IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

SERGIO RODRIGUEZ,

Plaintiff,

v.

CAPTAIN CHRISTOPHER BOHNER, in his official capacity as Commanding Officer of Naval Submarine Base Kings Bay,

and

SCOTT BASSETT, in his official capacity as Public Affairs Officer for Naval Submarine Base Kings Bay,

Defendants.

Civil Action No. 2:25-cv-408-RBS-LRL

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

Defendants blocked Mr. Rodriguez from the Naval Submarine Base Kings Bay's Facebook page ("Page") and deleted his posts and comments. Rodriguez then sued to vindicate his First Amendment rights, both to have his access and content restored and to seek prospective relief protecting him from future harm. Only then did Defendants unblock him, restoring some, but not all, of Rodriguez's content. Now Defendants want this lawsuit to go away, citing a new social media policy (adopted after Rodriguez was banned, but before he filed suit) and a declaration from Defendant Bassett that the specific posts included in the Complaint, together with "like or similar" content, would not be blocked under the new policy.

Neither the policy nor the promise renders this case moot or deprives Rodriguez of standing. Several key facts underscore this straightforward legal conclusion. First, Rodriguez remained blocked even after the Navy adopted its new policy. The policy did not protect his rights. He had to file this lawsuit to be unblocked. And the Navy retains complete discretion over both the Page and the policy. Second, the policy is critically unclear. It prohibits an official from removing speech based on (i) that same official's (ii) disagreement with the content. The policy does not address an official acting on orders to remove content, other persons' reactions as the reason for removing content, or motivations of the specific officer other than disagreement. Third, Defendants have not explained why Rodriguez was blocked and his content removed—nor whether that decision violated Defendants' prior policy. If Defendants have a history of violating social media policy, a credible threat remains that they will do so in the future. Finally, Defendants' narrow promise does not establish that First Amendment violations are unlikely to recur. Defendants do not promise that the policy extends to the full scope of the First Amendment—only to the same content excerpted in the Complaint and vaguely to under-

described "like or similar" content. The promise is therefore carefully circumscribed to provide the Navy with broad enforcement discretion against Rodriguez.

Defendants' motion to dismiss should be denied. The Navy's unilateral decision—after this lawsuit was filed—to unblock Rodriguez from the Page did not moot this case. The "voluntary cessation" doctrine is a well-recognized *exception* to mootness wherein "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Porter v. Clarke*, 852 F.3d 358, 363-64 (4th Cir. 2017) (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). To overcome voluntary cessation, and establish mootness, *Defendants*—not Rodriguez—"bear[] the formidable burden of demonstrating that it is absolutely clear that the alleged wrongful behavior cannot reasonably be expected to recur." *Friends of the Earth v. Laidlaw Environmental Services*, 528 U.S. 167, 190 (2000).

Defendants have not met that burden here. Defendants' bald assertion that it will not, in the future, block Rodriguez for posting "like or similar" content does not meet the Supreme Court's and the Fourth Circuit's exacting standard for establishing that no constitutional violation will recur. The social media policy also falls far short. The policy is not the kind of binding requirement, like a covenant not to sue, that courts find surmount the voluntary cessation exception. What is more, the policy did not protect Rodriguez here. Even after the policy went into effect, Rodriguez remained blocked. Only after he sued did Defendants unblock him. Also, Defendants retain complete discretion over the Page and can revise the policy at the stroke of a pen—or simply ignore it. And the policy itself, even if followed, is too unclear to demonstrate the wrongful conduct will not recur.

Rather than focus on the more relevant voluntary-cessation doctrine, Defendants instead spend most of their brief discussing two of the familiar three elements of Article III standing. Rodriguez meets the injury-in-fact element for two different, but related reasons: his speech is currently chilled (which Defendants do not address), and he faces a credible threat that Defendants will violate his First Amendment rights. These harms are redressable by a declaration that the content still-missing from the Page is caused by Defendants' violation of Rodriguez's First Amendment rights and an injunction ordering Defendants both to restore the additional content and to avoid violating Rodriguez's First Amendment rights in the future.

FACTS

Naval Submarine Base Kings Bay operates an official Facebook page intended to disseminate information and facilitate public interaction. Compl. ¶¶ 33, 38-43 (Dkt. No. 1). The Page allows members of the public to comment, react, and participate in discussion threads. *Id.* at ¶ 44. During the events described in the Complaint, Defendants Bohner and Bassett administered the Page. Defendant Bohner retired on or about July 3, 2025, and has been replaced by Captain William Dull.[1] Declaration of Scott Bassett ¶ 4, attached as Ex. 1 to Defs' Mem. in Supp. of Mot. to Dismiss (Dkt. No. 18-1).

Plaintiff Sergio Rodriguez is a military retiree. Declaration of Sergio Rodriguez ¶ 3, attached as Ex. 1 to Pl.'s Opp. (Dkt. No. 19-1). During his seven years of active-duty service and subsequent fifteen years as a military spouse, he has lived in military housing on many bases. *Id.* at ¶¶ 3-4. During that time, he became adept at navigating housing policy and procedures. *Id.* at ¶ 5. As widely reported, military housing can often fall far short of standards civilians expect for their own living quarters. *See, e.g.*, A System Stalled: Why Base Housing Fixes Keep Falling

[1] Pursuant to Fed. R. Civ. P. 25(d), Captain Dull is automatically substituted for Defendant Bohner.

