No. 24-306

In the Supreme Court of the United States

MICHAEL BUSH, ET AL.,

Petitioners,

v.

LINDA FANTASIA, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioners Pro Se

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September 13, 2024
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QUESTIONS PRESENTED

Town administrators imposed two distinct face mask mandates that included various secular exemptions. Certain aggrieved residents sued pro se for failure to accommodate their disabilities and religions, seeking declaratory, injunctive, and monetary relief in specific amounts. The Town moved under Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim eligible for relief. The District Court instead sua sponte dismissed the entire lawsuit on the grounds of legal standing and mootness, while denying the pro se plaintiffs the hearing they requested and opportunity to amend their original complaint. The questions presented are:

1. When plaintiffs are pro se laypeople, which, if any, of the following are permissible conditions of dismissal under Fed. R. Civ. P. 12(b)(1) or 12(b)(6): a) the dismissal is sua sponte, b) the plaintiffs are denied their requested hearing, or c) the plaintiffs are denied opportunity to amend their complaint in response to the court's identification of deficiencies?

2. When a court dismisses a case as moot, which, if any, of the following conditions are permissible: a) the defendants stated they may reengage in the challenged conduct, b) the court draws inferences in favor of the defendants, c) the plaintiffs sought monetary damages, d) the plaintiffs sought injunctive relief, or e) the plaintiffs sought declaratory relief?

PARTIES TO THE PROCEEDINGS

Petitioners[1] and Plaintiffs-Appellants[2] below

- Michael Bush
- Lisa Tiernan
- Susan Provenzano
- Robert Egri
- Katalin Egri
- Monica Granfield
- Ann Linsey Hurley

Respondents and Defendants-Appellees below

In Their Individual and Official Capacities:

- Linda Fantasia
- Martha Feeney-Patten
- Anthony Mariano
- Catherine Galligan
- Jean Jasaitis Barry
- Patrick Collins
- David Erickson
- Timothy Goddard

And

- Town of Carlisle

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[1] The Petitioners Pro Se are all individuals.

[2] Plaintiff-Appellant Linda Taylor is not a signatory to this petition.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the First Circuit

No. 22-1755

Michael Bush; Linda Taylor; Lisa Tiernan; Susan Provenzano; Robert Egri; Katalin Egri; Monica Granfield; Ann Linsey Hurley, *Plaintiffs-Appellants,* Joseph Provenzano; Kate Henderson; Ian Sampson; Anita Opitz, *Plaintiffs,* v. Linda Fantasia; Martha Feeney-Patten; Anthony Mariano; Catherine Galligan; Jean Jasaitis Barry; Patrick Collins; David Erickson; Timothy Goddard; Town of Carlisle, *Defendants-Appellees,*

John Doe; Jane Doe, *Defendants.*

Final Judgment: April 18, 2024

Rehearing Denial: June 18, 2024

U.S. District Court for the District of Massachusetts

No. 21-cv-11794-ADB

Michael Bush, et. al., *Plaintiffs,* v. Linda Fantasia, et. al., *Defendants.*

Memorandum and Order: September 12, 2022

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PETITION FOR A WRIT OF CERTIORARI

The Petitioners respectfully seek a writ of certiorari to review the judgment of the U.S. Court of Appeals for the First Circuit.

OPINIONS BELOW

The Opinion of the District of Massachusetts, is found at 2022 WL 4134501 and included in the Appendix ("App.") at 4a. The Judgment of the U.S. Court of Appeals for the First Circuit, is included at App.1a. These opinions were not designated for publication by the courts below.

JURISDICTION

The First Circuit entered judgment on April 18th, 2024 (App.1a), and denied a timely filed petition for rehearing on June 18th, 2024. (App.31a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

42 U.S.C. § 1983, in relevant part

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any . . . person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured. . . .

U.S. Const. art. III, § 2, in relevant part

> The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . .

