directive to read enforcement as reserved to the Secretary—it is clear that allowing OSHA enforcement under Section 1983 would be ‘incompatible’ with Congress’s dictates.” *Coombs-Moreno*, 2024 WL 4287247, at *5 (citing *Blessing*, 520 U.S. at 341). Plaintiffs therefore cannot seek relief for any OSHA violations through Section 1983.

III. Plaintiffs’ Section 1983 claims for constitutional violations are dismissed because plaintiffs have not adequately alleged the violation of a constitutional right.

Plaintiffs’ remaining Section 1983 claims based on violations of the First and Fourteenth Amendment are also dismissed. Assuming *arguendo* that at least some of defendants’ challenged acts were taken “under color of state law”—the first element of a Section 1983 claim—plaintiffs’ constitutional claims fail because plaintiffs have not alleged the second element—“the violation of a right secured by the Constitution and the laws of the United States.” *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 87–88 (2d Cir. 2015) (citations omitted).

First, plaintiffs’ argument that defendants violated the First Amendment’s Free Exercise Clause by denying their requests for religious exemptions is foreclosed in this Circuit. A “neutral law of general applicability” is subject to rational basis review even if it incidentally burdens a particular religious practice.” *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 280 (2d Cir. 2021) (quoting *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878–79 (1990)). In *We The Patriots*, healthcare workers subject to New York’s vaccine mandate, Section 2.61, moved for a preliminary injunction of the mandate on the grounds that it violated the Free Exercise Clause because it lacked religious exemptions. *Id.* at 272. The Second Circuit ruled against the healthcare workers, concluding that they were not “likely to succeed in showing that Section 2.61 is not neutral or generally applicable,” and that the rule “easily meets” rational basis review. *Id.* at 290. Since *We The Patriots*, multiple “district courts have found that [S]ection 2.61 is both neutral and generally applicable, survives rational basis review, and therefore does not violate the Free Exercise Clause.” *Hager v. People Inc.*, No. 23-CV-560-LJV, 2025 WL 2938608, at *7

(W.D.N.Y. Oct. 16, 2025) (collecting cases); see *Ioio*, 2026 WL 731089, at *4 (describing *We The Patriots* as “unequivocal, controlling precedent”); *Coombs-Moreno*, 2024 WL 4287247, at *6 (dismissing because the case bore “no material distinction from *We The Patriots* and other cases previously decided in this Circuit”). Plaintiffs’ argument that defendants’ implementations of Section 2.61 violated the Free Exercise Clause fails under these precedents.

Second, the vaccine mandates also did not violate plaintiffs’ substantive due process rights. To state a substantive due process claim, a plaintiff must allege (1) a valid liberty interest and (2) that the defendant infringed upon this interest in an irrational or arbitrary manner that “shocks the conscience.” *Murphy v. Hughson*, 82 F.4th 177, 188–89 (2d Cir. 2023). Plaintiffs’ substantive due process claim fails at both steps. At the first step, plaintiffs assert that defendants violated their substantive due process rights to “remain in their jobs unvaccinated” and to “choose their own medical treatment.” TAC at 2 ¶ 3; 80 ¶ 443. But the Second Circuit has held that “the Constitution embodies no fundamental right that in and of itself would render vaccine requirements imposed in the public interest, in the face of a public health emergency, unconstitutional.” *We The Patriots*, 17 F.4th at 293. Consistent with that holding, courts have dismissed substantive due process claims based on the same rights plaintiffs have posited here. See *Andre-Rodney v. Hochul*, 618 F. Supp. 3d 72, 82 (N.D.N.Y. 2022) (dismissing complaint alleging that Section 2.61 infringed on the right to “refus[e] unwanted medical treatment” because the vaccine mandate did not “force [employees] to consent to vaccination”); *Coombs-Moreno*, 2024 WL 4287247, at *6 (rejecting due process claim based on the right “to decline unwanted medical treatment”). Even if plaintiffs could articulate a fundamental constitutional right, their substantive due process claim would fail at the second step

of the analysis. In *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), the Supreme Court rejected the claim that a “compulsory vaccination law [wa]s unreasonable, arbitrary, and oppressive,” *id.* at 26, and the Second Circuit has relied on *Jacobson* to hold that Section 2.61 was a “reasonable exercise of the State’s power to enact rules to protect the public health,” *We The Patriots*, 17 F.4th at 290. Plaintiffs’ substantive due process claim therefore must be dismissed.

