

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official capacity as Governor of the State of Texas, and GOVERNOR MIKE DUNLEAVY, in his official capacity as Governor of the State of Alaska,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as President of the United States, *et al.*,

Defendants.

No. 6:22-cv-3-JCB

PLAINTIFFS' MOTION FOR HEARING ON MOTION FOR PRELIMINARY INJUNCTION

Time is running out for the Texas National Guard. The federal army's vaccination-compliance deadline, which the Defendants unconstitutionally imposed upon Texas's state military, is June 30. ECF Nos. 25-4, -5, -7. Governor Abbott respectfully requests that the Court hear argument so that it may decide the motion for preliminary injunction, ECF No. 24, and put a stop to the Defendants' unconstitutional federal overreach before it is too late.

A. Thousands of Guardsmen remain unvaccinated.

As described in the declaration of Texas's Adjutant General, Major General Thomas M. Suelzer, thousands of Guardsmen remain unvaccinated. Exh. A ¶¶ 4-9. Although many Guardsmen have exemption requests pending, many more do not. *Id.* ¶ 5. And the exemption requests are no salve; there is no likelihood that they will save these Guardsmen as virtually all such requests, across every branch of the nation's armed forces, are denied. *Id.* ¶¶ 5, 9. *See also, e.g., Doster v. Kendall*, No. 1:22-cv-84, 2022 WL 982299, at *4 (S.D. Ohio Mar. 28, 2022) ("As of March 22, 2022, the Air Force had adjudicated 4,403 religious exemption requests, but . . . only granted 21 requests."); *U.S. Navy SEALs I-26 v. Austin*, No. 4:21-cv-1236, 2022 WL 1025144, at

*5 (N.D. Tex. Mar. 28, 2022) (“Each [potential class member] has submitted a religious accommodation request, and each has had his request denied, delayed, or dismissed on appeal. Exactly zero requests have been granted.”); *Air Force Officer v. Austin*, No. 5:22-cv-9, 2022 WL 468799, at *10 (M.D. Ga. Feb. 15, 2022) (“[T]he Air Force has rejected 99.76% of all religious accommodation requests, and until about two weeks ago, it had rejected every single one it ‘carefully consider[ed].’”).

B. Losing these Guardsmen will devastate the Texas National Guard and the state programs that depend on it.

The Defendants’ attempted usurpation of the chain of command will wreak havoc on the Texas National Guard. Losing its unvaccinated members would cause “a devastating impact.” Exh. A ¶ 6. That loss would total “approximately 3,000 Soldiers, or roughly 15% of assigned force strength. The loss is equivalent to one combat sized Brigade, devastating [the Guard’s] ability to respond to our mission.” *Id.* Similarly, the Texas Air National Guard “would stand to lose 182 Airmen, or roughly 6% of its total assigned force.” *Id.* ¶ 9. “The loss of these highly specialized and technical Airmen, who are difficult to replace, would have a catastrophic impact on accomplishing our mission.” *Id.*

And these losses would seriously impair other state agencies who rely heavily on the Texas National Guard’s support. As Lt. Colonel Freeman Martin, the Texas Department of Public Safety’s Deputy Director of Homeland Security Operations, attests, a “reduction in [the Texas National Guard’s] available manpower would undermine [Operation Lone Star]’s goal to protect Texas and the United States from the impacts of [] criminal activity, including the tragedies of human trafficking and fentanyl-related deaths.” ECF No. 25-6 ¶ 7. Similarly, as Nim Kidd, Chief of the Texas Division of Emergency Management, attests, if “the National Guard [were] to suffer even a ten percent reduction in size”—that is, less than the 15% reduction General Suelzer anticipates—“particularly in specialized areas like air operations and civil assistance, TDEM’s ability to respond to disasters and emergencies would be drastically reduced.” ECF No. 25-8 ¶ 13.

C. Conclusion and prayer.

Regardless of their personal conscience, religious beliefs, or medical circumstances, and despite their commander in chief’s order that “[n]o governmental entity can compel any individual to receive a COVID-19 vaccine,” ECF No. 25-2 at 5, Guardsmen now have only a matter of days before they must begin a vaccine regimen that they have not been lawfully ordered to accept. Guardsmen who honor the order of their commander in chief rather than the unconstitutional directive issued by the Defendants jeopardize not only their careers but also the readiness and effectiveness of the Texas National Guard. Because of the imminent and potentially disastrous consequences of Defendants’ actions, Governor Abbott respectfully requests that the Court hear argument on the motion for preliminary injunction.

Date: June 3, 2022.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

I certify that on June 2, 2022, Zachary Avallone, counsel for the Defendants, informed me that the Defendants believe the pending motion can be decided on the submitted papers, but defer to the Court on whether there is any need for a hearing.

/s/ Christopher D. Hilton

CERTIFICATE OF SERVICE

I certify that on June 3, 2022, this document was filed through the Court's CM/ECF system, which automatically serves all counsel of record.

