No. 24-3404

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HUNTER DOSTER; JASON ANDERSON; MCKENNA COLANTANIO; PAUL CLEMENT; JOE DILLS; BENJAMIN LEIBY; BRETT MARTIN; CONNOR MCCORMICK; HEIDI MOSHER; PETER NORRIS; PATRICK POTTINGER; ALEX RAMSPERGER; BENJAMIN RINALDI; DOUGLAS RUYLE; CHRISTOPHER SCHULDES; EDWARD STAPANON, III; ADAM THERIAULT; DANIEL REINEKE, On behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

v.

HON. FRANK KENDALL, III, In his official capacity as Secretary of the Air Force; LT. GENERAL BRIAN S. ROBINSON, In his official capacity as Commander, Air Education and Training Command; LT. GENERAL JOHN P. HEALY, In his official capacity as Commander, Air Force Reserve Command; UNITED STATES OF AMERICA; MAJOR GENERAL JOHN D. DEGOES, In his official capacity as Surgeon General of the Air Force; LT. GENERAL MICHAEL E. CONLEY, In his official capacity as Commander, Air Force Special Operations Command,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Ohio

BRIEF FOR APPELLEES

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STATEMENT REGARDING ORAL ARGUMENT

Defendants-appellees do not believe that oral argument would be of assistance to this Court, but stand ready to participate in oral argument if the Court determines that oral argument would be helpful.

STATEMENT OF JURISDICTION

In this suit under the Religious Freedom Restoration Act of 1993 (RFRA), plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331, among other statutes. *See* Compl., R. 1, PageID# 6. The district court dismissed plaintiffs' claims as moot and entered judgment on March 18, 2024. Order, R. 127, PageID# 5987-98; Judgment, R. 128, PageID# 5999. Plaintiffs filed a timely notice of appeal on May 8, 2024. Notice of Appeal, R. 132, PageID# 6194; *see* Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Plaintiffs—18 service members in the Air Force and Air Force Reserve—objected to the Air Force's COVID-19 vaccination requirement on religious grounds, and they sought to enjoin enforcement of the requirement as to both themselves and a putative class of similarly situated Air Force service members. The requirement has since been rescinded at Congress's direction. Following that rescission, numerous courts, including the Supreme Court, have held that challenges to the rescinded requirement are moot.

The issue presented is whether plaintiffs' challenge to the Air Force's now-rescinded COVID-19 vaccination requirement is moot.

STATEMENT OF THE CASE

A. The Air Force's Former COVID-19 Vaccination Requirement

1. In August 2021, the Secretary of Defense directed the military departments to ensure that all service members were fully vaccinated against COVID-19. Sec'y of Def. Mem., R. 27-2, PageID# 1559. Service members could seek a religious exemption from this requirement. *See id.*; Streett Decl., R. 27-13, PageID# 1932. If a service member's religious exemption request was denied, the service member could appeal to a senior official. *See* Streett Decl., R. 27-13, PageID# 1932-33, 1937-38. If that too was denied, the service member could either receive the vaccine, wait for the military to initiate separation proceedings, or—if eligible—retire. Hernandez Decl., R. 27-14, PageID# 1941-45. Members of the Air Force Reserve who refused to comply were reassigned to the Individual Ready Reserve, in a "no pay/no points status." Watson Decl., R. 27-15, PageID# 1950; Heyen Decl., R. 27-18, PageID# 1978-80. Those reservists remained Air Force service members, but they would not drill with their units, nor earn pay nor credit toward retirement. Watson Decl., R. 27-15, PageID# 1950; Heyen Decl., R. 27-18, PageID# 1978-80.

2. In December 2022, Congress passed, and the President signed into law, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 2395 (2022) (2023 NDAA). Section 525 of the 2023 NDAA—enacted over the objection of the Department of Defense—obligated the Secretary of Defense to rescind the COVID-19 vaccination requirement. 136 Stat. at 2571-72; *see* U.S. Dep't of Def., *Transcript: Sabrina Singh, Deputy Pentagon Press Secretary, Holds a Press Briefing* (Dec. 7, 2022), https://perma.cc/EXQ2-FNBN.

On January 10, 2023, the Secretary of Defense rescinded the military's COVID-19 vaccination requirement. Sec'y of Def. Recission Mem., R. 100-1, PageID #5169-70. The Rescission Memorandum provided that "[n]o individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds." *Id.*, PageID# 5169. In addition, it directed the military departments to "update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand," and to "cease any ongoing reviews of current [s]ervice member religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests." *Id.* It further stated that former

service members who were discharged on the sole basis that they failed to obey an order to receive a COVID-19 vaccine "may petition their Military Department's Discharge Review Boards and Boards for Correction of Military or Naval Records to individually request a correction to their personnel records, including records regarding the characterization of their discharge." *Id.*, PageID# 5170. The memorandum noted that commanders retained the ability "to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions." *Id.*

On January 23, 2023, the Secretary of the Air Force issued an additional memorandum rescinding prior guidance implementing the COVID-19 vaccination requirement for the Air Force and Space Force. Sec'y of the Air Force Recission Mem., R. 101-1, PageID# 5176. The memorandum explained that "[n]o individuals currently serving in the Department of the Air Force shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious" or other grounds; that "[t]he Department of the Air Force will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand"; and that the "Department of the Air Force will cease any ongoing reviews of current" requests for

exemption from the COVID-19 vaccination requirement "or appeals of denials of such requests." *Id.*

And in February 2023, the Chief of the Air Force Reserve issued a memorandum rescinding the Reserve's prior policies limiting participation by unvaccinated service members in drills and training. Chief of the Air Force Reserve Recission Mem., R. 105-2, PageID# 5335. The memorandum explains that "COVID-19 vaccination status is no longer a barrier to service in the" Reserve. *Id.*

B. Plaintiffs' Challenge to the Air Force's Former COVID-19 Vaccination Requirement

1. Plaintiffs—18 active-duty and active-reservist members of the Air Force—filed this putative class action in February 2022. *See* Compl., R. 1, PageID# 1. Plaintiffs asserted that the Air Force's failure to grant their requests for religious exemptions from its COVID-19 vaccination requirement violated RFRA and the Free Exercise Clause of the First Amendment, *see id.*, PageID# 17-18, and they sought declaratory and injunctive relief to prohibit enforcement of that requirement, *id.*, PageID# 18-19. Plaintiffs did not seek monetary damages for back pay or retirement points, including for reservists who had been involuntarily assigned to the Individual Ready Reserve.