IV. The Court declines to exercise supplemental jurisdiction over plaintiffs’ state-law claim.

Having dismissed plaintiffs’ federal claims, the Court declines to exercise supplemental jurisdiction over plaintiffs’ claim for fraudulent concealment under New York law. Four factors bear on whether it is appropriate to exercise supplemental jurisdiction: “judicial economy, convenience, fairness, and comity.” *Catzin v. Thank You & Good Luck Corp.*, 899 F.3d 77, 81 (2d Cir. 2018). Generally, where “a plaintiff’s federal claims are dismissed before trial, ‘the state claims should be dismissed as well.’” *Brzak v. United Nations*, 597 F.3d 107, 113–14 (2d Cir. 2010) (quoting *Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 250 (2d Cir. 2008)); see *Pension Benefit Guar. Corp. ex rel. Saint Vincent Cath. Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 727 (2d Cir. 2013); *Klein & Co. Futures, Inc. v. Bd. of Trade*, 464 F. 3d 255, 266 (2nd Cir. 2006)

Plaintiffs have not provided a persuasive reason to depart from the usual practice of declining to exercise supplemental jurisdiction once federal claims are dismissed. Accordingly, I decline to exercise supplemental jurisdiction over plaintiffs’ state-law claim.

CONCLUSION

Defendants' motions to dismiss are granted. Plaintiffs' federal-law claims are dismissed with prejudice. Dismissal with prejudice is appropriate where, as here, "further amendment of [the] complaint would be futile." *Van Buskirk v. The New York Times Co.*, 325 F.3d 87, 92 (2d Cir. 2003). Plaintiffs, moreover, have not cured the deficiencies in the complaint even after three amendments, and after Judge Komitee dismissed substantially similar claims in *Coombs-Moreno*. This "[r]epeated failure to cure deficiencies by amendments previously allowed" justifies dismissal with prejudice. *Sprague v. Salisbury Bank & Tr. Co.*, 969 F.3d 95, 101 (2d Cir. 2020) (quoting

Foman v. Davis, 371 U.S. 178, 182 (1962)). Plaintiffs' state-law claim is dismissed without prejudice to refile in state court.

SO ORDERED.

/s/ Rachel Kovner
RACHEL P. KOVNER
United States District Judge

Dated: September 14, 2026
Brooklyn, New York

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGIANN CRATSLEY, individually)
and on behalf of those similarly situated,)
v.)
)
GUTHRIE HEALTHCARE SYSTEM,)
CORNING HOSPITAL AND DR.)
EDMOND SABANEKH)
)
Defendants.)

**ORDER ON MOTION TO
DISMISS BY DEFENDANTS**

This case concerns a claim of wrongful discharge under the Occupational Safety and Health Act of 1970 (OSHA"), 29 U.S.C. § § 651 *et seq.*, and a violation of the Free Exercise Clause. Plaintiff alleges that the termination of her employment at Corning Hospital was the result of religious discrimination after she refused to take the COVID-19 vaccine immunization. Plaintiff is seeking monetary damages, job reinstatement, backpay, compensatory and punitive damages.

Defendants Guthrie Healthcare System, Corning Hospital and Dr. Edmond Sabanegh filed a motion to dismiss the Plaintiffs complaint pursuant to Fed. R. Civ. P 12(b)(6) for failure to state a claim upon which relief can be granted, or alternatively, a motion to strike the class action allegations pursuant to Rule 12(0).