/s/ Christopher D. Hilton

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No. 6:22-cv-3

**JOSEPH R. BIDEN, in his official capacity as
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*Defendants.***

**DECLARATION OF THE ADJUTANT GENERAL,
MAJOR GENERAL THOMAS M. SUELZER**

1. I am Major General Thomas M. Suelzer, and I currently serve as the 53rd Adjutant General of the Texas National Guard. I have held this position since March 14, 2022. Prior to holding this position, I served as Assistant Adjutant General Air National Guard. I graduated from the United States Air Force Academy in 1990 with a Bachelor of Science degree in Political Science. After completing Undergraduate Pilot Training, I went on to serve in various operational and staff assignments during ten years of active-duty service and seven years in the Air Force Reserve. I joined the Texas Air National Guard in 2007 serving as Deputy Director of Operations for Domestic Operations. I also became a leader in the Homeland Response Force enterprise as Chief of Staff for the 71st Troop Command (JTF-71) and later the 136th Maneuver Enhancement Brigade (JTF-136). I went on to serve as the Texas Air National Guard Director of Operations, the Commander of the 136th Airlift Wing, and Director, Joint Staff for the Texas National Guard. Additionally, I have served on two Texas Southwest Border missions and as the military Dual Status Commander for the COVID-19 response in Texas.

2. **COVID-19 Vaccine Mandate.** The Secretary of Defense has mandated that all members of the armed forces, including the Texas National Guard, must obtain COVID-19 vaccinations. That mandate is contrary to the directive from the Commander in Chief of the Texas National Guard, Governor Greg Abbott, who has ordered that no governmental entities may impose vaccination mandates. As a result, Texas National Guard members are being made susceptible to involuntary separation by federal authorities, even though non-federalized Texas National Guard members remain under the exclusive command of Governor Abbott.

3. **Medical/Administrative Exemptions.** There are two types of exemptions from immunization: administrative and medical. Administrative exemptions include religious accommodations. Medical exemptions may be temporary (up to 365 days) or permanent. If a Service Member's primary care provider indicates an exemption is valid, that member must submit the supporting documentation through the appropriate command channels, for review and submission to The Surgeon General of the appropriate branch of military service. Members whose religious beliefs conflict with immunization requirements may request an exemption through similar channels.

4. **Impact of COVID Requirements on the Texas Army National Guard.** The Department of the Army set a deadline for active-duty personnel for Dec. 15, 2021, by which point Soldiers needed to have started a vaccination regimen or applied for an exemption. Members of the Army National Guard and Army Reserve have been given a final deadline of June 30, 2022, to complete the vaccine regimen, including booster shots.

5. There are currently 3,386 unvaccinated Texas Army Guardsmen. Of those unvaccinated, 412 are seeking religious exemption and 65 are seeking medical exemption. As of May 15, 2022, it is my understanding that only 8 religious exemption requests were granted out of the approximately 4,365 submissions by active-duty Soldiers, 3,000 religious exemptions are pending review.

6. Given the low rate of exemption approvals, losing these unvaccinated Soldiers would have a devastating impact. The Texas Army National Guard would lose approximately 3,000 Soldiers, or roughly 15% of assigned force strength. The loss is equivalent to one combat sized Brigade, devastating our ability to respond to our mission.

7. **Impact of COVID Requirements on the Texas Air National Guard.** The deadline for active-duty Air Force personnel was November 2, 2021. The deadline for Air Guard and Air Force Reserve was December 2, 2021. The Department of the Air Force is generally processing religious exemption requests within 30 business days. Members who receive a denial of the accommodation request have five calendar days from the denial to 1) begin a COVID-19 vaccination regimen, 2) submit a final appeal to The Surgeon General or 3) request to separate or retire. Though it is early in the process, it is my understanding that some decisions on final appeals are being returned in as little as three days.

8. There are currently 182 unvaccinated Texas Air Guardsmen. Of those unvaccinated, 144 are seeking religious exemption and 38 are not seeking any exemption. As of May 17, 2022, it is my understanding that only 66 religious exemption requests were granted out of 8,361 submissions by active-duty Airmen, and 2,358 religious exemptions are pending review.

9. Like the Army, the Air Force has a very low approval rate for exemptions. Therefore, the Texas Air National Guard would stand to lose 182 Airmen, or roughly 6% of its

total assigned force. The loss of these highly specialized and technical Airmen, who are difficult to replace, would have a catastrophic impact on accomplishing our mission.

10. **Overall Impact to the Texas National Guard.** As explained by my predecessor, Major General Tracy Norris, in her declaration, losing trained and experienced Texas National Guard members will have a severe impact on our forces, reducing our readiness and ability to confront the many challenges facing Texas and the Nation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3, 2022, in Austin, Texas.



Thomas M. Suelzer, Major General
Adjutant General of Texas