Shortly thereafter, plaintiffs sought preliminary relief requiring the Air Force to grant their religious-accommodation requests and prohibiting the Air

Force from taking punitive action against them. *See* Mot., R. 13, PageID# 578; *see also* Emergency Mot. for TRO as to Pl. Hunter Doster, R. 19, PageID# 940; Pls.' Resp., R. 44, PageID# 3062. The district court granted that motion and preliminarily enjoined the Air Force from "taking any disciplinary or separation measures against the [named] [p]laintiffs … for their refusal to get vaccinated for COVID-19 due to their sincerely held religious beliefs." Order, R. 47, PageID# 3203.

The district court subsequently certified a class action, Order, R. 72, PageID# 4466-67, and entered a class-wide preliminary injunction along the lines of its initial preliminary injunction that prohibited the Air Force from "plac[ing] or continu[ing] active reservists on no points, no pay status for their refusal to get vaccinated for COVID-19 due to their sincerely held religious beliefs," Order, R. 77, PageID# 4539-40.

The Air Force appealed those injunctions and the district court's certification of a class, and this Court affirmed. *Doster v. Kendall*, 54 F.4th 398 (6th Cir. 2022).

2.a. After the Air Force rescinded the COVID-19 vaccination requirement, the district court directed the Air Force to "address[] the issue of mootness." Notation Order (Apr. 18, 2023). The Air Force then moved to dismiss plaintiffs' claims as moot, contending that plaintiffs were no longer

subject to any injury from the since-rescinded vaccination requirement. *See* Mot., R. 111, PageID# 5391-418. The Air Force further argued that, because the district court could not grant plaintiffs any effectual relief on their claims for declaratory and injunctive relief, plaintiffs lacked any concrete interest in challenging that requirement. In response, plaintiffs suggested for the first time that the equitable relief they sought included "restoration of lost points and good 'retirement' years for reservists," as well as "backpay" for when those reservists were placed in the Individual Ready Reserve. Pls.' Mem. in Opp'n to Defs.' Request to Dismiss for Mootness, R. 112, PageID# 5833.

While that motion was pending, the Supreme Court vacated this Court's prior judgment in the case, and directed the district court "to vacate as moot its preliminary injunctions," *Kendall v. Doster*, 144 S. Ct. 481 (2023) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)); which the district court promptly did, Order, R. 123, PageID# 5950. The district court then directed the parties to provide "supplemental briefing concerning the mootness of this case in its entirety following the Supreme Court's order." Notation Order (Jan. 30, 2024). Plaintiffs agreed that the Air Force's rescission of vaccination requirement "moots most of this case for many of the named Plaintiffs and much of the class," but they repeated the new assertion that the equitable relief they sought included "the restoration of lost drill pay and retirement points for

those reservists who were involuntarily placed into the [Individual Ready Reserve]" because they were unvaccinated. Pls.' Mem. Regarding Mootness, R. 125, PageID# 5968; *but see* Defs.' Mem. Regarding Mootness, R. 124, PageID# 5955-56 (arguing that plaintiffs' complaint had not sought any retrospective relief); Mot., R. 111, PageID# 5408 n.4 (similar). Plaintiffs' newly requested relief would be applicable to only two of the named plaintiffs—Christopher Schuldes and Jon Dills—who were transferred to the Individual Ready Reserve and thus not permitted to drill with their units in early 2022, as well as to other similarly situated reservists. *See* Chief of the Air Force Reserve Recission Mem., PageID# 5969; Schuldes Decl., R. 125-1, PageID# 5980-81 (asserting "lost $3,436.64 of drill pay" and "reserve retirement points for the drill weekends" not attended); Dills Decl., R. 125-2, PageID# 5982-83 (asserting "lost $2,972.56 of drill pay" and "reserve retirement points for the drill weekends" not attended).

b. The district court dismissed plaintiffs' claims, holding that "[t]his case is moot in its entirety." Order, R. 127, PageID# 5997. First, in carefully parsing the relief sought in plaintiffs' complaint, *id.*, PageID# 5991, the court explained that none of that relief "remains available after the rescission" of the vaccination requirement, *id.* "Simply put, this case was framed as a suit for prospective relief, and such prospective relief may no longer be given by th[e]

Court." *Id.*, PageID# 5992. As for plaintiffs' new requests for back pay and retirement points, the court held that plaintiffs could not "seek additional relief for past harms through the prospective injunctive and declaratory relief sought in the Complaint." *Id.*; *see also id.*, PageID# 5993 ("Plaintiffs did not seek back pay or retirement points in their Complaint and have since been removed from no-pay, no-points status.").

Even assuming that plaintiffs had sought those money damages, the district court also determined that it "cannot grant the Plaintiffs' recently requested relief of back pay and retirement points." Order, R. 127, PageID# 5994. As the court explained, "reservists cannot recover back pay for drills or training they did not attend," "even if reservists were wrongfully prevented from attending the training or drill." *Id.* (citing *Palmer v. United States*, 168 F.3d 1310, 1314 (Fed. Cir. 1999)). And that reasoning "also applies to Plaintiffs' claim for retirement points"—plaintiffs "cannot receive credit for participating" in drills sessions they did not attend. *Id.*, PageID# 5996.

Moreover, the district court explained that "sovereign immunity bars the recovery of retirement points," as such an award "has the effect of increasing Plaintiffs' retirement pay," amounting to "monetary damages." Order, R. 127, PageID# 5996. And Congress had not waived the government's sovereign immunity—the court recognized that RFRA does not waive sovereign

immunity for damages against federal officials sued "in their official capacities," like plaintiffs' suit here. *Id.*, PageID# 5997.

c. Plaintiffs appealed and sought to consolidate this appeal with another appeal involving similar issues, *Poffenbarger v. Kendall*, No. 24-3417 (6th Cir.). This Court denied consolidation but indicated that "the appeals will be submitted to the same panel for consideration on the same date." Order (June 6, 2024).

