No. 25-30092

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ROBERT W. GALEY, JR.,
Plaintiff-Appellant,

v.

DONALD J. TRUMP, President of the United States; PETE HEGSETH, Secretary, U.S. Department of Defense; CHRISTINE WORMUTH; YVETTE K. BOURCICOT; RAYMOND S. DINGLE; UNITED STATES DEPARTMENT OF DEFENSE,

Defendants-Appellees.

On appeal from the United States District Court
for the Western District of Louisiana, No. 2:22-CV-6203

Opening Brief for Plaintiff-Appellant

James Baehr
Sarah Harbison
PELICAN INSTITUTE FOR PUBLIC POLICY
400 Poydras Street, Suite 900
New Orleans, LA 70130
Telephone: (504) 952-8016
sarah@pelicaninstitute.org
james@pelicaninstitute.org

June 6, 2025 *Counsel for Plaintiff-Appellant*

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Fifth Circuit Rule 28.2.1, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiff-Appellant: Robert W. Galey, Jr.

Defendants-Appellees: Lloyd J. Austin, III, Frank Kendall, III, Robert I. Miller, Richard W. Scobee.

Counsel for Plaintiff-Appellant: James Baehr and Sarah Harbison from the Pelican Institute for Public Policy represent Plaintiff-Appellant.

Counsel for Defendants-Appellees: Sarah Clark Griffin and Keri Lane Berman from the U.S. Department of Justice represent the Defendants-Appellees.

s/ James Baehr
James Baehr
Counsel of Record for Plaintiff-Appellant

Dated: June 6, 2025

STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant respectfully requests oral argument. This appeal presents significant questions of constitutional and statutory interpretation regarding Article III standing doctrine and military religious accommodation processes that will affect servicemembers throughout this Circuit. Specifically, this case requires this Court to clarify the scope and application of its recent precedent in *Crocker v. Austin*, 115 F.4th 660 (5th Cir. 2024), and *Jackson v. Noem*, 132 F.4th 790 (5th Cir. 2025), regarding when servicemembers have standing to challenge ongoing discriminatory policies. Given the constitutional dimensions of these issues, the institutional importance of military religious accommodation procedures, and the potential impact on future litigation involving similar challenges, oral argument would materially assist the Court in resolving these important questions of law.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction because Appellant alleges violations of federal law and constitution. 28 U.S.C. §§ 1331, 1343. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal arises from a final judgment in favor of Appellees. The district court entered final judgment on January 29, 2025, and Appellant filed a timely notice of appeal on February 19, 2025. ROA.522.

STATEMENT OF THE ISSUES

(1) Whether this Court's decisions in *Crocker v. Austin*, 115 F.4th 660 (5th Cir. 2024), and *Jackson v. Noem*, 132 F.4th 790 (5th Cir. 2025), implicitly determined that servicemembers have standing to challenge broader military vaccination policies and religious accommodation processes when the Court held such challenges survive mandate rescission?

(2) Whether the district court erred by rejecting Appellant's well-pleaded allegations of concrete, ongoing harm from the Army's discriminatory religious accommodation process, including continuing career consequences, reputational injury, and imminent future injury from subjection to the same systematically flawed accommodation system for other vaccine requirements.

STATEMENT OF THE CASE

Master Sergeant Robert W. Galey wanted nothing more than to serve his God and his country when he joined the United States Army. ROA.206. The Army's

COVID-19 vaccine mandate put his faith to the test. ROA.206-208. A devout Christian with 18 years of active-duty service and eight combat deployments to Iraq and Afghanistan, Master Sergeant Galey developed a sincere religious objection to taking the vaccine after prayerful reflection. ROA.209-210. The stakes were high: failure to inject the vaccine could result in "involuntary discharge, court-martial (criminal) prosecution, involuntary separation, relief for cause from leadership position, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service member, and loss of leave and travel privileges for both official and unofficial purposes." ROA.210.

Master Sergeant Galey served as First Sergeant of Task Force 1, Operations Group, Joint Readiness Training Center Fort Polk—a position of leadership and authority in his unit. ROA.210. In good faith, he applied for a religious accommodation exemption on October 14, 2021, explaining his sincere religious objections to vaccines created through unethical processes. ROA.210. His minister supported his request, stating he could "speak to the sincerity of Robert's beliefs and the legitimacy of this request." ROA.210-211. His chaplain concluded "that 1SG Galey's religious beliefs are sincerely held." ROA.211. His immediate commander supported his religious accommodation request and recommended approval. ROA.211.

