

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

STATE OF TEXAS, AND MAYO
PHARMACY, INC., A NORTH DAKOTA
CORPORATION,
Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Human Services;
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS,
Defendants.

No. 7:23-cv-22-DC

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Last week, the Supreme Court issued *Fed. Bureau of Inv. v. Fikre*, No. 22-1178 (March 19, 2024), attached to this notice as Exhibit A. The plaintiff in *Fikre* alleged the federal government placed him on the No Fly List in violation of his constitutional rights, including his First Amendment rights. *Fikre*, slip op. 1. The federal government asserted that the plaintiff's claims were moot for similar reasons to those asserted here—namely, that its administrative action removing the plaintiff from the No Fly List rendered the lawsuit moot. *Id.* at 4. The Supreme Court disagreed. This Court should as well.

The Court explained that mootness is a “formidable burden.” *Id.* at 6 (internal quotations omitted). It emphasized that this high bar “holds for governmental defendants no less than for

private ones.” *Id.* And the Court was particularly skeptical of mootness arguments where the government had allegedly infringed upon religious beliefs. *Id.* at 7.

If anything, this is an *easier* justiciability case than *Fikre*. In *Fikre*, the Supreme Court rejected the government’s mootness assertion, finding that neither the removal of the plaintiff from the No Fly List nor a sworn declaration that the plaintiff would “not be placed on the No Fly List in the future based on the currently available information” were sufficient to “prove” that there is “no reasonable expectation” that the government would “return to [its] old ways.” *Fikre*, slip op. 4, 6 (internal quotation marks omitted). Here, Defendants’ Revised Guidance does not alleviate any of the constitutional injuries or cure the procedural deficiencies. *See* Dkt. 57. And the government has not offered any sworn testimony assuring Plaintiffs that they will never be subject to onerous investigations for purported violations of the guidance.

Fikre confirms that Defendants’ justiciability arguments lack merit. This Court should therefore reject Defendants’ mootness argument and grant Plaintiffs’ Motion for Summary Judgment.

Dated: March 26, 2024

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record on March 26, 2024, via the court's electronic filing system.

/s/ Amy Snow Hilton
AMY SNOW HILTON
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