



2. In response to this Court's order, Plaintiff acknowledged that "Defendant is correct that the President himself is not subject to the Administrative Procedure[] Act," ECF No. 20 at 11, and he further acknowledged the constitutional difficulties associated with enjoining the President, *see id.* at 30-31. Plaintiff's principal contention was instead that the deficiency identified by the Court would not exist if the complaint were amended to name other defendants. *See id.* at 31 ("To the extent that Defendant argues the Complaint and Motion are deficient for failing to name other defendants, Plaintiff has moved this Honorable Court to permit amendment to the original complaint so that relevant members of the NLRB and SFWTF may be added as party defendants -- a motion that, if approved, renders Defendant's argument moot."). As Plaintiff put it, he "recognize[d] the prudence of 'sidestepping the thicket'" as to whether declaratory or injunctive relief was proper against the President, which is why he "requested leave to file an amended complaint to include additional defendants if deemed necessary by this Honorable Court." *Id.* at 32.

3. On November 12, 2021, Plaintiff filed a motion to amend the complaint to name various individuals other than the President. *See* ECF No. 22.<sup>1</sup> Defendant's deadline to respond to that motion is December 3, 2021, and Defendant intends to oppose the motion on the grounds that amendment would be futile. Among other things, Defendants anticipate arguing that because Plaintiff has a pending request for a religious exception from the vaccination requirement, his claims are neither constitutionally nor prudentially ripe at this time because (1) it is presently unknown whether his request will be granted, and (2) for as long as his request is pending, he will not be subject to discipline.

4. At the same time, Defendant's response to the original complaint — the one that this Court has already indicated is defective insofar as it only seeks relief against President Biden, the one

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<sup>1</sup> That motion also withdrew an earlier motion, *see* ECF No. 19, that was deficient insofar as it did not include a proposed amended complaint.

that Plaintiff is only halfheartedly defending, and the one that Plaintiff recognizes would be “moot” if leave to amend were granted — is due December 1, 2021. *See* Fed. R. Civ. P. 12(a)(2).

5. Defendant respectfully submits that it would be exceedingly inefficient to require the parties to litigate and the Court to decide a motion to dismiss a complaint on which Plaintiff is no seeking to proceed, and that the Court has already indicated is defective. That is particularly true because any motion to dismiss would need to highlight not only the Court’s inability to enter declaratory or injunctive relief against the President, but also the numerous other jurisdictional and merits flaw in the original complaint.

6. Counsel for Defendant conferred with Plaintiff before filing this motion. Plaintiff indicated that he could only consent to the relief requested herein if his sick leave request were approved. Needless to say, decisions on sick leave requests, like other personnel matters, are resolved in accordance with agency policy and regulation, and so the parties were unable to reach an agreement on Plaintiff’s proposed terms.

WHEREFORE, Defendant respectfully requests that the Court extend his deadline to respond to the original complaint to thirty days following any order denying Plaintiff’s motion for leave to amend. In light of Defendant’s forthcoming deadline on December 1, 2021, Defendant further respectfully requests expedited consideration of this motion.

Dated: November 22, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

CHRISTOPHER HALL  
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Assistant Directors

*/s/ Steven A. Myers*

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*Counsel for Defendant*

**CERTIFICATE OF CONFERENCE**

I hereby certify that on November 22, 2021, I conferred by email with Plaintiff concerning the relief requested herein. Plaintiff indicated that he would only consent to this request if his employing agency approved his sick leave request.

/s/ Steven A. Myers  
Steven A. Myers

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2021, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ Steven A. Myers  
Steven A. Myers

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

_____	)	
	)	
DAVID A. FOLEY,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
<i>v.</i>	)	Civil Action No. 4:21-cv-01098-O
	)	
JOSEPH R. BIDEN, JR., in his official	)	
capacity as PRESIDENT OF THE UNITED	)	
STATES,	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**[PROPOSED] ORDER**

Upon consideration of Defendant’s Motion for Extension of Time to Respond to Complaint, IT IS HEREBY ORDERED that the Motion is GRANTED. Defendant’s deadline to respond to the original Complaint shall be thirty days following any order denying the motion to amend.

DATED:

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HON. REED O’CONNOR  
UNITED STATES DISTRICT JUDGE