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Georgiann Cratsley served as a technical assistant for Defendant Guthrie Healthcare System at Corning Hospital for 41 years. (Doc. 1, ¶5,7) Guthrie Healthcare Systems owns the Corning Hospital and other health facilities in the Corning, N.Y., area. (Doc 1,¶9) Defendant Edmund Sabanegh, MD was the President and CEO of the Corning Hospital at the time of the complaint. (1. ¶15)

On August 18, 2021, the New York State Health Department issued Public Health Law §16, requiring entities such as hospitals or nursing homes to "continuously require covered personnel to be fully vaccinated against COVID-19 with the first dose for current personnel to be received by September 27, 2021." (Doc. 1,¶21) On August 26, 2021, PHL § 2.61 issued, superseding § 16 and adding more detailed instructions regarding vaccine requirements. (Doc. 1, ¶24) On November 24, 2021, PHL §2.61 was amended to restrict the availability of exemptions, including the repeal of religious exemptions. (Doc. 1, ¶25)

On September 18, 2021, Defendants announced a new workplace safety policy, requiring vaccination against COVID-19 for its employees. (Doc 1, ¶33) On the same day, Plaintiff requested a religious exemption to the requirement, which was granted on September 27. (Doc 1¶35-36) On November 19, 2021, Plaintiff received a letter from Defendant stating that the new PHL §2.61 provisions would be enforced, and that the Plaintiff would be required to take a COVID-19 vaccine by November 29, 2021, or be placed on unpaid leave. (Doc. 1 ¶39)

The complaint was filed on November 29, 2024, and the Defendants filed a motion to dismiss on March 28, 2025. The Plaintiff filed a reply on July 2, 2025, along

with a cross motion for summary judgment. The Defendants filed a reply to the summary judgment motion on May 11, 2026, to which the Plaintiff filed another reply to on May 14, 2026.

LEGAL STANDARD

A. Failure to State a Claim

Under Fed. R. Civ. P. 12(b)(6), a motion to dismiss the complaint will be successful unless the plaintiff pleads facts adequate "to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007). When the complaint pleads facts that are merely consistent with a defendant's liability "without some further factual enhancement[,] it stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 555 U.S. at 697; *Twombly*, 550 U.S. at 557. When all of the facts submitted by the plaintiff, besides those that are "mere conclusory statements" or "threadbare recitals of the elements for a cause of action," are taken as true, a claim is successfully stated if those facts then result in a plausible claim for relief. *Iqbal*, 555 U.S. at 662; *Twombly*, 550 U.S. at 555. For class action allegations, along with the *Iqbal* and *Twombly* standards, the plaintiff must also allege the four elements provided by Fed. R. Civ. P. 23 to survive a motion to dismiss. *Ruggles v. Wellpoint, Inc.*, 253 F.R.D. 61(N.D.N.Y. 2008).

B. Motion to Strike

Fed. R. Civ. P. 12(f) provides that "[t]he court may strike from pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." A court may strike class action allegations under Rule 12(f) if "it is obvious from the pleadings that the proceeding cannot possibly move forward on a classwide basis." *Manningv.*

Boston Med. Ctr. Corp., 725 F.3d 34, 59 (1st Cir. 2013) (citing *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943,949 (6th Cir. 2011)).

I. DEFENDANTS' MOTION TO DISMISS

A. There is no right of private action under the OSHA

In her first cause of action, Plaintiff asserts that the Defendants' policy of conditioning employment on vaccination violated her rights under OSHA. The court dismisses this claim because the law is well-settled that OSHA does not provide a private right of action. An employee who asserts that she has been injured as a result of an OSHA violation may file a complaint with the Secretary of Labor. The Department of Labor has exclusive authority to conduct investigations and to determine whether or not to take legal action against an employer for OSHA violations. "Under OSHA, employees do not have a private right of action." *Donovan v. Occupational Safety & Health Rev. Comm'n*, 713 F.2d 918, 926 (2d Cir. 1983).

In *Joio v. City of New York*, 2026 WL 731089 (2d Cir. 2026), a case also brought by attorney Saint-George, the Second Circuit applied the general holding in *Donovan* to a claim largely identical to the claim in this case that vaccine mandates violated OSHA. The court held that "a private action claiming violation of [OSHA] seeks to enforce the Act. We decline to ignore [200 cases holding that there is no private right of action under OSHA] and hold consistent with well-established precedent that [an employee] cannot bring claims under OSHA." *Id.* at 3. Consistent with *Donovan*, *Joio*, and the great weight of authority holding that there is no private cause of action under OSHA, the court dismisses the first cause of action.