It was all to no avail: Master Sergeant Galey's request was summarily denied. ROA.211. Despite this overwhelming support for his sincerity, his then-Commander recommended disapproval, writing "I find that MSG Galey does not have a sincerely held religious belief" and dismissing his request as "motivated by misinformation." ROA.211. The Surgeon General of the Army denied his request with a form letter, and his appeal was denied by the Acting Assistant Secretary of the Army with another form letter, "without regard to Master Sergeant Galey's individual circumstances." ROA.212.

Little did Master Sergeant Galey know then that the religious accommodation process to which he had applied was a sham. ROA.223. The Department of Defense Instruction that implemented the Religious Freedom Restoration Act appeared to protect religious rights, stating that service members' religious beliefs "may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, and assignment." ROA.224. But this was not how Appellees operated their system. As of September 16, 2022, the Army had denied 98.2% of religious accommodation requests, granting only 32 permanent religious accommodations out of 8,476 requested. ROA.217. Appellees systematically rejected religious accommodations with form letters, without any concern for the particulars of any service members' beliefs or circumstances.

Proceedings Below

On December 19, 2022, Appellant filed a complaint in this matter challenging the Army's COVID-19 vaccination mandate. ROA.7. Following congressional mandate in the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 ("NDAA"), the Army rescinded its COVID-19 vaccine mandate. In light of this, Appellees moved to dismiss Galey's case. ROA.136.

On July 23, 2024, Appellant responded by filing his First Amended Complaint, challenging not only the rescinded COVID-19 mandate but also the Army's ongoing discriminatory vaccination policies and "sham" religious accommodation process. ROA.206-238. Appellant's amended complaint goes far beyond the defunct COVID-19 mandate to challenge the Army's systematic religious discrimination that continues to this day.

Master Sergeant Galey faced significant career repercussions for his religious accommodation request: he was laterally demoted from his role as First Sergeant and replaced by a lower-ranked Soldier. ROA.212. He has been denied important training opportunities, including unit travel to Hawaii and Alaska for training. ROA.225. His orders for important follow-on assignments have been deleted. ROA.212.

Most troublingly, Master Sergeant Galey's Soldier Record Book now contains entries showing he was previously "flagged." ROA.212. While the particular flag

was removed, "the fact that there was a flag remains. Individuals reviewing the record would rightly wonder why there had been a prior flag on the record." ROA.212. Master Sergeant Galey suffered a tarnishing of his military reputation, as he went before promotion boards and, despite his sterling record, was not selected for promotion. ROA.212. He "wholeheartedly believes that his Soldier Record Book showing a prior flag – solely because of his religious accommodation request – is the reason for these denials of promotion." ROA.212.

Critically, Master Sergeant Galey "has committed to no longer take vaccines that are created through unethical processes" and "is frequently subject to various vaccine mandates and requirements as long as he serves in the military." ROA.212-214. He "remains under threat of punishment for the submission of religious accommodation requests for these additional vaccine requirements." ROA.214. This ongoing threat forms the heart of his amended complaint.

In his amended complaint, Appellant sought comprehensive relief mirroring that obtained by Navy servicemembers in similar circumstances, including:

1. Declaratory judgments that Defendants' vaccination policies violate the First Amendment, RFRA, and the Administrative Procedure Act;
2. Injunctive relief prohibiting enforcement of discriminatory vaccination policies;

3. Correction of personnel records to remove negative proceedings related to COVID-19 vaccination non-compliance;
4. Selection board reforms prohibiting consideration of vaccination refusal where accommodation was requested;
5. Policy amendments requiring proper religious accommodation procedures;
6. Public statements reaffirming the value of religious expression;
7. Training requirements for commanders on religious accommodation obligations; and
8. Reasonable attorneys' fees.

ROA.236-238.

On August 27, 2024, Appellees moved to dismiss all of Appellant's claims, arguing that the enactment of the NDAA and following service guidance mooted the claims and that Appellant lacked standing for broader challenges. ROA.344. Importantly, on September 23, 2024, before Appellant filed his opposition, this Court decided *Crocker v. Austin*, 115 F.4th 660 (5th Cir. 2024), holding that broader challenges to military vaccination policies were not rendered moot by mandate rescission. The district court acknowledged *Crocker* but failed to apply it properly. ROA.514.

On January 29, 2025, the district court issued a memorandum ruling granting Appellees' motion to dismiss. ROA.511. Despite this Court's controlling decision

in *Crocker v. Austin* determining that those servicemembers broader challenges to "vaccine policies and religious accommodations… are not rendered moot by the rescission," the district court nonetheless held that Galey had no standing to pursue such a challenge. ROA.519. The district court entered final judgment for the Appellees, resolving all issues in dispute. ROA.521. Appellant timely appealed. ROA.522.

