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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 CORAZON DE CRISTO CANO et al.,  
11 Plaintiffs,  
12 v.  
13 JOSEPH R. BIDEN et al.,  
14 Defendants.

Case No.: 22-CV-193-CAB-AHG

**ORDER DENYING EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND  
DISMISSING COMPLAINT**

[Doc. No. 3]

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17 Plaintiffs, a collection of over 100 individuals residing throughout the United States  
18 (along with one plaintiff residing in Germany) who are allegedly employed by dozens of  
19 different government agencies or federal contractors, bring this suit against government  
20 agencies and federal officials, including President Joseph R. Biden, the Centers for Disease  
21 Control, and the Safer Federal Workforce Task Force and its individual members, seeking  
22 to enjoin enforcement of two executive orders imposing COVID-19 vaccine requirements  
23 on federal employees (the “Employee Mandate”) and federal contractors (the “Contractor  
24 Mandate”), respectively. Shortly after filing the complaint, Plaintiffs filed an ex parte  
25 application for a temporary restraining order (“TRO”) temporarily enjoining defendants,  
26 whom Plaintiffs categorize as the “Federal Government,” “from enforcing the September  
27 9, 2021, Executive Orders, #14042 and 14043, unnecessarily forcing Covid-19  
28 vaccinations upon Federal Workers, as well as implementing any and all directives and

1 guidance mandated by the Safer Federal Workforce Task Force.” [Doc. No. 3 at 1-2.] The  
2 application states that “[i]f not preliminarily enjoined, the Federal Government will  
3 irreversibly place the Federal Worker plaintiffs at risk of imminent financial duress and/or  
4 physical injury.” [*Id.* at 2.] The application has been fully briefed, and the Court deems it  
5 suitable for submission without oral argument. The application is denied, and the  
6 complaint is dismissed for lack of subject matter jurisdiction.

7 **I. The Claims of Most Plaintiffs Are Not Justiciable**

8 First, the overwhelming majority of the plaintiffs do not have claims that are ripe for  
9 adjudication. “A claim is not ripe for adjudication if it rests upon contingent future events  
10 that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*,  
11 523 U.S. 296, 300 (1998) (internal quotation marks omitted). “[T]he mere potential for  
12 future injury, standing alone, is insufficient to render a case justiciable under Article III,  
13 even where the issue presented is primarily legal.” *See, e.g., Brnovich v. Biden*, \_\_ F.Supp.  
14 3d \_\_, No. CV-21-01568-PHX-MTL, 2022 WL 252396, at \*8 (D. Ariz. Jan. 27, 2022)  
15 (holding that plaintiff with pending request for exemption from Employee Mandate did not  
16 have a ripe claim).

17 Here, all but thirteen of the named plaintiffs remain employed and either have  
18 obtained an exemption to any COVID-19 vaccine requirements of their employer or have  
19 a request for an exemption pending. Moreover, both of the executive orders in question  
20 are already subject to a nationwide injunction issued by another court. *Feds for Med.*  
21 *Freedom v. Biden*, \_\_ F.Supp. 3d \_\_, No. 3:21-CV-356, 2022 WL 188329, at \*8 (S.D. Tex.  
22 Jan. 21, 2022) (issuing nationwide injunction on enforcement of Employee Mandate);  
23 *Georgia v. Biden*, \_\_ F.Supp. 3d \_\_, No. 1:21-CV-163, 2021 WL 5779939, at \*12 (S.D.  
24 Ga. Dec. 7, 2021) (issuing nationwide injunction on enforcement of Contractor Mandate);  
25 *see also* Complaint at ¶ 220 (“As it stands at this moment in time, all three of Defendant  
26 Biden’s vaccine mandates (Federal Employee, Federal Contractor, and OSHA ETS) have  
27 been enjoined by a federal court, or the Supreme Court . . . .”). None of the presently  
28 employed plaintiffs have alleged or presented evidence that they have experienced an

