

No. 24-1015

IN THE
Supreme Court of the United States

JOHN DOES 1-2, JANE DOES 1-3, JACK DOES 1-750,
JOAN DOES 1-750,
Petitioners,

v.

KATHY HOCHUL, in her official capacity as Governor of
the State of New York, JAMES McDONALD, in his
official capacity as Commissioner of the New York
State Department of Health, TRINITY HEALTH, INC.,
NEW-YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC.,
WESTCHESTER MEDICAL CENTER ADVANCED
PHYSICIAN SERVICES, P.C.,
Respondents.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioners, John Does 1-2, Jane Does 1-3, Jack Does 1-750, and Joan Does 1-750, petition for rehearing of this Court’s June 29, 2026 Order denying their petition for a writ of certiorari. As noted in the separate Opinion of Justice Gorsuch, with whom Justices Thomas and Alito joined, three Justices would have granted the Petition, or at least—and as specifically requested herein—summarily reversed the decision of the lower court, remanded the matter, and allowed Petitioners to pursue their claims via amended complaint or in discovery and a trial on the merits.

REASONS FOR GRANTING REHEARING

As Justice Gorsuch opined in his dissent from a denial of certiorari, “I harbor serious doubts about the Second Circuit’s rule.” *Doe v. Hochul*, 609 U.S. ___, 2026 WL 1855625, *2 (June 29, 2026) (Gorsuch, J., dissenting from denial of certiorari). As he noted, “I fail to see how a state law (especially an unconstitutional state law) prohibiting an accommodation can always and automatically supply an employer with an ‘undue hardship’ defense under federal law.” *Id.* In essence, denying certiorari in this matter—and concomitantly leaving the Second Circuit’s adjudication intact—“leave[s] States free to strip individuals of the protections guaranteed by so many federal civil rights statutes . . . all by the simple expedient of proscribing accommodations those statutes promise.” *Id.* at *3.

In addition to the significant Circuit split discussed at length in Petitioners’ Petition (at 17–41), since this Court’s consideration of the Petition, the Second Circuit has continued its insistence that federal law must yield to contrary state law. ***On the day after*** this Court denied certiorari, the Second Circuit yet again rejected a claim to religious accommodation required by federal law in New York—effectively barring any claim to a religious accommodation in New York. And it did this despite the fact that in that very case this Court had already granted certiorari, vacated the Second Circuit’s judgment, and remanded with instructions to reconsider in light of this Court’s precedent.

Additionally, since the time in which the Court was considering Petitioners’ Petition, the Second Circuit has issued at least two other decisions effectively barring any claim to religious accommodations in New York. *Parks v. Montefiore Med. Ctr.*, 2026 WL 1782149 (2d Cir. June 22, 2206); *Vesterman v. N.Y.C. Dep’t of Educ.*, 2026 WL 1580250 (2d Cir. June 3, 2026). Thus, a prohibition on religious accommodations in New York “is *exactly* what the Second Circuit said” is the law in that Circuit, *Doe*, 2026 WL 1855625, at *3 (Gorsuch, J., dissenting), and it has removed “any possible room for doubt about the Second Circuit’s views on the matter.” *Id.* at *4.

In addition to the Second Circuit’s continued insistence that religious accommodations are not really required by federal law if States enact laws making federally required accommodations “incompatible with [state law].” *Doe*, 2026 WL

1855625, *4 (Gorsuch, J., dissenting), the Ninth Circuit has twice held that state laws need not yield to federal antidiscrimination laws when it comes to religious accommodations from compulsory vaccination. *Luxton v. Washington State Dep’t of Veterans Affairs*, 2026 WL 1832333 (9th Cir. June 25, 2026); *Williams v. Legacy Health*, 174 F.4th 1201 (9th Cir. 2026).

The Fourth Circuit, by contrast and in direct conflict with the Second Circuit below and the Ninth Circuit’s recent decisions, held that dismissal of a Title VII religious accommodation claim was inappropriate where—as here—the plaintiff had plausibly alleged religious discrimination against a compulsory vaccination employment requirement. *Jenkins v. Valley Health Sys.*, 2026 WL 880479 (4th Cir. Mar. 31, 2026).

Though it was certainly true when Petitioners first pleaded with this Court to hear their plight, the fact that the conflict has only been exacerbated since this Court’s consideration of the Petition and that the Second Circuit continues its insistence that federal law must yield to state law when it comes to religious accommodations, the case presents intervening and substantial grounds for this Court’s rehearing of the Petition. The continuing and growing problem presented by the Second Circuit’s rule demonstrates that Petitioners’ “cases raises an important and *recurring* question of federal law that warrants this Court’s attention.” *Doe*, 2026 WL 1855625, at *1 (emphasis added).