SUMMARY OF THE ARGUMENT

The district court committed reversible error by dismissing Master Sergeant Galey's broader challenges to the Army's vaccination policies and religious accommodation process. This Court's recent decisions in *Crocker v. Austin* and *Jackson v. Noem* control and compel reversal on two independent grounds.

First, this Court's decisions in *Crocker* and *Jackson* implicitly determined that servicemembers have standing to challenge broader military vaccination policies and religious accommodation processes. When this Court reached the question of mootness in both cases and held that such challenges survive mandate rescission, it necessarily determined that the plaintiffs had standing to bring those challenges. Standing is a threshold constitutional requirement that must be satisfied before any court can address mootness or reach the merits. The district court's attempt to treat standing as an open question after these controlling decisions improperly relitigated issues this Court had already decided and created an untenable precedent requiring

every servicemember to relitigate identical standing questions despite comprehensive appellate analysis.

Second, even if standing were an open question, Master Sergeant Galey clearly satisfies established Article III requirements. He has alleged concrete, ongoing harm from the Army's discriminatory accommodation process, including continuing career consequences that affect his military service, reputation, and promotion prospects. His sworn declaration details specific injuries: removal from leadership positions, denial of promotions despite exemplary service, loss of training opportunities, and permanent personnel record entries that continue to harm his career. He has also alleged imminent future harm based on his religious commitment to refuse unethically-produced vaccines and his continued subjection to military vaccine requirements processed through the same systematically flawed accommodation system that denied 98.2% of religious exemption requests. The district court improperly rejected these well-pleaded allegations and applied an overly restrictive standing test that conflicts with Fifth Circuit precedent.

The systematic religious accommodation process challenged here creates ongoing cognizable harm extending far beyond the rescinded COVID-19 mandate. Master Sergeant Galey remains subject to the same discriminatory policies and personnel that systematically denied religious accommodations during the COVID-19 crisis. This Court's analysis in *Jackson v. Noem* confirms that servicemembers

retain concrete interests in ongoing accommodation processes that can provide the basis for effectual judicial relief. The fundamental constitutional and statutory issues raised by Master Sergeant Galey remain live and deserve an opportunity for adjudication on the merits.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews dismissals pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) under a de novo standard. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Dismissal under 12(b)(1) is strong medicine, and so it "should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Id.* (emphasis added). "Legal questions relating to standing and mootness are also reviewed de novo." *Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 421 (5th Cir. 2013) (internal citations omitted).

On a motion to dismiss, the court must accept the plaintiff's factual allegations as true and construe all facts in the light most favorable to the plaintiff. *Ramming*, 281 F.3d at 161. When a complaint invokes, as here, federal-question jurisdiction, it can only be dismissed "'if it is not colorable'" or "'wholly insubstantial and frivolous.'" *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 n.10 (2006).

A "case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming*, 281 F.3d at 161.

II. THIS COURT'S DECISION IN *CROCKER V. AUSTIN* DETERMINED THAT SERVICEMEMBERS HAVE STANDING TO CHALLENGE BROADER VACCINATION POLICIES.

a. The District Court Conceded That Broader Challenges Are Not Moot Under *Crocker*, But *Crocker*'s Mootness Holding Necessarily Presupposed Standing.

The district court acknowledged and accepted this Court's holding in *Crocker v. Austin* that broader challenges to military vaccination policies "are not rendered moot by the rescission." ROA.518. The court stated: "To the extent plaintiff would continue with broader challenges to the Army's vaccine policies and religious accommodations, the Fifth Circuit determine[d] in *Crocker* that these are not rendered moot by the rescission." *Id.*

Having conceded that mootness is not an issue, the district court's entire analysis hinged on standing. The court stated that "*Crocker* did not address standing" for broader policy challenges from the servicemembers who were not separated and that it "did not discuss the imminence or likelihood of such discrimination." ROA.518. Based on this analysis, the court concluded that Master Sergeant Galey

"lacks standing to proceed with his broader challenges to the Army and Department of Defense's vaccine and religious accommodation policies." ROA.519.