SUMMARY OF ARGUMENT

This case is moot. Plaintiffs challenged the Air Force's COVID-19 vaccination requirement, contending that it violated RFRA and the First Amendment, and they sought class-wide prospective relief to prohibit the Air Force from enforcing the requirement—which the district court granted. But while this suit was pending, Congress directed the military to rescind the COVID-19 vaccination requirement, which the Secretary of Defense and the Air Force did over a year ago. Plaintiffs now concede that the rescission of that requirement "moots most of this case for many of the named Plaintiffs and much of the class." Pls.' Mem. Regarding Mootness, R. 125, PageID# 5968; *see also* Order, R. 127, PageID# 5990-91.

In an effort to resuscitate this case from being entirely moot, plaintiffs now contend that they are entitled to back pay and retirement points that the

Air Force did not provide to unvaccinated reservists—including the named plaintiffs Dills and Schuldes, as well as other similarly situated Air Force reservists—while those service members were transferred to the Individual Ready Reserve and thus not participating in drills or training. The district court properly rejected plaintiffs' late-breaking theory for relief, which was not pleaded in their complaint and would fail even if it had properly been asserted.

First, plaintiffs were not entitled to any benefits from drills or training that they did not complete. Reservists transferred to the Individual Ready Reserve do not participate in drills and training activities, so they are not eligible to be paid for that non-participation. *See* 37 U.S.C. §§ 204(a), 206(a)(1). The district court correctly recognized this well-established understanding of the military pay statutes and, accordingly, determined that it could not grant plaintiffs any relief for work they did not perform. Plaintiffs' opening brief never addresses the district court's conclusion on that score, forfeiting any challenge to that holding.

Next, plaintiffs cannot recover damages under RFRA. RFRA's limited waiver of sovereign immunity does not extend to a damages claim against federal officials in their official capacities. In an effort to avoid that sovereign-immunity bar, plaintiffs attempt to cast their requested relief as "restitutionary" equitable relief. That attempt fails. The damages that plaintiffs seek are plainly

compensatory money damages, not restitution, as they seek an award based on alleged unlawful exclusion from a position.

Because the district court could not grant any effectual relief, the case is moot. The district court thus properly dismissed plaintiffs' claims, and this Court should affirm.

STANDARD OF REVIEW

The Court reviews de novo the district court's decision to dismiss the case for lack of subject matter jurisdiction. *Mokdad v. Sessions*, 876 F.3d 167, 169 (6th Cir. 2017).

ARGUMENT

THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' CLAIMS.

A. Plaintiffs' Requested Relief—Prospective Declaratory and Injunctive Relief to Prohibit Enforcement of the Air Force's Now-Rescinded COVID-19 Vaccination Requirement—Is Now Moot

1. Plaintiffs sought prospective relief barring enforcement of the Air Force's COVID-19 vaccination requirement against themselves and similarly situated service members. Now that the requirement has been rescinded, neither this Court nor the district court could "grant 'any effectual relief '" to plaintiffs. *Jarrett v. United States*, 79 F.4th 675, 678 (6th Cir. 2023) (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)). As a result, there is

no live case or controversy under Article III and no subject-matter jurisdiction. The district court's decision dismissing the case as moot should be affirmed.

As this Court has recognized, "[m]ootness arises when a plaintiff receives all the relief she requested or could receive in the case." *Jarrett*, 79 F.4th at 678 (citing *Alvarez v. Smith*, 558 U.S. 87, 92-94 (2009)); *see also U.S. Navy SEALs 1-26 v. Biden*, 72 F.4th 666, 672 (5th Cir. 2023) (similar, dismissing appeal of preliminary injunction enjoining military's COVID-19 vaccination requirement as moot). "When later events have eliminated the plaintiff's injury or made it impossible for the court to grant relief, the case has become moot and a court must dismiss it"—including, presumptively, when "an executive officer repeals a challenged regulation." *Davis v. Colerain Township*, 51 F.4th 164, 174 (6th Cir. 2022); *see also id.* at 175 (explaining that a challenge to state policy was "mooted by the governor's rescission of the" challenged policy). "No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quotations omitted).

The dispute here has ceased because the "challenged provision [has been] repealed." *Hill v. Snyder*, 878 F.3d 193, 204 (6th Cir. 2017). Plaintiffs challenged the military's COVID-19 vaccination requirement and sought only

prospective relief. Compl., R. 1, PageID# 18-19. Their complaint requested injunctive relief "preclud[ing] [d]efendants from taking enforcement/punitive action against" them, "a declaration that the challenged orders are unconstitutional and illegal," "injunctive relief" requiring "timely and good faith processing of … accommodation requests," and "injunctive relief" requiring the Air Force "to grant [p]laintiffs' accommodation requests." *Id.*

No effectual relief could be granted on those claims. The challenged requirement was rescinded over a year ago. Sec'y of Def. Recission Mem., R. 100-1, PageID #5169-70. The Secretary of Defense and the Secretary of the Air Force have specifically prohibited enforcement and punitive actions against service members in plaintiffs' position. *See* pp. 3-5 above (discussing the military's rescission actions). As with the Navy plaintiffs in *U.S. Navy SEALs 1-26*, military policy prevents the Air Force from "using vaccination status to deny deployment eligibility, training opportunities, and assignments," and the military has "definitively restored Plaintiffs to equal footing with their vaccinated counterparts through repeated formal policy changes." 72 F.4th at 673; *see* Sec'y of the Air Force Recission Mem., R. 101-1, PageID# 5176; Chief of the Air Force Reserve Recission Mem., R. 105-2, PageID# 5335. Indeed, plaintiffs concede that the Air Force's rescission of the vaccination requirement "moots most of this case for many of the named Plaintiffs and

much of the class." Pls.' Mem. Regarding Mootness, R. 125, PageID# 5968; *see also* Order, R. 127, PageID# 5990-91.

