

No. 26A239

In The
Supreme Court of the United States

JANE DOE, individually and as next friend of C.F., a minor,

Applicant,

v.

JAMES V. McDONALD, M.D., in his official capacity as Commissioner of Health of the State
of New York; EASTCHESTER UNION FREE SCHOOL DISTRICT; and CAITLIN
MONDELLI, in her official capacity as Principal of Waverly School,

Respondents.

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States
and Circuit Justice for the United States Court of Appeals for the Second Circuit

**REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR WRIT OF
INJUNCTION PENDING APPEAL AND FOR IMMEDIATE ADMINISTRATIVE
INJUNCTION**

PATRICIA FINN, ESQ.

Counsel of Record

Patricia Finn Attorney, P.C.

275 North Middletown Road, Suite 1E

Pearl River, New York 10965

(845) 398-0521

patriciafinnattorney@gmail.com

Counsel for Applicant

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INTRODUCTION

Respondents devote their pages to relitigating *Miller v. McDonald*, 180 F.4th 420 (2d Cir. 2026) ("*Miller II*"), and almost none to the threshold questions now presented: whether C.F. will be in a New York kindergarten classroom when school opens, and whether that question became academic because Applicant once identified August 25, 2026 as a family-separation date.

It did not. The District's own June 16, 2026 email — not Applicant's predicted relocation date — is the operative clock: C.F. must receive specified vaccinations within fourteen days of the beginning of school or be excluded. S.D.N.Y. Dkt. 20-3; Dist. Opp. 5–6. School is opening now. The choice the Free Exercise Clause forbids the State to force — vaccinate in violation of sincere religious conviction, or forfeit every New York school — is occurring this week. That is a live injury. As of this filing, Applicant and C.F. remain in New York, and C.F. remains registered as an incoming kindergartner at Waverly School. Appl. App. C ¶ 8.

The remainder of the oppositions is makeweight. The District asks this Court to find, in the first instance and on a cold record, that Applicant is insincere because C.F. received childhood vaccinations before her religious objection fully formed, and because the United States Conference of Catholic Bishops does not command every Catholic to refuse every vaccine. No court has made a sincerity finding. The State did not join the attack. *Thomas v. Review Board*, 450 U.S. 707 (1981), and *Frazee v. Illinois Department of Employment Security*, 489 U.S. 829 (1989), forbid judicial orthodoxy tests.

The State's lead citation, *We The Patriots USA, Inc. v. Ventura Unified School District*, 146 S. Ct. 323 (2025) (mem.), was a different vehicle, in a different posture, decided before the legal developments on which this application rests. This application does not ask the Court to decide the merits on the emergency docket. It asks for one child, subject to 10 N.Y.C.R.R. § 66-1.10, until the Second Circuit decides No. 26-1912.

I. THE APPLICATION IS NOT MOOT.

A. The District's fourteen-day rule — not August 25 — is the operative deadline.

On June 16, 2026, the Waverly School health office wrote Applicant that C.F. must receive Varicella, DTaP, and IPV (polio) vaccinations or be subject to school exclusion, and that those doses were required within fourteen days from the beginning of school in September. S.D.N.Y. Dkt. 20-3, at 1–2; Dist. Opp. 5–6. The District repeats that email in this Court. It is the only compliance deadline the school itself has ever given. See Appl. App. C ¶ 9.

August 20 and August 25 were not jurisdictional events. Appl. App. C ¶¶ 13, 16. They were dates by which, absent relief, Applicant would have to commit to relocating so that C.F. could begin kindergarten where the law still affords a religious accommodation. That is a description of irreparable harm, not a stipulation that the harm expires on a calendar date of Applicant's making. Those dates did not rewrite the District's fourteen-day rule.

