



Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington DC 20515

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October 7, 2021

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President,

We write to express serious concerns regarding recent reports that the White House is pressuring U.S. air carriers to require their employees to be vaccinated for COVID-19 by December 8, 2021, or else be fired. It is unacceptable that your Administration is using the threat of contractual measures as a coercion to single out American workers in a vital national industry, especially given the legal questions that have been raised regarding the imposition of employer vaccine mandates. We are also very concerned that these mandates are being pushed unilaterally by the White House on private companies in one sector of the economy prior to the Occupational Safety and Health Administration's (OSHA's) emergency rulemaking on this matter.<sup>1</sup> We strongly urge you to rethink this ill-conceived mandate which will result in the termination of employees whose jobs were saved over the last 18 months at enormous taxpayer expense and instead work with the airline industry and Congress on positive and legally defensible approaches to address the COVID-19 pandemic.

Last weekend, Reuters reported that White House COVID-19 response coordinator Jeffrey Zients urged American Airlines, Delta Airlines, and Southwest Airlines "to act sooner than later" to impose a COVID-19 vaccine mandate by December 8, 2021, which is at the beginning of the busy holiday travel season.<sup>2</sup> This unilateral mandate and arbitrary deadline will serve only to disrupt airline operations and increase the likelihood of cancelled flights, upsetting holiday plans for thousands of Americans, many of whom have not seen their families since the

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<sup>1</sup> White House, *Path Out of the Pandemic* (last accessed Oct. 4, 2021), available at <https://www.whitehouse.gov/covidplan/> (hereinafter WH Path).

<sup>2</sup> David Shepardson, *White House Pushes U.S. Airlines to Mandate Vaccines for Staff by Dec. 8*, REUTERS (last updated Oct. 4, 2021), available at <https://www.reuters.com/business/aerospace-defense/exclusive-white-house-pressing-us-airlines-quickly-mandate-vaccines-2021-10-01/>.

start of the pandemic. Reuters also reported that Mr. Zients directed passenger air carriers to look to United Airlines' COVID-19 vaccine requirement as a model for what the White House expects them to impose.<sup>3</sup> These reports are very concerning for a number of reasons.

First, the Administration's decision to target passenger air carrier employees for COVID-19 vaccine mandates and encourage their firing should they not comply has no basis in any COVID-related statute passed by Congress. In fact, quite the opposite has been the case. Congress, recognizing that a thriving airline industry is vital to the economy and national defense of the United States, provided approximately \$54 billion in passenger air carrier employee support since the beginning of the COVID-19 pandemic.<sup>4</sup> This aid successfully kept the passenger airline industry operating and its workers on the job.<sup>5</sup> All three Payroll Support Programs (PSP-1, -2, and -3) set forth numerous conditions that airlines were required to meet, including worker retention requirements, executive compensation and stock buyback restrictions, and route maintenance requirements. Importantly, none of the laws governing the PSP explicitly or implicitly directed the Administration to impose a COVID-19 vaccine mandate on air carriers.

One of the reasons for this is that Congress recognized the science which has consistently indicated that air travel is among the safest forms of transportation. In its Commercial Aircraft Cabin Aerosol Dispersion Test, the Department of Defense's U.S. Transportation Command (USTRANSCOM) found that "the overall exposure risk from aerosolized pathogens, like coronavirus, is very low" on large commercial aircraft.<sup>6</sup> A Harvard University report found that traveling on an aircraft, because of multiple layers of protection, is "as safe if not significantly safer" than other activities.<sup>7</sup> The report also concluded that "this multi-layered approach is so effective that the possibility of exposure to COVID-19 is reduced to a point so low that it 'effectively counters the proximity travelers are subject to during flights.'"<sup>8</sup> Despite the scientific evidence that air travel is extremely safe, your Administration is choosing to bully airlines into firing unvaccinated employees while giving a free pass to other modes of transportation like public transit, which received \$70 billion in COVID relief funding from Congress.<sup>9</sup> These actions send a false message to the American people that air travel is less safe than other activities, including travel by public transit or other modes of transportation, which is untrue.

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<sup>3</sup> *Id.*

<sup>4</sup> Ian Duncan and Lori Aratani, *Amid Flight Delays and Cancellations, Key Senator Questions*, WASH. POST, (July 16, 2021) <https://www.washingtonpost.com/transportation/2021/07/16/airline-flight-delays-cancellations-cantwell/>.

<sup>5</sup> U.S. Department of Treasury, *American Rescue Plan: Treasury's Progress and Impact After Six Months*, (Sept. 2021) <https://home.treasury.gov/system/files/136/American-Rescue-Plan-Six-Month-Report.pdf>.