Recognizing as much, the Supreme Court vacated this Court's prior decision as moot and directed the district court to vacate its preliminary injunctions, *Kendall v. Doster*, 144 S. Ct. 481 (2023)—ultimately leading to the district court's dismissal at issue here. And numerous courts have dismissed as moot cases and appeals challenging the military's COVID-19 vaccination requirement. *See Rudometkin v. Austin*, No. 23-5218, 2024 WL 3311248, at *1 (D.C. Cir. July 5, 2024) (per curiam) (unpublished) (affirming dismissal of case challenging military's vaccination policies); *Alvarado v. Austin*, No. 23-1419, 2023 WL 7125168, at *1 (4th Cir. Aug. 3, 2023) (unpublished) (dismissing appeal of dismissal order as moot); *Robert v. Austin*, 72 F.4th 1160, 1162 (10th Cir. 2023) (same), *cert. denied*, 144 S. Ct. 573 (2024); *Short v. Berger*, Nos. 22-15755, 22-16607, 2023 WL 2258384, at *1 (9th Cir. Feb. 24, 2023) (unpublished) (same); *Bazzrea v. Mayorkas*, 677 F. Supp. 3d 651, 656 (S.D. Tex. 2023) (dismissing case as moot); *Jackson v. Mayorkas*, No. 4:22-cv-0825-P, 2023 WL 5311482, at *1 (N.D. Tex. Aug. 17, 2023) (same), *appeal docketed*, No. 23-11038 (5th Cir.); Order at 2, *Pilot v. Austin*, No. 8:22-cv-1278 (M.D. Fla. June 15, 2023), Dkt. No. 222 (same); *accord U.S. Navy SEALs 1-26*, 72 F.4th at 669 (dismissing preliminary injunction appeal as moot); *Dunn v. Austin*, No. 22-

15286, 2023 WL 2319316, at *1 (9th Cir. Feb. 27, 2023) (unpublished) (dismissing appeal of preliminary injunction denial as moot); *Roth v. Austin*, 62 F.4th 1114, 1119 (8th Cir. 2023) (same); *Navy SEAL 1 v. Austin*, Nos. 22-5114, 22-5135, 2023 WL 2482927, at *1 (D.C. Cir. Mar. 10, 2023) (per curiam) (unpublished) (same), *cert. denied*, 144 S. Ct. 97 (2023); *cf.* Order at 2-3, *Navy SEAL 1 v. Secretary of the U.S. Dep't of Def.*, No. 22-10645 (11th Cir. May 9, 2023), Dkt. No. 77 (per curiam) (remanding preliminary injunction appeal in light of district court's indicative ruling dismissing the case as moot).

2. Plaintiffs' belated request for damages does not render this case a live controversy. Plaintiffs' complaint "did not seek damages or any other relief from any alleged injuries that would persist after the [military] changed policies." *Thomas v. City of Memphis*, 996 F.3d 318, 330 (6th Cir. 2021). And plaintiffs' complaint must have included the "remedies [they] request[]"—that is, "'a demand for the relief sought.'" *Luna Perez v. Sturgis Pub. Sch.*, 598 U.S. 142, 149 (2023) (emphasis omitted) (quoting Fed. R. Civ. P. 8(a)(3)).

As the district court recognized, plaintiffs' complaint does not seek any form of damages. *See Moore v. City of Harriman*, 272 F.3d 769, 772 (6th Cir. 2001) (en banc); Order, R. 127, PageID# 5991 (carefully parsing the relief sought in plaintiffs' complaint). Instead, the "complaint unambiguously seeks only declaratory and injunctive relief." *Donkers v. Simon*, 173 F. App'x 451, 454

(6th Cir. 2006) (unpublished). And plaintiffs never sought to amend their complaint to seek monetary relief. *Cf.* Calendar Order, R. 89, PageID# 5027 (directing the parties to file any "motions related to pleadings" by December 2022). "[T]his court cannot invent requests for damages that the plaintiff[s] did not make, particularly at this point in the litigation." *Donkers*, 173 F. App'x at 454; *see also Dubuc v. Parker*, 168 F. App'x 683, 688 (6th Cir. 2006) (unpublished) (complaint seeking prospective declaratory and injunctive relief could not be construed as seeking damages).

The "course of proceedings" also never suggested that plaintiffs sought damages based on their failure to comply with the Air Force's COVID-19 vaccination requirement. *Shepherd v. Wellman*, 313 F.3d 963, 967-68 (6th Cir. 2002) (quotations omitted). Plaintiffs sought only declaratory and injunctive relief as to the enforceability of that requirement, not any damages associated with the Air Force's enforcement of that requirement before it was enjoined. And the district correctly noted that "[n]one of [that] relief remains available after the recission of the mandate and the Supreme Court's decision instructing this Court to vacate its preliminary injunctions as moot." Order, R. 127, PageID# 5991-92. "[T]his case was framed as a suit for prospective relief," which "may no longer be given." *Id.*, PageID# 5992.

Having failed to request damages in their complaint, plaintiffs cannot avoid mootness by seeking damages now. *See Northern Ohio Chapter of Associated Builders & Contractors, Inc. v. MetroHealth Sys.*, 280 F. App'x 464, 467-68 (6th Cir. 2008) (per curiam) (unpublished) (holding a case to be moot where plaintiffs did not request damages in their complaint, notwithstanding a belated request in their appellate brief). As explained, pp. 7-8, plaintiffs purported to assert damages claims only after the government moved to dismiss their claims as moot following the Air Force's rescission of the vaccination requirement. But as the district court recognized, plaintiffs' "belated damages request designed merely 'to avoid otherwise certain mootness' cannot keep this suit alive." *Maras v. Mayfield City Sch. Dist. Bd. of Educ.*, No. 22-3915, 2024 WL 449353, at *4 (6th Cir. Feb. 6, 2024) (unpublished) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997)); *see also Youngstown Publ'g Co. v. McKelvey*, 189 F. App'x 402, 408 (6th Cir. 2006) (unpublished) (refusing to "read in a … specific claim for damages" where the complaint contained "no specific mention" of that relief, and which the plaintiffs had "raised … to avoid mootness" (citing *Arizonans for Official English*, 520 U.S. at 71)).