B. Plaintiff fails to state a claim under §1983 based either on OSHA or the Free Exercise Clause

Plaintiff also contends that 42 U.S.C. §1983 provides a means for assertion of a private right of action under OSHA. Section 1983 provides a legal mechanism for the enforcement of federal statutory rights by individuals if two conditions are met. The first is that Congress intended to allow an individual remedy. The second is that Congress has not foreclosed a remedy, either by express prohibition or by "creating a comprehensive enforcement scheme that is incompatible with individual enforcement under §1983." *Blessing v. Freestone*, 520 U.S. 329,341 (1997). In *Donovan*, the Second Circuit addressed both standards, concluding that the statute does not allow employees a private remedy and grants exclusive prosecutorial discretion over enforcement proceedings to the Secretary of Labor. See 713 F.2d at 926.

These principles apply in this case. The complaint alleges that OSHA contains a variety of provisions that apply to Covid-19 vaccine requirements. These include respiratory standards, (Doc. 1, ¶¶46-66), and protection of religious belief. (Doc. 1, ¶¶82-90.) The enforcement of these provisions is the exclusive province of the Secretary of Labor. An employee may request an investigation or other action by the Secretary, but she has no right to file a lawsuit to enforce the provisions of OSHA herself. The court follows the very recent decision in *Ioio* in dismissing the § 1983 claim because OSHA provides no private cause of action. 2026 WL 731089 at 3.

Finally, the Plaintiff alleges a constitutional claim under the First Amendment's Free Exercise Clause. She seeks a remedy under §1983 and alleges that the vaccine policy violates her religious beliefs. In *We the Patriots USA, INC. v. Hochul*, 7 F.4th 266, 282-90 (2d Cir. 2021) the

Second Circuit ruled that New York State's vaccine mandate, PHL § 2.61, likely qualifies as a neutral law of general applicability law subject to rational basis review. In reversing an order granting a preliminary injunction, the court also determined that PHL § 2.61 was supported by a rational basis. "Faced with an especially contagious variant of the virus in the midst of a pandemic that has now claimed the lives of over 750,000 in the United States and some 55,000 in New York, the State decided as an emergency measure to require vaccination for all employees at healthcare facilities who might become infected and expose others to the virus, to the extent they can be safely vaccinated. This was a reasonable exercise of the State's power to enact rules to protect the public health." *Id.* at 290.

The court follows *We the Patriots* in dismissing Plaintiffs Free Exercise claim. PHL §2.61 does not single out religious observance, either through express language or by treating religious conduct differently from other behavior. It applies to all healthcare workers. It was enacted during the COVID emergency for legitimate purposes, including the protection of healthcare workers, patients, and hospitals. These purposes supply a rational basis for the law that justifies its enforcement even in cases involving religious objections to vaccination.

C. Remaining Motions

In the course of opposing Defendants' motion to dismiss, Plaintiff included two paragraphs seeking summary judgment herself. Plaintiff argues that the following facts are not in dispute:

1. OSHA applies to Defendants as employers;
2. Defendants terminated Plaintiff because she refused to be vaccinated against

Covid-19;

3. Plaintiffs termination was "pursuant to the NYSDOH Vaccine Mandate PHL that was not mandatory."

(Doc. 29 at 48.)

Following the hearing on May 18, 2026, Plaintiff filed a "Motion for the Court to Adopt Plaintiffs Proposed Memorandum of Decision and Order." (Doc. 48.) Plaintiff seeks an order adopting what she describes as the uncontroverted material facts contained in her expert affidavits and other exhibits. Defendants respond that Plaintiff has not filed a motion that meets the requirements for summary judgment (or a motion to dismiss or for a preliminary injunction).