Behind, Military Times (Nov. 22, 2025), http://bit.ly/45cn5H8. In 2020, because he understands many of the challenges of military housing and because he wants to help others, he began volunteering with Armed Forces Housing Advocates, a non-profit organization that advocated for and assisted military families who encountered problems with their military housing. Rodriguez Decl. at ¶ 6. In 2024, when the organization dissolved, he continued that work on his own. *Id.* As part of his efforts to help other military families, Rodriguez regularly follows the official social media pages of various bases, posting and commenting, to help mentor and assist those living in base housing, including the Page. *Id.* at ¶¶ 12-13.

He has had significant success. He has become well known in the military community for his advocacy and help to military spouses and families. *Id.* at ¶ 7. In 2022, he was named "Navy Spouse of the Year" by Armed Forces Insurance. *Id.* at ¶ 8. He also received a commendation from President Biden and First Lady Jill Biden. *Id.* at ¶ 9. Senator Cory Booker described him as a "voice for those who cannot speak up." *Id.* at ¶ 10. And General Mark Milley wrote him expressing appreciation for his efforts in helping newcomers and spouses adjust to the military environment, noting that Rodriguez plays a "critical role" in maximizing their potential for success. *Id.* at ¶ 11.

At approximately 9:00 p.m. on August 12, 2024, an electrical power outage occurred at Naval Submarine Base Kings Bay, leaving many military families living on base without power for more than 12 hours. *Id.* at ¶ 14. Rodriguez monitors the Page and has posted for at least four years, without complaints. *Id.* at ¶ 13. He learned of the power outage through the Page and began posting advice there for families living on base. *Id.* at ¶ 15. When he learned that power had still not been restored the next morning, he replied on a post, "interested in the response to this." *Id.* at ¶ 16. Later that day, after learning that power still had not been restored, he tagged

the Page and asked: "is there a plan in place to temporarily relocate residents if the power outage continues? It's entirely too hot and humid to sit in a house without air conditioning. If residents need to relocate, who should they reach out to?" *Id.* at ¶ 17. Later that same day, as the outage continued, he tagged the Page and asked, "will you share the proper route for residents to take for reimbursement for their perishables? Power has been out for several hours, compensation needs to happen." *Id.* at ¶ 18. About an hour later, the Page responded to that question, tagging Rodriguez and providing a phone number for anyone who had a claim. *Id.* at ¶ 18.

Defendant Bassett blocked Rodriguez "pursuant to the directive of Captain Bohner," Bassett Decl. at ¶ 9, without any prior notice or explanation for the deletion, Rodriguez Decl. ¶ 19–23. Later that same day, Defendant Bohner's wife called Rodriguez. *Id.* at ¶ 19. They know each other socially through Rodriguez's work as an advocate for military families, and Mrs. Bohner has Rodriguez's personal cell phone number. *Id.* On that call, Mrs. Bohner informed Rodriguez that he had been blocked from the page. *Id.* She did not give any reason or explanation for why Rodriguez was blocked.

That call, from Defendant Bohner's wife, is the only communication Rodriguez received regarding the ban. *Id.* Neither Bohner, nor Bassett ever contacted Rodriguez to inform him that he was banned or to explain the reason for the ban—even though both have his personal cell phone number and email address. *Id.* at ¶¶ 20. Rodriguez still does not know why he was blocked. *Id.* at ¶¶ 31, 39.

Following the ban, Rodriguez learned from friends that all his previous comments and advice had also been deleted. *Id.* at ¶¶ 24, 27. On August 15, 2024, Rodriguez emailed Bassett requesting reinstatement to the Page, but he received no response. *Id.* at ¶¶ 25-26. After the ban, Rodriguez was unable to even see information on the Page. *Id.* at ¶ 28. Had he not been banned,

Rodriguez would have continued to post information and advice for base families and would have continued to question and criticize action or inaction by officials that he thought harmed the interests of military families living there. *Id.* at ¶ 29. Rodriguez never had any opportunity to contest or appeal the ban, nor was he ever given any reason for it. *Id.* at ¶ 30.

About two months later, in October 2024, the Navy adopted a new social media policy which prohibits blocking individual social media accounts from official Navy social media sites. Bassett Decl. ¶¶ 10, 13. But no one from the Navy (including Defendants) informed Rodriguez of the policy change, nor did they unblock him and reinstate him to the Page at that time. Rodriguez Decl. ¶ 31-32; Bassett Decl. ¶¶ 10, 13. Instead, Rodriguez was ultimately forced to file this lawsuit on July 3, 2025. Finally, on September 29, 2025, more than one year after Defendants blocked Rodriguez, and after Rodriguez filed this lawsuit, Defendant Bassett restored Rodriguez to the Page. Rodriguez Decl. ¶ 32; Bassett Decl. ¶ 13.

Even though Rodriguez has been unblocked, not all of his prior content was restored. Rodriguez Decl. ¶ 34; Bassett Decl. ¶ 13. Defendants acknowledge that Rodriguez's "prior replies and comments are not currently viewable on the NSB Kings Bay Facebook page." Bassett Decl. ¶ 13. Defendants assert that they have not deleted any of the content. *Id.* And Rodriguez has never deleted any posts or comments on the Page. Rodriguez Decl. ¶ 35.