But *Crocker*'s mootness holding necessarily required a determination of standing in the first instance. Standing is a threshold requirement that must be satisfied before a court can reach the merits of any issue, including mootness. "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Courts must determine standing before addressing any other issue. "Without jurisdiction the court cannot proceed at all in any cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

Critically, standing is determined at the time of filing and cannot be affected by subsequent events. "While the proof required to establish standing increases as the suit proceeds, the standing inquiry remains focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." *Davis v. FEC*, 554 U.S. 724, 734 (2008) (cleaned up). The Supreme Court has consistently applied the "longstanding rule that jurisdiction is to be assessed under the facts existing when the complaint is filed." *Lujan*, 504 U.S. at 569 n.4. "It is quite clear, that the jurisdiction of the Court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events." *Smith v. Sperling*, 354 U.S. 91, 93 n.1 (1957). The same standard holds true

in Religious Freedom Restoration Act cases, inquiring whether the plaintiff faces a substantial burden on religious exercise at the time suit is filed. *See, e.g., Holt v. Hobbs*, 574 U.S. 352 (2015). Master Sergeant Galey clearly faced such a burden when he filed suit in December 2022, while the mandate was active and he was suffering concrete harm from the accommodation denial.

This Court has made clear that standing survives policy rescission when discriminatory processes remain unreformed. *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 376 (5th Cir. 2022). The rescission of the COVID-19 mandate cannot retroactively eliminate Master Sergeant Galey's standing, which was clearly established at the time of filing.

When this Court reached the merits of the mootness question in *Crocker* and held that broader vaccination policy challenges survive mandate rescission, it necessarily determined that the plaintiffs had standing to bring those challenges. This Court could not have analyzed whether such challenges were moot without first determining that the plaintiffs had standing to bring them.

b. The Fifth Circuit's Standing and Mootness Tests Require Identical Inquiries into Concrete, Continuing Injury.

The district court's attempt to separate standing from mootness analysis denies that both doctrines require essentially identical inquiries under Article III. As this Court has recognized, "Mootness is the doctrine of standing in a time frame. The

requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness)." *Texxon Petrochemicals, L.L.C. v. Getty Leasing, Inc. (In re Texxon Petrochemicals, L.L.C.)*, 67 F.4th 259, 261 n.2 (5th Cir. 2023) (citation and internal quotation marks omitted).

Standing and mootness tests examine the same concrete interest requirement. To establish standing, a plaintiff "must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Ctr. for Biological Diversity, Inc.*, 704 F.3d at 424.

The mootness inquiry asks whether that same concrete interest persists: "[A] case becomes moot *only when it is impossible* for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added). Mootness analysis focuses on whether "the parties [still] have a concrete interest, however small, in the outcome of the litigation." *Id.*

Both doctrines examine the identical Article III question: does the plaintiff have a concrete interest in ongoing conduct that courts can remedy? The ostensible difference is temporal – standing asks whether this interest existed at filing, while mootness asks whether it continues to exist.

The Fifth Circuit consistently analyzes standing before mootness. In *Public Citizen, Inc. v. Bomer*, this Court dismissed the case for lack of Article III standing and therefore declined to consider mootness, because standing is a threshold

jurisdictional requirement that must be resolved before any assessment of mootness or the merits. *Public Citizen, Inc. v. Bomer*, 274 F.3d 212, 217 (5th Cir. 2001) ("because 'standing is a jurisdictional requirement, [it] may always be addressed for the first time on appeal").

The Supreme Court has similarly held that appellate courts must establish standing to hear cases. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 66-67 (1997). The Court there emphasized that Article III standing is a "threshold" jurisdictional requirement that must be satisfied at all stages of litigation. *Id.* at 64. It reaffirmed that "[e]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it." *Id.* (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). The Court clarified that standing is among the "core matters of federal-court adjudicatory authority" and must be addressed regardless of whether the issue is contested. *Id.* at 73. Accordingly, appellate courts are constitutionally obligated to assess whether the plaintiff has Article III standing and may not proceed unless standing is first established.

Crocker's mootness determination thus necessarily determined standing. When this Court in *Crocker* found that it was not "impossible for a court to grant any effectual relief" to servicemembers challenging accommodation processes, it

determined that plaintiffs retain the same concrete interest required for standing. *Crocker* found that servicemembers have continuing concrete interests in ongoing discriminatory policies when they "plausibly allege[] that the [military] continues to employ an illegal process for religious accommodations and that they will again be injured by it." 115 F.4th at 667-68. This analysis of examining concrete, continuing injury from ongoing policies that courts can remedy necessarily satisfied both standing and mootness under Article III.

The district court's analysis that standing and mootness present separate inquiries cannot be reconciled with this Court's recognition that mootness is simply "standing in a time frame." When *Crocker* determined that courts can provide "effectual relief" for broader accommodation policy challenges, it necessarily found that such challenges satisfy the identical concrete interest requirement for both standing and mootness.

c. The District Court Cannot Relitigate Issues Implicitly or Explicitly Decided by This Court.