(Doc. 51)

The court DENIES the Plaintiffs cross motion for summary judgment and her motion requesting the court to adopt her proposed order. In granting the motion to dismiss, the court has accepted as true Plaintiffs version of the facts as recounted in the complaint. These include the allegation that Defendants are employers subject to OSHA; that they employed Plaintiff; and that they discharged her because she chose not to be vaccinated against COVID. For legal reasons that the court has sought to explain above, these facts are an insufficient basis for a direct claim under OSHA, a §1983 claim for relief under OSHA, or a Free Exercise claim asserting the unconstitutionality of the New York state vaccination requirements for health care workers. The order dismissing these claims brings the case to a close before the district court. The court DENIES the cross motion for summary judgment and the "motion to adopt" as moot in light of the dismissal of the complaint.

The final question for the court is dismissal with or without prejudice. This case is not one that can be saved by pleading new facts. The complaint fails because the law--now clearly established through multiple rulings--is against it. Additional pleading will not change these shortcomings described above. For this reason, the dismissal is with prejudice.

CONCLUSION

The Defendants' Motion to Dismiss is granted for all claims with prejudice. The Plaintiffs Motion for Summary Judgment and Motion to Adopt are denied.

Dated at Burlington, Vermont, this day 3rd of August, 2026



Geoffrey W. Crawford, Judge
United States District Court

APPENDIX C
(Relevant Portions/Excerpts only of the
OSHA ETS June 21, 2021)

32376

Federal Register / Vol. 86, No. 116 / Monday, June 21, 2021
/ Rules and Regulations

DEPARTMENT OF LABOR
Occupational Safety and Health
Administration

29 CFR Part 1910
[Docket No. OSHA–2020–0004]
RIN 1218–AD36

Occupational Exposure to COVID–19;
Emergency Temporary Standard

AGENCY: Occupational Safety and Health
Administration (OSHA), Department of
Labor.

ACTION: Interim final rule; request for
comments.

SUMMARY: The Occupational Safety and
Health Administration (OSHA) is issuing an emergency
temporary standard (ETS) to protect healthcare and
healthcare support service workers from occupational
exposure to COVID–19 in settings where people with
COVID–19 are reasonably expected to be present.

I. Executive Summary

This ETS is based on the requirements of the Occupational
Safety and Health Act (OSH Act or Act) and legal precedent
arising under the Act. Under section 6(c)(1) of the OSH Act,
29 U.S.C. 655(c)(1), OSHA shall issue an ETS if the agency
determines that employees are exposed to grave danger

from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and an ETS is necessary to protect employees from such danger. These legal requirements are more fully discussed in Pertinent Legal Authority (Section III of this preamble).

32622 Federal Register / Vol. 86, No. 116 / Monday, June 21, 2021 / Rules and Regulations

Accommodations may also be need to be made for religious beliefs consistent with Title VII of the Civil Rights Act.

**APPENDIX D
(Excerpt from Title VII of the Civil Rights Act)**

(j) The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

APPENDIX E

Enforcement Policy for Respiratory Hazards Not Covered by OSHA Permissible Exposure Limits

Standard Number: 1910.1200

OSH Act: Section 5(a)(1)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <https://www.osha.gov>.

Nov 02, 2018

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM: KIMBERLY STILLE, Acting Director
Directorate of Enforcement Programs

SUBJECT: Enforcement Policy for Respiratory Hazards
Not Covered by OSHA Permissible Exposure Limits

As you are aware, Section 5(a)(1) of the Occupational Safety and Health Act (OSH Act) is occasionally used to cite respiratory hazards from exposure to an air contaminant that is not covered by an OSHA permissible exposure limit (PEL). This memorandum serves to clarify existing Agency enforcement policy for developing these citations.

Specifically, Section 5(a)(1) of the OSH Act requires each employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." As explained in the OSHA Field Operations Manual (FOM) (CPL02-00-160), when enforcing this requirement, the Occupational Safety and Health Review Commission and court precedent have determined that the following elements must be established in order for OSHA to prove a violation of the general duty clause:

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
2. The hazard was recognized;
3. The hazard was causing or was likely to cause death or serious physical harm; and,
4. There was a feasible and useful method to correct the hazard.