<sup>6</sup> Press Release, USTRANSCOM, Stephenie Wade, USTRANSCOM Releases results from study testing risk of COVID exposure on contracted aircraft, (Oct. 15, 2020) available at <https://www.ustranscom.mil/cmd/panewsreader.cfm?ID=C0EC1D60-CB57-C6ED-90DEDA305CE7459D>.

<sup>7</sup> Harvard's T. H. Chan School of Public Health's Aviation Public Health Initiative, *Phase One "Gate-to-Gate" Report of SARS CoV-2 Transmission and Risk Mitigation While Flying*, October 27, 2020. See also *Covid-19's Effects on U.S. Aviation and the Flight Path to Recovery: Before the Subcomm. on Aviation of the H. Comm. on Transportation and Infrastructure*, 117<sup>th</sup> Cong. (Mar. 2, 2021) (statement of Nicholas E. Calio, President and Chief Executive Officer, Airlines for America) available at <https://transportation.house.gov/imo/media/doc/Calio%20Testimony.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> Jenni Bergal, *Biden Plan to Boost Public Transit Funding: Visionary or Wasteful*, STATELINE, Apr. 28, 2021, available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/04/28/biden-plan-to-boost-public-transit-funding-visionary-or-wasteful>.

We are disappointed that Mr. Zients chose to hold up United Airlines, which is in the process of firing hundreds of workers whose jobs Congress saved, as the model for other airlines to follow.<sup>10</sup> Not incidentally, United is also being sued by thousands of employees who have filed for medical and religious exemptions from the COVID-19 vaccine mandate because the airline plans to place them on unpaid leave.<sup>11</sup> The voluntary and incentive-based programs other airlines and companies have pursued are the examples that should serve as model policies, not one which terminates employees whose jobs were just saved at great taxpayer expense.

We are also concerned that the reported requirements for the airline industry go beyond those you announced for the upcoming OSHA emergency rulemaking.<sup>12</sup> OSHA's emergency rulemaking will apparently require employers with more than 100 employees to ensure that their employees are either vaccinated against COVID-19 or tested for the virus weekly.<sup>13</sup> Thousands of businesses and millions of employees have been left with questions about the requirements OSHA will include in its emergency rulemaking.

While we believe this emergency rulemaking to be a blatant overreach of executive authority, at least the rulemaking process will allow the public and affected businesses to review and provide comments. In contrast, your Administration has decided to force passenger airlines to require employee vaccinations without even the semblance of a rule in place to guide their actions. Although we anticipate legal challenges will surely follow OSHA's arbitrary and capricious actions, there is absolutely no scientific or legal basis for the disparate treatment by your Administration of passenger air carriers from other large businesses.

Finally, the reported use of Civil Reserve Air Fleet (CRAF) contracts as a means of coercing air carriers is particularly insulting given the recent activation of CRAF in support of Operation Allies Refuge.<sup>14</sup> Your Administration's catastrophic and embarrassing surrender of Afghanistan to the Taliban necessitated only the third activation of CRAF in its history and marks the first time the program has ever been used to facilitate a retreat. Under contract with the Department of Defense, air carriers and their employees patriotically ferried thousands of Americans and our Afghan allies to safety. After admirably and professionally performing their duties, that same contract will now shamefully place those same employees under threat of termination.

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<sup>10</sup> David Shepardson, *supra* note 2.

<sup>11</sup> *Employees Sue United Airlines Over COVID Vaccine Mandate*, ABC NEWS 7, (Sept. 28, 2021), <https://abc7chicago.com/united-airlines-employee-sue-sued-over-covid-vaccine-mandate-coronavirus/11054722/>.

<sup>12</sup> WH Path, *supra* note 1.

<sup>13</sup> *Id.*

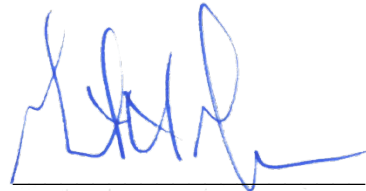
<sup>14</sup> David Shepardson, *supra* note 2.

While we share your goal of ending the COVID-19 pandemic, we object to the unilateral imposition of COVID-19 vaccine mandates on air carriers and other private companies by your Administration. We urge you to drop these coercive and unlawful vaccination schemes and work with Congress and private industry on public health measures to end the pandemic without threatening to end the livelihoods of hardworking Americans.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sam Graves", written over a horizontal line.

Sam Graves  
Ranking Member

A handwritten signature in blue ink, appearing to read "Garret Graves", written over a horizontal line.

Garret Graves  
Ranking Member  
Subcommittee on Aviation