

No.

In the Supreme Court of the United States

Rachel Robertson,

v.

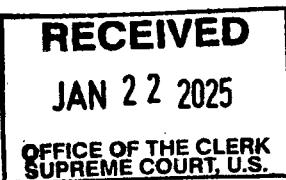
President Joseph Robinette Biden Jr.
In his individual and official capacity

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL SIXTH CIRCUIT*

**PETITION FOR WRIT OF CERTIORARI
CONTENTS OF THE JOINT APPENDIX**

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Kristen Clarke
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U.S. Department of Justice
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NOT RECOMMENDED FOR PUBLICATION

No. 23-3942

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Apr 15, 2024

KELLY L. STEPHENS, Clerk

RACHEL ROBERTSON,)
v.)
Plaintiff-Appellant,)
JOSEPH R. BIDEN, President of the United States,) ON APPEAL FROM THE UNITED
Defendant-Appellee.) STATES DISTRICT COURT FOR
v.) THE SOUTHERN DISTRICT OF
Ohio) OHIO

O R D E R

Before: BATCHELDER, GIBBONS, and McKEAGUE, Circuit Judges.

Rachel Robertson, proceeding pro se, appeals the district court's judgment dismissing her civil rights complaint. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). We affirm.

Robertson sued President Joseph R. Biden in his individual capacity, claiming that he violated her constitutional rights when, in 2021, he signed executive orders that mandated COVID-19 vaccinations for certain workers (e.g., federal contractors), including herself. She further alleged that President Biden, through social media, has caused the public "to receive misinformation about the Covid-19 virus and Vaccination and treatments." According to Robertson, President Biden's executive orders and their accompanying vaccine mandates forced her to resign from her job. For relief, Robertson sought \$3.2 million in damages and an injunction requiring President Biden to fund a public access radio and television station.

Pursuant to 28 U.S.C. § 1915(e)(2)(B), a magistrate judge granted Robertson leave to proceed in forma pauperis (IFP), screened Robertson's complaint, and recommended that it be dismissed for failure to state a claim because President Biden is entitled to presidential immunity.

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The district court agreed, overruled Robertson's objections, adopted the magistrate judge's recommendation, and dismissed Robertson's complaint. In the same order, the district court also denied Robertson's motion for leave to amend her complaint, a decision that she does not challenge on appeal.

We review de novo a district court's sua sponte dismissal under § 1915(e)(2). *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010). Under this statute, a district court must screen and dismiss IFP complaints that are frivolous or malicious or fail to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B); *see also Grinter v. Knight*, 532 F.3d 567, 572 (6th Cir. 2008). To avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Hill*, 630 F.3d at 471 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

The Supreme Court has recognized “absolute Presidential immunity from damages liability for acts within the ‘outer perimeter’ of [the president’s] official responsibility.” *Nixon v. Fitzgerald*, 457 U.S. 731, 756 (1982). The Supreme Court has further explained that injunctive relief against the president is an “extraordinary” remedy that should “raise[] judicial eyebrows,” *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (plurality opinion), and has held that, generally, courts lack jurisdiction “to enjoin the President in the performance of his official duties” that are discretionary, *id.* (quoting *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866)).

An executive order mandating COVID-19 vaccinations for federal workers implicates President Biden’s discretionary duties. *See Blassingame v. Trump*, 87 F.4th 1, 15 (D.C. Cir. 2023) (holding that issuance of executive orders is a discretionary act that is unquestionably within the president’s official responsibilities); *McCray v. Biden*, 574 F. Supp. 3d 1, 10 (D.D.C. 2021) (holding that the president’s executive orders that directed federal agencies to require COVID-19 vaccinations for federal contractor and employees were discretionary and not ministerial). And “the law is clear that [courts] cannot issue [injunctive] relief to require performance of official duties that are not ministerial.” *Citizens for Resp. & Ethics in Wash. v. Trump*, 438 F. Supp. 3d

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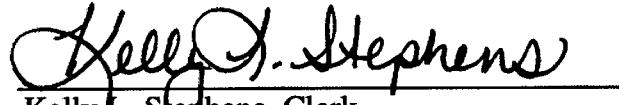
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54, 66-67 (D.D.C. 2020). Robertson's claim for injunctive relief against President Biden therefore was properly dismissed for failure to state a claim.

Robertson maintains that President Biden is not shielded from liability because he "violate[d] the rights of the citizens of the United States of America." Other courts have rejected this argument. *See, e.g., Johnson*, 71 U.S. at 500; *Franklin*, 505 U.S. at 826 (Scalia, J., concurring in part and in judgment); *Swan v. Clinton*, 100 F.3d 973, 977 (D.C. Cir. 1996); *Newdow v. Bush*, 355 F. Supp. 2d 265, 282 (D.D.C. 2005) (finding "no support at all" for an exception to presidential immunity "where [the President] is claimed to have violated the Constitution"). We do, too. We also reject Robertson's argument that President Biden is criminally liable under 18 U.S.C. § 242, which makes it a crime to willfully violate someone's constitutional rights, because, among other reasons, § 242 does not provide a private cause of action to civil litigants. *See United States v. Oguaju*, 76 F. App'x 579, 581 (6th Cir. 2003).