Rodirguez continues to worry that he might be blocked again for what he says on the Page. Rodriguez Decl. ¶ 38. He does not want to offend anyone because that might result in being blocked again. *Id.* So he often hesitates to say what he really wants to say, and he speaks very carefully, to avoid being blocked again. *Id.* The mystery surrounding the incident makes this hesitation worse because he does not understand what he did before to be blocked or what he

needs to do to avoid being blocked in the future, even if there is a new Navy social media policy. *Id.* at ¶¶ 39-40.

LEGAL STANDARDS

Defendants confuse standing and mootness. Both are subject to challenge under Rule 12(b)(1), where the Court must accept the plaintiff's well-pleaded allegations as true and draw all reasonable inferences in the plaintiff's favor. *See Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 186 (4th Cir. 2018). But "[t]he distinction matters because the Government, not petitioners, bears the burden to establish that a once-live case has become moot." *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 719 (2022). In short, a plaintiff has the burden to demonstrate the familiar three elements of standing at the time of filing and throughout the case. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992). Mootness occurs when post-filing events eliminate the parties' concrete stake in the case, such that there is no live case or controversy. *Friends of the Earth*, 528 U.S. at 189–193 (criticizing the Court's prior description of mootness as "standing set in a time frame"); *see also West Virginia*, 597 U.S. at 718–20 (discussing the difference between mootness and standing).

Contrary to Defendants' assertion, Mem.[2] at 6, Defendants bear the burden of proof, as the party asserting mootness. *Id.* at 189; *see also West Virginia*, 597 U.S. at 719. Furthermore, where, as here, a defendant claims its voluntary cessation of the conduct at issue created that mootness, its burden to establish mootness is "formidable." *Friends of the Earth*, 528 U.S. at 190; *see also Wall v. Wade*, 741 F.3d 492, 497 (4th Cir. 2014) (holding that a prison's suspension of policy did not moot the case).

[2] Citations to "Mem." are to The Memorandum of Law in Support of Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. No. 18).

ARGUMENT

I. Defendants Have Not Met Their Heavy Burden To Prove That Their Voluntary Cessation Renders This Case Moot.

Defendants argue that this case is moot because they promise not to block Rodriguez, and the Navy has changed its social media policy. Taken separately or together, these unlilateral voluntary actions fail to meet "the formidable burden of demonstrating that it is absolutely clear that the alleged wrongful behavior cannot reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 190.

A. The Voluntary Cessation Doctrine Places a Heavy Burden on Defendants to Demonstrate That They Will Not Block or Censor Rodriguez in the Future.

A case becomes moot only when the parties no longer have a legally cognizable interest or when the issues are no longer live, *Friends of the Earth*, 528 U.S. at 189–90, or "an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit," *West Virginia*, 597 U.S. at 719 (cleaned up). Moreover, a defendant's unilateral decision to voluntarily cease of the challenged behavior does not render a case moot. *See Porter v. Clarke*, 852 F.3d 358, 364 (4th Cir. 2017). Defendants have the burden to show it is "absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189.

The U.S. Supreme Court describes this burden as "formidable," *Friends of the Earth*, 528 U.S. at 190, and "heavy," *West Virginia*, 597 U.S. at 719. "Unsubstantiated assurances" in legal briefing and "bald assertions of a defendant ... that it will not resume a challenged policy fail to satisfy any burden of showing that a claim is moot." *Wall*, 741 F.3d at 497–98. To show that a case is truly moot, despite voluntary cessation, a defendant must prove "no reasonable expectation remains that it will return to its old ways." *FBI v. Fikre*, 601 U.S. 234, 241 (2024). "That much holds for governmental defendants no less than for private ones." *Id.*

In *Fikre*, the most recent Supreme Court case on voluntary cessation, the Court explained that it looks to the substance of a defendant's promise that the conduct will not recur and does not provide any special deference to a government declarant. *See id.* at 241–44. There, Fikre was placed on the "no fly list" and sued alleging the government placed him on the list for unconstitutional reasons. *Id.* at 242. According to the complaint, Fikre suspected that he was placed on the list for visiting a specific mosque, about which the FBI questioned him, and that the FBI threatened to put him on the "no fly list" if he did not "agree to serve as an informant against his co-religionists." *Id.* In response to the complaint, the government removed Fikre from the "no fly list" and submitted a declaration swearing that "it will not relist Mr. Fikre based on 'currently available information.'" *Id.* at 242–43.

The Court did not credit the government's sworn promise. Without providing the government any special deference, the Court instead found that the case was not moot under the voluntary-cessation doctrine because, "[p]ut simply, the government's sparse declaration falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past." *Id.* at 242 (citing *Friends of the Earth*, 528 U.S. at 190). As the Court explained, "What matters is not whether a defendant repudiates its past actions, but what repudiation can prove about its future conduct. It is on that consideration alone—the potential for a defendant's future conduct—that we rest our judgment." *Id.* at 244.[3]

Courts, therefore, have found the voluntary cessation test met, and cases moot, where the defendant's assurances are legally binding. For example, in *Already, LLC v. Nike*, 568 U.S. 85,

[3] Similarly, in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017), the Supreme Court found the case was not moot, despite voluntary cessation, because the government "could [] revert to its policy of excluding religious organizations." *See also West Virgina*, 597 U.S. at 720 (declining to dismiss a case as moot even where the government ceased the challenged conduct); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007) (same).

