

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

AMERICA'S FRONTLINE
DOCTORS, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

CIVIL ACTION NO.
2:21-CV-702-CLM
OPPOSED

**DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION,
IMPROPER VENUE, AND FAILURE TO STATE A CLAIM**

COMES NOW Defendants Xavier Becerra, Secretary of Health and Human Services, in his official capacity only; Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, in his official capacity only; Dr. Janet Woodcock, Acting Commissioner of Food and Drugs, in her official capacity only;¹ the U.S. Department of Health and Human Services; the Food and Drug Administration; the Centers for Disease Control and Prevention; the National Institutes of Health; and the National Institute of Allergy and Infectious Diseases (collectively, "HHS"), by and through Isaac C. Belfer, Trial Attorney, and James W. Harlow, Senior Trial Attorney, Consumer Protection Branch, Civil Division, U.S.

¹ This Motion to Dismiss is not being submitted on behalf of Secretary Becerra, Dr. Fauci, or Dr. Woodcock in their individual capacities.

Department of Justice, and file this Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6).²

The Complaint should be dismissed for lack of subject matter jurisdiction because Plaintiffs lack standing; the challenged actions are unreviewable under the Administrative Procedure Act (“APA”); and the Court lacks jurisdiction over Plaintiffs’ mandamus claim. The Complaint should be dismissed for improper venue because the only potential bases for venue in this District are the claims by the eight Plaintiffs who reside in Alabama, and each of these Plaintiffs lacks standing. Finally, the Complaint should be dismissed for failure to state a claim upon which relief can be granted because it fails to state a claim that the challenged actions are unlawful under the APA; it fails to state a claim under customary international law or 45 C.F.R. Part 46; and it fails to state a mandamus claim. The grounds for this Motion to Dismiss are more fully set forth in the concurrently filed Memorandum of Law, the Declaration of Suzann Burk, and the exhibits attached thereto.

Dated: September 16, 2021

Respectfully submitted,

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² Pursuant to the Court’s Order (ECF No. 20), HHS is filing a consolidated memorandum of law in support of its Motion to Dismiss and in opposition to Plaintiffs’ Motion for a Preliminary Injunction (ECF No. 15).

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ James W. Harlow

JAMES W. HARLOW

Senior Trial Attorney