

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LOGAN IRELAND, et al.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:25-cv-01921-EDK
Judge Elaine D. Kaplan

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION FOR VOLUNTARY REMAND AND STAY**

I. INTRODUCTION

Plaintiffs are transgender current or former members of the United States Air Force or the United States Space Force. Compl. ¶ 1. After the Secretary of Defense announced in May 2025 that transgender service members would be required to “separate” from the military imminently, Plaintiffs applied for “retirement,” which brings with it far more substantial benefits than “separation.” *Id.* ¶¶ 33–40, 49. In June 2025, the Air Force issued retirement orders to all 17 Plaintiffs, granting them retirement with 15–18 years of service “BY ORDER OF THE SECRETARY OF THE AIR FORCE.” *Id.* ¶¶ 42–43 & Exs. 3–19. Each of those orders provided that the Plaintiff to whom it pertained would be “RETIRED EFFECTIVE” September 1, October 1, November 1, or December 1, 2025. *Id.* ¶ 42 & Exs. 3–19. And under 10 U.S.C. § 9329, upon reaching these prescribed retirement effective dates, Plaintiffs were to be “entitled to retired pay computed under chapter 945” of Title 10 of the U.S. Code. *Id.* ¶¶ 23–24, 54, 57, 63.

In August and September 2025, however, before any of the Plaintiffs reached their respective retirement effective dates, the Air Force rescinded all 17 of these retirement orders.

Compl. ¶¶ 46–51. But the Air Force’s own retirement instruction—Department of the Air Force Instruction 36-3203—provides that retirement orders may only be rescinded under very limited circumstances, none of which were present here. *Id.* ¶¶ 44, 52, 60–61.

On November 10, 2025, Plaintiffs filed this lawsuit to recover the retired pay that they should be receiving under § 9329 and to reinstate their retirement orders, with credit for any time that they have continued to serve after the retirement effective dates in those orders. *Id.* ¶ 1 & pp. 18–19. On March 16, 2026, after seeking and obtaining from the Court three extensions of its deadline to respond to the Complaint, the Government moved to dismiss the claims of 16 of the 17 Plaintiffs for lack of jurisdiction. On July 22, 2026, the Court denied the United States’ motion and ordered the parties to submit a joint motion for entry of a scheduling order by August 11, 2026.

But on August 11, 2026—in lieu of a joint motion for entry of a scheduling order, and nine months after Plaintiffs filed suit in this Court—the Government moved to remand the Plaintiffs’ claims to the Air Force Board for Correction of Military Records (“AFBCMR”). Plaintiffs’ claims are properly before this Court, and the Government has provided no compelling reason for this Court to now remand those claims to a forum that has already once refused to hear them. The motion to remand should be denied, and all Plaintiffs should be permitted to proceed with their claims in this Court.

II. STATEMENT OF QUESTION PRESENTED

Whether the Court should remand Plaintiffs’ claims to the AFBCMR, even though the AFBCMR previously refused to hear such claims, the Government did not seek remand until nine months after Plaintiffs filed suit, and there is no substantial and legitimate basis for such a remand.

III. STATEMENT OF THE CASE

A. The Acting Assistant Secretary of the Air Force for Manpower and Reserve Affairs, with authority delegated by the Secretary of the Air Force, permitted transgender Air Force and Space Force members with at least 15 years of service to request retirement under § 9311 and § 9314.

On January 27, 2025, President Donald Trump issued Executive Order 14183, “Prioritizing Military Excellence and Readiness,” in which he directed the Secretary of Defense to take the steps necessary to exclude transgender people from the military. Compl. ¶ 29. One month later, on February 26, 2025, Darin S. Selnick, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness, issued a Memorandum directing the Secretaries of the Military Departments to take the steps necessary to exclude transgender people from their respective Departments (the “February 26 Memorandum”). *Id.* ¶ 30.