The district court's attempt to treat standing as an open question after *Crocker* improperly relitigated issues this Court had already decided. When an appellate court decides a case, the decision settles not only the ultimate question but also those preliminary questions which the logic of its decision necessarily presupposes. *See, e.g.*, *Cooper Tire & Rubber Co. v. Farese*, 248 F. App'x 555, 558 (5th Cir. 2007)

(noting that "those matters that were fully briefed to the appellate court and were necessary predicates to the ability to address the issue or issues specifically discussed are deemed to have been decided tacitly or implicitly…").

The logic of *Crocker*'s mootness decision necessarily presupposes that servicemembers challenging broader vaccination policies have standing. This Court's analysis that the rescission "does not ensure that [the military] will not discriminate against Appellants in the future" also establishes the concrete and imminent future harm required for standing. 115 F.4th at 668. When the Fifth Circuit in *Crocker* analyzed whether future discrimination was sufficiently concrete to defeat mootness, it necessarily determined that such future discrimination was sufficiently concrete to establish standing.

The district court's attempt to cabin *Crocker* to mootness analysis alone creates an untenable precedent. Under the district court's reasoning, every *Crocker* plaintiff would need to relitigate standing in future cases, despite this Court's comprehensive analysis of their claims. Such an approach would undermine the finality and precedential value of appellate decisions and create inefficient duplicate litigation on identical legal questions.

This Court's continued application of *Crocker* confirms that servicemembers have standing to challenge broader vaccination policies. In *Jackson v. Noem*, decided just months ago, this Court again applied *Crocker* to find that broader challenges to

military vaccination policies are not moot. 132 F.4th 790, 793 (5th Cir. 2025). There, Coast Guard servicemembers challenged the COVID-19 vaccine mandate, which was later rescinded. The district court dismissed as moot, but this Court reversed.

This Court explicitly relied on *Crocker*'s framework, explaining that the Coast Guard's rescission "did not moot the case because the Air Force had not made changes to its allegedly 'sham religious accommodation process for vaccinations.'" *Id.* (citing *Crocker*, 115 F.4th at 667-68). The Court found that "[t]aking the Plaintiffs' well-pled facts as true, we conclude it is still possible for a court to grant effectual relief." *Id.* at 794.

The *Jackson* Court recognized ongoing reputational and career harm similar to Master Sergeant Galey's allegations. The Court accepted evidence that "the service reputation of those who refused to follow [the mandate] is tarnished" and that "this harm could be remedied by a court order declaring the mandate unlawful." *Id.* at 794. This validates the type of ongoing career consequences Master Sergeant Galey alleges, concrete injuries that support both standing and prevent mootness.

Importantly, this Court reached this mootness analysis without any discussion of standing issues. This confirms that *Crocker* established that when servicemembers challenge broader accommodation processes, they have standing to do so. The Court's seamless application of *Crocker* without relitigating standing

demonstrates that standing for broader vaccination policy challenges was settled by *Crocker*.

III. THE DISTRICT COURT IMPROPERLY REJECTED APPELLANT'S WELL-PLEADED ALLEGATIONS OF CONTINUING HARM.

a. The District Court Failed to Accept Appellant's Allegations as True.

Even if standing were an open question, the district court committed fundamental error by rejecting Master Sergeant Galey's well-pleaded allegations of continuing harm. The court stated that Master Sergeant Galey had "not identified any vaccine for which he is currently seeking an exemption" and had not made "any additional religious accommodation requests" in over two years. ROA.518. The court concluded that "there is currently no injury or threatened injury for the court to redress for this individual." ROA.519. This analysis directly contradicts the fundamental principle that courts must accept a plaintiff's factual allegations as true on a motion to dismiss. *Ramming*, 281 F.3d at 161.

Master Sergeant Galey's amended complaint outlined concrete, ongoing harm from the Army's discriminatory accommodation process. Despite the district court's suggestion that all consequences were removed, Master Sergeant Galey's complaint specifically alleged continuing career harm including:

- Removal from his leadership position as First Sergeant (ROA.212, ¶ 20).
- Denial of promotions despite his sterling record (ROA.212, ¶ 22)

- Loss of training opportunities and follow-on assignments (ROA.212, ¶¶ 20-21)
- Continuing stigma from "flagged" entries in his personnel record that "would rightly wonder why there had been a prior flag on the record" – that have resulted in him being rejected for promotion (ROA.212, ¶ 21-22)

The district court improperly resolved disputed factual questions in favor of the government. In footnote 1, the court "credit[ed] this showing over plaintiff's unsupported assertions" regarding the impact of his record on promotion prospects. ROA.517. This was error – on a motion to dismiss, disputed factual questions must be resolved in favor of the plaintiff.

