

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

HOWARD CROSBY, et al.,

Plaintiffs,

v.

**LLOYD AUSTIN, III, in his official capacity
as Secretary of Defense, U.S. Department of
Defense, et al.,**

Defendants.

Case No. 8:21-cv-02730-TPB-CPT

**NOTICE OF OTHER ACTIONS RAISING CLAIMS RELATED TO THE
SECRETARY OF DEFENSE’S MEMORANDUM DATED AUGUST 24, 2021**

At the hearing on Plaintiffs’ motion for preliminary injunctive relief, this Court asked about other cases raising challenges to the Secretary of Defense’s Memorandum Regarding Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, dated August 24, 2021. Defendants provide a list of cases and their status below.

A. *Rudometkin v. Austin*, No. 1:21-cv-0220-UNA (D.D.C.). *Pro Se* plaintiffs—four prisoners at the U.S. Disciplinary Barracks in Fort Leavenworth, Kansas—filed a complaint on August 17, 2021, based on an alleged proposal to administer a COVID-19 vaccine to inmates within the military corrections system. On December 6, 2021, the court ordered plaintiffs to file an amended complaint, which was filed on December 7, 2021. Defendants have yet to respond to the

amended complaint because service has not been effectuated on the United States attorney. Plaintiffs have not moved for preliminary injunctive relief.

B. *Robert v. Austin*, No. 1:21-cv-02228 (D. Colo.). Plaintiffs are two members of the military who were stationed in North Carolina when they filed a complaint on August 17, 2021, on behalf of themselves as well as all other similarly situated active-duty National Guard and Reserve service members who are subject to Department of Defense regulations and have been ordered by the Secretary of Defense, Defendant Austin, to take a COVID-19 vaccine. On January 11, 2022, the court issued an order denying Plaintiffs' request for preliminary injunctive relief and dismissing the complaint. *Robert v. Austin*, No. 21-cv-02228-RM-STV, 2022 WL 103374 (D. Colo. Jan. 11, 2022). Plaintiffs have appealed to the Tenth Circuit. *Robert v. Austin*, No. 22-1032 (10th Cir. Feb. 2, 2022).

C. *Costin v. Biden*, No. 1:21-cv-2484 (D.D.C.). Ten plaintiffs—service members in several military departments, civilian employees, and employees of federal contractors—filed a complaint on September 23, 2021, raising claims related to Secretary Austin's directive dated August 24, 2021. Defendants have yet to respond to the complaint because service has not been effectuated on the United States attorney. Plaintiffs have not moved for preliminary injunctive relief.

D. *Navy Seal 1 v. Biden*, No. 8:21-cv-2429 (M.D. Fla.). Service members in each of the military departments and others filed a complaint on October 15, 2021, claiming that Secretary Austin's directive dated August 24, 2021, violate certain

statutory and constitutional provisions. On November 22, 2021, the court issued an order denying preliminary injunctive relief with respect to some claims and deferring a decision on preliminary injunctive relief with respect to other claims. *Navy Seal 1 v. Biden*, --- F. Supp. 3d ---, 2021 WL 5448970 (M.D. Fla. Nov. 22, 2021). On February 2, 2022, the court granted in part and denied in part a separate motion for a Temporary Restraining Order with respect to two plaintiffs. Plaintiffs' motions for class certification and preliminary injunctive relief remain pending. On February 13, 2022, the court extended the TRO until February 28, 2022, and severed the claims of the non-service member plaintiffs.

E. *Church v. Biden*, No. 21-cv-2815 (D.D.C.). Eighteen civilians and two active-duty Marines filed a complaint on October 24, 2021, challenging President Biden's Executive Order 14043 and Secretary Austin's directive dated August 24, 2021, for the vaccination of military personnel. On November 8, 2021, the court denied plaintiffs' motion for preliminary injunctive relief. *Church v. Biden*, --- F. Supp. 3d ---, 2021 WL 5179215 (D.D.C. Nov. 8, 2021). Plaintiffs' opposition to defendants' motion to dismiss is due February 25, 2022.

F. *Coker v. Austin*, No. 3:21-cv-01211-TWC-HTC (N.D. Fla.). Sixteen Service Members filed a complaint on October 6, 2021, raising statutory and constitutional claims related to Secretary Austin's directive dated August 24, 2021. On November 12, 2021, the court denied plaintiffs' motions for preliminary injunctive relief. *Doe #1-#14 v. Austin*, --- F. Supp. 3d ---, 2021 WL

5816632 (N.D. Fla. Nov. 12, 2021). Defendants' motion to dismiss the complaint is pending.