INTRODUCTION

The District Court did not just dismiss all of the Plaintiffs' legal claims. It delivered its disorienting sucker punch sua sponte, ostensibly on the grounds of legal standing. Despite the Defendants stating they may repeat their challenged conduct and the Plaintiffs' request for monetary damages, the District Court also sua sponte declared the case moot. And to ensure the Plaintiffs—who are pro se laypeople—could not recover from those blows, the District Court denied them the hearing that both they and the Defendants requested, and denied them opportunity to respond and amend their original complaint.

The 1st Circuit Court of Appeals affirmed all of that and a slew of other conduct this Court prohibits. The 1st Circuit's minimally explained affirmance is in direct conflict with this Court's precedents on mootness, constitutional rights, and qualified immunity. It also conflicts with other circuits' decisions on those issues. It leaves judges in the 1st Circuit's district courts to wonder, "Will the Court of Appeals affirm my abrupt dismissal of lawsuits I dislike? Or won't it?"

What prompted these conflicts to arise within the courts was a culprit this Court has had to strike down before: government mandates of dubious legality issued in response to COVID-19.

The 1st Circuit's decision empowers government personnel—without statutory authority and without medical credentials—to impose unapproved, unsafe medical devices on people. Further, the decision allows those medical mandates to bar people from buildings

indefinitely due to the people's disabilities and religions. (As if to say "To heck with the Americans with Disabilities Act." And with it went the Constitution that this Court instructed per curiam in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 68 (2020) cannot be "put away and forgotten" even in a pandemic.)

To reach this result, the 1st Circuit relied on undisclosed sources of information that this Court holds are impermissible at the pleading stage. The reliance on such forbidden sources by both the District Court and the Court of Appeals underscores the unsoundness of the decisions.

This Court has not hesitated to summarily overturn circuit court decisions, like this one, that disregard the applicable pleading standard in determining qualified immunity. Here, the 1st Circuit makes the same error as the lower courts made in *Lombardo v. City of St. Louis, Missouri*, 141 S.Ct. 2239 (2021) (per curiam), *Sause v. Bauer*, 138 S.Ct. 2561 (2018) (per curiam), and *Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam). In all three, this Court summarily reversed because the circuit courts refused to accept well-pleaded facts and draw reasonable inferences in favor of the nonmoving party in determining qualified immunity.

The public importance of this case cannot be overstated. The 1st Circuit did not merely condone government personnel issuing ultra vires mandates to bar people from public and private buildings in violation of long-established civil rights. The 1st Circuit affirmed the dismissal despite it being in violation of rules of civil procedure and in conflict with other circuits' and this Court's precedents regarding pro se plaintiffs, sua sponte dismissals, and mootness.

This Court's review is urgently needed regarding two procedural issues whose lack of clarity jeopardizes many lawsuits before they can even reach discovery: 1) the proper bounds of sua sponte dismissals, and 2) exceptions to mootness.

STATEMENT OF THE CASE

In 2021, trouble brewed in the bucolic, otherwise sleepy Town of Carlisle, Massachusetts.

Purportedly in response to COVID-19, the Town's public library imposed a mandate barring anyone over the age of two years unless they wore a face mask—an unapproved medical device for which the federal agency with regulatory authority explicitly prohibited claims of infection prevention or reduction. (App.212a). The mandate made no accommodation for people's disabilities or religions. (App.193a). The library neither had any legal authority to impose such a mandate, nor has it ever asserted that it has such authority.

Not to be outdone, several months later the Town's Board of Health imposed a different face mask mandate of its own. Unlike the library's mandate, the Board of Health's mandate allowed no exemptions for infants or people of any particular age. What it did allow exemptions for were disabilities and people in their own private work spaces. (App.199a). But unlike the library's mandate that barred people only from the library, the Board of Health's mandate barred people from all indoor spaces open to the public. And despite its exemptions for other reasons, it allowed no such accommodation of people's religions. (App.199a).

The Board of Health pointed to two unrelated Massachusetts laws for its supposed authority to impose such a mandate. (App.199a). But several applicable canons of construction revealed the Board's interpretation of the laws to be absurd. (App.109a-113a). And the Board of Health ignored the laws that actually do authorize and require it to take other actions in response to an outbreak of infectious disease. (App.109a-111a).