The district court's dismissal becomes even more problematic when viewed against Master Sergeant Galey's detailed sworn declaration submitted with his amended complaint. ROA.259-260. Under penalty of perjury, Master Sergeant Galey provided specific, concrete allegations of ongoing harm that directly contradict the court's conclusion that "there is currently no injury or threatened injury for the court to redress." ROA.519.

Master Sergeant Galey's declaration, executed under 28 U.S.C. § 1746, detailed continuing career consequences from his religious accommodation request:

- His follow-on assignment orders were deleted two months before his scheduled transfer (ROA.260 ¶ 3);

- He was immediately removed from his First Sergeant leadership position after refusing the vaccine (ROA.260 ¶ 3);
- He was flagged for involuntary separation and adverse action (ROA.260 ¶ 3);
- A Soldier Record Brief showing he was "flagged in December of 2022 for adverse action and involuntary separation" remains in his permanent personnel file and is visible to promotion boards (ROA.260-261 ¶ 4);
- He has been denied promotion twice due to following his faith and believes this flagged record is the cause (ROA.261 ¶ 5);
- He was denied a career-enhancing assignment as punishment for his religious beliefs (ROA.261 ¶ 5).

Critically, Master Sergeant Galey swore that he expects future harm: "I also believe that this will happen again to me, or to future generations of Soldiers, if the Army is not held to account for violating the law regarding its Soldiers freedom of religion. New vaccines are being produced and not all of them are created in an ethical way." ROA.261 ¶ 5.

The district court's footnote 1 dismissal of these sworn allegations as "unsupported assertions" while crediting the government's "showing" violated fundamental Rule 12(b)(1) principles. A plaintiff's sworn declaration constitutes evidence that cannot be simply disregarded on a motion to dismiss.

The court's treatment of Master Sergeant Galey's declaration exemplifies its improper resolution of disputed facts without following Federal Rule of Civil Procedure 12(d) procedures. If the court intended to reject sworn testimony about ongoing career harm and future threats, it was required to convert the motion to summary judgment and provide Master Sergeant Galey opportunity to conduct discovery and present additional evidence. It did not.

Jackson v. Noem confirms that the type of career and reputational harm Master Sergeant Galey alleges constitutes concrete injury sufficient for Article III purposes. In *Jackson*, this Court recognized that servicemembers' "service reputation" was "tarnished" by their refusal to comply with vaccination mandates, and found "this harm could be remedied *by a court order declaring the mandate unlawful*." 132 F.4th at 793-94 (emphasis added). Like the Coast Guard servicemembers in *Jackson*, Master Sergeant Galey's reputation could be remedied by a court order declaring the mandate unlawful. The *Jackson* Court's recognition that reputational harm in military service constitutes redressable injury also validates Master Sergeant Galey's allegations about the continuing impact of his "flagged" personnel record on promotion prospects.

This Court's analysis in *Franciscan Alliance, Inc. v. Becerra* provides even more direct support for Master Sergeant Galey's continuing injury claims. There, Catholic healthcare providers challenged HHS regulations requiring procedures that

violated their religious beliefs. 47 F.4th at 372. When HHS repealed the challenged rule and replaced it with a different version, the government argued mootness. *Id.* at 371. This Court rejected that argument, emphasizing that rescission of a rule does not automatically deprive plaintiffs of standing, especially where discriminatory processes remain unreformed. *Id.* at 376. The Court ultimately found that plaintiffs remained within the class of individuals affected by the prior mandate and faced realistic possibility of future enforcement despite policy changes. *Id.*

This same reasoning applies directly to this case. Just as the plaintiffs in *Franciscan Alliance* remained within the class of regulated parties despite the repeal of the challenged rule, Master Sergeant Galey remains within the class of individuals affected by the prior COVID-19 mandate. The government has not disavowed reimplementation of a similar mandate, and the vague promise that future accommodations will be handled fairly does not eliminate the credible threat of recurring harm. Therefore, under *Franciscan Alliance*, Galey retains standing to challenge the government's prior conduct and the process used to assess his religious accommodation.

b. The District Court Applied an Improperly Restrictive Standing Test.

The district court's requirement that Master Sergeant Galey identify a current vaccine exemption request conflicts with established standing doctrine. Standing does not require a plaintiff to subject himself to immediate harm before challenging

an ongoing discriminatory process. Courts regularly find standing based on allegations of future harm from ongoing policies. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014) (finding standing based on intention to engage in conduct arguably affected by challenged law).