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

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CINCINNATI, OHIO 45202-3988

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Filed: April 15, 2024

Ms. Rachel Robertson
4093 Clabber Road
Columbus, OH 43207

Re: Case No. 23-3942, *Rachel Robertson v. Joseph Biden*
Originating Case No. 2:23-cv-02473

Dear Ms. Robertson,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Jill E Colyer
Case Management Specialist
Direct Dial No. 513-564-7024

cc: Mr. Richard W. Nagel

Enclosure

Mandate to issue

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Rachel Robertson,

Plaintiff,

v.

Joseph R. Biden,

Defendant.

Case No: 2:23-cv-2473

Judge Graham

Magistrate Judge Vascura

Order

Plaintiff Rachel Roberston, proceeding *pro se*, alleges that her constitutional rights were violated by one or more executive orders issued by the President of the United States, Joseph Biden. Her claims relate to the President's 2021 executive orders mandating COVID-19 vaccinations for employees of the federal government, federal contractors, and employees of employers with at least 100 employees. She alleges that the vaccine mandate caused her emotional distress over being required to choose between keeping her job or violating her religious beliefs. Plaintiff seeks at least \$3.2 million in damages from the President.

In an initial screening Report and Recommendation, the Magistrate Judge determined that plaintiff's claims are barred by the doctrine of presidential immunity, which entitles the President of the United States to "absolute immunity from damages liability predicated on his official acts." *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982). The Magistrate Judge recommended that the complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2) for failure to state a claim on which relief may be granted.

This matter is before the Court on plaintiff's objections and motion for leave to file an amended complaint. Plaintiff argues that she is suing the President in both his official and individual capacities, and she wishes to amend her complaint to the extent that it is unclear on this point. In plaintiff's view, presidential immunity would not bar an individual capacity suit because the President "stepped outside his job description" when he issued the executive orders mandating COVID-19 vaccinations.

Plaintiff's argument must be rejected. Suing the President in his individual capacity does not help a plaintiff avoid the application of presidential immunity. The critical inquiry is whether the

action being challenged came “within the ‘outer perimeter’ of [the President’s] official responsibility.” *Nixon*, 457 U.S. at 756. If so, then the President is entitled to absolute immunity. *Id.* The issuance of executive orders is unquestionably within the President’s official responsibilities. *See Bldg. & Const. Trades Dep’t, AFL-CIO v. Allbaugh*, 295 F.3d 28, 32–33 (D.C. Cir. 2002).

Plaintiff expresses her understanding that the vaccine mandates have been declared to be unconstitutional. The Court notes that the United States Supreme Court and Fifth Circuit Court of Appeals have issued rulings which imposed stays on certain aspects of the Biden administration’s vaccine mandates. *See Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109 (2022); *Feds for Med. Freedom v. Biden*, 63 F.4th 366, 370 (5th Cir. 2023). Nonetheless, whether a particular exercise of executive power is later declared to be unlawful is not the test for immunity – it is whether the exercise was an “official act” of the President. *See Nixon*, 457 U.S. at 756; *Newdow v. Bush*, 355 F.Supp.2d 265, 282 (D.D.C. 2005) (finding “no support at all” for an exception to presidential immunity “where [the President] is claimed to have violated the Constitution”). Again, plaintiff’s claims squarely challenge official acts of the President and are barred by presidential immunity.

Accordingly, the Court OVERRULES plaintiff’s objections (doc. 6), DENIES plaintiff’s motion for leave to amend the complaint (doc. 7), ADOPTS the Report and Recommendation (doc. 3), and DISMISSES the complaint. Plaintiff’s miscellaneous motions (docs. 8, 9, 11) are DENIED AS MOOT.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: October 17, 2023

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Rachel Robertson,)
Plaintiff)
v.) Civil Action No. 2:23-cv-2476
Joseph R. Biden,)
Defendant)

JUDGMENT IN A CIVIL ACTIONThe court has ordered that (*check one*):

the plaintiff (*name*) _____ recover from the defendant (*name*) _____ the amount of dollars (\$ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (*name*) _____ recover costs from the plaintiff (*name*) _____

other: This case is closed.

This action was (*check one*):

tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

tried by Judge _____ without a jury and the above decision was reached.

decided by Judge _____ on a motion for _____

Date: 10/17/2023

CLERK OF COURT

s/Denise M. Shane

Signature of Clerk or Deputy Clerk

No. 23-3942

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 12, 2024
KELLY L. STEPHENS, Clerk

RACHEL ROBERTSON,)
Plaintiff-Appellant,)
v.)
JOSEPH R. BIDEN, PRESIDENT OF THE UNITED)
STATES,)
Defendant-Appellee.)

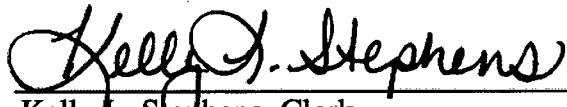
O R D E R

BEFORE: BATCHELDER, GIBBONS, and McKEAGUE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

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Filed: June 12, 2024

Ms. Rachel Robertson
4093 Clabber Road
Columbus, OH 43207

Re: Case No. 23-3942, *Rachel Robertson v. Joseph Biden*
Originating Case No. : 2:23-cv-02473

Dear Mr. Robertson,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

Enclosure

**Additional material
from this filing is
available in the
Clerk's Office.**