Several aggrieved residents signed and delivered letters to the Town administrator, the Town's health agent, and the director of the public library. The letters informed the Town personnel that they did not have legal authority to impose such mandates, face mask usage had documented harms, and that the mandates unlawfully barred the aggrieved residents from buildings due to their disabilities and religions. The letters gave the Town personnel 15 days to rescind or at the very least bring the mandates into conformance with applicable civil rights laws. (App.201a, 212a, 223a).

The only response was a single-sentence email message from the health agent merely acknowledging receipt of the letter. But the Town personnel refused to rescind their mandates, correct their ongoing civil rights violations, or even address the aggrieved residents' concerns. (App.80a).

Being pro se laypeople, the aggrieved residents learned as best they could how to file a lawsuit in federal district court for violation of their civil rights. They filed that suit using the template for a pro se non-prisoner civil rights complaint provided by the district court. They named as Defendants the Town and several Town personnel in both their official and individual capacities. Their complaint requested declaratory relief, injunctive

relief, and specific amounts of monetary damages. (App. 168a).

Now defendants, the Town and its personnel filed a motion solely under Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim eligible for relief. (App.235a). The pro se Plaintiffs timely filed an opposition to that motion. (App.284a).

Months later, the Board of Health lifted its challenged mandate and stated in its public meeting that it may at its discretion reimpose such a mandate. (App. 358a-365a). Shortly thereafter, the Defendants filed an *ex parte* letter in the court in violation of the local rule of civil procedure prohibiting the filing of such documents unless they accompany a motion. (App.42a-43a, 105a). The letter informed the court that the Board of Health had lifted its challenged mandate. But the letter made no mention of the Board's statement that it may reimpose the mandate whenever it wishes. (App.341a).

The pro se Plaintiffs filed an emergency motion asking the court to strike the improperly filed document. (App.343a). The court refused to strike it. Concerned that the illicit letter was a tactic to stealthily prompt the court to declare the case moot, the pro se Plaintiffs filed a letter of their own. In it, the pro se plaintiffs cited a good deal of precedential case law from this Court that precludes this case being moot. (App.348a).

Though both the Plaintiffs and the Defendants had requested a hearing on the Defendants' motion to dismiss the legal claims, the District Court denied them any hearing. (App.237a, 339a). And though the pro se Plaintiffs did not plead their claims with a great deal of precision, the District Court did recognize and acknowledge that the Plaintiffs were attempting to plead

violations of their rights under the Americans with Disabilities Act and the Free Exercise Clause of the 1st Amendment. (App.18a, 24a). Despite the Defendants having filed a motion to dismiss only under Fed. R. Civ. P. 12(b)(6) for failure to state a claim eligible for relief, the District Court sua sponte dismissed all the Plaintiffs' legal claims on the grounds of legal standing—which is Fed. R. Civ. P. 12(b)(1), not 12(b)(6). (App.10a-11a, 99a). The District Court also sua sponte declared the entire case moot despite the Defendants never having filed such a motion; the Defendants maintaining they may reimpose such mandates; and the Plaintiffs' requests for injunctive, declaratory, and monetary relief in specific amounts. (App.8a). Ensuring that the pro se laypeople could not recover from that complete dismissal, the District Court denied the pro se Plaintiffs any opportunity to respond or amend their original complaint. (App.30a).

The pro se Plaintiffs filed a timely appeal in the 1st Circuit Court of Appeals, which had jurisdiction under 28 U.S.C. § 1291. (App.75a). They also filed eight citations of supplemental authorities in support of their appeal, to which the Defendants did not file any responses. (App.154a). The only amicus curiae briefs filed were in support of the Plaintiffs, to which the Defendants did not file any responses. (App.119a).

The 1st Circuit Court of Appeals completely affirmed the District Court's decision, without issuing an opinion. Instead, it issued a judgment with a single paragraph. (App.1a).

Since the 1st Circuit's judgment conflicted with precedents from this Court and the 1st Circuit itself, the pro se Appellants timely filed a combined petition for panel rehearing/petition for rehearing en banc.

(App.51a). The 1st Circuit denied the Appellants a rehearing. (App.31a).