On March 27, 2025, in *Shilling v. United States*, the United States District Court for the Western District of Washington issued a nationwide preliminary injunction, temporarily blocking the implementation of the transgender military ban. *Id.* ¶ 31. But on May 6, 2025, the United States Supreme Court granted a stay of this preliminary injunction, thus allowing the ban to take effect. *Id.* ¶ 32. Just two days later, on May 8, 2025, the Secretary of Defense issued a Memorandum recognizing the Supreme Court ruling and setting June 6, 2025, and July 7, 2025, as the deadlines for transgender active-duty service members and reserve service members, respectively, to self-identify and voluntarily separate or else face involuntary separation. *Id.* ¶ 33.

On May 23, 2025, Acting Assistant Secretary of the Air Force for Manpower and Reserve Affairs Gwen R. DeFilippi issued a Memorandum, titled “Additional DAF Implementing Policy on Prioritizing Military Excellence and Readiness,” providing “additional implementation guidance to address voluntary separations/retirements and involuntary identification actions” for transgender Air Force and Space Force members (the “May 23 Memorandum”). *Id.* ¶ 34 & Ex. 1.

A section of the May 23 Memorandum, titled “Voluntary Separations and Retirements,” included the following paragraph regarding TERA for transgender Air Force and Space Force members:

Service members may apply for voluntary retirement or, if eligible, Temporary Early Retirement Authority (TERA). TERA is permitted in accordance with reference (b) [i.e., the February 26 Memorandum] for Service members with over 18 but less than 20 years of service. *Service members with 15 – 18 years of service may request TERA as an exception to policy.* Service members with 15 – 18 years of service who have already submitted a voluntary separation may withdraw the separation application and apply for retirement.

Id. ¶ 36 & Ex.1. (emphasis added). By providing that “Service members with 15 – 18 years of service may request TERA as an exception to policy,” the May 23 Memorandum permitted transgender Air Force and Space Force members with 15–18 years of service to apply for retirement under 10 U.S.C. § 9311 or § 9314, *id.* ¶ 37, which, if granted, would entitle them to retired pay under § 9329, *id.* ¶¶ 23–24.

The Air Force Personnel Center then issued updated “Instructions for Service Members with Gender Dysphoria to Request Voluntary Separation, Retirement or a Retention Waiver,” which, consistent with the May 23 Memorandum, stated the following regarding TERA for transgender Air Force and Space Force members:

Members with over 15 years but less than 20 years of active service may be eligible to apply for retirement under the Temporary Early Retirement Authority (TERA). While OSD guidance offered use of TERA for SMs with 18-20 years of service, *the DAF is extending TERA eligibility to include members who have more than 15 years of service and less than 18 years of service, as an exception to policy (ETP). If applying for TERA with between 15 and 18 years of service, the member will add a remark in the justification block saying they are requesting TERA as an ETP.*

Id. ¶ 38 & Ex. 2 (emphasis added).

B. The Air Force issued retirement orders to all Plaintiffs, approving their requests to retire under § 9311 or § 9314 with 15–18 years of service.

As of the May 23 Memorandum, Plaintiffs were all transgender members of the Air Force or Space Force and thus subject to the ban on transgender military members that was in the process of being implemented. Compl. ¶¶ 1, 39. In addition, at that time, all Plaintiffs had accrued 15–18

years of service. *Id.* ¶¶ 4–20. Therefore, as authorized by the May 23 Memorandum, all 17 Plaintiffs requested retirement under § 9311 or § 9314 as an exception to policy. *Id.* ¶¶ 37, 40.

Between June 6 and June 30, 2025, the Air Force issued retirement orders to all Plaintiffs, granting their requests to retire with 15–18 years of service. *Id.* ¶¶ 41–42. Each of these retirement orders stated on its face that it was “BY ORDER OF THE SECRETARY OF THE AIR FORCE.” *Id.* ¶ 43 & Exs. 3–19. In addition, each of these retirement orders mandated that the service member would be “RETIRED EFFECTIVE” September 1, October 1, November 1, or December 1, 2025. *Id.* ¶ 42 & Exs. 3–19.