The developments that have occurred since the time this Court was considering the Petition in this matter demonstrate that “addressing this case is well worth [the Court’s] time.” *Id.* At minimum, the Court should “summarily reverse” the Second Circuit’s decision and allow Petitioners to pursue their claims in the district court through an amended complaint or a trial on the merits. *Id.* Correcting the Second Circuit’s continuing and growing error “should have been an easy business,” *id.*, and it can be now. Permitting Petitioners to pursue their claims in the lower court will require the “lower courts [to] more carefully consider in future cases whether a defendant can successfully mount a Title VII undue hardship defense simply by pointing to a state-law mandate.” *Id.*

In addition to the exacerbated split among the Circuits that has arisen since this Court’s prior consideration, summarily reversing and permitting Petitioners to pursue their claims via an amended complaint or trial on the merits is consistent with what Respondents and the United States as *amicus curiae* suggested could have been done in the lower courts. *See* Br. of United States, 28 (“Nor did petitioners seek to amend their complaint” to show that “those accommodations were illusory, the outcome might well have been different.”); Br. of State Respondents, 14 (same). There is no “possible room for doubt about the Second Circuit views on the matter,” and its rule—as demonstrated by the exacerbated conflict demonstrated *infra*—cannot “be dismissed as some outlier, a mistake unlikely to be repeated elsewhere, given that various other circuits

have adopted a similar approach.” *Doe*, 2026 WL 1855625, at *4 (Gorsuch, J., dissenting) (collecting cases).

Put simply, the Court should grant this instant Petition for Rehearing, grant the petition for certiorari, vacate the lower court’s decision, and remand with instruction to permit Petitioners to pursue their claims via amended complaint or a merits determination. Dismissal with prejudice as a final adjudication, without even a hint of reference to Rule 15’s liberal interpretation of amendment, would work manifest injustice, continue a split of Circuit authority that is growing by the day, continue to shield the Second Circuit’s entrenched insistence that religious accommodations are not available in New York, and deprive Petitioners of their right to pursue the merits of their federal antidiscrimination claims. The Court should “settle the question so that other Americans seeking to vindicate their civil rights do not suffer the same fate as those now before us.” *Doe*, 2026 WL 1855625, at *4.

The Petition for Rehearing should be granted.

I. Since this Court's consideration of Petitioners' petition for writ of certiorari, the Second Circuit has continued in its insistence that no religious accommodations may be had for any compulsory vaccination scheme.

A. The day after this Court denied certiorari, and even after this Court's order in *Miller v. McDonald* granting a petition for writ of certiorari, vacating the Second Circuit's judgment, and remanding for further consideration in light of this Court's precedent, the Second Circuit yet again rejected any claim to a religious accommodation to compulsory vaccination.

On June 30, 2026—the day after the Court denied Petitioners' Petition—the Second Circuit not only “doubled down on its mistaken view,” *Doe v. Hochul*, 609 U.S. ___, 2026 WL 1855625, *4 (June 29, 2026) (Gorsuch, J., dissenting), it *tripled down* on its views that religious accommodations are not mandatory components of federal law. *See Miller v. McDonald*, 2026 WL 1871521 (2d Cir. June 30, 2026). There, despite having already had its prior decision vacated by this Court with instructions to reconsider its persistence that no religious accommodations are available when New York law purports to prohibit them, *see Miller v. McDonald*, 146 S. Ct. 879 (Dec. 8, 2025), the Second Circuit yet again held that neither federal law nor this Court's recent precedents dictate a different finding. 2026 WL 1871521, at *1.

Much like here, in *Miller*, New York imposed compulsory vaccinations schemes on school children, eliminated the component of its vaccination scheme permitting religious accommodations, and retained a medical exemption from that same compulsory vaccination scheme. *Id.* at *2. This is the same statutory discrimination against religious accommodations that New York deployed in Petitioners’ case. *See Doe*, 2026 WL 1855625, at *2; Pet. 4. And, identically to what the Second Circuit held below in this case, in *Miller* it found no problem with a statutory scheme that favors non-religious medical accommodations to compulsory vaccination while prohibiting identical religious accommodations. *Miller*, 2026 WL 1871521 at *6 (noting that it has already “rejected the notion” that retaining a medical accommodation while prohibiting a religious accommodation poses any problem under federal law). And, to add insult to Petitioners’ injury, the Second Circuit cited to its precedent in this case and the related Covid-19 vaccination cases for support that New York was not required to treat religious accommodations similar to medical accommodations when a state law prohibits religious accommodations. *Id.*