B. The injury is independent of any relocation.

Section 2164 forbids C.F. from attending any public or nonpublic school in this State without the listed immunizations. The loss of a New York kindergarten seat, the CPSE speech-and-language services tied to that seat, Appl. App. C ¶ 15, and the right to direct C.F.'s religious upbringing without surrendering every schoolhouse in the State, Appl. App. C ¶¶ 4, 12, is complete when the District excludes him. It does not become complete only when a moving truck departs.

The State cannot treat exit from New York as both the remedy and the reason nothing remains to decide. If a parent's statement that she will leave the State rather than vaccinate in violation of conscience mooted her case, every as-applied challenge to § 2164 would die the moment the parent described the only remaining lawful option. That is not how mootness operates. The controversy remains live because the District still intends to exclude C.F., the Commissioner still defends that exclusion, and C.F. still seeks the kindergarten seat he was given in June.

C. The appellate schedule does not defeat interim relief.

Nor is the interlocutory appeal moot because Applicant has not yet perfected it. State Opp. 1, 9. Jurisdiction under 28 U.S.C. § 1292(a)(1) attached when the notice of appeal was filed. A scheduling notification for merits briefing does not waive interim relief, and it does not convert a kindergarten-start injury into a winter briefing schedule. The October date the State highlights is

ordinary appeal management following a motions-panel denial. It is not a concession that C.F. can wait.

II. VENTURA DOES NOT CONTROL THIS APPLICATION.

The State leads with this Court's October 17, 2025 memorandum denial in *We The Patriots USA, Inc. v. Ventura Unified School District*, 146 S. Ct. 323 (2025). State Opp. 1. That denial does not decide this application.

First, the posture differs. Applicant sought a preliminary injunction in the district court, took a reasoned denial from Judge Karas predicated solely on *Miller II*, moved in the Second Circuit under Federal Rule of Appellate Procedure 8, and obtained a motions-panel denial citing *Agudath Israel of America v. Cuomo*, 979 F.3d 177 (2d Cir. 2020). That is the *Roman Catholic Diocese* and *Agudath Israel* sequence. *Ventura* was not.

Second, the legal landscape differs. *Ventura* was denied on October 17, 2025 — before this Court granted certiorari, vacated, and remanded the first *Miller* judgment in light of *Mahmoud v. Taylor*, 606 U.S. 522 (2025), on December 8, 2025, and before *Mirabelli v. Bonta*, 607 U.S. 492 (2026), was decided on March 2, 2026. The question presented here is what interim relief is available when the court of appeals, on remand from this Court, has adhered to its prior analysis of the same statute and a kindergarten start date has arrived. That question was not before the Court in *Ventura*.

Third, the relief differs. The *Ventura* applicants sought relief for a member organization and all similarly situated members. Applicant does not ask this Court to invalidate § 2164 on its face or to reopen religious exemptions statewide. She asks that one child be permitted to attend Waverly School subject to the outbreak-exclusion rule the State already administers for medically exempt children. 10 N.Y.C.R.R. § 66-1.10. Respondents' invocation of "all others similarly situated," Dist. Opp. 26; State Opp. 28–29, is an argument against a class-wide injunction Applicant has not requested.

Does 1–3 v. Mills, 142 S. Ct. 17 (2021), and *Dr. A. v. Hochul*, 142 S. Ct. 552 (2021), were COVID-era healthcare-worker mandates. Applicant seeks no merits preview of *Miller II*. She asks

that the status quo the District itself created in June — C.F. registered as an incoming kindergartner — be preserved through the appeal. That is equitable preservation.

III. SINCERITY IS NOT PROPERLY BEFORE THIS COURT.

The District's opposition is built on a sincerity trial this Court cannot and should not conduct. Dist. Opp. 3–5, 22–24.

First, Applicant submitted a six-page Statement of Religious Beliefs with her April 7, 2026 exemption request. Appl. App. D; S.D.N.Y. Dkt. 5-1. Counsel's cover letter stated the governing test in the terms this Court has written: sincerity, not membership in an organized religion and not approval by a church hierarchy. Appl. App. D (citing *Frazee*, 489 U.S. at 833–34).