93-95 (2012), a judicially enforceable, "unconditional[,] and irrevocable" covenant rendered the case moot, surmounting the voluntary cessation exception to mootness, because, "[b]eyond simply prohibiting Nike from filing suit, [the covenant] prohibits Nike from making any claim or any demand." In *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 397 (2d Cir. 2022), the "parties' mutual agreement and stipulation to the process for the return or destruction of documents produced by Exxon prior to trial" similarly rendered the case moot. And, in a case cited by Defendants, *Samsung Elecs. Co. v. Rambus, Inc.*, 398 F. Supp. 2d 470, 479 (E.D. Va. 2005) (cited at Mem. at 12), the court found a case moot where Federal Circuit precedent held that a covenant not to sue barred future litigation on certain patents.

B. Defendants' Vague, Narrow Promise That the Policy Allows Rodriguez to Make Similar Posts Falls Far Short of Meeting Their Burden.

Defendant Bassett's declaration does not demonstrate that Defendants will refrain from blocking or censoring Rodriguez's posts in violation of the First Amendment.

First, neither the Defendants nor the Navy has ever stated why Rodriguez was blocked under the pre-existing policy. That policy assertedly prohibited "content such as ... [p]ersonal attacks, vulgar, hateful, violent or racist language, slurs, stereotyping, hate speech, and other forms of discrimination." Bassett Decl. ¶ 12. Setting aside whether that former policy was consistent with the First Amendment, Rodriguez's posts contained none of that content. Without explaining why Rodriguez was blocked, Defendants cannot provide reasonable assurances that they have identified how this occurred and ensure that the same will not happen again. If Defendants have a history of violating their social media policies, the new policy, and promises regarding that new policy, are less persuasive. Accordingly, because Defendants do not actually "speak to" what would trigger re-blocking, the promise not to block Rodriguez again is insufficient to meet Defendants' burden. *See Pinkhasov v. Vernikov*, 2024 WL 2188356, at *5–

*7 (E.D.N.Y. May 15, 2024) (disregarding a government official's declaration and holding a social media blocking case is not moot despite voluntary cessation).

Second, the declaration states that, "pursuant to the updated [policy]," Rodriguez "would not be blocked on account of comments or replies like or similar to those included in paragraph 52 of the complaint." Bassett Decl. ¶ 15. Paragraph 52 of the complaint contains some of the most relevant comments, which is why they were included in the Complaint, but those comments were not the only ones Rodriguez made on the Page. *Compare* Compl. ¶¶ 47–52 *with* Rodriguez Decl. ¶¶ 16–18. Defendants' assertion that the previously blocked comments would not be blocked does not provide any reassurance that *different* comments would not be blocked in the future. Moreover, this "bald assertion" that the government will not repeat its misconduct is precisely the kind of statement that the Supreme Court and the Fourth Circuit has found "falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past." *Fikre*, 601 U.S. at 242; *see Wall v. Wade*, 741 F.3d 492, 498 (4th Cir. 2014) ("[B]ald assertions of a defendant—whether governmental or private—that it will not resume a challenged policy fail to satisfy any burden of showing that a claim is moot.").

Third, the change in leadership does not provide any assurance that the government will not block Rodriguez again. A change in leadership is not a legally binding promise to refrain from further misconduct, nor does a change in leadership preclude the Navy from altering or rescinding its policy. Indeed, Captain Dull has been in charge since July 3, 2025, yet Rodriguez remained blocked until September 29, 2025, after he filed this lawsuit. Rodriguez Decl. ¶ 33; Bassett Decl. ¶¶ 4, 13. And notably, Defendant Bassett does not assert that he actually will refrain from blocking Rodriguez—even if so-ordered by Captain Dull. Defendant Bassett

appears to say that the policy would not support blocking Rodriguez for like or similar posts. Bassett Decl. ¶ 13.

Fourth, Defendants have not repudiated their conduct or otherwise confessed that they erred. "[A] party's repudiation of its past conduct may sometimes help demonstrate that conduct is unlikely to recur." *Fikre*, 601 U.S. at 244. Although Defendants are not required to confess liability, repudiation would help demonstrate that Defendants understand the nature of the constitutional violations at issue and are therefore capable of taking, and have taken, steps to ensure those violations do not recur.

Defendants rely on a single case for the voluntary cessation exception, *Wagschal v. Skoufis*, 442 F. Supp. 3d 612 (S.D.N.Y. 2020). Mem. at 13. This case is inapposite. As an initial matter, the *Wagschal* court, in 2020, did not have the benefit of the Supreme Court's 2024 *Fikre* decision, where the Supreme Court declined to credit the government's declaration stating that the conduct at issue there would not recur. *Fikre*, 601 U.S. at 243. *Wagschal* instead relied on a pre-*Fikre* Second Circuit case, from 1992, that a government defendant is "entitled to 'some deference'" when it represents, in a declaration, "that certain conduct has been discontinued." *See Wagschal*, 442 F. Supp. 3d at 621 (quoting *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 59 (2d Cir. 1992)). But the Supreme Court held more recently in *Fikre* that both government and private defendants are held to the same voluntary-cessation burden; a government official's statements carry no more weight than a private party's when assessing promises regarding future conduct. *Fikre*, 601 U.S. at 241. Defendant Bassett's declaration therefore is not entitled to additional deference merely because he is a government official. Additionally, in *Wagschal*, the government actor declared that he did not intend to ban or block the plaintiff from the page again at *any* time in the future. *Wagschal*, 442 F. Supp. 3d at 621.

Defendant Bassett does not make the same promise; his assurances are carefully circumscribed to just the posts in the Complaint, together with a vague assurance about "comments or replies like or similar." Bassett Decl. ¶ 15. And again, Bassett does not expressly promise that he will not block Rodriguez.

