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April 17, 2023

Via CM/ECF

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119

RE: *Donovan v. Vance*, No. 22-35474 (oral argument scheduled for May 8, 2023)

Dear Ms. Dwyer:

I write pursuant to Rule 28(j) to call the Court's attention to the D.C. Circuit's recent decision in *Payne v. Biden*, 62 F.4th 598 (D.C. Cir. 2023) and to respond to plaintiffs' letter alerting the court to the Fifth Circuit's decision in *Feds for Medical Freedom v. Biden*, 63 F.4th 366 (5th Cir. 2023) (en banc).

In *Payne*, a unanimous panel of the D.C. Circuit held that the Civil Service Reform Act (CSRA) precluded district-court jurisdiction over a challenge to the federal-employee COVID-19 vaccination requirement that is also at issue in this appeal. As plaintiffs note, in *Feds for Medical Freedom*, a divided en banc court reached the opposite result, concluding that the CSRA does not bar review in district court and affirming a district court's decision granting a nationwide preliminary injunction against enforcement of the same COVID-19 vaccination requirement. Eight members of the Fifth Circuit dissented in whole or in part.

The government respectfully submits that the D.C. Circuit's reasoning and that of the Fourth Circuit in *Rydie v. Biden*, 2022 WL 1153249 (4th Cir. Apr. 19, 2022), is correct. In any event, plaintiffs' challenges to the federal employee vaccination requirement in this case fail on standing and ripeness grounds that

were not presented in *Feds for Medical Freedom*. *See, e.g.*, Gov't Br. 21-27 (explaining that none of the eight federal employee plaintiffs faces an actual or imminent injury from the vaccination requirement).

Sincerely,

/s/ Anna O. Mohan
Anna O. Mohan
U.S. Department of Justice
Appellate Staff, Civil Division

cc: All counsel (via CM/ECF)