

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-14269-F

STATE OF GEORGIA,
STATE OF ALABAMA,
STATE OF IDAHO,
STATE OF KANSAS,
STATE OF SOUTH CAROLINA, et al.,

Plaintiffs - Appellees,

versus

PRESIDENT OF THE UNITED STATES,
SAFER FEDERAL WORKFORCE TASK FORCE,
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,
DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT AND CO-CHAIR
SAFER FEDERAL WORKFORCE TASK FORCE,
OFFICE OF MANAGEMENT AND BUDGET, et al.,

Defendants - Appellants.

Appeal from the United States District Court
for the Southern District of Georgia

Before: WILSON, GRANT, and LUCK, Circuit Judges.

BY THE COURT:

The government appeals the district court's order preliminarily enjoining it from enforcing the vaccine mandate for federal contractors and subcontractors contained in Executive Order 14042, the September 24, 2021 Safer Workforce Task Force Guidance for Federal Contractors and Subcontractors (updated November 10, 2021), the September 30, 2021 Federal Acquisition Regulatory Council Memorandum, and the November 16, 2021 Determination of the

Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors. The government has also moved to stay the preliminary injunction pending appeal. We ordered the plaintiffs and intervenors to file expedited responses to the government's stay motion and invited the government to reply. Having reviewed the parties' submissions, we deny the motion because the government has not established one of "the most critical" factors—that it will be irreparably injured absent a stay. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) ("The first two factors of the traditional standard are the most critical."); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1280 (11th Cir. 2020) (The government is "entitled to a stay if [it] show[s] (1) that [it] will likely succeed on the merits; (2) irreparable injury absent a stay; (3) that the stay will not substantially injure the other interested parties; and (4) that a stay is in the public interest."). Without a showing by the government of an irreparable injury absent a stay, we cannot stay the preliminary injunction. *See United States v. Bogle*, 855 F.2d 707, 711 (11th Cir. 1988) (Hatchett, J., concurring specially) ("I deny the stay because the government has failed to make the showing of irreparable injury required by the law of the Eleventh Circuit.").

We also expedite the government's appeal of the district court's preliminary injunction and set the case for the next available oral argument. The government must file its initial brief no later than January 3, 2022. The plaintiffs and intervenors must file their answer briefs no later than January 17, 2022. And any reply brief must be filed no later than January 24, 2022.