In other words, the day after this Court denied certiorari in this matter, “the Second Circuit’s rule promises to mean that civil rights protected by federal law will give way whenever a contrary state law—even an unconstitutional state law—is in play.” *Doe*, 2026 WL 1855625, at *3 (Gorsuch, J., dissenting). The notion that federal antidiscrimination claims must

yield to contrary state statutory schemes “is *exactly* what the Second Circuit said” both below in this matter and continues to say is the law in other matters. *Id.*

The Second Circuit’s entrenched holding that state law trumps federal antidiscrimination law in the compulsory immunization context is a problem worthy of this Court’s attention and correction.

B. In other cases as well, the Second Circuit—since this Court considered Petitioners claims in this Court—has continued to espouse that compliance with state law is an excuse for noncompliance with federal law requiring religious accommodations.

If the Second Circuit refusal to recognize the error of its way after this Court’s GVR order in *Miller* were not proof enough of the need for this Court’s review, its other decisions since the Court’s consideration of Petitioners’ Petition removes all doubt. In two other decisions, the Second Circuit has demonstrated its entrenched and erroneous view that federally required religious accommodations to compulsory immunization schemes are not available when contrary state law prohibits them. *See Parks v. Montefiore Med. Ctr.*, 2026 WL 1782149, *2 (2d. Cir. June 22, 2026) (“Even assuming that Parks had pled a plausible claim of discrimination, the district court properly concluded that granting Parks a religious exemption from the COVID-19 vaccine requirement would have placed an undue hardship on Montefiore”

because “the state vaccine mandate” prohibited it. (citing *Russo v. Patchogue Medford Sch. Dist.*, 129 F.4th 182, 186 (2d Cir. 2025)); *Vesterman v. N.Y.C. Dep’t of Educ.*, 2026 WL 1580250 (2d Cir. June 3, 3026) (affirming dismissal with prejudice of plaintiff’s complaint alleging violation of federal law because the contrary state law prohibited granting religious accommodations to Covid-19 vaccine mandates).

The Second Circuit’s rule—which grants defendants a winning defense “whenever accommodating a plaintiff’s religious obligations would require it to violate state law,” *Doe*, 2026 WL 1855625, *4 (Gorsuch, J., dissenting)—is not an isolated occurrence. It is a deeply entrenched position in the Second Circuit, it is contrary to federal law, and it is worthy of this Court’s reconsideration here. Absent this Court’s reconsideration, the law is and will remain in the Second Circuit that religious accommodations required by federal law are subservient to state law. That is not and cannot be the law. The Second Circuit’s decisions post-denial in this matter are significant intervening circumstances that warrant rehearing here.

II. Since this Court's consideration of Petitioners' petition for writ of certiorari, the split among the circuit has become further exacerbated.

A. The Ninth Circuit has exacerbated the split among the circuits by agreeing with the Second Circuit below and holding that granting religious accommodations would be an undue hardship despite federal law demanding such accommodation.

The Second Circuit's persistent refusal to require state law to yield to federal antidiscrimination law is not merely isolated to that Circuit. On the same premise that the Second Circuit has universally rejected religious accommodation claims from compulsory vaccination schemes on the basis of contrary state law, the Ninth Circuit has likewise reached the same conclusion at least twice during the time the Court was considering Petitioners' claims here. *See Williams v. Legacy Health*, 174 F.4th 1201 (9th Cir. 2026) (noting employers had an undue hardship defense to religious accommodations claims under Title VII where state law and an employer's policy prohibited such accommodations); *Luxton v. Washington State Dep't of Veterans Affairs*, 2026 WL 1832333 (9th Cir. June 25, 2026) (holding that plaintiffs' religious accommodations claims under Title VII must be dismissed on the basis of a contrary mandate and undue hardship defense).

Thus, in addition to the Second Circuit’s universal rejection of religious accommodation claims on the basis of contrary state law in *Russo v. Patchogue Medford Sch. Dist.*, 129 F.4th 182, 186 (2d Cir. 2025); *Does 1-2 v. Hochul*, 2024 WL 5182675 (2d Cir. 2024); *D’Cunha v. Northwell Health Sys.*, 2023 WL 7986441 (2d Cir. 2023); and the host of other Second Circuit cases similarly holding, the Ninth Circuit has adopted the framework that religious accommodations must yield to contrary state laws. As Justice Gorsuch noted, “the Second Circuit’s rule [cannot] be dismissed as some outlier, a mistake unlikely to be repeated elsewhere,” because “various other circuits have adopted a similar approach.” *Doe*, 2026 WL 1855625, *4 (citing, *inter alia*, *Bowling v. Bd. of Directors, Judah Christian Sch.*, 167 F.4th 469 (7th Cir. 2026) and *Lowe v. Mills*, 68 F.4th 706 (1st Cir. 2023)). In other words, the split is significant and is growing by the day.