Indeed, the district court cited various courts that have similarly held that challenges to the military's now-rescinded COVID-19 vaccination requirement were moot notwithstanding plaintiffs' belated requests for damages. *See* Order,

R. 127, PageID# 5992-93; *see also Bongiovanni v. Austin*, No. 3:22-cv-580, 2023 WL 4352445, at *6 (M.D. Fla. July 5, 2023) (dismissing similar challenge to military's COVID-19 vaccination requirement as moot and rejecting the plaintiffs' argument that the court "could still award damages" because the "Plaintiffs do not assert a claim for damages in their Complaint"); *Bazzrea*, 677 F. Supp. 3d at 662 (similar, rejecting the plaintiffs' "claim for RFRA damages" because "declaratory and injunctive relief are the only types of relief requested in connection with their RFRA claim").

Plaintiffs resist this straightforward conclusion, contending (Br. 25-26) that they sought "broad relief," and alleged injuries associated with "transfer to the Individual Ready Reserve, loss of pay, and loss of retirement benefits." But "nobody would read" those allegations—largely confined to "the complaint's 'facts' section"—"as a request for damages." *Maras*, 2024 WL 449353, at *4; *see* Compl., R. 1, PageID# 5-6, 12. And the assertedly "wide-ranging" request for "injunctive relief " that plaintiffs emphasize, Br. 26, did not include a request for damages. *See* Compl., R. 1, PageID #17-18 (seeking "to halt the ongoing violations of law and to obtain compliance by the Defendants with same" and to obtain "declaratory and injunctive relief" for "First Amendment violations"). In any event, as explained in the next Section, plaintiffs would not be entitled to damages even if they had requested them.

Similarly, the district court correctly rejected plaintiffs' reliance on the "collateral consequences" mootness exception, Br. 18 (quoting *Sibron v. New York*, 392 U.S. 40, 54 (1968)). Under the collateral-consequences exception to mootness, a case is not moot if a court may remedy a plaintiff's "collateral" injury, even if the plaintiff's principal injury has been resolved. *See, e.g.*, *Sibron*, 392 U.S. at 53-59; *EEOC v. Federal Express Corp.*, 558 F.3d 842, 847 (9th Cir. 2009). As the district court explained, plaintiffs' complaint "did not seek" the assertedly collateral relief on which they rely to avoid mootness, and the court properly recognized that it "c[ould not] grant the Plaintiffs' recently requested relief" in any event, for the reasons discussed in Part B below. *See* Order, R. 127, PageID# 5993-94. Plaintiffs' invocation (Br. 18) of *Akers v. McGinnis*, 352 F.3d 1030, 1035 (6th Cir. 2003), where the Court *could* award money damages for a claim brought against state officials under 42 U.S.C. § 1983, is thus inapposite.

B. Plaintiffs Could Not Obtain Back Pay and Retirement Points Even If They Had Requested Them.

The Court can resolve this appeal on the arguments discussed above. But even assuming plaintiffs had sought retrospective relief, that request would fail. As reservists, plaintiffs (and others similarly situated) are not entitled under applicable military pay statutes to the relief they now seek—either back pay or retirement points—for drills they did not attend or work they did not perform.

Nor can plaintiffs recover damages from the government under RFRA. RFRA does not waive the United States' sovereign immunity for claims against military officials sued in their official capacities, as plaintiffs have alleged here. And plaintiffs are mistaken in their attempt to cast the relief they seek as "equitable": those damages constitute compensatory relief, not restitution.

1. Plaintiffs Cannot Recover Back Pay and Retirement Points Under the Military Pay Statutes for Drills They Did Not Attend.

The district court correctly concluded—in a ruling that plaintiffs' opening brief does not contest—that applicable military pay statutes do not entitle plaintiffs Dills and Schuldes, and other similarly situated service members, to pay and benefits for drills they did not attend or training they did not complete.

Those plaintiffs are "active reservist[s] in the United States Air Force." Compl., R. 1, PageID# 5-6. In that capacity, they are required to participate in military drills throughout the year as their service may require (typically, one or two weekends per month), and they may participate in active-duty training (typically, two weeks per year). 10 U.S.C. § 10147(a)(1); *see also Heim v. United States*, 50 Fed. Cl. 225, 238 (2001) ("[A] reservist is not considered to be on full-time active duty."), *aff'd*, 45 F. App'x 921 (Fed. Cir. 2002) (per curiam) (unpublished). But those reservist service members "are paid by the military only for drills actually attended and for active duty for training actually

performed." *Palmer v. United States*, 168 F.3d 1310, 1314 (Fed. Cir. 1999) (citing 37 U.S.C. §§ 204(a)(2), 206(a)(1)). Similarly, reservists can accrue points toward retirement, but only for drills attended or training performed. *See* 10 U.S.C. §§ 12732(a)(2)(B), 12733. Thus, when a reservist is transferred to the Individual Ready Reserve—when they do not participate in drills or training—they are not paid and do not collect points toward retirement (hence that status being characterized as "no pay/no points" status). Watson Decl., R. 27-15, PageID# 1950; Heyen Decl., R. 27-18, PageID# 1978-80; *see also, e.g.*, *Coleman v. Kendall*, No. 22-cv-1822, 2023 WL 4762582, at *2 (D.D.C. July 26, 2023) ("Time spent in [Individual Ready Reserve] also does not count towards the member's retirement.").