G. *U.S. Navy SEALs 1-26 v. Biden*, 4:21-cv-01236-O (N.D. Tex.). Twenty-six Navy service members, seeking to proceed anonymously, filed a complaint on November 9, 2021, raising claims related to Secretary Austin's directive dated August 24, 2021, and the Navy's implementation of that directive. On January 3, 2022, the court granted plaintiffs' motion for preliminary injunctive relief. *U.S. Navy SEALs 1-26 v. Biden*, --- F. Supp. 3d ---, 2022 WL 34443 (N.D. Tex. Jan. 3, 2022). On January 21, 2022, defendants noticed an appeal of the preliminary injunction order. On January 24, 2022, plaintiffs filed an amended complaint. On January 31, 2022, plaintiffs filed a motion for an order to show cause why defendants should not be held in contempt, which has been fully briefed. On February 13, 2022, the court denied defendants' motion for a partial stay of the preliminary injunction. The parties are briefing plaintiffs' motion for class-wide preliminary injunctive relief.

H. *Guettlein v. U.S. Merchant Marine Academy*, No 2:21-cv-6443 (E.D.N.Y.). Six students enrolled at the United States Merchant Marine Academy filed a complaint on November 19, 2021, raising claims related to Secretary Austin's directive dated August 24, 2021. On December 20, 2021, the Court denied plaintiffs' motion for preliminary injunctive relief. *Guettlein v. U.S. Merchant Marine Academy*, --- F. Supp. 3d ---, 2021 WL 6015192 (E.D.N.Y. Dec. 20, 2021). On January 3, 2022, plaintiffs voluntarily dismissed their claims.

- I. *Oklahoma v. Biden*, No. 5:21-cv-1136 (D. Okla.). The State of Oklahoma, its governor, and several anonymous National Guard members filed a complaint on December 2, 2021, raising claims related to the requirement that National Guard members be vaccinated against COVID-19. On December 28, 2021, the court denied plaintiffs' motion for preliminary injunctive relief. *Oklahoma v. Biden*, --- F. Supp. 3d ---, 2021 WL 6126230 (W.D. Okla. Dec. 28, 2021). The court ordered plaintiffs to file an amended complaint by February 15, 2022.
- J. *Fletcherich v. Austin*, No. 1:21-cv-03193 (D.D.C.). On December 7, 2021, a Navy Lieutenant Commander filed a complaint raising claims related to Secretary Austin's directive dated August 24, 2021. Defendants' response to the complaint is due February 22, 2022. Plaintiff has not moved for preliminary injunctive relief.
- K. *Vance v. Wormuth*, No. 3:21-cv-730 (W.D.Ky.). On December 7, 2021, an Army Captain filed a complaint raising claims related to Secretary Austin's directive dated August 24, 2021, and additional vaccination requirements. Plaintiff's motion for preliminary injunctive relief is pending. Defendants filed a motion to dismiss on February 14, 2022.
- L. *Poffenbarger v. Kendall*, No. 3:22-cv-1-TMR-SLO (S.D. Ohio). On January 2, 2022, an Air Force Reservist Second Lieutenant filed a complaint raising claims related to Secretary Austin's directive dated August 24, 2021. On January 3, 2022, the court denied plaintiff's request for a temporary restraining order. *Poffenbarger v. Kendall*, No. 3:22-cv-1, 2022 WL 19242 (S.D. Ohio Jan. 3, 2022).

The court has scheduled a hearing on plaintiff's motion for preliminary injunction relief for February 22, 2022. *Poffenbarger v. Kendall*, No. 3:22-cv-1, 2022 WL 203506 (S.D. Ohio Jan. 24, 2022).

M. *Abbott v. Biden*, No. 6:22-cv-3 (E.D. Tx.). On January 3, 2022, the Governor of Texas filed a complaint raising claims related to Secretary Austin's directive dated August 24, 2021. On January 25, 2022, the Texas Governor filed an amended complaint adding the Governor of Alaska as a plaintiff. Defendants' opposition to the Texas Governor's motion for preliminary injunctive relief is due February 22, 2022.

N. *Air Force Officer v. Austin*, No. 5:22-cv-9-TES (M.D. Ga.). On January 6, 2022, an Air Force officer, seeking to proceed anonymously, filed a complaint raising claims related to Secretary Austin's directive dated August 24, 2021. On February 11, 2022, the court held a hearing on plaintiff's motion for preliminary injunctive relief, which remains pending. Defendants' respond to the complaint is presently due March 14, 2022.

O. *Lembo v. Del Toro*, No. 1:22-cv-00325 (D.D.C.). On February 8, 2022, a Navy Captain filed a complaint raising claims related to Secretary Austin's directive dated August 24, 2021. Defendants have yet to file a response to the complaint because service has not been effectuated on the United States attorney.

Dated: February 14, 2022

Respectfully submitted,

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