

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

BENJAMIN COKER, *et al.*,

Plaintiffs,

v.

Case No. 3:21-cv-01211-AW-HTC

LLOYD AUSTIN, III, *et al.*,

Defendants.

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY, OR IN THE
ALTERNATIVE TO EXTEND CLOSE OF DISCOVERY**

Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure and this Court's November 22, 2021 Scheduling Order, ECF 48, Plaintiffs file this Motion to Compel discovery and/or complete production of the administrative record, or in the alternative to extend the discovery deadline to permit Plaintiff to submit targeted interrogatories, requests for admission, and/or depositions in lieu of the requested documents.

As explained in the accompanying memorandum and exhibits, the central disputed issue between the Parties is whether any discovery at all should be permitted. In its January 6, 2022 Order, ECF 58, this Court answered that question in the affirmative. Military Defendants have, with limited exceptions, refused to provide any documents beyond those in what they represent as the complete administrative record, which appears on its face to be incomplete.

Plaintiffs do not wish to engage in protracted discovery disputes. Instead,

they seek prompt, summary adjudication of their claims. This should be feasible, because the Parties appear to be in agreement on most of the material factual issues and what the administrative record does and does not contain.

Accordingly, Plaintiffs have proposed, as an alternative to the production of documents not in the administrative record, an extension of the close of discovery to permit Plaintiffs to propound interrogatories and requests for admissions, and to depose officials who can speak on behalf of Military Defendants, to narrow the range of disputed factual issues to facilitate summary adjudication of Plaintiffs' claims against Military Defendants only. In particular, Plaintiffs would propound interrogatories and RFAs like those set forth in the May 24, 2022 email, *see* Ex. 6, and would ask the Court to set a deadline to complete such discovery within 4-6 weeks of the order granting the request.

Dated: June 3, 2022

Respectfully submitted,

/s/ Brandon Johnson

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/s/ Travis Miller

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I electronically filed the foregoing notice with the Clerk of the Court by using the CM/ECF system, which will notify all attorneys of record of the filing.

/s/ Brandon Johnson

CERTIFICATE OF CONFERENCE

The undersigned counsel hereby certify that they attempted in good faith to resolve the issues presented in the instant motion with Defendants' counsel by: (1) letter on April 20, 2022, *see* Ex. 3 & ECF 88-4 (Defendants' April 22, 2022 response); (2) telephone conference on May 6, 2022, *see* 88-5 (email summary); (3) email on May 16, 2022; (4) telephone conference and email on May 18, 2022, *see* ECF 88-5; (5) email on May 24, 2022; (6) telephone conference on May 25, 2022; and (7) an additional series of emails on June 2-3, 2021. Further, Plaintiffs withdrew their May 5, 2022 motion to compel in order to engage in nearly a month of discussions with Defendants on how to resolve these discovery disputes without court action. While counsel were able to resolve a limited number of issues through these conferences, there remain a number of outstanding disputed issues. Defendants oppose the motion and the proposed extension of discovery.

/s/ Brandon Johnson

/s/ Travis Miller