It is well established that reservists "ha[ve] no lawful pay claim against the United States for unattended drills or for unperformed training duty," *Palmer*, 168 F.3d at 1314, even if their claim is for "improper discharge from the Reserves," *Martinez v. United States,* 333 F.3d 1295, 1310 n.3 (Fed. Cir. 2003) (en banc); *see also Baird v. United States*, 243 F.3d 558, 2000 WL 1229000, at *1 (Fed. Cir. Aug. 28, 2000) (per curiam) (unpublished) ("[A] reservist is entitled to compensation only if he actually performs his duties." (citing *Dehne v. United States*, 970 F.2d 890, 894 (Fed. Cir. 1992))); *Newport v. Stone*, 97 F.3d 1457, 1996 WL 499089, at *1 (8th Cir. Sept. 5, 1996) (per curiam) (unpublished) (similar);

Banks v. Garrett, 901 F.2d 1084, 1087 (Fed. Cir. 1990) ("[A] reservist is not entitled to compensation … unless he is ordered to perform and actually performs the work. Compensation is not based on status as a reservist." (alterations in original) (quoting *Ayala v. United States*, 16 Cl. Ct. 1, 4 (1988))); *Botello v. United States*, No. 23-174, 2024 WL 3909143, at *8 (Fed. Cl. Aug. 22, 2024) ("[A] reservist can only recover pay … for time on active duty or for drills and training actually performed, regardless of whether he was wrongfully removed from duty." (quotations omitted)).

The district court appropriately recognized this well-established principle, both with respect to plaintiffs' arguments as to back pay, Order, R. 127, PageID# 5994, as well as to retirement points, *id.*, PageID# 5996. Plaintiffs do not acknowledge, much less challenge, that holding on appeal. And because their opening brief never addresses it, plaintiffs have forfeited any challenge to the district court's conclusions that they "cannot recover back pay for drills or training they did not attend, and that "they cannot receive [retirement] credit" for not attending various drill sessions. *Id.*, PageID# 5994, 5996; *see, e.g.*, *Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019) ("[A]n appellant forfeits an argument that he fails to raise in his opening brief.").

Plaintiffs' reliance (Br. 21 n.8, 23) on the Little Tucker Act, 28 U.S.C. § 1346(a)(2), is also beside the point. Plaintiffs note (Br. 23) that the Little Tucker Act "confer[s] jurisdiction on the District Court," but as the Supreme Court has explained, the Little Tucker Act is simply "a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages," *United States v. Testan*, 424 U.S. 392, 398 (1976). Plaintiffs must have instead identified a substantive right on which to base their damages claims that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (quoting *Testan*, 424 U.S. at 400). As explained, the military pay statutes provide no such right.

Plaintiffs' reliance on the "constructive service doctrine" (Br. 22) is also misplaced. Under that doctrine, "military personnel who have been illegally or improperly separated from service are deemed to have continued in active service until their legal separation." *Barnick v. United States*, 591 F.3d 1372, 1379 (Fed. Cir. 2010) (quoting *Christian v. United States*, 337 F.3d 1338, 1347 (Fed. Cir. 2003)). But it does not extend to reservists, like plaintiffs, who were "on inactive status" (and were not active-duty service members) "at the time of the improper action." *Id.*; *see also Reilly v. United States*, 93 Fed. Cl. 643, 649 (2010) (rejecting reservist's claim for "pay for constructive service"). Again, the

district court correctly rejected this theory. Order, R. 127, PageID# 5995. Moreover, because plaintiffs were never *separated* from the military, this doctrine has no application to plaintiffs. *See* pp. 30-31 below.

2. Plaintiffs Cannot Recover Damages under RFRA.

As noted, plaintiffs do not grapple with the district court's conclusion that they are not entitled to relief under the military pay statutes. Instead, plaintiffs seem to contend that RFRA entitles them to back pay and retirement points. That is mistaken—RFRA "does not waive the federal government's sovereign immunity for damages." *Webman v. Federal Bureau of Prisons*, 441 F.3d 1022, 1026 (D.C. Cir. 2006).

Plaintiffs do not dispute (*e.g.*, Br. 23-24) that "the United States, as sovereign, is generally immune from suits seeking money damages." *Department of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48 (2024). That is because "monetary claims" are "potentially disruptive of the public fisc," so Congress must explicitly consent to the federal government's amenability to suit. *United States v. Droganes*, 728 F.3d 580, 589 (6th Cir. 2013). And the district court rightly concluded that no waiver of sovereign immunity

applies here that would entitle plaintiffs to monetary relief. Order, R. 127, PageID# 5996-97.[1]

a. RFRA does not waive sovereign immunity in official-capacity suits for damages. While plaintiffs argue that back pay and retirement points could be awarded under RFRA because "RFRA affords 'appropriate relief,'" Br. 22 (quoting 42 U.S.C. § 2000bb-1(c)), the Supreme Court held that identical language in a closely related statute, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc-2(a), "does not so clearly and unambiguously waive sovereign immunity to private suits for damages," *Sossamon v. Texas*, 563 U.S. 277, 285 (2011). Other courts of appeals have reached the same conclusion as to RFRA, holding that the statute "does not authorize damages against [military] officials in their official capacity" for the kinds of claims that plaintiffs have alleged here. *Lancaster v. Secretary of the Navy*, 109 F.4th 283, 294 (4th Cir. 2024) (collecting authorities from the Ninth,

[1] The waiver of sovereign immunity in the Little Tucker Act is irrelevant to plaintiffs' RFRA claims because RFRA is not a "money-mandating" statute. *Santana v. United States*, 127 Fed. Cl. 51, 58 (2016); *see also Stew Farm, Ltd. v. Natural Res. Conservation Serv.*, 767 F.3d 554, 562 (6th Cir. 2014) ("[A] statute creates a right capable of grounding a claim within the waiver of sovereign immunity if, but only if, it can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." (alteration in original) (quotations omitted)); *Chandler v. U.S. Air Force*, 272 F.3d 527, 529-30 (8th Cir. 2001) (explaining that the court could not order back pay in connection with a service member's claims for equitable relief).

Tenth, and D.C. Circuits); *see also Davila v. Gladden*, 777 F.3d 1198, 1210 (11th Cir. 2015).