Instead, this case is like *Pinkhasov v. Vernikov*, 2024 WL 2188356, 2024 U.S. Dist. LEXIS 87774, (E.D.N.Y. May 15, 2024), which distinguishes *Wagschal* at length. There, a city council member blocked a constituent from her Twitter account, and the constituent sued. *Pinkhasov*, 2024 WL 2188356, at *2. The court found the council member's assurances insufficient to demonstrate that the plaintiff would not be blocked in the future. *Id.* at *5–*7. The council member's declaration stated that she blocked plaintiff for "engag[ing] in persistent verbally abusive behavior" and had "no intention of using the banning function on Twitter to block Plaintiff from interacting with her Twitter account in the future, presuming Pinkhasov's conduct does not violate the law." *Id.* at *5 (cleaned up). Comparing that declaration to the one in *Fikre*, the *Pinkhasov* court held it insufficient for the same reasons:

> Like Yonas Fikre who did not know whether it was attendance at a mosque, his refusal to turn into an informant, or something else that placed him on the No Fly List, Councilmember Vernikov's short declaration, falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past, because it does not actually speak to what would trigger re-blocking and only provides assurances which are couched in legal conclusions

Id. at *6 (internal quotation marks omitted).

As in *Pinkhasov* and *Fikre*, Bassett's declaration does not explain why Rodriguez was blocked initially, nor does it clarify what particular speech might trigger Rodriguez's blocking in the future. The declaration, therefore, does not provide assurances that the government understands why the prior conduct happened and has taken steps to eliminate the conditions that

resulted in the decision to block Rodriguez. So too here, the Court should decline to find the government's declaration sufficient to meet its burden under the voluntary cessation doctrine.

C. The Navy's Changes to Its Social Media Policy Do Not Satisfy Defendants' Heavy Burden to Overcome the Voluntary Cessation Exception to Mootness.

Defendants rely heavily on the new U.S. Navy Social Media Policy, which was issued after Defendants blocked Rodriguez and before this lawsuit was filed. This policy change does not meet the Defendants' heavy burden because (i) the policy is not binding, (ii) Defendants could alter or amend the policy with the stroke of a pen, and (iii) the incomplete policy's unclear and language does not protect Rodriguez.

As an initial matter, internal governmental policy changes rarely make constitutional claims moot. In *Wall v. Wade*, the Fourth Circuit held that prison officials' decision to abandon a challenged policy during litigation did not moot the case because officials retained discretion to reinstate it. 741 F.3d 492, 497–98 (4th Cir. 2014) ("[W]hen a defendant retains the authority and capacity to repeat an alleged harm, a plaintiff's claims should not be dismissed as moot"). The Fourth Circuit reached a similar result in *Porter v. Clarke*, 852 F.3d 358, 364–66 (4th Cir. 2017). The court explained that a government policy change can moot a cause of action only when the government has "enter[ed] into an unconditional and irrevocable agreement that prohibits it from returning to the challenged conduct," or where the government "has not asserted its right to enforce [the challenged policy] at any future time." *Id.* at 364. *See also Already, LLC*, 568 U.S. at 93 (finding the voluntary-cessation exception met where a covenant not to sue was "unconditional and irrevocable"); *Eden, LLC v. Justice*, 36 F.4th 166, 171 (4th Cir. 2022) (holding that a challenge to Covid restrictions was not moot where defendants could theoretically reimpose similar restrictions). Courts are therefore "rightly skeptical" where a changed policy is not binding, irrevocable, or judicially enforceable. *See Tennessee v. Dep't of Educ.*, 104 F.4th

577, 589 (6th Cir. 2024) ("Courts are rightly skeptical about taking a party at its word that it will not enforce something when enforcement is within its discretion.").

First, the new social media policy is just that—a policy. It is not an "unconditional and irrevocable agreement that prohibits [Defendants] from returning to the challenged conduct." *Porter*, 852 F.3d at 364. Defendants have identified no federal statute or regulation forbidding Navy officials from blocking individuals from the Page. Likely because there is none. Furthermore, the policy has no enforcement mechanism. Indeed, Rodriguez was unblocked only after filing this lawsuit. Rodriguez Decl. ¶ 32. The mere instantiation of the policy did not cure the constitutional harm at issue, nor have Defendants demonstrated that the non-binding policy will preclude future constitutional harm to Rodriguez.

Second, Defendants retain complete control over the Page, and nothing prevents the Navy from revising the policy, reverting to the old policy, or having no policy at all once this litigation ends. Because Defendants retain complete discretion, this case presents a textbook scenario for the voluntary cessation exception to mootness. *Porter*, 852 F.3d at 365. *See also Pashby v. Delia*, 709 F.3d 307, 316-17 (4th Cir. 2013) (holding that a governmental entity's change to a challenged policy does not moot an action when the government retains authority to "reassess ... at any time" the change and revert to the challenged policy). Without more, the defendants cannot satisfy their burden.

Third, even if a non-binding policy change could render this case moot, the unclear policy has not cured the problem. The policy states, at page 13, "[t]he First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from an otherwise open online dialogue because they expressed views with

which the official disagrees." DEX 1, Attachment A at 13 (emphasis added). This statement is welcome, but it is an incomplete thought.