C. The Air Force impermissibly rescinded Plaintiffs’ retirement orders without explanation.

In July 2025, Acting Assistant Secretary of the Air Force for Manpower and Reserve Affairs DeFilippi was removed from her position and Brian L. Scarlett, Senior Advisor to the Assistant Secretary of the Army for Manpower and Reserve Affairs, was selected to perform the duties of Assistant Secretary of the Air Force for Manpower and Reserve Affairs. Compl. ¶ 45. On August 4, 2025, Scarlett, Performing the Duties of Assistant Secretary of the Air Force for Manpower and Reserve Affairs, issued a Memorandum, titled “Exception to Policy (ETP) for Temporary Early Retirement Authority (TERA) Decision” (the “August 4 Memorandum”). *Id.* ¶ 46. The August 4 Memorandum stated the following, disapproving Plaintiffs’ retirement requests after they had already been granted:

After careful consideration of the individual applications, I am disapproving all Temporary Early Retirement Authority (TERA) exception to policy requests in Tabs 1 and 2 for members with 15-18 years of service.¹ The decisions were made following the guidance set forth in references (a) [i.e., the February 26 Memorandum] and (b) [i.e., the May 23 Memorandum].

¹ Plaintiffs all appeared on Tab 1 or Tab 2 to the August 4 Memorandum. Compl. ¶ 48.

In lieu of TERA, members are eligible for voluntary separation, with eligibility for Voluntary Separation Pay (VSP) at twice the amount of involuntary separation pay.

...

Service members who elect not to voluntarily separate will be processed for involuntary separation.

Id. ¶ 47 & Ex. 21.

Consistent with the August 4 Memorandum, Plaintiffs received orders rescinding their previously approved retirement applications on either August 7 or September 9, 2025. *Id.* ¶¶ 50–51. Crucially, despite being “twice the amount of involuntary separation pay,” the Voluntary Separation Pay referenced in the August 4 Memorandum pales in comparison to the retired pay and other benefits to which an approved retirement application entitles a member with 15–18 years of service. *Id.* ¶¶ 47, 49.

Department of the Air Force Instruction 36-3203 (“DAFI 36-3203”), titled “Service Retirements,” sets forth the following narrow limitations on rescinding issued retirement orders:

The appropriate agency *may only revoke, rescind, or amend the order if fraud, manifest error, mathematical error, mistake of law, or substantial new evidence renders the order invalid.* The appropriate agency may amend or rescind retirement orders when, in rare circumstances such as medical hold, civil confinement, or prohibiting conditions listed in Table 3.1 or restrictions listed in Table 3.2, a member cannot complete retirement processing before the effective retirement date. (T-1)

Id. ¶ 44 & Ex. 20, § 1.1.4 (emphasis added). Neither the August 4 Memorandum nor any of the orders that Plaintiffs received identified any purported “fraud, manifest error, mathematical error, mistake of law, or substantial new evidence” to justify the rescission of Plaintiffs’ retirement orders. *Id.* ¶ 52.

D. The Air Force Board for Correction of Military Records (“AFBCMR”) rejected 12 Plaintiffs’ efforts to avail themselves of administrative remedies.

During the month of August 2025, Plaintiffs Ashley Davis, Logan Ireland, Alyxandra Anguiano, Devin Bable, Mikayla Barfield, Kira Brimhall, Rupert Cassidy, Corey Hunt, Jack

Rousch, Brandi Soukup, Lindell Walley, and Aubreigh Hedrich applied to the Air Force Board for Correction of Military Records (“AFBCMR”) to challenge the rescissions of their retirement orders. In November and December of 2025, each of these Plaintiffs received correspondence from the AFBCMR closing their applications without action.²

E. Plaintiffs sued for violation of 10 U.S.C. § 9329.

On November 10, 2025, Plaintiffs filed this lawsuit asserting a violation of 10 U.S.C. § 9329. In March 2026, the Government moved to dismiss the claims of 16 of the 17 Plaintiffs for lack of jurisdiction because those Plaintiffs had not separated from service at the time of filing and, the Government argued, were not seeking presently due money damages. The Government also argued that the Court lacked jurisdiction to hear the claims of Plaintiffs whose promised retirement effective dates had not passed as of the filing of the Complaint. On July 22, 2026, the Court denied the Government’s motion, finding that all Plaintiffs were seeking presently due retirement pay. The Court further directed Plaintiffs to supplement their Complaint by August 4, 2026, to allege that all Plaintiffs’ promised retirement effective dates had now passed and ordered the parties to file a joint motion for entry of a scheduling order by August 11, 2026. Plaintiffs timely supplemented their Complaint pursuant to the Court’s instructions. ECF No. 24.