REASONS FOR GRANTING THE PETITION

I. The 1st Circuit Violated This Court's Precedents by Declaring This Case Moot.

A. The 1st Circuit Violated This Court's Holding That the Plaintiffs' Demand for Money Absolutely Precludes Mootness.

In their letter to the District Court regarding mootness, their original brief to the 1st Circuit Court of Appeals, and their petition for rehearing, the pro se Plaintiffs explained that this Court has repeatedly made clear that any chance of monetary relief absolutely keeps a case from being moot. (App.52a, 105a, 349a-350a). *Mission Product Holdings, Inc. v. Tempnology*, LLC, 139 S.Ct. 1652, 1660 (2019):

> For better or worse, nothing so shows a continuing stake in a dispute's outcome as a demand for dollars and cents. *See* 13C C. Wright, A. Miller & E. Cooper, FEDERAL PRACTICE AND PROCEDURE § 3533.3, p. 2 (3d ed. 2008) (Wright & Miller) ("[A] case is not moot so long as a claim for monetary relief survives"). Ultimate recovery on that demand may be uncertain or even unlikely for any number of reasons, in this case as in others. But that is of no moment. If there is any chance of money changing hands, [the] suit

remains live. *See Chafin*, 568 U.S. at 172, 133 S.Ct. 1017.

Yet despite the Plaintiffs having requested monetary damages, the District Court sua sponte declared the entire case moot. And the Court of Appeals affirmed the declaration of mootness, while ignoring this Court's clear precedent.

B. The 1st Circuit Declared Mootness Despite the Defendants Asserting They May Repeat Their Challenged Conduct, Which Violates Two of This Court's Mootness Exceptions.

The Defendants not only failed to meet their "'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again . . . " *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.* (TOC), Inc., 528 U.S. 167, 189 (2000). They actually stated—as was documented in public meeting minutes provided to the District Court—that the Board of Health was lifting its mandate so that it could reimpose the mandate at its discretion.

The capable of repetition while evading judicial review and voluntary cessation exceptions to mootness this Court has articulated clearly applied here. But despite the Plaintiffs having cited those facts and this Court's precedents, the District Court and the Court of Appeals heeded none of it. Instead, while failing to cite anything in the record or anything for support, the Court of Appeals inexplicably declared, "Post-mandate developments have only made this controversy less likely to recur in its original form."

C. The Plaintiffs Requested Injunctive Relief and the 1st Circuit Ignored That This Court Holds That Such a Request Precludes Mootness.

The Plaintiffs requested injunctive relief from the unlawful COVID-19 mandates and informed both the District Court and the Court of Appeals of this Court's relevant precedent entitling them to that relief. (App. 90a):

> [E]ven if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case. And so long as a case is not moot, litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants "remain under a constant threat" that government officials will use their power to reinstate the challenged restrictions." *Roman Catholic Diocese*, 592 U.S., at —, 141 S.Ct., at 68; *see also High Plains Harvest Church v. Polis*, 592 U.S. __, 141 S.Ct. 527, 208 L.Ed.2d 503 (2020).

Tandon v. Newsom, 141 S.Ct. 1294, 1297 (2021).

But neither inferior court would follow this Court's instruction, with the 1st Circuit Court of Appeals defiantly asserting, "The appellants' requests for injunctive and declaratory relief are moot." (App.2a)

II. The 1st Circuit's Decision Conflicts with the 9th Circuit's Decision on Mootness, and Not Even the 9th Circuit Is Unanimous on That.

Unlike the 1st Circuit, the 9th Circuit recently held that because the government defendant might reimpose its COVID-19 mandate, it:

> . . . has not carried its "formidable burden" to show that it did not abandon this policy because of litigation, and thus that "no reasonable expectation remains that it will return to its old ways." *Cf. FBI v. Fikre*, 601 U.S. 234, 241 (2024) (cleaned up). So this case is not moot.

Health Freedom Def. Fund v. Carvalho, No. 22-55908, 5 (9th Cir. Jun. 7, 2024)

But revealing a striking lack of clarity as to whether rescission of a challenged mandate moots a case, that opinion was only of two of the three judges on that 9th Circuit panel. Judge Hawkins dissented, explaining that, "Because there is no longer any policy for our court to enjoin . . . " he would hold that the action is moot.