The Fifth Circuit has consistently held that plaintiffs challenging ongoing discriminatory policies need not wait for specific enforcement actions. In *Contender Farms, L.L.P. v. U.S. Dept. of Agriculture*, horse show participants challenged a USDA regulation that unlawfully delegated federal enforcement authority to private parties and imposed unconstitutional regulatory burdens on the horse show industry. 779 F.3d 258, 266 (5th Cir. 2015). The USDA argued this was an improper pre-enforcement challenge, contending that plaintiffs lacked standing because the regulation had not yet been applied against them. *Id.* at 267.

This Court rejected that argument, explaining that "ripeness and standing are closely related, with ripeness examining whether the asserted harm has matured sufficiently to justify judicial intervention." *Id.* (cleaned up). The Court held that in pre-enforcement challenges, "an allegation of future injury may suffice if the threatened injury is certainly impending or there is a substantial risk that the harm will occur." *Id.* Critically, this Court found standing based on the plaintiffs' intention to continue participating in horse shows, meaning they would be subject to the USDA regulation in the future. *Id.*

The Fifth Circuit held that plaintiffs had standing because they intended to continue participating in horse shows, meaning they would be subject to the USDA regulation in the future. The court emphasized that plaintiffs need not wait to violate the law or suffer penalties before challenging its legality. The court cited *Nat'l Envtl. Dev. Ass'ns Clean Air Project v. EPA*, 752 F.3d 999, 1008 (D.C. Cir. 2014) stating that it "is unnecessary to wait for the [Regulation] to be applied in order to determine its legality."

The district court's analysis here directly contradicts *Contender Farms*. Just as the horse show participants had standing based on their intention to continue participating in regulated activities, Master Sergeant Galey has standing based on his intention to continue military service while maintaining his religious objections to unethically-produced vaccines. The district court's statement that "if Galey wishes to challenge a future vaccine requirement, he may do so based on the accommodation process he actually experiences" (ROA.519) improperly requires him to "wait for the Regulation to be applied" before challenging its legality – exactly what *Contender Farms* held was unnecessary.

Moreover, Master Sergeant Galey's situation presents an even stronger case for standing than *Contender Farms*. Unlike the horse show participants who faced only potential future enforcement, Master Sergeant Galey has already experienced concrete harm from the challenged accommodation process and faces "certainly

impending" future injury given his continued military service and religious commitments. His sworn declaration establishes that he "believe[s] that this will happen again to me" because "new vaccines are being produced and not all of them are created in an ethical way." ROA.261 ¶ 5. This creates the "substantial risk" of future harm that *Contender Farms* found sufficient for standing.

The district court's analysis also conflicts with this Court's approach in *Crocker*. *Crocker* found that servicemembers have cognizable claims when they "plausibly alleged that the [military] continues to employ an illegal process for religious accommodations and that they will again be injured by it." 115 F.4th at 667-68. Master Sergeant Galey's allegations satisfy this standard.

This Court's recent application of *Crocker* in *Jackson v. Noem* further demonstrates that standing does not require a pending accommodation request. In *Jackson*, the Court found Coast Guard servicemembers had sufficient claims to defeat mootness despite the rescission of the COVID-19 mandate, focusing on their ongoing subjection to the "allegedly 'sham religious accommodation process for vaccinations.'" 132 F.4th at 793. The *Jackson* Court did not require the servicemembers to identify specific future vaccines or pending requests – it was sufficient that they remained subject to the same discriminatory process that had previously harmed them. Master Sergeant Galey's situation is identical: he remains

subject to the Army's accommodation process and faces routine military vaccination requirements that will inevitably trigger future conflicts with his religious beliefs.

This Court is empowered to remedy these harms. After the Northern District of Texas held in *U.S. Navy SEALs 1–26 v. Austin* that broader accommodation policy challenges were not moot, the parties ultimately reached a comprehensive class action settlement. *U.S. Navy SEALs 1–26 v. Austin*, No. 4:21-cv-01236-O (N.D. Tex. Feb. 14, 2024); ROA.309. The Navy agreed to extensive relief including personnel record corrections, policy amendments, public statements reaffirming religious rights, commander training requirements, and $1.5 million in attorneys' fees. While this relief reflects a negotiated settlement rather than a court determination, the parties' agreement to such substantial relief demonstrates the significant concrete harms that can result from discriminatory accommodation processes even after mandate rescission – and that these injuries are redressable. As Appellant noted in his complaint, "[t]here is no principled reason that Army servicemembers such as Master Sergeant Galey should not benefit from similar relief as the Army operated the same sham religious accommodation process as the Navy." ROA.228.

c. The Court Can Provide Redressability by Declaring Unconstitutional Appellees' "Vaccination Policies," Including the Sham Religious Accommodation Process that Continues to Harm Appellant.