On August 11, 2026, in lieu of joining Plaintiffs’ scheduling motion, the Government filed a motion to remand Plaintiffs’ claims to the AFBCMR and to dismiss the claims of three Plaintiffs as moot.

² In each case, the AFBCMR noted that it would take no action on the complaints because of concurrent Inspector General (IG) complaints. As an example, the AFBCMR’s letter closing Plaintiff Rupert Cassidy’s complaint is attached as **Exhibit A**. All plaintiffs who applied to the AFBCMR received similar closing letters.

IV. ARGUMENT

A. Standard of review

When challenging a military retirement rescission, there is no requirement that the plaintiff exhaust administrative remedies with the AFBCMR prior to seeking relief in this Court. *See Krzeminski v. United States*, 13 Cl. Ct. 430, 437 (1987). However, under RCFC 52.2(a), this Court “may order the remand of appropriate matters to an administrative or executive body or official.” The degree of discretion afforded to the Court in deciding whether to remand varies depending upon the position taken by the Government. When an agency action is under review by the Federal Courts, the agency may take one of five positions:

First, it may choose to defend the agency’s decision on the grounds previously articulated by the agency. Second, it may seek to defend the agency’s decision on grounds not previously articulated by the agency. Third, the agency may seek a remand to reconsider its decision because of intervening events outside of the agency’s control. Fourth, even in the absence of intervening events, the agency may request a remand, without confessing error, to reconsider its previous position. Finally, . . . the agency may request a remand because it believes that its original decision was incorrect on the merits and it wishes to change the result.

SKF USA, Inc. v. United States, 254 F.3d 1022, 1028 (Fed. Cir. 2001). Where the Government does not defend the agency’s decision on any grounds, alleges no intervening events, and confesses no error, its request fits best in the fourth *SKF* category. *Id.* at 1029. While the “reviewing court has discretion over whether to remand” in these circumstances, such remands are appropriate only where the agency’s concern over its decision is “substantial and legitimate” and not “frivolous or in bad faith.” *Id.*

An agency’s concern can only be “substantial and legitimate” where the agency professes an intent to reconsider the decision. *Keltner v. United States*, 148 Fed. Cl. 552, 563 (2020); *see also Am. Waterways Oper. V. Wheeler*, 427 F. Supp. 3d 95 (D.C. Cir. 2019) (“An agency’s professed intent to revisit the challenged decision is a necessary condition to obtain remand . . .

but it is not always a sufficient condition.”) (citing *Limnia, Inc. v. United States Dep’t of Educ.*, 857 F.3d 379, 387 (D.C. Cir. 2017)). Once the agency has professed its intent to revisit its decision, the Court may find that the agency’s concerns are “substantial and legitimate” only where “1) the agency provided a compelling justification for its remand request, 2) the need for finality . . . does not outweigh the justification for voluntary remand presented by the agency, and 3) the scope of the agency’s remand request is appropriate.” *Keltner*, 148 Fed. Cl. at 564 (quoting *Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1377, 1381 (Ct. Int’l Trade 2013) (brackets and internal quotation marks omitted).

B. The Government has not professed an intent to reconsider the rescissions of Plaintiffs’ retirement orders.

As a threshold matter, the Government’s request for a remand requires a showing of intent to reconsider its decision. *Keltner*, 148 Fed. Cl. at 563. That is not the case here. Instead, the Government’s motion demonstrates that it is seeking a remand to the AFBCMR for a “second bite at the apple,” which is inadequate grounds for a remand. *See Am. Waterways*, 427 F. Supp. 3d at 98. The Government identifies no alleged “fraud, manifest error, mathematical error, mistake of law, or substantial new evidence” that it wishes the AFBCMR to consider. DAFI 36-3203 § 1.1.4. Rather, it seeks a remand so that the AFBCMR can “specifically explain why the rescission of plaintiffs’ retirement orders was or was not permissible” and provide an “explanation [that] should assist the Court in evaluating plaintiffs’ claims.” ECF No. 26 at 17. Remanding for the sole purpose of allowing the AFBCMR to “expound upon [the agency’s] rationale” is not a valid basis to grant the Government’s motion. *Keltner*, 148 Fed. Cl. at 564–65.