Such disunity between circuits and within circuits regarding this basic factor that is critical to the survival of many lawsuits necessitates firm corrective instruction from this Court.

III. By Upholding the Sua Sponte Dismissal That Denied the Pro Se Plaintiffs a Hearing and Opportunity to Amend Their Original Complaint, the 1st Circuit Exacerbated Conflicts Between the Circuits.

A. Contrary to the 1st Circuit, the 2nd and 11th Circuits Hold That Complaints May Not Be Dismissed Sua Sponte Without Giving the Plaintiffs an Opportunity to Be Heard and to Respond.

The 2nd Circuit held in *Perez v. Ortiz*, 849 F.2d 793 (2d Cir. 1988) that complaints may not be dismissed sua sponte without giving the plaintiffs an opportunity to be heard and an opportunity to amend their complaint. The 2nd Circuit reiterated that holding in *Ethridge v. Bell*, 49 F. 4th 674 (2d Cir. 2022).

The 11th Circuit agrees with the 2nd Circuit. *See, e.g., Jefferson Fourteenth Assocs. v. Wometco de P.R., Inc.*, 695 F.2d 524, 527 (11th Cir. 1983) (requiring that plaintiff have the opportunity to file a written response and present arguments at a hearing before sua sponte dismissal); *cf Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015) (requiring notice and opportunity to respond prior to a dismissal sua sponte, but also stating that this requirement is excepted "when amending the complaint would be futile or when the complaint is patently frivolous").

B. The 9th Circuit Holds that District Courts Must Give Pro Se Plaintiffs Leave to Amend the Complaint to Cure the Purported Deficiencies the Court Identifies

The 9th Circuit would prohibit what the District Court did in this case. The 9th Circuit holds that whether or not a district court's dismissal of a complaint is sua sponte, if the plaintiff is pro se, the district court must give the plaintiff an opportunity to amend the complaint in response to the court's identification of deficiencies. *Akhtar* v. *Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012):

> . . . "before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.1992) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987), superseded on other grounds by statute as stated in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir.2000)) (en banc). A district court should not dismiss a pro se complaint without leave to amend unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988) (per curiam) (internal quotation marks omitted).

IV. This Court Has Instructed That Pro Se Pleadings Are to Be Construed "Liberally" but Has Failed to Set in Place Protections Against Dismissal of Pro Se Complaints, Such as Those the 9th Circuit Reasonably Requires.

This Court has instructed how pro se pleadings are to be construed:

> A document filed pro se is "to be liberally construed," *Estelle*, 429 U.S., at 106, 97 S.Ct. 285, 50 L. Ed. 2d 251, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). *Cf.* Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

Erickson v. Pardus, 551 U.S. 89, 94 (2007)

But this Court has, as of yet, failed to articulate protections from dismissal of pro se complaints. This Court's lack of instruction to protect the legal claims of pro se laypeople leaves all such plaintiffs vulnerable in the courts. The 9th Circuit's requirement that a district court should not dismiss a pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment provides a sensible model this Court should instruct all the circuits to follow.

A. The Scourge of Sua Sponte Dismissals Has Been Afflicting Plaintiffs in Federal Courts for Years, as Reflected by Law Journal Articles Arguing for This Court to Ban the Practice and Suggesting a Solution.

In *Justice In Full Is Time Well Spent: Why The Supreme Court Should Ban Sua sponte Dismissals*, 36 QUINNIPIAC LAW REVIEW 25 (2017), Michael J. Donaldson addressed federal courts' sua sponte dismissals of complaints. Donaldson noted the circuits' splits on this issue:

> The circuits are split . . . on whether a judge must give a plaintiff notice and an opportunity to be heard before [deciding an issue the court raised]. And they are further split on the consequences of a judge's failure to give notice.

