

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

Air Force Officer, Air Force NCO, Air Force Special Agent,
and Air Force Engineer, on behalf of themselves and all
others similarly situated,

Applicants,

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,

Respondents,

**CONSENTED APPLICATION TO THE HON. CLARENCE THOMAS
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Pursuant to Supreme Court Rule 13.5, and with Respondents' consent, Applicants Air Force Officer, Air Force NCO, Air Force Special Agent, and Air Force Engineer hereby move for an extension of time of 30 days, to and including November 25, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be October 26, 2024.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Eleventh Circuit rendered its decision in this case, No. 25-10081 (11th Cir.), on May 29, 2026 (Exhibit 1). The Court

of Appeals denied Applicants' petition for rehearing on July 28, 2026 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. The Respondents consent to this request for additional time.

3. The parties are discussing a potential settlement of the case. Applicants request additional time to file a petition for a writ of certiorari, pending the parties' settlement discussions.

4. This case involves a challenge to the Air Force's religious accommodation request process under the Religious Freedom Restoration Act (RFRA) and the First Amendment.

5. Applicants are Air Force service members who were denied religious accommodations to the Air Force's COVID-19 vaccine mandate under the Air Force's unlawful religious accommodation process. The mandate has been rescinded, but the Applicants who are still in service remain hesitant to invoke the religious accommodation process again as to other requirements, because the process still has not been fixed. Applicants seek relief for themselves and all similarly situated Air Force service members.

6. The Respondents are the Secretary of War, the Secretary of the Air Force, and the Surgeon General of the Air Force, in their official capacities. The Eleventh Circuit's decision identified (as the caption above identifies) the Defendants-Respondents as Lloyd J. Austin III, Secretary of Defense; Frank Kendall III, Secretary of the Air Force; and Robert I Miller, Surgeon General of the Air Force. Those were the officials when the case was filed. The current, successor Respondents are Pete Hegseth,

Secretary of War; Troy Meink, Secretary of the Air Force; and John DeGoes, Surgeon General of the Air Force.

7. Applicants allege that the Air Force’s religious accommodation process does not comply with RFRA and the First Amendment.

8. Specifically, RFRA requires that the government “shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden *to the person* — (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S. Code § 2000bb-1(b).

9. In other words, the government cannot deny a religious accommodation on the basis of “broadly formulated interests”—under RFRA, the inquiry instead must be “more focused,” specifically “to the person.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-32 (2006) (quoting 42 U.S.C. § 2000bb-1(b)). The government must assess whether burdening the *specific, individual* service member’s exercise of religion furthers a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S. Code § 2000bb-1(b); *O Centro*, 546 U.S. at 430-32.

10. The Air Force’s religious accommodation process, however, has not provided and still does not provide for the requisite individualized “to the person” assessment; the applicable instruction, DoDI 1300.17(I)(2)(e)(1), omits entirely the “to the person” assessment.

11. The military's COVID-19 vaccine mandate was the original catalyst for this lawsuit. The Air Force failed to make the "to the person" assessment required under RFRA in denying Applicants' requests for religious accommodation from the mandate.

12. Applicants also attested that they are reasonably hesitant to invoke the religious accommodation process again as to other requirements, because the process still unlawfully fails to afford the requisite "to the person" assessment.

13. The Eleventh Circuit erroneously held that Applicants did not plead a viable challenge to the religious accommodation process once the COVID-19 vaccine mandate was rescinded and that Applicants' entire case was moot upon such rescission, even though Applicants remain hesitant to invoke the religious accommodation process again.

14. The Eleventh Circuit's decision created a circuit split.

15. In two other cases involving substantially identical complaints and issues as here, the Fifth Circuit expressly held that plaintiffs did plead a viable challenge to the religious accommodation process and that rescission of the COVID-19 vaccine mandate did not moot the entire case. *See Jackson v. Noem*, 132 F.4th 790 (5th Cir. 2025) (Coast Guard service-member putative class action); *Crocker v. Austin*, 115 F.4th 660 (5th Cir. 2024) (Air Force individual service-member plaintiffs; not a class action or putative class action).

16. Applicants maintain that the Eleventh Circuit erred in ignoring and failing to apply black letter law applicable to the reading of a federal complaint.

17. The parties are working in good faith to try to settle this case.

18. Applicants hope that they will reach a settlement before their deadline to file a petition for certiorari passes, but they anticipate they will need some extra time to allow for further settlement discussions.

19. The requested extension would allow the parties to focus their efforts on settlement discussions, which, if successful, would obviate the need for a petition for writ of certiorari and would conserve the resources of the Court and the parties.

20. If the parties do not reach a settlement soon, Applicants intend to file their petition for a writ of certiorari but would need some extra time to turn their focus from settlement discussions to preparing an appropriate petition.

21. Accordingly, for good cause, in the interests of conserving the Court's and the parties' resources, and with Respondents' consent, Applicants request an extension of their deadline to file a petition for certiorari by 30 days.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including November 25, 2026, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

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October 16, 2026

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5, the undersigned, a member of the Bar of this Court, hereby certifies that on October 16, 2026, a copy of the foregoing was served by email and by third-party commercial carrier for delivery within three calendar days on:

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