

United States Court of Appeals for the Fifth Circuit

No. 23-20401
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
February 29, 2024

Lyle W. Cayce
Clerk

JOHN J. DIERLAM,

Plaintiff—Appellant,

versus

JOSEPH R. BIDEN, *in his official capacity as President of the United States*;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES; XAVIER BECERRA, *Secretary, U.S. Department of Health and*
Human Services; UNITED STATES DEPARTMENT OF TREASURY;
JANET YELLEN, *Secretary, U.S. Department of Treasury*; UNITED
STATES DEPARTMENT OF LABOR; JULIE A. SU, *Acting Secretary,*
U.S. Department of Labor,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-307

Before KING, HAYNES, and GRAVES, *Circuit Judges.*

PER CURIAM:*

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 23-20401

Pro se Plaintiff John Dierlam brought claims challenging the Affordable Care Act (ACA) alleging a myriad of violations of the United States Constitution and The Religious Freedom Restoration Act (RFRA). Dierlam sought both retrospective and prospective relief.

This pro se case was previously before this court in 2020. *See Dierlam v. Trump*, 977 F.3d 471 (5th Cir. 2020). There, we remanded the case so the district court could conduct a full mootness analysis and so Plaintiff could seek a refund of the shared-responsibility payments he made under the ACA from 2014-2017 (a fee imposed on individuals who failed to purchase health insurance) (retrospective relief). *Id.* at 475, 478. As to prospective relief, this court concluded that changes in the law raised questions of standing and mootness which the district court was to address on remand. *Id.* at 473-74.

On remand, the district court granted Defendants' Partial Motion to Dismiss finding that Plaintiff's claims were moot and/or lacked standing because the Tax Cut and Jobs Act reduced the shared-responsibility payments to \$0; the Department of Health and Human Services (HHS) created exemptions to the contraceptive-coverage requirement, which included an individual exemption for individuals like Plaintiff; and Plaintiff could not state an injury under § 1502(c) of the ACA. After permitting Plaintiff to file a Third Amended Complaint, Defendants filed another Partial Motion to Dismiss which the district court granted. Plaintiff appealed.

This court has considered this appeal on the basis of the briefs and pertinent portions of the record. Having done so, the judgment is affirmed for the reasons stated in the district court's detailed clarifying memorandum on the dismissal of Plaintiff's Second Amended Complaint. Those reasons also apply to Plaintiff's Third Amended Complaint. The district court did not err in granting Defendants' Partial Motion to Dismiss. We AFFIRM.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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February 29, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 23-20401 Dierlam v. Biden
USDC No. 4:16-CV-307

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk

Enclosure(s)

Mr. John J. Dierlam
Mr. Daniel David Hu
Ms. Alisa Beth Klein
Ms. Sarah Nicole Smith