Donaldson also highlighted the serious problems sua sponte dismissals cause:

> There is a lot wrong with sua sponte dismissals. They are inconsistent with the adversary system, and change the judge's role from referee to contestant. They can undermine respect for the legal system. And they increase the likelihood of errors, leading to unnecessary appeals and a waste of judicial resources. But most importantly, they lack the very due process the courts are supposed to safeguard.

Sua sponte Dismissals: Is Efficiency More Important Than Procedural Fairness? 89 UMKC L. REV. 243, Winter 2020 by Blake R. Hills also addressed the circuits' splits on and problems created by sua sponte dismissals. Hills asserted that, "The time has come for the Supreme Court to expressly recognize

that basic notions of fairness require all courts to provide notice and an opportunity to respond before dismissing a case sua sponte."

Both Donaldson and Hills concluded that this Court should ban sua sponte dismissals. Hills further emphasized that, "Due process and fairness allow for no other rule."

The Petitioners ask this Court to instruct the circuits to employ Donaldson's easy solution:

> The simplest way to proceed would be to do exactly what the court is inclined to do—draft an order and explanatory opinion dismissing the case—but, before filing it, send the draft opinion and order to the plaintiff, giving the plaintiff a short period of time to respond either by amendment or argument.

V. The 1st Circuit Violated This Court's Clear Instruction That Whether a Federal Constitutional or Statutory Right Was Clearly-Established Determines Only Whether the Government Personnel Are Personally Liable for Its Violation, Not Whether the Plaintiffs Are Entitled to Relief.

In its perfunctory judgment's single paragraph, the Court of Appeals erroneously conflated violation of a constitutional right with violation of a clearly-established right:

> To the extent that intervening caselaw may have strengthened the claim for damages from the Board's rescinded mandate, that possibility (concerning which we express no opinion) only underscores the fact that no clearly estab-

> lished Constitutional right was violated by appellees during the period in question.

(App.2a).

But the Plaintiffs/Appellants had already provided to the 1st Circuit Court of Appeals this Court's unmistakably clear instruction that whether a federal constitutional or statutory right was clearly-established when government personnel violated it determines only whether those personnel face individual liability—not whether plaintiffs are entitled to relief. Yet the Court of Appeals paid no heed to that instruction in either the Appellants' brief or their petition for rehearing. (App.62a, 114a).

The Court of Appeals also ignored that some of the Plaintiffs were attempting to plead an Americans with Disabilities Act claim—a statutory, not a constitutional right.

VI. The 1st Circuit's Issuance of a Legally and Willfully Flawed Single Paragraph in Lieu of a Published Opinion Is the Devious Conduct That Justices Thomas and Scalia Opined Should Trigger Review by This Court.

Dissenting from the denial of certiorari, Justices Thomas and Scalia opined that when appeals courts avoid publishing an opinion so as to keep from establishing precedent they know is improper, that should prompt this Court to grant certiorari:

> True enough, the decision below is unpublished and therefore lacks precedential force in the Fourth Circuit. *Minor v. Bostwick Labs., Inc.*, 669 F.3d 428, 433, n. 6 (C.A.4 2012). But that in itself is yet another disturbing aspect of

> the Fourth Circuit's decision, and yet another reason to grant review. The Court of Appeals had full briefing and argument on Austin's claim of judicial vindictiveness.

Plumley v. Austin, 135 S.Ct. 828, 831 (2015).

Likewise, the 1st Circuit Court of Appeals had full briefing on this appeal yet issued a perfunctory judgment of affirmance with merely a single paragraph. (App.2a). And in so doing the 1st Circuit stealthily avoided creating precedent while blatantly violating much of this Court's unambiguous instructions on critical issues including exceptions to mootness, civil rights, and qualified immunity.

If this Court allows the 1st Circuit Court of Appeals to get away with casting plaintiffs' rights and this Court's clear instruction aside in this manner, the 1st Circuit and other circuits will learn to play such games whenever they want to do what they know is wrong.

VII. The 1st Circuit's Judgment Cannot Be Reconciled with This Court's Rulings and Condones the Dangerously Tyrannical Conduct of Which Justice Gorsuch Ominously Warned.