The continued development of a corpus of antidiscrimination jurisprudence finding that state law prohibitions on religious accommodation triumph over federal antidiscrimination law requiring those very religious accommodations is a substantial intervening circumstances worthy of this Court’s attention and a grant of Petitioners’ rehearing request.

B. The Fourth Circuit has held that dismissal of a religious accommodation claim is inappropriate where—as here—a plaintiff made clear their religious objections to an employment requirement required accommodation.

In direct conflict with the Second Circuit’s persistent rule and the similar holdings of the First, Seventh, Ninth, and other Circuits discussed in Petitioners’ Petition (at 17–40), the Fourth Circuit recently held that a plaintiff seeking religious accommodation for sincerely held objections to Covid-19 vaccination cannot have his claims dismissed on the basis of an employer’s contrary policy. *See Jenkins v. Valley Health Sys.*, 2026 WL 880479 (4th Cir. Mar. 31, 2026). The Fourth Circuit held that all that is required to pursue a claim for discrimination claims under Title VII is to demonstrate that a plaintiff has a sincerely held religious objection to the employer’s Covid-19 vaccination requirement. *Id.* at *4. It reversed the district court’s dismissal and permitted the plaintiff to pursue his claims to a merits determination. This Court can and should permit the same here.

III. As numerous Justices have noted for a period of over 5 years, the Questions Presented in this matter are worthy of the Court’s attention.

Starting in 2021 and tragically continuing for over five years now, healthcare workers have begged this Court for intervention to protect their constitutionally

protected religious beliefs and their statutorily protected right to be free from unlawful religious discrimination in their employment. At each turn, these healthcare workers, who served as frontline heroes when the Republic faced an unprecedented medical pandemic, have been turned away. Petitioners and their fellow religious healthcare colleagues “served on the front line of the COVID-19 pandemic with bravery and grace.” *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Gorsuch, J., dissenting). They went “to great lengths to serve their patients during the COVID-19 pandemic.” *Dr. A v. Hochul*, 142 S. Ct. 552, 552 (2021) (Gorsuch, J., dissenting). Petitioners and their colleagues have sought emergency relief and been turned down. They have brought their claims in the ordinary course of petitions for a writ of certiorari and been turned away. The questions presented by the claims and the divergent opinions from the Circuit Courts present need for the Court’s clarification. Indeed, “[t]his split is widespread, entrenched, and worth addressing.” *Dr. A v. Hochul*, 142 S. Ct. 2569, 2570 (2022) (Gorsuch, J., dissenting).

What five years has begat is an allowance for “the State to insist on the dismissal of thousands of medical workers—the very same individuals New York . . . depended on and praised for their service on the pandemic’s front lines.” *Dr. A*, 142 S. Ct. at 559. Petitioners were “fired and had their practices shuttered. All for adhering to their constitutionally protected religious beliefs.” *Does 1-3*, 142 S. Ct. at 22. “Their plight [was] worthy of our attention” in 2021. *Id.* It remained “worth addressing” in 2022. *Dr. A*, 142 S. Ct. at 2570. And the host of denials these heroes

have face should “not be the final chapter in this grim story,” but should “serve as a cautionary tale for those who follow.” *Dr. A*, 142 S. Ct. at 559.

“Put simply, addressing this case is well worth our time—and correcting its error should have been an easy business.” *Doe*, 2026 WL 1855625, at *4. Petitioners pray unto the Court to “choose to settle the question so that other Americans seeking to vindicate their civil rights do not suffer the same fate.” *Id.*

CONCLUSION

Because the Second Circuit’s rule is a stain on federal antidiscrimination law, and because it continues in its persistence that federal antidiscrimination law must yield to contrary state law—and has done so even **after** this Court’s denial in this case, substantial and intervening circumstances warrant rehearing.

Respectfully submitted,

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RULE 44.2 CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I hereby certify that the foregoing petition is restricted to the grounds stated in the Rule, that it is presented in good faith, and is not presented for purposes of undue delay.

A handwritten signature in black ink, reading "Mathew D. Staver". The signature is written in a cursive style with a horizontal line crossing through the middle of the name.

Mathew D. Staver
Counsel of Record