1 adverse employment action based on either the Employee Mandate or the Contractor  
2 Mandate. These plaintiffs, therefore, “come before this Court complaining of a compulsory  
3 inoculation they may never need to take, and of adverse employment actions they may  
4 never experience. This uncertainty weighs decisively against the ripeness of Plaintiffs’  
5 claims and the irreparability of their purported injuries.” *Church v. Biden*, \_\_ F.Supp. 3d  
6 \_\_, No. CV 21-2815 (CKK), 2021 WL 5179215, at \*1 (D.D.C. Nov. 8, 2021). Necessarily,  
7 because the Court lacks jurisdiction over their unripe claims, these plaintiffs are not entitled  
8 to a TRO.<sup>1</sup>

9 Further, “[w]ithout jurisdiction the court cannot proceed at all in any cause . . . and  
10 when it ceases to exist, the only function remaining to the court is that of announcing the  
11 fact and dismissing the cause.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94  
12 (1998) (citation omitted). Accordingly, the claims of these currently-employed plaintiffs  
13 (identified by name below) are dismissed in their entirety.

## 14 **II. Claims of Remaining Plaintiffs**

15 Having dismissed the claims of those plaintiffs whose claims are not justiciable, only  
16 thirteen plaintiffs remain. Each of these plaintiffs alleges that they were terminated, forced  
17 into retirement, or placed on unpaid leave as a result of their opposition to COVID-19  
18 vaccination requirements at their employers, whom they allege are subject to the Contractor  
19 Mandate. The Court, however, lacks subject matter jurisdiction over these plaintiffs’  
20 claims because they lack Article III standing.

21 “[T]he ‘irreducible constitutional minimum’ of standing consists of three elements.  
22 The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the  
23 challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable  
24 \_\_\_\_\_

25 <sup>1</sup> *Cf. Robert v. Austin*, No. 21-CV-02228-RM-STV, 2022 WL 103374, at \*3 (D. Colo. Jan. 11, 2022)  
26 (“Because Plaintiffs have not established that their claims are justiciable, a fortiori, they cannot establish  
27 a likelihood of success on the merits or a clear and unequivocal right to injunctive relief.”); *Rodden v.*  
28 *Fauci*, No. 3:21-CV-317, 2021 WL 5545234, at \*2 (S.D. Tex. Nov. 27, 2021) (“[I]t is too speculative to  
say that the plaintiffs who have claimed an exemption [from the Employee Mandate] are in imminent  
danger of irreparable harm.”).

1 judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (internal citation  
2 omitted). The thirteen remaining federal contractor employee plaintiffs may, unlike the  
3 dismissed plaintiffs, have satisfied the first two elements. Either in the complaint or in  
4 declarations, these plaintiffs contend that they suffered an adverse employment action (i.e.,  
5 an injury in fact) that is traceable to some or all of the named defendants’ actions to the  
6 extent that their employers took adverse employment action against them as a result of the  
7 Contractor Mandate. Nevertheless, the remaining plaintiffs still do not have Article III  
8 standing to seek the injunction sought by the application for a TRO because they fail to  
9 satisfy the redressability requirement. The injury allegedly suffered by each of the  
10 remaining thirteen plaintiffs is the adverse employment action allegedly taken by their  
11 employers because of plaintiffs’ refusal to be vaccinated. The application for a TRO,  
12 however, does not seek reinstatement of these plaintiffs’ employment; it only seeks an  
13 injunction on enforcement of the Employee and Contractor Mandates. Granting this  
14 injunction will not redress these remaining plaintiffs’ injuries.