C. The Government’s concerns are not substantial and legitimate.

The Government’s lack of intent to reconsider the rescissions is dispositive. But even if the Government had professed an intent to reconsider its decision, its concerns are not “substantial

and legitimate”: The Government has not provided a compelling justification for the remand; Plaintiffs’ interest in finality outweighs the Government’s nonexistent justification; and the scope of the requested remand is unreasonable.

i The Government has provided no justification for a remand.

To justify its remand request, the Government must “state with particularity the grounds on which [its motion] is based.” *C.f. Miss. Riv. Transmission Corp. v. FERC*, 969 F.2d 1215, 1217 n.2 (D.C. Cir. 1992) (citing Fed. R. App. P. 27(a)). RCFC 7(b)(1)(B) requires the same particularity. But the Government identifies no specific basis on which the agency might reconsider its decision. It suggests that the AFBCMR might provide an “explanation of why the rescission of plaintiffs’ retirement orders was permissible under DAFI 36-3203 § 1.1.4,” with no hint of what that explanation might be. ECF No. 26 at 17.

Moreover, the record before this Court is complete. Plaintiffs’ challenge to the rescission of their retirements for failure to satisfy DAFI 36-3203 § 1.1.4 is not the type of new information or authority that justifies a remand. Plaintiffs’ claims do not require this Court to apply criteria in which the military has specialized expertise, such as the risk that a disability poses to the health, welfare, and safety of service members. *See Yang v. United States*, 149 Fed. Cl. 277, 280 (2020). Nor have Plaintiffs asked this Court to apply a nonjusticiable standard that the Court is “in no position to determine,” as was the case in *Antonnelis v. United States*, 723 F.3d 1328, 1336 (Fed. Cir. 2013). Instead, Plaintiffs challenge the Government’s decision to rescind Plaintiffs’ retirement orders in the absence of any of the limited, enumerated grounds under which the Government may lawfully do so. Here, the Government has articulated no grounds for its decision, let alone grounds that justify a retirement rescission under DAFI 36-3203 § 1.1.4. When an agency fails to comply with the “minimum standard” of “articulating a satisfactory explanation for its actions,” there is no reason for a remand. *Keltner*, 148 Fed. Cl. at 565.

The Court has before it all documents that the Government used to explain its decision when it rescinded the orders: Plaintiffs' orders themselves, the August 4 Memorandum, and the memoranda referenced by the August 4 Memorandum.³ The Court is just as well positioned as the AFBCMR to review these documents and determine whether they show "fraud, manifest error, mathematical error, mistake of law, or substantial new evidence" under DAFI 36-3203 § 1.1.4. The Government has provided no basis for the Court to conclude that a remand is needed to supplement this record.

ii Plaintiffs' interests in finality outweigh any interest in a remand.

Plaintiffs initiated this lawsuit on November 10, 2025. The Government could have pursued a remand at any point in the past nine months. It did not. In that time, it sought and received three extensions to respond to Plaintiffs' Complaint, Order Granting Mot., Jan. 5, 2026, Order Granting Mot., Feb. 3, 2026, Order Granting Mot., Feb 27, 2026; consumed more than four months of litigation time with its unsuccessful partial motion to dismiss, ECF Nos. 16, 21; and, when ordered by this Court to collaborate on a joint motion for entry of a scheduling order, declined to do so and instead filed the instant motion seeking remand to the AFBCMR, ECF. No. 26. The Government provides no explanation of why it waited until shortly before it would be required to produce its administrative record and begin merits briefing to seek a remand and thus further delay this Court's opportunity to evaluate the merits of this case.

