

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
FRANKFORT  
*Electronically Filed*

COMMONWEALTH OF KENTUCKY, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, *et al.*,

Defendants.

Civil No. 3:21-cv-00055-GFVT

**DEFENDANTS' UNOPPOSED MOTION TO EXTEND DEADLINE TO RESPOND  
TO COMPLAINT AND TO ENTER BRIEFING SCHEDULE**

Defendants respectfully request that the Court (i) extend their deadline to respond to Plaintiffs' amended complaint, ECF No. 22, until July 14, 2023, and (ii) enter a briefing schedule for Defendants' forthcoming motion to dismiss. Defendants have conferred with Plaintiffs, and Plaintiffs do not oppose the relief requested.

Procedural background. Plaintiffs commenced this action on November 4, 2021, Compl., ECF No. 1, challenging the issuance and implementation of the now-revoked Executive Order 14042, 86 Fed. Reg. 50,985 (Sept. 14, 2021), *revoked by* Executive Order 14099, 88 Fed. Reg. 30,891 (May 9, 2023). Prior to its revocation, Executive Order 14042 directed Executive departments and agencies to incorporate into certain new contracts and solicitations a clause imposing COVID-19 workplace safety protocols, including a vaccination requirement for the contractors' employees.

On November 30, 2021, the Court granted Plaintiffs' motion for a preliminary injunction and enjoined the Federal Government "from enforcing the vaccine mandate for federal contractors and subcontractors in all covered contracts in Kentucky, Ohio, and Tennessee." Op. & Order at 29, ECF No. 50. Defendants appealed that order shortly thereafter. Notice of Appeal, ECF No. 52. On January

3, 2022, four days before Defendants’ deadline to respond to the complaint, the Court granted the parties’ motion to stay proceedings pending final resolution of Defendants’ appeal from the Court’s order granting Plaintiffs’ motion for a preliminary injunction. Order, ECF No. 61.

On January 12, 2023, a panel of the Sixth Circuit upheld this Court’s decision to enter a preliminary injunction enjoining enforcement of Executive Order 14042, but narrowed the injunction’s scope to contracts and solicitations involving the plaintiffs in that case. *Kentucky v. Biden*, 57 F.4th 545 (6th Cir. 2023). The Sixth Circuit issued its mandate on March 7, 2023, *see* Mandate, ECF No. 65, and the time to file a petition for a writ of certiorari expired on June 9, 2023, *see Biden v. Kentucky*, No. 22A859 (U.S. Apr. 30, 2023), <https://perma.cc/VCM3-KFV4>. No party petitioned for a writ of certiorari. *See id.*

Recent developments. On May 1, 2023, the White House issued a statement announcing that the Administration would “end the COVID-19 vaccine requirement[] for . . . Federal contractors” on May 11, 2023, “the same day that the COVID-19 public health emergency ends.” *See* The White House, *The Biden-Harris Administration Will End COVID-19 Vaccination Requirements for Federal Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities* (May 1, 2023), <https://perma.cc/93DS-N47L>. The statement explains that the Administration is now “in a different phase of [its] response to COVID-19,” given that nearly 270 million Americans have received at least one shot of the COVID-19 vaccine, COVID-19 deaths have declined by 95%, and hospitalizations are down nearly 91%. *Id.*

On May 9, 2023, the President issued an Executive Order revoking Executive Order 14042, thereby ending the COVID-19 vaccination requirement for Federal contractors effective May 12, 2023, at 12:01 a.m. eastern daylight time. *See* Executive Order 14099 §§ 2–3, 88 Fed. Reg. at 30,891. The Executive Order further instructed that “[a]gency policies adopted to implement Executive Order 14042 . . . , to the extent such policies are premised on th[at] order[], no longer may be enforced and

shall be rescinded consistent with applicable law.” *See id.* § 2, 88 Fed. Reg. at 30,891.

On May 12, 2023, the Task Force updated its website to indicate that Executive Order 14042 had been revoked and that “all prior guidance from the [Task Force] implementing the requirements of Executive Order 14042 has also been revoked.” *See* Safer Federal Workforce Task Force, *For Federal Contractors* (May 12, 2023), <https://perma.cc/BT7T2-BF58>. The website further notes:

Pursuant to the Executive Order [of May 9, 2023], the Federal Government will not take any steps to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance implementing Executive Order 14042 and will not enforce any existing contract clauses implementing Executive Order 14042. Agencies must promptly rescind any deviations, policies, or other guidance premised on Executive Order 14042, and the FAR Council has revoked its September 30, 2021 guidance regarding deviations to the FAR to implement Executive Order 14042.

Shortly thereafter, Defendants asked Plaintiffs whether they intended to voluntarily dismiss their claims, given that the President had revoked Executive Order 14042. But Plaintiffs indicated that they had no plans to dismiss this case.<sup>1</sup>

Requested relief. In light of Executive Order 14042’s revocation, Defendants submit that this case is moot. Therefore, they intend to file a motion to dismiss and respectfully request that the Court enter the following schedule for further proceedings in this matter:

- Defendants’ deadline to respond to the complaint is extended until July 14, 2023;
- Defendants will file a motion to dismiss on or before July 14, 2023;
- Plaintiffs will file a response on or before August 4, 2023;

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<sup>1</sup> Numerous other groups of plaintiffs that had challenged Executive Order 14042 have already voluntarily dismissed their cases following that order’s revocation. *See, e.g., Texas v. Biden*, No. 3:21-cv-309 (S.D. Tex. May 12, 2023), ECF No. 64; *Florida v. Nelson*, No. 8:21-cv-2524 (M.D. Fla. May 23, 2023), ECF No. 50; *Assoc. Gen. Contractors of Am., Inc. v. Biden*, No. 4:21-cv-1344 (N.D. Tex. May 16, 2023), ECF No. 53; *Skurich v. Biden*, No. 3:22-cv-10 (S.D. Tex. May 22, 2023), ECF No. 12; *US Freedom Flyers v. United States*, No. 8:21-cv-2738 (M.D. Fla. May 18, 2023), ECF No. 27. And per the parties’ agreement, the Fifth Circuit instructed the district court in *Hollis v. Biden*, No. 1:21-cv-163 (N.D. Miss.), to dismiss as moot the plaintiffs’ challenge to Executive Order 14042. *See Hollis v. Biden*, No. 21-60910 (5th Cir. May 18, 2023), ECF No. 87-2 (unpublished order).

- Defendants may file a reply on or before August 18, 2023.

Defendants conferred with Plaintiffs, and Plaintiffs indicated that they have no objection to this proposed schedule.

DATED: June 13, 2023

Respectfully submitted,

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/s/ Jody D. Lowenstein  
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**CERTIFICATE OF SERVICE**

On June 13, 2023, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Eastern District of Kentucky, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Jody D. Lowenstein  
JODY D. LOWENSTEIN  
Trial Attorney  
U.S. Department of Justice

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**PROPOSED ORDER**

Upon consideration of Defendants' Unopposed Motion to Extend Deadline to Respond to Complaint and to Enter Briefing Schedule, the Court hereby **GRANTS** the motion and **ORDERS** the parties to comply with the following schedule for further proceedings in this matter:

- Defendants' deadline to respond to Plaintiffs' amended complaint is extended until July 14, 2023;
- Defendants will file a motion to dismiss on or before July 14, 2023;
- Plaintiffs will file a response on or before August 4, 2023;
- Defendants may file a reply on or before August 18, 2023.

**SO ORDERED.**

Dated:

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Gregory F. Van Tatenhove  
United States District Judge