Plaintiffs also mischaracterize the Supreme Court's holding in *Tanzin v. Tanvir*, 592 U.S. 43 (2020), by asserting (Br. 19) that "RFRA permits damage claims." The Supreme Court in *Tanvir* held that "injured parties can sue Government officials in their *personal* capacities" under RFRA. 592 U.S. at 47 (emphasis added). That holding did not extend to suing federal officials in their official capacities, however—indeed, the Second Circuit held as much in *Tanvir*, and the Supreme Court's decision did not disturb the court of appeals' sovereign-immunity holding. *Tanvir v. Tanzin*, 894 F.3d 449, 461 (2d Cir. 2018). The district court correctly noted that "Plaintiffs only brought suit against Defendants in their official capacities," and plaintiffs "have not provided authority that sovereign immunity was waived for this matter." Order, R. 127, PageID# 5997.

b. Plaintiffs attempt to evade this well-established understanding of RFRA, arguing that "Congress waived sovereign immunity for equitable claims, which extend to back pay." Br. 23. But plaintiffs fail to grapple with the district court's conclusion that, "even assuming that RFRA allows servicemembers to secure equitable relief against the military for wrongful conduct, [plaintiffs] still cannot receive back pay for the drills [at issue] because

they did not participate in them." Order, R. 127, PageID# 5996; *see also id.*, PageID# 5996-97 (concluding that sovereign immunity also was not waived as to retirement points).

Plaintiffs instead rely primarily on a dissent from the en banc D.C. Circuit's decision in *Hubbard v. Administrator, EPA*, 982 F.2d 531 (D.C. Cir. 1992) (en banc)—which did not involve RFRA claims but instead involved claims under the Administrative Procedure Act (APA). *See* Br. 24 (citing *Hubbard*, 982 F.2d at 547-48 (Edwards, J., dissenting)). Although the *Hubbard* dissent opined that "[a]n award of instatement and back pay … constitutes specific restitution" that could fall within the APA's waiver of sovereign immunity for equitable relief, *Hubbard*, 982 F.2d at 547-48 (Edwards, J., dissenting), the controlling opinion held that back pay can constitute "restitution[]" only if the plaintiffs "met all the pre-existing legal obligations to receive a cash entitlement from the government, at the time they were denied it," *id.* at 538 (majority opinion). Otherwise, back pay amounts to "compensatory damages" that "would return to [plaintiffs] the 'value' of the job from which [they were] wrongfully excluded." *Id.* at 539 n.12. The D.C. Circuit has subsequently reiterated the *Hubbard* majority's holding, explaining that back pay should not "generally be characterized as restitutionary," *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 747 (D.C. Cir. 1995); and noting that

"[m]oney damages are the 'classic remedy' for consequential losses," *Department of the Army v. FLRA*, 56 F.3d 273, 276 (D.C. Cir. 1995).

Consistent with these principles, the damages that plaintiffs seek here are compensatory, not restitutionary. That is, damages for the period when plaintiffs were assigned to the Individual Ready Reserve would "compensate [plaintiffs] for the costs of [their alleged] injury," *Pembaur v. City of Cincinnati*, 882 F.2d 1101, 1104 (6th Cir. 1989), not "restor[e] [them] to a position [they] occupied before" they filed suit, *United States v. Lively*, 20 F.3d 193, 202 (6th Cir. 1994) (quoting *Hughey v. United States*, 495 U.S. 411, 416 (1990)); *see also Haines v. Federal Motor Carrier Safety Admin.*, 814 F.3d 417, 425 (6th Cir. 2016) (distinguishing an "action at law," seeking compensatory damages, from an "equitable action" (quotations omitted)). After they obtained a preliminary injunction, plaintiffs could again participate in drills and trainings, making them eligible for "payment for services at a future time," but that injunctive relief did not "require[] the Air Force to compensate" plaintiffs for alleged past harms. *Veda, Inc. v. U.S. Dep't of the Air Force*, 111 F.3d 37, 40-41 (6th Cir. 1997). The remedies that they have belatedly requested in an effort to avoid mootness are classic compensatory "damages for loss sustained." *Id.* at 39; *see also Sosa v. Secretary, Dep't of Def.*, 47 F. App'x 350, 351 (6th Cir. 2002) (unpublished) (holding that the court lacked jurisdiction to grant the plaintiff military service

member's relief, whose "main objective is to recover additional benefits from the federal government").

c. That plaintiffs do not seek "reinstatement"—because they were never separated from the military, just temporarily assigned to the Individual Ready Reserve—only underscores that the relief they seek is not equitable. *See* Schuldes Decl., R. 125-1, PageID# 5981 (stating that plaintiffs "missed drill weekends" in 2022); Dills Decl., R. 125-2, PageID# 5983 (same). Plaintiffs are thus mistaken to rely (Br. 21, 24-26) on cases describing back pay associated with reinstatement as equitable relief, *see Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988).

Plaintiffs are also wrong to rely (Br. 19-21, 23-24) on *Schelske v. Austin*, No. 6:22-cv-49, 2023 WL 5986462 (N.D. Tex. Sept. 14, 2023). That court determined that "no remediable injury traceable to the [military's] conduct remains against any *non-separated* plaintiff," so claims asserted by those plaintiffs were moot—as plaintiffs' are here. *Id.* at *1 (emphasis added); *see also id.* at *17-19, *23-25 (concluding that the plaintiffs who were not separated from the military lacked standing because "they fail to demonstrate any continuing injury that the Court can remedy"); pp. 12-16 above. That court further explained—relying on *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 570 (1990)—that the plaintiff-reservists' request for back

pay was "not money wrongfully held by the [military] but, rather, wages [the plaintiffs] would have received had they been promoted." *Schelske*, 2023 WL 5986462, at *31 (citing *Terry*, 494 U.S. at 570-71). Similarly here, plaintiffs' belatedly requested back pay and retirement points are benefits "they would have received had they" not been transferred to the Individual Ready Reserve, but plaintiffs are not entitled to that relief. The *Schelske* court further explained that an active-duty service member who was separated from the military and who sought reinstatement and back pay could "seek[] relief related to … discharge," but sovereign immunity barred recovery of back pay for service members who had merely been denied promotions. *Id.* at *31-33. But as the district court correctly explained here, plaintiffs are neither active-duty service members, nor were they separated from the Air Force. Order, R. 127, PageID# 5995. Contrary to plaintiffs' statement (Br. 20), "[t]he facts of *Schelske*" are thus distinctly not "the facts here."

