

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

JUN 23 2021

John J. Dierlam

Plaintiff

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Nathan Ochsner, Clerk of Court

versus

CIVIL ACTION NO. 4:16-cv-00307

Joseph R. Biden, in his official capacity
as President of the United States et. al.

Defendants

**RESPONSE TO GOVERNMENT’S MOTION FOR AN EXTENSION OF TIME
TO RESPOND TO MR. DIERLAM’S SECOND AMENDED COMPLAINT**

On 6/18/2021 the Government/Defendants filed a Motion for an extension of time to file a response to my 2nd Amended Complaint. For the following reasons I oppose this extension:

a) The defendants requested a considerable delay to file a Response to my Original Complaint. See Dkt# 14. FRCP 15 requires 14 days to respond to an amended complaint. The government asked for 60 days. Based upon past behavior, I fully expected this Motion on the part of the government which makes a mockery of the 45 day limit set by Judge Ellison. They want to take 60 days at least, regardless. The government is of course free to file a second similar Motion if this extension is granted.

b) The Supreme Court case *California v. Texas, No.19-840* has little impact on this case as I indicated in my last Motion. The court ruled that Texas et. al. did not have standing since their case was based almost exclusively on the reduction of the Individual Mandate by the TCJA of

2017 to \$0. The court did not accept the States argument of increased costs and burden from people being driven to use State health care services because the Individual Mandate was now \$0. See <https://www.buzzfeednews.com/article/paulmcleod/supreme-court-aca-obamacare-ruling>

The instant case, is not at all dependent on the TCJA. It was initiated long before that Law was passed and has a basis in multiple Constitutional Violations, e. g. the 1st, 4th, 5th, 9th and 10th amendments as well as other Statutes and precedent.

1) My standing is based upon past (retrospective) harm from Individual Mandate payments of a total of \$5626.22.

2) It is also based upon current harm from the HHS Mandate. I maintain that the Trump inspired religious exemption is insufficient especially in my case. The health care sharing ministries and to some extent the religious exemptions to the HHS Mandate create a form of second class citizenship and ghetto for individuals of religious motivation. See pp. 6-8 of my Petition for Writ of Certiorari, Supreme Court Case No. 20-946.

3) My standing is also based upon future (prospective) harm. From *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 325 (5th Cir. 2009) on the question of mootness which is a subset of the concept of standing,

In *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, the [Supreme] Court said that "[i]t is well settled that 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." Further, "the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." This is a "heavy burden," which must be born by the party asserting mootness. (Footnotes deleted)

In the present case unlike the *California* case, it is not the reduction of the Individual

Mandate to \$0 which causes the harm but the existence of the Mandate and the very real and likely raising of the Individual Mandate penalty by the current Democrat Congress or the imposition of a far more onerous penalty or Law. THE ACA IS FULLY INTACT, and the current Supreme Court decision will only embolden the Democrats to raise the penalty. See also the links on p.3 of my “Motion to remove Judge Palermo from any further role in this case” for Biden’s statements indicating he will remove the current religious exemptions to the HHS Mandate. For these reasons this Supreme Court decision works against the government not in favor. My conclusion is this argument on the part of the defendants is disingenuous and another excuse to delay this case.

c) I purposely made only small changes to the Amended Complaint to simply bring it in line with the Appeals Court ruling of 10/15/2020. The Appeals Court ruled in order to meet the jurisdictional requirements of 28 U.S.C. §1346(a)(1), 26 U.S.C. §§ 6532(a)(1) and 7422 I must explicitly state all requirements of these statutes were met. Otherwise, the Complaint is substantially the same as the 1st Amended Complaint. The government has had nearly 5 years to submit documents to object to and attack the complaint. Again, for this reason the government should not receive additional time.

d) The government’s counsel argues that their case load has increased. I do not question this fact. Based upon news reports such as mentioned above and others, the current administration is expanding attacks on Constitutional rights. I fully expect the DOJ to become even more busy not less over time. The proper solution to this problem is to allocate more resources to the DOJ, if Congress has not already done so. This reason is not pertinent or justifiable in this case and simply yet another excuse to delay.

e) This court has improperly delayed and denied justice in this case for the past three years at least as suggested by the Appeals Court ruling to vacate and remand. In many ways, the overall situation retrospectively and prospectively is now even worse and more dire than it was when this case was filed. As stated in my “Motion to remove Judge Palermo from any further role in this case” on p. 4, I no longer have any expectation of fair treatment in this case. Despite the reasons above, I expect Judge Ellison will grant the delay. I see my best strategy is to attempt to preserve this case for appeal as much as possible. Hopefully, this Response will be filed once received by the clerks. I had to make several phone calls to the clerks and send in the “Motion to remove Judge Palermo from any further role in this case” three times before the clerks of the court actually filed the Motion.

Certificate of Service

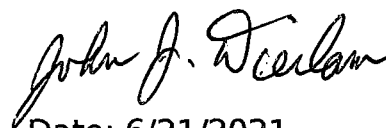
I certify I have on June 21, 2021 mailed a copy of the above document to the clerk of the court at:

United States District Clerk
Southern District of Texas
515 Rusk, Room 5300
Houston, TX 77002

as I do not have access to the Court's electronic filing system. I have also mailed a copy to Defendant's Counsel at:

Emily S. Newton
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 7132
Washington, DC 20530

I have emailed a courtesy copy to the Defendant's counsel at Emily.S.Newton@usdoj.gov as well as the Case Manager for Judge Ellison at Arturo_Rivera@txs.uscourts.gov.



Date: 6/21/2021
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SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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		§	
	Defendants	§	

[Proposed] Order

After due consideration, the defendants Motion for additional time is denied.

The Honorable Keith P. Ellison
United States District Judge