When applying these elements to respiratory hazards, it is important for Area Directors to ensure that 5(a)(1) citations are not based solely on evidence that a measured exposure exceeded a recommended occupational exposure limit (OEL), such as a Threshold Limit Value (TLV), or based on the fact that there is a documented exposure to a recognized carcinogen.²

Unless the case file evidence proves all four of the above elements, the Area Office should issue a hazard alert letter (HAL). The HAL should advise the employer that one or more employees at the establishment was being, or had been, exposed to a potentially serious respiratory hazard from a chemical that exceeded an OEL, and provide a series of recommended exposure control suggestions. For your information, attached is a sample HAL for a respiratory hazard.

However, if the evidence does provide sufficient proof of the four elements listed above, then the general duty clause should be cited, following the general guidance in the FOM, Chapter 4. We are providing the following additional guidance for developing evidence for each of these elements when specifically applied to respiratory hazards:

- a. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed- Evidence that documents this element includes personal air sampling results, written workplace observations, photographs, and witness statements noting how workers were exposed to the chemical, and descriptions of any implemented engineering, work practice, and administrative control measures, and personal protective equipment. The evidence should also substantiate that regular and continuing employee exposure to the chemical at the measured levels could reasonably occur. However, if the exposed employees were wearing appropriate respiratory protection with no deficiencies in the respirator program, then the likelihood that OSHA could establish a respiratory hazard covered by the general duty clause would be low.
- b. The hazard was recognized- OSHA can establish this element in one of two ways. (1) For employer recognition: Evidence may include employee complaints to management, illness and injury logs, consultant reports, a previous HAL, internal safety and health policies related to workplace operations involving the chemical that may refer to an OEL, or information from a manufacturer describing safety and health precautions for equipment or chemicals used in the workplace such as the chemical manufacturers' safety data sheet (SDS). (2) For

industry recognition: Evidence may include an industry or trade association's guidance document, or an assessment from an industry expert describing the work practice or operation used at the establishment and explaining the particular health hazards and recommended control measures. Alternatively, a similar publication from a (non-OSHA) federal, state, or local government agency, or from a professional organization, may also provide good evidence. Some examples of government agencies include the National Institute for Occupational Safety and Health (NIOSH), the National Toxicology Program (NTP), and the U.S. Environmental Protection Agency (EPA). Examples of organizations include The Center for Construction Research and Training (CPWR, formerly The Center to Protect Workers' Rights), the American Conference of Governmental Industrial Hygienists (ACGIH), and the Occupational Alliance for Risk Science (OARS).

- c. *The hazard was causing or was likely to cause death or serious physical harm* - Although an illness or injury from the measured exposure need not have occurred yet, the strongest evidence is an employee illness/injury, hospitalization, fatality, or medical diagnosis related to workplace exposure. In the absence of this, the evidence must include more than just the fact that a measured exposure exceeded a TLV or REL, because these recommended limits may be much lower than the level at which a serious health effect may be experienced. In most cases, proving this element will require an expert or industry-related peer reviewed study to document that serious physical harm could occur at the measured level with continuing employee exposure. Additionally, establishing serious physical harm for some respiratory hazards may be particularly difficult if the

resulting illness, such as cancer, would require a substantial period of time to occur.

- d. There was a feasible and useful method to correct the hazard - Evidence may include the SDS describing work practices for safe handling, engineering controls, and personal protective equipment, or published industry and/or NIOSH studies (e.g., health hazard evaluations (HHEs)) involving similar chemical processes or operations. Proving that feasible abatement measures would eliminate or materially reduce workplace exposure to a level that no longer presents a serious health hazard will likely require expert testimony.

For technical assistance in developing the required evidence related to the above elements, OSHA compliance officers may coordinate with their Regional Office to contact the Directorate of Technical Support and Emergency Management's (DTSEM) Salt Lake Technical Center (SLTC) at (801) 233-4900 and the Office of Occupational Medicine and Nursing (OOMN) at (202) 693-2323. For additional guidance for compliance officers, the Directorate of Training and Education's (DTE) OSHA Training Institute (OTI) has developed a job aid on this subject, which also includes tips for writing chemical 5(a)(1) citations.

