

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

AIR FORCE OFFICER, AIR FORCE NCO,
AIR FORCE SPECIAL AGENT, and
AIR FORCE ENGINEER, on behalf of
themselves and all others similarly situated,

Plaintiffs,

Case No. 5:22-cv-00009-TES

v.

LLOYD J. AUSTIN, III, in his
official capacity as Secretary of Defense;
FRANK KENDALL, III, in his
official capacity as Secretary of the Air Force; and
ROBERT I. MILLER, in his
official capacity as Surgeon General of the
Air Force,

Defendants.

PLAINTIFFS' MOTION TO STAY COUNTS I AND II

Plaintiffs hereby move (1) to stay the **military** mandate claims under Counts I and II pending final judgment, after exhaustion of all appeal rights, as to class-wide relief in *Doster v. Kendall*, No. 1:122-cv-84 (S.D. Ohio), provided that such stay shall be automatically lifted if the relief Plaintiffs are currently entitled to in *Doster* is vacated, reversed, stayed, or diminished in any way and (2) to stay the **federal civilian employee** mandate claims under Counts I and II pending final judgment, after exhaustion of all appeal rights, as to nationwide injunctive relief in *Feds for Med. Freedom v. Biden*, No. 3:21-CV-356 (S.D. Tex.), No. 22-40043 (5th Cir.), provided such stay shall be automatically lifted if the relief Plaintiff Air Force Officer is currently entitled to in *Feds for Med. Freedom* is vacated, reversed, stayed, or diminished in any way.¹ Plaintiffs further request that

¹ Defendants have indicated that they agree that the federal civilian employee mandate claims under Counts I and II should be stayed pending the outcome of *Feds for Med. Freedom*.

any stay order provide that, at any time, the Court may lift the stay and, for good cause, any party may file a motion to lift the stay.

In *Doster* and *Feds for Med. Freedom*, Plaintiffs have obtained some of the same preliminary relief they seek in this case. Specifically, Plaintiffs obtained preliminary relief as class members in *Doster*, and Plaintiff Air Force Officer obtained preliminary relief under the nationwide injunction entered in *Feds for Med. Freedom*. In their July 22, 2022 filing, Defendants correctly stated, “At the very least, Plaintiffs’ motion for class certification and a class-wide injunction, ECF No. 88, should be held in abeyance pending resolution of the substantially similar class that has already been certified in *Doster*..., and pending request for class-wide preliminary relief in that case.” [Doc. 117 at 2-3 n. 1].² To the extent Defendants now seek to restrict Plaintiffs’ rights as *Doster* class members by, for example, limiting the time period during which Plaintiffs may opt out of the *Doster* class, such a restriction would defy the terms of the July 27, 2022 *Doster* order and interfere with Plaintiffs’ rights as class members.

While Plaintiffs seek a stay of Counts I and II (Religious Freedom Restoration Act and First Amendment) as set forth above, they respectfully suggest that a stay of Count III is not appropriate, because the legal dimensions of the Count III claim for relief from the military mandate (Administrative Procedure Act) are separate and distinct from the legal dimensions of the claims under Counts I and II (RFRA and First Amendment). If final, permanent class-wide relief is ultimately issued in *Doster* (involving RFRA and First Amendment claims) after exhaustion of all appeal rights, then Plaintiffs would likely face no prospect of injury as to the military mandate. But no such final, permanent relief has been issued yet. Plaintiffs should be allowed to pursue relief

² Plaintiffs are prepared to file responses to Defendants’ recent notices of “supplemental factual developments” [Doc. 117] and of “additional authority” [Doc. 119] related to Counts I and II, but Plaintiffs will refrain from filing such responses pending the Court’s consideration of the present motion.

under an existing, alternative legal theory (APA) pending final judgment in *Doster*. Plaintiffs expect the Count III legal and factual issues to be straightforward and resolvable on summary judgment. If the Court denies Defendants' pending motion to dismiss Count III as Plaintiffs believe the Court should do [Doc. 101], Plaintiffs intend to pursue any necessary discovery related to Count III and to file a motion for summary judgment on that Count.

Accordingly, the Court should issue a partial stay: the Court should stay Counts I and II but not Count III.

WHEREFORE, Plaintiffs request that the Court stay Counts I and II (and not Count III) as set forth above.

Dated: August 4, 2022

Respectfully submitted,

/s/ Adam S. Hochschild

Stephen Crampton, *pro hac vice*
THOMAS MORE SOCIETY – Senior Counsel
PO Box 4506
Tupelo, MS 38803
(662)255-9439
scrampton@thomasmoresociety.org

Adam S. Hochschild, *pro hac vice*
Hochschild Law Firm
THOMAS MORE SOCIETY – Special Counsel
PO Box 401
Plainfield, VT 05667
(314)503-0326
adam@hochschildlaw.com

Mary Catherine Hodes, *pro hac vice*
THOMAS MORE SOCIETY – Special Counsel
112 S. Hanley Rd., Second Floor
Clayton, MO 63105
(314)825-5725
mchodes@thomasmoresociety.org

Michael McHale, *pro hac vice*
THOMAS MORE SOCIETY – Counsel
10506 Burt Circle, Ste. 110
Omaha, NE 63114
(402)501-8586
mmchale@thomasmoresociety.org

Paul M. Jonna, *pro hac vice*
LiMandri & Jonna LLP
THOMAS MORE SOCIETY – Special Counsel
P.O. Box 9120
Rancho Santa Fe, CA 92067
(858)759-994
pjonna@limandri.com

Michael R. Hirsh, GA #357220
Hirsh Law Office, LLC
2295 Towne Lake Parkway
Suite 116-181
Woodstock, GA 30189
(678)653-9907
michael@hirsh.law

Counsel for Plaintiffs