The policy's plain text only forecloses a Navy official from excluding speech based on (i) that same official's (ii) disagreement with the content. But an official might violate someone's First Amendment rights based on someone *else*'s reaction or, more pointedly, someone else's orders. Additionally, the motivation to abridge protected speech might be something other than disagreement—for example, annoyance, embarrassment, or anticipating that *others* might disagree or have negative reactions. The policy does not specify, as perhaps it should, that *no one*, acting on behalf of the Navy, will block the accounts of members of the general public, nor will anyone delete, filter, edit, hide or alter their posts, comments, or replies.

In sum, Defendants have failed to carry their heavy burden of showing that their unilateral actions, taken only after this case was filed, have rendered this case moot.

II. Rodriguez Continues To Have Standing.

Defendants spend most of their brief arguing that Rodriguez cannot establish standing because he lacks two standing elements, injury-in-fact and redressability. Mem. at 7–12. (Defendants do not challenge the third element, causation.) Both arguments are wrong. First, Rodriguez has an injury-in-fact because Defendants' prior conduct is currently chilling his speech and because Rodriguez faces the substantial risk of future constitutional violations. Second, Defendants' redressability arguments are, in essence, either a repackaged injury-in-fact argument or are beside the point. Rodriguez's harm is directly addressed by a declaration that the still-missing posts are a violation of Rodriguez's First Amendment rights, together with an injunction ordering their restoration and prohibiting Defendants from future violations.

A. Both Current Self-Censorship and the Substantial Risk of Another Ban Satisfy the Injury-in-Fact Requirement.

Defendants do not dispute that Rodriguez has suffered past injury, nor could they, as the Fourth Circuit has clearly held that being blocked from a government-run Facebook page is an injury in fact. *Davison v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019). Instead, Defendants contend that Rodriguez lacks standing now because he "cannot demonstrate that a threatened injury is impending, or that there is a substantial risk that harm will recur." Mem. at 8. This argument is mistaken.

The Fourth Circuit has long held that "'standing requirements are somewhat relaxed in First Amendment cases,' particularly regarding the injury-in-fact requirement." *Davison v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019) (quoting *Cooksey v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013) (collecting cases)). There are *two* ways that a threat of future enforcement can satisfy the injury-in-fact requirement in a First Amendment case like this one. *Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018). *First*, currently chilled speech: "[i]n First Amendment cases, the injury-in-fact element is commonly satisfied by a sufficient showing of self-censorship, which occurs when a claimant is chilled from exercising his right to free expression." *Cooksey v. Futrell*, 721 F.3d at 235 (cleaned up). *Second*, a credible threat of future enforcement: where a plaintiff "allege[s] [1] an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [2] there exists a credible threat of prosecution thereunder." *Davison*, 912 F.3d at 678 (quoting *Kenny*, 885 F.3d at 888) (internal quotation marks omitted). That two-part standard applies outside the criminal and civil enforcement context, including to cases like this one where the government bans an individual from an official Facebook page. *See Davison*, 912 F.3d at 678 (addressing a Facebook ban).

Chilled speech. In *Cooksey*, the plaintiff self-censored his speech on his website because he feared enforcement of an overbroad North Carolina law prohibiting "the practice of dietetics/nuitrition" by an unlicensed person. 721 F.3d at 230–32. The state had not brought any enforcement proceedings against the plaintiff, which, the state argued, meant that Cooksey had not alleged an injury in fact. *Id.* at 235. According to the state, Cooksey "alleges only a hypothetical 'injury' based on what the State Board might do in the future." *Id.* The Fourth Circuit rejected that argument. It held that a "chilling effect" on a plaintiff's speech—"one likely to deter a person of ordinary firmness from the exercise of First Amendment rights"—is sufficient to state an injury in fact. *Id.* at 236. Deterrence is sufficient because a "claimant need not show he ceased those activities altogether to demonstrate an injury in fact." *Id.* at 236. There, where plaintiff had actually ceased expressing certain opinions on his website, the Fourth Circuit held the plaintiff more than satisfied the injury-in-fact element of standing.

In *Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018), the Fourth Circuit easily held that the plaintiffs' "showing of self-censorship" satisfied the injury-in-fact standing requirement. There, students brought a facial challenge to a South Carolina law that criminalized, in essence, disrupting school. *Id.* at 284. The Fourth Circuit credited the students' testimony that they are unsure whether their conduct will result in enforcement, which "restricts their ability to engage they engage with the school," "speak out against abuses," or "participate in conversations about policing," holding that these restrictions limit the students' First Amendment rights. *Id.* at 288.

Rodriguez has demonstrated that he meets this standard from *Kenny* and *Cooksey*. He often self-censors to avoid being blocked again. Rodriguez Decl. ¶ 38. He worries that he might be blocked again because of what he says and is concerned that his comments may offend a

government official or hurt their feelings. *Id.* As in *Cooksey*, Rodrigeuz often hesitates to say what he really wants to say and speaks very carefully, to avoid being blocked again. *Id.*

Defendants' failure to explain their prior actions only compounds the chilling effect. *Id.* at ¶ 39. Rodriguez does not know why he was blocked before and whether that was according to the old policy. The mystery of the prior situation contributes to his uncertainty now, about what can get him blocked again. *Id.* at ¶ 40. As in *Kenny*, that uncertainty affects how he interacts with the Page, creating a chilling effect that establishes an injury-in-fact.

Accordingly, it matters little that Rodriguez has been restored to the Page presently, as he is not able freely to assist military families without constant self-censorship out of fear that Defendants will do the same thing again.

