

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAUL BRUNDAGE,

Plaintiff,

v.

CASE NO: 25-119

XAVIER BECERRA, Secretary
United States Department of Health and Human Services
200 Independence Avenue, S.W., Washington, D.C. 20201,

Defendant.

_____ /

COMPLAINT

1. Paul Brundage suffered an adverse reaction to a COVID vaccination that left him with a severe blood clotting disorder.
2. Pursuant to the Vaccine Act (42 U.S.C. §300aa-1 through 300aa-34), Mr. Brundage should now be eligible to bring a claim for compensation for his injury in the United States Court of Federal Claims under the National Vaccine Injury Compensation Program (“VICP”).
3. Unfortunately, Mr. Brundage is not able to pursue compensation under the VICP because Xavier Becerra has not complied with the Vaccine Act and has failed to add the COVID vaccine to the Vaccine Injury Table.

4. Xavier Becerra is, and at all relevant times has been, Secretary of the Department of Health & Human Services.

5. Mr. Brundage brings this suit to compel the Secretary to add the COVID vaccine to the Vaccine Injury Table.

6. Once the COVID vaccine is added to the Vaccine Injury Table, Congress can then impose the statutory tax on COVID vaccines which will allow compensation via claims under the VICP.

7. This will allow Mr. Brundage and the thousands like him in the United States that have suffered severe adverse reactions to COVID vaccinations to seek compensation through the VICP as envisioned by Congress in creating the Vaccine Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 42 U.S.C. §300aa-31(a); 28 U.S.C. §1331 and §2201, all conditions set forth in 5 U.S.C. §701 and the following sections having been met; 28 U.S.C. §§1331 (federal question); and 28 U.S.C. §§1361 (mandamus).

9. Venue lies in this judicial district under 28 U.S.C. §1391(e) as Mr. Becerra is an officer of the United States acting in his official capacity as Secretary of the Department of Health & Human

Services, an agency of the United States based in the District of Columbia.

FACTS

10. The National Childhood Vaccine Injury Act of 1986 (the “Vaccine Act”) (42 U.S.C. §300aa-1 through 300aa-34) created the Vaccine Injury Compensation Program.

11. The VICP was created as an alternative to the tort system to allow individuals that believe that they suffered a severe adverse reaction from a covered vaccination to pursue claims for compensation in the United States Court of Federal Claims.

12. Covered vaccinations under the VICP include the influenza vaccine, tetanus vaccine, and over a dozen others which are administered to all ages.

13. 42 U.S.C. §300aa-14(e)(2) of the Vaccine Act states, “the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table ... to include ... vaccines which were recommended for routine administration to children...”

14. Significantly more than 2 years has passed since the COVID vaccine was recommended by the Centers for Disease Control and Prevention for routine administration to children.

15. The Vaccine Act thus requires the Secretary of the Department of Health & Human Services to add any vaccine recommended for routine administration to children to the Vaccine Injury Table within two years.

16. Despite significantly more than two years passing since the COVID vaccine was recommended for routine administration to children, the Secretary has failed to add the COVID vaccine to the Vaccine Injury Table.

17. On November 15, 2024, Mr. Brundage sent notice to the Secretary informing him that the Secretary had thus far failed to meet his obligations under the Vaccine Act.

18. Mr. Brundage's notice provided Mr. Becerra the 60 days required by 42 U.S.C. §300aa-31(b) before Mr. Brundage was able to file a citizen's suit.

19. The Vaccine Act provides that "any person may commence in a district court of the United States a civil action on such person's own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this part." 42 U.S.C. §300aa-31(a).

20. Mr. Brundage thus brings this suit pursuant to the above

citizen's suit provision to compel Mr. Becerra to comply with his duties under the Vaccine Act.

COUNT I
VIOLATION OF THE NATIONAL CHILDHOOD VACCINE
INJURY ACT OF 1986, 42 U.S.C. §300aa-10, et. seq.

21. Plaintiff hereby incorporates by reference paragraphs 1 through 20 of this Complaint.

22. Pursuant to 42 U.S.C. §300aa-14(e)(2), the Secretary had a duty to add the COVID vaccine to the Vaccine Injury Table within 2 years of the of the vaccine being recommended by the Centers for Disease Control and Prevention for routine administration to children.

23. 42 U.S.C. §300aa-14(e)(2) states, “the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table ... to include ... vaccines which were recommended for routine administration to children...”

24. Despite this clear statutory requirement, the addition of the COVID vaccine to the Vaccine Injury Table has not occurred.

WHEREFORE, Plaintiff requests that this Court issue an order compelling the Secretary to add the COVID vaccine to the Vaccine Injury Table, for any other appropriate relief as provided by law, and for his

attorneys' fees and costs in bringing this citizen action under 42 U.S.C. §300aa-31(c).

COUNT II
MANDAMUS, 28 U.S.C. §1361

25. Plaintiff hereby incorporates by reference paragraphs 1 through 20 of this Complaint.

26. Plaintiff pleads this Count in the alternative in the event that the Court concludes that 42 U.S.C. §300aa does not fully allow for the requested remedy.

27. Pursuant to 28 U.S.C. §1361, federal district courts have “original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

28. The Secretary has the non-discretionary duty to apply properly the substantive and procedural laws comprising the Vaccine Act.

29. The Secretary's failure to add the COVID vaccine to the Vaccine Injury Table as required by the Vaccine Act provides this Court with jurisdiction to order the Secretary to fulfill his obligations.

WHEREFORE, Plaintiff requests that this Court issue an order

compelling the Secretary to add the COVID vaccine to the Vaccine Injury Table and for any other appropriate relief as provided by law.

COUNT III
ALL WRITS ACT, 28 U.S.C. §1651

30. Plaintiff hereby incorporates by reference paragraphs 1 through 20 of this Complaint.

31. Plaintiff pleads this Count in the alternative in the event that the Court concludes that 42 U.S.C. §300aa does not fully allow for the requested remedy.

32. The Secretary violated the Vaccine Act by failing to add the COVID vaccine to the Vaccine Injury Table as required by the Act.

33. In the event that the prior counts of the Complaint do not provide the necessary relief, Plaintiff is entitled to an order requiring the Secretary to comply with the Vaccine Act under the All Writs Act, 28 U.S.C. §1651.

WHEREFORE, Plaintiff requests that this Court issue an order compelling the Secretary to add the COVID vaccine to the Vaccine Injury Table and for any other appropriate relief as provided by law.

Dated January 16, 2025

Respectfully submitted,

/s/ Altom Maglio

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