

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

KENNETH ALLEN PRUITT,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., et al.,

Defendants.

CASE No.9:21-CV-00013-RC-ZJH

REPORT AND RECOMMENDATION

This case is assigned to the Honorable Ron Clark, United States District Judge, and has been referred to the undersigned Magistrate Judge for pretrial management. Pending before the court are *pro se* Plaintiff Kenneth Allen Pruitt's *Motions for Temporary Restraining Order and Injunctive or Declaratory Relief*. Doc. Nos. 2, 19, 39. For the reasons stated below, the court should deny Plaintiff's motions for injunctive relief.

Discussion

Plaintiff brings this case against President Joseph R. Biden and other government officials and agencies. Essentially, Plaintiff alleges that President Biden does not have the authority to reenter the United States into the United Nations' Paris Climate Accord because it is a "treaty" requiring the Senate's "advice and consent." U.S. CONST. art. II, § 2. Putting aside, for now, the serious questions of whether this case invokes the political question doctrine, or whether Plaintiff has standing, the undersigned will rule on Plaintiff's requests for a temporary restraining order/injunctive and declaratory relief. Through a series of motions (Doc. Nos. 2, 19, 39), Plaintiff has repeatedly asked for the same relief: he asks the court to enjoin the federal government from rejoining the Paris Climate Accord because it is supposedly a treaty requiring two-thirds consent of the Senate. In a sense of urgency, Plaintiff even tried to go over this court's head—he filed an

emergency appeal with the Fifth Circuit Court of Appeals before this court issued any substantive rulings. That appeal was dismissed. Doc. No. 46. Now the undersigned will consider Plaintiff's motions for a temporary restraining order.

Analysis

A party seeking a temporary restraining order or preliminary injunction must establish the following elements: (1) there is a substantial likelihood of success on the merits; (2) a substantial threat exists that the party will suffer irreparable harm if the injunction is not granted; (3) the threatened injury outweighs the threatened harm to the party whom he seeks to enjoin; and (4) the granting of the preliminary injunction will not disserve the public interest. *See Planned Parenthood of Hous. & Se. Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005). Due to its extraordinary character, injunctive relief should not be granted unless the party seeking relief has clearly carried the burden of persuasion as to all four elements. *PCI Transp., Inc. v. Fort Worth & W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005).

Plaintiff has not clearly carried his burden with respect to any of the required elements, but has particularly failed to satisfy the first two prongs. Without expressing any opinion as to whether the Paris Climate Accord is an "agreement" or a "treaty," the undersigned can certainly say Plaintiff has not shown a substantial likelihood that he would prevail on the merits. Instead, his case may (or may not) raise issues of standing and political question—issues that go to whether the court has jurisdiction in the first place.

Furthermore, Plaintiff has failed to establish that a substantial threat exists or that irreparable harm will result if the injunction is not granted. Plaintiff's logic is as follows: if the United States rejoins the Paris Climate Accord, the United States will be forced to take environmental protection measures that will somehow damage Plaintiff's interests in "minerals"

and “fossil fuels.” In his complaint and throughout his motions, Plaintiff does not specify what these mineral interests are, other than to say they exist in Nacogdoches County, Texas. Nor does Plaintiff explain, in detail, how entering the Paris Climate Accord would necessarily injure his particular interests. Further, Plaintiff does not explain how his interests would be protected if the Senate nonetheless approved the Paris Climate Accord despite the injunction.

Additionally, Plaintiff has not clearly shown that the harm that will allegedly occur to his mineral interests outweighs the harm of issuing an injunction that would disrupt this country’s international policy on climate change. With that in mind, Plaintiff has not shown how granting his requested relief would serve the public interest, let alone his own financial interests. Therefore, Plaintiff has not shown that he is entitled to a temporary restraining order, or the kind of injunctive relief that he requests.

Recommendation

For the reasons stated above, Plaintiff’s requests for injunctive relief should be denied. Therefore, the undersigned recommends that Plaintiff’s *Motions for Temporary Restraining Order and Injunctive or Declaratory Relief* (Doc. Nos. 2, 19, 39) should be **DENIED**.

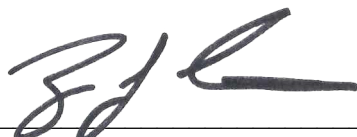
Objections

Pursuant to 28 U.S.C. § 636(b)(1)(C), each party to this action has the right to file objections to this Report and Recommendation. Objections to this Report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within fourteen (14) days after being served with a copy of this Report, and (4) be no more than eight (8) pages in length. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2); E.D. TEX. LOC. R. CV-72(c). A party who objects to this Report is entitled to a *de novo*

determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this Report, within fourteen (14) days of being served with a copy of this Report, bars that party from: (1) entitlement to *de novo* review by the United States District Judge of the findings of fact and conclusions of law, and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. *See Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED this 26th day of August, 2021.



Zack Hawthorn
United States Magistrate Judge