Please distribute this memorandum to all health compliance officers. If you have any questions on this, please contact the Office of Health Enforcement at (202) 693-2190.

Attachment [NOT ATTACHED]

APPENDIX F
May 1, 2026 Order of Judge Geoffrey W. Crawford

Full docket text for document 40:

ORDER: In anticipation of the hearing on May 18, 2026, concerning [8] defendants motion to dismiss and [29] plaintiffs cross-motion for summary judgment, the court orders that any additional briefing from defendants be filed not later than May 11, 2026. This order encompasses any reply from defendants concerning the motion to dismiss or their response to the cross-motion for summary judgment. Any reply from plaintiff to the response to the cross-motion for summary judgment shall not be filed later than May 14, 2026. Signed by Sr. District Judge Geoffrey W. Crawford on 5/1/26. (This is a text only Order.)(JL)

APPENDIX G

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

GEORGIANN CRATSLEY,
individually and on behalf of
similarly situated individuals,

Plaintiffs,

v.

GUTHRIE HEALTHCARE
SYSTEM, CORNING
HOSPITAL, AND Dr. Edmund
Sabanegh, Does 1-20

Defendants

Case No.: 6:24-cv-06701

PLAINTIFFS MOTION FOR THE COURT TO ADOPT PLAINTIFF'S PROPOSED MEMORANDUM OF DECISION AND ORDER

Plaintiff, by and through undersigned counsel, respectfully moves this Court for adoption of the accompanying Proposed Memorandum of Decision and Order and, in support thereof, and states as follows:

1. This matter came before the Court for oral argument and hearing on **May 18, 2026**, concerning the parties' pending motions, namely:
 - a. Defendants Motion to Dismiss; and
 - b. Plaintiff's cross Motion for Summary Judgment.
2. During the briefing and hearing on these motions, Defendants, including Defendant Guthrie, did not submit affidavits, declarations, deposition testimony, documentary evidence, or

any other admissible evidentiary materials controverting the material facts set forth by Plaintiff in support of the motion for summary judgment.

3. Accordingly, the material facts presented by Plaintiff remain uncontroverted for purposes of the Court's determination of the pending motions.
4. The remaining issues before the Court concern the application and interpretation of governing federal law to those undisputed facts.
5. At the conclusion of the hearing, the Court took the motions under review after providing Plaintiff's counsel reasonable accommodations during the hearing due to counsel's disability and recent ICU hospitalization
6. To assist the Court in its deliberation and determination, Plaintiff hereby submits the accompanying Proposed Memorandum of Decision and Order reflecting Plaintiff's understanding of the undisputed factual record, the applicable law, and the relief requested in the pending motions, which may have been a bit distorted during oral argument due to Plaintiff's counsel disability.
7. To further assist the Court in its deliberation and determination, included with Proposed Memorandum of Decision and Order are the following most relevant supporting affidavits and documents so that the Court does not have to hunt down the documents in the ECF docket:

Exhibits to Proposed Order

1. OSH Act – Complete
2. Respiratory Standard – 29 CFR §1934
3. Expert Affidavit of Dr. Peter McCullough, MD; ECF #1-15
4. Expert Affidavit of Bruce Miller, Certified Industrial Hygienist; ECF #1-19
5. Expert Affidavit of Dr. Baxter Montgomery, MD; ECF #1-16
6. New York State Department of Health PHL §2.61; ECF #1-7
7. Defendant Guthrie Immunization Policy; ECF #44-5
8. Plaintiff's Religious Objection Letter; ECF #44-1 Supplemental Appendix
9. Termination Letter, ECF #1-9

WHEREFORE, Plaintiff respectfully requests that the Court adopt the accompanying Proposed Memorandum of Decision and Order, together with such other and further relief as the Court deems just and proper.

Dated: July 1, 2026

Respectfully submitted,

s/ Jo Saint-George

Jo Saint-George, Esq.

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Pro Hac Vice

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