15 The only injunction that would redress these plaintiffs’ injuries (i.e., their loss of  
16 employment), let alone the irreparable harm they claim to have suffered as a result of those  
17 injuries, would be reinstatement of their employment. Yet, plaintiffs’ employers are not  
18 named as defendants.<sup>2</sup> “To obtain injunctive relief, a plaintiff must ask for that relief  
19 against a party who can redress her claim.” *Rodden*, 2021 WL 5545234, at \*3 (citing *Lujan*  
20 *v. Defs. of Wildlife*, 504 U.S. 555, 568 (1992)). The various federal officials and entities  
21 named as defendants here cannot reinstate these thirteen plaintiffs’ employment because  
22 they were not plaintiffs’ employers. Even if the actions or statements of the named  
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25 <sup>2</sup> It may not be possible for employees of a federal contractor, as opposed to the contractor itself, to have  
26 Article III standing to sue federal officials to enjoin enforcement of the Contractor Mandate, because the  
27 Contractor Mandate applies to contractors, not to the employees themselves. An employee’s redress  
28 would be against only his employer, not the federal government. Along these lines, most or all cases cited  
herein concerning the constitutionality of the Employee and Contractor Mandates were filed by federal  
employees against the agency that employs or employed them, or by the contractors themselves, objecting  
to the requirement that all of their employees be vaccinated.

1 defendants influenced the actions taken by plaintiffs’ employers that caused the injuries in  
2 fact, the injuries are not redressable here because they result “from the independent action  
3 of some third party not before the court.” *Id.* (denying TRO on enforcement of Employee  
4 Mandate by federal employee who sued the Safer Federal Workforce Task Force but not  
5 the federal agency that employed her). Likewise, the relief sought in this case as a whole  
6 will not redress these plaintiffs’ injuries because it will not result in the reinstatement of  
7 their employment. Accordingly, even though these remaining plaintiffs potentially have  
8 ripe claims, their failure to name the proper defendants precludes the Court from providing  
9 relief that will redress their injuries and therefore deprives it of jurisdiction over their  
10 claims as well.

### 11 **Disposition**

12 In light of the foregoing, it is hereby **ORDERED** as follows:

- 13 1. Plaintiffs’ ex parte application for a temporary restraining order is **DENIED**;
- 14 2. Because their claims are unripe and therefore not justiciable under Article III, the  
15 claims of the following plaintiffs are **DISMISSED WITHOUT PREJUDICE**  
16 for lack of subject matter jurisdiction:

- 17 • Corazon de Cristo Cano (accepted religious exemption)
- 18 • Terry Hardin (pending religious exemption request)
- 19 • Crystal Irvin (pending religious exemption request)
- 20 • Angelina Pina Hardin (pending religious exemption request)
- 21 • Jeannette Sale (denied religious exemption but no allegation or evidence of  
22 adverse employment action)
- 23 • Tanya Allemang (pending religious exemption request)
- 24 • Mohamad Bachrouche (pending religious exemption request)
- 25 • Logan Barnes (denied religious exemption but no allegation or evidence of  
26 adverse employment action)
- 27 • James Booth (granted religious exemption)
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- 1 • John Caligiuri (pending religious exemption request)
- 2 • Stephanie Caligiuri (pending religious exemption request)
- 3 • Ricardo Chavez (accepted religious exemption)
- 4 • Naomi Chiba (pending religious exemption request)
- 5 • Josef Christ (accepted religious exemption)
- 6 • Margaret Clark (accepted temporary religious exemption)
- 7 • Ann Colt (pending religious exemption request)
- 8 • David Courret-Knight (denied religious exemption but no allegation or
- 9 evidence of adverse employment action)
- 10 • Neil Custer (pending religious exemption request)
- 11 • Shawn Danneker (pending religious exemption request)
- 12 • Shad Davis (denied religious exemption but no allegation or evidence of
- 13 adverse employment action)
- 14 • Scott Dawson (accepted religious exemption)
- 15 • Darryn DeLine (accepted religious exemption)
- 16 • Gregg Dillingham (accepted religious exemption)
- 17 • Jared Dominick (accepted religious exemption)
- 18 • Teresa Dominick (accepted religious exemption)
- 19 • Kathryn Draper (accepted religious exemption)
- 20 • Anthony Dray (pending religious exemption request)
- 21 • Marie Dreyer (pending religious exemption request)
- 22 • Michelle Duncan (approved religious exemption)
- 23 • David Edewaard (granted religious exemption “pending a court review”)
- 24 • Mary Ruth Edwards (approved religious exemption)
- 25 • Heidi Fernandez (approved religious exemption)
- 26 • Jennifer Fish (accepted religious exemption)
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- 1 • Sharon Freeland (denied religious exemption but no allegation or evidence of
- 2 adverse employment action)
- 3 • Robert Frey (pending religious exemption request)
- 4 • Lisa Frost (approved religious exemption)
- 5 • John Grant (pending religious exemption request)
- 6 • Matthew Gray (accepted religious exemption)
- 7 • Jerry Gridley (approved religious exemption)
- 8 • Joseph Hanna (pending religious exemption request)
- 9 • Douglas Hart (pending religious exemption request)
- 10 • Marguerite Hart (accepted religious exemption)
- 11 • Chamise Hartman (pending religious exemption request)
- 12 • Larry Herbert (accepted religious exemption)
- 13 • Jamie Heijmans (approved religious exemption)
- 14 • James Horton (approved religious exemption)
- 15 • Ron Irvin (pending religious exemption request)
- 16 • Jeffery Jensen (denied religious exemption but no allegation or evidence of
- 17 adverse employment action)
- 18 • Erika Jordan (approved medical exemption)
- 19 • Samantha Keegan (pending religious exemption request)
- 20 • John Keisling (approved religious exemption)
- 21 • Dwight King (approved religious exemption and pending religious exemption
- 22 request)
- 23 • Jason Kofoed (approved religious exemption)
- 24 • Lindsay Liberto (pending religious exemption request)
- 25 • Sam Lopez (pending religious exemption request)
- 26 • Gale Lyon (approved religious exemption request)
- 27 • Morgan MaGill (pending religious exemption request)
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- 1 • Lisa McClain (pending religious exemption request)
- 2 • Jeffrey McCoy (pending religious and medical exemption requests)
- 3 • Kathleen McCoy (pending religious and medical exemption requests)
- 4 • Lance McDonald (pending religious exemption request)
- 5 • Trent Mooney (granted religious exemption)
- 6 • Timothy Moroney (pending religious exemption request)
- 7 • Joelle Moss (approved religious exemption)
- 8 • Julia Myers (denied religious exemption but no allegation or evidence of
- 9 adverse employment action)
- 10 • Jeffery Nielson (denied religious exemption but no allegation or evidence of
- 11 adverse employment action)
- 12 • Yana Noyola (pending religious exemption request)
- 13 • Patrick Paeschke (accepted religious exemption)
- 14 • Randall Perkes (no allegation or evidence of refusal to be vaccinated or
- 15 adverse employment action as a result thereof)
- 16 • Douglas Perkins (no allegation or evidence of refusal to be vaccinated or
- 17 adverse employment action as a result thereof)
- 18 • Bryan Raeder (approved religious exemption)
- 19 • John Randall (approved religious exemption)
- 20 • Kevin Reberger (accepted religious exemption)
- 21 • Carol Reid (accepted religious exemption)
- 22 • Matthew Reed (pending religious exemption request)
- 23 • Ramon Riojas (accepted religious exemption request)
- 24 • Tracey Rittenbach (approved religious exemption)
- 25 • Jennifer Roames (pending religious exemption request)
- 26 • Susan Rogers (pending religious exemption request)
- 27 • Mischelle Russell (accepted religious exemption request)
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- 1 • Anthony Savino (accepted religious exemption)
- 2 • Nancy Scala (accepted religious exemption)
- 3 • Karen Schultz (approved religious exemption)
- 4 • Brittany Skaar (granted religious exemption)
- 5 • Mark Smith (pending religious exemption request)
- 6 • James Snyder (approved religious exemption)
- 7 • Tim Solberg (pending religious exemption request)
- 8 • Roger Szelmeczka (denied religious exemption but no allegation or evidence
- 9 of adverse employment action)
- 10 • Kiera Taylor (pending religious exemption request)
- 11 • Douglas Teachout (approved religious exemption)
- 12 • James Thorne (accepted religious exemption)
- 13 • Viktor Tverdokhlebo (accepted religious exemption)
- 14 • Eva Upchurch (approved religious exemption)
- 15 • Rachel Waldron (pending religious exemption request)
- 16 • Mark Watson (granted religious exemption request)
- 17 • William Weidle (pending religious exemption request)
- 18 • Anthony Wilson (pending religious exemption request)
- 19 • Robert Wood (accepted religious exemption)
- 20 • Myra Wynn (pending religious exemption request)
- 21 • Tiffany Zerangue (pending religious exemption request)
- 22 • Roes 1-23 (none of whom are alleged to have been subject to adverse
- 23 employment action as a result of a refusal to be vaccinated)
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25 3. Because the relief sought in the complaint either will not redress their alleged  
26 injuries, and because relief that would redress such injuries cannot be provided  
27 by the named defendants, the following plaintiffs' claims are **DISMISSED**  
28 **WITHOUT PREJUDICE** for lack of Article III standing:

