

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

STATE OF FLORIDA,

Plaintiff-Appellee,

v.

ADMINISTRATOR, NATIONAL
AERONAUTICS & SPACE
ADMINISTRATION, et al.,

Defendants-Appellants.

No. 22-10165

**UNOPPOSED MOTION TO VACATE BRIEFING SCHEDULE AND
HOLD APPEAL IN ABEYANCE**

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Defendants-Appellants certify that the following have an interest in the outcome of this appeal:

Andrapalliyal, Vinita

Avallone, Zach A.

Biden, Jr., Joseph R.

Carnahan, Robin

Christmas, Natalie

Federal Acquisition Regulatory Council

Field, Lesley A.

Florida, State of

General Services Administration

Jackson, Karla S.

Koses, Jeffrey A.

Merryday, Honorable Steven D., U.S. District Court Judge

Mohan, Anna O.

National Aeronautics and Space Administration

Nelson, Bill

Office of Management and Budget

Office of the Attorney General of Florida

Percival, II, James Hamilton

Peters, David L.

Tenaglia, John M.

U.S. Department of Defense

U.S. Office of Personnel Management

United States of America

Whitaker, Henry Charles

Wilson, Honorable Thomas G., U.S. Magistrate Judge

Wynosky, Kevin Joseph

Young, Shalanda D.

**UNOPPOSED MOTION TO VACATE BRIEFING SCHEDULE AND
HOLD APPEAL IN ABEYANCE**

This case presents substantially the same question of law awaiting resolution by this Court in *Georgia, et al. v. President of the United States, et al.*, No. 21-14269 (11th Cir.), which has an expedited briefing schedule and will be fully briefed and argued by April 2022. For the following reasons, the government respectfully requests that the Court vacate the briefing schedule set in this case and hold this appeal in abeyance, pending resolution of the appeal in *Georgia*.

1. This appeal concerns Executive Order 14,042, 86 Fed. Reg. 50,985 (Sept. 14, 2021), which instructs Executive departments and agencies to incorporate a COVID-19 safety clause into certain future contracts and solicitations. That clause requires that contractors and subcontractors comply with guidance developed by a federal task force. The approved guidance requires covered contractor employees to be fully vaccinated against COVID-19 unless they are legally entitled to an accommodation. 86 Fed. Reg. 63,418, 63,420 (Nov. 16, 2021). It also requires, among other things, that in some circumstances covered contractor employees wear masks and physically distance while at workplace locations where work on or in connection with federal contracts is being performed. *Id.* at 63,420-421. On December 22, 2021, the district court granted plaintiff's motion to preliminarily enjoin enforcement of the Executive Order, Order, *Florida v. Nelson, et al.*, No. 8:21-cv-2524 (M.D. Fla. Dec. 22, 2021), ECF No. 37, and on December 30, the court entered

an order barring the Executive Order's enforcement against all covered contracts in the State of Florida, Order, *Florida v. Nelson, et al.*, No. 8:21-cv-2524 (M.D. Fla. Dec. 30, 2021), ECF No. 40. The central issue in this appeal is whether Executive Order 14,042 is a lawful exercise of the President's authority under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 101 *et seq.*

2. The identical question is presented in *Georgia*. There, the States of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah, and West Virginia, as well as various state officials and agencies, filed suit challenging the Executive Order and related guidance. Plaintiffs moved for a preliminary injunction in November 2021. On December 7, the district court entered a preliminary injunction that applies nationwide, barring the federal government from "enforcing the vaccine mandate for federal contractors and subcontractors in all covered contracts in any state or territory of the United States of America." *Georgia v. Biden*, ___ F. Supp. 3d ___, 2021 WL 5779939, *12 (S.D. Ga. Dec. 7, 2021). On December 9, the government appealed.

3. On appeal, the *Georgia* case has been set an expedited briefing schedule. Defendants-appellants filed their opening brief on January 18, 2022. Plaintiffs-appellees' response brief is due on February 8. Defendants-appellants' reply brief is due on February 22. The case has been tentatively calendared for oral argument the week of April 4.

4. Under the circumstances, it is in the interest of the parties and the Court for this appeal to be held in abeyance pending this Court's resolution of the same

legal issue in *Georgia*. Abeyance will conserve the resources of the parties and the Court because there is a strong likelihood that the outcome of this appeal will be controlled by the Court's decision in *Georgia*. Moreover, a nationwide injunction remains in place in *Georgia* so resolution of this appeal will have no practical effect unless and until that injunction is vacated.

5. Plaintiff's counsel informs us that plaintiff does not oppose abeyance.

Respectfully submitted,

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/s/ David L. Peters

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FEBRUARY 2022

CERTIFICATE OF COMPLIANCE

I certify that the foregoing complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 568 words. The foregoing also complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

 /s/ David L. Peters
David L. Peters

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2022, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ David L. Peters

David L. Peters