Second, C.F. received childhood vaccinations, including a Hepatitis A dose on April 14, 2023. Dist. Opp. 5; S.D.N.Y. Dkt. 26-2. The Statement addresses that history without evasion, explaining that when Applicant came to understand that certain required vaccines are manufactured using cell lines derived from aborted fetuses, this was not the formation of a new belief but the application of a longstanding conviction to a specific medical intervention she had not previously understood. Appl. App. D. A conviction applied more strictly to later doses than to earlier ones, once the parent understands what the later doses involve, is not insincerity. Nothing in the Free Exercise Clause requires a parent to have refused every injection from birth or forfeit the Clause's protection.

Third, no court has found Applicant insincere. Judge Karas did not. The Second Circuit did not. The State does not ask this Court to do so. Only the District does, and it does so by measuring Applicant against a 2015 USCCB memorandum and an August 7, 2026 letter from the Florida Conference of Catholic Bishops — a letter that was not in the record below. Dist. Opp. 23–24. That is the inquiry *Thomas* and *Frazee* foreclose. The guarantee of free exercise is not limited to beliefs shared by all members of a religious sect, and courts are not arbiters of scriptural interpretation. *Thomas*, 450 U.S. at 715–16.

The District's observation that Applicant did not reference specific vaccines, Dist. Opp. 4, cuts the other way: a parent who objects to vaccination as a matter of faith need not litigate each antigen. Its further observation that she has not sought a medical exemption, Dist. Opp. 6, is true

and irrelevant. She claims no medical contraindication. She claims a religious one the statute abolished.

IV. MILLER II DOES NOT RENDER INTERIM RELIEF UNAVAILABLE.

Both oppositions treat *Miller II* as the end of the matter. It is controlling in the Second Circuit. It is not a decision of this Court, and it is not the last word this Court has spoken about this statute.

On December 8, 2025, this Court granted certiorari in *Miller v. McDonald*, vacated the first Second Circuit judgment, and remanded for further consideration in light of *Mahmoud*. 146 S. Ct. 879 (2025) (mem.). A GVR is not a merits reversal. Neither is it a signal that the court of appeals should treat the remanded decision as written in stone. The Second Circuit adhered. Whether *Mahmoud* and *Mirabelli* reach a school-entry vaccination condition is therefore not a closed question in this Court.

Applicant does not ask the Circuit Justice to declare *Miller II* wrong. She asks that C.F. not be put to the choice *Mahmoud* described — surrender the religious formation of a child or surrender the school — while that question remains live. The district court never reached irreparable harm or the equities. Appl. App. B. The Second Circuit wrote one paragraph. Appl. App. A. There is no lower-court finding that C.F. will not be harmed, and none that one kindergarten seat threatens herd immunity.

The absence of a current circuit split, State Opp. 2, 14–15, is relevant to eventual certiorari, but it is not dispositive here — particularly where this Court has already granted certiorari, vacated, and remanded a judgment sustaining this very statute in light of *Mahmoud*, and the Second Circuit has now adhered on remand. Alignment between two courts of appeals following that disposition bears on whether to grant a future petition; it does not establish that C.F. must be vaccinated by day fourteen.

Delay is likewise overstated. Section 2164 has lacked a religious exemption since 2019, but C.F. was not a kindergartner in 2019. *Mahmoud* was decided in 2025; *Mirabelli* in March 2026. Applicant requested the exemption on April 7, 2026, Appl. App. D; sued on May 19, Appl. App. C ¶ 3; moved for a preliminary injunction on June 22, *id.* ¶ 5; appealed after the July 10 denial, *id.* ¶¶

6–7; and applied to this Court after the August 11 motions-panel denial, *id.* ¶ 16. That is the timeline of a parent whose child aged into the first year the statute closes every school door, after this Court altered the governing frame.