- 1 • Jeff Ahlers
- 2 • Jeff Bohi
- 3 • Susan Bruyere
- 4 • Nicholas Christiansen
- 5 • Dorothy Frenzel
- 6 • Janet Friesz
- 7 • Roger Graves
- 8 • Pamela Hartsock
- 9 • Dawnette Hunter
- 10 • Keith Newberry
- 11 • Matthew Sterba
- 12 • Jarrid Thomas
- 13 • Paul Winger

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15 4. In light of the foregoing, the complaint is **DISMISSED** in its entirety, without  
16 prejudice, with each Plaintiff granted leave to amend his/her claims. However,  
17 the Court finds that plaintiffs’ claims do not arise “out of the same transaction,  
18 occurrence, or series of transactions or occurrences” and therefore are not  
19 properly joined in the same lawsuit. Fed. R. Civ. P. 20. Plaintiffs reside in  
20 different states and are or were employed by dozens of employers, including  
21 disparate government agencies and private entities with contracts with the federal  
22 government, each of whom should be named as a defendant with respect to the  
23 claims of the particular employees of that entity. Moreover, these employers of  
24 each Plaintiff would not be liable “jointly, severally, or in the alternative with  
25 respect to or arising out of the same transaction, occurrence, or series of  
26 transactions or occurrences.” *Id.* Each plaintiff was subject to a unique adverse  
27 employment action (or, more commonly, no adverse employment action at all),  
28 and therefore each plaintiff’s individual circumstances are unique, requiring

1 separate analyses of the ripeness of their claims, their standing, and the relief to  
2 which they may or may not be entitled. Accordingly, only plaintiffs who were  
3 employed by the same entity may be co-plaintiffs in a particular lawsuit going  
4 forward. To that end, only the first named plaintiff, Corazon de Cristo Cano,  
5 along with any other individuals also employed by “Solute”, may file an amended  
6 complaint under this case number. Such amended complaint must be filed on or  
7 before April 25, 2022, or this case number will be closed. Any other plaintiffs  
8 wishing to continue pursuit of their claims, and who believe they can file a  
9 complaint that remedies the jurisdictional defects stated herein, must file new  
10 complaints with new case numbers (and pay the requisite filing fees), and may  
11 only include plaintiffs who share the same employer in the same case.

12 It is **SO ORDERED**.

13 Dated: April 4, 2022



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15 Hon. Cathy Ann Bencivengo  
16 United States District Judge  
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