Credible threat of future enforcement. Defendants do not contest the first element of the two-part credible enforcement test—that Rodriguez intends to continue commenting on the Page. Defendants instead argue that Rodriguez is not likely to be banned again for protected First Amendment conduct. Mem. 8–9 (citing *Davison* and *Kenny*). But "[p]ast enforcement against the same conduct is good evidence that the threat of enforcement is not chimerical." *Kenny*, 885 F.3d at 288 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014)). Moreover, this future threat is "especially credible" when Defendants have not disavowed future enforcement. *Id*.

Defendants argue, in essence, that two points weigh in their favor, both of which fail. *First*, Defendants argue that the new policy forecloses Defendants from blocking Rodriguez, citing page 13 of the policy. Mem. 8. That page states "The Navy may not block individual social media accounts from official Navy social media sites. *However*, *the Navy may delete comments that constitute a violation of law, regulation, or* *the Navy's terms of use*." DEX 1,

Attachment A at 13 (emphasis added). Defendants' brief quotes the first sentence, but not the second. Mem. 8–9. The Navy does not disavow the ability to delete comments, which Defendants previously did to Rodriguez, and the Navy claims the authority to do so based on violations of "the Navy's terms of use," which are not defined.

Defendants also quote this portion of the policy: "[t]he First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from an otherwise open online dialogue because they expressed views with which the official disagrees." Mem. at 8–9. Notably, Defendants do not make any arguments from this quotation. But they appear to suggest that the policy protects Rodriguez's future First Amendment activity. As discussed above, *supra* pp. 16–17, the policy is incomplete because it does not state that the Navy must always abide by the First Amendment.[4]

Second, Defendants argue that they have disavowed enforcement because Defendant Bassett has attested that the new policy would not result in blocking "comments or replies like or similar to those set forth in Plaintiff's Complaint." Mem. at 9. As an initial matter "disavowal," is merely evidence in favor of no standing. *See Kenny*, 885 F.3d at 288. It is not itself conclusive. Moreover, Defendants' disavowal is limited to the specific comments and replies listed in the Complaint and to the vague space occupied by comments "like or similar to those." Mem. 9. Rodriguez did, in fact, make *other* comments on the Page, as explained in his declaration, Rodriguez Dec. ¶¶ 16–18. Having now restored some of Rodriguez's content (but not all his content) to the Page, Defendants do not address whether those additionally restored comments would be protected by the policy. Defendants also could have acknowledged that the First

[4] Regardless of whether Facebook protects content to the fullest extent of the First Amendment, the Navy cannot violate the First Amendment rights of civilians by taking actions that would violate the First Amendment.

Amendment governs all of Rodriguez's expressive conduct. Defendants' narrow disavowal leaves Defendants with significant discretion to enforce this policy in violation of Rodriguez's rights.

What is more, the new policy, even were it clear, does not show that Rodriguez is protected from future First Amendment violations. Defendants have not explained whether their prior conduct in August 2024—banning Rodriguez and deleting his content—violated their *prior* policy. If Defendants have a history of violating social media policies, Rodriguez faces a credible threat that Defendants will violate *this* policy as well, regardless of whether the policy clearly protects Rodriguez (which it does not).

In sum, the Court should find Rodriguez has satisfied the injury-in-fact element of standing.

B. Rodriguez's Injuries Are Redressable by Declaratory and Injunctive Relief.

Both injunctive prospective relief and declaratory relief regarding the still-unavailable posts satisfy the redressability element of standing. *First*, Defendants' only relevant, if entirely cumulative, argument is that "Plaintiff cannot establish any future or ongoing injuries for reasons previously explained above." Mem. 10–11. As explained above in this Opposition, Rodriguez can establish, and has established, that he faces a credible threat of future First Amendment violations, especially where, as here, Defendants have complete discretion to repeat their prior harm. An injunction barring Defendants from blocking and censoring Rodriguez in the future, would make certain what Defendants' new social media policy makes so uncertain—the First Amendment does not permit Defendants to ban members of the public or delete their comments based on their viewpoints. *See Cooksey*, 721 at 238 (finding that declaratory relief would satisfy the redressability element of standing).

That Rodriguez has not yet been blocked or censored again does not bar prospective relief. The Fourth Circuit decision in *Lefemine v. Wideman* is illustrative. 672 F.3d 292 (4th Cir. 2012) (affirming declaratory relief), *vacated on other grounds*, 568 U.S. 1 (2012) (finding the plaintiff was a prevailing party entitled to attorneys' fees). In *Lefemine*, a county sheriff's office violated the First Amendment rights of a pro-life organization when it ordered members to remove protest signs they displayed on public sidewalks. *Id.* at 295. A year later the sheriff's department advised plaintiff that, if it continued to display the same types of signs, the sheriff's department would again require the group to take them down. *Id.* at 296–97. The group nonetheless continued to display the signs for two more years and was not prosecuted or otherwise ordered to remove the signs. *Id.* at 297. On appeal, the Fourth Circuit upheld the district court's order enjoining defendants "from engaging in content-based restrictions on Plaintiff's display of graphic signs without narrowly tailoring its restriction to serve a compelling state interest." *Id.* at 303. Like the plaintiffs in *Lefemine*, that Rodriguez has not been banned or censored again does not diminish his entitlement to prospective relief.

Second, Defendants argue at length that Rodriguez is not entitled to a declaration that the Defendants violated his rights—"just because he wants vindication for what happened to him." Mem. 11 (quoting *Wells v. Johnson*, 150 F.4th 289, 303 (4th Cir. 2025)). This unnecessary swipe is misplaced.