In the meantime, those Plaintiffs who opted for the Government's "voluntary separation" process have left service without the pension, health care, and other benefits to which they are entitled. And those who opted against "voluntary separation" are under an ongoing threat of

³ To the extent that the Government relies on the commander script attached to its motion, the Government acknowledges in its brief that the script also fails to state the agency's basis for rescinding the retirements. ECF No. 26 at 16.

imminent involuntary separation. If this case is remanded to the AFBCMR for further proceedings, any relief for Plaintiffs will be further delayed. Moreover, the Government has requested a six-month period for the remand—the maximum allowable duration under RCFC 52.2(b)(1)(B). To the extent the Government has articulated any interest at all in such a remand, that interest does not outweigh Plaintiffs’ interest in expeditiously reaching a judgment in this case. *See Keltner*, 148 Fed. Cl. at 566 (holding that plaintiff’s finality interest outweighed Government’s interest in using remands to delay and “either unfairly give the government the opportunity to restart the clock in order to bolster its defense with a post-hoc rationalization, or force [plaintiff] to file a new or amended complaint in this Court in six months’ time”). This is all the more true where the Government seeks remand to a forum that has already summarily refused to hear the claims of 12 Plaintiffs.

iii The scope of the requested remand is overly broad.

A remand under RCFC 52.2(b)(1)(A) must include directions that the court deems “proper and just.” This typically requires that the scope of the remand be appropriately narrow and targeted at the Government’s “substantial and legitimate” concern. *See, e.g., Ad Hoc Shrimp*, 882 F. Supp. 2d at 1381 (granting expansion of scope of remand to address discrete, newly discovered information). Here, however, the Government requests a remand for the AFBCMR to evaluate Plaintiffs’ argument that the Air Force unlawfully rescinded their retirements, address “any other issues plaintiffs raise in their applications,” and “determine and explain whether plaintiffs are entitled to any relief.” ECF No. 26 at 17–18. This is not a narrowly tailored remand to correct an identified error or assess a discrete set of facts or law; it is a complete litigation of Plaintiffs’ claims. This scope is even broader than the remand found to be overly broad in *Keltner*. *See* 148 Fed. Cl. at 566.

V. CONCLUSION

For all of these reasons, Plaintiffs request that the Court deny the Government's motion for remand and allow Plaintiffs to proceed with their claims.

Date: August 25, 2026

Respectfully submitted,

/s/ Jeremy Spiegel

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DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office of the Assistant Secretary

5 December 2025

SAF/MRBC (AFBCMR)
3351 Celmers Lane
Joint Base Andrews NAF Washington, MD 20762-6435

Dear Applicant:
Docket #: **BC-2025-02875**
eApplication #: **25000061226**

This is to inform you that your application has been received by the Air Force Board of Corrections for Military Records (AFBCMR). We have thoroughly reviewed your attachment(s) to determine your request for a correction of your military record; unfortunately, we have found that you have failed to exhaust or that you did not indicate you exhausted other administrative avenues of relief prior to applying to the AFBCMR. This is important because the AFBCMR is the highest administrative level of appeal in the Air Force. As such, applicants should exhaust all other available avenues of relief prior to seeking relief through the AFBCMR; paragraph 3.11 of our governing directive, AFI 36-2603, AFBCMR, states that the AFBCMR may return an application without action if the applicant has not exhausted all available and effective administrative remedies.

We have been informed that there are open Inspector General (IG) complaints that may be associated with your case. The AFBCMR is unable to proceed with adjudication until those matters are fully resolved.

It is to your benefit to avail yourself of the other avenues of relief before coming to the AFBCMR, ensuring access to all levels of appeal within the Air Force. Based on the foregoing we are closing your application to the AFBCMR since it is not viable. This is not a decision of the Board. When you have taken the action indicated above and have not found resolution, you may return your application to the AFBCMR. Please go to the Online Portal at <https://afrba-portal.cce.af.mil/#supplemental-submission> and submit your documents using your eApplication number: **25000061226**. Upon receipt of your resubmission, your case will be reopened to resume the adjudication process.

Case Management Division
AFBCMR