Observing this decade's extraordinary pattern of tyranny combined with complacency by the courts, Justice Gorsuch warned of its grave implications for our country:

> Since March 2020, we may have experienced the greatest intrusions on civil liberties in the peacetime history of this country . . . . [] rule by indefinite emergency edict risks leaving all of us with a shell of a democracy and civil liberties just as hollow.

Arizona, et al. v. Alejandro Mayorkas, et al. (598 U.S. __ 2023, Statement of GORSUCH, J.)

Part of that troubling trend in recent years, this case springs from local government personnel without relevant expertise issuing ultra vires medical mandates that barred people from buildings in Town due to their disabilities and religions—with those government personnel continuing to willfully violate those civil rights even after being informed of their violations. (App.80a). And so as to avoid correcting any of those violations, the inferior courts in this case stubbornly and stealthily refused to heed this Court's applicable instruction.

VIII. The 1st Circuit's Affirmance of Abrupt Sua Sponte Dismissal and Haphazard Declaration of Mootness Gives District Courts Free Rein to Forcefully Dismiss Virtually Any Lawsuit They Dislike.

Reassured by the Court of Appeals' tacit approval of abrupt sua sponte dismissal and willful violation of this Court's unambiguous instruction on mootness, the courts in the 1st Circuit now have free rein to forcefully dismiss virtually any lawsuit they dislike.

IX. By Treating Invading Aliens with More Sympathy and Their Suspect Legal Claims with More Regard than It Treated the U.S. Citizens in This Case, the District Court Displayed Animus and Bias That This Court Has Warned Undermines Legitimacy of the Courts.

This Court has warned that it is critical that courts' procedures be consistent and impartial, and that errors be corrected:

> In broad strokes, the public legitimacy of our justice system relies on procedures that are "neutral, accurate, consistent, trustworthy, and fair," and that "provide opportunities for error correction."

Rosales-Mireles v. United States, 138 S.Ct. 1897, 1908 (2018).

This Court has also cautioned that deprivations of process are particularly essential for courts to correct:

> This Court's prior GVR practice recognizes that deprivations of process, particularly where the stakes for individual litigants are high, are unjust in and of themselves. Such deprivations harm not only litigants but also the legal system itself, confidence in which is eroded when known, consequential, and remediable errors are needlessly left uncorrected.

Grzegorczyk v. *United States*, 142 S.Ct. 2580, 2585 (2022) Justice SOTOMAYOR, with whom Justice BREYER, Justice KAGAN, and Justice GORSUCH join, dissenting from the denial of a grant, vacate, and remand order.

Yet the District Court paid this Court's instruction no heed and the Court of Appeals did no better. Indeed, a lawsuit was recently filed in this same District Court by aliens who invaded the U.S. They based their legal claims against U.S. defendants on the aliens having been provided free transportation at U.S. taxpayer expense under allegedly misleading pretenses—a dubious notion of legal standing at best. Yet in its memorandum upholding the aliens' odd legal claims against dismissal, the District Court oozed naked favoritism and inflammatory embellishment:

> Plaintiffs' images were captured and sent to national news media. [] Unlike ICE agents legitimately enforcing the country's immigration laws, . . . the Court sees no legitimate purpose for rounding up highly vulnerable individuals on false pretenses and publicly injecting them into a divisive national debate . . . Treating vulnerable individuals like Plaintiffs in this way . . . is nothing short of extreme, outrageous, uncivilized, intolerable, and stunning.

Alianza Americas, et al. v. Ronald D. DeSantis, et al., United States District Court, District of Massachusetts. Case 1:22-cv-11550-ADB. Memorandum & Order dated March 29, 2024, Burroughs, D.J.

In glaring contrast, this same District Court showed contempt for the U.S. citizen Plaintiffs' legal claims in this case, including their conventional claims under the Americans with Disabilities Act and Free Exercise Clause of the 1st Amendment. United States District Court, District of Massachusetts. Case 1:21-cv-11794-ADB. Memorandum & Order dated September 12, 2022, Burroughs, D.J.

The 1st Circuit Court of Appeals' cursory yet complete affirmance of such unabashed bias, inconsistency, and animus toward U.S. citizens and their legal claims needs swift correction by this Court, lest it further undermine the courts' legitimacy.