V. THE EQUITIES FAVOR A ONE-CHILD, OUTBREAK-CONDITIONED ORDER.

The State submits that any injunction against a police-power statute is itself irreparable harm. State Opp. 3, 27 (citing *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers)). That principle cannot apply at the same altitude to a statewide invalidation and to a single kindergarten seat conditioned on the State’s own outbreak rule.

The Commissioner has already told the district court where he stands in the enrollment chain: he has no role in the enrollment, admission, attendance, or participation of C.F. or any other child in the District’s schools, and the Department enforces § 2164 against schools and school districts rather than against individual students and their families. S.D.N.Y. ECF No. 28, at 1 nn.1–2. He is a proper respondent because he defends the statute. He is not a proper spokesman for the proposition that one child’s attendance, on terms the Department already applies to medically exempt children, dismantles New York’s police power.

The District’s public-interest showing is the same abstraction. It cites statewide exemption rates and national measles counts. Dist. Opp. 25–26; State Opp. 5, 26. It cites no outbreak at Waverly. It does not explain why C.F. presents a greater risk than the medically exempt kindergartners § 2164 already admits, or than the unvaccinated adults who work in the building. And it does not engage Applicant’s consent to 10 N.Y.C.R.R. § 66-1.10 — the less restrictive mechanism the State already uses when an unvaccinated child attends school for a reason the statute recognizes.

On the other side is a five-year-old whose school year starts now and whose First Amendment injury is complete the morning he is turned away. The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The District’s authorities holding that constitutional injury is not automatically irreparable, Dist. Opp. 20–21, are cases in which the movant had not shown a likely

violation. They do not hold that a child may be put to an unconstitutional choice because a school year can be repeated later.

An administrative injunction pending disposition of this application, and a writ pending the Second Circuit's decision in No. 26-1912, may be written in three sentences:

Respondents shall not exclude C.F. from kindergarten enrollment, attendance, or services at Waverly School for noncompliance with N.Y. Public Health Law § 2164, provided that C.F. remains subject to 10 N.Y.C.R.R. § 66-1.10. This order dissolves upon the Second Circuit's disposition of the pending appeal, upon C.F.'s compliance with § 2164, or upon further order of this Court. It adjudicates no claim on the merits and binds no other child.

CONCLUSION

The application is not moot. School is opening. The District's fourteen-day rule is running. Sincerity has not been tried. The Commissioner does not enroll this child. This application presents one kindergartner on an interlocutory clock. The Court should issue an immediate administrative injunction and a writ of injunction pending appeal on the terms set out above.

Respectfully submitted,

/s/ Patricia Finn

PATRICIA FINN, ESQ.

Counsel of Record

Patricia Finn Attorney, P.C.

275 North Middletown Road, Suite 1E

Pearl River, New York 10965

(845) 398-0521

patriciafinnattorney@gmail.com

Counsel for Applicant

August 31, 2026

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, I caused a true and correct copy of the foregoing Reply in Support of Emergency Application for Writ of Injunction Pending Appeal and for Immediate Administrative Injunction to be submitted through the Supreme Court's electronic filing system and served on counsel of record for all Respondents by electronic mail, all counsel having consented in writing to service by electronic means. *See* Sup. Ct. R. 29.3. Paper filing will be completed in accordance with Supreme Court Rules 22 and 33.2.

Counsel served include Barbara D. Underwood, Solicitor General, Judith N. Vale, Deputy Solicitor General, and Mark S. Grube, Senior Assistant Solicitor General, Office of the New York State Attorney General, 28 Liberty Street, New York, New York 10005, counsel for Respondent James V. McDonald, M.D.; and Adam I. Kleinberg, Esq., Guercio & Guercio, LLP, 77 Conklin Street, Farmingdale, New York 11735, counsel for Respondents Eastchester Union Free School District and Caitlin Mondelli.

/s/ Patricia Finn
Patricia Finn, Esq.