

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

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|-----------------------------------|---|-----------------|
| FEDS FOR MEDICAL FREEDOM, et al., |) | |
| |) | |
| <i>Plaintiffs,</i> |) | |
| |) | |
| v. |) | No. 3:21-cv-356 |
| |) | |
| JOSEPH R. BIDEN, JR., et al., |) | |
| |) | |
| <i>Defendants.</i> |) | |

PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO STAY

Plaintiffs file this abbreviated opposition to the government’s motion to stay this Court’s preliminary injunction. The government claims it will seek relief in the Fifth Circuit if this Court does not rule by Thursday. Notably, the government gave itself longer to file its own stay motion than it is giving this Court to respond to that motion. Given the abbreviated timeline, Plaintiffs offer a brief response.

The Court should deny the government’s motion. Most of the government’s merits arguments in support of a stay were already raised in the preliminary injunction briefing and were properly rejected by the Court for the reasons stated in its order and in Plaintiffs’ own papers. The government’s remaining merits arguments were not raised in the preliminary injunction briefing at all and thus are forfeited.

Regarding the scope of the injunction, the government argues that it should be allowed to keep processing exemption requests during the pendency of the injunction. The Court should deny that request. Feds for Medical Freedom member George O’Sullivan, a

100% disabled veteran and Purple Heart recipient who now works for the CIA, submits the attached affidavit explaining the religious “accommodation” he received when agencies were still processing exemption requests. *See* Ex. 40. Mr. O’Sullivan was a Special Agent for the Director’s Protective Staff, and he submitted a request for a religious exemption from the vaccine mandate. In late December 2021, the agency’s Religious Accommodation Committee found Mr. O’Sullivan’s beliefs to be strongly held and sincere, but the “accommodation” offered was to use his own personal leave time until it expired, be put on Leave Without Pay status, or accept a “reassignment” to a position one grade lower (from GS-14 to GS-13) where he faces no realistic possibility of promotion and will suffer at least a \$60,000 pay cut because overtime is unavailable. *Id.*, ¶¶ 4-6. The agency followed up this “offer” with a letter indicating that if he declined it, he would “be considered non-compliant with Executive Order 140343 [*sic*] and will be contacted about next steps in the disciplinary process.” *Id.* He had to provide for his family, so he felt he had no choice but to accept the massive pay cut and demotion. *Id.*, ¶ 7.

There is no reason for the government to process exemptions to an illegal mandate that is already enjoined. And there is certainly cause for concern that, if allowed to continue “processing” exemption requests, the government would take the same kind of tactics used with Mr. O’Sullivan, whose experience is unlikely to be unique.

Dated: February 1, 2022

Respectfully submitted,

/s/ R. Trent McCotter

R. TRENT MCCOTTER (So. Dist. No. 3712529)
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CERTIFICATE OF WORD AND PAGE COUNTS

I hereby certify that the total number of words in this document, exclusive of those sections designated for omission, is 421 words, as registered by Microsoft Word. I further certify that this document, exclusive of those sections designated for omission for word limit purposes, is 2 pages. I further certify that this document is in size 13 Times New Roman font.

/s/ R. Trent McCotter

R. Trent McCotter

CERTIFICATE OF SERVICE

I certify that on February 1, 2022, a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) and served on all counsel of record.

/s/ R. Trent McCotter

R. Trent McCotter

EXHIBIT 40

AFFIDAVIT OF GEORGE O'SULLIVAN

1. My name is George O'Sullivan. I am over the age of 18 and am competent to make this declaration. The facts set forth in this declaration are based on my personal knowledge.
2. I am a member of Feds for Medical Freedom.
3. I am a civilian employee with the federal government. I work for the Central Intelligence Agency. I am also a 100% disabled veteran and Purple Heart recipient.
4. I was a Special Agent for the Director's Protective Staff. In 2021, I submitted a request for a religious exemption from the CIA's vaccine mandate. In December 2021, the Religious Accommodation Committee (RAC) said my religious beliefs were strongly held and sincere.
5. But the RAC's only offered accommodations were for me to use my leave time, enter LWOP status, or accept a "reassignment" to a position one grade lower (from GS-14 to GS-13) where I am almost guaranteed not to be promoted and will take a \$60,000 pay cut because overtime is not offered.
6. RAC followed up with a letter indicating that if I declined this offer, I would "be considered non-compliant with Executive Order 140343 [sic] and will be contacted about next steps in the disciplinary process."
7. I felt that I had no choice but to accept the demotion and pay cut because I have to provide for my family.
8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 1, 2022