X. This Case Is a Better Vehicle to Resolve These Questions than Most Other Cases Presenting Such Questions.

Some other cases may present similar issues or questions to this Court. But few to none present this case's final and exceptionally indisputable context in which for this Court to answer these questions.

A. Remedies Available in Inferior Courts Have Been Exhausted.

The Plaintiffs have exhausted all remedies available in inferior courts, including having their petition for rehearing denied.

B. This Case Is Exceptionally Easy to Rule Upon Because These Respondents Waived Counter-Arguments to the Key Points by Failing to Present Counter-Arguments Below.

This Court refuses to consider points raised by a respondent that the respondent had not presented in the courts below. *Byrd v. United States*, 138 S.Ct. 1518, 1530 (2018); *Rosemund v. United States*, 134 S.Ct. 1240, 1252 (2014); *Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.* 549 U.S. 443 (2007); *Glover v. United States*, 531 U.S. 198, 205 (2001); *Ryder v. United States,* 515 U.S. 177, 185 n.4 (1995); *United States* v. *Alvarez-Sanchez*, 511 U.S. 350, 360 n.4 (1994);

Federal Trade Comm'n v. Grolier, Inc. 462 U.S. 19, 23 n.6 (1983); *Jenkins v. Anderson,* 447 U.S. 231, 234 n.1 (1980).

This case is therefore the ideal vehicle to resolve the questions presented because in the Court of Appeals the Petitioners raised the following arguments, to which the Respondents presented no counter-arguments:

1. The District Court challenged the Plaintiffs' legal standing sua sponte.
2. The Defendants never filed a motion to dismiss the case as moot. The District Court declared the case moot sua sponte.
3. The District Court violated this Court's instruction on mootness that the Plaintiffs had presented to the District Court in writing.
4. The District Court denied the Plaintiffs a hearing that both they and the Defendants had requested in writing.
5. The District Court denied the pro se Plaintiffs any opportunity to amend their original complaint in response to the District Court's memorandum and order of dismissal.
6. The District Court ignored and even argued against the facts of the complaint.
7. The District Court analyzed the factual allegations and drew inferences in the Defendants' favor.
8. The District Court violated multiple Federal and Local Rules of Civil Procedure.

C. Neither This Court Nor Any Other Circuit Agrees with the 1st Circuit's Position That Plaintiffs Must First Violate a Mandate/ Law/Regulation in Order to Have Legal Standing to Challenge It.

The 1st Circuit Court of Appeals upheld and impliedly agreed with the District Court's reasoning that all but one of the Plaintiffs lacked legal standing because they did not allege that they had violated the challenged mandates before filing suit. This Court and courts throughout the other circuits regularly strike down laws/mandates/regulations without requiring the plaintiffs to have violated the challenged texts. The 1st Circuit is unique in its imposition of this new, additional requirement for legal standing, which is both hazardous and indefensible.

CONCLUSION

As its tools to perfunctorily rid itself of this case, the District Court used sua sponte dismissal and sua sponte declaration of mootness in blatant violation of this Court's unambiguous precedents. The District Court displayed unabashed bias, inconsistency, and animus in its handling of cases, thereby delegitimizing the courts.

To avoid setting clear precedent it had reason to know was in flagrant defiance of this Court's instruction, the 1st Circuit refrained from issuing an opinion —substituting a legally flawed single paragraph in its cursory judgment.

If left uncorrected, the District Court's willful violations of rules and this Court's instruction will persist and spread, thereby jeopardizing the legal claims of pro se laypeople and all citizens' civil rights. And if the 1st Circuit's stealthy affirmance is left uncorrected, the 1st and possibly other circuits will learn to employ such maneuvers whenever they want to uphold decisions this Court's precedents make clear are improper.

This Court should reject such tactics that delegitimize the courts by summarily reversing the judgment of the Court of Appeals. In the alternative, to better ensure the discontinuance of such unjust maneuvering, this Court should grant writ of certiorari, set the case for full merits briefing, and reverse the judgment below.

Respectfully submitted,

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