As an initial matter, Defendants have not cured all of the constitutional violations complained of in the Complaint. Mem. 10–11. The Navy has restored Rodriguez's access to the Page, and it has restored some of his content. Bassett Decl. ¶ 13. But as Defendant Bassett acknowledges, *id.*, and Rodriguez confirms, Rodriguez Decl. ¶ 34, not all of Rodriguez's original content has been restored. Defendant Bassett speculates that Rodriguez may have deleted that

content, Bassett Decl. ¶ 13, but Rodriguez did not, Rodriguez Decl. ¶ 35. For whatever reason, that content has not been restored. Accordingly, a declaration that the original blocking was unlawful would address still ongoing harm.

More pointedly, and contrary to Defendants' assertions, Rodriguez does not seek a declaration just because he wants symbolic vindication. The chronology, which Defendants omit, explain this request for declaratory relief. At the time Rodriguez filed his Complaint, he was blocked from the Page. He sensibly requested, together with prospective relief, that the Court declare that Defendants violated his rights by blocking him, deleting his comments, and preventing him from contributing to the Page. Compl. at 15 ("Request for Relief"). Only then, after Rodriguez filed his lawsuit, did Defendants attempt to cure—and fail to fully cure—their past constitutional violations. To be sure, a declaration related to conduct that has "come *and gone*," *Wells v. Johnson*, 150 F.4th 289, 300 (4th Cir. 2025) (emphasis added), is unavailable unless it can have some prospective effect, *id.* at 306. But here, Rodriguez seeks a declaration related to existing harm—the missing posts—and for prospective relief.

In sum, this Court should exercise its discretion to grant Rodriguez declaratory and injunctive relief to remedy his actual ongoing injury and to both clarify Rodriguez's legal rights and Defendants' legal obligations to prevent further injury. Enjoining defendants from blocking Rodriguez or deleting his comments will ensure that Rodriguez's current and future speech on the Page is not further chilled by the ongoing specter of further censorship because of his viewpoint. And prospective injunctive relief will redress Rodriguez's injury in fact by ensuring that Defendants do not repeat their prior constitutional violations.

* * *

As a final thought for Defendants' standing arguments, Defendants ask the Court to follow *McKercher v. Morrison*, 2019 WL 1098935 (S.D. Cal. March 8, 2019), for the proposition that, once the Rodriguez was unbanned from the Page, his case became moot because he "obtained the relief requested in his Complaint—the ability to access and comment on the NSB Kings Bay Facebook page." Mem. at 12. *McKercher* is not persuasive. This case does not analyze standing; it does not discuss redressability or injury in fact; and, it especially does not address whether an injury in fact exists owing to either a current chilling effect or a threat of future enforcement. *McKercher*, instead, is a mootness case—one that does not discuss voluntary cessation. The court's one-sentence mootness analysis, based on the arguments presented to it, is simply: "Plaintiff no longer has a personal interest in his claims for injunctive or declaratory relief because he obtained the relief requested—the ability to access and comment on [the defendant's] Facebook page." *McKercher*, 2019 WL 1098935, at *3. That holding is not persuasive here where Rodriguez has raised the voluntary cessation exception to mootness.

McKercher's facts are also distinguishable. There, the government defendant "unblocked everyone on [defendant's] Facebook page" shortly after the complaint was filed. *McKercher*, at *2. No such evidence exists in this case. Here, Rodriguez remained blocked for almost a year after the Navy implemented the new social media policy, and he was only reinstated after filing suit. Rodiguez Decl. ¶¶ 32–33; Bassett Decl. ¶ ¶ 10, 13.

The Court should follow a more analogous mootness case, from this District, *Davison v. Plowman*, 191 F. Supp. 3d 553 (E.D. Va. 2016). There, a constituent sued when the Commonwealth Attorney deleted his comment and blocked him from a government Facebook page. *Id.* at 554. He sought injunctive relief, undeleting his comment, restoring his ability to post

new comments, and enjoining the defendant from blocking him in the future. *Id.* The defendant reinstated plaintiff to the page and moved to dismiss the case as moot. Denying the motion to dismiss, the court held that "the restoration of the plaintiff's ability to post on the Facebook page did not moot his claim for an injunction against being banned," where the defendant provided "only minimal assurances that he will not again ban [him]." *Id.* at 558. The court explained that sometimes "a change in official policy or law, or some other external constraint on the defendant's action, such as a collateral court order" can satisfy defendant's voluntary cessation burden, but "[i]n the absence of such a constraint, when a defendant retains the authority and capacity to repeat an alleged harm, a plaintiff's claim should not be dismissed as moot." *Id.* at 557 (internal quotation marks and citation omitted). The court then ruled that the defendant there "did not carry his heavy burden of demonstrating that this case is moot" and denied the motion to dismiss. *Id.*

So too here, the Court should rule that Rodriguez's claims are not moot.

CONCLUSION

For the foregoing reasons, Rodriguez respectfully requests this Court deny the motion to dismiss.

Dated: December 26, 2025

Respectfully submitted,

/s/ Michael A. Petrino

Michael A. Petrino (Va. Bar. No. 77187)
Michelle A. Scott (*pro hac vice*)
CENTER FOR INDIVIDUAL RIGHTS
1100 Connecticut Ave, NW
Suite 625
Washington, DC 20036
Tel: (202) 833-8400
petrino@cir-usa.org
scott@cir-usa.org