d. Plaintiffs further contend (Br. 23, 27) that the government "waived" a "sovereign immunity defense" under RFRA by not raising it in its answer. Not so. This Court has explained that "[s]overeign immunity is jurisdictional in nature," *Gaetano v. United States*, 994 F.3d 501, 506 (6th Cir. 2021) (quotations omitted), and "[t]he doctrine of sovereign immunity removes subject matter jurisdiction in lawsuits against the United States unless the government has

consented to suit," *Hohman v. Eadie*, 894 F.3d 776, 784 (6th Cir. 2018) (quotations omitted). Accordingly, "[l]ike subject-matter jurisdiction, a sovereign-immunity defense may be asserted for the first time on appeal, and it may (and should) be raised by federal courts on their own initiative." *Nair v. Oakland Cty. Cmty. Mental Health Auth.*, 443 F.3d 469, 474 (6th Cir. 2006) (citation omitted); *see also id.* at 474-77 (explaining that a court may consider immunity arguments even if not raised as a threshold defense). The government had no reason to argue in its answer that plaintiffs had not identified a waiver of sovereign immunity because plaintiffs' complaint could not fairly be read to contemplate any demand for monetary damages. *See* pp. 16-20 above. The government raised sovereign immunity promptly after plaintiffs belatedly asserted that they sought back pay and retirement points. *See* Mot., R. 111, PageID# 5408-09; *see also* Defs.' Mem. Regarding Mootness, R. 124, PageID# 5955.

Plaintiffs' argument that the government is judicially estopped from denying the availability of damages (Br. 27-31) also fails for numerous reasons. For one thing, it misunderstands the government's previous arguments in district court. In opposing plaintiffs' motion for a preliminary injunction, the government argued that plaintiffs had not established irreparable harm because "military administrative and disciplinary actions, including separation, are not

irreparable injuries because the service member could later be reinstated and provided back pay if he prevailed on his claim." Defs.' Opp'n to Pls.' Emergency Mot. for TRO & Prelim. Inj., R. 27, PageID# 1551 (emphasis omitted). And the government cited cases in which service members challenged their *separation* from the military. In contrast to plaintiffs' claims here, none of those cases involved a reservist challenging an assignment to the Individual Ready Reserve or a reservist's suit for back pay based on drills or training in which he did not participate.

Plaintiffs' argument further fails because it misunderstands the application of judicial estoppel. The doctrine bars a litigant from changing its position where a "court adopted the contrary position either as a preliminary matter or as part of a final disposition." *Browning v. Levy*, 283 F.3d 761, 775 (6th Cir. 2002) (quotations omitted). The district court did not adopt the government's arguments about irreparable harm when it granted a preliminary injunction; to the contrary, the court reasoned that, even assuming monetary damages would be available, plaintiffs were entitled to relief because they would be irreparably harmed by a violation of the First Amendment or RFRA. *Doster v. Kendall*, 596 F. Supp. 3d 995, 1020 (S.D. Ohio 2022). Plaintiffs note that the district court's preliminary injunction did not contemplate "restoration of lost pay and lost points," Br. 30, but that is for the simple reason that

plaintiffs had not sought that relief, *see* Pls.' Mot. for an TRO & Prelim. Inj., R. 13, PageID# 578-59; Proposed Order Granting Pls.' Mot. for a Prelim. Inj., R. 13-16, PageID# 814-15. In any event, plaintiffs never raised any judicial-estoppel argument in district court, despite filing two briefs on mootness, *see generally* Pls.' Mem. in Opp'n to Defs.' Request to Dismiss for Mootness, R. 112, PageID# 5821-46; Pls.' Mem. Regarding Mootness, R. 125, PageID# 5966-78; and "the failure to raise an issue before the district court usually renders it forfeited on appeal," *Libertarian Party of Ohio v. Wilhem*, 988 F.3d 274, 278 (6th Cir. 2021).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7,481 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Calisto MT 14-point font, a proportionally spaced typeface.

/s/ Casen B. Ross
CASEN B. ROSS

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

/s/ Casen B. Ross
CASEN B. ROSS

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rule 28(b)(1)(A)(i), the government designates the following district court documents as relevant:

Record Entry	**Description**	**Page ID # Range**
R 1	Complaint	1-22
R 13	Motion for Preliminary Injunction	578-99
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R 27-14	Declaration of Colonel Elizabeth M. Hernandez	1940-46
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ADDENDUM

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10 U.S.C. § 12732

§ 12732. Entitlement to retired pay: computation of years of service

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

* * *

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

(C) Points at the rate of 15 a year for membership—

(i) in a reserve component of an armed force,

(ii) in the Army or the Air Force without component, or

(iii) in any other category covered by subsection (a)(1) except a regular component.

* * *

10 U.S.C. § 12733

§ 12733. Computation of retired pay: computation of years of service

For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

(1) The person's days of active service.

(2) The person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.

(3) One day for each point credited to the person under clause (B), (C), (D), or (F) of section 12732(a)(2) of this title, but not more than –

(A) 60 days in any one year of service before the year of service that includes September 23, 1996;

(B) 75 days in the year of service that includes September 23, 1996, and in anysubsequent year of service before the year of service that includes October 30, 2000;

(C) 90 days in the year of service that includes October 30, 2000, and in any subsequent year of service before the year of service that includes October 30, 2007; and

(D) 130 days in the year of service that includes October 30, 2007, and in any subsequent year of service.

(4) One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title.

(5) One day for each point credited to the person under subparagraph (F) of section 12732(a)(2) of this title.

(6) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 12732(a)(1) of this title, except a regular component.

37 U.S.C. § 204

§ 204. Entitlement

(a) The following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title—

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 10302, 10305, 10502, or 12402 of title 10, or section 503, 504, 505, or 506 of title 32.Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

* * *

37 U.S.C. § 206

§ 206. Reserves; members of National Guard: inactive-duty training

(a) Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay--

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe;

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing—

(i) active duty; or

(ii) inactive-duty training;

(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member); or

(C) in line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training; or

(4) for each of six days for each period during which the member is on maternity leave.

* * *