The Appellees' "vaccination policies" include a sham religious accommodation process for vaccinations that continues to apply to vaccinations and

harms Appellant. As documented in the amended complaint, the Army denied 98.2% of religious accommodation requests, granting only 32 permanent religious accommodations out of 8,476 requested across all Army components. ROA.217. The few requests that were granted were primarily for service members "imminently approaching retirement or other voluntary separation from the service." ROA.217.

Appellant's specific allegations regarding this systematically discriminatory process include that the Army's religious accommodation process:

- Permits the Army to forego individualized assessment and to satisfy the compelling interest requirement through generic determinations;
- Uses boilerplate statements to suffice for demonstrating that the Army's actions were the least restrictive means;
- Permits the Army to discriminate against soldiers who submit a request and to apply coercive tactics to pressure servicemembers to forego their beliefs;
- Permits Army leadership to dictate denial of all requests, no matter the individual circumstances of the requester.

ROA.296-297.

This system mirrors that which courts have found constitutionally suspect. While the passage of the NDAA arguably removed the "axe" of the COVID-19 vaccine, the axeman still stands nearby: Appellant still remains subject to a flawed system that the Army refuses to repudiate. It is this overarching system, not just its

application during the COVID-19 crisis, that Appellant challenges.

Critically, Appellant "has committed to no longer take vaccines that are created through unethical processes" and "is frequently subject to various vaccine mandates and requirements as long as he serves in the military." ROA.212. He "remains under threat of punishment for the submission of religious accommodation requests for these additional vaccine requirements." ROA.212. Appellant "believes that the DoD operated its religious accommodation process to the COVID-19 vaccine as a sham process" and "believes that the DoD will continue to operate its religious accommodation process for other vaccine requirements in the same manner." ROA.222.

Jackson v. Noem illustrates how courts can provide meaningful relief for these systematic accommodation process failures. The *Jackson* Court explicitly found that it was "still possible for a court to grant effectual relief" when military services fail to reform their accommodation processes after mandate rescission. 132 F.4th at 794. The Court's analysis focused on the ongoing operation of discriminatory policies rather than specific pending requests, demonstrating that prospective relief targeting the accommodation process itself provides sufficient redressability for Article III purposes. Master Sergeant Galey seeks similar prospective relief—judicial declaration that the Army's accommodation process violates constitutional and statutory requirements, coupled with injunctive relief requiring proper procedures

for future requests.

CONCLUSION

Master Sergeant Robert Galey wanted nothing more than to serve his God and his country – a choice he should never have had to make. His over 18 years of faithful service, including eight combat deployments where he risked his life for American principles, earned him the respect of his minister, chaplain, and immediate commander, all of whom supported his religious accommodation request. Yet an institution that trusted him to lead soldiers in combat refused to trust his sincere religious convictions, dismissing them as "motivated by misinformation" despite overwhelming evidence to the contrary. The Army's systematic denial of 98.2% of religious accommodation requests reveals a process designed to circumvent, not implement, Constitutional protections. Master Sergeant Galey's case is not merely about one soldier's rights – it is about whether our military will honor the very Constitutional principles that our servicemembers swear to defend with their lives.

The district court's dismissal cannot be reconciled with this Court's controlling precedent in *Crocker v. Austin* and *Jackson v. Noem*. Appellant's amended complaint presents claims at least as strong as those deemed sufficient in *Crocker*, challenging ongoing institutional policies that will continue to harm him absent judicial intervention.

This Court should **REVERSE** the district court's judgment and **REMAND**

for proceedings on the merits of Appellant's broader challenges to the Army's vaccination policies and religious accommodation process. The fundamental issues raised by Appellant remain live and deserve an opportunity for discovery and their day in court.

Respectfully submitted,

s/ James Baehr
James Baehr
Sarah Harbison
PELICAN INSTITUTE FOR PUBLIC POLICY
400 Poydras Street, Suite 900
New Orleans, LA 70130
Telephone: (504) 952-8016
sarah@pelicaninstitute.org
james@pelicaninstitute.org

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Plaintiff-Appellant's Opening Brief using the court's CM/ECF system which will automatically generate and send by email a Notice of Docket Activity to registered attorneys currently participating in this case, constituting service on those attorneys.

s/ James Baehr
James Baehr

Dated: June 6, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 6,139 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

s/ James Baehr
James Baehr

Dated: June 6, 2025